



FONDAZIONE BRUNO KESSLER – FBK

**Organization, Management and Control
Model pursuant to Legislative Decree no.
231/2001
– General Section –**

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1. Legislative Decree no. 231/2001 and Relevant Provisions of Law.

On June 8, 2001, Legislative Decree no. 231/2001 (annex 1) was issued in execution of the mandate as of Art. 11 of Law no. 300 dated September 29, 2000, and entered into force on July 4, 2000, with the purpose of adapting internal regulations concerning the liability of legal persons to a number of international treaties already subscribed to in Italy.

Legislative Decree no. 231/2001 regarding "Regulations governing the administrative responsibility of legal persons, companies and associations, including those without legal status" has introduced a form of liability of legal entities regarding specific offences committed in the **interest** or to the **advantage** of such legal entities by individuals acting as their representatives, administrators, or managers, including organizational units with financial and functional autonomy, as well as by individuals who de facto manage and control such legal entities and individuals under the direction or supervision of one of the aforementioned individuals. This liability is in addition to that of the individual who actually committed the offence.

The application of such provisions is deferred to the **Criminal Court**, with direct involvement of the **Public Prosecution Office** for all prosecution related matters.

The nature of the **penalties** varies depending on the nature and severity of the offence. Penalties specifically applicable to legal entities are the following (Art. 9):

- fines;
- interdictive penalties;
- confiscation;
- publication of the judgement.
- interdictive penalties are the following:
 - interdiction from work;
 - suspension or revocation of permits, licenses or concessions functional to committing the offence;
 - prohibition to negotiate with the public administration, except to obtain a public service;
 - exclusion from incentives, loans, grants or subsidies and potential revocation of those previously granted;
 - prohibition to advertise goods or services.

Interdictive penalties may be applied as precautionary measures when (Art. 45, paragraph 1) "*there is strong evidence to suggest the existence of the entity's liability for an administrative offence arising from a criminal offence and there are reasonable and specific elements suggesting that there is a real danger that offences of the same nature as the one concerning the proceedings are being committed.*" In this case, "*the prosecutor, as a precautionary measure, may request the application of one of the interdictive penalties provided in Article 9, paragraph 2.*"

The last paragraph of the aforementioned provision provides that, "*in lieu of a precautionary interdictive measure, the court may appoint a judicial commissioner in accordance with Article 15 for a period equal to the duration of the measure that would have been applied.*"

Art. 1 of Legislative Decree no. 231/2001 provides for the legislation to be applied to entities with legal status as well as to companies and associations without legal status.

The central government, local authorities, other non-economic public bodies and entities that perform constitutional functions (political parties and unions) are excluded from the scope of the Legislative Decree.

FONDAZIONE BRUNO KESSLER does not fall within any of the exemptions provided for by Legislative Decree no. 231/2001, and therefore is subject to application.

Pursuant to art. 5 of Provincial Law no. 14/2005, "*the legal status of the foundation under private law*

is acknowledged." For this reason, FONDAZIONE BRUNO KESSLER is also subject to the special regulations concerning administrative liability arising from an offence.

More specifically, according to the **general indictment criteria** set out in Art. 5 of Legislative Decree no. 231/2001, FONDAZIONE BRUNO KESSLER may be held accountable for crimes "*committed in its interest or for its benefit*":

- by individuals acting as representatives, administrators, or managers of the entity or of its organizational units with financial and functional autonomy, as well as by individuals de facto managing and controlling the entity (individuals who hold - de jure or de facto - a top position);
- by individuals under the direction or supervision of one of the individuals referred to in letter a).

According to the second paragraph of the aforementioned art. 5, the Foundation shall not be responsible for any wrongdoing if it can prove that the above-mentioned individuals acted exclusively in their own interest or on behalf of third parties.

These general indictment criteria, based on the existence of an "interest" or "advantage" for the Foundation deriving from the offence committed by the individual relevant from time to time, represent an extremely sensitive and complex aspect, as it is believed they can and should be considered in a strictly objective way; meaning that the interest (to be evaluated *ex ante*) or advantage (to be assessed *ex post*) will be deemed to exist even when the decision to commit the offence was taken by an individual (officer or mere employee) based on personal reasons (for example, to show personal capabilities to bring forth work results) but the actual offence leads to an advantage for the Foundation (in the example, the actual size of certain results in terms of economic return or image).

The Foundation's liability is also characterized by absolute **autonomy**, as it is expressly recognized (Art. 8) that such liability may be considered to exist and be configurable even when the offender is not identified or cannot be charged, or when the offence is extinguished for reasons other than amnesty.

Therefore, this aspect contributes to make the scope of applicability of this form of liability particularly trenchant, since the entity may be subject to proceedings not only in all cases in which the person named as the perpetrator of the offence has opted for plea bargaining, but also when, for whatever reason, this individual was not even actually involved in the trial or was not deemed punishable.

Moreover, all of the above is true also in the case the offence was committed **abroad**, given that, pursuant to the provisions of Art. 4 of Legislative Decree no. 231/2001, in this case the entity will be called to account for this offence in Italy, unless the government of the country where the offence was committed proceeds directly against it.

The offences covered by Legislative Decree no. 231/2001 are the following (articles from 24 to 25-*quinqüesdecies* of Legislative Decree no. 231/2001 – annex 2):

- undue receipt of disbursements, fraud against the Government or a public body or for obtaining public funds and cyber-fraud to the detriment of the Government or a public body (Article 24 of Legislative Decree No. 231/2001);
- cyber-crime and illicit data processing (Article 24-*bis* of Legislative Decree No. 231/2001);
- organized crime offenses (Article 24-*ter* of Legislative Decree No. 231/2001);
- official misconduct, undue inducement to give or promise benefits and corruption (Article 25 of Legislative Decree No. 231/2001);
- crimes involving the forgery of money, credit cards, and revenue stamps as well as identification instruments or signs (art. 25-*bis* of Legislative Decree 231/2001);
- crimes against industry and commerce (art. 25-*bis* of Legislative Decree 231/2001);
- corporate crimes (art. 25-*ter* of Legislative Decree No. 231/2001);

- crimes committed with the purpose of terrorism or subversion (art. 25-quater of Legislative Decree No. 231/2001);
- Female genital mutilation (art. 25-quater of Legislative Decree No. 231/2001);
- crimes against Persons (art. 25-quinquies of Legislative Decree No. 231/2001);
- crimes of market abuse (art. 25-sexties of Legislative Decree No. 231/2001);
- manslaughter and serious or grievous bodily harm caused by the violation of health and safety regulations (art. 25-septies of Legislative Decree No. 231/2001);
- receiving stolen property, laundering, illegal use of stolen property or benefits and self-laundering (art. 25-octies of Legislative Decree No. 231/2001);
- copyright violations (art. 25-novies of Legislative Decree No. 231/2001);
- forcing or persuading someone not to make statements or to make false statements to judicial authorities (art. 25-decies of Legislative Decree No. 231/2001);
- crimes against the environment (art. 25-undecies of Legislative Decree No. 231/2001);
- use of third-country nationals with no valid residence permit (Article 25-duodecies of Legislative Decree No. 231/2001);
- racism and xenophobia (article 25-terdecies of Legislative Decree No. 231/2001);
- transnational crimes (article 3 of Law no. 146/2006).

Art. 6 and 7 of Legislative Decree no. 231/2001 provides a form of **exemption** from liability if the entity demonstrates that it has adopted and effectively implemented organizational, management and control measures to prevent the offences in question prior to the offence being committed. The Model considered herein is a set of behavioral rules calibrated to the crime risk that characterizes the Foundation and/or its functions, and should include appropriate measures that promptly identify and eliminate risk situations to ensure that activities be carried out in compliance with the law.

Legislative Decree no. 231/2001 also provides for the appointment of an internal monitoring body (Supervisory Board) with the task of ensuring that this Model is operative, observed, and duly updated.

This Model shall meet the following needs:

- to identify the activities where crimes can actually be committed;
- to prescribe specific behavioral protocols with the aim of preventing offences;
- to provide for obligations of information to the Supervisory Board monitoring the application and observance of this Model;
- to introduce a disciplinary system adequate to punish failures to comply with this Model.

The legislator does not provide any indication on the body that shall resolve the adoption of the Model. However, it is deemed that the administrative body may resolve such adoption.

Finally, it is worth mentioning that the decision of the administrative body of a legal entity or company to implement the provisions of Legislative Decree no. 231/2001 is considered to represent a form of good management practice¹.

2. Organizational Structure of FONDAZIONE BRUNO KESSLER.

2.1 Incorporation of FONDAZIONE BRUNO KESSLER.

FONDAZIONE BRUNO KESSLER was established pursuant to Provincial Law no. 14/2005² with the aim to further pursue the goals and activities of the Trentino Cultural Institute.

Subsequently, the establishment of the Foundation was resolved by the local provincial government on July 14, 2006 (Resolution no. 1449/2006³) and the Foundation was incorporated with notary deed of the Public Notary Mr. Paolo Piccoli of Trento on November 24, 2006⁴.

The Founding Law and the deed of incorporation are published on the "Transparent Administration" webpage.

2.2 Purpose of FONDAZIONE BRUNO KESSLER

As provided in the By-Laws⁵, the Foundation, which is a non-profit entity, pursues the following objectives:

- cultural activities, scientific research, technological development to advance knowledge and serve the local community;
- exploring new frontiers of knowledge with particular emphasis on interdisciplinary approaches and practical applications, thus defining the profile of the Foundation in terms of originality and complementarity compared to the organization of scientific activities proper to universities;
- increased internationalization of Trentino, promoting collaborations and exchange activities with national and international research organizations, thereby increasing competitiveness and the ability of the provincial research system to attract human and material resources, promoting the involvement of the University of Trento and other local public and private organizations concerned;
- promoting a widespread capacity for innovation, in the broadest sense of new cultural, civil, and instrumental developments and dynamics, involving the community and the local economy in order to facilitate the exchange of knowledge and technology and the growth of Trentino, where Fondazione Bruno Kessler is rooted;
- transferring research results: supporting new kinds of entrepreneurship and professional skills, as well the qualification of government facilities, in the awareness of the Foundation's role and responsibility in local development dynamics;
- to respect personal dignity and the environment, as safeguarded and promoted by Trentino's history, tradition, and identity, in all the activities which the Foundation freely and independently decides to perform in order to pursue the aims and objectives outlined herein.

The Deed of Incorporation and the Charter have been published on the "Transparent Administration" webpage.

2.3. FONDAZIONE BRUNO KESSLER as a Legal Entity

FONDAZIONE BRUNO KESSLER is a private legal entity, albeit with quite peculiar characteristics due to its founder, which is the Autonomous Province of Trento, and its actual operational modalities, whose guidelines are included in Provincial Law no. 14/2005, which also places the Foundation on an equal status with regional research institutions.

Therefore, the purpose of FONDAZIONE BRUNO KESSLER coincides with a general interest of the local community as defined in the above provincial law, but at the same time, the Foundation may freely organize itself based on independent decisions made by its bodies.

With regard to the relationship with the Autonomous Province of Trento, FONDAZIONE BRUNO KESSLER plays a dual role: on one hand, the Autonomous Province of Trento is its founder, therefore the subject who has devolved its assets for the entity's purposes; on the other hand, the Foundation is considered a private instrumental entity of the Province Government (Art. 33 paragraph 1 letter b) of Provincial Law no. 3/2006 and Annex A of Province Law no. 3/2006).

FONDAZIONE BRUNO KESSLER's legal context is therefore quite specific. The Foundation takes on different roles depending on the activities to be performed and the parties with which it interacts. The Autonomous Province of Trento has control over the Foundation based on its founding law, statutory instruments, bodies, and binding directives. In this capacity, FONDAZIONE BRUNO KESSLER enjoys a privileged and close relationship with the Autonomous Province of Trento.

At the same time, FONDAZIONE BRUNO KESSLER is a "body governed by public law" in that it was not created for industrial or commercial purposes and is governed by officials who are publicly appointed. This means that the Foundation is required to deal with suppliers (be it for works, goods, or services) as a public buyer setting up tender procedures that are transparent, impartial and directed at generating the maximum competition in the market. In fact, it qualifies as a procuring entity.

FBK is also a public administration included in the consolidated income statement, as such included in the annual ISTAT list pursuant to art. 1, paragraph 3 of Law 196/2009 as amended.

It is an entity governed by private law under public control pursuant to the provisions of art. 1, comma 2, lett. c) of Legislative Decree no. 39/2013.

It falls within the scope of the "discipline concerning the right of civic access and the obligations of publicity, transparency and dissemination of information by public administrations". In this regard, with Board of Directors resolution of March 8, 2019, FBK confirmed the application of regulations on anti-corruption, transparency and non-transferability/incompatibility of offices (Law no. 190/2012; Legislative Decree no. 33/2013; Legislative Decree no. 39/2013; Legislative Decree no. 90/2014; Legislative Decree no. 97/2016; PL no. 4/2014 et altera), also on the basis of the specification contained in the Corruption Prevention and Transparency Plan of the Autonomous Province of Trento, which provides that the Foundations qualified as instrumental body of the Province (pursuant to Article 33, paragraph 1, letter b) of PL no. 3 of 2006) shall fall within the scope of art. 2-bis, paragraph 2, letter c) of Legislative Decree 33/2013 even regardless of the existence of the requirements provided for by the article itself. Also, FONDAZIONE BRUNO KESSLER may be qualified as an "economic operator," i.e. someone who places its goods and services on the market. This means that the Foundation may also participate in tender offers of third parties as well as enter into agreements and partnerships with public or private parties.

FONDAZIONE BRUNO KESSLER is also a stakeholder in several companies either created or participated by the latter in order to help and support businesses that rely on ideas and projects developed within the Foundation (so called spin-offs), taking into account the limits extended by art. 24-bis of P.L. no. 27 of 2010 to the instrumental bodies of the Province, which are required to apply some articles of Legislative Decree 175 of 2016 (Consolidated law on government-owned enterprises).

Finally, FONDAZIONE BRUNO KESSLER finances private start-up businesses, thereby involving government aid laws.

All of the above makes FONDAZIONE BRUNO KESSLER's organization, management, and control Model a totally atypical tool, created to reconcile and amalgamate the Foundation's different "natures" and with the intent to both fulfill the exceptional tasks referred to in Legislative Decree no. 231/2001 and not to limit the organizational freedom afforded to the Foundation by law.

2.4. The Administrative Organization of FONDAZIONE BRUNO KESSLER

The Foundation is registered at the Trento Chamber of Commerce with Economic Administrative Index number 194804 and VAT number 02003000227 and its currently registered office is in Via Santa Croce no. 77, Trento. Other registered offices are located in Via Sommarive no. 18, in Povo, Trento, and Via della Cascata no. 56/D, in Povo, Trento. In particular, the Humanities and Social Sciences Hub is hosted by the registered office in Trento as well as in Vicolo della Piccola, while the Science and Technology Hub is located at the Povo offices (Via Sommarive and Via Alla Cascata) and at Villa Tambosi in Villazzano. Currently, the Foundation has spaces on loan in Rome to allow the execution of a project that will end in 2021.

The Foundation is governed by a Board of Directors consisting of 9 members, 6 of which (designated with partial restrictions) are appointed by the Province, one is appointed by the University of Trento, two are appointed by the Board of Founders and Supporters (one of which is appointed by Confindustria).

As provided in the By-Laws, the legal representative of the Foundation before third parties and in court is the President, or the Vice-President should the President be absent or otherwise impeded.

The Foundation has also appointed a Board of Auditors, a Scientific Committee, and a Board of Founders and Supporters.

Additionally, there are a number of delegates of functions/proxies with powers of representation.

The names of the holders of the administration, management, governance and control offices of the Foundation are published on the "Transparent Administration" webpage.

2.5. The Internal Organization of FONDAZIONE BRUNO KESSLER.

In order to better understand the organization and the organizational structure of FONDAZIONE BRUNO KESSLER, it is necessary to separately describe the following:

- Administrative departments that provide support to research and study, divided into Services, which can internally be divided into Units;
- Research and study organizational departments, divided into Centers and Other Departments;
- Organizational departments with Special Purposes;
- the Secretary General, who is also the chair and the coordinator of the Steering and Coordination Committee.
- Staff offices and units dedicated to the general needs of the Foundation, directly reporting to the Secretary General and/or the President.

The organizational chart of the Foundation and the document "Organizational Logics of the Administration and Research Support Services Division" describing the activities of Services, Units and Offices can be found on the "Transparent Administration" web page (please see this web page for reference).

The Foundation has adopted an Organization Regulation which acts as an internal source, subordinate to the Statute and superordinate to the other internal rules dictated by guidelines, secondary regulations, policies etc.

3. The Organizational, Management and Control Model of FONDAZIONE BRUNO KESSLER

3.1. Previous versions of the Organization, Management and Control Model

The Foundation has approved the Organization, Management and Control Model pursuant to Legislative Decree no. 231/2001 on 22 July, 2013. Subsequently, the Organization, Management and Control Model was updated on 15 July, 2016 and on March 9, 2018. Therefore, this is the forth version of the document.

3.2 Principles and Elements Inspiring this Model

Pursuant to art. 6, paragraph 2 of Legislative Decree no. 231/2001, which refers to the predicate offenses committed by the so called top management officers, the Organization, Management and Control Model must meet the following requirements: *«a) identify the activities in which crimes may be committed; b) provide specific protocols aimed at planning the formation and implementation of the entity's decisions in relation to the crimes to be prevented; c) identify methods for the management of financial resources suitable for preventing the commission of offenses; d) provide for obligations to provide information to the body responsible for overseeing the functioning and compliance of the models; e) introduce a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model»*. Pursuant to paragraph 2 bis of the same art. 6, *"the models referred to in letter a) of paragraph 1 provide for: a) one or more channels that allow the persons indicated in article 5, paragraph 1, letters a) and b), to submit, to the end of protecting the integrity of the Entity, detailed reports of illicit conduct, relevant under this decree and based on precise and concordant factual elements, or violations of the organization and management model of the entity, of which they have become aware due to the functions performed by them; these channels guarantee the confidentiality of the identity of the reporting individual in the processing of the report; b) at least one alternative reporting channel suitable for guaranteeing, through electronic means, the confidentiality of the identity of the reporting party; c) the prohibition of retaliation or discriminatory, direct or indirect acts against the reporting agent for reasons connected directly or indirectly to the report; d) in the disciplinary system adopted pursuant to paragraph 2, letter e), sanctions against those who violate the protection measures of the reporting party, as well as those who carry out with malice or gross negligence reports that prove to be groundless»*.

Similarly, paragraphs 3 and 4 of art. 7, which refer to the predicate offenses committed by the individuals directed or supervised by others, provide that: *«the model provides, in relation to the nature and size of the organization as well as the type of activity carried out, suitable measures to guarantee the performance of the activities in compliance with the law and to promptly detect and eliminate risk situations. || 4. The effective implementation of the model requires: a) periodic verification and any amendment of the same when significant violations of the provisions are detected or when changes occur in the organization or activity; b) a disciplinary system suitable to sanction failure to comply with the measures indicated in the model »*.

The Organization, Management and Control Model adopted by the Foundation complies with such provisions of law and the principles on which it is based are the following:

- the definition of authorization powers coherent with assigned responsibilities;
- compliance with the principle of separation of functions;
- traceability and documentation of every transaction relevant for the purposes of Legislative Decree no. 231/2001;
- awareness and dissemination of the rules of conduct and procedures in place at all levels
- assignment to the Supervisory Board (SB) of the task of promoting the effective implementation of the Organization, Management and Control Model;

- allocation of adequate resources to the Supervisory Board;
- verification of the Organization, Management and Control Model's functioning and subsequent periodical update.

3.3 Structure of the Organization, Management and Control Model

The Organization, Management and Control Model is comprised of the following documents:

- this General Section;
- the Summary document for risk analysis;
- the Special Sections (from No. 1 to No. 10) dedicated to the prevention of homogeneous groups of offences;
- the Code of Conduct;
- the regulations, procedures and executive resolutions adopted by the Foundation and published on the "Transparent Administration" webpage.

The Organization, Management and Control Model and shall be regarded in coordination with the Three-year Plan for Corruption Prevention and Transparency.

3.4. Relationship between the Organizational, Management and Control Model and the Three-year Plan for Corruption Prevention and Transparency

Given the nature of Fondazione Bruno Kessler, defined as a variable geometry organization as it sometimes follows procedures for public entities and other times those for private ones, the Foundation pursues a set of measures aimed at the protection of legality and good practices that are autonomous but integrated between them: while maintaining autonomy of action and judgment to protect multiple control systems, it must also pursue a logic of system and synergy.

Framework

While the Organization and Management Model pursuant to Legislative Decree 231/2001 aims to minimizing the risk of committing "predicate offenses", the Three-year Corruption and Transparency Prevention Plan (PTPCT) pursuant to Law 190/2012 aims to prevent corrupt behavior understood "in the broad sense", namely including those situations in which, regardless of the criminal relevance, an incident of administrative malfunction originates from the use of one's functions for private purposes or from mismanagement situations, understood as making decisions deviating from the pursuit of the general interest due to improper conditioning by personal interests, but also as failure to comply with the principles of effectiveness, efficiency and affordability in the exercise of organizational functions and operational of the Foundation.

Therefore, while the adoption of the Organization and Management Model pursuant to Legislative Decree 231/2001 is aimed at minimizing the risk of committing the predicate offenses strictly indicated in Legislative Decree 231/2001, a source of administrative liability of the "entity only where committed in the interest or to the advantage of the latter, the PTPCT intends to contrast corruption (in the aforementioned terms), by identifying suitable measures to prevent situations in which, regardless of the criminal relevance of the conduct, mismanagement incidents (as understood above) may occur, as well as the repercussions and impacts in terms of the image of the Foundation.

With specific reference to the corruption cases, the aforementioned discrepancy translates into the fact that for Legislative Decree 231/2001 only the crimes of extortion, undue inducement to give or promise benefits and corruption, including corruption between individuals, are relevant, while Law no. 190/2012, refers to a broader concept of "corruption", including not only the entire range of crimes

against the PA, but also situations of mismanagement (as defined above).

Even though the prevention measures attributable to them have been integrated, there are still differences between the Organization and Management Model pursuant to Legislative Decree 231/2001 and the PTPCT, relating not only to the risk areas considered, but also to the roles and to the respective mandates of the bodies in charge of supervisory functions, or, respectively, the Supervisory Body (SB) and the Head of Corruption and Transparency Prevention (RPCT).

Even though the prevention measures attributable to them have been integrated, there are therefore differences between the Organization and Management Model pursuant to Legislative Decree 231/2001 and the PTPCT, relating not only to the risk areas considered, but also to the roles and to the respective mandates of the Bodies in charge of supervisory functions, namely, the Supervisory Body (SB) and the Head of Corruption and Transparency Prevention (RPCT) respectively.

That said, the Foundation deems it useful to have multiple separate and autonomous control systems. But at the same time, in this context, the Foundation intends to create a coordinated system where there is cooperation between the two activities and the relevant competent subjects.

Cooperation and coordination

Cooperation and coordination activities have been determined as follows:

1. The RPCT acknowledges the Organization and Management Model pursuant to Legislative Decree 231/2001 and as integrated and amended with particular attention to the aspects of possible synergy with his or her role;
2. The Supervisory Board acknowledges the PTPCT as integrated and amended with particular attention to the aspects of possible synergy with their role;
3. The RPTC and the SB set up periodic meetings (at least every six months) for discussion and coordination, drafting minutes to be kept in the records of their respective activities;
4. The SB and the RPCT, where appropriate, invite each other to meetings or discussions where joint presence appears useful or necessary.

3.5 Relationship between the Organizational, Management and Control Model and the “Transparent administration” webpage

The Foundation has adopted several regulations, procedures and executive resolutions that are published in the “Transparent Administration” web page or in other web pages.

Such documents shall be considered as mandatory and included in the Organization, Management and Control Model.

Therefore, with a view to rationalizing documents, the Organization, Management and Control Model shall refer to the regulations, procedures and directives published on this webpage whenever possible.

3.6 The audience of the Organization, Management and Control Model

The Organization, Management and Control Model is binding for:

- the members of the statutory bodies and other corporate bodies;
 - all the employees of the Foundation, including the Province employees seconded to the Foundation;
 - all collaborators or consultants, regardless of the type of contract or appointment;
 - all temporary agency workers.
- The Code of Conduct is also binding for:

- The companies supplying goods, services and works that work with the Foundation, regardless of the underlying legal relationship, and their employees or collaborators;
- the personnel present in the Foundation due to secondment or similar agreements;
- the personnel of other entities present in the Foundation under agreements or inter-institutional accords.

4. The Supervisory Board (SB)

4.1. Requirements of the Supervisory Board

In order to benefit from the adoption and implementation of the Organization, Management and Control Model, Legislative Decree no. 231/2001 requires to assign to a supervisory board the task of monitoring the functioning of and compliance with the Organization, Management and Control Model as well as of updating it, granting to this board independent powers of initiative and control. The Confindustria guidelines identify autonomy, independence, professionalism and continued action as the main requirements for the Supervisory Board as a whole and for its individual members.

Autonomy and independence requirements are met when control initiatives are free from any interference and/or influence by any member of the Foundation; to this end, it is essential that a hierarchical position as high as possible be assigned to the Supervisory Board as *a staff unit*, reporting to top administration officials or to the Board of Directors as a whole or a representative selected by the Board of Directors.

It is also essential that the Supervisory Board not take part in operations requiring decisions and actions that would undermine its objective judgment when assessing conduct and the Organization, Management and Control Model.

With regard to professionalism, it must be intended as the overall wealth of tools and techniques necessary to effectively carry out an assigned task.

With special reference to workplace health and safety, the Supervisory Board shall make use of all the resources that the Foundation has set up for prevention, namely: the Safety and Prevention Manager (RSPP), the Workers' Safety Representative (RLS), the Occupational Health Physician and other specific figures.

With regard to continued action ensuring effective and sustained implementation of the Organization, Management and Control Model, it is ensured by a monitoring system already in place.

4.2 Causes for Ineligibility and Forfeiture

All members of the Supervisory Board shall possess, in addition to adequate professional competence, subjective requirements that ensure the autonomy, independence and integrity required for the task. Specifically, those meeting the criteria listed below cannot be appointed as members of the Supervisory Board and shall be divested of authority if appointed:

- anyone who meets one of the causes of ineligibility under Art. 2382 of the Civil Code, meaning interdicts, those who are disqualified or bankrupt or those who have been banned, even temporarily, from public or executive office;
- anyone who is accused or have been convicted, even if the judgment is not final, or have agreed to plea bargain, even if the judgment is not irrevocable, for any of the offences referred to in Legislative Decree no. 231/2001 and subsequent amendments;
- anyone who has been sentenced to imprisonment, even if the judgment is not final, or who have entered into a plea bargaining agreement, even if the judgment is not irrevocable, for having committed an intentional crime;
- the spouse, relatives and next of kin within the second degree of the Foundation's directors and executive directors of subsidiaries and/or affiliates.

4.3 Appointment, Term, Replacement and Removal of Members of the Supervisory Board

The Board of Directors is responsible for **appointing** the members of the Supervisory Board.

MOG pursuant to Leg. Decree No. 231/2001 – General Section (Ed.4)

In compliance with the provisions of Art. 6, first paragraph, point b) of Legislative Decree no. 231/2001 and in light of the Confindustria guidelines, the Foundation has opted to adopt a Supervisory Board.

Members shall serve for a three-year term and may be re-elected.

The Board is automatically dissolved, should the majority of its members no longer be in office.

Should the Supervisory Board no longer be in office, the Board of Directors shall deliberate its replacement.

In order to guarantee the necessary stability of the Supervisory Board, the withdrawal by one of its members, which shall be approved by the Board of Directors and previously notified to the Board of Auditors, may take place for the following reasons:

- serious and verified reasons of incompatibility that undermine the independence and autonomy of the Supervisory Board member;
- the occurrence of a reason for ineligibility;
- gross negligence in performing duties related to the appointment;
- breach of confidentiality borne by the Supervisory Board;
- unexcused absence for more than three consecutive meetings of the Supervisory Board.

In the event of termination of any member of the Supervisory Board internal to the Foundation (e.g. due to appointment to other office, dismissal, disciplinary action), the Board of Directors shall take action as whether to confirm them as members of the Supervisory Board or not.

Supervisory Board members shall be entitled to remuneration for their activities, as approved by the Board of Directors of the Foundation at the time of their appointment.

4.4. Duties of the Supervisory Board

The Supervisory Board has the following **duties**:

- monitor the effectiveness of the Organization, Management and Control Model, verifying consistency between concretely implemented conducts and the Model;
- report to the Board of Directors any violation of the Organization, Management and Control Model that may give rise to liability for the Foundation, in order to take appropriate action;
- analyse the Organization, Management and Control Model's stability and functionality over time;
- examine the adequacy of the Organization, Management and Control Model, i.e., its real capacity to prevent behaviours constituting a predicate offence or otherwise contrary to its principles and those of the Code of Conduct;
- update the Organization, Management and Control Model dynamically, through the formulation of proposals for additions or amendments deemed necessary that shall be submitted to the Board of Directors, especially when: *(i)* substantial violations of the Organization, Management and Control Model occur; *(ii)* there are significant changes to the structure and/or activities of the Foundation; *(iii)* changes occur in regulations;
- suggest initiatives to increase knowledge and understanding of the Organization, Management and Control Model, promoting them with the Board of Directors, as well as initiatives for staff training following the Organization, Management and Control Model's principles.

4.5. Powers of the Supervisory Board

In order to perform these duties, the Supervisory Board shall be granted powers of initiative and control as follows:

- to access and review all documentation deemed relevant or useful for the fulfilment of its duties;
- to conduct supervision within the Foundation;

- to conduct internal investigations, obtaining information and first hand accounts;
- to coordinate with other internal functions, including via special meetings, to the end of monitoring risk areas and implementing the obligations provided for in the Organization, Management and Control Model (e.g., define standard terms, provide instructions, explanations, updates or check-lists);
- to update the list of information items of which supervisors shall notify the Supervisory Board;
- promote initiatives to increase everybody's knowledge and understanding of the Organization, Management and Control Model.

In general, the Supervisory Board may obtain, upon request and without need for prior approval, any information or data deemed necessary for the performance of its duties, subject to the prohibition of disclosing and/or sharing with third parties any information and/or data obtained, except in the event that disclosure and/or dissemination be requested by the police or the court.

4.6 Operating methods of the Supervisory Board

For the purposes of carrying out its functions, the Supervisory Board adopts its own operating rules (concerning procedures for calling meetings, recording activities, decision-making and similar).

The Supervisory Board may use external consultants and delegate limited areas of investigation to them. External consultants are independently appointed by the Supervisory Board without the need for authorization or consent by the Board of Directors. Consultants shall deal directly only with the Supervisory Board. The cost of such consultants shall be borne by the Foundation.

Without prejudice to the duty of supervising the adequacy of operations, activities carried out by the Supervisory Board may not be judged by the Board of Directors or any other internal function of the Foundation.

4.7 Supervisory Board Operating Budget

The Supervisory Board shall have suitable resources in order to execute its institutional functions.

4.8 Reporting by the Supervisory Board

The Supervisory Board shall record the activities performed at each meeting. The information, notifications and/or reports forwarded to the Supervisory Board shall be stored in a dedicated computer or paper file.

4.9 Reporting to the Supervisory Board

The Supervisory Board shall be the recipient of the information flows that will detailed in each Special Section.

In any case, the Supervisory Board shall be notified of:

- the appointment/replacement of members of the Board of Directors; the appointment/replacement of members of the Board of Auditors; the conferral/revocation/amendment of powers of attorney;
- changes in the organizational chart;
- the adoption of new internal regulations, procedures or executive resolutions;
- the amendment of existing internal regulations, procedures or executive resolutions.

The Supervisory Board shall be the recipient of information flows more specifically listed in each special sections.

In any case, the Supervisory Board shall be informed of the following:

- any action of the criminal police or any other authority that would indicate investigations are under way, even against unknown persons, for the offences provided for by Legislative Decree no. 231/2001;

- inspections carried out by public bodies, or ordered by national or European public bodies;
- critical situations concerning compliance with Legislative Decree no. 231/2001;
- disciplinary proceedings activated for violations of the Organization, Management and Control Model;

4.10 Communication channels to submit notifications to the Supervisory Board

Pursuant to art. 6, paragraph 2 bis of Legislative Decree no. 231/2001, the Organization, Management and Control Model must set up:

- one or more channels that allow the subjects indicated in art. 5 of Legislative Decree no. 231/2001 (senior management or workers directed and/or supervised by others) to submit notifications;
- at least one alternative reporting channel suitable for ensuring, through electronic means, the confidentiality of the identity of the informant.
- To this end, the Foundation has adopted the following communication channels:
- e-mail: odv@fbk.eu (read by the members of the Supervisory Body only);
- e-mail: anticorruzione@fbk.eu (read only by the Head of the Corruption Prevention and Transparency Chief Officer, or RPCT);
- PEC (Certified e-mail) anticorruzione@pec.fbk.eu (read only by the Head of Corruption Prevention and Transparency Office);
- platform dedicated to offense reports: www.whistleblowing.fbk.eu;
- paper mailbox (locked and accessible to the members of the Supervisory Body only);
- online form (read by the members of the Supervisory Body only).

4.11. Contents of the notification.

Pursuant to art. 6, paragraph 2 bis of Legislative Decree no. 231/2001, the notifications submitted to the Supervisory Body must be substantiated and must be based on precise and concordant facts.

These disclosures must concern unlawful conduct and/or violations of the Organization, Management and Control Model.

However, any person inside or otherwise connected with the Foundation may inform the Supervisory Board regarding any violation of the Organization, Management and Control Model. or relating to behaviors that, while not integrating any crime and not being in contrast with the provisions of the Organization, Management and Control Model, are nonetheless deemed non-compliant with the principles underlying the Organization, Management and Control Model itself. In fact, the Foundation intends to favor communication flows to the control body in every way.

4.12. Investigation by the Supervisory Board.

The Supervisory Board shall evaluate the information received and any subsequent reasonable action shall be taken under its discretion and responsibility, listening to the informant and/or the person allegedly responsible for the violation.

4.13. Duty of Confidentiality of the Supervisory Board. Anonymous disclosures. Prohibition of retaliation or discriminatory actions.

All the members of the Supervisory Body, as well as all the subjects of which the body can avail itself, for whatever reason, are bound by the obligation of confidentiality on any information of which they have become aware of while executing their functions or tasks.

The Supervisory Board is required to act in order to protect informants against any form of retaliation, discrimination and criminalization, ensuring also the confidentiality of their identity, without prejudice to the obligations of law and the protection of the rights of the Foundation and/or the person accused

wrongly and/or in bad faith.

Anonymous disclosures are allowed.

Direct or indirect retaliation or discriminatory acts against the informant for reasons connected directly or indirectly to the report are prohibited.

The audience is hereby reminded that, pursuant to art. 6, paragraph 2 bis of Legislative Decree no. 231/2001:

- the adoption of discriminatory measures against the informants can be reported to the National Labor Inspectorate, for the measures under its jurisdiction, by the informant him/herself as well as by the trade union organization indicated by him/her;
- the retaliation or discriminatory dismissal of the informant is null;
- the change of duties pursuant to Article 2103 of the Civil Code is also null, as well as any other retaliation or discriminatory measure taken against the informant;
- it is the responsibility of the employer, in case of disputes related to the application of disciplinary sanctions, or demotion, dismissal, transfer of the informant or the application of other organizational measure having direct or indirect negative effects on his/her working conditions after the submission of the notification, to demonstrate that these measures are due to reasons not related to the disclosure itself.

4.14. Reporting of the Supervisory Board to the Board of Directors.

In order to guarantee the autonomy and independence requirements, the Supervisory Board shall report to the top administrative body, meaning the Board of Directors or its delegate.

The Supervisory Board shall report at least once a year on the implementation of the Model and propose changes and additions that it deems necessary or appropriate.

It is understood that the Supervisory Board may also notify the Secretary General and the Board of Auditors with information as deemed appropriate.

5. Publicity of the Organization, Management and Control Model

5.1 Publication of the Organization, Management and Control Model

The Organization, Management and Control Model, as defined in point 3.3, will be published on the "Transparent Administration" web page, except for the risk analysis summary and for the special sections, which will however be available in the internal network (intranet).

5.2. Training and informing employees

In order to effectively implement the Organization, Management and Control Model, the Foundation shall ensure proper disclosure of its contents both inside and outside the Foundation.

Communications and training on the principles and contents of the Organization, Management and Control Model shall be guaranteed in coordination and/or during training activities planned and carried out by the Corruption Prevention and Transparency Chief Officer.

At any rate, each FBK employee or collaborator is required to:

- become acquainted with the Organization, Management and Control Model's principles and contents (as defined under point 3.3);
- become acquainted with the operating procedures proper to his/her tasks;
- actively contribute, within his/her role and responsibilities, to the successful implementation of the Organization, Management and Control Model, indicating its possible shortcomings.
- in any event, non-employee contract terms shall expressly state that violating the Organization, Management and Control Model's procedures and rules of conduct, including the regulations referred to therein or in the Code of Conduct, shall result in termination of the contract, without prejudice to the Foundation's right to seek compensation for damages.

5.3. Informing external consultants and partners

The Foundation shall inform its business and financial partners, consultants and external collaborators of the Organization, Management and Control Model's existence.

Contracts and agreements with the above subjects shall include provisions as the following: *"By signing this contract agreement, the undersigned agrees to comply with all provisions contained in the Foundation's Code of Conduct in addition to the rules of law. In case of violation of any provision of the Code of Conduct, the Foundation shall be entitled to terminate the contract effective immediately, without prejudice to the Foundation's right to seek compensation"*.

The following (or similar) clause is included in procurement contracts: *"The Contractor declares that he/she is aware that the Foundation has adopted a Code of Conduct published on the Transparent Administration portal, the provisions of which he/she must comply with. In case of violation of even one of the provisions of the Code of Conduct, the Foundation will have the right to terminate the contract with immediate effect, without prejudice to the right to compensation"*.

6. Disciplinary System

6.1. Functions and objectives of the disciplinary system.

Legislative Decree no. 231/2001 provides that, in order to effectively implement the Organization, Management and Control Model, a disciplinary system shall be introduced to sanction violations. Therefore, setting up an appropriate disciplinary system constitutes an essential requirement of the Organization, Management and Control Model for the purposes of criminal defense against the administrative liability of the institutions.

The application of disciplinary sanctions may be regardless of the initiation (or the outcome) of a criminal proceeding aimed at ascertaining the responsibility of the Foundation for the violation of Legislative Decree no. 231/2001

6.2. Disciplinary violations.

The following violations constitute disciplinary offences:

- violation of the Code of Conduct;
 - violation of any provision of the Organization, Management and Control Model, as provided for under section 3.3;
- and, consequently:
- violation of the Three-year Plan for Corruption Prevention and Transparency;
 - violation of regulations, procedures, and executive resolutions adopted by the Foundation and published in the “Transparent administration” web page;

Art. 7 of Law no. 300/1970 remains applicable.

6.3. Disciplinary System Structure.

6.3.1. Measures against employees.

Compliance with the provisions and rules of conduct provided in the documents listed under section 6.2 entails compliance with the obligations under Art. 2104, paragraph 2, of the Civil Code. These provisions and rules of conduct shall therefore constitute a substantial and essential part of employees’ obligations according to the law and to their employment contract.

An assessment procedure shall follow each notice of violation of the provisions and rules of conduct mentioned above. If a violation has indeed occurred, disciplinary sanctions shall be imposed.

Sanctions shall be proportionate to the seriousness of the violation.

The head of Human Resources is in charge of imposing disciplinary sanctions.

The Supervisory Board shall be informed of ongoing disciplinary procedures and their outcomes.

6.3.2. Organization, Management and Control Model violations and sanctions.

Without prejudice to the provisions of the Workers' Statute:

- employees who violate any of the documents listed under section 6.2 shall be subject to verbal reprimand;
- employees who, with intentional or gross negligence, submits reports to the Supervisory Body or to the Head of Corruption Prevention and Transparency which prove to be unfounded shall be subject to verbal reprimand;
- employees who violate a second time any documents listed under section 6.2 shall be subject to formal written reprimand;
- employees who violate the measures aimed at protecting the confidentiality of the identity of the

subject who submits a disclosure of misconduct to the Supervisory Body or to the Head of the Corruption Prevention and Transparency or in any case reveals his or her identity shall be sanctioned with a written reprimand;

- employees who violate any of the documents listed under section 6.2, and in doing so expose other workers' mental and physical safety or their own, or the Foundation assets, to objectively dangerous situations, shall be sanctioned with a fine not exceeding three hours of total pay;

- employees who violate any of the documents listed under section 6.2 for a third time in a five-year period - and in doing so harm the Foundation - shall be subject to suspension from duty without pay for a period not exceeding three days;

- employees who violate any of the documents listed under section 6.2, and in doing so commit a crime such as to cause the actual application against the Foundation of the sanctions provided by Legislative Decree no. 231/2001, shall be dismissed.

The nature and scope of sanctions against employees shall be chosen taking into account the following:

- intention or level of negligence, imprudence or inexperience;

- overall conduct and previous disciplinary actions, if applicable;

- the worker's duties.

The above is without prejudice to the Foundation's right to ask employees for damages resulting from a breach of the internal procedures set out in the Organization, Management and Control Model or the regulations referred to therein or in the Code of Conduct.

6.3.3. Measures Against Other Collaborators.

Failure to comply with the procedures and rules of conduct set out in the documents listed under section 6.2 by collaborators or consultants of the Foundation entails, in conformity with applicable contractual provisions, the termination of relevant contracts, without prejudice for the Foundation to claim compensation for any damage incurred.

6.3.4. Measures Against Executives.

Managers who violate any of the procedures and rules of conduct set out in the documents listed under section 6.2 -- and whose employment is regulated by the National Labor Collective Agreement for Managers of Industrial Enterprises -- shall be sanctioned according to such Collective Agreement, including dismissal in the most serious cases.

The above is without prejudice to the Foundation's right to claim compensation for damages caused by a manager's violation of the procedures and rules of conduct set out in the Organization, Management and Control Model or the regulations referred to therein or in the Code of Conduct.

6.3.5. Measures Against Directors and Auditors.

In the event one or more members of the Board of Directors or the Board of Auditors violate any of the procedures and rules of conduct set out in the documents listed under section 6.2 of the Organization, Management and Control Model, the pertinent Board may take any measure it deems appropriate, including, but not limited to, the following:

- verbal or written reprimand;

- suspension of the right to attendance fees or other emoluments, if any, up to a maximum amount equal to three board meetings;

- revocation of power of attorney, if applicable;

- reporting to the subject who appointed the Administrator or the Auditor for appropriate action to be

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taken.

6.3.6. Measures Against Commercial and Financial Partners, Consultants and/or External Collaborators.

Business partners, agents, consultants, contractors or other persons having contractual relations with the Foundation shall be subject to the provisions set out under section 5.3.

Notwithstanding anything of the foregoing, the Foundation may seek compensation for any damage suffered.

6.3.7. Measures Against the Supervisory Board.

If notified of violations of procedures and rules of conduct set out in the documents listed under section 6.2 by one or more members of the Supervisory Board, the Board of Directors shall take the initiatives deemed most suitable, including revocation of the appointment.

Notwithstanding the foregoing, the Foundation may seek compensation for any damage suffered.