

OVS S.P.A.

Organisation, Management and

Control Model – ANNEX 1

LIST OF “231” OFFENCES

pursuant to LEGISLATIVE DECREE No. 231 of 8 June 2001, as subsequently amended.

OVS S.P.A.	ORGANISATION, MANAGEMENT AND CONTROL MODEL GENERAL PART – ANNEX 1	Edition 01/2023	Page 1 of 10
------------	--	--------------------	-----------------

At the time of the latest update to this Model, except for subsequent amendments and additions, the offences that determine the application of Legislative Decree 231/2001 (the "Decree") are the following, grouped by article of reference in the Decree:

- i. **Article 24, *Improper collection of funds, fraud against the State, a public body or the European Union or for the obtainment of public funding, computer fraud against the State or a public body, and fraud in the supply to public bodies:*** embezzlement against the State or another public body (Article 316-bis of the Criminal Code), improper collection of contributions, financing or other funds from the State or other public body or the European Communities (Article 316-ter of the Criminal Code), fraud in supplies to public bodies (Article 356 of the Criminal Code), fraud against the State or other public body or the European Communities (Article 640 of the Criminal Code), aggravated fraud for the obtainment of public funding (Article 640-bis of the Criminal Code), computer fraud against the State or another public body (Article 640-ter of the Criminal Code), fraud in agriculture (Article 2 of Law 898/1986), as amended by effect of Legislative Decree February 25, 2022 n. 13, relating to the fight against fraud in the field of public funds;
- ii. **Article 24-bis, *Computer crimes and illegal data processing:*** falsity in a public computer document or document with probative effect (Article 491-bis of the Criminal Code); unauthorised access to a computer or electronic system (Article 615-ter of the Criminal Code); unauthorised possession and distribution of access codes to computer or electronic systems (Article 615-quater of the Criminal Code); dissemination of equipment, devices or computer programs intended to damage or interrupt a computer or electronic system (Article 615-quinquies of the Criminal Code); unlawful interception, prevention or interruption of computer or electronic communications (Article 617-quater of the Criminal Code); installation of equipment designed to intercept, prevent or interrupt computer or electronic communications (Article 617-quinquies of the Criminal Code); damaging of information, data and computer programs (Article 635-bis of the Criminal Code); damaging of information, data and computer programs used by the state, another public body, or an entity in the public interest (Article 635-ter of the Criminal Code); damaging of IT or computer systems (Article 635-quater of the Criminal Code);

OV S.P.A.	<p style="text-align: center;">ORGANISATION, MANAGEMENT AND CONTROL MODEL</p> <hr/> <p style="text-align: center;">GENERAL PART – ANNEX 1</p>	Edition 01/2023	Page 2 of 10
-----------	---	--------------------	-----------------

- Code); damaging of IT or computer systems operating in the public interest (Article 635-quinquies of the Criminal Code); IT fraud involving the certification of an electronic signature (Article 640-quinquies of the Criminal Code), as most recently amended by effect of Law 23 December 2021 n. 238;
- iii. **Article 24-ter, Organised crime offences:** criminal association (Article 416 of the Criminal Code) – including for the purpose of reducing or maintaining slavery (Article 600 of the Criminal Code), trafficking in persons (Article 601 of the Criminal Code), the purchase and sale of slaves (Article 602 of the Criminal Code), migrant trafficking (Article 12 of Legislative Decree No. 286/1998) – Mafia-type association (Article 416-bis of the Criminal Code), political-Mafia electoral bribery (Article 416-ter of the Criminal Code), kidnapping of persons for the purpose of extortion (Article 630 of the Criminal Code), an association for the illicit traffic of narcotic and psychotropic substances and the production, trafficking and illicit possession of such substances (Presidential Decree 309/90, Article 74);
- iv. **Article 25, Extortion, induced bribery and corruption:** extortion, induced bribery and corruption (Articles 317, 318, 319, 319-bis, 319-ter, 319 quater, 320, 321, 322, and 322-bis of the Criminal Code);
- v. **Article 25-bis, Counterfeiting of legal money and tender, official stamps and deeds or distinguishing marks:** counterfeiting and falsification of money and spending of counterfeit money (Articles 453, 454, 455 of the Criminal Code), falsification of official tax stamps (Article 459 of the Criminal Code), counterfeiting, falsification or possession of watermarks (Articles 460 and 461 of the Criminal Code), use of counterfeit or altered tax stamps (Article 464 of the Criminal Code); after the extension of July 2009, this regulation also applies to Articles 473 (counterfeiting, alteration or use of distinctive signs or patents, models and designs) and 474 of the Criminal Code (introduction into the state and trading in products with false signs);
- vi. **Article 25-bis.1, Offences against industry and trade:** disruption and fraud against industry (Articles 513, 513-bis and 514 of the Criminal Code), commercial fraud (Articles 515 and 516 of the Criminal Code), and the sale of industrial products with false signs (Articles 517, 517-bis, 517-ter and 517-quater of the Criminal Code);
- vii. **Article 25-ter, Corporate offences:** false corporate disclosures (Article 2621),

OV S.P.A.	ORGANISATION, MANAGEMENT AND CONTROL MODEL GENERAL PART – ANNEX 1	Edition 01/2023	Page 3 of 10
-----------	--	--------------------	-----------------

minor offences (Article 2621 bis of the Civil Code), false corporate disclosures by listed companies (Article 2622 of the Civil Code), false statements in prospectuses (Article 2623 of the Civil Code)¹, the offence of obstruction of control (Article 2625 of the Civil Code), unlawful return of contributions (Article 2626 of the Civil Code), unlawful distribution of profits and reserves (Article 2627 of the Civil Code), unlawful transactions involving shares or shareholdings in the company or the parent company (Article 2628 of the Civil Code), transactions to the detriment of creditors (Article 2629 of the Civil Code), the offence of the failure to disclose a conflict of interest (Article 2629-bis of the Civil Code), the crime of the fictitious formation of the share capital (Article 2632 of the Civil Code, now Article 173-bis of Legislative Decree 58/1998), undue distribution of company assets by liquidators (Article 2633 of the Civil Code), private-to-private corruption (Article 2635 of the Civil Code); incitement to private-to-private corruption (Article 2635-bis, para. 1 of the Civil Code); unlawful influence on shareholders' meetings (Article 2636 of the Civil Code), market rigging (Article 2637 of the Civil Code), obstruction of the functions of public supervisory authorities (Article 2638 of the Civil Code)². The company's vicarious corporate liability in relation to the

¹ Article 34 of Law 262/2005 repealed the predicate offence previously provided for in Article 2623 of the Civil Code for false statements and replaced it with a new case within the regulatory corpus of the Consolidated Law on Financial Intermediation in Legislative Decree 58 of 24 February 1998, Article 173 bis. Now, Article 25-ter of Legislative Decree 231/2001 – in letters d) and e) – provides for the entity's liability for the offence of false representation in a prospectus, while continuing to recall the contravention of Article 2623, paragraph 1 (Article 25-ter, letter d) and the offence pursuant to Article 2623, paragraph 2 (Article 25-ter, letter e).

According to a portion of the legal theory, the lack of coordination is not at all irrelevant, so much so that one wonders whether, after the mentioned change of the false statement in the prospectus, there is still the possibility of imputing this offence as a way to allege the vicarious corporate liability of a legal entity. Other authors believe that the collective entity's liability in relation to this offence has not ceased as a result of the amendments to the penalty system of the Consolidated Finance Act made by the Savings Law. According to this argument, Article 25-ter of Legislative Decree 231/2001 would refer not only formally to the offence of false representation in prospectuses (as initially conceived in Article 2623 of the Civil Code), but would also refer to subsequent changes in the rules for punishing the offence in question.

² Legislative Decree No 39 of 27 January 2010 on the "Implementation of Directive 2006/43/EC on the auditing of annual and consolidated accounts, amending Directives 78/660/EEC and 83/349/EEC, and repealing Directive 84/253/EEC", repealed Article 2624 of the Civil Code. (falsity in the reports or communications made by audit firms), contemplated by Article 25-ter, paragraph 1, letters f) and g) of Legislative Decree 231/2001 among the corporate crimes constituting a predicate offence the relative vicarious corporate liability.

At the same time, in Article 27, the new decree introduced the criminal offence of false disclosures in the reports or communications by the persons responsible for the auditing, as indicated below: "1. Those responsible for auditing who, to obtain for themselves or for others an unjust profit, in reports or other communications, with the awareness of falsity and the intention to deceive the recipients of the communications, attest to the falsehood or conceal information regarding the economic, equity, or financial

OV S.P.A.	ORGANISATION, MANAGEMENT AND CONTROL MODEL GENERAL PART – ANNEX 1	Edition 01/2023	Page 4 of 10
-----------	--	--------------------	-----------------

perpetration of these offences arises only if the criminal offences are committed in the interest of the entity (and not also for its benefit, as in other cases within the scope of application of Legislative Decree No. 231/2001);

- viii. **Article 25-quater, Offences for the purpose of terrorism and subversion of the democratic order:** or offences for the purpose of terrorism or subversion of the democratic order (Articles 270 et seq. of the Criminal Code, Articles 280 et seq. of the Criminal Code, Articles 289 and 320 of the Criminal Code), or in any case in violation of Article 2 of the New York Convention;
- ix. **Article 25-quater-1, Female genital mutilation policies:** offences of female sexual mutilation (Article 583-bis of the Criminal Code);
- x. **Article 25-quinquies, Offences against the individual:** offences relating to slavery, plagiarism and child pornography (Articles 600 et seq. of the Criminal Code, Articles 601 and 602 of the Criminal Code); unlawful intermediation and labour exploitation (Article 603-bis of the Criminal Code), solicitation of minors (Article 609-undecies of the Criminal Code), as most recently amended by effect of Law 23 December 2021 n. 238;
- xi. **Article 25-sexies, Market abuse:** insider trading and market manipulation,

situation of the company, entity or entity subject to audit, in a manner that misleads the recipients of the communications about this situation, are punished, if the conduct has not caused them financial damage, with imprisonment of up to one year. 2. If the conduct referred to in paragraph 1 has caused financial damage to the recipients of communications, the penalty is imprisonment of one to four years. 3. If the act provided for in paragraph 1 is committed by the person responsible for the audit of a public-interest entity, the penalty is imprisonment of one to five years. 4. If the act provided for in paragraph 1 is committed by the person responsible for the audit of a public interest entity for money or other benefits given or promised, or in collaboration with the directors, general managers or statutory auditors of the company subject to audit, the penalty referred to in paragraph 3 shall be increased by up to half. 5. The penalty provided for in paragraphs 3 and 4 applies to those who give or promise benefits, as well as to the general managers and members of the administrative body and the supervisory body of public-interest entities subject to statutory audit, who have contributed to committing the act”.

Article 37, paragraph 35, of Legislative Decree 2010 amended Article 2625, first paragraph, of the Italian Civil Code, excluding a review from the category of activities for which the provision punishes obstruction caused by directors. The criminal offence provided for in the second paragraph of Article 2625 of the Civil Code (obstruction of control) is provided for in Article 25-ter, paragraph 1, letter h) of Legislative Decree 231/2001 among the corporate crimes constituting a predicate offence for the relative vicarious corporate liability. Legislative Decree 39/2010, at the same time, introduced the offences of the unlawful (administrative and criminal) obstruction of control referred to below: “1. Members of the administrative body who, by concealing documents or by other artifice, impede or otherwise hinder the performance of legal audit activities, are subject to a fine of up to seventy-five thousand euros. 2. If the conduct referred to in paragraph 1 has caused damage to shareholders or third parties, the penalty of a fine of up to seventy-five thousand euros and imprisonment of up to eighteen months shall apply. 3. In the event of the audit of public interest entities, the penalties referred to in paragraphs 1 and 2 shall be doubled. 4. This can be decided ex officio”.

OV S.P.A.	ORGANISATION, MANAGEMENT AND CONTROL MODEL	Edition 01/2023	Page 5 of 10
	GENERAL PART – ANNEX 1		

offences introduced as a result of the extension of Legislative Decree 231/2001 to the offences contemplated in Articles 184-187 of Legislative Decree 58/1998 (the Consolidated Finance Act), as most recently amended by effect of Law 23 December 2021 n. 238. In the context of such offences, although not amending the relevant cases, reference is made to European legislation, in particular Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 (the MAR)³, to Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 (the MAD2) and Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016⁴; in the EU context, a number of delegated or implementing regulations have also been issued, including, in particular, the Commission Delegated Regulation (EU) 2016/522 of 17 December 2015⁵.

- xii. **Article 25-septies, Manslaughter and serious or grievous bodily harm committed as a result of the breach of occupational health and safety rules:** this concerns the types of offence specified in Articles 589 and 590 of the Criminal Code;
- xiii. **Article 25-octies, Receiving, laundering, and using money, goods or assets of illegal origin and self-laundering:** handling stolen goods (Article 648 of the Criminal Code), money laundering (Article 648-bis of the Criminal Code), using money, goods or assets of illegal origin (Article 648-ter of the Criminal Code) and self-laundering, as per the latest update pursuant to Legislative Decree 8 November 2021, n. 195;
- xiv. **Article 25-octies.1, Crimes involving means of payment other than cash:** unlawful use and forgery of payment instruments other than cash (493-ter criminal code), possession and dissemination of equipment, devices or computer programs aimed at committing crimes involving payment instruments other than cash (493-quater

³ The MAR, in force since 3 July 2016, replaced the previous legislative framework introduced by Directive 2003/6/EC (the MAD1) relating to market abuse. Reg. EU 596/2014 established a common regulatory framework for insider dealing, insider trading and market manipulation.

⁴ Article 56 amends certain provisions of Article 19 of the MAR (relating to the positions of managers).

⁵ This Delegated Regulation supplements the MAR in some points, concerning: (a) the market manipulation indicators set out in Annex I to the MAR; (b) the thresholds for the disclosure of inside information by market participants in shares of an issuance; (c) the specification of the competent authority for notifications of delays in the public disclosure of inside information; (d) the circumstances in which the issuer may allow trading during a closed period; (e) the types of transactions carried out by those exercising administrative, supervisory, or managerial responsibilities subject to notification.

criminal code), computer fraud aggravated by carrying out a transfer of money, monetary value or virtual currency (640-ter of the criminal code), introduced by Legislative Decree 8 November 2021, n. 184;

- xv. **Article 25-novies, Copyright infringement offences**, or rather, the offences referred to in Articles 171, first paragraph, subparagraph a-bis, third paragraph, 171-bis (this offence also including the abusive duplication for profit of computer programmes and their possession for entrepreneurial purposes without their SIAE identification), 171-ter, 171-septies and 171-octies of the Copyright Law (Law No. 633 of 25.4.1941 as subsequently amended);
- xvi. **Article 25-decies, Inducement not to make statements or to make false statements to a judicial authority**: relating to the offence referred to in Article 377-bis of the Criminal Code;
- xvii. **Article 25-undecies, Environmental offences**: environmental pollution (Article 452-bis of the Criminal Code), environmental disaster (Article 452-quater of the Criminal Code), negligent environmental offences (Article 452-quinquies of the Criminal Code), trafficking and abandonment of highly radioactive material (Article 452-sexies of the Criminal Code), aggravating circumstances (Article 452-octies of the Criminal Code), damage to habitats within a protected site (Article 727-bis of the Criminal Code), killing or possession of protected plant or animal species (Article 733-bis of the Criminal Code), infringements regarding waste discharges (Article 137 of Legislative Decree 152/2006, paragraphs 2, 3, 5, 11 and 13), unlawful waste management (Article 256, paragraphs 1, letters a and b, 3, 4, 5 and 6, first sentence, of Legislative Decree 152/2006), failure to carry out reclamation (Article 257, paragraphs 1 and 3, of Legislative Decree 152/2006), preparation and use of false certificates during waste transport (Article 258, paragraph 4 of Legislative Decree 152/2006), illegal traffic of waste (Article 259, paragraph 1 of Legislative Decree 152/2006), organised activities for the illegal traffic of waste (Article 260 of Legislative Decree 152/2006), serious breaches of the laws on the SISTRI waste traceability system (Art. 260-bis, Legislative Decree 152/2006), violation of air quality levels (Article 279, paragraph 5 of Legislative Decree 152/2006), offences relating to the application in Italy of the Convention on International Trade in Animal and Plant Species Threatened with Extinction (Article 1, paragraphs 1 and 2, Article 2, paragraphs 1 and 2, Article 6, paragraph 4,

criminal code offences referred to in Article 3-bis, paragraph 1 of Law no. 150/1992), breaches of the provisions on the cessation and reduction of the use of substances harmful to the ozone (Article 3, paragraph 6 of Law no. 549/1993), offences relating to ship pollution (Articles 8 and 9 of Legislative Decree no. 202/2007);

- xviii. **Article 25-duodecies, *Offence of employment of foreign workers*** without a residence permit or whose permit has expired, been revoked or cancelled, or whose renewal has not been requested within the terms of law, in the event that the workers employed are more than three, or are minors of non-working age, or are subject to other working conditions of particular exploitation as provided for in the third paragraph of Article 603-bis of the Criminal Code. (Article 22, paragraph 12-bis of Legislative Decree 286/1998); as well as **offences relating to illegal immigration: (a)** anyone who promotes, directs, organises, finances or transports foreigners into the territory of the State or carries out other acts intended to illegally procure their entry into the territory of the State, or of another State of which the person is not a citizen or has no title of permanent residence if: the act concerns the illegal entry or residence in the territory of the State of five or more persons; the transported person has been exposed to danger to his/her life or safety in order to procure the illegal entry or residence; the transported person has been subjected to inhuman or degrading treatment to procure the illegal entry or residence; the act is committed by three or more persons in complicity with each other or using international transport services or counterfeit or altered documents or in any case illegally obtained; the authors of the act have the availability of weapons or explosive materials. Penalty increases are provided for if the above acts are committed to recruit persons for prostitution or in any case to sexual or labour exploitation or concern the entry of minors to be used in illegal activities that promote their exploitation; or, if they are committed in order to derive a profit, even indirectly (Article 12, paragraphs 3, 3-bis and 3-ter of Legislative Decree 286/1998); **(b)** anyone who, to derive an unfair profit from the illegal status of the foreigner or in the context of the activities punished pursuant to Article 12 of Legislative Decree 286/1998, favours their remaining in the territory of the State in breach of the provisions of the aforementioned decree. Penalty increases are provided for when the act is

OV S.P.A.	<p style="text-align: center;">ORGANISATION, MANAGEMENT AND CONTROL MODEL</p> <hr/> <p style="text-align: center;">GENERAL PART – ANNEX 1</p>	Edition 01/2023	Page 8 of 10
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committed jointly by two or more persons, or concerns the stay of five or more persons (Article 12, paragraph 5 of Legislative Decree 286/1998);

- xix. **Article 25-terdecies, *Racism and xenophobia***, relating to propaganda or incitement and provocation, committed in a manner that results in a real danger of dissemination if based in whole or in part on the denial, gross minimisation or justification of the Holocaust, crimes of genocide, crimes against humanity and war crimes, as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, ratified pursuant to Italian Law No 232 of 12 July 1999;
- xx. **Article 25-quinquiesdecies, *Tax Offences***, regarding: a) Fraudulent declaration by the use of invoices or other documents for non-existent transactions, b) Fraudulent declaration by other artifice, c) Unfaithful declaration d) Failure to declare, e) Issue of invoices or other documents for non-existent transactions, f) Concealment or destruction of accounting documents, g) Undue set-off, h) Fraudulent evasion of payment of taxes.
- xxi. **Article 25-sexiesdecies, *Contraband offences***, relating to: contraband in the movement of goods through land borders and customs spaces (Article 282 of Presidential Decree No. 43/1973); contraband in the movement of goods on border lakes (Article 283 of Presidential Decree No. 43/1973); contraband in the maritime movement of goods (Article 284 of Presidential Decree No. 43/1973); contraband in the movement of goods by air (Article 285 of Presidential Decree No. 43/1973); contraband in non-customs areas (Article 286 of Presidential Decree No. 43/1973); contraband for undue use of imported goods with customs concessions (Article 287 of Presidential Decree No. 43/1973); contraband in cabotage and in general circulation (Article 290 of Presidential Decree No. 43/1973); contraband in temporary imports or exports (Article 291 of Presidential Decree No. 43/1973); contraband of foreign tobacco products (Article 291-bis of Presidential Decree No. 43/1973); aggravating circumstances to the contraband of foreign tobacco products (Article 291-ter of Presidential Decree No. 43/1973); criminal association for the contraband of foreign tobacco products (Article 291-quater of Presidential Decree No. 43/1973); other cases of contraband (Article 292 of Presidential Decree No. 43/1973); aggravating circumstances to the contraband (Article 295 of Presidential Decree No. 43/1973);
- xxii. **Article 25-septiesdecies, *Crimes against cultural heritage* and Article 25-**

OV S.P.A.	ORGANISATION, MANAGEMENT AND CONTROL MODEL	Edition 01/2023	Page 9 of 10
	GENERAL PART – ANNEX 1		

duodevicies, Crimes of laundering of cultural assets and devastation and looting of cultural and landscape assets: theft of cultural assets (518 bis of the Criminal Code), misappropriation of cultural assets (518-ter of the Criminal Code), receiving stolen goods of cultural assets (518-quater of the Criminal Code), forgery in private deeds relating to cultural assets (518 octies of the Criminal Code), violations on the matter of alienation of cultural property (518-novies criminal code), illicit import of cultural property (518-decies criminal code), illicit exit or export of cultural property (518-undecies criminal code), destruction, dispersion, deterioration, disfigurement, soiling and illicit use of cultural or landscape assets (518-duodecies of the criminal code), counterfeiting of works of art (518-quaterdecies of the criminal code), laundering of cultural assets (518 sexies of the criminal code), devastation and looting of cultural and landscape assets (518-terdecies of the criminal code);

- xxiii. **Article 10 of Law 146/2006**, relating to transnational crimes of criminal association, Mafia associations, inducement not to make statements or to make false statements to the judicial authorities, personal aiding and abetting, association for the purpose of smuggling foreign tobacco products, association for the purpose of illicit trafficking in narcotic and psychotropic substances, as well as the offences of illegal immigration provided for by Article 12 of Legislative Decree 286/1998.

Pursuant to Article **187-quinquies of Legislative Decree 58/1998 (Consolidated Finance Act)** also applicable, in reference to Articles 6, 7, 8 and 12 of Legislative Decree 231/2001, are administrative penalties equal to those imposed on the persons responsible for the administrative offences, committed in the interest or to the advantage of the entity, referred to in Part V, Title II of the Consolidated Financial Act.

OV S.P.A.	<p style="text-align: center;">ORGANISATION, MANAGEMENT AND CONTROL MODEL</p> <hr/> <p style="text-align: center;">GENERAL PART – ANNEX 1</p>	Edition 01/2023	Page 10 of 10
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