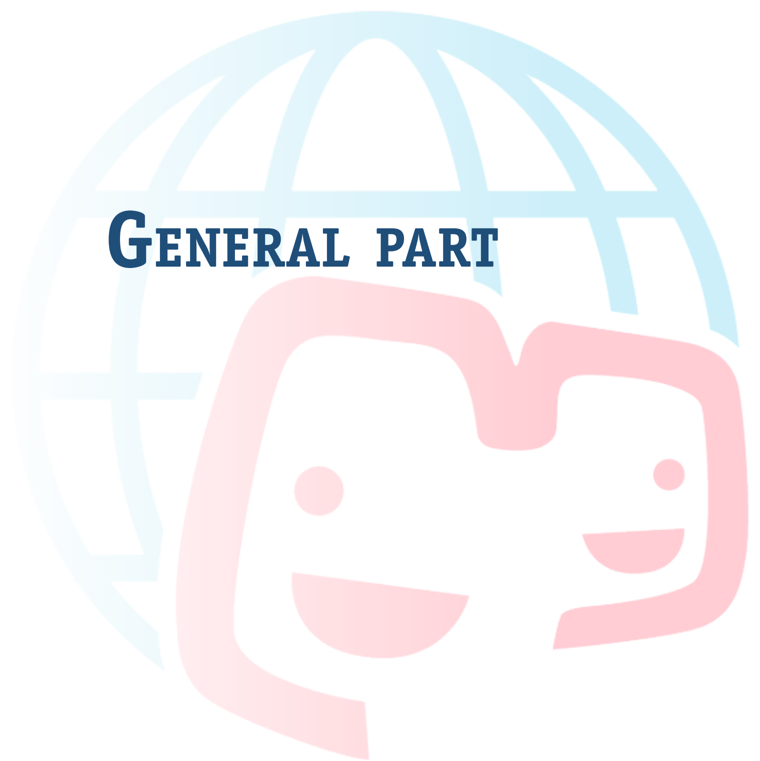
FMSI

Per il Bene dei Bambini

ORGANIZATION, MANAGEMENT AND CONTROL MODEL

Pursuant to Legislative Decree no. 231 of 8 June 2001



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FOREWORD

The Board of Directors of the Fondazione Marista per la Solidarietà Internazionale Onlus[1] (hereafter "***FMSI***" or the "***Foundation***") approved, with a resolution of 06/10/2021, this document called the Model of Organization, Management and Control, in accordance with Legislative Decree no. 231/2001 and, at the same time, designated - as prescribed by the regulations - the Organismo di Vigilanza (as a Supervisory Body) (hereafter also "**OdV**"), in the person of Luca Pardo.

The Organizational, Management and Control Model ("***Organizational Model***", "***Model***" or "***Model 231***") adopted by the Foundation has the function of guiding - through a set of general principles of conduct and protocols - the conduct of all those who operate and act, whether in a senior or subordinate position, on its behalf, in order to guarantee precise respect for legality, ethical principles and moral values.

In addition, it is believed that Model 231 can improve organizational, administrative and control functions, facilitating the achievement of the Foundation's purposes, including:

a) the promotion, care and dissemination of the values of peace, justice and solidarity among peoples through works of information, education and training;

b) the dissemination of these values, with particular regard to the right to education of socially and economically disadvantaged children and young people;

c) cooperation with other organizations and/or bodies whose mission and/or purpose is to promote the values of peace, justice and solidarity;

d) carrying out international cooperation activities in favour of developing countries, oriented towards the promotion of human rights, peace and justice.

Objectives that are close to the heart of all those who work within the Foundation.

[1] Following the registration of FMSI in the Registro Unico Nazionale del Terzo Settore (Single National Register of the Third Sector) and, in any case, not before the tax period following the operation of the said Register, the FMSI will use the acronym "ETS" (instead of "ONLUS") in its name and in any distinctive sign or communication addressed to the public, so that the new name of the Organisation will be **" Fondazione Marista per la Solidarietà Internazionale ETS".**

1. The Legislative Decree of 8 June 2001, no. 231

1.1. The administrative liability of entities pursuant to Legislative Decree no. 231/2001

Italy has ratified a number of international and European Union conventions[2] that have obliged states to provide for the liability not only of individuals, but also of collective entities, for certain types of offence and if certain conditions are met.

Therefore, in implementation of the delegation conferred on the Government with art. 11 of Law no. 300 of 29 September 2000, Legislative Decree no. 231 of 8 June 2001 (hereinafter referred to as "***Decree 231***" or "***Decree***") introduced into Italian law the regulations on the *"liability of entities for administrative offences dependent on crime"*.

Pursuant to art. 1 of Decree 231, the provisions set out there in apply *to "entities with legal personality and companies and associations, including those without legal personality"*, while the following are excluded from the application of the regulations: the State, public territorial entities, non-economic public entities, and those that perform functions of constitutional importance.

Consequently, Decree 231 applies to the Foundation as a Third Sector entity.

According to the regulations introduced, the company can only be held "*responsible*" for certain crimes listed exhaustively, whether committed or attempted, if:

a) the offence committed falls within those belonging to the *so-called numerus clausus;*

b) the person who materially committed the offence holds the position of top manager or subordinate;

c) the offence was committed in the interest and/or to the advantage of the entity.

The administrative liability of the administrative body is autonomous with respect to that of the natural person who has committed the crime on which the administrative offence attributable to the collective subject depends, and pecuniary sanctions may be applied to the latter, with the addition - if specific conditions are met - of prohibitory sanctions.

It is important to underline that the legislator, probably aware of the considerable afflictive character that distinguishes the punitive apparatus, decided to extend to the administrative offence dependent on crime the principle of legality and the corollaries that derive from it: the reservation of the law and non-retroactivity, the principle of certainty

[2] Of particular importance are the Brussels Convention of 26 July 1995 on the protection of the European Community's financial interests; the Brussels Convention of 26 May 1997 on the bribery of public officials of both the European Community and its Member States; the OECD Convention of 17 December 1997 on combating bribery of foreign public officials in international business transactions; the United Nations Convention and Protocols against transnational organised crime adopted by the General Assembly on 15 November 2000 and 31 May 2001 respectively, subsequently ratified by Law no. 146/2006.

and determinateness, as well as the prohibition of analogical application (art. 2 of the Decree). In fact, legality must concern not only the precept, but also the sanction, establishing that *"the entity cannot be held liable for an act constituting a crime if its administrative liability in relation to that crime and the related sanctions are not expressly provided for"* by law. The same provision, in providing for the principle of non-retroactivity of the incriminating regulation, specifies that the responsibility of the administrative body must refer to a law *"that came into force before the commission of the fact"*.

Having said that, Articles 5-8 of Decree 231 identify and regulate the criteria for attributing administrative liability to the company, by identifying *ad hoc* imputation criteria, both objective and subjective.

With regard to the objective criteria, art. 5 postulates, as already mentioned, a particular distinction between top management and subordinates: identifying in the former, those persons who commit the will of the entity, holding *"functions of representation, administration, or management of the entity or one of its organizational units with financial and functional autonomy"* as well as the *"persons who exercise, also de facto, the management or control of the entity";* and in the latter, those who are subject *"to the management or supervision" of* the former.

However, pursuant to Article 5, paragraph 2, the entity is not liable if the offence was committed exclusively in the interest of the persons mentioned above, or of third parties.

The distinction between the two subjective categories affects the attribution of the offence to the entity and the distribution of the burden of proof.

Generally speaking, pursuant to art. 6, if the offence has been committed by a person in a top management position, it is presumed that the offence is attributable to the will of the entity, unless the entity proves otherwise by having correctly applied the Organizational Model.

Differently, pursuant to art. 7, when the offence has been committed by a person in a subordinate position, the entity is presumed not guilty, and it will be up to the prosecution to prove the guilt of the entity, demonstrating the lack of due diligence.

In both cases, the entity is exonerated from liability if it proves that it has adopted and effectively implemented organization and management models suitable for preventing offences of the kind committed and that it has done so before the offence was committed.

In fact, the Organizational Model is attributed a dual function: *exemption*, because it allows the entity to avoid administrative liability even if senior or subordinate persons within the corporate structure have committed criminal offences; *reparation*, by granting sanction discounts if the Model is adopted by the entity after the offence has already occurred.

The subjective criteria for attributing the administrative offence to the administrative body would instead be the result of the implementation of the principle of culpability in collective subjects, similarly to individuals, according to a reconstruction that revolves around the concept of "organizational fault"[3].

3 At the highest level of culpability we find the "abstract hypothesis" of an intrinsically illicit enterprise, i.e. an enterprise whose corporate subject is simply and exclusively projected to commit crimes.

The assessment of the administrative liability of the administrative body is assigned to the criminal judge, and, in confirmation of the principle of autonomy of liability, the cognition of the criminal judge on the fact of crime involving the collective subject remains even in the case of non-prosecution of the natural person. Moreover, the liability of the entity is irrespective of any failure to identify the individual offender, and also exists when the offence attributable to the latter is extinguished for a reason other than amnesty (art. 8 of the Decree).

1.2. Predicate Offences

With regard to the type of offences which belong to the *so-called numerus clausus*, and which can integrate the liability of the entity, reference should be made to articles 24 et seq. of Decree 231, emphasizing how the original text of the Decree has been progressively and considerably expanded over the years compared to its original wording, which only contemplated a series of offences committed in the context of relations with the Public Administration.

To date, the relevant offences can be summarized as follows:

- article 24, Undue receipt of funds, fraud against the State or a public body or for obtaining public funds and computer fraud against the State or a public body;
- article 24-bis, Computer crimes and unlawful processing of data;
- article 24-ter, Organized crime offences;
- article 25, Extortion and bribery;
- article 25-bis, Counterfeiting of money, public credit cards, revenue stamps and identification instruments or signs;
- article 25-bis 1, Crimes against industry and trade;
- article 25-ter, Corporate crimes;
- article 25-quater, Crimes for the purpose of terrorism or subversion of the democratic order;
- article 25-quater *1*, Practices of mutilation of female genital organs;
- article 25-quinquies, Crimes against the individual;
- article 25-sexies, Market abuse;

The second degree of culpability is found, instead, in the company that, although not intrinsically illegal, makes the commission of crimes part of its internal policy: some crimes are considered a business cost, such as, for example, corruption. On the third level there are also cases in which the Foundation accepts the risk that the offence may occur, i.e. it considers the probability that harmful events may result from its decisions.
At the last level are those cases in which the commission of offences depends on a defect of organisation arising from a lack of control within the company.

- article 25-septies, Manslaughter or serious or very serious injuries committed in violation of the rules on the protection of health and safety at work;
- article 25-octies, Receiving, laundering and using money, goods or benefits of unlawful origin, as well as self-laundering;
- article 25-novies, Crimes relating to violation of copyright;
- article 25-decies, Inducement not to make statements or to make false statements to the judicial authority;
- article 25-undecies, Environmental crimes;
- article 25-duodecies, Employment of citizens of third countries whose stay is irregular;
- article 25-terdecies, Racism and xenophobia;
- article 25-quaterdecies, Fraud in sporting competitions, abusive gaming or betting and gambling by means of prohibited devices;
- article 25-quinquiesdecies, Tax crimes;
- article 25-sexiesdecies, Smuggling offences.

It should also be noted that Article 10 of Law no. 146 of 16 March 2006 (Ratification and implementation of the Convention and Protocols of the United Nations against international organized crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001) provides for the liability of collective entities for a series of offences, if their transnational nature is recognized.

1.3. The Sanctions System

Decree 231 defines, in articles 9 et seq., the *"set" of* sanctions applicable to the entity in the liability system outlined therein.

In particular, the sanctions that are likely to be applied to the entity are:

a) *the financial penalty*;

b) *disqualifying sanctions*:

   - disqualification;
   - suspension or revocation of authorizations, licenses or concessions functional to the commission of the offence;
   - prohibition to contract with the Public Administration;
   - exclusion from benefits, financing, contributions or subsidies and the possible revocation of those granted;
   - ban on advertising goods or services.

c) *confiscation* (always ordered in the event of conviction; while preventive seizure may be used as a precautionary measure);

d) *publication of the sentence* (this is optional and may be ordered in the case of application of a disqualification sanction).

Undoubtedly, the pecuniary sanction has a pre-eminent position, as it is indefectible: if the prerequisites are met to recognize the entity as responsible, this will certainly be imposed. However, in the cases expressly provided for by law, disqualification sanctions may also be imposed.

In addition to this "binary distinction" between pecuniary sanctions and prohibitory sanctions, there are also confiscation and publication of the sentence.

As regards the application criteria, for the pecuniary sanction, the Italian legislator has opted for a two-phase structure based on a quota system, where the two-phase declination is expressed in:

a) *number of quotas*: established by the judge taking into account the seriousness of the fact, the degree of responsibility of the entity, and the activity carried out to eliminate or mitigate the consequences of the fact and to prevent the commission of further offences;

b) *amount of each quota*: modulated on the basis of the economic and patrimonial conditions of the entity.

Disqualification sanctions, whose duration ranges from a minimum of three months to a maximum of two years, are added to pecuniary sanctions in mandatory cases, only for those crimes for which they are explicitly provided for.

In particular, they apply in relation to all the criminal offences provided for in Decree 231, with the exception of the offences referred to in Art. 25-sexies (Market abuse) and 25-decies (Inducement not to make statements or to make false statements to the Judicial Authorities), provided that at least one of the following conditions listed in Art. 13 of Decree 231 is met:

- the entity has gained a significant profit from the offence and the offence was committed by persons in top positions or by persons subject to the direction of others when, in this case, the commission of the offence was determined or facilitated by serious organizational deficiencies;
- in case of repeated offences.

The judge will assess, depending on the concrete case, the most appropriate sanction (or sanctions, also considering their joint application), also taking into account the activity carried out by the entity.

The sanctions of disqualification from exercising the activity, prohibition to contract with the Public Administration and prohibition to advertise goods or services may be applied - in the most serious cases - on a definitive basis.

In the case of the application of any of the prohibitory sanctions that determine "*the interruption of the entity's activity*", the provision of art. 15 of the Decree should be noted, which provides for judicial commissioning. In other words, the judge may decide to opt, instead of the prohibitory sanction, for the continuation of the activity by means of a commissioner, who will be assigned very specific powers and functions.

1.4. Attempted crimes

In the event of the commission, in the form of an attempt[4], of the offences referred to in Chapter I of Decree 231, the pecuniary penalties and disqualification penalties are reduced by between a third and a half, while the imposition of penalties is excluded in cases where the entity voluntarily prevents the action from being carried out or the event from occurring, pursuant to Art. 26 of Decree 231. In this case, the exclusion of sanctions is justified by the interruption of any relationship of immedesimation between the entity and the persons who assume to act in its name or on its behalf.

1.5. Changes in the entity

Decree 231 also regulates the regime of the company's liability in relation to modifying events, such as the transformation, merger, demerger and sale of the company.

In fact, art. 27, paragraph 1, states that the administrative body is liable for the obligation to pay the pecuniary penalty with its assets or with the common fund, where the notion of "*common fund*" refers to unrecognized associations.

The impact on the entity's liability of the modifying events connected to transformation, merger, demerger and sale of the company are regulated by articles 28-33 of the Decree.

In particular, art. 28 of the Decree provides that the liability of the entity for crimes committed prior to the date on which the transformation took effect continues.

On the other hand, according to the provisions of art. 30 of the Decree, in the case of a partial demerger, the demerged Foundation remains liable for crimes committed prior to the date on which the demerger took effect.

The entities that benefit from the demerger, whether total or partial, are jointly and severally obliged to pay the pecuniary sanctions owed by the demerged entity for offences committed prior to the date on which the demerger took effect, up to the actual value of the net assets transferred to the individual entity, except in the case of entities to which the branch of activity within which the offence was committed was transferred, even partially.

The disqualification sanctions relating to the offences indicated above are applied to the entity to which the branch of activity within which the offence was committed has remained or has been transferred, even partially.

Art. 31 of the Decree, on the other hand, governs the imposition of sanctions in the case of a merger or demerger, prescribing that if these take place before the conclusion of the judgement, the judge, in the commensuration of the pecuniary sanction, will take into account the economic conditions of the entity originally responsible, and not those of the entity resulting from the merger or demerger.

In addition, in the case of a disqualification sanction, the entity that results from the merger, or the entity that would be subject to the disqualification sanction following the

4 According to Article 56, paragraph 1, of the Criminal Code, an attempted crime is committed by "anyone who performs suitable acts, unequivocally aimed at committing a crime (...) if the action is not carried out or the event does not occur".

demerger, may ask the judge to replace it if the conditions are met. In particular, if:

a) the entity has fully compensated for the damage and has eliminated the harmful or dangerous consequences deriving from the crime, or has in any case taken steps to do so (art. 17, para. 1, letter a]);

b) the entity has eliminated the organizational deficiencies that led to the commission of the offence, through the adoption and implementation of the Organizational Model (art. 17, para. 1, letter b]);

c) the entity has made the profit available for the purposes of confiscation (art. 17, para.1 lett. c]).

Finally, articles 32 and 33 take into consideration the relevance of the merger or demerger in the case of reiteration of offences, and the hypothesis of the transfer of a company.

In the first case, Art. 32 states that the judge, in cases of liability of the entity resulting from the merger or benefiting from the demerger for offences committed after the date on which the merger or demerger took effect, may consider that there has been a repetition of the offence also with reference to convictions handed down before the date on which the merger or demerger took effect.

On the other hand, in the case of the transfer of a company in whose activity the offence was committed, the transferee is jointly and severally obliged, except for the benefit of prior enforcement of the transferor body and within the limits of the value of the company, to pay the pecuniary penalty.

1.6. Offences committed abroad

Article 4 of Decree 231 regulates the hypothesis in which the entity, although having its head office in Italy, commits crimes abroad.

Under the conditions of articles 7-8-9-10 of the Criminal Code, entities are also liable for offences committed abroad, unless the State of the place where the offence was committed takes action against them.

If, according to the above-mentioned articles of the Criminal Code, it is necessary to request the Minister of Justice to proceed against the guilty individual, then the request must also be made against the entity, under penalty of improper prosecution against the latter.

2. The Organization, Management and Control Model of the Fondazione Marista per la Solidarietà Internazionale Onlus

2.1 The functions of Model 231 and its essential elements

As mentioned above, the preparation of a 231 Model that meets the requirements of the law allows the entity to obtain significant benefits in two respects.

In fact, in the event that the entity has not previously adopted a 231 Model and crimes have been committed from which its administrative liability derives, the late adoption of the Model, while not exonerating it from liability, makes it the recipient of significant penalty discounts (so-called *reparatory* function).

On the contrary, the correct preparation and implementation of the Model may benefit the collective entity from the point of view of exemption from liability under Decree 231, the latter being excluded despite the fact that the offence has been committed by the persons referred to in Articles 6 and 7. This is referred to as an *exemption* function.

Having said that, it is important to emphasize that each entity is called upon to adapt and prepare such a Model on the basis of its own structure and peculiarities. After that, only if the Model has been concretely implemented - the evaluation of its effectiveness will be up to the judge - the entity will not be held responsible for the administrative offence dependent on crime.

In particular, pursuant to art. 6, paragraph 1, the entity is not liable if it proves that:

a) the management body has adopted and effectively implemented, prior to the commission of the offence, organizational and management models capable of preventing offences of the kind committed;

b) the task of supervising the functioning of and compliance with the models and ensuring that they are updated has been entrusted to a Foundation body endowed with autonomous powers of initiative and control;

c) the persons committed the offence by fraudulently circumventing the organization and management models;

d) there was no omitted or insufficient supervision by the Organismo di Vigilanza.

The second paragraph of art. 6 of the Decree instead sets out the contents of the Organizational Models, which must meet specific requirements:

- Identify the activities within the scope of which offences may be committed;
- Provide for specific protocols aimed at planning the formation and implementation of the entity's decisions in relation to the offences to be prevented;
- Identify methods of managing financial resources suitable for preventing the commission of offences;
- Provide training obligations for the administrative body responsible for supervising the functioning of and compliance with the models;

- Introduce an appropriate disciplinary system to sanction non-compliance with the measures indicated in the Model.

In the event that, despite the fact that the entity has adopted an Organizational Model in line with the aforementioned characteristics, a fraudulent circumvention of the system and precautions adopted by the collective entity occurs, these facts will be considered "*reasonably unforeseeable events*" by the latter, with the consequence that the commission of the offence cannot be considered suitable to demonstrate *ex post* the inadequacy of the model implemented.

It should also be pointed out that the preparation of the 231 Model and the establishment of the Organismo di Vigilanza are not mandatory, but constitute a necessary precaution so that the Foundation may benefit from exemptions from liability.

2.2 **The Guidelines adopted by Confindustria**

Art. 6, paragraph 3 of Decree 231 establishes that organizational models may be adopted, guaranteeing the requirements of paragraph 2, on the basis of Codes of Conduct drawn up by the associations representing the entities, communicated to the Ministry of Justice which, in agreement with the competent Ministries, may, within thirty days, formulate observations on the suitability of the models to prevent offences.

Confindustria has defined guidelines for the preparation of Models 231 (hereinafter "*Confindustria Guidelines*") providing, among other things, methodological indications for the identification of areas at risk (sector/activity within which crimes may be committed), the design of a control system (the so-called protocols for planning the formation and implementation of the entity's decisions) and the contents of the Organization Model.

The first version of the Confindustria Guidelines was adopted in 2014. In June 2021, after seven years since the last amendments, a new version of the document has been arrived at, which has also obtained the approval of the Ministry of Justice and which takes into account the legislative and jurisprudential changes that have taken place since the review in March 2014.

The aforementioned Confindustria Guidelines suggests the use of risk *assessment* and *risk management* methodologies that are divided into the following phases:

- identification of risk areas, aimed at verifying in which area/sector of the entity it is possible for the prejudicial events set forth in Decree 231 to occur. The term "*risk*" refers to any variable or factor within the company that, either alone or in conjunction with other variables, could have a negative impact on the achievement of the objectives set forth in Decree No. 231;

- preparation of a control system capable of preventing risks, through the adoption of specific protocols. This entails assessing the existing system within the entity for the prevention of offences and its possible adaptation, in terms of its ability to effectively combat, i.e. reduce to an acceptable level, the risks identified.

The most relevant components of the preventive control system for malicious crimes proposed by Confindustria are:

- Code of Ethical Conduct;
- Organizational System sufficiently updated, formalized and clear;
- Manual and computer procedures (information systems);
- Authorization and signature powers;
- Communication to and training of staff;
- Integrated control systems.

The relevant components of the preventive control system for culpable offences relating to the protection of health and safety at work and the environment proposed by Confindustria are:

- Code of Ethical Conduct;
- Organizational Structure;
- Education and training;
- Communication and Involvement;
- Operations Management;
- Monitoring system.

These components must be adapted to the following principles:

- verifiability, documentability, consistency and congruence of each operation;
- application of the principle of separation of duties (no one can manage an entire process independently);
- documentation of controls;
- provision of an adequate system of sanctions for the violation of the rules of the Civil Code and the procedures provided for by the Model;
- identification of the requirements of the Organismo di Vigilanza (autonomy, independence, professionalism and continuity of action);
- obligations to inform the Organismo di Vigilanza;
- *Whistleblowing*.

2.3 Case law precedents

For the purposes of drafting this Organizational Model, the most recent and significant pronouncements on the subject have been analyzed and taken into consideration.

In fact, the Guidelines of the trade associations and the aforementioned case law pronouncements constitute fundamental parameters from which to start when preparing a 231

Model that can be considered suitable and effective for performing the exemption function for which it is intended.

In order for a model to be considered suitable and, if correctly applied, to allow the entity to be exempt from liability, it must be endowed with a concrete and specific effectiveness and dynamism. For these reasons, in its drafting it is necessary to pay particular attention to:

- Non-accounting funds;
- Methods of preparing accounts;
- Methods of preparing financial statements;
- Possible implementation methods of the offences themselves, taking into account the internal and external operating context in which the entity operates;
- History of the entity (past events, including judicial ones);
- Segregation of functions in processes at risk;
- Authorizing signatory powers consistent with organizational and management responsibilities;
- Monitoring system suitable for reporting critical situations;
- Management of financial resources;
- Specific disciplinary system in both precept and sanction.

Jurisprudence has focused in particular on the elaboration of specific requisites which must be possessed by the members of the Organismo di Vigilanza; furthermore, it has underlined the need to provide for precise sanctions in the event of violation of the obligations to provide information to the Organismo di Vigilanza (which could also be a monocratic administrative body).

First of all, it is essential to map the areas in which the risk of offence is most deeply rooted (the so-called risk mapping), identifying all the sensitive areas which, involving the activity of the entity, are susceptible to the commission of offences. For each of these areas, it will therefore be necessary to establish specific prevention protocols that regulate as rigorously and effectively as possible these activities at risk. Furthermore, in order to guarantee the effective implementation of the entire organizational system, these protocols will have to be backed up by specific and appropriate sanctions. In fact, the Model 231 must be concretely implemented, and must constitute a dynamic and effective tool, which is shaped and modified as the operational and organizational reality of the legal entity changes; it cannot constitute a mere facade tool characterized by a merely formal value.

In situations where offences have already been committed, the planning content of the Model 231 must be calibrated and aimed at the adoption of specific measures suitable for preventing or averting the danger of a repetition of the offences that have already occurred. Therefore, the procedures relating to the formation and implementation of decisions concerning activities considered dangerous must be precisely determined. To this end, an exact identification of the persons to whom the adoption of decisions is entrusted is required, as well as the identification of the parameters to be followed in

the choices to be made, the precise rules to be applied for the documentation of contacts, proposals and every single phase of the deliberative and implementation phase of the decision.

Secondly, in order to allow for the correct and appropriate implementation of the Model, the entity must organize specific training courses aimed at ensuring adequate knowledge, understanding and application of the Model by all persons in senior and subordinate positions. Compulsory attendance at these courses must also be envisaged.

2.4 Adoption of the Organizational Model by the Fondazione Marista per la Solidarietà Internazionale Onlus

By adopting Model 231, the Foundation has set itself the goal of equipping itself with a set of protocols suitable for responding to the purposes and requirements of Decree 231 - both in the phase of crime prevention and in the phase of control and implementation of the Model itself - as an integration of the internal control and organizational tools.

The implementation of the Organizational Model and the tenor of the rules of conduct it contains are aimed at spreading among all those who act or may act in the name of and/or on behalf of and/or in the interest of the Foundation, the awareness and consciousness that certain behaviors - even if favorable to the interests of the company on the economic side - must be considered inadmissible and unjustifiable.

Therefore, the entity is called upon to set up a system for the dissemination of the model and an internal disciplinary system in order to strengthen the dissuasive effectiveness of the Model and its effectiveness, identifying the recipients of the sanctions, the types of sanctions, the commensuration criteria, the relevant conduct and the application procedure.

This Model does not constitute a separate control system, but integrates the internal control system with the intention of strengthening it and making it more effective, pursuing as its main - though not exclusive - objective that of protecting the internal organization of the Foundation and allowing it to avail itself of the exempting function of the Model, avoiding the onset of administrative responsibility in the case of the commission of crimes committed in its interest and/or to its advantage.

Consequently, the principles contained in the Organizational Model apply directly to, and must be respected by, all those who perform, even de facto, functions of management, administration, direction and control within the Foundation, as well as to all employees, managers and those with powers of external representation of FMSI.

On the other hand, with regard to consultants and suppliers in general, since they are external to the Foundation, the Foundation will evaluate, according to the procedures it deems most appropriate in concrete terms, the provision of specific termination and/or cancellation clauses as sanctions in the event of violation of the principles contained in Model 231.

That said, Model 231, as approved by the Foundation's Board of Directors, consists of a General Part and a Special Part.

The **General Part of** the Model is characterized by the identification of the institutional features of the entity, and provides for:

- a brief summary of the reference legislation, the purposes and principles that regulate the Model (recipients, structure, approval, modification, updating, etc.), the methodology used to draw it up and a brief introduction to each constituent element;
- Code of Ethics;
- Disciplinary System;
- Composition and powers of the Organismo di Vigilanza.

The **Special Part,** on the other hand, is characterized by the identification and regulation of specific areas and activities at risk of offence.

2.5 Methodology followed in drafting Model 231 of the Fondazione Marista per la Solidarietà Internazionale Onlus

The Organizational Model, as recommended by the Confindustria Guidelines and as required by Decree 231, was prepared in accordance with the methodological steps described below:

Stage 1 - Organizational analysis and identification of sensitive processes

The first advanced step towards the drafting of the Organizational Model is represented by the identification of the processes and activities in the context of which the crimes expressly mentioned in the *so-called numerus clausus* within the Decree may be committed.

A prerequisite for the identification of sensitive activities was the analysis of the organizational structure of the Foundation, with the aim of obtaining an overall picture of both the activity specifically carried out by the organization and the legal configuration of the Foundation at the time the project for drafting the 231 Model was launched.

Phase 2 - Identification of the subjects involved

The purpose of this phase is to identify the persons responsible for the sensitive processes/activities identified in the previous phase, i.e. the resources with in-depth knowledge of these processes/activities and the control mechanisms currently in place.

To this end, the following were carried out:

- a documentary analysis (organization chart, *handbook,* etc.) to understand the activity of the Foundation and identify, on a preliminary basis, sensitive processes/activities together with the functions responsible for these processes/activities;
- specific interviews with members of the Foundation's Operating Units, with the auditors, with the person in charge of Prevention and Safety Protection (RSPP) pursuant to Legislative Decree no. 81/2008, and with some members of the Board

of Directors, in order to better identify the mapping of sensitive processes/activities and the detection of the existing control system, with specific reference to the "control principles" provided for by the Decree and the Confindustria Guidelines.

Phase 3 - As-Is Analysis

The objective of Phase 3 was to analyze and investigate - for each sensitive process/activity identified in Phase 1, and with reference to the functions and roles of the persons responsible for and involved in these activities, identified in Phase 2 - the existing control elements, and to verify in which areas and sectors of activity and in what manner the offences provided for by Decree 231 could in abstract terms be committed.

In this phase, a working document was also created containing the mapping of the so-called "risk" activities that could be exposed to the potential commission of the offences referred to in the Decree.

In particular, two different categories of activities at risk have been identified:

- *sensitive activities*, which present a direct risk of criminal relevance for the purposes of the aforementioned Decree;
- *instrumental activities*, which present risks of criminal relevance only when they are combined with directly sensitive activities, supporting the commission of the offence, thus constituting the method of implementation.

The above analysis was facilitated by formalizing, for each sensitive process/activity of:

- main phases;
- functions and roles/responsibilities of the internal and external parties involved;
- existing control elements.

In addition, interviews were conducted with members of the Foundation's Operating Units, in order to better identify the mapping of sensitive and instrumental activities, and the detection of the existing control system with reference to the "*control principles*" envisaged by the Decree and the Confindustria Guidelines.

As a result of the aforementioned interviews, it was possible to carry out an initial "focus" on the offences under Decree 231 that may involve the responsibility of the Foundation in the normal course of its activities.

CRIME FAMILY	RELEVANCE
Offences against the PA	Low relevance
Computer crimes and unlawful data processing	Relevant
Organised crime offences	Not relevant
Forgery of money, public credit cards and stamps	Not relevant
Crimes against industry and trade	Not relevant
Corporate offences	Not relevant
Crimes for the purposes of terrorism or subversion of the democratic order	Not relevant
Practices of female genital mutilation	Not relevant
Crimes against the individual personality	Low relevance
Offences of market abuse	Not relevant
Crimes of manslaughter and grievous or very grievous bodily harm committed in violation of the rules on the protection of health and safety at work	Low relevance
Offences of receiving stolen goods, money laundering and use of money, goods or benefits of unlawful origin, as well as self-laundering	Relevant
Copyright offences	Not relevant
Inducement not to make statements or to make false statements to the judicial authorities	Not relevant
Environmental offences	Not relevant
Employment of illegally staying third-country nationals	Not relevant
Racism and xenophobia	Not relevant
Fraud in sporting compensations, unlawful gaming or betting and gambling by means of prohibited devices	Not relevant
Tax offences	Relevant
Transnational crimes	Not relevant

Step 4 - Gap Analysis

In this phase, through a comparison and analysis of the existing control elements, the necessary improvement actions were identified in order to implement a Model 231 suitable for preventing the Foundation's administrative liability for crime. In this regard, the term "*Gap Analysis" was used to refer to the* current model (*"As-Is"*) and the future model (*"To-Be"*).

Particular attention has been paid, in terms of compatibility, to the system of delegations and powers, the system of internal procedures, and the characteristics of the supervisory body entrusted with the task of supervising the operation of and compliance with the Model.

Phase 5 - Drafting of the Organizational Model

The last phase involved the drafting of the Organization, Management and Control Model, articulated in all its components according to the provisions of the Decree itself and the Confindustria Guidelines, adapting it to the results obtained from the analyses conducted in the previous phases.

The Model, as recommended by the Confindustria Guidelines, therefore fulfils the following functions:

- make all those who make up the Foundation's staff - or who in any case act in the name of and/or on behalf of the Foundation - aware of the need for strict observance of the provisions of the Model, under penalty of severe disciplinary sanctions;
- punish any behaviour in contrast with laws, regulations or, more generally, with the principles of fairness and transparency;
- inform about the serious consequences that could result for the Foundation from the application of pecuniary or interdictory sanctions, according to the provisions of the Decree, and the possibility that they may also be ordered as a precautionary measure;
- enable the Foundation to constantly monitor sensitive and instrumental processes and/or activities in order to intervene promptly when risk profiles emerge.

2.6 Definition of control principles

The system of controls, perfected by the Foundation on the basis of the indications provided by the Confindustria Guidelines, was implemented by applying the control principles, defined below, to the individual sensitive activities on the basis of

1. general principles of control relating to sensitive activities;
2. specific protocols, applied to the individual sensitive activities, which are implemented through:
    - **Regulations**: existence of internal provisions suitable for providing principles of conduct, operating procedures for carrying out sensitive activities as well as procedures for filing the relevant documentation;
    - **Traceability**: each operation relating to the sensitive activity must, where possible, be adequately documented. The process of decision-making, authorization and performance of the sensitive activity must be verifiable *ex post* also by means of appropriate documentary support and, in any event, the cases and methods of any possibility of deletion or destruction of the records made must be regulated in detail;
    - Segregation of **duties**: separation of activities between those who authorize, those who execute and those who control. This segregation is guaranteed by the intervention, within the same internal macro process, of more than one person

in order to guarantee the independence and objectivity of the processes. The segregation of duties is also implemented through the use of computer systems that enable certain operations to be carried out only by clearly identified and authorized persons;

- Power of attorney and **delegation of authority**: the authorization and signatory powers assigned must be consistent with the organizational and managerial responsibilities assigned, providing, where required, an indication of the approval thresholds for expenditures, and must be clearly known and defined within the Foundation. The internal roles assigned the power to commit the Foundation to certain expenses must be defined, specifying the limits and nature of the same. The carrying out of activities in the context of which one of the offenses indicated in Decree 231 could theoretically be committed can be supervised, in terms of signature powers, by the provision of joint signatures;
- **Monitoring activities**: aimed at periodically/temporarily updating the delegated powers and the control system in line with the decision-making system and the entire organizational structure. It concerns the existence of process controls carried out by the decision-making bodies or by external controllers.

2.7 **Approval, amendment and integration of Model 231**

The Organizational Model, as required by art. 6, paragraph 1, letter a) of the Decree, is an act issued by the *Board of* Directors (hereinafter also referred to *as the "BoD"*). Therefore, on 06/10/2021 the Foundation's Board of Directors resolved to adopt this Model.

Supervision of the adequacy and constant updating of the Model is instead guaranteed by the Organismo di Vigilanza, which periodically reports the outcome of its work to the Board of Directors.

This does not preclude the Board of Directors from being directly responsible for implementing the 231 Model in the Foundation.

In fact, the Board of Directors is required to constantly and punctually adapt the Organizational Model, also on the proposal of the Organismo di Vigilanza, in the event that the changed conditions of the company structure or regulatory updates require it.

Regardless of the occurrence of circumstances that require immediate updating of the Model, it must always be subject to periodic review.

2.8 **Staff training**

The Foundation, also through the Casa Generalizia, undertakes to organize periodic training courses for its employees and for those who have management functions, in order to disseminate the principles contained in the Model and in the Code of Ethical Conduct.

Failure on the part of Foundation employees to participate in training activities without justification constitutes a violation of the principles contained in this Model and, therefore, will be sanctioned in accordance with what is indicated in the paragraph on the Sanctions System.

For the purposes of the efficacy of this Model, the Foundation's main objective is to guarantee correct knowledge of the rules of conduct contained herein to both existing and future employees. The level of knowledge is carried out with different degrees of detail in relation to the different levels of involvement of the resources themselves

To this end, the adoption of this Model as well as the Code of Ethics is communicated to all Employees.

Such communication is made by sending a written communication or informative e-mail, followed by express acceptance and declaration of acceptance by the same.

2.9 Informing Consultants and Partners

Third parties who collaborate with the Foundation by virtue of consulting or supply contracts or collaboration agreements must be informed of the adoption of the Model by the Foundation.

At their request, the Model may be made available in electronic or paper format.

Appropriate information may also be provided on the policies and procedures adopted by the Foundation on the basis of this Model or containing prescriptions applicable to the same, as well as the texts of the contractual clauses usually used in this regard for their possible.

The commitment to observe the principles of the Model and of the Code of Ethical Conduct by third parties having contractual relations with the Foundation may also be provided for, case by case and on the basis of the importance of the relations with the third parties, by a special clause in the relative contract, which is accepted by the third party.

2.10 The activity and organizational structure of the Fondazione Marista per la Solidarietà Internazionale Onlus. Existing internal instruments

The Fondazione Marista per la Solidarietà Internazionale Onlus, inspired by the charism of Marcellin Champagnat, was founded by the Congregation of the Marist Brothers of the Schools in 2007 and works around the world for the rights of children and adolescents, with the aim of guaranteeing them better living conditions.

The Foundation has its headquarters in Rome, P.le M. Champagnat, 2 00144 Italy.

To date, no criminal charges have been filed against any of the individuals who work for the Foundation in connection with events that occurred in the course of its operations.

The Foundation devotes the greatest attention to its organizational structures, to respect for the rules and to the elaboration of operating procedures with control systems, both in order to ensure efficiency and transparency in the activities carried out and in the attribution of the relative responsibilities, and in order to reduce to a minimum malfunctions, irregularities, and therefore illicit behavior or in any case behavior that is not in line with what is indicated by the Foundation itself.

All those who work within the Foundation are obliged to respect civil and fiscal law, with particular reference to that applicable to non-profit organizations, as well as the directives and controls identified in the Model.

In fact, in the preparation of this Model, account was taken of the structures already existing within the FMSI architecture, in order to identify the control garrisons already operational and considered in themselves suitable for preventing offences and unlawful conduct. In addition, new protocols were integrated and prepared (within the *handbook*) in order to strengthen the structure of the entity in the face of the danger of the commission of offences by internal members (apical or subordinate), in the execution of corporate activities carried out in the so-called “*sensitive*” areas.

The analysis of the areas at risk (so-called sensitive areas) has made it possible to identify the shortcomings and the improvements to be made to the existing prevention tools with respect to the commission of the offences belonging to the *so-called numerus clausus* referred to in Decree 231 and in Articles 3 and 10 of Law no. 146/2006.

Governance **Model**

The Foundation, with the intention of implementing a constant and progressive adaptation of its Governance in the light of regulatory updates, has developed a set of tools for the governance of the organization, constituting the FMSI ***handbook***, which can be summarized as follows:

- **Code of Ethical Conduct**

The Codes of Ethics represent the basic tool for implementing ethics within an organization and identify the principles that should inspire individual behaviour.

The Foundation has identified a structured system of values and rules of conduct to which it intends to refer when working to achieve its institutional aims.

The adoption of ethical principles relevant to the prevention of the crimes set forth in Decree 231 is an essential element of the preventive control system. These principles find their natural place in the Code of Ethics adopted by the Foundation, which is an integral part of this Model and is also included in the *Handbook*.

The Code identifies the values and highlights the set of rights and duties that are most important in carrying out the responsibilities of those who, in any capacity, work within the Foundation or with it.

The adoption of the Code of Ethics is an expression of a working context whose primary objective is to satisfy, in the best possible way, the needs and expectations of its interlocutors, through:

- the continuous promotion of the Marist educational philosophy, Christian values such as solidarity and non-discrimination and the principles contained in the United Nations Convention on the Rights of the Child;

- formation to a healthy critical sense, to the ability to make responsible choices, to respect for one's own rights and those of all, to a sense of creativity, loyalty and transparency in relationships and, at the same time, education to interiority, to openness to Transcendence, to solidarity towards one's neighbor, in particular towards those most in need;

- the prohibition of conduct that conflicts not only with the provisions of the law that are relevant from time to time, but also with the values that the Foundation intends to promote;

- the observance of the Code of Ethics and the respect for its contents are required indiscriminately of: administrators, employees, consultants, suppliers, as well as all those who have a relationship of collaboration with FMSI, and who manifest, to some extent, externally the choices or orientations of the Foundation.

- **Organigram and organizational structure**

The Foundation's structure, hierarchical relationships and relevant aspects of the organizational units, activities, their mutual relations, roles and responsibilities are described.

- **Procedures and documents**

The Foundation has prepared specific procedures contained for:

a) project management;

b) charitable donations received;

c) office management, with reference to incoming and outgoing documentation and related filing;

d) accounting management, with reference to the management of expenses, use of credit cards and cash;

e) approval of travel and related expenses;

f) apprenticeships and volunteer paths;

g) *social media* management;

h) possible opening of local offices:

i) management of network partnerships.

- **Attached documents**

The *handbook* also includes a number of attached documents regarding:

1) Declaration of acceptance of the Manual;
2) Monitoring principles and procedures;
3) Project application form;
4) FMSI Solidarity Policy and project selection criteria 2021;
5) Evaluation grid;
6) Projects Agreement;
7) Payment Request;
8) Financial report;
9) Vademecum project management;
10) Receipt of Donations;
11) Mission Expenses Summary Form;
12) Request for travel-Budget form;
13) Internship request;
14) Motivational letter guidelines;
15) Request for volunteer activities.

Organizational structure

The following is a description of the organizational structure of FMSI.

- **The Founder**

The Founder is the Casa Generalizia dei Fratelli Maristi (FMS), the entity that undersigned the Constitutive Act and that will be able to designate, even by will, the person destined to succeed it in the exercise of the prerogatives and rights set forth in the Statute.

- ***Board of* Directors**

The general representation of the Foundation is conferred on the Board of Directors, composed of six members, including the President, of nationalities from all over the world, which has broad powers of ordinary and extraordinary administration.

In addition, there is the figure of the General Manager who represents the Foundation and operates according to the indications of the Board of Directors.

- **Auditors**

The auditors are responsible for monitoring compliance with the law and the Articles of Association, as well as respect for the principles of correct administration, with particular reference to the adequacy of the organizational, administrative and accounting structure

adopted by the Foundation. In the exercise of their auditing functions, the auditors may carry out acts of inspection and control.

The Foundation's structure and organizational structure

FMSI is a foundation organized in the following Operating Units:

a) Communication Unit;

b) Projects and Fundraising Unit;

c) Advocacy and Child Rights Unit;

d) Operations Unit.

3. The Organismo di Vigilanza (Supervisory Board)

3.1 General principles

Pursuant to Art. 6, paragraph 1, letter b) of Decree 231, the Foundation can benefit from the exemption from liability if *"the task of supervising the functioning of and compliance with the models and of keeping them updated has been entrusted to a body of the entity with autonomous powers of initiative and control"*.

Even in the absence of further indications provided by the Model, but on the basis of the Guidelines drawn up by Confindustria, it is easy to deduce which supervisory body, within the scope of the various forms that the organization takes in practice, possesses the necessary requisites to perform the functions of the Organismo di Vigilanza envisaged by the legislator.

It is, in fact, a widespread opinion that the duties of supervision of the Model must be entrusted to an supervisory body that meets the following requirements:

- *Professionalism*: the members of the OdV must have specific skills in inspection and in the analysis of control systems;
- *Honourability*: this requirement is deemed to be excluded in the event of the occurrence of a cause of ineligibility/disqualification or suspension from office;
- *Independence*: the need to guarantee effective control presupposes that the OdV is, as a whole, independent, that is, that it has no relationship with the Foundation that could undermine its autonomy of judgment. In particular, it is required that the members, if chosen from among the internal members of the entity, not perform operational tasks within the latter;
- *Autonomy*: as set out in art. 6 of Decree 231, the OdV must be endowed with *"autonomous powers of initiative and control"*; consequently, it must be granted decision-making autonomy in carrying out its activities; a high budget for carrying out its functions;
- Continuity *of action*: it is important that the OdV devotes itself with continuity to supervisory activities.

The Organismo di Vigilanza is the tool for controlling the effectiveness and adequacy of the Model. For these reasons, the following activities are fundamental:

- *Information activities*: information flows to the OdV are of paramount importance; in fact, case law has underlined the need to provide for specific sanctions in the case of violations of the obligations to inform the OdV;
- *Control activities*: the OdV must be equipped with inspection and supervision powers;
- *Propulsive and disciplinary* activities: the OdV carries out information and training activities on the contents of the Model and the Code of Ethics. In addition, it has the capacity to propose and evaluate the adequacy and effectiveness of the Model and the power to monitor and ascertain violations.

Specifically, on a more operational level, the OdV is entrusted with the task of:

- supervise the effectiveness of the model, i.e. the consistency between the concrete behaviours and the established model;
- examine the adequacy of the model, i.e. its real - not merely formal - capacity to prevent the prohibited conduct;
- analyze the maintenance of the model's robustness and functionality requirements over time;
- to take care of the necessary updating in dynamic sense of the model, in the hypothesis in which the operated analyses render necessary to carry out corrections and adjustments. This latter aspect is achieved by means of: - suggestions and proposals to adapt the model to the company bodies or functions capable of giving them concrete implementation in the company fabric, depending on the type and extent of the interventions;
- periodically check the map of areas at risk of offence in order to adapt it to changes in the activity and/or organizational structure. To this end, the management and the persons in charge of control activities - within their individual functions - must report to the Organismo di Vigilanza any situations that may expose the company to the risk of crime. All communications must be sent in writing;
- periodically carry out checks to ascertain the provisions of the Model, in particular to verify that the procedures and controls are carried out and documented in a compliant manner, and that the ethical principles are respected. To this end, the OdV may also make use of external professionals;
- coordinating with the other operational functions of the Foundation (also through appropriate meetings);
- collect, process and store all relevant information received in compliance with the provisions of the Model;
- update the list of information to be transmitted to it;
- promote initiatives for training and communication on the Model and prepare the necessary documentation for this purpose.

The structure thus identified is responsible for complying with the need to transpose, verify and implement the organizational models required by art. 6 of Decree 231. In addition, constant monitoring of the state of implementation and of the effective compliance of these models with the prevention requirements of the law is required.

1) If it emerges that the state of implementation of the required operating standards is deficient, it is the responsibility of the Organismo di Vigilanza to take all necessary initiatives to remedy such deficiencies and to correct this "pathological" condition as soon as possible.

It will then be a matter, depending on the case and circumstances, of:

- ✓ urge the heads of the individual organizational units to comply with the models of conduct;
- ✓ directly indicate what corrections and modifications should be made to normal business practices;
- ✓ report the most serious cases of non-implementation of the model to the managers and control officers within the individual departments;

2) if, on the other hand, the monitoring and the state of implementation of the models of organization, management and control should reveal that they are suitably and correctly implemented, but need to be updated due to new regulatory interventions, or because they are not suitable, at present, to avoid the risk of the occurrence of any of the offences provided for by the Decree, it will be the Organismo di Vigilanza in question that will have to take action to ensure that they are updated.

Therefore, the Organismo di Vigilanza must have free access to all the Foundation's documentation, including that relating to personnel, and the possibility of acquiring relevant data and information from the persons responsible.

In order to allow the effective and autonomous performance of the above-mentioned tasks assigned to the Organismo di Vigilanza:

(a) The Board of Directors of the Foundation, in the context of the procedures for forming the organization's budget, will deliberate each year, on the recommendation of the OdV, an adequate allocation of financial resources, which the OdV will be able to use for any requirements necessary for the correct performance of its duties;

(b) The Organismo di Vigilanza is free to make use - under its direct supervision and responsibility - of the assistance of all the structures of the Foundation, or of external consultants, within the limits of the approved budget.

3.2 Information flows to the Organismo di Vigilanza

The Organismo di Vigilanza, in its capacity as guarantor of compliance with and correct implementation of the Organizational Model, must be constantly informed and brought to the attention not only of the documentation prescribed by this Model, but also of any other information and/or circumstance relevant to the application of Decree 231, both by members of the corporate structure and by third parties who cooperate in the pursuit of the corporate purposes.

In turn, the Organismo di Vigilanza will draw up a written report on its activities every six months or annually, except in the case of urgent communications, and send it to the Chairman of the Board of Directors.

The Organismo di Vigilanza is the recipient of reports on possible violations of this Organizational Model and the Code of Ethics. To this end, specific information channels are described below, aimed at constituting a flow of reports and information to the OdV.

In particular, information concerning the following must be promptly transmitted to the OdV:

- measures and/or news coming from the judicial police, or any other authority, from which it can be inferred that investigations are being carried out for the offences referred to in the Decree, also against unknown persons;
- reports prepared by the managers of the Departments/Functions in the context of the control activities carried out, from which facts, acts, events or omissions may emerge that are critical with respect to the provisions of the Decree;
- information relating to the effective implementation, at all levels of the company, of the Model, highlighting the disciplinary proceedings carried out and any sanctions imposed (including the measures taken against employees), or the reasoned measures for dismissing disciplinary proceedings;
- any amendments and/or additions to the system of delegated and proxy powers;
- any issuance, amendment and/or integration to the operating procedures identified for the purposes of Decree 231.

Such reports must be made in writing. The Organismo di Vigilanza will evaluate the reports received, as long as they are sufficiently documented, and any consequent initiatives at its reasonable discretion and responsibility, acting in such a way as to guarantee the person making the report against any form of retaliation, discrimination, or penalization, also ensuring the anonymity of the person making the report, without prejudice to legal obligations and the protection of the rights of the Foundation.

Furthermore, in order to facilitate the flow of reports and information to the Organismo di Vigilanza, a dedicated information channel will be set up (duly brought to the attention of employees and third parties), whereby the aforementioned reports may be addressed odv@fms.it .

3.3 Whistleblowing

Law no. 179/2017, headed "*Provisions for the protection of the authors of reports of crimes or irregularities of which they have become aware in the context of a public or private employment relationship*", amended Article 6 of Decree 231. This provision states that the Organization, Management and Control Model must provide for:

1. the activation of one or more channels that allow both the top management of the Foundation and persons subject to its direction or supervision to transmit - in order to safeguard the integrity of the organization - reports of illicit conduct relevant for the purposes of Decree 231 or violations of the organization's Model of which they have become aware by virtue of their functions. The reports must be circumstantial and must be based on accurate and consistent facts;
2. the implementation of at least one alternative reporting channel to the one already in place that is suitable for guaranteeing, by computerized means, the confidentiality of the identity of the *whistleblower*. In this regard, it should be noted that such alter-

native channels must be able to separate the identification data of the whistleblower from the content of the report, providing for the adoption of codes replacing the identification data, so that the report can be processed anonymously and in such a way as to make possible the subsequent association of the report with the identity of the whistleblower only in cases where this is necessary (so-called "*encryption*");

3. This does not exclude the possibility that organizational models may also provide for channels for making anonymous reports. This hypothesis, in principle, seems to make the verification of the merits of the report more complex, with the risk of fueling unfounded reports and mere grievances that are far from the objective of protecting the integrity of the entity. In any case, in order to limit this risk, the adoption of specific measures for anonymous reports can be considered: for example, in order to strengthen the grounds for the report, it can be foreseen that it is adequately documented or made with a wealth of details and "*capable of bringing to light facts and situations relating them to specific contexts*", as specified by the National Anti-Corruption Authority (Autorità Nazionale Anti Corruzione, ANAC) with regard to the reports it is required to manage (see. ANAC Determination no. 6 of 28 April 2015 - "*Guidelines on the protection of public employees who report offences*").

   The ANAC Guidelines also recommend that a preliminary risk analysis be carried out in the management of the information and data that might be processed during the procedure, with the aim of identifying adequate security measures to ensure their confidentiality, integrity and availability. The measures recommended by ANAC are standard protocols for data transport and end-to-end encryption tools for the contents of reports and attached documents.

4. The implementation of the measures prescribed by the new *whistleblowing* legislation in the organizational models 231 will have to take into account the implications at the level of privacy, also in light of the entry into force of Regulation (EU) 2016/679, so-called GDPR and provide:

   a) The prohibition of direct or indirect retaliatory or discriminatory acts against the whistleblower for reasons directly or indirectly related to the report.

   b) In the disciplinary system adopted, it is appropriate to provide for sanctions against those who violate the measures for the protection of the whistleblower, as well as against those who make, with malice or gross negligence, reports that turn out to be unfounded.

   According to the regulations, the whistleblower and the relevant trade union organization can report any discriminatory measures taken by the entity to the National Labour Inspectorate.

   The provision also expressly sanctions the nullity of retaliatory or discriminatory measures, including dismissal and change of duties, taken against the reporting person. In the case of disputes related to the imposition of disciplinary sanctions or the adoption of further organizational measures, subsequent to the report, with negative effects on the working conditions of the reporter (demotion, dismissal, transfers), the employer has the burden of proving that they are based on reasons unrelated to the report itself.

5. In order to implement the new provisions, it is considered that the organizational model must indicate the "recipient" of the reports, i.e. the person, administrative body or function responsible for receiving and managing the reports subject to the new regulations, also on the basis of the size and organizational characteristics of the entity. By way of example, the recipients could be the following:

    - a specifically identified person or committee, such as the Organismo di Vigilanza;
    - an external administrative body or individual with proven professionalism, which will be responsible for managing the first phase of receiving reports in coordination with the administrative body;
    - the head of the compliance function (if any);
    - a committee represented by individuals from various functions (e.g. legal, internal audit or compliance);

    Furthermore, for the purposes of the appropriate configuration of the subject/entity appointed to receive the reports, attention should be paid to the role of the Organismo di Vigilanza. The Organismo di Viigilanza, for example, could be identified as an autonomous and independent recipient of the whistleblowings. This solution seems to be able to effectively achieve the purposes of the new rules, i.e. to safeguard the integrity of the entity and to protect the whistleblower; purposes which could hardly be pursued if, on the other hand, the reports were addressed to persons to whom the whistleblower has a position of functional or hierarchical dependence or to the alleged perpetrator of the violation or even to persons who have a potential interest related to the report. If, on the other hand, the Organismo di Vigilanza is not identified as the exclusive recipient, it seems appropriate to provide for its involvement in a concurrent or subsequent manner, in order to avoid the risk that the flow of information generated by the new *whistleblowing* mechanism escapes the control of the Organismo di Vigilanza altogether.

This being said, in consideration of the current internal structure of the Foundation and the small number of employees working there, it is considered sufficient for the moment to identify a single channel for reporting conduct contrary to the Model which is represented by the email of the OdV set up for this purpose (odv@fms.it) and to which only the same will have access.

In the event that the Foundation implements its organizational structure over time, it will consider the opportunity to create alternative channels that may also allow for anonymous reporting.

3.4 Identification of the Organismo di Vigilanza

In view of the size of the Foundation and the activity it performs, it was decided to set up a single-member Organismo di Vigilanza. The name and curriculum of the member of the Organismo di Vigilanza are attached to this Model. The current Organismo di Viglianza was appointed by resolution of the Board of Directors at 06/10/2021.

4. The Sanctions System

Pursuant to art. 6, par. 2, lett. e), and art. 7, par. 4, lett. b) of the Decree, the organizational, management and control models whose adoption and implementation (together with the other situations envisaged by the aforementioned articles 6 and 7 constitute a condition *sine qua non for the* exemption of the Foundation from liability in the event of the commission of the crimes set forth in the Decree, can be considered effectively implemented only if they envisage a disciplinary system suitable for sanctioning non-compliance with the measures indicated therein.

The application of disciplinary sanctions is irrespective of the start or outcome of any criminal proceedings, since the Model and the Code of Ethics constitute binding rules for the recipients, the violation of which must be sanctioned regardless of whether an offence has actually been committed or whether it is punishable, in order to comply with the dictates of the aforementioned Decree.

The rules of conduct imposed by the Model are, in fact, assumed by the Foundation in complete autonomy, for the purpose of better compliance with the regulations that apply to the Foundation.

Moreover, the principles of timeliness and immediacy of the disciplinary notice make it not only unnecessary, but also inadvisable to delay the imposition of the disciplinary sanction while waiting for the outcome of any judgement before the Judicial Authority.

1.7. Definition and limits of disciplinary liability

This section of the Model identifies and describes the relevant offences pursuant to the Decree, the corresponding disciplinary sanctions that can be imposed and the procedure for challenging them.

The Foundation, aware of the need to comply with the law and the provisions of the collective bargaining agreement in force on the subject, ensures that the sanctions that may be imposed in accordance with this Disciplinary System comply with the provisions of the national collective bargaining agreement applicable to the sector; it also ensures that the procedure for notifying the offence and imposing the relative sanction is in line with the provisions of art. 7 of Law 300 of 30 May 1970 (the so-called "*Workers' Statute*").

For recipients who are bound by contracts of a nature different from a subordinate employment relationship (directors and external parties), the applicable measures and sanctioning procedures must be applied in compliance with the law and the contractual conditions.

1.8. Recipients and their duties

The recipients of this Disciplinary System correspond to the recipients of the Model.

Recipients are obliged to conform their conduct to the principles set out in the Code of Ethics and to all the principles and measures for the organization and management of activities defined in the Model.

Any violation of the aforementioned principles, measures and procedures (hereinafter referred to as "*Breaches*") represents, if ascertained:

- in the case of employees and, a breach of contract in relation to the obligations

arising from the employment relationship pursuant to Article 2104 of the Civil Code and Article 2106 of the Civil Code;

- in the case of directors, failure to comply with the duties imposed on them by law and the Articles of Association pursuant to Article 2392 of the Italian Civil Code;
- in the case of external parties, constitutes breach of contract and justifies termination of the contract, without prejudice to compensation for damages.

In the event that it is decided to initiate the procedure for the imposition of disciplinary sanctions deriving from the Infringements, the Organismo di Vigilanza must be involved in this procedure, verifying that the specific procedures for informing all the subjects referred to above of the existence and content of this sanctioning system have been adopted.

1.9. General principles on penalties

In the event of Infringements and the consequent imposition of sanctions, the latter must, in any case, respect the principle of gradualness and proportionality with respect to the Infringements committed.

In order to determine the type and amount of penalties imposed, it is necessary to assess the following:

- the intentionality of the conduct giving rise to the breach;
- the negligence, imprudence and inexperience shown by the infringer, in particular with regard to the possibility of foreseeing the event;
- the significance and possible consequences of the breach or offence;
- the position of the Recipient within the organization of the Foundation, especially in view of the responsibilities connected with his or her duties;
- any aggravating and/or mitigating circumstances that may be found in relation to the conduct of the Recipient;
- the complicity of several Recipients, in agreement with each other, in the commission of the violation or offence.

The contestation of Infringements and the consequent sanctions differ in relation to the different category of Addressee.

1.10. Sanctions against employees

Any conduct by employees in violation of the individual rules of conduct set out in this Model is defined as a disciplinary offence.

With reference to the sanctions that may be imposed on employees, these fall within those indicated in the sanctions system provided for by the CCNL Istituzioni socio-assistenziali - AGIDAE adopted by the Foundation. In particular, the disciplinary system describes the sanctioned behaviors, according to the importance of the individual cases considered, and the sanctions actually foreseen for the commission of the facts themselves on the basis of their gravity.

In relation to the above, the Model makes reference to the sanctions and categories of sanctionable facts provided for by the sanctions system of the CCNL applied, in order to bring any violations of the Model within the cases already identified by the aforementioned provisions.

The Foundation believes that the aforementioned sanctions provided for in the CCNL Istituzioni socio-assistenziali - AGIDAE (National Collective Labour Agreement for Social Welfare Institutions - AGIDAE) are applied, in accordance with the procedures indicated below and in consideration of the principles and general criteria identified in the previous point, in relation to the Infractions.

The CCNL applied identifies hypotheses of disciplinary non-compliance which, by virtue of their generality and abstractness, are considered suitable to include the aforementioned Infractions.

The CCNL Istituzioni socio-assistenziali - AGIDAE provides for the following sanctions:

- verbal reprimand for minor misconduct;
- written warning for minor misconduct;
- fine, not exceeding the amount of three working hours, for more serious offences;
- suspension from work and pay, for a maximum of five days, for more serious offences;
- disciplinary dismissal.

Verbal warning

The verbal warning, in accordance with the CCNL Social Welfare Institutions - AGIDAE (art. 34), is applied to the worker in case of minor violations such as, but not limited to:

- violation of internal procedures, of the values and principles set out in the Code of Ethics, of the behavioural principles and control protocols set out in the Model and of the obligations to inform the Organismo di Vigilanza due to non-compliance with service regulations, or due to poor diligence in the performance of work, not attributable to deliberate failure to perform one's duty.

Written warning

The written warning, in accordance with the CCNL Social Welfare Institutions - AGIDAE (art. 34), is applied to the worker in the case of minor failures, and / or in case of recurrence of such failures as, for example:

- conscious tolerance of violations, or in any case of non-compliance, with the values and ethical principles of conduct set out in the Code of Ethics, the general principles and protocols of the Model and the obligations to inform the Organismo di Vigilanza;
- in general, commission of Infringements of greater gravity than those referred to in the verbal warning or for their recurrence.

After three written reprimands that are not time-barred, the worker, if he/she is a repeat offender, is subject to more serious measures that may range from a fine to suspension for a period not exceeding one day.

Fine not exceeding 3 working hours

The fine not exceeding 3 working hours is applicable to the employee in case of:

- violation of internal procedures, of the values and ethical principles set out in the Code of Ethics, of the general principles and protocols of the Model and of the obligations to provide information to the Organismo di Vigilanza, due to negligent non-compliance with the service regulations;
- in general, commissions of Infractions with negligent failure and of greater seriousness than those sanctionable with a written reprimand or repeated commission of the latter.

Suspension from pay and work for a period not exceeding four days

Suspension from pay and work may be imposed on the employee on the following grounds:

- tolerance due to negligence of violations, or in any case of failure to comply with internal procedures, values and ethical principles as set out in the Code of Ethics, the general principles and protocols of the Model and the obligations to inform the Organismo di Vigilanza by persons under its direction punishable by a fine not exceeding 3 working hours;
- in general, commission with negligence, demonstrated responsibility and causing damage to the Foundation or other Recipients, of Infractions of greater gravity than those punishable by a fine not exceeding the amount of 3 hours, or repeated commission of the latter at least three times;
- in particular, the negligent and demonstrably responsible commission of an Infringement of such significance as to constitute, even in a purely abstract manner, the elements of one of the types of offences contemplated in Decree 231.

Disciplinary dismissal

The sanction of disciplinary dismissal without notice, in accordance with the provisions of the CCNL Social Welfare Institutions - AGIDAE(art. 34), is applicable to the worker in cases of:

- Violation, or in any case failure to comply, with gross negligence and causing serious damage to the Foundation or other Recipients or with malicious intent, with internal procedures, the values and principles set forth in the Code of Ethics, the general principles and protocols of the Model, and the obligations to inform the Organismo di Vigilanza;
- adoption, in the performance of activities in the areas at risk, of a negligent conduct which does not comply with the prescriptions of the Model, where such conduct is identifiable as a refusal to execute orders concerning service obligations, or a repeated negligence or habitual failure to comply with laws or regulations or service obligations in the performance of work;

- Tolerance, with gross negligence and causing serious damage to the Foundation or other Recipients or with malice, of violations, or in any case failure to respect the values and ethical principles of conduct set forth in the Code of Ethics, the general principles and protocols of the Model, and in general the obligations to inform the Organismo di Vigilanza by persons under its direction punishable by disciplinary dismissal without notice;
- commission, in general, with serious negligence and causing serious harm to the Foundation or other Recipients, of Infractions of greater gravity than those sanctioned by suspension from pay and service for a maximum of five days, or commission of a recurrence of such Infractions more than three times;
- committing, in particular, with gross negligence or malice, an infraction of such importance as to constitute, in a reasonably concrete manner, one of the types of crimes covered by Decree 231, regardless of the initiation or outcome of any criminal proceedings against the Foundation's employee;
- final conviction for the underlying offences referred to in Decree 231 and in any case in which, given the essence of the offence, the continuation of the employment relationship is incompatible.

As regards the assessment of the aforementioned Infractions, the disciplinary proceedings and the imposition of any sanctions, the power of the employer remains unchanged.

It is foreseen that the Organismo di Vigilanza must be involved - by means of a specific communication - in the procedure for the imposition of sanctions for the infringements referred to in the Model.

The Organismo di Vigilanza must also be notified in the event that the dispute is dismissed.

1.11. Measures against Key Personnel (Article 5, paragraph 1, Legislative Decree No. 231/2001)

The Foundation rigorously evaluates Infractions of the Model committed by those who represent the top management of the Foundation and thus represent its image.

The values of correctness and transparency must first of all be made their own, shared and respected by those who guide the company's decisions, so as to set an example for all those who, at any level, operate within the Foundation.

Violation of the principles and protocols provided for by the Model by members of the Board of Directors and the General Manager must be promptly reported to the Organismo di Vigilanza, the entire Board of Directors and the Auditors.

1.12. Measures against the Organismo di Vigilanza

In the event of violation of this Model by the OdV, any one of the directors or the General Manager will immediately inform the Board of Directors which will take the appropriate measures including, for example, the revocation of the appointment of the OdV and the consequent appointment of a new OdV.

1.13. Measures against External Parties

Any behavior on the part of External Parties (collaborators, consultants and, in general,

individuals who perform freelance work, or who operate on behalf of FMSI) in contrast with the lines of conduct indicated in the Model and which entails the risk of committing an offense provided for in the Decree, may determine, in accordance with the provisions of the specific contractual clauses inserted in the letters of appointment or in the contracts, the termination of the contractual relationship, or the right to withdraw from it, without prejudice to any request for compensation for damages that the Foundation may have suffered.

The Organismo di Vigilanza, in coordination with the Chairman of the Board of Directors or a person specifically delegated by him, checks that specific procedures have been adopted to inform External Parties of the principles and lines of conduct of the Model and the Code of Ethics, as well as the consequences for the latter in the event of violation of the same.

The values of correctness and transparency must first of all be made their own, shared and respected by those who guide the company's decisions, so as to set an example and stimulate all those who work, at any level, for the Foundation.

Violations of the principles and measures set forth in the Model must be promptly reported to the Organismo di Vigilanza, the Board of Directors and the Auditors.

The Board of Directors is responsible for evaluating the Infringement and taking appropriate action.