Adriatic LNG
Energy for a better future

INTEGRITY MODEL

Approved by the Board of Directors
3rd April 2024

Model for "Terminale LNG Adriatico S.r.L."
pursuant to Legislative Decree no. 231 of June 8th, 2001

This document contains guidelines adopted by Terminal LNG Adriatico S.r.L. (hereinafter, "ALNG S.r.L.") upon implementation of an effective "Integrity Model" (hereinafter "Model") pursuant to Legislative Decree no. 231 of June 8th, 2001 and subsequent amendments and integrations.

This Model can be accessed on the ALNG S.r.L. website under the heading "About us – Integrity Model": www.adriaticlng.it.

INDEX

GENERAL PART

CHAPTER A - ADOPTION OF THE MODEL BY ALNG S.r.L.

1. The Model and Code of Ethics.

This Integrity Model (hereinafter "Model") is adopted following issuance of the ALNG S.r.L. Ethics Code.

The rules of conduct set forth in this Model supplement those of the Ethics Code and the Basic Control Standards (BCS) – *System of Management Control*, although they differ in scope from those of the Code given its specific objectives in implementation of the provisions set forth in the latter.

In fact, the Ethics Code and the BCS represent tools that can be generally applied by ALNG S.r.L. in order to express the principles of the "corporate code of professional ethics" and internal controls that ALNG S.r.L. recognizes as its own and with which all of its Employees must comply. The Model responds to requirements of a broader scope, insofar as it represents the synthesis between the objective of the Company to equip itself with integrity models such to assure conditions of fairness and transparency in the conduct of company business activities and compliance with the specific provisions of Legislative Decree no. 231 of June 8th, 2001 (hereinafter "Decree 231" or "Decree"), aimed at company-wide awareness of the adoption of corporate policies to prevent conduct that could potentially cause negative legal consequences to the detriment of ALNG S.r.L.

2. Adoption of the Model to assure fairness and transparency.

2.1. Fairness and transparency.

ALNG S.r.L. is sensitive to the need to ensure fair and transparent conditions in the management of business affairs and activities. It wishes to protect its position and image and of the companies that have invested in its capital, the expectations of its Shareholders, and the work of its Employees, Associates and Business Partners.

2.2. Purpose and principles of the Model adopted by ALNG. S.r.L.

In accordance with this philosophy, ALNG S.r.L. believes that it is consistent with its corporate policy to implement the Model, envisaged by the Decree, including rules of conduct, specific procedures and organizational structures that will establish an effective internal control system that is reasonably adequate to identify and prevent criminally relevant conduct pursuant to the Decree (ref. Section 1, Regulatory Appendix for the discipline indicated therein).

This initiative was taken with the conviction that adoption of the Model constitutes a valid tool for enhancing the awareness of everyone who acts in the name and on behalf of ALNG S.r.L., so that

they engage in fair and consistent conduct in the course of their own activities such as to prevent the risk of committing the criminal offenses envisaged in Decree 231.

The company reaffirms its opposition to illicit/unlawful forms of behaviour (including those from which it would draw profit), not only on the basis of the laws but, above all, on the social and ethical principles ALNG S.r.L. adheres to in the fulfilment of its corporate mission.

Therefore, the Model aims to place all top management[1] and subordinates, as well as independent Contractors, in the condition to acquire the sensitivity necessary to perceive and recognize situations that might lead them to commit criminal offenses in carrying out their functions and duties.

ALNG S.r.L. intends to pursue its aforementioned objectives through a process of identification, measurement, management and monitoring of the principal risks, as well as through predictive control activities, to be carried out, including on a proactive basis ("*ex ante* control"), by the Company's internal Compliance Officer (hereinafter CO), so as to permit the sound, fair, and legally compliant operation of the business consistent with its pursued objectives and those of the legislator.

The Model also aims to carry out a process of monitoring in the areas deemed "at risk of offense", so as to permit the company to intervene, in a timely manner, to precede and thwart the commission of unlawful acts. By initiating a registration system and communication of the operations "at risk", traceability and documentability are guaranteed as well as a constant monitoring by the individual persons responsible for the aforementioned risk-prone areas and by the CO, between whom an uninterrupted flow of information is to be maintained. The Model furthermore includes in its scope the possible negative consequences deriving from its inobservance, whether by the company or by individuals, in terms of penal, administrative, and disciplinary sanctions.

Therefore, congruent to, indeed alongside an undertaking of awareness and proliferation of the Model, the company wishes to instil in all personnel operating in the confines of company "at-risk" areas, in name, on behalf of, or in any case in the interests of the Company, the awareness of the possibility of incurring disciplinary sanctions resulting from violations of the rules of conduct or procedures of the Model, implemented in an appropriate especially designed system of penalties.

While considering the objectives that ALNG S.r.L. intends to pursue, the training of Employees assumes strategic importance. Therefore, in the pursuit of increased effectiveness of the present Model, the Company promotes awareness internally and for all its Employees (especially new hires), with varying degrees of depth, linked to the involvement of human resources within the individual identified risk-prone areas.

[1] For those in "top management positions" to be thereby considered «*by natural persons who hold representative, administrative, or executive positions in those entities or in one of their organizational units having financial and operating autonomy; persons who actually operate and control such entities*» (Article 5 of Decree 231).

The Model has been produced from a preliminary survey of the individual *"Corporate At-Risk Areas"* and activities therewith completed (also considered "at risk"), from there identifying the company sectors concerned by casuistry of assumed offenses (Risk Assessment). The at-risk areas in the Special Part of this Model have been identified, by analyzing the purpose of business activities carried out by ALNG S.r.L. and the duties and activities carried out by management along with other key functions of the Company.

With particular reference to the **corporate objective** of ALNG S.r.L., the starting point for risk area assessment requires stating that the Company, an equity partner of Qatar Terminal Limited, ExxonMobil Italiana Gas S.r.L. and Snam S.p.A., has implemented and currently manages the storage facility and re-gasification of liquefied natural gas (LNG), positioned offshore in the Adriatic Sea in the area adjacent to the City of Porto Viro (Province of Rovigo).

Thanks to the LNG Terminal, Italy today has a new strategic energy infrastructure that enables the importation of LNG (liquefied natural gas) from numerous sources, including Qatar and the United States of America.

Upon approval of the last update to the Model, the Company is responsible for receiving, storage and re-gasification of the natural gas in addition to administrative and planning.

Since the operational activities envisaged for the re-gasification facility, ALNG S.r.L. has, moreover, maintained numerous relationships with Public Administrative offices[2], through direct private contracts, agreed upon with either private entities or public officials (e.g. the "Operating Agreement" between ALNG S.r.L. and ARPA of Veneto and the services contract with ISPRA), or concessions, partnerships, assets (corporate complexes, participations, etc.), or other similar transactions characterised in any case by taking place in a potentially competitive content.

Parallel to scrutiny of the actual developed activities, an in-depth analysis of the internal company controls already in place is being examined via company organizational charts, job descriptions, laws, delegation systems, existing governance, existing internal procedures, as well as other relevant company documentation.

There have been, moreover, discussions with individual Employees, top management[3], the Manager of Prevention and Protection Services (RSPP) and contractors, in relation to the

[2] These include, but are not limited to: the Ministry of Enterprise and Made in Italy; the Ministry of the Environment and Energy Security; the Superior Institute for Environmental Protection and Research (ISPRA), which is part of the aforementioned Ministry of the Environment; the Regulatory Authority for Energy, Networks and Environment (ARERA); the Regional Technical Commission, Environmental Section; ARPA of Veneto the Province of Rovigo; the Municipalities of Loreo and Porto Viro; the Competition and Market Authority; the Coast Guard; the Harbour Master's Office; the Regional Safety Committee; the Maritime Civil Engineering Office; the Ministry of Infrastructure and Transport and the individual Public Testing Commissions, since the plant is subject to state concessions.

[3] Such as the Managing Director and the First Level Manager, reporting to the Departments of Business Service, Human Resources, Law & Market, SSHE & Regulatory, and Operations, respectively. As of September 2022, the Technical, Project & Planning Management Department was merged within the Operations Department.

safeguarding of health and safety in the workplace, as well as management of the contractors. The scope of these discussions consisted in identifying the organizational safeguards already in place within the company and the risk-prone areas, in verifying, in the "history" of ALNG S.r.L., the recurrence of "at risk" situations and finally in measuring the attention and care undertaken by contractors in the management of work place safety with respect to the regulations enforcing the safeguarding of health and safety for Employees.

The Model has been prepared by ALNG S.r.L. also bearing in mind the regulation of Decree 231 according to which organizational and managerial models can be adopted, and also on the basis of the Codes of Conduct compiled by the representative trade associations in the sector.

The Company therefore deals with the provisions of the Decree and to the following guiding principles:

- the guidelines set forth by the "Confederation of Italian Industry" (Confindustria) and by other Italian trade associations,
- Italian and North American experience in drafting offense prevention Models and definition of organizational management and control standards and systems.

2.3. Model Structure.

The Model is comprised of a General Part and a Special Part, subdivided into distinct chapters based on "risk-prone areas of offense" as identified through risk mapping activities (risk assessment).

The **General Part** defines the Model structure, with its regulating purpose and functions, whilst identifying the internal supervisor of the area at risk and of the CO, and also establishing an appropriate system of information flows and regulatory systems to sanction any inobservance of the said Model.

The **Special Part**, while keeping in mind the corporate activities of ALNG S.r.L., concretely regulates the conduct of the Recipients through the awareness of distinct rules of conduct, protocols and procedures, operating internally in differing risk-prone areas with the objective of preventing the commission of any offenses potentially being committed within the company.

In this regard, it is impossible on both the practical and conceptual levels to create a system of internal controls capable of totally eliminating possible risk-prone situations. Therefore, the objective of the Company and this Model is to reduce the risk to an "acceptable level"[4], and the identification of a limit on the quantity/quality of preventive measures to be adopted.

[4] "Acceptable risk" is defined in the Confindustria Guidelines as the risk for which «*additional controls 'cost' more than the resource to be protected*», while clarifying immediately thereafter that this assessment cannot be the sole principle of reference in the economic logic of costs.

To this end, we identified the following nine areas at risk:

1. The *first area* has been identified taking into account the types of offenses referred to in Articles 24 and 25 of Decree 231 (so-called crimes against the Public Administration), which has been subjected to major legislative actions since 2012, with the consequent need to update the Model (see Chapter A of the Special Part and Section 2 of the Regulatory Appendix);
2. The *second area* is identified according to the types of criminal offense envisaged in Article 24 *bis* of the Decree, or in other words, computer crimes and violation of copyright envisaged in Article 25 *novies* (see Chapter B of the Special Part and Section 3 of the Regulatory Appendix);
3. The *third area* was selected based on the types of offenses set out in Article 25 *ter* concerning the category of corporate crimes, including the offense of "Bribery among private individuals" set forth in Article 2635, paragraph 3, of the Civil Code and Article 25 *sexies* of Decree 231 (market abuse) (see Chapter C of the Special Part and Section 5 of the Regulatory Appendix);
4. The *fourth area* deals with the criminal offenses of the entity for the offenses of homicide and bodily harm, both severe, committed in violation of accident prevention and occupational hygiene and health protection laws (pursuant to Article 25 *septies* of Decree 231) (see Chapter D of the Special Part and Section 6 of the Regulatory Appendix);
5. The *fifth area* was introduced on the basis of criminal offenses introduced by Article 25 *bis1* of Decree 231, on crimes against industry and commerce (see Chapter E of the Special Part and Section 4 of the Regulatory Appendix);
6. The *sixth area* regards the assumed offense of *"Inducement not to make statements or to make false statements to the Judicial Authorities*" pursuant to Article 25 *decies*[5] of Decree 231 (see Chapter F of the Special Part and Section 7 of the Regulatory Appendix);
7. The *seventh area* addresses the types of criminal offenses envisaged in Article 25 *undecies* of Decree 231 which extends the liability of entities for the so called "*Environmental crimes*" (see Chapter G of the Special Part and Section 8 of the Regulatory Appendix).
8. The *eighth area* has been prepared with reference to the offense introduced by art. 25 *duodecies* of Decree no. 231 which provides for the possibility of "*Use of third-country*

[5] With the Legislative Decree July 7, 2011, No. 121 ("*Implementation of Directive 2008/99/CE on the environment penal protection and Directive 2009/123/CE, amending Dir. 2005/35/CE on the pollution caused by ships and the introduction of penalties for violations*") the legislature has provided for the correction of the erroneous numbering of the said Article (before Article 25 *novies*, now Article 25 *decies*).

nationals staying illegally" (illegal/irregular aliens) (see Chapter H of the Special Part and Section 9 of the Regulatory Appendix);

9. The *ninth area* concerns the crimes of Receiving of stolen goods, Money laundering, Use of money, goods or benefits of unlawful origin, and Self money laundering referred to in Article 25 *octies* of Decree 231 (see Chapter I of the Special Section and Section 7 of the Regulatory Appendix) .

The last area, finally, dictates specific rules for conducts which, while not directly integrating cases of offences implying administrative liability for the Company pursuant to the aforementioned Decree, are nevertheless capable of integrating anomalous or atypical conducts which, departing from ordinary and approved company practices, may constitute a potential source of harmful legal consequences for ALNG S.r.L. (see Chapter L of the Special Section).

For a deep examination of the contents of Decree 231 and the specific offenses set forth where provided for and the abovementioned risk areas, refer to the **Regulatory Appendix** of the present Model.

Following the entry into force of Law No. 179/2017 on the so-called '*whistleblowing*' and the subsequent Legislative Decree No. 24/2023, on the "Provisions for the protection of whistleblowers who report crimes or irregularities they have become aware of within a public or private employment relationship", a specific policy on the reports of illicit acts or irregularities that harm the public interest or the integrity of the Company, called " Whistleblowing Reports Procedure", was adopted (see Para. 3).

2.4. Amendments and supplements to the Model.

The Company Board of Directors or the director specifically delegated for this purpose by the Board of Directors is responsible for amending the Model, upon proposal from the CO, to supplement and for making modifications to the Model as deemed necessary following statutory changes to the offenses envisaged by the Decree or changes in the company or in the activities of ALNG S.r.L.

2.5. Periodic Verifications.

This Model is subject to two types of verifications, concerning:

a) its effectiveness, through controls on the consistency of the Model between the actual conduct of the Recipients and the Model itself; and

b) applicable procedures, through periodic controls on actual Model functionality.

Furthermore, all the reports received during the year, the actions undertaken by the CO and other interested parties, events that are considered risk-prone, and the awareness of personnel of the

supposition of offenses envisaged in the Decree are subject to analysis. Following these verifications, action for any required revision and/or updating of the risk-prone areas may be undertaken.

2.6. Recipients of the Model.

This Model applies to the following classes of personnel, all of whom are hereby classified as "*Recipients of the Model*" (hereinafter also "*Recipients*"):

a) Directors: Members of the Board of Directors of ALNG S.r.L.;

b) Direct hires of ALNG S.r.L.;

c) Secondees: the Secondees sent by the shareholders[6] for the entire duration of the service provided by the individual secondees to ALNG S.r.L.;

d) Secondees/PTFs: the Secondees sent by the Shareholders[7] and assigned to work for ALNG S.r.L. only for a predetermined time, for the entire duration of the service provided to ALNG S.r.L.;

e) Contracted workers or similar, throughout the duration of the service rendered to ALNG S.r.L.;

f) General or Special Representatives: all personnel granted a general or special power of attorney until its natural expiration or until its revocation, or until completion of the specific activity indicated in the power of attorney;

g) External consultants (disclosure only): professionals who provide consulting services to the Company on the basis of a specific commission or letter of engagement.

The rules of conduct and procedures set forth in the Model are applied to **all** classes of personnel indicated hereinabove, as well as to all those who directly or indirectly, permanently or temporarily establish collaborative relationships or relations with the Company for any reason or who act on behalf of the Company itself.

In addition to acting in compliance with the fundamental principles of transparency, fairness, legality, impartiality, and fidelity, each Recipient is consequently obliged to familiarize himself or herself with the Model, comply with its rules, contribute actively to its implementation, and report any deficiencies therein.

If they deem it necessary, the Board of Directors or the specifically delegated Director sets up specific evaluation systems in the Company for the selection of external collaborators, consultants, and similar service providers ("*external associates*"), and partners with whom the Company wishes to cooperate in any form for performing activities in the risk-prone areas ("*partners*").

[6] As identified in the *Service Agreement* by Exxon Mobil Italiana Gas S.r.L., Qatar Terminal Limited, Edison S.p.A., and ALNG S.r.L.

[7] As identified in the *Service Agreement* initialled on 2nd of May 2005 by Exxon Mobil Italiana Gas S.r.L., Qatar Terminal Limited, Edison S.p.a (today, no longer part of the corporate structure)., and ALNG S.r.L.

In all cases, ALNG S.r.L. promotes knowledge of the Model amongst its commercial or financial Partners and external consultants through its publication on the web site www.adriaticlng.it.

2.7. Functional Company Departments Involved.

The present Model applies to the following functional areas of the Company, whose company organisational charts, as of the date of approval of the last Model update, identifies the following departments:

a) Business Service Department;
b) SSHE and Regulatory Department;
c) Legal and Market Department;
d) Operations Management Department;
e) Human Resources Department;
f) Any other department that will be created in ALNG S.r.L.

3. Whistleblowing

With Law no. 179 of 2017 including "*Provisions for the protection of whistleblowers who report crimes or misconduct of which they become aware in the context of private or public employment*", updated by Legislative Decree no. 24/2023, the discipline on the so-called *whistleblowing* has been extended to the private sector. This term refers to the process by which employees of an organization, public or private, report potential unlawful and/or irregular conducts committed by members of the same organization or, in any case, acting within it or on behalf of it.

The discipline on *whistleblowing* aims at encouraging the emergence of situations which may cause harm to the public interest or the company, so as to prevent the risk of their verification.

Specifically, pursuant to paragraph 2-*bis* of Article 6 of Legislative Decree No. 231/2001, as amended by Legislative Decree No. 24/2023, the Model adopted pursuant to Decree 231 shall provide, according to the same Legislative Decree non 24/2023 implementing EU Directive 2019/1937 of European Parliament and the Council, for internal reporting channels, the prohibition of retaliation and the disciplinary system.

In light of the principles of fairness and transparency which guide the company vision of ALNG S.r.l., the Company has then further specified its policy on the reporting of unlawful conducts and/or violations of the Model, the Ethical Code, the Basic Control Standards and the company procedures, also by means of a specific policy called "*Whistleblowing Reports Procedure*", in order to give clear indications on the content and object of the Report, the means of transmission and its addressees, the management of the Report and the forms of protection of the subjects mentioned by

Legislative Decree no. 24/2023 (see "*Whistleblowing Reports Procedure*", available at the following link: https://whistleblowersoftware.com/secure/TerminaleGNLAdriaticoSrl).

Generally- and as explained more in detail in the "Whistleblowing Reports Procedure"-, the Company has activated, pursuant to Article 6, paragraph 2-*bis* of Legislative Decree no. 231/2001 and Article 4, paragraph 1, of Legislative Decree no. 24/2023, the **internal reporting channel** in written and oral form, through the adoption of information technology means (online platform), aimed at enabling the persons identified in Article 3 of Legislative Decree No. 24/2023 to submit Reports, in accordance with the procedures and with the protections provided therein.

The Company undertakes to ensure the **confidentiality** of the identity of the Reporting Person and the other persons identified in Article 3 of Legislative Decree No. 24/2023, the person involved and the person in any case mentioned in the Report, as well as the content of the Report and related documentation.

The Company also protects both the Reporting Person and the other persons referred to in Article 3 of Legislative Decree No. 24/2023 from any kind of retaliation, including attempted or threatened retaliation.

Lastly, the Company has prepared clear information on the channel, procedures and prerequisites for submitting internal and external reports, which it will make accessible to its employees in their workplaces and publish on its website for recipients outside the Company, pursuant to Article 5, paragraph 1, letter e) of Legislative Decree No. 24/2023.

CHAPTER B - INTERNAL OFFICER RESPONSIBLE FOR INDIVIDUAL RISK-PRONE AREAS

1. Appointment of a First-level Manager to the Individual risk-prone area. Roles and Responsibilities.

In order to ensure tangible and effective implementation of the Model and thus, for the purposes of constantly monitoring the risk-prone areas in the Company, the position of internal officer responsible for the individual risk-pone area is established (or the First-level Manager).

Without prejudice to the fulfilment of his or her ordinary corporate duties, the First-level Manager is responsible for systematic verifications of compliance to the Model to all its Recipients and its adequacy within the scope of his or her office.

When performing this task, the First-level Manager acts as the reference point of the CO, functionally reporting to it. He or she reports the results of inspections conducted, any violations reported, organisational or functional anomalies found, suggestions and proposals for modification and/or supplementing the Model, and assists the Compliance Officer in carrying out the duties delegated to it.

In particular, in his or her role as referent of the CO, the First-level Manager must perform the following activities or functions:

- supervision of his or her area of responsibility, with the authority to carry out preventive verifications and inspections at any time, in the form of spot-checks or otherwise;
- communication procedures as outlined in the following paragraph 2;
- collection of all reports and/or written disclosures made by the Employees in his or her own Department, or by external Consultants, referring to the specific risk-prone area monitored by him or her, without prejudice to what provided for by the Whistleblowing Reports Procedure.

In the event of temporary absence or prolonged inability of the individual First-level Manager and of the RSPP or of the Operations Manager, the responsible officer must delegate another person to perform his or her functions.

2. Informative obligations regarding the Compliance Officer

2.1. Reporting lines of the individual First Level Manager to the Compliance Officer.

Decree 231 states that organizational models must «*envisage mandatory disclosure to the Compliance Officer*» which can be fulfilled by the First-level Manager though reporting activities for the CO, to be carried out through distinct channels in writing (reports, emails and written communications), through the methods indicated below:

- **written half-year reports** indicating *(i)* the results of the Supervision activity and control in his or her area of expertise; *(ii)* the existence of corporate activities that are deemed wholly or partially to lack specific rules, or the malfunctioning of the existing regulation; *(iii)* any suggestions for modification and/or supplements to be made to the present Model; *(iv)* the effective use of consultancy services performed in the interest of the company and checking of the congruence of the remuneration paid;
- **promptly and in writing**, *(i)* any violations of the rules and procedures set forth in the Model as discovered on his or her own initiative or upon report, except for the cases of the *Whistleblowing Reports Procedure*; *(ii)* any serious anomalies found in the functioning of the Model; *(iii)* unusual conduct that, while not constituting violations, departs significantly from ordinary company practice (e.g. a fact that when considered individually appears irrelevant, might become significant or indicative of dysfunctions or anomalies, if repeated); *(iv)* the pendency of any criminal proceeding against him or her that has been formally registered upon charging of a complaint for one of the criminal offenses envisaged in Decree 231, or measures and/or information received from the judicial police, or any other authority, which indicate that other members of the company are under investigative proceedings for the offenses envisaged in the Decree.

In regard to the specific issue of accident prevention and occupational hygiene and health protection, the aforementioned written reports must be sent to the competent RSPP.

With regard to environmental issues, finally, the Company has decided to activate a special information channel, which identifies the Operations Manager as Internal Officer Responsible (or the First-level Manager) of such risk-prone area. Therefore, the above-mentioned written reports must be made in respect of the aforesaid Managers, except for the cases of the *Whistleblowing Reports Procedure*.

The *Integrity Document* is transmitted via e-mail by the Compliance Officer to the officer of the monitored risk-prone area (First-level Manager) at least 20 days before the end of the half-year period. The Officer in charge of the monitored risk-prone area must fill out and sign this document and send it to the CO promptly and, in any event, no later than the end of the month following the end of the half-year period.

The *Integrity Document* must also mention the risk-prone operations carried out in the area of responsibility and, in particular:

a) description of the risk-prone transaction, with a precise or approximate indication of the economic value of the transaction;

b) the Public Administration with responsibility for the procedure that is the object of the transaction;
c) the name of any internal officer in charge of the transaction (enclosing a copy or details of the letter of appointment, with specification of his or her position in the company organization);
d) the name of any persons appointed by the internal officer to whom, without prejudice to the responsibilities of the internal officer, certain functions are sub-delegated (the "Internal Deputies"), with indication of their position in the company organization;
e) indication of the principal initiatives and requirements satisfied in carrying out the transaction.

2.2. Reporting lines of the individual Employees, for the Managing Director, directors with operating responsibility, and the general or special representative, to the CO.

2.2.1. Written Reports.

The individual Employees, Managing Director, Directors with operating responsibility, and general or special representatives must communicate the following to the CO **promptly and in writing**:

(i) any fact, situation, or event that might involve violation of the requirements and/or procedures set forth in the Model;

(ii) any problems in applying the rules of conduct and/or procedures contained in them or doubts over proper application thereof;

(iii) measures and/or information issued by the judicial police or any other authority that indicate investigations are underway against known or unknown persons for the crimes as envisaged in Decree 231;

(iv) the pendency of any criminal proceeding against them, that is formally undertaken upon filing of charges for one of the criminal offenses envisaged in the Decree.

All communication to the CO can be sent via email to *compliance231@adriaticlng.it* or by post to the CO Terminale GNL Adriatico S.r.l, Via Santa Radegonda 8, 20121 Milan.

The Reports of illicit conducts and/or violations of the Model, the Ethical Code, the Basic Control Standards and the company procedures can be made in accordance with the modalities and forms of protection provided for by the *Whistleblowing Reports Procedure*

Without prejudice to what provided for by the *Whistleblowing Reports Procedure*, with particular reference to the prevention of accidents and protection of occupational health and hygiene, the aforementioned reports must be made to the competent RSPP, and, with respect to the matter of environmental protection, to the Operations Manager, who will promptly inform the CO.

The aforementioned must bring to the attention of the CO, the competent RSPP, the Operations Manager and the Technical Manager and, where deemed necessary, the First-level Manager, all other information of any kind (uncertain cases, potential or actual anomalies, violated procedures, immediate and/or corrective actions in the event of violated procedures etc.) received from third parties that regards implementation of the Model for all risk-prone activities. The following rules apply here:

a) when an employee encounters an anomalous situation or one that poses a potential source of risks for the Company, or if he or she does not know how to act, he or she must inform the CO or the competent RSPP or the Operations Manager and the Technical Manager (in their area of responsibility);

b) the flow of reports, including unofficial ones, must be channelled to the CO and the competent RSPP or the Operations Manager (in their area of responsibility), preferably in writing (e-mails, letters, registered letters);

c) the CO (or the RSPP or the Operations Manager for matters in their area of responsibility) is responsible for assessing the received reports and any consequent measures at his discretion and under his own responsibility, possibly interviewing the author of the report and/or the person who committed the alleged violation, and justifying in writing any refusals to carry out an internal investigation.

The Managing Director, Directors with operating responsibility, and general or special Representatives with proxies are obliged to fill out the *Integrity Document* **half-yearly and in writing**, in which the persons mentioned hereinabove certify that they are familiar with the current Model and that they have acted in accordance with the provisions and procedures set forth therein.

The *Integrity Document* is transmitted by the CO (or the RSPP or the Operations Manager, in regard to matters under their responsibility) via e-mail to the individual members of the company at least 20 days before the end of the half-year period. Each Recipient must fill out and sign the document and return it promptly to the CO (or the competent RSPP or the Operations Manager). The CO shall keep it on file, and it may be read upon submission of an adequately justified request in writing.

The *Integrity Document*, in the event that it reports a risk-prone transaction executed by the reporting members in question, must also mention the type of risk-prone transaction carried out in their area of responsibility, and in particular the following must be cited to describe the transaction:

2.2.2. Reports during staff meetings.

If they deem it necessary, the First-level Managers and the Managing Director may also inform the CO during the especially dedicated session at the weekly staff meetings.

2.2.3 Minutes of Meetings

It is advisable for at least two persons to participate on behalf of ALNG S.r.L. at particularly important meetings held at the highest levels of the Public Administration (in this regard, also see Chapter A of the Special Part).

At the end of the meeting, these persons must send the minutes with the main matters discussed to the CO. If this is not possible, the CO must promptly and adequately be informed.

CHAPTER C - COMPLIANCE OFFICER

1. The ALNG S.r.L. Compliance Officer.

The actual and effective implementation of the Model cannot preclude establishment of a body delegated to supervise the observance and functioning of the Model, and moreover to maintain it, its revisions, supplements and any modifications.

In compliance with the regulatory requirements and due to the need of making the internal control system effective - as taught by case law -, taking into account the corporate reorganisation initiated by the Company as from 2020, a Supervisory Body (SB) of a monocratic nature was established and appointed, composed of an external member, chosen among professionals and experts in the legal field and endowed with in-depth knowledge of the company's business (see section 1).

1.1. Identification of the Compliance Officer

The following criteria were evaluated when designating the CO:

- **Autonomy and independence**: the CO is not directly involved in the management activities involved in functions undertaken, but it enjoys operating and budgetary autonomy so that it can pursue its institutional objectives, supervising corporate affairs without interference, objectively, independently, and undisturbed;
- **Professionalism**: the CO is comprised of a member with proven experience, independence, and professionalism, who can adequately handle their assigned duties;
- **Respectability**: the CO must not find themselves in situations that undermine the judicial equanimity and liberty of the same CO (see causes for forfeiture in *infra* paragraph 3);
- **Continuous action**: the CO does not have operating duties within the company that he is assigned to monitor, given that the internal audit function must be performed – in accordance with the initial citations of case law – on a continuing basis and with objective judgment during verifications.

Consistently with the Guidelines issued by the Association of Italian Industries (Confindustria), and approved by the Ministry of Justice in the Ministerial Decree of 4 December, 2003 and subsequently modified[8], the Compliance Officer has been selected from among various qualified individuals who possess specific knowledge of Auditing and Consultancy of system analysis and control (e.g. Statistical Sampling; risk analysis and evaluation techniques; interviewing and questionnaire development techniques) as well as in judicial environments, specifically relating to

[8] Last updated on June 2021. .

penal law, in order to ensure a thorough knowledge of the criminal offenses envisaged by Decree 231.

Therefore, the Company's Board of Directors ultimately decided to identify Mr. Ciro Pellegrino, a lawyer with proven experience in the legal-criminal field and a member from outside the corporate structure, as the most suitable person, and appointed him as the sole member of the Supervisory Board (Compliance Officer).

In the performance of his duties, the Compliance Officer is supported by the Financial Service Supervisor - or an equivalent person, in the event of changes to the corporate organisation -, so as to ensure an effective and continuous interaction with the Company.

In order to maintain the professionalism of the CO, the member ensures to participate in training sessions, conferences and/or seminars that guarantee continual information and training in the areas of competence, as well as keeping up to date on the most important problems intrinsic to administrative liability pursuant to Decree 231.

The CO has his own budget, which is adequate for properly carrying out its duties, with the right of access to all sources of information in the company, through free consultation of documents and requests for information.

The activities and choices of the CO cannot be judged by any corporate structure, given the CO's operating autonomy, but without prejudice to the supervisory authority of the Board of Directors over the adequacy of the measures taken by the Team. This stems from the fact that the "*company management*" has final responsibility for the adoption and effective implementation of the Model.

1.2. Dedicated Temporary Work Staff.

Considering the peculiar nature of the duties of the CO and the specific professional skills that he must have to perform his supervisory and control duties, the CO of ALNG S.r.L. is supported, in addition to the Financial Service Supervisor (or equivalent) and as necessary, by a "Dedicated Staff". This Staff is normally chosen for this purpose from among the internal resources of the functions of ALNG S.r.L. and employed part-time for specific duties.

Specific internal organizational documents are used to establish the operating procedures for this "Dedicated Staff", the personnel selected to constitute it, their role and the specific responsibilities assigned by the CO to that staff.

1.3. Nomination of the Compliance Officer Members, Duration of Power, Substitution and Repeal.

The CO is nominated by the Board of Directors of the Company. His duration of service is of 3 years, and they are re-eligible.

In this capacity, the CO is not subject to the hierarchical and disciplinary authority of any corporate body or function.

Should he leave office during his term, the Board of Directors shall replace them without delay. The term of the co-opted member is considered to expire together with that of the members in office when he was appointed.

If the Compliance Officer resigns from his position before his term expires or forfeits his position, the Board of Directors shall appoint the new member of the Team without delay.

The following are causes for "forfeiture of responsibility":

1) conditions of ineligibility or forfeiture as envisaged in Article 2382 of Civil Code;
2) existing relationships, spousal, or similar relationships up to and including the fourth generation with members of the Board of Directors or with the Company's Sole Auditor, as well as any members of its subsidiary and/or parent companies or with external Contractors and Partner;
3) without prejudice to employment contracts, the existence of non-equity accounts between the members and the controlling and/or controlled Company or Companies, such that it compromises the independence of the abovementioned member;
4) a conviction, final or otherwise, for an offense as set forth by Decree 231[9];
5) a conviction, final or otherwise, punished by a temporary or permanent ban on holding public office, or temporary ban on holding executive positions with legal entities and enterprises;
6) violation of the privacy obligations envisaged in paragraph 9 below.

In cases of particular severity, the Board of Directors may, before or after the judgement of the court of first instance, and after consulting with the Company's Sole Auditor, suspend the CO's authority and nominate an officer *ad interim*.

The conditions of forfeiture also extend to Employees of which the CO makes use in the fulfilment of his functions and, in particular, to members of the "dedicated Staff".

Unless the role and position of the CO are revisited on the basis of experience in implementing the Model, any revocation of the specific powers of the CO or of his term may be carried out with just cause only[10], following resolution by the Board of Directors and after receiving the opinion of the Company's Sole Auditor, provided that a new CO is immediately nominated.

[9] A guilty verdict equals a sentence and application of the penalty as per article 444 of Code Criminal Procedure (see plea-bargaining).

[10] For example, "just cause" means but is not limited to the following: gross negligence in discharging the duties associated with the position: for example, failure to prepare the semi annual report to be submitted to the Board of Directors and the Company's sole Auditor; "*omitted or insufficient*" supervision by the CO as confirmed in a final or non-final judgment against the Company pursuant to the Decree or judgment with application of the penalty on request ("plea bargaining"); The attribution of operating functions and responsibilities inside the corporate organization that are incompatible with the prerequisites of "autonomy and independence" and "continuous action" incumbent on the CO.

If the sole member is temporarily prevented from acting for more than three months, the Board of Directors shall appoint a substitute member. The substitute member shall leave office when the CO is no longer prevented from acting.

In the event that the CO resigns from his office or becomes aware of facts proving his incapacity or causes for his disqualification, he shall immediately inform the Board of Directors, which shall, without delay, adopt all consequent measures.

1.4. Meetings of the Compliance Officer.

The CO is obliged to meet at least once every six months and whenever deemed appropriate. During the meeting, the sole member of the CO may be supported by a collaborator.

Representatives of the corporate functions may attend the meetings, when deemed necessary by the CO for the performance of his duties.

Meeting minutes must be drawn up after every meeting and signed by the attendees.

2. Duties and Authority of the Compliance Officer [11].

2.1. Publication and proliferation of the Model.

The CO is responsible for distributing and illustrating the Model inside the Company, as well as communicating the existence of the Model to those parties outside the Company that directly or indirectly establish a permanent or temporary professional and/or consulting relationship of any kind with the Company.

To this end, the CO organizes various training courses for all Company Employees in order to illustrate the content of the Model and promote the implementation of appropriate initiatives for disseminating awareness and comprehension of the Model, in coordination with the Human Resources Department (for example access to a *Lan* folder on the subject, updated by the CO).

2.2. Hiring and Training of Personnel.

In conjunction with the Human Resources Manager, the CO studies the advisability of establishing a specific system for assessing job candidates during the hiring process, taking into account the context of company requirements for application of Decree 231, and training of personnel based on employee level.

In particular, training activities for Managing Directors, Directors with operating responsibility, and First-level Managers, including in their capacity as officers of the risk-prone areas, is executed

[11] Special control functions are provided for, with reference to offenses envisaged in Article 25 *octies* of Decree 231, Legislative Decree no. 231/2007.

through *(i)* information found in the offer letter for new hires, *(ii)* initial training and subsequent in-service training in the event of any statutory amendments to Decree 231, and any supplements and/or amendments to the Model. Training, unless specifically stated otherwise, will take place in Milan.

Participation in these training courses is mandatory and the regular participation of trainees is subjected to specific controls. Following the completion of each training event each participant will be required to sign an acknowledgment document attesting their participation in the course.

Training activities for self-employed workers and independent Contractors by means of distance learning methods (CD/DVD presenting the Model and its regulations).

2.3. Supervision and Control.

The CO performs functional supervision and adherence to the Model.

Moreover, it:

- performs inspections on his own initiative or following relevant reports by the First-level Managers, Directors and/or Employees, in order to verify that the Model, rules of conduct, and procedures cited in it are correctly and effectively applied;
- through routine and surprise inspections, carries out targeted verifications of specific transactions or specific acts performed in risk-prone activities;
- coordinates with the other company functions for monitoring of risk-prone areas;
- participates in the weekly meetings of the Managing Director and First-level Managers (staff meetings) during the session dedicated to the Model.

2.4. Model Revisions.

The CO also acts in a consulting role, with the objective of Model updates with new regulations or company requirements, or modifying and/or supplementing the Model, including through the creation of new procedures or the revision of existing procedures, above all following ascertained violations of the Model.

The CO periodically verifies the assessment of areas “subject to the risk of criminal offense” in order to adjust it to changes in the company’s activity and/or organization, verifying the Model’s continuing correspondence to the corporate organization and/or activity, submitting proposals to the Board of Directors (or the delegated Director) to implement any modifications and/or supplements to the rules of conduct and procedures or elimination of procedures that have become unfeasible due to strategic, organizational, or business changes;

To this end, the CO participates in Board of Directors meetings or, alternatively, receives summaries of the topics discussed at these meetings (*“operating reports”)* from the Board of

Directors or delegated director, in order to be informed of any strategic, organizational, or business changes.

2.5. Budget Management.

The CO is responsible for managing financial resources, using them with complete independence for all needs connected with the correct performance of the functions assigned to him. The CO may suggest appropriate changes to the systems for Management of the financial resources (both revenues and outlays), to management through implementation of measures that can reveal the existence of any unusual financial flows characterized by greater margins of discretion than ordinarily envisaged.

2.6. Delegation of Roles.

The CO periodically verifies (with the support of the other functions with responsibility) the applicable system of delegations of authority, recommending changes if there are inconsistencies between the operating authority and/or title with the representative authority granted to the internal Head or *Sub*-Heads.

2.7. Contractual Terms.

The CO periodically verifies, with the support of the other competent functions, the validity of standard terms aimed at: *(i)* compliance by the Recipients of the provisions of the Decree 231, and the possibility of ALNG S.r.L. to carry out effective inspections of the Recipients of the Model in order to verify compliance with the rules set forth in it; *(ii)* implementation of penalty mechanisms, such as withdrawal from agreements with partners or external associates in the event of violation of regulatory requirements, particularly in regard to those governing protection of occupational health and safety.

2.8. Data Collection, distribution and preservation of related documentation.

The CO has the task of collecting and preserving all relevant information in regard to compliance with the Model that is acquired directly or through reports, also according to the *Whistleblowing Reports Procedure*. In particular, it must collect and keep the information regarding implementation of and compliance with occupational health and safety, as acquired through the periodic reports that are sent to it.

The CO also has to update the flow list of information that must be transmitted to the CO by Company Employees, First-level Managers, the Managing Director, Directors with operating responsibility, and general or special representatives with proxy.

The CO must be informed of the most significant activities or transactions envisaged in the Special Part and be provided with the data for updating documents so that effective controls can be carried out.

The CO carefully and impartially assesses all reports that it receives, determining their verity and validity. It may also carry out all the verifications and investigations as necessary, including the acquisition of documents and interviewing informed individuals.

2.9. Confidentiality obligations and privacy guarantees.

The Compliance Officer is bound to maintain the secrecy of news and information acquired in the course of performing his functions and must refrain from using confidential information for purposes other than performance of his duties.

Moreover, informants must be guaranteed protection against any form of reprisal, discrimination, or penalization, and the confidentiality of their identities must also be protected, except as mandated by law and protection of the rights of the Company or persons who are accused wrongly and/or in bad faith, as also indicated in the *Whistleblowing Reports Procedure*.

In any event, all information possessed by the CO must be used in accordance with the provisions of Legislative Decree no. 196 of 30 June 2003 and EU Regulation no. 2016/679 of 27 April 2016.

2.10. Coordination among various company roles.

The CO, in his daily proceedings, has the task of coordinating with other company functions, including by means of special meetings, for the various aspects regarding implementation of the Model (definition of standard terms, personnel training, disciplinary measures, etc.) and for optimal monitoring of activities in the risk-prone areas. To this end the CO must be kept constantly informed of the evolution of activities in these risk-prone areas and has free access to all related Company documentation. Management must in addition inform the CO of any situations that could expose the company to the risk of committing alleged crimes.

2.11. Disciplinary measures.

The CO has the task of indicating whether or not a violation of the Model has occurred. Any disciplinary measure to be imposed on the Employee (according to the severity of the specific case) is decided by the Board of Directors after consulting with the Human Resources Manager.

2.12. Information flows relating to the Board of Directors.

The CO reports directly to the Board of Directors:

a) **immediately draft and submit a spot report (or in any case without delay)**, on infractions of the Model found on its own initiative or upon report;
b) **prepare and submit a half-yearly report**, copied to the Company's Sole Auditor, on his activities, problems revealed (both in terms of conduct or external events, and in terms of the effectiveness of the Model), updates to the risk-prone areas, proposals to update, supplement and /or modify the Model, as well as the presence of company areas without, in whole or in part, specific regulation or the malfunctioning of the existing rules.

If particularly serious events occur, the CO may independently inform the Board of Directors, who may convene the CO for clarifications at any time.

CHAPTER D - DISCIPLINARY AND PENALTY SYSTEM

1. Penalty System.

So that the Model may realize its full potential in preventing the criminal offenses envisaged in Decree 231, the formal adoption of it by ALNG S.r.L. must be accompanied by, *inter alia*, the establishment of «*a disciplinary system that can penalize violation of the measures envisaged in the Model*» (Article 6, paragraph 2 (e), and Article 7, paragraph 4 of Decree 231).

The disciplinary and penalty system adopted by the Company is constantly monitored and updated by the Human Resources Manager. It is based on the presumption of the independence and autonomy of the disciplinary judgement.

ALNG S.r.L. carries out the disciplinary assessment of the conduct except, naturally, for any subsequent review by the ordinary judicial authorities, which does not prejudice the application of disciplinary sanctions. In fact, the rules of conduct imposed by the Model are assumed by the Company in full autonomy and independently of the unlawful crime perpetrated.

2. Employee Sanctions.

2.1. Disciplinary Measures.

Conducts by Employees in violation of the behavioural rules set forth in this Model are defined as "disciplinary measures."

The penalties that can be imposed on Employees are envisaged in Article 7 of Law no. 300 of 30 May 1970 (Workers Statute) and any special laws and regulations as applicable.

Given their significance, the rules of conduct and internal procedures for which penalties are envisaged in the event of violation are included in the corporate disciplinary regulation and communicated as appropriate to Employees. In any event, they are formally declared binding on all Employees (and all Recipients of the Model) with an internal circular, which is also published «*by means of posting in a place accessible to everyone*», as envisaged in Article 7, paragaph 1, Law no. 300/1970, with explicit indication of the disciplinary measures stemming from any violation.

With specific reference to the *Whistleblowing Reports Procedure*, the Company will apply the disciplinary sanctions according to this section:

- when it ascertains that retaliation[12] has been committed;
- when it ascertains that the Reporting has been obstructed or that an attempt has been made to obstruct it;

[12] The notion of "retaliation" is better defined in para 8.2. of the *Whistleblowing Reports Procedure*.

• when it ascertains that the obligation of confidentiality set forth in Article 12 of the Decree has been violated;

• when it ascertains that the activity of verification and analysis of the Reports received has not been carried out;

• when the civil liability of the Reporting person for defamation or slander in cases of malice or gross negligence is ascertained, including by a judgment of first instance.

On this point, it should be reiterated that retaliatory or discriminatory dismissal of the Reporting person is null and void, as well as the change of duties pursuant to Article 2103 of the Civil Code, and any other retaliatory or discriminatory measures taken against the Reporting person, as further specified in the *Whistleblowing Reports Procedure* (par. 8.2.).

In the event of disputes related to the imposition of disciplinary sanctions, or to demansions, dismissals, transfers, or subjecting the Reporting person to other organizational measures having direct or indirect adverse effects on working conditions, subsequent to the filing of the report, the employer bears the burden of proving that such measures are based on reasons unrelated to the report itself[13].

2.2. Reference to the National Collective Labour Agreement (CCNL).

In regards to the above mentioned, the Model refers to the classes of acts subject to penalty, as envisaged in the existing penalty system, and specifically the rules set forth in the Energy and Oil CCNL, and the following disciplinary measures:

- verbal warning;
- written warning;
- disciplinary suspension from work without pay for a maximum of eight days;
- termination of employment.

This involves application of the principle of correlation between the inobservances of workers and the disciplinary measures set forth in the CCNL. The penalty that is actually imposed according to the significance of the individual infraction is weighted and proportionate to the severity of the committed act and whether it involves repetition of a prior offense. The type and amount of each penalty cited hereinabove in accordance with the provisions of the applicable code of discipline at ALNG S.r.L. are determined according to the following criteria:

a) intention (*malice aforethought*) or degree of negligence, imprudence, or inexperience (*negligence*) implicit in the conduct, and also in reference to the likelihood of the event;

[13] See para. 8.2. of the *Whistleblowing Reports Procedure.*

b) overall conduct of the worker, considering any disciplinary precedents within the limits allowed by CCNL and the law;

c) failure in the fulfilment of the worker's duties;

d) the functional position of the personnel involved in the acts constituting the infraction;

e) other special circumstances that accompany the disciplinary infraction;

f) any consequences deriving from the disciplinary infraction, particularly in regard to the fiduciary relationship with the Company.

2.3. Measures of specific categories.

a) Executives.

If executives violate the internal procedures envisaged in this Model or engage in conduct at variance with the obligations set forth in the Model when performing activities in the risk-prone areas, the responsible persons will be subject to the most appropriate measures in accordance with the National Collective Labor Agreement for Executives of Industrial Firms. If violation of the Model undermines the fiduciary relationship between the Company and the Executive, the penalty is termination of employment for just cause.

b) Directors.

In cases of violation of the compliance program or negligent and careless act(s) which did not permit the identification, subsequent cessation of said Model violation(s), or in more serious cases, of perpetration of alleged offenses, the CO must inform the entire Board of Directors and the Company's Sole Auditor which shall assume the advisable actions prescribed by the measures envisaged by applicable Italian law, including convening of the Shareholders Meeting to discuss the possible prosecution or the mandate.

c) The Compliance Officer.

In the event of any violations of obligations imposed by the Model on the CO, or rules of conduct or cautionary procedures whereby inexperience and negligence purport the lack of control in Model revisions, the Board of Directors and the Company's Sole Auditor will undertake adequate measures which may result in the removal or substitution of the CO.

d) External associates or commercial partners.

All conduct in conflict with the lines of conduct illustrated in this Model, such that could entail the risk that an offense envisaged in the Decree be committed, determines, in accordance with the specific terms of contract entered in the letters of engagement or the partnership agreements,

termination of the contractual relationship. This is without prejudice to any claim for damages if this conduct causes material damage to the Company, or imposition of the measures envisaged in the Decree.

3. Investigation Phase.

Without prejudice to what provided for by the Whistleblowing Reports Procedure, the internal investigation phase is carried out both jointly and severally and separately by the CO, who may access documents and interview individuals in order to acquire information and data and interface actively with the relevant First-level Managers in order to obtain information.

During this phase, the CO must use tact and comply with privacy obligations, seeking to limit as much as possible all types of impact on the work of the personnel that it wishes to interview or contact by telephone. The CO will coordinate with the Human Resources department to ensure CCNL procedures are followed.

At the end of the investigative phase, the CO that performed the investigations must prepare a report summarizing the events, the analyzed documents, and any personnel interviewed, expressing his or her opinion.

4. Application of disciplinary sanctions.

In cases where it is found that the person under investigation is actually involved in the event, the CO shall send the Human Resources Manager the report prepared. It is the prerogative of the Managing Director and/or the Board of Directors to impose any disciplinary sanctions after consulting with the HR Manager. This must be done in compliance with the procedures envisaged in Law no. 300/70 and the applicable CCNL.

SPECIAL PART

Introduction.

The Purpose of the Special Part of this Model is to set forth in a concrete and uniform manner the rules of conduct for all those who must adhere to it through construction of a set of rules of conduct and procedures aimed at preventing commission of the offenses envisaged in Decree 231[14].

Therefore, the objective of this Special Part is to implement adequate precautions and protection so that all members of the Company behave in accordance with the rules set forth therein and comply with the procedures envisaged therein, with the result of allowing them to conduct their activities correctly, effectively and efficiently and preventing the commission of any offenses (criminal, administrative or disciplinary) and/or to reduce the risk of their occurrence.

Moreover, following this assessment, it was confirmed that, given the scope of their effective authority, all the top executives of ALNG S.r.L. (Board of Directors, Chairman of the Board of Directors and the Managing Director) could, at least hypothetically, commit or incite the commission of most of the criminal offenses envisaged in Decree 231.

On the basis of this consideration, the aforementioned parties are always expressly implied as being the potential authors of all the risk-prone activities indicated in the following chapters.

The Recipients of the Model must also comply with the rules set forth in the following Special Part when carrying out all activities involved in operation of the Company:

1. the ALNG S.r.L. Code of Ethics;
2. the internal Regulation for management and processing of confidential information and external communication of documents and information;
3. the "Basic Control Standards – *System of Management Control*", which summarizes the highest principles of the internal Company control system, which company procedures must adhere to;
4. all other documents regarding the existing internal Company control system which, for those parts of significance in preventing the criminal offenses envisaged in Decree 231, are considered integral parts of this Model.

[14] To this end, please see Section 2 and Sections of the Regulatory Appendix for further analysis of single criminal offense cases as outlined in the Decree, which show possible problem profiles in the Company and properly identify possible illegal conduct.

CHAPTER A - MANAGEMENT OF RELATIONS WITH THE PUBLIC ADMINISTRATION

1. Identification of risk-prone areas and activities deemed sensitive.

The objective of the present Special Part is to create a behavioural rules and procedures system within ALNG S.r.L. that, along with the Code of Ethics and the "Basic Control Standards – *System of Management Control*" adopted by the Company, guarantees that relations with Public Administration (both Italian and foreign) abide by principles of honesty, legality and transparency, in order not to compromise in any way the integrity and reputation of both Parties involved.

All company areas which maintain relations with ALNG S.r.L., that are considered to be exposed to the risk of commission of **offenses against the Public Administration** *ex* Articles 24 and 25 of the Decree 231 (of which is examined in Section 2 of the Regulatory Appendix), and specifically in regard to the particular activity engaged in by each one.

In particular, in this Special Section, we refer to all business functions that, in daily business operations, have any kind of relations (i.e. contractual, hard copy, electronic, online, etc.) with offices and representative entities or otherwise relating to the Italian Public Administration (at central and local level)[15] or at European Union level.

Such functions and related processes and activities are considered as "sensitive" in relation to the risk of verification of the above-mentioned offenses, among which we should remember the crimes of aggravated fraud, corruption and embezzlement or induction to give or promise money or other benefits, as well as trading in influence.

In view of the seriousness of Administrative Offenses depending on predicate offenses referred to Articles 24 and 25 and because of the numerous legislative actions[16] that have tightened (among other things) the treatment of penalties envisaged for such offenses, the Company has decided to proceed to a thorough and substantial activity of updating and implementation of this Special Section and Section 2 of the Regulatory Appendix, in which the main aspects of the reforming interventions were discussed.

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[15] Be Compared, but not limited to, with references to the following central and local government agencies: Ministry of Activity Production, Ministry of Transport, Ministry of Environment and Energy Security, Institute for the Protection and Environmental Research (ISPRA), headed by the aforesaid Ministry of Environment and Energy Security, Authority for Electricity and Gas, Italian Ministry for Economic Development, Veneto Region, ARPA Veneto, Regional Technical Commission, Environment Section, Province of Rovigo, Communes of Lorea and Porto Viro, the Coast Guard, the Port Authority, the Regional Security Committee, the Civil Engineering for Maritime Works, Ministry of Transport, Public Commissions for individual test, since the facility is subject to government grants.

[16] Reference shall be made to Law no. 190 of 6 November 2012, which implemented the so-called Anti-Corruption Bill, and to Law no. 69 of 27 May 2015, «*Provisions regarding the offenses against the Public Administration, of criminal organizations of mafia-type and of false accounting*», and to Law no. 3 of 9 January 2019 on «*Measures to Combat Crimes Against the Public Administration, as well as on the Statute of Limitations for Crimes and the Transparency of Political Parties and Movements*» (so-called 'Bribe destroyer').

For the purpose of better understanding the Conduct rules and procedures that have been excluded in order to prevent the offenses in question, it is considered appropriate to point out that as of now, in the context of this discussion, the term public administration must be understood, in general, as the complex of authorities, bodies and officials to which the law has entrusted the care of public interests and that, purely by way of example include the following entities:

- The EU, international and national public institutions, as organizational structures which with legal instruments have the task of pursuing the interests of society (including the State, government agencies, territorial, local and sector-specific regulatory authorities, the regional, provincial, municipal and district governments, etc.);

- Public Officials (national, EU and international) which, apart from a relationship of dependency by the State or other public body, exercise a public, legislative, judicial or administrative function (including individuals who perform public services and are engaged in the pursuit of public interests, authorities, bodies governed by public law, contracting authorities and mixed public-private companies);

- Those in charge of public functions or services that perform an activity recognized as functional to a specific public interest (including the activities carried out – under grants or agreements – in the public interest and subject to the supervision of Italian and foreign public authorities, activities relating to the protection of or relating to life, health, welfare, education, etc.).

Therefore, while referring to the cited Section 2 of the Appendix to the legislation for further in-depth examination, in particular with regard to the concepts of "public official" and "agent in charge of public service", in relation to the offenses in question, the activities where such offenses can be committed must substantially involve the following:

- the negotiation, execution, and/or performance of agreements, however called, with Italian or foreign public entities, including on conclusion of negotiated or public procedures (open or restricted) for the award of contracts (for work, supply, or services), concessions, partnerships, assets (corporate complexes, equity investments, etc.), or other similar operations characterized by the fact of being performed in a potentially competitive context[17];
- participation in procedures for obtaining grants, however denominated, contributions or financing, soft loans and subventions by Italian or EU Public Bodies, and their actual use;

[17] With this also including a context where, although there is a sole competitor in a specific procedure, the client entity could also choose other enterprises operating on the market.

- the participation in negotiated or public procedures in association with other parties (e.g. through temporary associations of enterprises, ATI);
- the management of request made, directly and indirectly, by the Company or in its interest, in relation to:
  - requests for contributions, subventions, financing, subsidised grants and disbursements however denominated from national or European bodies (pursuant to grants by the Ministry of Economic Development)
  - requests for approval of regulatory plans;
  - requests for opinions by public administrations that can influence the final decisions of other public administrations;
  - requests for changes in the approved plans
- the management of any other administrative decision (not included in the above) which is necessary for conducting ALNG S.r.L. business;
- the management, in general, of relations with Italian or foreign Public Administration and/or public entities and their representatives with particular reference to activities regulated by law;
- the management of relations with public entities to obtain permits, licenses, concessions, permits and/or authorizations functional or connected with the performance of business activities;
- the management of compliance with the safety of the facilities and workplace hygiene and hygiene in the workplace referred to in Legislative Decree no. 81 of 6 April 2008 (Consolidated Law on Security);
- the management of relations with public order in the recruitment of personnel belonging to protected categories or whose employment is facilitated;
- the management of relations with institutions and/or the various supervisory authorities and their individual members who have expertise in legislative processes, regulations or administrative proceedings regarding the Company;
- the activities of representing "particular interests" to political decision-makers (so-called lobbying);
- processing, managing and transmission, with information technology tools, of data, documents and information to the public administration or in any case to public authorities and bodies;
- the submittal, forwarding, deposit, and/or registration with public entities of communications, statements, reports, acts, documents, or various matters, and management of any assessments, verifications, inspections, and/or penalties that might result therefrom;

- the management of any judicial and extrajudicial disputes regarding fulfilment of agreements made with public entities;
- the management of legal, extrajudicial, or administrative disputes;
- any relationships with the judicial police;
- occasional activities with high interaction with the public administration (*i.e.* the occasion of projects for research and development, internships, apprenticeships, agreements with the PA, periodic demonstrations, public demonstrations and events, etc.);
- selection and management of Human Resources ;
- selection and management of relationships with suppliers, external collaborators and trading partner;
- the assignment of consulting or representation responsibilities for management of relationships with public entities;
- the administrative management of personnel, with special reference to tax, social security, and workers' compensation aspects, as well as management of the related inspections;
- legal compliance in regard to social security, welfare, workers' compensation, and tax obligations of Employees, and management of the relevant inspections;
- the definition of performance targets and management of the personnel incentive system (e.g. bonuses, fringe benefits, and incentives);
- definition of the compensation and/or any incentive systems referring to external consultants and/or associates;
- management of gifts, presents, giveaways, entertainment expenses, sponsorships and contributions in general.

Any additions to the above-mentioned list of sensitive activities may be proposed by the CO of the Company for subsequent approval by the Board of Directors.

2. Rules of conduct.

In order to ensure the Recipients of the present Model personify, in conducting transactions, duties and functions under their responsibility, conduct that is correct, legal and transparent in relations with Public Administration and, therefore, prevent the commission of corporate offenses against it, this Model sets forth the following rules of conduct to be followed by any and all persons or parties associated with ALNG S.r.L. (including self-employed professionals, outside collaborators and business Partners) in the discharging of their respective tasks and duties.

- It is forbidden for all Recipients of the Model to engage or attempt to engage, by commission or omission, in any behaviour whatsoever that may directly or indirectly against the Public Administration contemplated in Articles 24 and 25 of Decree 231, entailing administrative liability of the entity or other conflict of interest situation against the Public Administration in regard to what is envisaged in the supposition of the offense.
- It is mandatory to act fairly and transparently in performing all the activities involving the establishment of relationships with Italian or foreign public entities.
- In particular, all company directors and members of the Board of Auditors must perform their duties under law and the Articles of Association, with the greatest possible diligence, and in the event that they should become aware of facts detrimental to the Company, shall exert their best efforts to eliminate or contain any and all the harmful consequences thereof for the Company as well as its Shareholders and creditors.
- Relationships with Public Officials and, more generally, with the Public Administration, the State, the European Union, the International Criminal Court, foreign States, International Organizations or other public bodies (Italian and / or foreign) must not in any way compromise the integrity and reputation of the parties.
- It is forbidden to submit untrue declarations and statements to national and European Union public entities such as to cause harm to the State or another public entity in Italy or the European Union.
- It is forbidden to omit relevant information, data and documents and/or produce false and/or fabricated documents of any kind in order to illegally obtain contributions, public funding, financing, soft loans or other disbursements of the same type, however denominated.
- It is forbidden to allocate the amounts received from national or European Union public entities in the form of contributions, subsidies, financing, soft loans or other disbursements of the same type, however denominated, for purposes other than those for which they were originally intended.
- All declarations, information, and data addressed to these authorities must be transmitted promptly and be true, complete, and accurate. If grants, contributions, or financing are received, a specific statement must be issued.
- It is mandatory in the case of participation in a tender held by the Public Administration, to operate within the law, regulations, and proper business practice.
- It is forbidden for any and all persons and parties maintaining any relationship of any nature or kind whatsoever with ALNG S.r.L. to promise or provide benefits or favours of any nature or kind whatsoever (including promises of recruitment) to civil servants, persons in charge of providing

public services, and more generally, any and all persons serving the Public Administration and/or the Italian or foreign family members thereof, with a view to securing a benefit for the Company.

- It is forbidden to induce someone to give or promise, for him/herself or a third party, money or other benefits, in order to exercise influence over the decisions of a Public Official or a Person in charge of a public service taking advantage of or boasting relationships with a public officer, even if alleged.

- It is forbidden to promise or give money or other benefits, even non-financial, to a subject, in order to obtain an illicit mediation with a Public Official or a Person in charge of a public service or to compensate the public officer for the exercise of his functions or of his powers, or for the performance of an act in breach of his duties or for the omission or the delay of an official act.

- It is forbidden to offer or give gifts or presents to any third party outside of recurring holidays and in violation of the general rules set in Chapter I, paragraph 2 of this Special Section, without prejudice to the need, anyway, that such gifts and presents being of modest value.

- It is furthermore forbidden to give benefits of any kind, even in the form of sponsorships, promises of employment, assignment of consulting assignments, assignment of contracts and the like, directly or indirectly, in favor of public officials in charge of a public service and/or to any other party belonging to the public administration or public bodies, Italian or foreign, or for the benefit of other persons, individual and legal entities, due to the sphere of interest of the latter.

- In particular, it is forbidden, during a business negotiation or in the presence of a commercial relationship with the Public Administration to: (i) consider or offer employment opportunities and/or business that could benefit employees of the Public Administration personal capacity, (ii) solicit or obtain confidential information that could compromise the integrity or reputation of the parties, (iii) offering or in any way provide money or other benefits.

- It is forbidden to employ, with ALNG Srl, persons belonging to the government (or their relatives or similar), or allocate consulting assignments or to come to contractual relationships with individuals (individuals or legal entities) related in any way to public officials, if such persons have participated personally and actively in the negotiation of business or who have endorsed the requests made by ALNG Srl to the Public Administration.

- It is mandatory to keep, as part of a process that sees any direct or indirect involvement of the Company, a behavior based on the principles of fairness, transparency and fairness.

- It is also a duty to refrain from engaging in conducts intended to affect or in any way undermine the proper conduct of justice or by entering into agreements of corruptive nature or otherwise unlawful in order to favor or harm a party in proceedings (criminal, civil or administrative).
- No payment of any kind may be made in cash or kind, except for small current expenses of the Company (couriers, small purchases of stationery, or similar items).
- It is forbidden to prevent or obstruct supervision in any way by the individual Heads of the risk-prone areas and of the CO.

3. Procedures.

The procedures set forth below are aimed at supplementing ALNG S.r.L.'s current Quality System, the portions of which are relevant for the implementation hereof are to be deemed fully included and incorporated in the present Model[18].

- In general, with reference to the individual areas and sensitive activities listed above, it must be ensured adequate separation between approving, executing and monitoring functions.
- The documentation acquired and/or produced in support of assessments and communication with the public administration must be properly filed, by the competent corporate function, properly preserved and readily identifiable, in order to allow the reconstruction of responsibility, motivation of choices made and attest the effective implementation of controls.
- It is mandatory to keep in files (paper and/or computer) all documentation relating to business activity in areas at risk, under the supervision of their managers and with the way prescribed by privacy laws and systems, in order to not compromise the subsequent modification, if not with specific evidence.
- It is mandatory to guarantee that access to data, resources and processes is only permitted to persons strictly authorised under internal regulations, or to their delegates, and to the Company's sole Auditor and the Compliance Officer for their respective controls.
- Where access is also permitted to persons other than those indicated above, it is mandatory to comply with internal regulations and to request the necessary suitable justification.
- If deemed appropriate by the First-level Managers, relationships with a specific Public Administration for risk-prone activity areas can be managed in unified fashion, possibly appointing a specific officer in charge of each type of significant transactions or for a series of transactions (if they are repetitive) carried out in the risk-prone activity areas.

[18] With particular reference to the crimes envisaged by Article 640 *ter* of Criminal Code, in addition to the rules and procedures indicated above, see Chapter B below of the Special Part.

- The Employees of ALNG S.r.L. who handle external operations, as well as all other parties who are asked to represent the Company, must be engaged by means of a specific written power of attorney, with possible indication of their specific duties and term, in order to guarantee uniform management of relationships with third parties. These powers of attorney/delegations of authority must be communicated to the CO in the half-year *Integrity Document* and provided to the CO if requested by it.
- All meetings with members of the Public Administration (Italian or foreign) with whom ALNG S.r.L. establishes relationships for the negotiation or making of agreements, regardless of their name, must normally be held in the presence of two representatives of the Company. If special and documented reasons[19], the Managing Director nonetheless has the right to authorize any departures from this principle under his own responsibility (if appropriate, even on a general basis and/or according to the type of relationship).
- These exceptions must always be promptly reported to the CO, together with the reasons therefore. The Company representatives who attended meeting must prepare a written report.
- It is forbidden, in relations with the Public Administration, to be represented by consultants or other persons who can create conflicts of interest. The individual Employee who is assigned to handle the specific transaction has the responsibility of ascertaining whether or not any conflicts of interest exist.
- If ALNG S.r.L. participates in tenders or direct negotiations called by Italian or foreign public entities for the disbursement of loans, grants, and subsidies, all phases of the application and/or disbursement procedure must be documented and verifiable, so that the *traceability* and reconstruction of the individual transaction, its characteristics, as well as reasons and identification of the parties involved ex post are always possible. Furthermore, a copy of the related documentation must always be retained, so that the First-level Manager, in his capacity as officer of the relevant risk-prone area, can review it at any time, including for the purpose of reporting to the CO.
- The procedure to be followed in drawing up information prospectuses, shall entail:
  (i) the risk-prone transaction must be described, whether it involves a negotiated or public procedure must be specified, the value of the transaction (even in approximate terms, if it cannot be quantified exactly) must be indicated, whether or not it is competitive (e.g. entry in registers, possession of minimum capital, issuance of guarantees; the type of activity that will be carried

[19] For example, the impact of this rule causes major operating problems and/or higher costs that cannot be reasonably justified by the low risk of the specific relationship with the public entity and/or the transaction, including in regard to the object of the meeting, the authority of the employee delegated to participate at it and/or the "phase" of the procedure.

out *(ii)* the persons that will participate with ALNG S.r.L. in the award and/or performance of the activity in question must be identified, in the case of association through ATI or consortium, third party participants (such as consultants, representatives etc.) must identify themselves and state: *1)* the reasons in support of this organizational; *2)* the reviews carried out to verify their satisfaction of the prerequisites of seriousness and reliability; *3)* the principle terms of the contract, including the agreed economic conditions; *4)* possible special applied conditions; *5)* all other relevant information. *(iv)* it must provide an exact accounting of all amounts that might be directly or indirectly disbursed by the public entities within the scope of these procedures, indicating the principal initiatives and most significant requirements satisfied in carrying out the transaction, promptly reporting any and all criticalities as relevant to the provisions of this Model.

- With reference to disbursement procedures, the following have to be met *(i)* the public body from which the loan was requested; *(ii)* he reasons for requesting the loan, and the intended use of the loan; *(iii)* the amount of the requested loan (even an approximate amount, if the exact amount cannot be specified); *(iv)* any requirements imposed on the applicant by the public entity for granting the loan (e.g. entry in registers, possession of minimal share capital, grant of guarantees, etc.); *(v)* the principal phases of the procedure; *(vi)* the outcome.
- It is mandatory to adequately document any gift offered, in accordance with the rules of conduct cited hereinabove, so that the prescribed verifications may be carried out.
- It is forbidden to assign tasks to suppliers of goods and services and third party professionals, circumventing the procedures laid down for their selection, based on documented and objective criteria about the professionalism, quality and affordability of the goods/services offered and services to be provided.
- It is mandatory to retain as outside collaborators, self-employed professionals and contractors only persons and parties found to be fully reliable and responsible in respect of occupational health and workplace safety issues. In particular, prior to entering into or renewing any relationship with contractors and third party companies the following must apply: *(i)* an express declaration by the aforesaid counterparties, certifying their full and complete knowledge and awareness and unreserved acceptance of any and all the provisions set forth herein; *(ii)* an attestation by the aforesaid counterparties to the effect that they have never been implicated in any legal proceedings whatsoever in respect of the offenses contemplated in Decree 231, together with a firm commitment to produce at any time (in the case where the counterparty in question is organised as an association, partnership or other body corporate), the certificate issued by the administrative sanctions records office mentioned in Article 80 of the said Decree; *(iii)* a clause

expressly governing the consequences of the commission of any offense whatsoever or breach of the provisions of the Model especially in respect of this Special Part, by the counterparty in question (for instance, express termination terms, penalties, etc.).

- It is forbidden to grant benefits or pay compensation (regardless of their name) in favour of the above mentioned that are not properly justified both at the contractual level and in light of the type of engagement and best practice on the market.
- The services billed in the invoices issued the above mentioned must be intermittently audited in order to ascertain that they were actually rendered, and not only as accounting items. Similarly, invoicing of Company sales to others must be carried out in strict compliance with all applicable Company rules.
- In particular, it is forbidden to grant and pay in favour of any Recipient any form of benefit (i.e. amounts of money, bonuses, benefits and advances on wages, etc.) beyond specific arrangements and amounts contractually agreed, and this also indirectly through:

  (i) the failure to control reimbursement of expenses and expense reports;

  (ii) the lack of control of activities related to treasury management;

  (iii) the failure to control costs included in the budget and investment plans and the lack of verification of related variances.

- The regularity for received goods/services must not be certified in the absence of a careful assessment of the quality and fairness of the goods/services received.

- The payment of goods/services must not be authorized in the absence of a check on the fairness of the delivery/performance compared to the contractual terms or which cannot be adequately justified in the context of the contractual relationship in place with suppliers.

- Pursuant to Decree 231, ALNG S.r.L. is liable for the targets assigned to personnel, and the adopted incentive system must be reasonable, so as not to induce personnel to engage in deviant conduct that, although prompted by personal objectives, is connected with realization of the bonuses tied to achievement of the assigned targets; this liability is commensurate to the extent they pursue the interest or benefit realized by ALNG S.r.L. either directly or indirectly.

- Similar principles must be adopted in regard to the compensation and/or any definition of incentive systems offered to consultants and/or external collaborators, but without prejudice, in this case, to rigorous compliance with the foregoing specifically in regard to both of the aforementioned classes of persons.

- Settlements and/or renunciations of receivables may be made only by the persons expressly delegated to do so by the Board of Directors and/or the Managing Director.
- In case of contracts for the supply of goods and/or services to a public administration or a public entity, a Contract Manager must be identified, who is required to monitor the compliance of the services rendered by the Company with its contractual obligations.
- It is mandatory to monitor relationships with Public Administration through the communication of data relating to each transaction "at risk" to the proper managers of the individual areas, to ensure full transparency of all operations and their monitoring by the CO.
- Except for the cases of the *Whistleblowing Reports Procedure*, all corporate entities of ALNG Srl as well as independent collaborators in the context of their respective risk areas have an obligation to promptly report any violation of rules, regulations and procedures to the Head of the risk area involved and to the CO, through written reports or, in extreme emergencies, verbally, as well as to communicate any difficulties or doubts about their correct application.

CHAPTER B - MANAGEMENT OF INFORMATION SECURITY

1. Identification of risk-prone areas and activities deemed sensitive.

In reference to information security management, one must first of all, realize the impossibility to individualise, *ex ante*, specific company areas which are more at risk of commission of **"Computer crimes and unlawful data processing**" referred to in Article 24 *bis* and "**Copyright violations"** referred to in Article 25 *novies* of Decree 231 (see Section 3 of the Regulatory Appendix for further information).

In fact, with the widespread use of technology, a instrument now fundamental for use in all areas of activity to optimize the human and economic resources of a company, it is important to call attention to all users of the Model on the risk of so-called computers crimes and copyright violations in all corporate functional areas that have relations with ALNG S.r.L., e in particular, those that operate using an IT system.

In the absence of a clear definition for an IT system, case law has outlined the essential features, stating that «*based on the given text ... the term "IT system" contains within it the concept of a plurality or sets of devices intended to be useful to everyone, through the use (in part) of information technology. The latter, as noted in the doctrine, is characterized by the registration (or "storage"), by means of electronic pulses, on media suitable for "data" of elementary representations of fact, made through numeric symbols (bits) ("Code"), in different combinations, such "data" processed automatically by the machine, generate "information" which consists more or less of extensive data organized according to a logic that allows it to be assigned with particular meaning for the user*»[20].

2. Rules of conduct.

In the fulfilment of risk activity, the Recipients of the Model must scrupulously abide by all rules of conduct as outlined in the *Computer User Responsibilities Reference Guide* currently in use by ALNG S.r.L., and also the following rules of conduct:

- All the Recipients of this Model shall be bound to scrupulously comply with the procedures set forth herein as well as any and all other internal procedures in force within ALNG S.r.L., especially those imposed by the Company, all of which are to be deemed to form an integral part hereof, insofar as they pertain to the prevention of the offenses contemplated in Articles 24 *bis* and 25 *novies* of Decree 231.
- It is forbidden to promote, collaborate, or compete, in anyway to give way to behaviours that individually or collectively, directly or indirectly lead to a criminal offense.

[20] See Supreme Court (Criminal Section VI) judgment no. 3067 of 4 October 1999.

- It is mandatory to use of the most advanced technologies available through the company and to carefully follow safety measures (e.g. Personalized passwords) on all ALNG S.r.L. company computers thereby limiting access to only those with authority.
- Each Employee and Recipients of the Model are to abide by rules and internal procedures set forth by the company in order to ensure safety of IT and or telecommunication systems and copyright for any programs, software and databanks they have or may use.
- It is mandatory to put in place all structures, means and operatives put in place by the Company for the secure use of IT and/or telecommunication system so as to ensure adherence to measures already in place as set forth by ALNG S.r.L.
- All Company Employees are responsible for the safety and management of ones own electronic and/or information system (including any programs, software or database subject to copyright), with emphasis on saving and memorizing data and operations completed through registration and control tools (daily or periodically) in order to allow for a correct control of the procedures and coherence to the internal operational phases, with respect to current norm.
- It is forbidden for all the Recipients of this Model to hinder or otherwise obstruct in any manner or form whatsoever, the oversight and inspective activities carried out by the Head of the risk-area and, where necessary, the heads of any and all other risk-prone areas as the CO.

3. Procedures.

The procedures set forth below are aimed at complementing ALNG S.r.L.'s current procedures as set forth in the *Computer User Responsibilities Reference Guide*, which, for those parts of significance in preventing the criminal offenses envisaged in the Decree, are considered integral parts of this Model.

- Any and all persons and parties maintaining any relationship of any nature or kind whatsoever with ALNG S.r.L., including self-employed professionals serving the Company and Company executives and Employees subjected to hierarchical supervision, shall be bound, each in respect of the risk-prone areas within which he or she falls, not only to forward written reports of any and all breaches of applicable rules and procedures to the heads of the areas of risk within which they serve, but also to inform the said area heads of any and all difficulties or doubts arising in respect of compliance with the said rules and procedures.
- It is mandatory to utilize acquired technologies in the information sector which assure among others the adoption of suitable measures for security (e.g. *personal passwords*). These limit access to only those authorized, and these operations can be accounted for.
- It is mandatory to use tools for registration or control (daily or periodic) of the operations carried

out by means of telecommunication or information system in order to guarantee constant verification of the fairness of the adopted procedures and internal consistency of the various operating phases, in compliance with the limits set forth in applicable laws and regulations.

- It is mandatory to maintain the integrity of the data base, applications, and system software must be ensured, as well as a record of the accesses to the data bases or sensitive parts of application software;
- It is mandatory to ensure the functioning of alternative tools in the event of temporary interruption of the electronic system through activation of specific back-up devices and procedures.
- If there are external elements that compromise all or part of system functions, an emergency plan must be implemented to permit the continuity of essential functions and return to normal operating conditions within a reasonable amount of time.
- It is mandatory to formalize and comply with the procedures for approval and acquisition of both *hardware* and *software*, as well as outsourcing of services, along with specific *back-up* devices.
- It is mandatory to ensure the implementation of reliable controls for the application procedures.
- It is forbidden to install Models into the IT system and/or telecommunication operatives provided by the Company that have unknown origins, or Models and sets of devices that come from external sources without authorization.
- It is forbidden to use a set of devices to capture communication relative to one or more information and/or telecommunication systems if forbidden unless prior consent has been obtained.
- It is mandatory to observe and comply with provisions governing the issuance of a qualified electronic signature.
- It is mandatory to maintain the authenticity of the contents with regards to informational documents, either public or private, as well as processing programs, software, database, or intellectual property subject to copyright, which establish relations of any kind.
- It is forbidden to introduce protected intellectual property, in full or in part, by any form of connection, in telematic systems, making it available to the public.
- It is forbidden to illegally duplicate computer programs for profit or to import, distribute, sell, keep for commercial or business purposes or lease programs contained in media without the required SIAE labels.
- It is forbidden to reproduce, transfer to other media, distribute, communicate, present or demonstrate in public the contents of a database for profit on media without the required SIAE

labels, unless where provided for by law.

- It is forbidden to illegally duplicate, reproduce, transmit or circulate publicly for profit by any means, in full or in part, intellectual property destined for television, cimena, for sale or hire, disks, tapes or similar media or any other media containing phonograms or videograms of musical works, film or audio visuals.

CHAPTER C - THE MANAGEMENT OF ADMINISTRATIVE, ACCOUNTING, FINANCIAL AND TAX RELATIONSHIPS

1. Identification of risk-prone areas and activities deemed sensitive.

ALNG S.r.L. is aware of the importance of transparency, accuracy and completeness of accounting information and commits to providing a reliable administrative/accounting system in order to correctly represent the management facts and to provide tools to identify, prevent and manage, within reasonable limits, financial and operational risks as well as fraud, which would damage the firm.

Therefore, in the present Special Part, the Company intends to reaffirm the basic principles to which management of administrative, accounting, financial and tax relationships should aspire, and more specifically the Business Service, Legal, Commercial and General Management Departments which have been identified as the highest risk areas of the Company for committing "**Corporate offenses**"[21] and "**Market abuse**" pursuant to Articles 25 *ter* and 25 *sexies* of Decree 231 (which will be more specifically discussed in Section 4 of the Regulatory Appendix).

Said Departments are indeed delegated to the carrying out of multiple activities referable to the administrative, accounting, financial and tax macro-sectors. The main tangible activities within the area in question are referable to the following:

- recording and processing of the accounting data and documents required for the preparation of the annual financial statements and interim reports;
- the preparation of the financial statements, together with the explanatory notes and the reports, tables and various corporate notices required under law, including disclosures to Quota-holders and the public in general, regarding the company's assets and liabilities, income and expenses, and cash flow;
- setting up of reserve funds and provisions and the use thereof;
- distribution of profits and reserves;

[21] It should be noted that Article 2624 of Civil Code ("False reports or communications of audit firms") was repealed by art. 37 of Legislative Decree, 27th January 2010 no. 39, which revised the discipline of the statutory audit, with effect from April 7, 2010, by replacing it in a manner almost identical with Art. 27 of the said Decree.
Since Article 25 *ter* of Decree 231, which refers to the aforementioned art. 2624 of Civil Code, was not in turn amended by the substitution of the rule that was repealed by the new art. 27, the doctrine has long been questioned about the continued relevance of the present case as predicate offense for the purposes of administrative liability of entities.
With sentence no. 34476/2010, the Supreme Court has definitively ruled out the importance of the matter under consideration of the above mentioned offense since the attribution of responsibility for the offense for the Entity in whose interest or benefit the individual acted, postulates the commission by the latter of an offense as pertaining strictly between the offenses provided for by the legislator. Neither is relevant, for the judgment of the Supreme Court, the possible legislative continuity between Article 2624 of Civil Code and art. 27 of Legislative Decree no. 39/2010, since the Code provision was expressly repealed and, therefore, is no longer capable of any interpretative reference whatsoever, as a function of integration art. 25 *ter* of Decree 231 and the allocation of the special responsibility of a crime.
Therefore, in updating this Special Section, following the reform introduced by Law November 6, 2012, no. 190, the Company has also arranged the update - through their elimination – of the rules of conduct and procedures relating to the prevention of crimes against the audit firm, now no longer existing.

- bookkeeping and billing of amounts payable and receivable, with specific emphasis on cost-effectiveness and services;
- transfer and/or deferment of receivables, through subrogation, disposal, offsetting or delegation (in any manner or form whatsoever);
- settlement and/or write-off of receivables;
- extraordinary corporate transactions, such as share capital transactions, mergers, de-mergers, transformations, buy-backs of own shares, acquisitions or disposals of business segments;
- compliance with tax regulations (such as, for example, filing of tax returns, withholding taxes deducted at source, or more generally, the returns required for the determination of taxes and levies, including municipal and local taxes);
- information and documents flows to and from the Company's sole Auditor, the Guarantors appointed pursuant to Deliberation 11/07 of the Authority for Electrical and Gas Energy (AEEG) and the Shareholders, as required for internal control and/or auditing purposes falling within the scope of the official tasks and responsibilities of the said persons and parties;
- overseeing of the Company's directors in general as well as supervision of the resolutions passed by the Board of Directors with a view to preventing the criminal offenses of undue repayment of contributions, unlawful distribution of profits and reserves, unlawful equity transactions, transactions to the detriment of creditors, the booking of fictional capital;
- preparation and approval of the economic and financial terms and conditions governing: *(i)* any sponsorships and advertising in general; *(ii)* and gifts and gratuities; *(iii)* consultancy services and refund of travel, boarding and lodging expenses for conventions and conferences;
- liaising with Shareholders, corporate organs and the independent auditors;
- management in general of relations with the public administration having to do with the performance of activities governed by the law, and specifically, management of relations with the public administration having to do with fulfilment, audits and/or inspections connected to company operations;
- management of relations with the Guarantor for all matters regarding protection in the processing of personal data as well as with the Anti-trust Authority;
- electronic data processing, management and transmission to public bodies;
- management of litigation as well as out-of-court and/or administrative proceedings and judicial and arbitration proceedings;
- submission and forwarding to and/or filing and registration with public bodies, of notices, statements, returns, disclosures, deeds, documents or sundry correspondence, as well as

management of any and all assessments, checks, inspections and/or disciplinary action related thereto.

The above-mentioned risk activities must be supplemented with those mentioned below given the expansion of "**Corporate crimes**" in Article 25 *ter* of the Decree 231 to include the criminal offenses of *Corruption among private individuals*» referred to in Article 2635 of the Civil Code and of «*Instigation to private bribery*» referred to in Article 2635 *bis* of the Civil Code (paragraph s *bis*) of cited Article 25 *bis*), with respect to which the Company, however, intends to reiterate the obligation for all recipients of this model to adopt conduct that complies with the principles of fairness, honesty and transparency, particularly in the context of relationships with third parties.

It should be noted that these new provisions are relevant to corporate liability only if the individual related to ALNG Srl were the briber (not the corrupted), who, in the interest or for the benefit of the Company, has given or promised money or other benefits to directors, general managers, managers responsible for preparing the financial statements, auditors and liquidators of another company, in order to have them perform or refrain from performing acts contrary to the obligations of their office or duties of loyalty, even when the offer or promise is not accepted.

With particular reference to the above indicated offenses, the Sensitive Activities considered most at risk of committing such an offense are, in particular, the following:

- The selection and management of Human Resources;
- The selection and management of relationships with third parties, such as suppliers, customers, business partners and external collaborators, including for the acquisition of goods and services;
- The assignment of consultancy or representation;
- The definition of compensation and/or any reward systems related to external collaborators, Business Partners and/or consultants;
- The management of gifts, presents, giveaways, entertainment expenses, sponsorships and contributions in kind.

2. Rules of conduct.

Without prejudice to the applicability of the rules of conduct set forth in the previous Chapters B and C (paragraph 5), which are to be considered an integral part of the present Model, the Recipients of the Model shall be bound to comply with the operative instructions for drawing up the financial statements as well as the following rules of conduct:

- It is mandatory to abstain from conduct that could result in the commission of the corporate offenses labelled in Articles 25 *ter* and 25 *sexies* of Decree 231 as giving rise to administrative liability for ALNG S.r.L. or that, although does not constitute a crime per se, could potentially become one.
- It is mandatory for any and all persons and parties maintaining any relationship of any nature or kind whatsoever with ALNG S.r.L. to ensure that the company is managed and administered in accordance with the principles of independence, good corporate governance and prudence.
- It is mandatory to comply with any and all statutory and regulatory provisions governing the Company's business activities, and to exert their best efforts to ensure that management transactions and events are properly recorded in a timely manner with a view to enabling the administrative-accounting system to ensure the transparency of accounting data. More specifically, this is required for the performance of any and all tasks related to the drawing up of the financial statements, interim reports and other corporate disclosures and filings, with a view to providing Shareholders and the market, in general, with accurate and appropriate information regarding the assets and liabilities, income and expenses, and cash flow of the Company and the Group as a whole.
- In particular, the procedures for drawing up the financial statements must be based on the following principles: *(i)* proper bookkeeping of the Company's assets and liabilities, as well as of any and all the Company's commitments destined to the preparation of the Financial statements; *(ii)* clear indication of the valuation policies in estimating book values, together with the additional valuations required to verify the reliability of the figures carried in the financial statements. The persons and parties involved in drawing up estimates, must comply with principle of reasonableness, and clearly specify the valuation policies followed, together with any and all the additional information required to verify the reliability of the bookings made, and moreover, that the financial statements are not only full and complete in terms of the corporate information provided, but also include all the information required pursuant to statutory financial reporting obligations; *(iii)* the archiving and filing of adequate supporting documents for each and every transactions with a view to allowing for the traceability of the same in both contractual and accounting terms, as well as to enabling the proper assignment and imputation of responsibility at the appropriate levels.
- It is mandatory to scrupulously comply with the principles of probity and transparency in the performance of any *and* all tasks related to the collection, processing and disclosure of the information and data to be divulged to investors with a view to allowing the latter to reach an

in*forme*d opinion on the assets and liabilities, income and expenses, and cash flow of ALNG S.r.L. and the development of its business, as well as on any and all related financial instruments and relevant rights.

- All top Management and Employees subject to hierarchical supervision, in charge of administrative and accounting tasks within the Business Services department, shall be bound to diligently maintain ordered archives of any and all the accounting documents used for drawing up the annual financial statements, prospectuses, reports and other corporate disclosures and notices, with a view to ensuring easy consultation of the same, whenever necessary, by company directors, Company's sole Auditor as well as the Compliance Officer and any and all other persons and parties concerned.
- Accounting data and the documents deriving therefrom, must be based on precise, exhaustive and verifiable information, in strict compliance with both outside regulations (statutory provisions, accounting principles) and internal policies, plans, rules and procedures; moreover, any and all accounting reports must be accompanied by adequate support documents to allow for objective analysis and verification.
- In particular, accounting data must: *(i)* allow for the timely drawing up of accurate balance sheets, income statements and cash flow statements for both internal use (for instance, planning and internal control reports, findings of the analysis of specific events as requested by management, etc) and disclosure outside the Company (financial statements, prospectuses, etc); *(ii)* provide the tools required to pinpoint, prevent and manage, to the extent possible, not only financial and operating risks, but also the commission of fraud against the Company; *(iii)* reasonable checks to be carried out with a view to ensuring the ongoing stability of the value of corporate assets and protecting against losses.
- Any and all company directors as well as the other persons and parties involved in drawing up the draft financial statements, the Directors' report, the explanatory notes and any and all related tables, shall be bound to draw up the aforesaid documents in strict compliance with statutory requirements, ensuring that the documents in question provide a true and fair view of the Company's accounts and management, and are comply with the principles of clarity and prudence as well as to promptly submit to the Board of Directors and the independent auditors, any and all the documents required to allow for careful analysis ahead of the approval of the annual financial statements and interim reports. The same parties shall be bound to exert their best efforts in providing the Company's sole Auditor and the independent auditors, on an ongoing basis, duly documented information and data, with a view to allowing for an in-depth audit of the annual financial statements.

- It is mandatory to scrupulously comply with any and all statutory provisions pertaining to the conservation and ongoing maintenance of the Company's share capital, as well as with any and all internal company procedures based on the aforesaid statutory provisions, with a view to reinforcing the Company's credit-worthiness, reliability and reputation in the eyes of creditors and third parties in general.
- In particular, in such regard, persons and parties maintaining any relationship whatsoever with ALNG S.r.L. shall in particular be bound to: *(i)* returning to Shareholders the capital contributions made by the latter or redeeming Shareholders from the obligation to make capital contributions, save pursuant to lawful share capital reductions; *(ii)* distributing either profits (including advances on profits) that have not yet been realised or that are required, under law, to be assigned to reserves, or reserves (including those not made up of profits) that are not subject to distribution pursuant to law; *(iii)* save in the cases permitted under law, acquiring or subscribing shares in the Company or its parent undertakings, if any, to such an extent as to compromise the stability of the Company's share capital or reserves not subject to distribution under law; *(iv)* effecting share capital reductions or mergers with other companies, or even de-mergers, in breach of statutory provisions protecting creditors; *(v)* proceeding with the booking of fictitious share capital or share capital increases, in any manner or form whatsoever; *(vi)* distributing the Company's assets to Shareholders – at the time of winding-up – prior to the payment of the Company's creditors or the setting aside of provisions to the extent required to satisfy all of the latter.
- It is mandatory to ensure the smooth functioning of ALNG S.r.L. and its corporate organs, by effecting and facilitating any and all forms of internal control in respect of company management, as required under law, as well as by exerting their best efforts to enable the general meeting of Shareholders to freely express its intentions on the basis of informed decisions.
- It is forbidden to hinder or otherwise obstruct, in any manner or form whatsoever, the smooth performance of the institutional oversight tasks incumbent on the Company's sole Auditor.
- It is mandatory to give full cooperation and to make available as quickly as possible to shareholders, the Company's sole Auditor and other corporate bodies, all documents and information requested and all company management-related documentation necessary to perform their legally assigned control tasks.
- In particular, the Recipients are prohibited from engaging in conduct that materially impedes, obstructs or otherwise inhibits the performance of control by members of the Board and other supervisory bodies, through the concealment of documents or the use of other fraudulent means.

- It is forbidden to engage in activities and/or effect transactions aimed at setting up liquidity not recorded in the Company's books (for instance, through the issue of invoices for fictitious transactions), or at setting up "slush funds" or maintaining "parallel accounts" ì.
- It is mandatory in any all correspondence and/or other dealings with Public Oversight Authorities (for instance, the Privacy Protection Authority, the Anti-trust Authority, etc.), to strictly comply with the principles of correctness, transparency and collaboration, and specifically, to ensure timely, proper and full compliance with any and all statutory or regulatory disclosure obligations towards Public Oversight Authorities, and shall refrain from obstructing the latter in the performance of their duties (for instance, through express denials of access, obstructive or uncooperative behaviour, the withholding of pertinent information as well as delays in effecting the disclosure and discovery of information and documents).
- In particular, it is forbidden to:
  (i) omit to transmit, with due clarity, completeness and promptness, the transmission of data and documents required by applicable legislation and/or specifically requested by said Authority;
  (ii) in such submitted communications and documentation, present facts that are untrue or conceal facts concerning the economic position, assets and liabilities, or financial position of the Company;
  (iii) engage in any conduct that is an obstacle to the exercise of functions by Public Supervisory Authorities, even during an inspection (expressed opposition, refusal as a pretext, obstructive behaviour or lack of cooperation, such as delays in communication or provision of documents).
- It is mandatory to ensure the orderly and proper provision of investment services.
- It is mandatory to behave in a fair and transparent manner with reference to the acquisition, process and communication of data and information necessary to enable investors to reach an informed opinion on the balance sheet, profit and loss and financial situation of ALNG Srl and the evolution of related activities, as well as on financial instruments and related rights.
- The documents describing the assets and liabilities, income and expenses, and cash flow of ALNG S.r.L. must set forth and illustrate all the information and data, including complementary information, required to provide a true and fair view of the Company's situation.
- It is forbidden to effect simulated transactions or disseminate false information that could result in a significant change in the prices of unlisted financial instruments or financial instruments in respect of which no application has been submitted for listing on a regulated market.

- It is mandatory to implement internal procedures aimed at avoiding exchanges of data amongst the various corporate sectors which must be maintained separate.
- It is mandatory to organise the performance of their assigned tasks and duties, with a view to minimising the risk of conflicts of interests, and to managing any and all conflicts of interest that may arise, in a manner that ensures transparency and equality of treatment in respect of customers.
- In particular, each director is obliged to give notice to the other directors and to the relevant Company's sole Auditor if personally or on behalf of a third party he has interests with one or more Company transactions. It is also required that the Chief Executive Officer gives notice to the other directors of interests, personal or on behalf of a third party, he has with one or more transactions of the Company and consequently refrains from carrying out the transactions in question.
- It is forbidden to promise or make gifts of money, to present gifts to any third party outside of festive seasons (granted in any event that such gifts and giveaways are of modest value). Suitable supporting documents must be kept in the archives of the Company regarding all gifts and presents distributed, in order to enable the CO to carry out any checks it deems necessary or useful.
- In this regard, it is forbidden to:

  (i) charge or assign goods supply and services to self-employed workers, suppliers of goods and services and/or consultants or external collaborators in circumvention of the normal process of selection, based on documented and objective criteria about the professionalism, quality and affordability of the goods/services offered and services to be provided;

  (ii) to render services or approve remunerative payments in favour of self-employed professionals, outside collaborators and/or consultants, without adequate justification, in light of both applicable contractual provisions and the type of professional services rendered; towards such end, any and all professional services billed in invoices must be carefully checked to ensure not only, from a formal standpoint, that the related invoices are fully compliant with all administrative and accounting requirements, but also, in substantive terms, that the underlying services have been rendered in actual fact.

  (iii) certify the regularity of received goods/services in the absence of a careful assessment of quality and fairness in relation to the goods/services received.

(iv) authorise the payment of goods/services in the absence of a check on the fairness of the delivery/performance compared to the contractual terms or which cannot be adequately justified in the context of the contractual relationship in place with suppliers;

- It is forbidden to grant other benefits of any kind (whether in the form of sponsorship, promises of employment, assignment of consulting assignments, assignment of contracts, etc.), directly or indirectly, for the benefit of members of senior management or their subordinates, belonging to private companies (customers, counterparties or otherwise associated with the Company), in order to unduly favour their interests.
- Any and all additional remuneration paid to Employees on the basis of a single commercial transaction, must be appropriate and determined in writing. Orderly records must be diligently maintained of any and all supporting documents. The CO shall be in charge of verifying the appropriateness of the remuneration in light of the terms and conditions of the underlying employment contract.
- In particular, it is forbidden to grant and pay in favour of any Recipient any form of benefit (i.e. amounts of money, bonuses, benefits, advances on wages, etc.) beyond specifically arranged circumstances and amounts contractually agreed, and this also indirectly through:

  (i) the failure to control reimbursement of expenses and expense reports;

  (ii) the lack of control of activities related to treasury management;

  (iii) the failure to control costs included in the budget and investment plans and the lack of verification of related discrepancies.

- It is mandatory to deploy resources and follow procedures, including for internal auditing purposes, with a view to ensure the efficient performance of services.
- It is mandatory to ensure the traceability of the procedures, times and features of the tasks and activities effected in rendering investment services.

3. Procedures.

3.1 Procedures

Compliance with the procedures set forth below, is key to efficient risk management with regards to the above described activities.

The procedures set forth above are aimed at complementing ALNG S.r.L.'s current Quality System already in force, constituting the Basic Control Standards – *System of Management Control",*

the portions of which that are relevant for the implementation hereof, are to be deemed fully included and incorporated in this Model.

With reference to the offenses punishable under Articles 2621 and 2622 of Civil Code, it must, first and foremost, be borne in mind that all the Company's financial statements, interim reports and other corporate disclosures and notices must be drawn up in accordance with statutory requirements and the Company's internal procedures which aspire to the same. More specifically:

- The accounts, information and data provided by each and every one of the corporate divisions involved, must be clear, complete and devoid of material misrepresentations and/or misstatements of fact.
- All data processing activities must be carried out in compliance with statutory accounting principles and policies.
- All information flows and data processing activities must always be appropriately documented so as to ensure that each and every accounting transaction or entry can be traced and reconstructed even long after the fact.
- Individual drafts of the financial statements and interim reports must be promptly made available to each and every member of the Board of Directors, prior to the scheduled date of Board meeting called for the approval thereof.
- In the case where bookings are made on the basis of subjective estimates and opinions (for instance, the valuation of individual shareholdings), the same must be certified as truthful and complete by the persons or parties that materially made the said estimates or issued the said opinions and/or ordered the bookings in questions, with the result that the latter may be held accountable for the said subjective estimates and/or opinions.
- Any and all changes in the valuation policies and accounting principles followed and/or in the manner, in which the same are applied, must be promptly reported to the head of the high-risk area, who shall be responsible of notifying the same to the CO.
- Any and all persons and parties in charge of overseeing and supervising compliance with obligations related to the performance of accounting activities (including, without limitation, the payment of invoices), shall place specific emphasis on the performance of the said obligations, checking the items billed in each individual invoice, in light of any and all related or supporting documents.
- Pursuant to the foregoing procedure, services billed by outside collaborators, consultants, self-employed professionals and suppliers, must be subjected to itemised checking and then reported to the CO, with a view to ensuring that the said services were in fact rendered, and that the invoices are free from spurious billings.

- Any and all persons and parties involved in the issue of invoices to third parties shall place specific emphasis on compliance with any and all related statutory and regulatory requirements.
- Settlements and/or write-offs of receivables may only be executed by persons specifically invested with delegated powers for such purpose by the Board of Directors and/or the Chief Executive Officer.
- In drawing up the notices and disclosures to be forwarded to Shareholders or released to the market in general, the head of the high-risk area (in this case, the *Financial Accounting and Reporting Supervisor*) shall be bound to issue a specific declaration which must be approved by the relevant managing director, presented to the Board of Directors during approval deliberation of the financial project and transmitted in copy to the CO. The aforementioned declaration must attest: *(i)* the truthfulness, correctness, accuracy and completeness of the information and data contained in the financial statements and/or the other accounting documents indicated above, and in related documents, as well as of the information made available by the Company itself; *(ii)* the total lack of any grounds whatsoever for concern that the information and data collected may feature inaccuracies or undue omissions; *(iii)* the implementation of an appropriate auditing system aimed at ensuring that financial statements provide a true and fair view of the Company's accounts with a reasonable degree of certainty.
- As regards the relations with the independent auditors, the head of the high-risk area (in this case, the *Financial Accounting and Reporting Supervisor*) must carry out the transmission of the documentation to the aforementioned company, with authority to delegate. Furthermore, the independent auditor representative may contact the CO so as to allow for joint approaches to situations that could potentially give rise to risks of the commission of offenses entailing corporate administrative liability. In this situation, it is forbidden to: *(i)* retain the independent auditors (or other companies belonging to the same network), in a consultative capacity incompatible with the their role as independent auditors; *(ii)* recruit as employees or retain as outside consultants, any and all Employees of the independent auditors in charge of carrying out mandatory audits, for a period of 36 months following the expiry of the agreement in effect between ALNG S.r.L. and the independent auditors, or the termination of the employment relationship pursuant to which the employee in question serves the independent auditors.
- The Board of Directors any and all Company Directors, Officers and Employees, and, specifically, the Manager in charge of this area at risk, shall be bound to extend to the Oversight Authorities (such as the Privacy Protection Authority, the Electrical Energy and Gas Authority and the Anti-Trust Authority) any and all the assistance and cooperation of which the latter may

stand in need, especially by making full and timely disclosure to the said authorities of any and all the documents and information the latter may request or require.

- It being understood that each time, for each inspection: *(i)* a copy of the documentation provided must be maintained in the company's archives; *(ii)* the CO must be promptly informed with regard to the outcome of the inquest; *(iii)* a company representative must be identified who shall be tasked with liaising between the various corporate units and representatives of the Oversight Authorities, with a view to coordinating data collection by the latter; *(iv)* the Company representative shall draw up a specific report on the investigations carried out by Oversight Authorities, ensuring that the said report is periodically updated in light of ongoing developments and the findings of the Oversight Authorities; *(v)* the said report must be submitted to the CO as well as to the other corporate offices involved in or affected by the contents of the report.

- All parties involved in risk activities and, in particular, in the preparation of corporate financial statements are required to promptly report to the CO any anomaly and/or irregularity that they may encounter in performing their tasks and their functions or any omission, inaccuracy or apparent falsification in the accounting records or their supporting documents that may come to their knowledge.

4. Role of CO.

Without prejudice to provisions set forth in the General Section, it must be pointed out that the supervisory tasks of the CO with regards to corporate offenses may consist in the issuing and updating of the rules of conduct to be following in respect of activities at risk, as specified in this Special Section. More specifically:

- With regard to the financial statements, reports and the other corporate disclosures and notices required under law by reason of the fact that ALNG S.r.L.'s financial statements are audited by independent auditors, the CO may: *(i)* monitor of the effectiveness of internal procedures designed to prevent the offense of making false corporate disclosures; *(ii)* address specific reports or complaints received from supervisory bodies or Employees, and carry out any and all the fact-finding activities deemed necessary or useful in light of the said reports or complaints; *(iii)* supervise the implementation of procedures and policies aimed at ensuring that the independent auditors are placed in a position of concrete independence in the performance of their auditing tasks in respect of the Company's activities.

- With regard to other activities at risk, the CO may: *(i)* periodically check compliance with internal procedures, periodically check compliance with disclosure obligations towards Public Oversight Authorities, as well as with the procedures to be followed during inspections by representatives thereof; *(ii)* monitor the effectiveness of the checks regarding the commission of offenses; *(iii)* without prejudice to what provided for by the *Whistleblowing Reports Procedure*, address specific reports or complaints received from internal control organs and/or Employees, and carry out any and all the fact-finding activities deemed necessary or useful in light of the said reports or complaints.

CHAPTER D - MANAGEMENT OF COMPLIANCE WITH WORKPLACE HYGIENE AND SAFETY REGULATIONS

1. Identification of risk-prone areas and activities deemed sensitive.

The propose of the present Special Part is to implement an efficient organisational structure in order to guarantee the concrete implementation and full compliance by the Recipients of the ALNG S.r.L.'s Model with the regulations and internal procedures already provided for by the Company with regard to safety in the workplace as well as the applicable Italian laws and regulations.

For this purpose, the following have been envisaged:

a) specific, written organizational and operating duties and powers on the part of the persons in charge of this sector;

b) for workers, adequate training and periodic updating in compliance with scientific advances and the assigned duties that are effectively performed in order to prevent - or reduce -workplace accidents as much as possible, and ensure full awareness by Employees of the importance placed by the Company on respect for human life and the psycho-physical integrity of each employee, and, therefore, the internal precautionary regulations placed by ALNG S.r.L. as well as by this Program, with a view to protecting the aforementioned values.

The specific rules of conduct and particular procedures set forth by the Company (specifically in the *ALNG SHEMS System Manual*), which are to be considered an integral part of the present Model, together with the rules and procedures envisaged herein must, therefore, be considered compulsory and mandatory for all the Recipients of the Model.

With reference to the management of safety and hygiene in the workplace, it appears evident that no preliminary mapping can be carried out of the operating areas within ALNG S.r.L. most at risk to the commission of the offenses contemplated under Article 25 *septies* of Decree 231 («**Involuntary manslaughter and involuntary serious and very serious bodily harm resulting from non-compliance with regulations governing accident prevention and the protection of health and hygiene at the workplace**», the details of which will be covered in Section 5 of the Regulatory Appendix).

The absolute relevancy which the Company attributes to the matters involved with "safe" performance of all corporate activities does not exclude *ex ante* any area, department or section of ALNG S.r.L. from the applicability of the precautionary rules, regulations and behavioural procedures set forth and aimed at protecting the lives and health of each Company Employee, specifically of each Recipient of the present Model. Therefore, all sections of corporate activity must comply with the following rules and procedures.

2. Rules of conduct.

The Company's main goal, especially in this Special Section, is to ensure that all Company Directors, Officers, Executives, Managers and Employees (including external Collaborators and business *Partners*) are made fully aware of the obligatory and binding nature of the following rules of conduct which have been designed with a view to preventing not only breaches of applicable statutory accident-prevention provisions but also unlawful behaviour that may give rise to criminal liability and disciplinary sanctions for the individuals involved, as well as expose the Company to administrative liability for the offenses

Specifically, for the purpose of preventing any type of accident (from the smallest to the most serious) and to guarantee maximum safety at the workplace for all Employees of ALNG S.r.L., the Company has implemented an integrated rules and regulations system which is continuously monitored and updated in accordance with the most up-to-date regulatory reforms, which are the result of the experience matured by the Quota-Holder, ExxonMobil Corporation, who has until today obtained excellent results in safety.

The following rules shall be integrated with those already in force in ALNG S.r.L. and identified in the specific manual implemented by the company, more specifically, in the *ALNG SHEMS System Manual* and the relative procedures:

- Compliance with the safety rules implemented by ALNG S.r.L. is a necessary condition and essential for the performance of any activities by Employees of the Company or by anyone on behalf of the Company.
- It is mandatory for all the Recipients of this Model to exercise the greatest possible diligence and vigilance in addressing any issue whatsoever pertaining to the prevention of workplace accidents and the protection of health and hygiene at the workplace, with a view to implementing the best and most appropriate solution, regardless of the costs involved.
- It is mandatory for all the Recipients of this Model to be attentive to their own and others' safety and health in all work environments.
- It is forbidden in the performance of their assigned tasks and duties, for all the Recipients of this Model engage in any behaviour whatsoever that may endanger their own or others' safety, and, more specifically, to commit or attempt to commit any act of omission that could directly or indirectly endanger their own or others' lives or psycho-physical safety, save for the performance of dangerous activities allowed by the law.
- It is forbidden for all the Recipients of this Model to promote or otherwise collaborate or take part in any behaviour whatsoever that may, in any manner or form whatsoever, give rise to

conduct that, considered on an individual or collective basis, could directly or indirectly damage or endanger their own or others' health or safety.

- It is forbidden for all the Recipients of this Model to engage in behaviour that, while not in itself entailing the commission of a crime *ex* Article 25 *septies*, could potentially result in such commission.
- It is mandatory for all the Recipients of this Model to assess any and all potential risks to their own or others' life and safety, and, if necessary, immediately inform the RSPP and/or the relevant area head, thereof.
- It is mandatory in the performance of their assigned tasks and duties, for all the Recipients of this Model to strictly comply with the principles of transparency and correctness, as well as with the requirements set forth in this Model, specifically focusing on health and safety at the workplace.
- It is mandatory to comply scrupulously with the procedures envisaged in this Program, as well as the additional internal procedures of ALNG S.r.L., which, for those parts of significance pertaining to safety and health at the workplace, are considered integral parts of this Program.
- It is mandatory to comply with legislative rules and regulations, whether national or regional, pertaining to the prevention of accidents and protection of health and hygiene at the workplace.
- It is forbidden for all the Recipients of this Model to use, even only on an occasional basis, the Company's structures, resources and equipment for the purpose of violating the preventive regulations and all rules placed by the Company, as well as the commission of crimes pursuant to Article 25 *septies*.
- It is mandatory for all the Recipients of this Model to make proper use of safety structures, equipment and devices installed within the Company.
- It is forbidden for all the Recipients of this Model to hinder or otherwise obstruct in any manner or form whatsoever, Supervisors' Activities carried out by the RSPP, and/or the Responsible of the area at risk, and/or, where necessary, the Responsible of any and all other areas at risk as well as the CO.

3. Procedures.

3.1. Procedures

In order to set up an effective system for the management and containment of risks to life and health at the workplace, as well as to allow for the "safe" performance of corporate activities in compliance with applicable regulations as well as the Company's internal rules and procedures, any and all ALNG S.r.L.'s Directors, Officers, Executives, Managers and Employees as well as self-

employed professionals and outside Collaborators serving the Company in any manner or form whatsoever, shall be bound to following the procedures set forth below.

The said procedures are to be followed in addition to the specific aforementioned internal requirements which are to be deemed to form an integral part hereof, insofar as they pertain to the implementation of this Model.

- It is mandatory for all the Recipients of this Model to ensure prompt, proper and full compliance with any and all statutory and regulatory disclosure obligations towards the RSPP or other persons or parties appointed or delegated by the same, and refrain from obstructing the same in the performance of their assigned tasks and duties. More specifically, it is mandatory for the Recipients of this Model to: *(i)* ensure that any and all the disclosures made to the RSPP or other persons or parties appointed or delegated by the same, pursuant to the said obligations are timely, complete ad clear; *(ii)* ensure that all the information and data contained in the said disclosures are true and correct and that no information and/or data that could be useful to the RSPP or other persons or parties appointed or delegated by the same, for the purposes of carrying out their assigned tasks and duties, have been unduly withheld or otherwise omitted; *(iii)* refrain from engaging in any behaviour whatsoever that may obstruct the performance of the RSPP's tasks and duties, including during inspections (for instance, through express objections, specious denials of access, obstructive or uncooperative behaviour, including delays in effecting the disclosure and discovery of information and documents).
- It is mandatory for all the Recipients of this Model to promptly report to the Supervisor and Area Manager, immediately upon becoming aware of any and all shortcomings and/or anomalies observed in safety devices and equipment, as well as any and all other potentially dangerous or hazardous situations. In emergency cases, the Recipients of this Model shall, within the limits of their job descriptions and possibilities, take direct action to eliminate or otherwise contain the aforesaid shortcomings or dangerous or hazardous situations, giving immediate notice thereof to the Supervisor, as well as the relevant Area Manager. Any and all reports, including unofficial comments and remarks, must be forwarded to the RSPP in writing (by e-mail, letter or registered post).
- It is mandatory to implement outreach initiatives targeting all the Recipients of the ALNG S.r.L. Model, with a view to ensuring the widespread awareness and dissemination throughout the Company, of all the rules and regulations set forth herein and imposed under accident-prevention legislation, with a view to sensitising staff to health and safety issues.
- It is mandatory that the outreach and training initiatives involve all Employees regardless of whether or not the latter serve in high-risk areas. In particular, training and outreach initiatives

must include: *(i)* training courses at the time of recruitment, transfer or a change in job description, aimed at ensuring that staff are suitably qualified to discharge their assigned tasks and duties; and *(ii)* periodic updating courses, whenever necessary, in light of changes in and reforms of applicable rules of conduct, procedures, technologies or any and all other information that may be necessary or useful for the promotion of health and safety at the workplace.

- It is mandatory, with the exception of those excused for good reason and just cause (for instance, if their attendance is required at other training sessions, seminars, meetings, conferences, conventions, etc.), for all ALNG S.r.L. Employees to attend the training, outreach and updating courses focusing on accident-prevention and workplace hygiene and safety issues, organised by the Company pursuant to applicable regulations and/or the internal procedures. The SSHE Department shall implement specific procedures for monitoring attendance, giving notice thereof to the CO. At the end of each course, all attendees shall be required to sign a document certifying their attendance.
- It is mandatory for any and all documents pertaining to business operations within areas at risk, to be diligently archived in accordance with the procedures imposed under *privacy* regulations, under the supervision of the relevant area managers, with a view to ensuring that both the said area managers and the RSPP are in a position to access and consult the same at any time, especially for the purposes of drawing up the reports to be forwarded to the CO.
- It is mandatory to dedicate sufficient resources to implementing effective procedures, including internal auditing procedures, designed to ensure smooth business operations in strict compliance with any and all regulations governing health and safety at the workplace.
- It is mandatory to appoint a workplace safety officer for each work environment within areas at risk, with a view to ensuring adequate internal oversight of the activities undertaken by Employees within each work environment, as well as compliance with accident-prevention regulations (for instance, the Supervisor).
- It is mandatory for any and all agreements with Consultants, self-employed Professionals, Suppliers and outside Collaborators to be witnessed in writing. Moreover, the said agreements must contain: *(i)* an express declaration by the aforesaid counterparties, certifying their full and complete knowledge and awareness and unreserved acceptance of any and all the provisions set forth herein; *(ii)* an attestation by the aforesaid counterparties to the effect that they have never been implicated in any legal proceedings whatsoever in respect of the offenses contemplated in Decree 231, together with a firm commitment to produce at any time (in the case where the counterparty in question is organised as an association, partnership or other body

corporate), the certificate issued by the administrative sanctions records office mentioned in article 80 of the said Decree; *(iii)* lastly, a clause expressly governing the consequences of the commission of any offense whatsoever giving rise to corporate administrative liability for the Company, or breaches of the provisions of this Model especially in respect of this Special Section, by the counterparty in question (*i.e.* express termination clauses, penalties, etc.).

- It is mandatory to retain only persons and parties found to be fully reliable and responsible in respect of occupational health and workplace safety issues as outside collaborators, self-employed professionals and contractors. In particular, prior to entering into or renewing any relationship with contractors and third party companies: *(i)* the counterparty must be shown to have implemented an organisational and management Model within the meaning of Decree 231; *(ii)* during the pre-selection phase, counterparties must be shown to have complied with any and all applicable accident-prevention regulations; *(iii)* understandings must be reached with the proposed counterparty in respect of each individual work process and activity; *(iv)* the counterparty must agree to subject any and all of the counterparty's work processes to monitoring and oversight by a Company representative, by way of further guarantee of the counterparty's compliance with safety regulations and the rules of conduct and procedures set forth in this Model; *(v)* provision must be made for outreach initiatives targeted at Suppliers and Outside Collaborators in general, with a view to encouraging the latter to implement safety and security measures and precautions in line with the Company's policies.

3.2. Prevention and Protection Service Manager (RSPP).

In pursuit of the goals established and described in this Special Part, the Company, in accordance with the guidelines set forth by Confindustria, commits to setting up a comprehensive internal control system involving the Prevention and Protection Service Manager (RSPP), in charge of first level activities in compliance with the rules in force, and the CO, which is responsible for second level oversight, entrusted with monitoring the efficiency and appropriateness of the procedures, directives and instructions.

The CO shall carry out the aforesaid monitoring duties as a completely independent and separate body, it being further understood that in no event may any supervisory or monitoring activity whatsoever carried out by the Compliance Officer be deemed to discharge or otherwise redeem, in whole or in part, any person or party tasked with implementing and/or supervising the implementation of regulations governing accident prevention, safety, health and hygiene at the workplace, from the full burden of the duties and responsibilities incumbent on the latter.

a) Qualifications and appointment.

The RSPP shall be appointed by the relevant corporate bodies, following verification of the following requirements.

The RSPP shall be chosen from amongst professionals with proven experience in workplace health, safety and hygiene.

Prospective candidates must be able to show that they have undergone specialist training on the aforesaid subjects through authorised institutions and bodies, and that they are fully familiar the business dynamics and operations of companies similar to ALNG S.r.L. Moreover, all the candidates must be able to show that they are fully abreast and up-to-date not only with the most recent regulatory reforms, but also the latest technological and scientific developments. They are also bound to comply with the reporting obligations and rules of conduct set forth in this Model and the Company's Code of Ethics.

b) Reporting obligations.

In addition to discharging any and all the obligations, especially the reporting and disclosure obligations, set forth in the General Section, the "*Prevention and protection service of the professional risks*" and, more specifically, the RSPP, in light of the provisions set forth by Article 33 of Legislative Decree no. 81/08 (New Unified Safety Text - TUS), shall:

- prepare and submit to the CO, on a half-yearly basis, a written report focusing on any and all events worthy of mention, the oversight activities carried out and the progress achieved in implementing the provisions of this Special Section.
- adequately address each and event report and complaint received from First Level Managers and Employees (with regard to possible violations of workplace health and safety regulations; non-compliance with the rules of conduct or procedures set forth in this Special Section, etc), carrying out any and all the investigative and fact-finding activities that may be necessary or useful in light of the said reports and complaints, and promptly informing the Compliance Officer thereof, except for the cases provided for by the *Whistleblowing Reports Procedure*.
- cooperate to identify areas of activity at high risk for safety and health at the workplace, with the Board of Directors and the Company doctor in the preparation of the Risk Assessment Document (which is to be considered an integral part of the present Model), undertaking, following indications given by the CO, the preparation of any integration proposals which he may deem necessary.
- drafting, within the limits of his expertise, of preventive and protective measures and control systems of the same.
- provision of adequate safety procedures for each corporate activity.

- organisation of training initiatives and participation in training programs as well as necessary personnel training or update courses with a view to ensuring that all Recipients of this Model are fully aware and sensitised to safety and health issues, specifically with reference to the information set forth in Article 36 TUS.
- ensure that all plant and equipment are fully compliant with accident-prevention regulations.

3.3. Role of the CO

In light of the above, and without prejudice to the provisions set forth in the General Section, there is a need to reinforce the internal control system in respect of the prevention of involuntary offenses, and towards such end, in its capacity as an independent and separate, second-level internal control body, the activities of which may in no way be deemed to discharge or redeem, in whole or in part, any person or party tasked with implementing and/or supervising the implementation of regulations governing accident prevention, safety, health and hygiene at the workplace, from the full burden of the duties and responsibilities incumbent on the latter, the CO shall:

- check that the guidelines, procedures and instructions issued by the RSPP are clear, effective to ensuring compliance with the workplace health, hygiene and safety regulations;
- the CO may perform periodic audits of the observance and efficiency of the internal procedures and may monitor the efficiency of the checks designed to prevent the commission of criminal offenses. Except for the cases of the *Whistleblowing Reports Procedure*, the CO is tasked with examining any specific reports from the RSPP or from any other person, and to take any measures deemed necessary or opportune to verify the content of said reports.

CHAPTER E - INDUSTRY AND COMMERCE

1. Identification of risk-prone areas and activities deemed sensitive.

Risk mapping, conducted in relation to "**Offenses against industry and commerce**" introduced by Article 25 *bis*1 of Decree 231 takes the services provided by ALNG S.r.L. into consideration where they regard a product (LNG) owned by its Customers, as well as the specific Customer and category, Company operations within a highly regulated market and procedures already in place at ALNG S.r.L., based firmly on the principles of fairness and accountability and fair competition in third party relations.

In particular, risk mapping has revealed that, of the offenses envisaged in Article 25 *bis*1, the criminal offenses of «*Using violence or fraud to do business in industry or commerce*» (Article 513 of Criminal Code) and «*Fraud in commerce*» (Article 515 of Criminal Code) are hypothetically possible, within the Company's scope of activity, while the offense of "*Unlawful competition by means of threats or violence*" (Article 513 *bis* of Criminal Code) is almost impossible (the offenses are examined in Section 4 of the Regulatory Appendix).

The risk assessment has established that company areas that may be considered exposed to the risk are highly regulated by European Union and national regulations and, in particular, by deliberations of the Authority for Electrical and Gas Energy (AEEG), and regard in particular the risk of «*Using violence or fraud to do business in industry or commerce*».

In this situation, the Company has appointed a guarantor, and entrusted the same with the responsibilities below, in accordance with the provisions of AEEG Deliberation no. 11/07, as amended by AEEG Deliberations 253/07 and 310/07 and clarified (by letter of 27 November 2007): *(i)* responsibility for compliance with the obligations set forth in the regulation on third party access, with particular reference to the access code and usage level of the infrastructure capacity, and on the economics of the management decisions, as well as *(ii)* the responsibility of preparing an annual report on the issues.

2. Rules of conduct.

The purpose of the present Special Part is to clearly and indisputably set forth the mandatory and binding nature of this Model for the Recipients regarding the rules of conduct and procedure already in force in the Company.

The rules and procedures are implemented in the protocols indicated below, with the aim of preventing and avoiding unfair and improper behaviour in carrying out company business on behalf of ALNG S.r.L., as well as indicating whether an unlawful act has occurred, which may give rise to

criminal and disciplinary sanctions for the individuals involved, as well as expose the Company to administrative liability for the offenses.

To this end, the Recipients of the Model are to abide by the following rules of conduct:

- It is mandatory to abstain from conduct that could result in the commission of the corporate offenses labelled in Article 25 *bis*1 of Decree 231 and, in particular «*Using violence or fraud to do business in industry or commerce*», «*Unlawful competition by means of threats or violence*» and «*Fraud in commerce*».
- It is forbidden to promote or otherwise collaborate or take part in any behaviour whatsoever that may, in any manner or form whatsoever, give rise to conduct that, considered on an individual or collective basis, could directly or indirectly give rise to an offense.
- It is forbidden to engage in behaviour that, while not in itself entailing the commission of a crime, could potentially result in such commission.
- It is mandatory to comply with the principles of accountability and correctness in third party relations.
- It is mandatory to engage in behaviour based firmly on the principles of fairness, correctness, efficiency, collaboration and courtesy in relations with Company Customers, in providing quality services and meeting the legitimate expectations and demands of the same, with respect for the standards in place safeguarding competition and the market.
- It is mandatory to honour commitments and contractual obligations assumed towards Company Customers, providing them with true, accurate and precise information.
- It is mandatory to observe and comply with legislative rules and regulations adopted at a European Union and national level and all internal control procedures regulating company activity and, in particular, primary and secondary regulations, in addition to internal protocols for safeguarding and guaranteeing free market principles.
- It is mandatory in maintaining relations with the Public Oversight Authorities, and in particular with the Authority for Electrical and Gas Energy and the Competition Authority, to strictly comply with the principles of correctness, accountability and collaboration.

With particular reference to the offense envisaged in Article 513 of Criminal Code («*Using violence or fraud to do business in industry or commerce*»):

- It is mandatory to correctly apply the deliberations of the Authority for Electrical and Gas Energy, as well as the European Union and national regulations dictated by such matter; it is mandatory, moreover, to strictly abide by the rules of conduct and principles of the corporate code of professional ethics of ALNG S.r.L. and the Code of Ethics, as well as other rules of conduct currently in force in the Company. The respect of such rules and regulations, in fact, avoids the risk of conducts, which may in any event be considered fraudulent.
- With regard to the particular method with which the conduct of the above mentioned offense and of the offense envisaged in Article 513 *bis* of the Criminal Code («*Unlawful competition by means of threats or violence*») – or, respectively «*violence against goods*» and «*violence or threats*» – despite being regarded as unlikely, all Recipients of this Model are reminded to firmly abide by the rules set forth in Chapter H of the Special Part.

With reference to the crime set forth in Article 515 of Criminal Code («*Fraud in commerce*»):

- It is deemed that the risk of committing the crime may be averted, or at least limited, through the strict compliance by all the Recipients of the Model, to the rules of conduct and procedures already in place in ALNG S.r.L. and, with particular regard to the accuracy of the measurement, with respect to the procedures set forth in the "*Measurement and Analysis Manual" (*AMAM).

3. Procedures.

In light of the specific behaviour rules and procedures indicated in Chapter H (here intended as fully integrated), in order to achieve an efficient control and risk control management system of the presupposed crimes envisaged in Article 25 *bis*1 of Decree 231, all the subjects, whether management or subordinates maintaining relations with ALNG S.r.L., including self-employed professionals and outside Collaborators must abide by the following procedures.

The procedures should be integrated with specific internal requirements currently in place and incorporated in ALNG S.r.L., contained in "*Measurement and Analysis Manual*" (AMAM), which, for the parties associated with implementing the Model, become an integral part of the same.

- The information, data and communications provided by each and every one of the corporate divisions involved must be clear, complete and devoid of material misrepresentations and/or misstatements of fact.
- Except for the cases of the *Whistleblowing Reports Procedure*, any conduct, engaged in by any Recipient of the Model, even partially pertaining to the above crimes of «*Using violence or fraud to do business in industry or commerce*», «*Fraud in commerce*» or in any event any

behaviour contrary to the general principles of correctness in industrial or commercial business must be reported promptly, orally or in writing, to the First-Level Manager and the Compliance Officer.

In particular, with reference to the offense envisaged in Article 513 of Criminal Code («*Using violence or fraud to do business in industry or commerce*»):

- A regular flow of information shall be guaranteed by the guarantor appointment pursuant to AEEG Deliberation no. 11/07 by ALNG S.r.L. and the Compliance Officer, in order to make the Body fully aware of the results of activities carried out by the guarantor.
- To the same end, a copy of the annual report prepared by the guarantor must be sent to the Compliance Officer.

With regard to the crime set forth in Article 515 of Criminal Code («*Fraud in commerce*»):

- Each Employee of ALNG S.r.L. is bound to report any difficulties or irregularities to the Compliance Officer and First-level *Manager*, with respect to the procedures, which may arise with regard to the product measurement activity (LNG).
- ALNG S.r.L. Customers and Contractors are bound to inform the Compliance Officer of any problems arising with quantity and/or quality of the product.
- The Compliance Officer shall have access to the LNG/Gas plant monthly accounts prepared by the Department for independent analysis and controls.

CHAPTER F - MANAGEMENT OF RELATIONS WITH THE JUDICIAL AUTHORITIES IN THE EVENT OF CRIMINAL PROCEEDINGS

1. Identification of risk-prone areas and activities deemed sensitive.

The objective of the present Special Part is to reinforce and implement the cardinal principles that have shaped the ALNG S.r.L. corporate philosophy, with particular reference to relations with the judicial authorities, and which are fully stated in the Company's Code of Ethics.

In particular, in light of the practical impossibility of eliminating the risk of the presupposed crime envisaged in Article 25 *decies* of Decree 231 «***Inducement not to make statements or to make false statements to the Judicial Authorities***» from occurring, the Recipients of the present Model are to abide by the rules and procedures provided below, in maintaining relations with the Judicial Authorities in relation to the principles of correctness, legality and accountability.

Nevertheless, it should be noted that, in the absence of ALNG S.r.L. company areas, which may be deemed more than others exposed to the risk of an unlawful act being committed, the crime of «*Inducement not to make statements or to make false statements to the Judicial Authorities*» and, therefore, the unlawful administration stemming from the offense, presupposes the pendency of penal proceedings (see Section 7 of the Regulatory Appendix for further examination of the offense).

Therefore, where the conditions exist, any subjects, whether management or subordinates maintaining relations with the Company could, in theory, engage in the unlawful behaviour, no matter what their roles or functions.

2. Rules of conduct.

The main goal of this Special Part is not simply to avoid or reduce the risk of the presupposed crimes set forth in Decree 231, and in particular Article 25 *decies*, being committed by the Recipients of the Model but, more importantly, to emphasize the importance ALNG S.r.L. places on each of them abiding by the ethical principles and corporate code of professional ethics of ALNG. S.r.L.

Each and every subject in a management or subordinate position on any level within the Company is bound to abide by the principles set forth in the Code of Ethics, lawfulness, integrity, loyalty and fairness in carrying out their work and responsibilities.

These principles are considered all the more essential in relations with the Public Authorities, and, in particular, with the Judicial Authorities, intended as any body of the judicial system, including the Public Prosecution's Offices and Judges (one-person or collectively, by temporary or permanent appointment).

The Company considers a collaborative approach absolutely vital, based on the principles of correctness and accountability, in performing business that entails any relations with the abovementioned bodies.

To this end, in light of the applicability of rules of conduct as set forth above in Chapter B, the present Model states that all the Recipients of the Model shall scrupulously abide by the following rules of conduct:

- It is mandatory to act fairly and transparently in performing all the activities involving the establishment of relations with the Judicial Authorities.
- It is forbidden to engage or attempt to engage, by commission or omission, in any behaviour whatsoever contemplated in Article 25 *decies* of Decree 231, entailing administrative liability of the entity, while not in itself entailing the commission of a crime, could potentially result in such commission.
- It is forbidden to promote or otherwise collaborate or take part in any behaviour whatsoever that may, in any manner or form whatsoever, give rise to conduct that, considered on an individual or collective basis, could directly or indirectly give rise to an offense.
- It is mandatory to abstain from engaging in conduct aiming to influence or threaten the correct administration of justice being carried out and, in particular, the formation of proof in the criminal process.
- It is mandatory, in pendency of criminal proceedings, to maintain behaviour that preserves and respects the authenticity and spontaneity of the statements issued by any subject (internal to or independent of the Company) and, in particular, those subjects being investigated or accused in penal proceedings.
- It is forbidden to directly or indirectly exercise undue pressure or acts of violence and/or deliver threats which may, in any event, condition the spontaneity of the behaviour of a person during the proceedings who has knowledge of the facts relevant to the criminal proceedings, who may make a statement.
- It is forbidden to promise or provide benefits, money or favours of any nature or kind whatsoever (including promises of recruitment) to any person who knows the facts and who may make statements as part of the criminal proceedings, with a view to securing a benefit for the Company. With reference to gifts or presents, please see general rules outlined in Chapter H (paragraph 2) of the present Special Part.
- Payment must be made by Bank Transfer, except for small current expenses of the Company (couriers, small purchases of stationery or similar items).
- It is forbidden to prevent or obstruct supervision in any way by the individual heads of the risk-prone areas and of the CO.

3. Procedures.

The procedures set forth below are aimed at supplementing ALNG S.r.L.'s current procedures, the portions of which are relevant for the implementation hereof are to be deemed fully included and incorporated in the present Model.

In particular, all the Recipients of the Model are bound to abide by the following procedures:

- Relations with the Judicial Authorities must be based on the principles of legality, accountability, correctness and collaboration so as not to compromise the integrity or reputation of the Company in any way, nor the decorum or dignity of the said Authorities.
- The First-level Manager or Compliance Officer must be informed promptly and in writing (by e-mail) of any criminal proceedings or measures and/or information from the judicial police or any other authority, which indicate that it is under investigation for offenses.
- Except for the cases of the *Whistleblowing Reports Procedure*, the First-level Manager and the Compliance Officer must be informed promptly of any pressure, threats or violence to force subjects to withhold statements or make false statements in the event they are called upon to provide a statement to the Judicial Authorities.
- Similarly, except for the cases of the *Whistleblowing Reports Procedure*, each Recipient of the Model must notify the First-level Manager and Compliance Officer if they receive offers or promises of money or favours of any kind to withhold statement or to make false statement to the Judicial Authorities.
- The above reporting obligations, to which all Recipients of this present Model are bound, are also applicable in the event the victim of the pressure, threat and/or violence or the recipient of eventual offers or promises of money or other advantages is an Employee of the Company, a Collaborator, Partner or Consultant of the same Company.
- It is forbidden to hire, grant consulting engagements or enter into contractual relationships with people who, being investigated or accused in penal proceedings, could make or have made statements to the Judicial Authorities, be they natural persons or legal entities, in order to obtain undue or unlawful personal advantage or benefit to the Company.

It is mandatory to adequately document any gift or present offered, in accordance with the rules of conduct cited hereinabove, so that the prescribed verifications may be carried out.

CHAPTER G - MANAGEMENT OF THE ENVIRONMENTAL PROTECTION

1. Environmental policy of ALNG S.r.L.

The environment and "environmental heritage assets" are assets of primary importance to individuals and the community as a whole in general, whose protection, conservation, rational management and improvement of their conditions are fundamental values that have always informed ALNG S.r.L. policies and business.

From the Company's perspective, "environmental assets" should be interpreted and implemented in a cohesive sense, comprising all natural and cultural resources, and more specifically as « *the surrounding in which operations are conducted, including the air, the water, land, natural resources, flora, fauna, humans and their interrelation. The environment, in this context, extends from within ALNG's location to the global system*»[22].

The Code of Ethics already recognise as one of business principles the «*commitment to sustainable development and the Company's responsibility towards the community*», which implies respect for the environmental laws and regulations in force in every Country where ALNG S.r.L. operates, the use of the best technologies available, the promotion and planning of development of its business aimed at valuing natural resources, preserving the environment for future generations and promoting initiatives for widespread environmental protection.

The Company is committed to conducting its business in compliance with the health, safety and security of its employees, third parties involved in business operations, customers and the community in an environmentally sustainable way and taking into account the economic needs of all the communities in which it operates.

In fact, aware of the undisputed significance of environmental issues and "environmental assets", including their effects on human health, ALNG S.r.L. has considered it essential to adopt appropriate and effective regulations and procedures aimed at regulating the processes and business areas most sensitive to these issues, independently of the legislation referred-to in Decree 231 and even before the introduction of Article 25 *undecies* relating to **Environmental offenses**.

More specifically, focusing on the (direct or indirect) environmental impact associated with its activities, the Company adopted an Environmental Policy to minimise this impact through the most rigorous environmental safety and protection standards, to ensure continuously improving performance and work, regardless of any economic aspect and of any costs incurred.

[22] See the *Glossary of SHEMS Elements, Expectations, and Guidelines,* approved 30 June 2011 (page 3).

Managing business operations and in particular the design, operation and maintenance of plants, inter alia aim to prevent incidents while seeking to control amounts of emissions and waste products, to keep them below the harmful levels.

ALNG S.r.L. also considers essential to promote interest in and respect for the environment, through proper awareness and training among its Employees, the Management and associates, so that they are aware of significant aspects and potential environmental impacts associated with the performance of their duties, and to commit themselves to working with respect for the environment, contributing to achieving our corporate objectives.

To this end, the Company encourages environmentally-responsible behaviour among Employees, suppliers and partners, even outside working hours, and to ensure the continued and effective involvement of the different company bodies with regard to environmental protection, through the SHE Forum and Employee Forum and through a continuous training and information programme for all those working (directly or indirectly) in this area.

In this regard, a training plan has been set up for Employees as well as third parties working on behalf of ALNG S.r.L., with specific sessions on environmental issues within SHEMS Training, or on more general issues in the context of the aforementioned SHE Forum and Employee Forum (such as waste collection).

Specifically, training and information sessions are regularly held at the different corporate offices and are divided according to the company levels they address and the type of tasks and functions assigned, to enlighten each employee of his powers, duties and responsibilities relating to the environment (for example, carrying out training courses on environmental issues for all those who will be on the offshore Terminal including during induction and providing training on specific issues).

ALNG S.r.L. also works with the government and industry groups to foster timely development of effective environmental laws and regulations, and promotes inclusive dialogue with the authorities and local communities in which it operates.

Aware of the importance of continuous dialogue and exchange with the latter with particular regard to environmental issues, the Company organizes formal and/or informal meetings with them to share its experience to facilitate improvements towards greater sustainability. In addition, events are promoted and sponsored aimed at raising public awareness on protecting "environmental heritage" (such as participation in EUSEW, "EU Sustainable Energy Week, 2009, 2010 and 2011 editions).

Indeed, environmental protection is at the heart ALNG S.r.L.'s sustainable development policy and everything that the Company does. The Company has also identified ESG

(Environment, Social and Governance) priorities and strategies to be implemented in the period 2023-2025, in line with the United Nations 2030 Agenda for Sustainable Development.

For these reasons, the Company believes it is imperative for all Recipients of this Model to strictly observe and fully comply with legislation (Italian, EU and international) in the field, the requirements and procedures currently in force at ALNG S.r.L. and those indicated below for the protection of the environment.

Therefore the purpose of this Special Part, dedicated to "*Management of environmental protection*" is, firstly, to remind all Recipients of this Model to respect "environmental heritage" itself, and to comply with all current internal provisions and prescriptions, in addition - it is reiterated - to sector regulations, and secondly, to as far as possible reduce the risk of "**Environmental crimes**" which were introduced under Article 25 *undecies* of Decree 231 (recently amended through the insertion of new offenses: for a detailed discussion of these offenses see Section 8 of Regulatory Appendix).

In this last regard, it is worth recalling that models of management, organization and control in the aforementioned Decree must in general involve concrete effectiveness and suitability in terms of prevention as concerns the offense scenarios contemplated by the Legislature.

With particular reference to new environmental offenses, the importance of adopting organisational structures is even more evident when one considers the fact that a preventive protection technique to benefit environmental assets was introduced as part of the system of administrative responsibility of institutions resulting from a crime, aimed at clamping down not only on conduct that has caused damage or a danger to the environment or to human health (so-called event offenses), but also on conduct that, independently of the occurrence of a harmful and/or dangerous event, entails offenses of a merely formal nature (a so-called conduct offense).

Also, it should be considered that the liable offenses covered by this Special Part are for the most part considered assumptions of violations to meet which a subjective, so-called generic guilt (*colpa generica*) is thus sufficient, understood as mere negligence, carelessness and incompetence in the performance of an activity, not marked by any particular gravity. It follows that, by definition, a mere error (e.g. due to an oversight or inattention) could lead to the Company to scenarios of major fault-based liability under Decree 231.

It is also true that the existence of such a liability requires that any environmental offense committed due to misconduct (but this is also the case involving intent) be attributable to the entity even when viewed objectively, represented by the interest and/or advantage to be pursued or obtained through said criminal conduct.

In this regard, the more prudent doctrine and jurisprudence on environmental offenses have found that the above-mentioned objective criteria of attribution (interest and advantage) must refer not to the crime being considered itself - since it is clear that the company has no interest, for example, in causing an environmental disaster - but to the conduct constituting the offense, substantiated in violation of rules established to protect human health and the environment.

Therefore, where company business is concretely organised or pursued in a manner that fails to comply with the provisions of Decree 231 and internal procedures adopted in accordance with said Decree, this may give rise to negligent or imprudent conduct by the Company, or, where such conduct took place in pursuit of reducing costs or saving on expenses, recognise a concrete advantage to same[23], which would mean a risk of incurring liability under Decree 231.

Such considerations, that underline the specific nature of the offenses in question, make it necessary to draw the attention of all Recipients of this Model to compliance with the following rules of conduct and procedure (jointly with those currently in force at ALNG S.r.L.), which have been identified on the basis of an in-depth risk-mapping exercise.

In this regard, it should be specified that in light of the particular significance of environmental issues, following the entry into force of Legislative Decree no. 121 of 2011 (which introduced Article 25 *undecies* into the framework of Decree 231), the Company has deemed fit to immediately update Model 231, by adopting this Special Part G in September 2011, in order to promptly adjust the Model to the protection requirements outlined by the Legislature, extending corporate liability to environmental liability.

The immediate implementation of the aforesaid legislative innovations was made possible by the existing provisions and protocols at ALNG S.r.L. (and in particular the procedures referred-to in *ALNG SHEMS System Manual*[24]), which, where strictly followed, are in themselves effective in environmental protection terms.

Subsequently, via its own Compliance Officer, the Company undertook an in-depth and accurate auditing and control process covering the pertinence and conformity of the aforesaid procedures with regards to the recently introduced regulations.

Furthermore, a thorough risk-mapping exercise was undertaken with reference to the commission of the Offenses in question, preparing a questionnaire ("Risk Assessment Tool"), which was submitted to the persons responsible for the areas affected by environmental issues, in order to identify the corporate areas most exposed to the risk of the commission of the aforementioned Offenses.

[23] An advantage understood as objectively measurable pecuniary interest.

[24] Namely *Safety, Security, Health and Environmental Management System*.

More specifically, a first risk-mapping exercise was undertaken in the Porto Viro Shore Base and at the Company's registered office in Milan, which contemplated interviews with the relevant company representatives (Regulatory/SHE Advisor, Shore Base Manager, RSPP and Logistics Supervisor).

The aforementioned mapping exercise was then pursued at the offshore Terminal and the aforesaid Questionnaire was submitted to the relevant Terminal (ALNG) Employees/Detached (Offshore Installation Manager, SHEMS Coordinator and RSPP).

In light of the outcomes of the above-described mapping exercise, this Special Part was appropriately included and implemented, in order to identify company areas and activities most exposed to "environmental offense risk", and to clarify the rules of conduct and specific procedures, aimed– as mentioned above– at avoiding or at reducing the danger of illicit behaviour by any Recipient of this Model.

It is reported that, during 2021, the Milan headquarter was transferred to the offices at Via Santa Radegonda no. 8, where the social activities already subjected to risk mapping are carried out. In addition, since November 2021, a new office has been in operation in Rovigo, at the Service Centre (CenSer) - Pavilion D, Viale Porta Adige, no. 45, where administrative and office activities supporting the regasification terminal's operations are also carried out.

Finally, it is noted that, as from 1st July 2022, the management of the Shore Base is entrusted to COSMI S.p.a., an engineering & contracting company and Prime Contractor for the maintenance services of Adriatic LNG.

2. Identifying risk-prone areas and activities deemed sensitive.

Following the entry into force of Law no. 68 of 22 May 2015, which introduced new environmental offenses relevant under Decree 231, this Special Part has been updated, in order to check the adequacy of the Model to prevent unlawful conducts in light of the new crimes.

With reference to the first profile, concerning "risk areas", it is necessary to distinguish between the various premises in which ALNG S.r.L. operates, which have been subject to an analysis and assessment of their most salient environmental aspects.

2.1. ALNG S.r.L. headquarter and the Shore Base.

As for the ALNG S.r.L. headquarter and the Shore Base, located in Porto Viro (Rovigo), during the mapping activity carried out at the time, it was found that, in carrying out corporate activities, electronic and computer equipment is used as are capital goods that are fully available to the Company, which, once used and under certain conditions, can be qualified as waste (*i.e.* monitors, computers, mobile phones, printers, copiers, toner, machinery, etc., as well as materials such as glass,

paper and plastic).

Therefore, with regard to the recently introduced environmental offenses, it is considered that special attention should be paid to the management and processing of the above-mentioned goods and equipment.

To this end, ALNG S.r.L. has adopted specific procedures for its own direct waste collection, such as by providing a system of separate collection of materials including paper, plastic and glass, which are then disposed-of by the municipally-owned company.

With reference to the equipment listed above, however, it is noted that it is not owned by the Company, but by other companies with which ALNG S.r.L. has entered into rental agreements (i.e. with IBM Italia Servizi Finanziari S.p.A. as regards computers, monitors, printers and copiers, with TIM for mobile phones). These companies provide any replacements, while disposal is carried out by specialised companies.

The appointed corporate functions carry out periodic checks on the formal correctness of the fulfilments and obligations to be performed by the outsourcers.

As of the date of approval of the latest update of this Model, the Company's head office is located in Milan, Via Santa Radegonda no. 8, where the corporate activities already subjected to risk mapping are carried out. In addition, as already indicated, since November 2021 a new office has been in operation in Rovigo, at the Service Centre (CenSer) - Pavilion D, Viale Porta Adige, no. 45, where administrative and office activities supporting the regasification terminal's operations also take place.

Lastly, as already mentioned, as of 1st July 2022 the management of the Shore Base is entrusted to COSMI S.p.a., which is the sub-conductor.

2.2. The regasification Terminal (Gravity Based Structure - GBS).

With particular reference to the regasification Terminal (Gravity Based Structure - GBS), located offshore of Porto Levante (Ro), this is a structure unique in the world, which has been specifically designed to supply the Italian energy market with a diversified, reliable and low-environmental-impact energy source.

More precisely, the Terminal has been designed around a large concrete constructure (GBS), which houses two tanks of liquefied natural gas (LNG), and includes facilities for mooring and unloading LNG vessels, a regasification plant and a pipeline for sending the natural gas to the national distribution network.

The design and construction of the offshore structure were part of an international project designed and implemented in various countries around the world, including South Korea, the United States, Canada, Norway, Spain and Italy.

This highly innovative project manufactured with the latest technology, was developed in full compliance with Italian legislation (primary and secondary) and in cooperation with the competent authorities; a collaboration which led to the adoption of more than 100 specific environmental protection measures and the implementation of a comprehensive monitoring programme.

The Terminal has been declared a project of strategic interest in Italy and Europe, respectively by the Interministerial Committee for Economic Planning (CIPE) and the European Commission.

In this regard it should also be mentioned that approval was obtained for four Environmental Impact Assessments (EIA), to ensure compliance with all aspects of environmental protection and, most recently, the decree of exclusion from EIA for the project to increase the regasification capacity from 8 to 9 billion smc of natural gas per year.

Currently the Terminal, which in January 2009 obtained Integrated Environmental Authorisation (AIA) (*i.e*: the go-ahead to operate the installation from an environmental point of view), then renewed in 2016 and 2022 under Art. 29 *octies* of Legislative Decree 152/2006*,* works with the best technologies that have always ensured it maximum energy efficiency and full compliance with environmental protection requirements.

The work carried out on the Terminal mainly consists of unloading, storing and regasifying liquefied natural gas.

Therefore, the specific nature of the operations carried out and the particular location of the terminal imposes a maximum level of care and caution with respect to air emissions, discharges, accidental spills (especially oil and chemicals) and waste production and management.

In fact, barring any criminal cases (such as importing or possessing endangered species, animals or plants), the cases described in Article 25 *undecies* of Decree 231, all appear applicable, albeit theoretically (especially the criminal cases contemplated in Articles 727 *bis* and 733 *bis* of Criminal Code and Decree no. 152 of 3 April 2006).

It should be noted, finally, that the Company makes use of third parties for certain special waste management activities (sewage, oils, etc.), entrusting the transport and treatment to qualified suppliers, whose contract specifies that preference is given to the recovery of the waste rather than its disposal. In presence of specific needs, the same suppliers may be called upon to act as intermediaries for waste recovery and/or disposal activities.

It follows that the relationship with these suppliers, for which Offshore Installation Manager - IOM is responsible, should be subject to specific checks and inspections in order to prevent the commission of offenses relating to waste management.

3. Rules of conduct.

With regards to the second profile, concerning the rules of conduct to be followed by all Recipients of this Model, the purpose of this Special Section is a clear and incontrovertible reaffirmation of the mandatory and binding nature of the rules of conduct currently in force within ALNG S.r.L. as well as those listed below to the above, and especially to those performing their duties on the GBS in the name of, on behalf or in the interest of the Company.

As mentioned above, even before and independently from the regulatory and punishable aspects referred-to in Article 25 *undecies,* the Company has drawn up and implemented the standards and procedures (see, in particular, the *ALNG SHEMS System Manual,* the *Waste Management Manual* and the *Environmental Management Manual*), which constitute an effective safeguard for the protection of the "environmental heritage", constantly updated and implemented as necessary according to the most advanced technical and scientific knowledge.

Therefore, the aim here is to expressly and fully invoke the provisions and protocols mentioned as well as the requirements of the *ALNG SHEMS System Manual,* which constitute a 'model of care', to be considered binding on all the Recipients of this Model, which, if properly applied, ensures the environment every form of protection and reduces the potential risk to the environment inherent in business processes.

These rules and procedures are implemented in their rules of conduct listed below (and in the procedures referred-to in paragraph 4), designed to prevent and avoid behaviours in the performance of business activities that are in any way likely to constitute an offense (in terms of danger and/or damage) to legal "environmental assets", as well as the occurrence of misconduct likely to lead to their author incurring criminal and disciplinary liability and administrative liability for a crime for the Company.

More markedly, below are specified the rules of conduct of a *general* nature which must be respected by all the Recipients of this Model, as well as the *specific* rules of conduct for the prevention of criminal acts under Article 25 *undecies,* which, as a result of the risk-mapping exercise above were considered more exposed to occurrence risk in relation to the ALNG S.r.L. company situation.

Scrupulous adherence to the following rules of conduct of a *general* character is therefore required:

- It is mandatory to abstain from conduct that could result offenses involving the Company's administrative liability under Article 25 *undecies* of Decree 231, and, in particular, the criminal cases contemplated by the Criminal Code (Articles 452 *bis*, 452 *quarter, 452 quinquies*, *452 sexies*, *452 octies* , 727 *bis* and 733 *bis*) and Legislative Decree n. 152 of 3 April 2006 (Environmental Code).
- It is forbidden to promote, collaborate in, contribute to, or in any way cause the commission of acts that, taken individually or collectively, directly or indirectly constitute the offenses in question.
- It is forbidden to engage in conduct which, although not in itself an offense, could potentially become such.
- It is mandatory to behave in a careful and scrupulous way with regard to any matter which may affect the protection of the environment.
- It is mandatory to act in accordance with the rules adopted at international, EU and national legislative level, of a legislative or regulatory nature;
- It is mandatory to observe the Environmental Policy and all internal procedures governing business activities designed to safeguard "environmental assets".
- It is mandatory to consistently carry out awareness-raising activities in favour of all the Recipients of the ALNG S.r.L. Model (including third parties such as Employees, Business Partners and Suppliers), in order to ensure awareness of environmental issues is suitably raised along with correct awareness of the requirements set out in this Special Part, the procedures in force and, more generally, legislation in environmental matters.
- It is mandatory to ensure personnel is adequately trained in each area at risk through regular training courses and updates, in particular if this is necessary as a result of changes or the introduction of new policies, procedures and relevant technologies.

  It is mandatory for all employees of ALNG S.r.L. to participate in training, information and update courses, organized by the Company, unless legitimately unable to attend. The Human Resources Department prepares specific frequency checks, notifying the CO.
- All notices required by law and regulations to the Supervisory Authority, including the CO, must be performed promptly, correctly and in good faith, not interposing any obstacle to the latter's performance of their control duties.
- It is mandatory to draw up and keep the documentation for compliance with the environmental requirements (*i.e.*: monthly reports, Environmental Integrity Report, SHE Report, ISPRA Report, Verification & Measures for SHEMS System-6) in order to allow checks over the behaviour and the activities performed (directly or indirectly) by the Company . In this respect,

it is required to behave with propriety and collaboratively with internal or external agents (*i.e.*: Shelter, ARPAV, Harbourmaster's Office), whose task is to carry out auditing activities with reference to the environmental risk management system.

- In order to ensure the traceability of waste, it is obligatory to provide data, information and/or documents that are true, accurate and complete.
- In cases of emergency, including of mere potential environmental risk, it is mandatory to immediately implement the necessary measures contemplated by the Company, informing the First Level Project Head.
- Any reports to the Compliance Officer or to the Operations Manager (see paragraph 3, section 2) must be made in writing where they relate to any danger (both potential or actual) encountered in the field of environmental protection, to any defects and/or irregularities which, directly or indirectly, may be noted with regard to environmental issues and, in particular, the management of business waste to any discharges and emissions into the atmosphere, except for the cases of the *Whistleblowing Reports Procedure*.
- It is compulsory to adopt criteria of propriety, transparency and cooperation in relations with the Public Administration in general and with the competent Authorities in environmental matters (such as, but not limited to, the Ministry of the Environment and Energy Security, the Electricity and Gas Authority, the Italian Economic Development Ministry, the Veneto Region, the ARPA Veneto, the Regional Technical Commission, Environment Section, the Province of Rovigo).

In light of the fact that some basic regulations (*i.e.*: discharges, emissions, waste, etc.) are subject to on-going interpretations, sometimes changing via case-law, in the case of new activities and/or working operations and in case of any doubts regarding interpretation, the Legal Officer must be involved to assess the appropriateness of carrying out a legal assessment, including turning, where necessary, to an expert in administrative law.

The following are the rules of conduct in relation to *specific* types of environmental offense deemed relevant for ALNG S.r.L., which have been divided into four macro-areas according to their source of law.

a) Offenses under the Criminal Code.

With regard to **offenses under the Criminal Code** of «*Environmental pollution»* (Article 452 *bis* c.p), «*Environmental disaster»* (Article 452 *quater* c.p), «*Culpable crimes against the*

Environment» (Article 452 *quinquies* c.p), «*Trafficking and neglect of highly radioactive material»* (Article 452 *sexies* c.p), conspiracy, even of mafia-type, to commit environmental offenses (Article 452 *sexies* c.p), «*Killing, destruction, capture, taking, possession and trading of specimens of protected wild fauna or flora species*» (Article 727 *bis* of Criminal Code) and «*Destruction or deterioration of habitat within a protected site*» (Article 733 *bis* of Criminal Code):

- It is forbidden to carry out any conduct which may cause, or which may give rise to the risk of, environmental pollution, namely the significant and measurable compromising or degradation of water or air, or of extended or significant portion of soil and subsoil, or of an ecosystem, of the biodiversity, even agricultural, of the plant life and fauna, including natural areas protected or subjected to landscape, environmental, historical, artistic, architectural or archaeological restrictions, or to the detriment of protected animal or plant species.
- It is forbidden to carry out any conduct which may cause, or which may give rise to the risk of, environmental disaster, namely the irreversible alteration to the equilibrium of an ecosystem, the alteration to the equilibrium of an ecosystem whose elimination is particularly costly and achievable only with exceptional measures, or the injury to public safety determined on the basis of the relevance of the fact for the extent of the compromise or on its harmful effects, or of the number of the persons both injured and exposed to danger, including the disaster produced in a natural areas protected or subjected to landscape, environmental, historical, artistic, architectural or archaeological restrictions, or to the detriment of protected animal or plant species.
- It is mandatory to adopt behaviours which are fair and respectful of the environment, ensuring the effective compliance with the law and regulation provisions, and of the internal policies regarding the protection of the environment and the prevention of pollution in all its possible forms.
- It is mandatory to absolutely respect protected animal and plant species and every habitat within a protected site[25].
- It is forbidden to engage in any conduct which may constitute a risk (even potential) to protected *habitats* or to specimens belonging to a protected wild *animal* species or protected wild *plant* species or to their conservation status[26].

25 «*Habitat within a protected site*» means any *habitat* of species for which an area is classified as a special protection area in accordance with art. 4, paragraph 1 or 2 of the aforementioned Birds Directive (Dir. 2009/147/EC), or any natural *habitat* or a *habitat* of species for which a site is designated as a special area of conservation pursuant to art. 4, paragraph 4, of the Habitats Directive (Dir. 92/43/EC).

26 «*Conservation status*» means the effect of the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations.

- To this end, it is mandatory to proceed to a preliminary investigation making it possible to verify the nature of the site in which the Company is operating and the potential presence of protected animal or plant species or protected sites.
- It is mandatory to use solutions, devices, equipment and instruments such as to eliminate/reduce any environmental impact associated with the performance of the business and work with respect to protected plant and animal species and protected sites.

b) Offenses contemplated by Legislative Decree no. n. 152 of 3 April 2006 (so-called Environmental Code or Consolidated Environmental Text - TUA).

As for **Offenses under the Environmental Code** (TUA), please note the following.

1. With regard to the crime of «*Unauthorised dumping of waste*» (Article 137, paragraph 3, 5, 11 and 13, of the TUA):

- It is mandatory to contemplate the discharge of industrial wastewater[27] containing non-hazardous and/or dangerous substances (*i.e.* nickel, lead, copper, zinc, etc.), only in the presence of specific authorization issued by the competent authority.
- It is mandatory to carefully observe both internal procedures on discharges and the requirements of the above authorization and/or any additional requirements laid down by the competent authority, and in any case to operate within the limits set by law (for example so-called limit values), of the regions or by the competent authority itself.
- It is forbidden to make discharges into soil, subsoil or groundwater, except in the cases and within the limits provided by law.
- It is mandatory to respect the absolute prohibition of pouring substances or materials in the sea as identified by international Conventions ratified by Italy.

2. As for offenses that relate mainly to waste management («*Unauthorized waste management activities*» *ex* Article 256, paragraph 1, 3, first and second sentences, 4, 5 and 6, first sentence; «*Illicit traffic in waste*» *ex* Article 259, paragraph 1; «*Activities organized for the illegal trafficking of waste*» *ex* Article 452 *quaterdecies* of Criminal Code, it should be noted that, as stated by law[28], the responsibility for its proper application, in relation to national and EU provisions, is binding on **all** those involved in the production, distribution, use and consumption of goods which originate from waste.

It is therefore mandatory to observe the following rules of conduct:

[27] This concerns any type of wastewater discharged from premises in which trade or business occurs.

[28] See Supreme Court, Criminal Section III, judgment no. 5033 of 17 January 2012, and Regulatory Appendix, Section 8.

- It is mandatory to conduct waste management in a manner consistent with the laws and internal requirements and procedures, aimed where possible, at recovery, reuse and recycling of materials and goods used in order to ensure the utmost environmental and health protection.
- It is forbidden to carry out any waste management activity[29] (hazardous and non-hazardous) without the required authorization, registration or notification established or in any case in violation of the provisions contained or referred-to in the aforementioned permits.
- It is forbidden to create, manage or contribute to the creation or operation of an unauthorized landfill.
- It is mandatory to fulfil the obligations contemplated by the Company in respect of the management of waste at the ALNG S.r.L., Milan site, the Shore Base and the offshore terminal, and to attune one's behaviour, even outside working hours, to absolute respect for the environment and human health.
- It is mandatory to follow instructions and regulations in force at ALNG S.r.L. with reference to the classification of waste produced within the various business activities and at the various corporate offices. In this regard, suitable information must be provided to the Recipients of this Model.
- It is mandatory to ensure that the information, requirements and procedures for the management of waste are subject to constant monitoring to regularly assess the appropriateness of updating them or implementing them by reason of any regulatory action relating to the environment and/or technological developments.
- It is mandatory to verify the reliability of any third parties (suppliers and contractors) in accordance with company procedures established as regard Supplier Qualifications, and, in particular, the seriousness, reliability and professionalism of those whom the Company decides to entrust with the waste management service. More precisely, in the context of relationships with those entities, the following must occur: *(i)* as regards delegation, possession of the requirements and responsibilities required by law for carrying out their duties (e.g., authorization, registration on rolls, certifications, etc.), *(ii)* in the contract, the existence of specific clauses requiring compliance with the requirements of this Model and the Code of Ethics, and *(iii)* the performance of the assignment, the timely and proper fulfilment of the contractual obligations and, in particular, the activities inherent to the cataloguing and management of waste carried out by third parties.

[29] «*Management*» must be understood as the collection, transport, recovery, disposal, trade and brokerage of waste.

- It is forbidden to mix hazardous waste with different hazardous properties or hazardous waste with non-hazardous waste[30]. In this regard, adequate information must be provided about the types of waste produced by the Company.
- It is obligatory to perform or have performed each shipment involving the waste produced by the Company in accordance with the law and, in particular, the requirements of EEC Regulation no. 103 of 14 June 2006, which imposes duties of communication/notification to the competent authorities, the obtaining of the relevant approval, and correct indication of the data contained in the accompanying document.

3. With regard to the violation pursuant to Article 257, paragraph 1 and 2, of the TUA on « *Site remediation*»:

- It is mandatory in the case of the occurrence of an event that has the potential to contaminate a site, to report forthwith to one's manager, who in turn is required to take action to ensure this is notified to the municipality, the province or region in whose territory the damaging event was noted, and the Prefect of the Province.
- It is mandatory in the above scenario to observe the established internal procedures to ensure the necessary safety and prevention measures are taken on the site.
- In the event of accidental pollution of the soil, subsoil, surface water or groundwater, due to concentrations exceeding the risk threshold, it is mandatory to ensure the remediation of the contaminated site in conformity with the plan approved by the competent authority.

4. As for «*Violations of reporting requirements, record and form keeping requirements*» as per Article 258, paragraph 4, second sentence, of the TUA, and «*Violations of legislation on the computerised Waste Tracking System*» contemplated by Article 260 *bis*, paragraph 6 and 7, second and third period, and 8, of the TUA:

- It is mandatory to maintain regular documentation relating to the production, collection, transport, recovery and disposal of waste produced by ALNG S.r.L. for the tracking of same [*i.e.* Stock books, waste identification form, Environmental Statement Form (*Modello Unico di Dichiarazione ambientale*), etc.].
- It is mandatory to regularly check the correctness and accuracy of said documentation.

[30] «*Mixing*» shall also be understood as the dilution of hazardous substances.

- In preparing a waste analysis certificateit is mandatory to provide accurate, clear and truthful information and data as to the nature, composition and physico-chemical characteristics of the waste.
- It is also forbidden to enter a false and/or altered certificate among the data to be provided to enable the traceability of waste.

5. Finally, as concerns «*Violations of emission and air quality limit values*» *ex* Article 279, paragraph 5, of the TUA:

- It is mandatory to comply with the requirements contained in the resolution granting authority or otherwise imposed by the competent authority, and the rules prescribed by law and all internal procedures relating to emissions into the atmosphere.

c) Offenses under Law no. 549 of 28 December 1993.

In relation to **Offenses under Law no. 549 of 28 December 1993** and, more precisely, pursuant to Article 3 («*Terminating and reducing ozone depleting substances*»):

- It is mandatory to strictly observe the internal regulations and the national and EU rules on the protection of the ozone layer and, in particular, EC Regulation no. 3093/94.
- The production, consumption, import, export, possession and sale of ozone-depleting substances must comply with the provisions of the EC Regulations.
- It is forbidden to create, operate or conduct systems that contemplate the use of ozone-depleting substances, except as set out by said EC Regulation.

d) Offenses contemplated by Legislative Decree no. 202 of 6 November 2007.

Finally, with particular regard to the **offenses contemplated by Legislative Decree no. 202 of 6 November 2007** on intentional and negligent pollution caused by ships (Articles 8 and 9 respectively):

- It is strictly forbidden to perform spills of any pollutant substance (*i.e.*: hydrocarbons) in the waters of the sea and to engage in behaviour likely to cause leakage of fuel, petroleum products or other pollutants.
- For the purpose of disposing of pollutants it is mandatory to respect the relevant standards and protocols.
- In case of accidental spillage, it is mandatory to provide immediate and timely notification to one's manager (First-level Manager), who in turn must provide prompt notification of any

information, data and aspect concerning what has occurred, and to take the necessary measures contemplated by the Company in the event of an emergency.

4. Procedures.

4.1. Procedures

In order to prevent the risk of the commission of Environmental crimes and any profiles of (administrative) liability relating to such offenses by ALNG S.r.L., it has become necessary, in accordance with the requirements of Decree 231, to adopt safeguards to allow an adequate monitoring of environmental risks and, therefore, a coordinated system of procedures for the management and allocation of tasks and responsibilities.

As explained above, the Company has adopted effective and appropriate environmental safeguards in order to give full attention to the prevention of any environmental damage, naturally including all the specific aspects of the protection afforded by criminal law, today encompassed (in terms of underlying offenses) in the framework of Decree 231.

These procedures and protocols in force at ALNG S.r.L. and, in particular, the *ALNG SHEMS System Manual,* take into account the nature, size and impact that the specific activities carried out by the Company involve in environmental terms and are proportional to their importance.

In the above *Manual* the following are identified as necessary: *(i)* applicable requirements, *(ii)* monitoring procedures (i.e.: via reports), *(iii)* operational management procedures, *(iv)* duties and responsibilities.

In particular, for present purposes, through the integrated *SHEMS* system, meeting the requirements of ISO 14001 and OSAS 18001, the Company has developed models of integrated prevention, which constitute an effective policy for preventing and managing environmental risks, which requires a careful precautionary approach and a high level estimate (higher than expected standards) against potential environmental impacts.

In this latter regard, we note that ALNG S.r.L. has a separate risk assessment system *(Environmental Risk Assessment* SHEMS 6-C), which makes it possible to both qualitatively and quantitatively constantly monitor and assess environmental risk with regard to various business activities, so as to be able to identify the necessary "corrective" actions from a preventive perspective aimed at eliminating or at least reducing the level of risk which may occur.

With specific regard to the offshore terminal, work activities carried out there, as far as environmental risks are concerned, are subject to constant (monthly) assessment and analysis by the maintenance officers, supervisors and qualified external experts. A system of preventative maintenance has also been established, which defines the checks, frequency and any replacements to be performed in relation to the critical state of equipment.

The Company then set out an emergency plan (with the intervention of *ESG Group*), which lays down specific procedures to prevent and mitigate the potential environmental impacts associated with accidents or exceptional situations.

With reference to managing environmental protection and health, ALNG S.r.L. has also identified those responsible for specific business procedures *(Environmental Management),* with proven experience and expertise, having special powers, such as waste management.

Assigning delegation (also) in environmental matters occurs in accordance with the provisions of the law on the matter, that is to say formally and expressly and with an agreed duration, via a written document with a specific date, in which the characteristics and limitations of the assignment and the powers necessary for the performance of same are comprehensively defined.

The allocation and exercise of powers within each decision-making process are congruent with respect to positions of responsibility and underlying risk situations.

With particular regard to spending powers in environmental matters, it is generally observed that the Company has adopted forecasts for managing financial resources and financial planning, providing adequate and appropriate budgets for environmental safety for each of their locations.

More specifically, it is noted that the Heads of functions and business processes most involved in environmental issues (Technical Manager, Operations Manager and Offshore Installation Managers) are equipped with autonomous spending powers for the performance of their specific activities (*i.e.*: approval of contracts, purchase orders, cash outlay, etc.), while for certain activities and operations of particular importance, monitoring and approval/consent from other parties is contemplated (including, as appropriate, the Operations Manager, Business Services Manager and Managing Director).

In summary, the general and guiding principles of the internal control system adopted by ALNG S.r.L. (also) on the environment are as follows:

- *traceability* of all significant operations, *i.e.* each operation must have adequate supporting documentation, through reports being prepared and issued, electronic or paper communications, etc.;
- *verifiability* (*i.e.*: traceability) of the relevant operations in accordance with the principle indicated above, it is possible to carry out checks indicating the nature and reason for the operation and to identify contributors (who authorised, performed, recorded and checked same);
- compliance with the principle of *separation of functions*, i.e. the system adopted provides a clear definition of powers and responsibilities within the organisation, which must be consistent and appropriate to the tasks assigned;

- constant *flow of the relevant information* to the Compliance Team (see paragraphs 2 and 3).

4.2. The Operations Manager.

In application of the aforementioned principles and in order to achieve the objectives set out in this Special Section, following the company reorganisation completed in 2022, ALNG S.r.L. has decided to identify Operations as the internal Manager (or First-level Manager), who represents the Company's contact person with reference to environmental issues.

In particular, the Operations Manager, in charge of the Offshore Installation Managers (OIM), oversees all the activities carried out on the Terminal.

Without prejudice to the reporting obligations already outlined in the General Part of this Model and without prejudice to the *Whistleblowing Reports Procedure*, the Operations Manager must arrange to:

- report any detected anomalies, defects or shortcomings and any situation of concrete or potential danger of which they are (directly or indirectly) aware in relation to the management of environmental protection.
- report any change of technological system, equipment, production processes, such as to aggravate the environmental impact in various premises in which the Company operates.
- adequately evaluate any report or information received from First-level Managers and Company Employees (concerning any instances of behaviour that may – even just potentially – be relevant in relation to environmental crimes, the breach of the Company's rules of conduct and procedures, etc.).
- carry out whatever checks are deemed appropriate or necessary in relation to the reports received, also timely informing the CO.
- transmit the SHE report to the Compliance Officer, in which are collected data on environmental performance, wastes, emissions, discussions in SHE Steering Committee, etc.
- periodically prepare a report in writing to be sent to the Compliance Officer in order to adequately brief the latter on the reports and/or information received and the results of any follow-up action taken.

4.3. The role of CO (Compliance Officer).

With special reference to environmental issues and without prejudice to the rules set out in the General Part of this Model, the Compliance Officer is tasked with:

- evaluating effective knowledge of the rules (internal and external) designed to protect the environment and referred to in the aforementioned Article 25 *undecies* of Decree 231;

- ensuring that the Company's directives, instructions and procedures are clear and effective for the purposes of guaranteeing compliance with environmental protection laws and regulations;
- assessing the effectiveness and completeness of the SHEMS programme with reference to the new predicate offenses in environmental matters;
- analysing the Daily Reports on the performance of the Regasification Terminal as well as the monthly Key Performance Indicator, which must be forwarded to the Compliance Officer by the First-level Managers, and also the SHE reports and the other reports sent by the Operations Manager.
- analysing environmental audit reports by Public Entities and/or Public Oversight Authorities (*i.e.* ARPA, ASL, etc.);
- without prejudice to what provided for by the *Whistleblowing Reports Procedure*, evaluating any reports coming from the Operations Manager or any other person and making whatever checks are deemed appropriate or necessary in relation to the reports received;
- requesting the Operations Manager for any information, deed or document that proves useful or necessary for the performance of its supervisory and monitoring duties in relation to environmental matters;
- carrying out, where it deems appropriate, periodic checks on compliance with and the effectiveness of internal procedures and monitoring the effectiveness of the checks apt to prevent the commission of the environmental crimes referred to in Article 25 *undecies*.

CHAPTER H -THE MANAGEMENT OF HUMAN RESOURCES

1. The identification of risk areas and sensitive activities.

The purpose of this Special Section is represented by the need for ALNG SrL to reaffirm the importance of scrupulous observance of the law (national, EU and international) to all employees of the Company, and the principles of maximum fairness, transparency and loyalty in dealing with third parties especially when referring to employment, after recent legislative actions affected the number of offenses that could lead to administrative liability of entities as referred to in Decree 231.

In particular, in this Special Section dedicated to **Human Resource Management**, the Company intends to restate and clarify its firm opposition to any unlawful actions on the employment market that could compromise competition among firms, e.g. by using illegal workers.

Moreover, ALNG LTD has always promoted the value of its resources in order to improve and increase the company's assets and the competitiveness of its know-how, always fully respecting the values of the individual, as well as the laws and principles that regulate the free market.

In this context, it is worth reiterating the principles of corporate policy established in the Code of Ethics adopted by the Company and, more accurately, in Part II - Section (B) dedicated to "*Work Ethics and the protection and enhancement of Employees" and in "Recruitment and placement of persons*":

«*Employment arises from the need to acquire skills and professionalism on the market that are not present in the company, and the need to integrate young people in which to invest, guaranteeing the growth and development of the company.*

The recruitment and selection of personnel respects the candidate's privacy and is based solely on criteria of objectivity and transparency, guaranteeing equal opportunities and avoiding favouritism (...).

Part of the new Associates hiring process is a specific programme designed to help recent graduates. ***All staff are employed under a regular contract, in accordance with laws applicable to the place of employment, and no form of illegal employment is tolerated****. When hired, and during the induction period, every employee receives accurate information with particular reference to rules governing the employment relationship, rules and procedures for health and safety in the workplace, company policies and rules of the Code of Ethics to ensure immediate and accelerated awareness and to promote fast integration into the life and culture of the company*».

Specifically, therefore, regarding recent regulatory action, indicated below are the behavioural norms and protocols designed to prevent commission of the offenses under Article 25 *duodecies* of

Decree 231, concerning «***Use of third-country nationals staying illegally***» (further information can be found in Section 9 of Regulatory Appendix).

With reference to the crime referred to in Article 22, paragraph 12 *bis* of Legislative Decree no. 286 of 25 July 1998, it should be pointed out that, although the principles and rules mentioned above are imposed on all the Company's direct and indirect related parties, the offense is a "role-specific offense", meaning that it is an offense that can be committed only by persons in possession of specific qualifications or performing specific tasks.

Indeed, the rules punish an «*employer*» who hires illegal foreign workers wherever the special conditions mentioned above also apply, so it refers to those who hold senior positions within the Company and for this reason qualify as **Employers**.

However, it should be emphasised that on this point the Supreme Court has stated that not only the employer, but also those who, on behalf of the employer or acting on his behalf or in any event in his employ - have personally and directly hired illegal workers, can be punished (see Supreme Court, Criminal Section I, judgment no. 25615 of 18 May 2011).

Furthermore, the offenses referred to in Article 12, paragraphs 3, 3 *bis*, 3 *ter* and 5 of Legislative Decree no. 286 of 25 July 1998 belong to the category of "common crimes", which can be committed by whoever engages in the descripted conducts.

Consequently it also refers to those who, directly or indirectly, are involved in the activities, processes and functions allowing entry into ALNG S.r.L. of foreign workers as part of Human Resource management, in particular the selection and hiring of employees, Collaborators and Suppliers of the Company (i.e. Human Resource Manager).

2. The rules of conduct.

During the course of the above-mentioned sensitive activities, as well as complying with the rules of conduct for the protection of health, hygiene and safety of workers (see paragraph 2 of Chapter D of this Special Part), Recipients of this model are required to strictly adopt the following rules of conduct that are in addition to rules and procedures currently in force in ALNG S.r.L. human resource management.

- It is mandatory to abstain from behaviour which may be administrative liability offense pursuant to art. 25 *duodecies* of Decree 231.

- It is forbidden to promote, collaborate, compete, or in any way cause the commission of acts that, taken individually or collectively, directly or indirectly, can be construed as the offense in question.
- It is forbidden to adopt conduct which, though it may not constitute an offense in itself, could potentially result in liability of the Company in accordance with Decree 231.
- It is mandatory to operate in compliance with the rules, laws and regulations adopted at both EU and national level, in order to oppose the phenomenon of "irregular employment" (“no-contract work”).
- Irregular employment is not tolerated in any form either within the Company or dealings with external collaborators, partners and suppliers.
- It is mandatory to hire employees with a regular employment contract and in full compliance with industry regulations and conditions laid down by the national collective bargaining agreement (CCNL).
- It is forbidden to hire foreign workers without a residence permit, or with a permit not renewed, cancelled or expired and/or minors below the legal working age (i.e. under 16 years).
- It is prohibited place employees under exploitative working conditions. The personal health and safety of every ALNG S.r.L. employee must be guaranteed and protected.
- It is mandatory for all employees of the Company, and foreign workers in particular, to comply promptly, fairly and in good faith with all the provisions of laws, regulations and internal Company rules, with special reference to this Special Part.
- It is mandatory for external collaborators, partners and suppliers to comply with primary and secondary legislation on such matters.

3. Procedures.

In order to prevent the commission of criminal offenses or other forms of misconduct in relation to human resource management, along with procedures aimed at the "*Management of compliance with occupational health and safety regulations*" (pursuant to Chapter D, paragraph 3 of this Special Part), which are considered an integral part hereof, the following procedures and the following protocols were prepared in addition to those already adopted by ALNG S.r.L. to become integral parts of this model for the parts intended relevant to preventing the criminal offense of «Use of third-country nationals staying illegally» pursuant to art. 25 *duodecies* Decree 231.

In particular, all recipients of the Model are required to comply with the following procedures:

• It is mandatory to request and obtain a copy of the residence permit of foreign workers at job application stage and to verify its validity.

• It is forbidden to enter into employment contract with a duration longer than the period of validity of the residence permit.

• It is mandatory to constantly monitor the status of foreign workers during their relationship with the Company, particularly in proximity to expiry of the residence permit with regard to possible renewal of the contract (which must not take precedence over renewal of the residence permit).

• It is mandatory to inform your First Level Manager and/or the Human Resource Manager if a worker's permit should be cancelled or withdrawn.

• A report must be submitted regularly to the Compliance Officer regarding the employment of foreign workers and the existence of all legal conditions for their hiring.

• It is mandatory to store, in electronic or printed format, all documentation (documents, reports, contracts, letters, etc.) relevant to the employment of new resources and, foreign workers in particular, with special regard to documents produced and received before and after submission of the authorization application for the employment of foreign workers living abroad.

• The storage and preservation methods for the documents listed above must ensure that the contents cannot be changed ex post and guarantee their traceability throughout the process, to facilitate the completion of any subsequent checks and inspections.

• It is mandatory to assign tasks to suppliers of goods and services in accordance with company procedures regarding the selection and management of relationships with third parties, which are designed to document criteria and objectives such as the professionalism, quality and affordability of the goods/services provided. The selection of counterparties also required to provide special services. must be carried out with caution, assessing reliability, proven experience and requirements of a formal nature (i.e. registration with the Chamber of Commerce) or in terms of employer contributions.

• It is mandatory for every collaborator, supplier or partner of the Company to comply with sector regulations on "irregular employment". In this respect, through appropriate contractual clauses the Company may consider requesting that the aforementioned parties comply with immigration rules.

• In particular, in service contract procurement procedures, compliance with legal and regulatory requirements must be verified, including making documentation available to the Company for related checks, or specific clauses should be included in the contractual arrangements to confirm contractor regularity in terms of Human Resource Management.

• It is forbidden to pay fees or remuneration that are not adequately justified according to the type of contractual relationship.

CHAPTER I – THE MANAGEMENT OF FINANCIAL RESOURCES

1. The identification of the exposed areas and sensitive activities.

Further to the introduction in the Italian Criminal Code of the new offense of Self Laundering by Law 15 December 2014, no. 104, that also amended Section 25 *octies* of Decree 231, ALNG S.r.l. has carried out the *risk assessment* activity aimed at detecting the Company's areas potentially exposed to the risk of commission of the new crime and, generally, to the offenses of Receiving of Stolen Goods (Section 648 of the Italian Criminal Code), Money Laundering (Section 648 *bis* of the Italian Criminal Code) and Use of money, goods or benefits of unlawful origin (Section 648 *ter* of the Italian Criminal Code), all referred to in the mentioned Section 25 *octies*.

The existence of specific corporate protocols aimed at regulating the selection of business counterparties, the rules regarding the purchase by the Company of goods and services, the payments to third parties and the management of financial resources, allow to consider the risk of commission of the abovementioned crimes within the company's activities as remote, also considering the nature of ALNG S.r.l. *business*, in which the Company has relations with a limited number of clients, all industrial and large, based on contracts, also long-term contracts, and with the application of tariffs set by the Regasification Code approved by the Authority for Electricity and Gas.

However, considering the scope of the conducts that could generate a criminal liability for the Company following the introduction of the offense of Self Laundering, it was deemed as necessary to detect the so called sensitive activities and the Company functions potentially interested by crimes treated in this Special Part.

Within the area in question, the main "sensitive" activities are:

- Purchase of goods and services from suppliers and commercial partners;
- Sale of goods and services;
- Financial flows and investments management;
- Intragroup relations;
- Management of financing transactions with third parties;
- Sponsorship and donations.

The Company's functions which may be potentially involved in the commission of the offenses dealt with in this Special Part are:

- Business Service Manager;

- Commercial;
- Tax & Treasurers;
- External Affair Advisor.

With respect to Self Laundering crime, the assessment as to the sensitive areas has been focused on the proper conducts set forth in the criminal provision that punishes – it is worth mentioning - the use, substitution or transfer in business, economic, financial or speculative activity, of money, goods or other things deriving from a crime[31], *in such a way as to concretely obstruct the identification of their criminal origin.*

As pointed out in the first comments, the application of the new offense with respect to the administrative liability of corporations has important practical implications, since in the list of crimes (potentially committed within the same legal entity), that could constitute the predicate offenses of Self Laundering conduct, there are both offenses also relevant to Decree 231 (for example, corruption) and, therefore, already taken into consideration by the measures adopted by the Company, and offenses that do not currently trigger the administrative liability of the entity (such as the crimes of simple fraud or misappropriation).

With respect to this last case, doubts have arisen on whether for the correct prevention of the offense of Self Laundering it is necessary mapping the risk in connection to all those offenses which may potentially procure the profit which is the object of the new crime, although those offenses are not listed in Decree 231. This option seems however not in line with the legality principle, which has been restated many times by the Supreme Court even with respect to the administrative liability deriving from a crime. Additionally, it is worth noting that the legislator, in constructing the unlawful conduct of the offense of Self Laundering, introduced specific parameters which fix the boundaries of the criminal relevance: therefore, a strict interpretation of the provision allows to affirm that the use of money or goods (even non material, such as the saving resulting from tax offenses) will not always constitute the offense of Self Laundering by the Company, but only those conducts carried out to obstruct, concretely, the identification of the illicit origin of the profit will be criminally relevant.

In light of the above, in considering the organizational measures necessary to prevent the commission of Self Laundering the attention has been focused on the control over the financial flows and the other profits received by the Company, in order to assess the presence of measures allowing the entity to adequately check their lawful origin and to make the use of its own financial resources always traceable. In any case, even with respect to the risk of commission of tax offenses (potentially

31

representing one of the main sources of Self Laundering) it was found that the Company has adopted procedure aimed at correctly dealing with taxes, direct and indirect, that is dealt with Tax & Treasurers.

2. Rules of conducts.

In carrying out the so called activities exposed to risk the Addressees of this Model shall comply with the following rules of conducts:

- It is prohibited to commit or attempt to commit conducts (active or by omission) suitable to entail the offenses set forth in Section 25 *octies* of Decree 231, involving the administrative liability of the Company or that, although they do not constitute an offense by themselves, could potentially become a crime.
- It is prohibited to promote, cooperate, concur or, in any way, contribute to realize behaviors that, individually or collectively, constitute, directly or indirectly, the offenses under examination.
- It is prohibited entering into commercial relations, including negotiations, conclusion and execution of contracts or acts, with subjects (individuals or companies) not previously identified or which are known, even due to pending criminal investigation, as joining criminal organization or as involved in illicit conducts, such as, for example and not limited to, money laundering, usury, fraud and other offenses against the property.
- It is prohibited to use methods of payments in violation of the regulation against money laundering and that do not allow tracing the financial flows.
- It is mandatory to adopt a correct, transparent and cooperative behavior, in compliance with the law and corporate procedures, in all the activities regarding the purchase and sale of goods and services, including the selection and management of the customer list regarding the business partners of the Company.
- It is mandatory to refrain from receiving payments by third parties in violation of the applicable regulation or through modalities not admitted by the corporate policies.

3. Procedures.

In order to prevent the commission of the offenses examined in this Special Part or anyway the occurrence of irregular and/or anomalous behaviors regarding the management of financial resources, the following procedures and protocols have been identified, which are in addition to those already adopted by ALNG S.r.L. and complete this Model for those sections relevant for the purpose of preventing the offenses of money laundering, including self laundering.

In particular, in performing and managing the sensitive areas above mentioned, the general principles of behavior regarding the attribution of responsibility and representation powers, segregation of activities, the traceability of the decision making and enforcement process of the Company's decisions, and the modalities to manage the financial resources and the controls made over the activities at risk shall be complied with.

Additionally, all the Addressees of the Model shall comply with the following procedures:

- It is mandatory to check, within the respective competences, the commercial and professional reliability of Suppliers and Commercial Partners, including the preliminary control that the subjects, which the Company has commercial relations with, are not included in the so called *black lists* against terrorism and money laundering prepared by the competent national and international bodies.
- Within the respective competence, it is mandatory to select Suppliers and Commercial Partners according to objective criteria that can be documented, in compliance with the policies adopted by the Company for the purchase of goods and service.
- The selection and evaluation process, and the management of the relation with Suppliers and Commercial Partners shall be documented and all the evidence shall be duly kept by the Company.
- It is mandatory to control that the payments are regular, as to the full correspondence between the addresses/payers and the counterparts involved in the transactions.
- The Addresses shall refrain from performing payments in violation of the use of cash and, in any case, in violation of the corporate policy regarding the means of payment.
- It is mandatory to ensure the transparency and traceability of investments in case of agreements/joint ventures with other companies, in case of intragroup transactions.
- It is mandatory to monitor the Company's flows in order to identify any transactions that may cause a liability for one of the offenses treated in this Special Part, and for ensuring transparency and traceability of the transactions carried out by the Company.

CHAPTER L - MANAGEMENT OF SPECIFIC RISK-PRONE AREAS

Each and every Employee shall be bound to comply with the specific rules of conduct/procedures set forth below, as part and parcel of the procedural implementation of the principles set forth in the Code of Ethics and in the "Basic Control Standards – *System of Management Control"*.

1. Conflict of Interests and Third Party Relations.

1.1. Conflict of Interests

All Company Employees shall ensure that any and all *business* decisions are taken in the Company's interest, and accordingly, avoid conflicts of interest[32] between their personal or family finances and their official tasks and duties within the Company, which could affect their independence of judgement and affect their decisions.

1.2. Customer Relations.

In dealing with Customers, all Company Employees shall be bound to:

- follow the internal procedures for liaising with Customers, with a view to developing and maintaining favourable, and long-lasting relationships with the latter;
- refrain from arbitrary discrimination against Customers and from attempting to take undue advantage of the Company's stronger bargaining position;
- scrupulously comply with any and all applicable statutory and regulatory provisions;
- always honour commitments and obligations assumed towards Customers;
- adopt a behavioural attitude marked by effectiveness, collaboration and courtesy;
- provide complete, truthful and accurate information so as to allow Customers to make informed business decisions;
- be truthful in advertising or other information distribution;

[32] Conflicts of Interest may occur when (including, but not limited to) employees or their family members hold economic and financial interests (ownership of significant number of shares, professional appointments, etc.) with customers, suppliers or competitors; when employees accept money, gifts or favours of any nature of kind whatsoever from persons, corporations or other legal entities which maintain or intend to enter into business relationships with ALNG S.r.L.; when employees use their position within the Company or information acquired during the course of their professional tasks, in a manner that could give rise to conflicts between their own interests and those of the Company.

- request suppliers to comply with the principles set forth in this Model and, whenever required pursuant to applicable procedures, ensure that Customers enter into a contractual commitment to do so.

1.3. Supplier Relations.

Any and all Employees/Staff on transfer/authorised representatives serving the Company must select suppliers in accordance with free market principles, and are encouraged to establish and maintain stable, transparent and collaborative relationships with suppliers as well as to always act in the Company's best interest.

In particular, any and all Employees/Staff on transfer/authorised representatives serving the Company, especially those involved in the selecting and dealing with Suppliers, must:

- comply with the internal procedures for selecting and liaising with Suppliers;
- refrain from discriminating amongst suppliers, allowing all Suppliers that meet applicable requirements to compete for the award of contracts by setting up a list of final candidates based on objective, clear, transparent and duly documented criteria; obtain the collaboration of suppliers with a view to constantly ensuring the best cost-effectiveness ratio possible, taking into account, quality, cost and delivery terms; scrupulously comply with any and all applicable statutory and regulatory provisions;
- scrupulously comply with any and all applicable contractual terms and conditions;
- maintain an open and frank dialogue with Suppliers, in line with best business practices;
- avoid situations of excessive dependence, both for ALNG S.r.L. and for the Supplier;
- request Suppliers to comply with the principles set forth in this Model and, whenever required pursuant to applicable procedures, ensure that customers enter into a contractual commitment to do so.

1.4. Relationships with political entities, public institutions, public officials[33] and stakeholder associations[34].

ALNG S.r.L. maintains ongoing relationships with political forces, and local, regional, national and international institutions, with a view to presenting its position on issues of interest to the

[33] The term «*public official*» means, any officer, representative, agent, exponent, member, employee, or consultant serving public administrations or public bodies at the international, national or local level, as well as any person holding public office or providing public services.

[34] The term «*representatives of stakeholder associations*» means individuals who hold institutional positions or other office within organisations such as trade associations, trade unions, environmental organisations, etc. (for instance, Confindustria).

Company, evaluating the repercussions of legislative and administrative developments on its business operations, and addressing specific concerns.

The Company does not finance or support any political parties or the representatives thereof, and maintains a strictly neutral position without endorsing any candidates whatsoever during electoral campaigns or providing support for events involving political parties.

Only the company divisions and other persons specifically appointed or otherwise authorised for such purpose by ALNG S.r.L.'s top management may maintain contacts with representatives of public institutions. In any event any and all such contacts must always be marked by a spirit of loyalty, transparency and constructive collaborations with public institutions, and targeted at promoting and protecting the Company's interests.

Sole and exclusive competence for the management of negotiations, assumption of commitments and performance of agreements, of any nature or kind whatsoever, with public officials, shall be deemed to reside in the company delegates and divisions specifically appointed or authorised for such purpose.

In dealing with the aforementioned, any and all Company Employees/Staff on transfer shall be bound to refrain from:

- promising or making gifts in cash, kind or through other benefits to public officials on a personal basis, with a view to promoting or furthering the Company's interests, including through unlawful pressure;
- circumventing the aforesaid requirements through other forms of benefits or contributions which, under the guise of sponsorship, appointments, consultancy contracts, publicity, etc. are in fact aimed at pursuing the prohibited goals set forth above.

Permitted activities include forms of collaboration with stakeholder associations and public institutions (more specifically, public officials, parliamentarians or Government ministers), provided that the said collaboration is strictly institutional in nature and targeted at contributing to cultural and/or social initiatives, or other events or activities of any nature or kind whatsoever promoted by the Company (such as the organisation of studies, research, conferences, seminars, etc), it being further understood that in no case may the participation of public officials, parliamentarians or government ministers, in the aforesaid events and activities, give rise to any expense whatsoever for the Company.

1.5. Competitor Relations.

Any and all Employees/Staff on transfer/authorised representatives serving ALNG S.r.L. shall be bound to scrupulously comply with any and all statutory provisions in force in any and all jurisdictions, in respect of anti-trust matters, as well as to collaborate with market regulators.

The aforementioned personnel may not be involved in any initiative or contacts whatsoever with competitors that could, albeit only abstractly, potentially result in breaches of anti-trust laws (for example, price fixing or production fixing agreements, sharing of markets, caps on output, associative agreements, etc).

1.6. Sponsorships and Contributions.

Within the range of allowable activities, ALNG S.r.L. may sponsor and make contributions in support of initiatives proposed by public and private entities and non-profit organisations duly established pursuant to law, which promote the Company's principles of ethics and integrity. Sponsorships and contributions may pertain to social, cultural, sports and artistic events and initiatives, as well as to studies, research, conferences and seminars focusing on issues of interest to the Company. To the extent possible, ALNG S.r.L. shall collaborate in the preparation of the aforesaid events and activities to ensure quality standards. In selecting initiatives worthy of its support, special care must be taken to avoid any and all personal or corporate conflicts of interest.

1.7. Company Public Disclosures.

Any and all public disclosures made by ALNG S.r.L., including through the *media* (newspapers, television, etc), must comply with the highest standards of accountability and be truthful in respect of the information they contain. Save where the same is already in the public domain, information regarding the Company's business activities, results, positions and strategies, may be disclosed at conferences, conventions and seminars, as well as through articles, essays and publications in general, only in strict compliance with the procedures governing the treatment of confidential information.

1.8. Procedures.

Within the specific above mentioned areas of risk, any of the below potential or actual situations below must be reported either orally or in writing (by e-mail), to the First Level Manager*:*

a) conflict of interests;
b) unsuitable Customer relations;
c) unsuitable Supplier relations;
d) unsuitable relations with political entities, public institutions, public officials and stakeholder associations;
e) unsuitable competitor relations or violations of antitrust regulations;

f) unsuitable Company public disclosures;

g) unsuitable sponsorships, whether negotiated or final, or obtaining of contributions.

If the First-level Manager is involved, decisions shall be taken on the matter at his discretion, and the CO shall be informed of any and all particularly serious actual or potential conflicts of interest for the Company, using the half-year *Integrity document*.

With particular reference to relations with institutions, when members of the Public Administration, members of Parliament or the Government are invited to events, activities or any initiative of a cultural and/or social or any other nature, the First Level Manager is bound to promptly notify the Compliance Officer, who will then evaluate the opportunity and potential benefit to the Company.

2. Gifts and presents.

No direct or indirect offerings of cash, gifts, favours, free services, benefits or the free use and enjoyment of goods or services of any nature of kind whatsoever, on a personal basis, may be made to Directors, Executives, Managers or Employees in the service of customers, suppliers, public bodies, public institutions or other organisations, as well as to directors, general managers, managers responsible for preparing corporate accounting documents, auditors, liquidators of the Company, or persons under their direction or supervision, for the purpose of securing undue advantages.

Small gifts or forms of hospitality, provided by way of common business courtesy, are permitted provided that they are of modest value (not exceeding € 50,00) and in any event, of such nature as to be insusceptible of jeopardising the integrity or reputation of one of the parties, and to have no impact whatsoever on the recipient's independence of judgement. In any event, any and all related expenses must be authorised by the person or corporate unit as specified in procedures, as well as adequately documented and recorded in writing. Similarly, no Company employee/staff-member on transfer/authorised representative may accept any offerings whatsoever, of cash, gifts, favours, free services, benefits or the free use and enjoyment of goods or services of any nature of kind whatsoever, on a personal basis, unless the same are of modest value (not exceeding € 50,00) and are made by way of common business courtesy. This rule, which extends to gifts promised or offered as well as those accepted, shall also apply in countries where it is customary to make lavish gifts to business partners.

In order better to monitor the flow of gifts allowed by commercial practice, ALNG S.r.L. envisages that the purchase of gifts be centralized in a single company office, preparing and then retaining a copy of the relevant documentation (e.g. transport document, receipts, waybills, etc.).

Any and all Company Employees who receive gifts that do not meet the above criteria, shall give immediate notice thereof to their First-level Manager and the CO which shall either decide to

authorise acceptance of the gift, on an exceptional basis, in light of the surrounding circumstances, or otherwise order the recipient to return the gift or use the same for a worthier purpose. In such latter case, the Compliance Officer shall also inform the donor of ALNG S.r.L.'s policy on gifts and gratuities.

The First-level *Manager* shall report to the CO any actual/potential cases of irregular gifts using the *Integrity document*.

3. Behaviour at the workplace.

The Company shall not tolerate any form of harassment in any of its premises. This policy is aimed at fostering a work environment that encourages mutual respect amongst Employees and working relationships free from disruptive and/or embarrassing behaviour.

The present policy shall be expressly applied to any and all forms of undue pressure and/or disruption by or to the detriment of Employees, Contractors, Suppliers and/or Customers.

For the intents and purposes of this policy, "*harassment*" means and includes any and all inappropriate conduct intended to result or actually resulting in:

- the promotion of an intimidating, hostile or offensive work environment;
- undue interference in the work processes carried out by another person;
- unreasonable obstructions to the career development and professional growth of another person[35].

Harassment will not be tolerated.

All Company Employees, including supervisors and *managers* who breach this policy, shall be subject to disciplinary action.

Any and all Employees, who feel they have been harassed, must give immediate notice thereof to their First-level Manager, the CO and the Human Resources Manager. Any employee or supervisor who observes or is aware of behaviour in contrast with the present policy must immediately report such to the CO and the Personnel Director. More specifically, the First Level Managers report to the CO, using the half-year *Integrity Document* regarding any actual/potential cases of unsuitable behaviour in the workplace.

No Employee may presume that the Company is in any event aware of any breach whatsoever of this policy. In all cases, except for the cases of the *Whistleblowing Reports Procedure*, reports of harassment must be brought to the attention of the CO, which shall determine appropriate corrective

[35] Harassment includes, for example, undesired verbal or physical approaches and any and all forms of writing or other publication, as well as the passing of comments and the making of insinuations of a sexual, racist or otherwise pejorative or discriminatory nature.

action. Employees reporting harassment shall be protected against retaliatory or discriminatory action, so as to ensure that all Employees may feel free to report harassment without fear of retaliation.

4. Proper use of Company Property.

All Employees shall be bound to make proper use of the resources and goods[36] entrusted to them by ALNG S.r.L. The use, albeit inadvertent, of such property for any reason whatsoever unconnected with the Company's business could result in serious harm and losses for the Company (in terms of potential litigation and/or claims, economic losses, loss of reputation, diminished competitiveness, etc.), which may be further magnified by the fact that improper use may result in criminal and administrative liability for any related offenses, and may thus lead to disciplinary action against the Employees involved. In light of the above, any and all Employees are bound to accept and acknowledge and improper use of company property is always and absolutely incompatible with the Company's interests.

Specifically, with regards to e-mail, all company Employees shall be bound to refrain from sending, both within and outside the Company, threatening and/or insulting e-mail that could be offensive to the recipient and/or harmful to the Company's corporate image. Any and all Employees found to have sent a threatening and/or offensive e-mail message, must be immediately reported to the head of the area at risk and the CO.

With regards to internet navigation, each and every Employee is bound to: *(i)* refrain from accessing websites that do not pertain to his or her specific job description during working hours, save in the case of necessity; *(ii)* refrain from installing on the Company's computer system, borrowed or unauthorised *software*, as well as from making unauthorised copies of licensed software for personal use, or for the benefit of third parties or even the Company itself. In particular, access to websites featuring indecent or offensive content is strictly prohibited.

With regards to fixed and/or cellular telephone use, all Employees shall be bound to use the Company's fixed telecommunications lines and cell phones only for work-related purposes, save in cases of particular urgency or severity.

Further guidelines on computer use by Employees are included in the *"Computer User responsibilities Reference Guide",* currently in force within ALNG S.r.L., which must be deemed automatically incorporated herein.

The CO reserves the right to periodically monitor and/or carry out random checks on the records of individual telephone calls placed or received by Employees (caller's and called party's telephone

[36] Such company property includes, but is not limited to: desktop computers, laptop computers, fixed telephone lines, cell phones, palmtop computers, credit cards, etc.

number, duration of the call), solely for the purpose of ensuring *integrity* within the Company, and in any event, always treating the data collected with the utmost confidentiality.

REGULATORY APPENDIX

The goal of the present Regulatory Appendix, an integral part of the Model, is to clarify the provisions set forth by the Legislative Decree no. 231 of 8 June 2001 dealing with the issue of corporate liability for offenses. In particular, the general principles of the aforementioned discipline were first of all examined, and then, the single presupposed offenses pointed out by Articles 24 and ss. of Decree 231.

SECTION 1: General principle of management liability.

1. The Decree's purpose and the establishment of the entities' "paracriminal".

By the issuing of Decree 231 on the 8th of June 2001, by virtue of the delegation of Law no. 300 of 2000 (Article 11), it has given execution to some international conventions[37] concerning the issue of the corporate bodies administrative liability.

Specifically, as the first time for the said Decree 231 introduces the principle of corporate "administrative liability" for offenses if committed in their «*interest*» or «*advantage*» by personnel within the corporate organization and, in particular, pursuant to Article 5 of The Decree:

1) «*by physical persons who hold representative, administrative, or executive positions in those entities or in the one of their organizational units having financial and operating autonomy; persons who actually operate and control such entities*» (so-called top management);

2) by physical persons «*subordinate to or under the management or supervision*» of the aforementioned persons (so-called subordinate personnel).

However, the entity is not liable for every criminal offense committed by the aforementioned Company Employees, but only for the criminal offenses that are absolutely envisaged by Decree 231 and, in particular, for the following criminal offenses classes:

- Offenses against the Public Administration as set forth in Articles 24 and 25[38];
- Computer crimes pursuant to Article 24 *bis*[39];
- Offenses of organized crime as set forth in Article 24 *ter*;
- Offenses against public faith and, more specifically, counterfeiting of coins, public banknotes, securities, revenue stamps and instruments and recognizable identities pursuant to Article 25 *bis*;
- Crimes against industry and commerce pursuant to Article 25 *bis*1[40];
- Corporate crimes pursuant to Article 25 *ter*[41];

[37] In particular, see the OECD Convention of 17 December 1997) on Combating Bribery of Foreign Public Officials in International Business, as well as various European Union conventions regarding the protection of European Union financial interests and combating bribery.

[38] See Section 2.

[39] See Section 3.

[40] See Section 4.

[41] See Section 5.

- Terrorist offenses and subversion of the democratic order, as envisaged in the Italian Criminal Code, special laws, and the New York Convention of November 1999, 9 (pursuant to Article 25 *quater*);
- Mutilation of female genital organs pursuant to Article 25 *quater1* (pursuant to Article 583 *bis* Italian Criminal Code);
- Crimes against individual personality *ex* Article 25 *quinquies*[42];
- Administrative crimes and offenses prescribed by the Unified Text of Financial Intermediation - TUIF (Decree n. 58/98), consisting in insider trading and market abuse (pursuant to Article 25 *sexies*)[43];
- Homicide crimes and serious personal injuries executed with violation of the accident prevention and occupational, hygiene and health protection laws (Article 25 *septies*)[44];
- Crime of stolen goods receiving (Article 648 *bis* of Criminal Code), money laundering (Article 648 *bis* of Criminal Code), use of illegally obtained money, assets, or profits (Article 648 *ter* of Criminal Code) pursuant to Article 25 *octies*[45];
- Offences relating to non-cash payment instruments, referred to in Article 25 *octies*.1[46];
- Offenses of copyright violations as set forth in Article 25 *novies*[47];
- Offense of Inducement not to make statements or to make false declaration to the Judicial Authorities (Article 377 *bis* of Criminal Code) pursuant to Article 25 *decies*[48];
- Environmental crimes pursuant to Article 25 *undecies*[49];
- Offense of «*Use of third-country nationals staying illegally*» pursuant to art. 25 *duodecies* Decree 231[50];
- Racism and xenophobia, pursuant to Article 25 *terdecies*;

[42] Crimes of placing or holding a person in conditions of slavery or servitude (Article 600 of Criminal Code), trafficking in human beings (Article 601 of Criminal Code), purchase or sale of slaves (Article 602 of Criminal Code), child prostitution (Article 600 *bis*, paragraph 1 and 2, of Criminal Code), exploitation of minors for production of pornographic material (Article 600 *ter* of Criminal Code), possession of pornographic material, albeit virtual (Article 600 *quater* of Criminal Code), tourism initiatives for the purpose of exploiting child prostitution (Article 600 *quinquies* of Criminal Code).

[43] See Section 5.

[44] See Section 6.

[45] See Section 7.

[46] See.Section 7.

[47] See Section 3.

[48] See Section 8.

[49] See Section 9

[50] See Section 10.

- Fraud in sporting competitions, unlawful gaming or betting and gambling by means of prohibited devices, referred to in Article 25 *quaterdecies;*
- Tax offences under Article 25 *quinquiesdecies*[51]*;*
- *Smuggling as per Article 25 sexiesdecies*[52]*;*
- *Crimes against the cultural heritage and laundering of cultural goods and devastation and looting of cultural and landscape heritage, referred to in Articles 25 septiesdecies and 25 duodevicies;*
- Transnational offenses as set forth in Law no. 146/2006[53].

Finally, as it is pointed out, the basic offense list should be considered - as previously mentioned - peremptory and undoubtedly likely to increase further on in anticipation of future legislative actions, for example in matter of tributary offense.

Therefore, in accordance with Decree 231, the companies and entities are required to be held accountable for administrative liability offenses, in the event that one of the above mentioned criminal offenses is committed by any company's director, officer, executive, manager or employee in their interest or benefit (albeit not exclusive), with the exception of a case in which the offender acted for his own purposes or for the purposes of a third party.

It is pointed out that the entity responsibility is completely autonomous as opposed to the personal and criminal responsibility of the person committing the offense, because it arises and independently remains whether the aforementioned offender is identified, punishable or punished.

Furthermore, punishability is envisaged in the event of attempt (Article 26), so when the crime is not completely achieved either because the event (e.g. wrongful fraudulent profit) did not come out or because the action was not carried out (e.g. unsuccessful inducement to wrongdoing of a public entity body *ex* Article 640, paragraph 2, of Criminal Code)[54].

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[51] See Section 11.

[52] See Section 12.

[53] "**Transnational offense**" means «*the offense punished by imprisonment whose maximum term shall not be less than four years, involving an organized criminal group, as well as; a) is committed in more than one State; b) or is committed in one State, but a substantial part of its preparation, planning, direction or control takes place in another State; c) or is committed in one State, but involves an organized criminal group that engages in criminal activities in more than one State; d) is committed in one State but has substantial effects in another State*» (see Article 3 of Law no. 146/2006). More specifically, the relevant offenses for the purpose of the liability pursuant to The Decree are: racketeering and mafia conspiracy (Articles 416 and 416 *bis* of Criminal Code), inducement not to make statements or to make false statements to judicial authorities (Article 377 *bis* of Criminal Code), assisting offenders (Article 378 of Criminal Code), racketeering for the purpose of smuggling foreign processed tobacco (Article 291 *quater* of Presidential Decree no. 43/1973), racketeering for illegal trafficking in narcotic or psychotropic substances (Article 74 of Presidential Decree no. 309/1990), and provisions against illegal immigration (Article 12, paragraph 3, 3 *bis*, 3 *ter*, and 5 of Legislative Decree no. 286/98).

[54] Nevertheless, it is pointed out that the responsibility of the Company may arise only in the event of **attempted crime** (and not also in the case of infringement, such as false corporate disclosures *ex* Article 2621 (1) of Civil Code) which are **malicious**, therefore, excluding crimes without malice aforethought contemplated in Article 25 *septies* of Decree. The punishability of the attempted offense can be affirmed to the extent that the criminal conduct, albeit not fully realized, reveals the intention of the author to carry out the planned crime, towards which the "*appropriate acts*" committed are "*aimed.*" (see Article 56 of Criminal Code).

Nevertheless, the lower degree of offensiveness and severity of attempted crimes have led lawmakers to envisage a penalty reduction both for the offense author and for the entity. Pecuniary and interdictive sanctions on activity are reduced from one-third to one-half.

Furthermore, if the Company promptly intervenes to prevent the action from being implemented or the occurrence of the event, its liability is excluded from the outset.

2. Conditions for liability exemption of the entities.

In case of offenses committed by the senior management, Decree 231 envisages a specific form of exemption of entity from liability, if the following conditions are cumulatively present:

a) the "*company's management*" has adopted and effectively achieved the "*compliance programs*", before the crime to be implemented, such as could prevent offenses of the same kind;

b) the task of supervising the functioning and compliance with the programs, and their updating, has been delegated to an Entity supervisory board, vested with independent initiative and supervisory authority;

c) the persons who committed the offense acted by fraudulently circumventing the protection mechanisms envisaged in the compliance program;

d) supervision by the Compliance Officer was not omitted or insufficient.

Therefore, in this case, it considers that there is the burden of proof reversal for the entity[55], on the other hand, in the case of offenses committed by persons subject to the management or supervision of others, it is incumbent upon the accusing body to prove that the commission of the offense was made possible by the company's failure to comply with its directive or supervisory obligations (see Article 7 Decree). Furthermore, in such a situation, the company's responsibility is resolutely excluded if it has adopted an efficient implementation of the Model *ex ante* (that is prior to the offense implementation). More specifically, the Model must envisage suitable measures to guarantee the full observation of Law by the corporate activities performances; it must also provide a system of checks

[55] It is noted that the Supreme Court has recently ruled on this point, stating that «***there is no burden of proof in the legislation of the administrative liability entity, being levied on the Prosecution***, *however, the burden of prove the commission of a crime by a person who has qualities provided for in article 5 of the Legislative Decree no. 231 and the lack of internal rules of the entity. The latter has broad discretion to provide releasing evidence*» (see Supreme Court, Criminal Section VI, Judgment of 16 July 2010, no. 27735, which was considered unfounded the question of the constitution of the provisions of Decree 231, raised respect the constitutional principles laid down in Articles 3, 24 and 27 of the Constitution).
The Supreme Court reached this conclusion stating that: «*... under the aforesaid identification relationships with its top management,* ***the company will be for its own***, *without involving the constitutional principle of the prohibition of liability for another's conduct (article 27 of the Constitution). Neither the Legislative Decree no. 231 outlines a hypothesis of liability, providing, on the contrary, the need exists that the "corporate negligence" of the entity, that is not having prepared a series of preventive measures appropriate to prevent the commission of offenses of the kind made; the finding of this organizational deficit allows a flat and smooth entity indictment of the offense made within its system. ...* [The Prosecution] ***shall identify specific channels connecting the action of one*** [i.e. the person] ***to other*** [i.e. of the entity] *interests and then the elements indicative of the entity's corporate negligence, which makes its responsibility (...)*» (see Supreme Court no. 27735/2010).

to discover and eliminate any high-risk situations, verifying the adopted precautions' suitability and the disciplinary system in the event of their violation.

As a result of the changes introduced by Law No. 179 of 30 November 2017, on *whistleblowing,* and by Legislative Decree no. 24/2023, the Model shall also provide channels to report unlawful conducts relevant pursuant to the Decree 231 or violations of the Model, the prohibition of retaliation and the disciplinary system[56].

Moreover, it is deemed necessary to make one last consideration regarding the possible offenders of the pre-supposed offenses.

Indeed, among the offenses mentioned in Decree 231, there are ones which require a specific qualification of the active subject ("specific offense"), so to lead us deeming that the illicit conduct can be performed only by those who hold certain roles or duties within the company (e.g.. administrators, general directors, auditors, liquidators, shareholders with reference to the "corporate offenses").

Nevertheless, pursuant to Article 2639 of Civil Code, the person who formally holds the title or the head of the legally envisaged function is equivalent to the person who continuously and significantly exercises the typical powers of the function or title (e.g. the "de facto" director). In this regard, among the senior management, Article 5 of Decree 231 includes not only those persons who perform representative, administrative, and executive functions within the entity, but also those who actually manage and supervise it (1, subparagraph *a*), in accordance with the consistent line of court decisions[57]. Accordingly, administrative liability might be not exempt by the lack of a formal title for the author offense.

Furthermore, it must be observed that the same "true" offenses can be committed by «*anyone*» (whether an employee or not), in the form of contributory negligence as contemplated by Article 110 of Criminal Code.

3. Administrative penalties.

The penalties envisaged by Decree 231, on confirmation of an administrative infraction dependent on a pre-supposed offense, consist of:

a) *monetary fines*, levied each time the company is found responsible and applied in shares (ranging from a minimum of € 258 to a maximum of € 1,549) in an amount not inferior to one hundred and not exceeding one thousand (Article 10);

[56] For more details see the Whistleblowing Reports Procedure.
[57] Jurisprudence has constantly confirmed the irrelevance of the merely formal title, placing the accent on the function that is actually performed, especially in cases of occupational accidents, by envisaging the liability of the one who, although is apparently vested with executive duties, is actually in charge of organizing company work.

b) *interdictive sanctions*, applicable only if expressly provided for and according to the precise alternative conditions pursuant to Article 13 of Decree 231[58], are prescribed, following an internal hierarchy, to envisage specific offenses. Indeed, due to their devastating impact, lawmakers have established that the application of the most serious ban (permanent ban on engaging in activity) can be ordered only if the other penalties are inadequate[59] (Article 14). Speaking in general, the bans are of a temporary nature (from three months to two years), and thus would be totally ineffective in cases of particularly seriousness. Therefore, whether from the offense implementation derives a relevant profit, and if the entity had not taken measures to prevent further crimes after being convicted previously already, there is no other adequate and proportionate penalty than a radical ban on its operations. The same must be said in the case of *societas*, which are structurally and ontologically illegal, whose sole or principal purpose is the implementation of an illegal activity (see Article 16).

c) the *confiscation*, which impacts the price or profit developed from the offense or, if this is not possible, the amounting of cash, assets, or other items of an equivalent value. Such a measure is always arranged following conviction of the entity, save for the part which may be returned to the damaged party;

d) the *publication of the guilty verdict*, finally, is a merely optional sanction which can be arranged only once on the entity expense together with the application of a ban[60].

With reference to bans, it is extremely important to emphasize that the entity may "remedy" its "organizational negligence", although late, with total exclusion of the measures in question and reduction of the fine. This is possible if, prior to the trial, *(i)* the damage has been fully compensated and its consequences have been fully eliminated (or at least the entity has made efforts to do so); *(ii)* the organizational deficiencies that caused the offense have been rectified; *(iii)* the achieved profit has been made available for confiscation.

[58] More precisely, they can be levied when: *a)* a significant profit is realised by the entity in the event of an offense committed by senior management, or *b)* the commission of the offense has been determined or facilitated by serious organisational deficiencies, when the offender is subordinate to the supervision and/or management of others; and *c)* in the event of repeated offenses.

[59] The sanctions envisaged by Article 9 of Decree 231 are: *(i)* complete ban of company operations; *(ii)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to commission of the offense; *(iii)* ban on entering into agreements with the Public Administration, except to receive public services; *(iv)* denial of allowances, financing, grants, or subsidies, and possible revocation of those already granted; *(v)* ban on advertising goods and services.

[60] The administrative measures expiration happens five years after the offense is committed.

In conclusion, it allows us to remember that the insidious aspect of the measures is represented by their sudden application during the trial. Indeed, even before any definitive guilty verdict, the bans can be placed as a precautionary measure should certain presuppositions be determined[61].

4. Criminal offenses committed outside Italy.

The Entity may be held administratively liable for offenses covered by Decree 231 even if the offense was committed outside Italy (Article 4 of Decree). The following requirements must be satisfied for this to occur:

a) the offense must be committed outside Italy by a person who is functionally tied to the Company pursuant to Article 5 of Decree 231 (e.g. directors or employees who are seconded outside Italy);
b) the offense in question must fall within of criminal offenses prescribed by the Decree;
c) the entity must have its main office in Italy;
d) the State, where the offense has been implemented, must not prosecute it, otherwise this would pose the problem of recessive Italian jurisdiction;
e) the entity is liable only in cases and conditions prescribed by Articles 7, 8, 9, and 10 of Criminal Code[62].

[61] More specifically: *a)* the severity of the entity's liability for one of the offenses where these penalties are expressly envisaged; *b)* one of the conditions envisaged by the aforementioned Article 13 of The Decree (see note 12).

[62] In short, specific criminal offenses (common and political offenses) of particular severity, presence of the author of the offense on Italian territory, request for proceeding by the Minister of Justice and, if necessary, a motion or complaint by the person harmed by the offense.

SECTION 2: Criminal offenses pursuant to Articles 24 and 25 of Decree 231.

Introduction.

This Section 2 of the Regulatory Appendix refers to offenses associated with relations with Public Administration pursuant to Articles 24 and 25 of Decree 231.

In this context we speak more precisely of "***Offenses against Public Administration***" because all the administrative liability offenses of the institutions referred to above are designed to protect (i) the smooth workflow and prestige of public bodies and related entities, as well as the proper performance and impartiality of public administration (Article 97 of the Constitution)[63] , or (ii) the protection of public property and its integrity[64].

Given the above, following the regulatory action required under the Decree Law on Anti-Corruption (converted with amendments into Law no. 190 of 6 November 2012, information on which can be found below), the Company decided to proceed to a significant implementation of this Section and update it to fully meet the needs that induced Italian Legislature to implement major – although, according to some authors, unsatisfactory - action to prevent corruption in Public Administration (Italian and foreign).

Furthermore, this Section 2 has been updated following the law reform of Law 27 May 2015, no. 69, regarding «*Provisions regarding the offenses against the Public Administration, of criminal organizations of mafia-type and of false accounting*», and of Law no. 3 of 9 January 2019 (so-called "Briber destroyer"), by Legislative Decree No. 75 of 14 July 2020 and most recently by Law 9 October 2023, n, 137.

As on both supply and demand fronts this issue involves entities classified as "public", it is necessary to clarify the general criteria for the precise identification of such entities, in order to better understand the offense to be prevented by adopting this model and, in particular, by the rules of conduct and procedures specified in Chapter A concerning relations with Public Administration.

The criminal offenses pursuant to art. 24 of Decree 231 and the provisions of article 25 will be discussed later in this document; the latter rule is directly concerned with the regulatory actions mentioned above.

[63] As the crimes of extortion, misappropriation of induction to give or promise utility and corruption under Articles. 317 et seq. of the Criminal Code.

[64] In particular, embezzlement against the State, misappropriation of funds from the State, aggravated fraud, aggravated fraud against the State or other public body, aggravated fraud to obtain public funds, computer fraud to the detriment of the State or another public body.

1. Criteria for the definition of Public Official and public service officer.

According to criminal law, a "*Public Administration Entity*" is commonly considered to be any legal entity acting in the public interest and which performs legislative, judicial or administrative activities compliant with rules under public law and authoritative acts.

In the Keeper of the Seals' Report it specifies that the concept of "**Public Administration**" is broadly speaking considered as "*covering the broadest spectrum of public entity categories which, in accordance to a now universally accepted tripartite arrangement, can be divided into legislative entities, judicial entities and enforcement entities*"[65].

It goes on to specify that this is why "*all public entities - to whichever of the three orders they pertain - are the keepers of that authority, reverberating from that entity in whose name they act. All have that element of public law that distinguishes the purpose of such bodies, the implementation of which what makes them a body. Hence, an act which through its personnel affects the Public Administration and compromises its regular operations is conceivable as an offense*"[66].

Based on these principles the Criminal Code, respectively in articles 357 and 358, outlines the concepts of "*Public Official*" and "*public service officer*".

The aforementioned provisions, following the Reform brought about by Italian Law 86/1990[67] have, as is known, taken on an objective and functional connotation associated with the actual exercise of a public duty or public service, regardless of the legal status of the entity and the existence of an actual working relationship subordinate to the public entity.

In fact, with the 1990 Reform Italian criminal law adopted a function-based concept of public law qualifications, under which it does not mention that a person should or should not pertain to the PA or to a public entity, but instead refers to the type of activity conducted and, more specifically, the regulations for such activity.

Articles 357 and 358 of the Italian Criminal Code clarify that, where a given activity and its governing rules are removed from private sector independence, and being answerable to regulations not otherwise available, we have a public activity and rules under public law, and the person involved can be considered a Public Official or a public service officer only for the aspects of his duties for which he does not act as a private individual and is not on an equal level to his counterparty.

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[65] See the *Keeper of the Seals' Report* in *Lavori preparatori del Codice penale* - vol. V - part II, p. 119.

[66] See previous footnote.

[67] Prior to the Reform, art. 357 of Italian Criminal Code stated: "*civil servants or employees of another public body exercising a legislative, administrative or judicial public function on a temporary or permanent basis; any other person exercising a legislative, administrative or judicial public function on a temporary or permanent basis, free of charge or against payment, voluntarily or compulsorily*".

a) Public Official

More specifically, pursuant to art. 357, paragraph 1 of the Italian Criminal Code, a Public Official is a person who "*for the purpose of criminal law*" exercises "*a legislative, judicial or administrative public function*".

Therefore with particular reference to the ***legislative function*** it includes entities involved in regulatory activities per se and related or preparatory to such activities (i.e. EU institutions with legislative powers, Parliament, the Government where authorised according to law, regional governments[68] and provincial governments).

With regard to the ***judicial function***, the concept of Public Official can include any entity taking part not only in the activity *ius dicere*, but also in activities that are related and auxiliary to that activity.

In this respect, therefore, public entities include not merely judges and magistrates of all Courts and Authorities, public prosecutors and members of the European Courts and Courts of Justice, but also clerks of court and court secretarial staff[69] and all officers and administrative bodies of the aforementioned Courts and Authorities.

With specific regard to the ***public administration function***, paragraph 2 of the article referred to previously states that "*a public administration function is that governed by rules under public law and by authoritative acts, and characterised by the setup and statement of intent of the Public Administration or its exercise through the application of authorisation or certification powers*".

It follows that the administrative function becomes a *public function* when it is governed by "*rules under public law*", i.e. by regulations that aim to pursue and protect major public interest and interests of a general nature, and is characterised "*by authoritative acts*" or by acts of supremacy.

The provisions in question also establish that an administrative function characterised by the exercise of the following types of power are *public*:

1) *decision-making powers* in relation to the "*setup and statement of intent of the Public Administration*", i.e. any activity which in any manner is designed to express the decision-

[68] In this respect, for example, a decision of the Court of Rome on 9 October 2012 relating to regional council members, stated that "*Given that regional councils have to consider themselves public entities that contribute to and participate in the exercise of a legislative function, and therefore that contributions received cannot be considered or managed as salary-related items and must by their nature be for public use in accordance with specific related regulatory guidance, the offense of embezzlement of public funds exists when a public official/parent entity has such funds available to them because of their official role - said funds being unquestionably of a public nature and consequently subject to a reporting obligation - and misappropriates the funds in their own favour instead of using them for the sole purpose indicated in regulations*".

[69] Or vice versa: "*The court appointed expert in a case of arbitration **is not** a public official or a public service officer, given that his function is auxiliary to proceedings under private law: bribery cannot therefore apply*" (see Supreme Court, Criminal Section VI, judgment no. 5901, 22 January 2013)

making power of the Public Administration. In this perspective, "*Public Officials*" are not only entities institutionally organised to apply such powers and those involved in activities of an investigational or preparatory nature for the decision-making procedure of Public Administration, but also their associates that occasionally take part in the aforementioned procedure;

2) *authorisation powers* in achieving the purpose and intent of Public Administration, carried out through instructions, directives and real commands with respect to which an individual is in a subjective position. In fact, case law considers authorisation powers to be not only those of a coercive nature, but also all activities that express discretional public power in relation to a party on a different, unequal level to that of the Authority (see Supreme Court, Joint Chambers, judgment no. 7958/1992);
3) *certification powers*, in relation to confirmation and record-related activities to which relevance for evidentiary purposes is assigned, with reference to statements of intent of the PA or in representation of a given situation, circumstance or event as certain, given that they occurred in the presence of a government officer.

Qualification as a Public Official, therefore, depends on the one hand on an assessment of an objective nature, to verify whether the activity performed and considered per se is governed by rules under public law and by authoritative acts and, on the other hand, on an assessment of a functional nature, to check whether that activity as actually manifested is characterised by the potential to exercise powers typical of a public function.

In brief, here referring to criminal case law guidance, it can be claimed that: "*Pursuant to articles 357 and 358 of the Italian Criminal Code, a public function or public service depends on an employment relationship with the State or other public entity, on the activities of a representative being attributable to a public entity, and that it is important to seek verification of the real activities exercised and the purposes, public or otherwise, achieved in doing so*" (see Supreme Court, Criminal Section VI, judgment no. 12385 of 17 October 2012).

From the above it is also evident that - as mentioned previously - **a public function can be exercised both by public and private officials**, since qualification as Public Official does not necessarily require an employment relationship between the individual and the public entity, nor does it demand that such a relationship exists when a person volunteers to place his own activities at the service of others on a continuous basis and in exchange for a given remuneration.

In this respect, it specifies for example that "*Persons in an organizational and employment structure of a public limited company can be considered Public Officials or public service officers when the activities of that company are governed by rules under public law and are pursued for*

public purposes, even if by private means. (A case relating to the sentencing for embezzlement of public funds of the general manager of a public limited company, ***contract holder*** *of a public service acting on behalf of a Municipal Authority, considered by the Supreme Court to be a public service officer)*" (see Supreme Court, Criminal Section VI, judgment no. 49759 of 27 November 2012)[70].

b) Public service officer.

Then art. 358 of the Italian Criminal Code provides a definition of a *public service officer* as follows: "*Pursuant to criminal law, public service officers are persons who, in any manner, provide a public service*" (paragraph 1).

Paragraph 2 of the same article specifies that "*a public service is intended to mean duties governed in the same formats as for a public official, but characterised by lack of the typical powers of the latter, and excluding the performance of simple routine duties and the provision of purely material services*".

Therefore a *service* can be defined as *public* when, as with the public function, it is governed by rules under public law, but unlike a public function does not involve the exercise of certification, authorisation and decision-making powers pertaining to a *public function*.

In particular, a public service officer performs an activity which, in positive terms, is governed by rules removed from the free will of individuals (i.e. public law), is in the public interest or to satisfy the needs of general interest, subject to an organisational setup according to public law and performed on the basis of economics different to those of normal market practices, and in negative terms is not characterised by the powers typical of an administrative public function and does not involve merely performing simple routine duties or the provision of purely material services[71].

"*Menial tasks*" refer to the performance of activities that merely follow others' orders with no independent decision-making powers of the representative whatsoever, whilst "*work of a material nature*" refers to an activity that is completed merely deploying labour in order to complete it.

c) Foreign public official and foreign public service officer.

[70] It is also considered that "*Qualification as a Public Official is based on the public law use of the activities performed by the representative, rather than the* nomen iuris *of his organisation (in this case the Court emphasised that the head of a* ***regional council*** *is assigned powers, the exercise of which highlight his importance as chairman of such a political group, making him directly involved in a particular planning and implementing method of the regional legislative function, which without doubt qualifies him as a Public Official pursuant to art. 357, paragraph 1 of the Italian Criminal Code)*" (see Supreme Court, Criminal Section VI, judgment no. 1053 of 3 December 2012).

[71] In this respect it is specified that: "*An employee of Poste Italiane S.p.A. whose duties merely involve "sorting", i.e. the mere sorting of mail, does not qualify as a public service officer. (A case of embezzlement of public funds which the Supreme Court overturned and referred the case back, qualifying the offense as embezzlement aggravated by abuse of office)*" (see Supreme Court, Criminal Section VI, judgment no. 46245, 20 November 2012.

The regulations and principles illustrated thus far obviously relate to an Italian national holding the offices of Public Official and public service officer examined above.

As this issue is governed by the principle of strict lawfulness, in order to protect foreign Public Administrations also in Italy and at the same time to punish foreign nationals under Italian law, an ad hoc provision became necessary - as is known - which extends the scope of application of offenses against Public Administration, also allowing fulfilment of the obligation of incrimination accepted by Italian Law on signing certain international conventions.

The reference point for the ruling in question (and in particular that regarding international bribery) is art. 322-*bis* of the Italian Criminal Code, introduced by the law decree that later led to the issue of Decree 231 (Law no. 300 of 29 September 2000), which amongst other things authorised the ratification and enforcement of the aforementioned international conventions, and more precisely the Brussels Convention of 26 July 1995 (on protection of the financial interests of the EU Member States) and the Paris OECD Convention of 17 December 1997 (on the battle against bribery of foreign Public Officials in international transactions[72].

The aforementioned article therefore served the purpose of clarifying that the reference to a legislative, judicial or administrative public function or the provision of a public service pursuant to articles 357 and 358 of the Italian Criminal Code is also extended to functions or services that can be defined as *public* under foreign and international laws and, therefore, also to all parties considered to have powers similar to those recognised under Italian law.

More specifically, after examining the aforementioned ruling it can be stated that, in certain cases, it is the Law that equates Italian public servants with foreign public servants covering certain roles, i.e. members of institutional bodies of the European Union (the Commission, European Parliament, European Court of Justice and European Court of Auditors), officials and representatives of the European Union and members and staff of bodies set up according to institutional EC Treaties (art. 322-*bis*, paragraph 1, sub-paragraphs 1, 2 and 4 of the Italian Criminal Code).

In other cases however, the Law uses an equivalence model than we can define as open-ended, in that it is based on the function actually exercised by the foreign official and on its correspondence with the function exercised in Italy and the rules governing that function.

In this last case, as mentioned, "*In a case of alleged bribery of a foreign official, the judge must - also through the Courts - **ascertain the regulations** under foreign law that are useful in establishing **whether the bribed official performs functions or activities corresponding to those of a Public Official or public service officer in Italy**. (In justifying this the Court emphasised that the principle*

[72] The OECD Convention outlines the more extensive concept of foreign public official, later transposed to Italian law, which includes any person performing a public function (administrative, legislative or judicial) in a foreign country, an employee of a public corporation or public interest or an officer in service in an international organisation, etc.

derives from art. 14, Italian Law no. 218 of 31 May 1995 which, with regard to the ascertainment of foreign law, poses a general legal principle, also relevant to criminal proceedings, in any case where the application of Italian criminal law presume the ascertainment of a given foreign regulation)" (see Supreme Court, Criminal Section VI, judgment no. 49532, 5 November 2009).

Such action must be taken by the interpreter in reference "*to persons commanded by EU Member States or by any public or private entity in the European Union, that exercises activities* ***corresponding*** *to those of EU officials or representatives*", "*those who, in other EU Member States, perform functions or activities* ***corresponding*** *to those of Public Officials or public service officers*" (art. 322-*bis*, paragraph 1, sub-paragraphs 3 and 5, Italian Criminal Code) and lastly, "*persons indicated in the first paragraph are considered equivalent to Public Officials, if their functions* ***correspond****, or otherwise public service officers*" (art. 322-*bis*, paragraph 3, Italian Criminal Code).

A further provision was recently added which envisages the application of both the aforementioned criteria in offenses committed by members of the International Criminal Court, to the institutional statute of which Italian Law was adapted only a short time ago.

In fact, the new paragraph 5-*bis*, introduced by art. 322-*bis*, paragraph 1, Italian Law no. 237 of 20 December 2012 (art. 10), published in Official Gazette no. 6 of 8 January 2013, extends offenses against Public Administration "*to* ***judges****, the public prosecutor, deputy public prosecutors, officials and representatives of the International Criminal Court, persons in the command of countries party to the Treaty establishing the International Criminal Court exercising functions* ***corresponding*** *to those of the officials and representatives of that Court, and members and staff of bodies set up on the basis of the Treaty establishing the International Criminal Court"*.

Paragraph 1 referred to above therefore envisages extension of the applicability to specific crimes against Public Administration by expanding the concept of Public Official to an **EU public official** in order to safeguard the supranational interests of EU Member States and to coordinate the action of Member States in protecting such interests ("**EU-level bribery**").

The following nos. 5 *ter*, 5 *quater* and 5 *quinquies*, moreover, further to the amendments made by virtue of Law no. 3/2019 and Legislative Decree no. 75/2020, extend the applicability of the criminal offenses provided therein also to:

a) persons exercising functions or activities corresponding to those of public officials and persons in charge of a public service within international public organizations;

b) members of international parliamentary assemblies or an international or supranational organization and judges and officials of international courts;

c) persons performing functions or activities corresponding to those of public officials and public service officers within non-EU states, when the act offends the financial interests of the Union.

Paragraph 2, on the other hand, punishes **only individuals** who promise, offer or give money or other benefits[73] "*to persons indicated in paragraph 1*" (and therefore we have a further case of EU-level bribery: see art. 322-*bis*, paragraph 2, sub-paragraph 1 of the Italian Criminal Code) and **non-EU foreign public officials**, i.e. persons exercising functions or activities corresponding to those of Italian Public Officials or public service officers "*in other **foreign countries** or **international public organisations***" ("**non-EU bribery**: see art. 322-*bis*, paragraph 2, sub-paragraph 2 of the Italian Criminal Code).

On this point, legal theory refers to "*conspiracy contrary to official duties*" in that, despite this being an offense which for the purpose of its commission requires the individual and the Public Official to have acted in concert, only the first of these can be punished.

Legal theorists have put forward many reasons in support of this decision adopted by Italian Law. On the one hand it has highlighted the potential for a foreign public representative to be criminally accused under their own law (also because it might not recognise Italian criminal law), and on the other hand the risk of harming international relations with the home country has been pointed out, as has the possibility of in any event finding it difficult to pursue a person not answerable to Italian or other EU Member State laws.

This clearly aimed to guarantee that trade is conducted on the basis of quality, price and service offered at arm's length conditions and compliance with open market and fair trading regulations.

To conclude, for the purpose of this discussion, the term "Public Administration" must be taken to mean all authorities, bodies and representatives to which the law entrusts action in the public interest and which, for example, can be identified as:

- national, EU and international public institutions, considered to be organizational structures with the task of using legal means to pursue the interests of the community (including the State, government, regional, local and sector-specific bodies, regulatory authorities, regional governments, provincial governments, local governments, constituencies, etc.);
- Public Officials (national, EU and international) which, regardless of an employment relationship with the State or other Public Entity, exercise a legislative, judicial or administrative public function (including individuals who in any event perform a public function and who exercise activities seeking to pursue to public interest, government agencies, bodies operating under the rules of public law, awarding bodies and mixed public-private entities);
- public service officers who perform an activity recognised as functional to a specific public interest (including those performed - under licence or agreement - in the general interest and

[73] According to offenses of bribery by a public official - as per art. 319-*quater*, paragraph 2 ("*Unlawful inducement to give or promise benefits*") and art. 321 ("*Punishment for persons committing bribery*") - and of attempted bribery pursuant to art. 321 of the Italian Criminal Code.

subject to supervision by public authorities, activities relating to the protection of or relating to human life, health, welfare, education, etc.).

2. Criminal offenses pursuant to Article 24 of Decree 231.

With particular reference to the provisions of art. 24 of Decree 231, namely «*Illegal receipt of funds, fraud against the State or a public entity or the European Union to obtain public funds and computer fraud against the State or a public entity*[74]», the regulation envisages the following offenses.

- *Embezzlement of public funding (Article 316 bis of Criminal Code)*[75].

Following the amendments introduced by Law Decree no. 4 of 27 January 2022, converted, with amendments, by Law no. 25 of 28 March 2022, this offence is committed when, after having received, from the Italian State, a public body or the European Union, contributions, subsidies, financing, subsidised loans or other disbursements of the same type, however named, intended for the achievement of one or more purposes, the sums obtained are not used for the purposes or activities for which they were destined. The offense consists of misappropriating, part or all, of the lawfully obtained funds regardless of whether the planned activity was performed or not.

As a result of the legislative *novum*, in 2022, the scope of the embezzlement conduct, which was previously limited to "public contributions, subsidies or financing", has been extended to "subsidised loans" and to "other public disbursements, however denominated": as a result of these changes, the regulatory paradigm of embezzlement no longer refers to a closed - albeit broad - catalogue of economic benefits, but to any type of public disbursement, symmetrically to what it is provided for the offence of fraud under Article 640 *bis* of the Criminal Code (see Supreme Court, Massimario Office, Report no. 31/22).

The rationale behind the incriminating regulation pursuant to art. 316-*bis* of the Italian Criminal Code consists in combating fraud subsequent to the obtaining of public benefits:[76] moreover, with the deletion of the phrase "public interest" - in relation to the purposes to which the resources must

[74] Heading as amended pursuant to Article 5(1)(a)(1) of Legislative Decree No 75 of 14 July 2020.

[75] Heading amended by Article 28-bis (1)(c)(1) of Decree-Law No 4 of 27 January 2022, converted, with amendments, into Law No 25 of 28 March 2022.

[76] This provision concerns, indeed, subsidies, contributions or financing to be intened as assignment of a grant or with a cost lower than that applicable under market conditions.

be allocated - following the amendments introduced in 2022, even the disbursement of funds for private purposes assumes criminal relevance.

In fact, with the 2022 reform, the Legislator intended to offer specific protection against episodes characterised by the use of public disbursements, regardless of their denomination, that does not respect the original purpose for which they were allocated: in particular, it was necessary to set up a suitable safeguard to repress all unlawful operations in the use of disbursements granted in the context of economic and social support policies following the Covid-19 pandemic.

For the commission of this offense it is sufficient that even *a part* of the funds received is used for purposes other than those envisaged, and the fact that the planned activity has in any event been implemented is of no relevance whatsoever.

Likewise, any other purpose that the receiving party wished to pursue is irrelevant, given that this implies (also from a psychological point of view) that misappropriation of the funds and the will to remove them from their planned use was deliberate.

Considering that the moment of offense is consummated during the phase of execution, it can also be linked to financing received in the past and not used now for the purposes for which it was disbursed.

For example, the criminal offense in question could apply when, following the non-fraudulent receipt of a public grant (national or European), issued in favour of the Company for purposes associated with its business activities, the company department in charge of that grant and/or the departments involved in the use of such funds then failed to use even just a part of the amount received for the designated purposes. In other words, the offense is committed every time a government grant received by the Company is incorrectly "administered".

- Wrongful obtaining of public funds [77] (Article 316-ter of the Italian Criminal Code).

This offense is implemented when, through the use or submission of false statements or documents or attesting things that are untrue, or through the omission of information that is due, it is obtained, without being entitled to it, contributions, subsidies, financing, subsidized loans or other grants of the same type, however denominated, granted or disbursed by the State, by other public entities, or by the European Union.

[77] Heading amended by Article 28-bis (1)(c)(1) of Decree-Law No 4 of 27 January 2022, converted, with amendments, into Law No 25 of 28 March 2022.

With reference to this offence as well, the 2022 reform pursued the same broader protection aims already mentioned with reference to the offence of embezzlement, by including in the object of the conduct described by Article 316 *ter* of the Criminal Code all public-sector benefits, however denominated, which are obtained through the conduct described by the provision, even irrespective of the production of damage to the State.

In this case, unlike in the previous hypothesis (Article 316 *bis)*, it is not relevant how the disbursements are actually used, since the offence is committed at the ('genetic') moment of disbursement of the unlawfully obtained funds.

The case in question constitutes a residual offense with respect to fraud against the State pursuant to art. 640, paragraph 2, sub-paragraph 1 of the Italian Criminal Code (see paragraph 2.3) and to aggravated fraud pursuant to art. 640-*bis* of the Italian Criminal Code (see paragraph 2.4).

In the context of the latter, it should be pointed out that whilst the misappropriation of public funds is committed every time that the unlawful conduct is adopted using specific methods envisaged in the regulations (use or presentation of false declarations or documents or misrepresentation or simple omission of required information) forms part of the different offense referred to in art. 640-*bis* of the Italian Criminal Code - a more wide-ranging and more serious offense - whereby the deceptive means used to obtain public funds are different to those contemplated in art. 316-*ter* of the Italian Criminal Code, and are attributable to the concept of "*contrivance or deception*" intrinsic to the fraudulent conduct.

Under the first instance, on the other hand, the specialist element with respect to fraud against the State pursuant to art. 640, paragraph 2, sub-paragraph 1 of the Italian Criminal Code is no longer the type of contrivance or deception used, but rather the type of gain achieved to the detriment of the public entity defrauded, which does not consist in obtaining a disbursement of funds but rather a generic gain of any nature.

For example, the offense referred to in art. 316-*ter* of the Italian Criminal Code could be committed if the Company should submit a request, for the allocation of a public grant, to the European Commission or other public entity (national or European), in support of which it presents false documents or fails to disclose relevant required information, thereby allowing the Company to obtain the loan or subsidy in question.

- Bid Rigging (Article 353 of the Criminal Code).

This offence - introduced into the list of the predicate crimes of the liability of the entity by means of Decree Law No. 105 of August 10, 2023, converted with amendments by Law No. 137 of October 9, 2023 - punishes anyone who with violence or threats, with gifts, promises or collusion or

other fraudulent means prevents or disrupts the bidding in public auctions or private tenders on behalf of Public Administrations, or drives away the bidders.

The punishment is increased in the hypothesis provided for in paragraph 2, if the act is committed by a person in charge by law or by the Authority of public auctions or bids, considering the greater disvalue of the violation of the duties inherent in the role held.

The scope of protection is also extended in paragraph 3 to private bidding on behalf of private individuals, directed by a public official or a legally authorized person, for which the penalty is reduced by half: according to the case law, private bidding on behalf of private individuals are those arranged freely by private individuals, and not imposed by the law or the Authority (Supreme Court, Criminal Section, no. 1934/ 2010).

The crime of disrupting the freedom of tenders can be envisaged in any situation in which the Public Administration proceeds to identify a contractor through a tender, regardless of the *nomen iuris* conferred on the procedure, even informal or atypical, observing instead the substantive profile of the selection.

Such cases occur whenever the Public Administration makes the outcome of the awarding of works, supplies and services depending on the outcome of contacts made with interested parties, each of whom, aware of competition by third parties, makes its own offer, in an attempt to submit more convenient conditions and obtain the contract award.

The norm indicates three possible results of the conduct: the **impediment** of the tender, consisting of the failure to carry out the procedure; the **disturbance**, *i.e.* any alteration of the regularity of its functioning, «*provided that it is suitable to prejudice the regularity of the competition*» (see Supreme Court, Criminal Section, no. 3223/2019). In particular, «*disturbance occurs even when the collusive conduct affects the regularity of the competition even without altering its results*» (see Supreme Court, Criminal Section, no.15849/2019).

Finally, there is the **turning away of bidders** for failure to submit an application or bid by those interested in bidding.

Regarding the material element, each of the unlawful conducts shall be peremptorily carried out through the use of intimidating (violence or threat) or fraudulent means (gifts, promises, collusion and fraudulent means in general).

It is noted that «*promises*» mean the manifestation of will, which provides for a consideration in terms of doing or giving something in order to obtain, as a counter-performance, the conduct desired by the agent; «*collusions*» means agreements of a clandestine nature, which are made between bidders or between them and those in charge of the selection procedure; «*other fraudulent means*» consist, on the other hand, of any artifice, deception or lies that are capable of altering the regular

operation and outcome of the tender, including through procedural anomalies, such as the use of nominees or giving incorrect information to participants.

As for the **completion** of the crime, it can be envisaged up to the moment of the final award, when the procedure for selecting the contractor reaches its conclusion (see Supreme Court, Criminal Section, no. 34746/2018). Indeed, the conduct cannot be carried out beyond the moment of the contract award.

The psychological element required is the general intent, consisting of the consciousness and will to carry out the typical fact, *i.e.* through the conduct described by the provision, to disturb or prevent the conduct of the competition, or to prevent the participation in it of other parties.

- Disturbing freedom of the procedure for selecting a contractor (Article 353 *bis* of the Criminal Code).

The crime under consideration - introduced into the list of predicate offenses of the liability of the entity by Decree Law No. 105 of August 10, 2023, converted with amendments by Law No. 137 of October 9, 2023- punishes anyone who, by violence or threat, or with gifts, promises, collusion or other fraudulent means, disrupts the administrative procedure aimed at establishing the modalities of selection of a contractor by the Public Administration.

The provision under consideration contains a reservation clause that excludes the crime in case of violence, threats or collusion that can be envisaged in other offebses, such as in the case of bribery (Article 319 of the Criminal Code).

In particular, this offense punishes acts that take place before of the publication of the call for tender, or other equivalent act, aimed at conditioning its content, intervening in the phase in which agreements might, for example, intervene aimed at making a "tailor-made tender" of the candidate to be favored, so that the call for tender contains such stringent requirements as to determine in advance the audience of potential competitors.

The provision of "equivalent act" is worth, then, to include any situation in which the free activity of competition is to be developed (thus Supreme Court, Criminal Section, no. 17876/2022), that is, all those acts that, although different from the call for tender, have the same value and effectiveness.

The wording of the offense under consideration anticipates the threshold of criminal relevance of conducts prior to the opening of a public tender. Thus, the purpose of the provision is to prevent that, among a plurality of participants, one of them is likely to have a higher probability of an award determined by the alteration of the procedure prodromal to the issuance of the call for tender.

Indeed, conduct aimed at altering the administrative procedure as a preparatory moment of the call for tender is incriminated (thus Supreme Court, Criminal Section, no. 13431/2017). It follows that conducts held after the publication of the call for tender fall within the scope of Article 353 of the Criminal Code.

The crime can be committed by "anyone," and in order to be envisaged, the provision requires the same modalities of conduct that are strictly provided for in Article 353 of the Criminal Code, such as violence or threats, gifts, promises, collusion or other fraudulent means. However, the literal formulation, unlike Article 353 of the Criminal Code, does not provide for two alternative naturalistic events - the hindering or disturbance of the tender - but only the **disturbance** of the administrative procedure directed at the formation of the content of the call for tender or an equivalent act.

On this point, it is noted that the disruption of the administrative procedure «*is manifested by the disturbance, alteration, conditioning, and diversion of the normal course of this by reason of the purpose of polluting the future content of the call for tender or an act equivalent to it; a diversion aimed at exploiting the establishment of the rules of participation in order to condition the manner in which the Public Administration selects the contractor*» (see Supreme Court, Criminal Section, no. 5536/2021).

As for the **moment of completion**, the conduct is integrated by the performance of even one of the acts that are strictly specified and intended for concrete unlawful interference, provided that the public body has initiated the administrative procedure that demonstrates the willingness to contract (thus Supreme Court, Criminal Section, no. 26840/2015).

-Fraud in public procurement (Article 356 of the Criminal Code)

This offence - included in the list of offences which may trigger the liability of the entity by Legislative Decree no. 75/2020 - punishes with imprisonment from one to five years and with a fine not lower than € 1032, anyone who commits fraud in the performance of supply contracts concluded with the State, with a public body, or with a company exercising public services or public necessity services, or in the performance of other contractual obligations provided for in Article 355 of the Criminal Code ("Failure to perform public supply contracts"[78]).

[78] Pursuant to Article 355 of the criminal code, «*whoever fails to fulfil the obligations arising from a supply contract concluded with the State, or with another public body, or with an undertaking performing public services or public necessities, causes to be missing, in whole or in part, things or works, which are necessary for a public establishment or a public service, shall be punished by imprisonment from six months to three years and a fine of not less than € 103.*
The penalty shall be increased if the supply concerns:
1. foodstuffs or medicines, or things or works intended for communications by land, water or air, or for telegraphic or telephonic communications
2. things or works intended for the armament or equipment of the armed forces of the State
3. things or works intended to obviate a common danger or public injury.

The penalty is increased in the cases listed in paragraph 2 of Article 355 of the Criminal Code, *i.e.* where the supply concerns

a. foodstuffs or medicines, or things or works intended for communications by land, water or air, or for telegraphic or telephone communications

b. things or works intended for the armament or equipment of the armed forces of the State;

c. things or works intended to obviate a common danger or public injury.

Since this is a proper offence, the active subjects of the offence are the supplier, as well as the subcontractor, the broker and the supplier's representative, who have concluded supply contracts with the State, public bodies or companies exercising public services or public necessity services.

Under the material perspective, the offending conduct is constituted, alternatively, by fraud in the **performance** of supply contracts or in the **fulfilment** of other contractual obligations pursuant to Article 355 of the Criminal Code, provided that the conduct is already entered into at the stage of performance of the contract. The offence must be «*a fraudulent failure to perform that is set out as a moment of an overall non-performance of the service, read in its entirety and not parcelled out through the individual moments through which it is carried out, unless they assume an essential importance with respect to the proper performance of the obligations undertaken*» (see Supreme Court, Section VI, 2 October 2013, no. 50334).

A peculiar feature of the case is the controversial notion of "fraud". The case-law has identified its extremes in contractual bad faith: Article 356 of the Criminal Code, in fact, sanctions those contractual conducts that, in the relations with the administration, violate the principle of good faith in the execution of the contract, enshrined in Article 1375 of the Civil Code. Therefore, in order to constitute the offence referred to in Article 356 of the Criminal Code, «*it is not sufficient the mere breach of the contract, but a "quid pluris" is required represented by contractual bad faith and, therefore, by the presence of a malicious expedient or deception such as to make the performance of the contract appear to comply with the obligations undertaken*» (thus, with the long-standing jurisprudence of legitimacy, Criminal Court of Cassation, Sec. VI, 10 January 2011, no. 5317).

The offence of fraud in public procurement, however, represents a "quid minus" compared to the offence of fraud: in fact, it does not require «a conduct involving artifice or deception, [...] nor a damaging event for the offended party, coinciding with the agent's profit, it being sufficient the willful non-execution of the public contract for the supply of goods or services» (see Supreme Court, Section VI, 15 May 2014, no. 38346).

If the offence is committed through negligence, the penalty shall be imprisonment of up to one year, or a fine ranging from € 51 to € 2,065.
The same provisions shall apply to subcontractors, brokers and representatives of suppliers, when they, in breach of their contractual obligations, have caused the supply to fail».

As to the consummative moment of the offence, it coincides *«with the notification of specific flaws or breaches to the contractor, since any discrepancy in the performance of the service or the mere interlocution between the parties is not sufficient»,* since it is necessary an antecedent period, in which the public contractor has the opportunity to verify the non-performance of the contract in its essential aspects (see Supreme Court, Sec. VI, 15 May 2014, no. 38346).

By way of example, the aforesaid offence could arise where, having a supply contract with a public counterparty, the company fraudulently performs the service due in a manner qualitatively different from what was agreed, by supplying goods with characteristics other than those contractually provided for, or by using raw materials that are wholly unsuitable for fulfilling the economic and social function of the contract.

- Fraud against the State, other public entities, or the European Union (Article 640 (2) (1) of Criminal Code).

This offense occurs when an undue profit is obtained to damage others, by deception or under false pretences to deceive and defraud the State or public entity bodies or the European Union (passive offense subjects of the offense whose public nature determines an increased sentence).

In this case the offense is generic fraud (art. 640, Italian Criminal Code) aggravated by the particular classification of the injured party (State, other public entity economic or otherwise or the European Union), the public nature of which leads to a heavier penalty (art. 640, paragraph 2, sub-paragraph 1, Italian Criminal Code).

The peculiarity of this offense consists in "misleading" the victim by creating or making an effectively non-existent situation that is apparently real («*deception*»), or reasons aimed at convincing the victim of the truth of a falsehood («*false pretences*»).

More precisely, the incriminating conduct, defined as "restricted", consists in adopting any form of "*contrivance*" or "*deception*" (falsehood, remaining silent, deceit) to play upon the good faith of others with a view to deceiving the victim of the offense, which is consequently induced into arranging a disbursement of funds that would otherwise not have been arranged. Such a disbursement arrangement, an implicit requirement in this criminal offense, has the dual profile of producing unlawful gain for the offender and the disbursing body's damage to itself or to third parties.

For this reason, the offense in question is also defined as contrived cooperation of the **victim**.

In this respect, it should be remembered that "*the offense of fraud does **not** necessarily imply **consensus** between the person misled into committing an error and the injured party, i.e. the holder of the assets damaged who suffers the asset-related consequences of the fraudulent action, as the fraudulent conduct could easily have targeted a person other than the holder, obviously provided*

there is a causal relationship between being misled into committing an error and the elements of gain and damage. (Therefore if the victim of the offense, or injured party, is the person suffering the asset-related consequences of the fraudulent act, where this person and the defrauded person do not coincide, the legal action filed by the latter is deprived of all effect)" (see Supreme Court, Criminal Section II, judgment no. 44929, 12 November 2010).

With regard to the implicit requirement in an offense such as that referred to above, the Joint Criminal Chambers have claimed that: "*In order to qualify an offense as fraud, the* ***arrangement to disburse funds****, as the constituting element implicit in the incriminating case in point, consists in a voluntary act, causing undue gain to its own detriment and determined by being misled into such an error by deceptive conduct. It follows that the arrangement itself does not necessarily qualify as a legal instrument, i.e. a judicial act in the strictest sense, but can also be integrated by permission or consent, by the mere tolerance of a "common practice", a material act or omission, as its capacity to cause damage has to be considered sufficient*" (see Supreme Court, Joint Criminal Chambers, judgment no. 155, 29 September 2011).

With particular reference to "***undue gain***", case law considers that this occurs "*when an advantage, benefit or increase in wealth (which for offenses in which a constituent element is also damage, conceptually represented as regards the beneficiary by the specular aspect of enrichment - but not necessarily with an economic meaning - achieved by offender to the detriment of the victim) pursued or achieved* sine causa *or* sine jure*, i.e. in the absence of non-criminal legitimising judicial conditions; whereas all situations in which the benefit is in some way, directly or indirectly, protected by law as judicially significant is excluded*" (see *ex multis*, Supreme Court, Criminal Section II, judgment no. 26270, 3 June 2009).

As regards the "***damage***" resulting from the offense in question, unlike gain - which can also consist in satisfying any interest, even if purely the psychological or moral satisfaction of the offender or others - there must be an asset-related content, i.e. it must be detrimental to the assets of the injured party.

In terms of commission of the offense, fraud is classed as an instant damaging offense committed at the moment the offender actually achieves the gain and the loss of assets ("deminutio patrimonii") is permanently suffered by the victim.

As the gain and damage in question can happen at two separate moments, the offense in question becomes final not with the action seeking gain, but when the resulting damage occurs.

Otherwise, the offense is one of protracted, rather than instantaneous, commission, where the offender "*leading others to believe he holds the necessary qualifications, gains employment as a*

qualified member of staff of a public body and then, unlawfully, performs the related duties" (see Supreme Court, Criminal Section II, judgment no. 15670, 2 April 2009).

For example, this offense would be implemented by communicating false and inaccurate information to a Public Authority in connection with a bidding procedure (e.g., accompanied by false documents), or by the omission of essential data, information, or documents to achieve the aimed contract.

In fact, "*The offense pursuant to art. 640, paragraph 2 of the Italian Criminal Code is committed in a case in which an entity signs agreements regarding services - which are later provided - to a PA, using contrivance or deception consisting in falsely declaring that the conditions and requirements are met for performing the agreed activities, and misleading the public entity also regarding the actual methods for providing the service, entrusted to personnel that do not have the required professional skills. In such a case, in fact, the collection of amounts paid as the price of the services qualifies as undue gain, which for the public entity corresponds to damage consisting in the outlay of public funds in exchange for services provided by parties without the required qualifications*" (see Supreme Court, Criminal Section II, judgment no. 22170, 9 May 2007).

4. Aggravated fraud to obtain public disbursements (Article 640 bis of Criminal Code).

As mentioned previously, such a criminal offense constitutes an aggravated case of simple fraud, characterised by the fact that the fraudulent conduct specifically seeks to unduly obtain public funds.

Letter (d) of Article 28 *bis* of Law Decree no. 4 of 27 January 2022 amended Article 640 *bis* of the Criminal Code in order to extend the scope of application of the provision, in addition to contributions, financing, subsidised loans or other disbursements of the same type, also to "subsidies", thus making the textual wording of the provision homogeneous with that of the offence of wrongful obtaining of public funds pursuant to Article 316 *ter* of the Criminal Code.

The specializing element compared to the offense of fraud discussed earlier (art. 640 of the Italian Criminal Code) is the material purpose of the fraudulent act, for the identification of which the Law has adopted a deliberately generic formula, i.e. "*disbursement of public funds*", by this meaning "*any subsidised allocation of funds disbursed by the State or other public entity or by the European Union*" for the purpose of performing works or activities in the public interest.

From an objective viewpoint, for the offense to be committed the presence of contrivance or deception is required that is suitable for misleading the disbursing body.

Case law, in fact, claims that "*The amounts originating from public funding continue to be publicly owned also at the moment in which they become available to the private entity financed, the*

restriction on their use solely for the purpose they were disbursed remaining intact. Fraud is therefore committed pursuant to art. 640-bis of the Italian Criminal Code when ***contrivance or deception*** *are used to obtain undue gain in relation to such funding*" (see Supreme Court, Criminal Section III, judgment no. 5150, 27 November 2012).

This offense can be realized through deception or false pretences, such as knowingly providing untrue information or false documentation to obtain public financing or similar disbursements, regardless of their name.

Similarly, aggravated fraud is committed when in obtaining a disbursement of public funds there is evidence of the existence of employment relations never arranged so as to obtain a disbursement of indemnities from INPS (Italian Social Security Institution) (see judgment no. 816 of the Preliminary Investigations Magistrate of the Court of S. Maria. C.V., 16 October 2012).

The moment the offense is committed coincides with the date on which payments cease, which also marks the end of the aggravation of the damage, given its nature as an offense of protracted commission.

In effect, it should be remembered that according to Supreme Court case law, "*The offense of aggravated fraud to obtain the disbursement of public funds paid in instalments at different times is a protracted commission offense and therefore involves administrative liability of the entity in whose interests or benefit the offense was committed pursuant to Italian Legislative Decree 231/2001, even if only the final disbursement was received after the entry into force of the aforementioned decree*" (see Supreme Court, Criminal Section II, judgment no. 28683, 9 July 2010).

5. Computer fraud against the State or another public entity body (Article 640 ter of Criminal Code).

Art. 640-*ter* of the Italian Criminal Code, introduced by Law no. 547 of 23 December 1993 (on "*Amendments and integrations to provisions of the criminal code and code on criminal procedure with regard to computer crime*), envisages and governs the particular role of asset fraud committed through the use of computers and/or electronic instruments.

The need to introduce an independent offense, alongside the fraud already governed by art. 640 of the Italian Criminal Code, was brought about by the fear of guaranteeing the ability to punish unlawful conduct which, given its perpetration through fraudulent interference with the normal functioning of a computer or tampering with data subject to electronic processing, was not always punishable under art. 640 of the Italian Criminal Code.

As for traditional fraud, the legal interest protect is identified as assets and, in particular reference to the administrative liability of entities, as public assets, in that the offense in question is included among the presumed offenses only if damage is suffered by the State or other public entity.

In objective terms, the offense envisages two alternative forms of conduct, respectively consisting in any manner of alteration of the functioning of an IT system and unauthorised action by any means on data, information or applications contained on a computer or electronic system or related to such.

In the attempt to assign a precise definition to these terms, it was in any event argued that conduct involving "***hacking***" an IT system essentially involves a change to the regular performance of the processing and/or transmission of data output from that system.

Such a change can be made "*in any manner*" and can therefore refer to the hardware or software of the computer.

In the first instance, an example could be tampering with the printer used to output data in a format understandable to the human mind and eye after processing. An example of the second instance could involve tampering with the software programme, possibly consisting in altering certain logical steps in the original application or the use of a programme different to or in addition to that normally used in a given IT system, or, lastly, the use of a programme incompatible with the system, i.e. not limited to performing operations other than those programmed by the system owner but even acting contrary to the normal programme, altering or paralysing some of its functions.

With regard to the conduct referred to as "***unauthorised action***" on data, information or applications, this activity consists in tampering with the data or information to be processed, or with the instructions and commands contained in the application "*without the right to do so*", i.e. by action taken beyond the exercise of any lawful right (i.e. data cancellation, data alteration or logical correlation, or false data input).

In a similar way to hacking, this conduct can be achieved "*by any means*". The fact that the data is cancelled, for example, through the processor's commands or even by placing a magnet in proximity to the magnetic media on which it is stored, is therefore irrelevant.

As regards the subject of the offense, it is important that the "*IT or electronic system*"[79], for the purpose of qualifying as IT fraud, is capable of generating a transfer of assets from which the related damage and gain arise without subsequent manual intervention.

[79] As already specified in Chapter B on *IT security management*, under Italian law there is no regulatory definition of an IT and electronic system. Therefore to overcome this absence it is important to cite case law pronouncements on this issue: "*based on a literary definition ... the term "**IT system**" per se* [encompasses] *the concept of many pieces of equipment designed to perform any function useful to humans through the (full or partial) use of information technology. The latter, as found in legal theory, is characterised by the recording (or "storage") by electronic impulse, on suitable media, of "data" as elementary representations of an event, performed through different combinations of numeric symbols (bits) (the "code"). Such "data" processed automatically by the machine generates*

The "*data*" consists in elementary representations of numbers, words, images, sounds and signals encoded in a particular format (bits) imperceptible to humans but which make processing and handling possible by the computer. The "*information*" on the other hand is a dataset organised according to a logic that allows a specific meaning to be assigned to them for the user. Lastly, "*applications*" are sets of instructions expressed in the form of data, on the basis of which a computer processes the data and information and subsequently performs the various functions for which it was designed.

The data, information and applications involved in "unauthorised action" must consequently be "*contained in the system*", i.e. recorded on the computer's hard disk, or on "*peripherals*", i.e. designated for use or processing by the IT system but stored on medial external to the hard disk (magnetic cards, compact disks, floppy disks).

Again in terms of the subject matter of the offense, based on the wording of art. 640-*ter* of the Italian Criminal Code, it is then necessary - as for fraud - that the fraudulent conduct of the offender results in a "***gain***" for himself or others (of an economic or asset-related nature, i.e. consisting in achieving a different material gain or satisfaction of a mere moral or psychological nature) that is "***unlawful***" given that it occurred *sine jus*, i.e. in the absence of a justifying legal entitlement.

With reference to the further event in the offense in question, "***damage to others***", a real loss of assets has to occur for assessment on the basis of objective parameters, and not therefore in relation to the assessment of the extent that such impoverishment could be achieved by the victim. The arrangement of disbursement must therefore result in a "minus" compared to the previous condition. The damage therefore consists in the negative difference in assets that must be real and not merely potential.

In subjective terms, lastly, the existence of *generic fraud* is necessary, consisting in the awareness and willingness to procure undue gain for oneself or others to the detriment of others, based on the abnormal result of data processing achieved by an alteration in the way the processor functions, i.e. through unauthorised action on the data and information to be processed.

Computer fraud is therefore committed at the time the offender achieves the undue gain resulting from the damage to a third party's assets, which must necessarily occur after tampering with the damaged IT system.

Art. 640-*ter*, paragraphs 2 and 3 of the Italian Criminal Code envisage the following aggravating circumstances if the offense is committed *(i)* "***against the State or other public entity or***

"information" formed from a more or less extensive set of data organised according to a logic that assigns them a specific meaning for the user" (see Supreme Court, Criminal Section VI, judgment no. 3067 4 October 1999).
An **electronic system** is a complex IT system characterised by remote connection between the processors, or between a computer and its remote terminals, across telecommunications lines, e.g. phone lines, optic fibres or electromagnetic waves.

on the pretext of exempting someone from military service" (already contemplated in art. 640, paragraph 2, sub-paragraph 1 of the Italian Criminal Code); *(ii)* "***with abuse of the title of systems operator***"; *(iii)* "*with* ***theft or unlawful use of a digital ID***" to the detriment of one or more persons (this aggravating circumstance was recently introduced by art. 9, paragraph 1 of Law Decree no. 93 of 14 August 2013, converted with amendments to Law no. 119 of 15 October 2013, and is currently envisaged in art. 640-*ter*, paragraph 3 of the Italian Criminal Code).

Specifically, the aggravating circumstance of "**abuse of the title of systems operator**" applies when the operator violates the duty of loyalty to the owner (or in any event the user) of the IT system entrusted to his care, and to the persons in whose economic interests the system is operated.

In this respect, the "*systems operator*" in question refers solely to the special technical IT role of system administrator who, within a company, has control over the various steps in the data processing procedure - and therefore the potential to intervene in such steps - and the opportunity to access all memory sectors of the IT system on which he operates, or on other systems if a network is in place, exploiting the legal means of access to the processor.

In this case, the offender represents "a particular social danger in view of his privileged role in the system". Being in direct contact with the processor, in fact, he has a greater chance of being able to abusively act on the data and applications, which are therefore in a more vulnerable position (Supreme Criminal Court, judgment of 11 November 2009, Gabriellini, CED 245696).

Irrelevant to the concept in question, however, in addition to the mere "operator" who performs only operational and manual functions, other professional figures are excluded - e.g. programmers, software and hardware analysts - who, though authorised to use the computer workstation, only have a limited, sector-specific knowledge of the system that does not offer them the opportunity to adopt significant conduct pursuant to the aforementioned art. 640-*ter* of the Italian Criminal Code with the same ease as the "system administrator".

Then with reference to the aggravating circumstance of "**theft or unlawful use of a third party's digital ID to the detriment of one or more parties**" (see art. 640-*ter*, paragraph 3, Italian Criminal Code), this applies when the offender has acted as described in art. 640-*ter* of the Italian Criminal Code "as a result of" the theft or unlawful use of a third party's digital ID.

A "digital ID" is commonly understood to be the set of information and resources granted to a particular user by an IT system, which (as instead defined in art. 1, paragraph u-*ter*, Legislative Decree no. 82 of 7 March 2005) consist in validation of the unique credentials assigned exclusively to a person, allowing his identification on the IT systems by means of appropriate technological means that also guarantee access security.

The purpose of this recent regulatory action appears to be that of implementing digital ID protection with a view to increasing public faith in the use of online services and to restrict the phenomenon of fraud perpetrated (especially in the consumer credit sector) through identity theft.

Lastly, with regard to the instances of how the incriminating case in point might be committed in general, this can occur for example when, after a loan is obtained, the IT system of a public entity is hacked in order to input a loan amount higher than that obtained, or if data on the IT system is tampered with through alteration or illegal input, or by unlawful action on the operating system so that it works differently to that originally programmed, with a view to achieving any interest or benefit in favour of the Company.

3. Criminal offenses pursuant to Article 25 of Decree 231.

As mentioned above, art. 25 of Decree 231 was subject to legislative intervention by Law no. 190 of 6 November 2012 (**art. 1, paragraph 77**) which - as is known - transposed the changes made in particular to the Criminal Code and, as a result, to Decree 231 by the Anti-corruption Decree. Law no. 3 of 9 January 2019 (so-called "Briber destroyer") has introduced further amendments, by bringing into the category of crimes against the Public Administration, which may trigger the company's liability, the offense of Trading in influence provided for in art. 346-*bis* of Criminal Code, and the imposition of higher sanctions applicable to the company.

Before moving on to discuss the aforementioned amendments, it is worth mentioning in general the extent of the reform of 2012 , which did not only affect the Italian legal system of punishment (envisaged in the Criminal Code and in Decree 231) of the phenomenon of bribery, but also offered a number of tools and applied numerous structural changes to Public Administration, for the implementation of a preventive (and repressive) strategy against bribery which, in certain aspects (to be discussed later in this document), refer to the regulations regarding administrative liability of entities affected by an offense, and organizational units in particular.

3.1. The aim of the regulatory reform by Law No. 190 of 6 November 2012

The aim of the regulatory reform, for the purpose of the aforementioned Law 190/2012, is to combat the increasing phenomenon of corruption.

This purpose was clearly expressed in Mario Monti's words, at that time the Italian Prime Minister, which followed the «*Report of the Commission for the study and processing of proposals*

regarding the transparency and prevention of corruption in public administration», Rome – 2012[80]: «*The spread of such corrupting practices undermines the confidence of trade and companies, dissuades foreign investments and one of its several consequences is the declining competitiveness of this country. For these reasons the battle against corruption has become a priority for the Government*».

Moreover, the Minister of Public Administration, who instituted the aforementioned Commission, stated that: «*as confirmed by international data, corruption is still* ***a widely spread phenomenon in our country****. It is one of the main causes of service* ***inefficiency*** *in the community, of the instability of public finances, of people's* ***mistrust*** *of democratic institutions. Corruption is, in fact, the cause of enormous economic and social costs because it compromises the equality principle, undermining equal opportunities, becoming one of the factors that lead to social disintegration. In this way, it is necessary for the system – and for the administrative practices enforced – to include preventive measures for the phenomenon*».

During the opening of the legal year of the Court of Audit, Alfredo Lerner, the Vice Attorney General, referring to damages caused to the Public Administration as a consequence of criminal offenses, and in particular to the phenomenon of corruption, acknowledging how extensive it is actually becoming (about 60 billion euros a year[81)], stated that «*Late in 2010 the international press reported the result of a study conducted by Transparency International, a study about the awareness of corruption in the Public Administration of various countries, in the* ***chart that includes all the countries examined Italy is among the last.*** *(...) Despite the special focus on corruption offenses, broadly speaking, (...)* ***Italy has not achieved significant results in the reverse trend****: the insufficient data collected by the Research System of the Ministry of Interior between 2004 and 2010 show* ***a very slight downward trend****. Even the* ***positive results*** *related to the execution of incisive and extensive judicial investigations are absolutely provisional and evanescent, unless followed by an adequate policy of prevention that aims to change the reference framework that made corruptive conduct possible. Meanwhile, there is a significant decrease in the number of reports indicating some* ***kind of habit in the phenomenon*** *that could lead to a real "corruption culture" (...)*»[82].

[80] The aforementioned Commission was instituted by Filippo Patroni Griffi, Minister of Public Administration, by means of a decree signed on 23 December 2011.

[81] See*: Opinion of the High Council of Judiciary about Law Decree no. 2156 – B, approved by the Senate of the Republic on 17 October 2012 concerning: "Regulations for the prevention and repression of corruption and illegality in Public Administration.", Resolution of 24 October 2012: «In economic terms, the amount of resources that corruptive activities appropriate from public funds has been estimated at about 60 billion euros a year» (paragraph 1).*

[82] See: *Opening Ceremony of Legal Year 2011 – Report written by Mario Ristuccia, Attorney General, meeting of SS.RR., 22 February 2011, Luigi Giampaolino, President, pages 63, 64.*

The need to adjust the system of prevention and repression of corruption stems, therefore, from higher considerations, from commitments undertaken by our country over the years, taking part in several international agreements[83], from, as many people say, ethical reasons compared with the conduct of the ruling class, mainly intended to achieve personal interests and damaging the proper performance of Public Administration[84].

Under these circumstances, it seems obvious that parliamentary procedures, which later gave rise to Law 190/2012, were necessarily lengthy, complicated and tortuous because of the aims of the Reform.

In fact, more than two years of parliamentary work and major changes to the source text were needed to gain final approval, on 31 October 2012, from the Chamber of Deputies (the Senate approved it on 17 October 2012) of the bill "Regulations for the prevention and repression of corruption and illegality in Public Administration." (the Anti-corruption Decree), which became Law 190/2012, published in the Italian Official Gazette no. 265 of 13 November 2012.

The Anti-corruption Decree was a definite breakthrough in the legislative approach to the phenomenon, because through this the lawmakers pursued two different aims: preventive, through reforms and organizational and administrative changes in Public Administration in order to strike at the sources of corruption, and crime repressive, through harsher punishment, among other things, for corruption-based offenses and the introduction of new offenses.

The Ministerial Committee for the fight against corruption «admits that approval of the new Law 190/2012 is Italy's opportunity to introduce new measures and improve existing measures through coordinated action to implement effective strategies for preventing and combating corruption and, in general, illegality in Public Administration» (See page 1 of "Guidelines for the Department

[83] This refers in particular to the **UN Anti-corruption Convention** adopted by the UN General Assembly by Resolution no. 58/4 of 31 October 2003, ratified by Italian Law no. 116 of 3 August 2009 (so six years later), and to the two **European Council Conventions of 1999** - the Criminal Law Convention on Corruption, signed in Strasbourg on 27 January 1999 and the Civil Law **Convention on Corruption signed on 4 November 1999** - which were transposed to Italian Law only last year, by Laws no. 110 and 112, respectively, both dated 28 June 2012.
It should be remembered that the opening words of art. 1, Italian Law 190/2012 are: "In implementation of Article 6 of the UN Anti-corruption Convention, adopted by the UN General Assembly of 31 October 2003 and ratified by Italian Law in Law no. 116 of 3 August 2009, and of Articles 20 and 21 of the Criminal Law Convention on Corruption signed in Strasbourg on 27 January 1999 and ratified by Italian Law no. 110 of 28 June 2012, ...". Also important are the invitations of international and supranational bodies, such as in the report produced by the GRECO Statutory Committee, i.e. the Group of States against Corruption set up in 1999 by the European Council to monitor Member States' compliance with anti-corruption standards and to encourage the implementation of necessary reforms, offering a best practices exchange platform on issues regarding the prevention of corruption and bribery.
Lastly, on this point note the "Report on the Phase III Application of the OECD Anti-corruption Convention in Italy" (the Organization for Economic Co-operation and Development), published in December 2011 by the Working Party on Corruption, which assesses and makes recommendations on the implementation and application in Italy of the OECD Convention in the battle against bribery and corruption of foreign public officials in international economic transactions, and the 2009 Council Recommendations on enhancing the battle against bribery and corruption of foreign public officials in international economic transactions.

[84] See: *Data sheets issued by the National Legal Council regarding* Law 190/2012 – Rome, 13 November 2012: «*the reform made a piecemeal attempt to mitigate the increasingly pressing demand, which came from several parties, to make the conduct of the Italian ruling class ethical, because for a very long time this class has aimed to achieve personal interests, damaging its Public Administration and the proper functioning of the "administrative machine" as a whole*» (page 4).

of Public Administration establishment of the National Anti-corruption Plan referred to in Law no. 190 of 6 November 2012", issued on 12 March 2013).

In addition to Article 2, which includes the only clause on financial invariance, the aforementioned Law contains just one other Article, made up of 83 paragraphs, in which the aforementioned aims are explained.

3.2. The organizational and administrative aspects of the Reform.

Regarding the relevant aspects of the Reform, **Article 1**, **paragraph 1** to **paragraph 74**, is concerned with implementing a strategy for preventing agreements and corruptive conduct through three interrelated[85] factors:

1) the Interministerial Committee, which must instructions through the issue of guidelines as already mentioned (see Prime Minister's Decree of 16 January 2013);
2) the Department of Public Administration, which must propose new methods and organize the prevention strategies and their application;
3) the National Anti-corruption Authority, which consists of the Commission for Evaluation, Transparency and Integrity of Public Administrations – C.I.V.I.T. (instituted through Legislative Decree 150/2009), which must control, prevent and combat corruption and illegality in Public Administration (paragraph 1).

Some of the main functions of the Authority are:

- a strictu sensu preventive function, through collaboration with equivalent foreign authorities, approval of the National Anti-corruption Plan – N. A. P., analysis of the reasons and factors leading to corruption and the identification of strategies to prevent and combat the phenomenon;
- an advisory function, executed through optional comments on the compliance of the action and conduct of public officials with the law, codes of conduct and Collective Agreements, and relating to the external roles performed by administrative managers;
- a function of control and supervision of the actual application and efficacy of the measures taken by Public Administrations and compliance with the regulations on transparency of administrative activities;
- the obligation of annual reporting to Parliament (paragraph 2).

The Authority has investigative powers, explained by the «request for news, information, records and documents from Public Administrations», and the power of direct intervention, i.e. it can «order the implementation of acts or provisions demanded by the anti-corruption plans and the

[85] See: no. 1 Circular, 25 January of 2012 made by the Presidency of the Council of Ministers – Department of Public Administration - Studies and Consultancy Services for the Treatment of the staff.

regulations on transparency in administrative activities» which consist in «the repression of conduct or action that may be in conflict with the previously mentioned plans and regulations on transparency» (paragraph 3).

These powers were reinforced by the new Law no. 221 of 17 December 2012 (converted from Legislative Decree no. 179 of 8 October 2012), which considers the Authority's option to call upon assistance from the Italian Tax Police and the Inspectorate of the Department of Public Administration in the investigations and controls necessary.

The preventive system implemented by the 2012 Reform consists of nationwide implementation of the National Anti-corruption Plan by the Department of Public Administration (paragraph 4, letter c), and, regarding every central and local Administration (regional and other local authorities) the implementation of Three-Year Prevention Plans, which analyze the different levels of risk of corruption of the offices and illustrate the organizational action taken to prevent this phenomenon (paragraph 5).

On 12 March 2012, the Ministerial Committee for the fight against corruption issued the "Guidelines for the Department of Public Administration establishment of the National Anti-corruption Plan referred to in Law no. 190 of 6 November 2012", to which the Department of Public Administration and each Public Administration must refer when developing the aforementioned Three- Year Plans (see paragraph 4).

As explained in the aforementioned Guidelines, «the N.A.P. is the tool through which priority strategies for the prevention and the combating of corruption in Public Administration, on a national scale, can be identified. The N.A.P. does not in itself qualify as an activity performed, which has a final deadline, but as a set of preventive tools which are gradually refined, changed or replaced depending on the feedback obtained from their application » (page. 2).

The N.A.P. will have to make implementation of the guidelines flexible and differentiated for Public Administrations, separating guidelines for general application from those to be evaluated by the beneficiary Administrations.

In part-reference to the logic and scope of the Organization, Management and Control Models pursuant to Decree 231 and, in general, to risk control, assessment and management, which typically relates to the private sector, the Three-Year Plans must meet the following requirements:

1) identifies activities which are highly exposed to the risk of corruption (sensitive activities of Decree 231);
2) for these activities, plans education, implementation and control systems for the decisions, which adequately prevent the risk of corruption (the organizational forms of Decree 231);

3) with particular regard to the activities identified, includes reporting obligations to the Anti-corruption Manager (paragraph 7) who checks the function and compliance with the plan (also required for the Supervisory Board);
4) compliance with deadlines as explained in the law or regulations for conclusion of the provisions;
5) monitors relations between the Administration and companies with which it enters into contractual arrangements, or with companies interested in authorizations, concessions or the disbursement of any kind of economic benefits, also checking possible relationships or affinities existing between the owners, administrators, officers and employees of the such entities and the managers and employees of the Administration;
6) identifies additional transparency obligations over and above those specified by law (paragraph 9).

The Anti-Corruption Manager, appointed in every Administration, has the specific duties of:

checking the efficient application of the Plan and its suitability, and proposing possible changes to the Plan when significant infringements of the regulations are discovered, or following changes in the organization or in the activities of the Administrations;

after approval from the competent manager, checking actual rotation of duties in the offices where activities exposed to a higher risk of corruption are performed;

identifying staff members to attend education programmes organised by the Institute of Public Administration as referred to in paragraph 11 (paragraph 10).

According to the regulations governing administrative liability, the Anti-corruption Manager is responsible for implementing the Consolidated Law on Public Administrations, and also at disciplinary level, in the event a corruption offense committed within the Administration is confirmed, or a tax-related offense or offense against the Public Administration's image[86].

[86] See art. 21, Legislative Decree no. 165 of 30 March 2001, as amended, on "***Executive liability***": "**1.** *Failure to achieve the objectives ascertained through the results of the appraisal system referred to in Title II of the legislative decree implementing Law no. 15 of 4 March 2009, on the optimisation of public service productivity and on the efficiency and transparency of public administrations, or the failure to comply with directives attributable to executives, subject to challenge and without prejudice to any disciplinary liability in accordance with the contents of collective pay agreements, lead to the impossibility of renewal of such executive office. In relation to the seriousness of cases, subject to challenge and in compliance with the adversarial system, the administration may also cancel an appointment that makes the executive open to the roles referred to in Article 23, or terminate the employment relationship in accordance with the provisions of the collective pay agreement.* **1-bis.** O*ver and above the cases referred to in paragraph 1, against an executive who, subject to challenge and in compliance with the adversarial system according to procedures envisaged by law and national collective pay agreements, is found guilty of violation of the duty of supervising compliance - by staff assigned to his offices - of the quantitative and qualitative standards set by the administration, in line with Commission guidance pursuant to Article 13 of the legislative decree implementing Law no. 15 of 4 March 2009 on the optimisation of public service productivity and on the efficiency and transparency of public administrations, after consulting the Anti-trust Authority, remuneration is reduced by up to eighty per cent in relation to the seriousness of the violation.* [**2.** repealed]. **3.** *The provisions relating to executive offices held in police forces,*

For companies and authorities, the law provided for a particular means of exclusion, the "Manager", which reiterates the provisions of Article 6 of Decree 231 («the authority shall not be liable if it can prove that (…)»).

In fact according to the above terms, the Manager is liable, «*unless he proves all of the following circumstances*»:

a) arranging, before commission the offense, that the Three-Year Plan, referred to Article 5 complies with the related provision (paragraph 9) and performs the required tasks (paragraph 10);

b) monitors the functioning and compliance with the Plan.

The existence of a "Code of Ethics", a code of conduct for Public Administrations, «in order to assure services qualities, prevention of corruption phenomenon, respect of constitutional duty of diligence, loyalty, neutrality and the exclusive service in protection of the public interest», if any, should also be reported (see the new Article 54, paragraph 1, Consolidated Law on Public Administration, amended by paragraph 44 of Article 1, Law 190/2012).

Each Public Administration defines a code of conduct which complements that specifically adopted by the Government (see Article 54, paragraph 5).

Moreover the Code imposes the ban on every public employee of receiving or accepting, for any reason, any payment, gift or other benefit related to the performance of their duties or assigned tasks, except for gifts, provided they are of modest value and within the limits of normal relations of courtesy.

Violation of the duties prescribed by the Code results in the disciplinary liability of the public employee and for the purpose of civil, administrative and accounting liability also apply «every time such liability is associated with the violation of duties, obligations, laws or rules, included those relating to implementation of the corruption prevention plan (see Article 54, paragraph 3).

In implementation of the aforementioned provisions, Italian Presidential Decree no. 62 of 16 April 2013 was issued, "Regulations containing the code of conduct for public employees pursuant to art. 54, Legislative Decree no. 165 of 30 March 2001".

In this respect, note the provisions of art. 4 of the aforementioned Decree in relation to "Gifts, remuneration and other benefits": "1. An employee shall not request, or solicit, for himself or for

diplomatic and magistrature careers and in the armed forces or state fire brigades shall remain valid".

others, gifts or other benefits. 2. An employee shall not accept, for himself or for others, **gifts** or other **benefits**, except those customarily given and of **modest value** on an **occasiona**l basis as part of normal courtesy and international norms".

The regulation defines the concept of "modest value" in the following terms: "For the purpose of this article, gifts or other benefits of **modest value** shall mean those of a value generally not exceeding **€ 150**, also in the form of a discount. The codes of conduct adopted by individual Administrations can envisage lower limits, or even exclude their acceptance, in relation to the characteristics of the entity and the type of duties performed" (art. 4, paragraph 5).

As a general rule, however, it is envisaged that "In any event, regardless of the circumstance that the fact constitutes an offense, the employee shall not request, for himself or for others, **gifts or other benefits even of modest value as payment for performing or for having performed an action in the course of his own duties from parties that could benefit from decisions or activities inherent to such duties, or from parties for which he is or will be called upon to perform or exercise an activity or power inherent to the office he holds**" (art. 4, paragraph 2, sub-paragraph 2).

It further establishes that "An employee shall not accept cooperation assignments from private parties that have, or in the past two years have had, a significant economic interest in the decisions or activities inherent to the office he holds" (art. 4, paragraph 6).

The aforementioned principles and rules of conduct are also dictated in reference to employment relations with staff below or above the grade held.

In fact, "*An employee shall not accept, for himself or for others, from another member of staff of a lower grade than himself, either directly or indirectly, any gift or other benefit except those customarily given and of modest value. An employee shall not offer, directly or indirectly, any gift or other benefit to a member of staff of a higher grade than himself, except those customarily given and of modest value*" (art. 4, paragraph 3).

Furthermore, "Gifts and other benefits in any event received by an employee, outside the cases permitted under this Article, shall be immediately made available to the Administration to arrange their return or for devolvement to institutional purposes" (art. 4, paragraph 4).

3.3. The crime repression profiles of the Reform.

With reference to aspects of a crime repressive nature, **article 1**, **paragraphs 75-83** refer to the disciplinary measures designed to reinforce the efficiency and effectiveness of those already existing to combat the phenomenon of bribery.

More precisely, major changes have been made (amongst others) to the Criminal Code (in

particular affecting a number of the key offenses against Public Administration) and new offenses have been introduced under the categories of Offenses against Public Administration and Corporate offenses.

The following paragraphs discuss only the major regulatory changes referring to the liability of entities dependent upon an offense, whilst purely for the sake of completeness a brief summary is then provided of the further contributions given by the 2012 Reform.

1) On the issue of accessory penalties, a new offense has been introduced as referred to in art. 319-quater of the Italian Criminal Code which, if found guilty, involve a ban on all arrangements with Public Administration pursuant to art. 32-quater of the Italian Criminal Code[87] or the termination of employment or working relations pursuant to art. 32-quinquies of the Italian Criminal Code (art. 1, paragraph 75, sub-paragraphs a and b).

2) Art. 314 of the Italian Criminal Code, which - as is known - punishes the offense of "Embezzlement", has been amended in terms of penalties in the sense that the minimum main term of imprisonment is increased from 3 to 4 years, with other elements of such cases remaining as already prescribed (art. 1, paragraph 75, sub-paragraph c).

3) Art. 322-ter of the Italian Criminal Code adapts the penalty of equivalent confiscation to the provisions regarding ordinary confiscation, in that the measure is now extended not only to the "price", but also to the "gain" from the offense (paragraph 75, sub-paragraph o).

4) Art. 323 of the Italian Criminal Code, which punishes the office of "Abuse of office" has seen the penalties "reviewed" upwards (was from 6 months to 3 years' imprisonment; now 1 to 4 years' imprisonment) (paragraph 75, sub-paragraph p).

To conclude, before moving on to examine the presumed offenses pursuant to the new art. 25 of Decree 231, the recent Reform was generally welcomed by most legal authorities.

In fact, the Court of Auditors generally "confirmed its positive opinion already expressed in relation to this measure at the hearing of 2010, based on the fact that, unlike in the past, the approach to the problem is not prevalently imposed under criminal law, as traditional under the Italian system, but rather under administrative law, i.e. tending to identify remedial action of an organisational nature. The remedial action is therefore designed to prevent or highlight the problem and is in addition to mere disciplinary measures".

The Court then pointed out "the strong technical and ethical significance, in the light of that already established in articles 11 and 16, Italian Legislative Decree no. 150 of 27 October 2009, of enhancing the transparency of administrative activities to the "level of essential services involving

[87] Law no. 3 of 9 January 2019 has added the offense of Trading in influence, provided for in art. 346-bis c.p., in the group of crimes which result, in the event of criminal conviction, in the inability to make arrangements with Public Administration.

social and civil rights, pursuant to art. 117, paragraph 2, sub-paragraph m) of the Constitution. Lastly, appreciation was also expressed for the introduction of the National Anti-corruption Programme, in reference to its origination endogenous to the Administration, and its nature as a remedy in programmatic and legal terms against the onset of situations of corruption"[88].

The Director of Public Governance and Territorial Development of the OECD, Rolf Alter, also welcomed this measure, stating: "The Anti-corruption Decree is heading in the right direction as it is based on an agreement between political decision-makers".

Similarly, a positive review of the measure came from **CONFINDUSTRIA**.

In effect, on the one hand the General Manager of Confindustria, Marcella Panucci, confirmed that "The Anti-corruption Decree is highly innovative. For the first time an integrated approach to the problem has been adopted; prevention is considered on a par with repression", and on the other hand by Confindustria's Delegate for Legitimacy, Antonello Montante, who emphasised that "Confindustria is arranging to adapt its 231 Guidelines to the new laws and new presumed liability offenses pursuant to Decree 231 (for example, organised crime-related offenses, violation of intellectual property rights, offenses against industry and commerce and environmental offenses) introduced after the recent 2008 update, and will do the same in relation to the new offense of bribery between individuals introduced by the Anti-corruption Decree", which was approved today by the Lower House.

Lastly, in its opinion submitted to the Italian Ministry of Justice pursuant to art. 10, Law 195/58, the **Supreme Judicial Council** (SJC) confirmed "to conclude ... the determination that tends to be open to systematic global reform of offenses against Public Administration has to be viewed positively; one which, to achieve its aims, nevertheless calls for certain regulatory amendments and further incisive action on issues not contemplated".

The SJC referred in particular to the statute of limitations[89]: "(...) it seems appropriate to point out the serious risk of launching substantive law reforms, given the current statute of limitations for offenses, that could result in the system running on empty" [90].

[88] See the *Report on Activities conducted in 2011* (pages 28-29, presented by Presiding Judge Giampaolino of the Court of Auditors, at the inauguration of the 2012 judicial year. Note that, on 14 September 2011, the hearing of the Presiding Judge before Committees I and II of the Lower House on the Anti-corruption Decree no. 4434, "*Provisions for the prevention and repression of bribery and corruption and unlawful practices in public administration*", on which law decree that Presiding Judge had already been questioned by the Senate on 27 July 2010.

[89] See the aforementioned *Opinion of the Supreme Judicial Council*: "*Without a radical review of the statute of limitations, every amendment to the law risks being in vain, in that statistics show, and this has been demonstrated often in European studies (the latest in the GRECO Report of 23 March 2012) that the main obstacle to repression of the bribery and corruption phenomenon in Italy is the current system of calculation and too-short time-barring limitations*" (paragraph 3).

[90] See previously cited *Opinion of the Supreme Judicial Council* (paragraph 6).

4. Individual offenses pursuant to the new art. 25, Decree 231.

With specific regard to the provisions of art. 25 of Decree 231, **art. 1, paragraph 77, Law 190/2012** firstly envisages amendment to the numbering of this provision as follows: (**paragraph a**) "Extortion, unlawful inducement to give or promise benefits and bribery", and secondly introduces the new offense pursuant to art. 319-quater of the Italian Criminal Code in the body of the article (**paragraph b**).

Subsequently, Legislative Decree no. 75/2020 further amended the aforementioned provision, which is now entitled «*Embezzlement, extortion, undue inducement to give or promise benefits, bribery and abuse of office*», since there are also mentioned (in the first paragraph of Article 25) the offences referred to in Articles 314, para 1, 316 and 323 of the Criminal Code, for which the entity may be held liable in the event of offence against the financial interests of the European Union (see below).

As a result of this action the aforementioned provision governs the following offenses.

- *Extortion (art. 317, Italian Criminal Code).*

The original offense pursuant to art. 317 of the Italian Criminal Code, "Bribery", has been significantly amended by art. 1, paragraph 75, sub-paragraph d, Law 190/2012, which also gave rise to a new offense as referred to in art. 319-quater of the Italian Criminal Code, with a view to balancing the discrepancy between significant criminal conduct qualifying as bribery compared to others.

As stated in the Office of Principles' Report of the Supreme Court, in its analysis of Italian Law 190/2012 (Report no. III/11/2012 of 15 November 2012), "the recommendations originating in particular from the "Report on the Phase III application of the OECD Anti-corruption Convention in Italy" also concerned the need to avoid application of the offense of extortion as a possible means of exemption from liability for international bribery, and the GRECO Report pointed out the need to avoid that the measure, not recognised in other European codes, allows the offender to escape punishment by claiming he is a victim of extortion, the introduction of the new offense appears to be the result of a decision in line with international offenses, though it heralds a considerable number of complications given, at this point, the combined presence in the system of no less than three contiguous types of offense (bribery, unlawful inducement and extortion)".

In particular, the rewording of the regulation in question largely became necessary in order to avoid impunity loopholes in the offenses of "environmental extortion" which - as is known - are characterised by the absence of conduct typical of coercion and inducement by a public official in the original provisions of art. 317 of the Italian Criminal Code and the determination of individual-related aspects in giving or promising money or other benefits, in the conviction that the amount required

would not otherwise be obtained.

In accordance with a Supreme Court case-law pronouncement, «*the connotations of environmental extortion are situations in which - as an effect of long-standing, widespread illegal practices in certain sectors of Public Administration - coercion or inducement attributable to an offender who is a Public Official becomes the extent of a deviant reference framework for that sector (and therefore of the specific "environmental" sphere)*» (see Supreme Court, Criminal Section VI, judgment no. 35269, 14 September 2012).

As is known, prior to the aforementioned changes, art. 317 of the Italian Criminal Code punished the conduct of a Public Official or public service officer who, abusing of his title or powers, coerced or induced someone into procuring, for himself or others, an undue gain in the form of money or other benefit.

With the 2012 Reform, the Law aimed to limit the offense in question only to cases in which the abusive conduct led to actual coercion of the individual. For this reason it envisages that the only offender in this offense is the person holding the authorisation powers that could give rise to *metus publicae potestatis* for the private party, i.e. the Public Official and also a public service officer. Article 3 of Law 27 May 2015 no. 69 amended Article 317 c.p. so as to re-introduce the punishment of the public service officer.

In this respect, case law has claimed that "*metus publicae potestatis*" is found not only when the willingness of the individual is coerced by an explicit threat of damage or is misled by deception, but also when dominated by the superior position of the Public Official who, even if no explicit and open demand is made, acts in such a way as to give the victim the distinct impression that he must adapt to the decisions of the Public Official to avoid the danger of being subject to bias, thereby inducing him into giving or promising money or other benefit" (see Supreme Court, Criminal Section VI, judgment no. 17234, 22 April 2010).

Consequently, coercion remains subject to art. 317 of the Italian Criminal Code, when used by the public official, for whom a heavier punishment is now envisaged (was 4-12 years' imprisonment; now 6-12 years' imprisonment).

Inducement, on the other hand, is now covered by a new, separate offense entitled "Unlawful inducement to give or promise money or other benefits" (art. 319-quater, Italian Criminal Code), in which the offenders are as much the Public Official as the public service officer, as well as the private individual (described later in this document).

Moving on to discuss the offense pursuant to the "reformed" art. 317 of the Italian Criminal Code, note that this is committed when the Public Official, abusing of his title or powers, forces a private party to promise or procure, for himself or for a third party, undue money or other benefit.

In this latter case, the adverb "unlawfully" used by the incriminating regulation does not apply to the subject matter of the Public Official's demand, which might not be objectively unlawful, but rather to the means adopted to make that demand and its implementation (see Supreme Court, Criminal Section VI, judgment no. 27444, 1 February 2011).

However, the decisive nature remains implicit, which for the purpose of the offense in question refers to the abuse of the superior power exercised by the public party against the private counterparty to generate or insinuate in the private counterparty a state of fear so as to bend him to the public official's will.

As both the superior position and that of succumbing can be manifested in a variety of forms, it is not possible to give a full list of the types of extortive conduct involved.

For this reason, the indications are limited to a general definition of "coercion", i.e. the only conduct characterising the new offense of extortion, which refers to any related psychological coercion sufficient to imply a prospect of unjust harm to the victim, who remains however free to accept the demand or to (potentially) suffer the harm threatened.

In this respect it is specified that "On the issue of extortion, the coercion that constitutes the objective element of the offense, as amended by art. 1, paragraph 75, Law no. 190 of 6 November 2012, implies the Public Official's use only of moral violence, which consists in a threat, explicit or implicit, of unjust harm, causing asset-related or non asset-related damage to the victim. (As its justification the Court specified that the concept of coercion does not include the use of physical violence, incompatible with the abuse of title or office)" (Supreme Court, Criminal Section VI, Roscia case, judgment no. 3251, 5 December 2012).

It further specifies that "In the offense of extortion pursuant to art. 317 of the Italian Civil Code, as amended by art. 1, paragraph 75, Law 190/2012, coercion consists in the conduct adopted by the Public Official that is suitable for generating a position of "metus" in the private party that derives from the exercise of public power, sufficient to limit the free will of the latter and placing him in an unjust defensive position with respect to the demands, veiled or otherwise, for money or other benefit, such conduct being different to that of inducement, the objective element of the new offense pursuant to art. 319-quater of the Italian Criminal Code (though introduced by the same art. 1, paragraph 75 of Law 190), which can instead be manifested in an implicit or tepid approach by the Public Official or public service officer that is in any event able to determine a position of subjection, or in a more

underhand persuasive action" (see Supreme Court, Criminal Section IV, judgment no. 3093, 18 December 2012)[91]

Consequently, also as a result of the amendments introduced by art. 1, paragraph 75 et seq. of Law 190/2012, extortion is committed, for example, when the Public Official who "in his dealings with the private counterparty, uses an abrupt and stressful approach, accompanied by conduct in abuse of his title and/or powers, designed to generate in the recipient a reduced "decision-making space", suitable to inducing the latter into promising or giving an undue benefit" (see Supreme Court, Criminal Section VI, judgment no. 10981, 21 February 2013).

The offense in question is committed by the Public Official, for example, when he uses the methods indicated and apparently grants the private party the power to affect the issue of payment instructions, associated with a supply contract with the PA, and demands a fax from the private party to this effect, or in the case in which a Public Official, during the course of an inspection discovers a violation by the inspected company, threatens the company with serious consequences (of a criminal or administrative nature) if it does not accept his demand for money or other benefit.

In relation to such cases the victims of the offense are, at the same time, the Public Administration and the private party subject to extortion.

With regard to the offender, on the other hand, the regulation punishes only the public official which, under the terms of art. 322-bis of the Italian Criminal Code, must also be taken to mean any member of EU bodies and any official of the EU or foreign countries.

Furthermore, despite this being an offense committed by a public official[92], by virtue of the general principles of collusion (art. 110 et seq., Italian Criminal Code), any member of ALNG S.r.L. could hypothetically participate in the commission of this offense if, by his own conduct, he materially acts in concert with the Public Official in coercing, or threatening or using other fraudulent means upon the victim to induce him to issuing the undue promise, or if he morally acts in concert with the aforementioned government officer in any activity or conduct which, by acting upon the will of the victim, giving rise to or reinforcing the proposed offense (always provided that such conduct in some way results in a benefit for the Company).

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[91] In the same sense, the Supreme Court, Criminal Section VI, judgment no. 11944, 25 February 2013 states: "***Coercion**, constituting the objective element of extortion pursuant to art. 317 of the Italian Criminal Code, as amended by art. 1, paragraph 75 of Law 190/2012, is committed when the Public Official takes action with methods or with forms of pressure that do not leave room for a freely made decision by the recipient of the demand, who then decides, without having been offered any direct advantage, to give or promise a benefit for the sole purpose of avoiding the damage threatened. This is different to **inducement**, the offense covered by art. 319-quater of the Italian Civil Code, which is instead committed when the Public Official or public service officer takes action with more tepid methods or forms of pressure, sufficient to leave room for the recipient of the demand to decide, who then becomes an accomplice after the fact because he can expect to benefit directly*". Upheld by the Supreme Court, Criminal Section VI, judgment no. 11942, 25 February 2013.

[92] It is defined as "reato proprio" the offense which can be committed only by subjects holding a certain position/qualifications (such as a Public Official or a Person in charge of a public service with respect to the crimes against the Public Administration, or the bankrupt person in the bankruptcy crimes).

- Unlawful inducement to give or promise money or other benefits (art. 319-quater, Italian Criminal Code).

The new offense introduced by the 2012 Reform, unless a more serious offense is confirmed with a punishment from six to ten years and six months of imprisonment, incriminates a Public Official or public service officer who, abusing of his title or powers, induces someone into unduly giving or promising, to himself or to a third party, money or other benefit[93]

As mentioned above, the introduction of this offense is strictly associated with the need to punish the offense described by case law as "environmental extortion" or, in any event, to punish conduct qualifying as borderline between extortion and bribery.

"As is known, the decisive element that differentiates between extortion and bribery of a public official (regardless of the official's duties) lies in the conduct traceable in the intent of the Public Official and his private counterparty, and therefore in the type of relationship established between the two parties. If as part of the offense of bribery their respective intents are more or less on an equal basis (each of the two aiming, in a deviate form but freely, for a personal benefit or interest), in extortion, vice versa, the Public Official exploits his authority and powers of office to coerce or condition the will of the victim, giving him to understand that he has no alternative but to submissively accept his unjust demands, to the extent that the free will of the private counterparty is conditioned by the feeling that he is subject to the predominant will (or perceived as such) of the Public Official" (see Supreme Court, Criminal Section VI, judgment no. 35269, 14 September 2012).

Therefore, where the position of subjection of the private party does not exist or dissipates, and the private party acts as lead player in guaranteeing the unlawful benefits, using criminal mechanisms or practices that deviate from the system standard where need be, then the unlawful relationship between the Public Official and the private counterparty develops on an essentially equal plane, the situation is one of corruptive agreement which, according to the previous regulations, would qualify as bribery by a public official, whereas now the punishment is delivered pursuant to the new art. 319-*quater* of the Italian Criminal Code.

It is for this reason that the private party - who retains a certain degree of free will as regards the inducement perpetrated by the Public Official or public service officer - is considered punishable, albeit to a lesser extent than the government officer (imprisonment of up to three years, or up to four

[93] See the new art. 319-*quater* of the Italian Criminal Code, as amended by Law 27 May 2015, n. 69, "***Unlawful inducement to give or promise a benefit***", which states: "**1.** *Unless a more serious offense is confirmed, a Public Official or public service officer who, abusing of his title or powers, induces someone into unduly giving or promising, to himself or to a third party, money or other benefit is punished by six to ten years' and six months' imprisonment.* **2.** *In the cases envisaged in paragraph 1, the person giving or promising money or other benefit is punished by up to three years' imprisonment or by up to four years' imprisonment if the fact offends the financial interest of the European Union and the damage or profit are higher than Euro 100.000*».

years when the offence offends the financial interests of the European Union and the damage or profit exceeds € 100,000), and no longer a victim as in a case of extortion by coercion.

In this respect, it is confirmed that such an option, together with the "topographic detachment" of the new criminal offense compared to that of extortion, placed in a position alongside that of bribery, "indicates how in effect the new offense is placed on the border between bribery and extortion or, alternatively, in a position closer to that of bribery in which, under art. 321 of the Italian Criminal Code, the party promising or paying the benefit is also punished, than to the offense of extortion".

And with particular reference to the distinction between the offense in question and true bribery it was noted that "(...) it is in effect the more limited extent of the punishment envisaged for "extortion" by inducement (up to three years' imprisonment) compared to the much heavier punishment envisaged for the briber (as already mentioned from four to eight years' imprisonment under the new provision), that indicates the fact that the Law seems to have considered the suitability as a mitigating factor, in terms of punishment, of "inducement" by the Public Official to be the diversifying factor compared to bribery".

Then with regard to the material profile of the offense, the "inducement" has to refer to conduct sufficient to result in a relative psychological state of coercion, an abuse of power not applied directly, but rather indirectly and mediated, in such a way that the party subject to the coercion can always withdraw by refusing to participate.

According to constant Supreme Court guidance - formed under the previous art. 317 of the Italian Criminal Code - inducement is committed in the presence of oppressive conduct by the Public Official or public service officer (allusions, silence, metaphor), suitable to influencing the motivational process of the victim, generating a psychological state of subjection.

Lastly, it is specified that "(...) Also qualifying as inducement, pursuant to art. 319-quater of the Italian Criminal Code, is the conduct of a Public Official that claims there could be unfavourable consequences deriving from application of the law to obtain undue payment or promise of money or other benefit. This is, again, an instance of prospecting damage, but in this case it is not unjust and, rather, the party that would legitimately suffer aims to avoid that, by allowing the unlawful demand. It follows that **the distinction between the offenses pursuant to art. 317 of the Italian Criminal Code and those of art. 319-quater of the Italian Criminal Code** do not **pertain** to the psychological intensity of the pressure exerted, but rather **to the quality of such pressure**: the threat or otherwise in the legal sense. Consequently, we can understand why under the new legislation the party subject to inducement is no longer considered a victim, but rather as an offender that aims to achieve an unlawful result in his favour" (see Supreme Court, Criminal Section VI, judgment no. 7495, 3 December 2012).

And also: “the “inducement” required in order to qualify as “unlawful inducement to give or promise benefits” pursuant to art. 319-quater of the Italian Criminal Code, introduced by Law 190/12, is committed when the conduct of the Public Official is characterised by “abuse of power or title”, i.e. the exercise of power or psychological persuasion against a person to whom the unlawful demand to give or promise money or other benefit is proposed, provided that the person who gives or promises is aware that such “benefits” are undue” (see Supreme Court, Criminal Section VI, judgment no. 8695, 4 December 2012).

Furthermore, the Supreme Court clarified that the relationships between the two offenses in question, following a solution in terms of regulatory continuity, in that “The inducement, required in order to qualify as the offense envisaged in art. 319-quater of the Italian Criminal Code, as introduced by art. 1, paragraph 75, Law 190/2012, is no different in structural terms from that already forming one of the two conduct options under the previous offense of extortion pursuant to art. 317 of the Italian Criminal Code, and therefore consists in the conduct of a Public Official or public service officer who, abusing of his office or title, using various forms of persuasion, suggestion, tacit or otherwise, or by deception, results in someone, aware that the demand is unlawful, giving or promising, for himself or others, money or other benefit” (see Supreme Court, judgment no. 8695/2012, already cited).

It follows that “the current articles 317 and 319-quater of the Italian Criminal Code are in perfect continuity with the previous wording of art. 317 of the Italian Criminal Code ex latu the offender: the joint reading of the two rulings as now amended or introduced by the new provision cover the same area previously covered for extortion under the former art. 317 of the Italian Criminal Code” (see Supreme Court, judgment no. 8695/2012, already cited).

Likewise it is claimed that “as art. 317 of the Italian Criminal Code, now amended, already punished both forms of conduct of the Public Official, the interpreter, making use of the criteria outlined above, will trace back to the cases previously covered by the first or second regulation, disregarding the terminology used in the indictment which must reflect the two generic terms “force” or “induce” used in the previous wording”.

Lastly, note that the back-up clause referred to in the introduction to art. 319-quater of the Italian Criminal Code aims to exclude punishment for unlawful inducement if the event constitutes a more serious offense.

However, it was found that “The function of this clause is not immediately evident, as it is not clear what might be the different offenses that could be committed by the Public Official or public service officer through inducement (except perhaps that of aggravated fraud against the State)”.

It appears, therefore, that "in this way the Law wanted to legitimise not the other conceptual nature of inducement as opposed to coercion, but rather the attributability to the general concept of "inducement" as much as to absolute coercion as to its not producing such an effect, but assigning punishment of the first solely to art. 317 of the Italian Criminal Code, and at the same time the non-criminal materiality of the conduct of a person that becomes a victim of inducement" (see Report no. III/11/2012 dated 15 November 2012 of the Office of Principles of the Supreme Court, already cited).

- Bribery offenses in general (art. 318 et seq., Italian Criminal Code).

As is known, the offense of bribery is divided into various criminal roles (art. 318 et seq., Italian Criminal Code) which have a fundamental common element constituted by "pactum sceleris", i.e. an agreement between the private briber and the public officer corrupted, involving the misuse of public office or the performing of an act contrary to official duties or service (or the omission or delay in performing an official duty) against payment of an undue remuneration.

Bribery offenses are distinguished from that of extortion in that, whilst in the latter - as we have seen - the public party exploits the state of fear generated in the victim, to the extent of corrupting him or eliminating his free will (unjust consent - position of subjection), in cases of bribery the corrupted party and the briber both freely work towards a common unlawful goal.

Therefore the line of demarcation between the two criminal roles is found in the type of relationship between the intentions of the parties involved: equal in cases of bribery, unequal in extortion in full favour of the coercive intent of the public officer which conditions the freedom of the private party to express his own intent, which, to avoid greater detriment, has to comply with the unjust claims of the former (see ex multis Supreme Court, Criminal Section VI, judgment no. 38650, 5 October 2010).

With regard to the many forms of bribery, the regulatory diversification now refers to the different constitutional structure which, as regard the two main offenses referred to in articles 318 and 319 of the Italian Criminal Code, lies in the fact that the "new" bribery of a public official (contrary to the official's own duties), unlike bribery of a public official (regardless of the official's duties), is no longer anchored to the commission of an act specific to the public office or function involved.

Other offenses are instead distinguished in terms of punishment, which changes according to the qualification of the offender, justifying separate regulatory provisions (Public Official pursuant to articles 318-319 of the Italian Criminal Code; public service officer pursuant to art. 320 of the Italian Criminal Code; EU or foreign officials pursuant to art. 322-bis of the Italian Criminal Code in cases of international bribery) whilst, lastly, there are separate provisions envisaging penalties for a

private sector briber (art. 321 of the Italian Criminal Code) and the case of attempted bribery (art. 322 of the Italian Criminal Code.

The Reform under the terms of Law 86/1990 then introduced the following:

- the criminal offense of judicial bribery pursuant to art. 319-*ter* of the Italian Criminal Code, and
- special aggravating circumstances for bribery of a public official (regardless of the official's duties) (art. 319-bis, Italian Criminal Code).

The systematic encoding referred to above was not changed in terms of its original layout by the Reform introduced by Law 190/2012.

In fact, the amendments particularly concerned the offenses under art. 318 of the Italian Criminal Code, now "*Bribery in the exercise of official duties*" and the now stronger punishment of cases of "*Bribery contrary to official duties*" (art. 319, Italian Criminal Code), "*Judicial bribery*" (art. 319-*ter*, Italian Criminal Code), "*Bribery of a public service officer*" (art. 320, Italian Criminal Code) and "*Attempted bribery*" (art. 322, Italian Criminal Code). Law no. 69 of 27 May 2015 and Law no. 3 of 9 January 2019 have imposed heavier sanctions for the crimes mentioned above, as we will see below.

a) Bribery in the exercise of official duties (art. 318 of Criminal Code).

As mentioned above, the Reform cited on a number of occasions was preceded by the rewording of art. 318 of the Italian Criminal Code, in that it replaces the previous offense of "*Bribery by official act*"[94] with "*Bribery in the exercise of official duties*" (or bribery by a public official (contrary to the official's own duties)), which punishes a Public Official who, in relation to the exercise of his duties or powers, receives money or other asset-related benefit or a promise thereof (**art. 1, paragraph 75, sub-paragraph f, Law 190/2012**).

The main distinction between the previous criminal offenses lies in the elimination of the teleological link between the receipt of an undue benefit (or the promise thereof) and performing an official duty, to the extent that this offense is also committed when misuse of the public duty or power is not expressed in a specific act.

The rationale behind such a decision lies in the numerous problems encountered in probate terms of demonstrating the existence of a causal link between the unlawful giving or promise and a specific official duty or service performed.

Therefore, following the aforementioned reform, it is now easier to reconstruct, and with greater

[94] Art. 318 prior to the Reform stated: "*1. A public official who, to perform an official duty, receives a form of remuneration, for himself or for a third party, in money or other benefit that is not due to him, or accepts the promise thereof, shall be punished by six months to three years' imprisonment. 2. If the public official receives remuneration for an official duty he has already performed, the punishment shall be up to one year's imprisonment*".

precision, the confines between the various forms of bribery: on the one hand, bribery of a public official (regardless of his official duties), which is still anchored to the prospect of performing an act contrary to official duty (art. 319, Italian Criminal Code) and on the other hand by bribery of a public official (contrary to the official's own duties), in which the acceptance or promise of an undue asset-related benefit by the Public Official (or public service officer) is regardless of the commission or omission of acts related to their office.

More precisely, pactum sceleris in such cases of bribery essentially refers to an agreement that could involve generic conduct of a Public Official that is identifiable based on his responsibilities or actual scope of action, that could be susceptible to the performance of many individual actions not pre-established or planned, but still relating to the "genus" envisaged, or the performance of an action not necessarily identified *ab origine*, but in any event associated, also in this case, with a genus of actions identified in advance, or the misuse - systematic or otherwise - of public duty in the interests of the private party acting as briber, occurring when the private party promises or delivers to the public party, who accepts, money or other benefit to guarantee the award, without further specification, of future favours, in addition to - as per the previous provision - the purchase/sale of specific public duties or public services against payment of a sum of money or other benefit given or promised to the government officer.

On this last point, it should be remembered that the offense of bribery in question is also committed by mere acceptance of the "promise" of receipt of money or other benefit that is undue, without that promise being necessarily accompanied by actual giving, provided it is identified and susceptible to implementation.

Another new element introduced by the Reform of 2012 refers to the giving of money or other benefit that no longer need to assume the nature of "payment" (i.e. the role of the payment in performing an official duty).

According to certain experts, removal of the remunerative nature of the giving would have consequently led to removal of the requirement of proportion between the action of the private party and that of the public party, which was previously necessary for the offense to be committed.

Lastly, note that the conduct punished under the new art. 318 of the Italian Criminal Code, despite its rewording, in any event shows a minor difference from the case of bribery by a public official, in that it justifies a lighter punishment than that envisaged in art. 319 of the Italian Criminal Code (3-8 years' imprisonment and 6-10 years' imprisonment, respectively, as established by the reform introduced by Law no. 69/2015 and Law no. 3/2019) even though it is heavier than that envisaged previously (6 months to 3 years' imprisonment).

In fact, this offense is different from that referred to in art. 319 of the Italian Criminal Code in

that, in the first case, following the agreement with the private party, the Public Official goes on to violate the fairness principle and the duty to act impartially imposed upon him as a public officer, though without such partiality being transferred into action; whilst in the second case, it is easier to state that the partiality rests with the action which, in effect, tends not to achieve its underlying public purpose, but rather the mere interest of the private party.

Lastly, note that the distinction no longer exists between the previous and subsequent cases of corruption by a public official, which was based on the timing referred to in the repealed paragraph 2 of the article in question ("*If the public official receives remuneration for an official duty he has already performed, the punishment shall be up to one year's imprisonment*").

b) Bribery to obtain an act contrary to official duties (art. 319 of Criminal Code).

According to dominant theory, the regulation in question protects the principles of sound performance and impartiality of Public Administration indicated in art. 97, paragraph 1 of the Constitution: sound performance, in that the performance of acts contrary to official duty involves violation of the rules regarding the exercise of administrative functions; impartiality, as they violate the PA's obligation to place itself in a position beyond particular and private interests, and to instead treat these in a manner that is essential equal and standardised.

Unlike the offense envisaged in art. 318 of the Italian Criminal Code, examined previously, the offense in question is committed when a Public Official receives, for himself or for others, money or other benefit in order to perform an "act not pertinent to his official duties" albeit formally lawful, resulting in an advantage to the briber.

An "act contrary to official duty" includes any conduct adopted by the Public Official that is in conflict with legal regulations and with service instructions.

In this respect, it is specified that "In relation to bribery of a public official (regardless of the official's duties) the acts contrary to official duty are not only unlawful (i.e. forbidden by imperative regulations) or illegal (because they are dictated by legal provisions concerning their validity and effectiveness), but are also acts which, though formally lawful, are performed intentionally by the Public Official, regardless of compliance with his institutional duties, expressed in regulations at any level, including the principles of fairness and impartiality" (see Supreme Court, Criminal Section II, judgment no. 14021, 3 April 2008).

Furthermore, for the offense in question to be committed, it is not necessary that the official duty or act contrary to official duty is included in the specific tasks of the Public Official, as it is sufficient that such action is one of the official responsibilities of the body to which the public official

belongs, and in relation to which he has or could have any opportunity to interfere, even if purely circumstantially.

On this point, it has been claimed in fact that, to consider there to be grounds for the offense of bribery of a public official (regardless of the official's duties), «*even if it is not deemed necessary to identify the specific act contrary to official duty for which the Public Official has received undue sums of money or other benefits, it is important that his conduct is in any event in a direct manner which frustrates the role assigned to him, as only in this way can it be deemed in violation of the duties of loyalty, impartiality and seeking solely to satisfy the public interest imposed upon him (see Supreme Court, Criminal Section VI, judgments 34417 of 15 May 2008, 20046 of 16 January 2008 and 21192 of 26 February 2007)*» (see Supreme Court, Criminal Section VI, judgment no. 22301, 8 June 2012).

Moreover, it clarifies that «*for the purpose of committing bribery, whether regardless of or contrary to official duties, the fact that the official act true to or contrary to the official's own duties is included among the specific duties of the Public Official or public service officer is irrelevant, but it is necessary and sufficient that the act is one for which the body, to which the person belongs, is responsible and is one in relation to which he exercises, or can exercise, some form of interference, albeit purely circumstantially (inter alia see Section VI, judgment no. 20502 of 2 March 2010, Martinelli, ref. 247373; Section VI, judgment no. 33435 of 4 May 2006, Battistelli, ref. 234359; Section I, judgment no. 4177/04 of 27 October 2003, Balsano, ref. 227100)*» (see Supreme Court judgment no. 22301/2012, already cited).

The Reform implemented by Law 190/2012 has left this offense unchanged, merely rendering the punishment harsher by raising the minimum and maximum terms of imprisonment (was 1-5 years' imprisonment; now 4-8 years) (art. 1, paragraph 75, sub-paragraph g, Law 190/2012).

c) Aggravating circumstances (art. 319-bis of Criminal Code).

The aggravating circumstance in question, which is limited solely to bribery pursuant to art. 319 of the Italian Criminal Code, applies when the criminal agreement between the corrupt Public Official and the private party acting as briber refers to public funds, salaries, pensions or contracts involving the Administration to which the Public Official belongs.

On this last point, it was specified that "Where art. 319-bis of the Italian Criminal Code envisages a stronger punishment if the bribery involves "*the signing of contracts", its aim is to highlight cases in which bribery of a public official (regardless of the official's duties) gives rise to a permanent commitment of the Administration in which it may no longer intervene by means of an authoritative act by way of self-protection. The text of the provision does not allow any limit to be*

placed on the type of contract, the conclusion of which is the aggravating circumstance, and therefore in cases of settlement pursuant to art. 48, Legislative Decree 546/1992, the only assessment that needs to be made is whether the settlement is a legal instrument or if, instead, there is an authoritative act of the Administration that re-determines the tax-related obligation, in addition to the consent, in an unequal measure, of the taxpayer" (see Supreme Court, Criminal Section VI, judgment no. 9079, 24 January 2013).

d) Bribery in judicial acts (Article 319 ter of Criminal Code).

It is worth pointing out firstly that the offense envisaged in art. 319-*ter* of the Italian Criminal Code is not an aggravating circumstance with respect to offenses pursuant to articles 318 and 319 of the Italian Criminal Code, but rather a completely separate offense, introduced - as previously mentioned - by Law 86/1990 to ensure the impartial conduct of the judicial proceedings.

Though the introduction to the aforementioned article makes specific reference to "judicial acts", this is not considered a qualifying element of such a case of bribery.

In effect, according to Supreme Court case-law guidance, even an amount paid by an individual to an officer of the Italian Criminal Investigation Department to facilitate the acceptance of an application for release falls under the scope of application of this provision.

Consequently, for the offense in question to be committed it is not necessary that the incriminating acts are directly attributable to the exercise of a judicial duty in the strictest sense, as the scope of application of art. 319-ter of the Italian Criminal Code covers not only judicial acts per se, but also those that are a more lateral expression of the exercise of judicial activities, and also attributable to persons other than judges and public prosecutors.

The "party", whether a beneficiary or injured by the corrupt agreement, has to be considered any natural person or legal entity that has proposed a judicial claim or has had such a claim brought against them.

With particular reference to criminal proceedings, it should be remembered that the "party" refers not only to the alleged offender, but also to the party under investigation, to an injured party filing a civil claim in criminal proceedings, to third party liability and to a person liable under civil law for a pecuniary penalty, in addition - obviously - to the public prosecutor's staff.

With regard to the party corrupted, the regulation refers solely to the offenses pursuant to articles 318 and 319 of the Italian Criminal Code (and to art. 320 of the Italian Criminal Code[95]),

[95] As will be explained, this regulation extends punishment pursuant to articles 318 and 319 of the Italian Criminal Code to public service officers.

therefore limiting punishment only to the public parties qualifying as Public Officials, without making any distinction however between the various types within this category.

Lastly, it is worth pointing out that such offenses could involve the liability of ALNG S.r.L. if perpetrated with a view to achieving an advantage for the Company or in any event in the Company's interest, even if the Company is not directly involved in the proceedings.

For example, the offense in question is committed where ALNG S.r.L. is party to judicial proceedings and, in order to obtain an advantage in those proceedings, bribes a Public Official (not just a magistrate, but also a clerk of court or other official).

To conclude, note that the Reform implemented by Law 190/2012 changed only the penalty system of the provision in question: for the baseline offense referred to in paragraph 1, the punishment was 3-8 years' imprisonment, whereas this has been raised to 4-10 (currently to 6-10 years, following the Law 27 May 2015, no. 69). For the aggravated offense pursuant to the first part of paragraph 2 the punishment was 4-12 years' imprisonment, whereas the minimum only has been raised to 5 years (**art. 1, paragraph 75, letter h, of Law no. 190 of 2012**). Law No. 69/2015 has increased the penalties: the crime in question is now punished with 6-12 years' imprisonment, whereas for the aggravated hypothesis the punishment is 6-14 years' imprisonment, if the fact causes the wrongful conviction of someone to not more than 5 years' imprisonment, and 8-20 years' imprisonment, if the fact causes the conviction of someone to more than 5 years' imprisonment.

e) Corruption of persons in charge of a public service (art. 320 of Criminal Code).

This rule, to be considered independent of the cases provided for in art. 318 and 319 of the Italian Criminal Code, now provides for extension of the criminal nature of conduct referred to in provisions previously mentioned to persons in charge of a public service, which no longer envisages any distinction in terms of penalties between those who hold or did not hold the position of public employees (i.e. linked by a public employment contract with the State or a public entity).

Indeed, the former punishment for acts of bribery was limited only to a public official who was also a public employee.

This amendment, which expands the scope of criminality, emphasizes the powers of a public service official - whether or not he is a public employee - and thus confirms the need to always include being in charge of a public service among those potentially involved in the offenses in question (art. 1, par. 75, letter l, of the Law no. 190 of 2012).

In essence, the new penalties have been standardized to cover all those exercising a public service, albeit mitigating the penalty compared to that for which a Public Official would be liable.

f) Penalties for the corruptor (Art. 321 of Criminal Code).

The provision in question, which remained unchanged after the 2012 reform, provides that the penalties on corruption matters also extend to the corruptor.

Indeed, corruption is, of course, a criminal hypothesis necessarily bilateral in nature; therefore, just as the public agent who has accepted the offer or promise of unlawful payment is punished, so is the private entity that took the corrupting action.

Lastly, for the purpose of applicability of art. 321 of the Criminal Code and of the resulting criminal liability of the individual, the fact that a public official may remain unknown or that there might be doubts as to his actual participation in the criminal act, is irrelevant. In such cases, the punishment of the corruptor remains.

g) Inducement to accept bribe (Article 322 of Criminal Code).

This offense is implemented when a bribe is offered or promised to a public official or public employee (or solicited by the public official himself) in order to induce him to perform an official act or induce him to omit or delay an act by his office, if the offer or promise are not accepted.

This criminal assumption is an "early form" of the crime of corruption, which consists of a dual hypothesis: incitement by an individual (art. 322, par. 1 and 2, Criminal Code.) and incitement by a public official (art. 322, par. 3 and 4, Criminal Code).

On the first point, the offense in question occurs when the conduct adopted aims to commit an act of corruption but remains incomplete as the Public Official or public service employee refuses the offer or the promise of undue benefit unlawfully made to him inciting the commission, omission or delay of an act of his office.

For the configuration of the offense the amount of compensation offered, the level of the beneficiary, his economic position and any other connotations relating to the specific case, must be taken into account.

More precisely, a material element of the offense of incitement to corruption pursuant to art. 322 of the Criminal Code, consists in the actual offer or promise of money or other benefits, even if the quantity or quality is not determined, with which the corruptor intends to compensate the Public Official as inducement either to perform or omit an act relevant to his office, .e. to perform any act contrary to his duties.

So a serious promise and the likelihood of achieving the objective pursued by the corruptor are necessary.

Therefore, an offense is excluded only when it lacks the potential qualification of the offer or

promise to achieve the aim pursued by the corruptor due to the clear and absolute inability of the Public Official to adopt the wrongful conduct requested.

This means that the seriousness of an offer of money and its qualification as an inducement to the beneficiary by performing an act contrary to his official duties, is in itself sufficient to commit the offense in question.

Case law states that «*On the issue of incitement to corruption, in art. 322 of the Criminal Code, the seriousness of the offer and therefore its potential conductivity must necessarily be correlated to the required counterclaim, to the conditions of the offeror and of the public official, as well as to the circumstances of time and place in which the offense takes place* » (see Supreme Court, Criminal Section VI, judgment no. 7505 of 29 January 2013).

Therefore, in this case, for example, configuration as an offense is excluded where the sum of €10,000 is offered to two police officers with the aim of inciting them not to report the infringement of the highway code just committed by the defendant, due to its blatant mocking nature. If at all, it could configure as contempt in view of the implicit insult to the honour and status of the Public Official as the recipient of such a sum.

Embodied in the second point, which relates to incitement by a Public Official or by a public service officer, is the «incitement» by the public officer by means of a promise or giving of money or other benefits to an individual, that is «manifested in a form of indirect cunning and psychological pressure on the individual», without resulting in the constraint that characterizes the crime of extortion.

Lastly, it should be noted that the criminal configuration of corruption also applies to an illegal proposal made by a third party acting as intermediary.

As a final point, note that the Reform updated the rule in question, in so far as it relates to «improper corruption» of a public service officer, eliminating the need for him to also be a public employee (**art. 1, par. 75 m) of Law 190/2012**).

It is the necessary adaptation to the changes made to art. 320 of the Italian Criminal Code.

A case law has clarified that «*there is continuity between the new legal provisions on incitement to corruption contained in art. 322, paragraphs 1 and 3 of the Criminal Code, as replaced by Law 190/2012, and the previously applicable provisions contained in those paragraphs, as the purpose of these changes was merely to adjust the two criminal offenses of incitement to corruption to include the new criminal figure of corruption of public service officers pursuant to art. 318 of the Criminal Code, which was also replaced by Law 190/2012: except for the ban on retroactive application of the new rules, according to art. 2, par. 4, of the Criminal Code, in so far as it expands the functional range of the new cases of corruption as referred to in art. 318 of the Criminal Code*

(which absorbs the "old" cases of improper corruption) and increases its penalties framework» (see Supreme Court, Criminal Section VI, judgment no. 11792 of 11 February 2013).

Moreover, it states that «*The offense of incitement to corruption exists, pursuant to art. 322 of the Criminal Code, and not that of incitement punished by art. 319 quater of the Criminal Code, where the parties also establish a relationship based on equal terms with a view to "marketing" powers*» (see Supreme Court, Criminal Section VI, judgment no. 3251 of 3 December 2012).

h) Embezzlement, extortion, unlawful inducement to give or promise money or other benefits*, bribery and attempted bribery of members of International Criminal Courts or bodies of the European Communities or international parliamentary assemblies or international organizations and of officials of the European Communities and non-EU countries* (Article 322-bis of Criminal Code).

With reference to the circumstances referred to in art. 322-*bis* of the Criminal Code, it is considered appropriate to provide the full text of the rule for the purpose of easier identification and understanding.

In particular, the above mentioned provision, as modified by the Law no. 3 of 9 January 2019, states:

«*1. The provisions of Articles 314, 316, 317-320 and 322, third and fourth paragraphs shall also apply to:*

1) *members of the European Commission, the European Parliament, the European Court of Justice and the European Court of Auditors;*
2) *officials and representatives employed under a contract that complies with the regulations for EU officials or the conditions applicable to the EU representatives of ;*
3) *entities controlled by the Member States or by any public or private entity of the European Union performing functions similar to those of officials and other civil servants or representatives of European Union,*
4) *members and employees of entities constituted on the basis of the Treaties establishing the European Union;*
5) *those who, in the context of other Member States of the European Union, perform functions or activities equivalent to those of Public Officials or of persons in charge of a public service.*

5-bis) the judges, public prosecutors, deputy prosecutors, officials and representatives of the International Criminal Court, persons delegated by the Member States party to the Treaty establishing the International Criminal Court which perform functions corresponding to those of

the officers or representatives of the Court itself, and members and managers of entities constituted on the basis of the Treaty establishing the International Criminal Court;

5-ter) persons who carry out tasks or activities corresponding to that of Public Officials or of Persons in charge of a public service operating in public international organizations.

5-quarter) members of international parliamentary assemblies or of an international or supranational organization and the judges and officials of international courts.

5-quinquies) to persons exercising functions or activities corresponding to those of public officials and persons in charge of a public service [96].

2. The provisions of Articles 319 quater, paragraph 321 and 322, first and second paragraphs also apply if money or other benefits are given, offered or promised to:

1) *the persons mentioned in the first paragraph of this article;*
2) *persons who perform functions or activities equivalent to those of Public Officials and to persons in charge of a public service in the context of other foreign countries or international public organizations, if the offense is committed in order to obtain for himself or others an unfair advantage in international business transactions and thereby obtain or maintain an activity of economic or financial nature.*

3. The persons referred to in the first sub-paragraph shall be treated as Public Officials, if they perform similar functions, and otherwise as persons in charge of a public service».

As explained above, the rule in question, introduced by Law no. 300 of 29 September 2000, and subsequently amended (most recently by Law No. 3 of 9 January 2019), extends the applicability of the rules in relation to the offenses of corruption, extortion and attempted bribery referred to in this discussion (as well as embezzlement) to all categories of persons listed therein (non-EU countries, bodies of the European Union and EU officials, International Criminal Court, international parliamentary Assemblies as that established inside NATO, Oecd, Council of Europe, etc., international organizations), subject to the terms of conduct of the case referred to above.

This provision has extended:

- On the one hand, the scope of the main criminal figures in damage to the Public Administration to the cases in which they have been committed by EU officials or public officials of another EU member state, as well as by those who carry out tasks or activities corresponding to that of Public Officials or of Persons in charge of a public service operating in international organizations, by the members of international parliamentary Assemblies or international organizations and by the judges and officials of international courts;

[96] Number inserted by Art. 1(1)(d) of Legislative Decree No 75 of 14 July 2020, in force since 30 July 2020.

- Secondly, the punishment of the only private entity extorted in the case referred to in the newly introduced art. 319 quater, paragraph 2, of the Criminal Code, of the individual corruptor (art. 321 Criminal Code) and of the instigator of corruption of a public official to act contrary to his official duties, which, respectively, art. 322, paragraph 1 and 2 of the Criminal Code, when committed «also» in respect of those persons identified by the first paragraph of the provision and of those who carry out tasks or activities corresponding to that of Public Officials or of Persons in charge of a public service operating in non-EU countries.
- civil servants or EU public officers (referred to in the preceding paragraph) and non-EU (paragraph 2), *i.e.*, public servants of a non-EU country and officials of public international organizations (e.g. UN, OECD).

In this respect, given the ambiguous formulation in terms of penalties, as per art. 25 of Decree 231, which extends the liability of legal entities also to cases covered in the article in question, case law on its legitimacy has emphasised that «*The precautionary disqualification measures also apply to the entity investigated for an administrative offense pursuant to art. 25, Law Decree 231/2001 resulting from an offense under Article. 322 bis of the Criminal Code (international bribery). Art. 25, paragraph 4 extends the subjective scope of the offenses mentioned in the first three paragraphs. Therefore, the suggestion contained in art. 25, paragraph 5 must be deemed to address the basic hypothesis of corruption set out in paragraphs 2 and 3, also including the subjective extensions contemplated in paragraph 4*» and if an official of a non-EU country is convicted for bribery «*the disqualification sanctions provided by law shall apply to the entity to which administrative liability for the offense is attributed*» (see Supreme Court, Criminal Section VI, judgment no. 42701 of 30 September 2010).

-Trading in influence (art. 346 bis of Criminal Code)

Law no. 3 of 9 January 2019 has significantly reformed the crime of Trading in influence, in which the criminal offense of boasting of influence referred to in art. 346 of the Criminal Code (repealed) has been absorbed.

The reformed art. 346 *bis* of the Criminal Code provides as follows:

*«Save for the cases of cooperation in the corruption offenses provided for by Articles 318, 319, 319 ter and 322-bis of the Criminal Code, whoever**, taking advantage of or boasting his or her relationship, both existing or alleged**, with a Public Official, a Person in charge of a public service, or one of the other subjects referred to in art. 322-bis, unduly induces someone to give or promise to him/herself or to a third party money or other thing of value either as **compensation for his or her***

illegal mediation *with the Public Official, the Person in charge of a public service or any of the subjects referred to in art. 322-bis or to compensate them for the exercise of their functions or their powers is punishable with imprisonment between one to four years and six months.*

The same penalty shall be applicable to the person who unduly gives or promises money or other thing of value*.*

The penalty is increased if the person who unduly induces someone to give or promise to him/herself or to a third party, money or other thing of value is a Public Official or a Person in charge of a public service.

The penalty is also ***increased*** *if the facts are committed in relation to the exercise of judicial activities or as a* ***compensation for the Public Official, the Person in charge of a public service or any of the subjects referred to in art. 322-bis for the performance of an act in breach of their duties or for the omission or delay of an official act.***

The penalty is diminished if the facts are particularly tenuous».

The crime of Trading in influence aims at sanctioning, among others, those conducts which precede the actual corruption agreement between the public agent and the private, thereby strengthening the early protection of the interests of the Public Administration.

The 2019 Reform has redrawn the crime referred to in Article 346 *bis* of the Criminal Code, extending its scope: the "new" hypothesis of Trading in influence, indeed, punishes the conduct of whoever obtains, for himself or others, the giving or promise by a private party of "money or other advantage" - therefore even advantages of a non-economic nature – by representing him the possibility to intercede on his behalf with a Public Official or a Person in charge of a public service, **regardless of whether the relation with the public officer is existing or only alleged.**

As indicated by the first Supreme Court's decisions following the entry into force of the new discipline, the crime equates on a criminal law level the boast of a relationship or of a credit with a public officer only alleged (non-existent in reality) to the representation of a really existing relationship with a public agent. Consequently, the liability is extended to the private who wants to take advantage of the influence even in the hypothesis of boast of alleged relationships (on the contrary, in the previous offense of boasting of influence, the so-called "smoke buyer" was considered to be the victim of the crime).

As regards the "seller of illicit influence", the Supreme Court held that there is continuity between the crime of boasting of influence, referred to in the repealed art. 346 of the Criminal Code, and the crime of Trading in influence, referred to in the reformed art. 346 *bis* of the Criminal Code.

Through the new formulation of the offense set forth in art. 346 *bis* of the Criminal Code the Legislator has disconnected the illegality of the mediation from the illegality of the conduct of the

Public Official or the Person in charge of a public service, thus it is possible to envisage cases of illicit mediations criminally relevant even if not aiming at obtaining an act contrary to the duty of the office of the Public Official or the Person in charge of a public service, where the illegality shall be referred to the quality of the mediator or to the relations between this latter and subjects belonging to the Public Administration, which put the intermediary in such a position that does not ensure the independence between him and the public agent.

As to the typical fact, some uncertainties remain with regard to the exact limits of the "illicit mediation" subject to criminal sanctions: in this respect, it can be maintained that the intermediation is illicit when it is based on family relations, friendship or political relations between the intermediary and the public officer, or on the possession of public roles by the intermediary. Furthermore, the mediation aiming at committing a crime is undoubtedly illicit.

In case the agent does exercise influence over the Public Official or the Person in charge of a public service, such a conduct, resulting in the selling of the public office, would constitute instead the corruption cases mentioned by the same provision (art. 346 *bis* of the Criminal Code, indeed, contains the clause «*save for the case of cooperation in corruption offenses provided for by Articles 318, 319, 319 ter and 322-bis of the Criminal Code* »).

Following the entry into force of Law no. 3 of 9 January 2019, the crime referred to in Article 346 *bis* of the Criminal Code is mentioned in Article 25 of the Decree 231, thus becoming a predicate offense of the liability of the company. In fact, both the illicit intermediary and his financier can be persons embodied in the structure of a company, or outside contractors responsible for managing the relations with the Public Administration (*e.g.* consultants who carry out activities on behalf of the company aimed at the issuing of licenses, authorizations or permits from public entities).

- *The offences of embezzlement and abuse of office*

Legislative Decree no. 75 of 14 July 2020 introduced three new offences to the list of crimes referred to in Article 25 of Legislative Decree no. 231/2001, namely:

- *Embezzlement of public funds (Article 314, para. 1, of the Criminal Cod*e - thus excluding embezzlement of use): this offence occurs when a public official or a person in charge of a public service, having by reason of his office or service the possession or otherwise the availability of money or other movable property of others, appropriates it.

- *Embezzlement by profiting from the error of others (Article 316 of the Criminal Code):* the provision punishes the public official or the person in charge of a public service, who, in the performance of his duties or service, taking advantage of the error of others, unduly receives or retains, for himself or for a third party, money or other benefits.

- *Abuse of office (Article 323 of the Criminal Code*): the provision, as amended by Decree-Law no. 76 of 16 July 2020 (converted, with amendments, into Law no. 76 of 11 September 2020), punishes, unless the act constitutes a more serious offence, a public official or a person in charge of a public service who, in the performance of his duties or service, in breach of specific rules of conduct expressly laid down by law or by acts having the force of law and from which no margin of discretion remains, or by omitting to abstain in the presence of a personal interest or of a close relative or in the other prescribed cases, intentionally procures for himself or others an unfair financial advantage or causes unfair damage to others

Pursuant to the same Article 25 of Legislative Decree no. 231/2001, the commission of the aforementioned offences may give rise to the liability of the entity if the act offends the financial interests of the European Union.

It is interesting to note that the offences referred to in Articles 314, para. 1, 316 and 323 of the Criminal Code fall within the category of the so-called "proper offences", since they can only be committed by persons holding the qualifications referred to in the aforementioned provisions (public official and/or person in charge of a public service): therefore, where the offence is detrimental to the financial interests of the European Union, the entity may be held liable if the company officers can be qualified as a public official or a person in charge of a public service by virtue of the public interest pursued by the company; alternatively, the legal entity may be held liable if one of its employees contributes, in the capacity of *extraneus*, to the commission of the offence by the public official or the person in charge of a public service (*e.g.* by persuading the public official to embezzle EU funds, in order to invest them in the company).

5. Sanctions applicable to the company

Law no. 3 of 9 January 2019 has increased the sanctions applicable to the company in case of commission of offenses against the Public Administration.

In particular, in case of conviction for one of the offenses indicated in paragraphs 2 and 3 of Article 25 of the Decree 231, disqualification sanctions for a duration of **no less than four years and no more than seven years** shall be applied**,** if the crime is committed by a top manager, whereas if the crime has been committed by a subordinate, disqualification sanctions for a duration of **no less than two years and no more than four years** shall be applied, thus derogating in both cases to the limits (more favourable) of application of the disqualification sanctions provided for in Article 13 of the Decree 231[97].

[97] Paragraph 2 of Article 13 of the Decree 231 establishes that, as a general rule and without prejudice to art 25 of the same Decree, «*The duration of disqualification sanctions is no lower than three months and no greater than two years*».

The reformed Article 25 of the Decree 231 also establishes that in case of commission of the offenses mentioned by the same Article, disqualification sanctions in the ordinary amount provided for by paragraph 2 of Article 13 of the Decree 231 shall be applied to the company that, before the judgment of first instance, has undertaken effective behaviours to avoid further consequences of the crime, to secure evidence of the crime, to identify who is responsible or for the preservation of funds or other thing of value and has eliminated the organisational deficiencies which have led to the crime by adopting organizational models to prevent offenses of the kind than that occurred.

SECTION 3: Criminal offenses pursuant to Articles 24 *bis* and 25 *novies* of Decree 231.

Criminal offenses, prescribed by Decree 231 and in matter of "*Computer crimes and unlawful data processing"* (Article 24 *bis*), inserted by Law No. 48 of 18 March 2008, and "*Crimes of copyright violation*" (Article 25 *novies*), introduced by Law no. 99 of 23 July 2009, are illustrated as follows.

1. *Counterfeiting of computer documents (Article 491 bis of Criminal Code).*

This offense occurs when the criminal conducts, envisaged by the Section of the Italian Criminal Code, called "*Falseness of deeds*", are concerning a computer document[98]. More specifically, Article 491 *bis* of the above-cited Code extends the protection of paper documents to computer documents, whether public or private, having provisional efficiency.

2. *Unauthorised access to a computer or telematic system (Article 615 ter of Criminal Code).*

This offense, aimed to protect the "*computer domicile*", occurs when someone accesses to (or remains in) a computer or telematic system protected by special security measures without authorization or, in any case, against the expressed or unspoken will of the *jus excludendi* holder (authorized user).

3. *Unauthorized holding, dissemination and installation of equipment, codes and other means of accessing computer or telematic systems (Article 615 quater of Criminal Code).*

This provision, as amended by Law no. 238 (European Law 2019-2020) with effect from 1st February 2022, sanctions anyone who, in order to procure an unjust profit for himself or others or to cause damage to others, unlawfully obtains, holds, produces, reproduces, disseminates, imports, communicates, delivers, otherwise makes available to others or installs apparatuses, tools, parts of apparatuses or tools, codes, passwords or other means of accessing a computer or telecommunications system, protected by security measures, or provides indications or instructions suitable for the aforementioned purpose.

4. *Unlawful possession, distribution and installation of equipment, devices or computer programs aimed at damaging or interrupting a computer or a telematic system (Article 615 quinquies of Criminal Code).*

Following the entry into force of Law no. 23 December 2021, no. 238, which broadened the

[98] The term "*computer document*" means, according to the Digital Administration Code, any "*representation of acts, facts or legally relevant data*" (see Article 1, subindent *p*, Decree n. 82 of 7 March 2005, Digital Administration Code as subsequently amended and updated.

range of punishable conducts, the offence in question occurs when a person unlawfully obtains, possesses, produces, reproduces, imports, disseminates, communicates, delivers or otherwise makes available to others or installs computer equipment, devices or programmes for the purpose of unlawfully damaging a computer or telecommunications system, the information, data or programmes contained therein or pertaining thereto, or of facilitating the total or partial interruption or alteration of its operation.

5. Interception, hindrance or unlawful interruption of computer or telematic communications (Article 617 quarter of Criminal Code).

This offense is carried out when someone fraudulently intercepts, interrupts or hinders the information and communication contained within another person's computer or telematic system, or the information which pass between several computer or telematic systems. Furthermore, anyone who reveals to third parties, without authorization and via any public information medium, the content of the information gained by committing the above-mentioned offenses.

6. Unlawful possession, dissemination and installation of equipment and other means of intercepting, impeding or interrupting computer or telematic communications (Article 617 quinquies of the Criminal Code)

The offence in question, following the entry into force of Law no. 238 of 23 December 2021, is committed by anyone who, outside the cases permitted by law, in order to intercept communications relating to a computer or telematic system or between several systems, or to prevent or interrupt them, procures, possesses, produces, reproduces, disseminates, imports, communicates, delivers, otherwise makes available to others or installs equipment, programmes, codes, passwords or other means designed to intercept, prevent or interrupt communications relating to a computer or telematic system or between several systems

7. Damage to information, data and computer programs or private computer or telematic systems (Articles 635 bis and 635 quater of Criminal Code).

These crimes are directed to punish cases of damage to private owned computers.

Specifically, in accordance with Article 635 *bis* of Criminal Code, anyone who deteriorates, deletes, alters or suppresses information, data or programs contained in another person's computer or telematic system, shall be punished. On the other hand, in accordance with Article 635 *quater* of Criminal Code, anyone who performs the aforementioned conduct against another person's computer or telematic system or enters or transmits programs, data or information aimed at destroying, at damaging or at rendering completely or partially unusable or seriously impede the operation of said system, shall be punished.

Following the amendment by Legislative Decree no. 7 of 15 January 2016, the crimes referred to in Articles 635 *bis* and 635 *quater* of the Criminal Code are aggravated if committed with violence against the person or threat, or by abusively acting as systems operator.

8. Damage to information, data and computer programs utilised by the State or other public entity bodies or in any case of public utility, or damage to publicly utilized computer or telematic systems (Articles 635 ter and 635 quinquies of Criminal Code).

These offenses occur when someone commits an act aimed at destroying, deteriorating, deleting, altering or suppressing information, data or computer programs utilised by or pertinent to the State or other public entity body or in any case of public use, or commits an act aimed at destroying, damaging, rendering either partially or completely unusable, or seriously impedes the operation of publicly utilised computer or telematic systems.

Unlike the previously mentioned offenses of computer damage (Articles 635 *bis* and 635 *quater*), in this type of crime, the threshold of punishability is anticipated to its attempt so that, in the event of effective destruction, deterioration, deletion, alteration or suppression of the information, data or publicly utilised computer programs, or the effective damage or destruction to the publicly utilised computer or telematic system, the envisaged sanction is increased.

Following the amendment of the Legislative Decree no. 7 of 15 January 2016, the crimes referred to in Articles 635 *ter* and 635 *quinquies* of the Criminal Code are aggravated if committed with violence against the person or threat, or by abusively acting as systems operator.

9. Computer fraud by an electronic signature certifier (Article 640 quinquies of Criminal Code).

This offense occurs when the person who certifies electronic signatures violates the obligations placed by law for the purpose of issuing a qualified certificate.

In order to be punishable, the offender must act in order to procure unlawful gain for himself or others or for the purpose of damaging others.

10. Article 1, paragraph 11, Decree-Law no. 105 of 21 September 2019 – Urgent provisions on the national cyber security perimeter and on the regulation of special powers in sectors of strategic importance.

The list of cybercrimes referred to in Article 24 *bis* was expanded following the conversion into law of Decree-Law no. 105 of 21 September 2019, containing urgent provisions on the national cybersecurity perimeter (so-called Cybersecurity Decree). The purpose of this regulation is to ensure a high level of security of networks, information systems and IT services of collective interest, and it

applies to public administrations, bodies and national operators on which the exercise of an essential function of the State depends, or the provision of a service essential for the maintenance of civil, social or economic activities that are fundamental to the interests of the State, and from the malfunctioning, interruption - even partial - or improper use of which, national security may be jeopardised.

The implementation of the Cybersecurity Decree has been delegated to Prime Ministerial Decrees, concerning - among other things - the identification of the subjects exercising essential services that are included in the PNSC, the criteria and methods for the transmission of lists of ICT goods, systems and services.

The violation of certain (relevant) obligations under the Cybersecurity Decree is criminally sanctioned pursuant to Article 1, para. 11, of Decree-Law 21 September 2019 no. 105, which punishes with imprisonment from one to three years «*[w]hoever, for the purpose of hindering or conditioning the completion of the proceedings referred to in paragraph 2, letter b)* [ed: procedure for compiling and updating lists of networks, information systems and information services]*, or in paragraph 6, lett. a)* [ed: procedures relating to the awarding of supplies of ICT goods, systems and services to be used on networks, information systems and information services]*, or the inspection and supervisory activities provided for in paragraph 6, letter c), provides untrue information, data or factual elements not corresponding to the truth, relevant for the preparation or updating of the lists referred to in paragraph 2, letter b), or for the purposes of the communications referred to in paragraph 6, letter a), or for the performance of the inspection and surveillance activities referred to in paragraph 6, letter c), or fails to communicate the aforesaid data, information or factual elements within the prescribed time limits*».

11. Article 171, paragraph 1 a bis), and paragraph 3 of Law no. 633 of 22 July 1941.

This offense occurs when a person, without having the right and for any purpose, places intellectual property, in whole or in part, at the disposal of the public in a system of telematic networks, using various types of connection. The penalty is harsher when the work of intellectual property is not intended for publication, is obtained by misappropriation from third parties and involves alteration, mutilation or any other modification to the same, which could damage the author’s honour or reputation.

12. Article 171 bis of Law no. 633 of 22 July 1941.

The provision punishes the illegal duplication of software programs for processing, import, distribution, sales or possession for commercial or entrepreneurial purposes or for rent of software stored on media without the required SIAE labels.

Similarly, the above-mentioned offense also regards any means used solely to consent or facilitate the removal or effective circumvention of devices installed to protect a software program.

Lastly, it applies to the reproduction for profit on media without the required SIAE labels, transfers to another media, distributes, communicates, presents or publicly esposes the contents of a database, extracts or reuses or distributes, sells or rents a databank in violation of the limits established by law.

13. Article 171 ter of Law no. 633 of 22 July 1941.

The provision punishes offenses consisting of a number of unlawful conducts, which may include the following:

- illegal duplication, reproduction, transmission or diffusion in public by means of any procedure, in whole or in part, of intellectual property intended for television, cinema, the sale or rental or records, tapes of similar media or of any other media containing phonograms or videograms of musical, cinematographic or audiovisual works or sequences of moving images; literary, dramatic scientific or teaching works, musical or musical-dramatic works, multimedia works, including those that are contained in collective or group works or in a database;
- public circulation, in violation of the limits and methods established by law, intellectual property (in whole or part) protected by copyright, by placing it in a system of telematic networks using various types of connection;
- the transmission or circulation of any means of an encrypted service, without the agreement of the distributor;
- the installation, distribution, sale, transfer of any kind, or the introduction into Italian territory and possession for the sale of special decoding equipment or parts of equipment to gain entry into a crypted service without due payment;
- the manufacture, import, distribution, sale, rental, or transfer of any kind, of equipment, products or parts or the provision of services with the final purpose of circumventing technological copyright protection measures;
- the illegal removal or alteration of electronic information identifying work or material protected by copyright, or the distribution, dissemination, communication or making available to the public of protected works from which electronic information has been removed or altered;
- the abusive fixation in digital, audio, video or audiovideo support, in whole or in part, of a cinematographic, audiovisual or editorial work or the reproduction, performance or communication to the public of the abusively performed fixation[99].

[99] Letter inserted by Article 3, paragraph 1, of Law 14 July 2023, no. 93.

14. Article 171 septies of Law no. 633 of 22 July 1941.

The offense comprises of the failure to communicate to SIAE data identifying media not requiring labels by producers and importers of the media. It also envisages communication of false statement regarding obligations deriving from copyright laws.

15. Article 171 octies of Law no. 633 of 22 July 1941.

The offense consists of the fraudulent production, sales, importation, promotion, installation, modification, public or private use of equipment or parts of equipment decoding conditional access audiovisual broadcasts via air, satellite, cable, in both analogue and digital form.

SECTION 4: Criminal offenses envisaged in Article 25 *bis*1 of Decree 231.

Criminal offenses that, with reference to the actual business carried out by ALNG S.r.L. is considered at greater risk of occurring relevant to offenses against industry and commerce prescribed by Article 25 *bis*1 of Decree 231, are set out below.

1. Interference in the freedom of industry or commerce (Article 513 of Criminal Code).

This offense is implemented when violence or fraud is used in industry or commerce.

«*Violence on goods*» is intended as any form of physical energy exerted on an item resulting in damage, transformation or a change in the designation of the same item, while «*fraudulent means*» is intended as deception and false means to mislead the victim to impede or hinder the free principles of industrial or commercial business.

2. Unlawful competition by means of threats or violence (Article 513 bis of Criminal Code).

This offense is committed by using threats or violence against commercial, industrial or any other business associated with production.

Despite the provisions of Article 513 *bis* of Criminal Code identifying the perpetrator of the unlawful conduct as being «*whoever*», in reality the offense may only be committed by subjects engaging in commercial, industrial or production activity, although the subject is not required to hold the formal title of entrepreneur according to current civil regulations.

The conduct entails the subject engaging in behaviour classified as unfair competition which, because of the expressed means («*violence or threat*»), entails forms of intimidation aimed at controlling or at least conditioning the commercial, industrial and production means of others.

Therefore, the notion of «*unlawful competition*» set forth in the provision does not identify with acts of «*unfair competition*» envisaged in Article 2598 of the Italian Civil Code[100], consisting however in violent or threatening acts aimed at repressing the self-determined capacity of competitors.

[100] Article 2598 of Civil Code. *"In addition to the provisions on protecting identification marks and trademark laws, an act of unfair competition is committed when a person:*
1) uses names or identification marks to cause confusion with the legitimate names or identification markets used by others, or servilely imitates the products of a competitor, or engages in any other acts to create confusion with the products and business of a competitor;
2) disseminates news and comments on the products and business of a competitor, to discredit the competitor, reap product from the products or the company of a competitor;
3) directly or indirectly uses any other means non-compliant with the principles of professional correctness and able to damage another company".

The offense is aggravated if the acts of competition regard financial activities, in whole or in part and in any way, belonging to the State or other public bodies.

3. Fraud in commerce (Article 515 of Criminal Code).

Lastly, the offense of fraud in commerce – which may be committed by «*whoever*» in the exercise of commercial activity (or open dealing with the public) – is committed by delivering to the buyer goods which by their origin, quality or quantity, are different from the ones declared or agreed.

The regulation aims to therefore regulate the so-called *aliud pro alio* (or difference between the agreed and delivered goods), which may occur, for example, where there is a difference in quality, use or number, weight or measurement between the goods sold and those originally requested or agreed, or of a different origin.

SECTION 5: Criminal offenses pursuant to Articles 25 *ter* and 25 *sexies* of Decree 231.

Criminal offenses, prescribed by Decree 231 (Articles 25 *ter* and 25 *sexies*) and *in* matter of corporate offenses and market abuse, are illustrated as follows.

1. False corporate disclosures (Articles 2621 and 2622 of Civil Code).

The offenses of False corporate disclosures have been subject to several legislative interventions over the years, which had a profound effect on the identification of the typical fact punished by the criminal law provision.

Following the amendment of Law no. 69 of 27 May 2015, which entered into force on 14 June 2015, the current regulatory framework provides for two different and autonomous criminal offenses which differ on the basis of the nature of the company, namely unlisted company (Article 2621 of Civil Code) or listed company (Article 2622 of Civil Code).

In particular, the offense referred to in Article 2621 of Civil Code is envisaged when the directors, general managers, executives in charge of the drafting corporate accounting documents, auditors and liquidators who, for the purpose of procuring for themselves or third parties an undue profit, intentionally report in financial statements, reports or other corporate communications addressed to the shareholders or the public, **material facts not corresponding to the truth**, or omit **relevant material facts,** whose communication is required by law, concerning the economic and financial situation of the company or of the group to which it belongs, **in such a way** as to deceive the addressees on the aforesaid situation.

A lower penalty is established in case the facts referred to in Article 2621 of Civil Code are less serious, taking into account the nature and the size of the company, as well as the modality or the effects of the conduct, or they concern companies which are not subject to the provisions on bankruptcy and "*concordato preventivo*" (agreement among creditors).

provided for by Article 1, paragraph 2, of Royal Decree no. 267 of 1942 (in the latter case the offense can be prosecuted subject to the complaint filed by the company, shareholders, creditors or other addressees of the corporate communication – Article 2621 *bis* of the Civil Code). Article 2621 *ter* of the Civil Code establishes the criteria for exemption of the conducts referred to in Articles 2621 e 2621 *bis of* Civil Code from criminal liability pursuant to Article 131 *bis* of Criminal Code.

Article 2622 of Civil Code punishes the conducts of False corporate disclosures of the companies issuing financial instruments admitted to trading on a regulated market in Italy or in another EU member country, to which the following are equivalent 1) companies issuing financial instruments for which application has been submitted for admission to trading on a regulated market in Italy or in another EU member country; 2) companies issuing financial instruments admitted to

trading on an Italian multilateral trading facility; 3) companies which control companies issuing financial instruments admitted to trading on a regulated market in Italy or in another EU member country; 4) companies that have publicly raised capital or that manage it.

From a subjective point of view, the specific intent is required: the active or omissive behaviour described above must be supported by the awareness of the concrete misleading suitability of the conduct, in order to obtain an unjustified profit for the benefit of the perpetrator or third parties.

It should be noted that liability arises also when information concerns assets owned by, or administrated by the company on behalf of third parties;

The offense may be committed by the directors, general managers, auditors and liquidators, as well as executives in charge of the drafting of corporate accounting documents.

2. Misrepresentations of fact in prospectuses (Article 173 bis of Legislative Decree no. 58 of 24 February 1998).

Previously punishable under Article 2623 of the Italian Civil Code (now repealed[101]) and currently under the Consolidation Law on Financial Intermediation (Article 173 *bis*), this offense entails the exposure of false information or the non-disclosure of pertinent information in prospectuses (therefore documents necessary as aim at soliciting investments or to obtain listing on regulated markets, as well as documents to be published in occasion of takeover bids or share exchange transactions), with the result that the recipients of the said prospectuses could be misled.

However, it must be pointed out, especially in light of the Confindustria Guidelines, that there is no reference to Article 173 *bis* in Article 25 *ter,* that replaces the corresponding repealed section of the Italian Civil Code (Article 2623). As a result, the Decree ought not to apply to the offense of «*misrepresentation of fact in prospectuses*», even if material misrepresentations in information prospectuses and the other documents mentioned in the provision, could, in certain circumstances, be relevant for the purposes of Articles 2621 and 2622 of Civil Code as «*misrepresentations of fact in corporate disclosures*».

3. Unlawful repayment of capital contributions (Article 2626 of Civil Code).

Save in cases pursuant to lawful share capital reductions, this offense consists in the repayment (which could be also simulated) of capital contributions to Shareholders, or in the redemption of the same from the obligation to provide for them. The offense may be committed only by the management.

[101] Pursuant to Article 34 of Law no. 262/2005 that also provided for the insertion of Article 173 *bis* into Legislative Decree no. 58/98.

4. Unlawful distribution of profits or reserves (Article 2627 of Civil Code).

This offense may consist in the distribution either of profits (or advances on profits) that have not yet been realized or that are required, under law, to be assigned to reserves, or in the distribution of reserves (also the ones not made up of profits) that are not subject to distribution pursuant to law. It must be pointed out that the crime is deleted if the unlawfully distributed profits are returned, or if the reserves in question duly replenished, by the scheduled deadline for the approval of the company's financial statements.

5. Unlawful transactions involving shares or participating interests in the parent undertaking (Article 2628 of the Italian Civil Code).

Save in cases permitted under law, this offense consists in the acquisition or subscription of shares in the company, to such an extent as to compromise the stability of the company's share capital or reserves not subject to distribution under law. It must be pointed out that the crime is deleted in the case where the share capital and/or reserves in question are duly replenished by the scheduled deadline for the approval of the company's financial statements.

The offense may be committed only by the management. Furthermore, the directors of the parent undertaking may be held liable for complicity with the subsidiary's directors in case where it can be shown that the latter effected the unlawful transactions on shares of the parent undertaking, by the instigation and behest of the directors of the parent undertaking itself.

6. Transactions prejudicial to creditors (Article 2629 of Civil Code).

This offense consists in the carrying out, in breach of law provisions protecting creditors, of share capital reductions, mergers with other companies or even de-mergers, as a damage to the company's creditors.

The crime is deleted if the injured creditors are fully compensated before the out-of-court proceedings.

7. Booking of fictitious capital (Article 2632 of Civil Code).

This offense may be implemented by administrators and/or shareholders: *a)* by fictitiously constituting or increasing the company's share capital through the attribution of company's shares with an amount that is lesser than their nominal value; *b)* by the mutual subscription of shares; *c)* by significantly overvaluing contributions of assets in kind, of credits and of the company estate in case of corporate transformation.

8. Obstruction of internal control or auditing activities (Article 2625 of Civil Code).

This offense consists in hindering or obstructing, by failing to disclose documents or by other deceptions, the auditing activities lawfully entrusted to Shareholders, to other corporate organs or to the independent auditors, thereby occasioning harm or losses to the Shareholders.

9. Private bribery (art. 2635, Italian Civil Code).

Given the importance of bribery offenses in general in recent Italian Law reforms, it is considered appropriate to discuss the offense of "*Bribery between private individuals*" in greater detail.

Art. 2635 of the Italian Civil Code, which covers this type of offense, was amended by Law no. 190 of 6 November 2012 which - as is known and as discussed in Section 2 of this Regulatory Appendix - has had a considerable impact (also) on "**Offenses against Public Administration**", and in particular on the offenses pursuant to art. 318 et seq. of the Italian Criminal Code, with the main aim of preventing and combating the phenomenon of bribery.

The above action, therefore, forms part of this logic, replacing the previous case of "*Breach of trust following the giving or promise of a benefit*" (introduced in 2002 and later amended by Law no. 262 of 28 December 2005 and by Legislative Decree no. 39 of 27 January 2010) and introducing the offense of "*Bribery between private individuals*", which is the result of consolidated legal theory preparation, along with the new offense introduced by art. 346-*bis* of the Italian Criminal Code, "*Unlawful influence peddling*" (which in any event is not included among the presumed offenses referred to in Decree 231).

The offense in question responds to the need to punish forms of corruption also outside the public sector; a need also claimed by various European sources[102].

In fact, it is perfectly clear even from the introduction that the aim of the legislation, in line with supranational laws, is also to qualify offenses between private individuals as "bribery", in a similar way to that typically involved in bribery between a private party and a Public Official.

Legislative Decree no. 38 of 2017 has partially rephrased the crime of Private bribery, in order to overcome the critical issues arisen in its implementation.

Moving on to a more detailed examination of the offense in question, it should be mentioned briefly that, according to the new provision, save where this constitutes a more serious offense, the directors, general managers, executives in charge of the drafting of corporate accounting documents, auditors and liquidators, of companies or private entities, that, also through intermediaries, solicit or receive, for themselves or for others, or accept the promise of undue money or other thing of value,

[102] See Bill no. 2156-B. In fact, Law 120/2012 (paragraph 76) introduced the obligation arising from European Council and UN Conventions on bribery in the private sector, already punished in many European legal systems.

in order to perform or refrain from performing an act in breach of their office or fiduciary duties, shall be liable to imprisonment of between one to three years.

The same penalty shall apply if the fact is committed by a person who, in the organizational structure of the Company or the private entity, exercises managerial functions other than that of the subjects previously referred to.

Where the relevant offense is committed by those under the supervision of the individuals identified above, the penalty is up to 18 months' imprisonment.

The Legislator has then clearly identified the subjects who can commit the offense in question.

In effect this is a **person-specific offense**, i.e. one that can only be committed by the persons indicated in the incriminating regulation, who on the one hand are the same as those identified under the previous regulation (i.e. directors, general managers, executives in charge of the drafting of corporate accounting documents , auditors and liquidators of a company; in 2017 the group of the "intern" subjects has been extended to those who perform leading functions other than that of the subjects mentioned above) and, on the other hand, «*persons under the management and supervision*» of the aforementioned persons (paragraph 2), although in the latter case the offender receives a milder punishment.

The extension of the latter category of offenders in the scope of application of the offense in question for the first time introduced an independent incrimination of breach of trust by persons who are not senior managers and who do not perform duties involving control over operations or accounts.

As quite rightly remarked in this respect, "*the formula adopted by Italian Law seems to suggest ... that the offenders in this second case are not only the employees in the strictest sense of the word, but anyone who on behalf of the company performs an activity which - by law or under contract - is subject to the management or supervision of his superiors*".

Furthermore, the offense in question is **an offense necessarily involving acting in concert**, and therefore committed with the participation of at least two persons, the briber and the corrupted party, respectively the first carrying out the promise and/or giving of the money[103] or other benefit, and the latter in breach of trust "*by following*" the former, i.e. by performing an action or omitting doing so «*in violation of the terms of his office and in breach of trust obligations*»[104].

Paragraph 3 of Article 2635 of Civil Code, indeed, punishes the person who, also through intermediaries, promises or gives undue money or other thing of value to the "intern" subjects referred

[103] See Report no. III/11/2012 dated 15 November 2012, already cited.

[104] Unlike the previous provision, the regulation now also punishes the promise or giving of money or other benefit, even in this last specification is not actually innovative, in that it must be considered included in the broader meaning of "*benefit*" - and seems more an attempt to standardise the regulatory jargon to that used in articles 318 and 319 of the Italian Criminal Code.

to in paragraph 1 and 2 of the Article: as it will be later explained, only this conduct of active corruption can give rise to the administrative liability of the company, in whose interest and advantage the "briber" acts (whilst the company which the "corrupted party" works for will not be liable, since – on the contrary - it is deemed that it can only suffer an harm because of the conduct of its employee).

The Legislator of the Reform of 2012 has expanded the range of obligations whose violation is criminally significant, envisaging, alongside the specific duties identifiable from legal and contractual obligations governing the position of the offender, a more generic duty of "loyalty" in the exercise of private sector duties. This category, which appears however to be of uncertain determination as regards its actual content, is therefore riddled with problems in terms of its application[105].

In any event the rationale behind the incriminating case in point is evident: to prevent and combat any action that could result in incorrect corporate management (i.e. *mala gestio*) by persons related to the entity.

With particular reference to the *typical conduct*, note also that, following the legislative intervention of 2017, for envisaging the offense it is no longer necessary that the conduct "causes damage to the company", thus turning the offense from a crime of damage to a crime of danger.

With regard to the **psychological profile**, as in the past the offender is required to commit *generic fraud*, not otherwise specified in terms of intensity, and therefore it has to be assumed that the offense in question is also punishable in the form of recklessness, as it is sufficient for this purpose that the offender represents the detriment to the company, accepting the risk of his unlawful conduct being discovered.

Lastly, a special aggravating circumstance is envisaged in paragraph 4 of the article in question, doubling the punishments referred to above if a company involved has securities listed on regulated markets in Italy or other EU Member States or widely distributed among the public pursuant to art. 116 of the Consolidated Law on Finance (Italian Legislative Decree 58/1998).

Law no. 3 of 9 January 2019 (so-called "Bribe destroyer") has ultimately eliminated the prosecution upon complaint of the crime of Private bribery, in order to encourage the applicability of the provision referred to in Article 2635 of Civil Code, which is now prosecutable *ex officio*.

With regard to the relevance of the offense pursuant to Decree 231, the letter *s-bis* of art. 25-*ter* of Decree 231 refers to the «*cases envisaged in art. 2635, paragraph 3 of the Italian Civil Code*», so that under the terms of this Decree only the company of the **briber** can be held liable as only this company could benefit from the corrupt conduct. Conversely, the Legislator believes that the company of the **corrupted party** does not deserve to be punished, on the assumption that it suffers damage as a result of the violation of official duties or breach of trust. The offense referred to in

[105] See Report no. III/11/2012 dated 15 November 2012, already cited.

Article 2635 of Civil Code (together with that referred to in the following Article 2635 *bis* of Civil Code) is the only one among the corporate crimes mentioned in Article 25 *ter* of the Decree 231 which can lead to the application of disqualification sanctions.

10. Instigation to private bribery (*Article 2635 bis, paragraph 1 of Civil Code)*

This offense – introduced by Legislative Decree no. 38 of 2017 – consists in the undue offer or promise of money in favour of directors, general managers, executives in charge of the drafting of corporate accounting documents, auditors and liquidators of companies or private entities, as well as of those who hold managing functions, in order to perform or refrain from performing an act in breach of their fiduciary duties, when the offer or the promise is not accepted. In such a case, the company's liability arises in relation to the active conduct of the subject who offers or promises undue money or other thing of value to the subjects mentioned above.

The crime, as a result of the amendment introduced by Law no. 3 of 9 January 2019, is now prosecutable *ex officio.*

11. Undue influence on the general meeting of Shareholders (Article 2636 of Civil Code).

This offense consists in constituting a majority at the general meeting of Shareholders, through simulated or fraudulent deeds and/or documents, with the intention of securing an undue benefit for oneself or another.

12. Stock manipulation (involving unlisted securities) (Article 2637 of Civil Code).

This offense consists in disseminating false information or in effecting simulated transactions or engaging in other deceptions able to determine a significant change about the prices of financial instruments or to intervene on the level of public confidence in the economic and financial stability of ALNG S.r.L. or of its Shareholders.

Despite the use of the term «*whoever*» in the text of the related statutory provision, this offense may be committed by: the issuer, advisors, the intermediary, market observers and commentators such as financial analysts and journalists, as well as the issuer's independent auditors.

13. Obstruction of Public Oversight Authorities in the discharge of their duties (Article 2638 of Civil Code).

These are two distinct offenses in terms of the related unlawful behaviour and the time of commission:

a) The first offense is implemented: *(i)* through the exposure of false material facts (whether or not they are subject to evaluation) in statutory disclosures to Public Oversight Authorities[106], regarding the assets and liabilities, income and expenses, and cash flow of the persons and parties subject to oversight, with the aim at obstructing the said Public Oversight Authorities in the discharge of their duties; *(ii)* through the non-disclosure of material facts pertaining to the aforesaid assets and liabilities, income and expenses, and cash flow, in breach of statutory disclosure obligations. Liability shall be incurred even in cases where the information in question pertains to assets held or administered by the company on behalf of third parties;

b) The second offense is implemented merely by knowingly and willingly, in any manner or form whatsoever, obstructing Public Oversight Authorities in the discharge of their duties, including through non-compliance with statutory disclosure obligations towards the said authorities.

Both the offenses outlined above may be committed by the management, the executive officers, members of the Board of Auditors and receivers.

14. Insider trading (Article 184 of Legislative Decree no. 58 of 24 February 1998).

The market abuse legislation has been reformed following the entry into force of Regulation (EU) No 596/2014 (so-called MAR), which has been followed by the adoption of Legislative Decree No. 107 of 10 August 2018, which has intervened on the provisions of Legislative Decree No. 58 of 24 February 1998 (so-called Consolidated Law on Finance - TUF) in order to coordinate and adapt the national legislation to the European legislation.

As a result of the repeal of Article 181 TUF, the definition of "**inside information**" has been given by the Regulation (EU) No 596/2014, whose Article 7 provides that *«inside information»* shall comprise the following types of information:

a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;

b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in

[106] Il comma 3-bis, come modificato dall'art. 26, comma 1 del D. Lgs. n. 224/2023, prevede che «*[a]gli effetti della legge penale, alle autorità e alle funzioni di vigilanza sono equiparate le autorità e le funzioni di risoluzione di cui al decreto di recepimento della direttiva 2014/59/UE e al regolamento (UE) 2021/23 e alle relative norme attuative*».

accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;

c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments;

d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments[107].

Law No. 238 of 23 December 2021 (so-called European Law 2019/2020) amended the scope of application of the provisions on market abuse. According to the current wording of Article 182 TUF, the provisions on offences (Articles 184 and 185 TUF) and administrative violations (Articles 187 *bis* and 187 *ter* TUF) apply to facts concerning:

a) financial instruments admitted to trading or for which a request for admission to trading on an Italian or other European Union regulated market has been submitted;

b) financial instruments admitted to trading or for which a request for admission to trading on an Italian or other European Union country's multilateral trading facility (MTF) has been submitted;

c) financial instruments traded on an organized trading facility (OTF);

d) financial instruments not covered by letters a), b) and c), whose price or value depends on, or has an effect on, the price or value of a financial instrument referred to in those letters, including, but not limited to, credit default swaps and contracts for differences;

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[107] Article 7 of the Regulation (EU) No 596/2014 also clarifies that information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information (paragraph 2). An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article (paragraph 3). For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions. In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set in accordance with the second subparagraph of Article 17(2), information about their physical operations shall be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments (paragraph 4). ESMA shall issue guidelines to establish a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in point (b) of paragraph 1. ESMA shall duly take into account specificities of those markets (paragraph 5).

e) conducts or transactions, including bids, relating to auctions on an authorized auction platform, such as a regulated market for emission allowances or other auctioned products related thereto, even where the auctioned products are not financial instruments within the meaning of Commission Regulation (EU) no 1031/2010 of 12 November 2010.

Pursuant to the amended Article 182 TUF, the provisions of Articles 185 and 187 *ter* TUF apply (in addition to the cases set forth in the first paragraph of the same Article 182 TUF) also to facts concerning:

a) spot contracts on commodities that are not wholesale energy products, capable of causing a significant alteration in the price or value of the financial instruments referred to in Article 180, para. 1, letter a);

b) financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk, capable of causing a significant change in the price or value of a spot commodity contract, where the price or value depends on the price or value of those financial instruments;

c) benchmark indices.

Moreover, following the amendment made by Law No. 238/2021, the new Art. 182 TUF expressly provides that the sanctioning provisions on market abuse shall apply to any transaction, order or other conduct relating to the financial instruments referred to in paragraphs 1 and 2, regardless of whether such transaction, order or conduct takes place on a trading venue (paragraph 3), and that the crimes and administrative violations provided for in respect of market abuse shall be sanctioned under Italian law, even if committed on foreign territory, when they relate to financial instruments admitted, or for which a request for admission has been submitted, to trading on an Italian regulated market or an Italian multilateral trading system, or to financial instruments traded on an Italian organized trading system (paragraph 4).

Pursuant to Article 183 TUF - most recently amended by Law no. 238/2021 - the sanctioning provisions on market abuse do not apply to

a) to the transactions, orders or conducts envisaged by Article 6 of the MAR Regulation, by the persons referred to therein, in the context of monetary policy, exchange rate policy or public debt management, as well as in the context of the Union's climate policy activities or in the context of the Union's common agricultural policy or common fisheries policy;

b) trading in own shares carried out pursuant to Article 5 of the MAR Regulation.

b-bis) to trading in transferable securities or related instruments referred to in Article 3, para. 2, lett. a) and b) of the MAR Regulation, for the purpose of stabilizing transferable securities, where such trading is carried out in accordance with Article 5, paragraphs 4) and 5) of that Regulation [108].

The conduct of insider trading is punished by Article 184 TUF, named - following the amendments introduced by Law no. 238/2021 - «*Abuse or unlawful communication of inside information. Recommending or inducing others to commit insider trading*».

This offense punishes the person who, possessing an **"inside information**", by virtue of his membership of the administrative, management or supervisory bodies of an issuer, of his holding in the capital of an issuer or of the exercise of his employment, profession, duties, including public duties, or position, or, possessing inside information by reason of the preparation or execution of criminal activities: *(i)* buys, sells or carries out other transactions involving, directly or indirectly, on his own behalf or for a third party, financial instruments using such information (so-called *insider trading*); *(ii)* discloses such information to others (so-called *tipping*) outside the normal exercise of his employment, profession, duties or position or a market survey conducted pursuant to article 11 of Regulation (EU) no. 596/2014[109]; *(iii)* recommends or induces others, on the basis of such information, to carry out any transaction referred to *sub a) (*so-called *tuyautage).*

Following the entry into force, on 1st February 2022, of Law no. 238/2021, criminal liability has been introduced, with a less severe sanctioning treatment, also for the so-called secondary insider (previously exposed only to the administrative sanction of Article 187 *bis* TUF), *i.e.* the person who, in possession of inside information for reasons other than those mentioned above, commits any of the conducts typified with reference to the so-called primary insider.

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[108] Letter added by Article 26, paragraph 1(b) of Law No. 238 of December 23, 2021. Pursuant to Article 3 paragraph 2(a) and (b) of Regulation (EU) no. 596/2014, "securities" shall mean «(i) shares and other securities equivalent to shares; (ii) bonds and other forms of debt securities; or (iii) debt securities convertible or exchangeable into shares or other securities equivalent to shares," where "related instruments" shall mean "the financial instruments specified below, including financial instruments not admitted to trading or traded on a trading venue, or for which admission to trading on a trading venue has not been requested: (i) contracts or rights to subscribe for, acquire, or dispose of securities; (ii) derivative financial instruments on securities; (iii) where the securities are convertible or exchangeable debt instruments, the securities into which the debt instruments may be converted or with which they may be exchanged; (iv) instruments issued or guaranteed by the issuer or guarantor of the securities and the market price of which may significantly influence the price of the securities or vice versa; (v) where the securities are securities equivalent to shares, the shares represented by such securities as well as all other securities equivalent to such shares.»
In particular, pursuant to Article 5, paragraphs 4 and 5 of the MAR Regulation, the prohibition against insider dealing and market manipulation does not apply to trading in securities or related instruments for the purpose of stabilization of securities when «(a) stabilization is carried out for a limited period; (b) relevant information regarding stabilization is disclosed and notified to the competent authority at the place of trading venue in accordance with paragraph 5; (c) appropriate limits regarding price are complied with; and (d) such trading complies with the conditions for stabilization set out in the regulatory technical standards referred to in paragraph 6.»

[109] Letter modified by Article 4, paragraph 7, letter a) of the Legislative Decree no. 107 of 10 August 2018.

Paragraph 5 of Article 184 TUF provides, finally, that is a crime (and no longer a contravention) the conduct of insider trading that concerns conduct or transactions, including bids, relating to auctions on an authorised auction platform, such as a regulated market for emission allowances or other related auctioned products, even when the auctioned products are not financial instruments, within the meaning of Commission Regulation (EU) no. 1031/2010 of 12 November 2010.

In case of conducts falling under Article 184 TUF, a pecuniary sanction between four hundred and one thousand quotas shall be imposed on the company (if the company has obtained a product or a profit of relevant amount, the fine shall be increased up to ten times such product or profit).

Without prejudice to the sanction applicable to the company pursuant to Decree 231, the pecuniary administrative sanction provided for in Article 187 *quinquies* TUF shall apply in case of violation of Article 14 (*Prohibition of insider dealing and of unlawful disclosure of inside information*) and Article 15 (*Prohibition of market manipulation*) of MAR is committed[110].

15. Market abuse (or stock manipulation involving listed securities) (Article 185 of Legislative Decree no. 58 of 24 February 1998).

This offense is committed by disseminating false information or setting up sham transactions or employing other devices, concretely likely to cause a significant alteration in the price of financial instruments.

The offense referred to in Article 185 TUF may be implemented by «*anyone*», although the people who tend to be at risk to the commission of this offense seem to be issuers, advisors, intermediaries, market observers and commentators (financial analysts, journalists) and the issuer's independent auditors.

Further to the amendment made by Legislative Decree no. 107/2018, a person who has committed the act by means of trading orders or transactions carried out for legitimate reasons and in accordance with accepted market practices, pursuant to Article 13 Regulation (EU) no. 596/2014, is not punishable.

Following the amendments made by Law no. 238/2021, paragraphs 2 *bis* and 2 *ter* of Article 185 TUF were repealed. Therefore, it must be considered that, following the new legislation, market manipulation concerning financial instruments traded on a multilateral trading facility (MTF), on an organised trading facility (OTF) or not traded on any venue (OTC - Over the Counter), or concerning derivatives and emission allowances, constitutes a crime, as the provision that provided for the arrest and a fine has been repealed.

[110] With regard to a company, in case of violation of the obligations of prevention and detection of market abuse and of the obligations of public disclosure provided for by Article 16, 17, 18, 19, 20 of Regulation (EU) no. 596/2014, the sanction provided for by Article 187 *ter1* TUF shall be applied.

Also with reference to market manipulation, moreover, the aforementioned cases of exemption under Article 183 TUF are not prejudiced.

16. False or omitted declarations for the issue of the preliminary certificate (Article 54 of Legislative Decree No. 19/2023).

Article 55 of Legislative Decree No. 19/2023 of March 2, 2023, on the "Implementation of Directive (EU) 2019/2021 of the European Parliament and of the Council of November 27, 2019, amending Directive (EU) 2017/1132, as regards cross-border transformations, mergers and divisions" amended Legislative Decree no. 231/2001, through the introduction, in Article 25 *ter*, paragraph 1, letter s-*ter)*, of the reference to the crime of false or omitted declarations for the issuance of the preliminary certificate.

This offense, provided for in Article 54 of Legislative Decree No. 19/2023, punishes the conduct of anyone who, in order to make it appear that the requirements for the issuance of the **preliminary certificate referred to in Article 29 of Legislative Decree No. 19/2023** have been fulfilled, forms wholly or partially false documents, alters true documents, makes false declarations or omits relevant information.

In particular, the preliminary certificate is an act issued by the notary public as a public official, upon request of the Italian company participating in the cross-border transaction, certifying the fulfillment of the acts and formalities preliminary to the implementation of a cross-border merger.

Various documents shall be attached to the application for the issuance of the preliminary certificate pursuant to Article 29 of Legislative Decree No. 19/2023 (identified by the same provision, including *e.g.* the cross-border merger project, the resolution of the shareholders' meeting approving the project, the reports of independent experts, *etc.*).

Based on the documents and information received, the notary is required to verify the applicant company's fulfillment and compliance with the conditions and formalities necessary to carry out the transaction and, only in case of a positive assessment, issues the preliminary certificate.

The crime is presented as a common offense, however, it seems to be applicable only to those individuals to whom Legislative Decree No. 19/2023 makes specific reference, for example, those who perform the function of collecting data within the company, processing it, communicating it, or those who participate in the procedure aimed at obtaining the preliminary certificate.

Coming to a more detailed examination of the offense under consideration, the conduct can be active ("***forming***", namely creating a previously nonexistent document; "***altering***", namely modifying a pre-existing genuine document by adding, replacing or deleting some constituent parts) or omissive ("**omitting relevant information**").

Material object of this crime can be any document prodromal to the issuance of the certification, for example the project of the cross-border transaction (Articles 8, 19 and 43 of Legislative Decree No. 19/2023), the attestations on the debt and credit situation (Article 30), the reports of directors (Article 21) or experts (Article 22).

The ***mens rea*** required by the offense is that of **specific intent**, since it is necessary that the agent has put in place the act, as strictly stated by the provision, «*in order to make it appear fulfilled the requirements for the issuance of the preliminary certificate*» referred to in Art. 29 c. 3 Legislative Decree 19/2023.

The offense referred to in Article 54 of Legislative Decree No. 19/2023 is punishable by imprisonment from six months to three years; in case of conviction to a sentence of not less than eight months' imprisonment, the offender is also subject to the sanction of disqualification from the executive offices of legal persons and companies.

Pursuant to Article 25 *ter*, paragraph 1, letter s-*ter)*, a pecuaniry fine from one hundred and fifty to three hundred quotas shall be applied to the entity.

SECTION 6: Criminal offenses pursuant to Article 25 *septies* of Decree 231.

Criminal offenses, prescribed by Decree 231 and in matter of safety and health on the workplace, are illustrated as follows. More specifically, Article 25 *septies* introduces the offenses of «*Involuntary manslaughter and involuntary serious or very serious bodily harm, violating accident-prevention and workplace hygiene and safety regulations*»[111].

The offense of involuntary manslaughter is punishable under Article 589 of Criminal Code («*Whoever negligently occasions the death of a person, shall be punished by imprisonment for a term of between six months and five years*»), while the offense of involuntary bodily harm is punishable under the subsequent Article 590 of the above-cited Code which distinguishes between various types of bodily harm (soft, severe and very severe) with sentencing commensurate to the severity of the harm inflicted.

Specifically, bodily harm is considered severe «*1) if the offense develops a disease that puts in danger the victim's life, or a disease or incapacity to attain to ordinary tasks for more than forty days; 2) if the offense determines a permanent sensory or organ impairment*" (Article 583 (1) of the Italian Criminal Code). The offense is considered very severe, if it develops: "*1) a disease that is certainly or probably incurable; 2) the loss of sensory function; 3) the loss of a limb or mutilation that renders a limb unusable, or the loss of organ function or of reproductive ability, or the permanent and serious speech impairment; 4) the disfigurement or permanent facial scarring*» (Article 583 (2) of Criminal Code).

For the intents and purposes of administrative liability, the offense must be implemented through the violation of accident-prevention and workplace hygiene and safety regulations; should this be the case a sentence increasing is envisaged for the offender. Moreover, the offenses in question may be committed through any type of human conduct[112], by its commission or its omission, and not necessarily involving violence[113], which consists in the violation of the said regulations and it represents the cause of the typical offensive event prescribed by the articles in question (death or injury).

[111] Article 25 *septies* was recently modified by Law no. 81/08, which provided for a rewrite of the offenses, concentrating mainly on specifying the sanctioning profile envisaged for the pre-supposed offenses in question (which remain the same).

[112] In fact, the offenses in question are often defined as "freely committed" precisely because they do not require any specific modus operandi, as distinct from the "restricted offenses" such as cheating, the commission of which, pursuant to section 640 of the Italian Penal Code, necessarily entails «*deception or fraud*».

[113] Cases of death or disease caused by immersion in water, exposure to cold or food contamination are considered.

With regard to «*death*», no specific further comments are needed, apart from the fact that the offense may be committed not only in case of the natural and physical death of the victim, but also in case of "clinical" or brain death, therefore the total loss of cerebral function. In respect of «*bodily harm*», the disease referred to, which may be occurred to the victim body and mind, consists in «*any anatomical or functional alteration whatsoever of the organism, even if localized and entailing no impact on general organic conditions*»[114].

The three offenses share the subjective element of negligence[115] and, in particular, *specific negligence*[116]

In such regard, as already noted, Article 25 *septies* expressly provides that, in order for an entity body to incur liability, the involuntary manslaughter or bodily harm must be occasioned through the violation of the regulations governing the prevention of accidents on the workplace and the protection of the employees health and hygiene on the workplace; the subjective element of the offense above-cited offenses (therefore the principle pursuant to which a crime is attributed to its author, or, in other words, pursuant to which a subject is reproached for the offense committed) is constituted solely by *specific negligence*, with the result that a person may be deemed "negligent" if he or she causes the death of another person or causes to another bodily harm, through the violation of the accident-prevention regulations specifically aimed at avoiding the said events.

In such regard, the reference is the entire section of regulations and, over the general rule set forth in Article 2087 of Civil Code (*"Protection of workplace conditions*"[117]), the dispositions set forth in the new Unified Safety Text (Legislative Decree n. 81 as amended of 9 April 2008) and every other regulation, discipline and rule issued and *to be issued* in the aforementioned matter.

Pursuant to Decree 231, the offenses in question could constitute a liability presupposition to ALNG S.r.L., for example, if, by their commission, the Company achieves an "*advantage*" (i.e. in terms of economic savings or even simply time saving), due to the lack of provision about the necessary and sufficient economic resources by ALNG in matter of safety and health protection on

[114] See Ministerial report on the Draft Penal Code.

[115] There is no statutory definition of negligence, although section 43 of Criminal Code defines negligent offenses. More specifically, the section provides: «*An offense: […] is negligent, or involuntary, when the event, even if foreseen, was not intended by the agent and arises from negligence, recklessness, lack of skill or non-compliance with laws, rules, regulations or orders* [...]».

[116] It is normal to distinguish «*generic negligence*» (which consists in non-compliance with preventive measures made up of common-sense rules of conduct as well as the specific procedures to be followed in certain circumstances) and «*specific negligence*» which consists in the violation of specific precautionary requirements imposed by Oversight Authorities and/or under laws (including legislative decrees), rules, regulations or orders.

[117] Article 2087 of the Italian Civil Code provides: «*In engaging in business, he employer shall be bound to implement the measures which, in light of the peculiarities of work processes, past experience and best technical practices, are necessary to protect the physical integrity and moral personality of workers and employees*».

the workplace (e.g. not allocating an adequate budget for the Prevention and Protection Service on the workplace, to be determined, among other things, by the size of the company, the operative branches and the number of employees).

SECTION 7: The offenses pursuant to Section 25 *octies* and 25 *octies*.1 of Decree 231.

This Special Section concerns the offenses of Receiving of stolen goods, Money Laundering and Use of money, goods or benefits of illicit origin introduced within the Decree 231 under Section 25 *octies*, following the entry in force of Legislative Decree 21 November 2007, no. 231, implementing Directive 2005/60/EC, concerning the prevention of the use of financial system for the purpose of money laundering and terrorist financing. Additionally, by Law 15 December 2014, no. 186, the new offense of Self Laundering has been introduced in the Italian criminal system, also referred to in Section 25 *octies* of Decree 231.

Subsequently, Legislative Decree no. 195 of 8 November 2021 (which entered into force on 15 December 2021) intervened on the offences referred to in Articles 648, 648 *bis*, 648 *ter* and 648 *ter.1* of the Criminal Code, broadening their scope of application (see below): in particular, the extension of the operational scope of Money Laundering and Self-Money Laundering offences to the proceeds originating from any crime (including negligent crime), as well as from the offences ("contravvenzioni") punished with imprisonment of more than one year or six months in the minimum, entails the extension of the offences which could constitute the "precondition" of the conducts punished by Articles 648 *bis* and 648 *ter.1* c.p., with a consequent increase in the risk of the commission of such offences, which may give rise to the liability of the entity.

On 14 December 2021, Legislative Decree no. 184 of 8 November 2021 came into force, concerning the «*Implementation of Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA*», which broadened the scope of the criminal offences provided for in Articles 493 *ter* of the Criminal Code and 640 *ter* of the Criminal Code, and introduced into the Criminal Code the new offence of «*Possession and dissemination of computer equipment, devices or programmes aimed at committing offences relating to non-cash payment instruments*», referred to in Article 493 *quater* of the Criminal Code. The aforementioned legislation also entailed the extension of the offences triggeringg the liability of the entity, through the introduction into Decree 231 of Article 25 *octies.1,* named «*Offences concerning non-cash payment instruments*».

With this legislative measure, the Italian Legislator, in fulfilment of the obligations undertaken at European level, intended to provide suitable repressive instruments to safeguard the security of

economic exchanges in the light of the continuous process of dematerialisation of payments, in order to combat criminal activities inherent in the digital market and to protect citizens from the increasingly widespread frauds in this sector.

Lastlt, Article 6-*ter*, paragraph 2, letter b), number 3), of Law Decree No. 105 of August 10, 2023, converted with amendments by Law No. 137 of October 9, 2023, changed the heading of Article 25 *octies.1*, which is now named "Crimes concerning non-cash payment instruments and fraudulent transfer of valuables" and includes the crime under Article 512 *bis* of the Criminal Code.

The placement of Article 25 *octies.1* of Decree No. 231 in contiguity with the administrative offence referred to in Article 25 *octies,* relating to the offences of Receiving, Laundering and Utilisation of Money, Goods or Benefits of Unlawful Origin, as well as Self-Laundering, makes it possible to identify in the management, control and monitoring of patrimonial and financial flows the sensitive areas 'common' to the various offences referred to in the aforementioned provisions.

1. A brief description of the crimes punished pursuant to Section 25 *octies* of Decree 231 is outlined below:

Receiving of stolen goods (Section 648 of the Italian Criminal Code)

The offense pursuant to Section 648 of the Italian Criminal Code is entailed when a person, apart from participation in the [predicate] offense, acquires, receives or conceals money or goods which are the proceeds of a criminal offense, or assists in acquiring, receiving or concealing such money or goods, with the purpose to gain for himself or another.

The crime requires that the money or goods represent the proceeds of a criminal offense (for example, theft, robbery, etc.), which is the condition for the offense of receiving of stolen goods, in which the person who acquires, receives or conceals has not participated ("apart from participation").

As a result of the amendments introduced by Legislative Decree No. 195 of 8 November 2021, punishability has been extended to the conduct of receiving stolen goods which concerns money or things deriving from a contravention punishable by arrest of more than one year in the maximum or of more of six months in the minimum: this is a significant extension of application, considering that contraventions are punished indifferently on the basis of wilful misconduct or negligence, with a consequent increase in the possibility of the occurrence of the predicate offence of Article 648 of the Criminal Code.

The perpetrator of the conduct punished by Article 648 of the criminal code shall, in any case, act with the intent – even in the form of "eventual intent" (*dolo eventuale*) – as to the knowledge of

the illicit origin of the money or goods and to the willingness to acquire, receive, conceal or, intentionally, to assist with the purpose to promote these conducts.

For the crime to be entailed a specific intent is required: particularly, the perpetrator must be aware to reach – or permit to a third person to reach – a profit. The notion of profit pursuant to Section 648 of Italian Criminal Code includes any benefits, also non-economic, that the perpetrator seeks to gain.

In any case, it is important to highlight that, lacking the intent required for the crime of Receiving of Stolen Goods, the offense of unwise purchase can be anyway entailed (Section 712 of the Italian Criminal Code).

The offense of Receiving of Stolen Goods is punishable with imprisonment terms ranging from two up to eight years and a fine from € 516,00 to € 10.329,00, but the penalties may be increased if the money or goods object of the crime originate from the offenses of aggravated robbery (pursuant to Section 628, paragraph 3, of the Italian Criminal Code), aggravated extortion (pursuant to Section 629, paragraph 2, of the Italian Criminal Code), aggravated theft (pursuant to Section 625, paragraph 1, no. 7, of the Italian Criminal Code).

In the event that the money or property that are the object of the unlawful act comes from a contravention punishable by a term of imprisonment of more than one year in the maximum or a minimum of six months, the penalty is imprisonment of one to four years and a fine of between €300 and €6,000. Finally, if the offence is of particularly tenuity, the penalty is imprisonment for a term of up to six years and a fine of up to €1,000 in the case of money or things deriving from a crime, and imprisonment for a term of up to three years and a fine of up to €800 in the case of money or things deriving from a contravention.

The concerned crime is entailed also in the event that the perpetrator of the offense, from which the money or goods originate, cannot be held responsible or punishable, or lacking the condition to prosecute such an offense, or if the predicate offense has been committed entirely abroad.

Money Laundering (Section 648 *bis* of the Italian Criminal Code)

This offence occurs when a person, apart from cases of complicity in the offence, replaces or transfers money, goods or other utilities originating from a crime, or carries out other transactions in connection with them, so as to hinder the identification of their criminal origin.

As in the case of the offence of receiving stolen goods, the legislative amendment made in 2021 broadened the scope of the offence, which occurs when the money, goods or other utilities (including companies, securities, rights of credit) that are the subject of unlawful conduct originate from the

commission of a previous "crime" (the words "not culpable" having been removed), but also of a contravention punishable by a term of imprisonment of more than one year in the maximum or a minimum of six months, which constitute the predicate offence.

With respect to the psychological element of the crime, it is required the generic intent, namely the awareness of the illicit origin of the good and the will to carry out the abovementioned conducts of substitution or transfer or other operations aimed at hiding the illicit origin of the goods.

The offense is punishable with imprisonment terms ranging from four and twelve years and a fine from € 5.000 to € 25.000 (the monetary sanction has been increased by Law 15 December 2014, no. 186). The penalty is increased if the illicit conduct is carried out in performing a professional activity, and is decreased if the money, goods and other assets originated from crimes punishable with imprisonment terms lower than five years. The penalty is imprisonment for a term ranging from one to four years and a fine between € 300 and € 6.000 when the offence relates to money or things deriving from an offence punishable by a term of imprisonment of a maximum of more than one year or a minimum of six months

Due to the reference to the Section 648 of the Italian Criminal Code, the offense is entailed even if the perpetrator of the offense, from which the money and goods originate, cannot be held responsible or punishable, or lacking the condition to prosecute such an offense.

Use of money, goods or benefits of unlawful origin (Section 648 *ter* of Italian Criminal Code)

The offense pursuant to Section 648 *ter* of Italian Criminal Code punishes - apart from participation in the [predicate] offense and provided that the conducts do not constitute Receiving of Stolen Goods or Money Laundering – anyone who uses for economic or financial activities money, goods or assets originating from a criminal offense.

The offense under examination is punishable with imprisonment terms ranging from four up to twelve years and with a fine from € 5.000,00 to € 25.000,00 (this monetary sanction has been increased by Law 15 December 2014, no. 186). The penalty is increased if the illicit conduct is carried out in performing a professional activity, and is decreased if the money, goods and other assets originated from crimes punishable with imprisonment terms lower than five years. Following the amendments introduced by Legislative Decree no. 125 of 8 November 2021, the penalty is imprisonment for a term ranging from two to six years and a fine between €2.500 and €12.500 when the offence relates to money or things deriving from an offence punishable by imprisonment for a maximum of more than one year or a minimum of more than six months.

With respect to the psychological element, it is required the generic intent, namely the awareness of the illicit origin of the goods and the will to realize the abovementioned conduct.

Self-Laundering (Section 648 *ter1* of Italian Criminal Code)

By Law 15 December 2014, no. 186 (containing measures on the disclosure and repatriation of capital held abroad and for enhancing the war against tax evasion. Measures on self-laundering), the Legislator introduced in the Italian Criminal system, among other things, the new offense of Self Laundering under Section 648 *ter1* of the Italian Criminal Code, that punishes the conduct of whoever, having committed (or participated in the commission) of a crime, substitutes, transfers or utilizes in business, economic, financial or speculative activity, money, goods or other things deriving from said crime, in such a way as to concretely obstruct the identification of their illicit origin.

It is worth underlining that, as a result of legislative changes introduced in 2021, the predicate offense of the abovementioned conduct can be any criminal offense and, but also a misdemeanour (provided that it is punished with imprisonment for a maximum of more than one year or a minimum of six months) and then, money, goods or other assets that are the object of the illicit conduct may result also from the commission of a crime not included in the predicate offenses listed within Legislative Decree no. 231/2001.

This provision excludes the criminal relevance of those conducts where the money, goods or other assets are destined to the mere personal use or enjoyment.

As to the sanctions, the provision provides for different penalties depending on the seriousness of the predicated offense. Particularly, pursuant to the first paragraph of Section 648 *ter1* of the Italian Criminal Code, the criminal offense is punishable with imprisonment terms ranging from two to eight years and a fine from € 5.000 up to € 25.000. The penalty is imprisonment for a term of between one and four years and a fine of between € 2.500 and € 12.500 when the offence relates to money or things deriving from an offence punishable by imprisonment for a maximum of more than one year or a minimum of more than six months.

The same penalties provided for in the first paragraph apply in case the money, goods or other assets originate from a crime committed with the conditions set forth in Section 416 *bis* of the Italian Criminal Code relating to “Mafia Association even foreign”, or to support the activity of the above associations (see Section 7, Law Decree 13 May 1991, no. 152, converted with amendments, by Law 12 July 1991, no. 203, and following amendments and integrations). The penalty is decreased if the money, goods and other assets derive from the commission of an intentional crime punishable with imprisonment lower than five years.

The penalty could be also increased if the illicit conduct is carried out in the exercise of banking, financial or other professional activity, and could be decreased – up to half – if the perpetrator takes

active steps to avoid other consequences of the illicit conducts or to ensure the crime evidence and the identification of the goods or money or other assets deriving from the offense.

The crime is entailed even if the perpetrator of the offense, from which the money and goods originate, cannot be held responsible or punishable, or lacking the condition to prosecute such an offense.

The administrative liability pursuant to Legislative Decree no. 231/2001 requires that the illicit conducts are committed in the interest or advantage of the Company. The requirement of the interest or of the advantage could be identified, for example, in relation to Company's assets deriving from the offense of theft or in case of use of capital having an illicit origin in economic and financial activities related to the corporate object. Otherwise, the presence of an interest or of an advantage for the Company should be excluded lacking a connection between the illicit conduct and the Company's activity.

In the event of the commission of one of the offences mentioned above, the entity is subject to a monetary sanction between 200 and 800 quotas. In the event that the money, goods or other benefits originate from an offence punishable by imprisonment for a maximum of more than five years, a monetary penalty from 400 to 1.000 quotas shall apply. In addition, in the event of conviction for one of the offences referred to in Article 25 *octies* of Decree 231, disqualification sanctions provided for in Article 9 of the same Decree 231 shall also be applicable to the entity, for a period not exceeding two years.

2. With reference to the offences referred to in Article 25 *octies.1* of Decree 231, it is useful first of all to refer to the definition of "non-cash means of payment", contained in Article 1 of Legislative Decree no. 184/2021, *i.e.* an intangible or tangible protected device, object or record, or a combination thereof, other than legal tender, which, alone or in conjunction with a procedure or series of procedures, enables the holder or user to transfer money or monetary value, including through digital means of exchange.

That said, the offences referred to in Article 25 *octies*.1 of Decree 231 are set out below:

Misuse and counterfeiting of non-cash payment instruments (Article 493 *ter* of the Criminal Code)

This offence punishes with a term of imprisonment ranging from one to five years and with a fine ranging from € 310 to € 1.550 anyone who, in order to obtain a profit for himself or for others,

unlawfully uses credit or payment cards, or any other similar document enabling the withdrawal of cash or the purchase of goods or the provision of services, or in any case any other payment instrument other than cash, without being the holder thereof. The same punishment shall be imposed on any person who, in order to gain profit for himself or others, forges or alters the instruments or documents referred to in the first sentence, or possesses, disposes of or acquires such instruments or documents of unlawful origin or in any case forged or altered, or payment orders produced with them.

The legislative amendment of 2021 broadened the scope of operation of the crime in question, which originally (Article 55 of Legislative Decree no. 231/2007, then transited into the Criminal Code as a result of Legislative Decree no. 21/2018) was limited to the undue use and falsification of credit and payment cards, so as to include intangible means of payment, such as accounts of digital means of payment (such as, for example, Satispay and Paypal), but also the so-called cryptocurrencies.

Possession and distribution of computer equipment, devices or programmes aimed at committing offences involving non-cash payment instruments (Article 493-*quater* of the Criminal Code)

The offence in question, introduced into the Criminal Code by Legislative Decree no. 184/2021, punishes with imprisonment of up to two years and a fine of up to € 1. 000 whoever, in order to make use of them or to allow others to use them in the commission of offences involving non-cash means of payment, manufactures, imports, exports, sells, transports, distributes, makes available or in any way procures for himself or for others equipment, devices or computer programs which, by virtue of their technical or design characteristics, are primarily constructed for the commission of such offences, or are specifically adapted to the same purpose.

This offence is prodromal to the commission of further offences relating to means of payment other than cash: for it to be committed, the **specific intent** is also required, which is substantiated by the intention to make use of such instruments, or to allow others to make use of them, for the commission of such offences.

Fraudulent transfer of valuables (Article 512 bis of the Criminal Code)

This crime -introduced into the list of predicate offenses by Decree Law No. 105 of August 10, 2023, converted with amendments by Law No. 137 of October 9, 2023 - punishes anyone who fictitiously attributes to others the ownership or availability of money, goods or other utilities in order to evade the provisions of the law on assets prevention measures or smuggling, or to facilitate the commission of one of the crimes referred to in Articles 648 of the Criminal Code (Receiving of stolen goods), 648-*bis* of the Criminal Code (Money laundering) and 648-*ter* of the Criminal Code (Use of money, goods or utilities of illegal origin). Paragraph 2 of the provision, introduced by Decree Law 2 March 2024, n. 19, punishes whoever, in order to evade the provisions on anti-mafia documentation, fictitiously assigns to others the ownership of enterprises, company shares or shares or corporate offices, if the entrepreneur or company participates in procedures for the award or execution of contracts or concessions.

The crime under consideration can be integrated by a variety of simulated transactions concerning assets of different nature; in particular, it can be concretely carried out through the **fictitious attribution of the ownership or availability of money or other assets** and consists of a situation of **formal appearance** of the ownership of such assets, which differs from the substantial reality, with the aim of circumventing the rules on asset prevention, smuggling or for facilitating the crimes of receiving of stolen goods, laundering or use of assets of illicit origin (thus Supreme Court, Criminal Section, no. 8452/2019).

The expression «*fictitious attribution of the ownership or availability of money, goods or other utilities*» has a broad meaning, referring not only to the traditional forms of negotiation, but to any type of act suitable for creating an apparent relationship of lordship between a given subject and the asset, with respect to which the power of the person making the attribution, on whose behalf or in whose interest the attribution is made, remains intact (thus Supreme Court, Criminal Section, no. 15781/2015).

Therefore, this offense is characterized by the conscious determination of a **situation of discrepancy** between **formal ownership**, merely apparent, and ***de facto* ownership** of a given asset, qualified by the specific fraudulent finalization as described by the law.

The person who makes himself the fictitious owner of assets is also liable under Article 512 bis of the Criminal Code, in cooperation with the person who made the fictitious attribution (thus Supreme Court, Criminal Section, no. 22106/2022): for example, the person who, other than the

concealed owner of the asset and the front man, acts as a *de facto* director of companies on behalf of actual owners (thus Supreme Court, Criminal Section, no. 27123/2023).

The crime is completed at the moment in which the simulated transaction is concluded and the apparent transfer of the asset takes place, in particular «*when the fictitious intestacy is carried out, so that, in order to be able to affirm the cooperation on the part of a third party, it is necessary to demonstrate that he or she made a material or moral contribution at the very moment of the fraudulent attribution*» (see Supreme Court, Criminal Section, no. 16520/2021).

Even subsequent conducts of further fictitious attribution, different from the first attribution and although having as their object the same asset or the same corporate structure, constitute unlawful conducts autonomously punishable under Article 512 *bis* of the Criminal Code, as they are in any case aimed at operating an evasion of the real holder and preventing the ablation of the asset (thus Supreme Court, Criminal Section, no. 11881/2018).

The **psychological element** of the crime also provides for a **specific intent**, which consists in the purpose of evading the law provisions on prevention measures or smuggling, or to facilitate the commission of one of the crimes referred to in Articles 648, 648 *bis* and 648 *ter* of the Criminal Code.

With specific reference to the case of transfer for the purpose of evading the provisions on preventive measures, the crime of fraudulent transfer of valuables to be envisaged, it is sufficient only that the perpetrator may fear the establishment of the said measure, not requiring the prior enactment or that the relevant proceedings are pending (thus Supreme Court, Criminal Section, no. 22954/2017).

Computer fraud (Article 640 *ter* of the criminal code)

This offence punishes anyone who, by altering in any way the operation of a computer or telecommunications system or by intervening without the right to do so in any manner whatsoever in data, information or programs contained in a computer or telecommunications system or pertaining to it, procures for himself or others an unfair profit to the detriment of others.

Paragraph 2 of Legislative Decree no. 184/2021 introduced a new aggravating circumstance (in addition to that already provided for in the case where the conduct is committed by abusing the capacity of system operator) where the alteration of the computer system results in a transfer of money, monetary value or virtual currency. This aggravated hypothesis is expressly referred to in Article 25 *octies.1* of Decree 231.

Therefore, following the 2021 legislative amendment, computer fraud is relevant for the purposes of the entity's liability in two distinct hypotheses: pursuant to Article 24 of Decree 231, as

an offence punishable in its entirety, but only if committed to the detriment of the State or other public entity or the European Union; pursuant to Article 25 *octies*.1 of Decree 231, as an offence punishable even if committed against a private individual, where the aggravating circumstance of an unlawful act resulting in the transfer of money, monetary value or virtual currency can be envisaged.

The sanctioning apparatus provided for against the entity pursuant to Decree 231 is extremely diversified depending on the object of the offence, in particular

- in relation to the offence of undue use and falsification of non-cash payment instruments referred to in Article 493 *ter* of the Criminal Code, the entity is subject to a fine of 300 to 800 quotas (Article 25 *octies.*1, first paragraph, letter a)
- for the offence of possession and dissemination of computer equipment, devices or programmes aimed at committing offences concerning payment instruments other than cash referred to in Article 493-*quater* of the criminal code, and for the offence of computer fraud referred to in Article 640-*ter* of the criminal code, in the hypothesis aggravated by the carrying out of a transfer of money, monetary value or virtual currency, a monetary sanction of up to 500 quotas is applied to the offence (Article 25 *octies.*1, first paragraph, letter b).

In addition, the second paragraph of Article 25 *octies.*1 provides that, unless the act constitutes another administrative offence punishable more severely, in relation to the commission of any other offence against public faith, against property or which in any event offends property, when its object is payment instruments other than cash, the following financial penalties shall apply to the entity

- up to 500 quotas if the offence is punished with imprisonment of less than ten years;
- from 300 to 800 quotas if the offence is punished with a term of imprisonment of no less than ten years.

In this regard, the doctrine has pointed out that the wording of the second paragraph of Article 25 *octies.1* does not appear to comply with the principle of legality enshrined in Article 2 of Decree 231, as it does not circumscribe the scope of application of the administrative offence to the offences covered by Decree No. 231. A strict interpretation of the provision should lead to the conclusion that only offences against property, or which in any case offend against property, provided for by the Criminal Code and already included in Decree 231, are included in the list of new offences for which the entity is liable under Article 25 *octies.1*.

In the event of the commission of the offences referred to in the first and second paragraphs of Article 25 *octies.1*, the disqualification sanctions provided for in Article 9 of Decree 231 are also applicable to the entity.

SECTION 8: Criminal offenses pursuant to Article 25 *decies* of Decree 231.

The crime-assumption indicated hereinafter was introduced within Decree 231, Article 25 *decies*, by Law no. 116 of 3 August 2009.

In particular, the law provides for offenses for which the Company may be liable as set forth in Article 377 *bis* of the Italian Criminal Code, which entails *"Inducement not to make statements or to make false statements"*.

The offense is committed when a subject is induced, by violence or threat, or an offer or promise of money or other asset, not to make a statement or to make false statement in front of the Judicial Authorities, statements used in penal proceedings, when they have the right not to reply.

It is also noted that a condition of the offense is pendency in penal proceedings. As noted, the proceedings are initiated by the so-called *notitia criminis* (or accusation, a complaint or report by private parties or law enforcement), and entails in the initial stages of investigation by the Public Prosecutor and, at a later time, the possible start of actual criminal proceedings.

Therefore, the «*Judicial Authorities*» envisaged in Article 377 *bis* of Criminal Code, is intended as any body belonging to the judiciary, including the bodies of the Public Prosecutors office as well as judges (one-person or collectively, temporary or permanently in office).

As for the subject committing the offense, the regulation does not refer to a particular qualification, making reference to «*whoever*» and, therefore, may be any subject who, obviously, is a part of the Company (pursuant to Article 5 of Decree 231).

With reference to the passive subject, on the other hand, the recipient of the inducement may exclusively be the person who, as mentioned above, is called by the Judicial Authorities to make a statement (for example, the recipient is invited to make an appearance in front of the Public Prosecutor), and has the right not to reply.

In particular, the provision refers to a person under investigation (the so-called "accused"), the person being investigated and the person being investigated as part of proceedings relating to Article 12 of the Italian Code of Criminal Procedure.

The law expressly recognises the right of these subjects to remain silent as well as their right to lie (namely the two rights the person may use to express his above mentioned right to not respond), when, for example, they pertain to questioning or oral proceedings during the penal proceedings (see Articles 64 and 210 of Code of Criminal Proceedings).

The unlawful conduct can be expressed in different alternate ways, such as violence[118], threat,

[118] «*Violence*» is intended as any coercive means to deprive the victim of the freedom of determination and action

the promise or offer of money or other benefit[119], which is sufficient to effectively induce the recipient of reticence or lying at the proceedings.

Therefore, for the purpose of integrating this offense, the mere behaviour to instigate an offense does not suffice. The passive subjects must make a false statement or not make a statement, using their right to not respond. In this event, the offense can take place when two subjects from the Company, at any level, are involved in the same proceedings or in associated proceedings, and one induces the other to not reveal certain elements or facts known to him or to reveal falsehoods, offering him money or other benefits or threatening, for example, to fire him.

[119] «*Other benefit*» is intended as an advantage not necessarily of an economic nature, a favor or gift of any kind.

SECTION 9: Criminal offenses pursuant to Article 25 undecies of Decree 231.

With reference to the "**Environmental Crimes**" referred to in article 25 *undecies* of Decree 231, introduced by Legislative Decree no. 121 of 7 July 2011, it should be noted that Italian law – in transposing the EU Directives on the protection of the environment through criminal law and on ship-source pollution[120] – has extended the administrative liability of legal persons to cover a multiplicity of crimes designed to protect the legal interest that is the "environment".

Those crimes, which constitute predicate offenses that may give rise to administrative liability under Decree 231 if committed in the interests of or to the advantage of a company, can be broken down into five groups as follows:

a) the crimes under Articles 727 *bis* and 733 *bis* of Criminal Code, introduced by the above mentioned Legislative Decree no. 121/2011, and the new offenses introduced under Title VI *bis* of the Second Chapter of the Criminal Code following the entry into force of Law 22 May 2015, no. 68, referred to by Article 25 *undecies* of Decree 231;

b) some crimes, for the most part misdemeanours, under Legislative Decree no. 152 of 3 April 2006 (so-called 'Environmental Code' or 'Consolidated Environmental Text', or 'TUA' to use its Italian acronym), in relation to water discharges, waste management, remediation obligations and atmospheric emissions;

c) some crimes governed by Law no. 150 of 7 February 1992 concerning the possession of and trade in protected fauna or flora species;

d) some crimes governed by Law no. 549 of 28 December 1993 ("*Measures to protect the ozone layer and the environment*") concerning obligations in connection with the terminating and reduction of the use of ozone-depleting substances;

e) finally, some crimes in connection with the discharge of hydrocarbons and other liquid substances by ships under Legislative Decree no. 202 of 6 November 2007.

In general, it is as well to point out that the majority of environmental crimes are misdemeanours[121]. It follows that one must bear in mind the general principles laid down in the

[120] See Directive 2008/99/EC and Directive 2009/123/EC, amending Directive 2005/35/EC. Legislative Decree No. 121/2011 was issued further to the European Parliament's delegation of power to national government under the Communities Act 2009 (Law No. 96 of 4 June 2010).

[121] Within the context of Environmental crimes there are a number of "*delitti*", for example, under articles 258, 260 and 260 *bis* of the Environmental Code as well as under articles 8 and 9 of Legislative Decree no. 202/2007, or among the new offenses introduced by Law 22 May 2015, no. 68.

Criminal Code, especially the last paragraph of Article 42[122], when considering the constituent elements of the crime and in particular the mental element (*mens rea*).

Additionally, among the new offenses, included within the so called "predicate crimes", introduced in the criminal code further to the entry into force of Law no. 68/2015, there are also offenses punishable for negligence.

Indeed, within the context of the broad concept of "crime" the Italian Criminal Code draws a fundamental distinction between felonies and misdemeanours, providing as a rule that the *mens rea* for the former is intention (with negligence being an exception that must be expressly stated by the law) while the *mens rea* for the latter is indifferently intention or negligence.

In other words, the perpetrator of a misdemeanour is liable for his (knowing and voluntary) action or omission «*whether intentional or negligent*» (last paragraph of article 42).

Therefore, an environmental crime that amounts to a misdemeanour can be punished on the basis also of mere **negligence**, **carelessness** or **incompetence** on the part of the perpetrator (so-called in other words, "*general guilt*" or "*general negligence'*) or **the breach of specific precautionary rules** laid down by the authorities and incorporated into laws, regulations, orders or rules (so-called '*specific negligence'*).

That approach must not lead one to suppose that the law gives little consideration or attention to environmental matters. On the contrary, it is precisely the pre-eminence of those interests and the need to afford more adequate protection to the legal interest that is the environment which has led the law to lowering the threshold of criminally relevant behaviour to mere misdemeanours, whose prosecution from a strictly *mens rea* standpoint is much easier than is the case with felonies because one does not have to prove intention on the offender's part but just negligence.

Having clarified the foregoing, below is an analysis of the crimes that – following a preliminary mapping of risk – can be considered as exhibiting a higher risk of occurrence taking into account the business that ALNG S.r.L. actually carries on.

In light of the importance that environmental protection is afforded in the Company's policies, it was considered better to include at the end of this Section 8 a table summarising **all** of the criminal conduct envisaged by Article 25 *undecies* of Decree 231 and the associated sanctions.

a) Crimes under Criminal Code.

- Environmental pollution (Article 452 bis of Criminal code)

[122] See also the last paragraph of article 43 of the Criminal Code whereby «*the distinction between intentional crimes and negligent crimes prescribed by this article for offenses shall likewise apply to misdemeanours whenever with respect thereto the criminal law makes a legal consequence depend upon that distinction*» (for example, the seriousness of the crime/punishment, recidivism, declaration as to being a habitual offender or a professional criminal).

«It is punishable with imprisonment from two to six years and with a fine from € 10.000 up to €100.000 whoever unlawfully causes a significant and measurable compromising or deterioration:
1) of water and air, or of extended or significant portion of soil and subsoil;
2) of an ecosystem, biodiversity, even agricultural, of the plant species or fauna.
If the pollution is produced in a natural protected area or subjected to landscape, environmental, historical, artistic, architectural or archaeological restrictions, or to the detriment of protected animal or plant species, the penalty is increased from one third up to a half. If the pollution causes a deterioration, compromising or destruction of an habitat in an natural area protected or subject to landscape, environmental, historical, artistic, architectural or archaeological restriction, the penalty is increased from on third up to two third»[123].

The offense of "Environmental pollution" has been introduced in the Italian criminal system by Law 22 May 2015, no. 68. The new elaborated provision clearly differs from the typical ecocrimes as they were regulated before the entry into force of the 2015 reform.
In fact, until the recent reform, environmental offense have been always constructed as typical misdemeanour, aimed at criminally sanctioning the exercise of polluting activities in lack of authorization or by exceeding the threshold limits set forth by the Law.
The offense under Article 452 *bis* c.p. differs from the previous legislation, being a typical offense of event and damage, which punishes the occurring of significant and measurable "*compromising*" or "*deterioration*" of 1) *water and air, or of extended or significant portion of soil and subsoil;2) an ecosystem, biodiversity, even agricultural, of the plant species or fauna.*
The terms used by the Legislator to depict the event seems to cover all cases in which a concrete harm to the good, which is the object of the protection, occurs.
In this respect, under a mere lexical perspective, while the term "*compromising*" seems to be referred to a situation generally irreparable, characterized by a definitive inability of the good as to its functions, the concept of deterioration should be intended as a mere state of worsening with respect to the previous conditions of the same good.
In the law context, as outlined in the report of the Case-law Office of the Court of Cassation about Law no. 38 of 22 May 2015, the two terms are both found in the definition of environmental damage set forth in Article 18 of Law 18 July 1986, no. 349 (the Law instituting the Ministry for the Environment), identified as «*any voluntary or culpable fact in violation of law provisions or measures adopted under the law which compromises the environment, by harming it, altering it or destroying*

[123] Paragraph substituted by Article 6-*ter*, para. 3, letter b), of Law Decree 10 August 2023, no. 105, converted with amendments in Law 9 October 2023, no. 137.

it as a whole or in part, [which] obligates the author of the fact to compensate the State»; such formulation corresponds to the measurable progress of environmental damage, inside of which the deterioration is the loss, indeed, of the degree of use and/or ecological function.

However, the compromising and deterioration of the environment are criminally relevant if they are «*significant and measurable*».

By using this expression, which recalls the one used in Article 300 of the Code of the Environment for defining the environmental damage («*it is environmental damage any deterioration significant and measurable, direct or indirect, of a natural resource or of the utility connected to this latter*»), the Legislator seems willing to punish only and exclusively those conducts which are characterized, respectively, by a clear relevance under the pollution profile, and which can be quantified, with respect to both the attacked matrix and the scientific parameters (biological, chemical, organic, naturalist, etc) of the alteration.

The above mentioned terms, however, raise a number of issues as to their interpretation, being expressions - as noted in the first comments to the provision under examination - undoubtedly vague and undetermined.

As to the material object of the offense at stake, while the first part of the provision (concerning the compromising or deterioration of « *water and air, or of extended or significant portion of soil and subsoil»)* does not raise particular issue as to its interpretation, there are more doubts with respect to the concept of **ecosystem**.

In this respect, indeed, it is not easy to understand which is the substantial difference between the above mentioned concept and the totality of the environmental matrix (air, water, soil) referred to in the first part of the provision.

As to the conduct, the offense under Article 452 *bis* c.p. is constructed as a crime of free form, which may be carried out both through an active conduct and an omission, namely the omitted prevention of the event by whom, based on the environmental legislation, has to comply with the specific obligation of prevention with respect to a certain polluting fact, damaging or dangerous.

Additionally, the provision uses the term “unlawfully” to define the illicit character of the conduct: the use of the adverb “illicit” seems to be aimed at making criminally relevant any conducts carried out in violation of law provisions, even if not specifically connected to the environmental protection.

Furthermore, based to the case-law on environment, the “unlawful” situation should not be limited to the lack of the necessary authorizations, but should be extended even to the cases of unlawful or expired authorizations, or to cases of violations of the prescriptions or the limits of the authorizations.

As to the subjective element of the crime, Article 452 *bis* c.p. provides for an offense with generic intention, in respect of which all the forms of intention may occur, including the eventual intention

("dolo eventuale"). It should be noted that environmental pollution is punished, under the following Article 452 *quinquies* c.p. (provision which is referred to in Article 25 *undecies* of Decree 231) **even for negligence**: in such a case, the penalty provided is decreased from one third to two third compared to the corresponding intentional hypothesis.

In case of conviction of the company for the offense set forth in Article 452 *bis* c.p., it is provided the application of the pecuniary sanction from 250 up to 600 quotas, as well as, by virtue of the introduction of paragraph 1 *bis* of Article 25 *undecies* of Decree 231, the application of interdictive sanctions pursuant to Article 9 of Decree 231, for a period no longer than one year.

- ***Environmental disaster (Article 452 quarter of the Criminal Code)***

«*Except for the cases provided for by Article 434, whoever unlawfully causes an environmental disaster is punished with imprisonment from five to fifteen years.*

The followings represent, alternatively, environmental disaster:

1) the irreversible alteration to the equilibrium of an ecosystem;

2) the alteration to the equilibrium of an ecosystem whose elimination is particularly costly and achievable only with exceptional measures;

3) the injury to public safety determined on the basis of the relevance of the fact for the extent of the compromise or its harmful effects, or on the basis of the number of the persons both injured and exposed to danger.

If the disaster is produced in a natural area protected or subjected to landscape, environmental, historical, artistic, architectural or archaeological restrictions, or to the detriment of protected animal or plant species, the penalty is increased from one third up to a half»[124].

The offense of environmental disaster is the more significant innovation of the 2015 reform, considering that, as of today, lacking a specific discipline, all cases of environmental disaster have fallen according to the case-law (as supported by the Constitutional Court) in the offense of unnamed disaster under Article 434 c.p., so as to cover all the cases where an environmental contamination had produced a danger for the public safety.

Similarly to the offense of environmental pollution, also the crime under Article 452 *quater* c.p. is constructed as an offense of event by free form, sanctioning any active conduct or omission which caused, alternatively, one of the events included in the meaning of "disaster" mentioned in the second paragraph of the same Article 452 *quater* c.p.

[124] Paragraph substituted by Article 6-*ter*, para. 3, letter c), of Law Decree 10 August 2023, no. 105, converted with amendments in Law 9 October 2023, no. 137.

The material object of the offense is, first of all, the « *irreversible alteration to the equilibrium of an ecosystem*» and its alteration «*whose elimination is particularly costly and achievable only with exceptional measures*».
The above mentioned hypotheses, which surely are the most serious cases of environmental harm, refer to the events in which the harmful effects caused to an ecosystem are stable and no longer recoupable, or to situation in which the restoration of the previous condition is particularly difficult.
As to the third "event" of disaster as described in the provision, regarding the «*injury to public safety determined on the basis of the relevance of the fact for the extent of the compromise or its harmful effects, or on the basis of the number of the persons both injured and exposed to danger*», it is worth highlighting that such hypothesis, as compared to those mentioned above, seems to occur in mere situation of danger for the public safety, in lack of any form of damage to the environment. In this respect, it has been noted that the case under 3) introduced in the offense of environmental disaster a crime of mere conduct, lacking a specific connection to the environmental protection, so as some authors identified in such an offense a special hypothesis of "sanitary disaster".

As to the subjective element of the offense, environmental disaster is also an offense requesting the generic intention, with respect to which all the forms of intention may occur, including the eventual intention ("dolo eventuale").
Pursuant to Article 452 *quinquies* c.p., such offense is punished **even for negligence**, and in such a case it is applicable the penalty decreased from one third to two third compared to the corresponding intentional hypothesis.

In case of conviction of the company for the offense set forth in Article 452 *quater* c.p., it is provided the application of the pecuniary sanction from 400 up to 800 quotas, as well as, by virtue of the introduction of paragraph 1 *bis* of Article 25 *undecies* of Decree 231, the application of interdictive sanctions pursuant to Article 9 of Decree 231, for a period no longer than one year.

- Culpable offenses against the environment (Article 452 *quinquies* of the Criminal Code)
«*If any of the facts pursuant to Articles 452 bis and 452 quarter is committed for negligence, the penalties provided for by the same articles are decreased from one third to two third.*
If from the commission of the facts mentioned in the above paragraph it derives the danger of environmental pollution or of environmental disaster the penalties are further decreased of one third».

The above provision confers criminal relevance to those conducts of environmental pollution and environmental disaster committed with negligence.
The second paragraph of Article 452 *quinquies* c.p. provides for a further diminution of the penalty when the conducts under Articles 452 *bis* and 452 *quater* c.p. give rise to the **danger** of environmental pollution and environmental disaster. The aim of this provision is to sanction even those culpable facts, which are concretely adequate to cause an environmental pollution or environmental disaster, so as to fully implement the obligations to incriminate even dangerous conducts provided for by the Directive on the criminal protection of the environment (Directive 2008/99/EC of 19 November 2008). However, it should be noted that the above provision - in addition to the fact that it raises interpretative issues, for example as to its application to the case of environmental disaster consisting in the injury to the public safety, so sanctioning the "danger of the danger" for the public safety - seems pleonastic, considering that the above conducts of danger were already punishable, in relation to the intentional hypotheses, through the attempted form of the new environmental offenses, and - in relation to the culpable hypotheses - by means of the existing misdemeanour, which are constructed as crimes of danger.

In case of conviction of the company for the offense under Article 452 *quinquies* c.p., it is provided the application of the pecuniary sanction from 200 up to 500 quotas.

- Aggravating circumstances (Article 452 *octies* of the Criminal Code)
«*If the organization under Article 416 is directed, exclusively or alternatively, to the purpose to commit any of the offenses provided for by this title, the penalties provided for by the same Article 416 are increased.*
When the organization under Article 416 bis is aimed at committing any of the offenses provided for by this title or to obtain the management or anyway the control over economic activities, concessions, authorizations, public tender or public services in relation to environmental matter, the penalties provided by the same Article 416 bis are increased.
The penalties set forth in the first and second paragraphs are increased form one third to the half if public officials or public service officers, performing tasks or rendering services in environmental matters, belong to the organization».

The introduction of environmental aggravating circumstances in relation to the offense of conspiracy is due to the need, of criminal politic, to fight against the phenomenon of criminal organizations which gain relevant profits from the environmental crimes.

Further provisions introduced by Law no. 68 of 22 May 2015 which are of interest to the company are the followings:

- Aggravating circumstances (Article 452 *octies* of the Criminal Code)

«In case of conviction or plea bargain, pursuant to Article 444 of the code of criminal procedure, for the offenses set forth in articles 452 bis, 452 quarter, 452 sexies, 452 septies and 452 octies of this code, it is always ordered the confiscation of the goods which are the product or the profit of the crime or which were used to commit the crimes, unless they belong to persons extraneous to the offense.

When, further to a conviction for one of the offenses provided for by this title, the confiscation has been ordered and it is not possible to enforce it, the Judge indentifies goods having an equivalent value which are available to the defendant, even indirectly of through a third person, and order to confiscate them.

The confiscated goods pursuant to the previous paragraphs or their profits, if any, are made available for the competent Public Administration and for the restricted use for the reclamation of the sites.

Confiscation does not apply if the defendant has effectively made safe and, if necessary, carried out the reclamation and restoration of the state of the places».

- Restoration of the state of the places (Article 452 *octies* of the Criminal Code)

«*When issuing a conviction or a decision of plea bargain pursuant to Article 444 or the code of criminal procedure for any of the offenses provided for by this title, the Judge orders to recoup and, if technically possible, to restore the state of the places, charging the condemned and those subjects under Article 197 of this code for their execution.*

The provision according to title II of sixth part of legislative decree 3 April 2006, no. 152, concerning the environmental restoration apply to the restoration of the state of the places pursuant the previous paragraph».

-Killing, destruction, capture, taking or possession and trade of specimens of protected wild fauna or flora species (Article 727 bis of Criminal Code)[125].

That crime, already included among the predicated offenses which may rise the liability of the entity under Decree 231 before the 2015 reform, is committed where, except for permitted cases, one

[125] Heading amended by Article 15 paragraph 1(a) of Legislative Decree No 135 of 5 August 2022.

kills, captures or possess specimens belonging to a protected wild fauna species (paragraph 1) or destroys, takes or possesses specimens belonging to a protected wild flora species (paragraph 2).

To this end, it should be noted that by «*protected wild fauna or flora species*» is meant those indicated respectively in Annex IV to Council Directive 92/43/EC of 21 May 1992 (so-called 'Habitats Directive'), and in Annex I to Directive 2009/147/EC of the European Parliament and the Council of 30 November 2009 (so-called 'Birds Directive').

However, no crime is committed if «*the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species*». One can deduce from this exclusion of criminal (and hence also administrative) liability that the legal interest protected by the law is not so much the single specimen belonging to a protected species but more the «*conservation status*» of the species exposed to danger or harmed by the criminal conduct.

As a misdemeanour is involved, the conduct in question is punished if committed intentionally or negligently and hence also, for example, where the death or destruction of a specimen having an impact on the conservation status of the species occurs as a result of mere inattention or incompetence.

Following the entry into force, on 27 September 2022, of Legislative Decree no. 135 of 5 August 2022, paragraph 3 of Article 727 *bis* of the Criminal Code sanctions anyone who, unless the act constitutes a more serious offence, illegally trades in protected animal and plant species.

- Destruction or deterioration of a habitat within a protected site (article 733 bis of Criminal Code).

The misdemeanour in question is committed whenever a habitat within a protected site is destroyed or in any case made to deteriorate thereby compromising conservation status.

For the purposes of the application of article 733 *bis* of Criminal Code, by «*habitat within a protected site*» is meant any habitat of species for which an area is classified as a special protection area pursuant to articles 4, paragraph 1 and 2, of the above mentioned Birds Directive (Directive 2009/147/EC) or any natural habitat or habitat of species for which a site is designated as a special area of conservation pursuant to article 4, paragraph 4, of the Habitats Directive (Directive 92/43/EC).

Likewise, in this case from a *mens rea* standpoint, it is sufficient that the offender acted negligently.

a) Crimes under Legislative Decree no. 152 of 3 April 2006 (so-called 'Environmental Code' or 'Consolidated Environmental Text, or 'TUA').

- Unauthorised dumping of water waste without authorization or with suspended or revoked authorization (article 137, paragraphs 3, 5, 11 and 13, of the Environmental Code).

Article 137 of the Environmental Code envisages a wide range of unlawful conduct that essentially attacks water resources.

In particular, the conducts concern mainly the unauthorised discharges of water wastes; therefore, it notes that, pursuant the Article 74, paragraph 1, subparagraph ff) of TUA, «*discharge*» means «*any release made only by means of a stable connection system which connects the production cycle of wastewater to the receiving body of surface water, into soil, subsoil and drainage system, without a continuous solution, whatever their pollutant nature, even if they are subjected to a prior treatment of purification*»[126].

However, for the purposes of administrative liability under Article 25 *undecies*, paragraph 2, subparagraph a), only some types of conduct are relevant and specifically:

- the discharge of industrial wastewater containing the hazardous substances listed in Tables 5 and 3/A of Annex 5 to Part III of the Environmental Code **in the absence** of the prescribed authorisation (paragraph 2);
- the discharge of industrial waste water containing the hazardous substances listed in Tables 5 and 3/A of Annex 5 to Part III of the Environmental Code **without observing the conditions** of the authorisation or other conditions of the competent authorities (paragraph 3);
- the discharge of industrial waste water entailing **the exceeding** of the table limits specified in Table 3 or, in the case of discharge on soil, those specified in Table 4 of Annex 5 to Part III of the Environmental Code or entailing **the exceeding** of the more restrictive limits laid down by the Regions, Autonomous Provinces or competent authorities, in relation to the substances listed in Table 5 of Annex 5 to Part III of the Environmental Code (paragraph 5, first sentence);
- the discharge of industrial waste water entailing **the exceeding** of the above mentioned limits **together with** the limits set for the substances listed in Table 3/A of Annex 5 to Part III of the Environmental Code (paragraph 5, second sentence);
- violation of the prohibition against discharging on soil, in the subsoil and into ground water referred to in articles 103 and 104 of the Environmental Code (paragraph 11);
- the discharge into sea waters by ships or aircraft of substances or materials **whose dumping is absolutely prohibited** under international conventions ratified by Italy except where the quantities are such as to be rapidly rendered harmless by the physical, chemical and biological process that occur naturally at sea and prior authorisation has been granted by the competent authorities (paragraph 13).

  All of the above constitute misdemeanours.

[126] The scope of this term excludes water discharge as referred to in Article 114 of the Environmental Code.

- Unauthorised waste management (Article 256, paragraph 1, 3, first and second sentences, 4, 5 and 6, first sentence, of the Environmental Code).

Article 256 of the Environmental Code, the key provision of the entire system of sanctions in connection with waste management, punishes a series of independent and separate instances of conduct that lack statutory validity (for example, authorisation, registration or notice) thereby rendering them unlawful.

Before examining the various types of crime governed by the provisions in question, it is essential to define the concepts of «*waste*», the material object of the offenses therein envisaged, and «*management*», the term that generally covers the unlawful conduct described in Article 256.

Regarding «***waste***», that concept is to be understood as meaning «*any substance or object which the holder discards or intends or is required to discard*» (Article 183, paragraph 1, subparagraph a), of the Environmental Code).

In general, waste is classified, depending on its origin, as *urban* or *special* and, depending on whether it displays the properties set out in Annex I to Part IV of the Environmental Code, as *hazardous* or *non-hazardous* (Article 184, paragraphs 1 and 4, of the Environmental Code).

According to Article 184 *bis* waste does not include «*by-products*», that is any substance or object that *(i)* originates from a production process, *(ii)* will be used directly without any further processing other than normal industrial practice, *(iii)* by the producer or third parties, and *(iv)* whose further use is «*lawful*», i.e. the substance or object fulfils all environmental and health protection requirements.

At the same time law excludes some objects and substances indicated in Article 185[127] from the definition of «*waste*» under Article 256, and more precisely from the scope of Part IV of the Environmental Code («*Provisions on waste management and the remediation of contaminated sites*»), and likewise excavated soil and rocks that fulfil the conditions laid down in Article 186.

Finally, in transposing Directive 2008/98/EC[128], some specific provisions were laid down on the subject of «*end-of-waste status*» under Article 184 *ter*, introduced by Legislative Decree no. 2005 of 3 December 2010.

[127] For example, gaseous effluents emitted into the atmosphere, land (*in situ*), uncontaminated soil, radioactive waste and decommissioned explosives.

[128] The European Parliament and the Council adopted the *Directive on waste* and repealing certain other Directives on 19 November 2008.

In this regard it is provided that waste shall cease to be such when *(i)* the substance or object has undergone a recovery operation (including recycling and preparation for re-use), *(ii)* the substance or object is commonly used for specific purposes, *(iii)* a market or demand exists for such a substance or object, *(iv)* the substance or object fulfils the technical requirements for the specific purposes and meets the legislation and standards applicable to products, and *(v)* the use of the substance or object will not lead to overall adverse environmental or human health impacts.

Regarding «***management***», that concept is to be understood as meaning «*the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker*» (Article 183, paragraph 1, subparagraph n), of the Environmental Code).

In this regard case law has clarified that «*the concept of waste management ... is not to be understood in a business sense or as the professional carrying out of the typical activities associated therewith but in a broad sense inclusive of any contribution, active or passive, aimed at accomplishing the collection, transport, recovery or disposal of waste, including actions taken as a dealer or broker*».

In particular, the legislation has defined the following terms:

- «*collection*» means the gathering of waste, including the preliminary sorting and preliminary storage of waste, for the purposes of transport to a waste treatment facility (Article 183, paragraph 1, subparagraph o), *op cit*.);
- «*recovery*» means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy (Article 183, paragraph 1, subparagraph t), *op cit*.);
- «*disposal*» means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy (article 183, paragraph 1, subparagraph z), *op cit*.).

Some of the activities included in the concept of «*management*» have not been expressly defined by the above-mentioned Article 183. Nonetheless, it is possible to define them in the following terms:

- «*transport*» consists of moving the waste from the place of production to the location at which it will undergo recovery or disposal;
- «*actions taken as a broker*» consists of the activities undertaken by whoever, without taking physical possession of the waste, limits himself to putting the waste producer and/or others

interested in waste management in contact with one another for the purposes of arranging for the recovery or disposal of the waste itself;

- «*actions taken as a dealer*» consists of the purchase and sale of waste collected and transported by others without taking physical possession of the waste.

The undertaking of the above activities, subject to controls of one form or another (prior, contemporaneous or subsequent), is possible only if one is specifically entitled to do so. For the present purposes suffice it to say that in general the activities that entail the greatest environmental risk require a special purpose authorisation while for other less risky activities mere enrolment in a register or compliance with simplified procedures is all that is required[129].

Turning now to examine the conduct covered by Article 256 that is relevant for the purposes of article 25 *undecies*, paragraph 2, subparagraph b), such consists of the following:

- the collection, transport, recovery and disposal of waste, hazardous and not hazardous, including actions taken as a dealer or broker, **in the absence** of the required authorisation, registration or notice[130] (Article 256, paragraph 1, subparagraphs a) and b), of the Environmental Code).
- the establishment or management of an **illegal dump**, i.e. unauthorised, even if it is dedicated just in part to the disposal of hazardous waste (paragraph 3, first and second sentences). In this regard, it should be borne in mind that «*establishment*» of an illegal dump means the setting aside and fitting out of an area for use as a dump through the carrying out of the works necessary to that end (for example, the levelling of the area and opening of the relevant accesses thereto) while «*management*» presupposes the preparation of an area to receive the waste and consists of putting in place an organisation of persons, things and/or equipment aimed at the functioning of the dump itself[131].

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[129] See Articles 208, 209, 210, 211, 212, 214, 215 and 216 of the Environmental Code.

[130] It should be noted that, in this regard, case law has established that the offense of "*Unauthorized transport of waste*" is an instantaneous crime, *i.e.* is one which is fully consummated or completed in and by a single act in the moment and the place in which it occurs (see Supreme Court judgment no. 216555 of 13 April 2010, in *CED Cassazione 2010*; *Id.* no. 8300 of 25 November 2009, in *Ambiente e sviluppo*, 2010, 754). This type of offense is distinguished from one that involves a continuous series or repetition of acts, which endures after the moment of the offense as the offense of "*Organized activities for the illegal traffic of waste*" pursuant to Article 260 of the Environmental Code (see Supreme Court judgment no. 24428 of 25 May 2011, in *CED Cassazione 2011*).
In the case of instantaneous crimes, the statute of limitations takes effect from the moment of the offense, while in the case of continuous crimes it is triggered on cessation of the criminal conduct or act.

[131] With reference to the concept of **illegal dumping**, case law has repeatedly stated that: «*In terms of waste management, the offenses of "Establishment" and "Management" of unauthorized dumping pursuant to article 51, paragraph 3, Legislative Decree no. 22 of 5 February 1997, is completed by the accumulation, more or less systematic but not repetitive and occasional, of waste in a given area, the heterogeneity of materials, the permanent abandonment of waste and the degradation (real or potential) of an area's condition as a result of the presence of these materials*» (see Supreme Court, Criminal Section III, judgment no. 203 of 7 January 2008; *Id.*, no. 36062 of September 2004).

In cases where the conduct described in the previous points is committed due to inobservance of the conditions contained or referred to in the authorisations or lack of the requisites and conditions required for registration or notification, the administrative sanction that can be imposed on the offender will be lighter.

- the impermissible **mixing of waste** in violation of the prohibitions laid down in Article 187 (paragraph 5)[132].
- the **temporary deposit**[133] of hazardous health waste at the place of production in violation of Presidential Decree No. 254 of 15 July 2003 pursuant to Article 227, paragraph 1, subparagraph b (paragraph 6, first sentence).

With particular reference to **persons** who may commit this offense, it is helpful to recall the following judgment:

«*According to this Court's precedent (see Supreme Court Criminal Section III) judgment no. 6420 of 7 January 2007, published on 11 February 2008), article 2, paragraph 3, of Legislative Decree No. 22/1997 already envisaged the accountability and cooperation of* ***all*** *the persons 'involved'* ***in any guise*** *in the management cycle not just of the waste but also of the 'goods from which the waste originates' and article 178, paragraph 3, of Legislative Decree No. 152/2006 has precisely reiterated the principle of the '****accountability and co-operation of all the persons involved in the production, distribution, use and consumption of the goods from which the waste originates****'*» (See Supreme Court, Criminal Section III, judgment no. 23971 of 15 June 2011; *Id.*, judgment no. 5033 of 17 January 2012).

And also: «*On that point, therefore, this Court (Criminal Section III, judgment no. 7746 of 24 February 2004, Turati and another) has ruled regarding waste management that* ***liability*** *for its correct carrying out in relation to national and Community law* ***lies with all of the persons involved*** *in the production, distribution, use and consumption of the goods from which the waste itself originates, and that such liability exists* ***also at the level of mere instigation, determination, support or facilitation in connection with the commission of the offenses***» (See Supreme Court, Criminal Section III, judgment no. 23971 of 15 June 2011)[134].

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[132] Article 187, paragraph 1 of the Environmental Code states: «*It is prohibited to mix hazardous waste with different properties or hazardous waste with non-hazardous waste*», unless specific authorization is granted pursuant to paragraph 2 of this article. Note that «*mixing*» should also be taken to mean the dilution of hazardous substances.
The Supreme Courts have clarified that the ban in question is pure common sense as mixing clearly makes it difficult to trace the waste, thereby making it impossible to assess the segregated use that can be made of the different elements.

[133] «***temporary deposit***» refers to «*the grouping together of waste, prior to collection, in the place where it is produced*» pursuant to article 183, paragraph 1, sub-paragraph bb), of the Environmental Code.

[134] These principles would also appear to be essentially reinforced by Legislative Decree no. 205/2010 (Articles 2 and 16).

In application of these principles, the offense of *Unauthorized waste management* (provided for by paragraph 1 of Article 256) is ascribed to employers because of his failure to diligently supervise his/her employees who committed the prohibited conduct.

In fact, «*the liability for unauthorized waste management does not regard necessary that the author is aware and the wilful of criminal conduct, but it arises from any act done in violation of duties of care rested legitimately upon the persons in charge of managing the business, when they fail to take of all measures necessary to prevent employees from committing criminal activities with reference to the waste management*» (see Supreme Court, judgement no. 2391 of 2011; *Id.*, Criminal Section III, judgement no. 19332 of 8 May 2009).

In accordance with previous judgments, caselaw has clarified that the producer/holder of non-hazardous special waste, when does not dispose wastes on his/her own or not give them to the other persons which manage a public waste disposal service, must ensure that those to whom he/she gives the wastes in order to their ultimate disposal have a due authorization, each for carrying out their activities (transport, interim storage, ultimate disposal), and that the failure to verify the presence of such requirement entails at least criminal liability for negligence (see Supreme Court, Criminal Section III, judgement no. 7461 of 15 January; *Id.*, judgement no. 44291 of 28 November 2007; *Id.*, judgement no. 21777 of 27 March 2007).

It was also stated that «*the holder of wastes is required to discard them in accordance to the prescriptions provided by the Legislative Decree no. 152/2006, so that the same is liable for negligence, in complicity with third parties unauthorized, whom he decides to entrust with the waste disposal*». In this case, in fact, «*the holder is liable for a "culpa in eligendo" because he entrusted, in defiance of all the responsibilities set forth by law, the wastes to third parties without prior verification if they have authorizations required*» (see, *ex pluribus*, Supreme Court, Criminal Section III, judgement no. 8018 of 1 March 2018; *Id.*, judgement no. 6101 of 7 February 2008; *Id.*, judgement no. 21588 of 6 May 2004).

In the light of above pointed and, in particular, of "*the principle of the accountability and co-operation of all persons involved in the production, distribution, use and consumption of goods from which the waste originates*", stated by abovementioned jurisprudence, it is clear that said offense of "*Unauthorized waste management*" may be committed, for example, by the party responsible of ALNG S.r.L. wastes management, in compliance with any person in leading or subordinate positions within the Company, *ex* article 110 of Criminal Code.

It is clear that such person shall commit the crimes at least in the interest of or for benefit of the Company (*i.e.* in order to reduce the costs for the disposal of materials classified as waste), in violation

of the duty of care for failing to take all necessary measures to avoid any misconduct in the waste management.

- Site remediation (Article 257, paragraph 1 and 2, of the Environmental Code).

The crime in question punishes, unless the fact amounts to a more serious offense[135], two different misdemeanours, based on acts of omission (paragraph 1).

The *first* consists in a failure to report, in according with the Article 242 of TUA, by the responsible of pollution, in the case of the occurrence of an event that has the potential to contaminate a site, to municipality, the province or the region in whose territory the damaging event was noted, as well as to Prefect of Province.

In this report must be defined the relevant aspects of the situation and, in particular, must be mentioned: the personal data of operator, the characteristics of the site, the environmental matrices presumably involved and a description of actions to be performed (see Article 304 of TUA).

Caselaw has stated in this regard that «*the polluter is required to report to the authorities provided by Article 242 of TUA* ***regardless*** *of exceeding the risk threshold concentrations (RTC) and its omission is punished under article 257 of TUA*» (See Supreme Court, Criminal Section III, judgement no. 16702 of 29 April 2011)

The *second* misdemeanour, always provided by paragraph 1 of above-mentioned Article, consists in a failure to undertake site remediation in conformity with the plan approved by the competent authorities in cases of contamination of the soil, subsoil, surface water or ground water that has occurred as a result of exceeding the risk threshold concentrations (RTC) (paragraph 1).

Provision is made for a heavier penalty in cases where the pollution is caused by hazardous substances (paragraph 2).

It is a crime that requires actual damage in the form of site contamination, defined in terms of exceeding certain parameters (*i.e.* risk threshold concentrations) (see Supreme Court, Criminal Section III, judgment no. 26474 of 14 March 2007).

Caselaw has clarified that in order to commit the crime in question, it is necessary both that the risk threshold concentrations have been exceeded and that a remedial plan approved by the competent authorities have been adopted within the framework of the procedure governed by Articles 242 *et seq.* of the Environmental Code (which regulate the characterisation procedure and the said remedial plan).

[135] Article 257 of Legislative Decree no. 152/2006 has been amended by the Law 22 May 2015, no. 68.

This differs from the previous rules laid down in Article 51 *bis* of Legislative Decree No. 22 of 5 February 1997 (so-called 'Ronchi Decree'). In fact, «*with the introduction of Article 257 of the Environmental Code, consummation of the crime necessarily presupposes the adoption of a remedial plan pursuant to Article 242*» and, therefore, «*in the absence of a final approved plan, there can be no crime under Article 257 of the Environmental Code*» (see Supreme Court, Criminal Section III, judgement no. 699 of 13 April 2010 - 9 June 2010; *Id.*, judgement no. 9492 of 29 January 2009, Rv. 243115).

That said, it has been clarified that criminal liability in this regard also attaches to those who impede the making and carrying out of the remedial plan by failing to implement the characterisation plan necessary to prepare the remedial plan in the first place (see Supreme Court, Criminal Section III, judgement no. 35774 of 2 July 2010 - 6 October 2010).

Further to the amendments made by the 2015 reform, it is now provided that the compliance with the project approved according to Article 242 and followings of the Environmental Code is a condition excluding criminal liability for the environmental misdemeanours set forth in other laws for the same event and for the same conducts pursuant to the first paragraph of Article 257 of the Environmental Code.

- *Violation of reporting requirements, record and form keeping requirements (Article 258, paragraph 4, second sentence, of the Environmental Code).*

The law has extended the liability of legal persons also to cases in which, in the context of the preparation of a waste analysis certificate, false information is given as to the nature, composition and chemical-physical properties of the waste or a false certificate is used during transport.

This offense is a part of the obligations provided for by Article 188 *bis* of TUA with reference to the waste traceability, from its production until its ultimate destination.

In order to ensure the traceability of waste, the regulatory framework of the Environmental Code provides that waste traceability is to be ensured by joining the waste traceability system - RENTRI pursuant to Article 188 *bis* TUA.

In particular, by implementing what provided for by Article 188 *bis* TUA, the Ministry for the Environment and Energy Security enacted, by Ministerial Decree of 4 April 2023, no. 59, the regulation regarding the discipline of the waste traceability and the electronic register for waste traceability (RENTRI), which provides for the procedures and fulfilments set forth in Articles 189, 190 and 193 of the same TUA, as integrated into RENTRI. The regulation entered into force on 15 June 2023.

The keeping of loading and unloading records shall meet the requirements under Articles 4 and 5 of Ministerial Decree No. 59/2023, while the identification form (FIR) is regulated by Articles 6 and 7 of Ministerial Decree No. 59/2023.

The falsification of a certificate and the use of a false certificate referred to in Article 258 paragraph 4, last sentence, of TUA are specific crimes compared to the general ones involving false documentation contained in the Criminal Code. They are felonies and the *mens rea* therefore is solely intention.

- *Illegal traffic in waste (Article 259, paragraph 1, of the Environmental Code).*

The provision in question punishes two types of conduct, consisting of the illegal traffic of waste under EU law as per Article 26 of Council Regulation (EEC) No. 259 of 1 February 1993 and the shipment of the waste listed in Annex II to the same Regulation in breach of the special rules laid down for that waste (see subparagraphs (a), (b), (c) and (d) of Article 1(3) of the above mentioned Regulation).

To ensure that all national systems observe certain minimum requirements for the protection of the natural environment and human health, the EU rules on the "*supervision and control of shipments of waste within, into and out of the European Community*" establish complex procedures to enable the single Member States – whose territory is affected by the transport (incoming or outgoing) or transit of waste – to precisely know the characteristics of the waste, its origin, its ownership, the route that it will follow and its final destination.

The objective pursued is to suppress the illegal traffic in waste and to limit the legal one in waste through controlling it.

More specifically, **illegal traffic in waste** exists if a shipment of waste is effected in circumstances where **any one** of the following conditions laid down in Article 26 of the aforementioned Regulation are fulfilled:

a) without notification to all competent authorities concerned (Article 26 paragraph 1(a) of the above mentioned Regulation); or
b) without the consent of the competent authorities concerned or with consent obtained from the competent authorities through falsification, misrepresentation or fraud (Articles 26 paragraph 1(b) and (c) of the above mentioned Regulation); or
c) the shipment is not specified in a material way in the consignment note (Article 26 paragraph 1(d) of the above mentioned Regulation); or
d) the shipment results in disposal or recovery in contravention of Community or international rules (Article 26 paragraph 1(e) of the above mentioned Regulation); or

e) the shipment is contrary to the rules on the import and export of waste within the member States referred to in Articles 14, 16, 19 and 21 of the Regulation in question (Article 26(1)(f) of the above mentioned Regulation).

Given that the Company - as mentioned above - has entered into a contract with third parties for the waste management service, ALNG S.r.L.'s Employees may incur this offense in the case they gave a causal contribution (direct or indirect) to any criminal activity undertaken by the third, leading to a liability for complicity *ex* article 110 of Criminal Code.

For example, a crime under the above-mentioned Article 259 may be committed when the irregularities detected in the documentation accompanying a shipment of waste are such as to give rise to total uncertainty as to the effective person handling the various stages of the transport.

- *Activities organised for the illegal trafficking in waste (Article 452 quaterdecies of Criminal Code, previously Article 260, paragraphs 1 and 2, of the Environmental Code).*

The crime referred to in Article 260 of the Environmental Code has been repealed by Legislative Decree no. 21 of 2018. The repealed provision remains however criminally relevant as the same offense is currently regulated by Article 452 *quaterdecies* of Criminal Code. Even if Article 25 *undecies,* paragraph 2, letter f) of the Decree 231 keeps referring to the crime under Article 260 of the Environmental Code as a predicate offense of the company's liability, the activity organised for the illegal trafficking in waste referred to in Article 452 *quaterdecies* of Criminal Code belongs to the group of the predicate offenses in accordance with Article 8 of the Legislative Decree no. 21 of 2018, which establishes that references to the repealed provisions, wherever they may be, shall be intended as referred to the corresponding provisions of the Criminal Code.

The crime of *Activities organised for the illegal trafficking in waste* aims at fighting against any and all illegal waste management activities which are carried out necessarily with cumulative, professional and habitual strategies because of the traffic's characteristics of continuity, systematicity and organization and because regard enormous quantities of waste (see Supreme Court, Criminal Section III, judgment no. 46189 of 14 July 2011).

The offense in question can be committed through a variety of conduct, characterised by its being done through a number of operations and involving the marshalling of means and the carrying on of continuous organised activities with a view to making an unlawful gain.

That conduct consists of the transfer, receipt, transport, export, import or in any case unlawful management of enormous quantities of waste (paragraph 1). Provision is made for heavier penalties in the case of highly radioactive waste (paragraph 2).

First and foremost it should be noted that the crime in question can be committed by a single person ("mono-subjective" offense, not "pluri-subjective", as it might be assumed from the term «*organization*») and hence does not require two or more offenders for its perpetration, even though, in practice, this crime presents associative and organized features.

This mono-subjective structure of the offense in question is easily deduced from the very wording used by law in the *incipit* of Article 452 *quaterdecies* of Criminal Code («*whoever, with a view to making an unlawful gain ... transfers, exports, imports…*»). Moreover, that deduction is not diminished by the reference to the necessity for a series of continuous operations over time since that circumstance is merely an objective facet of the unlawful conduct (see Supreme Court, Criminal Section III, judgment no. 4503 of 16 December 2005; *Id.*, judgment no. 16630 of 20 April 2011).

Regarding the *actus reus* and with special reference to the conduct of «*unlawful management*», caselaw has had occasion to spell out that the term «*relates to any form of waste management, including through actions taken as a broker or dealer, that is undertaken in breach of the provisions in the matter and cannot be considered as being tied to the notion of "management" in Article 183, subparagraph d), of Legislative Decree no. 152/06 or limited to the cases in which the activity is carried on without the prescribed authorisations*» (see Supreme Court, Criminal Section III, judgment no. 28685 of 4 May 2006) and hence also in the case in which the authorization is expired, illegal or not suitable for the type of treated waste.

Therefore, the crime covers not only the management of unlawful waste but also all instances of (unlawful) management in breach of existing laws and regulations, without the prescribed authorisation/registration/notice (see Supreme Court, Criminal Section III, judgment no. 46029 of 12 December 2008) or in total breach of the terms of the authorisation/registration/notice (see Supreme Court, Criminal Section III, judgment no. 358 of 20 November 2007; Court of Appeal of Palermo, Criminal Section IV, judgment no. 889 of 18 March 2011).

As for the notion of «*enormous quantities*» of waste, it has been held that reference must be made «*to the quantity of material managed overall through a multiplicity of operations even if each one considered separately could be considered as small in size, and such irrespective of whether the unlawfulness is a result of a lack of authorisation or breach of the terms of the authorisation*» (see Supreme Court, Criminal Section III, judgement no. 358 of 8 January 2008; *Id.*, judgment no. 30847 of 10 July 2008).

Regarding the *mens rea*, the felony under Article 452 *quaterdecies* of Criminal Code requires not only the will to engage in the conduct described above but also specific intention, i.e. the intention to pursue a purpose beyond the mere carrying out of the unlawful activities, which in the case in point would be the making of an unlawful gain.

In this regard caselaw stresses that the gain in question must not necessarily be economic because it could also take the obtaining of a merely personal benefit (for example, prestige) or - and it is very important in order to the administrative liability under Decree 231 - the **form of business cost savings** (see amongst others Court of Appeal of Palermo judgment no. 889/2011, *op cit*.).

Also with reference to such offense it should be noted the waste management of company is entrusted to third parties.

Therefore, the responsibility of ALNG, pursuant to Decree 231, could be seen if a person within the Company, in its interest or for its benefit, gives a contribution to unlawful activity undertaken by the company entrusted for waste management, which, for example, has violated the waste management rules or carried out this activity without prescribed authorizations or with expired authorization or totally violating its prescriptions.

Pursuant to paragraph 4 *bis* of the provision under examination, it is always ordered the confiscation of the goods which were used to commit the crime or which are the product of the profit of the offense, unless they belong to a person extraneous to the crime. When confiscation is not possible, the Judge identifies those goods having an equivalent value which are available to the condemned even indirectly or through a third person and order to confiscate them.

- *Violation of the rules governing the computerised Waste Traceability Control System (Article 260 bis, paragraphs 6, 7, second and third sentences, and 8, of the Environmental Code).*

As mentioned before Italy has transposed the EU rules on waste (Directive 2008/98/EC) into domestic law through Legislative Decree no. 205 of 3 December 2010.

In particular, and insofar as it is of interest herein, the aforementioned Decree had provided for the adaptation of Part IV of the TUA to the **waste traceability control system** - SISTRI (established by Ministerial Decree of 17 December 2009), thereby making this system operational in all its modalities, and had also provided for a system of sanctions, set forth in Article 260 *bis* (amended by Legislative Decree no. 121 of 7 July 2011), in the event of violation of the obligations provided for by the aforementioned System.

The objective of this System was to combat illegality in the special waste sector and the proliferation of actions and behaviours that do not comply with the existing rules. The current paper-based system, centred on the three documents consisting of the Waste Identification Form, the Loading and Unloading Register, and the Single Environmental Declaration Form (MUD), was to be replaced by technological solutions aimed at simplifying the procedures and fulfilments to be carried out by companies (with a consequent reduction in costs incurred) and at managing in an innovative

and more efficient manner a complex and variegated process that includes the entire waste chain, with guarantees of greater transparency and knowledge.

However, the full operation of SISTRI was subject to continuous extensions regarding its entry into force, until it was abolished by Decree-Law no. 135 of 14 December 2018 (so-called "Simplification Decree-Law", converted into Law no. 125 of 30 October 2013) as of 1st January 2019.

Subsequently, on 26 September 2020, Legislative Decree no. 116 of 3 September 2020 came into force, implementing Directive (EU) 2018/851, amending Directive 2008/98/EC on waste, and implementing Directive (EU) 2018/852, amending Directive 1994/62/EC on packaging and packaging waste. This measure rewrote the text of Article 188 *bis* TUA, replacing the now suppressed SISTRI with the National Electronic Register for Waste Traceability (RENTRI), regulated by Ministerial Decree of 4 April 2023, no, 59.

The waste traceability system contemplates those procedures and fulfillments under Articles 189, 190 e 193 of the same TUA, as integrated by Ministerial Decree no. 59/2023 into the national electronic register for waste traceability. The regulation on RENTRI entered into force on 15 June 2023.

It should be noted that the legislative measures mentioned above, which led to the abolition of SISTRI and the introduction of RENTRI, did not formally repeal the provisions of Article 260-*bis* TUA, relating to penalties in the event of violations of the requirements of the SISTRI rules: however, these provisions are currently inapplicable, since the provisions governing the SISTRI have been repealed.

The sanctions apparatus relating to SISTRI is provided for in paragraphs 10 to 13 of Article 258 TUA, which - however - are not referred to in Article 25 *undecies* of Legislative Decree no. 231/2001.

- *Violation of emission and air quality limit values (Article 279, paragraph 5, of the Environmental Code).*

Article 279, paragraph 5, of the Environmental Code makes provision for a misdemeanour consisting of the violation while operating a plant of **emission limit values**, the conditions laid down in an authorisation, Annexes 1, 2, 3 or 5 to the Part V of the Environmental Code, plans, programmes or the rules referred to in Article 271 **or** the **conditions** otherwise imposed by the competent authorities where the exceeding of the limit values **also** leads to **the exceeding of the air quality limit values** envisaged by existing laws and regulations.

As the crime in question is a misdemeanour, the required *mens rea* is either intention or negligence.

c) Crimes under Law no. 549 of 28 December 1993.

Law no. 549 of 28 December 1993 («*Measures to protect the ozone layer and the environment*») envisages a series of measures designed to bring an end to the use of substances that are harmful to the ozone layer and damaging for the environment together with a set of specific rules governing the collection, recycling and disposal of those substances in conformity with EU and international law.

In particular, Article 3 («*Terminating and reduction of ozone-depleting substances*») provides, firstly, that the production, consumption, import, export, possession and placing on the market of the harmful substances must be in accordance with the provisions of Council Regulation (EC) No. 3093/94 (paragraph 1) and, secondly, that plants which envisage the use of those substances may not be authorised save as otherwise provided in the above mentioned Regulation (paragraph 2).

The phasing out and the reduction of the use of those ozone-depleting substances are also subject to special secondary legislation introduced by ministerial decree.

Violation of the provisions of Article 3 entails liability for the legal person under Article 25 *undecies*, paragraph 4, of Decree 231, which refers to the crime indicated in paragraph 6 of the said Article 3.

d) Crimes under Legislative Decree no. 202 of 6 November 2007.

Articles 8 and 9 of Legislative Decree no. 202 of 6 November 2007 ("*Transposition of Directive 2005/35/EC on ship-source pollution and associated penalties*") provide respectively for the felony of intentional pollution and negligent pollution caused by ships.

More precisely, the *actus reus* is the same in both cases with the difference between the two crimes lying in the *mens rea*.

Offenders may be captains of ships flying any flag, crewmembers, ship owners and ship operators (and hence it is a crime that may be committed only by a certain category of persons).

The criminal conduct consists in a violation of the provisions under Article 4 of Legislative Decree no. 202/2007 prohibiting ships, irrespective of their flag, in internal waters (including ports) from «*discharging the polluting substances referred to in Article 2, paragraph 1, subparagraph b, into the sea*» and from «*causing the spilling of such substances*». In particular, reference is made to the polluting substances listed in Annex I (**hydrocarbons**) and Annex II (**noxious liquid substances transported in bulk**) to the Marpol 73/78 Convention.

The event caused by the conduct involving a discharge or spill is pollution of the waters.

In this regard, although there is no caselaw on point, it is reasonable to assume that the term of «*pollution*» should be understood in a formal sense, so the criminal event is performed only by conduct of spill out any of substances listed in the above-mentioned Annexes. Therefore, it is not necessary a particular level of contamination.

The causation of significant damage to water quality or to animal and plant species integrates the hypothesis more serious provided for by the paragraph 2, but if such damage is not proved, it does not seem possible to consider the conduct of spill as lawful.

From the standpoint of *mens rea*, the two provisions differ because:

- one (Article 8) punishes the agent who acts intentionally or even just recklessly, i.e. when the agent realises that the event (pollution in the case in point) could well occur but nonetheless accepts that risk as a possible consequence of his unlawful actions;
- the other (Article 9) punishes the agent who displays general or specific negligence.

SUMMARY TABLE

Article 25 *undecies* of Decree 231
«*Environmental Crimes*»

No.	Crime	Monetary fines	Interdictives sanctions
1	Environmental pollution (Article 452 *bis* of Criminal Code)	From 250 up to 600 quotas	For a period not exceeding one year: *1)* complete ban of company operations; *2)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to the commission of the offense; *3)* ban on entering into agreements with the Public Administration, except to receive public services; *4)* denial of allowances, financing, grants, or subsidies, and possible revocation of those already granted; *5)* ban on advertising goods and services.
2	Environmental disaster (Article 452 *quater* of Criminal Code)	From 400 up to 800 quotas	For a period not exceeding one year: *1)* complete ban of company operations; *2)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to commission of the offense; *3)* ban on entering into agreements with the Public Administration, except to receive public services; *4)* denial of allowances, financing, grants, or subsidies, and possible revocation of those already granted; *5)* ban on advertising goods and services.

No.	Crime	Monetary fines	Interdictives sanctions
3	Culpable offenses against the environment (Article 452 *quinquies* of Criminal Code)	From 200 up to 500 quotas	NO
4	Traffic and dereliction of highly radioactive waste (Article 452 *sexies* of Criminal Code)	From 250 up to 600 quotas	NO
5	Aggravating criminal conspiracy (Article 452 *octies* of Criminal Code)	From 300 up to 1000 quotas	NO
6	Killing, destruction, capture, taking or possession and trading of specimens of protected wild fauna or flora species. (Article 727 *bis* of Criminal Code).	Up to 250 quotas	NO
7	Destruction or deterioration of a habitat within a protected site (Article 733 *bis* of Criminal Code).	From 150 to 250 quotas	NO
8	Apart from the cases covered by paragraph 5, the discharge of industrial waste water containing the hazardous substances listed in Tables 5 and 3/A of Annex 5 to Part III of the Environmental Code **without** observing the conditions of the authorisation or other conditions of the competent authorities (Article 137, paragraph 3, of Environmental Code).	From 150 to 250 quotas	NO
9	The exceeding of the limit values specified in Table 3 when discharging industrial waste water or, in the case of discharge on soil, those specified in Table 4 of Annex 5 to Part III of the Environmental Code or the more restrictive limits laid down by the Regions, Autonomous Provinces or competent authorities in relation to the substances listed in Table 5 of Annex 5 to Part III of the	From 150 to 250 quotas	NO

No.	Crime	Monetary fines	Interdictives sanctions
	Environmental Code (Article 137, paragraph 5, first sentence, of Environmental Code).		
10	The discharge into sea waters by ships or aircraft of substances or materials whose dumping is absolutely prohibited, except where the quantities are such as to be rapidly rendered harmless and prior authorisation has been granted (Article 137, paragraph 13, of Environmental Code).	From 150 to 250 quotas	NO
11	The discharge of industrial waste water containing the hazardous substances listed in Tables 5 and 3/A of Annex 5 to Part III of the Environmental Code **in the absence** of the prescribed authorisation (Article 137, paragraph 2, of Environmental Code).	From 200 to 300 quotas	For a period not exceeding 6 months: *6)* complete ban of company operations; *7)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to commission of the offense; *8)* ban on entering into agreements with the Public Administration, except to receive public services; *9)* denial of allowances, financing, grants, or subsidies, and possible revocation of those already granted; *10)* ban on advertising goods and services.
12	The discharge of industrial waste water entailing the exceeding of the limit values set for the substances listed in Table 3/A of Annex 5 to Part III of the Environmental Code (Article 137, paragraph 5, second sentence of Environmental Code).	From 200 to 300 quotas	For a period not exceeding 6 months: *1)* complete ban of company operations; *2)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to commission of the offense; *3)* ban on entering into agreements with the Public Administration, except to receive public services; *4)* denial of allowances, financing, grants, or subsidies, and possible

No.	Crime	Monetary fines	Interdictives sanctions
			revocation of those already granted; *5)* ban on advertising goods and services.
13	Violation of the prohibition against discharges referred to in articles 103 and 104 of the Environmental Code[136] (Article 137, paragraph 11, of Environmental Code).	From 200 to 300 quotas	For a period not exceeding 6 months: *6)* complete ban of company operations; *7)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to commission of the offense; *8)* ban on entering into agreements with the Public Administration, except to receive public services; *9)* denial of allowances, financing, grants, or subsidies, and possible revocation of those already granted; *10)* ban on advertising goods and services.
14	Unauthorised management of **non hazardous** waste (Article 256, paragraph 1, subparagraph a) of Environmental Code).	Up to 250 quotas	NO
15	Unauthorised management of **hazardous** waste (Article 256, paragraph 1, subparagraph b) of Environmental Code).	From 150 to 250 quotas	NO
16	Establishment or operation of an unauthorised dump (Article 256, paragraph 3, first sentence, of Environmental Code).	From 150 to 250 quotas	NO
17	Establishment or operation of an unauthorised dump dedicated, even just in part, to the disposal of hazardous waste (Article 256,	From 200 to 300 quotas	For a period not exceeding 6 months: *1)* complete ban of company operations;

[136] Articles 103 and 104 prohibit respectively discharges on soil and discharges in subsoil and into ground water.

No.	Crime	Monetary fines	Interdictives sanctions
	paragraph 3, second sentence, of Environmental Code).		*2)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to commission of the offense; *3)* ban on entering into agreements with the Public Administration, except to receive public services; *4)* denial of allowances, financing, grants, or subsidies, and possible revocation of those already granted; *5)* ban on advertising goods and services.
18	Inobservance of the conditions contained or referred to in the authorisations or lack of the requisites and conditions required for registration or notification (Article 256, paragraph 4, of Environmental Code).	Pecuniary penalty reduced by half	NO
19	Impermissible mixing of waste in violation of the prohibitions referred to in article 187 (Article 256, paragraph 5, of Environmental Code).	From 150 to 250 quotas	NO
20	Temporary deposit of **hazardous health waste** at the place of production in violation of article 227, paragraph 1, subparagraph b) (Article 256, paragraph 6, first period) of Environmental Code).	Up to 250 quotas	NO
21	Failure to undertake site remediation in cases of contamination of the soil, subsoil, surface water or ground water that has occurred as a result of exceeding the risk threshold concentrations (RTC) (Article 257, paragraph 1, of Environmental Code).	Up to 250 quotas	NO
22	Failure to undertake site remediation in cases of pollution caused by **hazardous** substances	From 150 to 250 quotas	NO

No.	Crime	Monetary fines	Interdictives sanctions
	(Article 257, paragraph 2, of Environmental Code).		
23	Falsification of a waste analysis certificate or use of a false certificate (Article 258, paragraph 4, second sentence, of Environmental Code).	From 150 to 200 quotas	NO
24	Illegal traffic in waste (Article 259, paragraph 1, of Environmental Code).	From 150 to 250 quotas	NO
25	Activities organised for the illegal trafficking in waste (Article 260, paragraph 1, of Environmental Code, currently Article 452 *quaterdecies*, Criminal Code).	From 300 to 500 quotas	For a period not exceeding 6 months: *1)* complete ban of company operations; *2)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to commission of the offense; *3)* ban on entering into agreements with the Public Administration, except to receive public services; *4)* denial of allowances, financing, grants, or subsidies, and possible revocation of those already granted; *5)* ban on advertising goods and services[137].
26	Activities organised for the illegal trafficking in highly radioactive waste (Article 260, paragraph 2, of Environmental Code, currently Article 452 *quaterdecies*, para. 2 Criminal Code).	From 400 to 800 quotas	For a period not exceeding 6 months: *1)* complete ban of company operations; *2)* suspension or revocation of authorizations, licenses, or concessions that materially contributed to commission of the offense; *3)* ban on entering into agreements with the Public Administration, except to receive public services;

[137] If the entity or one of its organisational units is constantly used for the sole or main purpose of enabling or facilitating the commission of the crime, a permanent ban on carrying on business will be imposed.

No.	Crime	Monetary fines	Interdictives sanctions
			4) denial of allowances, financing, grants, or subsidies, and possible revocation of those already granted; *5)* ban on advertising goods and services[138].
27	Violation, in the operation of a plant, of the emission limit values or prescriptions set out in the permit, in Annexes 1, 2, 3 or 5 to Part V of the Environment Code, in the plans and programmes or in the regulations referred to in Article 271, or of the requirements otherwise imposed by the competent authority, where the exceeding of the emission limit values also results in exceeding the air quality limit values laid down by the legislation in force (Article 279, paragraph 5, of the Environment Code).	Up to 250 quotas	NO
28	Importing, exporting or re-exporting, under any customs regime, selling, displaying for sale, holding for sale, offering for sale, transporting, including on behalf of third parties, or in any case possessing specimens of species listed in Annex A, App. I, and in All. C, Part 1, of Council Regulation (EEC) No. 3626/82 of 3.12.1982, and subsequent amendments and additions, in breach of the provisions of the Decree of the Minister for Foreign Trade of 31.12.1983 (art. 1, paragraph 1, Law no. 150 of 7 February 1992[139]).	Up to 250 quotas	NO
29	Importing, exporting or re-exporting, under any customs		NO

[138] See the previous note.

[139] Importing, exporting or re-exporting, under any customs regime, selling, displaying for sale, holding for sale, offering for sale, transporting, including on behalf of third parties, or in any case possessing specimens of species listed in Annex A, App. I, and in All. C, Part 1, of Council Regulation (EEC) No. 3626/82 of 3.12.1982, and subsequent amendments and additions, in breach of the provisions of the Decree of the Minister for Foreign Trade of 31.12.1983 (art. 1, paragraph 1, Law No. 150 of 7 February 1992).

No.	Crime	Monetary fines	Interdictives sanctions
	regime, selling, displaying for sale, holding for sale, offering for sale, transporting, including on behalf of third parties, or in any case possessing specimens of species listed in Annex A, App. I and III, and in All. C, Part 2, of Council Regulation (EEC) No. 3626/82 of 3.12.1982, as amended and supplemented, in breach of the provisions of the Decree of the Minister for Foreign Trade of 31.12.1983 1983 (art. 2, par. 1, L. 7 February 1992, no. 150).	Up to 250 quotas	
30	Import of objects for personal or domestic use relating to species indicated in paragraph 1, carried out without presenting the CITES documentation, where provided for (Article 2, paragraph 2, Law no. 150 of 7 February 1992).	Up to 250 quotas	NO
31	Breach of the prohibition referred to in paragraph 1, of the possession of live specimens of mammals and reptiles of wild species and live specimens of mammals and reptiles from captive breeding that constitute a danger to public health and safety (without prejudice to the provisions of Law no. 157 of 11 February 1992) (Article 6, paragraph 4, Law no. 150 of 7 February 1992).	Up to 250 quotas	NO
32	Import of objects for personal or domestic use relating to species indicated in paragraph 1, carried out without presentation of the required CITES documentation issued by the foreign State where the object was purchased (Article 1, paragraph 2, Law no. 150 of 7 February 1992).	From 150 to 250 quotas	NO

No.	Crime	Monetary fines	Interdictives sanctions
33	Cases provided for in Article 16, para. 1), letters a), c), d), e) and l) of Council Regulation (EC) no. 338/97 of 9.12.1996, as amended and supplemented, concerning the falsification or alteration of certificates, licences, import notifications, declarations, communications of information with a view to the acquisition of a licence or certificate, the use of false or altered certificates or licences (Article 3 *bis*, para. 1, of Law no. 150 of 7 February 1992).	For offences under Art. 3 *bis*, para. 1 of the Penal Code - Monetary sanction up to 250 quotas, if an offence is committed for which a maximum term of imprisonment of no more than 1 year is envisaged; - monetary sanction from 150 to 250 quotas, if an offence is committed for which a maximum term of imprisonment of no more than 2 years is envisaged; - monetary sanction ranging from 200 to 300 quotas, if an offence is committed for which a term of imprisonment not exceeding a maximum of 3 years is envisaged; - monetary penalty of between 300 and 500 quotas, if an offence is committed for which a maximum term of imprisonment of more than three years is prescribed	NO
34	Infringement of the provisions of Article 3 concerning the cessation and reduction of the use of harmful substances (Article 3, para. 6, of Law no. 549 of 28 December 1993[140]).	From 150 to 250 quotas	NO
35	Intentional pollution, committed in the event of a **wilful breach** of the	From 150 to 250 quotas	For a period not exceeding 6 months:

[140] Law No. 549 of 28 December 1993 regulates 'Measures to protect stratospheric ozone and the environment'.

No.	Crime	Monetary fines	Interdictives sanctions
	provisions of Article 4[141] by the Master of a ship, flying any flag, as well as by the crew members, the owner and the shipowner of the ship, where the breach occurred with their complicity (Article 8, para. 1, Legislative Decree no. 202 of 6 November 2007[142]).		1) the disqualification from the exercise of activities; 2) the suspension or revocation of authorisations, licences or concessions functional to the commission of the offence 3) the prohibition of contracting with the public administration except for the provision of a public service 4) the exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted 5) the prohibition to advertise goods or services [143].
36	Intentional pollution, as referred to in subsection 1, which has caused permanent or, in any case, particularly serious damage to the quality of the water, to animal or plant species or to parts thereof (Article 8, para 2, Legislative Decree no. 202 of 6 November 2007).	From 200 to 300 quotas	For a period not exceeding 6 months: 1) the disqualification from the exercise of activities; 2) the suspension or revocation of authorisations, licences or concessions functional to the commission of the offence 3) the prohibition of contracting with the public administration except for the provision of a public service 4) the exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted 5) the prohibition to advertise goods or services[144] .
37	Culpable pollution, committed in the event of a **culpable** breach of	Up to 250	NO

[141] See Article 4 of Legislative Decree No 202 of 6 November 2007: '(...) it is forbidden for ships, without any discrimination as to nationality, to discharge into the sea the polluting substances referred to in Article 2(1)(b) or to cause the discharge of such substances'.
[142] Legislative Decree No. 202 of 6 November 2007 is entitled 'Implementation of Directive 2005/35/EC on ship-source pollution and related penalties'.

[143] See footnote 117.

[144] See footnote 117.

No.	Crime	Monetary fines	Interdictives sanctions
	the provisions of Article 4[145] (unless the act constitutes a more serious offence) by the Master of a ship, sailing under any flag, as well as by the crew members, the shipowner and the shipowner, if the breach occurred with their cooperation (Article 9, para. 1, Legislative Decree no. 202 of 6 November 2007).		
38	Culpable pollution referred to in para. 1, which has caused permanent or, in any case, particularly serious damage to the quality of the water, to animal or plant species or to parts of them (Article 9, para. 2, Legislative Decree no. 202 of 6 November 2007).	From 150 to 250 quotas	For a period not exceeding 6 months: 1) the disqualification from the exercise of activities; 2) the suspension or revocation of authorisations, licences or concessions functional to the commission of the offence 3) the prohibition of contracting with the public administration except for the provision of a public service 4) the exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted 5) the prohibition to advertise goods or services[146] .

[145] See footnote 121

[146] See footnote 116

SECTION 10: Criminal Offenses pursuant to Article 25 *duodecies* of Decree 231.

This paragraph examines the newly introduced case of «*Use of third-country nationals staying illegally*» pursuant to art. 25 *duodecies* of Decree 231.

In particular, the above-mentioned hypothesis has been included in the category of predicate offenses pursuant to art. 2, Legislative Decree no. 109 of 16 July 2012, on «*Implementation of Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers who employ third-country nationals staying illegally*» (published in Italian Official Gazette no. 172 of 25 July 2012 and entering into force on 9 August 2012), in order to address the problem of irregular employment or "moonlighting" and make collective entities more liable for any wrongdoing on the market.

Regulatory reform responds, more precisely, to the need to harmonize the legislative framework, law enforcement and in particular, the laws of EU Member States, so as to uniformly affect all business entities employing immigrant workers without a residence permit valid for this purpose, or with the intent to further distort the principles of free competition and the free market.

With the introduction of Article 25 *duodecies* of Decree 231, deliberate offenses become significant and punished by art. 22, paragraph 12 *bis* of Legislative Decree no. July 25, 1998, n. 286 ("*Standard provisions governing immigration rules and regulations on the status of foreign nationals"* - Consolidated Law on Immigration) where they are entered into in the interest and/or for the benefit of society, which are affected only by a penalty of a pecuniary nature - from 100 to 200 units - with an upper limit of € 150,000.00.

For the purpose of exact identification of the illegal conduct that the Law intended to avoid with this provision, in the face of multiple indictments under the rules set out above, it seems appropriate to indicate the following provisions governing the new case of administrative offense.

In fact, art. 22, paragraph 12 *bis* of the Consolidated Law on Immigration identifies a case of aggravated offense under art. 22, paragraph 12, of the Consolidated Law which states:

«*An employer who employs a foreign national not in possession of a valid residence permit provided for by this Article, i.e. whose permit has* ***expired*** *or with renewal* ***not*** *requested, in accordance with law, or whose permit has been withdrawn or cancelled, shall be punished with imprisonment from six months to three years and a fine of € 5,000 for each such worker employed*».

With particular reference to corporate liability, the aforementioned employer conduct is relevant only when the conditions are satisfied as referred to in art. 22, paragraph 12 *bis* of the Consolidated Law on Immigration, recently introduced by Legislative Decree 109/2012, which states:

«*The penalties for the offense envisaged in paragraph 12 shall be increased by one third to one half:*

a) *if the workers are employed in numbers **greater than three**;*
b) *if **minors** under the legal working age are employed;*
c) *if the workers employed are subject to **other** particularly exploitative conditions as referred to in the Article 603 bis, paragraph 3 of the Criminal Code*».

Lastly, art. 603 *bis*, paragraph 3 of the Criminal Code («*Brokerage and illegal exploitation of workers*») provides that:

«*The following are specific aggravating circumstances that result in an increase of the sentence by one third to one half*:

a) if the number of workers recruited is **more than three** ;
b) if one or more of the recruited persons are **minors** under the legal working age ;
c) if the crime committed exposes workers to situations of **grave danger**, having regard to the characteristics of the work to be performed and to working conditions».

It is therefore believed that in the absence of the three aggravating circumstances mentioned above, the offense in question is not a source of liability pursuant to Decree 231, except where the conduct adopted constitutes one of the more serious criminal cases, such as the crime of «*enslavement*» art. 600 of the Criminal Code, as referred to in art. 25 *quater* of the Decree, or the crime of «*Criminal association*» pursuant to art. 416 of the Criminal Code and art. 24 *ter* of Decree 231.

In terms of the materiality of commission of the offense, note that on the basis of the wording of the provision in question the offender appears to be only the «*employer*».

However, it should be noted in this regard that Supreme Court case law has ruled that both the employer can be held accountable for the crime at issue and a person who - on behalf of, or delegated by, or otherwise employed by the same employer - has personally arranged the direct hiring of workers under unlawful conditions (See Supreme Court, Criminal Section I, judgment no. 25615, 18 May 2011).

In fact, the contested provision in art. 22, paragraph 12 *bis* of the Consolidated Law on Immigration punishes «*those who seek to employ*», i.e., adopt conduct regardless of the specific moment of employment, that can be achieved, other than by the employment itself, through the exploitation of the illegal foreign worker per se, on a more or less continuous basis, and benefiting from employment given by others.

Therefore, the conduct punished («*having sought to employ*»), that is not only recruited but also exploited the foreign labour, has to occur in violation of the provisions laid down on «*Permanent and temporary subordinated employment* », and in particular to the above-mentioned art. 22 of the Consolidated Law on Immigration.

The procedure for granting clearance to initiating the employment of foreign nationals is governed by the provisions of Article 22 of the Consolidated Law on Immigration and the related Implementing Decree, Presidential Decree no. 394 of 31 August 1999, entitled "*Regulation on implementation of the Consolidated Law on Immigration and the provisions relative to the status of foreign nationals pursuant to art. 1, paragraph 6, Legislative Decree no. 286 of 25 July 1998*", as amended.

To sum up, note that in order to establish an employment relationship of a permanent or temporary nature with a foreign national (non-EU) resident abroad, the employer - Italian or legally resident foreign national - must have submitted a specific nominative request for clearance to work to the appropriate *Immigration Office* of the local magistrate's court, accompanied by appropriate documentation (aforementioned Art. 22, paragraphs 1 and 2).

After obtaining the opinion of the Commissioner regarding the existence of any impediment to granting clearance of the foreign national, and from the Provincial Employment Office regarding the employer's minimum contractual and profitability capacity, the Immigration Office **denies** the application in the case of a negative opinion from at least one of the above mentioned offices, or in the event of a favourable opinion:

- contacts the employer to arrange the **delivery of clearance** and signing of the contract (which is then also signed by the foreign worker upon arrival in Italy);
- electronically transmits the documents to the consular offices (see Art. 31 of the aforementioned Regulation).

The clearance is valid for employment for **6 months** from the date of issue, during which the worker must enter Italy, introduce himself to the Immigration Office and sign the employment contract (aforementioned Art. 22, paragraph 5).

Once the worker has signed the contract and shown proof of mailing of the application for a residence permit, the employment relationship can begin, subject to certain disclosure obligations on the part of the employer[147].

Lastly, note that the work permit has a duration equal to that of the employment contract and, in any case, **not more than 2 years** if the contract is permanent, or **of 1 year** in the case of a short-term contract (Article 5, paragraph 3 *bis*, Consolidated Law on Immigration).

[147] It should be noted in this regard that the employer must make the following disclosures:
1) to inform the establishment of the employment relationship to the Job Centre responsible for the place of work, the day before the start of the activity, and this communication is also valid for the INAIL and for the INPS;
2) if the employee grants the use of housing in any way (hospitality, rental, loan), present the specific message of "change of address" within 48 hours to the Authority of Public Safety.

Therefore before expiry of the residence permit, the foreign worker must submit the **renewal application**, completed on the appropriate form and accompanied by the required documentation, prior to expiry of the work permit and in any event no later than 60 days after its expiry.

Indeed, when an application is submitted late, it can be denied and the foreign national extradited.

Having clarified the obligations and procedures that must be followed for the purpose of legal recruitment of a foreign worker, note that the offense in question can therefore be committed in objective terms when one or more of these obligations are violated by the offender so as to take advantage of "irregular" workers, and further provided that it fulfils the conditions laid down in the aforementioned Article 12 *bis*, paragraph 22.

In subjective terms, note that prior to the reform introducing the Security Package (Law Decree no. 92 of 23 May 2008, which entered into force that same day), the aforementioned art. 22 punished the offense in question less severely (by imprisonment for 3 months to 1 year and a fine of € 5,000 for each employee), qualifying this as a contravention offense, punishable even for mere negligence of the employer who, for example, has not taken the steps to directly perform the necessary controls and verification regarding the possession of a residence permit from the subject employed or to be employed.

Subsequently, however, this illegal practice is tightened and qualified as a crime, punishable by imprisonment from 6 months to 3 years and with a fine of € 5,000 for each worker illegally employed.

The 2008 Reform therefore rendered the offense punishable under art. 22, paragraph 12 bis of the Consolidated Law on Immigration only as fraud, i.e. only in cases where the employer is attributed with awareness and the will to hire irregular and/or illegal workers.

Indeed, in this respect case law regarding legitimacy has stated that «*The regulatory action of 2008 has consequently made cases of immaterial liability criminally negligent [i.e. due to mere negligence, imprudence or inexperience], in this instance opting for partial abolition of the provisions previously in force. (...) Under Article 2 of the Criminal Code, paragraph 2, also referring to past employment of foreigners without a residence permit valid for work purposes, offenders can still be punished only if the conduct was malicious*» (see Supreme Court, Criminal Section I, judgment no. 9882, 11 March 2011).

Therefore, «*It must be concluded that an employer error, even if negligent, regarding the possession of a valid residence permit by the foreign employee, falling under the regulatory aspect of an integral case, excludes criminal liability*» (See aforementioned Supreme Court judgment no. 9882/2011).

Article 25 *duodecies* of Legislative Decree no. 231 of 2001 has been amended by Law no. 161

of 2017, which has included reference to the crimes referred to in Article 12, paragraphs 3, 3 *bis* and 3 *ter,* and paragraph 5 of the Legislative Decree no. 286 of 25 July 1998 and subsequent amendments.

In particular, Article 12, paragraph 3, of Legislative Decree no. 286 of 1998 punishes whoever, in violation of the provisions of this Decree, promotes, directs, organizes, finances or transports foreigners in the State's territory or carries out other acts aimed at the illegal entry in the State's territory, or in another State of which the person is not citizen or does not have the right to permanent residence, in the following cases: a) the fact concerns the entry or the illegal permanence in the State's territory of five or more persons; b) the life of the transported person was placed at risk of life or integrity to obtain his entry or illegal permanence; c) the transported person has been subject to inhuman or demeaning treatment to obtain his entry or illegal permanence; d) the fact was carried out by three or more persons in agreement among each other or using international transportation services or counterfeited or modified documents or in any case obtained illegally[148]; e) the authors of the fact have the availability of weapons or explosives.

Pursuant to Article 12, paragraph 3 *bis* of Legislative Decree no. 286 of 1998, if the facts as mentioned under paragraph 3 are committed occurring two or more of the cases mentioned under letters a), b), c), d) and e) of the same paragraph, the punishment provided for is increased.

The subsequent paragraph 3 *ter* establishes that if the facts as mentioned under paragraph 3 (and 1) are committed *i*) for the purpose to recruit persons to be destined to prostitution or anyway sexual or labour exploitation or concern the entry of minors for favouring their exploitation in illegal activities; *ii*) for profit, even indirect, imprisonment is increased from one third to half and a 25,000 Euro fine applies.

Paragraph 3-*quarter* expressly qualifies as aggravating circumstances the cases mentioned under paragraphs 3-*bis* and 3-*ter* of Article 12 of Legislative Decree no. 286 of 1998.

Lastly, paragraph 5 of Article 12 of the Legislative Decree no. 286 of 1998 punishes whoever, in order to obtain an illegal profit from the foreigner's condition of illegality or within the ambit of activities punished in compliance with Article 12 of this Decree, fosters the permanence of said foreigner on the State's territory in violation of the provisions of Legislative Decree no. 286 of 1998.

[148] The Constitutional Court, byJudgment No. 63/2022, declared the constitutional illegitimacy of Article 12, paragraph 3, lett. d), Legislative Decree No. 286 of July 25, 1998 (Consolidated Act of provisions concerning the regulation of immigration and norms on the condition of foreigners), «*limited to the words "or by using international transportation services or documents that are forged or altered or otherwise illegally obtained." The penalty from five to fifteen years' imprisonment [now six to sixteen years following the reform of Decree-Law No. 20/2023] set forth in the Consolidated Immigration Act for anyone who has helped someone enter Italian territory illegally by using an airliner and forged documents is manifestly disproportionate. The very high penalties established for the aggravated hypotheses of aiding and abetting immigration can be reasonably explained only from the point of view of combating international migrant smuggling, managed by criminal organizations that derive huge profits from this activity, but they are evidently disproportionate compared to different situations, in which there is no evidence of any involvement in such organizations*».

When the fact is committed in complicity by two or more persons, or it concerns the permanence of five or more persons, the punishment is increased.

SECTION 11: Criminal offences relevant pursuant to Article 25 *quinquiesdecies* of Decree 231.

The alleged offences indicated below have been introduced within the new article 25 *quinquiesdecies* (*Tax offences*) of Decree 231 by Law no. 157 of 19 December 2019, which entered into force on 25 December 2019, converting, with amendments, the Decree Law no. 124 of 26 October 2019, containing "*Urgent provisions on tax matters and for unavoidable needs*".

Subsequently, Legislative Decree no. 75 of 14 July 2020 - in force since 30 July 2020 -, transposing the "*European Union (EU) Directive (EU) PIF 2017/1371 on combating fraud affecting the financial interests of the Union by means of criminal law*", further broadened the list of tax offences that may give rise to a charge of liability to the entity, including also the offences of misrepresentation, omitted declaration and undue compensation - respectively provided for by Articles. 4, 5 and 10 *quater* of Legislative Decree no. 74 of 10 March 2000 - in the event that these offences are «*committed for the purpose of evading value added tax within the scope of cross-border fraudulent schemes connected to the territory of at least one Member State of the European Union, from which an overall damage equal to or exceeding ten million euro results or may result*»[149].

Below is a brief description of the offences referred to in Article 25 *quinquiesdecies*, paragraph 1 and 1 *bis*, of Decree 231.

• Fraudulent tax return through the use of invoices or other documents for non-existent transactions (Article 2 of Legislative Decree no. 74/2000)

The crime referred to in Article 2, paragraph 1, punishes with imprisonment from four to eight years anyone who, for the purpose of evading income tax or value added tax (VAT), declares in one of the annual tax returns relating to such taxes fictitious liabilities by using invoices or other documents for non-existent transactions. The 2019 reform amended Article 2 by introducing paragraph 2 *bis*, which provides for lower penalties when the declared liabilities amount to less than € 100.000.

The author of the offence is the person who has to file the income tax return and/or VAT return, that is the direct taxpayer or another subject required to file the tax return in his/her capacity as a director, liquidator or representative of companies, entities, natural persons or as a tax substitute (Article 1, lett. c, of Legislative Decree 74/2000).

[149] This sentence was so amended by Article 5, para. 1 of Legislative Decree no. 156 of 4 October 2022.

The Legislator considers the offence referred to in Article 2 a very serious crime, so much that it is not provided any threshold of relevance. Such choice is due to the insidiousness of the conduct, which is carried out through the use of invoices or other documents of similar probative value according to tax rules (*e.g.* expense reports, tax receipts, fuel card, etc.), issued for transactions which have not actually been carried out in whole or in part (objective non-existence), or which indicate charges or VAT for an amount higher than the actual amount (over-invoicing), or which report that the transaction has been carried out by parties other than those who have actually made the transaction (subjective non-existence).

Paragraph 2 of Article 2 specifies that the offence is committed *through the use of invoices or other documents* for non-existent transactions when such invoices or documents are recorded in the obligatory accounting records, or are held as evidence against the Tax Authorities.

With regard to the subjective element, the offence under Article 2 requires that the perpetrator of the criminal conduct acts with the so-called specific intent to evade income tax or value added tax.

The 2019 Legislator also provided that, in the event of conviction or plea bargain pursuant to Article 444 of the Code of Criminal Procedure for the offence referred to in Article 2 of Legislative Decree 74/2000, where the amount of the liabilities indicated in the tax return is higher than € 200,000, the so-called extended confiscation referred to in Article 240-*bis* of the Criminal Code applies (with consequent possibility of seizure). This Article permits the confiscation of money, goods or other benefits, whose legitimate provenance cannot be justified by the convicted, and of which, even through a natural or legal person, the convicted appears to be the owner or to have the availability at a value disproportionate to the income he/she has declared for the purposes of income tax, or to his economic activity. The extended confiscation can also be carried out “for equivalent”, through the acquisition of sums of money, assets and other benefits for an equivalent value, of which the offender has the availability, even through a third party.

As to the sanctions which can be imposed on the legal person for the crime of fraudulent declaration through the use of invoices or other documents for non-existent transactions, Article 25-*quinquiesdecies*, paragraph 1, letter a) and b), provides that a pecuniary sanction of up to 500 shares shall apply to the company, and of up to 400 shares, if the declared liabilities amount to less than € 100.000. In addition to the pecuniary sanctions, the disqualification measures set out in Article 9, paragraph 2, letter c), d) and e) of Decree 231 (ban on negotiating with the Public Administration, except for obtaining provision of a public service; exclusion from benefits, loans, grants or subsidies and the possible revocation of those already granted; ban on advertising goods or services) shall apply to the company.

The company might be held liable for this offence where, for example, the company's personnel record invoices for non-existent transactions, or conclude contracts for the supply of goods or services knowing that the company will not receive them, or claims a deduction for expenses which have not been incurred, for the purpose of evading income tax or VAT.

• Fraudulent tax return through the use of other artifices (Article 3 of Legislative Decree no. 74/2000)

This offence – whose current version is the result of significant reforms, including, in particular, Legislative Decree no. 158 of 2015 – applies to cases outside the scope of Article 2, to anyone who, for the purpose of evading income tax or value added tax (VAT), by carrying out objectively or subjectively simulated transactions or by using false documents or other fraudulent means intended to obstruct the assessment and mislead the Tax Authorities, declares, in one of the annual tax returns relating to such taxes, lower taxable income than the actual amount or fictitious liabilities, credits or withholdings, when the following two conditions are *jointly* met:

- with reference to each of the taxes, the amount of the tax evaded is higher than € 30,000;
- the total amount of the assets subtracted from taxation, even by indicating fictitious liabilities, is higher than 5% of the total amount of the assets indicated in the annual tax return, or, in any case, it is higher than € 1.5 million, or the total amount of the fictitious credits and withholdings aimed at reducing taxes is higher than 5% of the amount of the tax itself or, in any event, it is higher than € 30,000.

It should be first specified that this offence can be committed by any person required to submit the income tax return and/or VAT return.

As for the conduct criminally relevant, the case law has clarified that the offence under Article 3 has a biphasic structure, since the conduct is made up of two segments, namely 1) the mendacious declaration and 2) the prodromal deceptive activity in support of the mendacious declaration. The deceptive activity consists in the carrying out of the alternative conducts described by the offence, namely the carrying out of objectively or subjectively simulated transactions, the use of false documents (other than "*invoices or other documents for non-existent transactions*"), or the use of other fraudulent means intended to obstruct the assessment and mislead the Tax Authorities. In particular, according to art. 1, (g-*ter*), of Legislative Decree 74/2000, the terms "*fraudulent means*" refer to the artificial active or omissive conducts carried out in breach of a specific legal obligation, which lead to a false representation of reality.

Paragraph 2 of Article 3 points out that the fact is committed by using false documents when such documents are recorded in the obligatory accounting records or are held as evidence against the Tax Authorities.

Paragraph 3 of Article 3 also specifies that the mere breach of invoicing obligations and of the obligations to record assets in the accounting records or the mere indication of lower assets than the real ones in invoices or records cannot be considered as fraudulent means.

With regard to the subjective element, the offence under Article 3 requires that the perpetrator of the criminal conduct acts with the so-called specific intent to evade income tax or value added tax.

This crime is punished with imprisonment from three to eight years. When the tax evaded is higher than € 100,000, in the event of conviction or plea bargain pursuant to Article 444 of the Code of Criminal Procedure, the so-called extended confiscation referred to in Article 240-*bis* of the Criminal Code also applies.

Article 25-*quinquiesdecies*, paragraph 1, (c), provides that a pecuniary sanction of up to 500 shares and the disqualification measures set out in Article 9, paragraph 2, (c), (d) and (e) of Decree 231 shall apply to the company, in whose interest or for whose benefit the offence has been carried out.

The "other artifices" referred to in Article 3 of Legislative Decree 74/2000 could consist, by way of example, in the simulation of legal transactions as to record fictitious costs, in the fictitious interposition of persons for the purpose of transferring to their bank accounts the proceeds of transactions carried out by the Company which have not been recorded in the accounts, the utilization of a hidden warehouse to conceal goods, or the reclassification of balance sheet items in breach of the accounting and tax rules for the purpose of obtaining an undue tax saving.

- **False declaration (Article 4 of Legislative Decree 74/2000)**

This offence punishes with imprisonment from two to four years and six months anyone who, apart from the cases provided for in Articles 2 (Fraudulent declaration using invoices or other documents for non-existent transactions) and 3 (Fraudulent declaration by means of other devices), in order to evade income tax or value added tax, indicates in one of the annual declarations relating to those taxes positive elements for an amount lower than the actual amount or non-existent liabilities, when, jointly

1) the evaded tax exceeds, with reference to any of the individual taxes, one hundred thousand euro;

2) the total amount of the assets evaded from taxation, including by means of the indication of non-existent passive elements, is higher than ten per cent of the total amount of the assets indicated in the declaration, or, in any case, is higher than two million euro.

The reserve clause «*outside the cases provided for in Articles 2 and 3»* indicated in the *incipit* characterizes Article 4 as a "closing" provision, typifying the discrepancy between the taxable value represented and the real taxable value, in the absence of the fraudulence required by Articles 2 and 3 (see Supreme Court, Criminal Sec. V, 23 May 2013, no. 36894).

From the point of view of the active parties, this is a proper offence, since the provision is aimed solely to those in charge to submit the annual return for the purposes of income tax, pursuant to Article 1, Presidential Decree no. 600 of 29 March 1973, or value added tax, pursuant to Article 17, Presidential Decree no. 633 of 26 October 1972, without prejudice to the provisions of Article 1, letter c) of Legislative Decree 74/2000, which includes among the active parties of the offence also the directors, liquidators and, more generally, the directors and liquidators of companies, entities or natural persons who, in the cases provided for by law, submit declarations.

From an objective point of view, the typical conduct is manifested in the indication in the declaration of non-existent passive elements or of active elements for an amount lower than the actual amount.

Paragraphs *1bis* and *1ter* better define the perimeter of typicality of the offense, outlining its exegetic limits. In fact, the Legislator has provided for an area of non-punishability that extends in two respects:

- pursuant to paragraph 1 *bis,* for the purposes of the application of the offence in question, no account is taken of incorrect classification, of the valuation of objectively existing assets or liabilities, in respect of which the criteria concretely applied have in any event been indicated in the financial statements or in other documentation relevant for tax purposes, of the breach of the criteria for determining the accrual period, of the non-inherence, of the non-deductibility of real passive elements;
- pursuant to the following paragraph 1 *te*r, outside the cases referred to in paragraph 1*bis*, valuations which, taken as a whole, differ by less than 10% from the correct ones do not give rise to punishable acts, and the amounts included in that percentage are not taken into account when ascertaining whether the punishability thresholds laid down in paragraph 1, lettr. a) and b) are exceeded.

With regard to the psychological element, the jurisprudential approach considers that, in order to constitute the offence, the intent must be of a specific type, and therefore the taxpayer, in addition

to being aware of and willing to make an untrue declaration, must be aiming at tax evasion (see Supreme Court, Criminal Section III, 1 December 2011, No. 13296).

Pursuant to Article 25 *quinquiesdecies,* paragraph 1 *bis*, lett. a), the entity in whose interest or to whose advantage this offence has been committed for the purpose of evading value added tax within the scope of cross-border fraudulent schemes connected to the territory of at least one Member State of the European Union, resulting in or likely to result in overall damage equal to or exceeding ten million uro, is subject to a monetary sanction of up to 300 quotas and the disqualification sanctions set out in Article 9, para. 2), letter c), d) and (e).

- **Omitted declaration (Article 5 of Legislative Decree 74/2000)**

This criminal offence punishes with imprisonment from two to five years anyone who, in order to evade income tax or value added tax, does not submit, being obliged to do so, one of the declarations relating to those taxes, when the tax evaded is higher, with reference to any of the individual taxes, than € 50.000.

Failure to submit a declaration is a proper crime, which can only be committed by those obliged to submit declarations under the tax legislation, except for the provision of Article 1, lett. c), which provides for the punishability also of those who hold the position of director, liquidator or legal representative of companies, bodies or natural persons.

From the point of view of the material conduct, this hypothesis constitutes a case of proper omission, since it penalizes the failure to comply with the tax precept requiring the submission of declarations relevant to income tax or value added tax. Lastly, from the standpoint of the subjective element, the specific intent is required in the offence in question, the proof of which may be deduced from the extent to which the applicable threshold of punishability is exceeded, together with the full awareness on the part of the obliged party of the exact amount of the tax due, an amount which, moreover, may constitute the object of representation and volition even only in the form of possible intent (thus Supreme Court, Sec. III, 12 June 2019, no. 39960).

The same penalty is also imposed, pursuant to paragraph 1 bis, on anyone who does not submit, being obliged to do so, the declaration as withholding agent, when the amount of unpaid withholding tax exceeds €50,000.

Paragraph 2, on the other hand, narrows the scope of criminal relevance, establishing that, for the purposes of the provision laid down in paragraphs 1 and 1 *bis,* a declaration submitted within ninety days of the expiry of the time limit or not signed or not drawn up on a form conforming to the prescribed model is not deemed to have been omitted.

Pursuant to Article 25 *quinquiesdecies,* paragraph 1 *bis,* lett. b), the entity in whose interest or to whose advantage this offence has been committed for the purpose of evading value added tax as part of cross-border fraudulent schemes connected to the territory of at least one Member State of the European Union, resulting in or likely to result in overall damage equal to or exceeding ten million Euro, is subject to a monetary sanction of up to 400 quotas and the disqualification sanctions set out in Article 9, paragraph 2), letter (c, (d and (e).

• Issuing of invoices or other documents for non-existent transactions (Article 8 of Legislative Decree no. 74/2000)

The offence under Article 8 punishes anyone who, to allow third parties to evade income tax or value added tax (VAT), issues or releases invoices or other documents for non-existent transactions.

The author of the offence can be anyone, whether or not obliged to keep accounting records, who issues or releases invoices or other documents for non-existent transactions, as defined by Article 1, let. a), of Legislative Decree 74/2000. Article 8 therefore protects the tax transparency.

Article 8 does not require that tax documents are actually used to evade taxes, as it is sufficient that they are simply "issued" or "released". It follows that the crime in question can be qualified as a crime of danger.

With regard to the subjective element, the offence under Article 8 requires that the perpetrator of the criminal conduct acts with the so-called specific intent to allow third parties to unduly and fraudulently lower their tax base, with reference to the income tax or value added tax. The case law has clarified that it is not required that the perpetrator of the offence acts for the sole purpose of allowing third parties to evade taxes, since he may act to obtain a profit for himself as well.

As regards sanctions, the perpetrator of the criminal conduct is punished with imprisonment from four to eight years. Paragraph 2-*bis* of Article 8 provides that, where the untrue amount indicated in the invoices or documents and relating to non-existent transactions is lower, over the tax period concerned, than € 100.000, the perpetrator of the offence is punished with imprisonment from one year and six months to six years.

In the event of conviction or plea bargain pursuant to Article 444 of the Code of Criminal Procedure, when the untrue amount indicated in the invoices or documents is higher than € 200,000, the so-called extended confiscation referred to in Article 240-*bis* of the Criminal Code applies.

Article 25-*quinquiesdecies*, paragraph 1, letter d) and e), provides that, when the offence of issuing of invoices or other documents for non-existent transactions is carried out in the interest or for the benefit of the company, a pecuniary sanction of up to 500 shares or of up to 400 shares, if the

amount indicated in the invoices is lower than € 100.000, and the disqualification measures set out in Article 9, paragraph 2, letter. c), d) and e) of Decree 231 shall apply to the company.

• Concealment or destruction of accounting documents (Article 10 of Legislative Decree no. 74/2000)

This offence, which applies unless a more serious crime has been committed, punishes anyone who, for the purpose of evading income tax or value added tax (VAT) or to allow third parties to evade taxes, conceals or destroys in whole or in part the accounting documents or the documents of which conservation is mandatory, in order to prevent to determine the actual income or turnover.

It should be first pointed out that the offence under Article 10 can be committed both by persons directly obliged to keep accounting records and by persons other than the taxpayer, to whom the accounting records are referred.

The conduct sanctioned by the abovementioned crime is the concealment or destruction, even partial, of the accounting records or documents of which conservation is mandatory, according to tax or civil law, and not the failure to hold them, which is administratively sanctioned under Article 9 of Legislative Decree no. 471 of 1997, or their falsification, which may constitute the more serious offence referred to in Article 3 of Legislative Decree no. 74/2000 instead.

Article 10 requires that the conduct described is followed by the impossibility to determine the actual income or turnover.

With regard to the subjective element, it is required that the perpetrator of the offence acts with the so-called specific intent to evade income tax or value added tax or to allow third parties to evade them. Since Article 10 does not require that a damage is done to the Treasury, the crime in question can be qualified as a crime of real danger.

As regards sanctions, the perpetrator of the criminal conduct is punished with imprisonment from three to seven years.

According to Article 25-*quinquiesdecies*, paragraph 1, (f), a pecuniary sanction of up to 400 shares and the disqualification measures set out in Article 9, paragraph 2, letter c), d) and e) of Decree 231 shall apply to the company, in whose interest or for whose benefit the offence has been carried out.

- **Undue offsetting (Article 10 *quater* of Legislative Decree 74/2000)**

This offence punishes with a term of imprisonment from six months to two years the conduct of anyone who fails to pay the sums due, by using, pursuant to Article 17 of Legislative Decree No. 241 of 9 July 1997, undue credits in offsetting, for an annual amount exceeding € 50.000.

Paragraph 2 of the provision also provides for an increase in the penalty (from one year and six months to six years) where non-existent credits in excess of fifty thousand euro per year are used as compensation.

As to the active parties, this is also a case of a proper offence, which can only be committed by the taxpayer as a natural person, or, in the case of entities, by the natural persons who represent them by statute or by law, and who are required to submit Form F24 (through which to pay the taxes due by offsetting the payment of taxes with any credits).

The typical conduct, therefore, is based on the right, recognized - in addition to the aforementioned provision pursuant to Article 17 of Legislative Decree no. 241 of 9 July 1997 [150]- by Article 8, paragraph 1, of the Taxpayer's Statute (Law no. 212 of 27 July 2000), to extinguish the tax obligation also by offsetting. The offsetting offences are present where the tax liability is discharged by using:

- credits that are not due, *i.e.* those which, although certain in their existence and exact amount, are, «*for any regulatory reason, still not usable (or no longer usable) in financial compensation transactions in the relationships between the taxpayer and the Treasury*» (see Supreme Court, Sec. III, 26 June 2014, no. 3367). By way of example, when the taxpayer's credit is deductible only in a time period different from the reference period of the tax liability, or the case in which the portion of the credit exceeds the legal limits for offsetting;
- non-existent credits, *i.e.* those credits that are artificially constructed or represented in the accounts or in the declaration or in any other way, such as - for example - VAT credits not resulting from the declarations or periodic reports referred to in Article 17, Legislative Decree no. 241/1997.

[150] Pursuant to the second paragraph of Article 17 of Legislative Decree No. 241 of 9 July 1997, the debts and credits subject to unitary payment and set-off refer to:
a) to income taxes, related additional taxes and withholding taxes collected by direct payment pursuant to Article 3 of Presidential Decree No. 602 of 29 September 1973; for the withholding taxes referred to in the second paragraph of the aforesaid Article 3, the option of making the payment to the competent section of the provincial treasury of the State remains unaffected; in this case offsetting is not permitted
b) to value added tax due pursuant to Articles 27 and 33 of Presidential Decree No. 633 of 26 October 1972, and that due by the persons referred to in Article 74;
(c) to substitute taxes on income tax and value added tax;
(d) to the tax provided for by Article 3(143)(a) of Law No 662 of 23 December 1996 (IRAP)
(e) social security contributions payable by holders of an insurance position in one of the schemes administered by social security institutions, including membership fees;
(f) social security contributions payable by employers and principals of coordinated and continuous collaboration services;
g) premiums for insurance against accidents at work and occupational diseases due in accordance with the Consolidation Act approved by Presidential Decree No. 1124 of 30 June 1965;
h) the interest provided for in the case of payment by instalments pursuant to Article 20;
h-ter) to other revenues identified by decree of the Minister for Finance, in agreement with the Minister for the Treasury, Budget and Economic Planning, and with the competent Ministers for each sector;
h-quater) to the tax credit due to cinema owners;
(h-quinquies) to the amounts that the entities required to collect the increase to the municipal surtax have to pay to INPS, pursuant to Article 6-quater of Decree-Law No 7 of 31 January 2005, converted, with amendments, by Law No 43 of 31 March 2005, and subsequent amendments
(h-sexies) to taxes on government concessions;
(h-septies) tuition fees.

The psychological element of the offence in question is constituted by general intent, but the offence is also punishable by way of possible intent: consciousness and intention must, therefore, invest both the indication in the compensation form of non-existent or not due credits and the exceeding of the punishability threshold of fifty thousand euro provided for in paragraphs 1 and 2.

Pursuant to Article 25 *quinquiesdecies,* paragraph 1 *bis*, lett. c), the entity in whose interest or to whose advantage this offence has been committed for the purpose of evading value added tax within the scope of cross-border fraudulent schemes connected to the territory of at least one Member State of the European Union, resulting in or likely to result in overall damage equal to or exceeding ten million euro, is subject to a monetary sanction of up to 400 quotas and the disqualification sanctions set out in Article 9, paragraph 2), lett. c), d) and e).

• Fraudulent subtraction to pay taxes (Art. 11 of Legislative Decree no. 74/2000)

The offence under Article 11, paragraph 1, punishes anyone who, **for the purpose of avoiding payment** of income tax or value added tax (VAT) or interests and administrative penalties related to such taxes for an amount higher than € 50.000, fraudulently alienates or commits other fraudulent acts on his own or others' goods in order to make the enforced recovery procedure totally or partially ineffective.

Paragraph 2 of Article 11 punishes the conduct of anyone who, **for the purpose of obtaining for himself or others a partial payment of taxes** and related accessories, indicates, within the documentation submitted for the financial settlement procedure, a lower taxable income than the actual amount or fictitious liabilities for an amount higher than € 50.000.

The author of the crime under Article 11, paragraph 1, is the person liable to pay taxes, whereas in the offence referred to in paragraph 2, the author may be both the person liable to pay taxes and a person other than the latter, as paragraph 2 expressly refers to the purpose "*of obtaining for himself or others a partial payment of taxes*".

The criminally relevant conduct can therefore consist of:

1) pursuant to paragraph 1, fraudulently alienating or committing other fraudulent acts on his own or others' goods. Such acts shall be intended as acts which, although leading to an actual transfer of assets, are connoted by deception or contrivance, so as to prevent - according to an "*ex ante*" judgment - the Tax Authorities from collecting a sum of money which, by way of tax or interests and administrative sanctions related to such taxes, exceeds the threshold of € 50.000 (therefore, this is an activity of material misappropriation of financial resources);

2) pursuant to paragraph 2, indicating, within the documentation submitted for the financial settlement procedure, assets or liabilities other than the real ones (thus falsifying assets).

With regard to the subjective element, it is required that the perpetrator of the offence acts with the so-called specific intent to evade income tax or value added tax or to obtain for himself or others a partial payment of taxes and related accessories, through the real or fictitious impoverishment of the assets of the person liable to pay taxes.

It should also be pointed out that, while the offence under paragraph 1 punishes the conduct of the taxpayer consisting in the artificial plundering of his own assets for the purpose of evading taxes, regardless of whether the Tax Authorities have made a formal claim or have initiated an enforced recovery procedure, the crime under paragraph 2, on the other hand, requires that the Tax Authorities have opened an inspection against the taxpayer, since it expressly makes reference to an ongoing financial settlement procedure.

The case law has clarified that the profit of the offence under Article 11 can be identified with the value of the assets fraudulently subtracted to the credit guarantee of the Tax Authorities for the evaded taxes, rather than with the tax liability left unpaid (Supreme Court, Sec. V, 14 March 2019, no. 32018).

As to the sanctions, the offence of fraudulent subtraction to pay taxes is punished with imprisonment from six months to four years.

With respect to the crime under paragraph 1, where the amount of taxes, sanctions or interests is higher than € 200.000, the perpetrator of the criminal conduct is punished with the more serious penalty of imprisonment from one year to six years and where it is higher than € 100.000, the so-called extended confiscation referred to in Article 240-*bis* of the Criminal Code applies.

With regard to the offence under paragraph 2, where the amount of the assets lower than the actual ones or of the fictitious liabilities is higher than € 200,000, the more serious penalty of imprisonment from one year to six years applies, as well as the so-called extended confiscation referred to in Article 240-*bis* of the Criminal Code.

With respect to the pecuniary sanctions which can be imposed on the company in whose interest or for whose benefit the offence of fraudulent subtraction to pay taxes has been carried out, Article 25 *quinquiesdecies* of Decree 231 provides that a pecuniary sanction of up to 400 shares and the disqualification measures set out in Article 9, paragraph 2, letter c), d) and e) of Decree 231 shall apply to the company.

For example, the crime can be committed in case the company, pending a dispute with the Income Revenue Authority, transfers its assets “below costs” to its subsidiary company.

* * *

Finally, it should be noted that paragraph 2 of art. 25 *quinquiesdecies* provides that all pecuniary sanctions applicable to the entity shall be **increased by one third** if, following the commission of one of the abovementioned tax offences, the company has obtained a **profit of substantial amount**.

It should also be pointed out that, following the introduction of Article 25 *quinquiesdecies* in Legislative Decree no. 231/2001, pursuant to Article 19 of Legislative Decree 231, the entity is also subject to the **confiscation** "direct" or "for equivalent" of the price or profit of the tax offence which has been carried out in the interest or for the benefit of the company, as well as to the preventive seizure, provided for by Article 53 of Legislative Decree no. 231/2001.

SECTION 12: Criminal offences pursuant to Article 25 *sexiesdecies* of Decree 231.

This Special Section concerns the offences of Smuggling referred to in Article 25 *sexiesdecies* of Decree 231, introduced by Legislative Decree no. 75 of 14 July 2020 (transposing EU Directive 2017/1371 on the fight against fraud affecting the financial interests of the European Union - the so-called PIF Directive), in which the offences provided for in Presidential Decree no. 43 of 23 January 1973 (the so-called Consolidated Text of Legislative Provisions on Customs Matters - TULD) are referred to.

The ratio of the PIF Directive is to continue the work of harmonising the criminal law of the Member States with particular reference to the most serious types of fraudulent conducts in the financial sector, in order to guarantee the protection of the financial interests of the Union. In this scenario, as also indicated in the Explanatory Report of the legislative decree implementing the PIF Directive, following the establishment of a customs union common to all EU Member States, customs duties represent a resource belonging to the Union and, as such, contribute to the financing of the EU budget.

Pursuant to Article 34 TULD, “customs duties” are all those duties that customs is obliged to collect by virtue of a law, in connection with customs operations. In particular, among customs duties, “border duties” include import and export duties, levies and other import or export charges provided for by EU regulations and their implementing rules, and also, with regard to imported goods, monopoly duties, border surtaxes and any other tax or surtax in favour of the State.

That said, the offence of smuggling consists in the conduct of anyone who introduces goods into the territory of the State in violation of customs provisions, fraudulently evading payment of border duties.

The offence of smuggling could also be committed through the fraudulent use of the so-called "VAT warehouse" (Article 50 *bis* of Decree-Law No. 331/1993) and, therefore, by unlawfully taking advantage of the self-billing mechanism: the unlawful use of the mechanism of importation in free circulation through the "VAT warehouse" is, in fact, sometimes charged as a way of carrying out smuggling (see Supreme Court, Sec. III, judgment no. 26202 of 20 May 2015).

Pursuant to Article 25 *sexiesdecies,* the entity responsible for the offence of smuggling is subject to a fine of up to two hundred quotas in cases where the border duties owed do not exceed €

100,000[151]; above this threshold, on the other hand, a fine of up to four hundred quotas will apply. In addition, in both cases, disqualification sanctions set out in Article 9, paragraph 2), let. c), d) and e) of Decree 231 are applicable, *i.e.* prohibition from contracting with the public administration, except for obtaining the performance of a public service, exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted, as well as the prohibition from advertising goods or services.

Below is a brief description of the most relevant cases provided for by the TULD, which have been included among the so-called 231 offences:

Art. 282 Smuggling in the movement of goods across land borders and customs areas

A fine of not less than two and not more than ten times the border duties due shall be imposed on any person who
(a) introduces foreign goods across the land border in violation of the requirements, prohibitions and limitations established in accordance with Article 16;
(b) unloads or stores foreign goods in the space between the border and the nearest customs post;
(c) is caught with foreign goods concealed on his person or in his luggage or in his packages or among other goods or in any means of transport, in order to evade customs supervision;
(d) removes goods from the customs territory without having paid the duties due or without having guaranteed payment thereof, except as provided for in Article 90;
(e) brings out of the customs territory, under the conditions provided for in the preceding subparagraphs, national or nationalised goods subject to border duties;
(f) holds foreign goods, when the circumstances provided for in the second paragraph of Article 25 for the offence of smuggling occurr.

Art. 283 Smuggling in the movement of goods in the border lakes

A fine of no less than two and no more than ten times the border duties due shall be imposed on any person

[151] Article 1, paragraph 4, of Legislative Decree No. 8/2016 had provided for the decriminalization of offenses provided for by TULD punishable by fine only. This provision was amended by Article 4 of Legislative Decree No. 75/2020, which now provides that offenses under the TULD in customs matters are not to be decriminalized, provided that the amount of unpaid border duties exceeds 10.000.00 euro. It follows that, below this threshold, the conduct punishable with only a fine constitutes an administrative offence, which is not capable of trigger the administrative liability of the entity (which may, on the other hand, arise where the evaded border duties exceed 10.000.00 euro).

a) who introduces through Lake Maggiore or Lake Lugano into the basins of Porlezza, foreign goods without presenting them to one of the national customs authorities closest to the border, without prejudice to the exception provided for in the third paragraph of Article 102;
b) who, without permission from the customs, transporting foreign goods with ships in the stretches of Lake Lugano where there are no customs, skirts the national shores opposite to the foreign ones or casts anchor or stays at anchor or in any case puts himself in communication with the customs territory of the State, in such a way that it is easy to disembark or embark the goods themselves, except in cases of force majeure.
The same punishment shall be imposed on any person who conceals foreign goods in the vessel for the purpose of evading customs inspection.

Article 284 Smuggling in the maritime movement of goods

A fine of not less than two and not more than ten times the border duties due shall be imposed on any master
(a) who, without permission of the Customs, while carrying foreign goods in ships, skirts the seashore or drops anchor or stands at anchor near the seashore except in cases of force majeure
(b) who, while carrying foreign goods, lands in places where there are no customs, or disembarks or transhipps such goods in breach of the requirements, prohibitions and restrictions laid down in accordance with Article 16, except in cases of force majeure;
(c) who transports foreign goods without a manifest in a vessel of not more than two hundred tons net tonnage, in cases where the manifest is required;
(d) which at the time of departure of the vessel does not have on board the foreign goods or the national goods for export with refund of duties which should be thereon according to the manifest and other customs documents;
(e) who transports foreign goods from one customs post to another, in a vessel of not more than fifty tons net tonnage, without the appropriate bond note;
(f) who has embarked foreign goods leaving the customs territory on a vessel of not more than fifty tons, except as provided in Article 254 for the embarkation of ship's stores.
The same punishment shall be imposed on anyone who conceals foreign goods in the ship for the purpose of evading customs inspection

Art. 285 Smuggling in the movement of goods by air

A fine of not less than two and not more than ten times the border duties due shall be imposed on the commander of an aircraft
(a) who transports foreign goods into the territory of the State without holding the manifest, when the latter is required;
(b) who, at the time of departure of the aircraft, does not have on board the foreign goods, which should be there according to the manifest and other customs documents;
(c) who removes goods from the places where the aircraft lands without having carried out the prescribed customs operations;
(d) who, landing outside a Customs airport, fails to report the landing to the Authorities specified in Article 114 within the shortest time. In such cases not only the cargo but also the aircraft shall be deemed to have been smuggled into the customs territory.
The same penalty shall be imposed on any person who, from an aircraft in flight, throws foreign goods into the customs territory or conceals them in the aircraft for the purpose of evading customs inspection.
The above penalties shall apply irrespective of those imposed for the same act by the special laws on air navigation, insofar as they do not relate to customs matters.

Article 286 Smuggling in non-customs areas

A fine of not less than two and not more than ten times the border duties due shall be imposed on any person who, in the non-customs areas specified in Article 2, sets up unauthorised warehouses of foreign goods subject to border duty, or sets up such warehouses in excess of the permitted amount.

Art. 287 Smuggling for undue use of goods imported with customs facilities

A fine of not less than two and not more than ten times the border duties due shall be imposed on any person who gives foreign goods imported duty-free or at a reduced rate of duty a destination or use other than that for which relief or reduction was granted, save as provided in Article 140.

Art. 288 Smuggling in customs warehouses

The licensee of a privately owned bonded warehouse, who holds therein foreign goods for which the prescribed declaration of introduction has not been made or which are not entered in the warehouse

registers, shall be punished with a fine of not less than two and not more than ten times the border duties due.

Art. 289 Smuggling in cabotage and traffic

A fine of not less than two and not more than ten times the border duties due shall be imposed on any person who brings into the State foreign goods in substitution for national or nationalised goods shipped in cabotage or in circulation.

Article 290 Smuggling in the export of goods eligible for duty drawback

Whoever uses fraudulent means for the purpose of obtaining an undue refund of duties established for the import of raw materials used in the manufacture of domestic goods that are exported, shall be punished by a fine of not less than twice the amount of the duties unduly levied or attempted to be levied, and not more than ten times the amount of the duties.

Article 291 Smuggling in importation or temporary exportation

Whoever, in import or temporary export operations or in re-export and re-import operations, in order to evade the payment of duties that should be due, subjects the goods to artificial manipulations or uses other fraudulent means, shall be punished with a fine of not less than two times and not more than ten times the amount of duties evaded or attempted to be evaded.

Article 292 Other cases of smuggling

Whoever, other than in the cases provided for in the preceding Articles, evades payment of the border duties due, shall be punished by a fine of not less than two and not more than ten times such duties.

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