

# ONLY THE ITALIAN VERSION IS AUTHENTIC

## **Italian Legislative Decree No. 231 of 8 June 2001**

Regulation scheme on administrative responsibility of legal persons, companies and associations, but also of those without a status of legal entity, pursuant to article 11 of Italian law No. 300 of 29 September 2000

*(Official Gazette of the Italian Republic, No. 140, 19 June 2001, General Series)*

### **THE PRESIDENT OF THE ITALIAN REPUBLIC**

Having regard to articles 76 and 87 of the Italian Constitution;

Having regard to article 14 of Italian law No. 400 of 23 August 1988;

Having regard to articles 11 and 14 of Italian law No. 300 of 29 September 2000, delegating the Italian Government to implement, within eight months of its coming into force, a legislative decree establishing the regulation scheme on administrative responsibility of legal persons, companies and associations, but also of those without a status of legal entity, not carrying out any important constitutional function according to the provisions and guidelines of article 11;

Having regard to the preliminary resolution of the Italian Council of Ministers, adopted in the meeting of 11 April 2001;

Having sought the opinion of the competent Commissions of the Chamber of Deputies and of the Senate of the Italian Republic, pursuant to article 11 (1), of above-mentioned Italian law No. 300 of 29 September 2000;

Having regard to the resolution of the Italian Council of Ministers, adopted in the meeting of 2 May 2001;

Upon the proposal of the Minister of Justice, in agreement with the Minister of Industry, Trade, Craft and Foreign Trade, with the Minister for Community Policies and with the Minister of Treasury, Budget and Economic Planning of the Italian Republic;

### **I S S U E S**

the following legislative decree:

### **CHAPTER I**

### **ADMINISTRATIVE RESPONSIBILITY OF LEGAL ENTITIES**

### **SECTION I**

General provisions and criteria for assigning administrative responsibility

### **Art. 1. – Subjects**

- 1.This legislative decree shall regulate the responsibility of legal entities for administrative offences linked to a crime.
2. Its provisions shall apply to legal entities as well as to companies and associations without a status of legal entity.
3. These provisions shall not apply to the Italian State, to its territorial authorities, to other non-economic public bodies nor to legal entities carrying out important constitutional functions.

#### **Art. 2. - Legality principle**

1. Legal entities shall not be held responsible for facts which constitute an offence if their administrative responsibility relating to that offence and the relative sanctions are not expressly provided for by any law come into force before the facts were committed.

#### **Art. 3. – Succession of laws**

- 1.Legal entities shall not be held responsible for facts which, in compliance with a subsequent law, do not constitute an offence anymore or for which the administrative responsibility of legal entities is no longer provided for, and if a sentence for such an offence is no longer executed and does not have any legal effects.
- 2.Where the law of the time when the offence was committed and the subsequent laws are different, the law whose provisions are more favourable shall apply, unless an irrevocable judgement has been passed.
- 3.The provisions under subsections (1) and (2) shall not apply when dealing with special or temporary laws.

#### **Art. 4. – Offences committed abroad**

- 1.In the cases and under the conditions envisaged in articles 7, 8, 9 and 10 of the Italian criminal code, legal entities having their headquarters in the territory of the Italian State shall also be responsible for offences committed abroad, provided that the State where the offence has been committed does not proceed against them.
- 2.In the cases in which the law envisages that the guilty shall be punished at the request of the Minister of Justice, proceedings against legal entities shall be taken only if this request is made against the entities as well.

#### **Art. 5. – Responsibility of legal entities**

- 1.Legal entities shall be responsible for offences committed at their own benefit and in their own interest:
  - a)by those people holding representation, administration or direction offices in the legal entity or in one of its business units with financial and functional independence, as well as by those people holding, even de facto, management and control positions in the entity;
  - b)by those people subject to the direction and supervision of one of the subjects under letter a).
- 2.Legal entities shall not be responsible if those people under subsection (1) acted in their own interest or in the interest of third parties.

#### **Art. 6. Senior management and organizational models of legal entities**

- 1.Where the offence has been committed by those people under article 5 (1) a), legal entities shall not be responsible if they prove that:

- a) their managing body has adopted and implemented effectively, before the offence was committed, organizational and management models in order to avoid offences such as the one in question;
- b) the task to supervise the functioning and observance of the models and to deal with their updating has been assigned to a body of the legal entity with independent initiative and control powers;
- c) those people have committed the offence fraudulently eluding organizational and managing models;
- d) the supervision by the body under letter b) has not been neglected nor inadequate.

2. Concerning the extent of delegated powers and the risk of committing offences, the models under letter a), subsection (1), shall meet the following requirements:

- a) identifying activities where offences may be committed;
- b) providing for special protocols aiming at planning the development and implementation of the decisions made by legal entities as regards the offences to avoid;
- c) identifying methods to manage financial resources in order to avoid offences being committed;
- d) providing for information liabilities for the body in charge of supervising the functioning and observance of the models;
- e) establishing a penalty system aiming at sanctioning the non-respect of the measures stated by the model.

3. Organizational and management models can be adopted, meeting the requirements under subsection (2), according to codes of conduct drawn up by representative associations of legal entities and communicated to the Ministry of Justice that, in agreement with the Ministries concerned, can make, within thirty days, comments on the capability of the models to avoid offences.

4. In smaller legal entities, the tasks under letter b), subsection (1), can be directly carried out by their managing body.

5. At any rate, profits made by legal entities on the offence shall be confiscated, even in an equivalent form.

#### **Art. 7. – Subjects under other people’s direction and organizational models of legal entities**

1. In the case under article 5 (1) b), legal entities shall be responsible if the offence committed has been due to the non-observance of directive or supervisory obligations.

2. At any rate, the non-observance of directive or supervisory obligations shall be excluded if legal entities have adopted and implemented effectively, before the offence was committed, an organizational and management model in order to avoid offences such as the one in question.

3. The model shall provide for, according to the type, size and business of legal entities, suitable measures for guaranteeing a legal business development, detecting and eliminating any risk in time.

4. For the model to be effective, the following requirements shall be met:

- a) the model shall be periodically checked and, if necessary, modified, if significant violations of provisions are detected or if changes in legal entities or in their business occur;
- b) a penalty system shall be set up, in order to sanction the non-respect of the measures provided for by the model.

#### **Art. 8. – Independent responsibilities of legal entities**

1. The responsibility of legal entities shall exist even if:

- a) the offender has not been identified or (s)he is not indictable;
- b) the offence is extinguished for a reason other than amnesty.

2. Unless otherwise provided, proceedings shall not be taken against legal entities when amnesty is granted for an offence for which they are responsible and the accused has waived the application of such responsibility.

3. Legal entities may waive amnesty.

### SECTION II General sanctions

#### **Art. 9. – Administrative sanctions**

1. The sanctions for administrative offences are the following:

- a) pecuniary sanctions;
- b) prohibitive sanctions;
- c) confiscation;
- d) publication of the judgement.

2. Prohibitive sanctions are the following:

- a) debarment from carrying on business;
- b) suspension or revocation of authorizations, licences or concessions exploited to commit the offence;
- c) ban on entering into contracts with the public administration, except for obtaining public services;
- d) exclusion from facilities, funding, grants or subsidies and revocation of any aid granted;
- e) ban on advertising goods or services.

### **Art. 10. - Administrative pecuniary sanctions**

1. Pecuniary sanctions shall always apply to administrative offences.

2. Pecuniary sanctions shall apply in the case of a number of amounts higher than one hundred and lower than one thousand.

3. The minimum amount is 258 Euros (five hundred thousand Italian liras), the maximum one is 1,549 Euros (three million Italian liras).

4. Reduced payment is not allowed.

### **Art. 11. - Criteria for assessing pecuniary sanctions**

1. When establishing criteria for assessing pecuniary sanctions, the judge shall rule on the number of amounts taking into account the seriousness of the offence, the degree of responsibility of legal entities as well as their business, in order to eliminate or mitigate the consequences of the offence and to avoid further offences being committed.

2. Amounts shall be fixed according to the economic and financial state of legal entities in order to guarantee the efficacy of sanctions.

3. In the cases envisaged by article 12 (1), the amount is always 103 Euros (two hundred thousand Italian liras).

### **Art. 12. – Reduction of pecuniary sanctions**

1. Pecuniary sanctions shall be halved and shall not exceed 103,291 Euros (two hundred million Italian liras) where:

- a) the offender has committed the offence in his/her own interest or in the interest of third parties and legal entities have not taken advantage or have taken little advantage of it;
- b) the pecuniary injury caused is particularly negligible.

2. Sanctions shall be reduced by one-third to a half where, before the opening statement of the first instance trial:

- a) legal entities have fully paid damages and have removed any injurious or dangerous consequence of the offence or, however, have effectively acted for this purpose;
- b) an organizational model has been adopted and implemented in order to avoid offences such as the one in question.

3. Where both the conditions mentioned under the letters of subsection above are satisfied, sanctions shall be reduced by one-third to a half.

4. At any rate, pecuniary sanctions shall not be below 10,329 Euros (twenty million Italian liras).

### **Art. 13 – Prohibitive sanctions**

1. Prohibitive sanctions shall apply in the case of offences for which they are expressly provided for, if at least one of the following conditions is satisfied:

a) legal entities have taken great advantage of the offence and it has been committed by senior management or by those employees subject to other people's direction if, in this case, the offence has been caused or aided and abetted by serious organizational negligence;

b) offences are reiterated.

2. Prohibitive sanctions shall last more than three months and less than two years.

3. Prohibitive sanctions shall not apply in the cases provided for by article 12 (1).

#### **Art. 14. – Criteria for choosing prohibitive sanctions**

1. The object of prohibitive sanctions is the specific activity to which the offence of legal entities is connected. The judge shall fix their type and duration according to the criteria provided for by article 11, taking into account their ability to avoid offences such as the one in question.

2. The ban on entering into contracts with the public administration may also be limited to some types of contracts or of administration. The debarment from carrying on business implies the suspension or revocation of authorizations, licences or concessions exploited to pursue the activity.

3. Where necessary, prohibitive sanctions may be applied jointly.

4. The debarment from carrying on business shall only apply when the infliction of other prohibitive sanctions is inappropriate.

#### **Art. 15. – Legal Commissioner**

1. Where the conditions to apply a prohibitive sanction providing for the suspension of the business of legal entities are satisfied, the judge shall rule, instead of applying the sanction, that the business of legal entities shall be continued by an external commissioner for the duration of the prohibitive sanction that should apply, in at least one of the following cases:

a) legal entities carry out a public service or a service of public interest whose suspension may be highly prejudicial to the general good;

b) the suspension of the business of legal entities may have, taking into account their size and the economic state of the territory where they are located, serious consequences on employment.

2. Through the sentence prescribing the continuation of the business, the judge shall rule on the commissioner's duties and powers, taking into account the specific activity where legal entities have committed the offence.

3. Within the scope of the duties and powers defined by the judge, the commissioner shall be in charge of adopting and implementing effective organizational and control models in order to avoid offences such as the one in question. (S)He cannot carry out unusual tasks without prior authorisation by the judge.

4. Any profit made through the continuation of the business shall be confiscated.

5. The continuation of the business by the commissioner cannot be prescribed if the suspension of the business results from the definitive application of a prohibitive sanction.

#### **Art. 16. Definitive application of prohibitive sanctions**

1. The definitive debarment from carrying on business can be prescribed if legal entities have taken great advantage of the offence and they have already been condemned, at least three times during the last seven years, to temporary debarment from carrying on business.

2. The judge may definitively apply to legal entities the ban on entering into contracts with the public administration or the ban on advertising goods or services if they have already been condemned to the same sanction at least three times during the last seven years.

3. Where legal entities or one of their business units are permanently used for the main or sole purpose of allowing or aiding and abetting the commission of offences involving their responsibility, the definitive debarment from carrying on business shall always be prescribed and provisions under article 17 shall not apply.

#### **Art. 17. - Redress of the consequences of the offence**

1. Subject to the application of pecuniary sanctions, prohibitive sanctions shall not apply, before the opening statement of the first instance trial, in the following cases:

- a) legal entities have fully paid damages and have removed any injurious or dangerous consequence of the offence or, however, have effectively acted for this purpose;
- b) legal entities have eliminated organizational negligence which caused the offence by adopting and implementing organizational models in order to avoid offences such as the one in question.
- c) legal entities have agreed to the confiscation of profits made.

#### **Art. 18. - Publication of the verdict of guilty**

1. The publication of the verdict of guilty may be prescribed if a prohibitive sanction applies to legal entities.

2. The judgement shall be published once, wholly or partly, in one or more journals stated by the judge in the verdict and it shall be posted up in the city where the headquarters of legal entities are located.

3. The judgement shall be published by the office of the clerk of the court at the expense of legal entities.

#### **Art. 19. – Confiscation**

1. The verdict of guilty always prescribes that any price or profit legal entities made on the offence shall be confiscated, except for the part that can be returned to the injured party and for the rights acquired by third parties in good faith.

2. Where the confiscation order under subsection (1) cannot be enforced, the object of the said confiscation may also be amounts of money, goods or other valuables equivalent to the price or profit made on the offence.

#### **Art. 20. - Reiteration**

1. Reiteration occurs if legal entities, definitively condemned at least once for an offence, commit another offence within five years of their definitive conviction.

#### **Art. 21. – Multiplicity of offences**

1. Where legal entities are responsible for offences committed by means of a single action or omission or by carrying out an activity and before a judgement for one of them, even a temporary sentence, is passed, the pecuniary sanction prescribed for the most serious offence shall apply and be increased by up to three times. In spite of such increase, the amount of the pecuniary sanction shall not exceed the amount of the sanctions applicable for each offence.

2. In the cases envisaged in subsection (1), where the conditions for applying prohibitive sanctions are satisfied with reference to one or more offences, the sanction prescribed for the most serious offence shall apply.

## **Art. 22. - Expiration**

1. Administrative sanctions shall expire five years after the commission of the offence.
2. Such expiration shall be suspended if prohibitive precautionary measures are requested and the administrative offence is contested in pursuance of article 59.
3. A new expiration period shall start as a result of the said suspension.
4. Where the suspension is due to contestation of the administrative offence, the expiration shall be suspended until the judgement on the offence becomes definitive.

## **Art.23.- Non-observance of prohibitive sanctions**

1. Anyone who, while carrying on the business of legal entities to which a sanction or a prohibitive precautionary measure has been applied, infringes the obligations or the bans concerning such sanctions or measures, shall be punished with six months to three years imprisonment.
2. In the case under subsection (1), legal entities in whose interest or favour the offence has been committed shall be punished with a pecuniary administrative sanction of two hundred to six hundred amounts and with the confiscation of profits, in pursuance of article 19.
3. Where legal entities have taken great advantage of the offence mentioned under subsection (1), prohibitive sanctions shall apply, even if they differ from the sanctions previously inflicted.

### SECTION III

#### Administrative responsibility for offences [1]

## **Art. 24. – Embezzlement of funds, fraud against the State or a public body or in order to obtain public funds and computer fraud against the State or a public body.**

1. With reference to the commission of the offences under articles 316-bis, 316-ter, 640 (2), No. 1, 640-bis and 640-ter of the Italian criminal code, if the offence is committed against the State or another public body, the pecuniary sanction up to five hundred amounts shall apply to legal entities.
2. Where legal entities have taken great advantage of the offences under subsection (1) or have caused particularly serious damages because of them, the prohibitive sanction of two to six hundred amounts shall apply.
3. In the cases envisaged in subsections herein above, the prohibitive sanctions mentioned under article 9 (2) c), d) and e) shall apply.

## **Art.24-bis. – (Computer crimes and illegal data processing). [2]**

1. With reference to the commission of the offences under articles 615-ter, 617-quarter, 617-quinquies, 635-bis, 635-ter, 635-quater and 635-quinquies of the Italian criminal code, the pecuniary sanction of one to five hundred amounts shall apply to legal entities.
2. With reference to the commission of the offences under articles 615-quarter and 615-quinquies of the Italian criminal code, the pecuniary sanction up to three hundred amounts shall apply to legal entities.
3. With reference to the commission of the offences under articles 419-bis and 640-quinquies of the Italian criminal code, subject to the provisions under article 24 of this decree in the cases of computer fraud against the State or another public body, the pecuniary sanction up to four hundred amounts shall apply to legal entities.
4. In the cases of conviction for one of the offences mentioned under subsection (1), the prohibitive sanctions envisaged in article 9 (2) a), b) and e) shall apply. In the cases of conviction for one of the offences mentioned under subsection (2), the prohibitive sanctions envisaged in article 9 (2), b)

and e) shall apply. In the cases of conviction for one of the offences mentioned under subsection (3), the prohibitive sanctions envisaged in article 9 (2) c), d) and e) shall apply.

#### **Art.24-ter. – Organized crime [3]**

1. With reference to the commission of one of the offences under articles 416 (6), 416-bis, 416-ter and 630 of the Italian criminal code, to offences committed under the circumstances envisaged in the said article 416-bis or aiming at aiding and abetting the business of associations mentioned under the same article, as well as to offences envisaged under article 74 of consolidated law mentioned in decree of the President of the Italian Republic No. 308 of 9 October 1990, the pecuniary sanction of four hundred to one thousand amounts shall apply.

2. With reference to the commission of one of the offences under article 416 of the Italian criminal code, subject to subsection (6), or of one of the offences under article 407 (2) a) 5) of the Italian code of criminal procedure, the pecuniary sanction of three to eight hundred amounts shall apply.

3. In the cases of conviction for one of the offences mentioned under subsections (1) and (2), the prohibitive sanctions envisaged in article 9 (2), shall apply for a minimum period of one year.

4. Where legal entities or one of their business units are permanently used for the main or sole purpose of allowing or aiding and abetting the commission of the offences mentioned under subsections (1) and (2), the sanction prescribing the definitive debarment from carrying on business in pursuance of article 16 (3) shall apply.

#### **Art.25. – Extortion and corruption**

1. With reference to the commission of the offences under articles 318, 321 and 322 (1) and (3), of the Italian criminal code, the pecuniary sanction up to two hundred amounts shall apply to legal entities.

2. With reference to the commission of the offences under articles 319, 319-ter (1), 321, 322, (2) and (4) of the Italian criminal code, the pecuniary sanction of two to six hundred amounts shall apply to legal entities.

3. With reference to the commission of the offences under articles 317, 319, aggravated in pursuance of article 319-bis if legal entities have taken great advantage of the offence, 319-ter (2), and 321 of the Italian criminal code, the pecuniary sanction of three to eight hundred amounts shall apply to legal entities.

4. The pecuniary sanctions prescribed for the offences under subsections (1) to (3) shall apply to legal entities even if such offences have been committed by those people mentioned under articles 320 and 322-bis.

5. In the cases of conviction for one of the offences mentioned under subsections (2) and (3), the prohibitive sanctions envisaged in article 9 (2), shall apply for a minimum period of one year.

#### **Art.25-bis. – (Counterfeiting, forgery of public documents and official stamps) [4] [5]**

1. With reference to the commission of the offences mentioned in the Italian criminal code on counterfeiting, forgery of public documents and official stamps, the following pecuniary sanctions shall apply to legal entities:

a) for the offence under article 453, the pecuniary sanction of three to eight hundred amounts;

b) for the offences under articles 454, 460 and 461, the pecuniary sanction up to five hundred amounts;

- c) for the offence under article 455, the pecuniary sanctions prescribed by letter a), in respect of article 453, and by letter b), in respect of article 454, reduced by one-third to a half;
  - d) for the offences under articles 457 and 464 (2), the pecuniary sanctions up to two hundred amounts;
  - e) for the offence under article 459, the pecuniary sanctions prescribed by letters a),c) and d), reduced by one-third;
  - f) for the offence under article 464 (1), the pecuniary sanction up to three hundred amounts;
2. In the cases of conviction for one of the offences mentioned under articles 453, 454, 455, 459, 460 and 461 of the Italian criminal code, the prohibitive sanctions envisaged in article 9 (2), shall apply for a maximum period of one year.

#### **Art.25-ter. – (White-collar crimes) [6]**

1. With reference to the white-collar crimes mentioned in the Italian civil code, if they are committed in the company's interest by managers, general managers, liquidators or those people subject to their supervision, where the offence would not have occurred if they had supervised in compliance with their duties, the following pecuniary sanctions shall apply:

- a) for the minor offence of false accounting, envisaged by article 2621 of the Italian civil code, the pecuniary sanction of two [7] to three hundred [7] amounts;
- b) for the offence of false accounting against associates and creditors, envisaged by article 2622 (1) of the Italian civil code, the pecuniary sanction of three [8] to six hundred and sixty [8] amounts;
- c) for the offence of false accounting against associates and creditors, envisaged by article 2622 (3) of the Italian civil code, the pecuniary sanction of four [9] to eight hundred [9] amounts;
- d) for the minor offence of false stock-exchange documents, envisaged by article 2623 (1) of the Italian civil code, the pecuniary sanction of two [10] to two hundred and sixty [10] amounts;
- e) for the offence of false stock-exchange documents, envisaged by article 2623 (2) of the Italian civil code, the pecuniary sanction of four [11] to six hundred and sixty [11] amounts;
- f) for the minor offence of false audit reports and accounting, envisaged by article 2624 (1) of the Italian civil code, the pecuniary sanction of two [12] to two hundred and sixty [12] amounts;
- g) for the offence of false audit reports and accounting, envisaged by article 2624 (2) of the Italian civil code, the pecuniary sanction of four [13] to eight hundred [13] amounts;
- h) for the offence of audit-hampering, envisaged by article 2625 (2) of the Italian civil code, the pecuniary sanction of two [14] to three hundred and sixty [14] amounts;
- i) for the offence of false company capital formation, envisaged by article 2632 of the Italian civil code, the pecuniary sanction of two [14] to three hundred and sixty [14] amounts;
- l) for the offence of illegal repayment of contributions, envisaged by article 2626 of the Italian civil code, the pecuniary sanction of two [14] to three hundred and sixty [14] amounts;
- m) for the minor offence of illegal distribution of profits and reserves, envisaged by article 2627 of the Italian civil code, the pecuniary sanction of two [12] to two hundred and sixty [12] amounts;
- n) for the offence of illegal transactions involving stock, company stock or that of the holding company, envisaged by article 2628 of the Italian civil code, the pecuniary sanction of two [14] to three hundred and sixty [14] amounts;
- o) for the offence of transactions detrimental to creditors, envisaged by article 2629 of the Italian civil code, the pecuniary sanction of three [15] to six hundred and sixty [15] amounts;
- p) for the offence of illegal distribution of company assets by liquidators, envisaged by article 2633 of the Italian civil code, the pecuniary sanction of three [15] to six hundred and sixty [15] amounts;
- q) for the offence of unlawful influence on the Assembly, envisaged by article 2636 of the Italian civil code, the pecuniary sanction of three [15] to six hundred and sixty [15] amounts;
- r) for the offence of stock manipulation, envisaged by article 2637 of the Italian civil code, and for the offence of lack of communication of conflicts of interest, envisaged by article 2629-bis of the Italian civil code, the pecuniary sanction of four hundred [16] to one thousand [16] amounts; [17]
- s) for the offence of obstruction of the public supervisory authority in carrying out their job, envisaged by article 2638 (1) and (2) of the Italian civil code, the pecuniary sanction of four [9] to eight hundred [9] amounts;

2. Where legal entities have taken great advantage of the commission of the offences under subsection (1), the pecuniary sanction shall be increased by one-third.

#### **Art.25-quater. – Crimes of terrorism or subversion of the democratic order [8]**

1. With reference to the commission of crimes of terrorism or of subversion of the democratic order, envisaged by the Italian criminal code and by Italian special laws, the following pecuniary sanctions shall apply to legal entities:

a) where the offence is punished with imprisonment not exceeding ten years, the pecuniary sanction of two to seven hundred amounts;

b) where the offence is punished with imprisonment exceeding ten years or with life imprisonment, the pecuniary sanction of four hundred to one thousand amounts.

2. In the cases of conviction for one of the offences mentioned under subsection (1), the prohibitive sanctions envisaged in article 9 (2), shall apply for a minimum period of one year.

3. Where legal entities or one of their business units are permanently used for the main or sole purpose of allowing or aiding and abetting the commission of the offences mentioned under subsection (1), the sanction prescribing the definitive debarment from carrying on business in pursuance of article 16 (3) shall apply.

4. The provisions under subsections (1), (2) and (3) shall also apply with reference to the commission of offences, other than those under subsection (1), which infringe at any rate the provisions under article 2 of the UN Convention for the Suppression of Financing Terrorism (New York, 9-12-1999).

#### **Art.25-quater. 1. – Female genital mutilation**

1. With reference to the commission of the offences under article 583-bis of the Italian criminal code, the pecuniary sanction of 300 to 700 amounts and the prohibitive sanctions envisaged in article 9 (2) for a minimum period of one year shall apply to the legal entities where the offence has been committed. In the case of accredited private bodies, their accreditation shall be revoked.

2. Where legal entities or one of their business units are permanently used for the main or sole purpose of allowing or aiding and abetting the commission of the offences mentioned under subsection (1), the sanction prescribing the definitive debarment from carrying on business in pursuance of article 16 (3) shall apply.

#### **Art.25-quinquies.- Crimes against the person [20]**

1. With reference to the commission of the offences under section I, chapter III, title XII, book II of the Italian criminal code, the following pecuniary sanctions shall apply to legal entities:

a) for the offences under articles 600, 601 and 602, the pecuniary sanction of four hundred to one thousand amounts;

b) for the offences under articles 600-bis (1), 600-ter (1) and (2), even in respect of the pornographic material under article 600-quarter.1 and 600-quinquies, the pecuniary sanction of three to eight hundred amounts; [21]

c) for the offences under articles 600-bis (2), 600-ter (3) and (4), and 600-quarter, even in respect of the pornographic material under article 600-quarter.1, the pecuniary sanction of two to seven hundred amounts; [22]

2. In the cases of conviction for one of the offences mentioned under subsection (1) a) and b), the prohibitive sanctions envisaged in article 9 (2) shall apply for a minimum period of one year.

3. Where legal entities or one of their business units are permanently used for the main or sole purpose of allowing or aiding and abetting the commission of the offences mentioned under subsection (1), the sanction prescribing the definitive debarment from carrying on business in pursuance of article 16 (3) shall apply.

#### **Art.25- sexies. – Market abuse [23]**

1. With reference to the offences of abuse of confidential information and manipulation of the market under part V, title I-bis, chapter II of consolidated law mentioned in Italian legislative decree No. 58 of 24 February 1998, the pecuniary sanction of four hundred to one thousand amounts shall apply to legal entities;

2. Where legal entities have taken great advantage of the commission of the offences under subsection (1), the pecuniary sanction shall be increased by up to ten times the said advantage.

**Art.25-septies. – Manslaughter or serious/very serious injuries due to breach of the regulations on health protection and safety in the workplace. [24]**

1. With reference to the offence under article 589 of the Italian criminal code, committed in breach of article 55 (2) of Italian legislative decree implementing the delegation under Italian law No. 123 of 3 August 2007 on health and safety in the workplace, a pecuniary sanction of 1,000 amounts shall apply. In the case of conviction for the offence herein above, the prohibitive sanctions envisaged in article 9 (2) shall apply for a period of three months to one year.

2. Subject to the provisions under subsection (1), with reference to the offence under article 589 of the Italian criminal code, committed in breach of the regulations on health protection and safety in the workplace, a pecuniary sanction of 250 to 500 amounts shall apply. In the case of conviction for the offence herein above, the prohibitive sanctions envisaged in article 9 (2) shall apply for a period of three months to one year.

3. With reference to the offence under article 590 (3) of the Italian criminal code, committed in breach of the regulations on health protection and safety in the workplace, a pecuniary sanction up to 250 amounts shall apply. In the case of conviction for the offence herein above, the prohibitive sanctions envisaged in article 9 (2) shall apply for a maximum period of six months.

**Art.25-octies – Receiving, money laundering and use of money, goods or services of illegal origin [25]**

1. With reference to the offences under article 648, 648-bis and 648-ter of the Italian criminal code, the pecuniary sanction of 200 to 800 amounts shall apply to legal entities. Where the money, goods or other facilities originate from an offence for which the maximum sentence of imprisonment exceeding five years is prescribed, the pecuniary sanction of 400 to 1,000 amounts shall apply.

2. In the cases of conviction for one of the offences mentioned under subsection (1), the prohibitive sanctions envisaged in article 9 (2) shall apply for a maximum period of two years.

3. With reference to the offences under subsections (1) and (2), The Ministry of Justice, having heard the opinion of the Bank of Italy's Financial Intelligence Unit (UIF), shall make the comments mentioned in article 6 of Italian legislative decree No. 231 of 8 June 2001.

**Art.26. - Attempted crimes**

1. Where the offences under this chapter of the decree have been attempted, the pecuniary and prohibitive sanctions shall be reduced of one-third to a half.

2. Legal entities shall not be held responsible if they voluntarily prevent the offence being committed or the event occurring.

## CHAPTER II

### ASSET RESPONSIBILITY AND MODIFICATIONS OF LEGAL ENTITIES

#### SECTION I

##### Asset responsibility of legal entities

#### **Art.27. - Asset responsibility of legal entities**

- 1.Legal entities shall be solely responsible for paying pecuniary sanctions with their own assets or with their common fund.
- 2.State credits originating from administrative offences of legal entities shall have priority over other credits originating from offences, pursuant to the provisions of the Italian code of criminal procedure. For this purpose, the pecuniary sanction shall be deemed equivalent to the pecuniary punishment.

#### SECTION II

##### Modifications of legal entities

#### **Art.28. – Transformation of legal entities**

- 1.In case of transformation of legal entities, any responsibility for the commission of offences prior to the date on which such transformation took effect shall remain unchanged.

#### **Art.29. - Merger of legal entities**

- 1.Legal entities resulting from mergers, even corporate mergers, shall be held responsible for any offence legal entities participating in the merger were responsible for.

#### **Art.30. – Split-up of legal entities**

- 1.In case of split-up, any responsibility for the commission of offences prior to the date on which such split-up took effect shall remain unchanged, subject to the provisions of subsection (3).
- 2.The beneficiaries of the total or partial split-up shall be jointly and severally liable for paying pecuniary sanctions owed by split-up legal entities for the commission of offences prior to the date on which such split-up took effect. The said obligation shall be limited to the real value of the net worth transferred to the single legal entity, unless the branch of business where the offence had been committed was transferred, even partly, to this legal entity.
- 3.The prohibitive sanctions for the offences under subsection (1) shall apply to legal entities to which the branch of business where the offence had been committed remained or was, even partly, transferred.

### **Art.31. - Determining sanctions in case of merger or split-up**

1. Where the merger or the split-up takes place before the sentence is passed, the judge, when assessing the pecuniary sanction pursuant to article 11 (2), shall take into account the economic and financial state of legal entities which were originally liable.
2. Subject to the provisions of article 17, legal entities resulting from the merger or legal entities to which, in case of split-up, the prohibitive sanction can be applied, shall be entitled to request that the judge should replace this sanction with the pecuniary sanction where the merger or split-up satisfy the conditions under letter b, subsection (1) of article 17 as well as the further conditions under letters a) and c) of the same article.
3. Where the judge accepts the request, (s)he shall sentence to replace the prohibitive sanction with a pecuniary sanction corresponding to the same or two times the amount of the pecuniary sanction imposed on legal entities for the same offence.
4. Legal entities shall be entitled, even in the cases of merger or split-up after the sentence is passed, to request the replacement of the prohibitive sanction with the pecuniary sanction.

### **Art.32. - Importance of the merger or the split-up as regards reiteration**

1. In the cases of responsibility of legal entities resulting from the merger or of beneficiaries of the split-up for offences committed after the date on which the merger or split-up took effect, the judge can pass a sentence of reiteration, pursuant to article 20, even in respect of sentences passed against the legal entities participating in the merger or the split-up entity for offences committed prior to such date.
2. For this purpose, the judge shall take into account the type of breach and of business where the offences have been committed as well as of the merger or split-up features.
3. A sentence of reiteration can only be passed against the beneficiaries of the split-up, pursuant to subsections (1) and (2), if the branch of business where the offence of which the split-up entity had been convicted was, even partly, transferred to them.

### **Art.33. – Sale of the concern**

1. In the case of sale of the concern where the offence has been committed, the buyer shall be jointly and severally obliged to pay the pecuniary sanction, subject to the seller's benefit of prior discussion and within the value of the concern.
2. The buyer's obligation shall be limited to the pecuniary sanctions reported in the mandatory account books or owed for the commission of administrative offences (s)he was aware of.
3. The provisions under this article shall also apply in the case of assignment of the concern.

## CHAPTER III

### PROCEEDINGS FOR ASCERTAINING AND APPLYING ADMINISTRATIVE SANCTIONS

#### SECTION I

##### General provisions

#### **Art.34. – Applicable judicial proceedings**

1.As regards the proceedings for administrative offences, the regulations under this chapter shall apply as well as the provisions of the Italian code of criminal procedure and of the Italian legislative decree No. 271 of 28 July 1989, as far as they are compatible.

#### **Art.35. – Extension of the regulation on the accused**

1.The legal provisions on the accused shall apply to legal entities, as far as they are compatible.

#### SECTION II

##### Parties, jurisdiction and competence

#### **Art.36. – Competence of the criminal judge**

1.It shall be competent for the criminal judge to ascertain the administrative offences of legal entities.

2.As far as the ascertaining proceedings for administrative offences of legal entities are concerned, the provisions on the formation of the court and the legal provisions in regard of administrative offences shall be observed.

#### **Art.37. – Nonsuit**

1.Administrative offences of legal entities cannot be judged if the criminal trial against the offender cannot begin nor continue because of the lack of one of the conditions to prosecute a case.

#### **Art.38. – Union and separation of proceedings**

1.The proceedings for the administrative offence of legal entities and the criminal proceedings taken against the offender who committed the crime linked to the administrative offence shall be united.

2.The administrative offence of legal entities shall be separately prosecuted only:

- a)where the suspension of proceedings has been prescribed in pursuance of article 71 of the Italian code of criminal procedure;
- b)where the proceedings have been defined according to the summary procedure or to the application of the punishment pursuant to article 444 of the Italian criminal code or the criminal decree of conviction has been issued;

c)where the observance of legal provisions renders it necessary.

### **Art.39. – Representation of legal entities**

1.Legal entities shall participate in criminal proceedings with their own legal representative, unless (s)he is accused of the crime to which the administrative offence is linked.

2.Legal entities willing to participate in the proceedings shall submit to the office of the clerk of the competent court a document containing, under pain of inadmissibility, the following information:

- a) the company name and its legal representative's name and address;
- b) the defence attorney' name and surname and his/her power of attorney;
- c) the defence attorney' signature;
- d) the declaration of domicile or the adoption of domicile of choice.

3.The power of attorney, granted in pursuance of article 100 (1) of the Italian code of criminal procedure, shall be submitted to the public prosecutor's secretariat or to the office of the clerk of the court or it shall be submitted during the hearing enclosed to the document under subsection (2).

4.Where the representative fails to appear, legal entities shall be represented by their defence attorney.

### **Art.40. – Duty solicitor**

1.Legal entities having not appointed their own defence attorney or having been deprived of him/her shall be defended by a duty solicitor.

### **Art.41. – Absence of legal entities**

1.Legal entities failing to appear before the court shall be found guilty of default.

### **Art.42. – Modifications of legal entities during the trial**

In case of transformation, merger or split-up of originally liable legal entities, proceedings shall continue against the entities resulting from such modifications or the beneficiaries of the split-up who shall participate in the current phase of trial by submitting the document under article 39 (2).

### **Art.43. – Notification to legal entities**

1.As regards the first notification to legal entities, the provisions under article 154 (3) of the Italian code of criminal procedure shall be observed.

2.However, notification provided to the legal representative shall be valid, even if (s)he is accused of the crime to which the administrative offence is linked.

3.Where legal entities have declared their domicile or adopted a domicile of choice in the document mentioned under article 39 or in another document submitted to the judicial authorities, notification shall comply with article 161 of the Italian code of criminal procedure.

4.Where it is not possible to provide notification according to the subsections herein above, judicial authorities shall order to carry out a new search. Where this search is unsuccessful, the judge shall, at the request of the public prosecutor, stay proceedings.

## SECTION III Proof

### **Art.44 – Incompatibility with the role of witness**

1.The role of witness cannot be undertaken by:

- a) the person accused of the crime to which the administrative offence is linked;
- b) the representative of legal entities mentioned in the document under article 39 (2) and who held that office when the offence was committed.

2. In case of incompatibility, the representative of legal entities can be questioned and examined in the forms, within the bounds and with the effects prescribed for the questioning and examination of the accused in connected proceedings.

## SECTION IV

### Precautionary measures

#### **Art.45. – Application of precautionary measures**

1. Where there is serious circumstantial evidence to deem legal entities responsible for an administrative offence linked to a crime and there are well-founded and specific facts to believe that a real risk exists that offences of the same type of the one in question will be committed, the public prosecutor can request that one of the prohibitive sanctions under article 9 (2) should apply as a precautionary measure, by providing the judge with the facts on which such request is based, including those in favour of legal entities, as well as any inference and defence brief submitted before.

2. The judge, having received the said request, shall issue an order prescribing the procedure to apply the measure. The provisions under article 292 of the Italian code of criminal procedure shall be observed.

3. Instead of applying the prohibitive precautionary measure, the judge can appoint a legal commissioner pursuant to article 15 for a period corresponding to the duration of the measure that would apply.

#### **Art.46. - Criteria for choosing the measures**

1. When ordering precautionary measures, the judge shall take into account the specific suitability of each measure as far as the type and degree of precautionary requirements to be met in the case in point are concerned.

2. Each measure shall be proportioned to the seriousness of the offence and to the sanction that could apply to legal entities.

3. The debarment from carrying on business can solely apply as a precautionary measure where any other measure is inadequate.

4. Precautionary measures cannot apply jointly.

#### **Art.47. – Competent judge and application procedure**

1. It shall be competent for the judge in charge of the case to order the application or repeal of precautionary measures, as well as modifications of their application procedure. During investigations, the judge shall be in charge of preliminary investigations. The provisions under article 91 of Italian legislative decree No. 271 of 28 July 1989 shall also apply.

2. Where the application of the precautionary measure is requested out of the hearing, the judge shall fix the date for the hearing and order notification be provided to the public prosecutor, legal entities and defence attorneys. Legal entities and defence attorneys shall also be informed that, at the office of the clerk of the court, they can examine the public prosecutor's request and the facts on which it is based.

3. In the hearing mentioned in subsection (2) above, the procedure under article 127 (1), (2), (3), (4), (5), (6) and (10) of the Italian code of criminal procedure shall be observed and the terms under subsection (1) and (2) of the same article shall be reduced to five and three days respectively. The

period of time between submitting the request and the date for the hearing cannot exceed fifteen days.

#### **Art.48. – Executive provisions**

1.The order prescribing the application of a precautionary measure shall be notified to legal entities by the public prosecutor.

#### **Art.49. – Suspension of precautionary measures**

1.Precautionary measures can be suspended where legal entities request that the legal provisions conditioning the exclusion of prohibitive sanctions in pursuance of article 17 should apply. In this case the judge, having heard the public prosecutor, if (s)he decides to accept the request, (s)he shall fix an amount of money as a guarantee, order the suspension of the measure and fix the term to carry out the corrective actions mentioned in article 17.

2.The guarantee consists in depositing at the Fines Office an amount of money which can be lower than the half of the minimum pecuniary sanction prescribed for the offence in question. Instead of the deposit, a mortgage or a joint and several guarantee are accepted.

3.In case of non-performance, incomplete or inefficient fulfilment of the activities within the fixed term, the precautionary measure shall be restored and the deposit or the guarantee shall be assigned to the Fines Office.

4.Where the conditions under article 17 are satisfied, the judge shall repeal the precautionary measure and order the repayment of the deposit or the redemption of the mortgage; the guarantee shall be redeemed.

#### **Art.50. – Repeal and replacement of precautionary measures**

1.Precautionary measures shall be repealed, even automatically, where the conditions for their application mentioned in article 45 are not satisfied, even because of unexpected events, or in the cases envisaged by article 17.

2.Where precautionary requirements are mitigated or the applied measure is no longer proportioned to the seriousness of the offence or to the sanction that could definitively apply, the judge shall, at the request of the public prosecutor or of legal entities, replace the measure with a less serious one or order the application of the same measure, but in a mitigated form, even by fixing a shorter duration.

#### **Art.51. – Maximum duration of precautionary measures**

1.When ordering precautionary measures, the judge shall fix their duration, which cannot exceed the half of the maximum term mentioned in article 13 (2).

2.After the first instance verdict of guilty, the precautionary measure can have the same duration as the corresponding sanction applying with the same judgment. At any rate, the duration of the precautionary measure cannot exceed the two-thirds of the maximum term mentioned in article 13 (2).

3.The duration of precautionary measures shall start from the date of notification of the order.

4.The duration of precautionary measures shall be calculated according to the duration of definitive sanctions.

### **Art.52. - Appeal against official actions applying precautionary measures**

1.The public prosecutor and legal entities, through their defence attorney, can appeal against all the official actions concerning precautionary measures, by indicating the reasons contextually. The provisions under article 322-bis (1-bis) and (2) of the Italian code of criminal procedure shall be observed.

2.Against the measure issued pursuant to subsection (1), the public prosecutor and legal entities, through their defence attorney, can appeal to the Court of Cassation for breach of law. The provisions under article 325 of the Italian code of criminal procedure shall be observed.

### **Art.53. – Attachment**

1.The judge can order the attachment of goods whose confiscation is allowed by article 19. The provisions under articles 321 (3), (3-bis) and (3-ter), 322, 322-bis and 323 of the Italian code of criminal procedure shall be observed, as far as they are applicable.

### **Art.54. – Protective sequestration**

1.Where there are well-founded reasons to believe that the guarantee for the payment of pecuniary sanctions, of legal costs and of any other amount due to the Treasury, is absent or lost, the public prosecutor, in any phase or instance of the trial on the merits, shall request the protective sequestration of legal entities' real property and movables or of the sums and goods due to them. The provisions under articles 316 (4), 317, 318, 319 and 320 of the Italian code of criminal procedure shall be observed, as far as they are applicable.

## SECTION V

### Preliminary investigations and hearing

### **Art.55. - Registration of the administrative offence**

1.The public prosecutor receiving notification of the administrative offence linked to a crime committed by legal entities, shall immediately record in the register mentioned in article 335 of the Italian code of criminal procedure the identification data of legal entities and, where it is possible, their legal representative's name and address as well as the crime to which the offence is linked.

2.The registration under subsection (1) shall be notified to legal entities or to their defence attorney, if they request it, within the same bounds in which it is allowed to notify the registration of a crime to the person to which such crime is attributed.

### **Art.56. - Term for ascertaining the administrative offence in preliminary investigations**

1.The public prosecutor shall be in charge of ascertaining the administrative offence within the same term prescribed for preliminary investigations into the crime to which the said offence is linked.

2.The term for ascertaining the administrative offence against legal entities shall start from the registration mentioned in article 55.

### **Art.57. - Notice that legal entities are under investigation**

1.The notice that legal entities are under investigation shall contain the invitation to declare a domicile or to adopt a domicile of choice to receive notification as well as the warning to submit the document under article 39 (2) in order to participate in the proceedings.

#### **Art.58. – Dismissal**

1.Where the public prosecutor does not give notice of the administrative offence in pursuance of article 59, (s)he shall issue a well-reasoned order of dismissal of proceedings and notify it to the Attorney General at the Court of Appeal. The Attorney General can undertake the essential inquiries and, where (s)he thinks that the conditions are satisfied, (s)he shall charge legal entities with the administrative offences linked to the crime within six months of the said notification.

#### **Art.59. – Notification of the administrative offence**

1.Where the public prosecutor does not order the dismissal, (s)he shall charge legal entities with the administrative offence linked to the crime. The notification of the crime is contained in one of the proceedings mentioned in article 405 (1) of the Italian code of criminal procedure.

2.The notification shall contain all the identification data of legal entities, the statement, in a clear and precise form, of the fact which can imply the application of administrative sanctions, the crime to which the offence is linked, as well as the relevant legal articles and sources of proof.

#### **Art.60. – Forfeiture of notification**

1.The notification under article 59 cannot be provided where the crime to which the administrative offence is linked is statute-barred.

#### **Art.61. – Sentences passed in the preliminary hearing**

1.The judge of the preliminary hearing shall dismiss a case in the event of redemption or nonsuit of the administrative sanction, if the offence itself does not exist or evidence is insufficient, contradictory or, however, inadequate to proceed against legal entities. The provisions under article 426 of the Italian code of criminal procedure shall apply.

2.After the preliminary hearing, the decree providing for the judgment against legal entities shall contain, on pain of nullity, the notification of the administrative offence linked to the crime, the statement, in a clear and precise form, of the fact which can imply the application of administrative sanctions, the crime to which the offence is linked, the relevant legal articles and sources of proof, as well as the identification data of legal entities.

### SECTION VI Special proceedings

#### **Art.62. – Summary judgement**

1.As far as summary judgement is concerned, the provisions under title I, book VI of the Italian code of criminal procedure shall be observed, as far as they are applicable.

2.In the absence of preliminary hearing, the provisions under articles 555 (2), 557 and 558 shall apply, according to the circumstances.

- 3.The duration of the prohibitive sanction and the amount of the pecuniary sanction shall be reduced in pursuance of article 442 (2) of the Italian code of criminal procedure.
- 4.At any rate, the summary judgement shall not be permitted where a definitive prohibitive sanction applies for the administrative offence.

#### **Art.63. – Application of the sanction on request**

- 1.The sanction can apply to legal entities on request where the judgement against the accused is definitive or definable in pursuance of article 444 of the Italian code of criminal procedure, as well as in all the cases in which the sole pecuniary sanction is prescribed for the administrative offence. The provisions under title II, book VI of the Italian code of criminal procedure shall be observed, as far as they are applicable.
- 2.In the cases in which the pecuniary sanction is applicable on request, the duration of the prohibitive sanction and the amount of the pecuniary sanction shall be reduced in pursuance of article 444 (1) of the Italian code of criminal procedure.
- 3.Where the judge thinks that a definitive prohibitive sanction shall apply, (s)he shall reject the request.

#### **Art.64. – Proceedings by decree**

- 1.The public prosecutor, where (s)he thinks that the sole pecuniary sanction shall apply, can submit to the judge for preliminary investigations, within six months of the administrative offence being recorded in the register under article 55 and after the file being transmitted, a well-reasoned request for issuing the decree of application of the pecuniary sanction, by indicating its measure.
- 2.The public prosecutor can request the application of a pecuniary sanction reduced by up to the half of the minimum applicable amount.
- 3.Where the judge rejects the request, if (s)he shall not pass the sentence excluding the responsibility of legal entities, (s)he shall return the proceedings to the public prosecutor.
- 4.The provisions under title V, book VI of the Italian code of criminal procedure shall be observed, as far as they are compatible.

### SECTION VII Judgement

#### **Art.65. – Term to redress the consequences of the offence**

- 1.Before the opening statement of the first instance trial, the judge can order the stay of proceedings if legal entities request to carry out the activities under article 17 and prove to have been unable to undertake them previously. In this case, if the judge decides to accept the request, (s)he shall fix an amount of money as a guarantee. The provisions under article 49 shall be observed.

#### **Art.66. – Sentence of exclusion of the responsibility of legal entities**

- 1.Where the administrative offence notified to legal entities does not exist, the judge shall state it through a sentence in which (s)he shall indicate the reasons. The same procedure shall apply if evidence of the administrative offence is lacking, insufficient or contradictory.

**Art.67. – Judgement of nonsuit**

1.The judge shall grant a judgement of nonsuit in the cases mentioned in article 60 and where the sanction is statute-barred.

**Art.68. – Proceedings on precautionary measures**

1.Where the judge passes one of the sentences mentioned in articles 66 and 67, (s)he shall order the termination of any precautionary measure prescribed.

**Art.69. – Verdict of guilty**

1.Where legal entities are held responsible for the administrative offence they were charged with, the judge shall apply the sanctions prescribed by law and sentence them to pay legal costs.  
2.Where prohibitive sanctions apply, the sentence shall always mention the activity or organisations subject to the sanction.

**Art.70. – Sentence in case of modifications of legal entities**

1.In case of transformation, merger or split-up of liable legal entities, the judge shall state in the sentence that it is passed against legal entities resulting from the transformation or merger or the beneficiaries of the split-up and mention originally liable legal entities.  
2.The sentence passed against originally liable legal entities shall also be enforced against legal entities under subsection (1).

SECTION VIII  
Appeals

**Art.71. – Appeals against sentences on the administrative responsibility of legal entities**

1.Legal entities shall be entitled to appeal against the sentence applying administrative sanctions other than prohibitive sanctions in the cases and according to the procedure prescribed for the accused of the crime to which the administrative offence is linked.  
2.Legal entities shall always be entitled to appeal against the sentence applying one or more prohibitive sanctions, event if the accused of the crime to which the administrative sanction is linked cannot appeal.  
3.The public prosecutor shall be entitled to lodge, against the sentence on the administrative offence, the same appeal permitted for the crime to which the administrative sanction is linked.

**Art.72. – Extent of appeals**

1.The appeals lodged by the accused of the crime to which the administrative offence is linked and by legal entities, shall be of avail to both the accused and legal entities, unless they are solely grounded on personal reasons.

**Art.73. – Revision of sentences**

1.The provisions under title IV, book IX of the Italian code of criminal procedure, except for articles 643, 644, 645, 646 and 647, shall apply to sentences passed against legal entities, as far as they are compatible.

## SECTION IX Enforcement

### **Art.74. – Enforcing judge**

1.It shall be competent to the judge mentioned in article 665 of the Italian code of criminal procedure to rule on the enforcement of administrative sanctions linked to a crime.

2.It shall also be competent to the judge under subsection (1) to rule on the following cases:

- a)the termination of the enforcement of sanctions in the cases mentioned in article 3;
- b)the termination of the enforcement in the cases of prescription of the crime due to amnesty;
- c)the establishment of the applicable administrative sanction in the cases envisaged by article 21 (1) and (2);
- d)the confiscation and return of the attached goods.

3.Concerning the enforcement proceedings, the provisions under article 666 of the Italian code of criminal procedure shall be observed, as far as they are applicable. In the cases under subsection (1) letters b) and d), the provisions under article 667 (4) of the Italian code of criminal procedure shall be observed.

4.Where the debarment from carrying on business applies, the judge can, at the request of legal entities, authorize the accomplishment of day-to-day management tasks which do not imply the continuation of the prohibited activity. The provisions under article 667 (4) of the Italian code of criminal procedure shall be observed.

### **Art.75. – Enforcement of pecuniary sanctions [26] [27]**

### **Art.76. – Publication of the verdict of guilty**

1.The verdict of guilty shall be published at the expense of legal entities to which the sanction applies. The provisions under article 694 (2), (3) and (4) of the Italian code of criminal procedure shall be observed.

### **Art.77. - Enforcement of prohibitive sanctions**

1.The docket prescribing the enforcement of a prohibitive sanction shall be notified to legal entities by the public prosecutor.

2.The duration of prohibitive sanctions shall be fixed having regard to the date of notification.

### **Art.78. – Conversion of prohibitive sanctions**

1.Legal entities having belatedly carried out the activities under article 17 can request, within twenty days of the notification of the docket, the conversion of the prohibitive administrative sanction into a pecuniary sanction.

2.The request shall be submitted to the enforcing judge and shall include the document proving the activities under article 17 have been carried out.

3. Within ten days of the submission of the request, the judge shall fix the hearing in the council room and notify it to the parties and their defence attorneys; where the request is not manifestly groundless, the judge can suspend the enforcement of the sanction. The suspension shall be ordered by means of a well-founded revocable decree.

4. Where the judge accepts the request, (s)he shall convert the prohibitive sanctions by issuing an order and fix the amount of the pecuniary sanction, which shall not be lower than the sum already prescribed in the sentence and shall not exceed the double of the said sum. When fixing the amount of the sanction, the judge shall take into account the seriousness of the offence for which the sentence was passed and the reasons causing the belated accomplishment of the conditions under article 17.

#### **Art.79. – Appointment of the legal commissioner and confiscation of profit**

1. Where the sentence providing for the continuation of the business of legal entities pursuant to article 15 shall be enforced, the public prosecutor shall request the appointment of the legal commissioner to the enforcing judge, who shall undertake it without formality.

2. The commissioner shall report on the enforcement to the judge and on the management state to the public prosecutor every three months. At the end of the appointment, the commissioner shall submit to the judge a report on management showing the value of the profit to be confiscated and the procedure used to carry out organizational models.

3. The judge shall rule on confiscation in pursuance of article 667 (4) of the Italian code of criminal procedure.

4. Legal entities shall be charged for the activities undertaken by the commissioner and for the commissioner's fee.

#### **Art.80. – National register of administrative sanctions [28] [29]**

#### **Art.81. – Register certificates [30] [31]**

#### **Art.82. – Issues concerning registrations and certificates [32] [33]**

### CHAPTER IV

#### Implementation and coordination provisions

#### **Art.83. – Combination of sanctions**

1. Only the prohibitive sanctions provided for in this legislative decree shall apply against legal entities, even if different legal provisions prescribe, in consequence of the verdict of guilty, the application of identical or similar administrative sanctions against legal entities.

2. Where, as a result of the offence, an administrative sanction identical or similar to the prohibitive sanction provided for in this legislative decree has already applied, the duration of the previous sanction shall be calculated in order to fix the duration of the administrative sanction linked to a crime.

#### **Art.84. – Communications to the control and supervisory authorities**

1. The judgement applying prohibitive precautionary measures and the irrevocable verdict of guilty shall be notified to the control and supervisory authorities of legal entities by the office of the clerk of the court where they have been pronounced.

## **Art.85. – Legal requirements**

1.By means of the regulation issued in pursuance of article 17 (3) of Italian law No. 400 of 23 August 1988, within sixty days of the date of publication of this legislative decree, the Italian Minister of Justice shall implement the legal requirements concerning the proceedings for ascertaining the administrative offence as regards the following matters:

a)the procedure to establish and keep the court files;

b)[34]

c)other activities necessary to enforce this legislative decree.

2.The opinion of the Italian State Council on the regulation provided for in subsection (1) shall be issued within thirty days of the request. This decree, sealed with the Italian Great Seal, shall be inserted into the Official Register of legal acts of the Italian Republic. Anyone subject to this decree shall observe it and anyone in charge of this decree shall make other people comply with it.

### **Notes:**

1 Section replaced by art.3 (1) of Italian Legislative Decree No. 61 of 11 April 2002, starting from the day following its publication in the Official Gazette. The previous section was the following: “Administrative responsibility for offences mentioned in the Italian criminal code”.

2 Article inserted by art.7 (1) of Italian Law No. 48 of 18 March 2008, come into force on 5 April 2008.

3 Article inserted by art.2 (29) of Italian Law No. 94 of 15 July 2009.

4 Article inserted by art.6 (1) of Italian Decree Law No. 350 of 25 September 2001, converted, with modifications, by Italian Law No. 409 of 23 November 2001.

5 Pursuant to art. 52-quinquies (1) of Italian Legislative Decree No. 213 of 24 June 1998, as inserted by art. 4 (1) of Italian Decree Law No. 350 of 25 September 2001, converted, with modifications, by Italian Law No. 409 of 23 November 2001, the pecuniary sanctions prescribed reduced by one-third shall apply to the offences mentioned in this article concerning euro banknotes, coins and tax stamps which are not legal tender yet. Such reduction shall not apply in the cases of forgery where the culprit has put the coins or the official stamps into circulation after 31 December 2001.

6 Article inserted by art.3 (2) of Italian Legislative Decree No. 61 of 11 April 2002, starting from the day following its publication in the Official Gazette, according to the procedure under art.5 of said Italian Legislative Decree No. 61 of 11 April 2002.

7 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled one hundred to one hundred and fifty amounts.

8 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled one hundred and fifty to three hundred and thirty amounts.

9 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled two hundred to four hundred amounts.

10 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled one hundred to one hundred and thirty amounts.

11 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled two hundred to three hundred and thirty amounts.

12 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled one hundred to three hundred and thirty amounts.

13 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled two hundred to four hundred amounts.

14 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled one hundred to one hundred and eighty amounts.

15 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled one hundred and fifty to three hundred and thirty amounts.

16 Sanction increased by art.39 (5) of Italian Law No. 262 of 28 December 2005. Originally, the sanction totalled two hundred to five hundred amounts.

17 Letter modified by art.31 (2) of Italian Law No. 262 of 28 December 2005.

18 Article inserted by art.3 (1) of Italian Law No. 7 of 14 January 2003, starting from the day following its publication in the Official Gazette.

19 Article added by art.8 (1) of Italian Law No. 7 of 9 January 2006.

20 Article inserted by art.5 (1) of Italian Law No. 228 of 11 August 2003.

21 Letter modified by art.10 (1) a) of Italian Law No. 38 of 6 February 2006.

22 Letter modified by art.10 (1) b) of Italian Law No. 38 of 6 February 2006.

23 Article inserted by art.9 (3) of Italian Law No.62 of 18 April 2005.

- 24 Article inserted by art.9 (1) of Italian Law No.123of 3 August 2007, subsequently replaced by art.300 (1) of Italian Legislative Decree No. 81 of 9 April 2008.
- 25 Article inserted by art.63 (3) of Italian Legislative Decree No. 231 of 21 November 2007.
- 26 Article repealed by art.299 (1) of Italian Presidential Decree No. 215 of 20 May 2002, starting from 1 July 2002.
- 27 For the new regulation scheme on this subject, see art.200, 240 and 241 of Italian Presidential Decree No. 215 of 20 May 2002.
- 28 Article repealed by art.52 (1) of Italian Presidential Decree No. 313 of 14 November 2002, starting from the forty-fifth day following its publication in the Official Gazette.
- 29 For the new regulation scheme on this subject, see art.9 and 11 of Italian Presidential Decree No. 313 of 14 November 2002.
- 30 Article repealed by art.52 (1) of Italian Presidential Decree No. 313 of 14 November 2002, starting from the forty-fifth day following its publication in the Official Gazette.
- 31 For the new regulation scheme on this subject, see art.30, 31 and 32 of Italian Presidential Decree No. 313 of 14 November 2002.
- 32 Article repealed by art.52 (1) of Italian Presidential Decree No. 313 of 14 November 2002, starting from the forty-fifth day following its publication in the Official Gazette.
- 33 For the new regulation scheme on issues concerning registrations and certificates, see art.40 of Italian Presidential Decree No. 313 of 14 November 2002.
- 34 Letter repealed by art.52 (1) of Italian Presidential Decree No. 313 of 14 November 2002, starting from the forty-fifth day following its publication in the Official Gazette.