

# **ORGANIZATION MANAGEMENT AND CONTROL MODEL**

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**Pursuant to Legislative Decree No. 231 of June 8, 2001**

***EDIPOWER***

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Organisation Management and Control Model

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General Section

*Edipower*

## 1. The Administrative Liability of Legal Entities

### 1.1 The legal regime of the administrative liability of legal persons, companies and associations

Legislative Decree No. 231 of 8 June 2001, partially implementing Delegated Law No. 300 of 29 September 2000, regulates and firstly introduces into the national legal system the administrative liability of legal persons, companies and associations, including bodies without legal personality (institutions).

Particularly, Delegated Law No. 300 of 2000, which, *inter-alia*, ratifies the Convention of 26 July 1995 on the protection of the European Communities' financial interests, EU Convention of 26 May 1997 on the fight against corruption and the OECD Convention of 17 September 1997 on combating bribery of foreign public officials in international business transactions, fulfils the obligations established by the said international instruments and, especially, the community ones, which provide for certain models of liability for legal persons and a corresponding sanctionary system for corporate offences. Accordingly, Legislative Decree No. 231/2001 falls within the scope of the international obligations to be fulfilled and – in line with the prescriptive systems of many European Countries – establishes the liability of the *societas* as “*an autonomous centre of interests and legal relationships, a reference point for duties of various nature, and a source of decisions and activities by individuals acting in the name, for the account or, in any event, in the interest of the entity*” (report to preliminary project for criminal law reform – Grosso).

The establishment of administrative liability for companies stems from the empiric consideration that wrongdoings inside an enterprise, far from pursuing the private purposes of an individual, often fall within the scope of a rather common *corporate policy* and are the result of decisions made by the entity's top managers.

Such “administrative liability” is peculiar because, although punished with administrative sanctions, it stems from an offence and enjoys the guarantees inherent in criminal proceedings.

Particularly, Legislative Decree No. 231/2001 provides for an articulated sanctionary system ranging from soft pecuniary penalties to very severe disqualifying penalties, including the “capital” sanction, i.e. disqualification from carrying out business activities.

Administrative sanctions can be inflicted on a company exclusively by a Criminal Court, without prejudice to all guarantees under criminal laws, solely if all of the objective and subjective requirements of law are met, i.e. the commission of a determined offence, in the interest or for the advantage of the Company, by qualified individuals (high-ranking officials and their subordinate employees reporting hierarchically to them),

The liability of an entity also includes any offences committed abroad, unless such offences are pursued by the Authorities of the State in which they have been committed, and provided, however, that the particular conditions provided by Legislative Decree No. 21/2001 are satisfied.

First of all, the administrative liability stems from an offence committed *in the interest or for the advantage* of an entity. An exclusive benefit obtained by the acting individual (or by a third person unrelated to such entity) excludes the entity's liability, in that the latter is absolutely and clearly unconnected with such fact.

As far as individuals are concerned, article 5 of Legislative Decree No. 231/2001 provides that an entity is held liable for certain offences in the event that any such offence is committed by:

- a) “*Individuals who performs duties of a representative, administrative and management nature for the entity or one of its financially and functionally independent organisational units, as well as individuals who, even de facto,*

*manage or exercise control over the entity in question (the so-called “individuals in a top position);*

- b) *“individuals directed and supervised by any of the individuals mentioned under point a) (the so-called “subordinate individuals”).*

In order to determine the entity's liability, in addition to the requirements referred to above objectively connecting the offence with the entity, the law requires that the entity's culpability be assessed. Such subjective requirement is represented by *organisational culpability*, i.e. the violation of adequate diligence rules self-imposed by the entity for the purpose of obviating the specific risk of offence.

Initially established for offences against the Public Administration (article 25 of Legislative Decree No. 231/2001) or against the Public Administration's property (article 24), the entities' liability has been extended – by virtue of some prescriptive measures issued subsequently to Legislative Decree No. 231/2001 – to some other offences, such as the forgery of money, public credit documents and revenue stamps (article 25 *bis*), corporate offences (article 25 *ter*), offences connected with terrorism or the subversion of democracy (article 25 *quater*), and offences against the person (article 25 *quinquies*).

In particular:

**A) Offences against the Public Administration, and namely:**

- Misappropriation of contributions, loans or any other disbursements from the State or other Public Entities (article 316 *ter* of the Italian Penal Code);
- Fraud perpetrated against the State or other Public Entities (article 640, first paragraph, of the Italian Penal Code);
- Embezzlement to the detriment of the State or other Public Entities (article 316 *bis* of the Italian Penal Code);
- Aggravated fraud in order to obtain public disbursements (article 640 *bis* of the Italian Penal Code);
- Computer fraud perpetrated against the State or other Public Entities (article 640 *ter* of the Italian Penal Code);
- Corruption (articles 318, 319, 322 *bis* of the Italian Penal Code);
- Extortion by public officials (article 317 of the Italian Penal Code);
- Judicial corruption (article 319 *ter* of the Italian Penal Code);
- Inducement to corruption (article 322 of the Italian Penal Code);

**B) Offences of forging money, public credit notes and revenue stamps.**

**C) Corporate offences, and namely:**

- Fraudulent corporate communications (article 2621 of the Italian Civil Code);
- Fraudulent corporate communications to the detriment of shareholders or creditors (article 2622 of the Italian Civil Code);
- Fraudulent misrepresentation in prospectuses (article 2623 of the Italian Civil Code);
- Fraudulent misrepresentation in the auditing company's reports or communications (article 2624, first and second paragraphs, of the Italian Civil Code);
- Impediment to control activities (article 2625, second paragraph, of the Italian Civil Code);
- Fictitious formation of corporate capital (article 2632 of the Italian Civil Code);
- Undue return of contributions (article 2626 of the Italian Civil Code);
- Illegal distribution of profits and reserves (article 2627 of the Italian Civil Code);
- Unlawful transactions concerning the Company's or its parent company's shares or quotas (article 2628 of the Italian Civil Code);
- Transactions to the detriment of creditors (article 2629 of the Italian Civil Code);

- Undue distribution of corporate assets by liquidators (article 2633 of the Italian Civil Code);
- Illicit influence on the general meeting (article 2636 of the Italian Civil Code);
- Agiotage (article 2637 of the Italian Civil Code)
- Obstruction to the exercise of public supervisory authorities' functions (article 2638, first and second paragraphs, of the Italian Civil Code)

D) Offences connected with terrorism or the subversion of democracy

E) Offences against the person

## 1.2 Purpose of the Organization and Management Model

In introducing the aforesaid administrative liability regime, the Decree provides for a special form of exemption from such liability, on condition that the Entity can prove to have adopted all suitable and necessary organizational measures to prevent the commission of any offences by individuals acting for its account. The existence of an adequate organization is a measure and indication of the Entity's diligence in carrying out its activities, having regard, in particular, to those which are at risk of offences being committed under the Decree: accordingly, if an efficient and effective organization is assessed to exist, this fact excludes any "culpability" on the part of the Entity, and no penalties may be inflicted on it.

Articles 6 and 7 of the Decree describe the characteristics of an effective and efficient organizational apparatus, a correct organization of which excludes the Entity's liability. In particular, the Entity is exempt from any penalty if evidence can be given by it that:

- a) before the commission of the fact, the Entity's managing body had adopted and effectively implemented proper organization and management models to prevent the types of offences committed;
- b) the duty of monitoring the functioning of the model and ensuring its regular updating is assigned to a body of the Entity vested with its own action and control powers which actually complied with its monitoring obligations;
- c) the individuals by whom the offence was committed acted fraudulently by eluding the said organization and management models.

In particular, the following requirements must be met by the models referred to under point a) above:

- I. identification of the activities where the possibility exists that the offences listed in the Decree are committed;
- II. adoption of specific protocols designed to plan the making and implementation of the Entity's decisions on the offences to be prevented;
- III. identification of such methods for the administration of financial resources as to prevent any such offence from being committed;
- IV. establishment of reporting obligations towards the body in charge of monitoring the functioning of the model and compliance therewith;
- V. introduction of a tested internal disciplinary system under which any non-compliance with the measures set out in the model is punished.

## Guidelines by the Italian Manufacturers' Federation (CONFINDUSTRIA)

On 7 March 2002, Confindustria approved the final text of its "Guidelines for the construction of organization, management and control models pursuant to Legislative Decree No. 231/2001", which may be summarized in the following basic points:

- identification of areas at risk, with a view to verifying in which corporate areas/sectors the detrimental events listed by Legislative Decree 231/2001 may potentially occur;
- preparation of a control system capable of avoiding such risk through the adoption of special protocols. The most important components of the control system devised by Confindustria are the following:
  - code of ethics;
  - organizational system
  - manual and computer procedures
  - authorising and signing powers
  - control and management systems
  - training and communication to personnel

The components of such control system must be consistent with the following principles:

- verifiability, documentability, consistency and fairness of each transaction;
- application of the principle of segregation of powers (nobody shall be permitted to autonomously manage a whole process);
- documentation of controls made;
- adoption of an adequate disciplinary system for the violation of the provisions of the Civil Code and/or the procedures established by the Model;
- determination of requisite characteristics for the Surveillance Body, which can be summarised as follows:
  - autonomy and independence
  - professionalism
  - continuity in action.
- Surveillance Body's reporting obligations.

Subsequently, on 3 October 2002, Confindustria issued an "Appendix to Guidelines for the construction of organisation, management and control models pursuant to Legislative Decree No. 231/2001 concerning the offences introduced by Legislative Decree No. 61/2002".

The purpose for which the provisions of Legislative Decree No. 231/2001 have been extended to corporate offences is that of ensuring a greater transparency in the enterprise's internal procedures and processes and, accordingly, of ensuring better control over the managers' doings.

The above entails the following double need:

- a) *"to adopt such specific organisational and procedural measures – within the framework of the model as outlined in the Guidelines for offences against the Public Administration – as to reasonably ensure that such type of offences are not committed";*
- b) *"to specify the most important responsibilities of the Surveillance Body in order to ensure that the model is actually, effectively and continuously functioning".*

On 18 May 2004 some amendments were made by Confindustria to the said Guidelines concerning, in particular, the Surveillance Body. Said Guidelines, recently approved by the Ministry of Justice, have been taken into consideration in preparing this Model.

## 2. Adoption of the Model by Edipower S.p.A.

### 2.1 Edipower's industrial mission: Tolling Agreement

In the latest months Edipower's activities underwent a substantial reconfiguration process, which need be described in a detailed manner because some important changes derived therefrom, including that of identifying sensitive activities pursuant to Legislative Decree No. 231, activities which are now substantially reduced compared to the past.

In fact, effective as of 31 January 2004, the activities carried out by Edipower are regulated by two agreements executed by and between Edipower and its industrial partners (Edison S.p.A., AEM S.p.A. AEM Torino S.p.A., Atel ("the Industrial Partners"). Further to said agreements, the business model adopted by Edipower is the so-called "Tolling".

This industrial model satisfies: i) the Industrial Partners' need of having production capacities available for use, thus optimising their own production areas and business strategies and ii) Edipower's need to have access to credit facilities from lending institutions for an amount and on more advantageous terms in that its industrial risk profile has been substantially reduced by virtue, inter-alia, of the certain cash flows generated from the *Tolling Agreement* that can be used for debt service purposes.

In particular, the above two needs are satisfied in the Tolling Agreement for thermoelectric power plants and in the Power Purchase Agreement ("PPA") for hydroelectric power plants by means of a strict segregation of risks and, consequently, of functions and responsibilities among the Industrial Partners (the so-called "Tollers") and Edipower.

Under the first kind of agreement Edipower's role is merely that of a transformer of the fuel owned by the Tollers into electric energy, which is *ab origine* owned by the Tollers themselves. The contractual scheme can be assimilated to a contract for goods processing committed to a third party (Edipower for the account of the Tollers).

Under the PPA, Edipower's role is that of a supplier of electric energy produced by using its water resources as holder of the related concession rights. This scheme can be considered as a requirement agreement for the supply of electric energy.

In both cases, Edipower is responsible for operating and duly providing maintenance to the plants in addition to making all related interventions of structural modernisation and environmentation previously approved by the Tollers with a view to ensuring both the maximum productivity and the maximum productive efficiency of the plant.

In turn, the Tollers are responsible for the best commercial exploitation of the production capacities made available by Edipower; in consideration of the above services, the Tollers pay Edipower, in addition to the reimbursement of certain duly vouchered items of cost (in particular, insurance premiums), a monthly fee (the so-called "*Tolling Fee*"), itemised as follows:

- I. an amount as consideration for the power generation plants made available, regardless of whether the Tollers decide to use them or not (the so-called "availability fee");
- II. an amount as consideration for the electric energy actually produced (the so-called "transformation fee");
- III. an amount proportional to the number of plant switching on/off requested by the Tollers (the so-called "start-up fee");

IV. an amount proportional to the efficiency level of the plants (the so-called “efficiency fee”).

More exactly, the aggregate consideration under the PPA is composed of only two of the above items of fee. Thus, Edipower is not exposed to risks relating to the actual availability of the hydric resource (rainfall), which is incurred by the Tollers.

The agreements governing the relationship between Edipower and the Tollers will remain in force for 8 years from January 2004. Edipower’s certainty to be able to receive, under such a long lasting agreement, continuous and foreseeable payment flows for the transformation service offered to the Tollers permitted Edipower (also to the benefit of the related shareholders) to benefit from a partly “non-recourse” loan, i.e. a loan secured by the Company’s assets only, and first of all, of course, the Tolling Agreement and the consequent rights towards the Tollers.

The covenants under the Tolling Agreement and the PPA took effect on 1 January 2004 and since that date Edipower has no longer carried out the following activities, which are now the exclusive responsibility of the Tollers:

- under the Tolling Agreement: supplies of fuel (e.g. purchase, swap, price and exchange rate risks relating to such supplies);
- under the Tolling Agreement: management of fuel logistics (e.g. lease of means of transportation, insurance coverage, unloading and management of warehouses outside Edipower’s production sites;
- under the Tolling Agreement and the PPA: dispatch and sale of the electric energy produced by Edipower (except for a minimal part thereof that will continue being sold by Edipower to the Operator of the National Transmission Network under the agreements made before the effective date of the Tolling Agreement).

But Edipower continues generating electric energy and, for this purpose continues availing itself of suppliers of maintenance services and contractors and purchasing goods and services both for the operation of the plants (purchase of spare parts, cleaning, canteen, site watching, waste disposal services, insurance and others) and for the modernisation of its plants through the award of turnkey contracts. In this context, Edipower will also continue managing consultancy and sponsorship agreements directly. Accordingly, even after January 1, 2004, Edipower will continue directly purchasing goods and services falling within the boundaries of its activity in compliance with the laws in force and its specific company procedures.

Always for the purpose of managing its assets, Edipower will also continue carrying out all procedures to obtain such authorisations and permits as are required to operate the plants and related transformation/environmentation (e.g. relations with Municipal, Provincial and Regional Authorities and Central State Administration), including the entering into of any agreements with local authorities representing territorial interests.

In addition, Edipower will continue maintaining relationships with independent Authorities, and, particularly, with the regulatory authority for the electric sector (Gas and Electricity Regulatory Authority) and with the market protection Authority (Antitrust Authority).

The business model as described above has substantially affected the company organisation; in particular, the Operations Area does no longer supply fuel and related logistics services (being now the Tollers’ responsibility) and, on the other hand, the Market Area does no longer sell the electric energy produced by the plants (except for a minimal part thereof that will continue being sold by Edipower to the Operator of the National Transmission Network under the agreements made before the effective date of the Tolling Agreement).

But, being so obliged by the laws in force, Edipower continues its marketing activities for the so-called “Dispatch Services Market” by offering such services as are necessary to

ensure the safety of the electric system to the Operator of the National Transmission Network on the so-called "Electricity Exchange".

## 2.2 Edipower's reasons for adopting the Model

Being sensitive to the need of ensuring fairness and transparency in its business and activities in order to protect its position and reputation, its shareholders' and creditors' expectations, and its employees' job, Edipower has deemed it compliant with its company policies to implement the organisation and management model provided by the Legislative Decree (hereinafter "the Model"). Accordingly, by a resolution passed by its Board of Directors on 24 May 2004, the Company has already adopted a Code of Ethics which fairly reflects the values and principles on which the Company's activities are based. Such instruments – the adoption of which is not mandatory under the Decree – are nevertheless valid means for sensitising all those who act in the name and on behalf of the Company so that, by constantly conforming their actions to the rules so established, they always behave in compliance with the law and fairness and transparency principles.

This Model has been prepared taking into account, in addition to the instructions of the Decree, the Guidelines issued by CONFINDUSTRIA as amended from time to time, as well as the best practice worked out in the period in which the related law provisions have been in force and that strengthened in the US experience further to the issuance of the Federal Sentencing Guidelines in 1991.

This Model was unanimously adopted by Edipower's Board of Directors at the board meetings held on July 15, 2004 and September 28, 2004.

Upon launching the Model, the Board of Directors appointed a Surveillance Body whose members are the Internal Audit Manager *pro-tempore* and two professionals already sitting on the Board of Statutory Auditors, i.e. Ms. Mariateresa Battaini and Mr. Aldo Poletti, for the reasons that are better described hereinafter.

## 2.3 Amendments to the Model and significant documents for implementation purposes

The Model fairly reflects the company policy pursued by the Company's top management: therefore, the power to supplement and/or amend shall be vested in the Board of Directors by virtue of a resolution to be passed for this purpose on the terms required for its adoption.

Particularly, taking into account the indications that will be given by the Surveillance Body, the Board shall update the Model whenever any implementation requirements is to be met further to any law amendments, organisational changes, the identification of any additional risky areas or other facts.

In order to fully implement the principles and provisions contained in the Model and consistently with it, Edipower may, on the basis of the contribution given by each Company Function, work out some specific procedures, to be made enforceable by the Managing Director upon instructions of the Board of Directors, in addition to those established in the Model. Such procedures will be collected by the Human Resources and Organisation Department, which shall update and communicate them to each of the functions responsible for the areas concerned for subsequent correct adoption.

## 2.4 Purpose and basic principles of the Model

The adoption, as well as an efficient implementation of the Model, is not only an instrument for preventing the commission of any offences, but, being a set of rules to be complied with by the Company's representatives, improves Edipower S.p.A.'s corporate governance.

Therefore, the purpose of the Model is to create a structured and organic system of procedures and control activities to be carried out, even on a mainly preventive basis, which cannot be violated unless its provisions are fraudulently eluded.

To this end, the Model serves the following purposes of:

- making all those who act in the name and on behalf of the Company aware of the need of strictly complying with the Model, the violation of which entails severe disciplinary sanctions;
- emphasising the Company's censure on any conduct which, based on a misunderstanding of the Company's interest, is in breach of any laws, regulations or, more generally, of the fairness and transparency principles on which the Company's business is based;
- informing of the heavy consequences that might be suffered by the Company (and, therefore, by all its employees, executives and high-ranking officials) from the infliction of the pecuniary and disqualifying penalties provided by the Decree, as well as of the fact that such penalties may even be inflicted on a precautionary basis;
- enabling the Company to constantly control and attentively monitor all activities so as to be able to timely intervene whenever any risky situation arises and, if appropriate, to apply the disciplinary measures provided by the Model.

Accordingly, in preparing the Model, the following points have been considered:

**Identification of sensitive processes** through a preventive examination of all corporate documents (organisation charts, powers of attorney, activities carried out, minutes of Board of Directors' meetings, organisational instructions, and others) and interviews with the persons responsible for the various areas of the Company's operations (i.e. all Department Managers) for the purpose of verifying whether any sensitive processes and related protective measures and controls existed (procedures, verifiability, documentability, fairness and consistency in all transactions, segregation of functions, documentability of controls, and others). For this purpose, it was essential to make an attentive analysis of the Company's past activity to assess whether any risky situations had ever arisen and, in the affirmative, the related causes (the so-called "*as is analysis*"). The goal of this phase was that of analysing the corporate context with a view to identifying where and how any offences might be perpetrated.

A clear picture of risky areas and sensitive processes, of the existing controls and of any critical situations was drawn from the above analysis.

**Gap analysis:** on the basis of the existing situation as assessed above, the measures to be adopted were identified so as to improve and adjust to the purposes pursued by the Decree, the internal control system and the essential organisational rules in light of the principles, emphasised by the Guidelines issued, of the segregation of functions, conferment of authorising powers consistently with the responsibility respectively assigned. In this phase, a special attention was paid to identify and regulate all financial resource management and control processes in risky activities.

**Protocols:** for each operating unit in which a potential risk might be run, a decision-making protocol was prepared which contains the regulations indicated by the person having operating responsibilities therefor as the most suitable for the risk profile so

identified, i.e. a set of rules generated from a detailed analysis of each single activity and of the risk prevention system.

The said protocols are based on the rule that all the various phases of any decision-making process must be documented and verifiable so that the reasons from which any decision made stems are always known.

Each such decision-making protocol was formally made enforceable by a Circular Letter from the Managing Director (upon instructions of the Board of Directors), officialising and making the rules of conduct contained therein binding on all those who, at any time, carry out an activity within which a potential risk was detected.

The previously existing protocols, which have been validated in realising this work, and the new ones prepared are attached to the Model as an integral part thereof.

The determination of management modalities for financial resources capable of preventing the commission of offences - as set out in the set of corporate rules and the authority delegation system – has been summarised in the expenditure regulations (Circular on Financial Flows Management) attached to this Model setting out the modalities for the circulation of financial flows within the Company.

More specifically, such expenditure regulations provide that all procedures concerning financial flows must fairly reflect the principles of transparency, verifiability and inherence to the corporate activity. They also provide that all authorising and signing powers to be granted must be consistent with the organisational and managerial responsibilities of the respective grantee.

**Formulation of the Model and Code of Ethics:** in this phase, the Company's purpose was that of formulating an internal regulatory system designed to plan the formation and implementation of the Company's decisions in relation to risk/offences to be prevented through:

- a Code of Ethics fixing the general guidelines and principles on which the Company's operativity shall constantly be based;
- an organization and management Model specifically designed to prevent the commission of the offences listed in the Decree and based on formal procedures regulating in detail all operating modalities in "sensitive" sectors and on a system of authority delegation and powers of attorney for the signature of corporate deeds capable of clearly and transparently reflecting all decision-making and implementation procedures. For the purposes of efficiently applying and complying with the Model, an essential point is that of sensitising all the corporate structures and levels into compliance with any and all rules and procedures provided by the Model;
- the appointment of a Surveillance Body vested with the responsibility of monitoring the functioning of and compliance with the Model and of proposing a regular updating thereof.

## 2.5 Structure of the Model: General Section and Special Sections

The Model is composed of this General Section, in which the function and principles of the Model are described and its essential components are identified and regulated (Surveillance Body, disciplinary system; information flows; procedures for personnel selection; authorising and controlling system), and two Special Sections, respectively named “Special Section A” and “Special Section B”.

Special Section “A” is devoted to the prevention of the offences against the Public Administration set out in articles 24 and 25 of the Decree:

Considering the exclusively institutional nature of Edipower’s relationships, the principles and procedures contained therein are deemed suitable to prevent the commission of the offences connected with terrorism or the subversion of democracy set out in article 25 *quater*.

In addition, some areas that are instrumental to the commissions of the said offences have been identified, having regard to those activities which, while not implying a direct contact with the Public Administration, may nevertheless be supportive (whether financially or operatively) of the commission of the offences in question.

Special Section “B” is devoted to the prevention of the corporate offences set out in article 25 *ter* of the Decree.

Some activities that, in abstract, may be instrumental to the commission of the said corporate offences have been identified also in this sector.

Lastly, as far as the offences against the person set out in article 25 *quinquies* of the Decree are concerned, the specific activity carried out by the Company has been considered as not having any risk profiles which, reasonably, may potentially result in the commission of such offences in the interest or for the advantage of the Company. In this respect, reference is made to the principles contained in this Model and in the Code of Ethics requiring our representatives, collaborators and partners to comply with the Company’s values of solidarity, protection of the person, morality, law compliance and fairness.

## 2.6 Persons covered by the Model

As explained above, the Model is intended for all of Edipower S.p.A.’s employees who, in particular, are assigned to activities classified as risky. Accordingly, the provisions contained in the Model must be complied with by all executive officers acting in the name and on behalf of the Company and by all employees duly trained and informed of the contents of the Model on the terms set out in the Model itself according to the responsibility level respectively assigned.

With a view to ensuring that offences are effectively and efficiently prevented, a special protocol has been prepared in the course of this work providing for the terms on which this Model shall be complied with by any external collaborators, whether natural persons (consultants, professionals and others) or artificial persons supplying services to Edipower S.p.A. on a continuative basis. Compliance by these persons with the Principles of Conduct characterising the Company’s activity must be secured by having them bound by a contract clause requiring compliance by them with Edipower’s Code of Ethics.

### 3. Surveillance Body

According to the provisions of the Decree, the characteristics of the Surveillance Body shall be the following:

- **Autonomy and independence**, which are essential requirements because the Surveillance Body shall not be directly involved in management activities being such activities the object of its supervisory activity. For this purpose, the Surveillance Body is given full hierarchical independence; a reporting activity at top level must also be provided for. In addition, the members of the Surveillance Body and their qualifications shall be such as to ensure, from both an objective and a subjective standpoint, absolute autonomy in its evaluations and determinations;
- **Professionalism**, which is necessary to carry out the sensitive and incisive functions assigned to it;
- **Continuity in action**: for this purpose, the Surveillance Body shall:
  - constantly monitor compliance with the Model using the necessary investigation powers;
  - attend to the implementation of the Model and ensure its regular updating;
  - represent a constant reference point for all the personnel of the Company.

The Report to Legislative Decree No. 231 of 2001 also specifies that the body to be entrusted with the task of monitoring the proper functioning and efficiency of the Model and compliance therewith, and ensuring its regular updating must be an internal body of the Company other than the Board of Directors, whose activities, too, are to be controlled and monitored by the Surveillance Body.

In accordance, *inter-alia*, with the most recent text of Confindustria's Guidelines dated 18 May 2004, which further specifically indicates certain characteristics of the Surveillance Body, we deem it crucial for our Surveillance Body to work on a continuous and permanent basis.

The most recent text of Confindustria's Guidelines dated 18 May 2004 supplied some additional explanations and suggestions on the characteristics and composition of the Surveillance Body.

On the one hand, the importance of continuity in the Surveillance Body's action has been emphasised so that the said Body may devote all such resources as may be necessary to duly perform its important duties. On the other hand, Confindustria hypothesises a number of alternative solutions for the composition of the said Body, including the insertion therein of bodies already existing within the Company, such as the Internal Control Committee and the Internal Audit Function.

In the case of Edipower, the solution to appoint some of the Company's directors (or only those who sit on the Internal Control Committee) as members of the Surveillance Body has not been considered feasible, because both the Internal Control Committee and, more generally, the Board of Directors are not composed of independent directors, and because (even without having any operational powers within Edipower) Edipower's directors (including those who sit on the Internal Control Committee) are in any event vested with some important operational powers within the companies holding shares in Edipower.

Considering, *inter-alia*, such fact, Edipower S.p.A. is inclined (a solution that is also supported by the aforesaid Confindustria's Guidelines) to create for this purpose a Body composed of more persons, including the Internal Audit Manager *pro-tempore* and two professionals, i.e. Ms. Mariateresa Battaini and Mr. Aldo Poletti, who already sit on Edipowers' Board of Statutory Auditors.

Actually, the three persons mentioned above meet all the requirements set out in Confindustria's Guidelines and, particularly:

- I. continuity in action in that the members of the Surveillance Body are expected to remain in office for a considerable term, i.e. until the day on which the general meeting will be held to approve the Company's accounts as at 31 December 2006.
- II. Independence, in that the Internal Audit Manager reports hierarchically to the President of the Company (who is not vested with operational powers), while the two independent professionals, also and *a fortiori* by virtue of their office as members of the Board of Statutory Auditors, meet and must satisfy this requirement; and
- III. professionalism, in that the Internal Audit Manager, for the very reason of the qualifications and responsibilities functionally assigned to him, has the necessary know-how to monitor all corporate activities, and, similarly, the two independent professionals, also and *a fortiori* by virtue of their office as members of the Board of Statutory Auditors, are specifically qualified to carry out monitoring activities.

The Body, as above composed, can rely on the high professionalism of its members who (vested with other institutional supervisory duties within the Company) are *inter-alia* already engaged in activities similar to those of the Surveillance Body. In addition, the three members mentioned above can exercise high authority and – also by virtue of their qualifications and personal experience – ensure independence and seriousness in evaluating the doings of the Company's representatives of any level.

Eaipower further deems it appropriate, always with a view to preserving the Body's actual autonomy and impartiality, to establish some general rules defending and ensuring the full operativity of said Body.

Particularly, in order to preserve the independence and continuity in action of the Body, the Surveillance Body's members will remain in office until the day on which the general meeting will be held to approve the Company's accounts as at 31 December 2006.

Their fees, as determined by the Board of Directors upon their appointment, will remain unchanged for the whole term of their office, except for any adjustments if so required to reflect legal rates. The removal, if any, of the Surveillance Body's members, which can be decided solely for reasons connected with any serious breach of the duties assigned to them, shall be resolved by the Board of Directors and shall previously be communicated to the Board of Statutory Auditors and to the internal Audit Committee.

### 3.1 Responsibilities and powers of Edipower's Surveillance Body

Edipower's Surveillance Body is entrusted with the task of:

- constantly verifying all corporate activities to monitor and, if appropriate, identify any other areas of activity at risk to the commission of the offences listed in the Decree;
- examining the half-year reports prepared by the Department Managers and, more generally, any and all specific reports received from whoever has knowledge of any potential breach of the Model, so that any deficiencies in the Model and/or possible breaches thereof may be detected;
- activating on the basis of the results achieved the corporate structures in charge of preparing the operating and supervisory procedures for properly regulating the activities to be carried out for the purpose of constantly implementing the Model;
- watching over compliance by all the persons concerned with the rules established in the Model;
- verifying the efficiency of the Model in light of the Company's organisation and its actual capability of preventing the commission of offences;
- determining, in co-operation with the functions concerned, any amendments to the Model to be proposed to the Board of Directors, having regard in particular to any developments/changes in the Company's organisational structure or operativity, or to any amendments made to the law;
- watching over the fairness of the authority delegation system in order to ensure efficiency for the Model. For this purpose, cross-checks shall be made to determine whether the activity actually carried out by the Company's representatives fairly reflects the powers formally conferred on them under the powers of attorney in force.

At an organisational level, and fully autonomously, the Surveillance Body shall for that purpose:

- work out and implement a program of periodical verifications on the actual application and efficiency of the internal control procedures for risky areas;
- carry out some special verifications on given transactions or specific deeds made within the scope of risky areas of activity as identified in the Special Sections of this Model;
- collect, process and preserve all important information concerning compliance with the Model, and, if necessary, update the list of information to be mandatorily transmitted to the Surveillance Body;
- co-operate with the various corporate functions to better monitor all activities in risky areas. For this purpose, the Surveillance Body shall be constantly kept informed of any development in the said risky areas and shall have free access to all corporate documents. The Surveillance Body shall also be informed by the management of any situations in the Company's activity that may expose the Company to a risk of offence;
- co-operate with the Human Resources and Organisation Department, and with the various individuals responsible for the other corporate functions in all matters relating to the implementation of the Model, including but not limited to the promotion of adequate initiatives for the diffusion of the knowledge and comprehension of the Model, personnel training, establishment of standard clauses, disciplinary measures, and other purposes;
- co-operate with the various individuals responsible for other corporate functions in order to ensure that all necessary internal organisation documents for the functioning of the Model containing instructions, explanations or updatings are duly prepared;

- carry out internal investigations to ascertain any suspected violation of the provisions of the Model;
- verify that all the factors set out in the Special Sections of the Model for the identification of the types of offences are adequate and consistent with the obligations laid down by the Decree; otherwise, expedite the related updating process;
- suggest to the management all suitable additions to the financial resource management system (whether inwards or outwards) adopted by Edipower;
- open and keep a dedicated e-mail box to receive from the corporate structures any requests for explanations on doubtful cases or problematic hypotheses, as well as any requests for intervention for having the Model duly implemented;

For the purpose of performing its duties, the Surveillance Body:

- shall establish its own regulations (modalities of calling, voting, etc.);
- in carrying out its activities, may rely on the co-operation of the staff of the Internal Audit Function, and, namely, individuals who will from time to time be entrusted by the Surveillance Body with some specific tasks or duties according to the regulations to be prepared by the Surveillance Body;
- can dispose of an adequate expense budget for all expenditures to be decided and made in order to fulfil its duties;
- is supported by the Company's employees with staff functions ensuring continuous and capillary interventions;
- may avail itself of external consultants;
- may also avail itself of the existing corporate functions (and, particularly, of the Legal Department and Corporate and Legal Secretariat; Human Resources and Organisation Department, Administration, Finance and Control Department) to fulfil its duties;
- has free access to all corporate documents as may be required to fulfil its duties;
- may acquire reports from whoever is informed of facts occurred or may supply relevant information for the Surveillance Body's operativity;
- may open disciplinary procedures and follow the course thereof in order to verify their outcome and implementation modalities;
- may request the Chairman of the Board of Directors to convene the Board and the Internal Audit Committee for a meeting, and the Chairman of the Board of Statutory Auditors to convene the Statutory Auditors for a meeting; may also request the Chairman of the Board of Directors to convene the shareholders for a general meeting.

### 3.2 Responsibilities of the Surveillance Body: reporting to corporate governance bodies

Two reporting obligations are incumbent on Edipower's Surveillance Body:

- the one, on a continuative basis, directly towards the Managing Director and, on an at least six-monthly basis, towards the Internal Audit Committee;
- the other one, on a six-monthly basis, towards the whole Board of Directors, the Board of Statutory Auditors and the Auditing Company.

The presence of the above functional relationships with top-level bodies, including some members who have no operating responsibilities and, accordingly, are free from management activities, is a factor capable of ensuring that the Supervisory Board's task is performed in the most independent manner. Besides, should any criticism identified concern any of the recipients of the report, a corresponding notice shall be promptly given to one of the other persons mentioned above.

The Surveillance Body may be convened by the corporate governance bodies at any time to be heard on any relevant facts concerning the observance and preventive suitability of the Model. Minutes of any such meeting shall be drawn up and a copy thereof shall be kept by the Surveillance Body in its files:

In addition, the Surveillance Body shall provide the Board of Directors and the Board of Statutory Auditors with:

- an annual written report on the implementation of the Model within the Company (having regard, in particular, to the verifications made and the outcome thereof, the need, if any, of adjusting the Model or the related procedures, and so on), in relation to which the recipients may make comments and/or requests;
- an annual plan of the activities planned for the following year.

In addition, the Board of Directors shall every year submit to the general meeting, together with its own report on the Company's operations, a report on the activities carried out by the Surveillance Body.

Moreover, the Surveillance Body shall co-operate with the corporate functions responsible for various specific matters, and in particular:

- with the Legal Affairs and Secretariat Function (for example for the interpretation of the applicable law provisions in determining the content of relevant contractual clauses and for any formalities to be accomplished for the purpose of preventing the commission of corporate offences);
- with the Human Resources and Organisation Function for the training of personnel, the infliction of any disciplinary measures, the issuance of specific organisational instructions;
- with the Administration, Finance and Control Function for the verification and regulation of financial flows.

### 3.3 Information flows towards the Surveillance Body

#### 3.3.1 Reports from company representatives or third persons

Within the Company, the Surveillance Body shall be communicated, in addition to the documents prescribed in the Special Sections of the Model in accordance with the procedures contemplated thereby, any other information of any kind whatsoever, including if coming from third persons, concerning the implementation of the Model in the areas of activity at risk.

The Surveillance Body shall endeavour to keep the identity of the reporting persons confidential in order to protect them from any form of discrimination or victimisation, as well as their reputation, without prejudice to any obligation laid down by law and to the rights of the Company or of the persons concerned.

Particularly,

- Such reporting obligation is incumbent, in general, on all the personnel who becomes aware of any information concerning the commission of offences within the Company and/or any conduct inconsistent with the principles and procedures established in the Model;
- All reports shall be in writing and shall concern any breach, attempted or suspected breach of the Model, with the indication of the individual responsible therefor, if known;
- The Surveillance Body shall examine all reports received, convene, if necessary, the reporting person and/or the presumed author of the breach reported, and carry out all necessary investigations to assess whether such breach has been committed;
- Reasons in writing shall be given for all determinations made further to such investigations (taking of disciplinary action or dismissal of the related report).

Lastly, the information flow will be supplemented by meetings to be held on a regular basis (at least every six months) between the Surveillance Body and the Internal Audit Committee, the Board of Statutory Auditors and the Auditing Company.

Every information, notice, report under this Model shall be kept by the Surveillance Body in its files, whether computer- based or paper-based, for ten years. Access to such files is exclusively permitted to the members of the Surveillance Body and individuals authorised by the Surveillance Body, without prejudice to all obligations under the privacy law.

### 3.3.2 Reporting obligations relating to official deeds

In addition to the reports, including unofficial reports, contemplated by the preceding paragraph the following information must be supplied to the Surveillance Body:

- measures and/or notices issued within the scope of criminal proceedings, including if brought against unknown persons, concerning any facts that may be of interest to the Company;
- measures and/or notices issued within the scope of relevant administrative proceedings or civil proceedings concerning any claim or action from independent Authorities, Public Finance Administration, Ministry of Environment, local government administrations, or concerning contracts with the Public Administration, applications for and/or management of public subsidies;
- requests for legal assistance received by the Company from its personnel further to the institutions of criminal or civil proceedings against them;
- reports received from the persons responsible for corporate functions within the scope of their supervisory activity concerning any relevant fact under the Model.

Also available to the Supervisory Board are any and all corporate documents, including but not limited to:

- Summary sheets concerning all contracts awarded to/by Edipower further to competitive bidding procedures at a national or European level or further to private negotiations;
- Notices and documents concerning contracts awarded by Public Entities or Public Utility Entities;
- Information acquired within the scope of specific procedures and provided for therein;
- News concerning the effective implementation of the Model at all company levels, having regard, particularly, to disciplinary procedures;
- Minutes of the Board of Directors' and Board of Statutory Auditors' meetings;
- Authority delegation system and any change therein.

### 3.4. Identification of the Compliance Officer

In relation to all the activities of the Company, and with a view to ensuring a permanent connection between the Surveillance Body and the various Company Departments, the Department Managers shall serve as Compliance Officers and liaise with the Surveillance Body for all matters concerning the observance and adjustment of the Model in their respective area.

It will be the Compliance Officer's duty to communicate to the Surveillance Body, including through the Internal Audit Function, any and all information concerning any non-compliance with the Model or potential breach of the Model. In addition, the Compliance Officer shall on a six-monthly basis prepare a report on the activities of his/her Department highlighting the state of implementation of the Model. The Compliance Officer shall declare in writing to be familiar with, and to be bound to observe the rules established in the Model and duly perform his/her supervisory and monitoring duties.

Without prejudice to his/her responsibility and supervisory obligation, the Compliance Officer may also appoint one or more sub-compliance officers to carry out some specific and limited functions; also said sub-compliance officers shall declare in writing to have knowledge of the Model and related procedures, and undertake to carry out the duties assigned to them.

The appointment of the Compliance Officer, and of sub-compliance officers, if any, shall be communicated to the Surveillance Body, and for it to the Internal Audit Function, together with the written declarations mentioned above.

#### **4. Selection and Training of Personnel, communication of the Model**

The selection, adequate training and a constant updating of the personnel on the principles and provisions contained in the Model are all factors of a paramount importance for a correct and efficient implementation of the Company's offence prevention system.

All representatives acting within the Company, as well as the Company's partners and external collaborators are required to be fully familiar with the fairness and transparency purposes that are pursued with the Model and with the terms on which the Company intends to pursue such purposes by preparing and adopting an adequate system of procedures and controls.

##### **4.1 Selection of Personnel**

Human resources are an essential component of the life, development and success of a business.

The personnel selection – to be made on the terms set out in a specific procedure – must be based on equity, fairness and transparency principles, and on such criteria and procedures as to ensure that the individuals selected meet all professionalism, skill, integrity and reliability requirements. Edipower's commitment is to develop the capabilities and efforts of its employees so that the fairness, professionalism and commitment requested from them be intended as essential values for the achievement of the Company's objectives. For this purpose, the functions responsible for the management of human resources shall identify and implement criteria based on the merit and skill of an exclusively professional nature in any decision on their employees' activity.

##### **4.2 Selection of external collaborators**

The selection and management of external collaborators (suppliers, sales representatives, partners, agents, consultants and others, hereinafter "collaborators") shall fully reflect reasonableness, professionalism, integrity, fairness and transparency principles.

Particularly,

- as provided by a special circular, all agreements and contracts that will be entered into with the said persons shall always include a suitable clause permitting the Company to terminate the relationship in the event that the conduct of any such collaborator is at any time inconsistent with the provisions of the Code of Ethics adopted by the Company;
- the company structures availing themselves of any such collaborator or responsible for the process in which such collaborator's activity is included shall record all data and news permitting to monitor and evaluate its conduct, and, if so requested, shall make the said data and news available to the Surveillance Body for the purposes of the supervisory activity to be carried out by the latter;
- as provided by a special circular, all of the external collaborators shall undertake, under an express contractual clause, to take knowledge and observe the Company' Code of Ethics: accordingly, each collaborator shall be made aware of the contents of the Code of Ethics.

### 4.3 Training of and communication to personnel

In compliance with the provisions of Legislative Decree No. 231 of 2001, Edipower has established a specific information and training plan targeted at circulating and explaining the Model to all its employees. This plan will be handled by the competent management structures in co-operation with the Surveillance Body.

Particularly, as far as communication is concerned, the following is provided:

- the Model and all necessary information for its comprehension and implementation will be affixed to the notice board;
- a letter signed by the Human Resources and Organisation Manager describing the contents of the Decree and the information/training modalities established by the Company will be delivered to all employees together with the pay-packet;
- the Model will be circulated through the Company's computer systems and will be delivered to all employees by e-mail.

As far as personnel training is concerned, some different targeted interventions will be made with a view to personalising such training and actually satisfying the needs of each single structure/resource.

Accordingly, a training course is envisaged for all managers concerning:

- an introduction to the law provisions and to Confindustria's Guidelines. In particular, the Department Managers will be informed of all consequences that may be suffered by the Company from the commission of any offences by individuals acting on the Company's behalf, of the essential characteristics of the offences set out in the Decree and of the purposes served by the Model in that context;
- an explanation of each component of the organisation Model and of the specific preventive purposes pursued by it.

The Department Managers shall then divulge the information acquired within their respective area of responsibility in order to ensure that such information is duly circulated and shared.

Training interventions will be renewed whenever new employees are hired.

## 5. Authority Delegation System

In this connection Edipower's policy provides that only individuals vested with formal and specific powers may bind vis-à-vis third persons the Company to which they belong. Accordingly, permanent powers of attorney are solely granted for the performance of organisational duties actually implying representation needs, taking into account the organisational responsibilities formally assigned to the structure to which the holder of a power of attorney belongs.

Particularly, all of the authorities conferred under a power of attorney shall fairly reflect the missions and responsibilities described in the Company's Organisation Chart.

In addition, for the conferment, management and revocation of a power of attorney granting permanent representation powers, the Company:

- requires that the company structures concerned identify the functions responsible for the proposal, legal/implementing/supervising phases, and for the preservation of all official documents;
- establishes the content, implementation modalities and timing of each phase of the process of conferment, revocation and maintenance of powers of attorney granting permanent representation powers.

The granting of a power of attorney shall be supported by an accompanying letter, to be transmitted to the grantee together with the related deed of conferment containing the instructions and limits for the exercise of the powers conferred thereunder (with referral to the company regulations, Model and organisational provisions), requesting for and collecting his/her written acceptance.

All powers of attorney issued shall be kept by the Legal Affairs and Secretariat Function and shall be made available to the Surveillance Body.

The competent functions – including with the support of the Department Manager responsible for sensitive activities:

- shall periodically verify the authority delegation system in force, including through an examination of all documents attesting to the activity actually carried out by the individuals acting on behalf of the Company, and shall recommend all necessary amendments in the event that the management functions and/or the capacity of the grantee does not correspond to the representation powers conferred on him/her.

## 6. General Principles of Internal Control

The Internal Control System is composed of a series of “instruments” designed to ensure the achievement of efficiency and effectiveness operating objectives, reliable financial and management information, compliance with all laws and regulations, as well as the protection of the Company’s and third persons’ property.

### 6.1 General control environment

In order to ensure that all activities are actually controlled:

- all responsibilities shall be finally determined and duly distributed avoiding functional overlappings or operating allocations conveying critical activities on one and the same individual;
- no significant transactions can be made unless previously authorised;
- representation powers shall be conferred according to the exercise purposes and amount limits strictly connected with the duties assigned and the related organisational structure;
- all operating systems shall be consistent with the Model, internal procedures, laws and regulations in force.

### 6.2 Control activities

All transactions in risky areas shall be carried out in compliance with the following general rules:

- all operating processes shall be predetermined by preparing adequate supporting documents so that the fairness and consistency thereof, and responsibility therefor may always be verified;
- the characteristics and reasons of all operating decisions shall be traceable and those who authorised, made and verified each activity shall be identifiable;
- any exchange of information between contiguous phases/processes shall be made so as to ensure the integrity and completeness of all data processed.

The control system is subject to permanent supervision and periodical evaluation so as to be adjusted on a regular basis.

## 7. Disciplinary System

### 7.1 General Principles

A qualifying point of the Model and – at the same time – an essential condition for its actual operativity, implementation and observance by all company representatives, partners, external collaborators and any other persons that entered into a contract with the Company in the cases contemplated by a special Circular, is the adoption of an adequate system under which any breach of the provisions and organisational procedures contained therein are punished.

In this respect, it is worthwhile emphasising that sanctions are inflicted regardless of whether or not an offence has been committed and criminal proceedings have been instituted: in fact, the purpose of the sanctions provided herein is that of restraining any violation of the provisions of the Model on the prevention of criminal offences, by making the Company's personnel and all those who collaborate with the Company in any manner whatsoever fully aware of the Company's resoluteness in pursuing any violation of the rules established by it in order to be sure that the duties and/or tasks assigned are duly performed.

A disciplinary procedure will be opened by initiative of the Surveillance Body whenever, in the course of its monitoring and surveillance activity, a possible violation of the Model has been detected. The Surveillance Body shall also perform consulting functions in the whole disciplinary procedure with a view to acquiring any useful information for a constantly updating of the Model. The assessment of any liabilities deriving from any breach of the Model and the infliction of the related sanction shall in any event be made in compliance with all applicable laws concerning the privacy, dignity and reputation of the persons concerned.

### 7.2 Measures against employees

Any conduct held by employees (i.e. individuals in the employ of the Company) in breach of the rules of conduct established in the Model constitutes a default under primary employment obligations and, consequently, a disciplinary wrongdoing.

The Model is communicated to all employees of Edipower S.p.A. by affixing it to the notice board and through some special information courses.

The sanctions that can be inflicted are included in those provided for by the laws in force, the applicable collective bargaining and the Company's disciplinary code in compliance with the laws in force, the procedures set out in Law No. 300 of 30 May 1970 (Workers' Statute) and the related provisions contained in the National Collective Labour Agreements in force.

Any breach will be investigated and, if assessed, disciplinary actions will be taken by the Human Resources and Organisation Department in accordance with the provisions of the National Collective Labour Agreement and the company procedures and in compliance with the laws in force.

Particularly,

By way of example but not of limitation, as far as employees governed by the National Collective Labour Agreement for Electrical Workers are concerned:

- a) a disciplinary sanction represented by a verbal reprimand is inflicted on any employee who has breached the internal procedures set out in the Model (e.g. non-compliance with mandatory procedures, or failure to provide the information required by the Surveillance Body, or to make requisite checks, and the like) or who has held,

in carrying out his/her activity, a conduct inconsistent with the rules established in the Model, which is considered a “failure to execute the orders given by the Company in writing and/or verbally” as provided under letter c) of point 1) of the “Correlation criteria between workers’ misconduct and disciplinary measures” quoted at foot of article 25 of the National Collective Agreement (“Disciplinary Measures”) and/or a violation of article 2104 of the Italian Civil Code, in the event that any such breach or misconduct is not so serious as to make the sanctions provided under letter b), c), d), e), f), g) applicable;

- b) a disciplinary sanction represented by a written reprimand is inflicted on any employee who has breached the internal procedures set out in the Model (e.g. non-compliance with mandatory procedures, or failure to provide the information required by the Surveillance Body, or to make requisite checks, and the like) or who has held, in carrying out his/her activity, a conduct inconsistent with the rules established in the Model, which is considered a “failure to execute the orders given by the Company in writing and/or verbally” as provided under letter c) of point 1) of the “Correlation criteria between workers’ misbehaviour and disciplinary measures” quoted at foot of article 25 of the National Collective Agreement (“Disciplinary Measures”) and/or a violation of article 2104 of the Italian Civil Code, in the event that any such breach or misconduct is considered more serious than those which make a verbal reprimand applicable but not so serious as to make the sanctions provided under letter c), d), e), f), g) applicable;
- c) a fine not in excess of the amount of four hours of pay is inflicted on any employee who has breached the internal procedures set out in the Model or who, in carrying out activities in risky areas, has held several times a conduct inconsistent with the rules established in the Model, which is considered a “failure to execute the orders given by the Company in writing and/or verbally” as provided under letter c) of point 1) of the “Correlation criteria between workers’ misconduct and disciplinary measures” quoted at foot of article 25 of the National Collective Agreement (“Disciplinary Measures”) and/or a violation of article 2104 of the Italian Civil Code, in the event that any such breach or misconduct is more serious than those sanctioned under letters a) and b) but not so serious as to make the sanctions provided under letter d), e), f), g) applicable;
- d) a disciplinary sanction represented by suspension from work without pay for a maximum of 10 days is inflicted on any employee who, by breaching the internal procedures set out in the Model or holding in carrying out his/her activity a conduct inconsistent with the rules established in the Model or by performing any act against the Company’s interest, exposes the Company’s property to a risk of loss, in that such conduct is considered a “failure to execute the orders given by the Company in writing and/or verbally” as provided under letter c) of point 1) of the “Correlation criteria between workers’ misconduct and disciplinary measures” quoted at foot of article 25 of the National Collective Agreement (“Disciplinary Measures”) and/or a violation of article 2104 of the Italian Civil Code, in the event that any such breach or misconduct is more serious than those sanctioned under letters a), b) and c) but not so serious as to make the sanctions provided under letter e), f) and g) applicable, or in case of relapse of any misconduct sanctioned under letters a) b) and c);
- e) a disciplinary sanction represented by transfer is inflicted on any employee who has breached the internal procedures set out in the Model or, in carrying out his/her activity, has held a conduct inconsistent with the rules established in the Model and/or has performed any act against the Company’s interest, in the event that such misconduct is more serious than those sanctioned under letters a) b) and c), but less serious than those sanctioned under letters f) and g), in that any such misconduct is considered a “failure to execute the orders given by the Company in writing and/or verbally” as provided under letter c) of point 1) of the “Correlation criteria between

workers' misconduct and disciplinary measures" quoted at foot of article 25 of the National Collective Agreement ("Disciplinary Measures") and/or a violation of article 2104 of the Italian Civil Code, or, in case of relapse of any misconduct sanctioned under letter d), or whenever the employee holds again any misconduct under the foregoing sub-paragraphs after being inflicted the sanction provided under letter d);

- f) a disciplinary sanction represented by dismissal with notice is inflicted on any employee who, in carrying out his/her activity, holds a conduct inconsistent with the internal procedures set out in the Model and/or unequivocally designed to commit an offence sanctioned by Legislative Decree No. 221 of 2001, in that any such misconduct is considered an act that "fully impairs the Company's trust in such employee" as per letter i) of point 2) of the "Correlation criteria between workers' misconduct and disciplinary measures" quoted at foot of article 25 of the National Collective Agreement ("Disciplinary Measures") and/or a violation of article 2104 of the Italian Civil Code, or, whenever the employee holds again any misconduct under the foregoing sub-paragraphs after being inflicted the sanction provided under letter e), or in case of relapse of any misconduct under the foregoing letters once two suspensions from work without pay have been inflicted;
- g) a disciplinary sanction represented by dismissal without notice is inflicted on any employee who, in performing his/her duties in risky areas, holds a conduct in breach of the rules set out in the Model and such as to entail the infliction on the Company of the measures provided by Legislative Decree No. 231 of 2001, and/or, in any event, a more serious misconduct than those provided under letter f), in that such misconduct is considered an act capable of causing "severe moral and/or material damages to the Company", and a "criminal offence under the law" as provided under point 3) of the Correlation criteria between workers' misconduct and disciplinary measures" as quoted at foot of article 25 of the National Collective Agreement ("Disciplinary Measures").

The Company also reserves the right to apply, as a provisional measure, the provisions of paragraph 4) of article 25 of the National Collective Agreement ("Disciplinary Measures") according to which *"In the event that the extent of any misconduct cannot be assessed immediately, the Company may prudentially suspend the worker for a period of time not in excess of 60 days. In that period the worker will receive his/her pay as determined in that article (remuneration structure) and those indemnities which, by contract, are payable in any case of paid leave, unless he/she has been held liable for any misconduct sanctioned with any of the measures provided for under letters f) and g) of the first paragraph of this article"*.

### 7.3 Measures against executives

An executive relationship is characterised by an eminently fiduciary nature. The conduct of an executive has an impact not only inside the Company but even outside the Company, for example in terms of market reputation.

Accordingly, the observance by all of the Company's executives of the provisions of this Model and their obligation to procure that the provisions of this Model are fully complied with, is an essential point in an executive relationship, because they are an incentive and an example for all those who report hierarchically to them.

This Model will be made known to all of Edipower S.p.A.'s executives by directly delivering it to them and collecting their signature as evidence of their acceptance of the terms contained therein and, in particular, as an express acceptance of and consent to the provisions of paragraph 7.3.2, headed "provisional measures".

Whenever any breach is assessed, a disciplinary procedure will be opened by the Human Resources and Organisation Department, in accordance with the provisions of the applicable National Collective Labour Agreement governing employees with executive capacities and with the company internal procedures.

#### 7.3.1. Sanctions

In case of any breach of the provisions of the Model or of any conduct held by an executive in carrying out activities in risky areas that is inconsistent with the rules set out in the Model, or whenever an executive officer allows any employee reporting hierarchically to him/her to hold any conduct that is inconsistent with and/or in breach of the Model, the most suitable sanctions will be inflicted to such executive according to the nature of the executive relationship as provided, inter-alia, by the laws in force, by the National Collective Labour Agreement for executive officers of industrial undertakings, and by any company agreements applicable to executive officers.

Particularly, a disciplinary sanction represented by dismissal with notice will be taken against any executive who, for lack of surveillance, allows any other employee reporting hierarchically to him/her to hold a conduct inconsistent with the rules established in the Model, or a less serious conduct than those sanctioned with dismissal without notice which permits to continue the employment relationship at least provisionally, without prejudice, in any event, to the Company right to pay an indemnity in lieu of notice.

An executive is sanctioned with dismissal without notice if he/she holds a conduct in breach of the rules established in the Model and such as to entail the infliction on the Company of the penalties provided by Legislative Decree No. 231 of 2001, and/or, in any event, such a more serious misconduct than those sanctioned with dismissal with notice as to seriously impairing the essential requirements of his/her employment relationship and, in particular, the fiduciary relationship, which does not to permit to continue, not even provisionally, the employment relationship, being the fiduciary relationship an essential point thereof.

#### 7.3.2 Provisional Measures

In the event that a breach of the provisions of the Model or a conduct held by an executive in carrying out activities in risky areas inconsistent with the rules established in the Model constitutes an offence under criminal laws, the Company may elect to adopt against the offender, and pending the outcome of criminal proceedings, either of the following provisional measures:

- a) preventive suspension with full pay of the executive;
- b) assignment to other duties within the Company.

By signing this Model each executive gives his/her express consent to the Company applying, at its own choice, either of the above provisional measures.

At the end of criminal proceedings, if the breach of the Model is finally assessed, the executive will be inflicted the sanctions provided in paragraph 7.3.1. of the Model.

#### 7.4 Measures against directors and statutory auditors

As regards the extent of the supervisory powers vested in the Surveillance Body, Legislative Decree No. 231/2001 does not modify the company regulations and the provisions of the Company's by-laws so as to require any substantial and unjustifiable restrictions to its statutory and organisational autonomy, with the consequence that, with respect to the holders of powers of attorney expressed in terms of a large autonomy and delegated powers (Managing Directors, President vested with operational powers), or with respect to the individuals who are considered fully trustworthy by the Company, will continue being applied the only forms of control that are already provided for by the regulations in force as well as the related remedies in the event of any violations of the law committed by them.

In any event, the Surveillance Body is entitled to consult with the persons vested by law with supervisory responsibilities and is authorised to request for a verification that all requirements of law entitling to bring any actions for liability or revocation for cause are met.

Based on and confirming the above, Edipower will examine in an extremely rigorous manner any breach of this Model committed by those who hold a top position within the Company and, therefore, reflect the image of the Company vis-à-vis its employees, shareholders, creditors and the public. The formation and consolidation of company ethics based on fairness and transparency values implies, first of all, that such values be acquired and observed by those who direct the Company's choices, so as to serve as an example and incentive to all those who work for the Company at any level.

In case of a breach by one or more directors of the internal procedures established in the Model or adoption, in carrying out their duties, of any measures in conflict with the provisions or principles of the Model, the Surveillance Body shall promptly inform thereof the whole Board of Directors and Board of Statutory Auditors, which shall take all necessary actions under the laws in force.

Similarly, in case of a breach by one or more members of the Board of Statutory Auditors, of the internal procedures established in the Model or adoption, in carrying out their duties, of any measures in conflict with the provisions and principles of the Model, the Surveillance Body shall promptly inform the whole Board of Statutory Auditors and the Board of Directors, which shall take all necessary actions under the laws in force.

#### 7.5 Measures against external collaborators

Any and all contracts and agreements entered into with companies, consultants, external collaborators, partners and others – in compliance with the terms contained in a special Circular – shall include some specific clauses under which any conduct held by any such contracting party, or by any individual acting for such contracting parties in conflict with the rules of conduct set out in the Model and, therefore, capable of entailing the risk of commission of any of the offences punished by Legislative Decree No. 231 of 2001 will entitle the Company to terminate the related contract or, alternatively, to demand due performance of the contract, without prejudice to the Company's right to claim for damages.

## **8. Confirmation of Model implementation and adequacy**

The Model will be subject to two types of verifications:

- 1) monitoring activity on the efficiency of the Model (consisting in the verification of consistency between the Model and the actual conduct of the individuals concerned) through the establishment of a system of periodical declarations from the individuals covered by the Model confirming that no action inconsistent with the Model has been taken. The Compliance Officer for each risky area has the duty to have such declarations filled in by the employees and to transmit them to the Surveillance Body, which shall keep them in its files and shall then make some checks on a sample basis;
- 2) verifications of the procedures: on the terms established by the Surveillance Body, the actual functioning of the Model will be verified on an annual basis. In addition, a verification will be made on a sample basis on all the reports received in each year, the actions taken by the Surveillance Body and by the other individuals concerned, any risk factors detected, the personnel's knowledge of the contents of the Model.

The results of the above verification, accompanied by proper comments on implementation prospects, will be included in the report to the Board of Directors to be prepared by the Surveillance Body.

Organisation Management and Control Model

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Special Section A

*Edipower*

## A.1 Types of offences in the course of relations with the Public Administration

As a preamble to this Special Section “A”, below is a short description of the offences contemplated by articles 24 and 25 of the Decree.

### [Aggravated fraud perpetrated against the State or other Public Entities \(article 640, second paragraph, point 1\) of the Italian Penal Code\)](#)

This offence is committed by whoever obtains, by misleading other persons through expedients or deceptions, an unjust profit to the detriment of the State, or any other public entity or the European Union. Such offence arises whenever, for example, in preparing documents or data for participating in a competitive bidding procedure, untrue information is supplied to the Public Administration (for example, supported by fake documents), for the purpose of being awarded the related contract.

### [Aggravated fraud in order to obtain public disbursements \(article 640 \*bis\* of the Italian Penal Code\)](#)

This offence is committed whenever the above fraudulent conduct concerns public loans, howsoever named, granted by the State, or another public entity or the European Union. This offence arises in the event that any expedients and deceptions are used to obtain public loans, for example by supplying untrue data or preparing fake documents,.

### [Embezzlement to the detriment of the State or other Public Entities \(article 316 \*bis\* of the Italian Penal Code\)](#)

This offence is committed by whoever, having obtained from the State, or another public entity or the European Union a loan, howsoever named, for the realisation of public interest works or activities, does not use the funds received for the purposes declared. Since the fact punished is the non-use of the loan granted for the purpose declared, this offence may even arise out of loans received in the past which are subsequently not used for the purposes for which they were granted.

### [Misappropriation of contributions, loans or any other disbursements from the State \(article 316 \*ter\* of the Italian Penal Code\)](#)

This offence is committed by whoever – by using or filing false statements or documents or omitting any requisite information – obtains contributions, loans, low-rate loans or other similar disbursements granted or paid by the State or another public entity or the European Community.

In any such case, otherwise than as provided above (article 316 *bis*), the final use of the public funds received is irrelevant in that the offence arises upon the undue obtainment thereof.

Lastly, it must be considered that such offence, having a residual nature, only arises when the conduct held is not such as to fall within the scope of the more serious offence of aggravated fraud to the detriment of the State (article 640 *bis* of the Italian Penal Code).

### [Computer fraud perpetrated against the State or other Public Entities \(article 640 \*ter\*, first paragraph, of the Italian Penal Code\)](#)

This offence is committed by whoever, by altering the functioning of a computer or telematic system or by manipulating the data stored therein, obtains an unjust profit to the detriment of the State or another public entity.

Actually, this offence may arise in the event that, once a loan has been obtained, the Public Administration's computer system is violated in order to indicate a higher amount than that lawfully obtained.

**Extortion by public officials (article 317 of the Italian Penal Code);**

This offence is committed whenever a public official or civil servant, abusing his/her office or power, obliges or induces a person to unduly give or promise a sum of money or any other benefit to himself/herself or another person.

Such offence has limited risk profiles under Legislative Decree No. 231/2001; in fact, being an offence which is typical to individuals as above qualified, the Company's liability may only arise in the event that an Employee or Agent of the Company participates, in the interest and for the advantage of the Company, in the offence committed by a public official or civil servant who, abusing his/her position, demands for an undue performance.

**Corruption (articles 318, 319 of the Italian Penal Code);**

This offence is committed whenever a public official or civil servant accepts that a sum of money or any other benefit be given or promised to himself/herself or another person against the performance, omission or deferment of an office act or the performance of an act contrary to his/her office duties.

Accordingly, such offence arises both in the event that a public official performs for a consideration an act falling within the scope of his office (for example, he/she speeds up a matter to be processed by him/her) and in the event that he/she performs an act contrary to his/her duties (for example, he/she procures an unlawful award under a competitive bidding procedure).

This type of offence is different from that of extortion because an agreement for the achievement of a reciprocal benefit exists between corrupter and corruptee, while in the case of extortion, a private person suffers from the conduct of a public official or civil servant.

Pursuant to article 321 of the Italian Penal Code, the penalties applicable to public officials and civil servants also apply to any private person who gives or promises any sum of money or other benefit to a public official or civil servant.

**Inducement to corruption (article 322 of the Italian Penal Code);**

The penalty for this offence applies to whoever offers or promises a sum of money to a public official or civil servant to induce him/her to perform an act contrary to or consistent with his/her office duties, in the event that such promise or offer is not accepted. Equally sanctioned is the conduct of a public official who solicits a promise or an offer from a private person.

**Judicial corruption (article 319 *ter* of the Italian Penal Code);**

This offence is committed by whoever offers or promises a sum of money or another benefit to a public official or civil servant to induce him/her to favour or damage a party to civil, criminal or administrative proceedings.

Accordingly, a company which, being a party to a judicial case, corrupts a public official (who need not be a judge but may even be a court clerk or any other officer) for the purpose of being successful in pending proceedings may be held liable for such offence.

In addition, in order to actually prevent the commission of the offences in question, we deem it appropriate to shortly list the individuals who may be subjectively qualified as public official or civil servant, a qualification which is relevant for the purposes of the cases under examination, hereinafter generally referred to as "Public Administration".

Particularly, the definition of Public Administration as considered for the purpose of identifying risky areas is the one given by articles 357 and 358 of the Italian Penal Code, according to which “public officials and civil servants” are all those who – whether employed or not by the Public Administration – carry out an activity regulated by provisions of public law and authoritative acts. Based on that definition, we have analysed the following situations of possible relations with:

- 1) Individuals having public legislative functions, such as for example:
  - *Parliamentary members and members of the Government;*
  - *Members of regional or provincial councils;*
  - *Members of the European Parliament and members of the Council of Europe;*
  - *Individuals having ancillary functions* (keepers of parliamentary deeds and documents; stenographers, bursars, technicians, and others);
- 2) individuals having public judicial functions, such as for example:
  - *judges* (including but not limited to ordinary judges of First Instance Courts, Courts of Appeal, Supreme Court of Cassation, Water High Court, Regional Administrative Court, State Council, Constitutional Court, Military Courts, popular jurors of the Courts of Appeal, Judges of Peace, Honorary Vice Lower Court Judges (“Pretori”) and associates, members of formal Panels of Arbitrators or of parliamentary investigation commissions, judges of the European Court of Justice, or of any International Court);
  - *individuals having functions connected* with those mentioned above (including but not limited to officers and members of the Criminal Investigation Department, Tax Police and “Carabinieri”, court clerks, secretaries, judicial custodians, process servers, conciliation ushers, trustees in bankruptcy, operators who release certificates at court clerks’ offices, experts and consultants to the Public Prosecutor, court-appointed receivers in bankruptcy proceedings, liquidators under a composition with creditors procedure, extraordinary commissioners for large enterprises under extraordinary administration);
- 3) individuals having public administrative functions, such as, for example:
  - *employees, officials and representatives of the State, international and foreign bodies and territorial entities* (including but not limited to officials and employees of the State, European Union, international bodies, Foreign States and territorial entities, including Regions, Provinces, Municipalities and Mountain Communities; individuals having functions that are ancillary to the institutional functions of the State, such as members of the Municipal Technical Office, Building Commission, the Chief Administrative Officer of the Amnesty Office. Municipal Ushers, clerks assigned to duties concerning the occupation of public space, municipal corresponding clerks assigned to the employment agency, employees of state-owned companies or municipalised companies, tax collectors, sanitary personnel of public structures, personnel of Ministries or Superintendences);
  - *employees of national and international public entities* (including but not limited to officers and employees of the Chamber of Commerce, Bank of Italy, Supervisory Authorities, Social Security Institutes, ISTAT, United Nations, FAO);
  - *private individuals performing public functions or public services* (including but not limited to notaries, private persons acting under concession or whose activity is in any event governed by provisions of public law and authoritative acts).

In this respect, please note that, pursuant to article 322 *bis* of the Italian Penal Code, the definition of Public Administration as described above also applies to any entity having functions similar to those of the EU bodies, or any other Member-State of the European Union, or foreign State or international public organizations.

It is worthwhile mentioning, in particular, for the purpose, *inter-alia*, of identifying the risk of commission of some of the offences set out in Legislative Decree No. 231 – that Edipower's representatives may be considered as persons performing a public service.

Edipower's activity is that of producing electric energy on behalf of others from thermoelectrical source (an activity subject to mere authorisation) and from hydroelectrical source (an activity subject to concession-granting), as well as that of selling electric energy to some qualified customers (it is the energy produced from hydroelectrical source that is sold to the Tollers under a sale agreement).

In light of all that has been highlighted above with respect to the "definition of Public Administration", we can reasonably consider that – excluding the relevance of the activity of selling energy to qualified customers – both the energy production from thermoelectrical source and the energy production from hydroelectrical source fall within the notion of "public service", with all consequences for the purposes of the subjective qualification of those who work in that sectors.

Actually, the deep transformations occurred in the regulations and management of services in the latest years, at a national and communitary level further to the liberalisation of said services, together with the traditional lack of univocal rulings by Italian Criminal Courts and Administrative Courts on the identification of the necessary subjective qualification which gives rise to the said offences against the Public Administration, in such "doubtful" sectors as those of the energy business, do not permit to come to a peaceful conclusion on the activities carried out by Edipower.

In fact, if the activity connected with the hydroelectrical production, which is carried out under concession, can more clearly be held to fall within the notion of "public service", it is much more doubtful whether the thermoelectrical production may fall within such notion, considering that it is not supported by a concession and that the only public regulations applying to it (*inter-alia* only partly) might offer no sufficient support.

Accordingly, without prejudice to all the considerable margins of uncertainty as to whether Edipower's representatives may be held liable for the offences of extortion and passive corruption, the Company, in any event, deems it appropriate – as a sound management rule – to include in its Code of Ethics some specific provisions to obviate the risk that its employees receive any money or other gifts from private individuals for favouring said private individuals in the Company's activities to which they are assigned.

In addition, some special procedures designed to ensure an even higher level of protection from all risks have been established for certain more sensible sectors.

## A.2 Major areas of activities at risk

The assumption of the offences considered above is the establishment of relations with the Public Administration and the performance of activities qualified as a public function or public service.

For this purpose, it is essential to remind the new business model adopted by Edipower since 1 January 2004 further to the execution of the Tolling Agreement.

Particularly, since that date, the following activities have been no more the responsibility of Edipower:

- under the Tolling Agreement: supplies of fuel (e.g. purchase, swap, price and exchange rate risks relating to such supplies);
- under the Tolling Agreement: management of fuel logistics (e.g. lease of means of transportation, insurance coverage, unloading and management of warehouses outside Edipower's production sites;
- under the Tolling Agreement and the PPA: dispatch and sale of the electric energy produced by Edipower (except for a minimal part thereof that will continue being sold by Edipower to the Operator of the National Transmission Network under the agreements made before the effective date of the Tolling Agreement).

However, Edipower continues generating electric energy and, for this purpose continues availing itself of suppliers of maintenance services and contractors and purchasing goods and services both for the operation of the plants (purchase of spare parts, cleaning, canteen, site watching, waste disposal services, insurance and others) and for the modernisation of its plants through the award of turnkey contracts.

In light of the foregoing, the areas of activity that are considered more specifically at risk are:

- 1) handling of supplies of goods and services (except for the above supplies under the Tolling Agreement);
- 2) participation in procedures for obtaining disbursements, subsidies or loans from the Public Administration and the actual use thereof;
- 3) application for administrative measures on an occasional basis (obtainment or renewal of authorisations, permits and certificates, execution of agreements and conventions, handling of inspectors' visits) for the performance of some activities that are instrumental to those which are typical to the Company;
- 4) handling of litigations to which the Company is a party (before criminal, civil, administrative or tax authorities, arbitrators, and other authorities);
- 5) handling of relations with Public Supervisory Authorities.

The following areas to be considered as instrumental to those examined above have been also identified in that said areas, although not characterised by direct relations with the Public Administration, may constitute a (financial or operational) support and a preliminary assumption for the commission of the offences mentioned above:

- 1) execution and performance of consulting/professional services agreements;
- 2) personnel selection;
- 3) development and training of human resources;
- 4) finance and treasury management;
- 5) management of real properties;
- 6) management of sponsorships;
- 7) management of gifts and liberalities;
- 8) management of computer systems.

Moreover, an additional factor of risk arises in the event that an activity is performed in certain geographical areas in which there are no adequate safety and transparency conditions.

### A.3 Persons covered by Special Section “A”

This Special Section covers any conduct held by directors, executives and employees (hereinafter “*company representatives*”) acting in areas of activity at risk, as well as external collaborators and partners. However, generally speaking, external collaborators and partners are prohibited to sub-delegate or sub-contract, or howsoever confer any rights on others, without the express approval of Edipower, which reserves the right to choose and verify the moral and professional adequacy of the persons concerned, as well as contracts, services, consulting services.

In accordance with the terms set out in a special Circular, each such person will therefore bound, by virtue of a special contractual clause, to take knowledge and observe the principles and procedures contained in this Special Section in order to prevent and not to allow that the offences contemplated by the Decree are committed.

### A.4 General principles of conduct and implementation of the decision-making process in areas of activities at risk

This Special Section expressly provides for the obligation of all company representatives directly, and of external collaborators and partners under specific contract clauses and on the terms established in a circular issued for this purpose, to:

- comply with any and all laws and regulations applicable to the Company’s business, having regard, in particular, to those activities which imply contacts and relations with the Public Administration;
- have all relations entered into and kept with the Public Administration characterised by the maximum fairness and transparency;
- observe any and all laws, regulations and authoritative measures governing the activities of Edipower carried out under concession, in accordance with fairness and transparency rules so as to ensure compliance with the good performance and impartiality principles pursued by the service supplied;
- avoid any possible situation of conflict of interest with the Public Administration.

Accordingly, based on the above principles, it is forbidden:

- to make or consent to any donation, or promise of money, assets or other gifts of any kind whatsoever to the Public Administration’s representatives or third persons designated by or directly or indirectly connected with the said representatives; Particularly, no individual recommended by a representative of the Public Administration can be taken into consideration for recruitment by the Company, or recommended by the Company for recruitment by or placing with a third person; No recommendation coming from the Public Administration concerning consultants or business partners to be used by the Company in carrying out its activities or to be recommended by the Company to its consultants or partners can be taken into consideration;
- No request for sponsorships, electoral campaign contributions, privileged treatments coming from a representative of the Public Administration can be taken into consideration, especially if made on the occasion of a specific deal or business transaction;

- to make presents, gifts or render services of any nature whatsoever not contemplated by the company procedures (i.e. any form of gift offered or received beyond the normal business or complimentary practice, or in any event intended for receiving a more favourable treatment in conducting any activity of the Company). Particularly, it is forbidden to make presents in any form whatsoever to Italian and foreign public officials (even in those countries in which to make presents is a common practice), or to the members of their families or to any persons indicated by them, so as to influence their independence of judgment or induce them to procure an advantage for the Company. Permitted presents are characterised by a small value;
- to render services to partners or external collaborators that are not adequately justified by the scope of the association relationship created with the partners;
- to select external collaborators or partners for any reason other than necessity, professionalism and economicity, and award them a compensation that is not adequately justified by the scope of the existing relationship or the real value or the service rendered;
- to file untrue or incomplete declarations or, in any event, mislead any national or communitary public body with a view to obtaining any public disbursements, subsidies or low-rate loans;
- to use any sum received from a national or communitary body as disbursement, subsidy or loan for any purposes other than those intended;
- to have unauthorised access to the computer systems of the Public Administration to obtain and/or modify any information stored therein in the interest or for the advantage of the Company;
- to receive any sum of money or other benefits for the advantage of the Company from any private person who may benefit from any decisions or choices made by the Company within the scope of its business.

With respect to the conducts described above:

- 1) Edipower will not tolerate that its representatives, collaborators or partners hold at any time a conduct inconsistent with the principle of a strict observance of the Model, laws and regulations in force in all places and countries in which the Company operates;
- 2) Commitments towards the Public Administration can be exclusively taken and managed by company representatives, collaborators or partners so authorised under a special proxy;
- 3) Any agreements with partners must be made in writing and all the terms contained therein must be specified, especially the financial terms agreed for joint participation in a procedure, and must be proposed or verified or approved by at least two of Edipower's representatives;
- 4) Any task entrusted to an external collaborator must be evidenced by a written instrument, with the indication of the consideration agreed, and must be proposed or approved by at least two of Edipower's representatives;
- 5) Any consideration must be paid in a transparent manner, supported by documentary evidence and must be traceable back at any time;
- 6) Any declaration made to national or communitary public bodies in order to obtain any public disbursements, subsidies or loans must exclusively contain absolutely true information and must be complete so as to attest that all of the conditions required to obtain such funds are satisfied and that no impediments exist; if such funds are received, a special report must be issued with respect thereto;
- 7) All those who are in charge of controlling and supervising that the obligations connected with the performance of the above activities are duly fulfilled (payment of invoices, use of loans obtained from the State or a communitary body, or any other

public entity) must particularly pay attention to how such obligations are fulfilled and promptly report any irregular situations to the Surveillance Body.

Finally, it is required strict compliance with all the organisational procedures established for each of the activities mentioned above, which supplement and complete the provisions contained in this Model.

## A.5 Principles and data for the implementation of the Model

In pursuance of the general principles set put in Section A.4, any and all company representatives, collaborators and partners must follow the specific procedures described below and also comply with the guidelines given in the General Section and with any other existing organisational procedure covering certain aspects of the Company's business.

Particularly,

- Any and all company representatives, collaborators and partners taking a commitment of any nature whatsoever towards the Public Administration shall be granted a specific power of attorney for that purpose specifically and unequivocally mentioning:
  - the identity, capacity and powers of the grantee;
  - the subject (whether a body or an individual) to whom the grantee reports hierarchically;
- Any critical situation detected in the course of a relationship with the Public Administration must be immediately reported to the Surveillance Body in writing;
- All agreements made with partners or consultants must be in writing and expressly set out the terms and conditions agreed upon;
- In any of the cases provided by a special Circular, all agreements made with partners or consultants must contain clauses and conditions requiring the knowledge and observance of the Decree and of the Company's Code of Ethics;
- All consultants or partners must be selected in a transparent and impartial manner and the reasons of the choice made must be traceable back (for example, by using special check lists or a formalised beauty contest procedure);
- No tasks entrusted to consultants or partners can be sub-contracted, delegated or howsoever transferred to another person, unless Edipower gives its consent thereto, consent which is conditional upon the assessment that the Company's requirements of fairness, integrity, professionalism and economicity to be applied in selecting partners and consultants are met;
- No cash payments or payments in kind are permitted, and all payments must be evidenced by vouchers justifying the disbursement and mentioning the payee;
- All declarations made to national or foreign public bodies in order to obtain any public disbursements, subsidies or loans must exclusively contain absolutely true and complete information to ensure a correct evaluation by the Public Administration;
- In the event that such public funds are received, a special report on the actual use thereof must be prepared;
- Those who are in charge of controlling and supervising that the obligations connected with the performance of the above activities are duly fulfilled (payment of invoices, use of loans obtained from the State or any other public entity, whether national or foreign must particularly pay attention to how such obligations are fulfilled and promptly report any irregular or anomalous situations;
- All judicial inspections or similar activities (including but not limited to tax inspections, seizures and perquisitions, assessments pursuant to Legislative Decree No. 626 of 1994) must be attended by the individuals so expressly appointed and by the competent Compliance Officer. Minutes of the related proceeding must be drawn up and a copy thereof must be transmitted to the Surveillance Body.

The above, without prejudice to any other procedures – in addition to the indications given above – established by Edipower for the performance of certain specific activities.

#### A.5.1 Instructions and verification by the Surveillance Body

The Compliance Officer must supply proper instructions on:

- The conduct to be held by all company representatives, partners and collaborators in performing risky activities and in all relations with the Public Administration;
- The implementation of the procedures described above.

In this respect, the Surveillance Body will control and supervise the adequacy and efficiency of the instructions supplied by the Compliance Officer.

Particularly, the Surveillance Body will:

- attend to the implementation of the procedures described above;
- verify that all related documents are duly kept;
- periodically verify the authority delegation system in force, and recommend any amendments thereto in the event that the management power and/or capacity of the grantee do not fairly reflect the representation powers conferred;
- periodically verify the validity of suitable standard clauses designed to ensure compliance by external collaborators and partners with the Model and the Decree;
- report any assessed breach to the Body responsible for inflicting disciplinary sanctions;
- indicate to the management any addition to be made to the financial management systems adopted by Edipower and recommend all appropriate actions to be taken in order to detect any atypical financial flows characterised by wider margins of discretionality than those established.



## B.1 Types of corporate offences (article 25 *ter* of the Decree)

As far as this Special Section “B” is concerned, below is a short description of the offences contemplated by article 25 *ter* of the Decree.

### 1. Fraudulent misrepresentation in communications, prospectuses and reports

#### Fraudulent corporate communications (articles 2621 and 2622 of the Italian Civil Code)

The offence of fraudulent corporate communications is presently covered by two provisions of law which, while both punishing any misrepresentation by directors, statutory auditors, general managers and liquidators in the Company’s financial situation, are differentiated in whether or not pecuniary damages are suffered by the Company’s shareholders or creditors. The first one (article 2621 of the Italian Civil Code) is a case of potential danger and is construed as a fraudulent misdemeanour; on the contrary, the second one (article 2622 of the Italian Civil Code) is an offence characterised by the fact that its components include a harmful event affecting the shareholders’ and creditors’ property.

The two above offences arise from the inclusion, in the company’s accounts, reports or other corporate communications prescribed by law and addressed to the shareholders or to the public, of any material facts which, being a matter of evaluation, are untrue and can mislead the recipients on the asset or financial situation of the company or the group to which the Company belongs, for the purpose of deceiving the shareholders, the creditors or the public, or from the omission, for equal purposes, of any information concerning the Company, the communication of which is prescribed by law.

More precisely,

- the purpose of such conduct must be that of obtaining an unjust profit for himself/herself or others;
- the false or omitted information must be relevant and such as to substantially alter the representation of the asset, economic or financial situation of the company or the group to which it belongs;
- no penalty is inflicted if any such false information or omission entails a difference in the financial results of the year before taxes not in excess of 5% or a difference in the company’s net worth not in excess of 1%; in any event, such fact is not sanctionable if it is the result of estimates which, if considered separately, make a difference not higher than the correct estimate by 10%;
- liability is extended to the case in which the information concerns assets owned or managed by the company’s directors on behalf of others.

#### Fraudulent misrepresentation in prospectuses (article 2623 of the Italian Civil Code)

This offence is committed by whoever includes any false information in the prospectus required to solicit investments or to have the company listed on the regulated markets, or in any document to be published in relation to a public purchase or exchange offer, or conceals any data or news in order to mislead the addressees or deceive them.

This offence is similar to that of fraudulent corporate communications, and contemplates a “misdemeanour implying a real danger” in the event that no pecuniary damages are suffered by the addressees of the prospectus from such misrepresentation and an “offence” in the event that damages are actually suffered.

In this respect, it is hereby specified that:

- there must be awareness of such misrepresentation and the intention to deceive the addressees of the prospectus;
- the conduct held must be such as to deceive the addressees of the prospectus;

- the purpose of the conduct held must be that of obtaining an unjust profit for himself/herself or others.

#### [Fraudulent misrepresentation in the auditing company's reports or communications \(article 2624 of the Italian Civil Code\)](#)

This offence may be committed by the officers of an auditing company who in their reports or communications attest to untrue facts or conceal some information concerning the company's asset, economic or financial situation so as to mislead the addressees thereof.

Accordingly, this offence concerns the officers of an auditing company. A residual hypothesis of an involvement of the audited company may arise in the event that the consultants' conduct had been encouraged or caused by an employee or director of the audited company, provided, however, that the company obtained some benefits therefrom.

## 2. Criminal protection of corporate capital

#### [Undue return of contributions \(article 2626 of the Italian Civil Code\);](#)

The law punishes those directors who return any contribution to the shareholders or release the shareholders from the obligation to return such contribution, in an open or simulated manner, except for those cases in which the corporate capital can be lawfully reduced.

#### [Illegal distribution of profits and reserves \(article 2627 of the Italian Civil Code\);](#)

This offence is committed by those company directors who abstract any part of the corporate capital (by distributing profits or advances on profits not actually earned or to be allocated to reserves by law, or reserves, whether or not formed by profits, which cannot be distributed by law) from their natural destination as prescribed by law, i.e. that of being an instrument for the achievement of the company's purposes and a security for the company's creditors.

However, such offence is remedied if profits and reserves are restored before the date of approval of the company's annual accounts.

#### [Unlawful transactions concerning the Company's or its parent company's shares or quotas \(article 2628 of the Italian Civil Code\)](#)

Also in this case, the purpose is that of protecting the integrity and effectiveness of the corporate capital and undistributable reserves from any dilution that could impair the interest of creditors; particularly, it is punished the conduct of those directors who purchase or subscribe to shares or quotas of the company that they are serving or of its controlling company (see article 2359 of the Civil Code) except as permitted by law (see, in particular, articles 2357, 2359 *bis*, first paragraph, 2369, 2483 and 2522 of the Italian Civil Code), thus damaging the corporate wealth.

However, such offence is remedied if the corporate capital or reserves are restored before the date of approval of the company's accounts for the year in which such offence has been committed.

#### [Transactions to the detriment of creditors \(article 2629 of the Italian Civil Code\);](#)

This provision has the purpose of protecting the interests of creditors in certain particularly sensitive phases of a company's life (mergers, split-ups and reductions of corporate capital) when a resolution passed by the general meeting results in an

amendment to the company by-laws and its implementation could impair the rights of the company's creditors, which are entitled to make opposition. Accordingly, in order to correctly identifying the offending conduct, reference shall be made to the law provisions protecting creditors, having regard, in particular, to those which govern the reduction of excess capital (article 2306, 2445 of the Italian Civil Code, respectively applying to partnerships and companies), as well as those governing merger or split-up procedures (article 2503 of the Italian Civil Code, as referred to by article 2504 *novies*, fourth paragraph, of the Italian Civil Code as far as a split-up is concerned).

This offence is sanctionable solely if the company's creditors have been damaged by the violation of the above law provision.

The offence is remedied if the damaged creditors are indemnified before legal proceedings are instituted.

#### [Fictitious formation of corporate capital \(article 2632 of the Italian Civil Code\);](#)

This offence, which may be exclusively committed by directors and contributing shareholders, arises from the following actions:

- fictitious formation or increase of the corporate capital by allotting shares or quotas at a lower price than their nominal value;
- reciprocal subscription of shares or quotas;
- substantial overvaluation of assets contributed in kind, receivables, or of the company's net value in case of transformation.

#### [Undue distribution of corporate assets by liquidators \(article 2633 of the Italian Civil Code\)](#)

This offence is committed by those liquidators who distribute company assets among the shareholders (whether or not concurrently with them in case of inducement by the latter) before paying the company's creditors or setting aside the necessary sums to pay all creditors, in the event that the company's creditors are actually damaged thereby.

This offence is remedied in the event that the damaged creditors are indemnified.

### [3. Criminal protection of the company's regular functioning](#)

#### [Impediment to control activities \(article 2625 of the Italian Civil Code\)](#)

This offence is committed solely by those directors who, by concealing documents or using other artful devices, impede or howsoever hinder the control or audit activities that can be legally made by the shareholders or the other corporate bodies (board of statutory auditors) or auditing companies, thus damaging the shareholders.

#### [Illicit influence on the general meeting \(article 2636 of the Italian Civil Code\);](#)

This offence consists in the determination – by whoever is concerned – of a majority at a general meeting by using counterfeit documents or fraudulent means with a view to obtaining an unjust profit for itself or others.

### [4. Criminal protection of market transparency](#)

#### [Agiotage \(article 2637 of the Italian Civil Code\)](#)

This offence consists in circulating any false information and in making sham transactions or using other fraudulent means with a view to substantially altering the price of listed or

unlisted financial instruments, or significantly impairing the public's trust in banks' financial stability.

## 5. Criminal protection of supervisory functions

### Obstruction to the exercise of public supervisory authorities' functions (article 2638, first and second paragraphs, of the Italian Civil Code)

This offence may be committed by the directors, general managers, statutory auditors and liquidators of those companies which are subject by law to, or have certain obligations towards Public Supervisory Authorities, in the event that they:

- set out in any notice to be given by law to the said authorities any untrue facts concerning the asset, economic and financial situation of the company for the purpose of obstructing the exercise of their supervision functions; or
- for the same purpose, wholly or partly conceal, by using other fraudulent means, facts to be disclosed; or
- willingly obstruct the functions of the said authorities in any form whatsoever, including by omitting to send requisite notices.

### B.2 Major areas of activities at risk

The areas of activity that are considered at risk of commission of said offences have been identified as follows:

- preparation and approval of Company's accounts and any other corporate communication to be sent by law to shareholders and creditors;
- communications outwards (particularly towards the press and the other information and advertising media, and those relating to financial markets) concerning any facts or data inherent to the asset, economic and financial situation of the company;
- relations with the general meeting and the board of statutory auditors;
- transactions concerning the company's assets (in particular, distribution of profits and share transactions);
- relations with the auditing company;
- activities subject to supervision by public authorities under the regulations applicable to the Company's business sector.

In this respect the following areas have been identified as potentially instrumental to the commission of the aforesaid offences, even though not directly involved in the activities that are directly related to the types of offences described above.

Particularly,

- entering of records in the Company's accounts and, more generally, keeping of accounts and preparation of the documents to be transmitted to the auditing company or other third persons;
- preparation of the documents required by the directors for the preparation of the Company's balance sheets and notes thereto, reports and any other corporate communication.

### B.3 Persons covered by Special Part "B"

The persons covered by this Special Section "B" are not only the directors, statutory auditors, general managers, auditors and liquidators who are particularly involved in the above risky activities, but also all those who, acting in those areas for any reason whatsoever, may directly or indirectly commit or facilitate the commission of the offences mentioned above.

For this purpose, all company representatives, collaborators and partners are required to observe the rules of conduct set out in the Model and in the other procedures established in this connection, in order to prevent and not to allow that any of the offences contemplated by the Decree are committed.

#### B.4 General principles of conduct

In order to prevent the offences mentioned above, the Model provides that the persons covered by it are expressly forbidden to:

- hold, or howsoever participate in any conduct that may result in the commission of any of the offences in question;
- hold, or howsoever participate in any conduct which, regardless of whether the conduct in question is not such as to give rise to any of the above types of offence, may potentially do so or favour the commission of any such offence.

More specifically, for this purpose, this Special Section B provides for the express obligation of the persons covered by the Model:

- a) to hold at all times a fair and transparent conduct in compliance with all laws, regulations, company procedures in force, general accepted accounting principles, in any and all financial activities for the preparation of balance sheets and all other corporate communications, with a view to supplying the shareholders, third persons, institutions and the public with true and correct information on the asset, economic and financial situation of the Company. To these ends, it is forbidden to:
  - represent or transmit, for the preparation of balance sheets, reports and prospectuses or other corporate communications or data that are incomplete or untrue, or omit any relevant information on the asset, economic and financial situation of the Company;
- b) to strictly comply with any and all law provisions protecting the integrity and effectiveness of the corporate capital and to act at all times in compliance with the company procedures based thereon, in order not to impair the rights of creditors and third persons in general. To these ends, it is forbidden to:
  - return contributions to the shareholders or release the shareholders from the obligation to make any contribution, except in those cases in which the corporate capital can be lawfully reduced;
  - distribute profits, advances on profits not actually earned or to be allocated to reserves by law, or reserves;
  - purchase or subscribe to shares or quotas in the Company or its controlling company except as permitted by law whenever such purchase or subscription may impair the integrity and effectiveness of the corporate capital;
  - fictitiously form or increase the corporate capital to the detriment of creditors in violation of the law provisions protecting creditors;
  - fictitiously form or increase the corporate capital by allotting shares or quotas at a lower price than their nominal value upon the incorporation of a company or whenever an increase of capital takes place;
  - abstract corporate assets from creditors in the course of liquidation proceedings and distribute them among the shareholders before all creditors are paid or the sums required to satisfy their claims are set aside;
- c) to ensure that the Company and all corporate bodies properly function, by exercising and facilitating every form of control on the Company's operation as prescribed by law, and that all of the general meeting's resolutions are freely, consciously and correctly passed. To these ends, it is forbidden to:
  - behave as to materially impede, by concealing any documents or using other fraudulent means, or howsoever hinder control or auditing activities by the board of statutory auditors or the auditing company concerning the Company's operation;
  - determine or influence the resolutions to be passed by the general meeting by using counterfeit documents or fraudulent means for the purpose of willingly affect the formation of the general meeting's will;

- d) to give all notices to the Supervisory Authority as prescribed by the applicable laws and regulations timely, fairly and in good faith, without howsoever hindering the performance of the supervisory functions of the said Authority. To these ends, it is expressly forbidden to:
- set out or conceal in any notice to be given under the laws and the regulations governing the Company's business sector to the competent Supervisory Authority for that business sector, any relevant facts concerning the asset, economic and financial situation of the Company, or omit any relevant information;
  - behave in such a manner as to hinder the performance of the said supervisory functions, for example in the course of any inspections.

## B.5 Guidelines for the implementation of the Model

In order that the principles set out above are complied with and the offences described above are prevented, the procedures for performing activities in risky areas are set out hereinafter.

### B.5.1 Balance sheets and other corporate communications

The preparation of the annual balance sheet and of all communications to shareholders and creditors as prescribed by law must be made in compliance with the existing procedures according to the following operating rules:

- a) the competent functions shall identify, through their respective managers, the data and information to be supplied for the preparation of the balance sheet. To these ends,
  - the data and information to be communicated,
  - the criteria for processing the data,
  - the time schedule for the delivery of the dataare determined in a clear and precise manner.
- b) the data shall be transmitted to the competent function (Accounting, Finance and Control) through the computer system, which permits to trace each passage and to identify the individuals by whom the data are entered into therein;
- c) the documents relating to the communications referred to above shall be kept at the disposal of the members of the Board of Directors, Board of Statutory Auditors, Auditing Company and Surveillance Body.

### B.5.2 Protection of corporate capital

All transactions concerning Edipower's corporate capital, those relating to the incorporation of companies, purchase and sale of participating interests, as well as those which may potentially impair the integrity of the corporate capital must be carried out in compliance with all rules of corporate governance and company procedures.

In particular, it is mandatorily required

- a) to obtain an opinion from the Accounting, Finance and Control Manager and the Chief Operating Officer of the Company, an evaluation by the Managing Director, and to submit to the Board of Directors for approval any corporate transaction concerning the incorporation of companies, purchase and sale of participating interests, reduction or increase of capital, including if made through contributions in kind, distribution of profits and reserves;
- b) to hold meetings for information purposes, to be attended by the Board of Statutory Auditors, Surveillance Body and Auditing Company, concerning the allocation of profits and reserves and any proposed transaction as mentioned above;
- c) to prepare a Plan to be approved by the Board of Directors on the criteria of allocation of profits and reserves;
- d) to report the Surveillance Body about each initiative or proposal in this connection.

### B.5.3 Regular Functioning of the Company

In order to prevent the commission of the offence of impediment to control the Company's operation by the governance bodies and the auditing company, the observance of the related company procedures and corporate governance rules is called. In particular,

- a) the Accounting, Finance and Control Function shall liaise with the Control Bodies, with the duty to co-ordinate and collect all information and documents requested by the Control Bodies and the auditing company and evaluate the adequacy, completion and accuracy thereof;

All the documents relating to the matters set out in the agenda of general meetings and board meetings, or on which the Board of Statutory Auditors' opinion is required shall be transmitted to the Board of Statutory Auditors in due course;

- c) the Board of Statutory Auditors shall periodically verify all documents relating to the company's operation;

#### B.5.4 Activities subject to Surveillance

In order to prevent the commission of the offence of fraudulent misrepresentation in communications and obstruction to the exercise of supervisory functions, all activities subject to supervision under specific regulations governing the Company's business sector must be carried out in compliance with the existing company procedures and fairness and transparency principles.

In particular,

- a) the quality and timely forwarding of:
  - all the periodical notices to the competent authorities required by laws and regulations;
  - all documents to be transmitted to the said authorities;
  - any other data and documents requested by the said authorities;
  - all information supplied in the course of any inspections in light of co-operation and transparency principles;shall be ensured;
- b) the activities of collection, communication and transmission of the above data are the responsibility of the Compliance Officer, who shall make sure that each procedural obligation is duly performed and that all the activities carried out are duly supported by documentary evidence to be made available to the Surveillance Body for any verifications. In addition, the competent Compliance Officer shall draw up an annual report on all relations with the competent Supervisory Authority;
- c) all requests for data, communications, and inspections to be made shall be notified to the Surveillance Body.

#### B.6 Responsibilities of the Surveillance Body

In addition to the general duties described in the General Section and the special duties indicated in the sub-sections of Special Section A as examined above, the Surveillance Body is assigned the following duties to ensure the observance and efficiency of the Model in corporate offence matters:

- 1) *balance sheet and other corporate communications*
  - to monitor the efficiency of all procedures and corporate governance rules for the prevention of any offence of fraudulent misrepresentation in corporate communications;
  - to examine any specific report coming from the control bodies or any employee and make all verifications as deemed necessary or appropriate further to the reports received;
  - to see that the auditing company actually maintains its independence so as to ensure that all documents prepared by the Company are really verified;
- 2) *protection of corporate capital/regular functioning of the company/performance of all activities subject to surveillance:*
  - to periodically verify that all company procedures and corporate governance rules are duly complied with;
  - to periodically verify that all notices to the Supervisory Authorities are duly sent, as well as the outcome thereof and the course of any inspections;
  - to monitor the efficiency of the procedures for the prevention of offences;

- to examine specific reports, if any, coming from the supervisory bodies or employees and make all necessary verifications.