



**DISG**

DIPARTIMENTO  
DI SCIENZE  
GIURIDICHE  
UNIVERSITÀ DEGLI  
STUDI DI UDINE

# FIGHTING FRAUD THROUGH COMPLIANCE

AFRADE PROJECT (AGRICULTURAL FRAUDS DETECTION)

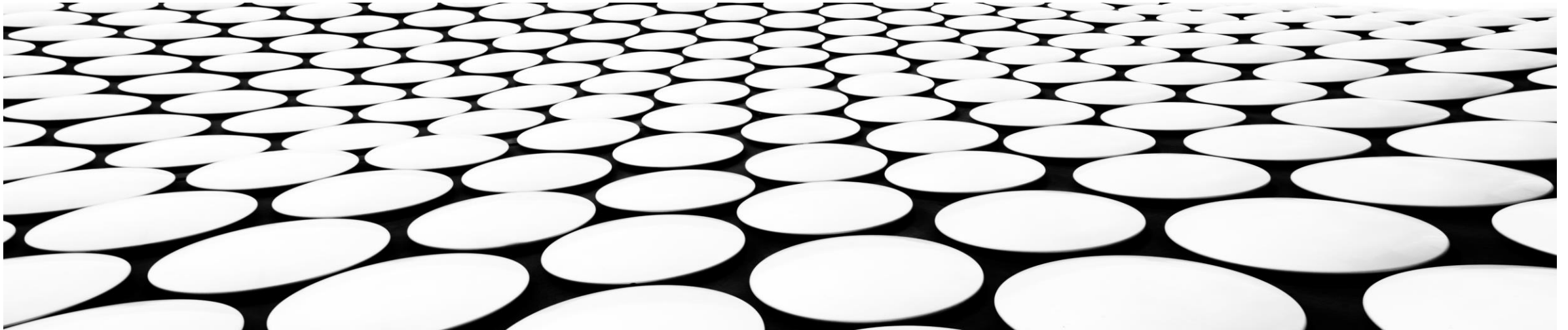
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II VIRTUAL SEMINAR

*European agricultural subsidy fraud patterns and  
complex schemes of cross-border agricultural frauds*

UNIVERSITY OF PISA - APRIL 22<sup>ND</sup> 2024



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## **NATURAL RISK AND MAN-MADE RISK: SUBSIDIES AND FRAUD**

**Natural risk** (weather conditions, catastrophic events, pests, crop diseases)

**Artificial risk** (commodity prices, public policies, wars)



potential  
impairment losses –

**SUBSIDIES**

criminological  
environment for

**FRAUD**

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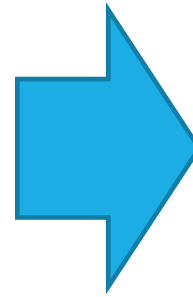
# **CRIMINAL LAW AND CORPORATE LIABILITY**

**Art. 316-bis c.p.**

**Art. 316-ter c.p.**

**Art. 640-bis c.p.**

**Art. 2 Law no. 898/1986**



**Corporate liability**  
(art. 24 leg. decree  
n. 231/2001)

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# FRAUD PREVENTION IN AGRIFOOD COMPLIANCE

1. Environment
2. Biotechnology
3. Supply chains
4. Sustainability
5. Public economy
6. Competition
7. Trademarks and made in Italy
8. Consumer health



**Fraud**

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# AGRIFOOD COMPLIANCE

- Compliance = setting up operational procedures and control flows to “channel” the behaviour of the individuals into virtuous paths.
- It’s an advanced garrison for the prevention of all frauds, including those that may arise in the agricultural sector.
- Excellent ground to develop shared strategies, including cross-border branding (any differences in discipline in corporate liability tend to fade).

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# AGRIFOOD COMPLIANCE

- Risk analysis itself – and the resulting risk management choices – is entrusted to assessments that are far from being scientifically based, and indeed are inevitably linked to contingent sensitivities
- Risk containment measures are inspired by a preventive matrix of effectiveness that cannot be fully defined *ex ante*
- Lacking of nomological structure; role of experience

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# THE NOTION OF “FRAUD”

## PIF Directive (Art. 3)

- (i) use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
- (ii) non-disclosure of information in violation of a specific obligation, with the same effect;
- (iii) misapplication of such funds or assets for purposes other than those for which they were originally granted

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# THE NOTION OF “FRAUD”

- “Unitary” concept of fraud - with rather broad boundaries - far from the typification of incriminating norms.
- Nevertheless somewhat consistent with the typological approach to crime risk that characterizes corporate liability (homogeneous dimension of offense).
- The primacy of precision of prohibition leaves the field to the preparation of measures of detection and containment that are as capable as possible of offering adequate performance in relation to a criminal phenomenology that it useless to subdivide.



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# RISK GOVERNANCE & RISK ASSESSMENT

## **Fraud risk governance** (anti-fraud program)

- (i) clearly define organizational roles and responsibilities, inspired by the segregation of functions;
- (ii) spread risk awareness;
- (iii) identify possible sources of internal conflict.

# RISK GOVERNANCE & RISK ASSESSMENT

## Fraud risk assessment

- (i) **“STATIC” RISK ASSESSMENT:** internal investigations, interviews, operational practices. Not always able to capture all the nuances of risk.
- (ii) **“DINAMIC” RISK ASSESSMENT:** adequate and functional reporting and whistleblower protection procedures is equally decisive. Proper management of internal reports that arrive through the implementation of whistleblowing channels, whose mandatory nature – albeit only for certain entities – constitutes an unprecedented push towards corporate prevention (directive 2019/1937 and d.lgs. n. 24/2023).

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# RISKY PROCESSES

- Negotiation, conclusion and execution of contracts/conventions with public entities through negotiated procedures (direct award or private treaty; open or restricted);
- Participation in calls for funding;
- Management of software from public entities (or provided by third parties) and telematic connections (incoming and outgoing) or transmission of data on computer media to public entities;
- Use of the funds obtained.

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## **RISKY PROCESSES: CASES**

- Inclusion of false information (or omission of information due) in the application for funding
- Misappropriation of funds: *(i)* used for different reasons or *(ii)* appropriated by individuals

**LIMIT OF COMPLIANCE** = purely illegal dimension of society. No preventive activity is conceivable, due to logical incompatibility (Cass. pen., Sez. I, n. 49086/2012)

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# RISK MANAGEMENT

## 1.- FIXED CONTROL STANDARDS

- a) segregation of activities between those who execute, those who control, those who authorize;
- b) presence of internal provisions regulating the activity;
- c) formalized rules for signature and authorization powers;
- d) traceability of operations.

# RISK MANAGEMENT

## 2.- CONTROL STANDARDS RELATED TO FINANCIAL MANAGEMENT

- i. management of financial resources in the strict sense;
- ii. conferment of appointments and consultancies;
- iii. granting of utilities;
- iv. hiring of personnel.



- A) NO AUTONOMY**
- B) FORMAL AUTHORIZATION**
- C) SHARED PROCEDURE**
- D) REPORTS**
- E) DOCUMENTATION AND TRACEABILITY**
- F) LIST OF SUPPLIERS**

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# RISK MANAGEMENT

## 3.- SPECIFIC CONTROL STANDARDS

Additional controls of a specific nature (for example, related to computer systems):

- a) authentication to systems
- b) authorization system for executable operations on data
- c) checklists of authorized personnel
- d) compartmentalization of the computer system
- e) user obligation procedures
- f) use of back-up
- g) use of blockchain

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# CORRECTIVE MEASURES

- Importance of authoritative and professional auditors
- Role of the Supervisory Board (ODV)
- Data mining



**CORRECTIVE MEASURES**



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# TECHNOLOGY SUPPORTING AGRIFOOD COMPLIANCE

- Blockchain guarantees traceability and non-modifiability of procedures.
- “Guaranteed” information technologies: the operator can’t move freely, he/she is forced to follow a “path” – a “virtuous path” – imagined by the compiler of the management model.
- The use of blockchain technology and artificial intelligence, especially linked to big data, open up new scenarios capable of tightening corporate controls by enabling the detection of alarm signals of various kinds.

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# TECHNOLOGY SUPPORTING AGRIFOOD COMPLIANCE

- Legal protection by design applied to the entity's IT platforms and dependent on the use of preventive tools to counter the circumvention of operational protocols
- Use of operational protocols that, benefiting from IT input, can influence the behaviour of subjects by determining predefined outcomes is a prospect of interest in corporate liability
- IT environment with blurring the distinction between legal rules and technical system rules.

**THANK YOU FOR YOUR ATTENTION!**



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e della Ricerca



PON  
RICERCA  
E INNOVAZIONE  
2014 - 2020



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DEGLI STUDI  
DI UDINE  
hic sunt futura

Dissemination activities of the results of the research project "*Organization and management models under Legislative Decree No. 231 and prevention of the risk of the commission of agribusiness crimes*", co-financed by the European Union - ESF REACT-EU and PON Research and Innovation 2014-2020 (Action IV.6 - Green, 34-G-14628-1)