



**ORGANIZATION, MANAGEMENT
AND CONTROL MODEL
IN ACCORDANCE WITH
LEGISLATIVE DECREE
N. 231 OF 8 JUNE 2001**

GENERAL PART



**ISTITUTO
ITALIANO DI
TECNOLOGIA**

Entity	Italian Institute of Technology Foundation
--------	--

History	
Date	Short description
25/01/2010	Adoption of the Model of the Italian Institute of Technology Foundation
19/12/2024	Italian Institute of Technology Foundation Model Update

INDEX

1	THE REGULATORY FRAMEWORK: LEGISLATIVE DECREE N. 231 OF 8 JUNE 2001	5
1.1	The sanctions provided for in Legislative Decree 231/2001	6
1.2	LAW 190/2012 AND LEGISLATIVE DECREE 231/2001	6
2	THE ORGANIZATION AND MANAGEMENT MODEL OF THE ITALIAN INSTITUTE OF TECHNOLOGY	9
2.1	A brief history of the Foundation	9
2.2	The main activities	9
2.3	Internal organization of the Italian Institute of Technology	10
2.4	Purpose of the organization and management model	11
2.5	Method for preparation of the foundation model	12
2.6	Recipients	13
2.7	Approval, modification and implementation of the model	13
2.8	Activities reported to the Foundation's Top Management	13
2.9	Checking items	14
2.10	Management of financial resources	15
3	THE SUPERVISORY BODY	15
3.1	The Supervisory Body	15
3.2	The requirements	16
3.3	Term of office, replacement and dismissal of members of the Supervisory Body	16
3.4	The functions and powers of the Supervisory Body	18
3.5	Information flows of the Supervisory Body	20
3.6	Whistleblowing	21
3.6.1	Protection of the reporter	21

4	SCIENTIFIC CODE OF CONDUCT AND BEHAVIOR.....	22
5	DISCIPLINARY SYSTEM	22
6	TRAINING AND INFORMATION FOR PEOPLE IN THE FOUNDATION.....	22
7	PAST CASE-LAW	23
7.1	A brief overview of criminal law	25
A	The concurrence of persons in the offence (Article 110 of the criminal code).....	25
B	Proper and common offence	25
C	The attempted crime (Article 56 of the criminal code)	26
D	Public official and person in charge of a public service (Sections 357 and 358 of the criminal code).....	26
8	ATTACHMENTS	30
1	Text of Legislative Decree 231/2001	30
2	List of offences	30
3	Mapping of processes at risk.....	30
4	Code of Conduct and Scientific Behavior	30
5	Disciplinary system.....	30
9	ADDENDUM	30
A1	Relevant offences under Law 190/2012.....	30
A2	Mapping of processes at risk.....	30
A3	Principles for the Prevention of Corruption and for Transparency.....	30
A4	Protocols for the Prevention of Corruption and for Transparency	30

1 THE REGULATORY FRAMEWORK: LEGISLATIVE DECREE N. 231 OF 8 JUNE 2001

Legislative Decree N. 231 of 8 June 2001 (hereinafter referred to as the '**Decree**') concerning the 'Regulations on the administrative liability of legal persons, companies, and associations, including those without legal status', pursuant to Article 11 of Law N. 300 of 29 September 2000, introduced a new type of liability of entities into our legal system (Annex No. 1).

This is a particular form of administrative liability in criminal proceedings, for specific offences committed by senior management or employees. Therefore, in addition to the criminal liability of the individual perpetrator of the offence, there is also that of the entity.

The provisions of the Decree, pursuant to Article 1, apply to the following entities (hereinafter also referred to as the '**Entity**' or the '**Entities**')

- entities with legal **status**;
- companies and associations, including those without legal status.

The Entity's liability arises when the offences explicitly provided for by the Decree or by special laws and committed *in its interest* or *to its advantage* by persons linked to the Entity in different ways. In this regard, Article 5 of the Decree indicates as **offenders**:

- "*persons who hold representative, administrative or managerial positions in the Entity or of one of its organizational units with financial and functional independence, as well as persons who exercise, its management and control, either officially or de facto*" (so-called top managers);
- "*persons subject to the direction or supervision of one of the persons referred to in a)*" (so-called subordinates).

By the express will of the legislator, the Entity is not liable for the crime if top managers or subordinates have taken actions '*in their own exclusive interest or in the interest of third parties*' (Article 5(2) of the Decree).

The liability of the Entity, pursuant to Article 6 of the Decree, may also be excluded when, before carrying out the action:

- organizational and management models suitable for preventing the commission of the offences provided in the aforementioned Decree are prepared and implemented;
- a supervisory body is established, with autonomous initiative powers, with the task of supervising the functioning of the organization and management models (hereinafter also the '**Supervisory Body**' the '**Body**' or the '**SB**').

In case of offences committed by top managers, the Entity's liability is excluded if the Entity also proves that the offence was committed by fraudulently circumventing the existing models and that there was also no or insufficient control by the Supervisory Body, which is specifically charged with supervising the proper functioning of and compliance with the Organization and Management Model.

In case of offences committed by the subordinate, on the other hand, the exclusion of the Entity's liability is also subject to the adoption of behavioral protocols appropriate to the nature and type of the activity carried out. These protocols ensure that the Entity's activities are carried out in compliance with the law and facilitate the detection and timely elimination of risky situations.

1.1 Sanctions under Legislative Decree 231/2001

Regardless of any potential administrative liability of the Entity, anyone who commits one of the offences mentioned in the Decree and set out in Annex n. 2 will, in any case, be considered indictable for the unlawful conduct he or she has carried out.

- Article 9(1) identifies the sanctions that may be imposed on the Entity. In particular, they can be:
 - fines;
 - disqualification sanctions:
 - disqualification from exercising the activity;
 - suspension or revocation of authorizations, licenses or concessions useful to carry out the offence;
 - prohibition to enter into contracts with Public Administrations, except for obtaining the performance of a public service;
 - exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted;
 - ban on advertising goods or services;
- confiscation;
- publication of the verdict.

1.2 LAW 190/2012 AND LEGISLATIVE DECREE 231/2001

Law N. 190 of 6 November 2012 '*Provisions for the prevention and repression of corruption and illegal actions in public administration*' introduced a broadly structured system for the prevention of further

corruption, within the scope of offences against the Public Administration, if compared to what is mentioned in the Decree.

Despite the similar aspects of these two systems, there are significant differences between the measures under Law N. 190/2012 and those of the Decree.

In particular, with regard to the type of crimes to be prevented, while the Decree concerns crimes carried out to the advantage of the Entity or, in any case, in its interest (Article 5 of the Decree), Law 190/2012 also aims to prevent crimes carried out against the Entity.

With regard to '*corruption cases*', the Decree refers to the offences of bribery, malfeasance, undue inducement to give or promise benefits, and bribery among private individuals, all cases from which the Entity must gain an advantage or have an interest in order to be liable. In the opinion of the A.N.AC., however, Law 190/2012, refers to *"a broader concept of corruption, which includes not only the entire range of crimes against the P.A. governed by Title II of Book II of the Criminal Code, but also situations of 'bad administration', which include all cases of significant deviation of behavior and decisions, from impartial care of public interest, i.e. situations in which private interests improperly affect the action of administrations or organizations, whether such influence has been successful or remains at the attempted level"*.

Therefore, according to the A.N.AC. "in a logic of coordination of measures and simplification of fulfilments, the companies shall supplement the Organization and Management Model pursuant to Legislative Decree n. 231 of 2001 with measures suitable to prevent illegal and corruption phenomena within the companies in line with the purposes of Law n. 190 of 2012. These measures must refer to all the activities performed by the company and must be brought together in a unified document that takes into consideration the Corruption Prevention Plan, also for the purposes of the assessment of annual update and the A.N.AC supervision. If combined in a single document with those adopted in implementation of Legislative Decree n. 231/2001, such measures are placed in a special section and are therefore clearly identifiable, taking into consideration that they are related to different management procedures and responsibilities".

Lastly, it should be noted that with Legislative Decree n. 75/2020 the legislator extended the administrative liability of entities under Legislative Decree n. 231/2001 also to the offences of misappropriation, embezzlement by profiting from the error of others and abuse of functions, set out respectively in Articles 314, 316 and 323¹ of the Criminal Code. These cases, in particular, represent crimes in their own right, the conduct of which consequently requires the direct participation of a public official or a person in charge of a public service. The amendment made makes the analogy

¹ With Decree-Law n. 92 of 2024 and subsequently, with the final approval of Decree-Law n. 1718 of 10 July 2024, the legislature repealed the offence of abuse of office, while at the same time introducing, with Decree-Law n. 92, a new criminal offence of 'embezzlement by diversion' in Article 314 of the Criminal Code, under the heading 'Misappropriation of money or movable property'.

between the two prevention systems even more restrictive.

Given what mentioned above, the IIT, having already made choice to use this Organization and Management Model, although not required to do so, has decided, on a voluntary basis, to also regulate some specific aspects related to anti-corruption and transparency in an attached section of the *Addendum*.

For a specific examination of Law 190/2012 and the choices that the IIT, on a voluntary basis, has made in this regard, please refer to the *Addendum*.

2 THE ORGANIZATION AND MANAGEMENT MODEL OF THE ITALIAN INSTITUTE OF TECHNOLOGY

2.1 A brief history of the foundation

IIT - Fondazione Istituto Italiano di Tecnologia – Italian Institute of Technology Foundation (hereinafter the '**Foundation**', the '**Institute**' or the '**IIT**') - was established by Law n. 326 of 24 November 2003.

The IIT is an international center of excellence in scientific research and advanced technology. Its aim is to encourage the country's technological development and advanced training in accordance with national science and technology policies, thereby strengthening the national production system.

The IIT is a Foundation supervised by the Ministry of Education, Universities and Research and the Ministry of Economy and Finance, established therefore to promote excellence in basic and applied research, and to contribute to the Country's economic development.

IIT's primary objectives are therefore both the creation and dissemination of scientific knowledge and the strengthening of Italy's technological competitiveness, as well as collaboration with academic institutions, private companies and the Country's main research centers.

The Institute went through an initial start-up period of about two years during which, the management structure, the scientific plan and first training initiatives were defined.

2.2 The main activities

IIT's *mission* is characterized by research activities in the field of *Technology Transfer*, with a high scientific profile at national and international level. In these terms, the Foundation establishes relations with similar organizations in Italy and ensures the contribution of Italian and foreign researchers that work for foreign institutes of excellence.

The Foundation aims to promote technological development and advanced training in the Country, in accordance with national science and technology policies, thus strengthening the national production system.

To this end, the Foundation:

- facilitates and accelerates the development, in the national research system, of the appropriate scientific and technological capacities to foster the transition of the national production system towards high technology systems;
- develops innovative methods and skills to facilitate the introduction of best practices and

positive schemes of competition in national research;

- promotes and develops scientific and technological excellence both directly, through its multidisciplinary research laboratories, and indirectly, through collaborations with national and international laboratories and research groups;
- carries out advanced training programs as part of broader multidisciplinary programs and projects;
- encourages a culture based on sharing and exploiting the results obtained to be used for the improvement of production and the welfare state, both internally and at the level of the entire national research system;
- creates technological knowledge, related to components, methods, processes and techniques to be used for the realization of products and services and their connections, in strategic sectors for the competitiveness of the national production system;
- attracts and brings together researchers working in different research institutes with further connections among specialized centers of excellence;
- promotes interaction between basic and applied research areas and supports their experimental development;
- disseminates transparent selection procedures of researchers and projects, based on merit, in accordance with criteria that are widespread and well-established worldwide.

2.3 Internal organization of the Italian Institute of Technology

IIT is provided with an organizational and *governance* system inspired by the operating models of the main scientific institutions active at international level.

In fact, the *governance* model has been identified and structured by comparison with international research centers of excellence with the specific purpose of creating an operational model capable of facilitating the performance of scientific activities while optimizing the return on the resources employed and the funding available.

IIT's Organization and Management Model is based on the following basic principles:

- the autonomy of research;
- a clear and specific definition of responsibilities;
- operational flexibility;
- constant assessment of the results obtained through independent control bodies.

The smooth running of the Foundation is ensured by a simple administrative system - in relation to the organization size and complexity - which takes care of both management aspects and relations with the scientific world.

Pursuant to Article 6 of the Statute, the following must be considered parts of the Foundation (hereinafter referred to as the '**Organs**')

- the Council;
- the President;
- the Scientific Director;
- the Executive Committee (hereinafter referred to as the 'Committee');
- the Board of Auditors.

They are **operational** structures of the Foundation (hereinafter referred to as the '**Operational Structures**')

- Fields and Research Centers;
- the Technical Scientific Committee;
- administrative offices;
- evaluation committees.

The organization of the Foundation, the roles and activities pertaining to the Bodies and Operating Structures are described in the "General Operating Regulations", to which reference is made in full.

2.4 Purpose of the organization and management model

The IIT Committee's decision to provide the Foundation with an Organization and Management Model (hereinafter the '**Model**') has the purpose to promote and enhance an ethical culture within the Institute. This choice will result in actions and initiatives aimed at raising the awareness of all those who work with the Foundation, to the transparent and correct management of the activity and to the respect of the legal regulations in force.

The Model is gradually updated in order to make it suitable to prevent the commission of different kinds of offence in line with the related regulatory developments.

The IIT Model was adopted by resolution of the Committee on 25 January 2010. The last update of this Model took place on 16 December 2024.

The approved Model consists, in addition to this 'General Section', of a 'Special Section', its related

annexes, and the Addendum containing the tools, adopted on a voluntary basis, for the prevention of corruption and for transparency pursuant to Law 190/2012.

The Committee intends, through the adoption of the **Model**:

- to make it known to all those who collaborate in any way with IIT, that the Foundation condemns in the strongest way any conduct contrary to laws, regulations, or conduct that violates internal regulations (*policy*, protocols, and the Code of Conduct and Scientific Behavior for the purposes of Legislative Decree 231/2001) and, in general, any principle for a clear and transparent management of the activity carried out by the IIT;
- to ensure, as far as possible, the prevention of the commission of offences, within the scope of the activities carried out by IIT through: i) the continuous monitoring of all areas of activity at risk; ii) the training of collaborators in the correct performance of their duties;
- to disseminate and promote a culture of transparency and legality within the Foundation.

2.5 Method for preparation of the foundation model

The activity carried out for the purpose of drafting the Model was divided into several phases. The first phase of Risk Assessment is set out in detail in the Special Part of this Model.

After this phase, the Foundation's Model pursuant to Legislative Decree n. 231/2001, General Part and Special Part, was defined, articulated in all its components according to the provisions of the Decree and the indications contained in the Guidelines prepared by Confindustria.

The Model is regularly updated in accordance with regulatory and organizational developments using the method described in the previous steps.

Subsequently, the Model was supplemented - voluntarily - by the drafting of a specific Addendum, with the prescriptions established by the main international anti-corruption Principles and Guidelines, by the A.N.AC Guidelines, by the successive updates to the PNA and by Law no. 190/2012, on the active and passive sides, also in relation to the type of activity carried out by the Entity.

Lastly, the Model was adapted following introduction of Legislative Decree 24/2023, which, in implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, introduced a unified discipline for the protection of persons who report violations of national or European Union regulatory provisions that harm the public interest or the integrity of the public administration or private entity, of which they have become aware in a public or private work context.

2.6 Recipients

The Model is addressed to all those who work with the Foundation, in particular to

- the members of the Bodies, Committees, Commissions or similar bodies set up by the Foundation;
- all managerial and non-managerial staff working in the name and on behalf of the Foundation;
- the collaborators;
- the affiliates (PhD students and Researchers from organizations affiliated to IIT).

IIT also requires compliance with the Model by all the people who collaborate in different ways with the Foundation in carrying out its statutory activities, as well as by all the third parties who represent the Foundation without any dependency ties (e.g. consultants, suppliers), including through the possible provision of contractual clauses requiring external collaborators, consultants and suppliers to comply with the principles available in the Code of Conduct and Scientific Behavior. The failure to comply with this Code could envisage the possibility for the IIT to withdraw from the contract or to terminate it.

2.7 Approval, modification and implementation of the model

Pursuant to Article 6(1)(a) of the Decree, the Model constitutes an act issued by the management body (Committee).

On the proposal of the Supervisory Board, the Committee makes any amendments and additions necessary to ensure the continued compliance of the Model with the provisions of the Decree and any structural and/or organizational changes to the Foundation.

The Committee is responsible for the implementation of the Model.

Supervision of the adequacy and implementation of the Model decided by the Committee is ensured by the Supervisory Board. The Supervisory Board reports continuously the outcome of its work to the Committee.

2.8 Activities reported to the Foundation's Top Management

As mentioned in the introduction of this Model, the offences from which the liability of the Entity may arise pursuant to this Decree, may be committed both by the so-called apical subject and by the

person subject to his/her direction or **supervision**.

The Foundation Committee is directly involved in the ordinary and extraordinary management of the Institute. Therefore, it is difficult to imagine the existence of something exempting it from responsibility.

The Decree provides, in the case of an offence committed by senior management, for an inversion of the burden of proof, since it is up to the Foundation to prove the fraudulent evasion of the Model prepared and effectively implemented.

Therefore, in the case of an offence committed by the Committee, it is not sufficient to prove it is an offence committed by an 'unfaithful' member, but it is required that there was no omission or lack of control by the Supervisory Board over compliance with the Model. The Committee is the natural recipient of the incriminating regulatory provisions for which liability can be configured pursuant to the Decree.

As a result of this regulatory indication, it is deemed necessary that the control activities entrusted to the Supervisory Board also concern the Committee's work.

2.9 Checking items

General checks

The control system improved by the Foundation was implemented by applying some checking items, defined below, to the individual sensitive activities.

Regulation: existence of internal provisions providing principles of conduct, operating methods for carrying out sensitive activities, as well as methods for archiving relevant documentation.

Traceability: i) each operation related to the sensitive activity is, where possible, adequately documented; ii) the process of decision, authorization and performance of the sensitive activity is verifiable *ex post*, including by means of appropriate documentary support.

- **Separation of duties:** separation of activities between those that provide authorization, those that carry out the activity and those that carry out the checks.

Powers of attorney and proxies: the assigned powers of authorization and signature authorities are: i) consistent with the organizational and management responsibilities assigned, providing, where required, an indication of expenditure approval thresholds; ii) clearly defined and known within the Foundation. In particular, the Committee has approved a system of delegation of powers and division of responsibilities, assigning powers and duties in relation to the professional skills possessed by each individual.

Specific control tools

General rules of conduct and existing control activities have been identified for the processes at risk, which represent control tools for the purposes of the Model and form an integral part of it (Model - Special Section).

2.10 Management of financial resources

Article 6(2)(c) of the Decree states that the models must provide for '*methods of managing financial resources suitable for preventing the commission of offences*'. This provision finds its *rationale* in the observation that most of the offences covered by the Decree can also be committed through the financial resources of the Entity (e.g.: constitution of extra-accounting funds for carrying out acts of corruption).

To prevent such conduct, the IIT has implemented systems for decision proceduralization that, by providing the different stages of the decision-making process documented and verifiable, prevent the mismanagement of the Institute's financial resources.

It should be noted that the Foundation's financial flows are generated by the activities, listed below, which are subject to regulation and control:

- **Project Funding Activities**
- **Procurement of goods and services**
- **Staff recruitment**
- **Financial statements:** the preparation of financial statement is an activity of the Committee.
- **Signature and spending power:** signature authority is granted by the Committee to the Director General, Scientific Director, Research Directors, Administrative Managers, Network Centre Coordinators, *Facility Managers*, *Tenured* and *Tenure Track* researchers, *Principal Investigators* and *Administrative Managers* not employed by *Functional Managers*.

3 THE SUPERVISORY BODY

3.1 The Supervisory Body

Article 6(1)(b) of the Decree, among the requirements for the Entity to be exempt from liability

resulting from the commission of the offences listed therein, identifies the establishment of a Supervisory Board, endowed with autonomous powers of initiative and control, with the task of supervising the functioning, effectiveness, adequacy and observance of the Model, and ensuring that it is updated.

3.2 The requirements

The Body is a collegial body made up of three regular members, one of them acts as Chairman, placed in a position of third-party status and independence with respect to the other bodies of the Foundation. In order to work properly, it must meet the following **requirements**:

- **autonomy and independence:** it must have no operational duties and only have staff relations with the Executive Committee;
- **professionalism:** the members of the Supervisory Board must have specific knowledge in relation to any useful technique for preventing the commission of offences, for discovering those that have already been committed and identifying their causes, and for verifying compliance with the Model by members of the IIT Foundation;
- **continuity of action:** in order to ensure the effective implementation of the Model, the presence of a structure dedicated exclusively to supervisory activities is necessary.

The members of the Supervisory Board are chosen among people particularly qualified and experienced in legal matters and control procedures and with integrity requirements.

In order to guarantee the autonomy and independence of the Body, both external and internal members may be appointed, provided they have no operational tasks. The members of the Body must not be linked to the Foundation by significant economic interests or by any situation that may generate a concrete conflict of interest. The Body must be provided with adequate financial and logistical means to enable its normal operations.

3.3 Term of office, replacement and dismissal of members of the Supervisory Body

The members of the Body are appointed by the Executive Committee and remain in office for the period set out in the relevant appointment decision. They may be re-elected.

The Executive Committee is free to cancel the appointment of the members of the Supervisory Board at any time, provided there is a just cause for revocation and after consulting the Board of Auditors. The following can be considered a proper ground for dismissal:

- the member is subject to interdiction, incapacitation or bankruptcy proceedings;

- indictment in criminal proceedings involving a penalty related to disqualification, including temporary disqualification, from public office or inability to hold executive office;
- ascertaining the absence of requirements related to autonomy, independence, professionalism and continuity of action laid down for the appointment;
- the existence of one of the cases of ineligibility;
- serious breach by the members of the Supervisory Body of the duties imposed on them by law or by the Model;
- a conviction of the Foundation pursuant to the Decree, which has become final, or a criminal proceeding concluded through so-called "plea bargaining", where the documents show the "omitted or insufficient supervision" by the Supervisory Body, in accordance with the provisions of Article 6, paragraph 1, letter d) of the Decree;
- a final conviction against one of the members of the Supervisory Body for having personally committed one of the offences mentioned in the Decree;
- a final conviction, against one of the members of the Supervisory Body to a penalty entailing disqualification, even temporary, from public office, or temporary disqualification from the executive offices of legal persons and companies. If there are members of the Supervisory Body who have an employment relationship with the Entity, the termination of the contractual relationship with the latter constitutes just cause for revocation.

In the event of a conviction, the Executive Committee, pending the res judicata of the sentence, may also order - after hearing the Board of Auditors - the suspension of the powers of the Supervisory Body, or of one of its members, and the appointment of an interim Supervisory Body, or the appointment of a new member.

Notwithstanding the foregoing, each member of the Supervisory Body has the right to inform the Executive Committee of his or her intention to proceed with the renunciation of the assignment, by means of a communication containing the related reasons.

In the event of termination, or resignation of a member of the Supervisory Body for any reason whatsoever, the Executive Committee shall, without delay, provide for his replacement by means of a specific resolution. The outgoing member of the Supervisory Body shall, in any case, be required to perform all the functions provided by law or by the Model until the person appointed by the Executive Committee will replace him/her. The members of the Supervisory Body appointed as replacements shall remain in office for the time for which the persons they replace should have remained in office.

The Executive Committee decides, on the proposal of the Supervisory Body, on the financial resources that, from time to time, the Supervisory Body deems necessary to perform its functions correctly and

effectively.

The remuneration, if any, due to the members of the Supervisory Body (including the Chairman, the Vice-Chairman, the delegated members or those holding particular offices) is defined at the time of appointment or by subsequent decision of the Executive Committee. The members of the Supervisory Body are, in any case, entitled to reimbursement of expenses incurred in connection with their duties.

The Supervisory Body adopts its own internal rules of procedure, which provide for: the planning of activities and controls, the procedures for convening meetings, the voting procedures, the procedures for appointing the Chairman and, if necessary, the Deputy Chairman, drafting the minutes of meetings, and the regulation of information flows to and from the Supervisory Body.

3.4 The functions and powers of the Supervisory Body

The following activities are carried out by the Body, that is required to:

- promote awareness and understanding of the Model in the IIT Foundation;
 - compliance with the Model in the Foundation;
- a) collect, process and store any information relevant to the verification of compliance with the Model;
 - b) monitor the effectiveness of the Model over time, with particular reference to the conduct observed in the context of the IIT;
 - c) promote the updating of the Model in the event that it becomes necessary and/or appropriate to make corrections and adjustments to it, in relation to changed organizational and/or legislative conditions;
 - d) promptly report any breach of the Model considered significant, of which it has become aware through a report by employees or which has been ascertained by the Body itself. Anonymous reports will be assessed at the discretion of the Body, taking into consideration the seriousness of the breach reported and the information contained therein. Reports will be taken into consideration only if they are based on specific and consistent factual elements, and are relevant under the Decree.
 - e) communicate and report on an ongoing basis to the Committee and, on a regular basis, to the Body of Statutory Auditors about the activities carried out, the reports received, the corrective and improvement measures of the Model and their implementation status. Provide, on a six-monthly basis, to the Committee a written report containing the following elements:
 - the overall activity carried out during the year, also in relation to the program previously

developed;

- the necessary and/or appropriate corrective and improvement actions of the Model and their implementation status;
 - expressing opinions on the appropriateness of including termination or cancellation clauses in contracts with consultants, collaborators and third parties who have relations with the Foundation, in the context of company activities that are potentially exposed to the commission of the offences referred to in the aforementioned Decree;
- f) promote the knowledge of the principles contained in the Model and their translation into consistent behavior by different recipients by identifying the most appropriate training and communication measures within the relevant annual plans;
- g) regularly check and control the areas/operations at risk identified in the Model and carry out a review of the Foundation's activities with the aim of identifying the areas at risk of offences and propose their updating and integration, if the need arises;
- h) set up specific 'dedicated' information channels aimed at facilitating the flow of reports and information to the Body;
- i) report to the Executive Committee, on the basis of the activity performed, the possible drafting of protocols, operating and control procedures that adequately regulate the performance of activities, in order to implement the Model.

For the purposes of performing the duties listed in the preceding paragraph, the powers listed below are assigned to the Body:

- a) issue internal provisions aimed at regulating the activity of the Body. Such provisions, which must be properly justified (e.g. provisions defined by urgent situations or opportunity), will be issued autonomously by the Body, but they must not be in conflict with the rules adopted by the Foundation for its own functioning;
- b) access to any document of the Foundation relevant to the performance of the functions assigned to the Supervisory Body pursuant to the Decree;
- make use of external consultants of proven professionalism in cases where this is necessary for the performance of activities within its competence;
- require that any employee, manager and/or collaborator of the Foundation promptly provide information, data and/or news suitable for identifying aspects connected with different activities related to the Model, as well as verifying its effective implementation by the

organizational structures of the Institute;

- c) verify that the structures in charge have applied disciplinary measures in the event of ascertained violations of the Model and its constitutive elements.

For the purposes of a better and more effective performance of the tasks and functions assigned to the Body, the latter may decide to delegate one or more specific tasks to the individual members of the Body itself, or it may make use of a structure of the Foundation appointed for this purpose.

The Body must meet no less than four times a year: minutes must be drafted for each meeting.

Furthermore, the Supervisory Body may be convened at any time by the Committee and may, in turn, submit a request to that effect, to report on the functioning of the Model or on specific situations.

3.5 Information flows of the Supervisory Body

The Body shall draw up a written report on its activities every six months and send it to the Executive Committee.

The Body is the recipient of reports on possible violations of this Model. To this end, specific information channels have been set up, aimed at establishing a flow of reports and information for the Body.

All employees and all those who cooperate in the pursuit of the Foundation's aims are required to promptly inform the Supervisory Body of any violations of the Model and of any other aspect potentially relevant to the application of the Decree.

In particular, the following information must be promptly transmitted to the Supervisory Body:

- measures and/or information from the judicial police, or any other authority, from which it is clear that investigations have been carried out for offences covered by the Decree, even against unknown persons;
 - reports prepared by function managers within the framework of the control activities carried out, from which facts, acts, events or omissions may emerge with critical profiles with respect to the rules of the Decree;
 - communications concerning sanctions imposed (including measures taken against employees);
 - amendments and/or additions to the system of mandates and proxies;
- any issuance, amendment and/or integration to the operating procedures relevant for the purposes of the Decree.

3.6 Whistleblowing

Senior Executives, Subordinates and, likewise, Third Parties² may report unlawful conduct that may constitute "predicate offences" pursuant to Legislative Decree 231/2001 as well as violations of this Model in compliance with the *Procedure for the management of reports in compliance with Legislative Decree n. 24/2023* adopted by the Foundation, to which full reference is made, and which is published at the following link:

<https://iit.segnalazioni.net/pages/policy>.

To make a report, Recipients may refer to the internal channels indicated in the *Whistleblowing Policy*, summarized below:

via an online platform accessible on the 'whistleblowing' page on the home page of the Foundation's Web site, or directly at <https://iit.segnalazioni.net>;

via the e-mail box: organismodivigilanza@iit.it

by traditional mail, to the address Fondazione - IIT - Organismo di Vigilanza - Via Guidubaldo del Monte 54, 00197 Roma.

3.6.1 Protection of the reporter

The reporting protection system is considered a basic tool to effectively apply the crime risk prevention system.

In this respect, clear reference is made to the provisions of the *Procedure for managing reports in accordance with Legislative Decree n. 24/2023* for the protections to be afforded to the reporter.

In any case, it is possible to apply all the protections provided in favor of the whistleblower in Articles 16, 17, 19 and 22 of Legislative Decree 24/2023.

Furthermore, anyone who reports a violation of the Decree or the Model or the Code of Conduct and Scientific Behavior, even if it does not constitute an offence, must not be disadvantaged in any way by this action, regardless of whether his/her report turns out to be well-founded or not.

Anyone who, in their capacity as a whistleblower, believes that he/she have suffered direct or indirect retaliatory or discriminatory acts for reasons connected, directly or indirectly, to their warning shall report the abuse through the channels indicated in the *Procedure for managing reports in accordance with Legislative Decree n. 24/2023*.

Violation of the provisions of this paragraph shall entail, the imposition of disciplinary sanctions

² Only the Third Parties defined in the Procedure for Handling Whistleblowing Reports in accordance with Legislative Decree N. 24/2023 can make whistleblowing reports.

and/or the application of the other measures provided in paragraph 8 of the General Section of the Model.

In any case, without prejudice to the application by the competent authority of the sanctions mentioned in Article 21(1)(c) of Legislative Decree n. 24/2023, anyone that makes a report by intent or gross negligence that turns out to be unfounded and leads to a criminal conviction, even with a first instance judgment, for the offence of defamation or slander, or to a civil conviction, even with a first instance judgment, for the same offence, shall not be entitled to the protections offered by the system described herein and shall be subject, as the case may be, to the disciplinary sanctions and/or other measures mentioned in paragraph 8 of the General Section of the Model.

4 CODE OF BEHAVIOR AND SCIENTIFIC CONDUCT

The adoption of ethical principles relevant to the prevention of the offences referred to in the Decree, as well as in Law 190/2012, is part of an essential element of the preventive control system. The correct place of these principles is in the Code of Conduct and Scientific Behavior (Annex n. 6).

The Code of Conduct and Scientific Behavior, in fact, aims to suggest, promote or prohibit specific behaviors to which sanctions proportionate to the seriousness of any infringements committed may be connected.

5 DISCIPLINARY SYSTEM

A qualifying point of the Model is the provision of an adequate Disciplinary System (Annex n. 5) to sanction non-compliance and violation of the rules of the Model and its constitutive elements.

Such violations must be sanctioned by disciplinary action, regardless of whether criminal proceedings are brought, even when conduct does not constitute a criminal offence.

With regard to relationships with consultants, collaborators and third parties, the Institute may adopt a contractual *standard* according to which any conduct in contrast with the Code of Conduct and Scientific Behavior by the aforementioned subjects may result in the immediate termination of the contractual relationship and a possible claim for compensation, if such behavior causes damage to the Foundation.

6 TRAINING AND INFORMATION FOR PEOPLE AT FOUNDATION

In compliance with the provisions of the Decree, IIT has defined a specific communication and training plan aimed at disseminating and illustrating the Model to all the Foundation's people.

In particular, with regard to **communication**, an e-mail signed by the Scientific Director was sent to all those who, in any capacity, collaborate with the Foundation. In this communication, the adoption of the Model was acknowledged, inviting the recipients to comply with the control system envisaged by the Model itself.

As far as **training** is concerned, it is carried out through regular meetings with all employees and collaborators in order to provide details about the Model or through the use of *e-learning* tools.

In particular, the following topics are addressed:

- Legislative Decree 231/2001;
 - Consequences for the Foundation in the event of possible offences committed by its staff;
 - Code of Conduct and Scientific Behavior;
 - Essential features of the offences provided in the Decree;
1. Function and contents of the Model adopted by the Foundation
 2. Protocols and policies;
 3. Sanctioning system;
 4. Supervisory Body;
 5. The integration of the Foundation's Model with anti-corruption and transparency regulations.

Participation in the training sessions described above is formalized by requesting the signature of attendance (or similar *e-learning* methods) and entering the names of those present in the Supervisory Body's database. In addition, a questionnaire assessing learning of the principles of the Model is submitted to the participants.

7 PAST CASE LAW

A number of case law precedents were analyzed, which, together with the indications trade associations, constituted the guidelines for drafting the Model. Legal judgments have highlighted many aspects considered essential for drafting a suitable Model, emphasizing that it must be a Model endowed with concrete and specific efficacy, effectiveness and dynamism. In particular, when drafting it, particular attention must be paid to:

- procedures related to non-accounting funds;
- accounting preparation methods;

- methods of drafting financial statements;
- procurement procedures and related controls;
- implementation of an analysis of possible ways in which offences could be committed, taking into account the internal and external operating context in which the company operates;
- take into account the history of the entity (past events, including judicial ones);
- provide for the segregation of functions in risk processes;
- assigning authorizing signatory powers consistent with organizational and management responsibilities;
- create an appropriate monitoring system to report critical situations;
- use clear instruments and procedures for management of financial resources, preventing the creation of slush funds through the issuance of invoices for non-existent transactions, payments for consultancy services that were never carried out or the value of which is significantly lower than what declared by the company;
- provide compulsory training on the Model and awareness-raising activities aimed at ensuring proper knowledge, understanding and application of the Model by employees and managers;
- establish information flows to the Supervisory Body and provide for relevant disciplinary sanctions in case of non-compliance.

When it appears highly possible that offences will be committed by the persons in charge of the top management of the legal person, the **procedures** related to the formation and implementation decisions concerning the activities considered dangerous must be precisely determined. This entails the exact identification of the persons entrusted with the adoption of decisions, the identification of the parameters to follow in the choices to be made, and the specific rules to be applied documenting contacts, proposals and every single phase of the deliberative and implementation moment of the decision.

A specific disciplinary system must also be adopted, both in terms of precept and sanction. It must also provide sanctions in case of a breach related to the reporting obligations towards the Supervisory Body.

Training courses must be organized for all employees with compulsory attendance and participation.

7.1 A brief overview of criminal law

A Collusion of persons in crime (Article 110 of the criminal code)

The collusion of persons in crime is mentioned in Article 110 of the Criminal Code, which states: 'When several persons concur in the same offence, each of them shall be subject to the penalty established for that offence, subject to the provisions of the following articles'.

There are two types of contest:

- the '*possible collusion*' that occurs when two or more persons take part in the commission of one or more offences that can also be abstractly committed by a single person (e.g. fraud)
- the '*necessary collusion*' that occurs when the criminal law requires the presence of several persons for the crime to be committed (e.g. bribery)

If, on the other hand, the nature of the personal contribution to the commission of the offence is considered, a further distinction can be made:

- the '*material involvement*' that occurs when the subject directly participates in the actions that give rise to the material element of the offence
- the '*moral involvement*' that occurs when the subject gives a psychological impulse to carry out a crime, committed by others. The psychological impulse can be seen as determination, when it gives rise in others to a previously non-existent criminal intent, or instigation, when it reinforces an already existing criminal intent.

A particular kind of people collusion is the **collusion in the own offence (reato proprio)**.

It is possible that in the own offence committed by persons with the specific subjective qualification (so-called *intraneus*), other persons who lack such subjective qualification (so-called *extraneus*) may be involved. In this case, *the extraneus* is liable, as an accomplice, for the offence committed by the *intraneus* pursuant to Article 117 of the Criminal Code.

B Own and common offence

A **common offence** is defined as an offence that can be committed by *anyone*, without regard of particular subjective characteristics, e.g. fraud, misappropriation of public funds, etc.

By **own offence** (or "**reato proprio**") we mean, on the other hand, the criminal offence which can only be committed by a person with a specific subjective qualification, e.g. the false corporate communication offence can only be committed by the persons clearly mentioned in Articles 2621 and 2621 a of the Civil Code, i.e. by directors, general managers, auditors and liquidators; or the offence

of embezzlement which can only be committed by the persons clearly mentioned in Article 314 of the Criminal Code, i.e. by a public official or a person in charge of a public service.

C The attempted crime (Article 56 of the Criminal Code)

The offence is carried out only when all its constitutive elements are fulfilled.

Attempted crime occurs when the active subject wants to commit an offence and takes steps to do so, but does not carry out the criminal intent for reasons beyond his or her control.

The text of Article 56 of the Criminal Code is as follows: 'Whoever performs suitable acts, absolutely aimed at committing an offence, shall be liable for an attempted offence, if the action is not performed or the event does not occur...'. On this point, it is worth recalling that also with reference to the liability of the Entity, the legislator has provided in Article 26 of Legislative Decree 231/2001 that: 'Monetary and disqualification sanctions are reduced by between one third and one half in relation to the commission, in the form of attempt, of the offences indicated in this chapter of the Decree. The entity is not liable when it voluntarily prevents the performance of the action or the realization of the event.'

D Public official and person in charge of a public service (Sections 357 and 358 of the Criminal Code)

Art. 357 Notion of public official

The notion of Public Official is derived from Article 357 of the Criminal Code, which provides: 'For the purposes of criminal law, public officials are those who exercise a **legislative, judicial or administrative public function**³. For the same purposes, an administrative function governed by **rules of public law** and **authoritative acts** and characterized by **development and manifestation of the will of the public administration** or by its being carried out by means of **authoritative or certifying powers**.'

The *status* of public official was traditionally linked to the formal role held by a person within the public administration, such as a civil servant.

As reiterated by the Supreme Court of Cassation, a subordinate or dependent relationship with a public body is not necessarily a prerequisite for granting the status of public official. In fact, a person who: *'contributes in a subsidiary or accessory way to the implementation of the purposes of the public administration, with actions that cannot be excluded from the context of public functions'* is also to be regarded as a public official.

³ Judicial and legislative functions are public as such, with the consequence that the person exercising them is always classifiable as a public official. On the contrary, with reference to the administrative function, only the person who performs an administrative activity characterized by the exercise of deliberative, authoritative and certifying powers takes on the quality of public official.

After Law n. 86 of 26 April 1990, qualification is now attributed on the basis of the function actually assumed, as moreover confirmed by the jurisprudence of the Supreme Court of Cassation, according to which: *'the formal qualification of the person within the administration is not important now'*.

The Court of Cassation has therefore confirmed that the qualification must also be recognized to anyone who, although a private citizen, may exercise authoritative, deliberative or certifying powers, also considered separately. However, without prejudice to this, it is always necessary to verify whether the activity is governed by public law, since 'the status public official, pursuant to Article 357 of the Criminal Code, must be recognized to those persons who, whether public employees or mere private individuals, can and must - whatever their subjective position - form and manifest, within the scope of a power governed by public law, the will of the public authority, or exercise, independently of formal nominations, authoritative, deliberative or certifying powers, severally and not cumulatively considered'⁴.

In light of the above, those who

- contribute forming the will of a public administration;
- have the following powers related to:
 - decision;
 - certification;
 - attestation;
 - coercion;⁵
 - collaboration, even on an occasional basis.⁶

Public officials are subject to a peculiar discipline under criminal law, resulting from their status.

They can therefore only be guilty of specific offences against the public administration (so-called proper offences) such as:

- Extortion (Article 317 of the Criminal Code);
- Own bribery (Article 319 of the Criminal Code);
- Corruption for carrying out an improper function (Article 318 of the Criminal Code);
- Undue inducement to give or promise benefits (Article 319-quater of the Criminal Code);
- Embezzlement (Article 314 of the Criminal Code);

⁴ Cass. S.U. 7958/1992

⁵ Cass. Pen. Sec. VI 81/148796

⁶ Cass. Pen. Sec. VI n. 84/166013

Misappropriation of money or movable property (Article 314-bis of the Criminal Code);

- Embezzlement by profiting from another person's error (Article 316 of the Criminal Code);
- Disclosure of official secrets (Article 326 of the Criminal Code);
- Refusal and omission to perform official acts (Article 328 of the Criminal Code).

Art. 358 Notion of person in charge of a public service

The notion of '*person in charge of a public service*' is provided in Article 358 of the Criminal Code, which states: '*For the purposes of criminal law, persons in charge of a public **service** are those who, for whatever reason, **perform a public service**. A **public service** must be understood as an activity carried out in the same way of a public function, but characterized by the lack of specific powers of the last one, and through the exclusion from the performance of simple tasks of order and the performance of purely material work*'.

From the wording of the rule it is possible to understand that the public service is subject to the same discipline related to the public function, lacking, however, the typical powers that characterize it (i.e. deliberative, authoritative and certifying powers) and requiring an activity that does not end with the mere execution of orders or instructions of others or the deployment of physical force. For the purposes of recognizing the status of public service appointee, in fact, a minimum of discretionary power is required, involving the performance of 'intellectual' tasks in its broad sense.⁷

Following the amendment made by Laws n. 86/90 and n. 181/92 to Article 358 of the Criminal Code, similarly to what happened with public officials (Article 357 of the Criminal Code), the qualification of the person in charge of a public service is no longer traditionally linked to the formal role played by the person within the public administration, but rather to the public nature of the activity actually carried out by that person.

For both public officials and persons in charge of a public service, the legal obligation laid down in Article 331 of the Criminal Code 'Reporting by public officials and persons in charge of a public service' applies.

This Article provides that '*Without prejudice to the provisions of Article 347, public officials and persons in charge of a public service who, in the course of or by reason of their duties or service, become aware of an offence indictable ex officio, must report it in writing, even when the person to whom the offence is attributed cannot be identified. The report shall be submitted or forwarded without delay to the public prosecutor or to a judicial police officer. When several persons are required to report the same event, they may also draw up and sign a single document. If, during civil or administrative proceedings, there*

⁷ Cass. n. 10138/1998; no. 467/1999.

is an event that may constitute a crime indictable ex officio, the authority in charge shall draw up and transmit the report to the public prosecutor without delay'.

8 ATTACHMENTS

- 1 Text of Legislative Decree 231/2001
- 2 List of offences
- 3 Mapping of processes at risk
- 4 Code of Conduct and Scientific Behavior
- 5 Disciplinary system

9 ADDENDUM

- A1 Relevant offences under Law 190/2012
- A2 Mapping of processes at risk
- A3 Principles for Prevention of Corruption and for Transparency
- A4 Protocols for Prevention of Corruption and for Transparency



ISTITUTO ITALIANO DI TECNOLOGIA

Sede Legale: Via Morego, 30 16163 Genova
Uffici di Roma: Via Guidubaldo del Monte, 54 00197 Roma
Tel. 010 2896
www.iit.it