

AUTOELETTRIC S.R.L SOCIETA' UNIPERSONALE

**ORGANISATION, MANAGEMENT AND CONTROL MODEL PURSUANT TO
LEGISLATIVE DECREE 231/2001**

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GENERAL SECTION

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Introduction

Autoelettric S.R.L. Società Unipersonale (hereinafter also referred to simply as ‘**Autoelettric**’) has decided to adopt this organisation, management and control model pursuant to Legislative Decree 231/2001. In this context, it is worth briefly outlining the general provisions of the regulation in question.

1. Overview of the legislation

1.1. Introduction to Legislative Decree 231/2001

Legal entities, as autonomous centres of interests and legal relationships, are now also considered as a point of reference for various types of rules (in particular ethical rules and codes of conduct) and as the source of decisions and activities of individuals operating in their name, on their behalf or in their interests.

This has led to a need on the part of supranational and national institutions to implement controls on legal entities (bodies and companies), increasing their responsibility for acts performed in the course of their activities.

National legislation (Enabling Law No. 300 of 29 September 2000, Art. 11, and the subsequent Legislative Decree No. 231 of 8 June 2001, as amended and supplemented) - also in compliance with supranational obligations and conventions (EEC Convention of 26/7/1995, OECD Convention of 17 December 1997, etc.) - defines a system of punitive liability for entities and companies for unlawful acts committed by persons acting in the interest of or on behalf of the legal person.

The nature of these liabilities is defined - with respect to traditional standards - as a third genus, represented by the provision for the application of an administrative sanction (as a consequence, however, of a crime and within the context of criminal proceedings).

1.2. Parties concerned to whom the legislation applies

Pursuant to paragraph 1 of Article 11 of Delegated Law 300/2000 and Article 1, paragraph II of Legislative Decree 231/2001, the range of entities concerned is very broad; in particular, Article 1(2) of Legislative Decree 231/2001 states that “the provisions contained herein apply to entities with legal personality and to companies and associations without legal personality”.

The liability of the entity is added to the liability of the natural person who actually committed the offence.

1.3. The persons concerned - analysis of offences

The entity is liable if one of the “predicate” offences provided for by Legislative Decree 231/01 is committed, provided that it is committed in the interest or for the benefit of the entity itself, by one of the following persons:

- natural persons who hold “senior” positions (representation, administration or management of the entity or one of its organisational units with financial and functional autonomy) or who exercise, even de facto, the management and control of the entity;
- natural persons subject to the management or supervision of one of the above persons;
- natural persons acting in the name and on behalf of the entity by virtue of a mandate and/or any collaboration agreement or assignment of tasks.

The entity is presumed liable if the offence is committed by a senior natural person. In this case, the entity itself has the burden of proving its non-involvement in the facts by demonstrating that the act committed is not in line with company policy.

Conversely, the liability of the entity must be proven in cases where the person who committed the offence does not hold a senior position. In such cases, the burden of proof lies with the prosecution, which must demonstrate the existence of organisational or supervisory deficiencies that may entail joint liability on the part of senior management.

1.4. Penalties

Penalties, as stated, are imposed within criminal proceedings and consist of measures:

- financial penalties;
- disqualification;
- confiscation;
- publication of the conviction.

The system of penalties available to the criminal court (which is responsible for establishing the offence committed by the natural person, assessing the conduct of the entity, imposing the administrative penalty on the latter and enforcing it) is rather complex.

Firstly, for any administrative offence dependent on a crime, a financial penalty is established (Article 10), modulated in units, which cannot be less than one hundred or more than one thousand. The amount of each instalment varies from a minimum of €258.23 to a maximum of €1,549.37, so that the amount of the financial penalty that can actually be imposed cannot be less than €25,822.85 or exceed €1,549,370.70. Obviously, by virtue of the principle of legality (Article 2), the number of

instalments is determined by the legislator for each offence. Within the statutory framework, the judge is required to make a twofold assessment:

1. determines the number of instalments to be applied in practice, taking into account the seriousness of the offence, the degree of responsibility of the entity, the action taken to eliminate and mitigate the consequences of the offence and to prevent further offences from being committed;
2. subsequently, sets the amount of each instalment on the basis of the economic and financial conditions of the entity, in order to ensure the effectiveness of the penalty (Article 11).

The penalty system is supplemented by disqualification penalties (Article 13), which, unlike the financial penalties provided for each offence, are only applied in relation to certain cases considered to be more serious.

Furthermore, the decree makes their imposition subject to one of the following conditions:

- that the entity has derived significant profit from the offence and the offence was committed by persons in senior positions, or by persons subject to the direction of others, provided that, in this case, the commission of the offence was determined or facilitated by serious organisational deficiencies;
- in the event of repeated offences.

Disqualification sanctions (Article 9(II)) have a duration of not less than three months and not more than two years, may be applied jointly and also as a precautionary measure. They are:

- disqualification from exercising the activity;
- suspension or revocation of authorisations, licences or concessions functional to the commission of the offence;
- prohibition from contracting with the public administration (except to obtain public services);
- exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted, prohibition from advertising goods or services.
- Finally, penalties such as the following are also provided for:
- publication of the conviction (Article 18), which may only be ordered if a disqualification penalty is imposed on the entity;
- confiscation of the proceeds or profits of the offence (Article 19), which always follows the conviction, even in equivalent form (i.e. involving sums of money, goods or other benefits of the same value as the proceeds or profits of the offence, if it is not possible to seize these).

1.5. The liability of the entity and the circumstances that exclude it

The liability of the entity therefore presupposes the commission of the offences provided for by persons holding a senior position or even a subordinate position (as they are subject to the supervision of others).

However, the decree provides for a mechanism of exemption from liability, which, inspired by the compliance programme system in force in the United States of America, revolves around the adoption and effective implementation by the entity itself of organisational and management models suitable for preventing offences of the type that occurred.

In essence, these are genuine self-regulation programmes, the adoption and implementation of which may result in the organisation being exempt from liability (under certain conditions) and having important substantive and procedural consequences in terms of, for example, the commensurability and reduction of financial penalties, the inapplicability of disqualification sanctions and the suspension and revocation of precautionary measures.

The organisational models existing within the entity must in any case be further observed.

When an entity is administratively liable as a result of committing an offence (punishable under Legislative Decree 231/2001), the offence must have been committed in order to pursue an interest or obtain an advantage for the entity itself. It is now necessary to define the concept of interest or advantage more precisely. The rulings of the Supreme Court of Cassation are illuminating in this regard, establishing that the phrase 'in its interest or to its advantage' does not contain a hendiadys, because the terms refer to legally different concepts, since it is possible to distinguish between an "upstream" interest resulting from undue enrichment, anticipated and perhaps not realised, as a consequence of the offence, and an advantage objectively achieved by committing the offence, even if not anticipated "ex ante", so that the interest and the advantage are in real competition.

1.6. Requirements to be met in order to prevent the risk of liability

In accordance with Articles 6 and 7 of Legislative Decree 231/2001, in order to prevent the risk of liability (which is almost automatic in the case of offences committed by persons in senior positions and requires certain additional circumstances in the case of offences committed by persons in subordinate positions), the entity is required to demonstrate:

- that it has carried out appropriate assessments of the possibility of certain risks occurring within its organisation;

- that it has adopted and effectively implemented, prior to the commission of the offence, organisational and management models suitable for preventing offences of the type that occurred; in particular, these models must:
 - identify the activities of the entity in which offences may be committed;
 - provide for specific protocols or rules aimed at planning the formation and implementation of the entity's decisions in relation to the risks of committing the offences to be prevented;
 - provide for the methods of identifying and managing the financial resources allocated to the activity in which the offences may be committed;
 - provide for an appropriate disciplinary system to sanction non-compliance with the measures indicated in the model;
 - provide for information obligations both towards employees, consultants and collaborators in general, and towards the body responsible for supervising the functioning and observance of the model;
- supervise the functioning and compliance with the organisational models through a body within the entity with autonomous powers of initiative and control;
- that the conduct that caused the offence was carried out - where committed by a person in a senior position - by fraudulently circumventing the aforementioned organisational and control models;
- that the conduct that caused the offence - where committed by a subordinate - was carried out despite the existence of an adequate organisational, management and supervisory model suitable for preventing the offence.

2. The organisation, management and control model

2.1. Objectives of the model

Having made these necessary preliminary remarks, it should be emphasised that the model is primarily aimed at preventing the specific “business risk” associated with the administrative liability of legal persons for offences involving criminal offences and, secondly, at limiting such liability in terms of penalties.

To achieve these objectives, the model must:

- ensure that the potential perpetrator of the offence is fully aware that they are committing an offence (the commission of which is strongly condemned and contrary to the interests of the Entity, even when it might apparently benefit from it);
- establish precise and mandatory procedural guidelines for the performance of sensitive operations;
- enable the entity to react promptly to prevent or impede the commission of the offence itself, thanks to adequate monitoring of activities;
- punish, with appropriate sanctions, any unlawful conduct, through the constant activity of the supervisory body over the work of the people with regard to sensitive processes and the imposition of disciplinary or contractual sanctions.

2.2. Other analyses and requirements undertaken during the development of the Model

In order to ensure that the model is appropriate to the specific characteristics of the company, the development of the model was accompanied by investigations and acquisitions designed to identify the risks present in the company's organisational network.

In particular:

- the company documentation on each operation and type of procedure already in place was examined;
- particular attention was paid to the examination of the company procedures already in place with the aim of confirming their suitability or making the necessary and appropriate improvements and additions to them.

3. Adoption of the Organisational Model

In accordance with the provisions of Article 1, paragraph I, letter a) of Legislative Decree 231/2001, the organisational model is 'an act issued by the governing body' and, therefore, by the Board of Directors of the Entity.

In order to ensure the speed of the adjustment measures, the Board of Directors may delegate the General Manager to make non-substantial additions to the Model, particularly in order to introduce measures for new types of offences that may be identified within the scope of Legislative Decree 231/2001 or to adapt the model itself to additional requirements arising from case law developments.

3.1. Analysis of areas in which crimes may be committed

This analysis involved three types of verification, as follows:

- a. identification of services and activities particularly exposed to the risk of crime;
- b. identification of the types of operational areas exposed to risk;
- c. identification of the types of public administration and individuals for whom the risk of crime is conceivable.

3.2. Information requirements

In order for the criminal court to consider that the organisational model adopted has been effectively implemented, it is essential that the body responsible for monitoring its operation and compliance can rely on a constant flow of information.

Therefore, the entity must provide for the establishment of a confidential internal communication channel between employees and the supervisory body.

Furthermore, since computerised organisation is the most effective tool for detecting anomalies and illegalities, it is recommended, also from this perspective, to appoint a person with expertise and experience in the field as a member of the supervisory body or as an external consultant.

Since the organisational model can only exclude the entity's liability if - in addition to being adopted - it has been "effectively implemented", it should be noted that the Legislative Decree requires, for this purpose, not only the obligation to inform the supervisory body, but also the introduction of a 'disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model' (Article 6, paragraph 2, letter e; Article 7, paragraph 4, letter b).

It is clear that, as a general principle, any penalty system, even if only disciplinary, is justified in its application, provided that it is made known to all those concerned by the authority that imposes it.

In order to achieve exemption from liability, it will therefore be necessary to publicise the organisational model adopted to all those working in the structure; "permanent" posting on the notice board and communication to trade unions.

At the time of adoption, a meeting of all staff will be held for an initial discussion of the entire issue.

The same procedure must be followed when any changes or updates are made to the model.

The supervisory body must ensure that new recruits and those who are transferred to different positions within the company are informed by providing them with the model and individual explanations.

It should be noted that, according to Legislative Decree 231/2001, the “disciplinary system” must be implemented both for “persons subject to the management of others” and those “in senior positions”. Since the legislation does not provide any clarification regarding the characteristics of the disciplinary system, it is considered that any violation of the rules of conduct set out in the model by employees should be treated in the same way as violations considered by the National Collective Labour Agreement and that the procedure and related sanctions provided for therein should be applied.

3.3. Freelance relationships

With regard to freelance collaborators, the relevant individual contract must contain the obligation to comply with the model and an indication of the consequences of violations of the model and the measures to be taken as a result.

It should be provided that malicious violations of the organisational model by directors may also result in forfeiture of office and any rights, including financial rights.

Upon receiving notification from the supervisory body of a suspected violation of the model, the entity must immediately initiate disciplinary proceedings and, if the violation is confirmed, impose the sanction.

If, on the other hand, the entity may well be sanctioned for offences committed by freelance professionals on its staff, it will be essential that the organisational model, in addition to expressly covering them, is also implemented in their regard in the same manner, as compatible, as for employees.

It is also essential that the individual contract expressly provides for the forms of ascertaining violations.

In that case, it will be expressly stipulated which violations of the organisational model, due to their seriousness, shall result in the immediate termination of the relationship.

However, since it is conceivable that an investigation may be conducted into offences committed by these individuals, deemed to have been carried out in the interest or to the advantage of the organisation, the latter must - in order to ensure the widest possible scope in the choice of legality - also require freelance professionals who are occasionally present in the company to comply with all the procedures established in the model.

3.4. Whistleblowing reports – introductory notes

On 10 March 2023, Legislative Decree 24/2023 was published for the purpose of implementing Directive (EU) 2019/ 1937 of the European Parliament and of the Council of 23 October 2019 on the

protection of persons who report breaches of Union law and laying down provisions on the protection of persons who report breaches of national law (“whistleblowing decree”).

The aforementioned decree regulates the protection of persons who report breaches of national or European Union regulations that harm the public interest or the integrity of the public administration or private entities, which they have become aware of in a public or private work context.

Furthermore, with reference to Legislative Decree 231/2001, the aforementioned decree, bringing together all matters relating to the reporting of unlawful conduct, amended paragraph 2-bis and repealed paragraphs 2-ter and quater of the aforementioned decree.

4. Composition of the organisational model

In addition to this general section, the model also consists of the following documents:

- regulations of the supervisory body and information flows;
- code of ethics (in Italian and English);
- sanctioning system
- risk analysis;
- operating procedure no. 1 - relations with public bodies;
- operating procedure no. 2 - management of the IT system and personal data protection;
- operating procedure no. 3 - safety at work;
- operating procedure no. 4 - administrative office;
- operating procedure no. 5 - production and purchasing office;
- operating procedure no. 6 - waste management;
- operating procedure no. 7 - recruitment and management of employees.

Attached documents (integral part of this general section):

1. organisation chart.