



Novamont S.p.A.

**DOCUMENT DESCRIBING THE  
ORGANISATION, MANAGEMENT AND  
CONTROL MODEL  
PURSUANT TO LEGISLATIVE DECREE  
231/2001**

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# 1 INTRODUCTION

## 1.1 Presentation of Novamont S.p.A.

Novamont was founded in 1989 as a strategic research centre for the Montedison Group to carry out an ambitious and innovative project called "Living Chemistry for Quality of Life" relating to research, research development and dissemination of knowledge in the field of materials from renewable sources.

Research investment, which accounts for more than 10% of its annual turnover, and the use of more than one third of staff in the areas of development and innovation, make the Company one of a kind on the Italian market.

Concrete proof of the credibility of the strategy and objectives pursued by Novamont is the fact that it was the subject of one of the first merchant banking operations with a long-term perspective, in support of a research and development project on the part of a number of major institutional investors.

It is now an established and internationally renowned industrial company and boasts some of the most revolutionary innovations in the study and manufacture of bioplastics, the use of which is widespread throughout the world. Bioplastics, which have similar properties of use to those of conventional plastics, are distinctive in that they are biodegradable and compostable and therefore achieve a substantial reduction in their environmental impact following disposal.

## 1.2 Aims of the document

Legislative Decree no. 231 of 8 June 2001, "Rules governing the administrative liability of legal entities, companies and associations, including those without legal personality, pursuant to Art. 11 of Law no. 300 of 29 September 2000" (hereinafter "Legislative Decree 231/01") introduced into the Italian legal system the principle of administrative liability of entities for certain types of offences, where the latter have been committed, in the interest or for the benefit of those entities, by:

- senior persons (i.e. persons with representative, administrative and management duties within the entity);
- persons managed or supervised by others.

Legislative Decree 231/01 provides that an entity will avoid administrative liability if it can demonstrate that it has adopted and effectively implemented an organisation, management and control model capable of preventing the commission of the offences set out in the decree.

Where an offence included in Legislative Decree 231/01 is committed and the Company cannot prove that it has adopted and effectively implemented an organisation, management and control model (hereinafter OMC 231), the Company runs the risk of being imposed sanctions in the form of fines and prohibitions.

In response to the legislation described above, Novamont S.p.A. has:



- adopted and implemented its own organisation, management and control model pursuant to Legislative Decree 231/01;
- set up a Supervisory Board pursuant to Legislative Decree 231/01, appointed to monitor compliance and to supervise the functioning and updating of the model that has been implemented.

This document illustrates the individual components of the MOC 231 adopted by Novamont S.p.A. and the methodological approach followed for the creation of those components.

### 1.3 Description of the document

This document describing Novamont S.p.A's OMC 231 consists of:

- a **General Part**, which describes not only the model of corporate governance and its system of delegations and powers, but also the process for defining the OMC 231 as well as the operating principles and mechanisms for the implementation of the model;
- **Special Parts**, one for each family of offence, which includes:
  - a description of the respective types of offence;
  - the specific company activities that are considered sensitive;
  - the behavioural principles to be observed;
  - the supervisory protocols governing sensitive activities;
  - the systematic information flows arranged.

## 2 GENERAL PART

### 2.1 Legislative Decree 231/2001

#### *2.1.1 Object of the decree*

In accordance with the authority delegated under Art. 11 of Law no. 300 of 29 September 2000, Legislative Decree no. 231 was enacted on 8 June 2001 and subsequently entered into force on 4 July 2001. Its aim was to bring domestic legislation on the liability of legal entities into line with a number of international conventions which Italy had long since ratified, such as the Brussels Convention of 26 July 1995 on the protection of the financial interests of the European Communities, the Brussels Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States and the OECD Convention of 17 December 1997 on combating bribery of foreign public officials in international business transactions.

This decree entitled "Rules governing the administrative liability of legal entities, companies and associations, including those without legal personality" introduced into the Italian legal system a regime of administrative liability with respect to entities (meaning companies, consortia, etc.) for certain offences committed, in the interest or for the benefit of those entities, by:



- a) by individuals with representative, administrative and management duties within those entities or within an organisational unit thereof invested with financial and operational autonomy and by individuals who manage and supervise those entities, including on a de facto basis (for example, directors and general managers);
- b) by individuals managed or supervised by one of the persons indicated above (for example, non-management employees).

This administrative liability is in addition to that of the individual who actually carried out the act. The enlargement of the scope of liability aims to capture, in relation to certain criminal offences, entities that have taken advantage of the offence being committed. For all offences committed, a fine may always be imposed whereas for the most serious of offences it will be necessary to impose prohibitive sanctions such as the suspension or withdrawal of licences or concessions, a ban on contracting with the Public Sector, a ban on carrying on business, exclusion from or withdrawal of funding and grants, a ban on advertising goods and services, etc.

The liability provided for in Legislative Decree 231/01 also applies to offences committed abroad, unless the State where the offence was committed takes action itself.

### *2.1.2 Types of offence*

The types of offence provided for by Legislative Decree 231/01 on the administrative liability of entities, are currently:

- Offences against the Public Sector (Arts. 24 and 25);
- Computer crime and unlawful data processing (Art. 24-bis);
- Organised crime (Art. 24-ter);
- Counterfeiting of coins, banknotes, revenue stamps and coupons and instruments or signs of identification (Art. 25-bis);
- Crime against industry and commerce (Art. 25-bis 1);
- Corporate crimes (Art. 25-ter);
- Crimes of terrorism or subversion of the democratic order (Art. 25-quater);
- Mutilation of female genitalia (Art. 25-quater 1);
- Crimes against the person (Art. 25-quinquies);
- Market abuse crimes (Art. 25-sexies);
- Manslaughter, actual or grievous bodily harm committed in breach of the laws governing health and safety in the workplace (Art. 25-septies);
- Receipt of stolen goods, money laundering and use of money, goods or benefits from unlawful activities (Art. 25-octies);
- Infringement of copyright (Art. 25-nonies);





- Inducement to not give statements or to give false statements to a judicial authority (Art. 25-decies);
- Transnational offences (Law no. 146 of 16 March 2006, Arts. 3 and 10).

### *2.1.3 Sanctions*

The sanctions that may be imposed on entities as a result of the commission or attempted commission of the offences mentioned above are:

- fines applied on a quota basis (from a minimum of €258 to a maximum of €1,549) up to a maximum of €1,549,370.69;
- prohibitive sanctions (which are also applicable as precautionary measures);
  - ban on carrying on business;
  - suspension or withdrawal of authorisations, licences or concessions instrumental in the commission of the offence;
  - ban on contracting with the Public Sector;
  - exclusion from benefits, funding, grants or subsidies or withdrawal of any that have been granted;
  - ban on advertising goods or services.
- confiscation and seizure of the profit made from the offence;
- publication of the judgment.

### *2.1.4 Exemption from administrative liability*

Legislative Decree 231/01 specifies ways in which the entity can avoid administrative liability. In particular, Article 6 of Legislative Decree 231/01 stipulates that, where an offence is committed by a senior person, the entity will not be liable if it can prove that:

- the management body of the entity has adopted and effectively implemented, before the offence was committed, adequate organisation and management models capable of preventing offences of the type committed;
- the task of monitoring the functioning and effectiveness of the models and compliance therewith and of keeping them updated has been entrusted to a board within the entity invested with autonomous powers of initiative and control;
- the people who committed the offence acted by fraudulently avoiding the aforementioned organisation and management models;
- there was no omission or insufficient supervision on the part of the board specified in letter b).

Consequently, there is, as far as the entity is concerned, a presumption of liability due to the fact that senior persons express and reflect the policy and will of the entity. That presumption can be rebutted if the entity manages to show the existence of the four conditions listed above. In that case, although



the senior person will continue to be personally liable, the entity will not itself be liable under Legislative Decree 231/01.

As far as the liability of entities is concerned, Legislative Decree 231/01 assigns a discriminatory value to organisation, management and control models to the extent that the latter are capable of preventing the offences set out in Legislative Decree 231/01 and, at the same time, are effectively implemented by the management body.

Article 7 of Legislative Decree 231/01 lays down the principle of the entity's administrative liability for offences if they were made possible by a failure to fulfil the management and supervisory obligations. That failure is however excluded if, before the crime is committed, the entity has adopted and effectively implemented an organisation, management and control model capable of preventing offences of the type committed.



## 2.2 Organisation, Management and Control Model (OMC 231)

### 2.2.1 *Functionality of the model*

The organisation, management and control model is a structured and organic system of principles, internal rules, operating procedures and supervisory activities aimed at ensuring that the Company carries out its activities in a diligent and transparent manner, in order to prevent behaviours that fall within the types of offence set out in Legislative Decree 231/01 as subsequently amended and supplemented.

In particular, pursuant to Article 6(2) of Legislative Decree 231/01, the OMC 231 must meet the following requirements:

- identify activities within the scope of which crimes may be committed;
- establish specific procedures governing the making and implementation of the entity's decisions in relation to the crimes to be prevented;
- identify ways of managing financial resources that are capable of preventing crimes from being committed;
- establish duties with regard to reporting to the board appointed to monitor the functioning of and compliance with the model;
- introduce a suitable disciplinary system to sanction any non-compliance with the measures indicated in the model.

In accordance with Article 6 of Legislative Decree 231/01 and with the guidelines for interpretation and application drawn up by the most representative trade associations, in particular those supplied by Confindustria, Novamont S.p.A. has defined the general principles, structure and components of its OMC 231.

### 2.2.2 *Structure and components*

The main components of Novamont S.p.A.'s OMC 231, in accordance with the provisions of Legislative Decree 231/01, are as follows:

- Ethical Code;
- System of delegations and powers;
- Supervisory procedures;
- Sanctions system;
- Training and communication plan.
- Supervisory Board.



The **Ethical Code** aims to promote and spread the vision and mission of Novamont S.p.A., by promoting a system of ethical values and behavioural rules in order to ensure a commitment to a morally correct and legally compliant conduct on the part of employees and third parties involved in company operations. The Ethical Code therefore sets out:

- the vision, mission, ethical values and principles that form the basis of the Company's culture and management philosophy;
- behavioural rules to be adopted in the performance of their duties and in their dealings with the company's internal and external partners;
- duties incumbent upon senior and non-senior employees with regard to reporting to and cooperation with the Supervisory Board;
- reference to the sanctions system applicable in the event of breach of the rules laid down in the Ethical Code.

The **System of delegations and powers** defines how the Company is organised in terms of structure, roles, responsibilities and authorisation and signatory powers assigned.

The **Supervisory procedures** define all of the supervisory actions to be carried out with respect to the activities identified as being sensitive in terms of the commission of the offences set out in Legislative Decree 231/01, which, if carried out appropriately, help to prevent the commission of such offences.

The **Sanctions system** defines the disciplinary sanctions and the ways in which these are imposed on the individuals (senior persons, employees, managers, external partners) responsible for breaching the rules contained in the Ethical Code and for failing to comply with the provisions laid down in the OMC 231. The disciplinary system sets out:

- the relevant legislative and regulatory framework that governs, at contractual level and in relation to the civil code, the sanctions and the procedures for imposing those sanctions in the event of offences and incorrect behaviours on the part of management and non-management staff and external partners;
- the sanctions imposed on senior persons, employees and managers as well as the measures taken against external partners;
- the internal procedures for the detection, communication and handling of breaches.

The **Training and communication plan** aims to communicate to all stakeholders the rules and provisions laid down in the OMC 231, in order to ensure that they are fully familiar with the latter. The objective of the **Training and communication plan** is to inform Novamont S.p.A. staff, through tailored training courses, about the need to take into account the provisions laid down in the OMC 231 as well as the risk of the offences defined by current legislation being committed.

The Plan must specify the following points:

- the training and information programmes to be carried out;
- the techniques, resources and tools to be used in support of training and communication activities (for example, internal circulars, notices to be affixed in accessible places, multi-media documents, classroom training)
- the procedures for recording the training activities carried out.



The **Supervisory Board** has the duty of verifying compliance with the OMC 231 adopted and its suitability and of updating the latter according to organisational changes within Novamont S.p.A. and in current legislation. Accordingly, the following are defined:

- the appointment and revocation process;
- the essential requirements;
- the organisational placement;
- duties and powers;
- the budget;
- liability.

## 2.3 Methodological approach

### *2.3.1 Methodology adopted*

An organisation, management and control model, adopted pursuant to Legislative Decree 231/01, must be created and implemented in order to prevent, within reasonable limits, the commission of the offences set out in the decree.

In that regard, particular importance is attached to an analysis of the organisational structure in order to:

- identify sensitive activities where there could be opportunities for unlawful behaviours;
- describe the internal control system governing the sensitive activities identified.

The identification and analysis of sensitive activities must be undertaken whenever there are changes in organisation and in legislation.

This task requires the direct involvement of senior members of staff, i.e. directors, general managers and, in general, all those who, in the performance of their duties, have significant decision-making and operational autonomy with respect to the Company.

For further details about the methodology adopted, see the document entitled "Methodology for assessing sensitive activities pursuant to Legislative Decree 231/01".

The aim of the document is to set out the methodology and tools used in analysing the activities where potentially there is a risk of the offences contemplated in Legislative Decree 231/01 being committed.



## 2.4 System of delegations and powers

### 2.4.1 Principles

The System of delegations and powers aims to:

- assign roles and responsibilities to each sector of the Company;
- identify the individuals who can carry out specific company activities;
- formalise the assignment of decision-making powers and their economic limits.

The principles on which this System is founded include:

- a clear and organic allocation of duties, in order to avoid overlapping of power or power vacuums,
- segregation of responsibilities,
- the contraposition of interests, to prevent concentrations of power, in accordance with the requirements of the OMC 231 laid down in Legislative Decree 231/01.

The System of delegations and powers must be coherent with the risk taking, assessment and management policies with respect to the most significant risks and with the risk tolerance levels fixed.

Documentation about the System of delegations and powers is kept at the administrative office that monitors activities connected to the performance of corporate management duties and which also makes any updates resulting from changes, insertions, deletions and supplements agreed by resolution by the Board of Directors of Novamont S.p.A..

(...)

## 2.5 Sanctions System

### 2.5.1 Introduction

In order to be effectively implemented, the OMC 231 requires the establishment of an adequate sanctions system, which fulfils an essential role in the architecture of Legislative Decree 231/01: indeed it is this system that serves to protect the internal procedures (within the meaning of Art. 6(2)(e) and Art. 7(4)(b) of Legislative Decree 231/01).

In order for the OMC 231 to enable the Company to avoid liability, it must have, as indicated in the aforementioned Art. 6(2), *a suitable disciplinary system to sanction any non-compliance with the measures indicated in the Model.*

The requirements that the sanctions system must meet, where not provided for in the Decree, can be inferred from existing legal theory and case law which identifies these as follows:

- **Specificity and autonomy:** *specificity* is expressed by the introduction of a sanctions system within the Company designed to sanction any breach of the OMC 231, regardless of whether or not the commission of an offence results from that breach; the requirement of *autonomy* is



expressed by the self-sufficiency of operation of the internal disciplinary system with respect to external systems (e.g. criminal proceedings), i.e. the Company is obliged to sanction the breach regardless of the progress of the criminal proceedings and considering the type of breach in relation to the protocols and procedures specified in the OMC 231;

- **Compatibility:** the procedure for establishing breaches and for imposing sanctions as well as the sanctions themselves cannot be in conflict with laws or with contractual provisions governing the employment relationship in existence with the Company;
- **Suitability:** the system must be efficient and effective in preventing the commission of offences;
- **Proportionality:** the sanction applicable or applied must be proportionate to the breach observed;
- **Recording in writing and suitable dissemination:** the sanctions system must be drafted in writing and made known, through information and training initiatives, to all those to whom it applies (simply affixing a copy of the sanctions system in a place accessible to all as per Art. 7, paragraph 1, of the Workers' Statute will not therefore be sufficient).

That said, it seems obvious that the commission of breaches would compromise the bond of trust between the Parties, legitimising the imposition of disciplinary sanctions by the Company.

An essential feature of the Company's disciplinary power is the ability to charge the worker (whether an employee or senior figure or partner) with the breach, regardless of whether the behaviour in question constitutes a breach so substantial as to cause criminal proceedings to arise.

As stated above, one of the fundamental requirements for the sanctions is that they must be proportional to the breach observed, such proportionality to be assessed according to two criteria:

- the severity of the breach;
- the type of employment relationship with the worker (employee, self-employed, management, etc.), taking into account the specific rules existing at legislative and contractual level.

### *2.5.2 Definition and limits of disciplinary liability*

This section of the OMC 231 identifies and describes the breaches that are substantial within the meaning of Legislative Decree 231/01 as subsequently amended, the corresponding disciplinary sanctions that can be imposed and the procedure for challenging any such breaches.

The Company, being aware of the need to comply with current laws and provisions, ensures that the sanctions that can be imposed under this Sanctions System are compliant with the national collective labour agreements applicable to the sector, in the present case with the national collective labour agreement for employees of the chemical industry. It also ensures that, from a procedural point of view, Art. 7 of Law no. 300 of 30.05.1970 (Workers' Statute) is applied with respect to challenging the offence and the imposition of the respective sanction.





For persons who are bound by contracts other than that of a subordinate employment contract (directors and, in general, external partners), the measures that are applicable and the sanction procedures must comply with both legal and contractual conditions.

### *2.5.3 Persons to whom the disciplinary system applies and their duties*

The persons to whom this disciplinary system applies are the persons to whom the OMC 231 applies.

Such persons are obliged to act in compliance with the principles enshrined in the Ethical Code and with all the principles and measures concerning the organisation, management and control of company activities defined in the OMC 231.

Any established breach of the above principles, measures and procedures constitutes:

- in the case of employees and managers, a breach of contract in relation to the duties arising from the employment relationship in accordance with Art. 2104 and Art. 2106 of the Civil Code;
- in the case of directors, a breach of the duties imposed by the law and by the bylaws in accordance with Art. 2392 of the Civil Code;
- in the case of external partners, a breach of contract and just reason to terminate the contract, without prejudice to any claim for damages.

The procedure for imposing the sanctions listed below therefore takes into account the characteristics arising from the legal status of the persons against whom the action is being taken.

The Supervisory Board must in all cases be involved in the procedure for imposing disciplinary sanctions.

The Supervisory Board checks that specific procedures are being adopted to inform all of the persons listed above, right from the start of their relationship with the Company, about the existence and content of this Sanctions System.

### *2.5.4 General principles in relation to sanctions*

Any sanctions imposed against breaches must, in all cases, respect the principle of graduality and proportionality with respect to the severity of the breaches committed.

The determination of the type, as well as the extent of the sanction imposed following the commission of breaches, including substantial offences within the meaning of Legislative Decree 231/01, must be based on an assessment of the following criteria:

- the intentionality of the behaviour from which the breach originated;
- any negligence, rashness and carelessness shown by the perpetrator in the commission of the breach, especially in terms of the actual foreseeability of the event;
- the significance and any consequences of the breach or of the offence;





- the position occupied by the person within the company organisation especially having regard to the responsibilities connected with his duties;
- any aggravating and/or attenuating circumstances that may be observed in relation to the behaviour adopted by the person, including, but not limited to, the imposition of previous disciplinary sanctions against the same person in the two years preceding the breach or the offence;
- the agreed complicity of more than one person in the commission of the breach or the offence.

The process for challenging the breach and the imposition of the sanction differ according to the category to which the person concerned belongs.

### *2.5.5 Sanctions against employees*

Behaviours adopted by employees in breach of the individual behavioural rules laid down in this OMC 231 are defined as disciplinary offences.

The sanctions that can be imposed on employees are those laid down in the company's disciplinary system and/or in the sanctions system contained in the national collective labour agreement, in accordance with the procedures set out in Article 7 of the Workers' Statute and any special laws and regulations applicable.

The OMC 231 makes reference to the sanctions and to the categories of sanctionable actions laid down in the Civil Code and in the national collective labour agreement, in order to match up any breaches of the OMC 231 with the types already specified in the aforementioned laws.

The Company believes that the above sanctions specified in the national collective labour agreement are applicable, according to the procedures indicated below and in consideration of the general principles and criteria identified in the previous point, to the breaches defined above.

In particular for employees, according to the national collective labour agreement, the following sanctions can be imposed:

- a) verbal warning;
- b) written warning;
- c) fine;
- d) suspension from work;
- e) dismissal through fault.

#### (a) verbal warning

According to the national collective labour agreement, a verbal warning is given to the employee in the following circumstances:



- breaches committed with minor negligence, provided that they are minor in extent and do not have consequences outside of the company structure/organisation;
- in general, a minor breach of the duties laid down in the internal procedures set out in the OMC 231 or the adoption of a behaviour not compliant with the requirements of the OMC 231 in carrying out an activity in an area at risk or with the instructions given by superiors.

(b) written warning

According to the national collective labour agreement, a written warning is given to the employee in the following circumstances:

- Breaches which are minor but which are greater than those sanctionable with a verbal warning which the employee has committed, negligently and in the performance of company activities;
- negligent breach of the duties with regard to reporting to the Supervisory Board as specified in the OMC 231;
- repeating, more than twice, of a breach already sanctioned with a verbal warning;
- in general, offences punishable with a verbal warning, where, by virtue of objective circumstances, specific consequences or repeated behaviour, they become more substantial;
- in general, a non-serious breach of the duties laid down in the internal procedures set out in the OMC 231 or the adoption of a behaviour not compliant with the requirements of the OMC 231 in carrying out an activity in an area at risk or with the instructions given by superiors.

(c) and (d) fine and suspension from work

The employee may be fined (sum not exceeding the amount of three hours' normal pay) or suspended from work and from pay (according to the national collective labour agreement) in the following circumstances:

- repeating, more than twice, of a breach already sanctioned with a written warning;
- breaches, committed with fault, which have consequences within and outside the company structure and organisation;
- in general, offences punishable with lesser sanctions where, by virtue of objective circumstances, specific consequences or repeated behaviour, they become more substantial;
- in general, breach (repeated or a certain severity) of the duties laid down in the internal procedures set out in the OMC 231 or the adoption of a behaviour not compliant with the requirements of the OMC 231 in carrying out an activity in an area at risk or with the instructions given by superiors.

(e) dismissal through fault.

Any worker who, in carrying out an activity in one of the areas at risk, adopts a behaviour not compliant with the stipulations of the OMC 231 and with the clear aim of committing one of the



offences sanctioned by Legislative Decree 231/01, is liable to be dismissed in accordance with the national collective labour agreement.

In particular, the sanction applies where an employee has wilfully and culpably (only for the family of offences in relation to health and safety at work) committed a breach so substantial that it constitutes, concretely or merely abstractly, an offence under Legislative Decree 231/01.

As regards establishing the above breaches, the disciplinary procedure and the imposition of sanctions, the employer's powers remain unchanged and may be delegated to specially appointed persons.

Provision is made for the necessary involvement of the Supervisory Board in the procedure for imposing sanctions owing to a breach of the OMC 231, in the sense that a disciplinary sanction owing to a breach of the OMC 23 cannot be imposed without prior notification of the Supervisory Board.

That notification becomes superfluous when the proposal for the imposition of the sanction comes from the Supervisory Board.

The Supervisory Board must be given similar notification of any decision to abandon the disciplinary procedures set out in this paragraph.

Workers will be given immediate and extensive information about the introduction of any new provision in the form of an internal circular explaining the reasons and summarising the content thereof.

### *2.5.6 Sanctions against managers*

The management relationship is one characterised by its fiduciary nature. The manager's behaviour is reflected not only within the Company but also externally, for example in terms of market image and, in general, on the various stakeholders.

Therefore, compliance with the provisions of this OMC 231 on the part of the Company's managers and their duty to ensure its compliance are considered an essential part of the management employment relationship, because they act as an incentive and set an example for all those under their hierarchical control.

Any breaches committed by the Company's managers will, by virtue of the special relationship of trust existing between them and the Company and the lack of a disciplinary system to which to refer, be sanctioned according to the disciplinary measures deemed most appropriate to the individual case based on the general principles identified above in the paragraph *General principles in relation to sanctions*, in line with legal and contractual provisions, and in consideration of the fact that the aforementioned breaches constitute, in all cases, breaches of the duties arising from the employment relationship.



The same disciplinary measures apply where a manager permits, expressly or through lack of supervision, the employees under his hierarchical control to engage in behaviours that are not compliant with the OMC 231 and/or in breach thereof, or behaviours that may be qualified as breaches.

If the breaches of the OMC 231 on the part of managers constitute criminal offences, the Company reserves the right, at its choice, to adopt the following alternative provisional measures against those responsible pending the criminal proceedings:

- precautionary suspension of the manager from work but with the right to receive full pay;
- assignment to another position within the Company.

If the criminal proceedings confirm the breach of the OMC 231 by the manager and therefore convicts him for one of the offences set out herein, the manager will be subject to the disciplinary measures reserved for more serious breaches.

In particular, the disciplinary measure to be adopted in the case of particularly serious breaches is that of dismissal for just cause or reason.

The sanction of dismissal for just cause applies in the case of particularly serious breaches that may result in the measures set out in Legislative Decree 231/01 being imposed on the Company, in such a way as to undermine the fiduciary element of the employment relationship, and has the effect that the employment relationship, where the fiduciary element is a fundamental requirement, cannot be continued not even temporarily.

Provision is made for the necessary involvement of the Supervisory Board in the procedure for imposing sanctions on managers owing to a breach of the OMC 231, in the sense that no sanction owing to a breach of the OMC 23 can be imposed on a manager without the prior involvement of the Supervisory Board.

That involvement is presumed, where the proposal for the imposition of the sanction comes from the Supervisory Board.

The Supervisory Board must be given similar notification of any decision to abandon the disciplinary procedures set out in this paragraph.

#### *2.5.7 Measures against senior people (Art. 5(1)(a) of Legislative Decree 231/01)*

The Company regards as extremely serious any breaches of this OMC 231 on the part of individuals who represent the top management of the Company and project its image towards employees, shareholders, customers, creditors, supervisory authorities and the general public. The values of correctness and transparency must, first of all, be adopted, shared and respected by those individuals who guide company choices, in order to set an example and act as an incentive for all those who work for the Company at any level.



Where the principles and the measures laid down in the OMC 231 adopted by the Company are breached by members of the Company's Board of Directors, these must be reported immediately by the Supervisory Board to the entire Board of Directors and to the Board of Statutory Auditors.

Liability of directors towards the Company is, for all purposes, governed by Art. 2392 of the Civil Code.<sup>1</sup>

The Board of Directors is competent to consider the breach and to take the most appropriate measures against the director or directors that have committed the breach in question. In that consideration, the Board of Directors is assisted by the Supervisory Board and decides by an absolute majority of those present, excluding the director or directors who committed the breaches, having consulted with the Board of Statutory Auditors.

The sanctions that can be imposed on directors are the withdrawal of the powers delegated or the mandate and, where the director is employed by the Company, dismissal from that post.

In accordance with Art. 2406 of the Civil Code, the Board of Directors and the Board of Statutory Auditors are competent, pursuant to the applicable laws, to call a Shareholders' Meeting, where this is considered necessary. A Shareholders' Meeting must be called for resolutions about the possible withdrawal of the mandate or the bringing of any action for liability against directors (it is specified that an action for liability against directors is a compensatory action and cannot, therefore, be considered a sanction).

### *2.5.8 Measures against external partners*

Any behaviour adopted by external partners (colleagues, agents and representatives, consultants and, in general, self-employed workers, as well as suppliers and partners, including in the form of consortia and joint ventures) that conflicts with the standards of conduct indicated in this OMC 231 and which entail the risk of an offence set out in Legislative Decree 231/01 being committed, may, depending on the content of the specific contractual clauses included in the letters of appointment or in the contracts, result in the termination of the contractual relationship or the right to withdraw from the latter, without prejudice to any claim for damages if such behaviour causes harm to the Company such as, for example, where the sanctions laid down in the decree are imposed against the Company, including as a precautionary measure.

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<sup>1</sup> Art. 2392 **Liability towards the company.**

Directors shall perform the duties imposed upon them by law and under the bylaws with the diligence required by the nature of the post and according to their specific capabilities. They shall be jointly and severally liable towards the company for damage arising from any breach of those duties, unless the powers concerned are those of the executive committed or duties specifically attributed to one or more directors.

In all cases, directors shall, without prejudice to the third paragraph of Art. 2381, be jointly and severally liable if they are aware of detrimental facts but did not do what they could to prevent the carrying out of such facts or to eliminate or mitigate the harmful consequences thereof.

Liability for the acts or omissions of directors shall not extend to any such director who, being free from blame, has immediately recorded his dissent in the book of minutes of the meetings and resolutions of the board and immediately informed the chairman of the board of statutory auditors in writing of his dissent.



The Supervisory Board, in liaison with the Deputy General Manager or other person delegated by the latter, checks that specific procedures have been adopted in order to send to external partners the principles and standards of conduct contained in this OMC 231 and in the Ethical Code and checks that they are informed about the consequences that may arise from any breach of such principles and standards.

## 2.6 Training and communication plan

### 2.6.1 Training and communication of the OMC 231

Training for the purpose of the decree is organised by the Supervisory Board and will be structured as follows:

- **managerial staff and staff with representative duties:** initial general classroom training will be provided followed by specific training for new recruits and regular updates in the event of substantial changes in the OMC 231 and, in particular, if new offences are introduced by legislation.

It will be the duty of the Supervisory Board to check:

- the quality of the courses;
- the frequency of updates;
- the actual participation of staff in these courses;

The training courses must offer:

- an introduction to the legislation and to the Confindustria Guidelines,
- an in-depth analysis of the principles contained in the Ethical Code and in the General and Special Part of the OMC 231;
- a description of the role played by the Supervisory Board;
- a description of the sanctions system.

- **non-managerial staff involved in sensitive activities:** a training course will be organised the content of which will be similar, in nature and scope, to the courses described above. The Supervisory Board will have the duty to check the suitability of the training course and to verify that the course is run effectively, including for new recruits or whenever there are organisational changes that require individuals to participate in the course;
- **non-managerial staff not involved in sensitive activities:** an internal memo will be distributed to all employees currently in service and to those subsequently recruited. The Supervisory Board will have the duty to check the suitability of the memo and that it is disseminated effectively;
- **external partners:** a general memo will be distributed to all those who have current contractual relations with the Company in areas of sensitive activities. As regards those with



whom contractual relations will be established in the future, the memo will be handed over at the time when the respective contracts are signed. The Supervisory Board will have the duty to check the suitability of the memo and that it is disseminated effectively.





## 2.7 Supervisory Board

### 2.7.1 Legislative context

Article 6(1)(b) states, with regard to the actions of *senior* managers, that "*the task of monitoring the functioning of the models and compliance therewith and of keeping them updated*" must be entrusted "*to a board within the entity invested with autonomous powers of initiative and control*". Although there is no express legislative reference to the actions of *persons managed by others* for the purposes of the effective implementation of the model adopted, Article 7(4)(a) calls for *regular checks and changes where significant breaches of provisions are discovered to have taken place or where there are changes in organisation or activity*, such activity being the typical responsibility of the Supervisory Board.

The Supervisory Board is the department responsible for supervising the OMC 231, in terms of monitoring the Company's ethical, organisational and management procedures.

### 2.7.2 Appointment and revocation process

The Supervisory Board is appointed by resolution of the Board of Directors.

The appointment must specify the criteria adopted in terms of the identification, structure and type of the body or unit invested with the role of Supervisory Board, as well as the reasons behind that choice and behind the appointment of the individual members of the Supervisory Board.

As regards composition, the Board of Directors appoints the Chairman of the Supervisory Board from among its members. In all cases, the Chairman must not, at the time of appointment and throughout his entire term of office, be connected in any way or in any capacity to the Company by connection of employment, subordination or hold management positions within the latter.

Individual members of the Supervisory Board must personally meet the requirements of integrity and morality.

The following constitute grounds for ineligibility:

- being engaged or having been engaged, directly or indirectly, in economic relations (such as, for example, professional services during the present or past year, having commercial dealings in the present or past year, etc.) with the Company, with its subsidiaries, with the executive directors, with the shareholder or group of shareholders that control the company, of such significance as to undermine their independence of opinion;
- owning, directly or indirectly, shareholdings in such a number that they can control or exert a substantial influence over the company;
- being a close relative of executive directors of the company or of persons falling within the situations described in the previous points;
- being barred, disqualified or bankrupt;





- being subject to criminal proceedings for one of the offences indicated in Legislative Decree 231/01;
- having requested or consented to the imposition of the penalty with the agreement of the parties pursuant to Art. 444 of the Code of Criminal Procedure for one of the offences indicated in Legislative Decree 231/01;
- having been convicted, by means of a definitive judgment within the meaning of Art. 648 of the Code of Criminal Procedure:
  - for acts connected with the performance of their duties;
  - for acts that impact significantly on their professional morality;
  - for acts that entail a ban on holding public offices, on holding management positions within companies and legal persons, on carrying on a profession or an art, as well as the incapacity to contract with the Public Sector;
  - and, in any case, for having committed one of the offences set out in Legislative Decree 231/01;
- to protect the essential requirements of the Supervisory Board, from the time when a member is notified of the bringing of criminal proceedings according to Arts. 405 and 415 bis of the Code of Criminal Procedure and until a non-suit ruling is issued according to Art. 425 of the Code of Criminal Procedure, or if the proceedings do proceed, until an order of acquittal is made according to Arts. 529 and 530 of the Code of Criminal Procedure. This ground for ineligibility applies exclusively to criminal proceedings for acts referred to in the previous point.

The appointment must specify the term of the appointment, which is a fixed-term appointment and normally lasts for three years as from the date of appointment.

The appointment must also specify the remuneration for the mandate, without prejudice to the investiture of members of other bodies or units for whom the monitoring of the adequacy and of the concrete functioning of the internal control system forms a substantial part of their duties, the OMC 231 having been adopted, according to authoritative legal theory, as an integral part of the internal control system.

Members of the Supervisory Board may cease their role by renunciation, supervening incapacity, death or revocation.

Members of the Supervisory Board may be revoked:

- in the event of repeated breaches of duties or unwarranted inactivity;
- if prohibitive sanctions are imposed on the Company as a result of the inactivity or its member or members;
- where breaches of the OMC 231 are observed and there is a failure to report those breaches and to check the suitability and effective implementation of the OMC 231 in order to propose any changes;
- if, after appointment, any of the grounds for ineligibility specified above should arise.



Revocation is decided by the Board of Directors and immediately reported to the Board of Statutory Auditors.

In the event of renunciation, supervening incapacity, death or revocation of a member of the Supervisory Board, the Chairman of the Supervisory Board will immediately notify the Board of Directors which will take the appropriate decisions without delay.

In the event of renunciation, supervening incapacity, death or revocation of the Chairman of the Supervisory Board, he will be replaced by the eldest member, who will remain in office until the date on which the Board of Directors has resolved on the appointment of the new Chairman of the Board of Statutory Auditors.

### *2.7.3 Essential requirements*

Taking into consideration the specific nature of the duties with which it is entrusted, the stipulations laid down in Legislative Decree 231/01 and the information contained in the Guidelines issued by Confindustria, the choice of the internal body invested with autonomous powers of initiative and control is made in such a way as to guarantee that the Supervisory Board meets the requirements of autonomy, independence, professionalism and continuity of action that Legislative Decree 231/01 requires for that function.

In particular, taking also into account the aforementioned Confindustria Guidelines, the aforesaid requirements can be qualified as follows:

#### *2.7.3.1 Autonomy*

The Supervisory Board is invested with decision-making autonomy.

The Board is autonomous with respect to the Company in that it is not involved in any way in operational activities or management activities. Furthermore, the Supervisory Board is able to carry out its role without direct or indirect influence from controlled entities. The activities carried out by the Supervisory Board cannot be censured by any other company body or structure.

The Board is also autonomous in the regulatory sense, in other words it can determine its own behavioural and procedural rules within the scope of the powers and functions determined by the Board of Directors.

#### *2.7.3.2 Independence*

The independence of the Supervisory Board means the necessary requirement that there must be no form of subjection with respect to the Company. Independence is acquired by means of a correct and appropriate hierarchical placement within the Company.

#### *2.7.3.3 Professionalism*

The Supervisory Board is professionally capable and reliable.



It is therefore necessary, at board level on the whole, to guarantee the technical/professional capabilities necessary to carry out the duties that it is required to perform, including legal, accounting, business and organisational expertise as well as expertise in the area of health and safety at work.

In particular, specific capabilities must be guaranteed in the activities of inspection and consultancy, for example expertise in statistical sampling, risk analysis and assessment techniques, interview techniques and questionnaire preparation, as well as the methods for identifying fraud.

These characteristics, combined with independence, guarantee objectivity of opinion.

#### 2.7.3.4 Continuity of action

In order to guarantee the effective and constant implementation of the OMC 231, the Supervisory Board operates continuously. The Supervisory Board therefore guarantees, in terms of the operating solutions adopted, that it will concentrate its efforts predominantly, albeit not necessarily exclusively, on its work in such a way as to perform its institutional duties both effectively and efficiently.

#### *2.7.4 Organisational placement*

Article 6 of Legislative Decree 231/01 requires the Supervisory Board to exist within the Company and to occupy a functional place on the organisational chart. Only in this way can the Supervisory Board be informed about the Company's events and can achieve the necessary coordination with the other corporate bodies. In the same way, only by being an inherent part of the Company can the Supervisory Board guarantee the necessary continuity of action.

The Supervisory Board operates **under** the Board of Directors and is appointed by the latter. In order to further guarantee the requirement of independence, the Supervisory Board has duties with regard to reporting to the Board of Statutory Auditors and - in the final instance - to the Shareholders' Meeting.

By virtue of being an inherent part of the Company and by virtue of its positioning within the organisation, constant information flows are also guaranteed between the Supervisory Board and the Board of Directors.

#### *2.7.5 Identification*

Considering all the principles embodied in the Company's corporate identity and the specific nature of the duties with which the Supervisory Board is entrusted, it was decided to opt for a board comprising three members.

The following persons may be part of the Supervisory Board:

- Non-Operational Director
- Intellectual Property and Legal Affairs Manager
- Planning, Control and Information Systems Manager



The Supervisory Board is entitled to make use of its specific secretariat which is authorised to carry out operational support activities, within the framework of its full decision-making autonomy. A special mandate or appointment is required in order for the secretariat to carry out operational activities in support of the Supervisory Board.

The duties that can be delegated externally are those involving the carrying out of technical activities, without prejudice to the obligation, on the part of the unit or other external partner used as support, to report to the Company's Supervisory Board. It is important to note that the granting of this type of delegation does not affect the liability of the Company's Supervisory Board with respect to the supervisory duties entrusted to it by the law.

The composition is recognised as being sufficient to guarantee that the Supervisory Board meets the prescribed requirements of autonomy of initiative and continuity of action.

Members of the Supervisory Board have been chosen from individuals who hold the specific capabilities necessary in view of the particular nature of the Supervisory Board's powers and the professional expertise required.

### *2.7.6 Duties*

The Supervisory Board carries out the duties laid down in Articles 6 and 7 of Legislative Decree 231/01 and, in particular, the following activities:

- supervisory and control activities;
- monitoring of the implementation of the Ethical Code;
- adaptation and updating of the OMC 231;
- reporting to the corporate bodies;
- management of information flow.

#### *2.7.6.1 Supervisory and control activities*

The primary function of the Supervisory Board is to constantly monitor the functionality of the OMC 231 adopted.

The Supervisory Board must monitor:

- compliance with the stipulations of the OMC 231 in relation to the various types of offence set out in Legislative Decree 231/01;
- the actual effectiveness of the OMC 231 within the corporate structure and its actual capacity to prevent the offences set out in Legislative Decree 231/01 from being committed.



In order to carry out this important function in an appropriate manner, the Supervisory Board must carry out a regular check of the individual areas that are considered sensitive, ensuring that the relevant procedures have actually been adopted and correctly applied, that the documentation specified in those procedures has been prepared and is regularly updated, and that the measures and precautions adopted in the OMC 231 are efficient and capable of preventing the commission of the offences set out in Legislative Decree 231/01.

In particular, the Supervisory Board has the duty to:

- check that the supervisory procedures laid down in the OMC 231 have actually been adopted and correctly applied. It should be noted, however, that supervisory activities fall under the primary responsibility of the operational management and are considered an integral part of each company process ("line control"), hence the importance of staff training;
- carry out, directly or through the operational support of the secretariat, periodic checks on certain operations or specific acts carried out, especially, in the areas of sensitive activities, the outcomes of which will be summarised in a special report whose content will be described in the communications to the corporate bodies, as described below;
- collect, process and retain significant information with respect to compliance with the OMC 231;
- monitor initiatives aimed at spreading knowledge and understanding of the OMC 231.

#### 2.7.6.2 Monitoring with respect to the implementation of the Ethical Code

The Supervisory Board monitors the application of and compliance with the Ethical Code adopted by the Company's Board of Directors on 16 November 2004 as subsequently amended.

The Supervisory Board supervises the dissemination, understanding and implementation of the Ethical Code.

The Supervisory Board proposes to the Board of Directors any needs to update the Code.

#### 2.7.6.3 Updating of the OMC 231

The Supervisory Board has the task of assessing whether it is necessary to make changes to the OMC 231, and will make suitable proposals to the Board of Directors where such changes become necessary as a result of:

- significant breaches of the stipulations of the OMC 231 adopted;
- significant changes in the internal structure of the Company, or in the manner in which company activities are carried out;
- legislative changes.

In particular, the Supervisory Board has the duty to:



- conduct surveys into company activities in order to update the mapping of sensitive activities;
- liaise with the manager responsible for training programmes for staff and colleagues;
- interpret relevant legislation on the subject of applicable offences, as well as any Guidelines prepared, including in addition to existing guidelines, and check that the internal control system is compliant with the relevant laws or regulations or with the Confindustria Guidelines;
- check any needs to update the OMC 231.

#### 2.7.6.4 Reporting to the corporate bodies

It is important that the Supervisory Board is in constant touch with the Board of Directors. Likewise, there must be a regular course of reporting to the Board of Statutory Auditors.

The Supervisory Board reports to the Board of Directors:

- if necessary, about the formulation of proposals regarding any updates and adaptations of the OMC 231;
- immediately, about established breaches of the OMC 231 adopted, in cases where such breaches may give rise to liability for the Company, so that appropriate measures can be taken. Where it is necessary to adopt appropriate measures against directors, the Supervisory Board is required to notify the Shareholders' Meeting;
- periodically, about the report that it must submit annually in relation to the monitoring and supervisory activities that it has carried out and their outcome, and about any critical aspects that have emerged in terms of conducts or events that may have an effect on the adequacy or effectiveness of the OMC 231.

The Supervisory Board reports to the Board of Statutory Auditors:

- immediately, about established breaches of the OMC 231 adopted, in cases where such breaches may give rise to liability for the Company, insofar as the Board of Statutory Auditors must monitor the adequacy of the Company's administrative, organisational and accounting system and its correct functioning;
- periodically, by sending the report referred to in the previous point.

The Supervisory Board may be convened at any time by the aforementioned bodies or may, in turn, submit a request to that effect, in order to report on the functioning of the OMC 231 or on specific situations.



### 2.7.6.5 Management of the information flow to the Supervisory Board

In order to facilitate the Supervisory Board's control and supervisory activities, it is necessary to set up and guarantee information flows to the Supervisory Board.

The Supervisory Board must therefore be kept constantly informed about what is happening in the Company and about any important aspect.

The duties with regard to reporting to the Supervisory Board ensure that the supervisory and control activities in relation to the effectiveness of the OMC 231 are carried out in an orderly manner. These reporting duties concern, on a periodic basis, the information, data and details specified in detail in the Special Parts, or subsequently identified by the Supervisory Board and/or requested by the latter from the Company's individual departments.

This information must be sent in the time and manner described in detail in the Special Parts or which will be defined by the Supervisory Board (information flows).

The duties with regard to reporting to the Supervisory Board also concern, on an occasional basis, any other information, of any kind, regarding the implementation of the OMC 231 in the areas of sensitive activities as well as compliance with the stipulations of Legislative Decree 231/01, which may be useful for the fulfilment of the Supervisory Board's duties and, in particular, the following mandatory information:

- information about the effective implementation, at all company levels, of the OMC 231, indicating any sanctions imposed or decisions to abandon sanction procedures, together with the respective reasons;
- the emergence of new risks in the areas managed by the various managers;
- any reports prepared by the various managers as part of their supervisory activities, from which there may emerge certain facts, acts or omissions which are critical in terms of compliance with the provisions of Legislative Decree 231/01 or with the stipulations of the OMC 231;
- any anomalies or abnormalities found by the company departments or results of the supervisory activities carried out in accordance with the OMC 231;
- measures and/or information coming from criminal police bodies, or from any other public authority, revealing that investigations are being made into the offences set out in Legislative Decree 231/01, against known or unknown persons;
- internal reports from which there emerges liability for the offences concerned;
- notifications or requests for legal assistance forwarded to the Company by senior persons or persons managed by others where legal proceedings are brought against them in relation to one of the offences set out in Legislative Decree 231/01;
- reports by senior persons or persons managed by others of presumed cases of breaches and violations of specific behavioural standards, or any other suspicious attitude in relation to the offences laid down in Legislative Decree 231/01;
- reports by partners, agents and representatives, consultants and, in general, self-employed workers, as well as suppliers and partners (including in the form of consortia and joint





ventures) and, more generally, by all those who, in any capacity, work within the areas of sensitive activities for or in the interest of the Company.

The Supervisory Board does not have the duty to check regularly and systematically all of the above phenomena. It is not therefore obliged to act whenever it receives a report but it is at its discretion whether to assess specific cases where it is appropriate to carry out more detailed checks and initiatives.

As regards the sending of reports by senior persons or persons managed by others, it is emphasised that the duty to inform the employer of any behaviours contrary to the OMC 231 falls within the broader duty of diligence and obligation of loyalty on the part of the employee. Therefore, if the employee performs his reporting duty correctly, no disciplinary sanctions can be imposed. However, appropriate disciplinary sanctions will be imposed on any employee who engages in improper reporting, both in terms of content and form, prompted by a desire to defame the reported person.

In particular, the following stipulations apply:

- information and reports by whomever sent, including those concerning any breach or suspected breach of the OMC 231, of its general principles and of the principles laid down in the Ethical Code, must be done in writing and may be anonymous. The Supervisory Board acts in such a way as to guarantee informants against any form of retaliation, discrimination or penalisation or any consequence of making such reports, by ensuring the confidentiality of their identity, without prejudice to legal obligations and to the protection of the rights of the Company or of individuals who are accused wrongly and/or in bad faith;
- information and reports must be sent by the informant directly to the Supervisory Board;
- the Supervisory Board assesses the reports received; all persons with reporting duties are required to cooperate with the Board in order to allow it to gather any additional information deemed necessary so that it can assess the report in a full and correct manner.

Information flows and reports are retained by the Supervisory Board in a special computer database and/or in hard copy format. Data and information held in the database are made available to persons outside of the Supervisory Board subject to its authorisation, unless such access is mandatory by law. The latter defines, by means of a suitable internal measure, the criteria and conditions for accessing the database and for retaining and protecting data and information, in accordance with current legislation.

### *2.7.7 Powers*

The main powers of the Supervisory Board are:

- self-regulation and definition of internal operating procedures;
- supervisory and control powers.





With regard to the powers of self-regulation and definition of internal operating procedures, the Supervisory Board has exclusive competence in relation to:

- how its activities and decisions are recorded;
- how it communicates and liaises directly with each company structure, and how it acquires information, data and documentation from the company structures;
- how it coordinates with the Board of Directors and with the Board of Statutory Auditors and how it participates in the meetings of those bodies, at the Board's own initiative;
- how it organises its supervisory and control activities, and how it reports the results of the activities carried out.

With regard to supervisory and control powers, the Supervisory Board:

- has free and unconditional access to all of the Company's departments - without the need for any prior consent - in order to obtain any information or data deemed necessary to carry out the duties set out in Legislative Decree 231/01;
- can dispose freely, without any interference, of its initial and period budget, in order to meet any requirement necessary to carry out its duties correctly;
- can, if deemed necessary, call upon the help, under its direct supervision and responsibility, of all of the Company's structures;
- can, in the same way, with full decision-making autonomy and where specific skills are required to carry out its duties professionally, call upon the operational support of some of the Company's operating units or the assistance of particular professionals outside the Company for which it will use its period budget. In these cases, the persons outside the Supervisory Board merely provide technical/specialist support in an advisory capacity;
- can, having made the appropriate investigations and checks and interviewed the perpetrator of the breach, report the event according to the rules laid down in the Sanctions System adopted pursuant to Legislative Decree 231/01; however, the process for formally challenging the breach and the imposition of the sanction must be carried out by the employer.

### *2.7.8 Budget*

In order to further strengthen the criteria of autonomy and independence, the Supervisory Board is provided with an adequate initial and period budget previously determined by the Board of Directors.

The Supervisory Board may dispose of those economic resources entirely autonomously; however, it needs to report on the use of that budget at least once a year, and to justify the budget for the following year, as part of the routine duties of reporting to the Board of Directors.



### *2.7.9 Liability of the Supervisory Board*

Additionally, as a result of the introduction of Art. 25-octies of Legislative Decree 231/01, following the enactment of Legislative Decree no. 231 of 21 November 2007, the Supervisory Board is required to act as guarantor with respect to compliance with anti-money-laundering legislation by the Company in which it operates.

Individual members of the Supervisory Board are legally obliged, under Art. 52 of Legislative Decree 231/07, to report:

- immediately, to the supervisory authorities of the sector, all acts or facts of which they become aware in the performance of their duties, which may constitute a breach of the provisions issued under Art. 7, paragraph 2, of Legislative Decree 231/07;
- immediately, to the owner of the business or to the legal representative or to a representative thereof, any breaches of the provisions set out in Art. 41 of which they become aware;
- within thirty days, to the Ministry of Economy and Finance, breaches of the provisions set out in Art. 49, paragraphs 1, 5, 6, 7, 12, 13 and 14 and in Art. 50 of which they become aware;
- within thirty days, to the Financial Intelligence Unit (UIF), breaches of the provisions contained in Art. 36 of which they become aware;

**Breach of the reporting duties mentioned above is, in accordance with Art. 55(5) of the Decree, subject to criminal sanctions with the penalty of imprisonment for up to one year and a fine ranging from €100 to €1,000.**

The introduction of this legal duty on the Supervisory Board and the criminal liability resulting from the breach of the aforementioned decree reopen a hot topic, namely the liability of the Supervisory Board.

Before the enactment of the above decree, the Supervisory Board was always excluded from direct criminal liability because, in particular, of the lack of effective powers of initiative and intervention granted to the members of that body by their principal.

In particular, legal theory has considered the possibility that the Supervisory Board may be held liable, pursuant to Art. 40, second paragraph, of the Criminal Code, on the grounds of omissive complicity in the offences committed by persons belonging to the entity.

The article provides that "failure to prevent the event that one has a legal duty to prevent is equivalent to causing it". According to established case law, the legal duty to prevent the event requires the existence of a specific position of guarantor on the part of the person with respect to a certain legal asset. So, the question is whether such a position is assumed by the Supervisory Board or whether the latter has a legal duty to prevent the commission of offences that an effective OMC 231 should have prevented.

Based on an analysis of the powers entrusted to it, the answer to that question in both legal theory and case law is a resounding no.

In truth, the duty imposed on the supervisory board is a duty of supervision (in other words in relation to the functionality of the OMC 231) which does not entail a duty to prevent the event (i.e. the offence).

Thus the Supervisory Board lacks those powers of intervention that form the position of guarantor on which the omissive liability referred to in Art. 40, second paragraph, of the Criminal Code is based.



As far as liability is concerned, there has always been a reference to civil liability, of contractual nature (Art. 1218 Civil code) and arising from the relationship with the Board of Directors that appointed it.