



## **GME'S MODEL OF ORGANISATION AND MANAGEMENT (\*)**

*under Legislative Decree no. 231 of 8 June 2001,  
as subsequently amended and supplemented*

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updated under article 7, Law no. 48 of 18 March 2008  
updated under article 2, para. 29, Law no. 94 of 15 July 2009  
*updated under art. 15, para. 7, Law no. 99 of 23 July 2009*  
*updated under art. 4, Law no. 116 of 3 August 2009*

## **GUIDING PRINCIPLES**

approved by the Board of Directors of Gestore dei Mercati Energetici S.p.A. (GME) -  
Resolution of 24 March 2010

(\*) Reference shall always be made to the Italian text. In case of discrepancies, the Italian text shall prevail.

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## 1 DEFINITIONS

- AEEG: “Autorità per l’energia elettrica ed il gas” (Italian electricity & gas regulator);
- Assonime: “Associazione fra le Società Italiane per Azioni” (association of Italian joint stock companies);
- Code of Ethics: code of ethics adopted by GME;
- Confindustria: the main association representing manufacturing and service companies in Italy;
- Consultants: parties acting in the name and/or on behalf of GME;
- Crimes: crimes covered by Legislative Decree 231/2001, as subsequently amended and supplemented;
- Employees: all of GME’s salaried workers (including managers);
- GME: Gestore dei Mercati Energetici S.p.A.;
- GME’s Statutory Bodies: members of GME’s Board of Directors and Board of Auditors;
- Group: GSE and its subsidiaries under art. 2359 of the Italian Civil Code;
- GSE: Gestore dei Servizi Energetici - GSE S.p.A.;
- Guidelines: Guidelines for building models of organisation, management and control under Legislative Decree 231/2001 (as subsequently amended and supplemented), approved by Confindustria;
- Model: general guiding principles for adopting a model of organisation, management and control under Legislative Decree 231/2001 (as subsequently amended and supplemented);

- Partners: GME's contractual counterparties (whether natural or legal persons) or parties with which/whom GME establishes any form of contractual co-operation;
- Public Administration: the Public Administration, including public officials or officers in charge of a public-interest service;
- Sensitive processes: GME's activities exposed to the risk of commission of the crimes;
- Supervisory Body: supervisory body under Legislative Decree 231/2001 (as subsequently amended and supplemented).

## 2 INTRODUCTION

This document lays down the general principles underlying the organisational model that Gestore dei Mercati Energetici S.p.A. (GME) decided to adopt in accordance with Legislative Decree 231/2001 of 2001, as subsequently amended and supplemented. The Decree governs *the administrative liability of legal persons, companies and associations, including those without legal personality, under art. 11 of Law no. 300 of 29 September 2000*. The Model consists of multiple co-ordinated documents, as described in paragraph 5 below.

GME developed the Model on the basis of the “Guidelines” issued by Confindustria (see below) and of the general criteria set out in GSE’s “Guidelines”.

## 3 LEGISLATIVE DECREE 231/2001

Legislative Decree no. 231 of 8 June 2001 (hereinafter also referred to as the “Decree”) entered into force on 4 July 2001 and was subsequently amended and supplemented. The Decree was enacted under a law (“legge delega”) delegating ample powers to the Government to produce legislation in connection with Italy’s obligations arising from Community Directives on corruption of public officials.

The Decree introduces and regulates the so-called “administrative” liability of companies for crimes that have been committed or attempted to be committed in their interest or to their advantage by the persons listed in art. 5 of the Decree<sup>1</sup>. This liability adds to the one of the natural person that has materially perpetrated the fact. The Decree thus introduces an autonomous companies’ sanctioning system, considering that - within the scope of

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<sup>1</sup> Art. 5. *Liability of companies or entities*

1. A company or entity shall be liable for crimes that have been committed in its interest or to its advantage:

a) by persons holding positions of representation, administration or management within the company or entity or within one of its organisational units having financial and functional autonomy, as well as by persons exercising the management and control of the same company or entity, even on a *de facto* basis;

b) by persons managed or supervised by one of the persons referred to in subpara. a) above).

2. The company or entity shall not be liable for such crimes, if the persons specified in para. 1 above have acted in their sole interest or in the interest of third parties.

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companies' wrongdoings – a natural person is hardly ever the sole perpetrator of the wrongdoing; in fact, the wrongdoing may be an expression of the company's policy or result from a "fault" or deficiency of the company's organisation.

As to the types of crimes involving the administrative liability of companies, the original text of the Decree (articles 24 and 25) refers to **wrongdoings committed in the course of relations with the Public Administration**, such as: misappropriation of contributions, funds or other disbursements granted by the State or other public bodies; fraud against the State or other public bodies; serious fraud in order to obtain public disbursements; cyberfraud to the detriment of the State or other public bodies; bribery in order to obtain an official act; bribery in order to obtain an act contrary to official duties; judicial bribery; inducement to bribery ("istigazione alla corruzione"); extortion by colour of office or coercion ("concussione"); embezzlement to the detriment of the State or other public bodies.

Other articles covering the administrative liability of companies or entities have been subsequently enacted. On the date of approval of this document, these articles are:

- **art. 24-bis<sup>2</sup>**: computer crime and illegal data processing;
- **art. 24-ter<sup>3</sup>**: organised crime;
- **art. 25-bis<sup>4</sup>**: forgery of money, public credit cards, revenue stamps, identification signs or means as per art. 15, Law no. 99 of 2009;
- **art. 25-bis 1<sup>5</sup>**: crimes against industry and trade;
- **art. 25-ter<sup>6</sup>**: false corporate communications; false corporate communications to the detriment of shareholders or creditors; falsehood in independent auditors' reports or communications; obstruction to the performance of audits; undue return of capital

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<sup>2</sup> Introduced by art. 7, Law no. 48 of 18 March 2008.

<sup>3</sup> Introduced by Law no. 94 of 15 July 2009.

<sup>4</sup> Introduced by art. 6, para. 1, Law-Decree of 25 September 2001, amended and converted into Law no. 409 of 23 November 2001 concerning urgent provisions in view of the introduction of the euro and subsequently amended by Law no. 99 of 23 July 2009.

<sup>5</sup> Introduced by Law no. 99 of 23 July 2009.

<sup>6</sup> Introduced by art. 3, para. 2, Legislative Decree no. 61 of 11 April 2002, which has entered into force since 16 April 2002 as part of the reform of company law.

contributions; unlawful allocation of net income and reserves; unlawful transactions on the company's or Parent Company's shares; transactions prejudicial to creditors; fictitious capital formation; undue allocation of corporate assets by liquidators; unlawful influence on shareholders' meetings; agiotage; obstruction to the performance of public supervisory authorities' duties;

- **art. 25-quater**<sup>7</sup>: terrorism or subversion of the democratic order (under the Criminal Code and special laws);
- **art. 25- quater.1**<sup>8</sup>: mutilation of female genitals;
- **art. 25-quinques**<sup>9</sup>: crimes against personality under Book II, Section XII, Subsection I of the Criminal Code: enslavement – article 600, Criminal Code; prostitution of minors – art. 600-bis, Criminal Code; child pornography – art. 600-ter, Criminal Code; possession of pornographic material – art. 600-quater; sex tourism – art. 600-quinques, Criminal Code; trafficking in human beings – art. 601, Criminal Code; sale and purchase of slaves – art. 602, Criminal Code; also committed abroad, as per art. 604, Criminal Code;
- **art. 25-sexies**<sup>10</sup>: market abuse;
- **art. 25-septies**<sup>11</sup>: involuntary manslaughter and serious or very serious accidental injuries in breach of laws and regulations on prevention of injuries and health & safety in workplaces;
- **art. 25-octies**<sup>12</sup>: acquiring, receiving, laundering and using money, goods or assets of unlawful origin;
- **art. 25-novies**<sup>13</sup>: breach of copyright;

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<sup>7</sup> Introduced by art. 3, para. 3, Law no. 7 of 14 January 2003.

<sup>8</sup> Introduced by art. 8, Law no. 7 of 9 January 2006.

<sup>9</sup> Introduced by art. 5, para.1, Law no. 228 of 11 August 2003.

<sup>10</sup> Introduced by art. 9, para. 3, Law no. 62 of 18 April 2005.

<sup>11</sup> Introduced by art. 9, Law no. 123 of 3 August 2007.

<sup>12</sup> Introduced by art. 63, Legislative Decree no. 231 of 21 November 2007.

<sup>13</sup> Introduced by Law no. 99 of 23 July 2009.

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- **art. 25-novies**<sup>14</sup>: inducement not to render declarations or to render false declarations to judicial authorities.

Companies or entities are also administratively liable for the transnational crimes referred to in articles 3 and 10 of Law no. 146 of 16 March 2006, as amended by article 64 of Legislative Decree no. 231 of 21 November 2007, i.e.:

- criminal association (art. 416, Criminal Code);
- mafia association (art. 416-bis, Criminal Code);
- criminal association for smuggling foreign tobacco products (art. 291-quater, Consolidated Text of Law, referred to in Decree of the President of the Republic no. 43 of 23 January 1973);
- criminal association for trafficking in narcotic drugs or psychotropic substances (art. 74, Consolidated Text of Law, referred to in Decree of the President of the Republic no. 309 of 9 October 1990);
- violation of provisions against illegal immigration (art. 12, paras. 3, 3-bis, 3-ter and 5, Consolidated Text of Law, referred to in Legislative Decree no. 286 of 25 July 1998);
- inducement not to render declarations or to render false declarations to judicial authorities (art. 377-bis, Criminal Code);
- personal aiding and abetting (art. 378, Criminal Code).

Pursuant to art. 5, para. 1 of Legislative Decree 231/2001 (as subsequently amended and supplemented), a company shall be liable for the crimes committed in its interest or to its advantage by **persons in senior positions** and **persons subject to their management or supervision**.

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<sup>14</sup> Introduced by Law no. 116 of 3 August 2009.

In this connection,

- **persons in senior positions** are persons holding positions of representation, administration or management within the company or one of its organisational units having financial and functional autonomy, as well as persons performing activities of management and control of the same company, even on a *de facto* basis;
- **persons subject to their management or supervision** are persons managed or supervised by one of the above persons in senior positions.

Assonime issued a circular letter (no. 68/02) about the interpretation of the definition of “persons subject to their management or supervision”. The letter indicates that the definition does not apply to all those who work for the company, whatever their duties, but only to those who may - within the scope of their duties - commit one of the criminal offences listed in the Decree. In other words, the definition extends to persons over whom the Top Management has a duty of oversight or persons acting in the name of the company, such as suppliers, consultants, contractors, quasi-dependent workers (“parasubordinati”) and joint venture partners.

Conversely, the definition of corporate crimes only refers to criminal offences committed by: “directors, general managers, liquidators or persons subject to their supervision”, as well as by “*de facto* directors”.

With regard to the corporate crimes referred to in articles 2621 and 2622 of the Civil Code (false corporate communications), the amendment introduced by art. 30 of Law no. 262 of 28 December 2005 provides that the perpetrators of these crimes shall include not only the above-mentioned persons but also managers in charge of preparing the corporate accounting records.

Hence, GME adopted guidelines on the role of the manager in charge of preparing the corporate accounting records” (internal circular letter 1/2008), with a view to strengthening compliance with the rules on correct corporate communications.

The company shall be liable<sup>15</sup> only if the crime has been perpetrated in its interest or to its advantage. This means that the company is not liable if the natural person has acted in his/her sole interest or in the interest of third parties (provided that the third party is not the company or the Group to which the company belongs).

No administrative liability will arise if a person having a qualified relationship with the company has not only acted beyond the scope of his/her powers or duties, but has also committed an arbitrary action unrelated to any interest, policy or other aim of the company.

The Decree identifies a “quasi-criminal” liability, although it explicitly refers to an “administrative” liability (this choice was made to safeguard, at least formally, the general principle enshrined in art. 27 of the Constitution, under which criminal liability is a personal liability). Signs of the quasi-criminal nature of this liability are found in the parts of the legislation which refer to the ascertainment of liability by the criminal judge and to the autonomous liability of the company with respect to the ascertainment of the liability of the natural person that has perpetrated the crime.

Indeed, the Decree introduced a “hybrid” concept of administrative liability of legal persons, which is assessed by the criminal judge in a proceeding against another person (natural person, e.g. director, manager or employee) charged with one of the crimes specified in the Decree. Hence, this administrative liability is ascertained by the criminal judge under the rules governing criminal proceedings, in which the company is equated with the accused.

The company's liability is practically associated with the criminal prosecution of the accused. For reasons of economics, efficiency and guarantee, the company's liability is procedurally correlated with the criminal liability of the accused. However, the company's liability remains autonomous, i.e. the company is liable even if (see art. 8, Legislative Decree 231/2001, as subsequently amended and supplemented):

- the perpetrator of the crime has not been identified or is not chargeable;
- the crime becomes extinguished for reasons other than amnesty (“amnistia”).

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<sup>15</sup> The liability of the company does not replace but adds to the liability of the natural person that has perpetrated the crime.

Unless otherwise provided by law, the company is not prosecuted if an amnesty has been granted for the crime for which it is presumably liable and the accused has waived its application. The company may waive the amnesty.

The sanctions imposed on companies are:

- **pecuniary sanctions**, which are commensurate with the severity of the fact and the operating and financial conditions of the company;
- **prohibitive sanctions**, such as: suspension or revocation of licences and “concessions” instrumental to the commission of the wrongdoing; prohibition on contracting with the Public Administration, except for obtaining the provision of a public-interest service; disqualification from exercising activities; denial or revocation of benefits, funds, contributions or subsidies; prohibition on advertising goods and services. The judge may replace the prohibitive sanction with the appointment of a commissioner for the same duration as the sanction, if the company meets the requirements for being disqualified from exercising activities, but it provides a public-interest or an essential service whose interruption may have a severe impact on the public at large. The same criterion is adopted if, considering the size of the company and the economic conditions of the geographic area where it is based, the interruption of its activities may have major repercussions on employment. However, the proceeds from continuation of the company’s activities may be confiscated. The commissioner cannot allow the company to continue its activities, if the interruption of its activities results from the application of a final judgement imposing a prohibitive sanction (considerable proceeds from and recurrence of the wrongdoing). Prohibitive sanctions involve the publication of the judgement of conviction;
- **confiscation of proceeds from the offence** or of equivalent assets.

The conviction of the company is recorded in the national register of administrative sanctions and notified to the regulatory authority overseeing the company, where applicable.

However, it should be stressed that the aim of Legislative Decree 231/2001 (as subsequently amended and supplemented) is not so much to develop an effective system for punishing the crimes as to introduce systems for monitoring the company's activities and preventing the commission of the crimes. Therefore, in introducing the administrative liability regime, the Decree lists specific causes of exemption from such liability.

In particular, if the crimes are committed by **persons in senior positions** and if all the requirements for administrative liability are met, the company is not liable if it can demonstrate:

- a) prior the commission of the crime, its governing body has adopted and effectively implemented models of organisation and management suitable for preventing crimes of the type that occurred;
- b) a body of the company with autonomous powers of initiative and control (in small companies, this body may coincide with the governing body) has been vested with the task of monitoring the functioning of and compliance with the models, as well as of updating them;
- c) the persons who have committed the crime have fraudulently avoided compliance with the above models of organisation and management. Hence, the Model should enable the company to:
  - o exclude that any person working within the company might justify his/her misconduct by invoking ignorance of the company's guidelines;
  - o avoid that, in most cases, the crime might be caused by human errors (including those due to negligence or incompetence) in assessing the company's guidelines;
- d) the body referred to in para. b) above has not omitted to exercise oversight or has not exercised inadequate oversight.

In connection with the extension of delegated powers and with the risk of commission of the crimes, the Decree also stipulates that the models referred to in para. a) above shall meet the following requirements:

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1. identify the activities that are exposed to the commission of the crimes specified in the Decree;
2. develop specific protocols for planning and implementing the company's decisions as to the crimes to be prevented;
3. develop procedures for managing the financial resources needed to prevent such crimes;
4. introduce duties of reporting for the body in charge of monitoring the functioning of and compliance with the Model;
5. putting in place an internal disciplinary system suitable for punishing non-compliance with the measures indicated in the Model.

The same Decree provides that, in order to adopt models of organisation and management responding to the above requirements, companies may rely on the codes of conduct prepared by trade associations and notified to the Ministry of Justice. After receiving such codes, the Ministry of Justice may - jointly with the competent Ministries and within 30 days - formulate comments on the adequacy of the models to prevent the crimes. These pre-defined models, which are verified by the Ministry of Justice, provide companies with more assurances that their models are compliant with the Decree. Nevertheless, when ascertaining a company's administrative liability, the criminal judge will assess whether the model in place is adequate and has been effectively implemented.

Conversely, if the crimes are committed by **persons subject to the management or supervision of persons in senior positions**, the company is liable only if the prosecution (Public Prosecutor) can demonstrate that the commission of the crime by such persons has been caused by non-fulfilment of management or supervision duties. Nevertheless, the Public Prosecutor's investigation finds a limit in the explicit provision of the Decree which excludes non-fulfilment of management or supervision duties if, prior to the commission of the crime, the company has adopted and effectively implemented an adequate model to prevent a crime of the type that has occurred.

Hence, in this case too, it is crucial to adopt and effectively implement an adequate preventive organisational model.

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Effective implementation of the Model requires:

- periodical monitoring and possible change of the Model, when significant breaches of its prescriptions or changes in the company's organisation or activities occur;
- internal disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model.

The party in charge of adopting the model is "the governing body" (i.e. the Board of Directors and the Chief Executive Officer), which is responsible for taking the company's strategic decisions.

The adoption of an organisational model is an option and not an obligation for a company. Therefore, the lack of such model does not - *per se* - expose the company to sanctions or liability, although the model is a necessary but not sufficient instrument for benefiting from exemption of liability.

#### **4 CONFINDUSTRIA'S GUIDELINES**

Pursuant to art. 6, para. 3 of the Decree, Confindustria defined its own Guidelines for building models of organisation, management and control. The Guidelines provide member companies with a methodological approach to identifying risks and shaping the model of organisation, management and control, by using risk assessment/risk management processes. The building of the Model consists of the following stages:

1. identification of risks;
2. preparation and/or implementation of a control system suitable for preventing the above risk through the adoption of specific protocols. The most significant components of the control system designed by Confindustria are:
  - a) code of ethics;
  - b) organisational system;
  - c) manual and electronic processes;
  - d) powers of authorisation and signature;
  - e) control and management systems;
  - f) personnel awareness, training and education. These components should be based on the following principles:
    - verifiability, documentability, consistency and adequacy of each action;
    - application of the principle of separation of functions;
    - documentation of controls;
    - adequate system for sanctioning breaches of the Code of Ethics and of the procedures indicated in the Model;
    - autonomy, independence, professionalism and continuity of action of the supervisory body;
3. definition of criteria for setting up the supervisory body and planning specific information flows from and to the supervisory body.

It is worth recalling that, on 31 March 2008, Confindustria updated its Guidelines for building models of organisation, management and control. The Ministry considered the latest version of Confindustria's Guidelines to be adequate.

## **5 GME'S ORGANISATIONAL MODEL**

### **5.1 Components of the Model**

The Model adopted by GME consists of this document, called "Guiding Principles" or Guidelines, and of "Special Parts" concerning the different types of crimes listed in the Decree.

The organisational Model is supported by the set of the corporate processes, the Code of Ethics and the organisational and authorisation system.

The Guiding Principles describe the rationale and purposes of GME's Model, as well as its basic components, management and updating procedures.

The Special Part called "Crimes against the Public Administration and Other Crimes" is applied to the crimes referred to in articles 24, 24-bis, 24-ter, 25, 25-bis, 25-quaer, 25-quaer.1, 25-quinquies, 25-sexies, 25-septies, 25-octies and 25-novies of the Decree and in the Criminal Code. The second Special Part, called "Corporate Crimes", refers to article 25-ter and, namely, to the sanctions laid down in the Civil and Criminal Codes.

The Model may be supplemented with additional special parts concerning other types of crimes, as may be required by the subsequent enactment of law provisions enlarging the scope of the administrative liability of companies.

### **5.2 Goals pursued by GME with the adoption of the Model**

In line with its mission (as defined in Legislative Decree 79/1999 and subsequent legislative/regulatory provisions), GME deems it essential to ensure correctness and transparency in its operations, so as safeguard its role as an institution and as a subsidiary of a company providing a public-interest service under "concession. Therefore, GME decided to adopt a model of organisation and management (under Legislative Decree 231/2001, as subsequently amended and supplemented) whose general principles are consistent with those adopted by its Parent Company.

GME feels that the Model may further strengthen compliance with the ethical values that it is already pursuing. In this connection, GME amended its Code of Ethics to make it consistent with the Group's ethics and to incorporate the general principles that are required for putting in place a viable organisational Model. The Board of Directors adopted the original text of the Model with its resolution of 21 Feb. 2006 and then amended and supplemented it with its resolution of 28 March 2008.

GME's Model takes into account the prescriptions of the Decree and Confindustria's Guidelines and is based on the general criteria of GSE's Guidelines and on the best practices of crime prevention developed at international level.

The internal control system, already existing with the GSE Group upon the enactment of Legislative Decree 231/2001, plays a crucial role in the Model. Based on this system, GME has put in place specific instruments responding to the legislative requirements, shaping its internal control system along the lines specified by the Decree.

By so doing, GME intends to give evidence, to its internal and external stakeholders, of the way in which its governing body manages and organises resources in view of effectively preventing the crimes covered by the Decree.

The legislation under review explicitly refers to the following topics:

- **identification of activities at risk.** In particular, the identification of areas where the crimes listed in Legislative Decree 231/01 may be committed supposes an internal process of review of all the corporate processes.

The map of the activities at risk shall be constantly updated to reflect both changes to corporate processes and legislative changes to the list of crimes to which the legislation under review applies. The Supervisory Body shall periodically transmit specific reports to the Board of Directors on the results of the mapping process.

With particular regard to unintentional killing and serious or very serious accidental injuries in breach of laws and regulations on prevention of injuries and health & safety in workplaces, GME carried out a thorough analysis aimed at identifying the

potential areas at risk, without *a priori* excluding any area of activity. Indeed, these types of crimes may involve all the components of the company.

- Furthermore, GME analysed the process of management of financial resources to check whether it was based on specific control principles, such as:
  - separation of roles in the key stages of the process;
  - traceability of acts and authorisation levels associated with individual operations;
  - monitoring of the correct performance of the different stages of the process (specifically formalised requests for payment orders, authorisation by the competent function, checking whether the received goods match the ordered goods, verification of payment, checking of the invoice and entry of the item into the accounting records);
  - documentation of the controls carried out;
- identification of GME's body in charge of exercising oversight and defining appropriate procedures;
- relevant information flows towards the above body;
- definition of protocols of behaviour and of implementation of decisions in the activities at risk;
- system for sanctioning employees' breaches of the prescriptions defined in the Model;
- awareness, training and education of personnel members, especially those in charge of managing the activities at risk.

The Model is aimed at:

- informing those working in the name and on behalf of GME, in areas with sensitive activities, of the risk of committing individual and corporate, criminal and administrative offences, if they breach the rules laid down in the Model;
- indicating unlawful behaviours through which GME might obtain a gain and the related criminal and administrative risk incurred by GME;
- recalling the ethical-social principles underpinning GME's activities;
- putting in place the instruments indicated by the Decree in order to enable GME to effectively prevent and sanction the wrongdoings.

### **5.3 Adoption of the Model within GME**

GME's Board of Directors:

- adopted the original text of GME's "Model of Organisation and Management" with its resolution of 21 February 2006;
- defined the membership of the Supervisory Body.

The organisational guidelines of GME take into account, among others, those already in use by its Parent Company, so as to guarantee:

- A. standardisation of protocols and uniformity of approaches and judgement criteria at Group level;
- B. co-ordination of control activities in accordance with the Group's policies and strategies;
- C. functioning of the Supervisory Body.

The Model was subsequently amended and supplemented with the Resolution of 28 March 2008.

### **5.4 Updating of, changes and additions to the Model**

As formally established at Group level, the organisational Model shall incorporate all the changes and additions introduced by the Parent Company. GSE's and GME's Supervisory Bodies shall coordinate their activities in incorporating the changes into the Group's Model.

Substantial changes and additions to the Model fall under the sole responsibility of GME's Board of Directors. The word "substantial" means major changes and additions to the structure and functioning of the Model, e.g. change of the Supervisory Body's responsibilities and of the Model approval procedures.

GME's Supervisory Body may make changes or additions which are instrumental to the effective implementation of the Model, but which do not represent substantial changes thereto. The word "instrumental" means changes and additions which are necessary for managing the Model, e.g. updating the map of areas at risk and the implementation protocols.

GME's Supervisory Body may also make additions to the Special Parts of the Model which are instrumental to its effective implementation or issue special instructions.

### **5.5 Implementation of the Model**

GME's Supervisory Body shall have the task of implementing the organisational Model. With regard to Group-level sensitive activities, GME's Supervisory Body shall co-ordinate its activities with GSE's Supervisory Body.

## **6 SUPERVISORY BODY**

### **6.1 Identification of the Supervisory Body**

GME's Board of Directors shall have the power of appointing the Supervisory Body and the task of monitoring its operation. GME's Board shall also adopt resolutions on any proposed changes or updates of the Model.

The term of office of the Supervisory Body shall be equal to the one of the Board of Directors which has appointed it. The Supervisory Body shall tender its resignation to the new Board of Directors. Nevertheless, the Supervisory Body shall - except for the resignation of its individual members for reasons other than the natural expiration of their term of office - exercise its functions until the Board of Directors appoints the new Supervisory Body.

The Supervisory Body identified by the Board of Directors shall be endowed with dedicated resources, adequate in number and skills, for its monitoring activity. These resources, which may be used even on a part-time basis, may be selected among those available within the Parent Company's Audit department.

Furthermore, under prior arrangements with GME's Top Management, the Supervisory Body may avail itself of the support of GME's departments/organisational units, with a view to conducting specific actions pertaining to each department/organisational unit as may be required from time to time.

The Supervisory Body shall fulfil its responsibilities on a continuing basis, relying on the Parent Company's Audit function or on GME's Audit function and, under prior arrangements with the Top Management, on external consultants, within the limit of expenditure established in the same measure and under the same rules as those of the Parent Company.

## **6.2 Conditions of ineligibility and incompatibility**

With regard to conditions of ineligibility and incompatibility:

- the members of the Supervisory Body shall not have kinship relations with the Top Management or have economic interests in the company or be in a position of potential conflict of interest, excluding professional and/or working relations;
- persons who have been convicted - even without a final judgement - for one of the crimes referred to in the Decree shall not be appointed as members of the Supervisory Body.

Where the Head or one of the members of the Supervisory Body finds himself/herself in one of the above-mentioned positions of incompatibility, the Board of Directors shall - after conducting appropriate investigations and hearing the person involved - establish a time limit of 30 days within which the incompatibility shall be remedied. If, after the expiration of the above time limit, the incompatibility persists, the Board of Directors shall revoke the assignment.

## **6.3 Cessation of the assignment**

Only the Board of Directors shall have the authority to revoke the Supervisory Body and each member thereof.

Each member of the Supervisory Body cannot be revoked, except for just cause.

The revocation for just cause shall include:

- debarment or disqualification or serious illness/disability rendering the member of the Supervisory Body unfit for performing his/her oversight duties or illness/disability involving his/her absence from work for over six months;
- assignment of operational functions and responsibilities to the Supervisory Body or the occurrence of events incompatible with the requirements of autonomy of initiative and control, independence and continuity of action which are typical of the Supervisory Body;
- serious misperformance of the duties which are typical of the Supervisory Body;
- irrevocable judgement of conviction of the company as per the Decree or criminal proceeding ending with the application of the penalty at the request the parties (so-

called “plea bargaining”), where - based on the records - the Supervisory Body has “omitted to exercise oversight or exercised inadequate oversight” pursuant to art. 6, para. 1 d) of the Decree;

- irrevocable judgement of conviction of the members of the Supervisory Body for having personally committed one of the crimes referred to in the Decree;
- irrevocable judgement of conviction of one member of the Supervisory Body to serve a penalty which involves debarment, even on a temporary basis, from holding public offices or temporary debarment from the governing bodies of legal persons and companies.

In the above cases, where a judgement of conviction has been rendered, the Board of Directors - pending the irrevocability of the judgement - may also resolve to suspend the powers of the member of the Supervisory Body.

Each member of the Supervisory Body may at any time resign from office by giving an advance notice of at least 3 months.

## **6.2 Responsibilities and powers of the Supervisory Body**

The distinctive features of the Supervisory Body shall be independence, professionalism and continuity of action. It shall have autonomous powers of initiative and control and the task of monitoring the operation of and compliance with the Model and of updating it. In particular, it shall:

- monitor compliance with the prescriptions of the Model by its recipients; the recipients shall be identified in the Special Parts of the Model concerning the different types of crimes listed in the Decree;
- check whether, based on GME's structure, the Model is actually capable of effectively preventing the commission of the crimes specified in the Decree;
- update the Model as required by corporate or legislative/regulatory changes.

In more operational terms, GME's Supervisory Body shall:

- periodically assess whether the organisational-procedural measures underlying GME's decision-making and implementation processes are adequate and compatible with the Model; and propose changes or additions, if any;

- periodically assess whether GME's decision-making and implementation processes in critical areas (in terms of risk of commission of the crimes specified in the Decree, as subsequently amended and supplemented) are adequate;
- periodically assess whether the controls on activities carried out in critical areas (in terms of risk of commission of the crimes specified in the Decree, as subsequently amended and supplemented) are adequate;
- issue instructions, making changes and additions to the specific control activities of which the Supervisory Body is in charge, which are instrumental to the effective implementation of the Model and which do not represent substantial changes thereto;
- within the scope of its responsibilities, submit proposals of additions or changes to the Model to GME's Board of Directors;
- activate control procedures, considering that the primary responsibility for overseeing activities (even those conducted in areas of activities at risk) rests with the operational Management of GME and that such responsibility is an integral part of the corporate process;
- periodically verify specific operations or acts conducted in areas of activities at risk, as defined in the Special Parts of the Model;
- conduct internal investigations in order to ascertain the alleged breaches of the Model;
- take appropriate initiatives to disseminate awareness and understanding of the Model and of the related internal organisational documentation;
- draft the internal organisational documentation which is necessary for the functioning of the Model and containing instructions, clarifications or updates;
- collect, process and store the relevant data and update the list of data to be compulsorily reported to or held at the disposal of the Supervisory Body, so as to ensure the effectiveness of the Model;
- check whether the elements specified in the Special Parts of the Model for the different types of crimes (adoption of standard clauses, performance of procedures, etc.) are adequate and whether they meet the requirements of the Decree; otherwise, update the same elements;
- prompt the activation of disciplinary procedures by GME's bodies having responsibility for the specific cases.

To discharge its duties, the Supervisory Body shall have free access to all the relevant corporate documentation.

### **6.3 Reporting**

The Supervisory Body shall periodically report on the status of implementation of the Model to the Board of Directors and to the Board of Auditors.

The Supervisory Body shall establish adequate information and co-ordination channels with GME's bodies in charge of controlling the accounting, administration and management activities (Board of Auditors and Independent Auditors). These reporting channels provide further assurances on the functioning of the Model and on the independence of the Supervisory Body in the accomplishment of its duties.

The Board of Directors or the Board of Auditors may at any time invite the Supervisory Body to report on the functioning of the Model or on specific matters. The Supervisory Body may in turn ask to be heard by the Board of Directors or the Board of Auditors on the above-mentioned matters.

On a yearly basis, the Supervisory Body shall submit to the Board of Directors a written report on the implementation of the Model, highlighting any deficiencies to be addressed or actions to be undertaken. The document shall, among others, describe the notifications received and the actions undertaken by the Supervisory Body and by the other parties concerned during the year.

## **7 INFORMATION FLOWS TOWARDS THE SUPERVISORY BODY**

The Supervisory Body shall receive not only the documents prescribed in the Special Parts of the Model (to which the reader is referred), but also any other information, including information from third parties, about the implementation of the Model in areas of activities at risk.

The Supervisory Body shall be kept constantly informed about the evolution of activities in areas at risk and have free access to all of the company's documents which may be useful

for that purpose. Moreover, the Management shall notify the Supervisory Body of any activity which may expose GME to the risk of crime.

The procedure of delegation of powers adopted by GME and its updates shall be notified to the Supervisory Body.

GME's Supervisory Body shall receive information about:

- measures taken by and/or news coming from judicial police bodies or any other authority, indicating that investigations (including those concerning unknown persons) are being held on the crimes specified in the Decree;
- requests of legal counselling made by managers and/or employees, where judicial proceedings for the crimes specified in the Decree have been instituted;
- reports issued - within the scope of their control activity - by persons in charge of corporate functions other than those of the Supervisory Body, indicating facts, acts, events or omissions of a critical nature in terms of compliance with the provisions of the Decree;
- copies of periodical reports on occupational health & safety (e.g. copy of the Risk Assessment Document prepared by the Head of Prevention and Protection, etc.), as well as on incidents, injuries, inspections and/or any other relevant circumstance for the purpose of applying the Model;
- copies of reports on internal or external attempts of fraudulent access to corporate information systems;
- news about actual implementation of the organisational Model at all the levels of the company, highlighting the disciplinary procedures undertaken, the sanctions imposed, if any, or the dismissal of the cases and the related reasons.

Periodical reports submitted (on a quarterly basis) by the Administration, Finance & Control unit about the non-occurrence of critical events in its activities shall represent key elements of the system of control of financial flows and integrate the above reporting system.

Even informal notifications shall be transmitted to GME's Supervisory Body. Therefore:

- any notifications about commission of the crimes specified in the Decree in connection with GME's activities, or anyway about behaviours not conforming to the rules of conduct adopted by GME and by the Group, shall be collected;
- the Supervisory Body shall - in its own reasonable discretion and responsibility - assess the notifications received and the consequent measures, if any, to be taken, and possibly hear the notifying person and/or the alleged offender;
- the Supervisory Body shall protect the notifying persons from any form of retaliation, discrimination or penalisation, maintaining confidentiality about their identity, unless otherwise provided by the applicable legislation and without prejudice to the protection of the rights of GME or of the persons accused wrongfully or in bad faith.

To facilitate the flow of information and notifications towards Supervisory Bodies, "dedicated reporting channels" shall be put in place.

### **7.1 Collection and storage of data**

The Supervisory Body shall store any data, notifications and reports indicated herein in a special data base (on both electronic and paper media). Access to the data base shall be restricted to the Supervisory Body.

## **8 PERSONNEL: AWARENESS, TRAINING, EDUCATION AND ASSESSMENT**

Jointly with GME's Supervisory Body, GSE's Personnel Head (who currently manages the activities of training & education of GME's personnel under a service contract between GME and GSE) shall manage activities of personnel awareness of, training and education on the implementation of the Model. These activities shall include (but shall not be limited to):

- for all personnel members: information included in the letter of employment and subsequent training and education as part of courses of introduction to the GSE Group (for newly hired personnel); awareness initiatives and training courses

(including those based on e-learning methods) for all employees; access to a section of GME's intranet dedicated to the subject and updated by the Supervisory Body; e-mail updates, where necessary;

- for personnel with managing and representation functions (in addition to the activities covered by the previous point): initial seminar upon the initial implementation of the Model and subsequent periodical update meetings.

Special notices shall be provided to third parties with which/with whom GME co-operates. These notices, describing the policies adopted by GME hereunder, shall be usually included in the contracts entered into with such parties.

With a view to implementing the Decree, the Personnel Head shall – jointly with the Supervisory Body – define appropriate procedures for identifying and notifying abnormal situations, where such situations arise upon selection and recruitment of the personnel or upon the application of assessment criteria for career development.

## **9 DISCIPLINARY SYSTEM**

### **9.1 Role of the disciplinary system**

Art. 6, para. 2 e) and art. 7, para. 4 b) of the Decree explicitly provide (with reference to both persons in senior positions and persons subject to their management or supervision) that a company shall not be administratively liable if it can demonstrate, among others, that it has put in place *a disciplinary system suitable for sanctioning non-compliance with the measures specified in the Model*. A system of sanctions (commensurate with the breach and acting as a deterrent), enforceable upon violations of the rules adopted by GME under the guiding principles indicated herein, makes the Supervisory Body's oversight action effective and guarantees the effectiveness and seriousness of the Model. Indeed, the putting in place of such disciplinary system is an essential pre-requisite of the Model in view of the company's exemption from administrative liability. As is obvious, breaches of the provisions of GME's complex and elaborate Model 231 undermine the confidence-based relationship with GME. Consequently, they may involve disciplinary action, whatever the criminal proceedings which may be instituted when a given conduct represents a crime.

It is also worth stressing that disciplinary sanctions are imposed independently of the outcome of a possible criminal proceeding, since GME adopted the rules of conduct of the Model in full autonomy, regardless of the fact that a given conduct may represent a wrongdoing.

As to the types of sanctions, it should be preliminarily stated that, in the case of salaried workers, any sanction shall comply with the procedures of art. 7 of the Labour Code and/or of special legislative or contractual provisions, where applicable, and obey the principles of the typicality of the breaches and of the typicality of the sanctions.

In compliance with art. 7 of the Labour Code, the part of GME's Model 231 which contains the code of conduct and the sanctioning system shall be made known to employees by posting it in a place accessible to all of them.

## **9.2 Pre-requisites of the applicable sanctioning system**

Considering the existing system of industrial relations and the legislation already applicable to the personnel of the GSE Group, GME adopted the sanctioning system established in the national collective labour agreement (CCNL). In particular, the CCNL confirms article 35 of the collective labour agreement of 1 August 1979, as supplemented by the Minutes of the Agreement of 28 July 1982 concerning criteria of correlation between workers' misconduct/misperformance and disciplinary measures.

Therefore, the conducts that represent punishable breaches of GME's Model and Code of Ethics are defined in para. 9.3 of Model 231.

Some of these conducts are exemplified below by increasing order of severity:

- a) employees' breach of internal procedures implementing the principles expressed herein or, in performing activities connected with Sensitive Processes, conducts which do not conform to the prescriptions of the Code of Ethics or of the code of conduct;
- b) breach of internal procedures implementing the principles expressed herein or, in performing activities connected with Sensitive Processes, conducts which do not conform hereto and expose GME to an objective situation of risk of commission of one of the crimes;
- c) in performing activities connected with Sensitive Processes, conducts which do not conform to the internal procedures implementing the principles expressed herein or to the Code of Ethics and having the univocal purpose of committing one or more crimes;
- d) in performing activities connected with Sensitive Processes, conducts which patently breach the internal procedures implementing the principles expressed herein or the Code of Ethics and which may cause the application of the sanctions referred to in the Decree to GME.

The sanctions and any claims for damages shall take into account the level of responsibility and autonomy of the employee, the prior disciplinary measures applied to

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the same employee and the intentional nature and severity of the breach, i.e. the level of risk to which GME may reasonably believe to be exposed - for the purposes and effects of Legislative Decree 231/2001 - as a result of the employee's misconduct.

The Chief Executive Officer shall be responsible for the actual application of the disciplinary measures outlined herein, possibly on the basis of notifications by the Supervisory Body and after hearing the hierarchical superior of the person that has committed the breach.

### **9.3 Sanctions towards employees**

The following sanctions may be imposed on employees in the various cases of violation of the Model, in accordance with the provisions of both the Model and the disciplinary system referred to in the Minutes of the Agreement of 28 July 1982.

The conduct of an employee breaching the rules of the Model is a **disciplinary wrongdoing**, as it violates GME's rules and regulations.

The sanctions which may be imposed on employees are among those established in GME's disciplinary code, in compliance with the procedures referred to in article 7 of Law no. 300 of 30 May 1970 (Labour Code). The sanctions are based on a scale of increasing severity of the individual cases of misconduct.

In particular, any employee who has committed acts or omissions breaching the rules of the Model shall be subject to the following disciplinary sanctions. The extent of the sanctions shall depend on the severity and recurrence of the misconduct, as well as on the damage caused to the company or to third parties:

- a) *verbal or written reprimand;*
- b) *fine;*
- c) *suspension from service and from pay;*
- d) *dismissal with pay in lieu of notice;*
- e) *dismissal without pay in lieu of notice.*

**a) verbal or written reprimand**

Under point I.6 of GME's disciplinary code, any worker who *does not comply with the provisions made known by GME through internal circular letters or other suitable means*, including all the provisions of the Model, or - under point I.12 of the above code - *does not perform his/her work with the necessary diligence* and thus, in performing activities in areas at risk, adopts a behaviour not conforming to the prescriptions of the Model **shall be subject to a verbal or written reprimand.**

**b) fine**

Under point II.7 of the disciplinary code, any worker *persisting in one of the misconducts mentioned in para. I, before the misconduct has been individually ascertained and notified to him/her* or any worker who has already committed one of the misconducts mentioned in para. a) hereof and persists in breaching the prescriptions of the Model or who, in performing activities in areas at risk, continues to adopt a behaviour not conforming to the prescriptions of the Model, **shall be subject to a fine**, since such behaviours represent recurring non-compliance with GME's specific prescriptions.

**c) suspension from service and from pay**

Under points III.1 and III.11 of the disciplinary code, any worker who breaches the rules of the Model or, in performing activities in areas at risk, adopts a behaviour not conforming to the prescriptions of the Model and who *intentionally commits acts which may cause actual prejudice to the service, causes damage to or creates a situation which objectively jeopardises (...) the integrity of the company's assets* **shall be subject to suspension from service and from pay**, since such behaviours represent a damage to or jeopardise the integrity of the company's assets.

Any worker who has already received a fine and who persists in breaching the rules of the Model or, in performing activities in areas at risk, continues to adopt a behaviour not conforming to the prescriptions of the Model shall be subject to the same measure.

**d) dismissal with pay in lieu of notice**

Under points IV.2 and IV.7 of the disciplinary code, any worker who - in performing activities in areas at risk - adopts a behaviour which patently breaches the prescriptions of Model 231, causing *considerable damage (...) to the integrity of the company's assets or commits - with gross negligence or wilful misconduct - acts which may cause considerable damage to the company* and which may lead to the application of the measures referred to in the Decree to the company, **shall be subject to dismissal with pay in lieu of notice.**

Any worker who has already been suspended from service and from pay and who persists in breaching the rules of the Model or, in performing activities in areas at risk, continues to adopt a behaviour not conforming to the prescriptions of the Model shall be subject to the same measure.

**c) dismissal without pay in lieu of notice**

Under point V.6 of the disciplinary code, any worker who - in performing activities in areas at risk - commits acts which cause serious prejudice to the company *so that the company no longer trusts him/her* and is exposed to the application of the measures referred to in the Decree, **shall be subject to dismissal without pay in lieu of notice.**

**9.4 Measures towards managers**

Any manager who breaches the provisions of the Model or, in performing activities in areas at risk, adopts a behaviour not conforming to the prescriptions of the Model shall be subject to the same procedure of notification of the wrongdoing as the one used for the generality of employees. However, GME reserves the right to assess the most appropriate disciplinary measures to be taken for managers of companies producing goods and services, in accordance with the applicable legislation and national collective labour agreement (CCNL).

In compliance with the applicable legislation and collective labour agreement, GME reserves the right to file claims for damages against the manager as consequence of his/her breach of the behavioural rules and procedures referred to in Decree 231/01.

## **10 OTHER SAFEGUARDING MEASURES**

### **10.1 Measures towards members of the Board of Directors**

Where a breach is committed by one or more members of GME's Board of Directors, the Supervisory Body shall report the breach to the Board of Directors and to the Board of Auditors, so that they may adopt appropriate initiatives under the applicable legislation.

GME's Supervisory Body shall timely report the breach to GSE's Supervisory Body, which will in turn report the matter to GSE's statutory bodies, so that they may adopt appropriate initiatives within the Group.

### **10.2 Measures towards independent contractors**

Any conduct by independent contractors that is contrary to the rules of conduct indicated herein and that entails the risk of committing a crime punishable under the Decree may - in accordance with specific contractual clauses introduced into the letters of assignment - result into termination of the contract, without prejudice to any claims for damages, where such conduct causes actual damage to GME, as in the case of application of the measures specified in the Decree by a judge.

## **11 CODE OF ETHICS**

GME updated its Code of Ethics with a view to meeting the requirements of Legislative Decree 231/2001, as subsequently amended and supplemented.

The rules of conduct provided herein integrate with those of the Code of Ethics of GME and of its Parent Company, without prejudice to the different aims pursued by the Code of Ethics and by the Guidelines to the organisational Model. From this standpoint, the Code of Ethics shall be autonomously and generally applicable by GME. The Code of Ethics expresses the principles of behaviour that those acting in the name and on behalf of GME are held to abide by - under the applicable civil and criminal legislation, especially as regards general duties of correctness, diligence and good faith in the performance of the

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contract, as set out in articles 1175, 1176 and 1375 of the Civil Code - in order to comply with the criteria of impartiality, independence, confidentiality and transparency that are typical of the ethics of a public-interest service.

Additionally, compliance with the Code shall be an integral part of employees' contractual obligations towards their employer, for the purposes and effects of art. 2104 of the Civil Code and of art. 57 of the national collective labour agreement (CCNL) of 18 July 2006.

The Model, instead, responds to the requirements of the Decree and describes GME's instruments for preventing the commission of particular types of crimes, i.e. crimes that involve the administrative liability of GME as a legal person, if they are committed in its interest or to its advantage.

## **12 CORPORATE RULES AND PROCEDURES**

The set of the corporate rules and procedures, in their present configuration and subsequent updates, shall be an integral part of GME's Model.

GME shall put in place systems for centralised collection of the procedures developed by its competent units, so as to facilitate their dissemination and updating. The Supervisory Body shall be responsible for monitoring compliance with the corporate rules and procedures to the extent applicable under the Decree, as subsequently amended and supplemented, and under subsequent related legislation.

## **13 INITIAL APPLICATION OF AND CRITERIA FOR UPDATING THE MODEL**

### **13.1 Initial application of the Model**

Given its impact on GME's complex organisational structure, the organisational Model requires a special operational programme, capable of accommodating innovations. The programme shall identify the methodological approach to be taken, the activities to be carried out and the timescales within which the Model shall become operational. This means that all the parties engaged in the implementation of the Model shall help apply all

the planned measures, in accordance with the provisions and aims of Legislative Decree 231/2001, as subsequently amended and supplemented.

The programme shall also involve the setting up of an operational work group, consisting of the Head of GSE's Internal Audit unit and the heads of each of GME's functions. The latter, in particular, shall have the task of developing specific procedures and/or of changing/updating existing procedures, so as to implement the principles laid down herein in connection with the Sensitive Processes falling under their responsibility. Such procedures shall be developed and/or updated on the basis of the weaknesses detected in GME's current Model.

The "drafts" of the procedures to be adopted and/or their additions shall be submitted to the Supervisory Body for a compulsory but not binding opinion. The Supervisory Body shall express its opinion, providing suggestions also in view of co-ordination and consistency with the guiding principles expressed herein.

If the Supervisory Body expresses a favourable opinion, the procedures shall be submitted to GME's Chief Executive Officer for final review. If the Supervisory Body expresses an unfavourable opinion, the procedures, together with an explanatory report, shall be submitted to the Board of Directors.

### **13.2 Updating and adaptation of the Model**

The activities of updating and/or adaptation of the Model are explicitly covered by art. 6, para. 1 b) of the Decree. These activities shall be carried out mainly as a result of:

- changes to the legislation and to the Guidelines of Confindustria underlying the Model;
- breaches of the Model or outcomes of verifications of its effectiveness (including public-domain experiences concerning other companies of the sector) indicating previously undetected weaknesses;
- changes to GME's organisational structure deriving from operations of extraordinary finance or from strategic changes opening new fields of activity for GME.

This is a particularly significant activity, which ensures an effective implementation of the Model over time, taking into account changes in the legislative/regulatory scenario or in GME's structure, as well as weaknesses of the Model, especially those detected upon breaches thereof.

The Decree under review (art. 6, para. 1 a)) explicitly assigns the responsibility for adopting the organisational Model to the governing body. Thus, the responsibility for updating and adapting the Model and this document shall be vested in the body in charge of its initial adoption and thus in the Board of Directors.

In line with its role arising from art. 6, para. 1 b) of the Decree, the Supervisory Body shall report to the Chairman of the Board of Directors or the Chief Executive Officer any information of which it may become aware and which may justify the need for updating and adapting the Model.

However, the Model shall be revised periodically in order to ensure its consistency with the evolution of GME's requirements.

Proposals for updating/adaptation of the Model shall be formulated through the involvement of GME's competent functions and/or by relying on external experts, where necessary. The Supervisory Body shall submit such proposals to the Chief Executive Officer, who will in turn submit them to the Board of Directors for final approval.