ORGANISATION, MANAGEMENT AND CONTROL MODEL

UNDER ITALIAN LEG. DECREE NO. 231 OF 8 JUNE 2001

TEXT UPDATED WITH THE AMENDMENTS MADE BY THE BOARD OF DIRECTORS ON 24 MARCH 2022

CONTENTS

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GLOSSARY

Training and information activities	Dissemination of the Model addressed to the Consortium's employees and collaborators
CCNL	National Collective Labour Agreement (for the rubber and plastics industry) currently in force and applied by CONAI
Code of Ethics	Document that summarises the ethical commitments and responsibilities implemented in conducting all the activities aimed at the directors, employees and collaborators of CONAI achieving the Consortium's objectives, while showing the utmost respect for all stakeholders
CONAI	National Packaging Consortium
Consultants	Those acting in the name and/or on behalf of the Consortium on the basis of a mandate or any other collaboration relationship
Employees	All CONAI employees
Guidelines	Confindustria Guidelines for the establishment of Organisation, Management and Control Models under Legislative Decree 231/2001, in the latest version available
Antitrust Compliance Guidelines	The Compliance and Antitrust Guidelines approved by the Board of Directors on 24 February 2022.
Mapping	Process of identifying the business procedures and activities that can lead to the commission of crimes under Legislative Decree 231/2001
Market Abuse	Abuse of privileged information (arts. 184 and 185 of Legislative Decree no. 58 of 24 February 1998 – Consolidated Law on Financial Intermediation)
Model	The Organisation, Management and Control Model provided for by Legislative Decree 231/2001, of which the ethical and behavioural principles contained in the Code of Ethics, the Antitrust Compliance Guidelines and the disciplinary system also form an integral part
Reference legislation	Italian Leg. Decree no. 231 of 8 June 2001, as amended and supplemented
SB	Internal body responsible for supervising the operation of and compliance with the Model and its updating, as per Article 6, paragraph 1, letter b) of Legislative Decree 231/2001
Sensitive Operation	Any operation or deed that forms part of a Sensitive Process and may have a commercial, financial, technical-political or corporate nature
Consortium Bodies	The Board of Directors, the Executive Committee, the General Manager and the Board of Statutory Auditors of CONAI
P.A.	Public Administration, including public officials and persons in charge of a public service
Partners	Contractual counterparties of CONAI, which can be both natural and legal persons, with whom the Consortium agrees any form of contractually-regulated collaboration to cooperate with the Consortium within the context of Sensitive Processes
Sensitive Processes	CONAI activities for which there is a risk of committing an Offence
Offences	The set of crimes and administrative offences provided for by Legislative Decree 231/2001, as amended and supplemented, that may give rise to the Consortium's liability when committed in its interest or to its advantage
Whistleblowers	Individuals who report possible violations of the Model to the SB
Third parties	Consortium members, external collaborators and partners of CONAI

Organisation, Management

and Control Model

under Leg. Decree No. 231 of 8 June 2001

GENERAL SECTION

TEXT UPDATED WITH THE AMENDMENTS MADE BY THE BOARD OF DIRECTORS ON 24 MARCH 2022

1. Introduction - Regulatory framework

With Legislative Decree 231/2001 of 8 June 2001 (hereinafter, for the sake of brevity, also referred to as the "**Decree**"), containing the *"Regulations on the administrative liability of legal persons, companies and associations, even without legal personality"*, the Italian Legislator, in executing its mandate under Law no. 300 of 29 September 2000, has adapted Italy's legislation on the liability of legal persons to certain international conventions previously signed by the Italian State[1].

The Chief Legislator, therefore, put an end to a heated doctrinal debate, overcoming the principle according to which *societas delinquere non potest*[2] (a company cannot commit a crime) and introducing a system of administrative liability (actually, from a practical point of view, comparable to a real criminal liability) for bodies (in particular: bodies with legal personality and companies or associations, even without legal personality, hereinafter also collectively referred to as "**Bodies**"; these exclude the State, regional public authorities, non-economic public authorities and those which perform constitutional functions), in the event of certain specific kinds of crime being committed, in the interests or for the benefit of said Bodies, by (art. 5 of the Decree):

- ✓ parties serving as representatives, or holding administrative or senior executive positions within the Body or an organisational unit of same, and being financially and functionally independent, as well as by parties actually exercising management and control activities over same (*managerial staff*);
- ✓ parties subject to the management or supervision of one of the parties referred to in point (i) (*subordinate staff*).

Not all the offences committed by the aforementioned parties imply an administrative liability for the Body, since only specific types of offences are identified by the Decree[3].

As regards the legal position of CONAI, the provisions laid down in the Decree can certainly be applied to it, since it is a legal entity under private law.

1.1 The predicate offences giving rise to the liability of a Body.

With regard to the predicate offences giving rise to the possible administrative liability of a Body, the first type to be taken into consideration involves **offences against the Public Administration**, which are detailed in **articles 24** and **25** of the Decree, namely:

- Embezzlement at the expense of the State, another public body or the European Union

1 In particular: Brussels Convention of 26 July 1995 on the protection of financial interests; Brussels Convention of 26 May 1997 on the fight against corruption involving public officials, both in the European Community and in Member States; OECD Convention of 17 December 1997 on criminalising bribery of foreign public officials in international business. As will be explained herein, with Law no. 146/2006 the Legislator ratified the United Nations Convention and Protocols against transnational organised crime adopted by the General Assembly on 15 November 2000 and 31 May 2001.

2 Before the Decree was adopted, a company could not take on the role of *defendant* in criminal proceedings. Indeed, it was believed that Art. 27 of the Constitution, which lays down the principle that criminal liability is personal, prevented extending criminal charges to a company, and therefore to a 'non-personal' body. A company, therefore, could be called upon, from a civil point of view, to answer for the damage caused by an employee, as per arts. 196 and 197 of the Code of Criminal Procedure, in the event of the convicted employee being insolvent, and therefore to pay the fine levied.

3 It should also be noted that the "catalogue" of offences under Legislative Decree 231/01 is constantly expanding.

(article 316-*bis* of the Criminal Code);

- Misappropriation of contributions, financing or other payments by the State, another public body or the European Union (art. 316-*ter* of the Criminal Code);
- Fraud in public supplies (art. 356 of the Criminal Code)[4];
- Deception at the expense of the State, another public body or the European Union (article 640, paragraph 2, no. 1 of the Criminal Code);
- Aggravated deception to obtain public funds (art. 640-*bis* of the Criminal Code);
- Cyber fraud against the State, another public body or the European Union (article 640-*ter* of the Criminal Code);
- Misappropriation of aid, premiums, allowances, refunds, contributions or other payments either in whole or in part by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development (art. 2 of Law 898/1986)[5];
- Embezzlement against the financial interests of the European Union (art. 314, paragraph 1 of the Criminal Code)[6];
- Embezzlement by profiting from the errors of others against the financial interests of the European Union (art. 316 of the Criminal Code)[7]
- Extortion (article 317 of the Criminal Code);
- Corruption in the discharge of official duties (articles 318 and 321 of the Criminal Code);
- Corruption resulting in an act that is contrary to official duties (articles 319 and 321 of the Criminal Code);
- Corruption in judicial acts (article 319-*ter*and 321 of the Criminal Code);
- Inducement or promise to give undue benefits (article 319-*quater* of the Criminal Code);
- Corruption of persons in charge of a public service (articles 320 and 321 of the Criminal Code);
- Incitement to corruption (article 322 of the Criminal Code)[8];
- Embezzlement, extortion, corruption and incitement to corrupt members of EU bodies and Foreign State officials (article 322-*bis* of the Criminal Code)[9];
- Abuse of office against the financial interests of the European Union (art. 323 of the Criminal Code)[10];
- Influence peddling (art. 346-*bis* of the Criminal Code)[11].

Law no. 48 of 18 March 2008 (in force since 5 April 2008), which ratified and implemented the Council of Europe Convention on Cybercrime adopted in Budapest on 23 November 2001 (in force

4 Introduced by Leg. Decree no. 75 of 14 July 2020.
5 Introduced by Leg. Decree no. 75 of 14 July 2020.
6 Introduced by Leg. Decree no. 75 of 14 July 2020.
7 Introduced by Leg. Decree no. 75 of 14 July 2020.
8 Introduced by Leg. Decree no. 75 of 14 July 2020.
9 As amended by Law 3/2019.
10 Introduced by Leg. Decree no. 75 of 14 July 2020.
11 As amended by Law 3/2019.

since 1 July 2004), introduced Article **24-*bis***, **Computer crimes and unlawful data processing** (recently extended in its scope), which extended the liability of bodies to cases involving the commission of the following crimes:

- Counterfeiting of a public electronic document or of a document having evidential value (art. 491-*bis* of the Criminal Code)[12];
- Abusive access to a computer system (art. 615-*ter* of the Criminal Code);
- Possession, dissemination and improper installation of equipment, codes and other means of accessing computer or online systems (art. 615-*quater* of the Criminal Code)[13];
- Possession, dissemination and improper installation of computer equipment, devices or programs aimed at damaging or interrupting a computer or online system (art. 615-*quinquies* of the Criminal Code)[14];
- Interception, prevention or unlawful interruption of computer or online communications (art. 617-*quater* of the Criminal Code)[15];
    - Possession, dissemination and improper installation of equipment and other means capable of intercepting, preventing or interrupting computer or online communications (art. 617-*quinquies* of the Criminal Code)[16];
- Damage to information, data and computer programs (art. 635-*bis* of the Criminal Code);
- Damage to information, data and computer programs used by the State or another public agency or body providing public services (art. 635-*ter* of the Criminal Code);
- Damage to computer and online systems (art. 635-*quater* of the Criminal Code);
- Damage to computer or online systems providing public services (art. 635-*quinquies* of the Criminal Code);
- Computer fraud by an electronic signature certifier (art. 640-*quinquies* of the Criminal Code);
- Crimes concerning the national cybersecurity perimeter (art. 1, paragraph 11 of Leg. Decree 105/2019)[17].

Art. 24-*ter* of Law no. 94 of 15 July 2009 introduced the liability of Bodies in relation to **organised crime**, i.e. in relation to the commission of one of the offences referred to in the following articles:

- Unlawful association to commit a crime (article 416 of the Criminal Code);
- Direct association to commit one of the following crimes: placing and holding a person in a situation of slavery or servitude; human trafficking; buying and selling slaves; promotion,

12 As amended by Legislative Decree no. 7 of 15 January 2016 (Provisions on the abrogation of crimes and the introduction of offences with civil financial penalties, in accordance with article 2, paragraph 3 of Law no. 67 of 28 April 2014).
13 As amended by Law no. 238/2021.
14 As amended by Law no. 238/2021.
15 As amended by Law no. 238/2021.
16 As amended by Law no. 238/2021.
17 Conversion with amendments of Law no. 133 of 18 November 2019.

management, organisation, financing or material participation in illegal immigration (art. 416, paragraph 6 of the Criminal Code);
- Mafia-type associations, including foreign ones, as amended by Law no. 69/2015 (art. 416-*bis* of the Criminal Code);
- Bargaining of votes between politicians and members of the Mafia (article 416-*ter* of the Criminal Code);
- Kidnapping for the purpose of blackmail (article 630 of the Criminal Code);
- Criminal association aimed at the illegal trafficking of narcotic drugs or psychotropic substances (art. 74 of Presidential Decree no. 309 of 9 October 1990);
- Illegal manufacturing, importing into the country, sale, transfer, possession and carrying in a public place or a place open to the public of war or war-like weapons or parts thereof, explosives, illegal weapons or several common firearms (article 407, paragraph 2, letter a), no. 5 of the Code of Criminal Procedure);
- Crimes committed taking advantage of the intimidating power of the association and of the resulting conditions of submission and silence, or crimes committed to facilitate the activity of Mafia-type associations.

Art. **25-*bis*** of the Decree – introduced by art. 6 of Law no. 409 of 23 September 2001 – includes the **offences of counterfeiting money, public bonds and duty stamped papers** (arts. 453, 454, 455, 457, 459, 460, 461, 464, 473 and 474 of the Criminal Code).

Law no. 99 of 23 July 2009 added art. **25-*bis*.1**, which includes sanctions to Bodies for the commission of **crimes against industry and trade**. These include the following crimes:

- Disrupted freedom of industry or trade (art. 513 of the Criminal Code);
- Illegal competition with threat or violence (art. 513-*bis* of the Criminal Code);
- Fraud against national industries (art. 514 of the Criminal Code);
- Fraud in the exercise of trade (art. 515 of the Criminal Code);
- Sale of non-genuine food substances as genuine (art. 516 of the Criminal Code);
- Sale of industrial products with false marks (art. 517 of the Criminal Code);
- Manufacture and trade of goods made by usurping industrial property rights (art. 517-*ter* of the Criminal Code);
- Counterfeiting of geographical indications or designations of origin for agri-foodstuffs (art. 517-*quater* of the Criminal Code).

A further type of crime involving the administrative liability of a Body concerns **business crimes**, a category governed by art. **25-*ter*** of the Decree, which provision was introduced by Legislative Decree no. 61 of 11 April 2002 by identifying the following cases, as amended by Law no. 262 of 28 December 2005, Law no. 69 of 27 May 2015 and Leg. Decree 38 of 15 March 2017:

- False corporate communications (art. 2621 of the Civil Code);
- False corporate communications of a minor nature (art. 2621-*bis* of the Civil Code);

- False corporate communications of listed companies (art. 2622 of the Civil Code);
- False statements in a prospectus (art. 2623, paragraph 1 of the Civil Code);
- False statements in relations or communications of the auditing company (art. 2624 of the Civil Code);
- Impeding control (art. 2625 of the Civil Code);
- Undue reimbursement of contributions (art. 2626 of the Civil Code);
- Illegal distribution of profits and reserves (art. 2627 of the Civil Code);
- Illegal transactions involving shares or quotas of the company or parent company (art. 2628 of the Civil Code);
- Transactions prejudicial to creditors (art. 2629 of the Civil Code);
- Failure to communicate a conflict of interest (art. 2629 *bis* of the Civil Code);
- Fictitious capital formation (art. 2632 of the Civil Code);
- Undue distribution of corporate assets by liquidators (art. 2633 of the Civil Code);
- Corruption between private individuals (article 2635, paragraph 3 of the Civil Code)
- Incitement to corruption between private individuals (art. 2635-*bis* of the Civil Code);
- Unlawful influence in meetings (art. 2636 of the Civil Code);
- Agiotage (article 2637 of the Civil Code);
- Hindering the activities of public supervisory authorities (art. 2638, paragraphs 1 and 2 of the Civil Code).

Law no. 7 of 14 January 2003 introduced art. **25-*quater***, which further extends the scope of the administrative liability of Bodies to include **crimes aimed at terrorism or subversion of the democratic order**, provided for by the criminal code and special laws (these include the crimes referred to in articles 270-*bis*, 270-*ter*, 270-*quater*, 270-*quinquies*, 270-*sexies*, 280, 280-*bis*, 289-*bis*, 302, 304, 305, 306 and 307 of the Criminal Code: the Body's liability may arise also in relation to the commission of crimes aimed at terrorism or subversion of the democratic order provided for by special laws, as well as in relation to other crimes in any event committed in breach of article 2 of the International Convention for the Suppression of the Financing of Terrorism adopted in New York on 9 December 1999).

Law no. 7 of 9 January 2006 also introduced art. **25-*quater* 1**, which extends the scope of the administrative liability of Bodies to include the **practice of female genital mutilation** (art. 583 *bis* of the Criminal Code).

Law no. 228 of 11 August 2003 introduced art. ***25- quinquies***, under which a Body is responsible for the commission of **offences against individuals** (articles. 600, 600-*bis*, 600-*ter*, 600-*quater*, 600-*quater 1*[18], 600-*quinquies*, 601, 602, 603-*bis*, 609-*undecies*[19] of the Criminal Code).

18 As amended by Law 238/2021.
19 As amended by Law 238/2021.

Law no. 62 of 18 April 2005, known as the EU Law, and Law no. 262 of 28 December 2005, known as the Savings Law, increased the number of types of crimes covered by the Decree by introducing art. **25-*sexies*** relating to **market abuse** (arts. 184 and 185 of Legislative Decree No. 58 of 1998)[20]. Italian Legislative Decree no. 107 of 10 August 2018 further extended the administrative liability of Bodies to include among the relevant predicate offences those specified in art. 187-*quinquies* of the Consolidated Finance Law, i.e. violation of the prohibitions referred to in articles 14 (misuse or illicit disclosure of inside information and recommendation or induction of others to misuse inside information) and 15 (market manipulation) of Regulation (EU) No. 596/2014.

Law no. 123/2007 involved the addition of art. **25-*septies***, later replaced by art. 300 of Leg. Decree no. 81/2001, which includes the liability of Bodies in connection with **involuntary manslaughter** (art. 589 of the Criminal Code) committed in breach of art. 55, paragraph 2 of the Consolidated Law on Safety at Work (paragraph 1), in connection with all other cases of involuntary manslaughter committed in violation of the rules on the protection of health and safety at work (paragraph 2), and in cases of **severe and debilitating wrongful injury** committed in breach of rules on health and safety at work (paragraph 3).

Art. **25-*octies***, introduced by Leg. Decree no. 231/2007, sanctions Bodies for the commission of offences relating to **receiving**, **laundering and using money, goods or property of illicit origin, and self-laundering**. The legislation has been updated by Legislative Decree no. 195 of 8 November 2021, which, by intervening on articles 648, 648-*bis*, 648-*ter* and 648-*ter*.1 of the Criminal Code, has extended the offences of receiving, laundering and using money, goods or property of illicit origin, and self-laundering (within the limits respectively specified by the relevant rules) to also include cases in which the underlying predicate offences are either involuntary or minor violations. The scope of Leg. Decree 231/2001 has therefore been expanded correspondingly.

Leg. Decree no. 184 of 8 November 2021, implementing Directive 2019/713/EU, introduced art. **25-*octies*.1,** which added to the types of predicate offences covered by the Leg. Decree 231/2001 those relating to the **misuse and falsification of payment instruments other than cash** (arts. 493-*ter*, 493-*quater*[21] and 640-*ter* of the Criminal Code, the latter in cases aggravated by a transfer of money, of monetary value or of virtual currency). The new regulation also lays down the penalties to be imposed on Bodies for the commission of any other crime against public faith and against or in any case detrimental to property as provided for by the criminal code, when this relates to non-cash payment instruments.

Art. ***25-novies***, introduced by Law no. 99/2009, punishes Bodies for crimes relating to the **infringement of copyright** (articles 171, paragraph 1, letter a bis), and paragraph 3, 171-*bis*, 171-*ter*, 171-*septies* and 171-*octies* of Law no. 633 of 22 April 1941), while article **25-*decies***, introduced by Law no. 116/2009 and amended by Leg. Decree no. 121/2011, sanctions Bodies for

20 As amended by Law 238/2021.
21 Introduced by Leg. Decree 184/2021.

the commission of offences relating to any **inducement not to make statements or to make false statements to the Judicial Authorities** (art. 377-*bis* of the Criminal Code).

Subsequently, Legislative Decree no. 121/2011 introduced art. **25-*undecies***, which extends the liability of Bodies to certain **environmental crimes**, obtained both from the Criminal Code and from the special legislation of the Consolidated Environmental Law (Legislative Decree no. 152/2006). This legislation has been enriched through Law no. 68/2015, which extends the liability of Bodies to include offences relating to **environmental pollution** (art. 452 *bis* of the Criminal Code), **environmental disaster** (art. 452 *quinquies* of the Criminal Code), **involuntary crimes against the environment** (art. 452 *quinquies* of the Criminal Code), **trafficking and abandonment of high-radioactivity material** (art. 452 *sexies* of the Criminal Code); to the aggravating circumstances provided for in art. 452-*octies* of the Criminal Code; as well as to the crimes of **killing, destroying, capturing, collecting and holding protected wild animal or plant species** (art. 727-*bis* of the Criminal Code) and of **destroying or deteriorating habitats within a protected site** (art. 733-*bis* of the Criminal Code). Also added downstream of the interventions carried out by Legislative Decree no. 21/2018 are organised crimes involving the illegal trafficking of waste (art. 452-*quaterdecies* of the Criminal Code), which replaced the case referred to in art. 260 of the Consolidated Environmental Law[22].

Leg. Decree 109 of 16 July 2012 added art. **25-*duodecies***, implemented by Law no. 161 of 17 October 2017, which introduced sanctions for the commission, in the interests or for the benefit of the Body, of the offences of **employing illegally staying third-country nationals** (art. 22, paragraph 12-*bis* of Leg. Decree 286/98), of **favouring the stay of such citizens on State territory in order to profit unfairly from the foreigner's illegal status** (art. 12, paragraph 5 of Leg. Decree 286/98), and of **unlawful association to commit a crime concerning illegal immigration, also with aggravating circumstances** (art. 12, paragraphs 3, 3-*bis* and 3-*ter* of Legislative Decree no. 286 of 25 July 1998 - Consolidated Immigration Law).

Law no. 167 of 20 November 2017 added art. **25-*terdecies*** which sanctions the commission of

22 In addition to the crime cases specifically referred to and those of the Consolidated Environmental Law – for an exhaustive list of which, please refer to the text of art. 25-*undecies* of Leg. Decree 231/2001 – it is also worth noting Leg. Decree no. 136 of 10 December 2013, converted into Law no. 6 of 6 February 2014, which introduced into the Consolidated Environmental Law the new art. 256-*bis*, "Unlawful combustion of waste". This rule, although not specifically invoked by art. 25-*undecies*, is of particular importance in the matter of administrative liability since, in the event of the aforementioned offence being committed (or attempted), this constitutes the liability – independent of that of the perpetrators – of the owner (natural person) of the undertaking or of the person responsible for the organised activity due to non-supervision, thus resulting in the application of the prohibitory penalties provided for in art. 9, paragraph 2 of Legislative Decree no. 231/2001. In terms of the environment, also worthy of note are the offences provided for by Law 150/1992 "Regulation on offences relating to the application in Italy of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, as well as rules for the marketing and possession of live specimens of mammals and reptiles that may constitute a danger to public health and safety"; those provided for by Law 549/1993 "Measures to protect the stratospheric ozone and the environment"; and those provided for by Legislative Decree no. 202/2007 "Implementation of Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements".

crimes concerning **racism** and **xenophobia** (art. 604--*bis*, paragraph 3 of the Criminal Code).

Law no. 39 of 3 May 2019 introduced art. **25-*quaterdecies*** regulating the cases of **fraud in sports competitions and illegal gambling or betting and gambling exercised by means of prohibited equipment** (arts. 1 and 4 of Law no. 401 of 13 December 1989,) if committed in the interest or for the benefit of the Body. Leg. Decree 124 of 26 October 2019 (converted with amendments from Law n. 157 of 19 December 2019) introduced art. **25-*quinquiesdecies*** which extends the liability of Bodies to the commission, in their interest or to their benefit, of a series of **tax offences**. Downstream of the further additions made by Legislative Decree no. 75 of 14 July 2020, the following criminal and tax crimes were included among the predicate offences:

- Fraudulent declarations through the use of invoices or other documents for non-existent transactions (art. 2, paragraphs 1 and 2-*bis* of Leg. Decree 74/2000);
- Fraudulent declarations by means of other expedients (art. 3 of Leg. Decree 74/2000);
- Inaccurate declarations (art. 4 of Leg. Decree 74/2000), if committed in the context of fraudulent cross-border systems and in order to evade value added tax for a total amount of no less than EUR 10 million[23];
- Omitted declarations (art. 5 of Leg. Decree 74/2000), if committed in the context of fraudulent cross-border systems and in order to evade value added tax for a total amount of no less than EUR 10 million[24];
- Issuing invoices or other documents for non-existent operations (art. 8, paragraphs 1 and 2-*bis* of Leg. Decree 74/2000);
- Concealment or destruction of accounting documents (art. 10 of Leg. Decree 74/2000);
- Undue offsetting (art. 10-*quater* of Leg. Decree 74/2000), if committed in the context of fraudulent cross-border systems and in order to evade value added tax for a total amount of no less than EUR 10 million[25];
- Fraudulent withholding of taxes (art. 11 of Leg. Decree no. 74 of 10 March 2000).

Art. **25-*sexiesdecies***, introduced by Leg. Decree no. 75 of 14 July 2020, sanctions Bodies for **smuggling** crimes, as foreseen by Presidential Decree no. 43 of 23 January 1973 (art. 282 *et seq.*).

Draft Law C-893-B approved on 3 March 2022[26] introduced within Legislative Decree no. 231/2001 articles **25-*septiesdecies*** and **25-*duodevicies***, through which the administrative liability of Bodies was also extended to **crimes against cultural heritage** (arts. 518-*bis*, 518-*ter*, 518-*quater*, 518-*octies*, 518-*novies*, 518-*decies*, 518-*undecies*, 518-*duodecies* and 518-*quaterdecies* of the

23 Introduced by Leg. Decree 75/2020.
24 Introduced by Leg. Decree 75/2020.
25 Introduced by Leg. Decree 75/2020.
26 Specifically, the regulatory measure reformed the criminal provisions for the protection of cultural heritage, currently mainly contained in the Cultural Heritage Code (**Legislative Decree no. 42 of 2004**), including them in the Criminal Code and introducing the administrative liability of legal persons when such offences are committed in their interest or for their benefit.

Criminal Code) and to cases of **laundering cultural goods and the devastation and plundering of cultural and landscape assets** (arts. 518-*sexies* and 518-*terdecies* of the Criminal Code).

Lastly, Law no. 146 of 16 March 2006 – which ratified the United Nations Convention and Protocols against transnational organised crime adopted by the General Assembly on 15 November 2000 and 31 May 2001 – introduced the liability of bodies for **certain offences of a transnational nature** (art. 10).

It should be noted that, according to art. 3 of Law 146/2006, the "transnational" nature of these offences, which only relates to offences punished with a term of imprisonment of no less than four years, means that (a) an organised criminal group is involved and (b) that the offence is committed in more than one State; or (c) that it is committed in one State, but a substantial part of its preparation, planning, management or control takes place in another State; or (d) that it is committed in one State but involves an organised criminal group engaged in criminal activities in more than one State; or (e) that it is committed in one State but has substantial effects in another State.

Such offences are:

- Aiding and abetting (art. 378 of the Criminal Code);
- Unlawful association to commit a crime (art. 416 of the Criminal Code):
- Mafia-type unlawful association to commit a crime (article 416-*bis* of the Criminal Code);
- Criminal association aimed at smuggling foreign tobacco products (art.*291- quater* of Presidential Decree no. 43/1973);
- Criminal association aimed at the illegal trafficking of narcotic drugs or psychotropic substances (art. 74 of Presidential Decree no. 309/1990);
- Migrant smuggling (art. 12, paragraphs 3, 3 *bis,* 3 *ter* and 5 of Leg. decree no. 286 of 25 July 1998);
- Inducement not to make statements or to make false statements to the Judicial Authorities (article 377-*bis* of the Criminal Code);
- Aiding and abetting (art. 378 of the Criminal Code).

The aforementioned crimes and administrative offences may involve the administrative liability of a Body with headquarters in Italian territory even if committed abroad.

The Special Section of this Model describes in detail the types of crime taken into consideration by the reference legislation and considered relevant within the context of CONAI. Indeed, due to the particular type of business carried out by the Consortium, only some of the types of crime laid down in the Decree have been considered relevant. These are:

- Offences against the Public Administration;
- Business crimes;

- Involuntary manslaughter and severe or debilitating injury committed in violation of rules on health and safety at work;
- Computer crimes and unlawful data processing;
- Crimes against the administration of justice (article 377 of the Criminal Code);
- Environmental crimes;
- Self-laundering crimes;
- Tax crimes.

Please see the Special Section for more comprehensive details on measures to fight the risk of committing these offences.

1.2 Penalties under Leg. Decree 231/2001.

We now turn to the **disciplinary system** provided for by the Decree, which is structured around the following instruments (art. 9):

- Fines;
- Penalties of a prohibitory nature;
- Confiscation of the price of the crime or the profit obtained from it;
- Publication of the court ruling.

From a general point of view, it should be pointed out that the fact of assessing the liability of a Body, and therefore determining *whether* and *how much of* a penalty should be imposed, is the responsibility of the Criminal Court responsible for proceedings relating to the offences on which the administrative liability depends.

The Body is held responsible for the commission – by its representatives – of the offences set out in art. 24 *et seq.* even if these are only attempted. In such cases, however, the financial and prohibitory sanctions are reduced from one-third to half. The Body is not held liable when it voluntarily prevents the completion of the action or the execution of the event (art. 26 of Leg. Decree 231/2001).

Fines are regulated in articles 10, 11 and 12 of the Decree and apply in all cases where the liability of the Body is acknowledged. Financial penalties are applied in "quotas", to an extent of no less than 100 and no more than 1000, while the amount of each quota ranges from a minimum of € 258.23 to a maximum of € 1,549.37. The Court determines the number of quotas based on the indices specified in art. 11, paragraph 1, while the amount of the quota is fixed on the basis of the economic and capital conditions of the Body involved.

The **penalties of a prohibitory nature**, specified by art. 9, paragraph 2 of the Decree and applicable only in foreseen cases and for some of the offences, are:

a) Disqualification from conducting business;

b) Suspension or revocation of authorisations, licences or concessions relating to the offence committed;

c) Exclusion from contracts with public administrations, except to obtain the services of a public service;

d) Exclusion from entitlement to public concessions, grants, contributions or subsidies and revocation of those granted;

e) Prohibition on advertising goods or services.

As with fines, the type and duration of the prohibitory sanctions are determined by the Criminal Court responsible for proceedings relating to crimes committed by individuals, taking into account the factors specified in greater depth in art. 14 of the Decree. Prohibitory sanctions – except for the case referred to in art. 25, paragraph 5 – shall have a minimum duration of three months and a maximum duration of two years.

One of the most interesting aspects is that prohibitory sanctions may be applied to the Body both at the end of the trial and, as a precautionary measure, during the trial, when there are:

- serious grounds for believing that the body has committed an unlawful administrative act;
- specific and well-founded grounds for believing that there is a real danger that further offences of the same nature may be committed.

Confiscation of the price of the crime or the profit obtained from it is a mandatory penalty in the event of being found guilty of the crime (art. 19).

Publication of the court ruling is a possible penalty, of a reputational nature, which involves the application of a prohibitory sanction (art. 18).

1.3. Adoption and implementation of an Organisation, Management and Control Model to exempt Bodies from administrative liability in the event of a crime

In articles 6 and 7 of the Decree, the Legislator includes specific forms of exemption from administrative liabilities for Bodies. In particular, **art. 6, paragraph 1** sets forth that, in the event of the circumstances of a crime being ascribable to **managerial staff**, the Body is not held liable if it can prove that:

a) the senior executive organ has adopted and efficiently enacted, prior to commission of the act, an **Organisation, Management and Control Model** (hereinafter, for the sake of brevity, also referred to as the "**Model**") capable of preventing offences of the type occurring;
b) it has appointed an independent body with independent powers to monitor the operation and compliance of the Model and its updating (**Supervisory Body**; hereinafter also "**SB**");

c) the offence was committed by **fraudulently circumventing** the measures provided for in the Model;
d) supervision by the body referred to in point b) was neither omitted nor insufficient.

The content of the Model is detailed in art. 6, paragraph 2, which states that the Body must:

a) identify activities within the context of which offences may be committed;
b) devise specific protocols aimed at scheduling the formation and implementation of the Body's decisions in relation to offences to be prevented;
c) identify ways of managing financial resources such as to prevent offences;
d) set up mandatory information flows to the SB;
e) introduce a disciplinary system such as to punish non-compliance with the provisions of the Model.

In addition to these measures, Law no. 179 of 30 November 2017 (hereinafter also Law 179/2017), published in the *Official Journal* on 14 December 2017 – laying down "*Provisions to protect parties who report crimes or irregularities that come to their attention within the context of a public or private employment relationship*" – added to the body of art. 6 of the Decree a series of further paragraphs (2-*bis*, 2- *ter* and 2-*quater*) aimed at ensuring adequate protection of those within a Body who promptly report the commission of unlawful acts under the Decree (known as Whistleblowers).

In particular, paragraph 2-*bis*(*a*) states that the Model should –in addition to what has already been illustrated above – identify one or more channels to allow the parties belonging to the Body's organisation to "*make detailed reports – with a view to protecting the integrity of the Body – of any illicit conduct, relevant for the purposes of this decree and based on precise and concordant factual elements, or of violations of the Body's organisation and management model, which should come to their attention as a result of their role; these channels ensure that the identity of the whistleblower is kept confidential throughout the process of managing the report*";

In addition, paragraph 2-bis specifies (in letter b) that the Model should identify "at least one alternative reporting channel such as to ensure, by computer means, the confidentiality of the identity of the whistleblower" and that it must make explicit (in letter c) "the prohibition of direct or indirect retaliatory or discriminatory measures against the whistleblower for reasons connected either directly or indirectly with the report".

Finally, the paragraph states (in letter d) that the Model should identify, "as part of the disciplinary system adopted pursuant to paragraph 2, letter e) of the Decree, sanctions against those who violate the measures set up to protect the whistleblower, and against those who make reports, either intentionally or by serious negligence, that prove to be unfounded".

Therefore, aware of the importance of ensuring maximum protection against those who report

illegitimate conduct within the Body, CONAI decided to instantly adapt the Model to the latest provisions on whistleblowing, the most significant of which were in fact already met in previous versions of the Organisational Model. To this end, CONAI has adopted specific "*Guidelines on the protection of parties who report crimes or irregularities*", which it disseminates within the Consortium through publication on the Intranet and regular training activities on the topic of whistleblowing, within broader training on the liability of Bodies in the event of a crime.

In the event of the offence having been committed by subordinate staff, the adoption and effective implementation of the Model means that the Body will only be called upon to answer for the event if the offence was made possible by non-compliance with its management and supervision obligations (art. 7, paragraphs 1 and 2).

Paragraphs 3 and 4, instead, introduce two principles which, although connected to the scope of the aforementioned rule, appear relevant and decisive for the purposes of exempting the Body from liability for both types of offence referred to in art. 5, letters a) and b).

These paragraphs state that:

- the Model should include appropriate measures to ensure that activities can be carried out in accordance with the law and to promptly detect situations at risk, taking into account the type of activities carried out and the nature and size of the organisation;
- the effective implementation of the Model requires regular monitoring, as well as the amendment of same whenever significant legal violations are detected or whenever significant changes occur within the organisation; also important is the existence of a suitable disciplinary system - a condition already laid down in art. 6, paragraph 2, letter e).

From a formal point of view, therefore, the **adoption and effective implementation of a Model** is not an obligation, but merely an **opportunity** for Bodies, which could well decide not to comply with the provisions of the Decree without incurring, for this reason alone, any penalty.

However, it is clear that the adoption and effective implementation of a suitable Model is, for Bodies, an indispensable prerequisite in order to benefit from the exemptions laid down by the Legislator.

It is important, moreover, to take into account that the Model should not be understood as a static instrument, but as a dynamic system that allows the Body to eliminate, through its correct and targeted implementation over time, any shortcomings that, at the time of its creation, it was not possible to detect.

2. Adoption of the CONAI Model as a tool for preventing illegal conduct

CONAI is sensitive to the expectations of its Consortium members and is aware of the value they attribute to an internal control system capable of reducing the risk of the Consortium's staff committing offences.

In view of this awareness – in addition to the desire to direct the behaviour of all CONAI members towards a culture of legality and respect for rules – this Model sets out to generate a preventive, dissuasive control system aimed at reducing the risk of the aforementioned offences being committed.

The Model, therefore:

a) **identifies activities** in relation to which offences under the Decree may be committed (see the paragraph "Areas at risk" of each Special Section);

b) **analyses possible ways in which "predicate offences" may be implemented** and **identifies the parties potentially at risk of committing these offences** (see the paragraph "Parties concerned by risk monitoring and management activities" of each Special Section);

c) identifies **operational protocols** and methods for managing financial resources so as to fight the possibility of such offences being committed;

d) introduces **information obligations** concerning the body appointed to oversee the functioning and compliance of the Model;

e) introduces an **appropriate disciplinary system** which punishes failure to comply with the Model.

In order to ensure effective implementation of the Model, CONAI undertakes to:

a) regularly monitor, through its internal bodies, the effectiveness, efficiency and suitability of the Model;

b) amend the Model, whenever significant violations are detected or whenever it needs to be updated, also due to changes in CONAI's organisation or business;

c) apply penalties in the event of non-compliance with the provisions of the Model.

3. The CONAI Organisational Model: role of industry guidelines.

Art. 6, paragraph 3 of the Decree states that "*Organisation and Management Models may be adopted… on the basis of codes of conduct drawn up by trade associations and communicated to the Ministry of Justice which, in agreement with the competent Ministries, may formulate, within*

thirty days, observations on the suitability of the Models to prevent crime". Considering that CONAI Consortium members are represented within the Consortium through major trade associations of companies producing and/or using packaging, in drawing up this Model CONAI has taken into account the "*Guidelines for drawing up organisation management and control models under Leg. Decree no. 231/2001*" (hereinafter, for brevity, the "**Guidelines**") drawn up by Confindustria to help companies in the correct implementation of the Decree.

As a result, this Model complies with the principles set out in said document.

4. Structure of the Model

This Model consists of a "General Section" and a "Special Section", split according to the categories of offences deemed relevant in the context of CONAI's activities. In particular:

- the *General Section* describes the relevant legislation and the general rules of operation of the Model and of the Supervisory Body;
- the *Special Section* is split into chapters for each type of offence specified in Leg. Decree 231/2001 and focuses on the areas of activity and processes considered potentially sensitive to same, detailing the general principles of conduct to be followed for the prevention of such predicate offences.

5. Procedure for adopting and amending the Model

Given that the Decree describes the Model as a "deed issued by the senior executive body", its approval is by special resolution of the CONAI **Board of Directors**.

Said body is responsible for the adoption of any subsequent substantial amendments and/or additions (e.g. further additions to the Special Section). "Substantial" amendments or additions are those made necessary as a result of changes in the reference legislation or requiring a change in the behavioural rules concerning the Model, in the powers and duties of the SB and in the disciplinary system.

Non-substantial amendments (e.g. amendments and additions of a formal nature) may be approved by the **General Manager**, after informing the Supervisory Body.

This Model will, in any case, be subject to regular monitoring by the Supervisory Body which, at any time, may formulate proposals and suggest amendments aimed at adapting the Model to any organisational changes in the Consortium or to the introduction of new categories of predicate offences.

6. Relationship between the Model and the Code of Ethics

As mentioned above, the Model responds primarily to the need to prevent, as far as possible, the commission of the offences laid down in the Decree through specific rules of conduct. This is the main difference with the Code of Ethics, which is a more general instrument aimed at promoting a true "consortium deontology" and institutionalising the values, rules and principles shaping the character and operation of the Consortium and its individuals.

However, also in view of the provisions of the Confindustria Guidelines, CONAI aims to closely integrate its Model with its Code of Ethics, in order to form a body of internal regulations aimed at fostering a culture of ethics and transparency.

Employees, members, consultants and partners of the Consortium should comply with the general and specific rules of conduct laid down in the CONAI Model and Code of Ethics.

7. The phases behind the drawing up of the Model

The aforementioned guidelines, and the last few years' case-law, make it clear that the exemptions laid down in the Decree for bodies that adopt and effectively apply a suitable Organisation Model are more easily applied, especially in evidentiary terms, when the various phases behind the drawing up of the Model are documented.

In line with art. 6, paragraph 2 of the Decree, CONAI started drawing up its Model on the basis of the following activities:

a) ***Risk identification***: analysis of the reference context to highlight where (in which area/sector of activity) and how events may occur that are detrimental to the objectives set out in Leg. Decree no. 231/2001;

b) ***Development of a control system*** (so-called protocols to plan the formation and implementation of the Body's decisions): thorough evaluation of the system currently adopted within the Consortium and of the need to adapt it so as to effectively fight the identified risks and reduce them to an acceptable level.

CONAI is aware of the fact that adopting the Model does not completely eliminate the risk of crimes being committed, but that it serves to lay the conditions for preventing the commission of offences. Therefore, this model contains the set of precautionary measures that any perpetrator of a crime shall have to fraudulently circumvent.

7.1 Identifying business areas "at risk of a crime"

First of all, upon first drafting the Organisation Model, CONAI mapped the Consortium's business

areas, both in terms of the internal division of work (individual areas, sectors and offices and related functions and procedures) and in terms of relations with third parties that normally interact with CONAI (consortium companies, public administrations, etc.). The aim was to identify the activities potentially capable of generating risks in relation to the possible commission of the administrative crimes and offences laid down by Leg. Decree no. 231/2001.

As part of the process of mapping the processes/departments at risk, the subjects involved in monitoring activities were also identified.

The particular legal nature of CONAI – a legal enterprise under private law (art. 224 of Leg. Decree 152 of 3 April 2006) that **has no operational competences** in terms of the management of packaging waste and essentially carries out tasks of organising, connecting and coordinating the various supply chain consortia – has a decisive influence on the identification of "sensitive" areas in relation to the risk of offences being committed.

Moreover, a retrospective survey of the Body's "history" – carried out to assess its possible propensity to illegality – shows that the Consortium and its directors and employees have never been involved in criminal proceedings involving the Consortium's activities, and that no administrative sanctions have been levied in this regard. The identification of areas "at risk of a crime" is therefore based on a theoretical analysis and not on actual past experience.

From this analysis it emerged that the Consortium's "sensitive processes" under Leg. Decree 231/2001 may be associated with the following types of offences (each carefully described and analysed in the various chapters of the "Special Section" of the Model):

1. Offences against the Public Administration;
2. Business crimes;
3. Offences resulting from breaches of regulations on health and safety at work;
4. Computer crimes;
5. Tax crimes;
6. Other specific offences (analysed in the "*Other unlawful cases*" section of the Special Section).

A risk analysis relating to the other types of offence laid down by Leg. Decree 231/2001 reveals a remote risk that is difficult to hypothesise, even in abstract terms; in relation to these types of offences, therefore, the Consortium considers sufficient making reference to the requirements of the Code of Ethics and of the Antitrust Compliance Guidelines.

7.2. Developing a system of measures to prevent the risk of criminal offences being committed

The activities for drawing up the Model described above were completed by assessing CONAI's

existing control system and by adjusting its measures, where necessary, so as to prevent the risk of crimes being committed.

CONAI's activities are carried out, primarily, through a series of general rules and organisational procedures, which are formalised in a series of deeds that constitute the first system of protection against crimes and control over "sensitive processes". In particular, these deeds are:

1. the ***Articles of Association***, approved at the General Meeting of Consortium Members and amended, whenever necessary, by a specific Decree of the Ministry for the Environment, Land and Sea and the Ministry for Economic Development;
2. the ***Regulations***, approved at the General Meeting of Consortium Members pursuant to Article 30 of the Articles of Association, for the application of the latter and to the extent necessary to ensure the optimum functioning of the Consortium.

Moreover, the Consortium – by virtue of its institutional activities – adopts an articulated governance and public controls system, also aimed at ensuring transparency in decision-making processes and strict compliance with the current regulations. This system may be summarised as follows:

1. ***Board of Directors***, made up of 17 members, jointly representing the consortium categories of packaging producers and users, and inclusive of a consumer representative appointed by the Ministry for the Environment, Land and Sea and the Ministry for Economic Development;
2. ***Board of Statutory Auditors***, made up of seven members, three of which are appointed respectively by the Ministry for the Environment, Land and Sea, the Ministry for Economic Development, and the Ministry for Economy and Finance;
3. ***Annual auditing of accounts***, to which the Consortium voluntarily submits, and which is conducted by a leading auditing company;
4. ***Public supervision***, exercised with regard to the Consortium by the Ministry for the Environment, Land and Sea and the Ministry for Economic Development.

In addition to the aforementioned legislation and control systems, CONAI's operation is regulated through a further set of specific rules summed up in a series of "**procedures**" that identify and describe the competences and responsibilities of the various subjects forming part of the Consortium. Below is a series of such procedures relevant to Leg. Decree 231/2001:

1) "Finance and treasury" procedure;
2) "Annual financial statements and quarterly economic situation" procedure;
3) "Asset management" procedure;

4) "Contract management" procedure;

5) "Relations with the Public Administration" procedure;

6) "Calculation of taxes and submission of tax returns" procedure;

7) "Communication activities and external relations" procedure;

8) "HR management" procedure.

To these should be added the rules on the processing of personal data, those developed in implementation of other specific regulations (e.g. on safety at work), the *Antitrust Compliance Guidelines*, and the *Guidelines on the protection of parties who report crimes or irregularities*, adopted following the approval of Law no. 179/2017.

All the aforementioned regulatory and control systems pursue the objective of ensuring the correct execution of the Consortium's activities, so as to reduce as much as possible the risk of committing offences such as may result in the Body's administrative liability.

7.3. Rules on the distribution of authorisation and signing powers.

At CONAI, authorisation and signing powers are assigned in accordance with the organisational and management responsibilities of each individual, and, where deemed appropriate, include a precise indication of thresholds for the approval of expenses.

The system of authorisations and proxies for the signature of corporate deeds ensures a clear and transparent representation of the process of forming and implementing decisions.

This system is split into:

- **authorisations** (internal), which define the signatory powers and limitations assigned to the various managers to authorise specific operations;
- **proxies** (external, notarised if necessary), issued to managers to allow them to sign documents that formally commit the Body with third parties. The proxies, with separate and/or joint signature, define, for each type of operation, the limitations in terms of amount and timeframes, as well as the proxy holders and their powers.

Within the organisation, CONAI ensures the dissemination (through publication on the intranet) of a **breakdown of all existing authorisations**, providing an updated picture of the distribution of internal operational powers.

For effective prevention of crime, CONAI observes the following principles when assigning authorisations:

a) Those who, on behalf of CONAI, enter into agreements of any kind with the P.A. and third parties other than the P.A. must have formally been given the authorisation to do so;

b) Each authorisation must define specifically the powers of the holder, the subject (body or individual) to whom the holder reports hierarchically, and any other parties to whom the authorisations are jointly or separately conferred.

CONAI also observes the following principles when assigning proxies:

a) Proxies, whether special or general, are conferred – except in exceptional cases, expressly authorised by the General Manager – exclusively to members of the CONAI organisational chart and describe in detail the management powers conferred and any limits of expenditure;

b) Proxies also indicate any other parties to whom the powers forming the subject of said proxies are jointly or separately conferred, either in whole or in part.

8. The Supervisory Body

Leg. Decree 231/2001 states that the task of monitoring compliance with and the operation of the Model, including its updating, should be entrusted to an internal supervisory body with autonomous powers of initiative and control, which continuously exercises the tasks entrusted to it.

In accordance with the requirements of Leg. Decree 231/2001, the Board of Directors of CONAI has established a Supervisory Body with a **collegial structure made up of three members**, one of which – outside the CONAI organisational chart – acts as Coordinator and reports functionally to the Board of Directors.

In particular, the composition of the Supervisory Body was defined so as ensure the following requirements:

a) ***Autonomy and independence***: this requirement is ensured by the SB's collegial composition and by the presence of a majority number of members (two) who are not CONAI employees or members of the consortium bodies, and who necessarily include a member acting as Coordinator.

b) ***Professionalism***: this requirement is guaranteed by the professional, technical and practical skills of the members of the Supervisory Body. In particular, the chosen composition guarantees appropriate knowledge of the law and of the necessary control and monitoring principles and techniques, as well as of the Consortium's organisational structure and its main processes.

c) ***Continuity of action***: the Supervisory Body is required to constantly survey and monitor observance of the Model by the Recipients, to ensure its implementation and updating, and

to serve as a constant point of reference for all CONAI personnel. In particular, this requirement is guaranteed by the presence in the SB of an employee of the Consortium.

d) ***Compliance with the requirements of integrity and professionalism*** laid down by the CONAI Articles of Association and Regulations for Directors and Auditors and ***with the requirements of independence*** referred to in article 2409-*septiesdecies* of the Civil Code.

8.1. Duties and powers of the SB

The SB carries out the supervisory and control functions provided for in the Model and reports to the Board of Directors and to the Board of Statutory Auditors – at regular intervals set by its Regulations, and in any case at least on a half-yearly basis – on the general development of the Model and its foreseeable evolution, and on the most important operations carried out as a result of the SB's appointment.

From an operational point of view, the SB is entrusted with the task of:

a) verifying the implementation of planned control activities;

b) reporting on the results of operations carried out in the performance of its duties;

c) making proposals to the senior executive body regarding any updates and adjustments to the Organisation Model, to be carried out by means of any amendments and/or additions that should become necessary as a result of significant breaches of the provisions of the Organisation Model or significant changes to the Consortium's internal organisation;

d) reporting to the senior executive body any ascertained breaches of the Model that may lead to the Consortium's liability. In this regard, the SB coordinates with the company's management to assess the possible adoption of disciplinary sanctions, without prejudice to the latter's power to impose sanctions and the related disciplinary proceedings;

e) carrying out regular, targeted controls on specific operations or acts implemented by the Consortium, especially in the context of Sensitive Processes;

f) coordinating initiatives for the dissemination of information on the Model and preparing the internal documentation necessary for its operation.

The SB has free access to all the company documentation that it considers relevant and the Consortium's management is responsible for promptly providing answers to questions asked by the SB.

The SB is entitled to open "internal investigations" to acquire information following questionable behaviour under the Model.

In view of the special nature of the responsibilities assigned to the Supervisory Body and of the specific professional qualities required of same, in performing its duties the SB may avail of the

support of any external structures deems necessary for the execution of its tasks.

The SB must have sufficient financial and logistical resources to enable it to operate regularly. With regard to the formation of the company budget, the senior executive body shall approve an appropriate allocation of financial resources, proposed by the SB, which the latter will be able to use for any need connected with the proper performance of its duties. This fund may be managed independently by the SB – provided it is used exclusively for expenses incurred in the performance of its duties – by sending written and reasoned requests to the competent company departments, which shall meet same limited to the extent of the funds available. At the end of each year, the SB is required to report to the senior executive body the expenses incurred in carrying out its duties.

The members of the SB are required to act in an informed manner; each member may request information so as to verify the operation of the Model, its effectiveness and its actual management.

A written account shall be kept of all the activities carried out by the SB with respect to any whistleblower reports made, documenting the logical procedure followed to determine whether or not the report is founded.

These accounts are stored by the SB, together with the reports received, in a suitable archive (electronic and/or physical).

In the performance of its duties, the SB acts in compliance with the principles of confidentiality and professional/business secrecy.

In order to fully guarantee the autonomy and independence of the SB, decisions on any penalties to be applied to the members of the SB shall be the exclusive competence of the Board of Directors, with the opinion of the Board of Statutory Auditors.

8.2. Appointment and regulation of the SB

The Board of Directors of CONAI is responsible for: appointing the SB; choosing the criteria behind the composition of the SB; setting the remuneration of the members of the SB.

Members of the Supervisory Body remain in office for three years and may be re-elected. They are chosen for their indisputable ethical and professional profile and must not be related by blood or marriage to the members of the Board of Directors.

Employees of the Consortium and external professionals may become members of the Supervisory Body. Any external professionals, however, must be free of any relationship with the Consortium such as to cause a conflict of interest. The remuneration of the members of the SB, whether internal or external to the Consortium, does not constitute a conflict of interest.

Whoever has been disqualified, incapacitated or made bankrupt, or whoever has been sentenced,

even with a non-final ruling, to a penalty involving a disqualification, albeit temporary, from public offices or a ban on exercising management roles, or whoever has been sentenced, even with a non-final ruling or with a plea bargain, for having committed one of the offences provided for in Leg. Decree 231/2001, may not be appointed to the role of member of the Supervisory Body or, if appointed, shall cease to hold said office.

Members with a subordinate employment relationship with the Consortium shall automatically cease to hold their office in the event of the employment relationship terminating, regardless of the reason for said termination.

The Board of Directors may, after consulting the Board of Statutory Auditors, revoke members of the SB at any time, but only with just cause. Such just cause includes:

a) an ascertained serious failure by the SB to fulfil its duties;

b) failure to notify the Board of Directors of a conflict of interest which prevents the member from remaining in office in the SB;

c) any *res judicata* conviction of the Consortium or any plea bargain highlighting a lack of or insufficient supervision by the SB;

d) any breach of confidentiality regarding news and information acquired by the SB in the performance of its duties;

e) the initiation, for Consortium employees, of disciplinary proceedings for facts that may result in dismissal.

If revocation occurs without just cause, the revoked member may request immediate reinstatement in office.

Each member may withdraw from the appointment at any time with written notice of at least 30 days, to be sent to the Board of Directors by registered letter with return receipt.

The SB shall independently govern its operational rules by means of a special **Regulation** that sets out operating methods for performing its duties.

8.3. The SB's reporting requirements to the Consortium's top management

The SB shall report regularly on the implementation of the Model and on any critical issues that should emerge. In particular, two reporting lines are established:

- The first, occurring on a continuous basis and with no specific formalities, directly involves the Chairman of the Board of Directors and the General Manager;
- The second is strictly scheduled and involves providing the Board of Directors and the

Board of Statutory Auditors with a written report (every six months) illustrating the activities carried out and those planned for the following year.

Meetings with the bodies to which the SB reports must be recorded in the applicable ledgers and copies of minutes and any written reports must be stored by the SB and the bodies involved case by case. The Board of Directors, the Board of Statutory Auditors, the Chairman and the General Manager have the right to call a meeting with the SB at any time; in turn, for urgent reasons, the latter also has the right to call a meeting with the said bodies, through the competent departments or parties.

8.4. Mandatory information flows to the SB

Among the requirements of the Model, Leg. Decree 231/2001 sets out **specific information flows** from the Consortium departments to the Supervisory Body, aimed at allowing the SB to carry out its supervisory and monitoring activities.

Therefore, the following information must be communicated to the SB:

a) Regular results of the activities carried out by individual departments to implement the Model (summary reports of the activity carried out, monitoring activities, etc.);

b) Any fault or criticality detected within the information available.

In addition to reports of general violations as described above, the Consortium Bodies, employees and, within their contractual limits, consultants and partners must immediately send the SB information concerning:

a) orders and/or information from the criminal investigation department of the police, or any other authority, revealing that investigations are being conducted, even against unknown perpetrators, in relation to offences of the types identified in the Decree and involving CONAI or its employees or Consortium Bodies;

b) reports drawn up by the competent departments within the scope of their control activities, stating critical circumstances, actions, events or omissions with respect to compliance with the rules of the Decree;

c) disciplinary proceedings carried out and any sanctions applied, or measures for filing such proceedings with reasons, where these relate to alleged violations of the rules of conduct or procedures described in the Model.

All staff is required to comply with any documentation requests made by the SB during its audits.

Employees who are in possession of information regarding the commission of offences in CONAI or “practices” that are not aligned with the rules of conduct issued by CONAI under the Model, the

Code of Ethics or the Antitrust Compliance Guidelines must communicate this to the SB without delay. CONAI wishes to point out that the obligation to inform the employer of any conduct contrary to the Model is part of a broader duty of diligence and loyalty to the employer as per arts 2104 and 2105 of the Civil Code.

For electronic communications to and from the SB, CONAI has established a dedicated e-mail address, accessed solely by the Sb's Coordinator, who is external to the CONAI organisational chart. This method of submitting reports is aimed at ensuring the maximum confidentiality of whistleblowers, also in order to avoid retaliatory measures against them or any other form of discrimination or penalisation.

In addition to this whistleblowing channel, CONAI – in accordance with the provisions of art. 6 of Leg. Decree 231/2001 (as amended by Law 179/2017) – has set up a form on the Consortium's Intranet through which it is possible to send the SB reports of violations of the Model, of the Code of Ethics or of the Antitrust Compliance Guidelines: this whistleblowing channel guarantees the total anonymity of the whistleblower, since filling in the form generates an email with a generic sender addressed directly to the dedicated SB inbox without any details of the identity of the whistleblower when the latter decides to remain anonymous. Only in case of technical problems may members of the IT Area access this dedicated inbox as System Administrators; in this case, the IT Area Manager will promptly inform the SB's Coordinator, specifying who gained access and the reason that made access necessary.

The Supervisory Board assesses the reports received and adopts the measures it deems necessary, possibly convening the author of the report and/or the person responsible for the alleged violation, and justifying in writing any refusal to proceed with internal investigations.

The SB also takes into account anonymous reports, however transmitted, which it assesses by carrying out any checks or investigations deemed useful.

In any case, CONAI guarantees the utmost confidentiality of the identity of any whistleblower who does not choose to remain anonymous, except solely with regard to legal obligations and the protection of the rights of the Consortium or of persons accused in bad faith. In particular, the Coordinator ensures the utmost confidentiality of the identity of whistleblowers also with regard to any members of the SB on the CONAI organisational chart.

8.5. Collection and retention of information

The information and reports required by the Model are stored by the SB in a suitable archive (electronic and/or physical). Access to the database is only allowed by the SB.

9. Disciplinary system and penalty mechanisms

The definition of an appropriate disciplinary system and penalty mechanism has, in this context, a

dual purpose:

a) To ensure implementation of and compliance with the Model 231;

b) To satisfy one of the requirements considered essential by the Decree in order to benefit from exemption from liability (art. 6, paragraph 1, letter e); art. 7, paragraph 4, letter b)).

The application of disciplinary sanctions shall be independent of the establishment and outcome of any criminal proceedings in cases of violations forming one of the offences under Leg. Decree 231/2001. The sanctions that may be imposed change depending on the nature of the relationship between the infringer and the Consortium, as well as on the importance and severity of the violation committed. Moreover, they are consistent with the disciplinary system provided for by the National Collective Labour Agreement (CCNL) applied by CONAI and comply with the procedures laid down in article 7 of Law no. 300 of 30 May 1970 (Workers' Statute).

9.1 Employees subject to the CCNL - Disciplinary System

Any violation of the rules of conduct set out in this Model by employees subject to the CCNL constitutes a disciplinary offence and therefore makes applicable the penalties provided for in articles 56 *et seq.* of the CCNL for the rubber and plastics industry, namely:

- Verbal warning;
- Fine of up to 3 hours of pay and cost-of-living allowances;
- Written warning;
- Suspension from work for up to 3 days;
- Dismissal with advance notice;
- Dismissal without advance notice.

The above does not prejudice all the provisions of the CCNL relating to the procedures and obligations to be observed in the application of sanctions, which are to be understood as referred to herein.

9.2. Violation of the Model and related penalties

Without prejudice to the obligations for the Consortium arising from the Workers' Statute, examples of punishable behaviour constituting a violation of this Model are:

1. Breaches by employees of internal procedures provided for or expressly referred to by this Model (e.g. non-compliance with prescribed procedures, violations of the Code of Ethics or the Antitrust Compliance Guidelines, failure to provide the Supervisory Body with prescribed information, lack of controls, etc.);

2. The adoption, in the performance of activities connected with Sensitive Processes, of conduct that does not comply with the requirements of the Model;
3. The adoption of retaliatory or penalising measures against whistleblowers;
4. Breaches of measures set up to protect the identity of whistleblowers;
5. Breaches, either intentional or by serious negligence, of the ban on making unfounded reports to the SB.

Sanctions must be proportionate to the level of responsibility and autonomy of the employee, to the existence of any pre-existing disciplinary proceedings involving the employee, to the intentional nature of the conduct, and to the seriousness of the same, meaning the level of risk to which the Consortium may reasonably consider itself exposed, in accordance with and for the effects of the Decree, as a result of the conduct in question.

In any case, it should be noted that:

a) ***conservative disciplinary actions*** are imposed on employees who violate the provisions of the Model and all the relating documentation, or who, in carrying out activities in areas at risk, behave in a manner that does not comply with the requirements of the Model, taking such conduct as a failure to execute the orders imparted by the Consortium;

b) on the other hand, ***definitive disciplinary measures*** are imposed on employees who:

- in carrying out activities in areas at risk, behave in a manner that does not comply with the requirements of the Model and all the relating documentation, taking such conduct as a serious lack of discipline and diligence in the fulfilment of their contractual obligations such as to damage CONAI's relationship of trust with said employees;
- in carrying out activities related to areas at risk, behave in a manner that clearly conflicts with the provisions of the Model and all the relating documentation, and causes the concrete application against CONAI of the measures provided for by Leg. Decree 231/2001, thus causing the Consortium such serious moral and material damage as to make it impossible to pursue the relationship further, even temporarily.

In any case, it is the responsibility of the General Manager to investigate the above infringements, any disciplinary proceedings and the imposition of sanctions.

9.3. Measures against Managers

In the event of a violation, by employees serving as Managers, of the procedures provided for by this Model or of the adoption, in the performance of activities connected with Sensitive Processes, of conduct that does not comply with the requirements of the Model, CONAI reserves the right to apply to the parties directly responsible the most appropriate measures in accordance with the

provisions of the CCNL applied to Managers by the Consortium.

Any proxies entrusted to such Managers may also be revoked. In any case, the above does not prejudice the Managers' obligation to compensate CONAI for any damage caused by any conduct contrary to the requirements of the Model.

The investigation of such violations and the imposition of sanctions is the responsibility of the Board of Directors, which must also assess any retaliatory or prejudicial behaviour against the whistleblowers.

9.4. Measures against Directors

In the event of a violation of the Model by one or more members of the Board of Directors, the SB shall inform the Board of Statutory Auditors and the entire Board of Directors; these bodies shall take appropriate measures, based on the seriousness of the violation, including, for example, calling the General Meeting of Consortium Members in order to take the most appropriate measures provided for by law (in the most serious cases, even revocation from office for just cause).

9.5. Measures against Auditors

In the event of this Model being violated by one or more Statutory Auditor, the SB shall inform the Board of Statutory Auditors and the Board of Directors, which shall take appropriate measures including, for example, calling the General Meeting of Consortium Members in order to take the most appropriate measures provided for by law, or reporting the event to the competent Ministries if the violation is committed by one of the Ministerially appointed Statutory Auditors.

9.6. Measures against Consultants and Partners

Any conduct contrary to the rules of this Model, carried out by consultants, collaborators and third parties who have established relations with CONAI, may result – as determined by specific contractual clauses included in the relevant letters of appointment, agreements and contracts – in the application of penalties and/or the immediate termination of the contractual relationship, as well as a possible claim for compensation for any damages caused to the Consortium.

Such conduct will be assessed by the person in charge of the department that requested the involvement of the professional, who will report promptly and in writing to the Chief Executive Officer, after cautioning the party concerned and informing the Supervisory Body.

10. Disseminating the Model: communication and training

Ever aware of the importance of training and information for the purposes of prevention, CONAI has set up a communication and training programme aimed at ensuring the dissemination to the Recipients of the main contents of the Decree and of the obligations deriving therefrom, as well as

of the requirements of the Model. Its ***communications*** in this regard concern the Code of Ethics, the Antitrust Compliance Guidelines, the Model, and all the instruments of the control system (such as authorisation and signing powers, hierarchical structure, procedures, information flows and everything that contributes to transparency in the Consortium's day-to-day work). Communication is handled so as to ensure compliance with the principles of ***exhaustiveness*** and ***effectiveness***. Consequently, a set of information tools is made available to all employees (CCNL, Organisation Model, Leg. Decree 231/2001, Code of Ethics, Documentation 231, Antitrust Compliance Guidelines) to provide all the information considered of primary importance. To ensure adequate dissemination, CONAI acts on multiple levels, through consortium meetings, the internet and intranet, and e-mail communications to employees. In addition to communication, CONAI has also developed an appropriate ***training programme*** aimed at staff in areas at risk, designed to highlight the reasons of expediency, as well as the legal reasons, inspiring each individual rule adopted by CONAI and their practical scope. The training content and delivery method depends on the qualification of the recipients, on the level of risk in the area where they operate, and on whether or not they have the power to represent the Consortium. In order to facilitate the dissemination of the Model and the adoption of its measures by all employees, CONAI organises a series of explanatory seminars, to be followed when entering into service, when changing duties, or in the event of significant changes being made to the Model, in line with the procedures considered most appropriate. The Legal Area keeps documentary evidence of all such training activities, under the supervision of the SB.

Organisation, Management

and Control Model

under Leg. Decree no. 231 of 8 June 2001

SPECIAL SECTION

TEXT UPDATED WITH THE AMENDMENTS MADE BY THE BOARD OF DIRECTORS ON 24 MARCH 2022

1. Offences committed in relations with Public Administrations

1.1. Analysing relations with the Public Administration: areas at risk.

The list of offences against the Public Administration, as provided for by articles 24 and 25 of Leg. Decree 231/01, and the general criteria for identifying the parties to be regarded as the "Public Administration", are set out in Appendix 1 "*Offences against the Public Administration*".

The following chart sets out, for each offence referred to in Decree 231, the existence or otherwise of potential critical issues for the Consortium. In particular, it sets out the existence or otherwise of processes that may generate this offence (if present, these processes are referred to as "sensitive") and of management procedures (defining the general principles and rules to be followed to manage the process) and/or operational procedures (defining the activities, functions and tasks of specific activities) ensuring systematic and continuous monitoring.

Offences including relations with Public Administrations	Potentially sensitive process in CONAI	Presence of procedures / instructions
Embezzlement at the expense of the State, another public body or of the European Union (article 316-*bis* of the Criminal Code)	YES	YES
Misappropriation of contributions, financing or other payments by the State, another public body or the European Union (art.*316- ter* of the Criminal Code)	YES	YES
Fraud in public supplies (art. 356 of the Criminal Code)	NO	YES
Deception at the expense of the State, another public body or the European Union (article 640, paragraph 2, no. 1 of the Criminal Code)	YES	YES
Aggravated deception to obtain public funds (Article 640-*bis* of the Italian Criminal Code)	YES	YES
Cyber fraud against the State, another public body or the European Union (article 640-*ter* of the Criminal Code);	YES	YES
Misappropriation of aid, premiums, allowances, refunds, contributions or other payments either in whole or in part by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development (art. 2 of Law 898/1986)	NO	YES
Embezzlement against the financial interests of the European Union (art. 314, paragraph 1 of the Criminal Code)	NO	YES
Embezzlement by profiting from the errors of others against the financial interests of the European Union (art. 316 of the Criminal Code)	NO	YES
Extortion (art. 317 of the Criminal Code)	NO	NO
Corruption in the discharge of official duties (art. 318 of the Criminal Code)	YES	YES
Corruption for a deed conflicting with official duties (art. 319 of the Criminal Code)	YES	YES
Corruption in judicial acts (art. 319-*ter* of the Criminal Code)	YES	YES
Inducement or promise to give undue benefits (article 319-*quater* of the Criminal Code)	YES	YES
Corruption of persons in charge of a public service (art. 320 of the Criminal Code)	NO	YES
Incitement to corruption (art. 322 of the Criminal Code)	YES	YES
Embezzlement, extortion, corruption and incitement to corrupt members of EU bodies and Foreign State officials (article 322-*bis* of the Criminal Code)	NO	YES
Abuse of office against the financial interests of the European Union (art. 323 of the Criminal Code)	NO	YES
Influence peddling (art. 346-*bis* of the Criminal Code)	YES	YES

Due to its corporate purpose, CONAI operates and/or interacts with the Public Administration in order to achieve its objectives before the law. Consequently, it is exposed to the risk of persons operating for CONAI committing one or more of the offences included in the Decree.

Moreover, many of the activities carried out by CONAI for the Public Administration relate merely to legal obligations, provided for by the regulatory references that govern the life of the Consortium: in relation to these activities, which also require interaction with the PA, no significant risks of committing the offences laid down by Decree 231/2001 have been found.

On the other hand, the following activities are considered at risk of the commission of the crimes against the P.A. laid down by the Decree and specified in the relevant Appendix:

1) Relations with institutions, authorities and supervisory bodies to carry out the Consortium's institutional activities. In particular:

    a) Various contacts with Ministries, Chamber of Deputies and Senate, Community Policies Department, Competition and Market Authority, Electricity Authority, Communications Authority, Regions, Provinces and Municipalities, when these concern sensitive areas under the Decree (e.g. granting of contributions or subsidies, request for occasional/specific administrative measures necessary for the performance of instrumental activities, etc.);

    b) Contacts with public bodies (e.g. Financial Administration) to manage obligations,

audits, inspections regarding CONAI's institutional activities;

2) Relations with public bodies other than the above (e.g. Data Protection Authority, Register of Companies), in relation to the resulting checks/investigations/disciplinary proceedings;

3) Judicial or arbitration proceedings and, in general, judicial or administrative disputes;

4) Requests for certifications or administrative authorisations (e.g. for the occupation of public land);

5) Management of human resources, in particular:

a) Management of the obligations provided for in the event of initiating or terminating an employment relationship (communicating the employment relationship to the District Employment Office);

b) Obligations relating to the recruitment of protected or facilitated categories (communicating the employment relationship to the INPS national social security institute, the Labour Inspectorate, the Provincial Labour Office);

c) Relations with the Labour Inspectorate in the event of checks and inspections carried out by the competent public authorities with regard to employees belonging to protected or facilitated categories (e.g. employment training contract);

d) Communications to the competent bodies (INAIL, INPS, INPDAP, Provincial Labour Directorate) on accidents at work and occupational diseases and on aspects relating to health and safety at work (Leg. Decree 626/1994, now Consolidated Act 81/08);

e) Relations with the competent bodies in the case of checks/inspections carried out by public officials;

f) Activities for the acquisition and/or management of grants, subsidies, financing, insurance or guarantees granted by public entities; in particular, the management of public funding and facilitated training contributions;

6) Relations concerning industrial or intellectual property rights (e.g. copyright, trademarks);

7) "Treasury activities" which, by managing financial instruments and/or the like, while not involving direct relations with the Public Administration, may support the commission of offences in areas at risk of a crime.

1.2. Parties concerned by risk monitoring and management activities

In relation to the "sensitive" areas of activity identified in the previous paragraph, "subjects at risk of committing a crime" are all those who, in performing their duties within CONAI, establish institutional relations with the Public Administration. In particular, in view of the multiple relations CONAI has established with public administrations in Italy and abroad, the following situation has been identified:

"Sensitive" Activity/Process	"Parties posing a risk of criminal offences"
Relations with institutions, authorities and supervisory bodies relating to the execution of the Consortium's institutional activities, when these relate to sensitive areas within the meaning of Decree 231/2001 (e.g. granting of contributions or subsidies, request for occasional/specific administrative measures necessary for the performance of instrumental activities, etc.)	• Chairman • General Manager • Institutional Relations Area • Legal Affairs Area • Administration/Accounting Area • International Activity Area • Sustainability and Green Economy Area • Relations with the Territory Area • Special Local Projects Area
Relations with public bodies other than the above (e.g. Data Protection Authority, Register of Companies), in relation to the resulting checks/investigations/disciplinary proceedings	• Chairman • General Manager • Institutional Relations Area • Legal Affairs Area • Administration/Accounting Area
Judicial or arbitration proceedings and, in general, judicial or administrative disputes	• Chairman • General Manager • Legal Affairs Area • Administration/Accounting Area
Requests for certifications or administrative authorisations (e.g. for the occupation of public land)	• Chairman • General Manager • Legal Affairs Area • Administration/Accounting Area • Technical Area
HR Management	• General Manager • Human Resources and Personnel

	Administration Area
Relations concerning industrial or intellectual property rights (e.g. copyright, trademarks)	• Chairman • General Manager • Legal Affairs Area
"Treasury activities" which, by managing financial instruments and/or the like, while not involving direct relations with the Public Administration, may support the commission of offences in areas at risk of a crime	• General Manager • Administration/Accounting Area

1.3. System of preventive controls currently adopted in CONAI

With regard to the elements highlighted by the "risk mapping" phase, CONAI has decided to adopt specific behavioural models aimed at standardising the formation and implementation of decision-making processes in every "sensitive" area.

This paragraph identifies the set of "procedures" and control measures that any perpetrator of a crime shall have to violate. The following table associates each "sensitive" activity with the relative operating procedure adopted at CONAI.

"Sensitive" Activity/Process	**Reference procedure**
Relations with institutions, authorities and supervisory bodies relating to the role of the Consortium, when these relate to sensitive areas within the meaning of Decree 231/2001 (e.g. granting of contributions or subsidies, request for occasional/specific administrative measures necessary for the performance of instrumental activities, audits/inspections/checks of the PA, etc.)	Relations with the Public Administration; Contract Management
Relations with public bodies other than the above (e.g. Data Protection Authority, Register of Companies), in relation to the resulting checks/investigations/disciplinary proceedings	Relations with the Public Administration;
Judicial or arbitration proceedings and, in general, judicial or administrative disputes	Judicial or arbitration proceedings and disputes Relations with the Public Administration
Requests for certifications or administrative authorisations (e.g. for the occupation of public land)	Relations with the Public Administration

HR Management	HR Management Relations with the Public Administration (aspects related, for example, to the management of relations with INAIL)
Relations concerning industrial or intellectual property rights	Relations with the Public Administration
Treasury activities which, by managing financial instruments and/or the like, while not involving direct relations with the Public Administration, may support the commission of offences in areas at risk of a crime	Finance and treasury Relations with the Public Administration

Each procedure identifies, for each operation at risk, the parties required to authorise the operation, record and/or archive it, execute it and check it.

1.4. Prohibitions

CONAI's consortium bodies, managers, employees and external collaborators are required to observe the general principles set out below, limited to the obligations covered by specific procedures, the Code of Ethics, the Antitrust Compliance Guidelines and specific contractual clauses. It is forbidden:

a) to make cash donations to Italian or foreign public officials;
b) to distribute gifts outside the scope of the Consortium's common practice (i.e. any gift in excess of normal commercial or courtesy practices, and in any case intended to acquire favourable treatment in any business activity). In particular, it is forbidden to give any sort of gift to Italian and foreign public officials (even in those countries where giving gifts is a widespread practice), or to their families, such as to influence their independence of judgement or induce them in any way to create advantageous conditions for CONAI. The gifts allowed are only of modest value or aimed at promoting initiatives of a beneficial or cultural nature, or the reputation of the Consortium. Any gifts offered, except those of modest value, must be suitably documented so as to be monitored by the Supervisory Body;
c) grant advantages of any kind to representatives of the Italian or foreign Public Administration such as to bring about the same consequences as those set out in the preceding paragraph;
d) perform services for external collaborators and consultants that are not suitably justifiable within the context of the contractual relationship established with them;
e) pay fees to external collaborators that are not suitably justifiable in relation to the type of job to be carried out and local practice;
f) make false statements to national or EU public bodies with a view to obtaining public grants, contributions or subsidised funding;
g) allocate sums received from national or EU public bodies as grants, contributions or financing for purposes other than those for which they were intended;
h) exploit - or in any event boast - real or alleged relations with a public official or a person in

charge of a public service in order to unduly influence someone to give or promise, to themselves or to others, money or other benefits as the price for their illicit mediation with the public official or person in charge of the public service, or to pay same in relation to the performance of his or her duties or powers.

In order for these general directives to be implemented, the Consortium has established the following rules which must be observed for activities carried out both in Italy and abroad:

1. Employees, consortium bodies, external collaborators and consultants who materially pursue relations with the Public Administration on behalf of CONAI should be formally given the power to do so. Where necessary, specific written authorisation will be issued to the above mentioned persons;
2. Employees, consortium bodies, external collaborators and consultants have the obligation to report to the SB, in writing, any critical issue or conflict of interest that should arise within the context of their relationship with the Public Administration;
3. The contracts between the Consortium, external collaborators and consultants must set out all the applicable terms and conditions in writing, and comply with the following points;
4. Contracts with external collaborators and consultants must contain standard clauses that call for compliance with Leg. Decree 231/2001;
5. External collaborators and consultants must be selected according to specific procedures;
6. Contracts with external collaborators and consultants must contain a special clause stating that they are aware of the Code of Ethics, Antitrust Compliance Guidelines and Model adopted by the Consortium and their implications for the company, and that they accept them and are committed to complying with them;
7. Contracts with external collaborators and consultants must contain a special clause that regulates the consequences of their breaching the provisions of the Model, Code of Ethics and/or Antitrust Compliance Guidelines (e.g. express termination clause, penalties);
8. All payments must be made following appropriate administrative procedures documenting their purpose and the traceability of the expenditure;
9. Statements made to national or EU public bodies for the purpose of obtaining grants, contributions or financing must be entirely truthful and, if the funds are obtained, a report must be drawn up detailing their actual use;
10. Those who monitor and supervise obligations connected with the performance of such activities (payment of invoices, destination of funds obtained from the State or from EU bodies, etc.) must pay particular attention to the implementation of these obligations and instantly report any irregularities or anomalies;
11. Legal, tax and administrative inspections must be followed by those expressly delegated to do so. Records of the whole inspection procedure must be drawn up and stored. In the event of a critical issue being highlighted in the final report, the Supervisory Body shall be informed in writing by the person responsible for the department concerned;
12. With reference to financial management, CONAI carries out specific procedural controls and takes particular care of work flows that do not fall within the Consortium's typical processes and are therefore managed in an extemporaneous and discretionary way. The purpose of these controls is to prevent the formation of hidden reserves.

1.5. Controls by the SB

Without prejudice to the SB's discretionary power to conduct specific controls, also following the receipt of reports, the SB regularly carries out, also with the assistance of third parties, random checks on Sensitive Activities, in order to verify the correct execution of same in relation to the rules and principles dictated by this Model.

2. Business Crimes

2.1 Analysis of sensitive processes in relation to the possible commission of business crimes.

The offences theoretically relevant to the Consortium, among those set out in article 25-*ter* of Leg. Decree 231/01 as possible predicate offences and forming the basis for the administrative liability of Bodies, are listed in Appendix 2 "*Business crimes*".

The following chart, which follows the one used for all the relevant offences described in the Special Section of this Model, sets out, for each offence, the existence or otherwise of potential critical issues for the Consortium. In particular, it sets out the existence or otherwise of processes that may generate this offence (if present, these processes are referred to as "sensitive") and of management procedures (defining the general principles and rules to be followed to manage the process) and/or operational procedures (defining the activities, functions and tasks of specific activities) ensuring systematic and continuous monitoring.

Business crimes	Potentially sensitive process in CONAI	Presence of procedures / instructions
False corporate communications (art. 2621 of the Civil Code)	YES	YES
False corporate communications of listed companies (art. 2622 of the Civil Code)	NO	NO
Impeding control (art. 2625, paragraph 2 of the Civil Code)	YES	YES
Fictitious capital formation (art. 2632 of the Civil Code)	NO	NO
Undue reimbursement of contributions (art. 2626 of the Civil Code)	YES	YES
Illegal distribution of profits and reserves (art. 2627 of the Civil Code)	YES	YES
Illegal transactions involving shares or quotas of the company or parent company (art. 2628 of the Civil Code)	NO	NO
Transactions prejudicial to creditors (art. 2629 of the Civil Code)	NO	NO
Undue distribution of corporate assets by liquidators (art. 2633 of the Civil Code)	NO	NO
Corruption between private individuals (article 2635 of the Civil Code)	YES	YES
Unlawful influence in meetings (art. 2636 of the Civil Code)	YES	YES
Agiotage (article 2637 of the Civil Code)	YES	YES
Failure to communicate a conflict of interest (art. 2629 bis of the Civil Code)	NO	NO
Hindering the activities of public supervisory authorities (art. 2638, paragraphs 1 and 2 of the Civil Code)	YES	YES

Due to its organisational structure and its nature as a consortium, CONAI appears to be exposed only to a very limited extent to the risk of the commission of business crimes. Indeed, such crimes involve interests traditionally linked to a strictly corporate context, and are therefore much less frequent in the quite different context of a consortium.

Nevertheless, from a thoroughly prudential point of view, it was decided to take into consideration all those crimes that may theoretically be committed, even though the actual risk of that happening is considered "remote".

Despite this precautionary approach, the following cases were considered inapplicable to CONAI (and consequently removed from Appendix 2 "*Business crimes*"): false corporate communications of listed companies (art. 2622 of the Civil Code); Illegal transactions involving shares or quotas of the company or parent company (art. 2628 of the Civil Code); failure to communicate a conflict of interest (art. 2629 *bis* of the Civil Code); undue distribution of corporate assets by liquidators (art. 2633 of the Civil Code).

On the other hand, the following activities are considered at risk of the commission of the business crimes laid down by the Decree and specified in the relevant Appendix:

1) Activities concerning the process of preparing the annual financial statements and annual and interim consortium communications, relevant under articles 2621 and 2621 *bis* of the Civil

Code, dedicated to governing cases of false corporate communications that may be classified as "of a limited extent";

2) Obstacle to control or auditing activities attributed by law to consortium members, consortium bodies or the auditing company, relevant under art. 2625 of the Civil Code;

3) Activities relating to relations with companies or consortia that may be the subject of corruption between private individuals or incitement to corruption between private individuals, relevant under articles 2635 and 2635 *bis* of the Civil Code;

4) Activities related to the preparation of General Meetings of Consortium Members (communication, calling and running of the General Meetings), relevant under art. 2636 of the Civil Code;

5) External relations with the media, relevant under art. 2637 of the Civil Code;

6) Communications with the supervisory authorities as prescribed by law, relevant under art. 2638 of the Civil Code

2.2 Parties concerned by risk monitoring and management activities

In relation to the "sensitive" areas of activity identified in the previous paragraph, "subjects at risk of committing a crime" are all those who, within CONAI, institutionally participate in the performance of such activities. In particular, an analysis of the Consortium's organisational chart revealed the situation described in the following table:

"Sensitive" Activity/Process	**"Parties posing a risk of criminal offences"**
Activities concerning the process of preparing the annual financial statements and annual and interim consortium communications	• Chairman / Board of Directors • General Manager • Legal Affairs Area • Administration/Accounting Area
Obstacle to control or auditing activities attributed by law to consortium members, consortium bodies or the auditing company	• Chairman / Board of Directors
Relations with companies or consortia that may be the subject of corruption between private individuals or incitement to corruption between private individuals	• Chairman / Board of Directors • General Manager • Institutional Relations Area
Activities related to the preparation of General Meetings of Consortium Members	• Chairman / Board of Directors • General Manager

(communication, calling and running of the General Meetings)	• Legal Affairs Area • Administration/Accounting Area • Consortium Members Area
External relations with the media, relevant under art. 2637 of the Civil Code	• Chairman / Board of Directors • General Manager • Legal Affairs Area • Institutional Relations Area • Administration/Accounting Area • Communications Area • International area • Study Centre/Prevention Area
Communications with the supervisory authorities as prescribed by law	• Chairman / Board of Directors • General Manager • Legal Affairs Area • Institutional Relations Area • Administration/Accounting Area • Communications Area

2.3. System of preventive controls currently adopted in CONAI

With regard to the elements highlighted by the "risk mapping" phase, CONAI adopts specific behavioural models aimed at standardising the formation and implementation of decision-making processes in every "sensitive" area.

This paragraph identifies the set of "procedures" and control measures that any perpetrator of a crime shall have to violate. The following table associates each "sensitive" activity with the relative operating procedure adopted at CONAI.

"Sensitive" Activity/Process	Reference procedure
Activities concerning the process of preparing the annual financial statements and annual and interim consortium communications	Financial statements; Management of corporate bodies and offices
Obstacle to control or auditing activities attributed by law to consortium members, consortium bodies or the auditing company	Relations with auditors and the auditing company Relations with consortium members
Relations with companies or consortia that may be the subject of passive corruption between private individuals	Management of corporate bodies and offices Communication activities and external relations
Activities related to the preparation of General Meetings of Consortium Members (communication, calling and running of the General Meetings)	Management of corporate bodies and offices Regulations of General Meetings of Consortium Members
External relations with the media, relevant under art. 2637 of the Civil Code	Communication activities and external relations
Communications with the supervisory authorities as prescribed by law	Communication activities and external relations Relations with the Public Administration

Each procedure identifies, for each operation at risk, the parties required to authorise the operation, record and/or archive it, execute it and check it.

2.4. Prohibitions

CONAI's consortium bodies, managers, employees and external collaborators are required to observe the general principles set out below, limited to the obligations covered by specific procedures, the Code of Ethics, the Antitrust Compliance Guidelines and specific contractual clauses. It is forbidden:

a) to represent or provide, in the preparation and drawing up of financial statements, reports, prospectuses or other corporate communications, false, incomplete or, in any case, non-truthful data on the Consortium's economic, capital and financial situation;

b) to omit legally required data and information on the Consortium's economic, capital and financial situation;

c) to disregard the rules laid down by law to protect the integrity and effectiveness of the Consortium capital, in order not to prejudice the guarantees of creditors and third parties in general;

d) to hinder the regular functioning of the Consortium and of the Consortium Bodies, guaranteeing and facilitating instead every form of internal management control required by law, as well as free decision-making at General Meetings of Consortium Members;

e) not to provide the supervisory authorities, promptly, accurately and in good faith, with all the communications laid down by law and by internal rules, and hindering instead the performance of their duties. In particular, it is forbidden: not to submit to the supervisory authorities, completely, accurately and promptly, all those regular reports, required by law and by applicable legislation, and not to provide the data and documents required by the legislation and/or specifically requested by the said authorities;

f) to make statements, in the aforementioned communications and transmissions, that do not correspond to the truth, or to conceal facts relating to the Consortium's economic, capital and financial conditions; to behave in any way such as to hinder supervisory activities, also during inspections by public supervisory authorities (express opposition, spurious refusals, obstructionist or non-cooperative conduct, such as delays in communications or in the provision of documents).

As a result of the above, the consortium bodies, employees, control bodies, external collaborators and consultants are expressly required:

a) to adopt a fair, transparent and cooperative behaviour, in compliance with the law and with internal procedures, in all activities aimed at drawing up the financial statements and other corporate communications, in order to provide consortium members and third parties with true and correct information on the Consortium's economic, capital and financial situation;

b) to strictly observe all the rules laid down by law to protect the integrity and effectiveness of the Consortium capital, in order not to prejudice the guarantees of creditors and third parties in general;

c) to ensure the regular functioning of the life of the Consortium, guaranteeing and facilitating instead every form of internal management control required by law, as well as free decision-making at General Meetings of Consortium Members;

d) to avoid carrying out simulated operations or spreading false news on the Consortium or on third parties;

e) to provide the supervisory authorities, promptly, accurately and in good faith, with all the communications laid down by law and by internal rules, and not to hinder the performance of any supervisory activities.

Failure to comply with these obligations may be subject to penalties under this Model.

2.5. Controls by the SB

Without prejudice to the SB's discretionary power to conduct specific controls, also following the receipt of reports, the SB regularly carries out, also with the assistance of third parties, random checks on Sensitive Activities, in order to verify the correct execution of same in relation to the rules and principles dictated by this Model.

3. Offences resulting from breaches of regulations on health and safety at work (Leg. Decree no. 81 of 09/04/2008)

3.1. Analysis of sensitive processes in relation to the possible commission of the crimes of involuntary manslaughter and wrongful injury in violation of regulations on health and safety at work.

First of all, it should be noted that CONAI, due merely to the fact of its being a body that carries out its activities through employees and collaborators, is exposed to the possible commission of crimes as set forth in art. 25-*septies* of the Decree, as introduced by Law n. 123/07 and subsequently amended by Leg. Decree no. 81/2008. Such crimes are described analytically in Appendix 3 "*Offences resulting from breaches of regulations on health and safety at work*".

Although there have long been doubts about the real compatibility of such crimes with the realisation of an "interest or advantage for the Body", case-law seems geared towards overcoming this apparent irreconcilability, considering instead that the interest or advantage for the Body must be sought not in relation to the event of the "death or injury" of the worker, but in the violation of the underlying precautionary/preventive regulations, whose non-compliance created the conditions of risk subsequently resulting in the injurious event.

A violation of the regulations on the prevention of accidents at the workplace could, in principle, be committed in order to obtain a direct or indirect economic benefit by minimising, or in any case reducing, investments in terms of the expenses or time spent on activities related to managing the safety system.

By way of example, the offences governed by art. 25-*septies* could be committed by a failure to comply, either in whole or in part, with the provisions of accident prevention regulations (Leg. Decree no. 81/08, hereinafter the "Consolidated Act"): this could happen when the death or the severe or debilitating personal injury of an employee or a collaborator of the Consortium occurs due to:

a) non-maintenance of the Consortium's buildings and plants;
b) failure to train staff on health risks and on the prevention methods adopted;
c) failure to regularly monitor compliance with internal health and safety requirements and measures.

The following chart, which follows the one used for all the relevant offences described in the Special Section of this Model, sets out, for each offence, the existence or otherwise of potential critical issues for the Consortium. In particular, it sets out the existence or otherwise of processes that may generate this offence (if present, these processes are referred to as "sensitive") and of management procedures (defining the general principles and rules to be followed to manage the process) and/or operational procedures (defining the activities, functions and tasks of specific activities) ensuring systematic and continuous monitoring.

Involuntary manslaughter and severe and debilitating wrongful injury committed in violation of rules on accident prevention and health and safety at work	Potentially sensitive process in CONAI	Presence of procedures / instructions
Involuntary manslaughter (art. 589 of the Criminal Code)	YES	YES
Wrongful personal injury (art. 590 of the Criminal Code)	YES	YES

The process of identifying areas potentially exposed to this risk took into account the provisions of art. 30 of the Consolidated Act, which states the requirements of the prevention and control system in order to fulfil all legal obligations relating to:

a) compliance with legal technical and structural standards concerning equipment, plants, workplaces, and chemical, physical and biological agents;
b) risk assessment activities and the consequent development of prevention and protection measures;
c) activities of an organisational nature, such as emergencies, first aid, procurement management, regular safety meetings, consultations with workers' representatives on safety issues;
d) health surveillance activities;
e) workers' information and training activities;
f) monitoring activities concerning the observance of health and safety procedures and instructions by workers;
g) acquisition of mandatory documentation and certifications;
h) regular monitoring of the application and effectiveness of adopted procedures.

The Consortium currently adopts suitable procedures that ensure compliance with the legislation on safety and prevention at work and which, for the purposes of this Model, are considered suitable to prevent the offences set forth by art. 25-*septies*.

All the accident prevention measures adopted by the Consortium comply with the provisions of the Consolidated Act and are expressly formalised in its "*Occupational health and safety management system*" (SGSL), in the form of a diagram, which should be regarded as an integral part of this Model and suitable for preventing the commission of the crimes in question.

Furthermore, it should be noted that the Consortium had drawn up a risk assessment document, which is also an integral part of this Model. Moreover, a regular informative report is drawn up concerning the work carried out by the Consortium in the field of safety at work, as required by the Consolidated Act. This report is forwarded to the Supervisory Body, which determines whether or not the requirements of Leg. Decree 231/01 have been met.

3.2. Parties concerned by risk monitoring and management activities

In relation to the "sensitive" areas of activity identified in the previous paragraph, "subjects at risk of committing a crime" are all those who, within CONAI, hold the role of manager or subordinate worker.

3.3. System of preventive controls currently adopted in CONAI

The system of preventive controls currently adopted in CONAI is based on the documentary and operational system set up in accordance with the preventive requirements of the Consolidated Act, considered as fully referred to herein. This set of behavioural rules forms the basis of this Special Section of the Model, with a view to verifying the suitability and effectiveness of the measures

adopted to prevent the commission of the offences in question.

3.4. Prohibitions

CONAI's consortium bodies, managers, employees and external collaborators are required to observe the general principles set out below, limited to the obligations covered by specific procedures, the Code of Ethics, the Antitrust Compliance Guidelines and specific contractual clauses. All management and subordinate staff, all those especially authorised to represent the Company, and all external collaborators and consultants are required to comply with the following binding protocols:

a) It is forbidden to commit or attempt to commit or contribute to committing any action or omission such as to result directly or indirectly in the offences referred to in art. 25-*septies* of Leg. Decree 231/2001, involving an administrative liability of the Body;

b) It is compulsory to strictly observe the set of safety procedures laid down by CONAI, which - where relevant for the prevention of the crimes referred to in the Decree - are to be considered an integral part of this Model;

c) Internal or external routes leading to exits or emergency exits must be kept clear in order to facilitate their use at all times;

d) When using office equipment and, in particular, equipment and technical instruments powered by electricity or equipped with a visual display unit, it is obligatory to observe the relevant "Instructions Manuals" supplied by the Manufacturer and the provisions of the "Risk assessment document";

e) It is compulsory to provide comprehensive training on safety at work by regularly organising mandatory training courses for all employees, as well as specific training courses on fire prevention for the HSE Officer. At the end of each training course - to be held with the support of personnel specialised in the prevention of accidents at work – a certificate of attendance shall be issued to every individual participant;

f) The Head of the Legal Area and of the Personnel Administration Area, in agreement with the HSE Officer and the Workers' Safety Representative, shall be obliged to collect and file relevant documentation in accordance with Leg. Decree 81/2008 and in particular, in addition to the aforementioned Risk assessment document: documentation relating to the safety of the building in which the Consortium is located; declarations of conformity of the electrical and fire-fighting system; documentation certifying the six-monthly monitoring of such plants; reports certifying that maintenance work has been carried out at the CONAI headquarters; documentation certifying that annual evacuation drills are carried out; teaching material and copies of certificates of attendance in corporate training courses on occupational safety (both general and specific to the HSE Officer);

g) Each Area Manager is obliged – in relation to the activities carried out in their own area – to inform the Supervisory Body promptly of possible emergencies or fires, of the need for a total or partial evacuation of the workplaces, or of accidents or illnesses within the Consortium;

h) The HSE Officer, in agreement with the Workers' Safety Representative, is obliged to regularly monitor the company's documents on the protection of the health, safety and hygiene of workers in order to ensure that they are properly archived (particularly the records of checks involving fire-extinguishing equipment);

i) The Head of the Legal Area and the Personnel Administration Area, in agreement with the HSE Officer and the Workers' Safety Representative, shall be obliged to keep up-to-date - also with the help of external consultants - the company's current instruments designed to protect the safety and health of employees, taking into account the specific needs of CONAI and any technological developments in the field;

j) It is compulsory to appoint a health facility or a company doctor to carry out the surveillance examinations set forth in Leg. Decree 81/2008;

k) It is compulsory to conduct an annual meeting between the HSE Officer, the company doctor and the Workers' Safety Representative. Minutes of said meetings shall be drawn up and then stored by the Workers' Safety Representative. Said meetings shall also be held when there are any significant changes in the conditions of exposure to the risk of accidents, e.g. following the introduction of new technologies having an impact on the safety of workers. A copy of the minutes shall be sent to the Surveillance Body. Failure to comply with these obligations may be subject to penalties under this Model.

3.5. Controls by the SB

Without prejudice to the SB's discretionary power to conduct specific controls, also following the receipt of reports, the SB regularly carries out, also with the assistance of third parties, random checks on Sensitive Activities, in order to verify the correct execution of same in relation to the rules and principles dictated by this Model.

4. Computer crimes and unlawful data processing

4.1. Analysis of sensitive processes in relation to the possible commission of computer crimes.

The offences theoretically relevant to the Consortium, among those set out in article 24-*bis* of Leg. Decree 231/01 as possible predicate offences and forming the basis for the administrative liability of Bodies, are listed in Appendix "Computer crimes".

The following chart, which follows the one used for all the relevant offences described in the Special Section of this Model, sets out, for each offence, the existence or otherwise of potential critical issues for the Consortium. In particular, it sets out the existence or otherwise of processes that may generate this offence (if present, these processes are referred to as "sensitive") and of management procedures (defining the general principles and rules to be followed to manage the process) and/or operational procedures (defining the activities, functions and tasks of specific activities) ensuring systematic and continuous monitoring.

Computer crimes and unlawful data processing (Art. 24-bis)	Potentially sensitive process in CONAI	Presence of procedures / instructions
Counterfeiting of a public electronic document or of a document having evidential value (art. 491-*bis* of the Criminal Code)	NO	NO
Abusive access to a computer system (art. 615-*ter* of the Criminal Code)	YES	YES
Possession and dissemination of codes and other means of accessing computer or online systems (art. 615-*quater* of the Criminal Code)	YES	YES
Dissemination of computer equipment, devices or programs aimed at damaging or interrupting a computer or online system (art. 615-*quinquies* of the Criminal Code)	YES	YES
Interception, prevention or unlawful interruption of computer or online communications (art. 617-*quater* of the Criminal Code)	YES	YES
Damage to information, data and computer programs (art. 635-*bis* of the Criminal Code)	YES	YES
Damage to information, data and computer programs used by the State or another public agency or body providing public services (art. 635-*ter* of the Criminal Code)	YES	YES
Damage to computer and online systems (art. 635-*quater* of the Criminal Code)	YES	YES
Damage to computer or online systems providing public services (art. 635-*quinquies* of the Criminal Code)	YES	YES
Computer fraud by an electronic signature certifier (art. 640-*quinquies* of the Criminal Code)	NO	NO
Breach of regulations concerning the national cybersecurity perimeter (art. 1, paragraph 11 of Leg. Decree 105/2019)	NO	NO

Due to its organisational structure and its nature as a consortium, CONAI appears to be exposed only to a limited extent to the risk of the commission of computer crimes, since the typical activities carried out by Consortium do not expose the body to the need to access external information systems that could, at least potentially, be damaged.

Nevertheless, from a thoroughly prudential point of view, it was decided to take into consideration all those crimes that may theoretically be committed, even though the actual risk of that happening is considered "remote".

Despite this precautionary approach, the following case was considered inapplicable to CONAI (and consequently removed from Appendix 4 "*Computer crimes*"): computer fraud by an electronic signature certifier (art. 640-*quinquies* of the Criminal Code).

On the other hand, the following activities are considered (at least theoretically) at risk of the commission of the computer crimes laid down by the Decree and specified in the relevant Appendix: activities related to the processing, storage and maintenance of information in computer media; activities relating to the management, control and updating of computer systems.

At present, CONAI ensures the prevention of conduct potentially capable of resulting in computer crimes through specific regulations aimed at protecting the body's internal information system and its interconnections with the outside world. In particular, the Consortium strictly regulates the

behaviour required in order to ensure legal requirements are met, both through the adoption and implementation of specific procedures, and through specific instructions provided to all appointed parties specifically authorised to process data under Regulation (EU) no. 2016/679.

The existing procedures are considered stringent enough to meet the preventive requirements of the Decree in relation to the type of crime in question.

Moreover, a further suitable control in this regard is undoubtedly the Code of Ethics, which contains general principles of conduct which, it is believed, also satisfy the preventive requirements stemming from the introduction of computer crimes as a predicate offence giving grounds for establishing the body's liability.

4.2. Parties concerned by risk monitoring and management activities

In relation to the "sensitive" areas of activity identified in the previous paragraph, "subjects at risk of committing a crime" are all those who, within CONAI, hold the role of manager or subordinate worker and have access to the Consortium's computer network.

4.3. System of preventive controls currently adopted in CONAI

Following the elements highlighted by CONAI's "risk mapping" phase, the body has decided to adopt specific behavioural models aimed at reducing the possibility of commission of the offences laid out in art. 24-*bis* of Leg. Decree 231/01. The system of preventive controls currently adopted in CONAI is based on the provisions of the Code of Ethics, as well as on the "*Internal regulations on the use of company computer and online instruments*".

4.4. Prohibitions

CONAI's consortium bodies, managers, employees and external collaborators are required to observe – in addition to the provisions of the Document of Conformity to the legislation on the protection of personal data, of the Code of Ethics and of specific security procedures – the following general principles of conduct.

a) Workstations

Workstations, whether desktops or notebooks, are supplied and set up with appropriate hardware and software to enable their correct use, in accordance with company standards and in compliance with the necessary licenses.
The installation and updating of devices and programs are the sole responsibility of the Information Systems staff. It is therefore forbidden, among other things, to: jeopardise the operation of network services and the relating hardware with viruses or programs aimed at damaging or interrupting the functioning of the system; destroy, deteriorate or render entirely or partly unusable programs, information or data belonging to the Consortium or to others; install unauthorised software, including "shareware" and "freeware"; modify all or part of the software or its operating configurations; uninstall or copy all or part of the software; amend, add or remove hardware devices

and their connections; use communication devices other than those supplied for the workstation; disable the anti-virus system, even just temporarily; open modem work sessions from workstations connected to the corporate network.

b) Corporate network usage

Access to the corporate network is subject to the possession of a user identifier (ID) and password (PW). The user asks Information Systems for an ID and PW. The Information Systems department assesses the request and, if considered justified, enables the user on a personal basis and exclusively for reasons and purposes connected with the user's work activities.
The password communicated by Information Systems to the user must then be changed when the user first connects. Personal passwords should be known only to the holder of the linked ID, and should be stored diligently and never communicated to any third party, even temporarily.
The password may be set freely by the holder, based on the following requirements: it must have at least 8 different characters; it must not be the same as the holder's ID or first or last name; it must be changed regularly.
If a user thinks that their PW has been leaked, they must immediately inform Information Systems and ask to replace it with a new one.
Generally speaking, therefore, it is forbidden to: access network services unlawfully; use other people's PW or have their own used by third parties; unlawfully leak or store PWs; violate the security of archives and computers; leave active sessions unattended; use other users' work sessions.

c) Data security

Each user is obliged: to protect documents considered important and in any case confidential; to store files/data and any company information in secure places not easily accessible to third parties; not to reproduce or disclose any company information/data without the explicit authorisation of the person in charge and in any case of the appropriate consortium departments; not to intercept, alter, prevent or interrupt communications from other users on the network or install equipment and systems suitable for this purpose.

d) Internet use

The use of the Internet is functional to the performance of the user's work; any personal use of the instrument, although permitted, should always be done with extreme moderation and never to the detriment of the work activities being conducted.

In the event of needing to download or update programs for reasons connected with work activities, users should always contact Information Systems, and in any case should: verify possession of the necessary rights of use; verify compatibility with the installed software; not violate copyright or similar rules.

e) E-mail

Email may be used without restrictions for external communications made for work purposes, while moderate use is allowed for private purposes. In this case, users are asked to follow the same principles, in terms of form and content, applied to the use of the instrument for work purposes.
The use of non-consortium email accounts is only allowed via the web (i.e. through Internet browsers).
Any message or information sent by the user is identifiable and attributable to the Consortium and, therefore, any communication sent must comply with the interests of CONAI and with the Consortium's principles and guidelines.
Users are required to respect the confidentiality of communications received from other users. Moreover, it is prohibited to send e-mail messages or other electronic communications that disguise the identity of the sender or of the Consortium.

f) Correct use of the network

The Consortium's information systems may not be used to transmit, receive or store communications of a discriminatory, obscene or defamatory nature, and in any case contrary to the law and to the policies and principles of CONAI.
In the event of malfunctions on CONAI's information systems, the Consortium reserves the right to analyse any messages or files considered responsible for the malfunction, and to take any action necessary to safeguard the system and its operation.

g) System security breaches

Any possible system security breaches must be communicated in a timely manner to the Information Systems Manager. Users are required to inform Information Systems in cases of theft, damage or loss of computer material or information and data belonging to the Consortium. Failure to comply with these general rules of conduct may be subject to penalties under this Model.

4.5. Controls by the SB

Without prejudice to the SB's discretionary power to conduct specific controls, also following the receipt of reports, the SB regularly carries out, also with the assistance of third parties, random checks on Sensitive Activities, in order to verify the correct execution of same in relation to the rules and principles dictated by this Model.

5. Tax crimes

5.1. Analysis of sensitive processes in relation to the possible commission of tax crimes.

The offences theoretically relevant to the Consortium, among those set out in article 25-*quinquiesdecies* of Leg. Decree 231/2001 as possible predicate offences and forming the basis for the administrative liability of Bodies, are listed in Appendix "Computer crimes".

The following chart, which follows the one used for all the relevant offences described in the Special Section of this Model, sets out, for each offence, the existence or otherwise of potential critical issues for the Consortium. In particular, it sets out the existence or otherwise of processes that may generate this offence (if present, these processes are referred to as "sensitive") and of management procedures (defining the general principles and rules to be followed to manage the process) and/or operational procedures (defining the activities, functions and tasks of specific activities) ensuring systematic and continuous monitoring.

Tax Crimes	Potentially sensitive process in CONAI	Presence of procedures / instructions
Fraudulent declarations through the use of invoices or other documents for non-existent transactions (art. 2, paragraphs 1 and 2-bis of Leg. Decree no. 74 of 10 March 2000)	YES	YES
Fraudulent declarations by means of other expedients (art. 3 of Leg. Decree no. 74 of 10 March 2000)	YES	YES
Inaccurate declarations (art. 4 of Leg. Decree no. 74 of 10 March 2000)	YES	YES
Omitted declarations (art. 5 of Leg. Decree no. 74 of 10 March 2000)	YES	YES
Issuing invoices or other documents for non-existent operations (art. 8, paragraphs 1 and 2 bis of Leg. Decree no. 74 of 10 March 2000)	YES	YES
Concealment or destruction of accounting documents (art. 10 of Leg. Decree no. 74 of 10 March 2000)	YES	YES
Undue offsetting (art. 10-*quater* of Leg. Decree no. 74 of 10 March 2000)	YES	YES
Fraudulent withholding of taxes (art. 11 of Leg. Decree no. 74 of 10 March 2000)	YES	YES

Specifically, the following activities of the Consortium are considered at risk of the commission of the tax crimes laid down by the Decree and specified in the relevant Appendix:

1) Activities relating to the calculation of taxes and to the submission of tax returns
2) Activities concerning the process of drawing up the annual financial statements;
3) Activities relating to asset management;
4) Finance and treasury activities.

At present, CONAI ensures the prevention of conduct potentially capable of resulting in tax crimes through specific and detailed procedures that strictly regulate the behaviour required in order to ensure all tax-related legal requirements are met.

Moreover, a further suitable control in this regard is undoubtedly the Code of Ethics, which contains general principles of conduct which, it is believed, also satisfy the preventive requirements stemming from the introduction of tax crimes as a predicate offence giving grounds for establishing the body's liability.

5.2. Parties concerned by risk monitoring and management activities

In relation to the "sensitive" areas of activity identified in the previous paragraph, "subjects at risk of committing a crime" are all those who, within CONAI, institutionally participate in the performance of such activities. In particular, an analysis of the Consortium's organisational chart revealed the situation described in the following table:

"Sensitive" Activity/Process	"Parties posing a risk of criminal offences"
Activities relating to the calculation of taxes and to the submission of tax returns	• Chairman • General Manager • Board of Statutory Auditors • Administration and Accounting Manager and Staff
Activities concerning the process of preparing the annual financial statements and annual and interim consortium communications	• Chairman / Board of Directors • General Manager • Legal Affairs Area • Administration and Accounting Manager and Staff
Activities relating to asset management	• General Manager • Legal Area Manager and Staff • Manager and Staff of the Consortium Members Registry Office • Manager and Staff of the Consortium Members Area • Administration and Accounting Manager and Staff • Technical Manager and Staff • Credit Recovery Manager and Staff • Control Area Staff
Finance and treasury activities	• Chairman / Board of Directors • General Manager • Head of Legal • Board of Statutory Auditors • Head of Administration and Accounting

5.3. System of preventive controls currently adopted in CONAI

With regard to the elements highlighted by the "risk mapping" phase, CONAI adopts specific behavioural models aimed at standardising the formation and implementation of decision-making processes in every "sensitive" area.

This paragraph identifies the set of "procedures" and control measures that any perpetrator of a crime shall have to violate. The following table associates each "sensitive" activity with the relative operating procedure adopted at CONAI.

"Sensitive" Activity/Process	**Reference procedure**
Activities relating to the calculation of taxes and to the submission of tax returns	Calculation of taxes and submission of tax returns; Asset management; Financial statements; Management of corporate bodies and offices Relations with the Public Administration; Relations with auditors and the auditing company.
Activities concerning the process of preparing the annual financial statements and annual and interim consortium communications	Financial statements; Management of corporate bodies and offices.
Activities relating to asset management	Asset management; Relations with consortium members; CONAI Articles of Association; Regulations of General Meetings of Consortium Members.
Finance and treasury activities	Finance and treasury;

	Management of corporate bodies and offices Regulations of General Meetings of Consortium Members.

Each procedure identifies, for each operation at risk, the parties required to authorise the operation, record and/or archive it, execute it and check it.

5.4. Prohibitions

CONAI's consortium bodies, managers, employees and external collaborators are required to observe the general principles set out below, limited to the obligations covered by specific procedures, the Code of Ethics, the Antitrust Compliance Guidelines and specific contractual clauses.

It is forbidden:

a) to omit or delay the submission of tax returns by the Consortium;

b) to indicate in the Consortium's tax returns fictitious liabilities by using invoices or other documents for non-existent transactions;

c) to indicate in the Consortium's tax returns fictitiously low assets or fictitious liabilities, credits or withholdings by carrying out subjectively or objectively simulated operations or by using false documents or other fraudulent means such as to hinder investigations and mislead the financial administration;

d) to record false documents in mandatory accounting records;

e) to provide false documents to the financial administration as evidence;

f) to issue invoices or other documents for non-existent operations;

g) to conceal or destroy all or part of any accounts or records that need to be archived by law;

h) to simulate the disposal of or carry out other fraudulent actions involving the Consortium's assets such as to render wholly or partially ineffective the compulsory collection of any tax debts;

i) to represent or provide, in the preparation and drawing up of financial statements, reports, prospectuses or other corporate communications, false, incomplete or, in any case, non-truthful data on the Consortium's economic, capital and financial situation;

j) to omit legally required data and information on the Consortium's economic, capital and financial situation;

k) to offset, in accordance with art. 17 of Legislative Decree no. 241/1997, non-existent or non-receivable credits;

l) to simulate the disposal of or carry out other fraudulent transactions involving the assets of the Consortium or of third parties in order to render wholly or partially ineffective any compulsory collection procedures;

m) to indicate false data or information relating to assets or liabilities in the documentation submitted for the purpose of accessing tax transaction procedures or within the framework of same.

As a result of the above, the consortium bodies, employees, control bodies, external collaborators and consultants are expressly required:

a) to adopt a fair, transparent and cooperative conduct, in compliance with the law and with internal procedures, in all activities aimed at calculating taxes and submitting tax returns, drawing up financial statements, and managing assets, as well as in all finance and treasury activities;

b) to strictly observe all the rules laid down by tax legislation and, in particular, ensure the prompt and correct fulfilment of CONAI's tax obligations;

c) not to make any changes to archived documents such as to hinder the traceability of decisions taken and procedures followed;

d) to inform the Supervisory Body of any anomalies in the financial relations with suppliers/consortium members in relation to payment methods, place and recipients;

e) to ensure, with regard to financial management, the traceability of all monetary transactions and to carry out all the necessary checks to ensure the transparency of financial flows (e.g. frequent reconciliation of accounting data; separation and segregation of tasks, in particular between purchasing decision-makers and payment-makers; development and maintenance of effective documentary flows to ensure that decision-making processes can be reconstructed *ex post*, etc.).

Failure to comply with these obligations may be subject to penalties under this Model.

5.5. Controls by the SB

Without prejudice to the SB's discretionary power to conduct specific controls, also following the receipt of reports, the SB regularly carries out, also with the assistance of third parties, random checks on Sensitive Activities, in order to verify the correct execution of same in relation to the rules and principles dictated by this Model.

6. Other illegal cases

6.1. Analysis of sensitive processes in relation to the possible commission of other crimes.

Many of the types of crimes set out in Leg. Decree 231/01 as possible predicate offences and forming the basis for the administrative liability of Bodies cannot be considered applicable to the Consortium, even in abstract terms. As set out in the risk-crime table, CONAI's particular set up – as an institutional body linking the various supply chain consortia, without actually carrying out concrete activities in the field of production, treatment and recovery of packaging – means that the commission of various categories of predicate offences is not even theoretically conceivable within CONAI.

In particular, these categories are: organised crime (art. 24-*ter*); counterfeiting currency (art. 25-*bis*); industrial and trade crimes (art. 25-*bis.1*); crimes with the intent to terrorise and subvert the democratic order (art.*25- quater*); practice of female genital mutilation (art. 25 *quater.1*); offences against the person (art. 25-*quinquies*); market abuse (art. 25-*sexies*); crimes relating to receiving, laundering and using money, goods or property of illicit origin (art. 25-*octies*); offences relating to payment instruments other than cash (art. 25-*octies.1)*; copyright violation crimes (art.*25- novies*); environmental crimes (art. 25-*undecies*); employing illegally staying third-country nationals (art. 25-*duodecies*); racism and xenophobia (art. 25-*terdecies*); fraud in sports competitions and illegal gambling or betting and gambling exercised by means of prohibited equipment (art. 25-*quaterdecies*); smuggling (art. 25-*sexiesdecies*); crimes against cultural heritage (art. 25-*septiesdecies*); laundering cultural goods and the devastation and plundering of cultural and landscape assets (art. 25-*duodevicies*); transnational crimes.

On the other hand, a potential risk has been detected (at least theoretically) with regard to the commission of crimes against the administration of justice (art. 25-*decies*) and, within environmental offences, to the unauthorised management of waste (art. 256 of the Consolidated Environmental Act, in relation to the limited management of waste produced at the Consortium's headquarters).

Finally, as regards offences connected with the re-introduction into the legal economy of profits deriving from criminal conduct (art.*25- octies*), it has been found that the offence of "*self-laundering*" introduced by art. 648 *ter*.1 of the Criminal Code and regulated by Law no. 186/2014, may also be theoretically relevant to the activities carried out by CONAI.

Indeed, although the most recent Confindustria guidelines state – on the basis of a number of authoritative interpretations – that a body can only he held liable for self-laundering in cases where the predicate offence that generated the illicit proceeds is already in itself included in the catalogue of offences that can trigger the body's liability, it appears more prudent, in view of CONAI's extremely cautious approach, to consider that art. 25-*octies* may also apply if the illegal profits of self-laundering derive from a crime other than those included in Legislative Decree no. 231/2001.

Therefore, it was decided to monitor the areas at possible risk, starting from the hypothesis that, in the event of the profits deriving from a crime committed by a person belonging to the Consortium being substituted, transferred or re-used in the context of CONAI's work activities (personal use for

individual enjoyment is instead excluded), then CONAI could also be held liable under the Decree.

Following the risk assessment activities conducted, further tax offences were identified in addition to those originally referred to in art. 25-*quinquiesdecies* of the Decree – relating both to tax returns (arts. 4 and 5 of Leg. Decree 74/2000, today included, as we have seen, within the scope of crimes committed in the context of fraudulent cross-border systems), and to the payment of taxes (arts. 10 *bis* and 10 *ter* of Leg. Decree 74/2000) – as potentially capable of generating profits that could be self-laundered in the context of CONAI's work activities. In order to reduce the risk of these offences being committed, a specific procedure (already referred to herein) was set up, dedicated to the "*Calculation of taxes and submission of tax returns*".

Moreover, paying particular attention to the transparency and traceability of financial flows – already considered from the perspective of preventing the commission of crimes against the Public Administration – should be considered fundamental for the prevention of self-laundering, since the commission of the crime referred to in art. 648-*ter*.1 of the Criminal Code requires the perpetrator to behave in a way that concretely hinders the activity of ascertaining the illicit nature of the proceeds.

6.2. Parties concerned by risk monitoring and management activities

In relation to the "sensitive" areas of activity identified in the previous paragraph, "subjects at risk of committing a crime" are all those who, within CONAI, hold the role of manager or subordinate worker.

6.3. Prohibitions

Since these risks are purely theoretical or of extremely reduced scope, CONAI has not adopted specific controls (with the only exception, for self-laundering, of the procedure dedicated to the *Calculation of taxes and submission of tax returns*). However, in order to limit to the maximum the possibility of the offences considered in this Special Section occurring, CONAI has drawn up a series of general principles of conduct which CONAI's consortium bodies, managers, employees and external collaborators are required to observe. In particular:

a) Crimes against the administration of justice:

Any behaviour, whether by managers or by subordinate staff, that may even just indirectly facilitate the making of false declarations to the judicial authorities, is expressly prohibited, as is any conduct that may interfere with the regular fulfilment of the activities of the judicial authority, both during investigations and during trial.
Given the above, in order to prevent the commission of the crimes set out in art. 25-*decies* of the Decree, the Consortium's managers and subordinate staff are expressly prohibited from using violence and threats or from offering or promising money or other benefits so as to induce any person, called to make statements before the Judicial Authorities that can then be used in criminal proceedings, not to make said statements or to make false statements instead. Moreover, they are expressly forbidden from helping anyone to circumvent the investigations of the judicial authorities.

b) Unauthorised waste management activities:

CONAI is not directly involved in activities that may impact the integrity of protected sites or habitats. However, since the waste produced in an office environment may be classified as municipal and similar waste, the Consortium is required, under Italian legislation (Leg. Decree 152/06) and under local legislation (Regulations for the management of municipal and similar waste and for the protection of the decorum and environmental hygiene of the Municipality of Milan, approved by Municipal resolution no. 118 of 6/11/2000 and amended by Municipal resolution no. 20 of 26/3/2002; Regulations for the management of municipal waste in the Municipality of Rome, approved by Municipal resolution no. 105 of 12 May 2005), to carry out the separate collection of certain types of waste.

For the purposes of these regulations, waste is classified, based on its origin, as municipal and special waste and, based on its hazardous characteristics, as hazardous and non-hazardous waste.

Municipal waste is: a) household waste, whether bulky or otherwise, from premises and places used for civil housing; b) non-hazardous waste from premises and places used for purposes other than those referred to in a), treated as municipal waste in terms of quality and quantity; c) waste from road sweeping; d) waste of any nature or origin lying on public roads and areas or on private roads and areas subject to public use and on the banks of waterways; e) plant waste from green areas, such as gardens, parks and cemeteries; f) waste from exhumation, and other waste from cemeteries other than those referred to in b), c) and e).

Special waste is a) agricultural and agro-industrial waste; b) waste from demolition and construction activities, and hazardous waste arising from excavation works; c) industrial waste; d) craft waste; e) commercial waste; f) service waste; g) waste from waste recovery and disposal activities, sludge produced by potabilisation and other water treatments and wastewater purification and by vapour abatement; h) waste from health activities; i) deteriorated and obsolete machinery and equipment; j) end-of-life motor vehicles, trailers and the like and parts thereof.

Non-hazardous special waste treated as municipal waste is: a) paper and cardboard; b) glass; c) plastic (small dimensions); d) other types of plastics; e) metal (small dimensions, e.g. cans); f) other types of metals; g) wood; h) organic waste for composting (excluding frying oils); i) clothing; j) textiles.

Other municipal waste is: a) market waste; b) primary and secondary packaging (only for users that use the packaged product); c) secondary packaging (also for users who sell the packaged product only in the case of material collected separately by a Public Service Operator (e.g. cardboard, crates).

Hazardous municipal waste is: a) paints, inks, adhesives; b) solvents; c) photochemicals; d) pesticides; e) fluorescent tubes and other mercury-containing waste; f) batteries; g) medicinal products; h) syringes lying in public areas; i) spent toner cartridges from collective copiers and printers; j) spent accumulators.

All parties operating within CONAI, each to the extent and in the manner required by their own role (and in particular those connected with procurement), are aware of the obligation to comply with current provisions on waste collection.

Procurement staff guarantees this by entering into special agreements with external bodies/parties authorised to collect spent cartridges/toners.

The above means that CONAI's employees, external collaborators and consultants are required to:

- carefully separate waste according to the types of waste listed above;
- strictly observe any special agreements with external bodies/parties authorised to collect and dispose of waste (for those in charge of the procurement process).

Failure to comply with these general rules of conduct may be subject to penalties under this Model.

c) Self-laundering

The consortium bodies, employees, control bodies, external collaborators and consultants are expressly required:

- to store any documentation from which it may be possible to reconstruct the execution of an act and the relative authorisations, in order to guarantee the transparency of the choices made. Said documentation should be stored in such a way as to allow the reconstruction of the history of events;
- to avoid overlaps between those who take or implement decisions, those who provide accounting evidence of operations, and those who are required to monitor same pursuant to the law and to the procedures laid down by the internal control system;
- not to make any changes to archived documents such as to hinder the traceability of decisions taken and procedures followed;
- to inform the Supervisory Body of any anomalies in the financial relations with suppliers/consortium members in relation to payment methods, place and recipients;
- to ensure the prompt and correct fulfilment of CONAI's tax obligations, in compliance with current regulations;
- to ensure, with regard to financial management, the traceability of all monetary transactions and to carry out all the necessary checks to ensure the transparency of financial flows (e.g. frequent reconciliation of accounting data; separation and segregation of tasks, in particular between purchasing decision-makers and payment-makers; development and maintenance of effective documentary flows to ensure that decision-making processes can be reconstructed *ex post*, etc.).

6.4. Controls by the SB

Without prejudice to the SB's discretionary power to conduct specific controls, also following the receipt of reports, the SB regularly carries out, also with the assistance of third parties, random checks on Sensitive Activities, in order to verify the correct execution of same in relation to the rules and principles dictated by this Model. The SB makes use of special check-lists to facilitate and standardise its control activities.

APPENDIXES

APPENDIX 1: OFFENCES AGAINST THE PUBLIC ADMINISTRATION

Embezzlement at the expense of the State or of the European Union (Article 316-bis of the Criminal Code)

Any person who is not a member of a public administration and who has obtained from the State or other public agency or from the European Community contributions subsidies or financing intended to encourage initiatives aimed at the execution of works or to carry out activities of public interest but does not allocate them to these purposes is punished with imprisonment from six months to four years.

With regard to the offence of embezzlement at the expense of the State, it is worth noting that, by the terms "contributions, subsidies or financing", the legislator means every form of economic intervention, whereas by the reference to works or activities of public interest, it seems that the legislator meant to refer not so much to the nature of the work or activity in itself as to the purpose pursued by the provider.

Example: one or more employees entrusted with managing funds allocated for training or environmental purposes use part of these funds to cover representation expenses.

Misappropriation of funds at the expense of the State or of the European Union (Article 316-ter of the Criminal Code)

Except where the fact constitutes the offence set out in article 640-bis, any person who, by using or submitting false statements or documents or statements or documents that contain false information or by omitting required information, unlawfully obtains, for themselves or for others, contributions, financing, subsidised mortgages or other funds of the same type granted or issued by the State, by other public agencies or by the European Community, shall be punished with imprisonment from six months to three years.
When the amount wrongly received is equal to or less than EUR 3,999.96, a mere administrative penalty shall be applied, in the amount of EUR 5,164.00 to EUR 25,822.00. This penalty may not exceed three times the benefit obtained.

The offence is committed if - by using or submitting false statements or documents or by omitting required information - contributions, financing, subsidised mortgages or other funds of the same type granted or issued by the State, by other public agencies or the European Community are obtained without being entitled to same. In this case, the use that is made of the disbursements is not important because the crime is committed at the time when the funding is obtained.
Finally, it is worth noting that this type of crime is subordinate to deception against the State, in the sense that it occurs only in cases when it does not amount to deception against the State.

Example: in order to obtain a grant from the European Community, an employee submits to the competent authorities documents falsely attesting to the existence of indispensable reasons for which CONAI requires the contribution.

Extortion (art. 317 of the Criminal Code)

Public officials or persons in charge of a public service who, by abusing their role or powers, induce someone to give or unduly promise money or other benefits to themselves or others, is punished with six to twelve years of imprisonment.

Abuse of power occurs in cases when power is exercised outside the cases established by laws, regulations and service instructions or not in the prescribed forms, or when said power, even if assigned to the official public, is used for unlawful purposes.

The offence comes with an absolutely negligible risk for the purposes of Legislative Decree no. 231/01. The case concerns certain qualified parties. The Consortium may only be held liable in cases in which an

employee or an agent, acting in the Consortium's interests or for its benefit, participates in the crime committed by public officials or persons in charge of a public service by taking advantage of their position to demand undue benefits.

Corruption

The offence of corruption consists in an agreement between a public official or person in charge of a public service and an individual, by virtue of which the former accepts from the latter the undue gift or promise of money or other benefits for the performance of an act either in breach or in conformity with his official duties.
Corruption in accordance with Legislative Decree no. 231/2001 is taken into consideration from two points of view: *active corruption* when a company employee corrupts a public official or a person in charge of a public service for the purpose of obtaining any benefit for the company; *passive corruption* when a company employee, acting as a public official or a person in charge of a public service, receives money or the promise of money or other benefits to carry out acts in breach of his official duties. This latter case is in fact difficult to implement because most cases will regard corruption carried out in the sole interest of the individual, and therefore not in the interest or to the advantage of the body.
Corruption takes place when the parties, being in an equal position, come to an agreement between them, unlike in the event of extortion, which involves the public official or person in charge of a public service exploiting their position of superiority over the private individual.
The cases of corruption covered by Leg. Decree 231/2001 are the following:

- Art. 318 of the Criminal Code Corruption in the discharge of official duties
A public official, who, in exercising his duties or powers, unduly receives money or any other benefit, for himself or for a third party, or accepts the promise of same, shall be punished with imprisonment for one to six years.

Example: a Consortium employee offers a sum of money to a public official – who accepts – in order to facilitate administrative measures necessary for the activity of the Consortium.

- Art. 319 of the Criminal Code Corruption for a deed conflicting with official duties
Public officials who, in order to omit or delay or because they have omitted or delayed an official duty, or in order to perform or because they have performed an act in breach of their official duties, receive, for themselves or for a third party, money or other benefits, or accept the promise of same, shall be punished with imprisonment for six to ten years.

Example: a Consortium employee offers a sum of money to a public official – who accepts – in order to obtain unlawful administrative measures useful for the activity of the Consortium.

Art. 319 bis Aggravating circumstances.
The penalty shall be increased if the above circumstances concern the provision of public employment or salaries or pensions or the signing of contracts involving the administration to which the official belongs.

- Art. 319-ter of the Criminal Code Corruption in judicial acts
If the facts referred to in Articles 318 and 319 are committed to promote or damage a party in a civil, criminal or administrative proceeding, the penalty shall be imprisonment for six to twelve years.
If the facts result in the unjust conviction of someone to imprisonment for no more than five years, the sentence of imprisonment is from six to fourteen years; if they result in unjust conviction to imprisonment for more than five years or for life, the sentence of imprisonment is from eight to twenty years.

Example: an employee offers a large sum to a magistrate to obtain a favourable outcome for the Consortium in proceedings to which said Consortium is a party.

- Art. 319-quater of the Criminal Code Inducement or promise to give undue benefits
Unless the offence represents a more serious crime, public officials or persons in charge of a public service who, by abusing their role or powers, induce someone to give or unduly promise money or other benefits to themselves or others, is punished with imprisonment of six years to ten years and six months.
In the cases provided for in the first paragraph, whoever gives or promises money or other benefits is punished with imprisonment for up to three years.

Example: an employee, at the request of a public official, agrees to pay a sum of money to obtain an undue advantage for the Consortium.

- Art. 320 of the Criminal Code Corruption of persons in charge of a public service
The provisions of articles 318 and 319 also apply to persons in charge of a public service.
In any case, the penalties are reduced by no more than one third.

- Art. 321 of the Criminal Code Penalties for the corrupting party
The penalties laid down in the first paragraph of art. 318, in art. 319, in art. 319bis, in art. 319ter and in art. 320, in relation to the aforementioned cases of arts. 318 and 319, shall also apply to those who give or promise to public officials or persons in charge of a public service money or other benefits.

- Art. 322 of the Criminal Code Incitement to corruption
Whoever offers or promises money or other undue benefits to a public official or a person in charge of a public service for the performance of his duties or powers incurs, in the event of the offer or promise not being accepted, in the penalty established by the first paragraph of art. 318, reduced by a third.

Example: a Consortium employee offers a sum of money to a public official – who does not accept – in order to facilitate administrative measures necessary for the activity of the Consortium.

If the offer or promise is made in order to induce a public official or a person in charge of a public service to omit or delay an official duty or to perform an act in breach of his official duties, the offender shall incur, in the event of the offer or promise not being accepted, in the penalty established by article 319, reduced by one third.

Example: a Consortium employee offers a sum of money to a public official – who does not accept – in order to obtain unlawful administrative measures useful for the activity of the Consortium.

The penalty set forth in paragraph 1 applies to public officials or persons in charge of a public service who demand the promise or gift of money or other benefits for the fulfilment of their duties or powers.
The penalty set forth in paragraph 2 applies to public officials or persons in charge of a public service who demand the promise or gift of money or other benefits from a private individual for the purposes set out in article 319.

- Art. 322 bis of the Criminal Code Embezzlement, extortion, corruption and incitement to corrupt members of EU bodies and EU and Foreign State officials
The provisions of articles 314, 316, 317 to 320, and 322, paragraphs 3 and 4, also apply to:
1. members of the EU Commission, the European Parliament, the Court of Justice of the European Union and the European Court of Auditors;
2. the officers and agents employed under contract according to the provisions of the European Community Staff Regulations or the rules applicable to agents in the European Community;
3. individuals seconded by Member States or by any public or private agency to the European Community, whose duties correspond to those of officials or agents of the European Community;
4. members and employees of Bodies set up in accordance with the Treaties establishing the European Community;
5. those who, in the context of other European Union Member States, perform functions or tasks that match those of public officials and persons in charge of a public service.
5-bis. judges, the public prosecutor, deputy prosecutors, officials and other agents of the International Criminal Court; persons seconded by the States that are parties to the Treaty establishing the International Criminal Court who exercise functions corresponding to those of officials or agents of the Court itself; members and staff of Bodies set up on the basis of the Treaty establishing the International Criminal Court.
The provisions of Articles 319-quater, paragraph 2, 321 and 322, paragraphs 1 and 2, also apply if money or other benefits are given, offered or promised:
1) to the persons specified in paragraph 1 of this Clause;
2) to persons who exercise functions or activities that match those of public officials and persons in charge of a public service in the context of other foreign States or international public organisations, if the crime is committed to procure for oneself or others an undue advantage in international business transactions or in order to obtain or retain an economic or financial activity.
The persons specified in paragraph 1 are regarded as public officials if they exercise the corresponding functions, and as persons in charge of a public service in other cases.

Example: a Consortium Manager gives or promises money or other benefits to a member of the European Commission to block proceedings

against the Consortium in relation to possible violations of competition law.

- Art. 322-ter of the Criminal Code Confiscation

In the case of a conviction, or of the application of a penalty at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure, for one of the offences provided for in Articles 314 to 320, even if committed by the persons referred to in the first paragraph of Article 322 bis, the confiscation of goods constituting the profit or price of the offence shall always be ordered, unless these belong to a person who is not a party to the offence; alternatively, where this is not possible, the offender's goods will be confiscated for a value corresponding to said price or profit.

In the case of a conviction, or of the application of a penalty pursuant to Article 444 of the Code of Criminal Procedure, for the offence provided for in Article 321, even if committed pursuant to the second paragraph of Article 322 bis, the confiscation of goods constituting the profit of the offence shall always be ordered, unless these belong to a person who is not a party to the offence; alternatively, where this is not possible, the offender's goods will be confiscated for a value corresponding to said profit and, in any case, of no less than that of the money or other profits given or promised to the public official or person in charge of a public service or to the other parties referred to in the second paragraph of Article 322 bis.

In the cases referred to in the first and second paragraphs, the sentencing court shall determine the amounts of money or assets to be confiscated insofar as constituting the profit or price of the offence or having a value corresponding to the profit or price of the offence.

- Art. 322-quater of the Criminal Code Financial compensation

Any sentence relating to the offences provided for in Articles 314, 317, 318, 319, 319-ter, 319-quater, 320 and 322-bis will always involve payment of an amount equal to that unduly received by the public official or person in charge of a public service as financial compensation in favour of the administration to which the public official or person in charge of a public service belongs, or, in the case referred to in article 319-ter, in favour of the administration of justice, without prejudice to the right to compensation for damages incurred.

In order to assess the possible business areas exposed to the greatest risk, it should be clarified that the term public official refers to all those parties, whether public or private employees, who can or must, within the scope of a power governed by public law, form and express the will of the Public Administration or exercise authoritative or certification powers. Those in charge of a public service are those who, while acting within the framework of an activity that is governed in accordance with the same modalities as a public official, lack the powers vested in the latter, provided they do not perform simple ordinary tasks or exclusively manual work.

Fraud in public supplies (art. 356 of the Criminal Code)

Whoever commits fraud in executing supply contracts or in fulfilling the other contractual obligations specified in the previous article (art. 355 of the Criminal Code) is punished with imprisonment from one to five years and with a fine of no less than EU 1,032.

The penalty is increased in the cases provided for in the first paragraph of the previous Article (art. 355 of the Criminal Code).

The offence arises when a body commits fraud in executing supply contracts or in fulfilling other contractual obligations arising from signing public supply contracts. Therefore, the rule punishes all conduct aimed at circumventing contractual obligations with the State or other public agency. The offence arises with the fraudulent execution not only of a supply contract (art. 1559 of the Civil Code), but also of a tender contract (art. 1655 of the Civil Code).

According to the most recent interpretation, for the offence to exist it must be serious enough to affect the relationship with the P.A. Unlike with deception, the offence need not attempt to deceive the buyer or disguise faults in the supply, the supplier's bad faith in the fulfilment of his duties being sufficient.

Example: after signing a supply contract with a public body, the Consortium provides a service other than the one agreed by contract.

Deception

Aggravated deception for the undue attainment of public funds are characterised by the unlawful attainment of funds from the State, the European Community or other public agencies.
Unlike embezzlement at the expense of the State, which involves the unlawful use of legally obtained contributions, this offence involves the unlawful attainment of public contributions.

The cases of deception covered by Leg. Decree 231/2001 are the following:

- **Art. 640 Deception.**
Whoever, by using tricks or schemes to mislead someone else, gains an unfair profit for himself or third parties at the expense of the other, is punished with imprisonment from six months to three years and with a fine from EUR 51 to EUR 1,032.
The penalty is one to five years' imprisonment and a fine of Euro 309 to Euro 1,549:
1) if the offence is committed against the State or another public body or on the pretext of exempting someone from military service;

Example: in order to obtain an administrative authorisation, an employee misleads the public officials in charge, providing a misleading representation of the facts through the submission of false documents.

2) if the offence is committed by engendering in the other the fear of an imaginary danger or the erroneous belief of having to execute an order imparted by an official authority.

The offence is punishable upon suit filed by the victim, unless one of the circumstances provided for in the preceding paragraph or other aggravating circumstances arise.

- Art. 640-bis Aggravated deception to obtain public funds.
The penalty shall be one to six years' imprisonment and the offence shall be automatically prosecuted if the circumstance referred to in Article 640 relates to contributions, financing, subsidised mortgages or other funds of the same type granted or issued by the State, by other public agencies or by the European Community.

Example: in order to obtain public funds for the Consortium, an employee voluntarily misleads the public officials of the competent office to decide in favour of the application through the complicity of third parties attesting to the existence of fictitious situations.

For the purposes of applying the provisions of Legislative Decree no. 231/2001, deception is only relevant if the related tricks and schemes are against the State or other public agency.

Cyber fraud against the State or any other Government Agency (Article 640-ter of the Criminal Code)

Whoever, by in any way altering the operation of a computer or online system or in any way interfering with the data, information or programs contained in or relevant to a computer or online system without being authorised to do so, gains an unfair profit for himself or third parties at the expense of others, is punished with imprisonment from six months to three years and with a fine from EUR 51 to EUR 1,032.
The penalty is one to five years' imprisonment and a fine of EUR 309 to EUR 1,549 if one of the circumstances laid down in Article 640, paragraph 2, no. 1 occurs, or if the offence is committed abusing the role of system operator.
The penalty is two to six years' imprisonment and a fine of EUR 600 to EUR 3,000 if the offence is committed by stealing or misusing the digital identity of one or more individuals.
The offence is punishable upon suit filed by the victim, unless one of the circumstances provided for in the second and third paragraphs or other aggravating circumstances arise.

For the purposes of applying the provisions of Legislative Decree no. 231/2001, cyber fraud is only relevant if the alteration of the computer or online system or of the data contained therein is committed against the State or other public agency.

The term computer system is to be taken to mean the hardware and software that allow the automatic elaboration and processing of data. The term online system is to be taken to mean the set of interconnected

elements which exploit IT and TLC principles and technologies, and which require the user to access databases stored on a central computer.

Example: in order to obtain advantages or lower charges for the Consortium, an employee hacks his way into the computer network of a public body and alters the data or information contained therein.

Influence peddling (art. 346-bis of the Criminal Code)

Aside from cases of aiding and abetting in the offences referred to in articles 318, 319 and 319-ter and in the corruption offences referred to in art. 322- bis, those who should exploit or boast actual or alleged relationships with a public official or a person in charge of a public service or one of the other persons referred to in art. 322- bis, and thus unduly influence someone to give or promise, to themselves or to others, money or other benefits, as the price for their illicit mediation with the public official or person in charge of a public service or one of the other persons referred to in art. 322- bis, or to pay same in relation to the performance of his or her duties or powers, is punished with imprisonment of one year to four years and six months.
The same penalty applies to those who unduly give or promise money or other benefits.
The penalty is increased if those who unduly influence someone to give or promise, to themselves or to others, money or other benefits hold the role of public official or person in charge of a public service.
The penalty is further increased if the facts are committed in relation to the performance of judicial activities or to remunerate public officials or persons in charge of a public service or other persons referred to in art. 322- bis for the abstention or delay in performing their official duties.
In the presence of particularly tenuous facts, the penalty is diminished.

With Law no. 3 of 9 January 2019, the Italian legislator also included the offence referred to in art. 346-bis of the Criminal Code to the set of predicate offences covered by Leg. Decree 231/2001. It should be noted, moreover, that the same amendment repealed, in the Criminal Code, the offence of fraudulent representation (previously provided for in art. 346 of said Criminal Code), however merging this unlawful conduct into the renewed text of art. 346-bis of the Criminal Code.

Example: in order to obtain advantages or lower charges for the Consortium, an employee exploits his friendship with a public official and receives from a consortium member an undue remuneration as the price of his/her illegal mediation between the two

Public administration body

For the purposes of criminal law, any legal person who has public interests and who carries out legislative, judicial or administrative activities under public law and authoritative deeds is commonly regarded as a “Public Administration Body”.

Although there is no definition of public administration in the Criminal Code, in accordance with the Ministerial Report annexed to said Code and in relation to the offences provided for therein, Public Administration Bodies are considered those bodies that carry out “all the activities of the State and other public agencies”.

In an attempt to formulate a preliminary classification of legal entities belonging to this category, it is also possible to recall art. 1, paragraph 2 of Leg. Decree 165/2001 on the organisation of employment in public administrations, which defines all State administrations as public administrations. By way of example, members of the Public Administration might include the following bodies or categories of bodies:

- Institutes and schools of every order and degree and educational institutions;
- Independent State bodies and administrations, such as: Ministries, Chamber and Senate, Community Policies Department, Competition and Market Authority, Electricity and Gas Authority, Communications Authority, Bank of Italy, Consob, Data Protection Authority, Revenue Agency.
- Regions, Provinces, Municipalities, Mountain Communities, and their consortia and associations;
- Chambers of Commerce, Industry, Trade and Agriculture and their associations;
- All national, regional and local non-economic public bodies, such as: Inps, Cnr, Inail, Inpdai, Istat,

Enasarco, Asl, Inpdap;
- State Bodies and Monopolies;
- Rai.

It is worth noting that not all the natural persons acting for the specified bodies are subjects against which the offences under Leg. Decree 231/2001 are considered to be committed. The applicable figures to this end are only “public officials” and “persons in charge of a public service”.

Public Officials

According to art. 357, paragraph 1 of the Criminal Code, a public official “for the purposes of criminal law” is someone who performs “public functions in the legislative, judicial or administrative sector”.

Persons in charge of a public service

There is no clear-cut definition of “persons in charge of a public service” in legal doctrine or in case-law. In order to better clarify the category of “persons in charge of a public service”, it is necessary to refer to the definition provided by the Criminal Code and to the interpretations that emerged as a result of practical applications. In particular, art. 358 of the Criminal Code states that “persons in charge of a public service are those who, in whatever capacity, provide a public service.
A public service is to be understood as an activity that is governed in accordance with the same modalities as a public official, although lacking the powers vested in the latter, and with the exclusion of the performance of simple ordinary tasks and exclusively manual work”.
Case-law has identified a number of indicators of the public nature of a body. In particular:

- being subjected to control and policy-making activities for corporate purposes and to the appointment and revocation of directors by the State or other public agencies;
- the presence of an agreement and/or concession with the public administration;
- the receipt of financial contributions from the State;
- the existence of a public interest in the body’s economic activities.

On the basis of the above, the discerning element to determine whether or not a person may be considered “in charge of a public service” isn’t the legal nature taken on or held by the body, but the duties entrusted to the party, which must consist in handling public interests or in meeting needs of general interest.

APPENDIX 2: BUSINESS CRIMES

False corporate communications

- Art. 2621 of the Civil Code False corporate communications

Outside the cases provided for by art. 2622, any directors, general managers, managers responsible for drawing up corporate accounting documents, statutory auditors and liquidators who, in order to obtain for themselves or for others an unfair profit, in financial statements, reports or other legally required corporate communications to partners or the public, knowingly state significant material facts that do not correspond to the truth or omit significant material facts on the economic, capital or financial situation of the company or group whose communication is required by law, in a manner specifically intended to induce others in error, are punished with imprisonment for one to five years.
The same penalty shall apply if the untruthful declarations or omissions relate to assets owned or administered by the company on behalf of third parties.

- Art. 2621-bis of the Civil Code Minor facts

Unless the offence represents a more serious crime, a sentence of six months to three years of imprisonment shall apply if the facts referred to in Article 2621 are minor, taking into account the nature and size of the company and the manner or effects of the conduct.
Unless the offence represents a more serious crime, the same penalty as in the preceding paragraph shall apply if the facts referred to in Article 2621 concern companies which do not exceed the limits specified in the second paragraph of Article 1 of Royal Decree No. 267 of 16 March 1942. In this case, the offence is punished by the company, its partners, creditors or other recipients of the corporate communication filing a suit against the offender.

- Art. 2621-ter of the Civil Code Non-punishable offence in the presence of particularly tenuous facts

For an offence to be considered non-punishable due to the presence of particularly tenuous facts, as stated in Article 131-bis of the Criminal Code, the court shall primarily assess the extent of any damage caused to the company, partners or creditors as a result of the facts referred to in Articles 2621 and 2621-bis.

- Art. 2622 of the Civil Code False corporate communications of listed companies

Any directors, general managers, managers responsible for drawing up corporate accounting documents, statutory auditors and liquidators of companies that issue authorised financial instruments for trading on a regulated market in Italy or in another country of the European Union, who, in order to obtain for themselves or for others an unfair profit, in financial statements, reports or other corporate communications to partners or the public, knowingly state material facts that do not correspond to the truth or omit significant material facts on the economic, capital or financial situation of the company or group whose communication is required by law, in a manner specifically intended to induce others in error, are punished with imprisonment for three to eight years.
The companies referred to in the preceding paragraph shall be treated as:
1) companies that issue financial instruments for which an authorisation has been requested to trade on a regulated market in Italy or in another country of the European Union;
2) companies that issue authorised financial instruments for trading in an Italian multilateral trading system;
3) companies that control companies that issue authorised financial instruments for trading on a regulated market in Italy or in another country of the European Union;
4) companies that rely on or manage public savings.
The provisions of the previous paragraphs shall also apply if the untruthful declarations or omissions relate to assets owned or administered by the company on behalf of third parties.

Example: the Board of Directors ignores the indication of the Administrative Director regarding the need for an allocation (adjustment) to the bad debt provision due to the crisis faced by a consortium member, and instead records a fictitiously high amount of credits in order not to reveal a loss which would entail the need for special measures involving the Consortium capital (arts. 2446 and 2447 of the Civil Code).

The offence of false corporate communications is committed when, in financial statements, reports or, in general, in legally required corporate communications to Consortium members, creditors or the public,

significant material facts are reported which do not correspond to the truth, or legally required information on the economic, capital or financial situation of the Consortium is omitted.
In order for this conduct to be considered an offence, it is necessary, first of all, that the aim of the offender be that of obtaining an unfair profit for himself or for others.
Moreover, the false or omitted information must be such as to specifically wish to mislead those to whom the communications are addressed concerning the situation of the Consortium; therefore, they must be significant, and such as to significantly alter the representation of this situation.
The offence is automatically prosecuted.

Impeding control (art. 2625, paragraph 2 of the Civil Code)

Administrators who, by concealing documents or by other suitable artifices, prevent or otherwise hinder the performance of control or auditing activities legally assigned to members, other corporate bodies or auditing companies, shall be punished with a fine of up to EUR 10,329.
If the conduct causes damage to the Consortium members, a term of imprisonment of up to one year shall apply and the victim can file a suit against the offender.
The penalty is doubled in the case of companies with securities listed on regulated markets in Italy or other states of the European Union or disseminated to the public to a significant extent pursuant to article 116 of Legislative Decree no. 58 of 24 February 1998.

For the purposes of the Consortium's liability, the case in question is that provided for in the second paragraph. Indeed, in the case provided for in the first paragraph, the conduct, although essentially identical, is not considered an offence, as only an administrative penalty is applied. It is important to note that the fact must be committed in the interest or for the benefit of the Consortium and not, for example, of directors or of part of the consortium. Also in this case, the unlawful conduct of the directors is punished, paying particular attention to protecting the control activities, not only of members or auditors, but also of the auditing company. The objective element of criminal liability is therefore any explicit action or omission, or any kind of conduct that results in a refusal or in actively hindering research. The subjective element, instead, is intentional conduct.

Example: a member of the body does not provide a member of the Board of Statutory Auditors with the documents required by same to perform its control activities, such as, for example, documents concerning legal actions taken to recover credits.

Undue reimbursement of contributions (art. 2626 of the Civil Code)

Directors who, except in cases of a legitimate reduction of the share capital, return, even under false pretences, contributions to members or free them from the obligation to perform them, shall be punished with imprisonment of up to one year.

The "typical conduct", except in cases of a legitimate reduction of the share capital, involves returning, even under false pretences, contributions to members or freeing them from the obligation to perform them.

Example: issuing a resolution to offset a debt of a Consortium member towards the body with a contribution credit that the latter has with the said Consortium member, essentially resulting in an undue reimbursement of the contribution.

Illegal distribution of profits and reserves (art. 2627 of the Civil Code)

Unless the offence represents a more serious crime, directors who distribute profits or advances on profits not actually realised or allocated by law to reserves, or who distribute reserves, including those not formed by profits, that cannot be distributed by law, shall be punished with imprisonment of up to one year.
The return of the profits or the re-establishment of the reserves before the time limit for approving the financial statements extinguishes the offence.

The offence occurs in two cases:
a) In the event of distributing profits or advances on profits not actually realised or allocated by law to

reserves.
b) In the event of distributing reserves, including those not formed by profits, that cannot be distributed by law.
It is worth noting that the return of the profits or the re-establishment of the reserves before the time limit for approving the financial statements extinguishes the offence.

Example: issuing a resolution to distribute dividends not formed by the year's profits but by funds that cannot be distributed because allocated by law to legal reserves.

Transactions prejudicial to creditors (art. 2629 of the Civil Code)

Directors who, in breach of the legal provisions protecting creditors, reduce the share capital or perform mergers with other companies or demergers, causing damage to creditors, shall be punished, upon suit filed by the victim, with imprisonment from six months to three years.
Compensation for damages to creditors before the judgement extinguishes the offence.

With this type of crime, a change should be observed from dangerous offence to criminal damage. In particular, in order for the offence to take place, it is necessary for the conduct in breach of the statutory standards governing the described operations to be consequently connected with "damage to creditors." This type of offence gains even greater significance under "private law" if we consider that the offence is punishable upon suit filed by the victim and that "compensation for damages to creditors before the judgement" extinguishes the offence.
It should also be noted that criminal conduct is given by the intention to violate the provisions governing the proper performance of operations involving a reduction in share capital, a merger or a demerger.
As this is an offence specific to certain classes of offender, it can only be committed by directors.
It is interesting to note that the current open formula makes it possible to assume that this offence is also committed in the event of a director carrying out the described operations in a situation of conflict of interest with the company and in breach of the provisions of the amended art. 2634 of the Civil Code (breach of trust).

Example: the Directors arrange an extraordinary merger, without complying with the procedure laid down in Article 2503 of the Civil Code to safeguard creditors.

Fictitious Consortium capital formation (art. 2632 of the Civil Code)

Directors and contributing members who, even partially, fictitiously form or increase the share capital through the assignment of shares or stock to an extent lower than their nominal value, the mutual subscription of shares or stock, or the significant overvaluation of contributions in kind or credit or of company assets in the case of transformation, shall be punished with imprisonment of up to one year.

This offence takes place when the Consortium's capital is formed or increased fictitiously through: the assignment of stock to an overall extent greater than the amount of said capital; the mutual subscription of shares or stock; or the significantly overvaluation of contributions in kind or credit or of company assets in the case of transformation.

Example: the Directors arrange an increase in the consortium capital by offering stock for a value lower than that declared.

Corruption between private individuals (article 2635 of the Civil Code)

Unless the offence represents a more serious crime, any directors, general managers, managers responsible for preparing corporate accounting documents, auditors and liquidators of private companies or bodies, who demand or receive for themselves or for others, even through a third party, the promise or gift of money or other undue benefits to perform or omit acts in breach of the obligations inherent in their office or their duties of loyalty, shall be punished with a term of imprisonment from one to three years. The same penalty shall apply if the fact is committed by those who, within the organisational framework of the company or private body, perform managerial duties other than those of the subjects referred to above.

The penalty of imprisonment for up to one year and six months shall apply if the event is committed by a person subject to the management or supervision of one of the persons referred to in the first paragraph.
Those who, even through a third party, offer, promise or give money or other undue benefits to the persons indicated in the first and second paragraphs shall be punished with the penalties set forth therein.
The penalties set out in the above paragraphs are doubled in the case of companies with securities listed on regulated markets in Italy or other states of the European Union or disseminated to the public to a significant extent pursuant to article 116 of the Consolidated Law on Financial Intermediation, as per Legislative Decree no. 58 of 24 February 1998, as amended. The offence shall be prosecuted upon suit filed by the victim, except where it results in a distortion of competition in the acquisition of goods or services. Without prejudice to the provisions of art. 2641, the measure of confiscation of equivalent value may not be less than the value of the benefits given, promised or offered.

Law no. 190 of 6 November 2012 "Provisions for the prevention and repression of corruption and illegality in public administration", published in O.J. no. 265 of 13/11/2012, connected paragraph 3 of art. 2635 of the Civil Code, as amended by paragraph 76 of the same, to the category of business crimes under article 25-ter of Legislative Decree no. 231/2001.
The main novelty introduced by the legislator was the provision of a fine of two hundred to four hundred shares of the company to which the "corruptor" belongs: indeed, liability was envisaged for companies that corrupt, but not for companies that are corrupted.
Consequently, for the purposes of liability under Legislative Decree no. 231/01, the only relevant conduct was that of those who give and/or promise money or benefits to the directors, general managers, managers responsible for drawing up corporate accounting documents, statutory auditors, liquidators and persons subject to the management or supervision of one of the aforementioned persons, in the interest of the body of origin (in this regard please note that art. 25-ter of Legislative Decree no. 231/2001 does not include advantage but only interest among the objective requirements).
Subsequently, Legislative Decree no. 38/2017 amended the way corruption between private individuals was regulated by modifying the offence of corruption, introducing the offence of incitement to corruption in art. 2635 bis, and tightening the disciplinary system (penalties for perpetrators, administrative sanctions for bodies under Leg. Decree 231/2001, ancillary sanctions).
The Decree aims to respond to the evaluation report concerning Italy of the *Group of States Against Corruption* (GRECO established by the Council of Europe upon approving the Criminal Convention on Corruption) of 20-23 March 2012, which highlighted the critical elements of Art. 2635 of the Civil Code in the version prior to the reform introduced by Law 190/2012, which in fact didn't resolve them altogether.
In particular, the third paragraph of Art. 2635, relevant for the purposes of the administrative liability of bodies under Legislative Decree 231/2001, redefines active corruption between private individuals, introducing the equal application of penalties to "extraneous" persons who, even through a third party, offer, promise or give money or other undue benefits to the persons indicated in the first and second paragraphs (the latter in the case of the offence being committed by someone who is subject to the management or supervision of one of the parties set out in the first paragraph). This type of offence (with the related system of possible penalties) is extended to conduct carried out against those who, within the organisational context of the body or company, cover, in any role, the non-top management positions already mentioned in the first paragraph of the article under examination.

Example: a member of the Consortium offers, promises or gives money or other undue benefits to a party belonging to a private body so that the latter may perform - in the interest of the Consortium - any act contrary to his duties or contrary to the obligation of loyalty towards his own body. For an offence to occur, the promise must be accepted (if it is not, art. 2635 bis of the Civil Code shall apply).

Incitement to corruption between private individuals (art. 2635-bis of the Civil Code)

Whoever offers or promises money or other undue benefits to directors, general managers, managers responsible for drawing up corporate accounting documents, statutory auditors and liquidators of private companies or bodies, and to those exercising managerial duties therein, in order to perform or omit acts in breach of the obligations inherent in their office or their duties of loyalty, shall, if the offer or promise is not accepted, be subject to the penalty set forth in the first paragraph of Article 2635, reduced by one third.
The penalty referred to in the first paragraph shall apply to directors, general managers, managers responsible for drawing up corporate accounting documents, statutory auditors and liquidators of private

companies or bodies, and to those exercising managerial duties therein, who demand for themselves or for others, even through third parties, the promise or gift of money or other benefits in order to perform or omit acts in breach of the obligations inherent in their office or their duties of loyalty, when the demand is not accepted. The offence shall be prosecuted upon suit filed by the victim.

The offence of incitement to corruption between private individuals consists in offering or promising money or other benefits to the persons referred to in paragraph 1 of Art. 2635 and the offer not being accepted. As per art. 2635, also in this case the envisaged assumption is that said subjects "demand" for themselves or for others, even through a third party, the promise or gift of money or other benefits, and that the insistent request is not accepted.
This is a further step up in the legislation's response to the seriousness of the offence of corruption, since it sets out to punish an offer/demand that is not accepted and does not in fact end in corruption.
As per art. 2635, also in this case the envisaged assumption is that said subjects "demand" for themselves or for others, even through a third party, the promise or gift of money or other benefits, and that the insistent request is not accepted. It sets the moment of committing the offence a step before the actual commission of corruption.
The reform is in alignment with the provisions of the Civil Code and of the Criminal Code: in Art. 322 of the Criminal Code, incitement to corruption is already envisaged and punished as an independent offence, thus overcoming the issue of the punishable nature of an attempt to commit the crime under art. 2635 of the Civil Code

Example: a member of the Consortium offers, promises or gives money or other undue benefits to a party belonging to a private body so that the latter may perform - in the interest of the Consortium - any act contrary to his duties or contrary to the obligation of loyalty towards his own body. For an offence to occur, the promise must be refused (if it is not, art. 2635 of the Civil Code shall apply).

Unlawful influence in meetings (art. 2636 of the Civil Code)

Whoever, with false or fraudulent acts, brings about a majority in a meeting, in order to obtain for themselves or others an unjust profit, shall be punished with imprisonment from six months to three years.

In this case, the body is only held liable if the conduct set forth in the article under consideration is perpetrated in the interest or to the advantage of the body. This makes it difficult to take the crime in question into consideration, as it is normally committed to promote personal interests and not those of the body. The typical conduct consists in someone bringing about a majority in a meeting, with false or fraudulent acts, in order to obtain for themselves or others an unjust profit. It should be noted that the legislator has changed the nature of the offence under examination, which has gone from an offence specific to certain classes of offender (i.e. one that can only be committed by directors) to a common offence. The legislator thus also considers punishable the behaviour of those who do not hold the position of director, e.g. consortium members.

Example: in order to obtain the favourable opinion of the Consortium Members' General Meeting, the Directors draw up and submit falsified documents during the meeting.

Agiotage (article 2637 of the Civil Code)

Whoever spreads false information, or sets up fake transactions or other artifices concretely likely to produce a significant change in the price of financial instruments that are unlisted or for which an application for authorisation to trade on a regulated market has not been submitted, or likely to significantly affect the reliance the public places in the financial stability of banks or banking groups, is punishable with a penalty of imprisonment from one to five years.

The commission of the offence requires the spreading of false information or the setting up of fake transactions or other artifices concretely likely to produce a significant change in the price of unlisted financial instruments, or likely to significantly affect the reliance the public places in the financial stability of

banks or banking groups.
The information spread must contain sufficiently precise facts. This includes neither rumours nor subjective forecasts. Information is considered false "when, by creating a false representation of the facts, it is such as to mislead operators and cause an undue rise or fall in prices." "Other artifices" means "any deceptive behaviour conducted to alter the normal evolution of prices".
For the offence to occur, it is sufficient to create a situation of danger, regardless of whether or not an artificial price change is effected.

Example: spreading false information about an upcoming commercial agreement between the Consortium and a company; information capable of bringing about a significant alteration in the price of said company's securities.

Hindering the activities of public supervisory authorities (art. 2638, paragraphs 1 and 2 of the Civil Code)

Any directors, general managers, managers responsible for drawing up corporate accounting documents, statutory auditors and liquidators of companies or bodies and other parties subject to or bound by law to public supervisory authorities, who, in legally required communications to said authorities, in order to hinder the performance of their supervisory duties, disclose untruthful material facts, even if subject to assessment, on the economic, capital or financial situation of the parties subject to supervision or, for the same purpose, conceal by other fraudulent means, either in whole or in part, facts that they should communicate concerning said situation, are punished with imprisonment for one to four years. This penalty shall also apply if the information relates to assets owned or administered by the company on behalf of third parties.
The same penalty shall apply to directors, general managers, statutory auditors and liquidators of companies or bodies and other parties subject to or bound by law to public supervisory authorities, who, in any form, also by omitting legally required communications to said authorities, consciously hinder their duties.
The penalty is doubled in the case of companies with securities listed on regulated markets in Italy or other states of the European Union or disseminated to the public to a significant extent pursuant to article 116 of Legislative Decree no. 58 of 24 February 1998.

The offence occurs upon disclosing, in legally required communications to the supervisory authorities, untruthful material facts, even if subject to assessment, on the economic, capital or financial situation of the parties subject to supervision, or concealing by other fraudulent means, either in whole or in part, facts that should be communicated concerning said situation, in order to hinder the performance of their supervisory duties.
This crime category responds to the need to coordinate and harmonise the numerous cases (of criminal conduct) concerning false statements in communications to supervisory bodies, attempts to hinder the performance of their duties, and omitted communications to the authorities, thus - according to the legislator - guaranteeing the full protection of corporate information (in this case to sectoral supervisory authorities) under criminal law.

Example: Directors state untruthful material facts in communications to supervisory bodies concerning the solidity of the consortium capital.

APPENDIX 3: OFFENCES RESULTING FROM BREACHES OF REGULATIONS ON HEALTH AND SAFETY AT WORK (LEG. DECREE NO. 81 OF 09/04/2008)

Involuntary manslaughter (art. 589 of the Criminal Code)

Whoever causes the death of a person by negligence shall be punished with imprisonment from six months to five years.
If the offence is committed in breach of the traffic regulations or those for the prevention of accidents at work, the punishment is imprisonment from two to seven years.
The penalty of imprisonment from three to ten years shall be applied if the offence is committed in breach of traffic regulations by:
a person under the influence of alcohol pursuant to article 186, paragraph 2, letter c) of Legislative Decree no. 285 of 30 April 1992, as amended; a person under the influence of drugs or psychotropic substances.
In the event of the death of several people, or the death of one or more persons and injury of one or more persons, the punishment that should be inflicted for the most serious of the crimes committed shall be applied, increased up to three times, but the penalty may not exceed fifteen years.

Example: the Consortium leases a building to expand its offices, instantly using it as a work place without making the necessary system upgrades. As a result, a fire occurs due to a malfunction and an employee dies.

Wrongful personal injury (art. 590 of the Criminal Code)

Whoever causes others a personal injury due to negligence shall be punished with imprisonment up to three months or a fine of up to EUR 309.
If the injury is serious, the punishment is imprisonment from one to six months or a fine from EUR 123 to EUR 619, and if it is extremely serious, imprisonment from three months to two years or a fine from EUR 309 to EUR 1,239.
If the offences in the second paragraph are committed in breach of the traffic regulations or those for the prevention of accidents at work, the penalty for serious injury is imprisonment from three months to one year or a fine from EUR 500 to EUR 2,000, and the penalty for extremely serious injury is imprisonment from one to three years. In cases of breach of the traffic regulations, if the offence is committed by a person under the influence of alcohol pursuant to article 186, paragraph 2, letter c) of Legislative Decree no. 285 of 30 April 1992, as amended, or by a person under the influence of drugs or psychotropic substances, the penalty for serious injury is imprisonment from six months to two years and the penalty for extremely serious injury is imprisonment from one year and six months to four years.
In the case of injury to several people, the punishment that should be inflicted for the most serious of the crimes committed shall be applied, increased up to three times, but the penalty of imprisonment may not exceed five years.
The crime is punishable upon suit filed by the victim, except in the cases provided for in the first and second paragraphs, limited to offences committed in breach of the regulations for the prevention of accidents at work or on health and safety at the workplace or that have caused an occupational disease.
Example: the Consortium buys a property, instantly using it as a work place without making the necessary system upgrades, so as to free a rented property within the agreed period. Due to a malfunction, an employee suffers an injury with a prognosis of more than forty days.

Aggravating circumstances (art. 583 of the Criminal Code)

The personal injury is considered serious, and three to seven years' imprisonment shall apply:
1) if the offence results in a disease that endangers the life of the victim, or an illness or inability to perform his or her ordinary occupations for more than 40 days;
2) if the offence results in the permanent weakening of a sense or organ.
The personal injury is considered extremely serious, and six to twelve years' imprisonment shall apply, if the offence results in:
1) a disease which is certainly or likely not to be cured;
2) the loss of a sense;
3) the loss of a limb, mutilation which renders the limb useless, loss of the use of an organ or of the ability to procreate, or a permanent and serious speech impediment;
4) deformation or permanent disfigurement of the face.

APPENDIX 4: COMPUTER CRIMES AND UNLAWFUL DATA PROCESSING

Counterfeiting of a public electronic document or of a document having evidential value (art. 491-bis of the Criminal Code)

If any of the counterfeiting set forth in this paragraph concerns a public or private computer document having evidential value, the provisions of said paragraph concerning respectively public acts and private deeds shall apply.

For this purpose, a computer document is any computer medium containing data or information having evidential value or programs specifically designed to process them.

Example: for an example common to all of the cases described in this Appendix, we can assume that a body official, in charge of information systems, unlawfully accesses the database of a public administration (and/or damages the data contained therein) to acquire information that will give the Consortium an advantage over other bodies concerning the acquisition of a given service.

Abusive access to a computer or online system (art. 615-ter of the Criminal Code)

Whoever gains unauthorised access to a computer or online system protected by security measures or remains there against the express or implied will of those who have the right to exclude them, shall be punished with imprisonment up to three years. The penalty is imprisonment from one to five years:

1) if the offence is committed by a public official or a person in charge of a public service, with abuse of power or breach of the duties inherent in the role or service, or whoever is even illegally exercising the profession of private detective, or abusing the capacity of system operator;

2) if, in order to commit the offence, the offender acts with violence against property or persons, or if he or she is obviously armed;

3) if the offence results in the destruction or damage to the system or total or partial interruption of its operation or the destruction or corruption of data, information or programs contained therein.

Where the facts referred to in the first and second paragraph concern computer or online systems of military interest or relating to public order or public safety or health or civil protection or otherwise in the public interest, the penalty is, respectively, imprisonment from one to five years and three to eight years. In the case under the first paragraph the offence is punishable upon suit filed by the victim; in other cases it is automatically prosecuted.

Illegal possession and dissemination of codes for accessing computer or online systems (art. 615-quater of the Criminal Code)

Whoever, in order to obtain for themselves or others a profit or to cause damage to others, illegally obtains, reproduces, distributes, discloses or delivers codes, passwords or other means of access to a computer or online system, protected by security measures, or in any case provides indications or instructions suitable for said purpose, shall be punished with imprisonment of up to one year and a fine of up to EUR 5,164.

The penalty is imprisonment from one to two years and a fine from EUR 5,164 to EUR 10,329 if any of the circumstances apply under items 1) and 2) of paragraph four of art. 617 quater.

Dissemination of computer equipment, devices or programs aimed at damaging or interrupting a computer or online system (art. 615-quinquies of the Criminal Code);

Whoever distributes, discloses or delivers a computer program developed by himself or by others in order to illegally damage a computer or online system, or the information, data or programs contained therein or pertaining thereto, or in order to promote the interruption, total or partial, or the alteration of its operation, shall be punished with imprisonment of up to two years and a fine of up to EUR 10,329.

Interception, prevention or unlawful interruption of computer or online communications (art. 617-quater of the Criminal Code)

Whoever fraudulently intercepts a communication or conversation, whether by telephone or telegraph, between other people or in any case not directed at them, or interrupts or prevents same, shall be punished with imprisonment from six months to four years.

Unless the offence represents a more serious crime, the same penalty shall be applied to whoever reveals the content of the above communication or conversation, either wholly or in part, with any means of public information.
The crimes are punishable upon suit filed by the victim. However, they are automatically prosecuted and the penalty is imprisonment from one to five years if the offence is committed: to the detriment of a public official or a person in charge of a public service, in exercising or as a result of the duties inherent in the function or service; by a public official or a person in charge of a public service, with abuse of power or breach of the duties inherent in the function or service; or by whoever exercises even illegally the profession of private investigator

Installation of equipment capable of intercepting, preventing or interrupting computer or online communications (art. 617-quinquies of the Criminal Code)

Whoever, except in the cases permitted by law, installs equipment designed to intercept, prevent or interrupt communications relating to a computer or online system or between multiple systems, shall be punished with imprisonment from one to four years.
The penalty is imprisonment from one to five years in the cases set forth by paragraph four of art. 617 quater.

Damage to information, data and computer programs (art. 635-bis of the Criminal Code)

Unless the offence represents a more serious crime, whoever destroys, deteriorates or renders useless, in whole or in part, the computer or online systems of others, or the programs, information or data of others, shall be punishable with imprisonment from six months to three years. If one or more of the circumstances referred to in the second paragraph of Article 635 occurs or if the deed is committed by abusing the role of system operator, the penalty is imprisonment for one to four years.

Damage to information, data and computer programs used by the State or another public agency or body providing public services (art. 635-ter of the Criminal Code)

Unless the offence represents a more serious crime, whoever commits an act intended to destroy, damage, delete, alter or suppress computer information, data or programs used by the State or other public body or pertaining thereto, or providing public services, shall be punished with imprisonment from one to four years. Should the act result in the destruction, deterioration, deletion, alteration or suppression of the computer information, data or programs, the penalty is imprisonment from three to eight years. If the circumstance referred to in point 1) of the second paragraph of Article 635 occurs or if the deed is committed by abusing the role of system operator, the penalty is increased.

Damage to computer and online systems (art. 635-quater of the Criminal Code)

Unless the offence represents a more serious crime, whoever, by the conduct under article 635-bis, or by introducing or transmitting data, information or programs, destroys, damages, renders unusable, either wholly or in part, the computer or online systems of others or severely hinders their operation, shall be punished with imprisonment from one to five years. If the circumstance referred to in point 1) of the second paragraph of Article 635 occurs or if the deed is committed by abusing the role of system operator, the penalty is increased.

Damage to computer or online systems providing public services (art. 635-quinquies of the Criminal Code)

If the act under article 635-quater is aimed at destroying, damaging, rendering unusable, either wholly or in part, computer or online systems providing a public service, or at severely hindering their operation, the penalty shall be imprisonment from one to four years.

If the act results in destruction or damage of the computer or online system providing a public service or if the latter is rendered unusable, either wholly or in part, the penalty shall be imprisonment from three to eight years.
If the circumstance referred to in point 1) of the second paragraph of Article 635 occurs or if the deed is committed by abusing the role of system operator, the penalty is increased.

APPENDIX 5: TAX CRIMES

Fraudulent declarations through the use of invoices or other documents for non-existent transactions (art. 2 of Legislative Decree 74/2000)

Whoever, in the relevant tax returns, indicates fictitious liabilities by using invoices or other documents for non-existent transactions to evade income tax or value added tax shall be punished with imprisonment for four to eight years.
The fact shall be deemed to have been committed using invoices or other documents for non-existent operations when such invoices or documents are registered in compulsory accounting records or are held as evidence for the financial administration.
If the fictitious liabilities are for less than EUR 100,000, a term of imprisonment from one year and six months to six years shall apply.

Law no. 157 of 19 December 2019, converting Leg. Decree 124/2019 (the so-called tax decree), included in the list of predicate offences also certain tax offences, in particular under amended art. 2 of Legislative Decree no. 74/2000. Currently, penalties are applied to whoever, in the relevant tax returns, indicates fictitious liabilities by using invoices or other documents for non-existent transactions (e.g. receipts, fuel cards, waybills, transport documents, debit/credit notes) to evade income tax (e.g. the corporate income tax IRES) or value added tax, when such invoices or documents are registered in compulsory accounting records or are held as evidence for the financial administration. The prison sentence and, correspondingly, the financial penalty provided for in art. 25-*quinquiesdecies* of the Decree is, however, reduced if the fictitious liabilities are for less than EUR 100,000. The offence consists in the insidious and artificial representation of the facts, accompanied by a specific mode of conduct toward the tax authorities, consisting in the use of false evidence to conceal the taxpayer's real income situation: in this lies the difference compared to the offence referred to in art. 3 of Legislative Decree no. 74/2000, the commission of which requires that the "tax fraud" not be assisted by the use of such evidentiary documents.
The offence relates to any tax return – not just the annual income tax return – and only sanctions the indication therein of liabilities that determine either a fictitiously low taxable base (e.g. as a result of fraudulently increasing in the costs incurred to generate income) or a fictitiously lower tax rate (e.g. due to undue deductions). As regards the non-existent transactions stated in the invoices, the offence exists both in the event of the total non-existence of the economic transactions and in the case of their partial non-existence (e.g., a sale of goods for a lower amount than that indicated in the invoice); moreover, the non-existence of the transactions may be either objective – the service indicated in the invoice never existed – or subjective – the service occurred, but between subjects other than those indicated in the invoice. Finally, the crime in question is punished only on a malicious basis.

Example: the Consortium indicates in the annual income tax returns certain costs for operations that never actually occurred and that it documents with false invoices.

Fraudulent declarations by means of other expedients (art. 3 of Leg. Decree 74/2000)

Outside the cases provided for in Article 2, whoever, in the relevant tax returns, indicates fictitiously low assets or fictitious liabilities, credits or withholdings by carrying out subjectively or objectively simulated operations or by using false documents or other fraudulent means such as to hinder investigations and mislead the financial administration, in order to evade income tax or value added tax, shall be punished with imprisonment for three to eight years, when, jointly:

a) any single evaded tax is higher than EUR 30,000;
b) the total amount of the assets deducted from taxation, also by indicating fictitious liabilities, is more than

5% of the total assets indicated in the tax return, or in any case is more than EUR 1.5 million; or when the total amount of fictitious credits and withholdings made to evade tax is higher than 5% of said tax or in any case EUR 30,000.

The fact shall be deemed to have been committed using false documents when such documents are registered in compulsory accounting records or are held as evidence for the financial administration.
For the purposes of applying the provision of paragraph 1, "fraudulent means" is not to be intended as the mere violation of the obligations of invoicing and recording assets in accounting records or the mere indication in invoices or records of fictitiously low assets.

Included among the predicate offences under Law 157/2019 is also the case mentioned in art. 3 of Legislative Decree no. 74/2000: as stated above, this type of fraudulent declaration is a "residual" offence compared to that governed by art. 2 of the said decree, because here the punished conduct is not using false invoices, but – alternatively – having carried out subjectively or objectively simulated operations, or using false documents (e.g. counterfeit invoices) or other fraudulent means to hinder investigations and mislead the financial administration, with the aim of evading income tax and VAT. Moreover, penalties apply in the event of indicating in tax returns both fictitiously low assets and fictitious liabilities, credits and withholding taxes. Unlike the case of fraudulent declarations through the use of invoices or other documents for non-existent transactions, for the offence in question a double penalty threshold is provided. AS per art. 2 of Leg. Decree 74/2000, also for fraudulent declarations by means of other expedients, the fact shall be deemed to have been committed "using false documents" when such documents are registered in compulsory accounting records or are held as evidence for the financial administration. To understand the offence correctly, it should be pointed out that the law defines "subjectively or objectively simulated operations" as apparent transactions, other than those resulting in tax evasion (i.e. the use of facts, acts and contracts which, although formally in compliance with the tax rules, have the sole purpose of realising an undue tax advantage as the effect of the transaction), arranged without the express desire to actually implement them, or relating to missing traders. The law also provides some references for the definition of "fraudulent means": in positive terms, these are artificial acts or omissions carried out in violation of a specific legal obligation, which lead to a false representation of the facts; in negative terms, they are not simply a violation of the obligations of invoicing and recording assets in accounting records or the mere indication in invoices or records of fictitiously low assets. In short, simple under-invoicing (known as working under the table) does not fall within the case under examination. Again, the offence is punishable only on a malicious basis.

Example: the Consortium indicates in the annual income tax returns a fictitiously low amount of revenues, drawing up a false "list" of environmental contributions received by consortium members

Inaccurate declarations (art. 4 of Leg. Decree 74/2000)

Outside the cases provided for in Articles 2 and 3, whoever, in the relevant tax returns, in order to evade income tax or value added tax, indicates fictitiously low assets or non-existent liabilities, shall be punished with imprisonment for two years to four years and six months when, jointly:

a) any single evaded tax is higher than EUR 100,000;
b) the total amount of the assets deducted from taxation, also by indicating non-existent liabilities, is more than 10% of the total assets indicated in the tax return, or in any case more than EUR 2,000,000.

For the purpose of applying the provision of paragraph 1, account shall not be taken: of incorrect classifications; of the evaluation of objectively existing assets or liabilities, with respect to which the criteria actually applied have in any case been indicated in the financial statements or in other relevant documentation for tax purposes; of any breach of the financial reporting criteria; of non-pertinence; of the non-deductibility of real liabilities.

Outside the cases provided for in paragraph 1-bis, evaluations which, overall, differ by less than 10% from the correct ones shall not give rise to a punishable offence. The amounts included in this percentage shall not be taken into account when verifying that the penalty thresholds referred to in paragraphs 1 a) and b) (1) have been exceeded.

The offence referred to in art. 4 of Legislative Decree no. 74/2000, introduced by Legislative Decree no. 75/2020, punishes, outside the cases provided for in articles 2 and 3 described above, whoever, in order

to evade income tax or VAT, indicates in the relevant tax returns fictitiously low assets or non-existent liabilities, when (a) any single evaded tax is higher than EUR 100,000; and (b) the total amount of the assets deducted from taxation, also by indicating fictitious liabilities, is more than 10% of the total assets indicated in the tax return, or in any case more than EUR 2,000,000.

It should be noted, however, that according to the provisions of art. 25-*quinquiesdecies*, paragraph 1-*bis*, of the Decree, in order to punish an offence of inaccurate declarations, also against a body, this must have been committed within the context of transnational fraudulent systems – i.e. in at least two different countries – and in order to evade (only) value added tax (the corporate income tax IRES is therefore excluded) for a total amount of no less than EUR 10,000,000.

Example: the Consortium indicates non-existent cost items in VAT returns, which lead it to save more than EUR 10,000,000 in taxes.

Omitted declarations (art. 5 of Leg. Decree 74/2000)

Whoever, in order to evade income or value added tax, does not submit the related mandatory tax returns is punished with imprisonment for two to five years when any single evaded tax is higher than EUR 50,000.
The term of imprisonment is two to five years for whoever does not submit a mandatory withholding agents' declaration, when the amount of unpaid withholdings exceeds EUR 50,000.
For the purposes of the provisions of paragraphs 1 and 1-bis, submitting a declaration up to 90 days after the deadline for delivery or not signed or not drawn up on the prescribed printed form shall not be regarded as a failure to submit same.

The crime referred to in art. 5 of Legislative Decree no. 74/2000, also introduced by Legislative Decree no. 75/2020, disciplines – in addition to cases concerning the time of submitting returns – also the failure to submit income tax returns.
As mentioned for the case relating to art. 4 of Legislative Decree 74/2000, pursuant to the provisions of art. 25-*quinquiesdecies*, paragraph 1-*bis*, of the Decree, in order to punish the failure to submit tax returns, also against a body, this must have been committed within the context of transnational fraudulent systems – i.e. in at least two different countries – and in order to evade (only) value added tax (the corporate income tax IRES is therefore excluded) for a total amount of no less than EUR 10,000,000.

Example: the Consortium fails to submit the annual VAT returns.

Issuing invoices or other documents for non-existent operations (art. 8 of Leg. Decree 74/2000)

Whoever issues invoices or other documents for non-existent transactions in order to allow third parties to evade income or value added tax is punished with imprisonment for four to eight years.
For the purposes of applying the provisions of paragraph 1, the issuance of multiple invoices or documents for non-existent transactions during a single tax period shall be regarded as a single offence. If the untruthful amount stated in the invoices or documents, per tax period, is less than EUR 100,000, the penalty applied shall be imprisonment from one year and six months to six years.

Example: the Consortium issues invoices for non-existent transactions in order to enable a supplier to evade taxes.

Concealment or destruction of accounting documents (art. 10 of Leg. Decree 74/2000)

Unless the offence represents a more serious crime, whoever, in order to evade income or value added tax, or to allow such an evasion by third parties, conceals or destroys all or part of any accounts or records that must be archived by law, so as not to permit the reconstruction of revenues or turnover, shall be punished with imprisonment for three to seven years.

Example: an employee of the Consortium's Administration Area destroys accounting documentation whose storage was mandatory, so that the financial administration cannot reconstruct CONAI's turnover.

Undue offsetting (art. 10-*quater* of Leg. Decree 74/2000)

Whoever does not pay the sums due by offsetting, in accordance with Article 17 of Legislative Decree no. 241 of 9 July 1997, non-receivable credits, for an annual amount exceeding EUR 150,000 shall be punished with imprisonment for six months to two years.
Whoever does not pay the sums due by offsetting, in accordance with Article 17 of Legislative Decree no. 241 of 9 July 1997, non-existent credits, for an annual amount exceeding EUR 150,000 shall be punished with imprisonment from one year and six months to six years.

The offence of undue offsetting referred to in art. 10-*quater* Leg. Decree 74/2000, introduced by Leg. Decree no. 75/2020, punishes, in the first paragraph, whoever does not pay the sums due by offsetting, in accordance with art. 17 of Leg. Decree 241/1997, non-receivable credits, for an annual amount exceeding EUR 50,000. Moreover, the second paragraph punishes with the same penalty whoever does not pay the sums due by offsetting, in accordance with art. 17 of Legislative Decree no. 241/1997, non-existent credits exceeding EUR 50,000.
As the Court of Cassation recently pointed out, the offence is deemed to have been committed both in the case of vertical offsetting (i.e. between debts and credits relating to the same tax) and in the case of horizontal offsetting (i.e. between debts and credits relating to different taxes).
As mentioned for the cases relating to articles 4 and 5 of Legislative Decree 74/2000, pursuant to the provisions of art. 25-*quinquiesdecies*, paragraph 1-*bis*, of the Decree, in order to punish undue offsetting, also against a body, this must have been committed within the context of transnational fraudulent systems – i.e. in at least two different countries – and in order to evade (only) value added tax for a total amount of no less than EUR 10,000,000.

Example: the Consortium offsets non-existent credits to obtain VAT savings of over EUR 10,000,000.

Fraudulent withholding of taxes (art. 11 of Leg. Decree 74/2000)

Whoever, in order to avoid payment of income or value added tax or interest or administrative penalties relating to such taxes for a total amount exceeding EUR 50,000, simulates the disposal of or performs other fraudulent acts on his own assets or those of others such as to render wholly or partially ineffective the compulsory collection of tax debts, shall be punished with imprisonment from six months to four years. If the amount of taxes, penalties and interest is greater than EUR 200,000, the term of imprisonment is from one year to six years.
Whoever, in order to obtain for himself or for others a partial payment of taxes and ancillary tax obligations, indicates in the documentation submitted for the purposes of tax transaction procedures fictitiously low assets or fictitious liabilities for an overall amount greater than EUR 50,000, shall be punished with imprisonment for six months to four years. If the above amount is greater than EUR 200,000, the term of imprisonment is from one year to six years.

Example: the Board of Directors agrees a false disposal of Consortium assets in order to hinder the compulsory collection of tax debts.

APPENDIX 6: OTHER ILLEGAL CASES

Self-laundering (Article 648-*ter*.1 of the Italian Criminal Code)

A term of imprisonment of two to eight years and a fine of EUR 5,000 to EUR 25,000 is imposed on whoever, having committed or participated in committing a crime, uses, substitutes or transfers, in economic, financial, entrepreneurial or speculative activities, the money, goods or other benefits deriving from the commission of said crime, so as to concretely hinder the identification of their criminal origin.

The penalty is imprisonment from one to four years and a fine from EUR 2,500 to EUR 12,500 if the offence involves money, goods or other property from the perpetration of a minor crime punishable with a term of imprisonment of minimum six months to maximum one year.

The penalty is reduced if the money, goods or other property come from a crime for which the term of imprisonment is less than five years.

*The penalties provided for in the first paragraph shall in any case apply if the money, goods or other property come from a crime committed under the conditions or for the purposes referred to in Article 416-*bis*.1.*

Outside the cases of the previous paragraphs, conduct where the money, goods or other property are intended for mere personal use or enjoyment are not punishable.

The penalty is increased if the offences are committed in the conduct of a banking or financial activity or another professional activity.

The penalty is reduced up to half for those who effectively act to prevent the conduct from having further consequences or to secure evidence of the offence and identification of the goods, money and other property coming from the crime.

The last paragraph of article 648 is applied.

It is worth noting that through Legislative Decree 195/2021, the legislator made amendments to the Criminal Code, which concern some of the offences mentioned in art. 25-*octies* of Leg. Decree 231/2001. In particular, the Decree amended all the cases related to laundering (i.e. receiving, laundering and using money, goods or property of illicit origin, and self-laundering), determining that the latter can be committed even if the predicate offence is an intentional crime or a minor violation.
In particular, art. 1 of Legislative Decree no. 195/2021 amended art. 648-*bis*, paragraph 1, and art. 648-*ter.*1, paragraph 1, of the Criminal Code, in both cases deleting the word “intentional ” and therefore also making punishable the laundering and self-laundering of money, goods or property from involuntary crimes.

Example: the body’s legal representative uses, as part of the Consortium’s economic activities, profits deriving from the commission of a previous tax fraud, using fraudulent means to objectively hinder the determination of the criminal origin of the sums employed.

GUIDELINES ON THE PROTECTION OF PARTIES WHO REPORT CRIMES OR IRREGULARITIES (known as *Whistleblowing*)

CONA
CONSORZIO NAZIONALE IMBALLA

1. Introduction –

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