

**ERG S.p.A.**

**Model of organisation and management**

**Italian Legislative Decree No. 231 of 08 June 2001**

Approved by the Board of Directors on 23 February 2017

*(cancels and replaces the document approved on 22 March 2016)*



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## **Definitions**

In addition to the definitions contained in other parts of the model, the terms and expressions with an initial capital letter used in this text have the following meaning assigned to them, it being specified that the same meaning applies to both the singular and the plural:

### **Tax authorities**

We are here referring, by way of a non-limiting example, to the Ministry of Economy and Finance, the Finance Department, the Public Property Agency, the Customs and Monopolies Agency, the Presidential Council of Tax Justice and the Financial Police.

### **Sensitive activity**

Activities performed by ERG S.p.A., in which the potential risk of committing the offences pursuant to Italian Legislative Decree 231/01 occurs.

### **Public Authority or Administration**

We are here referring, by way of a non-limiting example, to the Judicial Authorities, national and foreign Public Institutions and Administrations, Consob, Anti-trust Authority, Borsa Italiana S.p.A., the Guarantor for the Protection of Personal Data, the Authority for Electrical Energy, Gas and the Water System (AEEGSI) and the other Supervisory Authorities, both Italian and foreign as well as their officers and internal bodies.

### **CCNL or National Collective Labour Agreement**

National Collective Labour Agreement for Energy and Oil currently in force and applied by ERG.

### **Counterparties or suppliers**

Physical persons (not Employees) and legal entities that have set up a contractual agreement with the Company regarding, among other things, the supply of goods, services, professional services or the execution of works or the joint exercising of an economic activity through shareholdings in companies or temporary company associations.

### **Employees or Personnel**

Individuals who have an ongoing labour relationship with the Company, including managers.

### **Italian Legislative Decree 231/01 or the Decree**

Italian Legislative Decree no. 231 of 8 June 2001 and subsequent amendments and supplements.

### **ERG or the Company or Parent Company**

ERG S.p.A.

### **ERG Group or ERG Group Company**

ERG and its subsidiary companies

### **Confindustria's Guidelines**

The Guidelines for the construction of organisation, management and control models pursuant to Italian Legislative Decree 231/2001 approved by Confindustria, issued in March 2014 and published in July 2014 following approval from the Ministry of Economic Development.

### **Model**

The model of organization, management and control pursuant to Italian Legislative Decree no. 231/2001.

### **Corporate Boards**

ERG S.p.A. Board of Directors, the Board of Statutory Auditors and their relative members.

### **Supervisory Committee or Committee or SC**

Committee responsible for verifying the effectiveness of the Model and its related updating. The Supervisory Committee is also required to oversee compliance with the Code of Ethics.

### **Offences**

The crimes to which the regulations foreseen by Italian Legislative Decree 231/01 apply.

### **Subsidiary Companies**

ERG Subsidiary Companies pursuant to art. 93 of T.U.F.<sup>1</sup>

### **Senior Parties**

ERG's directors and in particular the Chairman, the Executive Deputy Chairman, the Deputy Chairman and ERG's Managing Director, as well as the parties holding proxies granted directly by the Board of Directors. More in general, those considered in senior posts are those subjects who are responsible for representing, administration or managing the entity or one of its other organisational units granted functional and financial independence or over which these effectively exercise management and control.

### **Top Management**

The Managing Director and those ranked immediately below him or her.

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<sup>1</sup> [...] are considered subsidiaries, in addition to those indicated in article 2359, section one, numbers 1 and 2, of the Italian Civil Code, as follows:

- a) Italian or foreign companies, over which a party, by virtue of a contract or a statutory clause, has the right to exercise significant influence, when the applicable law permits said contracts or clauses;
- b) Italian or foreign companies, over which a shareholder, on the basis of agreements with other shareholders, alone has sufficient voting rights to exercise a significant influence at the shareholders' meeting.

[...] rights held by subsidiary companies are also valid or those exercised by means of trustees or intermediaries; those due on behalf of third parties are not considered valid.

## 1. Italian Legislative Decree no. 231/2001

### 1.1. Decree content and law references

Italian Legislative Decree 231/01<sup>2</sup>, which came into force on 4 July 2001, introduced into our legislation the concept of administrative liability for legal entities, which is to be added to the criminal liability of the natural person who has materially committed certain unlawful deeds and which aims to involve, in the punishment of said crimes, the organisation in whose interest or to whose advantage these offences have been carried out.

The responsibility of the entity (even for crimes committed abroad, provided that the State where the crime was committed is not already pressing charges and the other conditions foreseen by art. 4 of the Italian Legislative Decree 231/01 are met) is ascertained when one of the crimes foreseen by Italian Legislative Decree 231/01 is committed by a natural person who is part of the entity and in the interest or to the advantage of the entity itself and if the latter has not adopted suitable organisation models to prevent the crimes listed under Italian Legislative Decree 231/01 being committed (so called "organisational liability"). With reference to the natural persons who have committed the crime, it takes into consideration the conduct of (i) Top management personnel and (ii) natural persons under the management or supervision of said subjects. In relation to the crimes that may lead to organisational liability, the Italian Legislative Decree 231/01 included, in its original text, only offences against the Public Administration (articles 24 and 25); subsequently, via further legislative actions often dictated by the need to align the regulation to European community norms and international conventions, other cases were introduced (the complete list of which is published in the section "Supervisory Bodies" in the ERGgate intranet).

### 1.2. Company actions that the decree considers as exemptions from its administrative liability

Italian Legislative Decree no. 231/01 provides a specific exemption from administrative liability, if the Entity can demonstrate that the management, before the offence was committed, had adopted and effectively implemented organisational and management models designed to prevent the offences committed".

The Model must meet the following requirements:

- identify the activities where the offences stated in the Decree may be committed;
- define specific decision making protocols with reference to the offences that must be prevented;
- identify procedures for managing financial resources capable of preventing the commission of such offences;
- implement reporting processes towards the board in charge of supervising the effectiveness of the Model;

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<sup>2</sup> Adaptation of Italian law on liability of legal persons, to the Brussels Convention of 26 July 1995 on the protection of the financial interests of the European Community, to the Brussels Convention of 26 May 1997 on combating the bribery of public officials of the European Community and of Member States and to the OECD Convention of 17 December 1997 on combating the bribery of foreign public officials in international business transactions.

- introduce an internal sanction system to appropriately punish the failure to respect the measures indicated in the Model.

Therefore a specific exemption from liability is provided for if the Entity proves that:

- prior to the commission of the offence, it had adopted and effectively implemented, an organisational and management model capable of preventing the commission of the offences included in the Decree;
- it had established an internal body with autonomous decision-making and control powers, charged with the responsibility of supervising the effectiveness of the Model, as well as ensuring it is regularly update;
- there is no evidence of omitted or insufficient control by the Supervisory Committee;
- the individual who carried out the offence acted by fraudulently ignoring the organisational and management Model.

ERG, in drafting the Model has appropriately taken into account the guidelines drawn up by Confindustria; any differences that exist between the Model and any specific indication of the guidelines, do not affect the basic accuracy and validity of the Model, since guidelines are general in nature, while the Model is strictly referred to the current Company's organisation.

### 1.3. Sanctions foreseen by the Decree

The Decree defines four types of administrative sanctions for violations:

- **pecuniary** sanctions, established through a system setting a minimum and a maximum number of "quotas" with reference to each offence. In order to make sanctions truly effective, the rule gives the law courts the power to define the number (between 100 and 1000, according to the gravity of the offence, the degree of responsibility of the entity and to what has been done to eliminate or mitigate the consequences of the offence and prevent further abuses) and the relative value (from EUR 258 and EUR 1549 "based on economic and financial conditions") of the "quotas" the entity can be sanctioned<sup>3</sup> with;
- **disqualification** sanctions, i.e.:
  - i. the prohibition from operating core business activities;
  - ii. the suspension or revocation of authorisations, licenses or concessions functional to the committing of the offence;
  - iii. prohibition from entering into contracts with the Public Administration, other than to obtain public services;
  - iv. the exclusion from facilities, loans, grants and subsidies as well as the revocation of those already granted;
  - v. the prohibition from advertising goods or services

<sup>3</sup> There are cases in which the penalty can be reduced if (alternatively) the offender has committed the act in his best interests or in the best interests of third parties and the entity has not obtained any advantage, or has obtained a minimal advantage and if the damage is negligible. The financial penalty is also reduced by a third to a half if, before the opening statement of the proceedings at first instance, the entity (i) has fully compensated the damage or has eliminated the damaging or dangerous consequences of the crime (or has tried to do so), (ii) or has adopted a Model suitable to prevent the same offence being committed in the future. The pecuniary sanctions are reduced by a half to two thirds if both the above conditions are met.

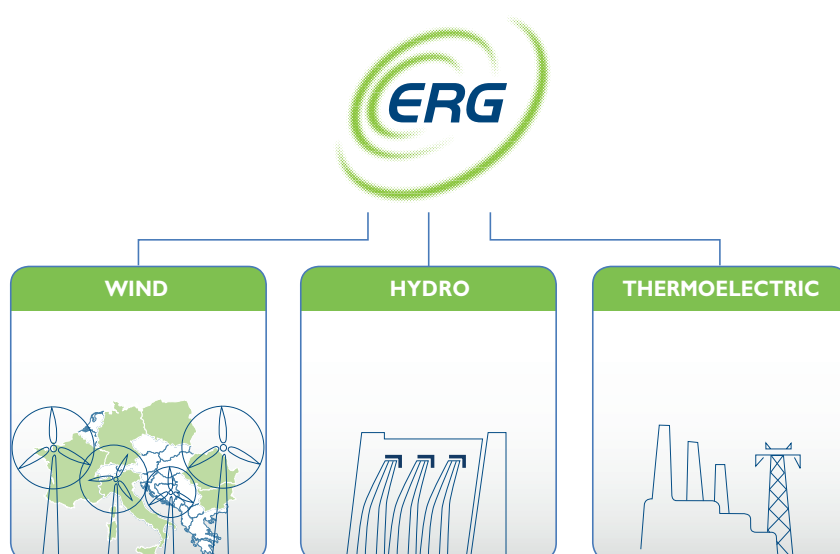
- **seizure** of the cost or profit deriving from the offence
- **the publication of the sentence.**

With reference to the crimes attempted that are relevant pursuant to the Italian Legislative Decree 231/01, without prejudice to the possible reductions of the pecuniary sanctions foreseen, no other responsibility falls on the shoulders of the entities if they have voluntarily avoided the perpetration of the actions or the criminal event.

## 2. Model adopted by ERG

### 2.1. Reasons for adopting the Model

ERG, a company listed on the Mercato Telematico Azionario (screen based stock exchange) organised and managed by Borsa Italiana S.p.A., has carried out a far reaching transformation process from being the main private Italian fossil fuel operator to becoming the main independent operator in the production of electricity from renewable sources of both the non-programmable variety (wind power) as well as the programmable version (thermo-electric and hydro-electric) expanding also abroad with a growing presence particularly on the French and German wind power market.



In 2016, the ERG Group, downstream of the completion of its own industrial reconversion, undertook a very thorough company consolidation process, reviewing the entire organisation and operations, consistent with the new mission and industrial standing as an independent European electricity operator (IPP – Independent Power Producer). In this context comes the project termed **“One Company”** that has led to a significant review of the organisational and company structure of the group, with the intent of making it more functional to the new business model.

The company reorganisation, effective as of 1 January 2017, has been achieved thanks to a merger by incorporation of ERG Services S.p.A. in ERG and the merger by incorporation of ERG Renew S.p.A. and ERG Renew Operations & Maintenance S.r.l. in ERG Power Generation S.p.A.

The new company framework features the presence of a company given over to power generation and energy sales named “ERG Power Generation S.p.A.”, entirely controlled by ERG, dedicated to the overall integrated management of the three different and complementary production technologies the Group currently has at its disposal and to the sale of electricity through the only centralised structure of Energy Management.

With reference to ERG the reorganisation was carried out by:

- the creation of a new area dedicated to business development (Business Development), directly referring to the Managing Director, with the aim of ensuring the attainment of the geographic, technological and market growth objectives in the short and medium-term;
- the creation of a single integrated Risk Management function for a more accurate and timely supervision of the risks usually associated to this new business model;
- the centralisation of the good and service procurement processes to create value by obtaining operating and scale synergies;
- the centralisation of a few staff functions now partly assigned to the companies that were the objects of mergers in order to improve their effectiveness, coordination and speed of action;
- the centralisation into a single function of all the Information Technology Communication (ITC) competences in order to answer the immediate requirements of the new business model and to latch on to the potential opportunities offered by the constant dissemination of computer digitalisation.

ERG, for the purpose of ensuring increased fairness and transparency in conducting its business activities, since December 2004, has considered it appropriate to adopt an Organisational and Management Model in line with the provisions of the Decree, subsequently updated to take into account the new regulations and organisational and business changes, up to the current edition. The Company, in fact, has considered and still considers the adoption of this Model, together with the Code of Ethics (hereinafter referred to as the "Code"), to be an additional tool, apart from the provisions of law, to make all its Employees, collaborators, as well as any other stakeholders (shareholders, Public Administrations, customers, suppliers, third-parties in general, etc.), conduct themselves in an appropriate and transparent way when performing their activities, in line with ethical and social values that ERG is based on in pursuing its corporate purpose, thus preventing the risk of any crime contemplated by the Decree being committed.

As a consequence, the adoption and effective implementation of the Model are intended to improve corporate governance, reduce the risk of committing crimes and provide valuable evidence for the Company to be considered not liable. It should be noted that in November 2015, the Company has obtained the certification of occupational health and safety management system at workplace according to OHSAS 18001.

## **2.2. Activities that involved intragroup services**

The ERG Group's organisational model foresees the centralisation of shared activities within the Companies of the ERG Group. In particular, the Company provides its own direct and indirect subsidiaries with legal, financial, organisational and personnel management services, risk management, institutional relations as well as activities of an administrative nature - accounting, tax and management of computer systems. The intragroup allocation is formally achieved by the stipulation of specific service contracts that ensure that each Company of the ERG Group can:

- reach independent and autonomous decisions, for which it must be granted broad responsibility, including decisions relative to the services received from the Company;

- consequently maintain control regarding the appropriateness of the intragroup services rendered/received.

The intragroup service contracts foresee:

- a detailed description of the activities that are the object of the service;
- the service provision procedures;
- the powers of verification and control granted to the individual ERG Group companies;
- the procedures for calculating the fees of the services provided;
- appropriate clauses protecting the informational assets of the individual ERG Group companies and the security of the transactions;
- the obligation, befalling the company, to operate in compliance with current laws and regulations as well as requiring compliance of the same even by third parties to which it might assign a subcontract for the entire or partial performance of the activities of the service;
- the right, for the companies receiving the intragroup services, to terminate the contract following any violation on ERG's behalf concerning:
  - the legal and regulatory dispositions that may lead to sanctions charged to those receiving intragroup services;
  - the obligation to execute the activities in compliance with the principles contained in the Model adopted by each company of the ERG Group as well as the Code of Ethics and internal reference regulations.

The intragroup agreements are designed to be fair and transparent and the relative services are supplied in compliance with the principles of sound management, accounting transparency and segregation of assets.

Taking into account the above, the Personnel in performing its own activities must comply with the principles of conduct foreseen by this Model and those of the Group Companies for whom these activities are carried out.

### **2.3. Construction and structure of the Model**

The Model has the purpose of defining a comprehensive set of prevention, deterrence and control tools aimed at reducing the risk of crimes being committed, by identifying sensitive activities and, if necessary, their resulting regulation.

Therefore, the activities performed to develop<sup>4</sup> the Model can be summarised as follows:

- identification of business operations affected by the risk of crime (sensitive activities), with the purpose of identifying sensitive activities, understanding possible ways of committing crime ("risk assessment") covered by the Decree and identify any need for corrective action;

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<sup>4</sup> According to the provisions of the Decree, the Guidelines published by Confindustria, the "Position Paper" or the Italian Internal Auditors Association, the CoSO Report (proposed by the Committee of Sponsoring Organizations of the Treadway Commission) as an international standard on internal control matters and Position Paper published by the "Associazione degli Organismi di Vigilanza" - Association of members of supervisory bodies (AODV).

- examination of existing corporate documentation, interviews with key corporate employees, identification of existing procedures, understanding the segregation of duties model, mapping existing controls and understanding how they are documented, analysis of risk situations occurred in the past and their causes;
- creation of a "map of 231 risks" and of a "gap analysis", which identifies any areas for improvement, with a view to guaranteeing the effectiveness of the controls set in place by the Model;
- definition of control protocols and formalisation of plans of action with changes (organisational, procedural or relating to information systems) necessary to define a control system reasonably able to prevent or reduce the risk of committing crimes.

As far as the effectiveness of the Model is considered, particular importance has to be put on the organisational structure, activities and rules implemented by management and the corporate staff aiming at ensuring the effective and efficient management of operations, the reliability of Corporate information towards internal and external third parties, the compliance with laws, regulations, procedures and internal policies.

The most important case law was considered in developing the Model, with reference to the characteristics that this must have:

- **effectiveness:** namely the adequacy of all the established controls for preventing the committing of crimes;
- **specificity:** model provisions must take into account the Company characteristics, size and type of activities, as well as the history of the Company;
- **constant updating:** i.e. the ability to reduce, over time, the risk of a crime being committed, in relation to the structure and character of the business, including with the work of the Supervisory Committee which keeps the Model up-to-date and current.

The structure of the Model adopted by the Company is characterised by the presence of the following major components:

- **Code of Ethics**, to which reference should be made, which states the principles on which the work of all those who contribute with their work to the development of company activity must be based;
- **general section**, defining the overall layout of the Model in relation to the provisions of the Decree and the specific choices made by the Company in its preparation, referring to the disciplinary system, to be applied in case of violation of the envisaged rules and procedures;
- **special section**, which provides a definition of the rules to be followed in performing sensitive activities
- **disciplinary system**, to be applied in case of breach of the Ethical Code, rules and procedures provided by the Internal Control and Risk Management System adopted by ERG.

## 2.4. The Internal Control System and Model

The regulatory system of reference for the sensitive processes and activities does not solely comprise the provisions of this Model, but rather a structured, coherent set of regulations:

- the **Code of Ethics**, targeting all stakeholders, which summarises the ethics principles adopted by the ERG Group for its business activities;
- the **Policies**, targeting all stakeholders, which based on values expressed in the Code of Ethics, define the basic operating principles for conducting the company's activities;
- the **Guidelines**, mainly targeting those responsible for operations and their control, which define the principles for conducting business;
- the **Procedures**, targeting those involved in the operating processes governed by the Procedures;
- the **Operating Notes**, targeting those operationally involved in the activities or activity phases governed by the document;
- the **Health and Safety Management System** (OHSAS 18001), indicating the procedures adopted for the safeguarding of health and safety at work;
- the **intragroup service contracts**, which regulate the services provided within the Group.

With reference to delegation of powers, the system adopted by the Company envisages:

- delegation of powers by the Board of Directors, through board resolutions, to the Chief Executive Officer in relation to ordinary Company management;
- delegation of signatory powers, powers of representation and negotiations with external parties (normally to persons reporting directly to the Chief Executive Officer);
- delegation of special powers for the performance of a specific, well-defined action, the completion of which invalidates the powers;
- delegation of powers to the managers of internal organisations for the adoption of certain measures with no negotiating powers outside the company.

The current **system of delegated powers** is designed in such a way as to ensure continuous coherence between the organisational structures, in line with the powers assigned and with the company's regulatory system (Policies, Guidelines, Procedures, Operating Notes and Job Descriptions), all of which in compliance (where possible) with the Segregation of Duties. This approach guarantees that the same person is not assigned all responsibility/powers to independently manage an entire sensitive activity. In particular, when delegating powers, the exact limits (including spending limits) are identified within which the powers are exercised, with the delegation of "unlimited" powers prohibited.

Where it is not possible to guarantee the Segregation of Duties the sensitive activity must in any case be subject to alternative compensatory control instruments.

Specific periodic controls are also in place to ensure alignment between the powers and the organisational roles, also in reference to any organisational changes.

With regard to the assignment of organisational responsibilities, the Organisational

Manual – based on the Company's organisation chart – defines the organisational positions, identifies the purpose and, for each company process within which the activities are performed, the related responsibilities.

The Model is therefore made up of the set of rules of conduct and controls established in this document and in the regulatory system, and the system of delegated powers and responsibilities stated above.

## **2.5. Model adoption process**

Although the adoption of the Organisational and Management Model is merely "voluntary" and not mandatory, ERG has decided to set up and adopt its own Model and appoint the Supervisory Committee considering this choice as representing an opportunity to improve its corporate governance. Since the Model is a "document issued by the Management Body", its adoption and any subsequent amendments and supplements will be responsibility of the Board of Directors, or of one of its members, subject to the subsequent approval of the Board itself as the subject which is vested with the original decision-making power in relation to the Model. The Supervisory Committee, as described in the following paragraphs, has the task of updating the Model with the support of any necessary resources, coordinating the analysis and mapping of sensitive areas and activities, ensuring Model operation and compliance.

Within the Model adoption process, the Supervisory Committee shall draw up a draft document, share it with the Internal Control and Risk Committee and then submit the final draft to the Board of Directors for approval and adoption.

## **2.6. Adoption of the Model within the Group**

The Subsidiary Companies set up under Italian law and subject to the management and coordination<sup>5</sup> of ERG are required to carry out specific analyses designed to assess the opportunity of adopting its own specific type of Model. To this end they may possibly request the support of the competent company functions of the Parent Company. In particular, they must consider the possible alternatives to the adoption of Models, referring, where possible, to the existing organisational documentation. The foreign subsidiary companies subject to ERG management and control must adopt the Group's Code of Ethics from the moment the company is formed or on finalisation of an acquisition or merger. In addition, in order to strengthen compliance with international anti-corruption laws, the foreign subsidiary companies must adopt the Anti-corruption Guidelines.

In order to define the criteria to be followed by Subsidiary Companies in adopting and managing Models or other specific measures, the Supervisory Committee of ERG draws up appropriate guidelines, to be shared with the Internal Control and Risk Committee and approved by the Board of Directors. These Guidelines are in any case communicated to the Corporate Bodies of the Subsidiary Companies.

Subsidiaries may refer to the model adopted by ERG, adapting it to their specific environment, sensitive areas and activities, when defining their specific Models.

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<sup>5</sup> The joint ventures and the companies in which the ERG Group companies hold interests are excluded from management and coordination, and consequently independently manage the issues relating to administrative liability of legal entities and, in more general terms, those associated with preventing offences.

### 3. Supervisory Committee

#### 3.1. Identification of the Supervisory Committee

The Decree identifies a "*body of the entity*", with independent authority of action and control, as the body to be in charge of supervising the functioning, effectiveness and observance of the Model as well as continuously and promptly updating it.

The generic concept of "*body of the entity*" justifies the multiple solutions that companies can adopt, considering their dimensions, Corporate Governance rules and the need to achieve a fair balance between costs and benefits.

Confindustria's Guidelines suggest appointing a body, other than the Board of Directors, which has characteristics of autonomy, independence, professionalism and continuity of action, as well as integrity and absence of conflicts of interest.

Internal and external members can be nominated to be part of the collective Supervisory Committee, provided that each of them has the above-mentioned prerequisites. Should members be both internal and external, as is specified in the Confindustria Guidelines, independence must be considered with reference to the Supervisory Committee as a whole and not to the individual members, since complete independence from the organisation is not enforceable for internal ones.

#### 3.2. Appointment and composition of the Supervisory Committee

The Board of Directors has the power to appoint the Supervisory Committee. Considering the previous section provisions, the Board believes that the best solution to ensure compliance with the requirements of the Decree is represented by granting the functions and powers of the Supervisory Committee to a collective body consisting of a Chairman, as an external member, and two internal members (preferably the Chief Audit and another Manager with adequate abilities) identified as meeting the requirements set by Italian Legislative Decree 231/01 and by Confindustria Guidelines.

In particular, the appointed members of the Supervisory Committee shall possess knowledge and/or expertise in the field of financial audit, tax compliance, management control, finance, risk management, internal audit, business organisation and legal.

The Supervisory Committee shall only report to the Board of Directors and has direct access to Top Management, the Board of Statutory Auditors and, both directly and indirectly through the Internal Control and Risk Committee, to the Board of Directors itself. In order to ensure the necessary autonomy of action and independence, the Supervisory Committee has no operational duties.

The members of the Supervisory Committee may not, in carrying out their duties (so called incompatibility causes):

- directly or indirectly engage in economic relations (or be able to influence the independence of opinion, also evaluated in relation to the individual financial condition) with the Company, its subsidiaries, executive directors, the shareholder or group of shareholders controlling the Company, with the exception of any employment relationship;

- directly or indirectly own shares enabling them to exercise control or significant influence over the Company;
- be close relatives of executive directors of the Company or of persons in the situations mentioned in the previous paragraphs;
- been convicted, even with no final judgement, for offences or to have adhered to the same case to the application of the sanction on request (so-called "plea bargaining")
- been declared interdict, disqualified or undergoing bankruptcy proceedings or have been convicted with sentences that entail disqualification from public offices, from the offices of Companies and legal entities, from a profession or an art, as well as the inability to negotiate with the Public Administration.

The Board of Directors verifies that appointed members of the Supervisory Committee fulfil the requirements of integrity, professionalism, autonomy, independence and continuity of action, also taking into account the instructions provided in Confindustria's Guidelines.

### **3.3. Duration of appointment, replacement and removal of Supervisory Committee members**

Members of the Supervisory Committee shall remain in office for a period preferably not exceeding three years and may be re-elected. In case of revocation of the appointing Board of Directors, whatever the reason, Committee members will remain in force until new ones are appointed, or the ones in force are confirmed by the new Board of Directors.

The Board of Directors has the power and responsibility to appoint and remove the Supervisory Committee; it may delegate the legal representatives of the company, as well as acknowledging any new appointments made by the representatives.

Members of the Supervisory Committee cannot be revoked except for good reason, by special resolution of the Board of Directors. Good reason for dismissal shall be intended as the occurrence of any of the following circumstances:

- occurrence of one of the reasons for incompatibility listed in point 3.2;
- repeated breach of their duties;
- violation of the Model;
- unjustified inactivity (e.g. repeated failure to participate in the regular meetings of the Supervisory Committee);
- conviction, even without final judgement, or application of the "plea bargaining" penalty for facts relating to the performance of their duties.

The Board of Directors will decide on a case-by-case basis, taking into consideration the seriousness of the offences involved, suspension or revocation of membership of the SC, even if not convicted of a "231 Offence" with final judgement, but in any event convicted or subjected to personal injunction orders;

- declaration of disqualification, inability and bankruptcy or a judgement involving the ban from holding public offices, managerial offices, a profession or art, and the inability to negotiate with the Public Administration;
- occurrence of a permanent condition of conflict of interest;
- changes in stock ownership resulting in a change of the party holding the majority of votes that can be exercised at ordinary shareholders' meetings.

At the time they are appointed, Supervisory Committee members must issue a declaration stating the absence of the mentioned conditions of incompatibility with reference to their specific activity.

Members of the Supervisory Committee can resign from their role at any time. In this case, they must notify the other members of the Supervisory Committee, the Chairman of the Board of Directors and the Chairman of the Board of Statutory Auditors in writing of the reasons for their resignation. Should one or more members of the Committee resign at the same time, the resignation would not take effect until a new Supervisory Committee member/members is/are appointed by the Board of Directors.

### **3.4. Duties, powers and activities of the Supervisory Committee**

The Supervisory Committee is responsible for carrying out, with autonomous powers of action and control, the following activities:

- supervising the respect of the Code of Ethics;
- verifying the effectiveness and adequacy of the Model, that is the ability of the Model to prevent the occurrence of crimes included in the Decree;
- analysing the business in order to update the mapping of sensitive areas;
- promoting training initiatives for the recipients of the Model, its communication and diffusion in collaboration with the competent functions;
- collecting, processing and storing of all relevant information received in accordance with the Model;
- ensuring that recipients' behaviour is consistent with the provisions of the Model;
- making periodical checks according to an annual plan notified to the Board of Directors;
- making any "out of plan" checks retained necessary, subsequently notifying the Board of Directors;
- coordinating with Company departments in order to acquire information useful for regularly monitoring sensitive activities;
- verifying that corrective actions necessary to make the Model operate are promptly and effectively implemented;
- carrying out internal audits, in order to obtain information necessary for its supervisory activities;
- updating the Model with reference to both regulatory changes and corporate structure, so that the Board of Directors may approve it, this way keeping the document consistent with the purposes described in the Decree.

As part of its checks on Model effectiveness, the Supervisory Committee:

- must take all necessary action in order to adapt behaviour to the provisions of the Model, if it appears that the status of implementation of rules is deficient;
- must act as soon as possible, when Model adaptation is needed;
- can communicate results of its audits in writing to the competent Heads of Departments involved, requesting an improvement action plan;
- must acquire directly from Heads of Departments all the elements needed to promote the application of the disciplinary system.

The Supervisory Committee must inform the Board of Directors and the Board of Statutory Auditors as soon as possible about significant violations of the Model, asking for support from Company functions able to collaborate in audit activities and in defining appropriate actions in order to prevent the recurrence of such circumstances.

Activities carried out by the Supervisory Committee in the exercise of its functions cannot be controlled in any way by any other body or company department, without prejudice to the fact that the Board of Directors is in any case obliged to carry out an inspection in order to evaluate the adequacy of the intervention of the Supervisory Committee.

The Supervisory Committee is granted the following powers and rights in order to perform its assigned duties:

- to access any kind of business document, relevant in relation to his functions;
- to benefit from the assistance of any Company department;
- to request any employee of the Company to promptly provide information, data and / or news necessary for identifying relevant aspects of company activities with reference to the Model and for monitoring its effective implementation;
- to request the Board of Directors and the Board of Statutory Auditors to be convened.

In addition, the Board of Directors must grant the Supervisory Committee with an annual appropriate financial allocation in order to conduct its business, based on a proposal from the Supervisory Committee.

The operations of the Supervisory Committee must be governed by a regulation, approved by the same, in which (at least) the following aspects are regulated: the types of verification and supervisory activities performed by the Committee; activities connected to the updating of Model; training and information activities of the recipients of the Model and Code of Ethics; operation and internal organisation of the Supervisory Committee (summoning of meetings, voting procedures, quorum for voting, minutes of meetings, resources, reporting and disclosure obligations).

With specific reference to the meetings of the Supervisory Committee and respecting the autonomy of the same, at least 4 meetings a year should be held (and reported in minutes).

### **3.5. Reporting to Corporate Bodies**

Despite its autonomy and independence, the Supervisory Committee must inform the Board of Directors:

- at the beginning of each year, about the plan of activities that it intends to carry out;
- with reference to the progress of activities and any motivated change made to the plan;
- immediately, in writing, about any significant issue arising from its activities;
- at least every six months, as part of separate reports, about the performance of its activities;
- about any violation of the Model.

To this end, the Supervisory Committee prepares a half-yearly report for the Internal Control and Risk Committee and the Board of Directors regarding its activities, informing the same

of any violations that it has encountered regarding the Model and/or the Code of Ethics. The Board of Statutory Auditors attends meeting of the Internal Control and Risk Committee.

### **3.6. Reporting duties to the Supervisory Committee**

It is obligatory that recipients submit to the Supervisory Committee any information deemed useful for its activity, including but not limited to:

- results of controls set in place to implement the Model, from which critical points emerge;
- measures and / or information from the judicial police or any other authority from which one can infer investigations concerning the Company;
- internal and external communications relating to facts that could be in connection with cases considered offences;
- requests for legal assistance submitted by company personnel against whom the judiciary is proceeding for cases considered offences;
- results of internal audits from which responsibility for offences emerges;
- news relating to organisational changes;
- updates to the system of delegated powers, also by publishing on the intranet portal;
- significant or atypical operations that may be at risk of offences;
- significant violations of the rules relating to accident prevention and hygiene in the workplace, where accidents and occupational diseases have arisen;
- any communication from Audit Company regarding issues that may indicate deficiencies in the system of internal controls, reprehensible facts, comments on the Company's financial statements;
- exceptions to the application of internal rules in force (guidelines, procedures, etc.).

The Supervisory Committee draws up and approves a specific procedure for the flow of information concerning the sensitive activities identified in the Model.

The Supervisory Committee shall also be granted direct access to any electronic and/or hardcopy filing systems in use that may contain information relevant to his activity, such as:

- corporate archive (minutes of meetings of corporate bodies, statutes, etc.);
- any communications protocols in input and output.

The documentation relevant to the application of the Model must be kept on record, by the involved, for a period of 10 years and shall be subject to "handover" in case of organisational changes.

### **3.7. Communication with the Supervisory Committee**

Communication with the Supervisory Committee must take place through the specific mailbox: [odv@erg.eu](mailto:odv@erg.eu).

The Supervisory Committee checks and ensures that those who report in good faith are not subject to any form of reprisal, discrimination or penalisation, and ensures that the confidentiality of their identity will be protected, without prejudice to the obligations of law and protection of rights of the Company or persons accused falsely and / or in bad faith.

The Supervisory Committee will consider reports received with discretion and responsibility; it can interview the author of the report and / or the person responsible for the presumed violation, documenting in writing reasons for any independent decision not to proceed. Any substantiated anonymous reports (containing all the objective details required to move to the next verification phase) shall be taken into consideration by the Supervisory Committee for further investigation.

## **4. Training and information**

For the purposes of the implementation of the Model, ERG believes that it is necessary to ensure correct knowledge and disclosure of the rules of conduct contained therein, both to its own employees (already in the Company or new recruits) and to the Counterparties who maintain relations, of any kind whatsoever, with the Company.

Training and information activities are managed by the Supervisory Committee which avails itself of other resources allocated in the Company; fulfilment of the training activities is mandatory, and the failure to comply with this obligation, verified by the HR Officer & Security and the Supervisory Committee, is subject to disciplinary measures.

In order to ensure the effective distribution of the Model and information for Company staff in relation to the contents of the Decree and the obligations arising from the implementation thereof:

- a copy of the Model is posted on company notice boards;
- the section of the intranet portal ERGgate dedicated to the Supervisory Committee is regularly updated.

### **4.1. Staff employed in risk areas**

Training of managers, staff vested with powers of representation and non-managerial staff employed in the risk areas of ERG must be based on classroom training provided following updates to the Model and on the basis of specific needs, for example on special interest issues (newly introduced offences, particularly significant sensitive activities, etc.). The training activities must be repeated periodically.

With regard to the Code of Ethics, the completion of a dedicated e-learning course is envisaged, tracked on the system and monitored by ERG's HR Officer & Security. The e-learning on the Code of Ethics must also be repeated periodically.

### **4.2. Newly-recruited staff**

Information and training activity is planned for newly recruited staff, based on:

- the delivery, together with the letter of appointment, of a copy of the Code of Ethics and an information sheet about the Model adopted by the Company;
- provision of an e-learning course on issues pursuant to Italian Legislative Decree 231/01: the crimes sanctioned by Italian Legislative Decree 231/01, the Model, the Supervisory Committee, the main sensitive activities identified in order to prevent the crimes sanctioned by Italian Legislative Decree 231/01, the information flows that must be communicated to the Supervisory Committee;
- provision of an e-learning course dedicated to the Code of Ethics.

E-learning training is tracked by the system and monitored by ERG's HR Officer & Security. After the initial training and information, new recruits follow the training path envisaged for existing company staff.

#### **4.3. Directors and key management**

For Directors and Managers holding strategic responsibility a training activity is foreseen on the issues raised pursuant to Italian Legislative Decree 231/01, with particular reference being made to the sanctioned crimes, the risks connected to the business and judicial precedents.

#### **4.4. Other staff**

Information to staff which does not fall within the categories referred to in the preceding paragraphs shall be effected by the Supervisory Committee through the periodic publication of information documents on the company intranet and other means of internal communication (such as corporate boards and periodical internal communications).

#### **4.5. Information to third parties**

Third parties (suppliers, consultants, third parties in general) shall be informed of the rules of conduct adopted by the Company, through an appropriate circulation of the Code of Ethics and the Model (of which an extract is published) on ERG's Internet portal.

It is also required that the third parties that collaborate with the Company issue a signed statement (even in the form of a specific contractual clause) in which they certify knowledge of the Code of Ethics and the ERG Model and undertake to comply with its prescriptions as well as not engaging in conduct that may lead to an involvement of the Company in the crimes listed in the Decree.

## 5. System of Sanctions

The system identifies the disciplinary sanctions imposed for violations of principles, conduct, and specific control elements required by the Model and Code of Ethics, and applies to employees, directors, statutory auditors, consultants and third parties in general, by way of appropriate disciplinary or contractual / negotiation sanctions.

In particular, the following are always violations liable to disciplinary assessment and consequent application of penalties:

- non-cooperation, when required, with the Supervisory Committee;
- failure to send information and reports provided by the Model and the information flow procedure to the Supervisory Committee when repeated and aimed at obstructing supervisory functions;
- repeated failure to participate to training activities on the model and/or the Code of Ethics, when not properly motivated;
- violation, infringement, circumvention, imperfect or partial application of the rules of conduct contained in this Model and the Code of Ethics.

Should the conduct to be censured be considered a crime pursuant to Italian Legislative Decree 231/01, procedures provided by the disciplinary system will take place regardless of the conduct and outcome of criminal proceedings initiated by the court.

### 5.1. Disciplinary system for Managers

The violation, offence, circumvention, imperfect or partial implementation made by managers of ERG, of any rule of conduct referred to in the Model and/or Code of Ethics constitutes a disciplinary offence punishable by the Chief Human Capital Officer, without prejudice to the guarantee of adversarial system procedures.

Taking into consideration the seriousness of the proven conduct, the Company can apply measures to limit or revoke delegated powers, in addition to changing the employment position of the person subject to disciplinary proceedings, until the moment of dismissal. In any case, sanctions will be defined according to the level of responsibility and autonomy of the Executive, the intentionality of his behaviour and its importance, considering both the relevance of the obligations violated and the effects which can reasonably impact ERG S.p.A. – also with reference to the Decree. When a single behaviour constitutes a multiple violation of the law, subject to different types of sanctions, the most serious applies. It remains still the right for the Company to also apply measures to limit or revoke powers or proxies, in addition to changing the position of the individual subjected to disciplinary proceedings.

### 5.2. Disciplinary system for Employees

The violation, offence, circumvention, imperfect or partial application made by employees of ERG subject to the National Collective Labour Agreement, of any single rule of conduct referred to in the Model and/or Code of Ethics, constitute a punishable disciplinary offence. For the purposes of this disciplinary system, sanctions applicable to employees of ERG not at managerial level - according to procedures provided for in article 7 of the

"Workers' Statute", article 55 of the National Collective Labour Agreement, as well as any applicable special regulation - are those provided by the National Collective Labour Agreement under article 55:

- oral warning;
- written warning;
- suspension from work without pay for up to 8 working days;
- dismissal.

In any event, sanctions will be defined according to the level of responsibility and autonomy of the employee, the intentionality of his behaviour and its importance, considering both the relevance of the obligations violated and the effects which can reasonably impact ERG, also with reference to the Decree. When a single behaviour constitutes a multiple violation of the law, subject to different types of sanctions, the most serious applies. The relapse within three years will automatically result in the immediate application of the more serious sanction.

Under the current system of powers, the task of ascertaining and applying sanctions to employees, lies with the Chief Human Capital Officer, who may rely on the support of the Supervisory Committee which will be asked to give a non-binding opinion. The Chief Human Capital Officer is also responsible for monitoring employees' behaviour with reference to their compliance with the Model, while the Supervisory Committee must monitor the effectiveness of the disciplinary system.

### **5.3. Measures towards Directors and Statutory Auditors**

In case of violation of the Model and/or Code of Ethics perpetrated by Directors and Statutory Auditors, the Supervisory Committee shall inform the Board of Directors and the Board of Statutory Auditors which will take the appropriate actions, according to the level of responsibility of the person involved, the intentionality and seriousness of his conduct and subject to securing the contradictory; in severe cases, failing the relationship of trust with the director/auditor, the removal during the first Shareholders' Meeting may be proposed<sup>6</sup> (even in extraordinary meeting in order to ensure the timely imposition of the sanction).

### **5.4. Actions taken against Counterparties**

Every violation of the rules of the Model that apply to Counterparties and committing any of the crimes indicated in Italian Legislative Decree 231/01 is sanctioned according to the provisions foreseen in the specific contractual clauses the govern the relationship between the Company and the Counterparties.

In any event:

- ascertainment of the counterparty's behaviour must comply with the adversarial system;

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<sup>6</sup> Commission Court of Naples, 26 June 2006 "[...] For administrators who have committed a violation of the Code of Ethics or of the Model, depending on the seriousness of the fact or fault and consequences resulting, the Board of Directors can apply formal written warning, pecuniary penalty, total or partial revocation of any powers. In severe cases, the revocation from the office may be proposed during the meeting [...]".

- the application of the sanction must take into account the seriousness of the contractual breach, i.e. as much the intentionality of obligations violated as the effects to which ERG could be exposed – also with reference to the Decree.

This is without prejudice to any request for compensation should any actual damages be caused to the Company by the behaviour of the Counterparty, as in the case of measures stated in Italian Legislative Decree no. 231/2001 imposed on the offender by the court.

The company asks its Employees, Directors and Counterparties in general to report any violations of the Code of Ethics and/or Model 231 and welcomes their contribution, even if the person issuing the report has participated in the violation.

## 6. Special Section

### 6.1 Introduction

The Company has analysed business processes to identify areas at risk of crime perpetration and to verify the adequacy of its Model in relation to issues covered by the Decree.

Control protocols were established with reference to identified risk areas, after evaluating existing controls and identifying action plans necessary to remedy identified deficiencies. The purpose of the special section is to regulate sensitive activities and introduce appropriate controls, in order to ensure the effectiveness of the Model adopted by the Company.

The special section is addressed to all the Company Staff who, regardless of the role exercised in the organisation, could become liable, in relation to the assigned tasks, for the cases considered to be offences. The Heads of Departments of each organisational unit must pay close attention to the diffusion of the provisions contained in this special section in areas of activity under their responsibility.

Any violation of rules included in this special section will involve the imposition of disciplinary sanctions, in accordance with provisions of the law, existing contractual provisions and the disciplinary system adopted by the Company

### 6.2 Special section structure

The special part identifies and describes the sensitive activities carried out by the Company either directly or through Counterparties.

For each sensitive activity the following elements are identified:

- Process
- Scope;
- Regulation;
- Code of conduct;
- Segregation of duties;
- Proxies and mandates;
- Traceability;
- Crime risks to which the business is potentially exposed.

In relation to the crimes to which the Company, by virtue of their activities carried out, is potentially exposed, the following are the sections of the offence (defined as the set of the offences related to the same crime area) provided by Legislative Decree 231/01 evaluated as relevant:

- Crimes against the Public Administration (art. 24 and 25);
- Computer crimes and illicit data processing (art. 24-bis);
- Corporate crimes (art. 25-ter);
- Crimes committed for terrorist purposes or in order to subvert the democratic order (art. 25-quater);
- Crimes by organised crime (art. 24-ter);

- Offences against individuals (art. 25-quinquies);
- Market abuse (art. 25-sexies);
- Manslaughter or serious or very serious bodily harm committed through violations of the regulations governing the protection of health and safety at the workplace (art. 25-septies);
- Receiving, recycling or using illicitly gained cash, goods or benefits as well as anti-money laundering (art. 25-octies);
- Offences involving violation of copyright (art. 25-novies);
- Incitement to not bear witness or to make false statements to the judicial authorities (art. 25-decies);
- Environmental crimes (art. 25-undecies);
- Employment of third country individuals with irregular permits of stay (art. 25-duodecies);
- Transnational crimes as defined by art. 3 of Law no. 146 of 16 March 2006.

Some offences included in the Decree (in particular, crimes related to forging money and public credit cards, duty stamps and in instruments and signs of recognition (art. 25 bis), crimes against industry and trade (art. 25 bis. 1), crimes resulting from mutilation of female genital organs (infibulation) (art. 25 quater1)) are not considered in the previous list of crime risks to which the sensitive activities identified are exposed, because the related risk has been assessed as abstract and not feasible in relation to the Company.

### 6.3 General principles of control

General principles at the base of tools and methodologies used to define control protocols listed in this special section can be summarised as follows:

- **Compliance with the Code of Ethics:** all sensitive activities must be carried out in accordance with the principles of conduct set out in the Code of Ethics adopted by the Company.
- **Segregation of duties:** business processes must comply with the principle of separation of duties, stating that the authorisation of an operation must be under the responsibility of someone other than the person who performs or supervises that operation. Segregation of duties should be guaranteed by the intervention, within the same process, of more than one person; it can be implemented by using computer systems that allow the execution of certain operations only by specifically identified and authorised persons.
- **Assignment of powers:** Authorisation and signing powers must be: i) consistent with organisational and managerial responsibilities; ii) clearly defined and known within the Company. Business roles assigned with the power to commit the Company in certain operations must be defined by specifying the limits and the nature of such authority. The attribution of powers for a determined type of deed must respect any specific requirements required by law for the carrying out of that deed.
- **Transparency and process traceability:** each activity relevant to the Decree must be verifiable, documented, consistent and appropriate. Proper storage of data and relevant information must be guaranteed, by way of information systems and / or paper support.

- **Appropriateness of internal regulations:** all the Company business rules must be consistent with operations carried out and the level of organisational complexity, and capable of ensuring the necessary checks to prevent the committing of offences specified in the Decree.
- **Staff training:** specific staff training plans must be envisaged, with particular reference to those operating in the sensitive areas listed below.
- **Staff Rotation:** specific plans must be introduced to rotate staff operating in sensitive areas, taking care to maintain continuity, coherence with guidelines and the necessary expertise of the company departments.

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