



*Compliance Programmes to Prevent 'Fiscal Corruption'. A Public-Private Cooperation Model from The Italian Perspective\**  
di **ROSSELLA SABIA**

**SUMMARY:** **1.** INTRODUCTION. – **2.** PREVENTING CORPORATE CORRUPTION AND TAX OFFENCES. THE FUNCTIONS OF COMPLIANCE PROGRAMMES IN THE ITALIAN LEGAL FRAMEWORK. – **3.** TOOLS AND BEST PRACTICES TO BUILD EFFECTIVE COMPLIANCE PROGRAMMES IN THE AREA OF CORRUPTION AND TAX CRIMES. – **4.** CONCLUSION. A POSSIBLE WAY TOWARDS AN INTEGRATED-APPROACH AGAINST 'FISCAL CORRUPTION' IN THE CORPORATE CONTEXT.

## Abstract

This article addresses the issue of how to structure an effective corporate compliance programme to prevent 'fiscal corruption', focusing on the Italian experience. The paper will first highlight how corporate compliance programmes provided for by the Legislative Decree No. 231/2001 are framed, with reference to both tax offences and corruption. Then, the 'dynamic' dimension of compliance programmes will be assessed, i.e. the way protocols and standards adopted by corporations to prevent the criminal phenomena at hand work in practice. Finally, this work will analyse the possibility of establishing an effective and useful interoperability between tax and corruption preventive frameworks, in order to set a more integrated system to combat 'fiscal corruption' in the corporate context.

**1. Introduction.** There is no explicit reference to the concept of 'fiscal corruption'<sup>1</sup> in the Italian legislation. In fact, the phenomena of corruption and tax crimes belong to different legal frameworks and are not directly linked. However, this does not exclude areas of convergence: the working definition of 'fiscal corruption' – by highlighting practices that may jeopardise the public administration function, the lawful and proper functioning of the market and the competition regime – proves useful in marking how these two phenomena can interact and develop into concrete criminal forms, *beyond* the formal boundaries of legal definitions<sup>2</sup>.

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<sup>1</sup> The notion of fiscal corruption is well-known in the economic literature, based on the consideration that an important area of government where corrupt practices lurk is the assessment and collection of tax revenues. For further references see A. Gullo, *Exploring the Interconnections Between Tax Crime and Corruption: National Report for Italy. VIRTEU*, 2022, para. 1, available at [www.corporatecrime.co.uk/virteu-reports](http://www.corporatecrime.co.uk/virteu-reports).

<sup>2</sup> A. Gullo, *Exploring the Interconnections Between Tax Crime and Corruption* (*supra* note 1), 7 and 41.

Given this background, this article will focus on criminal compliance strategies to prevent ‘fiscal corruption’ in the business context, with the aim of outlining a path for identifying relevant best practices and methodologies in the Italian scenario.

Corporate compliance<sup>3</sup> and internal controls are based, in their overall *rationale*, on risk assessment and risk management. Despite differences depending on the specific matter at stake, they focus on the importance of the ‘virtuous’ collective organisation and on the establishment of preventive operational rules as key factors to cope with multifaceted business risks. Therefore, this contribution is intended to address the question of how to structure compliance programmes to implement an *integrated* system to tackle corruption and tax crimes in corporate environments, i.e. how the internal control measures adopted by companies to manage and mitigate the crime-risk (related to both corruption and tax offences) can be coordinated and function synergically.

To this end, the present work is divided into three main sections.

First, the fundamental features of the Italian system of corporate criminal liability (Legislative Decree No. 231/2001)<sup>4</sup> are presented, by analysing the imputation mechanisms for holding organisations liable for predicate offences committed in their interest or for their benefit. Also, the importance for companies to be aligned with the regulatory requirements and

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<sup>3</sup> On this theme, see the recent study by S. Manacorda, F. Centonze (eds.), *Corporate Compliance on a Global Scale: Legitimacy and Effectiveness*, Cham, Springer, 2022.

<sup>4</sup> The well-established expression ‘corporate criminal liability’ will be conventionally used in this paper. However, it should be clarified that the Italian legislation formally defines the liability of entities – legal persons, companies, associations, even those without legal personality –, pursuant to Legislative Decree No. 231/2001, as ‘administrative’ liability depending on a crime. The Italian Supreme Court has qualified this form of collective liability as a *tertium genus*, somewhere in-between administrative and criminal realms (see Cass. pen., SS.UU., 24 April 2014, No. 38343, *Espenhahn e altri*, commented by R. Bartoli, *Luci ed ombre della sentenza delle Sezioni unite sul caso “Thyssenkrupp”*, in *Giur. it.*, 2014, 2566 ff.). Academics, however, are broadly oriented towards considering this system as criminal or, in any case, *punitive* in nature, in the light of some of its provisions (e.g. on limitation period, on merger and demerger, on dismissal of charges by the public prosecutor, etc.) and due to the severity of sanctions, also in the light of the ECHR’ interpretation of *matière pénale*. See G. Lattanzi, P. Severino, *Prevenzione e repressione della criminalità economica e responsabilità delle persone giuridiche*, in G. Lattanzi, P. Severino (eds.), *Responsabilità da reato degli enti*, vol. I, *Diritto sostanziale*, Torino, 2020, XIX.

to have a compliance programme in place to prevent crimes is discussed (Section 2).

The second part of the paper is devoted to the ‘dynamic dimension’ of compliance programmes, in order to examine how such tools are implemented in practice in the private sector to prevent corruption and tax crimes (Section 3). Finally, after reviewing the theoretical and practical grounds concerning the Italian approach to corporate criminal liability, this article proposes ideas for the design of integrated compliance programmes to counter ‘fiscal corruption’ (Section 4).

## **2. Preventing Corporate Corruption and Tax Offences. The Functions of Compliance Programmes in the Italian Legal Framework.**

As is well-known, corporate criminal liability in Italy is regulated by the Legislative Decree No. 231/2001<sup>5</sup>. The basic principles of this statute<sup>6</sup> establish that entities<sup>7</sup> can be held liable if their agents – whether managers or mere employees – commit *i*) a predicate offence, *ii*) in the interest or for the benefit of the organisation (objective element of corporate liability), due to *iii*)

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<sup>5</sup> This topic has been extensively discussed by Italian criminal law scholars. For an overview on the Legislative Decree No. 231/2001, *ex multis* see the following books: D. Castronuovo, G. De Simone, E. Ginevra, A. Lionzo, D. Negri, G. Varraso (eds.), *Compliance. Responsabilità da reato degli enti collettivi*, Milano, 2019; G. Lattanzi, P. Severino (eds.), *Responsabilità da reato degli enti*, vol. I (*supra* note 4); A. Bassi, F. D’Arcangelo, *Il sistema della responsabilità da reato dell’ente. Disciplina e prassi applicative*, Milano, 2020; M. Levis, A. Perini (directed by), *Il 231 nella dottrina e nella giurisprudenza a vent’anni dalla sua promulgazione*, Bologna, 2021; D. Piva (ed.), *La responsabilità degli enti ex d.lgs. n. 231/2001 tra diritto e processo*, Torino, 2021; L. Cornacchia, E.D. Crespo, *Responsabilità da reato degli enti collettivi. Profili dogmatici e politico-criminali a oltre vent’anni dal d.lgs. 231/2001*, Torino, 2023. For an analysis of the positioning of the Italian model in the European and international context, see C. De Maglie, *Italy*, in J. Gobert, A.M. Pascal (eds.), *European Developments in Corporate Criminal Liability*, London, Routledge, 2011, 252 ff.; A. Fiorella (ed.), *Corporate Criminal Liability and Compliance Programs*, vol. I, *Liability ‘Ex Crimine’ of Legal Entities in Member States*, Napoli, 2012; V. Mongillo, *La responsabilità penale tra individuo ed ente collettivo*, Torino, 2018; R. Sabia, *Responsabilità da reato degli enti e paradigmi di validazione dei modelli organizzativi. Esperienze comparate e scenari di riforma*, Torino, 2022.

<sup>6</sup> On the structure of corporate criminal liability pursuant to Legislative Decree No. 231/2001, see O. Di Giovine, *Lineamenti sostanziali del nuovo illecito punitivo*, in G. Lattanzi (ed.), *Reati e responsabilità degli enti. Guida al d.lgs. 8 giugno 2001, n. 231*, II ed., Milano, 2010, 3 ff.

<sup>7</sup> See *supra* note 4.

an ‘organisational fault’<sup>8</sup>, resulting from the failure to adopt or effectively implement a compliance programme prior to the commission of the crime (subjective element of corporate liability). The latter imputation criterion operates differently depending on whether the predicate offence is committed by a manager (Art. 6) or by an employee (Art. 7).

In the first case, given that managers are the ‘brains’ of the company’s policy, the mechanism for the entity to avoid liability is quite complex and subject to strict requirements: not only should it be assessed that the organisation has adopted and effectively implemented – prior to the commission of the predicate offence – a compliance programme suitable for preventing offences of the type that occurred; other conditions should also be met, i.e. that a supervisory body (*Organismo di Vigilanza*) has been set up to monitor the effectiveness of the compliance programme; that this body has actually played its role; that the management has ‘fraudulently circumvented’ the rules of conduct laid down in the compliance programme<sup>9</sup>.

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<sup>8</sup> On the notion of ‘organisational fault’ in the Italian corporate criminal liability landscape, see C.E. Paliero, C. Piergallini, *La colpa di organizzazione*, in *Resp. amm. soc. enti*, 2006, 3, 167 ff.; C. Piergallini, *Colpa di organizzazione e impresa*, in M. Donini, R. Orlandi (eds.), *Reato colposo e modelli di responsabilità*, Bologna, 2013, 161 ff.; C.E. Paliero, voce *Colpa di organizzazione e persone giuridiche*, in *Enc. dir., I tematici, Reato colposo*, directed by M. Donini, vol. II, Milano, 2021, 64 ff.; A. Fiorella, A.S. Valenzano, *Colpa dell’ente e accertamento. Sviluppi attuali in una prospettiva di diritto comparato*, Roma, 2016; E. Villani, *Alle radici del concetto di ‘colpa di organizzazione’ nell’illecito dell’ente da reato*, Napoli, 2016; V. Mongillo, *La colpa di organizzazione: enigma ed essenza della responsabilità “da reato” dell’ente collettivo*, in *Cass. pen.*, 2023, 3, 704 ff.

<sup>9</sup> See Art. 6, para. 1, letter c), Legislative Decree No. 231/2001. On the notion of committing the predicate crime by ‘fraudulently circumventing’ (*eludendo fraudolentemente*) the compliance programme, see in general A.F. Tripodi, *L’elusione fraudolenta nel sistema della responsabilità da reato degli enti*, Padova, 2013. This concept has been also discussed and clarified in the first ruling by the Italian Supreme Court that recognised the ‘suitability’ (*idoneità*) of a compliance programme to prevent crimes: see *Cass. pen.*, Sec. VI, 15 June 2022, No. 23401, para. 11, available at [www.sistemapenale.it/it/notizie/cass-2022-23401-impregilo-responsabilita-da-reato-degli-enti](http://www.sistemapenale.it/it/notizie/cass-2022-23401-impregilo-responsabilita-da-reato-degli-enti), commented by C. Piergallini, *Una sentenza “modello” della Cassazione pone fine all’estenuante vicenda “Impregilo”*, in *Sist. pen.*, 27 June 2022, 1 ff.; E. Fusco, C.E. Paliero, *L’“happy end” di una saga giudiziaria: la colpa di organizzazione trova (forse) il suo tipo*, in *Sist. pen.*, 27 September 2022, 1 ff.; D. Bianchi, *Verso un illecito corporativo personale. Osservazioni “umbratili” a margine d’una sentenza “adamantina” nel “magma 231”*, in *Sist. pen.*, 14 October 2022, 1 ff.; A. Merlo, *Il D.Lgs. 231/01 preso sul serio: la Cassazione scrive l’ultimo capitolo della saga “Impregilo”*, in *Foro it.*, 2022, 11, 669 ff.; F. Centonze, *Il crimine dell’«attore decisivo», i limiti della compliance e la prova «certa» della colpa di organizzazione. Riflessioni a margine della sentenza “impregilo”*, in

On the other hand, in the event of an employee committing a predicate crime, it is easier for the entity to avoid liability, as proof of the adoption and effective implementation of a compliance programme may be sufficient.

In both cases, if the predicate offence is ascertained and the company is prosecuted, the evaluation on the abovementioned requirements – including the one on the compliance programme – is entrusted to the judge during the criminal proceedings.

Therefore, the adoption of a compliance programme to manage, control and mitigate crime-risk is a key factor in the architecture of the Legislative Decree No. 231/2001. First, as seen, because it is the main element for assessing the existence of the organisational fault of the entity; second, because the effective implementation of compliance programmes implies the possibility (subject to judicial evaluation) for the organisation to avoid the '231' liability.

In addition, also the adoption of a compliance programme *ex post* – i.e. after the commission of the predicate crime – could result in multiple benefits<sup>10</sup> for the entity at different stages of the proceedings. These advantages encompass, among others, the exclusion of interdictory/disqualification sanctions<sup>11</sup>, the suspension of precautionary interdictory measures<sup>12</sup>, the

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*Cass. pen.*, 2022, 12, 4383 ff.; G. De Simone, *Si chiude finalmente, e nel migliore dei modi, l'annosa vicenda Impregilo*, in *Giur. it.*, 2022, 12, 2758 ff.

<sup>10</sup> P. Severino, *La responsabilità dell'ente ex d.lgs. n. 231 del 2001: profili sanzionatori e logiche premiali*, in C.E. Paliero, F. Viganò, F. Basile, G.L. Gatta (eds.), *La pena, ancora: fra attualità e tradizione. Studi in onore di Emilio Dolcini*, vol. II, Milano, 2018, 1101 ff. For a recent analysis focused on reparation by entities, see M. Colacurci, *L'illecito "riparato" dell'ente. Uno studio sulle funzioni della compliance penalistica nel d.lgs. n. 231/2001*, Torino, 2022.

<sup>11</sup> Art. 17 of the Legislative Decree No. 231/2001 provides that without prejudice to the imposition of fines (which are *always* applied in the event of conviction of the entity), interdictory sanctions are not applied when – before the start of the trial of first instance – the following conditions are met: a) the entity provided full compensation for the loss or damage and eliminated all harmful or dangerous consequences of the offence, or otherwise if it took effective action to that end; b) the entity eliminated the organisational shortcomings giving rise to the offence, by adopting and implementing a compliance programme suitable for preventing offences of the type occurring; c) the entity made the profits obtained available for confiscation.

<sup>12</sup> Pursuant to Art. 49, para. 1, Legislative Decree No. 231/2001, precautionary interdictory measures may be suspended if the entity files a motion requesting permission to complete the activities described in Art. 17 (see previous footnote).

conversion of the interdictory sanctions imposed at the conclusion of the criminal trial into a fine<sup>13</sup>. The main difference between *ex ante* and *ex post* adoption of compliance programmes is that, in the latter case, the entity can only obtain a reduction of sanctions, not an exclusion of liability.

Another distinctive feature of the Italian regulation on corporate criminal liability is that – unlike, for example, in some common-law legal systems<sup>14</sup> – corporations cannot be held liable for any crime committed in their interest or to their advantage, but solely for predicate crimes listed in the Legislative Decree No. 231/2001 (Arts. 24 ff.). Hence, only offences included in this ‘closed list’ can trigger corporate criminal liability.

The Italian legislator’s rationale for this choice was to simplify the process of creating compliance programmes by corporations, especially in the Decree’s initial years, and to alleviate their burden in terms of self-policing and self-organization. The legal requirement for entities, then, was to build preventive rules limited to a few specific offences – in principle, those most frequently committed in the corporate context<sup>15</sup>.

Over time, this closed list of predicate crimes has undergone various updates and revisions. These reforms have not always followed a consistent approach<sup>16</sup>, insofar as the Italian legislator has included offences that do not fit the definition of ‘white collar crime’, such as terrorist offences or female genital mutilation practices; while for many years, typical forms of corporate criminality – such as, namely, tax crimes – have been excluded.

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<sup>13</sup> Art. 78 of the Legislative Decree No. 231/2001 states that also in the enforcement phase of the proceedings, any entity which is late in taking action as per Art. 17 may apply to obtain the conversion of the interdictory sanction into a fine.

<sup>14</sup> Such as in the United Kingdom, where only limited offences, such as perjury, bigamy and treason are excluded. See *Halsbury’s Laws of England*, V ed., 2019, vol. 24(7), para. 582 (Liability of corporation), available at [www.lexisnexis.co.uk](http://www.lexisnexis.co.uk).

<sup>15</sup> For a discussion on the initial legislative option for a ‘minimalistic’ catalogue of predicate offences, see G. De Vero, *La responsabilità penale delle persone giuridiche*, in C.F. Grosso, T. Padovani, A. Pagliaro (directed by), *Trattato di diritto penale*, Milano, 2008, 261 ff.

<sup>16</sup> G. Amarelli, *Il catalogo dei reati presupposto del d.lgs. n.231/2001 quindici anni dopo. Tracce di una razionalità inesistente*, in *Legisl. pen.*, 23 May 2016, 1 ff.

In this respect, the ‘history’ of corruption and tax offences as ‘231’ predicate crimes is very different<sup>17</sup>. On the one hand, since the entry into force of the Legislative Decree No. 231/2001, corruption offences have always been included in the catalogue of predicate crimes for corporate criminal liability, albeit the relevant provision (Art. 25) has been subject to modifications (with respect, for example, to the inclusion of the crime of trading in influence in 2019)<sup>18</sup>.

After all, one of the primary drivers that led to the introduction of the ‘Decree 231’ in the Italian legal system, thereby overcoming the traditional dogma *societas delinquere non potest*, was the need for Italy to conform to supranational obligations in the area of the fight against corruption<sup>19</sup>, which required to provide for liability of legal persons. Therefore, it could be inferred that there exists a ‘genetic link’ between corporate criminal liability and corruption in Italy.

On the other hand, it was not until 2019 that tax offences were included among the predicate crimes<sup>20</sup> of Legislative Decree No. 231/2001 (Art. 25-

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<sup>17</sup> A. Gullo, *Exploring the Interconnections Between Tax Crime and Corruption* (supra note 1), para. 2.

<sup>18</sup> On this topic see A. Gullo, *I reati contro la Pubblica Amministrazione e a tutela dell'autorità giudiziaria*, in G. Lattanzi, P. Severino (eds.), *Responsabilità da reato degli enti*, vol. I (supra note 4), 426 ff.; V. Mongillo, *La legge “Spazzacorrotti”: ultimo approdo del diritto penale emergenziale nel cantiere permanente dell’anticorruzione*, in *Dir. pen. cont.*, 2019, 5, 304 ff. See also the comments by V. Valentini, *Sub art. 25*, in D. Castronuovo, G. De Simone, E. Ginevra, A. Lionzo, D. Negri, G. Varraso (eds.), *Compliance* (supra note 5), 519 ff.; D. Piva, *Sub art. 25*, in M. Levis, A. Perini (directed by), *Il 231 nella dottrina e nella giurisprudenza a vent’anni dalla sua promulgazione* (supra note 5), 632 ff.

<sup>19</sup> For an illustration see G. De Vero, *La responsabilità penale delle persone giuridiche* (supra note 15), 119 ff.

<sup>20</sup> See Law No. 157/2019. On the impact of the introduction of tax crimes in the ‘231’ catalogue, see the several contributions published in the special section of *Sistema penale*, No. 7/2020, linked to the webinar “Tax compliance, responsabilità degli enti e reati tributari. Una riflessione alla luce della legge 157/2019” organised by the Department of Law of Luiss University and Luiss School of Law on 15 May 2020. See also R. Bartoli, *Responsabilità degli enti e reati tributari: una riforma affetta da sistematica irragionevolezza*, in *Sist. pen.*, 2020, 3, 219 ff.; M. Bellacosa, *I reati tributari e i reati di contrabbando*, in G. Lattanzi, P. Severino (eds.), *Responsabilità da reato degli enti*, vol. I (supra note 4), 611 ff.; S. Finocchiaro, *In vigore la “riforma fiscale”: osservazioni a prima lettura della legge 157/2019 in materia di reati tributari, confisca allargata e responsabilità degli enti*, in *Sist. pen.*, 7 January 2020, 1 ff.; G. Flora, *Dalla “spazza corrotti” alla “spazza evasori”. brevi note critiche sulle recenti innovazioni legislative in materia di reati tributari*, in *Rass. trib.*, 2020, 1, 252 ff.; P. Ielo, *Responsabilità degli enti e reati tributari*, in *Resp. amm. soc. enti*, 2020, 1, 9 ff.; D. Piva, *Reati tributari e responsabilità dell’ente: una riforma nel (ancorché non di) sistema*, in *Dir. pen. cont. – Riv.*

*quinqüesdecies*), with the legislator implementing Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law at a domestic level. Indeed, the question of whether including tax crimes among the predicate crimes of corporate criminal liability had been the subject of extensive debate among scholars and institutional actors.

The main concern was that the company, in the event of a breach of tax law, would in any case directly face administrative tax sanctions<sup>21</sup>; providing for an (additional) system of corporate criminal liability for tax offences could entail the risk of violating the *ne bis in idem* principle<sup>22</sup> pursuant to Art. 4 of Protocol No. 7 of the European Convention on Human Rights and Art. 50 of the Charter of Fundamental Rights of the European Union. However, it has been suggested that such a risk could be avoided if the requirements laid down by the European Courts<sup>23</sup> were met in order to legitimate the application of a double-track sanctioning regime; and, in any case, the inclusion of tax offences in the 'Decree 231' was deemed entirely appropriate, as they are among the most significant forms of corporate criminality.

The latter position ultimately succeeded, and tax offences became part of the closed list of predicate crimes that can trigger corporate criminal liability.

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*trim.*, 2020, 3, 275 ff.; P. Veneziani, *Problemi attuali in tema di responsabilità dell'ente da reato tributario*, in *Cass. pen.*, 2020, 9, 3086 ff.; A. Perini, S. Ronco, *Considerazioni in tema di estensione della responsabilità da reato dell'ente agli illeciti di matrice tributaria: criticità attuali e prospettive di sviluppo*, in *Resp. amm. soc. enti*, 2021, 2, 43 ff.; F. Mucciarelli, *I reati tributari nel 'catalogo 231'. Un nuovo (ma imperfetto) strumento di contrasto alla criminalità d'impresa*, in *Dir. pen. cont. – Riv. trim.*, 2022, 1, 195 ff.; S. Metrangolo, *Gli illeciti penali tributari nel prisma della responsabilità da reato della societas*, in *Cass. pen.*, 2022, 12, 4401 ff.

<sup>21</sup> See Art. 11 of the Legislative Decree No. 472/1997 and Art. 7 of the Decree Law No. 269/2003 (depending on whether the entity has legal personality or not).

<sup>22</sup> *Ex multis*, see for critical remarks I. Caraccioli, *Reati tributari e responsabilità degli enti*, in *Resp. amm. soc. enti*, 2007, 1, 155 ff.; A. Ingrassia, S. Cavallini, *Brevi riflessioni sulla relazione tra il d.lgs. 231/2001 e i reati tributari: poenae non sunt multiplicanda sine necessitate*, in *Resp. amm. soc. enti*, 2016, 3, 109 ff. For a focus on the *ne bis in idem* issue in this matter, see A.F. Tripodi, *L'ente nel doppio binario punitivo. Note sulla configurazione metaindividuale dei doppi binari sanzionatori*, in *Dir. pen. cont. – Riv. trim.*, 2020, 4, 124 ff.; F. Mucciarelli, *Ne bis in idem, sanzioni tributarie e responsabilità dell'ente*, in *Sist. pen.*, 25 November 2023, 1 ff.

<sup>23</sup> See ECtHR, 15 November 2016, *A and B v Norway* [GC], App. No. 24130/11 and 29758/11; CJEU, 20 March 2018, case C-524/15, *Menci*.



Moreover, it is important to highlight, as anticipated, that one of the key objectives of the Italian legislation on corporate criminal liability is to encourage corporations to play a proactive role in preventing corporate crime; traditionally, this has been the sole responsibility of public authorities. This idea marks a noteworthy paradigm shift, in which criminal law enforcement no longer focuses mainly on repression, but also on prevention activities<sup>24</sup> entrusted to corporations, given that they generate, or are closer to, the expected risks. This regulatory strategy is developed with a view to achieving a public-private partnership<sup>25</sup> – where entities are requested to self-organise and self-regulate to protect collective and individual interests, ranging from crime prevention to areas such as human rights, privacy, consumer rights etc. – which is now adopted in many legal systems.

In Italy, this approach was embraced from the very beginning for corruption offences<sup>26</sup>, but was then considered valid for tax crimes as well. Although, as said, the ‘regulatory path’ leading to holding corporations liable for corruption and tax offences was very different for the two cases, since tax offences have been included in the scope of the ‘Decree 231’ compliance programmes have become the primary tool for corporations to prevent both types of offences – and to avoid, or at least, mitigate the associated criminal consequences. This has resulted in the need to draft specific preventive protocols within compliance programmes to address both corruption and tax offences. Therefore, for the purposes of this contribution, the interesting aspect is to assess to what extent such practices can be combined and applied more effectively so as to tackle – not only the two crimes as formally separate but –, in a more holistic sense, the phenomenon of ‘fiscal corruption’,

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<sup>24</sup> See G. Lattanzi, P. Severino, *Prevenzione e repressione della criminalità economica e responsabilità delle persone giuridiche* (supra note 4), *passim*.

<sup>25</sup> F. Centonze, *La co-regolamentazione della criminalità d'impresa nel d.lgs. n. 231 del 2001. Il problema dell'importazione dei “compliance programs” nell'ordinamento italiano*, in *An. giur. ec.*, 2009, 2, 219 ff.

<sup>26</sup> P. Severino, *Legalità, prevenzione e repressione nella lotta alla corruzione*, in *Arch. pen. web*, 2016, 3, 1 ff.

i.e. by capturing the criminological connections between corruption and tax crimes.

It seems useful to begin this analysis by presenting the state-of-the-art of methodologies, sources and best practices related to the design of corporate compliance programmes for corruption and tax crimes prevention.

**3. Tools and Best Practices to Build Effective Compliance Programmes in the Area of Corruption and Tax Crimes.** The Italian legislator, as mentioned, has placed the compliance programme<sup>27</sup> at the heart of the enforcement system of the Legislative Decree No. 231/2001 on corporate criminal liability. Nevertheless, this regulation only provides for general instructions on the structure and objectives of the compliance programme (Arts. 6 and 7), lacking detailed guidance on the contents/concrete types of rules to be adopted to prevent the predicate crimes<sup>28</sup>.

This is partially connected to the idea that each entity should build its own compliance programme based on a 'tailor-made' approach (i.e. taking into account its specific features, its governance system, the market in which it operates, etc.)<sup>29</sup>; but, as a consequence, private sector's actors had to

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<sup>27</sup> On compliance programmes in the Italian corporate criminal liability system, see C. Piergallini, *La struttura del modello di organizzazione, gestione e controllo del rischio-reato*, in G. Lattanzi (ed.), *Reati e responsabilità degli enti* (supra note 6), 153 ff.; Id., *Paradigmatica dell'autocontrollo penale. Dalla funzione alla struttura del "modello organizzativo" ex d.lg. n. 231/2001. Parte I*, in *Cass. pen.*, 2013, 1, 376 ff. and *Parte II*, in *Cass. pen.*, 2013, 3, 842 ff.; S. Manacorda, *La dinamica dei programmi di compliance aziendale: declino o trasfigurazione del diritto penale dell'economia?*, in *Soc.*, 2015, 4, 473 ff.; A. Gullo, *I modelli organizzativi*, in G. Lattanzi, P. Severino (eds.), *Responsabilità da reato degli enti*, vol. I (supra note 4), 241 ff.

<sup>28</sup> Art. 6, para. 2, Legislative Decree No. 231/2001 requires that compliance programmes must: a) identify the activities in relation to which offences may be committed; b) provide for specific protocols aimed at planning the formation and implementation of decisions by the entity regarding offences to be prevented; c) identify procedures for managing financial resources suitable for preventing the commission of offences; d) provide for obligations to disclose information to the supervisory body; e) introduce a disciplinary system to punish noncompliance with the measures set out in the programme. Para 2-bis of the same article states that compliance programmes should provide also for a whistleblowing system, pursuant to Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

<sup>29</sup> A. Gullo, *I modelli organizzativi* (supra note 27), 253.

search elsewhere, outside 'Decree 231' provisions, to identify the best practices to be adopted to prevent corruption and tax crimes.

As far as corruption is concerned, it must be acknowledged that in recent years there has been an increasing spread of advanced (and now, widely accepted) instruments and methodologies to prevent the risk of corruption within organisations<sup>30</sup>.

On the one hand, in fact, private soft law (ISO 37001:2016<sup>31</sup> can be mentioned in this respect, or the guidelines provided by trade associations)<sup>32</sup> has always played a strategic role in the area of anti-corruption, given that it enables entities to set up their internal procedures and controls to comply with established and shared standards (which focus on comprehensive risk assessment and management activities, as well as on the periodic review of the effectiveness of the measures adopted, also with a view to their updating). In this context, compliance can be also 'certified' by the competent bodies.

On the other hand, public soft law (adopted by enforcement authorities) has provided corporations with important indications on how to build anti-corruption compliance programmes. Reference can be made to guidelines published by various agencies – among others, the US Department of Justice

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<sup>30</sup> E.g. OECD, UNODC, World Bank, *Anti-corruption Ethics and Compliance Handbook for Business*, available at [www.oecd.org/corruption/anti-corruption-ethics-and-compliance-handbook-for-business.htm](http://www.oecd.org/corruption/anti-corruption-ethics-and-compliance-handbook-for-business.htm), 2013; United Nations Global Compact, *A Guide for Anti-corruption Risk Assessment*, available at [www.unglobalcompact.org/docs/issues\\_doc/Anti-Corruption/RiskAssessmentGuide.pdf](http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf), 2013; OECD, *Corporate Anti-corruption Compliance Drivers, Mechanisms, and Ideas for Change*, available at [www.oecd.org/daf/anti-bribery/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf](http://www.oecd.org/daf/anti-bribery/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf), 2020. On this topic, see also the book by S. Manacorda, F. Centonze, G. Forti (eds.), *Preventing Corporate Corruption. The Anti-bribery Compliance Model*, Cham, Springer, 2014.

<sup>31</sup> M. Pansarella, C. Pambianco, *UNI ISO 37001:2016 – L'integrazione con i Modelli organizzativi ex d.lgs. 231/2001 e con i piani anticorruzione ex legge 190/2012*, in *Resp. amm. soc. enti*, 2017, 2, 297 ff.; G. Tartaglia Polcini, P. Porcelli, *Profili giuridico/funzionali della nuova UNI ISO 37001/2016 sui sistemi di gestione per la prevenzione della corruzione*, in *Resp. amm. soc. enti*, 2017, 2, 9 ff.

<sup>32</sup> See for instance the Guidelines made by Confindustria, the main association representing companies in Italy (*Linee Guida per la costruzione dei modelli di organizzazione, gestione e controllo ai sensi del decreto legislativo 8 giugno 2001, n. 231 – Parte generale e Appendice Case Study*, updated in 2021), available on [Confindustria website](http://www.confindustria.it).

and the UK Serious Fraud Office<sup>33</sup> in general, as well as the Italian National Anti-corruption Authority (ANAC) and French Anti-corruption Authority (AFA)<sup>34</sup>, specifically on anti-corruption. Their aim is to foster the dialogue and strengthen the partnership between the public and private sectors in preventing corruption.

The analysis of the relevant abovementioned sources shows that some of the main areas where the greatest attention should be paid in the drafting of preventive anti-corruption policies are: staff recruitment; sponsorships and donations; organisations' departments that have direct relations with the public sector, also to obtain licenses and funding; procurement; relations with third parties (e.g. advisory, joint ventures, etc.)<sup>35</sup>.

Among the targeted rules to prevent corruption that can be adopted by organisations the following, *inter alia*, can be mentioned: providing for transparent procedures (including the use of external specialised companies) in analysing the CVs of candidates when recruiting staff; establishing an annual budget for sponsorships, as well as preventive and *ex post* checks on those awarded; identifying the persons responsible for relations with the

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<sup>33</sup> See U.S. Department of Justice, Criminal Division, *Evaluation of Corporate Compliance Programs*, available at [www.justice.gov/criminal-fraud/page/file/937501](http://www.justice.gov/criminal-fraud/page/file/937501), 2020 (see also the update in January 2023 to the *Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy*); Serious Fraud Office, *Evaluating a Compliance Programme*, available at [www.sfo.gov.uk/publications/guidance-policy-and-protocols/guidance-for-corporates/evaluating-a-compliance-programme/](http://www.sfo.gov.uk/publications/guidance-policy-and-protocols/guidance-for-corporates/evaluating-a-compliance-programme/), 2020.

<sup>34</sup> See ANAC, *Nuove linee guida per l'attuazione della normativa in materia di prevenzione della corruzione e trasparenza da parte delle società e degli enti di diritto privato controllati e partecipati dalle pubbliche amministrazioni e degli enti pubblici economici* (Determinazione No. 1134 of 8 November 2017), available at [www.anticorruzione.it/-/determinazione-n.-1134-del-08/11/2017](http://www.anticorruzione.it/-/determinazione-n.-1134-del-08/11/2017); AFA, *Recommandations destinées à aider les personnes morales de droit public et de droit privé à prévenir et à détecter les faits de corruption, de trafic d'influence, de concussion, de prise illégale d'intérêts, de détournement de fonds publics et de favoritisme*, available at [www.agence-francaise-anticorruption.gouv.fr/fr/recommandations](http://www.agence-francaise-anticorruption.gouv.fr/fr/recommandations), 2020. See also the recent *Presentation of Various Regulatory Frameworks for Promoting Business Integrity Across the World*, May 2023, and the various thematic guidelines (on corporate anti-corruption compliance function, anti-corruption due diligence for mergers and acquisitions, prevention of breaches of probity for sports federations, internal anti-corruption investigations, etc.) published on the AFA website.

<sup>35</sup> A. Gullo, *I reati contro la Pubblica Amministrazione e a tutela dell'autorità giudiziaria* (*supra* note 18), 442 f.; Confindustria, *Linee Guida per la costruzione dei modelli di organizzazione, Appendice Case Study* (*supra* note 32) 37 ff.

public administration (including the tax administration), and organising training programmes for them; the provision of mechanisms for employees turnover and the division of functions and powers (considering that the greater the discretionary power of an individual manager/employee in the procedure, the greater the risk of crimes being committed); providing for specific due diligence programmes with respect to third parties, to verify the reputation and reliability of advisors and suppliers and to prevent any possible conflict of interest<sup>36</sup>. In addition, the instruments for controlling and handling financial flows are key.

Moreover, especially in the anti-corruption sector, new technologies (such as AI software for data analysis and blockchain) offer great help to organisations<sup>37</sup> to identify, through the extraordinary computational capabilities of sophisticated IT compliance tools, risks and red flags that would otherwise not be identifiable through the ‘human’ analysis of corporate data. This way, corporate decision-making processes could be made more transparent, and consequently the commission of wrongdoings becomes more difficult.

On the other hand, with regard to best practices for the prevention of tax offences – despite their inclusion in the closed-list of ‘Decree 231’ as recently as 2019 – there are various sources that entities can rely on to build effective compliance programmes.

Indeed – apart from the connections with corporate criminal liability issues discussed in the Italian legal panorama – tax compliance has long

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<sup>36</sup> A. Gullo, *I reati contro la Pubblica Amministrazione e a tutela dell'autorità giudiziaria* (supra note 18), 443-445.

<sup>37</sup> E. Birritteri, *Big Data Analytics e compliance anticorruzione. Profili problematici delle attuali prassi applicative e scenari futuri*, in *Dir. Pen. cont.– Riv. trim.*, 2019, 2, 290 ff.; N. Selvaggi, *Dimensione tecnologica e compliance penale: un'introduzione*, in L. Luparia, L. Marafioti, G. Paolozzi (eds.), *Dimensione tecnologica e prova penale*, Torino, 2019, 217 ff.; R. Sabia, *Artificial Intelligence and Environmental Criminal Compliance*, in *RIDP*, 2020, 1, 179 ff.; C. Burchard, *Digital criminal compliance*, in M. Engelhart, H. Kudlich, B. Vogel (eds.), *Digitalisierung, Globalisierung und Risikoprävention. Festschrift für Ulrich Sieber zum 70. Geburtstag*, II, Berlin, Duncker & Humblot, 2021, 741 ff.; A. Nisco, *Riflessi della compliance digitale in ambito 231*, in *Sist. pen.*, 14 March 2022, 1 ff.; G. Morgante, G. Fiorinelli, *Promesse e rischi della compliance penale digitalizzata*, in *Arch. pen. web*, 2022, 2, 1 ff.; L. D'Agostino, *Criminal compliance e nuove tecnologie*, in *Dir. Pen. cont.– Riv. trim.*, 1, 2023, 1 ff.

been placed at the centre of corporate risk management strategies at international level, also taking into account the administrative sanctions that, as mentioned, can be applied to legal entities that violate tax regulations.

The main traditional tax crimes preventive measures implemented in the private sector include: the division of roles and responsibilities in corporate procedures aimed at submitting the corporate income tax declaration, providing for systems to verify the completeness and correctness of the data submitted; the verification of the effective existence of the transactions and services indicated in the invoices issued; the signing, by the corporate representatives responsible for submitting the corporate income tax declaration, of an affidavit as to the truthfulness and correctness of the data submitted; the setting up of an electronic storage system for tax documents to ensure their preservation and constant traceability<sup>38</sup>. As in the case of corruption, procedures for managing and monitoring the corporate financial flows prove essential also for the prevention of tax offences, and also AI applications could be a valuable assistance<sup>39</sup>.

However, the most important indications for Italian corporations come directly from the law: the Legislative Decree No. 128/2015, also in line with the strategies suggested by international bodies<sup>40</sup>, ensure the possibility of adopting the Tax Control Framework, a public-private cooperative compliance system<sup>41</sup>.

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<sup>38</sup> See M. Bellacosa, *I reati tributari e i reati di contrabbando* (supra note 20), 630.

<sup>39</sup> For an overview of AI applications in tax law matters, see A. Fidelangeli, F. Galli, *The Use of AI Technologies In the Tax Law Domain: An Interdisciplinary Analysis*, in *Dir. prat. trib. int.*, 2022, 1, 118 ff.

<sup>40</sup> See OECD, *Co-operative Compliance: a Framework. From Enhanced Relationship to Co-operative Compliance*. [www.oecd.org/publications/co-operative-compliance-a-framework-9789264200852-en.htm](http://www.oecd.org/publications/co-operative-compliance-a-framework-9789264200852-en.htm), 2013; OECD, *Co-operative Tax Compliance. Building Better Tax Control Frameworks*, [www.oecd.org/publications/co-operative-tax-compliance-9789264253384-en.htm](http://www.oecd.org/publications/co-operative-tax-compliance-9789264253384-en.htm), 2016. See also the *Recommendation on the Ten Global Principles for Fighting Tax Crime*, adopted by the OECD Council meeting at Ministerial level on 10 June 2022 and aimed at providing guidance to States in devising or updating their national strategies for addressing tax crime.

<sup>41</sup> C. Melillo, "Regime di adempimento collaborativo" e monitoraggio del rischio fiscale: incentivi, semplificazioni e oneri, in *Dir. prat. trib.*, 2015, 6, 963 ff.; G. Melis, *Tax compliance e reati tributari*, in *Rass. trib.*, 2017, 3, 751 ff.; Id., *La cooperative compliance: una visione di sistema*, in *Dir. prat. trib.*, 2023, 2, 351 ff.; G.L. Gatta, *I profili di responsabilità penale nell'esercizio della corporate tax governance*, in *Dir. pen. cont.*, 2018, 1 ff.; E. Macario, *Il 'Tax*

This regulation provides that entities with given turnover or revenue<sup>42</sup> may be admitted to the cooperative compliance system that allows the organisation to assess, together with the public tax authority (*Agenzia delle Entrate*), prior to the submission of tax declarations “[...] the situations likely to generate tax risks [...] through forms of constant and preventive dialogue on factual elements, including the possibility of the anticipation of control”<sup>43</sup>.

The core aspect and great advantage of this system lie in the possibility granted to the corporation to have a ‘confrontation’ with the enforcement authority *before* submitting the tax declaration and, therefore, before the public control activities that might lead to the imposition of sanctions against the legal person. Joining such a regime, entities can make use of a “[...] shortened procedure of prior enquiry regarding the application of tax provisions to concrete cases, in relation to which the taxpayer perceives tax risks”<sup>44</sup>, thus requesting a prior opinion to the tax authority.

The legislator also defines the essential requirements of the Tax Control Framework, describing it as “[...] an effective integrated system for the detection, measurement, management and control of tax risk, set in the context of the integrated system of corporate governance and internal control”

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Control Framework’ fattore chiave del nuovo paradigma dei rapporti Fisco-contribuente, in *Corr. trib.*, 2023, 3, 445 ff.; G. Marino, R. Moro, *Proposte normative per valorizzare gli istituti della “cooperative compliance”, del “tax control framework”, del ravvedimento operoso e per l’istituzione di un “bollino verde”*, in *Dir. prat. trib.*, 2023, 3, 961 ff.

<sup>42</sup> Previously, this regime was basically reserved to larger resident and non-resident entities having a permanent establishment in Italy with a total turnover or operating revenues of no less than 1 billion euros (but the threshold had been already lowered in 2022). The recent tax reform brought by Legislative Decree No. 221/2023 has further expanded the cases of access to this regime, with a gradual progression in the coming years (as the turnover or revenue threshold is set at 750 million euros from 2024, 500 million from 2026 and 100 million from 2028: see Art. 7, para. 1-*bis*, Legislative Decree No. 128/2015). This regime is available also in other cases, e.g. it can be accessed, regardless of such thresholds and if they meet all the other requirements established by the legislation, by taxpayers in the context of the procedure set by Art. 2, Legislative Decree No. 147/2015 (*interpello sui nuovi investimenti*); in addition, it is very interesting to note that, with the aim of strengthening this preventive dialogue between the taxpayers and the tax authority, also an *optional regime* for adopting such tax risk control system has been introduced, available for taxpayers who do not meet the requirements to join the cooperative compliance regime (see Art. 7-*bis*, Legislative Decree No. 128/2015).

<sup>43</sup> See Art. 6, para. 1, Legislative Decree No. 128/2015.

<sup>44</sup> Art. 6, para. 2, Legislative Decree No. 128/2015.

which must ensure “[...] a) a clear allocation of roles and responsibilities to the different sectors of the organisation [...] in relation to tax risks; b) effective procedures for the detection, measurement, management and control of tax risks, compliance with which must be ensured at all levels of the company; c) effective procedures to remedy any failures found in its functioning and to activate necessary corrective actions; c-bis) a mapping of tax risks related to business processes”<sup>45</sup>.

Hence, this regulation brings positive effects that can be summarised as follows: it gives corporations important instructions on how to build rules for the prevention of tax law violations, which become useful also in terms of preventing tax crimes; in the logic of an effective public-private partnership, it provides for a preventive intervention by the public enforcement authority (rather than, as is normally the case, only afterwards and with the possible imposition of sanctions) in supporting the corporation to manage the tax risk and in assessing whether the measures adopted are appropriate<sup>46</sup>; and following the latest tax reform brought by Legislative Decree No. 221/2023, for subjects joining the cooperative compliance regime, the benefits – in terms of exclusion or reduction of penalties – have been extended.

In fact, it is provided that no administrative sanctions are applicable to such taxpayers who – prior to the submission of tax declarations or before the expiry of the relevant tax deadlines – communicate to the public tax authority “in a timely and exhaustive manner [...] the tax risks”, given that the conduct is exactly corresponding to that represented with the communication, and with the exclusion of cases of tax violations characterised by simulation or fraud<sup>47</sup>.

Furthermore, administrative penalties are reduced by half, and in any case they cannot be applied in excess to the minimum, when the corporation

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<sup>45</sup> See Art. 4, para. 1, Legislative Decree No. 128/2015, as amended by Legislative Decree No. 221/2023. Moreover, according to this latest reform, the system of detection, measurement, management and control of tax risk should be compliant with the guidelines adopted by the tax authority (*Agenzia delle Entrate*) and it should be certified by independent professionals registered as lawyers or qualified accountants.

<sup>46</sup> M. Bellacosa, *L'inserimento dei reati tributari nel “sistema 231”: dal rischio di bis in idem alla implementazione del modello organizzativo*, in *Sist. pen.*, 2020, 7, 143 f.

<sup>47</sup> Art. 6, para. 3, Legislative Decree No. 128/2015.



adopts a conduct referred to a non-significant tax risk included in the risk map; also, the timely communication of tax risks connected to conduct carried out prior to joining the cooperative compliance regime – but before having formal knowledge of any administrative assessment activity or criminal investigations on the risks communicated – may result in the same reduction in penalties<sup>48</sup>. Under specific conditions, a cause of non-punishability is also foreseen in relation to the crime of unfaithful declaration (Art. 4, Legislative Decree No. 74/2000)<sup>49</sup>.

Having said that, it should be noted that several differences emerge between the adoption of the Tax Control Framework (Legislative Decree No. 128/2015) and that of the compliance programme (Legislative Decree No. 231/2001). Indeed, the former is aimed at companies with specific 'size' requirements, whereas 'Decree 231' does not distinguish between large and medium-sized or small companies; also, the Tax Control Framework is concerned with preventing any violation of tax law – not only those that also constitute proper tax crimes – and it does not require the entity to establish a monitoring body (such as the supervisory body referred to in Art. 6, Legislative Decree No. 231/2001)<sup>50</sup>.

Nevertheless, even if the prevention of corporate tax crimes is not the main objective of the Tax Control Framework, it can still be very useful in this respect, given that adequate procedures to ensure compliance with tax legislation and to manage the risk arising from aggressive tax planning can also help tackling such forms of crime<sup>51</sup>. Also, it is good to mention again the

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<sup>48</sup> Art. 6, paras. 3-*bis* and 3-*ter*, Legislative Decree No. 128/2015.

<sup>49</sup> Art. 6, para. 4, Legislative Decree No. 128/2015.

<sup>50</sup> See A. Gullo, *Exploring the Interconnections Between Tax Crime and Corruption* (*supra* note 1), 32; M. Bellacosa, *I reati tributari e i reati di contrabbando* (*supra* note 20), 629; P. Ielo, *Responsabilità degli enti e reati tributari* (*supra* note 20), 16; P.M. Sabella, *Tax cooperative compliance, reati tributari e responsabilità dell'ente. Prove di cooperazione fra pubblico e privato nella gestione del rischio fiscale*, in A. Gullo, V. Militello, T. Rafaraci (eds.), *I nuovi volti del sistema penale fra cooperazione pubblico privato e meccanismi di integrazione fra hard law e soft law*, Milano, 2021, 153 ff.

<sup>51</sup> In view of the integrated approach in relation to control systems for tax compliance purposes, see Confindustria, *Linee Guida per la costruzione dei modelli di organizzazione, Parte generale* (*supra* note 32), 43 ff.

possibility of a preventive intervention of the tax authority in assessing the general effectiveness of the tax planning and control system implemented by the corporation. This preventive assessment by the tax authority remains separate from that – eventual and linked to the commission of a predicate crime – which is made by the criminal judge with respect to the compliance programme.

However, a possible intersection emerges. It is undeniable that the positive assessment given by the tax authority strengthens the effectiveness of the compliance system adopted by the corporation. Then, it is difficult to imagine that, if a tax crime is committed (according to the requirements set by the Legislative Decree No. 231/2001), the criminal judge called to evaluate the organisational fault of the concerned corporation will disregard the existence of a preventive assessment by the tax authority.

Indeed, the lack of formal coordination mechanisms between the two frameworks (since, as explained, the related requirements are different) could be seen as a critical issue<sup>52</sup>; and in general the relationship between Tax Control Framework and compliance programmes has been very debated, since tax crimes were included in the catalogue of ‘231’ predicate crimes. This is expressed, to some extent, also in the Memorandum No. 216816 of 2020 by the Italian financial police (*Guardia di Finanza*), providing that police officers must take into account the tax authority’ assessment concerning the Tax Control Framework of a given corporation during criminal investigations concerning that entity<sup>53</sup>.

**4. Conclusion. A Possible Way Towards an Integrated-Approach Against ‘Fiscal Corruption’ in the Corporate Context.** The previous sections of this paper have discussed the importance of compliance

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<sup>52</sup> See P. Severino, *Fiscalità e competitività ai tempi del PNRR*, in *Rass. trib.*, 2022, 2, 470; G. Marino, R. Moro, *Proposte normative per valorizzare gli istituti della “cooperative compliance”* (*supra* note 41), 968 f.

<sup>53</sup> A. Gullo, *Exploring the Interconnections Between Tax Crime and Corruption* (*supra* note 1), 32; P.M. Sabella, *Tax cooperative compliance, reati tributari e responsabilità dell’ente* (*supra* note 50), 156.

programmes in the Italian system of corporate criminal liability, as well as the types of preventive policies that entities can adopt to prevent corruption and tax crimes. It is now possible to examine how corporations can implement more integrated systems for preventing the two phenomena in question, thus coordinating measures to combat ‘fiscal corruption’.

In fact, the studies carried out show that many of the protocols and procedures structured for the prevention of corruption on the one hand and the prevention of tax offences on the other are often similar and overlapping in terms of objectives, methodologies and the content of operational rules<sup>54</sup>.

Therefore, organisations should adopt a more comprehensive and organic approach to criminal compliance in these sectors, given that corruption and tax crimes can be closely interconnected criminal behaviours: it has been said that these ‘entanglements’ can arise, for example, in relation to the risk of bribing public officials of the tax administration, but also in cases where the commission of tax crimes may be the first step of a criminal plan leading to the conclusion of a corrupt agreement<sup>55</sup>.

Given this premise, the next step is to try to identify the main areas of integration of corporate policies and measures that can effectively contribute to the prevention objective.

A first area may concern the corporate decision-making process. In fact, companies are required to build compliance programmes that clearly define the roles associated with the different activities and internal procedures, with an appropriate horizontal and vertical distribution of powers and responsibilities in assessing compliance with tax legislation and in dealing with the public tax administration. This will ensure cross-checking between the persons in charge of these functions within the corporate departments, in order to prevent possible conflicts of interest and misconduct, that may be a

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<sup>54</sup> See Deloitte, *Reati tributari e modello 231 – Gestione del rischio fiscale in azienda*, available at [www2.deloitte.com/content/dam/Deloitte/it/Documents/tax/Reati%20Tributari\\_Mod231\\_NET\\_sett\\_Deloitte.pdf](http://www2.deloitte.com/content/dam/Deloitte/it/Documents/tax/Reati%20Tributari_Mod231_NET_sett_Deloitte.pdf), 2020.

<sup>55</sup> See A. Gullo, *Exploring the Interconnections Between Tax Crime and Corruption* (*supra* note 1), para. 1.

pre-condition for corruption. In designing such procedures, the regulatory requirements for the implementation of the Tax Control Framework will certainly be a point of reference, to be complemented, where necessary, by best practices related to the management of corporate anti-corruption procedures (e.g., with respect to the provision of a monitoring supervisory body pursuant to 'Decree 231').

In the enactment of such preventive rules, as mentioned<sup>56</sup>, new technologies have enormous potential, allowing business processes to be significantly speeded up, made safer and overall improved. Blockchain is an example, as it can make corporate decision-making transparent and constantly tracked, while also guaranteeing the authenticity of recorded data (which cannot be modified). Among other applications, scholars have highlighted the possibility of setting up a blockchain with centralised governance of network access attributed to management, where the various 'nodes' of the chain are also made up of the entity's control bodies, and where, through smart contracts, the automated implementation of crime prevention policies can be envisaged when the conditions are met<sup>57</sup>.

A second integration strategy could address the management of the financial flows of the company. As seen, this type of rules is essential to prevent both tax crimes and corruption: thus, the provision of integrated management of all corporate financial flows could be very useful, also to avoid a duplication of requirements and over-complication of compliance programme procedures. In this way, it is possible to ensure that – according to a 'by design' rationale – any act of disposal of company assets is carried out in accordance with the established protocols of crime-prevention.

A third possible mode of integration may refer to the setting up of books and records and IT archives for all relevant data (relating to corporate decision-making processes, management of financial flows, etc.). In

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<sup>56</sup> See *supra* para. 3.

<sup>57</sup> A. Gullo, *I modelli organizzativi* (*supra* note 27), 287; G. Soana, *Corporate compliance integrata e blockchain*, in L. Lupária Donati, G. Vaciago (eds.), *Compliance 231. Modelli organizzativi e OdV tra prassi applicative ed esperienze di settore*, Milano, 2022, 321 ff.

particular, the use of big data analytics software could make it possible to identify anomalous behaviours in real time, so that the necessary corrective action can be taken and the compliance system improved, including through the advanced learning capabilities of these systems.

This is of course a non-exhaustive list, but the above suggestions already make it clear that today it is not only possible (also thanks to ‘new tech’ tools too), but also desirable for companies to build an integrated compliance<sup>58</sup>, aiming at common procedures that guarantee efficiency and streamlining, and that do not lead to overlapping of roles (or lack of safeguards), duplication of controls and corrective actions<sup>59</sup>. This serves the dual purpose of complying with the various regulations that require entities to operate in accordance with a risk assessment and risk management-oriented approach (minimising the risk of suffering legal and reputational sanctions), and tackling complex phenomena such as ‘fiscal corruption’ in a more systematic and effective manner.

With a view to reform, one proposal is to consider whether the positive experience of public-private cooperation – which is taking place in Italy in the tax sector, in relation to the Tax Control Framework pursuant to Legislative Decree No. 128/2015 – can also be extended to the anti-corruption field, e.g. with regard to the possibility of a preventive ‘dialogue’ with the enforcement authority on the adequacy of the compliance programme adopted by the company; and, from a complementary perspective, the legislator should engage in providing more detailed guidance to companies on the preventive rules to be included in their compliance programmes<sup>60</sup>.

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<sup>58</sup> On future scenarios of integrated compliance see A. Gullo, *I modelli organizzativi* (*supra* note 27), 284 ff.; Id., Compliance, in *Arch. pen. web*, 2023, 3, 6 ff. It is worth mentioning also recent books dedicated to this topic: see L.G. Insinga, F. Rossi, M. Petrovic, *La compliance integrata per l'attuazione del Modello 231*, Padova, Primiceri Editore, 2022; S. Bartolomucci, *Compliance integrata, sistemi di controllo e sostenibilità*, Milano, 2023.

<sup>59</sup> See Confindustria, *Linee Guida per la costruzione dei modelli di organizzazione, Parte generale* (*supra* note 32), 42 ff.

<sup>60</sup> For a discussion of the state-of-the-art on this subject and a proposal to clarify regulatory standards for compliance programmes under ‘Decree 231’ through a multistakeholder procedure and the provision of a relative presumption of suitability, R. Sabia, *Responsabilità da reato degli enti e paradigmi di validazione dei modelli organizzativi* (*supra* note 5), 151 ff. and 313 ff.