



DAIKIN APPLIED EUROPE S.p.A.

Summary Document
relating to

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

“Organisational Model”

Special Section C

*Crimes against State property,
crimes against the Public Administration,
incitement not to issue statements or to issue false
statements to the Court Authorities.*

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1. CRIMES AGAINST STATE PROPERTY, CRIMES AGAINST THE PUBLIC ADMINISTRATION, INCITEMENT NOT TO ISSUE STATEMENTS OR TO ISSUE FALSE STATEMENTS TO THE COURT AUTHORITIES

1.1 Introduction

The offences dealt with in this Special Part are referred to in articles 24, 25 and 25-*decies* of Legislative Decree no. 231/2001.

In this regard, Article 24 of Legislative Decree 231/01 is most recently amended by Legislative Decree No. 75 of 14 July 2020 on the "*Implementation of EU Directive 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law*" (so-called PIF Directive), which included among the relevant offences the new crimes of fraud in public supply and fraud against the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD).

Article 25, on the other hand, has been first affected by the Reform on crimes against the Public Administration implemented by Law no. 190 (*Provisions for the prevention and the repression of corruption and illegal operations in the Public Administration, the so-called "Severino Law"*), which in particular modified the crime of corruption (providing a distinction between so-called corruption by coercion and undue incitement to give or promise benefits); subsequently by Law no. 13/2019 containing the "*Measures to combat crimes against the public administration, as well as on the regulation of the crime and on the transparency of political parties and movements*" which introduced the new type of predicate offence, namely, "*influence peddling*" pursuant to art. 346 bis of the Criminal Code; finally, Legislative Decree no. 75 of 14 July 2020, referred to above, extended the scope of Legislative Decree 231/01 also to the offences of embezzlement, embezzlement by means of profit from the error of others and abuse of office.

Art. 25-*decies*, on the other hand, which was not present in the original text of the Decree, has been added pursuant to art. 4 of the Law of 3 August 2009, no. 116 dated 3rd August 2009 (*Ratification and implementation of the United Nations Convention against corruption, adopted by the UN General Assembly on 31st October 2003 under resolution no. 58/4, signed by the Italian State on 9th December 2003, along with internal adaptations and modifications to the criminal code and the code of criminal procedure*) and subsequently replaced as a result of art. 2 paragraph 1 of the Legislative Decree of 7 July 2011, no. 121 (*Implementation of Directive 2008/99/EC on the protection of the environment through criminal law, together with Directive 2009/123/EC modifying Directive 2005/35/EC on ship-source pollution and the introduction of penalties for infringements*).

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

1.2 The types of offences

1.2.1 Crimes against Public Administration and State property (art. 24, Legislative Decree no. 231/2001).

a) *Misuse of Public Subsidies (art. 316-bis, Criminal Code).*

The law punishes those who modify the use of contributions, subsidies or loans obtained from the State, from other public bodies or from the European Community with respect to the use for which they were originally issued.

The offence is considered to have taken place even if only part of the funds is misappropriated and even in the case that the part that is properly used has completed the work or initiative for which the entire sum was destined.

The malicious conduct occurs irrespective of how the funds were obtained and only takes place after the funds themselves have been obtained.

b) *Improper obtaining of Public Subsidies (art. 316ter, Criminal Code).*

The law sanctions behaviour by which a company, through any means (and therefore also using an external party), obtains for itself or for others contributions, loans, special rate mortgages or other subsidies from the

State, from other public bodies or from the European Community, by using or presenting false or untruthful statements or documents, or by omitting to provide all due information.

The fact occurs when the funds are actually received.

c) *Fraud against the State or another public body (art. 640, paragraph 2, no.1).*

The law in question identifies an aggravating circumstance for the crime of fraud (art. 640, Criminal Code), when the fact is committed to the detriment of the State or another public body. The fraudulent activity is completed by the use of artifice (i.e. the simulation of circumstances other than the true ones) or deception (i.e. the use of mendacious or persuasive actions aimed at gaining the good faith of others), and is also potentially applicable in the presence of an undue silence, that induces an error on the part of the passive party and causes the latter to dispose of their assets in a manner that they would not otherwise have done. Another element necessary to complete the action is the achievement, as a direct consequence of the disposal of assets determined by the artifice or deception, of illicit profit in favour of the perpetrator (even if this is attributed to an individual other than the agent) together with damage to the State or to the other public body.

d) *Fraud to obtain public subsidies (art. 640-bis, Criminal Code).*

is completed by the types of behaviour indicated in art. 640bis of the Criminal Code, with the specialising element being the aim of obtaining contributions, loans, special rate mortgages or other subsidies of the same type, of whatever denomination, granted or issued by the State, public bodies or the European Community.

e) *Computer fraud to the detriment of the State or a public body (art. 640-ter, Criminal Code).*

The offence in question is committed when an individual, by altering the operation of an information technology or telematic system in any way or by intervening in an unauthorised manner and in any way on the data, information or programs contained in an information technology or telematic system or pertaining thereto, obtains an unjust profit for himself or others and damage to others (paragraph 1). Committing this offence may give rise to a corresponding administrative liability for the entity when the offence is committed to the damage of the State or of another public body.

The intent foreseen by the law is integrated by the desire to alter operation of the systems or to intervene on the data, programs or information, with the expectation of making an unfair profit to the damage of others, without necessarily intending to intentionally deceive or induce an error in other parties.

Committing the offence while abusing the position of system operator (paragraph 2), or through the theft or illegal use of the digital identity of one or more parties (paragraph 3) are considered to be aggravating circumstances.

f) *Fraud in public supplies (Article 356 of the Criminal Code)*

The offence in question punishes the person who commits fraud in the performance of supply contracts or in the performance of other contractual obligations referred to in Article 355 of the Criminal Code (which refers to obligations arising from a supply contract concluded with the State, another public body, or an undertaking providing public services or services of public necessity).

The term "supply contract" does not refer to a specific type of contract but, in general, to any contractual instrument intended to provide the Public Administration with goods or services. The offence of fraud in public procurement can therefore be committed not only in the fraudulent performance of a supply contract, but also of a procurement contract, since the provision punishes all fraud to the detriment of the P.A., regardless of the contractual arrangements under which the suppliers are required to perform particular services.

In order for the offence to be committed, mere breach of contract is not sufficient, since the criminal law requires bad faith in the contract, i.e. the presence of a malicious device or deception or deceit, such as to

make the performance of the contract appear to be in accordance with the obligations undertaken (consciousness and willingness to deliver other things than those agreed).

The offence of fraud in public procurement may also be committed by a person who, although not a party to the supply contract, has assumed the obligation to execute it, even partially.

g) Fraud in agriculture (Article 2 of Law No. 898 of 23 December 1986)

This offence is committed, where the act does not constitute a more serious offence provided for in Article 640 of the Criminal Code, by any person who, through the presentation of false data or information, unduly obtains, for himself or for others, aid, premiums, indemnities, refunds, contributions or other disbursements from the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, on the basis of the provisions of Article 2 of Law 898/1986. The punishment is imprisonment from six months to three years; it is from six months to four years when the damage or profit exceeds €100,000. When the sum unduly received is equal to or less than €5,000, only the administrative penalty shall apply. For the purposes of the aforementioned provision, the national shares provided for by Community legislation to supplement the sums charged to the said Funds, as well as the payments charged in full to the national budget on the basis of Community legislation, shall be assimilated to the payments charged to the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development.

1.2.2 Offences concerning relations with the Public Administration (art. 25, Legislative Decree no. 231/2001).

Foreword: in order to properly contextualise the offences described below, it is essential to define the terms “public officer” and “officer providing public services”.

Public officers are described by art. 357 of the Criminal Code as “those exercising a public function in the law, the courts or the administration. Equally, administrative functions are also public when they are regulated by public law and by acts constituting the exercise of public authority and when they are characterised by the formation and manifestation of the wishes of the public administration or carrying it out by the exercise of public authority or certified powers”.

On the other hand, officers providing public services, under art. 358, Criminal Code, are those who, for whatever reason, provide a public service, carrying out activities that are regulated in the same manner as public functions, but which feature the absence of the powers typically assigned to the latter, with the exception of the mere ordering and providing of purely material work.

a) Bribery with regard to function/position or with regard to actions contrary to official duties (articles 318, 319, 319bis, Criminal Code).

The action contemplated by art. 318 of the Criminal Code (bribery with regard to function/position) occurs when the public officer illegally receives or accepts a promise of money or other assets, for himself or for a third party, to carry out the functions or powers attributed to his office. This can also take the form indicated below, when the public officer receives or accepts the promise of compensation for an action that has already been committed.

The action contemplated by art. 319 of the Criminal Code occurs when the public officer illegally receives or accepts the promise of money or other assets, for himself or for a third party, to omit or delay, or for having omitted or delayed an action attributed to his office, or for carrying out or having carried out an action contrary to the duties of his office. The penalty is increased when the fact has as its object wages, pensions or the stipulation of contracts in which the public administration to which the public officer belongs is involved (art. 319bis, Criminal Code).

b) Judicial corruption (art. 319ter, Criminal Code).

The offence in question is integrated when the actions under articles 318 and 319 of the Criminal Code are performed by a public officer (not necessarily a magistrate) to favour or harm a party in a civil, criminal or administrative court case.

c) *Corruption of an officer in public service (art. 320, Criminal Code).*

This relates to the behaviour, previously described under art. 318, Criminal Code, of the person responsible for providing a public service who is also an officer in the public employ, together with the behaviour described in art. 319, Criminal Code, where the latter may be carried out by any person providing a public service.

d) *Penalty for the briber (art. 321, Criminal Code).*

Art. 321, Criminal Code incriminates a private individual guilty of the bribery offences under articles 318, 319, 319*bis*, 319*ter* and 320, Criminal Code, making provision for the respective penalties.

e) *Incitement to bribery (art. 322, Criminal Code).*

The law punishes those who offer or promise money or other assets that are not due to a public officer or an officer providing public services, if the offer or promise is not accepted, either to carry out his offices (paragraph 1) or induce him to delay or omit an action involved in his office (paragraph 2). The penalties envisaged by the first two paragraphs also apply to public officers or officers providing public services who solicit promises or gifts of this kind (paragraphs 3 and 4).

f) *Corruption (art. 317, Criminal Code)*

The law punishes any public officer or officer of the public services who takes improper advantage of his position or powers to force any party to give or promise undue monetary or other benefits to himself or to a third party. This offence is characterised by the fact that the public officer abuses his qualifications and powers to create a situation in which the private individuals is subject to him (so-called corruption by coercion).

g) *Undue incitement to give or promise benefits (art- 319*quater*, Criminal Code).*

The provision in question punishes any public officer or officer of the public services who takes improper advantage of his position or powers to induce any party to give or promise undue monetary or other benefits to himself or to a third party (paragraph 1) (so-called corruption by inducement). The private individual who gives or promises the money or other asset is likewise punished, although the penalty is lower (paragraph 2).

h) *Embezzlement, corruption, bribery and incitement to bribery of members of the International Court or of the European Community Bodies or of international parliamentary assemblies or international organisations and officers of the European Community and of foreign States (art. 322*bis*, Criminal Code).*

The provision in question sanctions the applicability of articles 314, 316, from 317 to 320 and 322, paragraphs 3 and 4, Criminal Code, to members of the European Community Institutions, to officers of the same, and to persons commanded to the Community with special functions or the officers of bodies set up under treaties. These provisions also apply to persons who, within the European Union Member States, carry out activities corresponding to those that under the Italian legal system are carried out by public officers or officers providing a public service, as well as by judges, chief attorneys, assistant attorneys, officers and agents of the International Criminal Court, by persons commanded by the States forming part of the Treaty that set up the Court itself, who carry out functions corresponding to those of the officers or agents thereof, by the members and officers of bodies set up on the basis of the Treaty founding the International Criminal Court (paragraph 1). These individuals are considered to be public officers when they carry out corresponding functions and are considered to be providing public services in other cases (paragraph 3).

Secondly, the law in question ratifies applicability of the provisions of articles 319*quater*, paragraph 2, 321 and 322, paragraphs 1 and 2, Criminal Code, even when the money or other assets are offered or promised to the persons indicated in the first paragraph (paragraph 2, no. 1), or to persons exercising functions or

activities corresponding to those of the public officers and officers in charge of public services within the Foreign States or international public organisations, if the offence is perpetrated in order to procure, for the perpetrator or for others, an undue advantage in international economic operations or in order to obtain or maintain an economic or financial activity (paragraph 2 , no. 2).

i) Offences affecting the financial interests of the European Union

Pursuant to Article 25 of Legislative Decree no. 231/01, as supplemented pursuant to Legislative Decree no. 75 of 14 July 2020, embezzlement, embezzlement by means of profit from the error of others and abuse of office when the act committed offends the financial interests of the European Union constitute predicate offences for the administrative liability of the entity.

These offences are provided for and punished by Articles 314, 316 and 323 of the Criminal Code. and consist respectively (i) as regards **embezzlement**, in the conduct of a public official or a person in charge of a public service, who, having by reason of his office or service the possession or otherwise the availability of money or other movable property of others, appropriates it; (ii) as regards **embezzlement by taking advantage of the error of others**, in the offence of a public official or a person in charge of a public service, who, in the exercise of his functions or service, taking advantage of the error of others, unduly receives or retains, for himself or for a third party, money or other benefits; (iii) with regard to **abuse of office**, the offence is committed when, unless the act constitutes a more serious offence, a public official or a public service appointee who, in the performance of his/her functions or service, in breach of the law or regulations, or by failing to abstain in the presence of his/her own interest or that of a close relative or in the other prescribed cases, intentionally procures for himself/herself or others an unfair pecuniary advantage or causes others unfair damage.

1.2.3 The crime of incitement not to issue statements or to issue false statements to the Court Authorities (art. 25decies, Legislative Decree no. 231/2001).

a) Incitement not to issue statements or to issue false statements to the Court Authorities (art. 377bis Criminal Code).

The only criminal figure contemplated by art. 25decies of the Decree is integrated by the actions of those who - either through violence, threats, offers or promises of money or other assets - induce the person called upon to issue statements to be used in criminal proceedings to the Court Authorities (but with the right to remain silent) not to issue those statements or to issue false statements. This offence is considered to exist even in the event that it is perpetrated at transnational level under art. 10, Law no. 146/2006.

1.2.4 Individual crimes against the public administration (Article 25 of Legislative Decree 231/2001)

a) Influence peddling (Article 346-bis of the Italian Criminal Code)

This offence is committed by anyone, except in cases of participation in the offences referred to in articles 318, 319, and 319-ter of the criminal code and in the corruption offenses referred to in article 322-bis of the criminal code, exploiting or claiming existing or alleged relationships with a public official or a person in charge of a public service or one of the other subjects referred to in article 322-bis, who improperly exacts or solicits promises, for himself or others, of money or other benefits, as the price of his own unlawful mediation towards a public official or a person in charge of a public service or one of the other subjects referred to in article 322-bis of the Criminal Code, or to remunerate him in relation to the exercise of his offices or his powers. The same offence is questionable for parties who improperly give or promise money or other benefits to an intermediary of the Public Administration. The case in question includes the crime of fraudulent representation, previously envisaged under art. 346 of the Criminal Code and today merged into the offence of influence peddling. The latter offence, therefore, now includes not only the material exploitation of a relationship that actually exists between the subject proposing himself as an intermediary and the public official or person in charge of a public service, but also in the case in which the intermediary is merely claiming to have some influence, which does not actually exist, on some of the subjects classified

pursuant to articles 357 and 358 of the Criminal Code. Consequently, the punishment of the private individual who is persuaded by the influence peddler to give or promise improper benefits is also envisaged.

The penalty is greater if the person who improperly exacts or solicits promises, for himself or others, of money or other benefits has the status of a public official or person in charge of a public service. The penalties are also greater if the acts are committed in relation to the exercise of judicial activities or to remunerate a public official or a person in charge of a public service or one of the other subjects referred to in article 322-bis of the Criminal Code in relation to the commission of an act contrary to official duties or to the omission or delay of an act of his office.

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 relations with the Public Administration 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 transparency in relations with the Public Administration, and with judges, consultants and any other individual involved in the management of any court and/or out-of-court questions;
- Ensuring that all activities are carried out in full compliance with the applicable legal requirements, and with all company rules aimed at preventing any risk of committing the offences indicated in Legislative Decree no. 231/01, with awareness among staff involved in processes considered to be sensitive of the potential risks of the offences set out in Legislative Decree no. 231/01 itself;
- 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. 231/01;
- 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, if 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;
- the adoption of information technology systems that guarantee the correct and true assignment of each operation of a segment thereof to the party responsible for it and to the parties taking part in it, together with the inability to modify (without trace) any of the records;
- the adoption of a policy relating to information technology security and the relative backup procedures, drawn up in advance, formally approved, updated periodically and communicated to all company staff;
- the existence of a Plan to face any emergency information technology events and/or disasters;
- the existence of formalised procedures regarding the generation and protection of activity logs on the systems, at least as regards activities that involve sensitive data.

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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 Articles 24, 25 and 25*decies* of the Decree;
- refrain from engaging in conduct that, although not covered within the meaning of Articles 24, 25 and 25*decies* of the Decree, 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, traceable and transparent manner in all activities, in accordance with the law and internal company procedures, in direct relations with or through intermediaries with the Public Administration;
- when managing relations with the Public Administration on behalf of the Company (or within an interest group or lobby), provide superior officers in the corporate hierarchy with information and periodic reports on the results of activities performed;
- always check in advance that statements and documentation presented to the Public Administration is complete and correct;

- when managing public inspections, provide maximum co-operation and transparency in relations with the officers of the Inspecting Body (providing the inspectors with suitable structures and making available the company documents required and requested), according to principles of good faith and truthfulness, notifying the Officers responsible of any critical situations that may emerge at that time;
- subject to the authorisation of the Managing Director or the persons delegated to do so, assign tasks to external associates and consultants or intermediaries, for single activities and single duties, verifying the relevant activity carried out and formalising and documenting, wherever possible and above all in the case of more significant contracts, the reasons for selecting that associate and/or consultant (also bearing in mind the type of activity assigned and the place in which it is to be carried out) and considerations on the price applied (coherence and congruence);

All the Recipients of this Model are likewise subject to the following prohibitions, as general rules of behaviour:

- prohibition from relations with the Public Administration unless delegated to do so in the Company organisation chart and function chart and according to the system of proxies and powers of attorney adopted by the company;
- prohibition from offering or carrying out, either directly or indirectly, any undue payments and promises of personal advantages of whatever kind (including the free availability of services, aimed at influencing decisions and transactions or the promise of employment), to representatives of the Public Administration both in Italy and abroad;
- prohibition from offering money, favours or benefits to intermediaries who propose to illegally influence a representative of the Public Administration;
- prohibition from distributing, to representatives of the Public Administration both in Italy and abroad, of gratuities or gifts, with the exception of small gifts of a modest or symbolic value, subject to authorisation and of a nature not liable to compromise the integrity and good reputation of the parties and not liable to be considered aimed at the improper acquisition of benefits;
- prohibition from receiving or soliciting, directly or indirectly, money, gifts or other advantages from third parties for the conduct of illegal lobbying in relation to the Public Administration;
- prohibition from presenting to national or foreign public bodies any untrue statements or statements lacking the necessary information to obtain public funding, and in any case prohibition from carrying out any action that might lead the body to erroneously issue funds or make payments of any nature;
- prohibition from assigning sums received from national or foreign public bodies as contributions, subsidies or loans to purposes other than those for which they were issued;
- prohibition from resorting to any form of pressure, deceit, suggestion or uptake of benevolence in the public officer, of a nature likely to influence the conclusions of the administrative activity;
- prohibition from issuing warrant of attorney to any external lawyer in the absence of a specific authorisation from the Managing Director or the Corporate Officer with the relevant power to do so;
- prohibition from paying the fees relating to the services of the external lawyer, in the absence of prior authorisation from the Company Officer responsible, and in the absence of prior attestation that the services have actually been rendered and assessment of the relevant congruence;
- prohibition from carrying out acts of violence, threats (or other similar forms of coercion) and prohibition from giving or promising sums of money or other forms of asset in order to induce anybody not to issue statements, or to issue false statements before the Court Authorities.

- prohibition from giving to anybody, for any reason, sums, goods or assets aimed at facilitating and/or rendering less burdensome the performance and/or the management of contracts with the Public Administration with respect to the obligations taken on therein;
- prohibition from paying fees to consultants, associates, commercial partners of the Company that are not justified by the services actually rendered;
- prohibition from illegally influencing the decisions of public individuals, even by merely indulging their requests;
- prohibition from exhibiting or producing false and/or altered documentation or data relating to the Company or providing false information or omitting required information relating to said Company;
- prohibition from carrying out any alteration to the Company's information technology and telematic systems and from manipulating the data thereof;
- prohibition of misleading conduct or deception in the performance of any contract for the supply of goods or services to public bodies or persons, in order to conceal and disguise a breach of contract and to present the performance of the supply as being in compliance with the obligations undertaken.

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.

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