



# Organisational, Management and Control Model\*

Pursuant to Legislative Decree no. 231/2001

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\* This Document represents free English translation of the Italian text prepared for the exclusive purpose of sharing it with foreign stakeholders. The Italian version of this document is the only original and valid text, duly approved by the Management Board; in case of differences or discrepancies between the Italian version and the English translation, the Italian versions shall in any case prevail.

## ORGANISATION, MANAGEMENT AND CONTROL MODEL

<b>EDITIONS</b>	
II Edition September 2010	Approved from the Board of Directors on 30th September 2010
I Edition October 2006	Approved from the Board of Directors on 23th October 2006

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## 1. THE LEGAL FRAMEWORK

### 1.1 THE CORPORATE LIABILITY REGIME

The Law Decree no. 231/2001, date 8 June 2001 (hereinafter the “Decree”), containing the “Provisions governing administrative liability of legal entities, companies and associations, including those without legal personality”, was introduced to ensure that the Italian legislation regulating the liability of legal entities complies with the International Conventions previously signed by the Italian State.

The Decree introduced an administrative liability regime to be imposed on legal entities, when certain specific offences are committed in their interest or to their benefit by:

- Natural persons who are vested with the function of representatives, managers or executive officers of the entities or of other organizational units endowed with financial and functional independence, or persons who exercise, even only *de facto*, the management and the control of such entities (so called “top positions”);
- Natural persons subject to the direction or the supervision of one of the aforementioned subjects.

The liability of the legal entity comes in addition and does not substitute the liability of the natural person who physically committed the unlawful act, which is regulated by criminal law.

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#### 1.1.1 TYPES OF OFFENCES

Not all the offences committed by the persons holding a “top position” entail the liability of the legal entity, but the Decree considers materially relevant only certain specific categories. In what follows we provide a brief story of the evolution, as from 2001, of the offences that fall within the scope of the Decree.

The first category that triggers the liability of the legal entity (hereinafter the “corporate liability”) includes offences against the Public Administration, disciplined by articles 24 and 25 of the Decrees, and specifically:

- Undue receipt of grants, loans or other funds from the State or other public entity (316-*ter* of the Italian Criminal Code);
- Fraud to the detriment of the State or other public entities (art. 640, para. II, no. 1, of the Italian Criminal Code);
- Aggravated fraud for the purpose of obtaining public funds (art. 640-*bis* of the Italian Criminal Code);
- Computer fraud to the detriment of the State or other public entities (art. 640-*ter* of the Italian Criminal Code);
- Bribery to influence an official act (artt. 318 and 321 of the Italian Criminal Code);
- Bribery to breach official duties (artt. 319 and 321 of the Italian Criminal Code);
- Bribery in judicial proceedings (artt. 319-*ter* and 321 of the Italian Criminal Code);
- Incitement to bribery (art. 322 of the Italian Criminal Code);
- Bribery of public service representatives (artt. 320 and 321 of the Italian Criminal Code);
- extortion (art. 317 cod. pen.);

- embezzlement from the State or from other public entity (art. 316-*bis* of the Italian Criminal Code);
- embezzlement of public funds, extortion and incitement to bribery of European Union institutions' functionaries and foreign States officials (art. 322-*bis* of the Italian Criminal Code).

Also, Art. 25-*bis* of the Decree, introduced by art. 6 of the Law no. 409 of the 23 September 2001, disciplines the offences of counterfeiting of money, credit instruments and revenue stamps (artt. 453, 454, 455, 457, 459, 460, 461 e 464 of the Italian Criminal Code).

**Corporate crimes** constitute an additional and very important category of offences that entails the corporate liability, introduced by the Legislative Decree no. 61 of 11 April 2002, as amended by the Law no. 262 of 28 December 2005, and disciplined by art. 25-*ter* of the Decree:

- false corporate reporting (art. 2621 of the Italian Civil Code);
- false corporate reporting to the detriment of the company, shareholders, or creditors (art. 2622 of the Italian Civil Code);
- fraudulent prospectus (art. 2623 of the Italian Civil Code, abrogated by art. 34 of the Law no. 262/2005, which has introduced art. 173-*bis* of the Legislative Decree no. 58 of the 24 February 1998);
- misrepresentation in reports or auditors' reports (art. 2624 of the Italian Civil Code);
- obstructing control (art. 2625 of the Italian Civil Code);
- undue return of contribution (art. 2626 of the Italian Civil Code);
- illegal sharing of profits and reserves (art. 2627 of the Italian Civil Code);
- unlawful transactions on shares or units of the company or of the parent company (art. 2628 of the Italian Civil Code);
- transactions to the detriment of creditors (art. 2629 of the Italian Civil Code);
- failure to report conflicts of interest (art. 2629-*bis* of the Italian Civil Code);
- fictitious capital formation (art. 2632 of the Italian Civil Code);
- improper distribution of corporate assets on the part of liquidators (art. 2633 of the Italian Civil Code);
- unlawful influence over the shareholders' meeting (art. 2636 of the Italian Civil Code);
- market rigging (art. 2637 of the Italian Civil Code, amended by the Law no. 62 of 18 April 2005);
- obstructing the functions of public supervisory authorities (art. 2638 of the Italian Civil Code, amended by the Law no. 62/2005 and by the Law no. 262/2005).

Law no. 7 of 14 January 2003 introduced in the Decree art. 25-*quater*, which includes terrorism and acts of subversion of democracy, disciplined by the Italian Criminal Code and by specific legislation, in the category of offences that entail the entity's liability.

Later on, Law no. 228 of 11 August 2003 introduced in the Decree art. 25-*quinquies*, which provides for the corporate liability for offences against individuals (artt. 600, 600-*bis*, 600-*ter*, 600-*quater*, 600-*quarter*, n.1, 600-*quinquies*, 601 e 602 of the Italian Criminal Code).

Even if Nooter/Eriksen S.r.l. is not a listed company, for the sake of completeness it shall be noted that Law no. 62/2005, so called "Community Law" (lit.: "Legge Comunitaria"), and Law no. 262/2005, known as the "Savings Law" (lit.: "Legge sul Risparmio"), have further enlarged the list

of offences that are materially relevant under the Decree with the introduction of the market abuse offences at artt. 184 e 185 of the Legislative Decree no. 58/1998.

Furthermore, Law no. 7 of 9 January 2006 has introduced art. 25-*quarter.1* in the Decree, which provides for the corporate liability for the practice of **mutilation of the female genital organs** (art. 583-*bis* of the Italian Criminal Code).

Subsequently, Law no. 146 of 16 March 2006, with which the Italian State ratified the UN Convention and Protocols against transnational organized crime, introduced the corporate liability for certain **transnational offences** that are committed:

- 1) with the involvement of a criminal organization
- 2) in more than one State, or
- 3) in one State but having considerable effects in more than one State.

The Decree has been amended, first, by Law no. 123 of 3 August 2007, and then by the Legislative Decree no. 231 of 21 November 2007.

Law no. 123/2007 has introduced in the Decree art. 25-*septies*, which has been later on substituted by Legislative Decree no. 81 of 9 April 2008, (consolidated text on occupational safety and health), which disciplines “accidental manslaughter and serious or very serious accidental personal injury, committed with the breach of the laws on **accident prevention and occupational safety and health**”. This amendment is particularly important, given that it introduces for the first time offences of culpable nature.

Moreover, the Legislative Decree no. 231/2007 has added art. 25-*octies*, which provides for the corporate liability for the offences of **laundering** (art. 648-*bis* of the Italian Criminal Code), receiving (art. 648 of the Italian Criminal Code) and use of money, goods or assets of illicit origins (art. 648-*ter* of the Italian Criminal Code).

Law no. 48 of 18 March 2008 has introduced in the Decree art. 24-*bis*, which extends the corporate liability also to **computer crimes and unlawful data processing**.

Law no. 99 of 23 July 2009 has introduced in the Decree:

- art. 25-*bis 1* disciplining the **industrial and commercial offences provided for the by criminal code**;
- art. 25-*novies* disciplining the **copyright infringements crimes**.

Law no. 94 of 5 July 2009 has introduced the **organized crime offences**.

Law no. 116 of 3 August 2009 has introduced in the Decree art. 25-*novies* concerning the inducement to omit statements or make false statements to the judicial authority.

Finally, Directive 2008/99/CE of 19 November 2008 on the protection of the environment through criminal law calls Member States to make every effort necessary to introduce the **environmental offences**, committed fraudulently or with gross negligence, in the list of offences that trigger the corporate liability. The transposition of the Directive is due by 2010.

It is likely that new and additional offences are going to be included in the list. Clearly, the corporate liability regime has a general and wide outreach, and applies in abstract to any type of offences.

Nooter/Eriksen S.r.l., through the Supervising Body, will keep the list of offences that are materially relevant under the Decree up to date (see Annex 1).

## 1.2 THE SANCTIONS

When the subjects indicated at art. 5 of the Decree commit one of the offences provided for by artt. 24 at sec. or by the mentioned specific legislation, the legal entity (hereinafter the “corporation”) may be imposed heavy sanctions.

Pursuant to art. 9 of the Decree, sanctions are of administrative nature and can be classified as follows:

- I. Pecuniary sanctions;
- II. Disqualifying sanctions;
- III. Forfeiture;
- IV. Publication of the verdict.

It should be noted that the assessment of the corporate liability, and the determination of the duration of the disqualification and of the amount of the pecuniary penalty, fall within the jurisdiction of criminal courts, competent for the proceeding involving the offences from which the corporate liability depends.

The corporation is considered liable for the offences listed at artt. 24 and ff. (except for the cases provided for by art. 25-*septies* and by the special legislation that supplemented the Decree) even if these offences have been committed in the form of attempt. In these cases, however, pecuniary and disqualifying sanctions are reduced by an amount ranging from a third to the half of the sanction.

Pursuant to art. 26 of the Decree, no liability is imposed on the corporation when it voluntarily impeded the completion of the criminal action or the occurrence of the event.

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### 1.2.1 PECUNIARY SANCTIONS

Pecuniary sanctions are regulated by artt. 10, 11 e 12 of the Decree and apply in all cases where the corporate liability is imposed. Pecuniary sanctions are divided on the basis of a “quota” system, in a number that cannot be less than 100 or more than 1000, and whose amount is established as follows:

- minimum € 258.23
- maximum € 1,549.37.

Therefore, the total amount of the sanction can be as follows:

- minimum € 25,823 (258.23 € \*100 quotas);
- maximum € 1,549.370 (1,549.37 € \*1000 quotas)

The Court determines the number of quotas on the basis of factors provided for by art. 11, para. 1, whilst the amount of each “quota” is established on the basis of the economic and patrimonial situation of the involved corporation.

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### 1.2.2 DISQUALIFYING SANCTIONS

Disqualifying sanctions, provided for by art. 9, para. 2, of the Decree, are applicable only in the hypothesis indicated in the mentioned provision and only for certain offences. These sanctions are:

- a) A temporary or permanent ban from carrying out business activities;
- b) The suspension or revocation of the permits, licenses and concessions instrumental to committing the offence;
- c) A ban from dealing with the Public Administration except to obtain public services;
- d) The exclusion from special loans, financial aids, grants and subsidies, and the eventual revocation of those previously granted;
- e) A temporary or permanent ban from advertising goods and services

Parallel to what happens for pecuniary sanctions, the type and the duration of the disqualifying sanctions are determined by the Court on the basis of the factors indicated at art. 14 of the Decree. In any case, they have a minimum and a maximum duration of three months and two years respectively.

Disqualifying sanctions can be applied both at the end of the trial, after the liability has been ascertained, and as an interim measure, when:

- There is serious evidence that induce to believe that the corporation is liable for the committed crime;
- There are well-grounded and specific pieces of evidence that show the existence of the concrete risk that other crimes of the same nature may be committed;
- The corporation profited to a large extent from the crime.

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### 1.2.3 FORFEITURE

Forfeiture of the price or of the profit of the crime is a compulsory sanction that derives from conviction (art. 19).

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### 1.2.4 PUBLICATION OF THE VERDICT

The publication of the verdict is a potential sanction and presupposes the application of a disqualifying sanction (art. 18).

Finally, for the sake of completeness, it should be noted that, pursuant to the Decree, the Court can also impose interim measures, such as:

- a) The seizure of goods for which forfeiture is allowed (art. 53);
- b) The cautionary attachment of movable and immovable goods of the corporation, when there is the well-grounded suspicion of the lack, or of the dispersion, of the resources necessary to pay the pecuniary sanctions, the expenses of the procedure or other debts towards the State (art. 54).

### 1.3 OFFENCES COMMITTED ABROAD

Pursuant to art. 4 of the Decree, the corporation can be held liable according to Italian Law even when offences are committed out of the Italian territory.

The requirements (provided for by art. 4 and deriving from the interpretation of other provisions contained in the Decree) at the basis of the corporate liability for offences committed abroad are:

- a) The offence must be committed abroad by a subject that is functionally linked to the corporation pursuant to art. 5, para. 1, of the Decree;
- b) The corporation must have its real seat in the Italian territory;
- c) The conditions provided for by artt. 7, 8, 9, 10 of the Italian Criminal Code must apply (when the law provides that the perpetrator – a natural person – is punished under the request of the Ministry of Justice, the proceeding is initiated also against the corporation only if the request is made against the corporation too). The reference to artt. 7-10 of the Italian Criminal Code must be interpreted in conjunction with artt. 24 and 25-*quinquies* of the Decree. Thus, - also pursuant to principle of legality provided for by art. 2 of the Decree – the corporation can be held liable for the offences indicated at artt. 7-10 of the Italian Criminal Code only if such offences are explicitly mentioned by the Decree.
- d) If all the above-mentioned requirements and conditions are present, it is possible to proceed against the corporation, provided that the State where the offence has been committed did not take legal action yet.

### 1.4 THE PERPETRATORS

The corporate liability arises exclusively when the offences are committed in the interest or to benefit of the corporation by:

- Natural persons who are vested with the function of legal representatives, directors or general managers of the entities or of other organizational units endowed with financial and functional independence, or persons who exercise, even only *de facto*, the management and the control of such entities (so called “top positions” ex art. 5, comma 1, lett. a);
- Natural persons subject to the control or the surveillance of one of the aforementioned subjects (so called “subordinate subjects” ex art. 5, comma 1, lett. b) .

As already indicated above, the Decree (art. 5, para. 2) expressly establishes that the corporation cannot be held liable if the aforementioned persons acted in their own interest or in third parties' interest.

When the offence is committed by subordinate subjects, the corporation will not be held liable if it proves that duties of supervision and control have been complied with.

### 1.5 THE LIABILITY OF THE CORPORATION

As mentioned above, the law expressly states that the administrative liability of the corporation arises only when certain types of offences are committed from persons who have a specific link to the corporation and only in the hypothesis that such offences are committed in the interest or to the benefit of the corporation.

It follows, thus, that such liability arises not only when the offence determined an advantage, whether economic or not, for the corporation, but also when, even in the absence of an actual economic advantage, the offence has been generated by the interest of the corporation.

It is not necessary that the interest or the advantage have an economic nature.

The above-mentioned paragraph 2 of art. 5 sets the limits of the corporate liability, thereby excluding the cases where the offence was committed in the exclusive interest of the perpetrator or in the interest of third parties, even if the corporation has profited from it. The provision should be read in conjunction with art. 12, para. 1, lett. a), which provides for a reduction of the pecuniary sanction when “*the perpetrator committed the offence in his or her own interest or in the interest of third parties and the corporation did not profit or profited only to a negligible extent from it*”.

If the person acted in his or her own interest and in the interest of the corporation, the corporation can be sanctioned.

Where the interest of the material perpetrator prevails over the interest of the corporation, the sanction may be reduced on the condition that the corporation did not profit or profited only to a negligible extent from the offence.

Finally, in the instances where the material perpetrator pursued exclusively his or her own interest or of third parties, the corporation cannot be held liable, notwithstanding the advantage obtained.

## 1.6 THE EXEMPTIONS

Artt. 6 and 7 of the Decree establishes the cases of exemption from liability. In particular, art. 6, para. 1, provides that when the offences are committed by subjects holding a “top position”, the corporation is not liable if it is proved that:

- a) The corporation adopted and implemented, prior to the perpetration of the offence, an Organizational, Management and Control Model (hereinafter the ‘Model’) capable of preventing offences similar to the one that has been committed;
- b) Appointed a Body, independent and vested with autonomous powers, which supervise the functioning and the compliance with the Model and ensures its update (hereinafter, also the “Supervisory Body” or the “Body”);
- c) The offence has been committed by fraudulently disregarding the Model;
- d) There is no evidence to suggest failed or insufficient control from the Supervisory Body.

The content of the Model is established at art. 6, para. 2, which provides that the corporation must:

- Identify the activities within which offences may be committed;
- Establish specific protocols aimed at programming the training initiatives and the implementation of the corporation’s decisions in relation to the offences to be prevented;
- Identify financial resources management procedures in order to prevent the said offences;
- Establish duties of disclosure towards the Supervisory Body;
- Adopt a system of sanctions capable of punishing the non-compliance with the provisions indicated in the Model.

The corporation will be held liable only in the event that the offence has been committed when the duty of control and supervision have not been complied with.

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Paras. 3 and 4 of art. 6 introduce two requirements that are fundamental in order for the exemption to apply. In particular, it provides that:

- The Model must provide appropriate measures in order to guarantee the carrying out of the activity in compliance with the law, and to rapidly detect situations of risk, taking into account the type of activity, as well as the nature and the dimension of the corporation;
- The effective application of the Model requires regular tests and amendments, if significant violations of legal provisions are detected or if important changes in the law or in the corporate structure occur; it is very important that also an appropriate disciplinary system is in place.

From a formal point of view, thus, the adoption and the effective implementation of a Model do not constitute an obligation, but only an option.

The corporation may decide not to comply with the provisions of the Decree in this respect. This does not imply the application of any sanction. However, the adoption and the effective implementation of an appropriate Model is an inescapable requirement to benefit from the exemption.

## 2. THE APPLICATION OF THE DECREE

### 2.1 NOOTER-ERIKSEN'S ORGANIZATIONAL, MANAGEMENT AND CONTROL MODEL

Nooter/Eriksen S.r.l. believes that adopting an Organizational, Management and Control Model (hereinafter the "Model") that complies with the requirements of the Decree, is in line with its business policy. For the same reason, the company, also implemented an appropriate system of risk assessment, as envisaged by the Decree.

In 2006 Nooter/Eriksen S.r.l. implemented:

- a Business Code of Ethics;
- a Model based on the Guidelines of the general confederation of the Italian industry (Confindustria);
- a Supervisory Body.

The Board of Directors has approved the Model with a deliberation dated 23 October 2006, after the members had submitted their written opinion.

In 2007 the Model has been reviewed to extend the mandate of the Supervisory Body, in order to comply with the requirements of "*continuity in its action and independence*", and to include the violation of the occupational safety and health laws in the list of offences. The review has been approved by the Board of Directors with a deliberation dated 5 December 2007.

Beside ensuring the compliance with the law, the implementation of the Model has so far being a valid tool for the:

- adoption of a clear organizational structure;
- identification of new areas at risk and new sensitive activities;
- definition of appropriate protocols of prevention;
- sensitization of all the employees of Nooter/Eriksen S.r.l. to the adoption of correct and transparent conducts.

In 2010 Nooter/Eriksen S.r.l. has updated and issued a new edition of the Model in order to:

- adapt it to the organizational developments occurred within the company;
- include the new types of offence that are materially relevant under the Decree;
- supplement it with a risk assessment methodology;
- supplement it with the other business management tools, such as the Quality Management System (ISO 9001), the Safety and Health Management System (OHSAS 18001) and the Environmental Management System (ISO 14001);
- capitalize on the experience developed along the past years thanks to the application of the Model and to the action of the Supervisory Body.

## **2.2 THE STRUCTURE OF THE MODEL**

The Model is structured in:

- A Code of Ethics;
- A System of Delegation of Corporate Powers;
- A System of Risk analysis and management of sensitive activities;
- A Supervisory Body;
- A System of Sanctions.

The Model can contain annexes such as the “List and Classification of Offences provided for by the Decree”, the “List of Protocols of Prevention”; annexes are managed by the Supervisory Body and their update does not imply the review of the Model.

The Model is supplemented by several Protocols of Prevention of Offences (hereinafter the “Protocols of Prevention” or the “Protocols”), each of them concerning the areas at risk, the sensitive activities and the types of offence that may be committed. The Protocols are edited in accordance to a standard protocol described in paragraph 6.3.1 “THE PROTOCOL OF PREVENTION OF OFFENCES” of the Model.

## **2.3 INTRODUCTION, APPLICATION AND UPDATE OF THE MODEL**

The introduction of the Model and of the Code of Ethics falls within the competence of the Board of Directors of Nooter/Eriksen S.r.l., which approves the Model through a deliberation.

The Board of Directors appoints the Managing Director as the delegate at the application of the Model and of the Code of Ethics and at ensuring that the Model is constantly updated and that the internal provisions and the business processes are implemented in compliance of the principles of control.

All subsequent material review or integration must be approved by the Board of Directors, whilst Managing Directors and the President of the Board alone can adopt formal modification and integrations.

The revisions of the Model and of the Code of Ethics are proposed by the Supervisory Body, which:

- Collects and validates the modifications proposed by the Managing Director and by other persons holding “top positions”;
- Identifies the necessary updates of the provisions of the Decree;
- Defines the updates of the sensitive areas;
- Evaluates the impact of organizational and procedural changes on the Model.

The review of the Protocols of Prevention can be proposed by all responsible subjects involved in the sensitive area/activity; it is validated by the Supervisory Body, which verifies the compliance with the Model and the appropriateness for the prevention of offences; and it is approved by the Managing Director.

## 2.4 THE RECIPIENTS OF THE MODEL

The provisions of the Model apply, pursuant to art. 6 of the Decree, to the Corporate Bodies, to the Employees, to Collaborators and Suppliers.

The provisions of the Model are compulsory and binding and potential violations must be communicated according to the procedure described in the Sections below.

## 2.5 TRAINING, COMMUNICATION AND INFORMATION

Pursuant to the Decree, and to the purpose of effectively implementing the Model, Nooter/Eriksen S.r.l. has defined and keeps up to date a specific communication and training program aimed at ensuring the full spread of the principles and of the provisions contained in the Model. Such program is managed from the Responsible of the Human Resources in coordination with the Supervisory Body.

In particular, with regards to the *information*, it is established that:

- the Model is published in the website of the company and is delivered to all the Employees;
- the Protocols of Prevention are delivered to the Recipients, i.e. to the identified corporate functions that have been involved in the management of the Sensitive Activity, and are made available within the company's intranet.

With regards to the *training*, Nooter/Eriksen S.r.l. has provided a specific training activity concerning, on a general level, the corporate liability regime (and, thus, the consequences for the company deriving from the commission of an offence from subjects that act on its behalf), the essential features of the offences regulated by the Decree, and, more specifically, the provisions contained in the Model and the procedures described in the Protocols of Prevention.

Such activity is articulated on the basis of the roles, of the functions and responsibilities attributed to the Recipients, as well as on the basis of the level of risk of the area of activity or of the organizational process where the Recipients work. Depending on circumstances, the activity may consist of classroom courses and/or circulation of training material. In particular, for those who work in the "*activities at risk*" and in the "*sensitive processes*", as identified in the Protocols of Prevention, the company organizes meetings aimed at describing the operating procedures associated with the daily activities conducted in the areas at risk and with the individual processes functional to the commission of a crime.

The activity of training shall be appropriately documented and attendance shall be recorded. The effectiveness of the training activity shall be evaluated through appropriate tests.

### **3. THE CODE OF ETHICS**

The Code of Ethics aims at establishing the principles of “business ethics” that Nooter/Eriksen S.r.l. has adopted and that all Employees, Corporate Bodies, Consultants and Partners should respect; for this reason, it should be considered an integral part of the Model.

The Code of Ethics is the text of reference for the definition of specific policies (e.g.: Quality, Environment, Health and Safety) and of corporate regulations (e.g.: The Regulation for the management of the information system and of privacy).

Nooter/Eriksen S.r.l. provides to the circulation of the Code of Ethics in order to promote full application.

## 4. THE SYSTEM OF DELEGATION OF CORPORATE POWERS

Nooter/Eriksen S.r.l. implemented organizational tools based on the following principles:

- Clear description of the reporting lines;
- Knowledge and transparency of the powers allocated within the company and attributed to interested third parties;
- Clear and formal delimitation of roles, with a complete description of the tasks of each corporate function, and of the related powers and responsibilities.

The tools are:

- The Organizational Map composed of:
  - The corporate organization chart;
  - The table describing the System of Delegation of Corporate Powers;
- The Job Description for each corporate function in the corporate organization chart;
- The Management Committee.

Organizational Map: on the basis of its own organizational structure and of the performed risk assessment, Nooter/Eriksen S.r.l. has drawn a list of responsibilities; in particular, the following areas of responsibility have been identified:

- Representation;
- Administration;
- Human Resources;
- Sales;
- Purchase;
- Management of projects
- Not job related activities

For each area, specific responsibilities have been identified; for each responsibility, organizational roles delegate to take such responsibilities have been identified.

Annex 2 “Organizational Map” contains the corporate organization chart and the table describing the System of Delegation of Corporate Powers.

Job Description: it contains the description of the corporate function and of the responsibility and it is managed by the Quality Management System.

The update and the development of the legal requirements, of the voluntary-based management systems, and of the corporation itself (in relation to the business, to the process flows and to the technical, logistic and administrative layout) can require the revision of the Organizational Map.

Reviews shall be always approved by the Managing Director.

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Management Committee: the functioning and the application of the system of delegated powers requires a regular participation from subjects involving “top positions” and a ‘platform’ in which the each specific contribution is gathered through a multidisciplinary and shared decision-making process. This is the purpose of the Management Committee, which is composed by all Nooter/Eriksen S.r.l. “top positions”, meets weekly and verbalises the content of the meetings in the “Minute of Meeting”. The collection of the “Minute of Meeting” allows the Supervisory Body to be constantly updated about the business activity, both as a whole and for each project, and to be informed about the decision concerning to the Sensitive Activities.

## 5. THE SUPERVISORY BODY

Art. 6 of the Decree establishes that the corporation is not liable for the committed offences if it proves that: *“the duty to supervise the functioning and the compliance with the Model, and to take care of its update is entrusted to an organ of the corporation endowed with independent powers of initiative and control”*. The Supervisory Body is, thus, a necessary organ, with functions of supervision, endowed with powers of initiative and control; its role is essential, given that it is entrusted with the task of updating the Model and that it bears the responsibility of its correct application.

The Supervisory Body represents one of the pivotal points in the adoption of the 231 Models and in their effective application; the requirements and the operation of the Supervisory Body have been modified along time in relation to aspects, such as:

- The different interpretation and importance attributed to the concept of “independence” of the Supervisory Body;
- The case law meanwhile established in relation to the corporate liability regime;
- The extension of the list of offences provided for by the Decree (e.g. violation of the occupational health and safety laws, cybercrime, etc).

### 5.1 THE REQUIREMENTS OF THE SUPERVISORY BODY

The Decree does not provide any specific provision about the composition and the structure of the Supervisory Body. However, from the entry into force of the Decree, Courts have dealt with this issue in several instances. According to the case law, the Body must meet the requirements of expertise and probity.

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#### 5.1.1 EXPERTISE

Three expertise requirement have been identified and recognized

- I. independence;
- II. professionalism;
- III. continuity of action.

The **independence** requirement implies that the Supervisory Body cannot be entrusted with operational tasks that could undermine its impartiality at the moment of carrying out its supervising duties; it is desirable that none of the members belong to other Corporate Bodies and that some of them are external collaborators endowed with the necessary expertise and independence.

The professionalism requirement refers to the set of technical and practical skills needed to carry out the functions of the Supervisory Body. Confindustria guidelines refer to the following skills:

- knowledge of statistical sampling;
- knowledge of risk analysis and risk assessment techniques, as well as of risk containment measures;

- flow-charting of procedures and processes for the identification of weak points;
- knowledge of interview techniques and ability to draft questionnaires;
- basic knowledge of psychology;
- knowledge of fraud identification techniques.

The introduction of the offences concerning the violation of the occupational health and safety laws suggested the inclusion of the ability to assess the risk and to evaluate the certification systems among the necessary requirements for the Supervisory Body.

In relation to the **continuity of action**, the Supervisory Body must represent a point of reference for all Employees.

The Supervisory Body can freely submit its advisory opinion about the structure of the Model, as this is not considered to undermine the independence and the impartiality of the Body.

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### 5.1.2 PROBITY

In addition to the aforementioned requirements, the Supervisory Body must meet the probity requirements, identified with:

- Integrity and absence of convictions in relation to the offences disciplined by the Decree;
- No conflict of interest;
- No parental relations with members of other Corporate Bodies and of the Board of Directors;
- No relation employed in a central or local public administration.

## 5.2 THE COMPOSITION OF THE SUPERVISORY BODY

Pursuant to the provisions of the Decree and having taken into account the specificities of the sector in which the company operates and its organizational structure, the Board of Directors entrusted the Supervisory Body with the duty to supervise the functioning and the compliance with the Model and to ensure its updates.

The first phase of introduction and implementation of the Model required that the Supervisory Body (i) closely interacts with the other Corporate Bodies capable of correctly interpreting unforeseen situations, (ii) increases the number of sensitive activities and (iii) finds the most appropriate ways to convey the Model to all Recipients.

The second phase of updating and adapting of the Model requires, instead, that the Supervisory Body develops greater technical and legal skills on the sensitive areas identified in the Model.

The Supervisory Body is composed by the following members:

- A lawyer, who masters the provisions of the Decree and keeps the Model up to date, examines the case law and submits opinions about the conformity of operations to the Model and to the Decree.
- An external consultant expert of management systems, who establishes the process approach and the risk assessment methodology, possesses auditing skills and masters the internationally recognised certification requirements (OHSAS 18001, ISO 14001, ISO 9001 etc);
- An internal consultant, who masters Business Management Systems, and possesses data analysis and data evaluation skills.

The differentiated composition and the presence of external members ensure that the independence requirements, not of the members of the Body, but of the Body as a whole, are met.

In addition, in order to protect the independence requirement, the Supervisory Body has been placed in a top position in the hierarchy and in a direct reporting line towards the Board of Directors.

In order to guarantee the continuity of action, the mandate shall last at least for two renewable years.

### 5.3 THE APPOINTMENT OF THE SUPERVISORY BODY

The Board of Directors appoints the Supervisory Body and ensures, before each new appointment, that new members meet the requirements expressly mandated by the Decree; periodically the Board re-examines the organizational structure and the powers conferred to the Supervisory Body.

Upon the appointment of the Body, the Supervisory Body members' compensation and the annual budget shall be established.

At any time, the Board of Directors can remove one or all members, if the necessary requirements of independence, professionalism and continuity of action are no longer met, or when causes of incompatibility have arisen for one or more members of the Body.

In case of impediment for one of the members of the Body to participate in the activities of the Body, the President of the Supervisory Body immediately calls the meeting of the Board of Directors for the appointment of a substitute.

If the impediment does not cease within 30 days, the member is definitively substituted.

### 5.4 DUTIES AND POWERS OF THE SUPERVISORY BODY

Pursuant to art. 6, para. 1, of the Decree, the Supervisory Body is entrusted with the duty to supervise the compliance with the Model and to keep it up to date.

**In general**, the Supervisory Body has the following duties:

- Supervision of the Model:
  - Assess the appropriateness of the Model, namely its suitability to prevent offences and detect their commission;
  - Assess the effectiveness of the Model, i.e. the correspondence of actual conducts and those formally described by the Model;
  - Monitor the business activity, as well as the functionality of the adopted system of prevention as a whole, in relation to the sensitive areas, through regular and additional checks and related follow-ups;
- Update of the Model:
  - Update the Model, by proposing, if necessary, to the Board of Directors, to the Managing Director and to the competent corporate functions, its adjustment, in order to improve its suitability and effectiveness, also in consideration of potential additional legislative changes and/or variations in the organizational structure and/or in case of serious violations of the Model;
- Information and training activities:
  - Promote and monitor information and training initiatives, included courses and communications, aimed at fostering an appropriate knowledge of the Model;
  - Provide timely feedback, also in the form of legal opinions, to the clarification and advice requests coming from the corporate functions, or from employees and collaborators or from the administrative and controlling bodies, in relation to the Model;

- Management of information flows towards and from the Supervisory Body:
  - Ensure the timely fulfilment of the reporting obligations in relation to the Model from the interested subjects;
  - Examine and evaluate all the information and/or reports received in relation to the compliance with the Model, included eventual violations;
  - Inform the Board of Directors and the other Corporate Bodies about the conducted activity, the related results and the programmed activities;
  - Indicate eventual violations of the Model and perpetrators, and propose the most suitable sanction for the concrete case;
  - In case of audits carried out by supervisory institutions, included the Public Authority, provide the necessary supporting information to the inspectors.

**In relation to the identified sensitive areas**, each Protocols of Prevention identifies specific supervisory duties for the Supervisory Body.

For the fulfilment of the assigned duties, the Supervisory Body is entrusted with all the power necessary to ensure an accurate and effective supervision of the functioning and the compliance with the Model.

The Supervisory Body, also with the help of available resources, can, for instance:

- Without prior notice, conduct checks and inspections, in order to correctly fulfil its duties;
- Without prior authorization or consent, freely access the archives and the documents of the company, in order to obtain all necessary information, data or document;
- Request and obtain, if necessary, from the employees and collaborators useful indications or information in relation to the business activities, to eventual malfunctions or to violations of the provisions of the Model;
- Resort, under its direct supervision and responsibility, to all company structures or to external consultants;
- Use available financial resources, in order to correctly fulfil its duties; the use of the budget is pre-emptively communicated to the Board of Directors.

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#### 5.4.1 OBSTRUCTION OF THE SUPERVISION DUTIES

If the Supervisory Body believes that the fulfilment of its duties is impeded or obstructed, it shall inform the Board of Directors in writing.

This information constitutes a sufficient reason to urgently call a meeting of the Board of Directors to take the necessary steps.

## 5.5 INFORMATION FLOWS MANAGEMENT

### 5.5.1 INFORMATION TOWARDS THE SUPERVISORY BODY

The Supervisory Body must be timely informed from all corporate subjects, as well as from external subjects that must comply with the provisions of the Model, about the existence of possible violations.

In any case, the following information must be transmitted to the Supervisory Body:

A. Information concerning violations, even only potential, of the Model, such as:

- Eventual instruction received by superiors and believed to be contrary to the law, to the internal procedures, or to the Model;
- Eventual requests or offers of money, gifts, or other benefits from, or destined to, public officials or public service representatives;
- Eventual reporting activity concerning the lack or the inadequacy of space, of the equipment, or of the protective devices, as well as any other risk for occupational health and safety, to which competent corporate functions did not provide a timely feed back;
- Eventual omission, negligence or misrepresentation in the accounting or in the documents at the basis of the account books;
- Eventual gaps in the budget or unusual expenses emerged from the authorization requests in the summarizing phase of the Management Control;
- Adopted measures and/or information from the police or from any other authority, from which it appears that investigations that concern, even indirectly, the company, its Employees, or the members of one or more Corporate Bodies are taking place;
- Requests of the company's legal assistance made by the employees pursuant to the provisions of the National Collective Agreement, in case of initiation of a criminal proceeding against them;
- Information related to the ongoing disciplinary proceedings and the eventual imposed sanctions or the reasons for the dismissal of the charge.

B. Information concerning Nooter/Eriksen S.r.l.'s activities, each Protocol of Prevention defines the information flow, such as:

- The "Minute of Meeting" of the "Management Committee";
- The Management Review defined within the certificates management system;
- The audit reports of the Management System Certification Bodies;
- The information related to changes in the organization or in the existing business procedures;
- The updates of the System of Delegation of Corporate Powers;

- Periodical reports in the matter of occupational health and safety, and in particular the minutes of the periodical meeting ex art. 35 of the Legislative Decree no. 81/2008, as well as all data related to the all industrial injuries occurred;
- Communications, from the Board of Statutory Auditors and from the audit company, in relation to each critical issue emerged, even if already solved.

During the investigational activity subsequent to the report, the Supervisory Body must make sure that all involved subjects are shielded from retaliation, discrimination, or penalization, by guaranteeing in this way the protection of reporting subjects' privacy (except when the law provides differently).

In order to facilitate reporting activity to the Supervisory Body from subjects that become aware of violations, even only potential, of the Model, Nooter/Eriksen S.r.l. opened up all communication channels and, in particular, created an email account (odv@ne.com). Reports can be sent in writing, also anonymously, to this address:

Nooter/Eriksen S.r.l.  
Organismo di Vigilanza  
Via A. Volta, 50  
21010 Cardano al Campo (VA)

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## 5.5.2 INFORMATION FROM THE SUPERVISORY BODY TO THE OTHER CORPORATE BODIES

The Supervisory Body regularly reports to the Board of Directors.

The Supervisory Body presents to the Board of Directors and the auditors:

- **Each semester**, a report about the conducted activity (in particular with the indication of the activity of supervision and the specific checks carried out, together with their result, the eventual update of the list of sensitive activities, etc.);
- **Immediately**, a report about critical and exceptional circumstances, such as violations of the principles of the Model, changes in the laws that impact on the Model, and in case of shortcomings of the Model itself.

The Board of Directors has the power to convene the Supervisory Body, which in turn has the power to ask the President of the Board to convene the Board of Directors and the Board of Statutory Auditors in case of emergency.

The Supervisory Body must participate in the meetings of the Board of Directors and of the Board of Statutory Auditors, convened to examine the regular and the additional reports from the Supervisory Body and, more in general, to carry out all the activities concerning the Model.

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### 5.5.3 OTHER REPORTING AND MONITORING ACTIVITIES

The Supervisory Body must coordinate with different corporate functions, and in particular:

- With the persons responsible for the Management Systems in relation to the sharing of operational practices and processes that supplement the Model;
- With the Personnel corporate function in relation to the circulation of information to the employees and to the disciplinary actions;
- With the other lawyers in the company in relation to contracts and to the fulfilment of the duties prescribed by the law to prevent the commission of corporate crimes.

For each Protocol in the Model, the specific duties of the Supervisory Body and the related responsible persons within the Body shall be identified.

## 6. THE IDENTIFICATION OF SENSITIVE AREAS

### 6.1 THE IDENTIFICATION OF OFFENCES

The offences that determine the additional liability of the corporation are expressly provided for by the legislator. Risks have been identified according to the probability of occurrence and to *ex ante* checks; in addition, when necessary, appropriate adjustments to the control system have been identified.

The Supervisory Body keeps Annex 1 - "List of Offences" - up to date and for each category, it provides an assessment of the potential application to the corporate reality of Nooter/Eriksen S.r.l.

Any update of Annex 1 - "List of Offence" shall be communicated to the Managing Director and to the subjects holding a "top position".

### 6.2 THE IDENTIFICATION OF SENSITIVE ACTIVITIES

Pursuant to art. 6 of the Decree, which provides that the corporation identifies the activities in which an offence may be perpetrated, Nooter/Eriksen S.r.l. has conducted an analysis of all corporate activities, of the decision-making processes, as well as of the internal monitoring system. The analysis has been conducted also with the support of consultants and external professionals, through the:

- Analysis of the results of the internal monitoring system;
- Analysis of the relevant internal corporate documents;
- Interviews with the persons responsible for the single areas of activities and with their direct collaborators;
- Audit of compliance with existing laws.

In the identification of the Sensitive Activities, account was taken of the:

- Risk that offences disciplined by the Decree could be committed; examples of activities of this kind are the "management of relations with public officials to obtain permits", the "Public Funds Management", the "Budget Management", etc.
- Indirect risk deriving from activities, which are not included in the list of offences provided for by the Decree, but which can be instrumental to the commission of one of such offences or can expose the corporation to situations of non-compliance or to legal proceedings; examples of activities of this kind are the "Purchase Department", the "Personnel Administration Department", the "Certification Management Department", etc.

Following the same logic, the whole organization has been screened and sensitive areas have identified within the:

- management of corporate processes related to an entire organizational area (Administration, Purchase, Sales, Project Management, etc.);
- functioning of Management Systems that involve the whole organization (Health and Safety, Environment, Informative assets, etc.).

Annex 3 “Map of sensitive activities” represents all the identified activities/areas/systems; the map is a dynamic document that can be update as a consequence of:

- normative updates;
- organizational changes and process modifications;
- identification of new elements through the supervisory activity, analysis of irregularities or of situations of non-compliance, analysis of spontaneous reporting activities.

The map is kept up to date by the Supervisory Body and is approved by the Managing Director.

### 6.3 THE MANAGEMENT SENSITIVE ACTIVITIES

Regardless of the type of activities, process and system, the following general principles of management and control have been identified:

- The clear and formalized **attribution of powers and responsibilities**, with express indication of the limits for the exercise of such powers, according to the “table of delegation of powers”, and the positions held in the corporate organization chart;
- The **separation of duties** through the correct allocation of responsibilities and the provision of appropriate authorization levels, with the view of avoiding functional overlaps or operational allocations that concentrate the critical activities on the same subject;
- **The traceability of acts and decisions** through appropriate supporting documents that attest the characteristics and the reasons of the operations and identify the involved subjects.
- The definition and the “**proceduralisation**” of the correct carrying out of the activities;
- The “**objectification**” of the decision-making processes (e.g.: suppliers’ requirements, objective criteria for the evaluation and the recruitment of personnel, etc.);

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#### 6.3.1 THE PROTOCOL FOR THE PREVENTION OF OFFENCES

The Protocol of Prevention of Offences is the tool used by Nooter/Eriksen S.r.l. to identify, delimit and maintain under control the system, the area, or the sensitive activity.

Figure 1 represents the different types of protocols and the main characteristics.

PROTOCOLLI DI PREVENZIONE REATI

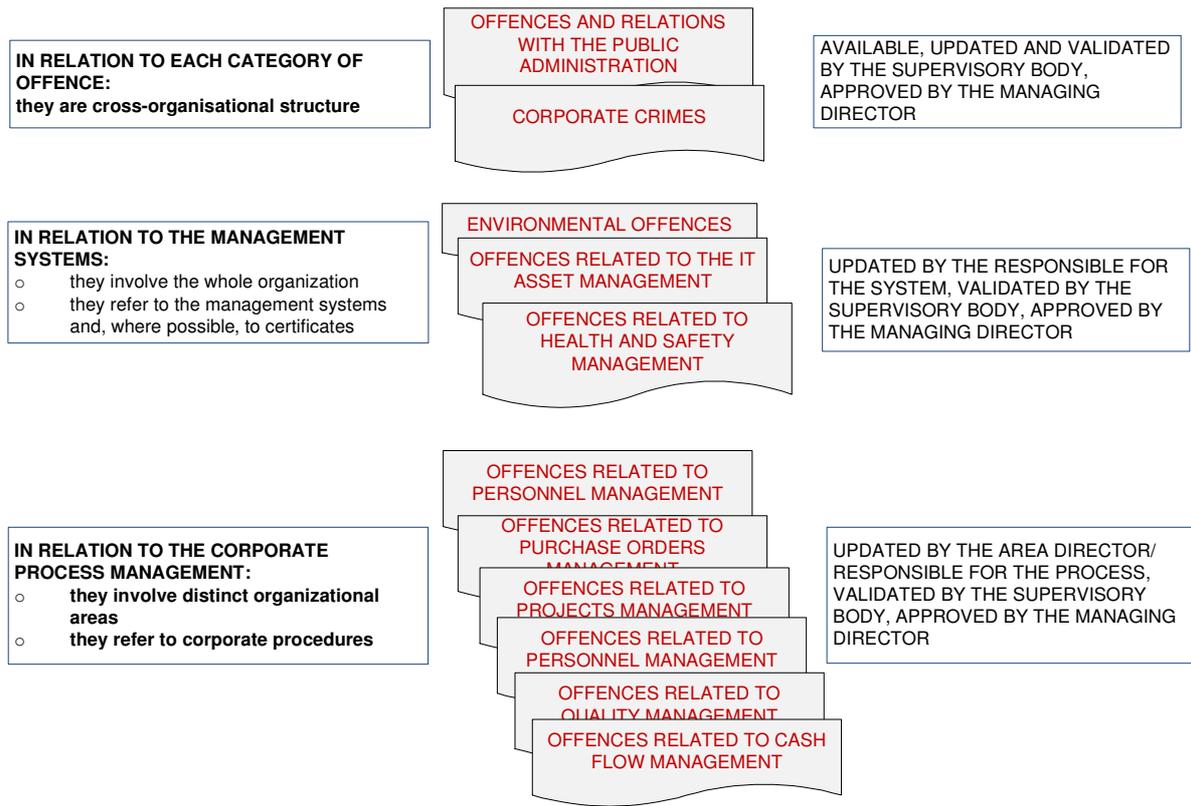


Figure 1: Protocols for the Prevention of Offences

Table 1 illustrate the standard structure of the Protocol.

PROTOCOL CHAPTERS		CONTENTS
1	SENSITIVE ACTIVITIES IDENTIFICATION	Describes the methodology followed in the identification of the activity and provides indications in relation to the types of risk
2	ACTIVITY DESCRIPTION	Describes and delimit the activity and, when available, refers to internal procedures
3	MANAGEMENT AND CONTROL	Identifies powers and responsibilities, authorization levels, and instruments of traceability
4	BEHAVIOURAL PRINCIPLES	Established the ethical principles and the required conducts on the specific activity
5	SUPERVISORY BODY ACTIVITIES	Specifies the tasks of the Supervisory Body in relation to the activity; Standardizes the flow of information towards the Supervisory Body
6	FORMATION ACTIVITY	Describes eventual specific formation activities necessary to the correct management of the protocol

Table 1: Standard structure of the Protocol of Prevention of Offences

## 7. THE SYSTEM OF SANCTIONS

### 7.1 THE CORPORATE MEASURES

The disciplinary system is based on the employer's powers established by art. 2106 of the Italian Civil Code. All employees' conducts that contrast with the provisions explicitly and implicitly established by the present Model and from the Code of Ethics constitute a disciplinary offence subject to sanction.

The application of the disciplinary sanction is based only on the violation of the provisions of the Model, regardless of the existence of a legal proceeding initiated before a Court in relation to the facts that constitute a disciplinary offence, and regardless of its outcome.

The procedures that the personnel is compelled to comply with and the sanctions provided for non-compliance are regulated by Nooter/Eriksen S.r.l. through the present Model and eventual subsequent instructions will be posted in the notice boards located in different areas within the company, communicated through intranet, and through the delivery of a paper copy.

Any disciplinary action towards employees must respect the procedures provided for by art. 7 of the Law no. 300/70 (the Workers' Statute).

The disciplinary sanction system adopted provides sanctions for all the infringements of the Model, through the modulation of the sanction in accordance with the principle of proportionality between the violation and the provided sanction.

The disciplinary system is subject to regular checks and evaluation from the Supervisory Body with the contribution of the Departments and of Management Systems.

### 7.2 THE SANCTIONS ON EMPLOYEES

The type and the entity of each sanction recalled above are applied also by considering:

- The intentionality of the behaviour and of the degree of negligence, having taken into account also the predictability of the event;
- The overall behaviour of the employee, with particular attention to eventual preceding disciplinary actions;
- The tasks of the employee;
- The functional position of involved persons.

In application of the National Collective Agreement, the following disciplinary sanctions for employees are provided, depending on the seriousness of the infringement:

- a) **Written warning:** in case of violation of internal procedures provided for by the Model or of adoption, in the carrying out of activities in the risky areas, of conducts non-compliant with the provisions of the Model;
- b) **Fine:** in case, after the written warning, of persisting violations of the internal procedures provided for by the Model, or of the persisting adoption, in the carrying out of activities in the areas at risk, of conducts non-compliant with the provisions of the Model. The fine can

be set at maximum the amount of the salary equivalent to four hours of work. Such amount shall be deducted from the salary and devolved to a charity organization.

- c) **Suspension from service and suspension of salary:** this sanction applies when the violation of the internal procedures provided for by the Model or the adoption of a conduct that is non-compliant with such provisions, or that goes against the interest of Nooter/Erisken S.r.l., harm the company or put at risk the integrity of the company's assets. The same disciplinary sanction shall be imposed on the employees who, being already fined, persists in violating the internal procedures provided for by the Model or in adopting conducts that, in carrying out the activities in the areas at risk, do not comply with the provisions of the Model. The employee can be subject to the suspension of the whole salary for maximum ten days.
- d) **Dismissal:** this sanction applies when the employees adopt conducts that, in carrying out the activities in the areas at risk, blatantly violate the provisions of the Model, such that the company incurs the concrete risk of being charged with the violation of the provisions of the Decree, provided that the employee remains autonomously liable under criminal law. The same disciplinary sanction shall be imposed to the employees who, being already subject to suspension, persist in violating the internal procedures provided for by the Model or in adopting conducts that, in carrying out the activities in the areas at risk, do not comply with the provisions of the Model.

Nooter/Eriksen S.r.l.'s reserves the right to sue for the damages caused through the violation of the procedures and of the behavioural provisions of the Model, in conformity and in accordance with the existing laws and with the National Collective Agreements.

The power of sanction is attributed according to hierarchy.

Violations are reported by Supervisors, contested and defined by Directors and shared with the Responsible for the Personnel, with the Employer, and with Managing Directors, and then reported to the Supervisory Body.

The Supervisory Body can be called to assess the seriousness of the violation and the appropriateness of the proposed sanction.

### 7.3 THE MEASURES TOWARDS DIRECTORS

The measure applied to managers is dismissal, pursuant to both art. 2119 c.c. and art. 22 of the National Collective Agreement for Industrial Companies Managers and applies, in accordance to art. 7 of Law no. 300/70 (Workers' Statute), in case of non-compliant conducts that concretely expose the company to the risk of being charged for violations, such as:

- Violation of the procedures provided for by the Model, for instance negligence or malpractice in the activity of risk assessment, omitted supervision, omitted transmission or manipulation of data and information towards the Supervisory Body, etc;
- Adoption of conducts that, in carrying out sensitive activities, do not comply with the Code of Ethics, for instance when non transparent relations are established with the Supervising Authority, when the conflicts of interest in relation to some clients, suppliers and/or other stakeholders are omitted, when confidential information is used or transmitted for aims other than those pursued by the corporation, when competition law provisions concerning the relations with the suppliers are violated, etc.

The measures applied against the management are defined and communicated by Managing Directors.

#### **7.4 THE MEASURES TOWARDS MANAGERS**

In case of violation of the Model from the members of the Board of Directors, the Supervisory Body shall inform the Board of Statutory Auditors and the whole Board of Directors, which shall take appropriate steps.

Measures against members of the Board of Directors are defined and communicated by the Board itself.

#### **7.5 THE MEASURES TOWARDS CONSULTANTS AND PARTNERS**

Any violation from Consultants and Partners of the provisions of this Model or the commission of offences disciplined by the Decree will be sanctioned on the basis of the specific contractual provisions, if any, or on the basis of existing laws.

Nooter/Eriksen S.r.l. reserves the right to sue for damages when the violations cause harm, accidents and/or injury (for instance, in case of application of the sanctions provided for by the Decree from the Court).

Measures against Consultants and Partners are proposed by corporate functions that manage the contractual relations, as defined and communicated by the Managing Directors.

#### **7.6 CONTRACTUAL REQUIREMENTS**

The corporate functions must ensure that the following clauses shall be inserted in the ongoing and future contracts, which relate to operations included in the sensitive activities:

- The commitment of the parties to comply with the Decree;
- The possibility for Nooter/Eriksen S.r.l. to assess the compliance to the Decree;
- The application of sanctions in case of violations of the Decree.

In general, and when required by specific circumstances, a contractual clause disciplining the compliance with the Model from contracting parties has been introduced in the contracts with external Collaborators and trade partners. Letters of engagement and agreements shall contain *ad hoc* clauses whereby undersigning parties undertake to comply with the provisions of the Model, thereby accepting that its violation can entail the termination of the contract.