



DAIKIN APPLIED EUROPE S.p.A.

Summary Document relating to

Organisation and Management Model **Legislative Decree no. 231/2001**

“Organisational Model”

Special Section I

Counterfeiting, falsification of instruments or means of identification, crimes against trade and industry and violation of copyrights.

CONTENTS

1. COUNTERFEITING, FALSIFICATION OF INSTRUMENTS OR MEANS OF IDENTIFICATION, CRIMES AGAINST TRADE AND INDUSTRY AND VIOLATION OF COPYRIGHTS	3
1.1 Introduction	3
1.2 The types of offence	3
1.3 The offences that are theoretically applicable to Daikin Applied Europe.....	8
1.4 Sensitive activities.....	8
1.5 The liabilities of the Company with regard to the questions under analysis	8
1.6 Principles and rules of behaviour for Recipients.....	9
1.7 Specific procedures.....	10
1.8 Checks and information flow to the Supervisory Body.....	10

1. COUNTERFEITING, FALSIFICATION OF INSTRUMENTS OR MEANS OF IDENTIFICATION, CRIMES AGAINST TRADE AND INDUSTRY AND VIOLATION OF COPYRIGHTS

1.1 Introduction

The offences dealt with in this Special Part are referred to in articles 25*bis*, 25*bis*.1 and 25*novies* of Legislative Decree no. 231/2001, all three of which were not present in the original body of the Decree and were introduced to it in subsequent statutory orders.

In particular, art. 25*bis* owes its insertion in the text of the Decree to the action of art. 6 of Legislative Decree no. 350 dated 25th September 2001 ("*Urgent provisions in view of the introduction of the Euro*"), converted with modifications by Law no. 409 dated 23rd November 2001. Following this, with art. 15, paragraph 7, letter a), numbers 1 and 4 of Law no. 99 dated 23rd July 2009 ("*Provisions for the development and internationalisation of businesses, and regarding energy*"), the rubric of the regulation was replaced, taking on its current appearance, with the addition of the "*instruments or means of identification*" as possible subjects of falsification. In the same regulatory provision, in art. 15, paragraph 7, letter a), no. 2, the offences under articles 473 ("*Forgery, alteration or use of trademarks or distinguishing marks, or of patents, models and designs*") and 474 ("*Introduction into the State and commercialisation of products with false marks*") were introduced to the list of predicate offences under art. 25*bis* of the Decree.

Also due to the effect of Law 99/2009 mentioned above (and in particular thanks to art. 15, paragraph 7, letter b) further new additions were made to Decree 231 with introduction of art. 25*bis*.1, which in turn introduces Crimes against industry and trade as further predicate offences, as will be seen in greater detail in the following.

Finally, the same Law also introduced art. 25*novies* to the text of Decree 231, relating to violations of copyright.

Relevant conduct, that may give rise to the direct administrative liability of the Company in whose interest or benefit the offence was committed, focuses on the following offences.

1.2 The types of offence

1.2.1 The crimes of forgery, counterfeiting of currency, counterfeiting of legal tender, counterfeiting of duty stamps and instruments or means of identification (art. 25*bis*, Legislative Decree no. 231/2001).

a) Counterfeiting of currency, spending and introduction into the State, with complicity, of counterfeit currency (art. 453, Criminal Code)

The legislation in question punishes the counterfeiting of currency, both national and foreign, that is legal tender in the State or outside it (paragraph 1, no. 1), or the alteration - in any way - of genuine currency, so that it appears of greater value (paragraph 1, no. 2), or again those who - while not taking part in the counterfeiting or alteration itself, but with the complicity of the author thereof or with an intermediary - introduce into the State territory, hold, spend or otherwise put into circulation counterfeit or altered currency (paragraph 1, no. 3), or finally who purchase or in other ways receive counterfeit or altered currency - from those by whom it was counterfeited or from an intermediary - in order to put it into circulation (paragraph 1, no. 4).

b) Alteration of currency (art. 454, Criminal Code)

The provision in question sanctions whoever alters currency of the type indicated in the preceding article, so as to reduce its value in any way, or who, with respect to the currency altered in that way, commits the offences indicated under numbers 3 and 4 of the preceding article (that is to say puts it into circulation or purchase or receives it from the counterfeiter or from an intermediary).

c) *Spending and introduction into the State, without complicity, of counterfeit currency (art. 455, Criminal Code)*

The provision in question, application of which is secondary to the two preceding, punishes anybody who, except in the cases indicated under articles 453 and 454 (and therefore in the absence of an agreement to that effect with the author of the counterfeits or with the intermediary), introduces into the State, purchases or holds counterfeit or altered currency, for the purpose of putting it into circulation, or who actually spends it or puts it into circulation.

d) *Spending of counterfeit currency received in good faith (art. 457, Criminal Code)*

The regulation in question punishes anybody who spends or otherwise puts into circulation counterfeit or altered currency that has been received in good faith.

e) *Counterfeiting of duty stamps, introduction into the State, purchase, possession or circulation of counterfeit duty stamps (art. 459, Criminal Code)*

The regulation in question establishes that the provisions pursuant to articles 453, 455 and 457, Criminal Code, also apply to the counterfeiting of duty stamps (such as stamped paper, duty stamps, postage stamps and other valuables considered equivalent to these by special laws; see paragraph 2) and to the introduction into the State territory, or the purchase, possession and circulation of counterfeit duty stamps (paragraph 1).

f) *Counterfeiting of watermarked paper for use in the manufacture of legal tender or duty stamps (art. 460, Criminal Code)*

The provision in question punishes anybody who counterfeits watermarked paper used to manufacture legal tender or duty stamps, or who purchases, possesses or disposes of said counterfeit paper.

g) *Manufacture or possession of watermark stamps or instruments destined to counterfeit currency, duty stamps or watermarked paper (art. 461, Criminal Code)*

The law in question punishes anybody who manufactures, purchases, possesses or sells watermark stamps, information technology programs or tools destined exclusively to counterfeiting or alteration of currency, duty stamps or watermarked paper, provided the fact does not represent a more serious offence (paragraph 1). In the same way it punishes those who conduct themselves in the same way with regard to holograms or other components used in currency and destined to ensure its protection from counterfeiting or alteration (paragraph 2).

h) *Use of counterfeit or altered stamps (art. 464, Criminal Code)*

The provision in question punishes anybody who - while not taking part in the counterfeiting or alteration operations - makes use of counterfeit or altered duty stamps (paragraph 1), with a decreased penalty if the stamps were received in good faith (paragraph 2).

i) *Counterfeiting, alteration or use of trademarks or distinguishing mark, or of patents, models and designs (art. 473, Criminal Code)*

This law sanctions those who, while able to know of the existence of an industrial property right, counterfeit or alter trademarks or distinguishing marks, either national or foreign, on industrial products, or anybody who - without having taken part in the counterfeiting or alteration - makes use of those counterfeit or altered trademarks or signs (paragraph 1).

The law also considers the possibility - sanctioning it as an independent offence - of counterfeiting industrial patents, designs or models, either national or foreign, or the use of patents, designs or models that have been counterfeited or altered, outside the case of participation in the counterfeiting or alteration thereof (paragraph 2).

The provision ends (paragraph 3) by subordinating the punishment for offences foreseen in paragraphs one and two to compliance with the internal laws, EC regulations and international conventions on the protection of industrial or intellectual property rights.

j) Introduction into the State and commercialisation of products bearing false marks (art. 474, Criminal Code)

The law in question punishes anybody who - while not participating in the offences under article 473, Criminal code - introduces into the State territory, in order to profit therefrom, industrial products with counterfeit or altered trademarks and other distinguishing marks, whether national or foreign (paragraph 1).

Another possible offence is carried out by those who - again while not taking part in the counterfeiting, alteration or introduction into the State territory - is in possession with the purpose of selling, sells or otherwise puts into circulation, with the aim of profiting therefrom, the products described under paragraph one (paragraph 2).

The provision likewise ends (paragraph 3) by subordinating the punishment for offences foreseen in paragraphs one and two to compliance with the internal laws, EC regulations and international conventions on the protection of industrial or intellectual property rights.

1.2.2 Offences against trade and industry (art. 25bis.1, Legislative Decree no. 231/2001).

a) Disruption of the freedom of trade or industry (art. 513, Criminal Code)

The provision in question punishes those who use violence on property or other fraudulent means, in order to prevent or disrupt the operations of an industry or trade.

The notion of "*violence on property*" can easily be understood from art. 392, paragraph 2 of the Criminal Code (dedicated to the arbitrary exercise of one's own reasons, carried out through violence on property), where it is specified that "*under the effects of criminal law, violence on property occurs when the property is damaged or transformed, or its use is changed*".

The notion of "fraudulent means" on the other hand refers to all those means aimed at inducing a misunderstanding, such as artifices, tricks, simulations and lies. With specific reference to the offence in question, doctrine construes the concept of fraudulence - in relation to competition - with reference to art. 2598, Civil Code.

b) Illegal competition involving threats or violence (art. 513bis, Criminal Code)

The law in question sanctions anybody who, in carrying out a commercial, industrial or manufacturing activity, performs acts of competition involving violence or threats (paragraph 1), with an increase in the penalty when said actions relate to an activity that is fully or partially funded by the State or by other public bodies (paragraph 2).

c) Fraud against national industries (art. 514, Criminal Code)

The provision in question sanctions anybody who sells or otherwise puts into circulation, on national and foreign markets, industrial products with counterfeit names, trademarks or distinguishing marks, thus causing damage to the national industry (paragraph 1).

The damage to the national industry, which is the event that forms the offence, also indicates when the offence took place, with the consequence that the *locus commissi delicti* must be within Italy, even if the commercialisation is carried out on foreign markets, where the harmful effects are produced on the national economic potential.

The article in question ends by specifying that, when the provisions of internal laws or the international conventions on protection of industrial property rights have been complied with for the trademarks or distinguishing marks, the penalty is increased and the provisions of articles 473 and 474, Criminal Code, do not apply (paragraph 2).

d) Commercial fraud (art. 515, Criminal Code)

The law in reference punishes anybody who, while carrying out a commercial activity, that is to say in a point of sale open to the public, provides the purchaser with one mobile asset in place of another, that is to say a mobile asset with an origin, provenance, quality and quantity other than the one stated or agreed, provided the fact does not represent a more serious offence (paragraph 1).

An independent and stricter legal framework is foreseen, when the material object of the conduct involves valuables (paragraph 2).

e) Sale of non-genuine food products as genuine food products (art. 516, Criminal Code)

The law in question punishes anybody who sells or otherwise trades in food products, indicating them to be genuine when they are not.

The term "genuine" is to be understood to refer both to "*natural genuineness*", this being the state of a substance that has not undergone alterations to its normal biochemical composition, and to the "*formal*" or "*legal genuineness*", which is to be considered as meaning that the composition of a food product and the regulatory requirements currently in force for that product must coincide.

f) Sale of industrial products bearing false marks (art. 517, Criminal Code)

The provision in question punishes whoever puts on sale or otherwise circulates works of intellect or industrial products, with national or foreign names, trade marks or distinguishing marks, that are liable to mislead the buyer regarding the origin, provenance, quality of the work or product, provided the fact does not constitute an offence under other points of law. Unlike art. 474, Criminal Code, the regulation does not require prior compliance with industrial property regulations, with the result that art. 517, Criminal Code, may apply even if the distinguishing marks are not registered.

g) Manufacture and sale of goods created through illegal use of industrial property rights (art. 517ter, Criminal Code)

The law in question sanctions, without prejudice to application of articles 473 and 474, Criminal Code, anybody who, in the knowledge of the existence of an industrial property right, manufactures or uses for industrial purposes objects or other goods created through illegal use of an industrial property right or in violation thereof (paragraph 1), along with those who, in order to obtain profit therefrom, introduce into the State territory, hold for sale, put on sale directly to consumers or in any way put into circulation the above mentioned goods (paragraph 2).

Both offences are punishable, subject to compliance with internal legislation, community regulations and international conventions on the protection of intellectual or industrial property rights (paragraph 4).

h) Forgery of geographical indications or designations of origin on agricultural and food products (art. 517quater, Criminal Code)

The provision sanctions the forgery or alteration of geographical indications or designations of origin on agricultural and food products (paragraph 1), that is to say the actions of those who, in order to profit therefrom, introduce into the State territory, hold for sale, put on sale directly to consumers or in any way put into circulation the above mentioned products with forged indications or designations (paragraph 2).

Both offences are punishable, subject to compliance with internal legislation, community regulations and international conventions on the protection of intellectual or industrial property rights (paragraph 4).

1.2.3 Offences relating to violation of copyright laws (art. 25novies, Legislative Decree no. 231/2001)

The forms of conduct envisaged by Law no. 633 dated 22nd April 1941 and referenced by art. 25novies are as follows:

- making available to the public - without being entitled to do so, for whatever reason and in whatever form - a protected intellectual work or part thereof, by putting it onto a telematic network system, using connections of whatever kind (art. 171, paragraph 1, letter *a-bis*);
- committing offences under art. 171, paragraph 1, Law 633/1941 on the work of another person not destined for publication, or usurping the authorship of the work, or again deforming, mutilating or modifying the work itself in another way, whereby the honour or reputation of the author is damaged (art. 171, paragraph 3);
- illegal duplication, with the aim of obtaining profit, of computer programs; importing, distribution, sale or possession for commercial or business purposes, or leasing, of programs contained on supports not marked by SIAE (Italian Royalties Collection Society); preparation of means to remove or evade the protective measures for computer programs, even when the fact relates to any means aimed solely at allowing or facilitating arbitrary removal or function avoidance of devices applied to protect a computer program (art. 171*bis*, paragraph 1);
- operations, carried out on supports not marked by SIAE, for the reproduction, transfer to another support, distribution, communication, presentation or public demonstration of the contents of a database, in violation of applicable provisions (articles 64*quinqies* and 64*sexies*); or extraction or re-use of the database, in violation of the reference regulations (articles 102*bis* and 102*ter*); or distribution, sale or lease of databases (art. 171*bis*, paragraph 2, Law no. 633/1941);
- **a)** illegal duplication, reproduction, transmission or public diffusion, using any procedure, either fully or in part, of an intellectual work - consisting of disks, tapes or analogue supports, or any other support containing sound recordings or video recordings of musical, cinematographic or similar audiovisual works or sequences of moving images - destined for the television system, for the cinema, for sale or for hire; **b)** illegal reproduction, transmission or public diffusion, using any process, of whole or partial literary, dramatic, scientific or educational works, musical or musical theatre works, or multimedia works, even if these form part of collective or composite works or databases; **c)** introduction to the State territory, possession for sale or for distribution, distribution or commercialisation or hire or transfer in any way, public projection, radio or television transmission or public playing of the illegal duplicates or reproductions mentioned above, without having contributed to their reproduction or duplication; **d)** possession for sale or for distribution, commercialisation, sale, hire, transfer for whatever purpose, public projection, radio or television transmission, of video cassettes, music cassettes or any other support containing sound recordings or video recordings of works of music, cinema or audio-visual works, or sequences of moving images, or any other support for which copyright law requires that the SIAE mark be affixed, when said supports do not have that mark or have a forged or altered mark; **e)** retransmission or diffusion by any means - in the absence of an agreement with the legitimate distributor - of an encrypted service received by means of equipment or parts of equipment capable of decoding conditional access transmissions; **f)** introduction to the State territory, possession for sale or for distribution, distribution, sale, hire, transfer in any way, commercial advertisement, installation of special decoding devices or elements that allow access to an encrypted service without payment of the due subscription fee; **f-bis)** manufacture, import, distribution, sale, hire, transfer in any way, advertisement for sale or hire, possession for commercial purposes, of equipment, products or components, or providing services, that all have the main aim or the commercial purpose of evading effective technological protection measures (referred to in art. 102*quater*, that is to say residual measures following removal of the measures themselves by the voluntary decision of the owners of the rights or as a result of agreements between the latter and the beneficiaries of exceptions, or finally as a result of administrative or legal provision), or that are mainly designed, manufactured, adapted or created with the aim of allowing or facilitating the evasion of said measures; **h)** illegal removal or alteration of electronic information (regulated by art. 102*quinqies*) or the distribution, import for the purpose of distribution, radio or television transmission, communication or making available to the public of protected works or other materials, from which the information itself has been removed or altered (art. 171*ter*, paragraph 1);

- **a)** reproduction, duplication, transmission, illegal diffusion, sale or commercialisation, transfer for any reason or illegal importing, of over fifty copies or examples of works protected by copyright or related rights; **a-bis)** communication to the public, for the purpose of profit and without being the owner of the relevant rights, of an intellectual work covered by copyright, or a part of it, by inserting it in a telematic network system, using connections of any kind; **b)** committing the offences described in paragraph 1, by carrying out the operations of reproduction, distribution, sale, commercialisation or import of works protected by copyright or related rights as a business operation; **c)** promotion or organisation of the illegal activities indicated in paragraph 1 (art. 171ter, paragraph 2);
- **a)** failure, on the part of the manufacturers or importers of the supports not subject to relevant mark (regulated under art. 181bis), to communicate to SIAE the data required for unique identification of said supports, within thirty days of their being put onto the market; **b)** false declaration of having fulfilled the obligations relating to application of the SIAE mark, unless this represents a more serious offence (art. 171septies);
- fraudulent production, sale, import, promotion, installation, modification or use for public and private purposes of equipment or parts of equipment capable of decoding conditional access audio and video transmissions (that is to say those in which the audio and video signals are only visible to closed groups of users), transmitted by broadcast, by satellite, by cable, in analogue or digital form (art. 171octies).

1.3 The offences that are theoretically applicable to Daikin Applied Europe

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1.4 Sensitive activities

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1.5 The liabilities of the Company with regard to the questions under analysis

Daikin Applied Europe is committed to base its operations on criteria of maximum transparency and good faith, in compliance with applicable regulations and all other pertinent requirements. To that end, the Company has taken on the following commitments:

- Involvement and awareness by the entire management structure, all employees and those who work on behalf of the organisation towards a culture of accountability and attention to questions regarding proper management of company activities;
- Ensuring that all activities are carried out in full compliance with the applicable legal requirements and with applicable corporate regulations and all the company rules aimed at preventing any risk of committing the offences indicated in Legislative Decree no. 231/01, with awareness among staff, involved in sensitive processes identified above, of the potential risks of the offences set out in Legislative Decree no. 231/01;
- The creation of suitable training operations for corporate staff regarding the potential risk of offences under Legislative Decree no. 231/01;
- The provision of a disciplinary system to punish any failures to comply with the measures indicated in the Organisational Model in order to prevent the offences pursuant to Legislative Decree no. 231/2001;
- The provision of suitable flows of information from employees to the Company Supervisory Body regarding all critical situations capable of resulting in a risk of committing offences under Legislative Decree no. 231/2001.

Daikin Applied Europe also assures:

- that standardised corporate provisions and/or procedures have been set up to provide principles of behaviour, operating methods for carrying out sensitive activities, and suitable methods for storage of significant documentation;
- that all operations relating to sensitive activities are traceable, with particular reference to: *i)* registration of every operation, with reference to the date of compilation, the date of acknowledgement of the document and the recognisable signature of the compiler and supervisor; *ii)* *ex post* verification, if necessary using suitable documentary means, of the decision-making process, with reference to the reasoning behind each operational decision, to guarantee maximum transparency; *iii)* detailed regulation of the ability to delete or destroy the records taken;
- adequate segregation of tasks, insofar as possible, with separation of the activities of persons giving authorisation, persons performing tasks and persons controlling and with identification, wherever possible, of an Officer in charge of each sensitive activity;
- periodic performance, by the Officer in charge of each sensitive activity, of monitoring activities, together with the preparation, when required, of relevant reports and transmission thereof to the Supervisory Body;
- a formalised system of proxies and duties, where necessary, that fulfil the following requirements: *i)* that the qualifications and professional skills of the proxy be in line with the organisational and management responsibilities assigned, providing, when required, for an indication of the levels of expenditure that can be approved; *ii)* express acceptance by the proxy and consequent taking on of the relevant obligations; *iii)* clear definition thereof, and of the respective contents and areas of operation; *iv)* knowledge within the Company and advertisement to external partners; *v)* definition of corporate roles with powers of expenditure, specifying the limits and nature of said expenditure;
- a filing system for documentation relating to sensitive areas, that guarantees the impossibility of modifying the data contained therein (without said modifications being highlighted), and in which the filed documents can only be accessed by persons who have been authorised to do so under internal regulations.

In carrying out activities considered at risk, in order to prevent the commission of the crimes listed in this Special Section, the Company must also ensure:

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1.6 Principles and rules of behaviour for Recipients

Recipients, identified in the light of the indications provided in the General Section (point 3.5) must:

- refrain from engaging in conduct liable to commit the offences pursuant to Legislative Decree no. 231/01;
- refrain from engaging in conduct that, although not covered within the meaning of Legislative Decree no. 231/01, have the potential to be considered as such;
- act in respect of the powers of representation and signature, within the scope of the duties and proxies conferred;
- behave in an ethical and transparent manner in all activities, in accordance with the law and internal company procedures;
- organise, when required, adequate training on the laws relating to competition, consumer protection and the protection of intellectual property;
- carry out their tasks in compliance with the principles of competition, the regulations safeguarding consumers and intellectual property laws;

- use the software and databases provided for Company use within the limits of the available licenses issued to the Company and in compliance with corporate protocols and procedures.

All the Recipients of this Model who are involved in sensitive activities for various reasons, are subject to the following prohibitions, as general rules of behaviour:

- prohibition from affixing to the Company's products any mark that is mendacious or liable to confuse the consumer or the customer regarding the quality, characteristics and origin of the products;
- prohibition from (i) carrying out activities aimed at, or such as to involve, the forgery or alteration of a trademark and/or any other distinguishing mark (national or foreign) belonging to or in any case traceable to third parties, (ii) using, either directly or indirectly, said forged and/or altered trademarks and/or distinguishing marks and (iii) using, either directly or indirectly, trademarks and/or distinguishing marks without the authorisation of the legitimate owner;
- prohibition from carrying out activities aimed, through the use of violence or threats made against competitors or consumers or in any case through the use of any other fraudulent means, at disturbing or preventing another party from carrying out an industrial or commercial venture;
- prohibition from carrying out activities aimed at, or liable to involve, the commercialisation (on the national or foreign market) of products with altered or forged names, trademarks or distinguishing marks;
- prohibition from carrying out fraudulent activities consisting in the commercialisation of products other than those agreed in terms of origin, provenance, quantity, quality, nature and characteristics;
- prohibition from carrying out activities that violate copyright laws.

1.7 Specific procedures

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1.8 Checks and information flow to the Supervisory Body

The Supervisory Body carries out periodic checks on the risk assets indicated above, in order to verify consistency with the requirements contained in the Organisational Model and, in particular, with the procedures that the Company has established to govern the carrying out of sensitive activities.

All business functions, senior management and/or those subject to management by other parties, together with the members of the corporate bodies, have an obligation to promptly inform the Supervisory Body of any requests formulated or of the occurrence of events or circumstances such as to suggest the committing of a possible offence under Legislative Decree no. 231/2001.

The Supervisory Board, with particular regard to crimes listed in the Legislative decree 231/2001, is the recipient, also through the whistleblowing procedure, of the following information flow:

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