

# ATAG

DAL 1947 DÀ VITA AI TUOI PROGETTI

## MANAGEMENT AND CONTROL MODEL

PURSUANT TO LEGISLATIVE DECREE 231/2001

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## GENERAL PART

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The administrative liability of legal entities has been introduced into the Italian legal system in execution of various international conventions.

Legislative Decree 8 June 2001, no. 231 (*breviter* Decree 231), containing the "*Discipline of the administrative liability of legal entities, companies and associations even without legal personality*", was therefore included in our legal system due to the need to honour non-postponable supranational commitments.

The extension of the scope of the legislation over time has been considerable.

The innovative scope of the legislation in question lies in having developed a new form of liability for entities with legal personality, companies and associations even without legal personality for administrative offences dependent on crime.

Therefore, the responsibility of the material perpetrator of the crime is accompanied by that of the entity, in the sense considered.

In fact, the expression "*liability for crimes of entities*" means the attribution to a collective subject of a liability consequent to and/or related to the commission of an unlawful act by a natural person belonging to the entity itself.

Although the law does not require legal entities to adopt a management and control model, its implementation is certainly a suitable tool for the prevention and/or limitation of the entity's liability pursuant to Legislative Decree 231/2001.

Indeed, as clearly expressed by the Guidelines dictated by Confindustria, "*The extension of liability aims to involve in the punishment of certain criminal offences the equity of the entities and, ultimately, the economic interests of shareholders, who, up until the force of the law in question, did not suffer consequences from the commission of crimes committed, to the benefit of the company, by directors and/or employees. The principle of personality of criminal liability left them, in fact, free from disciplinary consequences, other than any compensation for damages, if and insofar as existing. In terms of criminal consequences, in fact, only articles 196 and 197 of the Criminal Code envisaged (and still envisage) a civil obligation for the payment of fines or sanctions imposed, however only in the event of insolvency of the perpetrator of the act. Regulatory innovation, therefore, is of considerable momentum, as neither the body, nor the shareholders of companies or associations can be said to be extraneous to the criminal proceedings for crimes committed for the benefit or in the interest of the entity. This obviously results in an interest of those subjects (shareholders, associates, etc.) who participate in the equity affairs of the institution, in the control of the regularity and legality of the social work*".

The requirements of the MOGC (Organisation, Management and Control Model), which can be inferred from articles 6 and 7 of Decree 231 and the guidelines of the main trade associations can be summarised as follows:

- a) risk analysis, consisting in identifying the corporate areas and/or activities at risk of crime and the possible methods of implementing crimes in the aforementioned areas and activities (so-called risk assessment);

- b) system of protocols, procedures and controls aimed at regulating the Entity's activities in areas at risk of crime, including the methods of managing financial resources to prevent the commission of crimes;
- c) Supervisory Body that meets the requirements of autonomy and independence, professionalism and continuity of action;
- d) provision of information obligations towards the Supervisory Body;
- e) disciplinary system suitable for sanctioning any violation of the Model;
- f) provision of continuous updating of the Model based on changes in the Entity's activity and/or organisation and any unlawful conduct and/or violations of the Model.

All the requirements described above are necessary for a MOGC to be considered suitable for preventing the relevant predicate offences pursuant to Legislative Decree 231/2001.

## The legislation

### *Legislative Decree no. 231 of 08 June 2001*

Legislative Decree 8 June 2001, no. 231 (hereinafter also "Decree" or "Legislative Decree 231/2001"), pursuant to art. 11 of the law of 29 September 2000, no. 300, concerns the administrative liability of legal entities, companies and associations even without legal personality. This regulatory system outlines the general principles and criteria for attributing administrative liability for crimes.

This decree intends to adapt the internal legislation on the liability of legal entities to some international conventions:

1. Brussels Convention of 26 July 1995 concerning the protection of the financial interests of the European Community;
2. Convention of 26 May 1997 on the fight against corruption of officials of the European Community and of the Member States;
3. OECD Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions.

Article 5 of the aforementioned decree holds the entity liable for crimes committed in its interest or to its advantage:

- by persons who hold positions of representation, administration or management or of one of its organisational units with financial and functional autonomy, as well as by persons who exercise, also de facto, management and control thereof<sup>1</sup>;
- by individuals subject to the management or supervision of one of the above subjects<sup>2</sup>.

The entity is not liable if the persons indicated have acted in their own exclusive interest or that of third parties.

The provision of administrative liability materially involves the equity of the entities and therefore the economic interests of the shareholders in the punishment of the offences. Among the sanctions that can be imposed, those certainly more burdensome for the entity are represented by disqualification measures, such as suspension or revocation of licences and concessions, prohibition to contract with the public administration, disqualification from exercising the activity, exclusion or revocation of funding and contributions, ban on advertising goods and services.

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<sup>1</sup> By way of example, individuals in senior positions are considered to fall into this category, i.e. the Chair, Directors, General Managers, the Director of a branch or a division, as well as the de facto director or sole shareholder who takes care of the management.

<sup>2</sup> All subjects having a functional relationship with the entity shall be considered "subordinates" to the top management. Therefore, in addition to subordinate workers, this category also includes persons who maintain an agency or commercial representation relationship with the Company, or other coordinated and continuous collaboration relationships that are mainly personal and without the constraint of subordination (project work, administered, placement, summer orientation traineeship), or any other relationship contemplated by article 409 Code of Civil Procedure as well as occasional workers.

## The crimes

As for the crimes to which the regulation in question applies, they are currently of the following types:

1. crimes committed in relations with the Public Administration;
2. IT crimes and illegal data handling;
3. crimes regarding counterfeiting of money, instruments of public credit, tax stamps and identification instruments or distinctive signs;
4. some types of corporate crimes;
5. terrorist crimes or crimes aimed at subverting democratic order;
6. crimes against the individual personality;
7. crimes of abuse of privileged information and market manipulation;
8. some crimes committed in violation of accident prevention and occupational health and safety regulations;
9. receiving, self-laundering, money laundering and using money, goods or utilities of illicit origin;
10. transnational crimes;
11. organised crime offences;
12. crimes against industry and commerce;
13. copyright infringement crimes;
14. crimes against the administration of justice;
15. environmental crimes;
16. crimes relating to recruitment policy.

Specifically, the crimes to which the regulation applies are the following:

- 1) Crimes committed in relations with the public administration and against property (articles 24 and 25)
  - a) fraud to the detriment of the State, another public body or the European Union;
  - b) computer fraud to the detriment of the State or other public entity;
  - c) embezzlement to the detriment of the State or the European Union;
  - d) undue receipt of disbursements to the detriment of the State or the European Union;
  - e) aggravated fraud to obtain public funds;
  - f) extortion;
  - g) corruption for an official act;
  - h) corruption for an act contrary to official duties;

- i) corruption in judicial acts;
  - j) bribery of a person in charge of a public service;
  - k) incitement to corruption;
  - l) embezzlement, extortion, corruption and incitement to corruption of members of the bodies of the European Communities and of officials of the European Communities and of foreign States;
- 2) Computer crimes and unlawful data processing (art. 24-bis)
- a) unlawful access to an IT or electronic system;
  - b) interception, impediment or unlawful interruption of IT or electronic communications;
  - c) installation of equipment aimed at intercepting, impeding, or interrupting IT or telematic communications;
  - d) damage to information, data and computer programmes;
  - e) damage to information, data and computer programmes used by the State or by another public entity or in any case of public utility;
  - f) damage to computer and telematic systems;
  - g) damage to IT or telematic systems of public utility;
  - h) unlawful possession and dissemination of IT or electronic systems' access codes;
  - i) dissemination of IT equipment, devices or programs aimed at damaging or interrupting an IT or electronic system;
  - j) forgery relating to IT documents;
  - k) IT fraud by the entity carrying out electronic-signature certification services;
- 3) Counterfeiting money, public credit cards, revenue stamps and identification instruments or signs (art. 25-bis)
- a) counterfeiting of money, spending and introduction into the State, jointly, of counterfeit money;
  - b) alteration of money;
  - c) spending and introduction into the State of counterfeit money, not acting jointly;
  - d) forgery of revenue stamps, introduction into the State, purchase, possession or putting into circulation of forged revenue stamps;
  - e) counterfeiting watermarked paper in use for the manufacture of public credit cards or duty stamps;
  - f) manufacturing or possession of watermarked paper for the purpose of counterfeiting currency, public credit instruments, tax stamps or watermarked paper;
  - g) use of counterfeit or altered duty stamps.
  - h) counterfeiting, alteration or use of trademarks or distinctive signs or patents, models and designs;



i) introduction into the state and trade of products with false signs;

4) Company crimes (art. 25-ter)

a) false corporate communications;

b) false corporate communications to the detriment of the company, shareholders or creditors;

c) forgery in prospectus<sup>3</sup>;

d) forgery in the reports or communications of the independent auditors<sup>4</sup>;

e) prevented control<sup>5</sup>;

f) fictitious capital formation;

g) undue return of contributions;

h) illegal distribution of profits and reserves;

i) illicit operations on shares or quotas of the company or of the parent company;

j) operations to the detriment of creditors;

k) undue distribution of corporate assets by liquidators;

l) unlawful influence on the meeting;

m) insider trading;

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<sup>3</sup> Article 34 of the Law of 28 December 2005, no. 262 (containing provisions for the protection of savings and the regulation of financial markets and also known as the "Savings Law") has included the case of forgery in a prospectus in the category of crimes envisaged by Legislative Decree 58/1998 (TUF), in detail in art. 173-bis, repealing, at the same time, art. 2623 Civil Code

The consequence of the aforementioned repeal would seem to coincide with the removal of the offence of forgery in a prospectus from the category of the so-called predicate offences and, therefore, with the consequent loss of the administrative liability of the entity.

This would seem to be the thesis accepted by the majority doctrine; however, we deem it appropriate to give relevance to this crime, on the assumption of an orientation, albeit a minority one, which believes that, despite the transposition of the case in the TUF, the forgery in the prospectus continues to be relevant for the purpose of incurring the entity's liability

<sup>4</sup> Article 37(34) of Legislative Decree 27 January 2010, no. 39 repealed article 2624 of the Civil Code (forgery in the reports or communications of the independent auditors), introducing at the same time art. 27, which provides for the case of false reports or communications by those in charge of the statutory audit; the new case is more widely applicable than the previous one, as it also governs the offence committed by the auditor of a public interest entity. The type of crime referred to in art. 25-ter has therefore not been repealed from the list of offences, but has only changed its position (as it is no longer provided for by the Civil Code, but by Legislative Decree 39/2010); therefore, even in the absence of an express connection between Legislative Decree 231/2001 and the new type of offence, it is however deemed appropriate to leave the reference to the crime of forgery in the reports or communications of the heads of the statutory audit, which consequently continues to be analysed in the mapping phase of the sensitive activities and processes".

<sup>5</sup> Article 37, paragraph 35, of Legislative Decree 27 January 2010, no. 39 amended article 2625, first paragraph, of the civil code by excluding auditing from the list of activities whose impediment by the directors is sanctioned by the law; the prevented control by the auditors is currently governed by art. 29 Legislative Decree 39/2010, which provides that "1. the members of the administrative body who, by concealing documents or with other suitable artifices, prevent or in any case hinder the carrying out of the statutory auditing activities are punished with a fine of up to 75,000 euro. 2. If the conduct referred to in paragraph 1 has caused damage to the shareholders or third parties, the penalty of a fine of up to 75,000 euro and imprisonment of up to 18 months is applied, 3. In the case of statutory auditing of public interest entities, the penalties referred to in paragraphs 1 and 2 are doubled. 4. The procedure is ex officio".

- n) obstacle to the exercise of the functions of public supervisory authorities;
  - o) failure to disclose the conflict of interest;
  - p) corruption between private individuals;
  - q) Incitement to corruption between private individuals and accessory penalties;
- 5) Crimes for the purposes of terrorism and subversion of the democratic order (art. 25-quater)
- 6) Crimes against the individual (articles 24-quater.1 and 25-quinquies)
- a) reduction or maintenance in slavery or servitude;
  - b) child prostitution;
  - c) child pornography;
  - d) possession of pornographic material;
  - e) virtual pornography;
  - f) tourist initiatives aimed at the exploitation of child prostitution;
  - g) human trafficking;
  - h) purchase and sale of slaves;
  - i) practices of female genital mutilation;
- 7) Insider dealing and market manipulation crimes (art. 25-sexies)
- 8) Manslaughter and grievous or very grievous bodily harm committed in violation of the laws on accident prevention and on the protection of hygiene and health in the workplace (art. 25-septies)
- 9) Receiving, laundering, self-laundering and using money, goods or benefits of unlawful origin (art. 25-octies)
- 10) Transnational crimes<sup>6</sup>
- a) criminal association;
  - b) Mafia-type association;
  - c) criminal association aimed at smuggling of foreign tobacco;
  - d) association aimed at the illicit trafficking of narcotic or psychotropic substances;
  - e) provisions against clandestine immigration;
  - f) incitement to not make statements or to make false statements to the judicial authorities;
  - g) personal aiding and abetting;
- 11) Organised crime (art. 24-ter)

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<sup>6</sup> It should be noted that the commission of so-called "transnational" crimes is relevant only if the crime is punished with a prison sentence of no less than a maximum of four years and an organised criminal group is involved, and it (i) is committed in more than one State (ii) is committed in one State, but a substantial part of its preparation, planning, direction or control takes place in another State (iii) is committed in one State, but an organised criminal group is involved in it engaged in criminal activities in more than one State (iv) is committed in one State but has substantial effects in another State.

- a) crimes of criminal conspiracy aimed at enslavement or maintenance, human trafficking, the purchase and sale of slaves and crimes relating to violations of the provisions on clandestine immigration;
- b) Mafia-type associations, including foreign ones;
- c) political-Mafia electoral exchange;
- d) abduction of a person for the purpose of extortion;
- e) criminal association aimed at the sale of narcotic or psychotropic substances;
- f) criminal association;
- g) crimes concerning the manufacture and trafficking of weapons of war, explosives and clandestine weapons;

12) Crimes against industry and trade (art. 25-bis.1)

- a) disturbed freedom of industry and commerce;
- b) fraud in the exercise of trade;
- c) sale of non-genuine foodstuffs as genuine;
- d) sale of industrial products with misleading signs;
- e) manufacture and trade of goods made by usurping industrial property rights;
- f) counterfeiting of geographical indications or designations of origin for agri-food products;
- g) unlawful competition with threats or violence;
- h) fraud against domestic industries;

13) Crimes relating to breach of copyright (art. 25-nonies)

14) Crimes against the administration of justice (art. 25-decies)

15) Environmental crimes (art. 25-undecies)

- a) discharge of industrial wastewater containing dangerous substances without or in violation of the requirements imposed with the authorisation or by the competent authorities (art. 317, paragraph 3, single environmental text - TUA);
- b) discharge of industrial wastewater containing dangerous substances in violation of the table limits or the more restrictive limits set by the Regions or autonomous Provinces or by the competent Authority (art. 137, paragraph 5, first sentence, TUA);
- c) discharge into the sea by ships or aircraft of substances or materials whose spillage is prohibited, except in minimum quantities and authorised by the competent authority (art. 137, paragraph 13, TUA);
- d) unauthorised discharge (absent, suspended or revoked authorisation) of industrial wastewater containing dangerous substances (art. 137, paragraph 2, TUA);
- e) discharge of industrial wastewater containing dangerous substances in violation of the table limits or the more restrictive limits set by the Regions or autonomous Provinces or by the competent Authority (art. 137, paragraph 5, second sentence, TUA);

- f) discharges onto the ground and discharges into the subsoil and groundwater in violation of the prohibitions set out in articles 103 and 104 of the TUA (art. 137, paragraph 11, of the TUA);
- g) collection, transport, recovery, disposal, trade and intermediation of waste in the absence of the required authorisation, registration or communication (art. 256, paragraph 1, letter a) TUA);
- h) temporary storage at the place of production of hazardous medical waste (art. 256, paragraph 6, first sentence of the TUA);
- i) construction and management of an unauthorised landfill (art. 256, paragraph 3, first sentence of the TUA);
- j) prohibited waste mixing activities (art. 256, paragraph 5, TUA);
- k) pollution of the soil, subsoil, surface water and groundwater with the exceeding of the risk threshold concentrations and omission of the relative communication to the competent bodies (without prejudice to reclamation) (art. 257, paragraph 1, TUA);
- l) shipments of waste constituting illicit traffic. The conduct is aggravated if it concerns hazardous waste (art. 259, paragraph 1, TUA);
- m) transfer, reception, transport, export, import or illegal management of large quantities of waste (art. 260, paragraph 1, TUA);
- n) preparation of a false waste analysis certificate (art. 260-bis, paragraph 6, TUA);
- o) transport of hazardous waste without a hard copy of the SISTRI (waste traceability control system) form (art. 260 bis, paragraph 7, second and third sentence TUA);
- p) violation of the emission limits and related provisions (art. 279, paragraph 5);
- q) Crimes envisaged by Law 150/1992 - Discipline of crimes relating to the application in Italy of the convention on international trade in endangered animal and plant species, signed in Washington on 03.03.1973, referred to in Law 874/1975 and of Regulation (EEC) no. 3626/82, and subsequent amendments, 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;
- r) import, export, possession, use for profit, purchase, sale, display or possession for sale or for commercial purposes of protected species;
- s) possession of live specimens of mammals and reptiles of wild species or reproduced in captivity that constitute a danger to public health and safety;
- t) import, export, possession, use for profit, purchase, sale of protected species;
- u) forgery or alteration of certificates and licences; false or altered notifications, communications or representations in order to acquire a certificate or licence; use of false or altered certificates and licences for the importation of animals;
- v) Law 549/1993 art. 3, paragraph 6 - Measures to protect stratospheric ozone and the environment;
- w) Violation of the provisions that provide for the cessation and reduction of the use of substances harmful to the ozone layer;

- x) Legislative Decree 202/2007 - Implementation of directive 2005/35/EC relating to pollution caused by ships and consequent penalties;
  - y) if the entity or one of its organisational units is permanently used for the sole or main purpose of allowing or facilitating the commission of the offences indicated in art. 260. Legislative Decree 152/2006 or by art. 202/2007;
- 16) Crimes relating to recruitment policy with reference to the employment of non-EU citizens (art. 25-duodecies);
  - 17) Racism and xenophobia (art. 25 terdecies);
  - 18) Liability of entities for administrative offences dependent on crime (art. 12, Law no. 9/2013);
  - 19) Transnational offences (Law 146/2006);
  - 20) Fraud in sports competitions, abusive exercise of gambling or betting and games of chance exercised by means of prohibited devices;
  - 21) Tax offences (art. 25-quinquiesdecies).

## Association crimes

With the enactment of Law 94/2009, introduced into the body of Legislative Decree 231/2001 was art. 24 ter on organised crime.

Therefore, not only simple criminal association but also Mafia-type criminal association and that aimed at trafficking in narcotic or psychotropic substances (even when non-transactional) are included among the 231 offences.

## Crimes committed abroad

According to art. 4 of Legislative Decree 231/2001, the entity can be called to be liable in Italy in relation to crimes - contemplated by the same Legislative Decree 231/2001 - committed abroad. The explanatory report to Legislative Decree 231/2001 emphasises the need not to leave a frequently occurring criminal situation unsanctioned, also in order to avoid easy circumvention of the entire regulatory framework in question.

The assumptions on which the entity's liability for crimes committed abroad is based, envisaged by the law or inferable from the whole of Legislative Decree 231/2001 are as follows:

- 1) the offence shall be committed abroad by a person functionally linked to the entity, pursuant to art. 5, paragraph 1 of Legislative Decree 231/2001;
- 2) the entity shall have its head office in the territory of the State;
- 3) the entity may be liable only in the cases and under the conditions provided for in articles 7, 8, 9, 10 of the Criminal Code. This referral is to be coordinated with the provisions of articles 24 to 25-*nonies* of Legislative Decree 231/2001, so that - also in accordance with the principle of legality

under art. 2 of Legislative Decree 231/2001 - against the series of offences mentioned in articles 7-10 of the Criminal Code, the company may only be liable for those for which its liability is provided for by an *ad hoc* legislative provision;

- 4) the entity may be liable in cases where the State in which the crime was committed does not proceed against it.

In cases where the law provides that the offender is punished at the request of the Minister of Justice, proceedings are brought against the entity only if the request is also made against the entity itself.

# The sanctions provided

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## Pecuniary sanctions

Pecuniary sanctions are administrative in nature and always apply, even if the legal entity compensates for the consequences deriving from the offence.

The commensuration of the sanction depends on a twofold criterion:

1. determination of shares in a number not less than 100 and not more than 1,000;
2. attribution to each individual quota of a value between a minimum of € 258.00 and a maximum of € 1,549.00 (based on the economic and equity conditions of the institution).

Specifically, the fines may vary between a minimum of € 25,822.84 (reducible, pursuant to art. 12 of the Decree, up to half) and a maximum of € 1,549,370.69.

The judge determines the number of quotas taking into account:

1. the seriousness of the act;
2. the degree of the entity's liability;
3. the activity carried out to eliminate or mitigate the consequences of the fact and to prevent the commission of further offences.

## Disqualification sanctions

These are sanctions that are added to the pecuniary ones and have the function of preventing the repetition of the crime.

When applying these penalties, the judge has particular regard for the activity carried out by the entity, in order to determine greater invasiveness on the exercise of the activity.

In this regard, in fact, this category includes the following measures:

1. disqualification from exercising the activity;
2. ban on contracting for work with the Public Administration;
3. suspension or revocation of those permits, licences or concessions functional to the commission of the offence;
4. exclusion from public aid, financing, grants and subsidies and/or revocation of those already granted;
5. prohibition on advertising goods or services.

In the event of multiple offences, the sanction provided for the more serious one is applied.

The duration of the interdiction is generally temporary (from a minimum of 3 months to a maximum of 2 years), with the exception of some mandatory cases, in which the temporary nature of the interdiction is replaced by its definitive nature. By way of example:

1. in the event of recurrence of the criminal act;
2. in the event of a significant profit;
3. in case of recurrence for at least three times in the last seven years

We also note the possible continuation of the entity's activity (instead of the imposition of the sanction) by a commissioner appointed by the judge pursuant to art. 15 of Legislative Decree 231/2001, when one of the following conditions occurs:

1. the entity performs a public service or a service of public necessity the interruption of which can cause serious harm to the community;
2. taking into account its size and the economic conditions of the territory in which it is located, the interruption of the entity's activity can cause significant repercussions on employment.

## Confiscation

It is a sanction applicable at the same time as the conviction is issued and consists in the confiscation, by the Judicial Authority, of the price or profit generated by the crime, with the exclusion of the part of it, which can be returned to the injured party.

If the confiscation of the product or the profit of the crime is not possible, sums of money, goods or other utilities of equivalent value to the price or the profit of the crime are confiscated.

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## Publication of the sentence of conviction

Publication of the sentence is ordered when a disqualification sanction is applied to the entity.

The sentence is published (at the expense of the convicted legal entity) only once, in an extract or in its entirety, in one or more newspapers indicated by the judge in the sentence, as well as by posting in the municipality where the entity has its main office.

## Attempted crimes

In the event of commission, in the form of an attempt, of the crimes indicated in Chapter I of Legislative Decree 231/2001, the pecuniary sanctions (in terms of amount) and the disqualification sanctions (in terms of time) are reduced by a third to a half, while the imposition of sanctions is excluded in cases in which the entity voluntarily prevents the fulfillment of the action or the realisation of the event.

## Disclaimer

Articles 6 and 7 of Legislative Decree 231/2001 provide for a form of exemption from liability if the entity demonstrates that:

1. the governance body adopted and effectively implemented, before the occurrence of the criminal event, organisation and management models capable of preventing the occurrence of crimes such as the one that was committed;
2. the task of supervising the functioning and observance of the models and their updating has been entrusted to a body of the entity with independent powers of initiative and control;
3. the individuals who committed the crime did so by fraudulently circumventing the organisation and management models;
4. there has been no or insufficient supervision by the body referred to in b).



In relation to the extension of the delegated powers and the risk of committing crimes, the models shall meet the following requirements:

1. identify the activities within the scope of which offences may be committed;
2. provide specific protocols aimed at planning the formation and implementation of decisions of the entity in relation to the offences to be prevented;
3. identify ways of managing financial resources in order to prevent the commission of offences;
4. provide for obligation of information to the body responsible for supervising functioning and observance of the models;
5. introduce a private disciplinary system to punish non-compliance with the measures indicated in the Model.

It is also appropriate to make a distinction:

- if the crime was committed by persons who hold representation, administration or management functions in the entity or in one of its organisational units with financial and functional autonomy, as well as by persons who exercise, even de facto, management and control thereof, the institution is not liable if it proves the previous points;
- if the offence is committed by persons subject to the management or supervision of one of the subjects indicated above, the entity is liable if the commission of the offence was made possible by failure to comply with the management and supervision obligations; however, such non-compliance is excluded if the entity, before committing the offence, adopted and effectively implemented an Organisation, management and control model suitable for preventing offences of the type that occurred.

Article 6 of the Decree establishes lastly, that organisation and management models may be adopted on the basis of codes of conduct drawn up by associations representing the category, communicated to the Ministry of Justice, which, in agreement with the competent Ministries, may formulate observations on the suitability of the models to prevent crimes.

# The Model

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## Objective of the Model

The regulatory apparatus of Legislative Decree 231/2001 postulates the need for the entity to organise itself internally to prevent the activity of its personnel from leading to the commission of specific offences, likely to reverberate to the advantage of the entity itself.

In order to regulate and consolidate its corporate compliance system, Atag SpA has decided to adopt an Organisation, Management and Control Model pursuant to Legislative Decree 231/2001.

In particular, through the introduction of the Organisation, Management and Control Model, the Company therefore pursues the intention of giving systematicity to the processes and activities carried out therein in order to prevent the possible commission of the crimes referred to in Legislative Decree 231/2001.

For these reasons, firstly, it was necessary to identify and circumscribe the activities which, even only in an abstract and potential way, present a greater probability of leading to criminal and relevant behaviour pursuant to Legislative Decree 231/2001.

Indeed, the Entity Liability Model is based on the commission of one of the so-called predicate offences by a subject inserted in the entity's structure, in the interest or advantage thereof.

Through the adoption of the Model, Atag SpA intends to:

1. establish the values of ethics and respect for legality;
2. determine in the recipients of the Model the awareness that they may incur, in case of violation of the provisions outlined therein, in the commission of offences punishable by criminal sanctions that may be imposed on them, and administrative sanctions that may be imposed on the Company;
3. reiterate that these forms of illicit behaviour are strongly condemned by Atag SpA, since they (even if the Company were apparently in a position to benefit from them) are in any case contrary not only to the provisions of the law, but also to the ethical principles it intends to comply with in the performance of corporate activities;
4. allow the Company, thanks to monitoring of the areas of activities at risk, to intervene promptly to prevent or counter commission of the crimes themselves.

## Acceptable risk

A critical concept in the construction of the Organisation and management model is that of acceptable risk. In fact, for the purposes of applying the provisions of the decree, it is important to define a threshold that allows for a limit to be placed on the quantity and quality of the prevention instruments to be introduced to inhibit the commission of the offence. In relation to the risk of committing the offences referred to in Legislative Decree 231/2001, the acceptability threshold is represented by a preventive system such that it cannot be circumvented except intentionally, or, for the purpose of excluding the entity from administrative liability, the persons who committed the crime shall have acted by fraudulently evading the Model and the controls adopted.

# The phases of construction of the Model

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## Preliminary analysis of the business context

This phase had as its objective the preventive examination, through documentary analysis and interviews with the subjects informed within the corporate structure, of the organisation and of the activities carried out by the various functions, as well as of the corporate processes in which the activities are articulated.

In particular, the documents, procedures and preventive measures formalised in writing by the company for its correct operation were examined.

Below is the list:

- 1) Company chamber of commerce registration;
- 2) Company organisation chart;
- 3) DVR (risk assessment document) in use.

## Identification of areas of activity and corporate processes at "risk of crime"

Through the aforementioned preliminary analysis of the company context and the procedures in place, the following have been identified:

- "sensitive" areas of activity to the potential commission of offences, i.e. activities in which opportunities may hypothetically be created for the realisation of unlawful conduct covered by the Decree;
- processes "instrumental" to the realisation of the offences specified in the Decree, namely the processes within which, in principle, conditions and/or tools to commit crimes may be created.

The analysis, outlined in the "mapping of sensitive activities and instrumental processes" in Annex 2.

On the basis of the results of the Risk Assessment, at present, the following types of offences have been assessed as not relevant even if abstractly applicable to the company:

1. Offences of counterfeiting money, public credit cards, revenue stamps and identification instruments or signs pursuant to art. 25-*bis* Legislative Decree 231/2001;
2. Association crimes pursuant to art. 24-*ter* Legislative Decree 231/2001;
3. Transactional crimes pursuant to Law 146/2006;
4. Crimes against industry and commerce pursuant to art. 25-bis.1 Legislative Decree 231/2001;
5. Market abuse crimes pursuant to Legislative Decree 25-*sexies* Legislative Decree 231/2001;
6. Use of third-country citizens whose stay is irregular (art. 25-*duodecies* Legislative Decree 231/2001);

## 7. Racism and xenophobia pursuant to art. 25-terdecies Legislative Decree 231/2001

The aforementioned consideration is supported, as well as by objective considerations related to the corporate activity, also by the historical analysis of the life of the Entity, during which, due to the typicality of the aforementioned offences, no criminal hypotheses of this content committed for the benefit and/or favour of the Company itself have ever materialised.

The following types of offences have instead been considered as not applicable to the corporate reality of ATAG SpA;

1. Organised crime offences pursuant to art. 24-ter Legislative Decree 231/2001;
2. Crimes for the purpose of terrorism or subversion of the democratic order pursuant to art. 25-*quater* Legislative Decree 231/2001;
3. Practices of female genital mutilation pursuant to art. 25-*quater*.1 Legislative Decree 231/2001;
4. Crimes against the individual person (art. 25-*quinquies* Legislative Decree 231/2001);
5. Sports fraud (art. 25-*quaterdecies* Legislative Decree 231/2001).

In any case, the ethical-behavioural principles envisaged by this Model apply to said categories of crime, where attributable to them.

For the areas of activity and the sensitive instrumental processes identified, the potential cases of risk-offence, the possible ways of carrying them out and the subjects (employees and non-employees) normally involved have been identified.

Therefore, an assessment was performed of the level of potential risk associated with each sensitive activity/process, following a risk assessment methodology based on the following elements:

### 1. identification and weighting of the two macro axes for risk analysis:

- ✓ axis level of vulnerability of the entity, indicative of the degree of possibility that the event at risk will occur also in consideration of the existing safeguards;
- ✓ impact axis (potential associated crimes), indicative of the consequences of the realisation of the event at risk.

### 2. assignment and weighting, for each of the macro axes, of specific assessment parameters, according to the following scheme:

- ✓ for the axis of vulnerability:
  - frequency of occurrence/conduct of the activity described and other economic-quantitative indicators of relevance of the company activity or process (e.g.: economic value of the operations or deeds carried out, number and type of parties involved, etc.);
  - probability of occurrence, in the operational context, of the hypothesised crime (e.g. presumed "ease" of carrying out the criminal behaviour with respect to the reference context);

- any history of commission of crimes in the Company or more generally in the sector in which it operates;
- ✓ for the impact axis:
  - severity of the sanctions potentially associated with the commission of one of the crimes envisaged by Decree 231/2001 in carrying out the activity;
  - potential benefit that would result for the Company following the commission of the assumed unlawful conduct and that could constitute leverage for the commission of the unlawful conduct by company personnel;
- 3. **assignment of a specific evaluation to each analysis parameter on the basis of a qualitative scale (e.g.: very low - low - medium - high - very high);**
- 4. **definition of an overall assessment (of axis and total) and assignment of a summary risk judgement on the basis thereof, qualified as follows: high risk, medium risk, low risk.**

It is noted that the above variables have been used in order to define a degree of general risk associated with individual sensitive activities/processes.

## Drawing of the Model

Following the activities described above, Atag SpA has deemed it appropriate to define the operating principles and reference "protocols" of the Organisation Model it intends to implement, bearing in mind the provisions of the Decree.

## Adoption and recipients of the Model

The Company is sensitive to the need to ensure conditions of correctness and transparency in the conduct of business and corporate activities, to protect its position and image, the work of its employees and is aware of the importance of adopting an internal control system suitable for preventing the commission of illicit behaviour by its directors, employees, collaborators, representatives, partners and agents.

This initiative was undertaken in the belief that the adoption of the Model could constitute a valid tool for awareness raising and ethical training for all those who work in the name and on behalf of the Company, so that they behave correctly and linearly in carrying out their activities, such to prevent the risk of committing the offences envisaged by the Decree itself.

Although the adoption of the Model is envisaged by law as optional and not mandatory, Atag SpA, in compliance with art. 6, paragraph 1, letter a) of Legislative Decree 231/2001 that requires the Model to be an "act issued by the management body", adopted its own Model with the decision of the Board of Directors on 1 February 2021.

At the same time, Atag SpA set up a specific single-member Supervisory Body with the task of supervising the functioning, effectiveness and observance of the Model itself, as well as taking care of its updating.

With the formal adoption of the Model, this becomes an imperative rule for the Company, for the members of the corporate bodies (meaning the Board of Directors and, where required, the shareholders), for the employees and for anyone who operates in any capacity on behalf of or in the interest of the Company itself (collaborators, consultants, suppliers, partners, etc.).

The adoption and effective implementation of this system allow the Company to benefit from the exemption from liability provided for by Legislative Decree 231/2001 where possible and/or to reduce the risk of prejudicial events to acceptable levels by intervening directly on the probability that the event will occur and on its impact.

## Update of the Model

Subsequent amendments or additions of a substantial nature, also proposed by the Supervisory Body (meaning by these the amendments to the rules and general principles contained in this Model), are left to the competence of the Company's Board of Directors. In any case, the BoD will provide for the adoption of amendments other than substantial ones.

## The structure and characteristics of the Model

This Model consists of:

- a "General Part", which describes the relevant legislation and the general operating rules of the Model and of the Supervisory Body;
- a "Special Part", focused on the areas of activity and the instrumental processes deemed "sensitive", the rules of conduct and the other control tools - already in place in the company or set up *ad hoc* for the purposes of Legislative Decree 231/2001 - deemed relevant in relation to the crimes to be prevented and on the organisational structures.

The Company undertakes to effectively implement the Model, to constantly adapt it to changes in the internal and external context and guarantees its observance and its functioning by applying specific methodologies, adopting the operating methods deemed most appropriate each time and respecting mandatory control principles.

The Model is part of the broader organisation, control and quality system already existing in Atag SpA and which it intends to integrate with the following qualifying elements:

1. The dissemination of a Code of Ethics and conduct;

2. The definition of the codification of the internal operating procedures of the company and already in use therein;
3. The mapping of "sensitive" company activities and processes with respect to the commission of the crimes envisaged by Legislative Decree 231/2001 to be subjected to periodic analysis and monitoring (Annex 2);
4. The rules of conduct with which the Company has complied, aimed at preventing the occurrence of the crimes envisaged in Legislative Decree 231/2001;
5. The attribution to a Supervisory Body (hereinafter also SB) of the Company of supervisory tasks on the effective and correct functioning of the Model;
6. A frequency of information flows to the SB;
7. The implementation of a disciplinary system suitable for guaranteeing the effective implementation of the Model, containing the disciplinary provisions applicable in the event of non-compliance with the measures indicated in the Model itself;
8. Verification and documentation of each relevant commercial and corporate transaction;
9. Compliance with the principle of separation of functions, guaranteed by the presence of a system of attribution of powers that defines precise limits to the decision-making power of individuals and guarantees the separation between those who propose and those who authorise, between those who execute and those who control and, consequently, the absence in the company of subjects with absolute and unconditional power over an entire process;
10. definition of authorising powers consistent with the responsibilities assigned;
11. Availability in favour of the SB of company resources of an adequate number and value and proportionate to the expected and reasonably obtainable results;
12. The rules and responsibilities for the adoption, implementation and subsequent amendments or additions to the Model (update of the Model), as well as for the continuous verification of the functioning and effectiveness of the Model itself;
13. Awareness raising, information and dissemination activities at all company levels and to external recipients of the rules of conduct and established procedures.

# The general principles of the organisation and control system of Atag

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## Introduction

This Organisation, Management and Control Model, without prejudice to the specific purposes previously described and relating to Legislative Decree 231/2001, is part of the broader management and control system already in place in the company and adopted in order to provide a reasonable guarantee regarding the achievement of company objectives in compliance with the laws and regulations, the reliability of financial information and protection of equity, also against possible fraud.

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In particular, as specific tools aimed at planning the formation and implementation of the Company's decisions and at ensuring adequate control over them, also in relation to the crimes to be prevented, Atag SpA has identified the components illustrated below.

## Preventive general organisational system and separation of roles

The organisational system shall comply with the requirements of:

1. clarity, formalisation and communication, with particular reference to the assignment of responsibilities, the definition of hierarchical lines and the assignment of operating activities;
2. separation of roles, i.e. the organisational structures are articulated in such a way as to avoid functional overlapping and the concentration on a single person of activities that present a high degree of criticality or risk.

In order to guarantee these requirements, the Company adopts organisational tools (organisational charts, organisational communications, codified procedures, etc.) based on general principles of:

1. knowability within the Company;
2. clear description of reporting lines;
3. clear and formal delimitation of roles, with description of the tasks and responsibilities assigned to each function.

## Delegation of powers

At the date of adoption of this Model, the Company is implementing a system of written proxies regarding internal authorisation powers, on which the decision-making processes of the company depend regarding the operations to be implemented, or powers of representation for signing of deeds or documents intended for external use and suitable for binding the Company (so-called special or general "proxies").



In any case, it will be the task of the SB during its mandate to verify that the aforementioned proxies - and those that will be provided further - meet the following requirements:

1. be clearly defined and formally assigned through written communications;
2. be consistent with the responsibilities and tasks delegated and with the positions held within the organisational structure;
3. provide exercise limits in line with the roles assigned, with particular attention to spending powers and powers to authorise and/or sign transactions and deeds considered "at risk" within the company;
4. be updated as a result of organisational changes.

The Company undertakes to guarantee the timely updating of the delegations of powers, establishing the cases in which the delegations shall be assigned, modified and revoked (assumption of new responsibilities, transfer to different tasks incompatible with those for which they were conferred, resignation, dismissal, etc.).

## Operating Procedures

The processes and operational activities are supported by internal procedures formalised and/or in the process of further formalisation in writing, having the following characteristics:

1. adequate dissemination within the corporate structures involved in the activities;
2. regulation of the methods and timing of carrying out the activities;
3. clear definition of the responsibilities of the activities, in compliance with the principle of separation between the person who initiates the decision-making process, the person who carries it out and concludes it, and the person who controls it;
4. traceability of deeds, operations and transactions through suitable documentary and telematic supports that certify the characteristics and reasons for the operation and identify the subjects involved in the operation in various capacities (authorisation, execution, registration, verification of the operation);
5. objectification of decision-making processes, through the provision, where possible, of defined reference criteria and methodologies for making company choices;
6. provision of specific control mechanisms (such as reconciliation, balancing, etc.) such as to guarantee the integrity and completeness of the data managed and of the information exchanged within the organisation.

## Control and monitoring activities

They involve, with different roles: the Board of Directors, the Supervisory Body, the subjects with responsibility for safety and, more generally, all company personnel and represent an essential attribute of the daily activity carried out by Atag SpA.

The control tasks of these bodies are defined in compliance with the following types of control:

1. *supervisory activity* on the correct administration of the Company, on the adequacy of the organisational structures and on the observance of the law and the deed of incorporation;
2. *line controls*, aimed at ensuring the correct execution of operations and carried out by the same production structures or incorporated in the procedures;
3. *internal audit*, aimed at detecting anomalies and violations of company procedures and assessing the functionality of the overall internal control system and exercised by structures independent from the operational ones;
4. *external audit*, aimed at verifying the regular application of corporate procedures and their compliance with current legislation;
5. *control and management*, in relation to the timeliness of reporting critical situations and the definition of appropriate risk indicators.

## Traceability

Each operation shall be properly recorded.

The process of decision, authorisation and conduct of the activity shall be verifiable *ex post*, also through specific documentary supports and, in any case, the cases and methods of the eventual possibility of cancellation or destruction of the recordings made shall be regulated in detail.

For this reason, the Company considers it essential to guarantee the correct and concrete application of the aforementioned control principles in all areas of company activity/processes identified as potentially at risk of crime in the mapping phase and already listed.

The task of verifying the constant application of these principles, as well as their adequacy and updating, is delegated by the Company to the Board of Directors and, as soon as possible, it will also be delegated to the Supervisory Body. The latter shall be kept constantly informed and opinions and indications of principles and guidelines may be requested.

For an analysis of the Model verification activities, reference is made to the following chapters.

# Supervisory Body

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## Identification

Pursuant to the law, the Supervisory Body (hereinafter also "SB") has the task of supervising the application of Legislative Decree 231/2001.

Furthermore, the effective implementation of the MOGC also depends on the establishment and monitoring of the Supervisory Body itself.

In fact, it is responsible for:

- a) Supervising the functioning and observance of the compliance programme;
- b) Taking care of the update of the latter.

The SB also has autonomous powers of initiative and control (art. 6, paragraph 1, letter b) and at the same time benefits from information obligations on sensitive operations (art. 6, paragraph 2, letter d).

This Body cannot be identified in the management body, which has only proposal and supervisory powers.

Likewise, its function cannot be properly performed exclusively by personnel employed by the entity since the latter, placed under functional dependence on the BoD, may not boast the condition necessary to ensure effective independence from the top management bodies.

The function shall in any case be attributed to a body located in a high hierarchical position within the corporate organisation chart, highlighting the need for this position to be accompanied by the non-attribution of operational tasks which, by making this body a participant in decisions and operational activities, would "pollute" the objectivity of judgement at the time of checks on behaviour and on the Model.

The SB is a figure that reports directly to the top management of the Company, both operational and control, in order to guarantee its full autonomy and independence in the performance of the tasks entrusted to it. Its continuity of action is fundamental.

At the time of promulgating the MOGC, Atag SpA decided to confer the qualification of Supervisory Body to a monocratic body whose member is appointed by the management body and identified among subjects external to the Company, particularly qualified and experts in the relevant matters for the purposes of Legislative Decree 231/2001, in order to guarantee the Supervisory Body adequate competence in the legal, accounting, risk assessment, auditing and labour law areas, as well as in possession of the integrity requirements of the law.

However, Atag SpA, as of now, reserves the right to vary the form and composition of its Supervisory Body, also verifying, in consideration of the concrete company needs, the opportunity, for the future, to adopt a SB with a different composition compared to the initial choice.

Said Body - whatever its composition - shall be independent of it, i.e.:

- a. shall not be linked to the Company, to the Company of this parent company or to any companies controlled and/or invested in by the latter, by an employment relationship or by commercial or property relations that imply, with reference to the areas of competence of the SB, potential conflicts of interest;
- b. shall not have family relationships with the shareholders or directors of the Company, its parent company or its subsidiaries and/or investee companies capable of reducing their independence of judgement;
- c. shall not be linked in any way, for any reason whatsoever, to the Company, its parent company or any of its subsidiaries and/or investees by bonds of dependence or subordination.

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It is noted that the Supervisory Body:

1. reports directly to the Board of Directors;
2. has autonomous powers of intervention in the areas of competence. To this end, as well as to guarantee the continuous performance of the verification activity regarding the adequacy and suitability of the Model, the Supervisory Body makes use of internal personnel and/or external collaborators;
3. has its own "operating regulation" drawn up by the same;
4. has an annual expenditure budget, for exclusive use, decided by the Administrative Body. The SB autonomously and independently decides on the expenses to be made within the limits of the approved budget and refers the person with signatory powers in Atag SpA to sign the relative commitments. In the event of a request for expenses exceeding the approved budget, the SB shall be authorised by the Hair within the limits of the powers thereof or directly by the BoD.

The Supervisory Body is appointed for a period of 3 (three) years.

The Supervisory Body meets at least every four months and in any case according to as resolved in its "operating regulation".

For the purposes of better understanding and correct supervision of the corporate context, the Supervisory Body may request the presence - even permanently - at its meetings of individuals such as, by way of example, the heads of those corporate functions pertaining to control issues. The latter participate in the meetings exclusively as guests.

The following are causes of incompatibility with the role of Supervisory Body:

1. be a member with operational powers of the BoD of Atag SpA (or be a Director), of the Parent Company or of any Companies controlled and/or invested in by Atag SpA;
2. be an auditor of Atag SpA or of any Companies controlled and/or invested in by Atag SpA;

3. have relationships of marriage, kinship or affinity up to the fourth degree with the subjects referred to in the previous points;
4. have performed, in the last three years, administrative, management or control functions in companies subject to bankruptcy, compulsory administrative liquidation or similar procedures;
5. have been sentenced with a sentence, even if not irrevocable, to:
  - a. prison sentence that entails the disqualification, even temporary, from public offices or the temporary disqualification from managerial offices of ordinary legal entities;
  - b. prison sentence for having committed one of the crimes envisaged by Legislative Decree 231/2001;
6. have been the recipient of a sentence pursuant to art. 444 of the Code of Criminal Procedure for having committed one of the crimes envisaged by Legislative Decree 231/2001.

To protect the autonomy and independence, changes to the structure (appointments, revocations, etc.), to the powers and functioning of the Supervisory Body may only be made by means of resolutions of the Board of Directors with a unanimous and adequately justified vote.

The revocation of the SB may only take place for just cause.

In this regard, just cause shall mean:

1. serious breach of duties, as defined by the Model;
2. sentence of conviction of the Company or a sentence of plea bargaining pursuant to the Decree, which shows "omitted or insufficient supervision" by the SB;
3. conviction or plea bargain issued against the SB for having committed one of the crimes envisaged by Legislative Decree 231/2001 and crimes of the same nature;
4. breach of confidentiality obligations.

In all cases of precautionary application of a disqualification sanction provided for by the Decree, the Board of Directors, having acquired the appropriate information, may possibly proceed with the revocation of the SB, if it recognises a hypothesis of omitted or insufficient supervision by the same.

In the event that the requirements of autonomy, independence and professionalism no longer exist or in the event of the occurrence of one of the causes of ineligibility identified above, the Board of Directors, having carried out the appropriate investigations and having consulted the SB, establishes a term, not less than thirty days, within which the situation of incompatibility shall cease. Once this term has elapsed without the aforementioned situation having ceased, the Board of Directors shall declare the forfeiture of the SB.

Likewise, a serious illness that renders the SB unsuitable to carry out its supervisory functions, or an illness that, in any case, determines the absence from the SB activities for a period exceeding six months, will result in the declaration of forfeiture thereof, to be implemented according to the methods identified above.

In the event of resignation, revocation or forfeiture of the Supervisory Body, the Board of Directors will have to appoint a replacement in a timely manner.

## Requirements

### a) Autonomy and independence

Autonomy and independence aim to ensure that the Supervisory Body is not directly involved in the management activities that constitute the subject of its control activity and, above all, the possibility of carrying out its role without direct or indirect conditioning on the part of the controlled subjects. These requisites can be obtained by guaranteeing to the Supervisory Body hierarchical dependence and reporting activity directly to the top management, or rather to the Board of Directors.

### b) Professionalism

The SB is a body with technical-professional and specialist skills appropriate to the functions it is called upon to perform (e.g. interview techniques, flow charting, risk analysis techniques, etc.). These characteristics, together with independence, guarantee objectivity of judgement.

### c) Continuity of action

The SB is an internal body of the organisation, adequate in terms of structure and dedicated resources, and has no operational tasks that could limit the commitment necessary to carry out the assigned functions.

In order to give the Supervisory Body suitable capacity to find information and therefore to act effectively with respect to the company organisation, the information flows to and from the body are established, through this Model and, subsequently, through specific internal organisational documents issued by the Board of Directors or by the Supervisory Body.

## Functions and powers

The Supervisory Body of Atag SpA will generally be entrusted with the task of supervising:

1. compliance with the provisions of the Model by the recipients in relation to the various types of crimes contemplated by the Decree;
2. the effectiveness, efficiency and adequacy of the Model in relation to the corporate structure and the actual ability to prevent the commission of the crimes referred to in the Decree;
3. the advisability of updating the Model, where it is necessary to adapt it in relation to changed company conditions;
4. the adequacy, application and effectiveness of the sanction system.

On an operational level, the Supervisory Body will be entrusted with the task of:

1. implementing the control procedures envisaged by the Model;
2. constantly verifying the effectiveness and efficiency of the corporate procedures in force, making use of the help of the competent Functions, as well as of the subjects with responsibility for safety with regard to problems relating to the environment, hygiene, health and safety of workers;
3. conducting reconnaissance of the corporate activity for the purpose of updating the mapping of sensitive activities and instrumental processes;
4. periodically carrying out targeted verifications on certain operations or specific deeds put in place, above all, in the context of sensitive or "instrumental" activities for the realisation thereof;
5. coordinating with the managers of the Functions in charge of training for personnel training programmes;
6. monitoring the initiatives for the dissemination of knowledge and understanding of the Model, the preparation of the internal documentation necessary for the functioning of the Model, containing instructions, clarifications or updates; in its ongoing activity, the SB shall realise and apply operating procedures for the best formal management of the activity;
7. collecting, processing and retaining the relevant information in order to comply with the Model, as well as updating the list of information that shall be sent to it or kept at its disposal, constituting the "formal" database of the internal control activity;
8. coordinating with the other corporate functions in carrying out the monitoring activities within their competence and provided for in the protocols;
9. verify the adequacy of the internal control system in relation to current legislation;
10. verify that the elements envisaged for the implementation of the Model (adoption of standard clauses, completion of procedures, etc.) are in any case adequate and meet the requirements of compliance with the provisions of the Decree, adopting or suggesting the adoption, otherwise, of an update of the elements themselves;
11. verifying the need to update the Model;
12. periodically reporting to the BoD on the company policies necessary for the implementation of the Model;
13. checking the effective presence, regular maintenance and effectiveness of the databases in support of the activity pursuant to Legislative Decree 231/2001.

Since the Company is not among the recipients, duly listed by articles 10 and following, of Legislative Decree 231/2007 on anti-money laundering, the Supervisory Body is not subject to the communication duties envisaged by art. 52 of the same decree.

However, if it becomes aware, in the course of its activities, of sensitive events with respect to the types of crimes envisaged in art. 25-*octies* of Legislative Decree 231/2001, the Supervisory Body is required to promptly assess the situation and undertake all the actions it deems appropriate (communications to the Director, activation of the sanction system, etc.).

In any case, the application of the control protocols on the subject of receiving, laundering and using money, goods or utilities of illicit origin referred to in this Model is reserved.

For the purposes of carrying out the tasks indicated above, the Supervisory Body is assigned the following powers:

1. issue provisions aimed at regulating the activity of the Supervisory Body;
2. access any and all company documents relevant to the performance of the functions assigned to the Supervisory Body pursuant to Legislative Decree 231/2001;
3. resort to external consultants of proven professionalism in cases where this is necessary to carry out the verification and control activities or to update the Model;
4. arrange for the managers of the corporate functions to promptly provide the information, data and/or news requested of them to identify aspects connected to the various relevant corporate activities pursuant to the Model and to verify the effective implementation thereof by the corporate organisational structures.

## Methods and frequency of reporting to corporate bodies

The Supervisory Body of Atag SpA operates according to two reporting channels:

1. continuously with the Board of Directors;
2. annually through written dossiers on its activity for the management body and the Board of Statutory Auditors.

The presence of the aforementioned relationships of a functional nature, even with bodies without operational tasks and therefore not bound by management activities, constitutes a factor capable of ensuring that the task is carried out by the Supervisory Body with the greatest guarantees of independence.

The Supervisory Body may be convened at any time by the BoD or may in turn submit requests to that effect, to report on the functioning of the Model or on specific situations.

Furthermore, the Supervisory Body may send communications to the Board of Directors whenever it deems the need or opportunity to do so and in any case, shall transmit to them the aforementioned informative report on an annual basis, concerning:

1. the supervisory activity carried out by the Supervisory Body in the reference period;
2. any criticalities that have emerged both in terms of conduct or events within the Company and in terms of the effectiveness of the Model;
3. the corrective and improvement actions suggested and their state of realisation.

The meetings with the subjects and bodies indicated above shall be minuted and copies of the minutes shall be kept by the SB and by the bodies involved from time to time.

## Other activities

The SB shall coordinate, with the competent functions present in the company, for the various specific profiles and precisely:



1. with the Chief Executive Officer and/or the Board of Directors for corporate obligations that may have relevance with respect to the commission of corporate crimes;
2. with the Head of the Human Resources and Finance & ADM Office. with regard to the dissemination of information, with regard to personnel training and with reference to the possible activation of disciplinary procedures;
3. with the Health Safety Manager (RSPP - Responsible for the System of Prevention and Protection) for compliance with all the rules set by the law and internal company procedures on health, safety and hygiene at work;
4. with any other Function deemed relevant from time to time for the purposes of its activities.

## Methods of managing financial resources

The SB addresses to management indications relating to appropriate additions to the management systems of financial resources (both incoming and outgoing) with any measures designed for the purposes of compliance with Legislative Decree 231/2001 (e.g. detection of anomalies in particular transactions or payments of fees that are not justified by the economics of the transaction with a view to ascertaining whether they do not hide non-accounting items or corrupt hypotheses) and with a view to detecting the existence of atypical financial flows and characterised by greater margins of discretion than ordinarily envisaged.

All operations relating to atypical or unusual activities or services shall be specifically and clearly justified and communicated to the SB.

The management system of financial resources shall ensure the separation and independence between the subjects who contribute to forming the decisions on the use of resources, those who implement these decisions and those who are entrusted with the controls on their use.

For the purpose of implementing the decisions to use, the company makes use of financial and banking intermediaries subject to a regulation of transparency and stability in compliance with that adopted in the Member States of the EU.

All operations involving the use or employment of financial resources shall have an adequate reason and be documented and recorded, by manual and computerised means, in compliance with the principles of professional and accounting correctness; the related decision-making process shall be verifiable primarily by the Finance & ADM. department of Atag SpA.

# Information flows to the bodies in charge of control

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## Information obligations to the Supervisory Body

Within the company, the function managers of Atag SpA shall communicate to the Supervisory Body:

1. on a periodic basis and on the basis of specific indications and/or requests from the SB, the information, at the level of their own operating area, useful for the exercise of the SB activity in terms of verifying compliance, effectiveness and updating of this Model, as well as any other information identified by the Supervisory Body and requested by the latter from the individual organisational and managerial structures of Atag SpA through internal directives. This information shall be transmitted in the times and in the ways that will be defined by the Supervisory Body itself; similarly, the competent functions shall send the Supervisory Body periodic reports on specific topics (e.g. relating to processes connected to particular sensitive activities) and on any procedural exceptions where they intend to obtain the opinion of the Body itself;
2. on an occasional basis, any other information, of any kind, also coming from third parties and pertaining to the implementation of the Model in "sensitive" areas of activity and compliance with the provisions of the Decree, which may be deemed useful for the purpose of carrying out the tasks of the Supervisory Body. In particular, by way of non-exhaustive example, information concerning the following shall be compulsorily and promptly reported to the body:
  - a. decisions relating to the request, disbursement and use of public funding;
  - b. requests for legal assistance submitted by executives and/or employees against whom the judiciary proceeds for the predicate crimes;
  - c. measures and news coming from judicial police bodies, or from any other authority, from which it can be inferred that investigations are being carried out, even against unknown persons, for predicate crimes;
  - d. commissions of inquiry or internal relations from which liability emerges for hypothetical predicate offences;
  - e. information regarding the effective implementation, at all corporate levels, of the MOGC, with evidence of the disciplinary proceedings carried out and any sanctions applied or the dismissal of such proceedings with the relative reasons;
  - f. results of controls (preventive and subsequent) carried out in the reference period on assignments to market operators, following national and European tenders or private negotiations;
  - g. copy of the periodic reports on occupational health and safety;
  - h. reports prepared by the heads of other corporate functions as part of their control activity from which facts, acts, events or omissions with critical profiles may emerge with respect to compliance with the provisions of Legislative Decree 231/2001;
  - i. update of the Atag SpA delegation system
  - j. implementation of company procedures and processes;
  - k. renewal and/or non-renewal of company certifications.

The reporting obligations on an occasional basis are also addressed to third parties who operate, in any capacity, on behalf or in the interest of the Company in the context of corporate activities at risk, to whom the Company provides adequate information regarding the Organisation Model adopted.

With reference to the procedures for submitting reports, the following provisions apply:

1. the information and reports received from anyone, including those relating to any violation or suspected violation of the Model, of its general principles, shall be made in writing. The Supervisory Body acts in such a way as to guarantee the authors of reports against any form of retaliation, discrimination or penalisation or any consequence arising therefrom, ensuring the confidentiality of their identity, without prejudice, however, to legal obligations and the protection of the rights of Atag SpA or of persons wrongly accused and/or in bad faith;
2. the information and reports shall be sent by the interested party directly to the Supervisory Body; the right to activate further reports in accordance with as may be provided for by other corporate channels (e.g. reporting systems at Group level) does not imply the non-application of the information obligations towards the Supervisory Body;
3. the Supervisory Body evaluates the reports received and any consequent measures at its reasonable discretion and responsibility, possibly listening to the author of the report and/or the person responsible for the alleged violation and adopts any measures deemed necessary for the purpose of adapting the Model by carrying out the communications necessary for the application of any sanctions. It shall justify in writing the reasons for the decisions and any refusals to proceed with an internal investigation. Any consequent provisions are applied in compliance with the provisions of the sanction system referred to in the following chapter;
4. all recipients of the information obligations are required to collaborate with the Supervisory Body, in order to allow the collection of all additional information deemed necessary by the body for a correct and complete assessment of the report. Failure to collaborate or reticence may be considered violations of the Model with the consequences also foreseen in terms of disciplinary sanctions.

It is recalled that the Supervisory Body does not have the obligation to act every time a report is made as the decision to act and take action is left to its discretion and responsibility.

As part of the specific corporate procedures, dedicated information channels are set up by the Supervisory Body, with the dual function of facilitating the flow of information and reports to the body and quickly resolving uncertain cases and doubts.

The obligation to provide information generally applies to all personnel who come into possession of news relating to the commission of crimes or behaviour not in line with the rules of conduct.

Lastly, it is noted that the information flows referred to in this chapter may also be collected directly by the SB during its periodic control activities, using the methods that the SB deems most appropriate.

## Collection and storage of information

All information, alerts and reports sent to the Supervisory Body are kept by the latter in a special database (computer or paper) for a period of 10 years.

Access to the database is permitted, in addition to the Supervisory Body, to the Board of Directors, upon formal request to the SB.

# The disciplinary system

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## General principles

A crucial aspect of the construction of the MOGC 231 is represented by the provision of an adequate disciplinary and sanctioning system for violations of the Model and of the procedures envisaged therein.

See how pursuant to art. 6, paragraph 2, letter e) as well as of the art. 7, paragraph 4, letter b) of Legislative Decree 231/2001, the Organisation, Management and Control Models, the adoption and implementation of which (together with the other situations envisaged by the aforementioned articles 6 and 7) constitutes a *sine qua non* condition for the Company's exemption from liability in the event of the commission of the crimes referred to in the Decree, can be considered effectively implemented only if they provide for a disciplinary system suitable for sanctioning failure to comply with the measures indicated therein.

This disciplinary system shall address both employees and collaborators and third parties who work on behalf of the Company, providing for appropriate sanctions of a disciplinary nature in one case, of a contractual/negotiation nature (e.g. contract termination, cancellation from the list of suppliers, etc.) in the other case.

The application of disciplinary sanctions is independent of the initiation or outcome of any criminal proceeding, since the organisational models and internal procedures constitute binding rules for the recipients, the violation of which shall, in order to comply with the dictates of the cited Legislative Decree, be sanctioned regardless of the actual commission of a crime or the punishability thereof. The principles of timeliness and immediacy of the sanction make it not only dutiful but also inadvisable to delay the application of the disciplinary sanction pending the criminal trial.

## Sanctions for employees of Atag

This organisational Model constitutes to all intents and purposes a company regulation as an expression of the employer's power to issue provisions for the execution and for the discipline of work and as it is available in a place accessible to all, it will also constitute a disciplinary code.

Therefore, the subjects to whom this regulation is directed are obliged to fulfill all the obligations and provisions contained therein and to standardise their behaviour with the conduct described therein. Without prejudice to the right to compensation for damages, any failure to fulfill these obligations will be subject to disciplinary sanctions in compliance with the proportionality between sanction and infringement and in compliance with the procedure set out in art. 7 of the law of 20 May 1970, no. 300 as well as the CCNL (Collective Contract National Labour) applied.

## Verbal warning or admonition

The provision of "verbal warning" or "written admonition" will be incurred by any worker who implements actions or omissions of minor importance, disregarding the internal procedures set forth in this Model (for example, who does not observe the prescribed procedures, fails to notify the SB of the prescribed information, fails to carry out checks, etc.) or adopts, in carrying out activities in risk areas, behaviour that does not comply with the provisions of the Model itself, having to recognise in such behaviour a violation of the provisions communicated by the Company.

## Fine

A "fine" may be imposed on any worker who repeatedly disregards the internal procedures set out in this Model or adopts, in carrying out activities in risk areas, behaviour that repeatedly does not comply with the provisions of the Model itself, even before said shortcomings have been individually ascertained and contested, since such conduct shall be recognised as the repeated non-application of the provisions communicated by the Company.

## Suspension from service and pay

The provision of "suspension from service and remuneration" will be incurred by any worker who, in disregarding the internal procedures set out in this Model or by adopting, in carrying out activities in risk areas, behaviour that does not comply with the provisions of the Model itself, performs acts that expose the Company to an objective situation of danger or acts contrary to the interest of the Company that cause damage, having to recognise in such conduct the determination of damage or a situation of danger for the integrity of the company's assets or the fulfillment of acts contrary to its interests also deriving from non-compliance with the provisions communicated by the Company.

## Dismissal

The provision of "dismissal with indemnity in lieu of notice" will be inflicted on any worker who adopts, in the performance of activities in risk areas, behaviour that does not comply with the provisions of this Model and that determines the commission of a crime envisaged by the Decree, having to recognise in such conduct a significant damage or a situation of significant damage.

## Dismissal (without notice)

The provision of "dismissal without notice" may be incurred by any workers who adopt, in carrying out activities in risk areas, behaviour that is clearly in violation of the provisions of this Model and such as to determine the concrete application against the Company of the measures envisaged by the Decree, having to recognise in this behaviour the performance of acts such as to radically undermine the company's trust in them, or the occurrence of the non-fulfillments referred to in the previous points with the determination of serious damage to the company.

## Criteria for the application of sanctions

The type and extent of each of the sanctions mentioned above will be applied, in accordance with the provisions of the CCNL applied, in relation to:

1. the intentionality of the behaviour or the degree of negligence, imprudence or inexperience also with regard to the predictability of the event;
2. the overall behaviour of the worker, with particular regard to the existence or otherwise of the same disciplinary precedents, within the limits permitted by law;
3. the worker's duties;
4. the functional position of the persons involved in the facts constituting the non-fulfillment (in particular, in the case of an offence committed by subjects subordinate to the management of others, it will be necessary to verify and, if necessary, sanction, the violation by the senior subjects of their specific obligation of supervision of subordinates);
5. the other particular circumstances that accompany the disciplinary violation.

The verification of the aforementioned infractions, possibly upon notification of the Supervisory Body, the management of the disciplinary proceedings and the imposition of sanctions remain the responsibility of the appointed functions.

In particular as regards executive personnel, in the event of a violation of the general principles of the Organisational Model or corporate procedures, the body competent to detect infringements and apply sanctions is the Board of Directors or the person or body delegated by it, which will adopt the measures deemed suitable and proportionate against those responsible for the violations committed, taking into account that the same constitute breaches of the obligations and provisions arising from the employment relationship.

## Measures against top managers

In the event of violation of current legislation and of the Organisational Model by the Company's Directors, the Supervisory Body will inform the entire Board of Directors, which will have to take the appropriate initiatives pursuant to the law, involving, where necessary, the Shareholders' Meeting.

Possible disciplinary measures applicable to top managers are: written warning, temporary suspension mechanisms or, for the most serious violations, forfeiture/revocation of any corporate office held. The latter can be foreseen as automatic or be subordinated to a resolution of the Board of Directors.

With specific regard to the position of the directors, the disciplinary system will be integrated with the typical instruments envisaged by company law (primarily liability actions).

## Measures against third parties

Any conduct by collaborators, consultants or third parties connected to the Company by a non-employee contractual relationship, in violation of the provisions of Legislative Decree 231/2001, may determine the application of penalties or, in the event of a serious breach, the termination of the contractual relationship, without prejudice to any request for compensation if such behaviour causes damage to the Company, even independently of the termination of the contractual relationship.

To this end, with particular attention to the activities entrusted to third parties in outsourcing, the inclusion is envisaged of specific clauses in the contracts that acknowledge at least the knowledge of the Decree by the third-party contracting party, require the assumption of a commitment by the third-party contracting party and by its employees and collaborators to refrain from behaviours appropriate for constituting the hypotheses of crime referred to in the Decree itself and to adopt suitable control

systems (regardless of the actual perpetration of the crime or the punishability thereof) and that govern the consequences in case of violation of the provisions referred to in the clause; or a unilateral declaration of "certification" by the third party or collaborator regarding knowledge of the Decree and the commitment to base their activity on compliance with the provisions of the law.



# Training, information and periodic checks of the Model

## Training and information

For the purposes of the effectiveness of this Model, it is the objective of Atag SpA to guarantee correct dissemination and knowledge of the rules of conduct contained therein towards the resources already present in the company and those to be hired, with different degrees of detail in relation to the different level of involvement of the same resources in risk activities.

The continuous information and training system is supervised and integrated by the activity carried out in this area by the Supervisory Body, which supervises the activity by working in collaboration with the managers of the functions involved from time to time in the application of the Model.

This Model is communicated to all the resources present in the company at the time of its adoption. To this end, a special sharing space is set up (e.g. corporate network share) dedicated to the subject and updated by the Supervisory Body, containing documents describing the Model.

New hires are given an information document (in paper or electronic format), including the Model, with which to ensure that they have the knowledge considered of primary importance. The Model is subject to public posting on the company bulletin board.

For all employees<sup>7</sup> of the Company who play roles that are not merely operational but characterised by conceptuality and autonomy, it is also required to complete a formal "declaration of commitment", acquired in written or electronic form that will be deemed most appropriate, which, by way of example, could read:

### ***Declaration of commitment provided by the employee***

*I, the undersigned \_\_\_\_\_, declare that:*

- 1. I have received a copy of the Organisation, Management and Control Model (hereinafter the "Model"), adopted by the Company, as well as a copy of Legislative Decree of 8 June 2001 no. 231 (hereinafter "Legislative Decree 231/2001");*
- 2. I have carefully read the Model and Legislative Decree 231/2001;*
- 3. I undertake to observe the provisions contained therein.*

*Having said that, I declare that I have understood the contents of the Model and Legislative Decree 231/2001.*

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<sup>7</sup> From the list of employees required to make a declaration of commitment, only employees may be excluded, at the discretion of the Company, that are assigned to operational tasks that cannot involve the exercise of sensitive activities for the purposes of Legislative Decree 231/2001. Also for these employees it is emphasized that this Organisational Model constitutes to all intents and purposes a company regulation as an expression of the employer's power to issue provisions for the execution and for the discipline of work and as it is available in a place accessible to all, it will also constitute a disciplinary code.

*Date*

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*Signature*

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The training activity, aimed at disseminating knowledge of the legislation referred to in Legislative Decree 231/2001, is differentiated, in terms of content and delivery methods, according to the qualification of the recipients, the level of risk of the area in which they operate, whether or not they have representative functions of the Company.

The following are the responsibilities of the Human Resources office:

- provide for the definition of an annual updating program to be shared with the SB, which provides, in accordance with the provisions of the Model, a specific path for managerial staff and subordinate staff;
- prepare an annual calendar to be communicated, together with the summary content of the programme, to the SB.

Conversely, the SB will be responsible for informing the Human Resources office about:

- changes to the reference legislation in the guise of providing for supplementary training sessions;
- need for supplementary training actions resulting from the detection of errors and/or deviations from the correct execution of operating procedures applied to the so-called "sensitive activities".

The control activity referred to in the "Work Plan of the control activity of the SB" provides for the adoption of training actions upon the detection of errors and/or deviations from the correct execution of "sensitive" procedures with respect to the crimes referred to in Legislative Decree 231/2001.

In this case, the SB will activate internal auditing for the organisation and execution of the planned training action.

## Periodic verifications of the Model

The supervisory activity is carried out continuously by the Supervisory Body in order to:

- 1) verify the effectiveness of the Model (that is, the consistency between the actual behaviour of the recipients and the Model itself);
- 2) carry out the periodic assessment of the adequacy, with respect to the needs of prevention of the crimes referred to in Legislative Decree 231/2001, of the codified procedures governing risk activities;
- 3) proceed with the appropriate updates of the Model, it is concretised, first of all, in the Work Plan of the SB control activity.

The control system is capable of:

1. ensuring that the operational management methods meet the requirements of the Model and the current provisions of the law;
2. identifying the areas that need corrective actions and/or improvements and verifying the effectiveness of the corrective actions;

3. developing, in the company, the culture of control, also in order to better support any inspection visits by other subjects assigned, for various reasons, to verification activities.

Internal audits are managed by the Supervisory Body. To carry out the planned verification activities, the Supervisory Body may avail itself of the collaboration of personnel of other functions, not involved in the verified activities, with specific skills, or of external consultants.

The Work Plan "covers" one year (period January - December of each fiscal year) and indicates for each controlled activity:

1. the frequency of carrying out the verifications;
2. the selection of the sample;
3. the information flows (information flow from the operating staff to the SB) defined for each check performed;
4. the activation of training actions (activities for resolving procedural and/or information deficiencies) for each anomaly found.

The company areas to be verified and the frequency of checks depend on a series of factors such as:

1. risk pursuant to Legislative Decree 231/2001, in relation to the results of the mapping of sensitive activities;
2. assessment of existing operational controls;
3. results of previous audits.

Extraordinary checks not included in the "Work Plan" are planned in the event of substantial changes in the organisation or in some process, or in the case of suspicions or communications of non-compliance or in any case, whenever the SB decides to implement occasional *ad hoc* control.

The results of the controls are always recorded and submitted according to the methods and periodicity of the reporting envisaged.

Atag SpA considers the results of these verifications to be fundamental for the improvement of its Model.

Therefore, also in order to guarantee the effective implementation of the Model, the findings of the verifications relating to the adequacy and effective implementation thereof are discussed within the Supervisory Body and trigger, where relevant, the disciplinary system described.