



DAIKIN APPLIED EUROPE S.p.A.

Summary Document
relating to

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

“Organisational Model”

Special Section G

*Employment of citizens of third party countries
who are illegal residents*

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1. OFFENCES RELATING TO EMPLOYMENT OF THE CITIZENS OF THIRD PARTY COUNTRIES WHO ARE ILLEGAL RESIDENTS, SMUGGLING OF MIGRANTS, RACISM AND XENOPHOBIA

1.1 Introduction

The crimes referred to in this Special Section are those referred to in art. 25*duodecies*, of Legislative Decree 231/2001, entered in the regulatory body by art. 2, Legislative Decree no. 109 dated 16th July 2012 (*Implementation of Directive 2009/52/EC introducing minimum regulations regarding sanctions and actions against employers who employ citizens of third party Countries residing in the country illegally*).

This article, in its initial version, envisaged as a predicate offence the liability of the entities pursuant to Legislative Decree 231/01 that act governed by art. 22, paragraph 12*bis*, Legislative Decree no. 286 dated 15th July 1998 ("*Consolidation act on regulations governing immigration and provisions on the status of foreign nationals*", hereinafter the Consolidation Act on immigration), Art. 25*duodecies* was subsequently amended by Law no. 161 of 2017 (*Amendments to the code of the anti-mafia laws and of the preventive measures pursuant to Legislative Decree no. 159 dated 6 September 2011, the penal code and the implementation, coordination and transitional provisions of the criminal procedure code and other provisions. The delegation of powers to the Government to protect the jobs in seized and confiscated companies*), which introduced the additional type of offence, envisaged by art. 12, paragraph 3, 3-*bis*, 3-*ter* and 5, of the aforementioned Legislative Decree of 15 July 1998, no. 286 containing "*Provisions against illegal immigration*".

Law no. 167 of 2017 also introduced art. 25*terdecies* of Legislative Decree 231/2001 which refers to art. 604*bis* of the Criminal Code (pursuant to art. 3, paragraph 3-*bis*, of the law of 13 October 1975, no. 654) entitled "*Propaganda and instigation to commit crimes on the grounds of ethnic and religious racial discrimination*" containing the crimes of racism and xenophobia.

Relevant conduct, that may give rise to the direct administrative liability of the Company in whose interest or benefit the offence was committed, are described in the paragraphs below.

1.2 Employment of citizens of third party countries who are residing in the country illegally (art. 22, paragraph 12*bis*, Legislative Decree no. 286/1998)

The provision indicated, in reality, identifies an aggravated version of the basic offence, as described in art. 22, paragraph 12, C.A. on immigration. This provision, inspired by the *ratio* of discouraging the employment of non-EU citizens illegally present in Italy, provides a particularly stringent regulation - with criminal punishments - regarding setting up employment agreements with foreign individuals resident abroad.

More specifically, paragraph 12 considers it to be an offence for an employer to employ foreign workers without a valid residence permit, or whose residence permit has expired without any renewal having been requested within the terms set by law, or again whose residence permit has been revoked or cancelled. However, only the aggravated offences regulated by the following paragraph 12*bis* result in liability of the entity, if the above conduct has been carried out - by top or senior management - in its interests or to its advantage.

The provision in question, in effect, sanctions the employer himself with a penalty that is aggravated in the event of the fact under paragraph 12 being committed with respect to a number of workers without a residence permit that exceeds three, or when the workers employed are minors under the minimum working age, or when the workers employed have been subjected to working conditions that involve forms of exploitation under art. 603*bis*, Criminal Code (exploitation by means of violence, threats or intimidation, or by taking advantage of the workers' state of need or necessity, an indication of which, alternatively, may be: systematic retribution in a manner disproportionate to the quality and quantity of work provided, systematic violation of legislation relating to working hours, weekly rest days, compulsory leave and holidays, the existence of violations - of a type liable to cause a danger to health, safety or the personal security of the worker - of regulations pertaining to safety and hygiene on the workplace, or finally

subjection of the employee to particularly degrading working conditions, supervision methods or housing conditions).

1.3 Granting of illegal entry and aiding of illegal immigration

This crime, envisaged by article 12, paragraphs 3, 3-bis, 3-ter and 5 of Legislative Decree 286/1998 (the so-called *Consolidation Act on immigration*"), is typified by two types of cases: (i) granting the illegal entry of immigrants; (ii) abetting illegal residency.

The first of these offences is deemed to occur in the event that, in violation of the provisions of the consolidated act on immigration, at least 5 foreigners are assisted, directed, organized, financed or transported to Italy in a dangerous, degrading or humiliating manner or when other acts aimed at illegally granting entry into Italy or another country of which the individuals are not citizens or do not have the right to permanent residence are carried out. More severe penalties (and therefore greater company liability) are envisaged if, in addition to what was stated above, a) the act is committed by three or more people working together or using international transport services or forged, altered, or otherwise illegally obtained documents; b) the perpetrators of the crime are carrying weapons or explosive materials; c) the acts are committed in order to recruit people for prostitution or in any case for sexual or work exploitation or concern the entry of minors to be used in illegal activities in order to exploit them; d) these acts are committed for the purpose of making a profit, even indirectly (the latter is implicit on the behalf and to the benefit of the company).

The second of these offences, on the other hand, punishes anyone (and, therefore, even the company on whose behalf or to whose benefit the offence is committed) abetting the illegal residency of immigrants in Italy in violation of the rules of the aforementioned consolidated act.

1.4 Racism and xenophobia

This offence, called "*Propaganda and instigation to commit crimes on grounds of ethnic and religious racial discrimination*" is envisaged by art. 604bis of the Criminal Code (pursuant to art. 3, paragraph 3-bis of the Law of 13 October 1975, no. 654) and is committed by individuals who participate in organizations, associations, movements or groups whose aims include incitement to discrimination or violence for racial, ethnic, national or religious reasons, as well as propaganda or instigation and incitement committed in a way that results in a real danger of spreading, based on total or partial denial, serious minimisation or defending of the Holocaust or the crimes of genocide, crimes against humanity and war crimes.

1.5 Sensitive activities

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

Daikin Applied Europe is committed to managing its operations based 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 and legality;
- 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, 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;
- 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.

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1.7 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 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, traceable and transparent manner in all activities, in accordance with the law and internal company procedures.
- carry out purchase operations only when authorised by the administration or the persons specifically delegated for that purpose as foreseen by internal procedures, within the limits of the powers of signature and expenditure defined, and after first obtaining at least three quotes;
- making payments, for preference, by means of a bank draft or non-transferable check or in any case in a manner that ensures the traceability of the operations (except in the case of purchases with a small value);
- verify in advance the commercial and professional reliability, integrity and good faith, as regards the subject of relations with the Company, of suppliers, customers and commercial/financial partners, in order to check any anomalies, critical situations or irregularities in them or in the activities they carry out;
- keep, as foreseen by the corporate procedures and by applicable regulations, the Full Details of suppliers of goods and services, with the aim of highlighting the main administrative, commercial and operational information that can be used for proper classification of the individuals who are or who propose themselves as suppliers of the Company;
- ascertaining in advance and, after any working relationship has been set up, in an ongoing manner, that any non-EU citizens employed are duly authorised to reside within the State confines, in order to verify the need for renewal of their respective residence permits;
- filing and keeping all the documentation produced, including documents produced using telematic or electronic means, relating to fulfilment of the labour law and social security requirements, in particular verifying on a periodic basis, in the event of any foreign nationals being taken on and whenever necessary, the expiry dates of the relevant residence permits, if necessary reprimanding the workers in the event of expiry or failure to transmit the renewed permit within a short period of time.

All the Recipients of this Model (identified pursuant to point 3.5 of the General Section), are subject to the following prohibitions, as general rules of behaviour:

- prohibition from taking on workers without a residence permit, or whose residence permit has expired without renewal having been requested, or has been revoked or cancelled;
- absolute prohibition of encouraging, in any way, forms of illegal entry and residency in Italy of migrants and/or illegally procuring workers through the smuggling of migrants and the slave trade or in any way facilitating its financing or its realisation;
- absolute prohibition of carrying out any discriminatory activity towards personnel at the workplace;
- prohibition, as far as possible, from reserving and granting a single individual exclusive power to manage/execute administrative/commercial/financial activities (purchases, sales, transactions, loans) in the name or on behalf of the Company, as well as preparation, conservation and control of the relevant documentation (in particular the identification documents for contractual counter parties and the relevant contracts);
- prohibition from dealing with individuals operating in areas where there is an instrumental or direct risk of committing the offences in question, except by the persons delegated to do so

under the Daikin organisation chart and/or function chart and according to the system of proxies and powers of attorney adopted by the company;

- prohibition from dealing with individuals who have been condemned for offences under Legislative Decree no. 231/2001, except in the case of special needs which must be adequately justified and shared with the top management and with the Supervisory Body.

1.8 Specific procedures

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1.9 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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