SPECIAL PART “A”

CRIMINAL OFFENCES OF RELEVANCE TO CESAB CARRELLI ELVATORI S.P.A.

CONTENTS

Legend
c.c. = Civil Code
c.p. = Criminal Code
P.A. = Public Administration
TUF = Integral text of financial provisions

1. FOREWORD

Below is a brief description of the crimes envisaged in Legislative Decree 231/2001, which CESAB currently deems relevant to its activities, further to the assessments made, and the perpetration of which by the Parties bound by the Model (i.e. employees, heads of function, managers, directors, external contractors and partners, etc.) could result in the administrative liability of CESAB by virtue of and in accordance with the said Decree 231/2001 and subsequent amendments and additions thereto.

2. CRIMES AGAINST THE PUBLIC ADMINISTRATION (Arts. 24 and 25 of Legislative Decree 231/2001)

2.1 Public official and public service agent

Firstly, it must be explained that the concept of Public Administration in relation to the criminal code is different and broader than its sense in common parlance. In fact, crimes against the P.A. assume significance if committed by or against "public officials" and "public service agents", i.e. parties who may not belong to the Public Administration in the subjective sense (e.g. a notary can be a public official even though he does not belong to the Public Administration).

More specifically, art. 357 c.p. defines as "public officials**"** anyone who exercises a "public legislative, judicial or administrative function", and specifies that "administrative functions are deemed public if they are governed by provisions of public law and by authoritative acts and characterised by the formation and manifestation of the will of the public administration or by their performance by virtue of powers of authorisation and certification".
The criminal code therefore envisages three types of public function: legislative, judicial and administrative.
The first two (legislative and judicial) are not expressly defined by art. 357 c.p. because they typically have characteristics which make them immediately identifiable; i.e.:

- a legislative function is an activity performed by public bodies (Parliament, Regional Authorities and Government) which, according to the Italian Constitution, have the power to pass acts having the value of law;
- a judicial function is an activity performed by the judicial bodies (civil, criminal and administrative) and their auxiliaries (registrar, secretary, expert, interpreter, etc.), for the purposes of applying the law to the material case.

An administrative function, as defined by paragraph two of art. 357 is an activity characterised by the fact that it is governed by provisions of public law or by authoritative acts of the P.A. (thus differentiating it from the activities of a private nature, which are governed by instruments of private law, such as contracts) and by the fact that it is accompanied by investiture with at least one of the following three powers:

- the power to pass resolutions, i.e. the power to take part in the formation and manifestation of the will of the P.A. (e.g.: mayor or councillor of a municipality, members of committees formed for the purposes of judging competitive tenders, managers of public entities and other parties which, in the course of their duties, form the will of the Public Administration);

- authoritative power, i.e. the power which enables the P.A. to achieve its objectives by compulsory orders, which citizens are obliged to obey. It constitutes an expression of power of public authority, which includes coercive powers (arrest, search etc.), and powers of hierarchical supremacy within public bodies; this authoritative power implies the exercise of power which gives expression to the supremacy of the PA vis-à-vis private citizens (e.g. law enforcement agents, public inspectors, functionaries of supervisory bodies - Bank of Italy, Consob - etc.);
- certifying power, i.e. the power to draft documentation to which the judicial authority attributes privileged probatory validity (e.g. notaries), while at the same time attributing to the issuer of such certification the power to certify a fact by way of proof, unless disputed and deemed false.

Therefore, even a party not belonging to the P.A. may be considered to be a Public Official if in practice he or she exercises a legislative, judicial or administrative function as described above

Art. 358 c.p. defines as “public service agents anyone who, in any capacity, provides a public service”, the latter being defined as “an activity regulated in the same forms as a public function, but without the powers typically associated with the latter, and excluding the performance of simple duties of order and the provision of purely material service”.
The expression "in any capacity" means that a party might exercise a public function even without formal or proper investiture (a de facto public service agent). In this case too, the relationship between the P.A. and the party performing the service is not relevant.
The term "Public Service" refers to an activity governed by provision of public law and authoritative acts, but characterised by the absence of authoritative and certifying powers.

Public services, therefore, like public functions, are activities governed by provisions of public law or authoritative acts, but which are not associated with the typical powers of public functions.
The following are examples of public service agents: the employees of supervisory authorities who do not play a part in shaping the will of the authority and do not have authoritative powers; the employees of entities which perform public services but whose status is in fact private in nature; the employees of public departments, etc.

2.2 Corruption

Art. 318 c.p.: Corruption by an act of office
A public official who, to perform an act of office, receives directly or via a third party, in cash or kind, a benefit not due to him/her, or who accepts a promise thereof, is punishable with a custodial sentence of six months to three years.
If the public official receives the benefit for an act of office which he/she has already performed, he/she is punishable with a custodial sentence of up to one year.

Art. 319 c.p.: Corruption by an act contrary to the duties of office
A public official who, to omit or delay or for having already omitted or delayed an act of office, or to perform or for having already performed an act contrary to the duties of his office, receives directly or via a third party a sum of money or other benefit, or who accepts a promise thereof, is punishable with a custodial sentence of two to five years.

Art. 319 bis c.p.: Aggravating circumstances

The penalty is increased if the object of the fact set out in article 319 is the conferment of public posts or salaries or pensions, or the signing of contracts involving the administration to which the public official belongs.

Art. 319 ter c.p.: Corruption in judicial acts
If the facts indicated in articles 318 and 319 are committed to favour or damage a party in a civil, criminal or administrative trial, the penalty of imprisonment for three to eight years applies.
If the fact results in wrongful conviction attracting a prison sentence of not more than five years, the penalty is a term of imprisonment of four to 12 years; if the fact results in wrongful conviction attracting a prison sentence of more than five years or life, the penalty is a term of imprisonment of six to 20 years;

Art. 320 c.p.: Corruption of a public servant
The provisions of article 319 also apply to public servants; the provisions of article 318 also apply to public service agents, if the latter are also public employees.
In any event, the penalties are reduced by not more than a third.

Art. 321 c.p.: Penalties for the corruptor
The penalties established in paragraph one of article 318, in article 319, in article 319 bis and in article 320 in relation to the aforementioned hypotheses of articles 318 and 319, also apply to any person who gives or promises to give a public official or a public service agent money or benefits in kind.

Art. 322 c.p.: Solicitation of corruption
Any person who offers or promises undue money or benefits in kind to a public official or a public service agent who is also a public employee, with a view to inducing him/her to perform an act of office, is subject, in the event that the offer or promise is not accepted, to the penalty established in paragraph one of article 318, reduced by one third.
If the offer or promise is made with a view to inducing a public official or public service agent to omit or delay an act of office, or perform an act contrary to the duties of his office, the person convicted is subject, in the event that the offer or promise is not accepted, to the penalty established in art. 319, reduced by one third.
The penalty established in paragraph one applies to public officials or public service agents who are also public employees, who solicit a promise or gift of money or benefits in kind from a private citizen for the purposes indicated in article 318.
The penalty established in paragraph two applies to public officials or public service agents, who solicit a promise or gift of money or benefits in kind from a private citizen for the purposes indicated in article 319.

Art. 322 bis c.p.: Peculation, extortion, corruption and solicitation of corruption vis-à-vis members of institutions of the European Community and functionaries of the European Community and foreign States
The provisions of articles 314 and 316*, 317 to 320 and 322, paragraph three and four, also apply:*
1) to members of the Commission of the European Community, the European Parliament, and the Court of Justice and Court of Auditors of the European Community;
2) to functionaries and agents employed under contract in accordance with the statute of functionaries of the European Community or the regime applicable to agents of the European Community;

3) to persons ordered by Member States or any public or private entity at the European Community, who exercise equivalent functions to those of functions or agents of the European Community;
4) to members and staff of entities formed on the basis of the Treaties which instituted the European Community;
5) to any person who, within the framework of other Member States of the European Community, performs equivalent functions or activities to those of public officials and public service agents.
The provisions of articles 321 and 322, paragraph one and two, apply even if the money or benefit in kind is given, offered or promised:
1) to the persons indicated in paragraph one of this article;
2) to persons who exercise equivalent functions or activities to those of public officials and public service agents within the framework of other foreign States or international public organisations, if the act is committed with a view to obtaining for themselves or others an undue advantage in international economic operations.
The persons indicated in paragraph one are equated to public officials if they exercise equivalent powers, and to public service agents in other cases.

Corruption consists of an agreement between a private individual and a public official or public service agent under which the former gives or promises the latter a sum of money or other benefit in kind before or after the performance of an act on the part of the public functionary, which may or may not be in breach of the duties of his office.
Corruption is by definition a bilateral crime, insofar as its existence is dependent on an act both on the part of the public functionary, who accepts the payment or promise of benefit, and on the part of the private individual, who gives or promises the payment or benefit.

As a general rule, but with certain exceptions, the criminal code punishes both the public functionary and the private individual.

The criminal code envisages various forms of corruption:

- proper or improper, depending on whether the object of the corrupt agreement is an act in breach of the duties of office or an act in compliance with the duties of office (improper corruption is punished less severely than proper corruption);
- prior or subsequent, according to whether the corrupt agreement precedes or follows the performance of the act of office;
- active or passive, according to whether reference is made to the conduct of the public official (passive) or that of the private individual (active).

In the case of prior corruption, the crime is deemed to have been committed as soon as a sum on money or other benefit has been given or even simply promised to the public official, without any need for the respective act to have taken place (the latter simply constitutes the end to which the promise or payment was made).

Furthermore, for the offence of instigating corruption to be deemed to have been committed, the offer or promise alone is sufficient, provided that it is made in adequate seriousness and is capable of psychologically arousing the public official or public service agent in such a way as to give rise to the risk that the latter might accept the offer or promise.

The object of the promise or payment, moreover, may consist either of a sum of money paid to the public functionary, whether directly, indirectly or via an intermediary, or a benefit of any kind, even

of a non-capital nature, in favour of the public functionary or parties connected with him (e.g. the award of a bogus consulting assignment to a member of the public functionary's family, or the appointment of the family member as an employee).

Lastly, art. 322 bis c.p. governs the crimes of peculation, extortion, corruption and solicitation of corruption vis-à-vis members of institutions of the European Community and functionaries of the European Community and foreign States.

2.3 Extortion

Art. 317 c.p.: Extortion
A public official or public service agent who, in abuse of his office or powers, compels or induces someone to give or promise unduly, to him or to a third party, money or benefits in kind, is punished with a term of imprisonment of between four and 12 years.

Extortion is deemed to have taken place if a public official or public service agent uses hi subjective qualification or the powers connected with it, as an instrument to compel or induce someone unduly to make a payment or promise to render services.
Like corruption, extortion is a bilateral crime, insofar as it requires the conduct of two distinct parties, the extorter and the extorted; unlike corruption, however, only the extorter is subject to a penalty, insofar as the extorted is the victim of the crime.

A private individual may participate in the perpetration of the crime in the event that, by virtue of his conduct, he materially contributes with the public official to coercing, by threats or other fraudulent means, the will of the passive party to induce the latter to make the undue promise, or contributes morally with the public official by means of any activity or behaviour which, by acting on the will of the latter gives rise to or reinforces the illicit intent (e.g. in the course of a tax inspection by the Revenue Guard Corps, the party, who may be an employee, can adopt a behaviour which, in conjunction with the coercion instigated by the public official or in agreement with the latter, contributes to the perpetration of the crime by inducing the passive party to make the undue payment or promise).

2.4 Deception to the detriment of the State or other public body

Art. 640 c.p.: Deception
Anyone who, by inducing someone into error through artifice or false representation, procures for himself or others an unjust profit to the detriment of another, is punished with a term of imprisonment of between six months and three years and with a fine ranging from 51 euro to 1,032 euro.
The penalty is a prison term of one to five years and a fine of 309 to 1,549 euro:
1) if the act is committed to the detriment of the State or of another public body or with the pretext of exonerating someone from military service;
2) if the act is committed by inducing in the victim the fear of an imaginary danger or the erroneous belief of being required to carry out the order of an Authority.
The offence is punishable in response to the filing of a complaint by the victim, unless any of the circumstances envisaged in the previous point or other aggravating circumstances exist.

For the purposes of the application of Legislative Decree 231/2001, the crime of deception assumes relevance only if the passive party to the artifice and false representation involved in the conduct is the State or other public body (art. 640, para. 2, No.1).

The crime of deception to the detriment of the State or of another public body is deemed to have been committed if, by fraudulently inducing someone into error through artifice or false representation, the active party procures for himself or others an unjust profit, resulting in a loss to the State or other public body.
An example is the submission to the fiscal authorities of documentation containing false information for the purpose of obtaining an undue tax rebate; or, more generally, the submission to social security agencies or local administrative authorities, communications containing false data with the intention of obtaining any type of advantage or facilitation for the Company.

2.5 IT fraud

Art. 640-*ter* c.p.: IT fraud
Anyone who, by altering in any way the operation of an IT or ICT system or by acting without entitlement by any means on data, information or programmes contained in or pertaining to an IT or ICT system, procures for himself or others an unjust profit to the detriment of another, is punished with a term of imprisonment of between six months and three years and with a fine ranging from 100,000 to two million Italian lire.
The penalty rises to a prison term of between one and five years and a fine ranging from 600,000 to three million Italian lire if one of the circumstances envisaged in point one, paragraph two of article 640 applies, i.e. if the act is committed with abuse of the office of system operator.
The offence is punishable upon complaint of the victim, unless any of the circumstances envisaged in paragraph two or other aggravating circumstances applies.

For the purposes of the application of Legislative Decree 231/2001, the crime of IT fraud assumes relevance only in the event that the alteration of the IT or ICT system or data contained therein is perpetrated to the detriment of the State or other public body.

The fraudulent activity of the agent does not affect the person, who has not been induced into error, but the IT system belonging to the said person, by virtue of its manipulation.

The acts punished under the legislation include alteration of the computer records of the Public Administration with a view to making a given entity appear to meet essential conditions for the participation in competitive bidding or with a view to the subsequent production of documents certifying non-existent facts and circumstances, or with a view to changing fiscal and/or social security data of interest to the company (e.g. form 770) already transmitted to the administration.

2.6 Crimes relating to the award of public benefits

Art. 316-bis.: Embezzlement to the detriment of the State
Anyone outside the public administration, who, having obtained from the State or other public body or from the European Community contributions, subsidies or loans allocated with a view to promoting initiatives aimed at the construction of works or performance of activities in the public interest, fails to use them for the agreed purposes, is punished with a term of imprisonment of between six months and four years.

Art. 316-ter c.p.: Undue receipt of benefits to the detriment of the State
Unless the act constitutes the crime envisaged inarticle 640-bis, anyone who, by means of the use or presentation of false declarations or false documents or documents certifying untrue facts, or by the omission of due information, unduly obtains for himself or others, contributions, loans, facilitated mortgages or other benefits of similar type, regardless of their denomination, granted or issued by the State, other public bodies or the European Community is punished with a term of imprisonment of between six months and three years.
If the sum unduly received is less than or equal to seven million, seven hundred and forty-five thousand Italian lire, only an administrative sanction applies, involving the payment of a sum of money of between ten and fifty million lire. The said sum may not, however, exceed three times the benefit received.

Art. 640, para. 2, bis c.p.: Aggravated deception for the purpose of obtaining public benefits
"*The penalty is a term of imprisonment of between one and six years and proceedings are taken automatically if the act defined in article 640*[1] *relates to contributions, loans, facilitated mortgages or other similar benefits, regardless of their denomination, granted or issued by the State, other public bodies or the European Community".*

All activities relating to the obtainment of contributions, loans, facilitated mortgages or other similar benefits granted by the State, other public bodies or the European Community, and the management thereof by the Company are considered to be exposed to the risk of crime.

Specifically:

- The crime established in art. 316 bis presupposes that the Entity has previously obtained, duly and properly, from the state or other public body or from the European Community contributions, subsidies or loans which have pre-determined public purpose expressed in the act of concession. All of these benefits are characterised by the fact that they are granted at more favourable conditions than those available on the market. Contributions are portions of costs granted for the purpose of undertaking activities and initiatives, and can take the form of capital expenditure (non-repayable disbursements assigned to parties meeting specific conditions) and/or interest relief (the State of public body undertakes to pay all or part of the interest due in respect of credit transactions). Subsidies are non-repayable pecuniary grants disbursed periodically or by way of a lump sum. Loans are trading acts under which sums of money are granted to a party at favourable conditions. Such sums must be repaid on a medium and/or long-term basis, and the State or other public body pays all or part of the interest on the loan. The beneficiary of a subsidy is deemed to have committed a crime if he does not correctly administer the sum received, i.e. if he fails to achieve the public end established in the administrative provision under which the sum was granted. Even partial diversion from the established purpose of the sums obtained constitutes a crime, regardless of whether the planned activity has been carried out or not.

- The crime established in art. 316 ter c.p., alongside the similar and more serious crime established in art. 640 bis c.p., is an instrument for combating fraud committed in the preliminary phase leading up to the grant of public funds. This crime is deemed to have

[1] Art. 640 c.p. (*Deception*) punishes "*anyone who, by inducing someone into error through artifice or false representation, procures for himself or others an unjust profit to the detriment of another*".

been committed if the contribution is received further to the use or presentation of false declarations or documents or due to the omission of required information. With respect to the hypothesis envisaged in art. 640 bis c.p., the crime of undue receipt of benefits does not depend on the induction into error of the granting body or on the cause of loss or damage to the latter: by virtue of this, the intention of the legislator was to combat the declaration of false information or the omission of information which enabled the agent to obtain the loan.

- The crime established in art. 640 bis c.p., after the recent clarification of the United Sections of the Supreme Court which put an end to a jurisprudential conflict, can be classified as an aggravating circumstance of the deception envisaged in art. 640 c.p.; it differs by virtue of the specific object of the illicit activity: contributions, loans, facilitated mortgages or other public benefits. The conduct established in art. 640 bis c.p. contains a *quid pluris* with respect to the crime established in art. 316 ter c.p.: the crime is deemed to have been committed if the false declaration or omission of information, in view of the practical procedures by and context in which they are made, are denoted by a particular degree of fraud and artifice vis-à-vis the granting body. The fraudulent activity must lead to a series of events: the induction of others into error, the issue of an act of disposal of capital by the defrauded party and the obtainment of unjust profit by the agent or a third party by misleading another party.

3. CORPORATE CRIMES (Art. 25 ter Legislative Decree 231/2001)

3.1 Crimes of false corporate communications and false corporate communications to the detriment of shareholders or creditors

Art. 2621 c.c.: False corporate communications
Except in the cases envisaged in article 2622, directors, managing directors and managers in charge of drafting company accounting documents, statutory auditors and liquidators, who, with the intention of misleading shareholders or the public and for the purpose of procuring for themselves or others unjust profit, in the financial statements, reports or other corporate communications aimed at shareholders or the public and required by law, present material facts which do not correspond to the truth, even if the object of assessments, or who omit to communicate information required by the law about the economic, capital and financial situation of the company or group to which the company belongs, in such a way as to lead the addressees into error with regard to the said situation, are punished by arrest of up to one year and six months. Liability to prosecution also extends to the case in which the information relates to assets held or administered by the company on behalf of third parties. Liability to prosecution does not apply if the false declarations or omissions do not significantly alter the representation of the economic, capital or financial situation of the company or group to which it belongs. Liability to prosecution does not apply in any event if the false declarations or omissions bring about a change in operating profit for the year before tax of not more than 5%, or a change in net equity of not more than one per cent. The fact is not punishable in any event if it is a consequence of estimated valuations which, considered singly, do not differ from the correct value by more than 10 per cent. In the cases envisaged in paragraphs three and four, the parties defined in paragraph one are subject to an administrative sanction of between 10 and 100 quotas and a ban on holding directorial office in legal entities and companies of between six months and three years, on holding the office of director, auditor, liquidator, managing director and manager in charge of drafting company accounting documents, and from any other office invested with powers to represent the legal entity or company.

Art. 2622 c.c.: False corporate communications to the detriment of shareholders or creditors
The directors, managing directors and managers in charge of drafting company accounting documents, statutory auditors and liquidators, who, with the intention of misleading shareholders or the public and for the purpose of procuring for themselves or others unjust profit, in the financial statements, reports or other corporate communications aimed at shareholders or the public and required by law, by presenting material facts which do not correspond to the truth, even if the object of assessments, or who omit to communicate information required by the law about the economic, capital and financial situation of the company or group to which the company belongs, in such a way as to lead the addressees into error with regard to the said situation, inflict a capital loss on shareholders or creditors, are punished, upon filing of a complaint by the offended party, with a term of imprisonment of between six months and three years. Proceedings are taken in response to the filing of a complaint even if the fact encompasses another offence, even if aggravated to the detriment of the capital of parties other than shareholders and creditors, unless it was committed to the detriment of the State, other public bodies or the European Community. In the case of companies subject to the orders of part IV, heading III, section II, of legislative Decree No. 58 of 24 February 1998, the penalty for the acts envisaged in paragraph one is between one and four years, and the offence is automatically subject proceedings. The penalty is of between two and six years if, in the hypothesis illustrated in paragraph three, the act causes serious harm to savers. Harm is considered serious if it has affected a number of savers exceeding 0.1 per thousand of the population on the basis of the last ISTAT census or if it has destroyed or reduced

the value of securities by a total amount exceeding 0.1 per thousand of gross domestic product. Liability to prosecution for the acts envisaged in paragraphs one and three also extends to cases in which the information pertains to assets held or administered by the company on behalf of third parties. Liability to prosecution for the acts envisaged in paragraphs one and three does not apply if the false declarations or omissions do not significantly alter the representation of the economic, capital or financial situation of the company or group to which it belongs. Liability to prosecution does not apply in any event if the false declarations or omissions bring about a change in operating profit for the year before tax of not more than 5%, or a change in net equity of not more than one per cent. The fact is not punishable in any event if it is a consequence of estimated valuations which, considered singly, do not differ from the correct value by more than 10 per cent. In the cases envisaged in paragraphs seven and eight, the parties defined in paragraph one are subject to an administrative sanction of between 10 and 100 quotas and a ban on holding directorial office in legal entities and companies of between six months and three years, on holding the office of director, auditor, liquidator, managing director and manager in charge of drafting company accounting documents, and from any other office invested with powers to represent the legal entity or company.

The material objects of the crime are principally the draft financial statements and reports on operations, although the illicit conduct can also relate to other company communications envisaged by the law and aimed at shareholders or the public (such as documents to be published pursuant to articles 2501 *ter*-2504 *novies* c.c. in the event of merger or division, or, in the case of advance payments on dividends, pursuant to art. 2433 *bis* c.c). The scope of the crime does not extend, however, to inter-body communications (between different bodies of the company) and communications to a single addressee.

The presentation of facts not corresponding to the truth or the concealment of information can be achieved not only by materially altering the accounting data (e.g. in the case of reporting in the financial statements services never rendered or rendered at a lower value than their real value), but also through artificial valuation of assets or securities included in the said communications: consider, for example valuations relating to material or financial fixed assets forming part of the Company's equity, made according to criteria other than those indicated in the report or those established by the law, or on the basis of unreasonable parameters, and in any event in a manner likely to mislead shareholders or creditors.
Thus, in particular, the crime can be committed in the interest of the Company in the event of, for example, the creation of concealed, non-liquid reserves obtained by means of the undervaluation of asset entries or the overvaluation of passive entries in order to favour the self-financing of the corporate enterprise or cover any losses incurred in the financial year.
Further examples include closed triangulation (when a company transfers securities to another company, which in turn transfers them to a third company) and corporate constructions (a company constitutes or acquires the total equity of another, and the latter performs the same operation with a third company until the chain ends, normally with a company with a registered office in a tax haven).
There are also many economic and financial instruments which can be used to transfer money from one company to another: over-invoicing or false invoicing (e.g. for bogus consulting or the bogus supply of goods or services), receivable loans, instrumental use of derivative products, signing of *futures* contracts on securities, indices, signing of options on share or securities, etc.

The crimes can also be deemed to have been committed in cases in which the information pertains to assets held or administered by the company on behalf of third parties.

Law No. 262 of 2005 (savings law) introduced an aggravating circumstance for cases in which the false declaration causes harm to a significant number of savers persuaded to make investment decisions on the basis of the information set down in company statements and reports.

Lastly, it should be noted that, whereas in the crime established in art. 2621 c.c. no specific damage to the capital interests of certain parties is required, the more serious crime established in art. 2622 c.c. requires, to be deemed to have been committed, that the false communication causes capital damage to the company, shareholders or public to which at which it is aimed.

3.2 Falsification in the reports or communications of audit companies

Art. 2624 c.c.: Falsification in the reports or communications of audit companies
Persons in charge of auditing, who, with a view to obtaining for themselves or others unjust profit, in reports or other communications, in awareness of the falsification and with the intention misleading the addressees of the communications, make false declaration or conceal information relating to the economic, capital and financial situation of the company, entity or party subject to auditing, in such a way as to induce into error the addressees of the communications regarding the said situations, are punished, if their conduct has not occasioned a capital loss, with arrest of up to one year.
If the conduct defined in paragraph one has occasioned a capital loss for the addressees of the communications, the penalty is a term of imprisonment of between one and four years.

3.3 Preventing the performance of checks

Art. 2625 c.c.: Preventing the performance of checks
Directors who, by concealing documents or by means of other artifices, prevent or obstruct the performance of the activities of control or auditing legally attributed to the shareholders, to other company bodies or to auditing companies, are punished with a monetary administrative sanction of up to 10,329 euro. If such conduct has caused a loss to the shareholders, a prison term of up to one years is applicable and proceedings are taken in response to the filing of a complaint. The penalty is doubled in the case of companies with securities listed on regulated markets in Italy or other European Union Member States or distributed among the public to a significant degree pursuant to article 116 of the integral text of Legislative Decree No. 58 of 24 February 1998.

For the purposes of this regulation, consideration is given to the activities implemented by members of the Board of Directors, and by employees who assist the latter, which may influence the initiatives and activities of control falling to the shareholders, other company bodies or auditing companies.
More specifically, the activities in question are those which influence:

- the initiatives of control of shareholders established by the civil code and other legislative acts, such as art. 2422 c.c., for example, which establishes the right of shareholders to inspect the company registers;
- control activities of the Board of Statutory Auditors, envisaged by the civil code and other legislative provisions, such as articles 2403 and 2403-bis, for example, which establish the power of members of the Board of Statutory Auditors to conduct checks and inspections and request of the Directors information on company operations or specific matters;
- the activities of the auditing companies, envisaged by the relevant laws, such as, for example, those governed by articles 2409 from bis to septies c.c.

The crime - which punishes offences involving the obstruction of control activities assigned to shareholders, appointed company bodies and audit companies - is deemed to have been committed not only when, through the concealment of documents or other artifices, the aforementioned activities have been prevented, but also when they have merely been obstructed.
For such acts to constitute the crime, it is necessary for them also to have caused a loss to shareholders.

3.4 Undue return of conferments

Art. 2626 c.c.: Undue return of conferments
Directors who, outside the scope of legitimate reductions in share capital, return or simulate the return of conferments to shareholders or exonerate them of the duty to make them, are punished with a term of imprisonment of up to one year.

With regard to the activity connected with the return of conferments, this can assume an illicit nature when undertaken outside the scope of cases of legitimate reduction of company capital (art. 2306 c.c.) or reduction of excess capital (art. 2445 c.c.).
The act con be performed openly, i.e. by drafting a resolution showing that the sums are unduly allocated for return outside the scope of cases envisaged by the law, or in simulated form, e.g. by setting up bogus commercial operations with a shareholder, involving the transfer to the latter of sums drawn from the company capital. In this case, the payment of the sums to the shareholder is formally made on the basis of the bogus transaction (e.g. the simulated purchase of assets from the shareholder), but in reality is an undue return of conferments.
Consideration is given to all the acts undertaken by the directors or by the functions called upon to assist the latter in relation to the return of conferments to shareholders or releasing them from the duty to make them.

3.5 Illegal distribution of profits and reserves

Art. 2627 c.c.: Illegal distribution of profits and reserves
Unless the fact constitutes a more serious crime, directors who distribute profits or advances on profits not actually earned or which by law should be allocated to reserves, or who distribute reserves, whether or not made up of profits, which may not by law be distributed, are punished with arrest of up to one year. The crime is extinguished if such profits are returned or the reserves are re-constituted before the expiry of the term envisaged for approval of the financial statements.

The crime is deemed to have been committed if profits or advances on profits not actually earned or which by law should be allocated to reserves, are distributed, or if reserves, whether or not made up of profits, which may not by law be distributed, are distributed.
With regard to profits, the term is intended in its broadest sense, including any increase in net equity with respect to the nominal value of the share capital, even if independent (other than operating profit) of the performance of economic activity.
The monies in question must, furthermore, be profits or advances on profits which have not actually been earned (and are therefore bogus), or which cannot be distributed because they are allocated by law to the legal reserve, such as, for example, those imposed upon companies by articles 2423 comma 4, 2426, No. 4, 2428 c.c.
Penalties also apply to the distribution of reserves, even if not constituted with unavailable profits.

In this regard, it must be noted the act of extinguishing the crime by returning the profits or reconstituting the reserves before the expiry of the term envisaged for approval of the financial statements extinguishes only the liability of the of the natural person who committed the crime, but not that of the company.

3.6 Illicit operations relating to shares or equity investments of the parent company

Art. 2628 c.c.: Illicit operations relating to shares or equity investments of the parent company
Directors who, outside the scope of the cases permitted by the law, purchase or subscribe shares or equity investments, thus damaging the integrity of the share capital or the reserves which are not distributable by law, are punished with a prison term of up to one year. The same penalty applies to directors who, outside the scope of the cases permitted by the law, purchase or subscribe shares or equity investments issued by the parent company, thus damaging the integrity of the share capital or the reserves which are not distributable by law. If the share capital or reserves are reconstituted before the expiry of the term envisaged for approval of the financial statements for the year in which the act was committed, the crime is deemed extinguished.

In the case in point, acts of illicit purchase or subscription of shares in the company or parent company by directors attract sanctions only if they damage the integrity of the share capital or non-distributable reserves.

It must be noted that the act of extinguishing the crime by reconstituting the share capital before the expiry of the term envisaged for approval of the financial statements extinguishes only the liability of the natural person who committed the crime, but not that of the company.

3.7 Operations prejudicial to creditors

Art. 2629 c.c.: Operations prejudicial to creditors
Directors who, in breach of the legal provisions protecting creditors, undertake reductions in company capital or mergers with other companies or split up existing companies, causing damage to creditors, are punished, in response to the filing of a complaint by the offended party, with a term on imprisonment of between six months and three years. Payment of compensation for the loss before conviction extinguishes the crime.

The regulation punishes directors who undertake reductions in company capital or mergers or split up existing companies, by means which cause damage to creditors.
With reference to operations of share capital reduction, the following are examples of relevant conduct from a criminal point of view: execution of a resolution to reduce share capital despite the opposition of the company's creditors or in the absence of a resolution from the Court.
With reference to mergers and splitting up of companies, examples include the execution of the said operations before the term defined in art. 2503 paragraph 1, where the exceptions envisaged therein do not apply or in the event of opposition and without authorisation from the Court.

3.8 Failure to disclose conflict of interest

Art. 2629-bis c.c.: Failure to disclose conflict of interest
Any director or member of the board of management of a company with securities listed on regulated markets in Italy or other European Union Member States or distributed among the public to a significant degree pursuant to article 116 of the integral text of Legislative Decree No. 58 of 24

February 1998, and subsequent amendments, or of an entity subject to supervision pursuant to the integral text of Legislative Decree No. 385 of 1 February 1993, of the said integral text of Legislative Decree No. 58 of 1998, of Law No. 576 of 12 August 1982, or of Legislative Decree No. 124 of 21 April 1993, who violates the obligations of article 2391, paragraph one, is punished with a term of imprisonment of between one and three years, if the violation gives rise to loss or damage to the company or third parties.

The case in point was introduced by Law 262/2005.
The offence consists in non-disclosure, by a director or member of the board of management, of his or her personal interests in the operations of the company where the aforementioned operates, and which must be disclosed.
Specifically, art. 2391 c.c. requires members of the board of directors to disclose to the other members of the board and to the statutory auditors any interest which they, on their own account or on behalf of third parties , have in a given operation of the company, specifying its nature, terms, origin and scope.

3.9 Bogus formation of capital

Art. 2632 c.c.: Bogus formation of capital
Directors and shareholders who, whether partially or as a whole, spuriously form or increase the company's share capital by means of assignments of shares or equity investments to a total amount exceeding the amount of the share capital, reciprocal subscription of shares or equity investments, significant overvaluation of conferments of assets in kind or loans or of the company's equity in the case of transformation, are punished with a term of imprisonment of up to one year.

With reference to activities relating to the assignment of shares, a crime can be deemed to have been committed if the latter are issued for a lower nominal value than the declared value, insofar as the capital would be inflated to a degree corresponding to the difference between the value of assignment and the nominal value.
With reference to the reciprocal subscription of shares, this attracts sanctions insofar as it results in illusory multiplication of the wealth of the company, and the crime is deemed to have been committed even if their operations are not simultaneous, provided they formed the object of a single agreement.
The significant overvaluation of conferments and assets in kind or loans or company equity in the case of transformation (which is deemed to have occurred in the event of a breach of the criteria of reasonableness and correlation between the result of the estimate and the valuation parameters followed and presented, these criteria being already partially set forth by the legislator in art. 2343 c.c.) attracts sanctions insofar as it creates an illusory increase in wealth.

3.10 Undue distribution of company assets by liquidators

Art. 2633 c.c.: Undue distribution of company assets by liquidators
Liquidators who, by distributing company assets among shareholders before paying the company's creditors or allocating the necessary sums to reserves to satisfy them, cause a loss to such creditors, are punished, in response to the filing of a complaint by the offended party, with a prison term of between six months and three years. Payment of compensation for the loss before conviction extinguishes the crime.

The crime is deemed to have been committed if the liquidator distributes company assets before paying the amounts owed to the company's creditors or without allocating resources for this purpose to reserves, and if this causes a loss to the company's creditors (i.e. if the amount of assets is not sufficient to meet the claims of the said creditors).

3.11 Illicitly influencing the shareholders' meeting

Art. 2636 c.c.: Illicitly influencing the shareholders' meeting
Anyone who, by simulated or fraudulent acts, constitutes a majority at the shareholders' meeting, for the purpose of procuring for unjust profit for himself or others, is punished with a term of imprisonment of between six months and three years.

For the purposes of the legislation in question, consideration is given to acts aimed at convening the shareholders' meeting, authorising participation in the shareholders' meeting and counting votes on resolutions.
The aim of the legislation is to prevent fraudulent acts (e.g. the bogus transfer of equity investments to trusted persons for the purpose of obtaining their vote at the shareholders' meeting, or the bogus subscription of a loan with a pledge of shares, in such a way as to enable the creditor involved in the pledge to exercise voting rights at the shareholders' meeting) for illicitly influence the formation of the majority of the shareholders' meeting.

3.12 Security-price manipulation

Art. 2637 c.c.: Security-price manipulation
Anyone who disseminates false information, or undertakes simulated operations or other artifices materially capable of causing a significant alteration in the price of unlisted financial instruments or financial instruments for which no application for admission to trading in a regulated market has been submitted, or of significantly affecting public trust in the equity stability of banks or banking groups, is punished with a term of imprisonment of between one and five years.

The case in point was substantively amended by Law 262/2005, which excluded the application of this provision to companies with securities listed on stock markets. The perpetrators of the crime are not just company directors, but anyone. The dissemination of false information and the use of fraudulent means for the purpose of influencing the public, attracts sanctions not only if they provoke an increase or reduction in the value of the shares of the company whose directors perpetrate the criminal act or of other securities belonging to the said company, but more generally, if it is capable of causing a significant change in the price of unlisted financial instruments, or financial instruments for which no application for listing has been made.

3.13 Obstructing the public supervisory authorities in the exercise of their office[2]

Art. 2638 c.c.: Obstructing the public supervisory authorities in the exercise of their office
Directors, managing directors, managers in charge of the drafting of company accounting documents, auditors and liquidators of companies or entities or other parties subject by law to the public supervisory authorities, or with duties towards the latter, who, in communications to the said

[2] Public supervisory authorities include, for example, Consob, Banca d'Italia, ISVAP, the regulatory authority for competition and the market, the regulatory authority for the telecommunications industry, the regulatory authority for the electricity and gas industry.

authorities required by law, for the purpose of obstructing the exercise of supervisory functions, present material facts which do not correspond to the truth, even if they are the object of evaluations of the economic, capital or financial situation of the parties subject to supervision, or, for the same purpose, conceal by other fraudulent means, partially or as a whole, facts which they should have disclosed in relation to the said situation, are punished with a term of imprisonment of between one and four years. Liability to prosecution also extends to the case in which the information relates to assets held or administered by the company on behalf of third parties. The same penalty applies to the directors, managing directors, managers in charge of the drafting of company accounting documents, auditors and liquidators of companies or entities or other parties subject by law to the public supervisory authorities, or with duties towards the latter, who, in any form, including by omitting to make the due disclosures to the aforementioned authorities, knowingly obstruct the exercise of their functions. The penalty is doubled in the case of companies with securities listed on regulated markets in Italy or other European Union Member States or distributed among the public to a significant degree pursuant to article 116 of the integral text of Legislative Decree No. 58 of 24 February 1998.

The act can take two forms (false communication and obstructing the supervisory authorities) but both having the same end, namely that of obstructing the functions of the aforementioned supervisory authorities, which are not confined solely to Consob and Banca d'Italia, but also include any other authority invested with supervisory powers (e.g. regulatory authority for competition and the market, regulatory authority for the protection of personal data etc.).
In the former case, the act consists in presenting in communications addressed to the supervisory authorities and specifically envisaged by the law material facts which do not correspond to the truth, even if they are the object of evaluations of the economic, capital or financial situation of the parties subject to supervision, or, for the same purpose, conceal by other fraudulent means, partially or as a whole, facts which should have been disclosed.
In the latter case, the penalty applies to any act, of commission or omission, which in any form, including by failure to make the due disclosures to the authorities, obstructs the functions of supervision.

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In conclusion, from the point of view of the subjective framework of application of the types of corporate crime set out above, Legislative Decree 62/2001 extends the criminal liability deriving from the above not only to parties endowed with the subjective qualifications required of the various crimes (e.g. directors, managing directors, auditors, liquidators) <u>but also to parties required to perform the same functions, although having different qualifications, and parties who continuously and significantly exercise the powers typically associated with such qualifications or functions</u>.

<u>Art. 2639 c.c. Extension of subjective qualifications</u>.
For the crimes envisaged in this section, the party formally invested with the qualification or the holder of the post envisaged by civil law is deemed equivalent to any party required to perform the same function albeit with a different qualification, and anyone who continuously and significantly exercise the powers typically associated with such qualifications or functions. Outside the cases of application of legislation relating to the crimes of public officials against the public administration, the sanctionary provisions relating to directors also apply to anyone who is legally appointed by the judicial authority or public supervisory authority to administer the company or the assets held by it or managed by it on behalf of third parties.

4. CRIMES COMMITTED THROUGH THE VIOLATION OF OCCUPATIONAL SAFETY, HEALTH AND HYGIENE REGULATIONS (ART. 25-septies Legislative Decree 231/2001)

4.1 Homicide or serious or very serious personal injury without intent deriving from the violation of regulations governing occupational health and safety

Art. 589 c.p.: Homicide without intent
Anyone who occasions, through fault but without intent, the death of a person is subject to a prison term of between six months and five years.
If the act occurs as a result of the violation of legislation governing driving on the public highway legislation aimed at the prevention of accidents in the work place, the penalty is a prison term of between two and seven years.
In the event of the death of more than one person, or the death of one or more persons and injury of one or more persons, the applicable penalty is that which should be applied for the most serious of the violations committed, increased by up to three times, but not exceeding fifteen years.

Under art. 589 c.p., anyone who through fault occasions the death of another person is deemed guilty of this crime. The material fact of homicide through fault implies three elements: an act(s) or omission(s), an event (the death of a person) and the causal link between the two. With regard to the subjective element, homicide is deemed to be through fault if the agent wants neither the death of the victim nor the event by which it is caused, and the two occur through the fault of the agent, i.e. through negligence, lack of expertise or non-compliance with laws on the part of the latter.

Art. 590 c.p.: Personal injury without intent
Anyone who, through fault, occasions personal injury to others is punished with a prison term of between three months or a fine of up to €309.
If the injury is serious the penalty is a term of imprisonment of between one and six months or a fine of €123 to €619; if very serious, it is a prison term of three months to two years or a fine of €309 to €1,239.
If the facts defined in paragraph two are committed through violation of legislation governing driving on the public highway or legislation aimed at preventing injuries in the work place, the penalty for serious injuries is a prison term of between three months and one year or a fine of €500 to €2,000, and the penalty for very serious injuries is a prison term of between one and three years.
In the event of the injury of more than one person, the applicable penalty is that which should be applied for the most serious of the violations committed, increased by up to three times; the penalty of imprisonment cannot, however, exceed five years.
The offence is prosecutable in response to the filing of a complaint by the victim, except in the cases envisaged in paragraphs one and two, limited to facts committed through violation of legislation aimed at the prevention of accidents in the work place or relating to work hygiene or which have given rise to an occupational illness.

Art. 590, paragraph three c.p. punishes the conduct of anyone who occasions a serious or very serious personal injury to others through violation of legislation aimed at preventing accidents in the work place.
A personal injury is deemed serious:

- if the fact gives rise to an illness which threatens the life of the offended person or an illness resulting in the incapacity of the victim to perform their ordinary duties for a period exceeding forty days;

- if the fact permanently weakens a sense or an organ.

A personal injury is deemed very serious if the fact gives rise to:

- an illness which is definitely or probably incurable;
- the loss of a sense;
- the loss of a limb, or a mutilation which renders the limb unusable, or the loss of use of an organ or the capacity to procreate, or a permanent and serious difficulty of speech;
- deformation, or permanent disfigurement of the face.

The essential pre-requisite for the application of the sanctions envisaged in Legislative Decree 231/2001 lies in the perpetration of the crimes envisaged in articles 589 and 590 c.p. following the violation of occupational safety, health and hygiene regulations.

4.2 Principal definitions of the parties and services affected by the legislation governing occupational safety, health and hygiene

As envisaged in art. 2 of Legislative Decree 81/2008, the principal definitions of the parties and services affected by the legislation governing occupational safety, health and hygiene are set out below:

- Employer: *"the principal in an employment contract with a worker or, in any event, the party which, according to the type and configuration of the organisation within which the worker performs his or her work, has responsibility for the organisation itself or the production unit, insofar as it exercises the powers to make decisions and approve expenditure*";
- Executive: "*a person who, by virtue of their professional skills and the functional and hierarchical powers appropriate to the nature of the appointment conferred on them, implements the directives of the employer by organising work activity and overseeing its performance*";
- Manager: "*a person who, by virtue of their professional skills and within the limits of the functional and hierarchical powers appropriate to the nature of the appointment conferred on them, oversees work activity and ensures the implementation of the directives received, by checking that they are correctly executed by workers and exercising functional power of initiative*";
- Worker: *"a person who, regardless of type of contract, performs a work activity within the organisation or a public or private employer, with or without remuneration, including for the sole purpose of learning a trade, art or profession, excluding providers of domestic and family services. The following enjoy equivalent status to the worker defined above: worker members of cooperatives or companies, who render service on behalf of the company or entity itself; associates in joint ventures as per article 2549 et seq of the civil code; beneficiaries of training and familiarisation apprenticeship initiatives as per article 18 of Law No. 196 of 24 June 1997 and specific provisions of regional laws promoted to enable people to alternate work with study or facilitate career choices through hands-on experience of the world of work; students at education institutes and universities and participants in vocational training courses involving the use of laboratories, work equipment in general; chemical, physical and biological agents, including devices equipped with video-terminals, solely during periods in which the student is making actual use of the materials, instrumentation or laboratories in question; volunteers, as defined by Law No. 266 of 1 August 1991; volunteers of the national fire service and civil protection corps; volunteers undertaking civilian service; workers defined in Legislative Decree No. 468 of 1 December 1997,and subsequent amendments";*

- Competent Doctor: *"a doctor in possession of one of the qualifications and training and professional requirements defined in* art. 38[3]*, who collaborates, in accordance with* art. 29[4]*, paragraph one, with the employer for the purpose of assessing risks and is appointed by the latter to undertake health monitoring and all the other tasks defined in this decree*";
- Hazard prevention and protection service (SPP): "*combination of persons, systems and equipment, whether external or internal to the company, aimed at preventing and protecting workers against occupational hazards";*
- Head of the prevention and protection service (RSPP): *"person in possession of the professional requirements and capacities set out in art. 32*[5] *appointed by the employer to which he/she reports, to coordinate the hazard prevention and protection service";*

[3] **Art. 38, Legislative Decree 81/2008** *Qualifications and requirements of the competent doctor*

1. In order to perform the functions of competent doctor it is necessary to possess one of the following qualifications or requirements:
   a) specialisation in occupational medicine or preventive occupational medicine and psychotechnics;
   b) teaching post in occupational medicine or preventive occupational medicine and psychotechnics or industrial toxicology or occupational physiology and hygiene or occupational clinical medicine;
   c) authorisation as per article 55 of legislative decree No. 277 of 15 August 1991;
   d) specialisation in hygiene and preventive medicine or in legal medicine.
2. Doctors in possession of the qualifications set out in paragraph one, letter d), are required to attend appropriate university training programmes to de defined by an appropriate decree of the Ministry of Universities and Research in conjunction with the Ministry of Health. The parties defined in the previous sentence, who, on the date of entry into force of this decree, were serving as competent doctors or can prove that they had served as competent doctors for at least one year in the three years prior to the entry into force of this legislative decree, are authorised to perform the same functions. For this purpose, they are required to present to the Regional Authority a declaration from their employer proving that they performed such duties.
3. In order to perform the duties of competent doctor it is also necessary to attend a programme of continuing education in medicine pursuant to legislative decree No. 229 of 19 June 1999, and subsequent amendments and additions, with effect from the triennial programme following the entry into effect of this legislative decree. The credits envisaged by the triennial programme must be obtained in the amount of not less than 70% of the total in the discipline "occupational medicine and safety in the work place".
4. Doctors in possession of the qualifications and requirements set out in this article are registered in the register of competent doctors held by the Ministry of Health.

[4] **Art. 29 of Legislative Decree 81/2008** *Procedures for conducting risk assessments*

1. The employer conducts the assessment and produces the document defined inarticle 17 (Risk assessment), paragraph one, letter a), in conjunction with the head of the prevention and protection service and the competent doctor, in the cases envisaged in article 41 (Health monitoring).

[5] **Art. 32, Legislative Decree 81/2008** *Professional requirements and capacities of heads and staff of internal and external prevention and protection services.*

1. The professional requirements and capacities of the heads and staff of internal or external prevention and protection services must be appropriate to the nature of the hazards present in the place of work and associated with the work activities.
2. In order for the parties envisaged in paragraph one to perform these functions, they must hold at least a diploma of higher secondary education, as well as a certificate of attendance, involving testing of learning, of specific training courses appropriate to the nature of the hazards present in the work place and associated with the work activities. In order to perform the function of head of the prevention and protection service, in addition to the requirements in the previous sentence, it is necessary to hold a certificate of attendance, involving testing of learning, of specific training courses covering the prevention and protection of hazards, including of an ergonomic nature and deriving from work-related stresses envisaged in art. 28 (*Object of risk assessment)*, paragraph one; organisation and management of technical/administrative activities and in-company communication techniques and union relations. The aforementioned courses must in any event comply with the requirements of the agreement endorsed on 26 January 2006 at the permanent conference on relations between the State, the regions and the autonomous provinces of Trento and Bolzano, published in Official Gazette No. 37 of 14 February 2006, and subsequent amendments.
3. The functions of head or staff of prevention and protection services can also be performed by persons who, although not in possession of the educational qualification stipulated in paragraph two, are able to demonstrate that they had performed one of the functions in question, either as a consultant or as an employee, for at least six months prior to the date of 13 August 2003, provided that they then attend the training courses as specified in the agreement quoted in paragraph two.
4. The training courses indicated in paragraph two are held by the Regions and the Autonomous Provinces of Trento and Bolzano, by universities, ISPESL, INAIL, or IPSEMA for the part falling within their respective sphere of competence, by the national fire service corps, the defence administration, the public administration high school and the other high schools of the individual administrations, employers' and workers' union associations or joint bodies, as well as by the parties indicated in point four of the agreement quoted in paragraph two in respect of the limits and specific procedures envisaged therein. Other training providers can be identified at the permanent conference on relations between the State, Regions and Autonomous Provinces of Trento and Bolzano.
5. Persons in possession of a degree in one of the following classes: L7, L8, L9, L17, L23, as per the decree of the Ministry of Universities and Research dated 16 March 2007, published in S.O. to Official Gazette No. 155 of 6 July 2007, or in classes 8, 9,

- Workers' safety representative (RLS): *"the person elected or appointed to represent the workers in relation to matters of health and safety at work"*.

4.3 Principle characteristics of the legislation enacted to protect occupational safety, health and hygiene, and respective duties falling to Employers

The general measures for the protection of the health and safety of workers (which the employer is obliged to adopt to prevent accidents at work and occupational illnesses) are governed by art. 2087 of the civil code and Legislative Decree 81 of 9 April 2008 ("*Implementation of article 1 of Law No. 123 of 3 August 2007, relating to the protection of health and safety in work places*" or also Integral Safety Text) and subsequent amendments.
The Employer is obliged to eliminate any type of hazard posed by the work place in light of the knowledge acquired on the basis of technical progress, and, where this is not possible, to reduce such hazards to a minimum.
>From a general point of view, the Employer is obliged to organise, within the work places, a prevention and protection service for the purpose of identifying hazard factors.
More specifically, it is the duty of the Employer to provide its employees with:

- comprehensive information of a general nature about the hazards present in the place of work and specific information on the hazards involved in the tasks assigned to individual workers;
- adequate training covering the measures for protecting the health and safety of workers, with specific instruction relation to their own particular duties either at the time of their recruitment, or in the event of a transfer or change of duties, and in any event when new work equipment or new technologies are to be used.

4.4 Duties of the Employer

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10 and 4, as per the decree of the Ministry of Universities and Scientific and Technological Research dated 4 August 2000, published in S.O. to Official Gazette No. 245 of 19 October 2000, or in class 4 as per the decree of the Ministry of Universities and Scientific and Technological Research dated 2 April 2001, published in S.O. to Official Gazette No. 128 of 5 June 2001, or other degrees recognised under the legislation in force, are exonerated from attending the training courses indicated in paragraph two, sentence one. Other educational qualifications can be identified during the permanent conference on relations between the State, Regions and Autonomous Provinces of Trento and Bolzano.

6. The heads and staff of prevention and protection services are required to attend updating courses in accordance with the guidelines defined in the agreement between State and Regions indicated in paragraph two, without prejudice to art. 34 (*Performance of the duties of prevention and protection of hazards directly by the employer*).
7. The skills acquired further to completion of the training activities set out in this article by members of the internal service are recorded in the citizen's training register as per article two, paragraph one, letter i), of Legislative Decree No. 276 of 10 September 2003 and subsequent amendments.
8. In universities and institutes of education and vocational training, and institutions of higher artistic and dance training, employers who do not opt for direct performance of the duties falling to the prevention and protection service, appoints the head of the prevention and protection service from among the following:
   a) internal personnel of the educational unit in possession of the requirements defined in this article, and who declare their willingness to undertake the role;
   b) internal personnel of an educational unit in possession of the requirements defined in this article, and who declare their willingness to operate in several different institutes.
9. In the absence of personnel meeting the criteria set out in letters a) and b) of paragraph eight, groups of institutes can avail themselves jointly of the services of a single external expert, by entering into an appropriate agreement, by priority, with the local bodies which own the educational institute's buildings, or otherwise with specialist occupational health and safety bodies or institutes, or with other free-lance experts.
10. In the cases envisaged in paragraph eight, employers who avail themselves of an external expert to fulfil the role of head of the prevention and protection service must still organise a prevention and protection service with an adequate number of staff.

Art. 17 of Legislative Decree 81/2008 establishes that the principal duties of the Employer include:

- carrying out an assessment of the risks to health and safety, with reference - amongst other factors - to the choice of equipment, substances and chemical preparations used, and their storage in the work place;
- preparing a risk assessment document (DVR) containing:
    a) a report on the assessment of all risks to safety and health during the course of work activity, in which the criteria adopted for the purposes of the assessment are also specified;
    b) details of the preventive and protective measures implemented and the personal protection equipment adopted further to the assessment of risks to health and safety;
    c) the programme of measures deemed appropriate to ensure the ongoing improvement of safety levels;
    d) details of the procedures for implementing the measures to be taken, and the roles within the company's organisation responsible for attending to their implementation, which must be assigned exclusively to parties in possession of adequate skills and powers;
    e) the name of the head of the prevention and protection service, of the workers' or local safety representative and of the competent doctor who participated in the risk assessment;
    f) a list of duties which potentially expose workers to specific hazards, which require a recognised professional skill, specific experience, adequate training and instruction;
    g) the additional information envisaged in the specific regulations governing risk assessments set out in Legislative Decree 81/2008.
- storing the risk assessment document on the site of the company or production unit.
- preparing a single document containing the assessment of risks from interference (DUVRI) by means of which, in the event of the assignment of work activities, services and supplies for the company or production site to contractors or self-employed persons (excluding the exceptions established in Legislative Decree 81/08), the Employer provides such parties with detailed information regarding the specific hazards existing in the environment in which they are assigned to work, and regarding the emergency measures adopted in relation to their activity;
- amending and updating the DUVRI according to the evolution of works, services and supplies;
- appointing the RSPP;

The Employer must also:

- decide upon the protective measure to be adopted and, if necessary, the protection equipment to be used;
- inform workers exposed to serious and immediate risk, including potential risk, about the risk itself and the measures taken (or to be taken) by way of protection;
- in the case of serious and inevitable risk situations, instruct workers to leave their work station or work area;
- refrain from instructing workers to return to their work in a situation in which serious and immediate risk still exists.

The employer must ensure that each worker receives adequate training on safety and health matters.
The aforementioned training must be:

- specific, and relate also to the evolution of hazards or the introduction of new hazards
- periodic.

Information and instructions must be given:
- at the time of hiring;
- in the event of transfer or change of duties;
- when new work equipment or new technologies are introduced.

In addition to the above, the Employer (art. 18. Legislative Decree 81/2008) is also obliged to:

a) appoint a competent doctor to undertake health monitoring;
b) appoint workers, in advance, to the activities of implementing fire-prevention and fire-fighting measures, overseeing the evacuation of work areas in the event of serious and immediate danger, and attending to rescue, first aid and emergency management duties;
c) to issue workers with the necessary and appropriate personal protection equipment, taking account of the advice given by the RSPP and competent doctor;
d) take appropriate measures to ensure that only workers who have received adequate instructions and specific training are able to access areas which expose them to a serious and specific hazard;
e) order the compliance of each worker with the legislation in force, and with company regulations governing occupational safety and hygiene and the use of the collective protection systems and personal protection equipment placed at their disposal;
f) allow workers to check on, through the offices of the workers' safety representative, the application of health and safety protection measures;
g) send workers for medical check-ups by the deadlines established in the health monitoring programme and instruct the competent doctor to comply with the established obligations;
h) promptly notify the competent doctor of any termination of a work contract;
i) provide the workers' safety representatives with a copy of the risk assessment document at the request of the latter;
j) notify INAIL or IPSEMA, in relation to their respective spheres of competence, and, via these institutions, the national occupational health and safety database, for statistical and information purposes, of the details of any accidents in the work place resulting in absence from work of at least one day, within 48 hours of receipt of the medical certificate, and, for insurance purposes, information relating to accidents in the work place resulting in absence from work of more than three days;
k) consult the workers' health representative in the cases established by the law;
l) adopt the necessary measures for the purposes of fire prevention and evacuation of the work places, and for cases of serious, immediate danger;
m) within the framework of the performance of work under contract or sub-contract, equip workers with an identity card complete with photograph, the worker's personal data, and his or her employer;
n) in production units staffed by more than 15 workers, convene periodic safety meetings;
o) update preventive measures in relation to organisational and production changes of relevance to occupational health and safety, or in relation to developments in preventive and protective technique and technology;

p) inform INAIL and IPSEMA annually, and via these institutions, the national occupational health and safety database, of the names of the workers' safety representatives;
q) ensure that workers subject to compulsory health monitoring are not assigned to the specific work duty without the necessary certificate of fitness;
r) ensure that managers, workers, designers, constructors, suppliers, installers and the competent doctor comply with the duties required of them

The Employer must also appoint the Worker's Safety Representative, who must, in particular:
- assist the employer in assessing risks to the health and safety of workers;
- set up work stations in accordance with regulations;
- adopt the necessary and appropriate preventive and protective measures;
- give workers the necessary information and organise training courses on the measures aimed at protecting the health and safety of workers.

4.5 Duties of employees

Each worker must take care of his own health and safety and that of the others present in the place of work, who are subject to the effects of his actions or omissions, in accordance with his training, and the instructions and equipment issued by the Employer.
In particular, workers must:
- contribute, in conjunction with the Employer, executives and managers, to the fulfilment of the duties established for the purposes of protecting health and safety in the work places;
- observe the orders and instructions given by the employer, executives and managers, for the purposes of collective and individual protection;
- make correct use of work equipment, hazardous substances and preparations, means of transport and safety equipment;
- make appropriate use of the protection equipment placed at their disposal;
- immediately notify the employer, executive or manager of any shortcomings in the devices or equipment indicated in c) and d), or any hazardous condition which may come to their attention, and take direct action, in urgent cases, within the scope of their own skills and capacities, to eliminate or reduce situations of serious or imminent danger, and also notify the workers' safety representative;
- refrain from removing or modifying safety, signalling or control devices without authorisation;
- refrain from performing at their own initiative any operation or manoeuvre not within their sphere of competence or which might compromise their own safety or that of others;
- participate in the training and instruction programmes organised by the Employer;
- undergo the health checks envisaged in this legislative decree or ordered by the competent doctor.

The workers of companies performing work under contract or sub-contract, must wear an appropriate identity card complete with photograph, the worker's personal data, and his or her employer. The same duty also applies to self-employed personnel carrying out work directly in the same work place, who are obliged to fulfil this requirement on their own account.
Each worker is therefore responsible for his own health and safety and that of others present in the place of work, who are subject to the effects of his actions or omissions, in accordance with his training, and the instructions and equipment issued by the Employer.

It is the duty of the Employer, executives and managers to verify that workers comply with the company's safety rules, and the aforementioned are responsible for any violation thereof by workers (if attributable to lack of supervision).

5. IT-BASED CRIMES (Art. 24 bis of Legislative Decree) 231/2001)

5.1. IT system and IT data

The provisions regarding computer crime - which were the object of recent reform under Legislative Decree No. 48 of 19 March 2008 ratifying the Convention of the Council of Europe on computer crime, signed in Budapest on 23 November 2001 - presuppose a common reference to the definitions of "IT system" and "IT data".
The term "IT system" means any device or group of connected or interconnected devices, of which one or more, by means of a programme, automatically processes data (art. 1 of the Convention): this is a broad definition which encompasses all types of electronic, IT or ICT instrument capable of processing data (including, for example, a palmtop or mobile phone supporting programmes capable of data processing).
The term "IT data" is defined as any representation of facts, information or concepts which can be used in an IT system, including a programme capable of enabling an IT system to perform a function (*software*).

5.2. Crimes of illicit intrusion

Art. 615 ter c.p.: Unauthorised access to an ICT system
Anyone who gains unauthorised access to an IT or ICT system protected by security measures or remains within such a system against the express or implicit wish of the party entitled to exclude them, is punished with a term of imprisonment of up to three years.
The penalty is from one to five years:
1) if the act is committed by a public official or by a public service agent, through the abuse of powers or violation of the duties associated with the function or service, or by anyone practising, with or without authorisation, the profession of private investigator, or through abuse of their capacity as system operator;
2) if, to commit the crime, the guilty party uses violence against property or persons, or is visibly armed;
3) if the act results in the destruction or damage of the system or the complete or partial interruption of its operation, or the destruction or damage of the data, information or programmes contained in it.
If the acts set out in paragraphs one and two above relate to IT or ICT systems of military interest or pertaining to public order or public security or to the public health system or civil protection or of public interest in any manner, the penalty is a term of imprisonment of between one and five years, and three and eight years respectively.
In the case envisaged in paragraph one, the offence is punishable in response to the filing of a complaint by the offended party; in other cases, proceedings are taken automatically

Art. 615 quater c.p.: Unauthorised possession or disclosure of access codes to IT or ICT systems
Anyone who, for the purpose of procuring profit for himself or others or causing loss or damage to others, abusively procures, reproduces, disseminates, discloses or passes on codes, passwords or other means of access to an IT or ICT system protected by security measures, or provides information or instructions for the said purpose, is punished with a term of imprisonment of up to one year and a fine of up to 5,164 euro.

These provisions were introduced by art. 4 of Law 547/1993 aimed at adapting the criminal code to the gradual spread of information technology.

Art. 615 ter c.p. defines as a crime the conduct of anyone who abusively gains access to an IT or ICT system of another party (provided it is protected), or remains in such a system against the will of the party entitled to exclude him. In substance, the intention of the definition is to sanction anyone who breaches the confidentiality of another's communications or information, which are transmitted, with increasing frequency, by means of protected IT systems. Moreover, the legislation does not require the disclosure to third parties of abusively obtained information, since the crime is deemed to have been committed simply by virtue of gaining access without authorisation (e.g. authentication credentials) or with authorisation for a purpose other than the purpose for which access is gained. The crime is deemed to have been committed, furthermore, even if the system or data are not damaged or destroyed, insofar as the latter constitute aggravating circumstances which give rise to an increase in the penalty. The penalty is also increased if the act is committed through abuse of the capacity of system operator (a capacity held by anyone who professionally or by virtue of the functions exercised de facto, works on a non-casual basis on data or programmes - e.g. programmer, system administrator, analyst, etc.).
Unauthorised access can take place either "virtually" (e.g. by hacking) or physically or materially, i.e., for example, by means of unauthorised entry into rooms containing computing equipment.

Art. 615 quater c.p., by contrast, aims at sanctioning the preparatory and instrumental acts prior to unauthorised access, consisting in unauthorised possession or dissemination, in a variety of forms (acquisition, reproduction, dissemination, disclosure or passing on), of access codes (such as passwords, PINs, etc.) with which it is possible to overcome the protection systems with which an information system may be equipped. In this case too, the conduct is punishable regardless of whether access has taken place or not, insofar as it places the protected asset at risk.

5.3. Crimes of IT damage

Art. 615-quinquies c.p.: Dissemination of IT equipment, devices or programmes intended to damage or interrupt an IT or ICT system
Anyone who, for the purpose of illicitly damaging an IT or ICT system, the information, data or programmes contained in it or pertaining to it, or of favouring the complete or partial interruption or alteration of its operation, procures, produces, reproduces, imports, disseminates, passes on or in any way places at the disposal of others, IT equipment, devices or programmes, is punished with a term of imprisonment of up to two years and a fine of up to 10,329 euro.

Art. 635-bis c.p.: Damage of IT programmes, information and data.
Unless the fact constitutes a more serious crime, anyone who destroys, impairs, cancels, alters or deletes the IT programmes, information or data of others, is punished, in response to the filing of a complaint by the offended party, with a prison term of between six months and three years.
If the fact is committed with threats or violence to persons, or if the fact is committed through the abuse of the capacity of system operator, the penalty is a term of imprisonment of between one and four years, and proceedings are taken automatically.

Art. 635-ter c.p.: Damage of IT programmes, information and data used by the State or other public body, or in any event, of public utility
Unless the fact constitutes a more serious crime, anyone who commits an act aimed at destroying, impairing, cancelling, altering or deleting IT programmes, information or data used by or pertaining

to the State or other public body, or in any event of public utility, is punished with a term of imprisonment of between one and four years.
If the act causes the destruction, impairment, cancellation, alteration or deletion of IT programmes, information or data, the penalty is a prison term of between three and eight years.
If the fact is committed with threats or violence to persons, or if the fact is committed through the abuse of the capacity of system operator, the penalty is increased.

Art. 635-quater c.p.: Damage of IT or ICT systems
Unless the fact constitutes a more serious crime, anyone who, through the acts defined inarticle 635-bis, or through the introduction or transmission of data, information or programmes, destroys, damages another's IT or ICT systems, or renders them partially or wholly unusable, or seriously impedes their operation, is punished with a term of imprisonment of between one and five years.
If the fact is committed with threats or violence to persons, or if the fact is committed through the abuse of the capacity of system operator, the penalty is increased.

Art. 635-quinquies c.p.: Damage of IT or ICT systems of public utility.
If the fact defined inarticle 635-quater is aimed at destroying or damaging IT or ICT systems of public utility, or rendering them partially or wholly unusable or seriously impeding their operation, the penalty is a term of imprisonment of between one and four years.
If the fact results in the destruction or damage of the IT or ICT system of public utility or if the said system is rendered partially or wholly unusable, the penalty is a prison term of between three and eight years.
If the fact is committed with threats or violence to persons, or if the fact is committed through the abuse of the capacity of system operator, the penalty is increased.

These provisions are aimed at sanctioning the various categories of IT damage, and the acts which make them possible.

Specifically:

- Art. 615 quinquies preventively forbids a series of acts which do not yet constitute damage by are considered intrinsically hazardous for the integrity of IT systems, programmes and data. In particular, it is a crime to acquire, produce, reproduce, import, hand over, disclose or make available computer programmes (e.g. viruses), devices or equipment if such acts are committed for the purpose of damaging IT systems, programmes or data. Since this provision is of a preventive nature, the act constitutes a crime even if no damage actually occurs as a result of it;
- art. 635 bis punishes anyone who destroys or impairs another's IT programmes, data or information or renders them unusable (with the exception of IT systems, the damage of which attracts a more severe penalty established under a subsequent definition);
- art. 635 sanctions anyone who commits an act aimed at damaging IT programmes, data or information used by the State or other public body, even if such damage does not actually occur. With respect to the previous provision, therefore, the threshold of punishability is lowered to include less offensive acts (material damage is not a pre-requisite, it is sufficient that the acts were intended to cause damage) in view of the public nature or public utility of the data or programmes attacked. If damage does occur, however, the penalty is increased;
- art. 635 quater punishes the damage of IT systems caused through the introduction or transmission of data or programmes or through the acts established in art. 635 bis

(destruction, damage, impairment, cancellation, alteration or deletion of data or programmes). With respect to this article, art. 635 quater envisages higher penalties, insofar as the damage does not affect merely the data or programme, but the entire IT system;

- art. 635 quinquies sanctions the same acts as the previous article if aimed at damaging an IT system of the State or of public utility. In this case, however, the fact is punished even if damage does not arise, simply by virtue of having exposed the system to danger. The rationale for this is the importance for attributed to the proper operation of the public services and services of public utility performed with the use of IT systems. If damage actually arises, the penalty is increased.

5.4. Crimes against the protection of freedom and confidentiality of communications

Art. 617-quater c.p.: Interception, prevention or illicit interruption of IT or ICT communications
Anyone who fraudulently intercepts communications relating to an IT or ICT system or taking place between several systems, or prevents or interrupts them, is punished with a term of imprisonment of between six months and four years.
Unless the fact constitutes a more serious crime, the same penalty applies to anyone who reveals to the public, by any means of information, partly or wholly, the contents of the communications envisaged in paragraph one.
The offences established in paragraphs one and two are punishable in response to the filing of a complaints by the offended party.
Proceedings are taken automatically and the penalty is a term of imprisonment of between one and five years, however, if the fact is committed:
1) to the detriment of an IT or ICT system used by the State or other public body or by a company which undertakes public services or services of public necessity;
2) by a public official or by a public service agent, through the abuse of powers or violation of the duties associated with the function or service, or through abuse of the capacity of system operator;
3) by anyone who, with or without authorisation, practises the profession of private investigator

Art. 617-quinquies c.p.: Installation of equipment intended to intercept, prevent or interrupt IT or ICT communications
Anyone who, outside the scope of the cases permitted by the law, installs equipment capable of intercepting, preventing or interrupting communications relating to an IT or ICT system or taking place between several systems, is punished with a term of imprisonment of between one and four years.
The penalty is a prison term of between one and five years in the cases envisaged in paragraph four of article 617-quater.

Articles 617 quater and 617 quinquies c.p. safeguard the inviolability and confidentiality of communications made by means of IT and ICT, and are also the object of protection - like all other forms of communication - under art. 15 of the Constitution.

More specifically:

- art. 617 quater punishes anyone who fraudulently prevents, interrupts or intercepts communications relating to an IT or ICT system. The provision also punishes anyone who reveals to the public the contents of such communications. Aggravating circumstances are envisaged which result in an increase in the penalty, including the abuse of the capacity of

system operator. Interception consists in discovering the content, with or without recording, of the communications indicated, and must be fraudulent, i.e. must take place in a manner involving concealment and artifice;
- art. 617 quinquies punishes the unauthorised installation of equipment capable of intercepting, interrupting or preventing communications relating to IT or ICT systems, thus sanctioning the preparatory activities to the interception or interruption of communication. The crime is therefore deemed to have been committed once the equipment has been installed, regardless of whether it works or not.

5.5. Fraud relating to certification services

Art. 640-quinquies c.p.: IT fraud in relation to parties providing services of electronic signature certification
Parties engaged in the provision of services of electronic signature certification, which, for the purpose of procuring unjust profit for themselves or others or causing damage to others, violate the duties established by the law for the issue of a qualified certificate, are punished with a term of imprisonment of up to three years and a fine of between 51 and 1,032 euro.

This provision punishes the conduct of parties charged with providing services of electronic signature certification which violate the duties envisaged by the law for the issue of such certificates. The violation is punished only if committed for the purpose of procuring profit for oneself or others or for causing damage to others. The crime can therefore only be committed by parties qualified as certifiers, but private parties without such qualifications can be accessories to it by, for example, instigating and soliciting the certifier to commit the crime.

5.6. Offences of falsification

With reference only to IT documents, the following crimes assume significance:

Art. 476 c.p.: Material falsification committed by a public official in public acts:
A public official who, in the exercise of his functions, forms, partially or wholly, a false act or alters a true act, is punished with a term of imprisonment of between one and six years. If the falsification concerns an act or part of an act having the value of legal proof unless contested on the grounds of falsification, the prison term is of three to ten years.

Art. 477 c.p.: Material falsification committed by a public official in administrative authorisations or certificates.
A public official who, in the exercise of his office, counterfeits or alters administrative authorisations or certificates, or, by counterfeiting or alteration, makes the conditions required for the validity appear to have been met, is punished with a term of imprisonment of between six months and three years.
Art. 478 c.p.: Material falsification committed by a public official in authentic copies of public or private acts and in declarations of the contents of acts.
A public official who, in the exercise of his office, supposing the existence of a public or private act, simulates a copy of it and issues it in legal form, or issues a copy of a public or private act differing from the original, is punished with a prison term of between one and four years.
If the falsification concerns an act or part of an act having the value of legal proof unless contested on the grounds of falsification, the prison term is of three to ten years. If the falsification is committed by the public official in a declaration of the content of public or private acts, the penalty is a prison term of one to three years.

Art. 479 c.p.: Ideological falsification committed by a public official in public acts

A public official who, when receiving or forming an act in the exercise of his office, falsely states that a fact has been performed by him or took place in his presence, or certifies that he has received declarations which were not in fact made to him, or omits or alters declarations received by him, or in any way falsely certifies facts of which the act is intended to prove the truth, is subject to the penalties established in article 476.

Art. 480 c.p.: Ideological falsification committed by a public official in administrative authorisations or certificates.
A public official who, in the exercise of his office, falsely declares, in administrative authorisations or certificates, facts of which the act is intended to prove the truth, is punished with a term of imprisonment of between three months and two years.

Art. 481 c.p.: Ideological falsification in certificates committed by persons exercising a service of public necessity
Anyone who, in the exercise of a healthcare or forensic profession, or other service of public necessity, falsely declares, in a certificate, facts of which the act is intended
to prove the truth, is punished with a term of imprisonment of up to one year or a fine of between € 51.00 and €516.00. The above penalties are applied jointly if the fact is committed for the purposes of financial gain.

Art. 482 c.p.: Material falsification committed by a private individual
If any of the facts envisaged in articles 476, 477 and 478 is committed by a private individual, or a public official outside the exercise of his functions, the penalties established in the said articles, reduced by one third, apply respectively.

Art. 483 c.p.: Ideological falsification committed by a private individual in a public act
Anyone who falsely declares to a public official, in a public act, facts of which the act is intended to prove the truth, is punished with a term of imprisonment of up to two years. If the false declarations relate to acts of civil status, the term of imprisonment may not be less than three months.

Art. 484 c.p.: Falsification in registers and notifications
Anyone who, being obliged by the law to make records subject to inspection by the public security authorities, or to make notifications to such authorities regarding their industrial, commercial or professional operations, writes or allows the writing of false information, is punished with a term of imprisonment of up to six months or with a fine of up to € 309.00.

Art. 485 c.p.: Falsification in private acts
Anyone who, for the purpose of procuring advantage for himself or others or damaging others, forms, partially or wholly, a false private act, or alters a true private act, is punished, if he makes use of it or allows others to make use of it, with a term of imprisonment of between six months and three years.
Additions falsely made to a true act, once the latter has been definitively formed, are also deemed to be alterations.

Art. 486 c.p.: Falsification on a signed, blank page. Private act
Anyone who, for the purpose of procuring advantage for himself or others or damaging others, by making unauthorised use of a signed, blank page in his possession for a purpose involving the right or obligation to fill in the said page, writes or instructs to be written a private act producing legal effects, other than that for which he was entitled or obliged, is punished, if he makes use or allows others to make use of the page, with a term of imprisonment of between six months and three years.
A page on which the signatory has left blank any space intended to be filled is deemed to be a signed, blank page.

Art. 487 c.p.: Falsification on a signed, blank page. Public act
A public official who, by making unauthorised use of a signed, blank page in his possession for a purpose relating to his office and under an authorisation which involves the right or obligation to fill in the said page,

writes or instructs to be written a public act other than that for which he was entitled or obliged, is subject to the penalties established in articles 479 and 480 respectively.

Art. 488 c.p.: Other falsifications on a signed, blank page. Applicability of provisions relating to material falsifications
Cases of falsification on a blank, signed page other than those envisaged in the two previous articles are governed by the provisions on material falsifications in public acts or private acts.

Art. 489 c.p.: Use of a false act
Anyone who, without having taken part in the falsification, makes use of a false act is subject to the penalties established in the previous articles, reduced by one third.
In the case of private acts, the person who commits the fact is subject to penalty only if he has acted for the purpose of procuring advantage for himself or others or causing damage to others.

Art. 490 c.p.: Deletion, destruction or concealment of true acts
Anyone who, partially or wholly, destroys, deletes or conceals a true public or private act is subject, respectively, to the penalties established in articles 476, 477, 482 and 485, in accordance with the distinctions set down therein. The provision set down in the paragraph of the previous article applies.

Art. 491 bis c.p.: IT documents
If any of the falsifications envisaged in this section relates to a public or private computerised document with probatory validity, the provisions of the paragraph governing public and private acts respectively apply.

Art. 491 bis c.p. extends the legislation governing falsification in acts to computerised documents, i.e. any representation of data, information or concepts which can be used in an IT system or with an IT programme.
This series of crimes has been established to safeguard public trust in documents, i.e. the faith and certainty which peoples place in certain documents, in light of the probatory validity recognised by the order (and, in particular, to public and private acts, but also administrative authorisations and certificates).
In general terms, the falsification may find expression either in the “ideological” content of the act (e.g. a perfectly sound and genuine act whose content is not true), or in the material nature of the act (e.g. a document originally true in its content, but subsequently counterfeited or altered by means of deletions or abrasions).
With specific regard to computerised documents, the falsification may find expression in the lack of truthfulness of the content of the act (and in this respect it does not differ from a false document in hard-copy format), or in the exterior genuineness of the act, and in this respect is more insidious than an “ordinary” falsification. Indeed, a counterfeit computerised document may look like the original in every respect.
The notion of computerised document is defined in art. 1, letter p) of Legislative Decree No. 82 of 7 April 2005 (“Digital administration code”), as a “computerised representation of acts, facts or data of legal significance”. Art. 491 bis c.p., also specifies that, to be significant, the falsification must relate to a computerised document with probatory validity.
A computerised document is deemed to have probatory validity if it is formed in compliance with the technical rules which guarantee the identifiability of the author and the integrity of the document (art. 20 Digital Administration Code).