

RESPONSABILITÀ DELL'ENTE E COMPLIANCE AZIENDALI: UN'INDAGINE STATISTICA

Introduzione

di Mauro Catenacci

Il lavoro allegato a questa è la 'porzione' italiana di una ricerca dal titolo *Compliance Programs for the prevention of economic crimes*, promossa nel periodo 2008-2011 dalla *Waseda University* di Tokyo nel quadro di un più articolato programma di studi sulla prevenzione della criminalità economica condotti in Giappone lungo tutto il primo decennio del 2000 (per una descrizione completa cfr. TAGUCHI, *Vorbeugung und Sanktion von Unternehmenskriminalität in Japan und Waseda Projekt*, in MANNINO (a cura di), *Miscellanea sul fenomeno giuridico*, Napoli 2012, 37 ss.).

Si tratta, in particolare, di un *country report*, redatto da un gruppo di penalisti e di tecnici del(l'allora) Dipartimento di Diritto dell'Economia dell'Università di Roma Tre su 'commissione' della stessa *Waseda University* ed il cui contenuto si articola in due parti fondamentali: nella prima viene riferito al 'committente' della novità che, per l'ordinamento giuridico italiano e per la *compliance* delle nostre imprese, ha rappresentato l'entrata in vigore del Dlg. 231/2001 sulla responsabilità amministrativa da reato degli enti collettivi; nella seconda parte, vengono invece riportati i dati di un'indagine empirica che, in linea con i *desiderata* di quello stesso 'committente', analizza modi ed intensità delle politiche di gestione dei rischi da reato adottate da alcune grosse aziende italiane (per la precisione, 30, riconducibili ad alcuni grandi gruppi industriali e/o bancari) nel lasso di tempo che va dal 2001 al 2011 (dunque in sostanziale coincidenza proprio con i primi 10 anni di applicazione del Dlg. 231/01).

Presa nella sua globalità, la ricerca *Compliance Programs for the prevention of economic crimes* si segnala senza dubbio per ampiezza di riferimenti e, direi, soprattutto per varietà di sistemi presi in considerazione. Partita nel 2008, essa era stata in gran parte finanziata dallo stesso Governo giapponese, all'epoca preoccupato da una serie di eclatanti casi di corruzione politico-imprenditoriale e dunque seriamente deciso ad una riforma degli obblighi di *compliance* imposti alle aziende, che tenesse conto (in linea con una cultura, quella nipponica, direi *naturaliter* predisposta ad imparare ed importare quanto di buono esiste al mondo) dei sistemi di prevenzione del crimine economico fin qui adottati in sistemi giuridici particolarmente rappresentativi.

Il progetto (cui hanno contribuito, oltre all'Italia, anche Germania, Inghilterra, Cina, Australia, USA e Canada) era riuscito a produrre, sotto forma di rapporti nazionali, una consistente quantità di materiali di studio ed avrebbe dovuto concludersi, nel settembre 2011, con la pubblicazione dei dati raccolti attraverso i

diversi *reports* ed una Conferenza internazionale di sintesi, da tenersi proprio a Tokyo; le tragiche vicende legate al sisma che nel marzo 2011 ha colpito il Giappone hanno poi però, purtroppo, costretto la *Waseda University* a sospendere Conferenza e pubblicazione, così che, allo stato, la testimonianza di cotanto sforzo è rappresentata solo da due dispense editate dalla stessa Università (*Materials for the comparative study on compliance programs of corporations and their legal effects*, vol I and II), che si sappia mai diffuse attraverso editori internazionali ed in cui sono raccolte le relazioni inviate dai diversi Paesi partecipanti all'iniziativa (un progetto di pubblicazione in tal senso è comunque *in itinere* a cura di M. CATENACCI-N. SELVAGGI).

Sul destino di questo enorme sforzo nulla è dato al momento di sapere. Rimane tuttavia il rammarico per questa 'incompiuta', che avrebbe potuto (e potrebbe ancora) costituire una interessante base di studio per chiunque abbia interesse a coltivare le tematiche che ruotano intorno alla c.d. 'auto-responsabilizzazione' delle imprese nella lotta al crimine economico.

Intanto, nell'attesa di possibili quanto, al momento, imprevedibili sviluppi sul fronte editoriale, il gruppo italiano (dietro autorizzazione, beninteso, degli stessi organizzatori della ricerca) ha pensato di rendere pubblico il proprio contributo al progetto; dapprima attraverso la sua presentazione in occasione del Congresso "*La responsabilità dell'ente da reato nella prospettiva del diritto penale globalizzato*", a cura di A. FIORELLA, tenutosi a Roma il 4 aprile 2013, poi attraverso la sua pubblicazione su questa Rivista. Si tratta, come si diceva, di un contributo che si sforza anzitutto di spiegare agli interlocutori internazionali la centralità acquisita dal 'sistema 231' e dai Modelli Organizzativi nell'ambito delle politiche aziendali di prevenzione delle responsabilità da reato, per poi passare a verificare, attraverso la tecnica delle interviste, come alcune, grandi aziende italiane, almeno nei primi anni di applicazione del Dlg. 231/01, hanno organizzato la convivenza fra gli obblighi da quello stesso Decreto introdotti e gli strumenti di *risk management* (codici etici, regolamenti di disciplina, presidi di controllo interno etc.) preesistenti o comunque concorrenti.

Vero è che, agli occhi del lettore italiano, il lavoro potrebbe presentare qualche limite: quello temporale, anzitutto, che fa apparire come superati alcuni dei riferimenti normativi citati nel *report* (si pensi qui a tutti i cambiamenti che dal 2011 ad oggi il Dlg. 231/01 ha subito nella lista dei reati-presupposto) e forse un po' meno stringente l'attualità delle risposte fornite dalle imprese (le quali, intanto, hanno sicuramente avuto modo di meglio organizzare le forme di convivenza fra Modelli Organizzativi ed altri strumenti di *compliance*); o ancora la circostanza che, nella parte introduttiva (in assoluta coerenza, peraltro, coi caratteri propri di un *country report*), il contenuto si incentra sulla pedissequa, ennesima descrizione di ciò che da noi è oramai da considerarsi acquisito, vale a dire dei contenuti essenziali del Dlg. 231/01 e della funzione dei Modelli Organizzativi.

E' anche vero tuttavia che a questi possibili limiti si sovrappone un elemento di indiscutibile originalità, che ne rende particolarmente interessante l'analisi e che è rappresentato proprio dall'ampiezza dell'oggetto dell'indagine, riferita, come si è detto, non *alla sola* (per quanto importante) applicazione del Dlg. 231/01, ma più in generale *all'intera* politica di gestione del rischio da reato.

Il tema è noto a chiunque sia consapevole delle prassi relative alla adozione ed implementazione dei Modelli Organizzativi. Questi ultimi si trovano infatti il più delle volte a dover convivere ed interagire con una rete di misure di *risk management* altrimenti originatesi, con cui non di rado (si pensi ad es. agli obblighi organizzativo-cautelari imposti dalla normativa antiriciclaggio o da quella anti-infortunistica) condividono la specifica finalità preventiva, e che proprio per questo finiscono col porre delicati e non semplici problemi di coordinamento, anche ai fini di un'eventuale valutazione di responsabilità in caso di commissione del reato. Da qui la necessità di una parametrizzazione dei profili di responsabilità dell'ente che tenga conto anche di questi profili: qual è insomma il contesto di *compliance* aziendale nel quale i Modelli Organizzativi vengono di solito calati, e che peso può darsi a quel contesto ai fini del giudizio di idoneità ed efficace attuazione dei Modelli stessi? Come organizzare l'interazione fra i vari strumenti di minimizzazione del rischi da reato (*internal audit*, presidi di controllo, ufficio legale etc.) con cui gli organismi di vigilanza sono tenuti a convivere? E infine: entro quali limiti, nel valutare la responsabilità da reato dell'ente, le carenze riscontrabili in un Modello Organizzativo strettamente inteso possono essere 'compensate' dall'esistenza di una filiera preventiva altrove allocata, o comunque da un sistema *nel suo complesso* valutabile come adeguato ed efficiente?

A questi interrogativi, la ricerca *Waseda* non può certo dare una risposta; essa però fornisce un primo, indispensabile strumento informativo sull'argomento, e dunque, almeno da questo punto di vista, la sua utilità è fuori discussione. Per questo motivo è sembrato oltremodo opportuno (prima che, in attesa di iniziative editoriali 'ufficiali', la 'risalenza' di alcuni suoi dati si trasformi in vera e propria 'obsolescenza') pubblicarne il contenuto, così da fornire -questo almeno è l'auspicio- un ulteriore contributo all'approfondimento critico della (oramai amplissima e, come si vede, ricca di implicazioni teorico-pratiche) tematica della responsabilità da reato degli enti collettivi.



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dealing with

*COMPLIANCE PROGRAMS
FOR THE PREVENTION OF ECONOMIC CRIMES*

Italian Report on Corporate Liability
(Legislative Decree no. 231/2001)

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COMPLIANCE PROGRAMS FOR THE PREVENTION OF ECONOMIC CRIMES

1. Aims of research

To properly explain the issue, it is first of all necessary to underline that the main purpose of the research herein is to analyze the incidence, content and effects of the provisions introduced by the Legislative Decree no. 231 of June 8, 2001 (hereinafter, the “Decree”) regulating the corporate liability.

In this view, such project will attempt to verify the company’s effective compliance with the obligations provided for by the Decree, as well as the relevant consequences under the corporate governance profile, if any.

By way of background, the research is aimed at acquiring facts or information through which it is perfectly suitable to single out and focus on the several effects of the criminal liability, in case the company’s top management or employees break the rules provided for by law, especially with regard to the business structure.

Hence, each corporate entity establishes in full independence its own organization and allocation of tasks, duties and liabilities on the basis of business oriented evaluations, linked with the everlasting need of satisfactory and cost-effective results without wasting time or resources.

Instead, as of the Decree companies - especially the largest ones - have been forced to change the corporate structure for installing compliance programs aiming at preventing crimes committed by people belonging to the company itself.

As a consequence, by means of an examination concerning the above-mentioned legal provisions, as well as the relevant incidence, it will be drawn a detailed report on the enforceability and efficiency of the new regulation,

taking into account the precise features of the Italian industry and the cost-effective evaluations within the current regulatory framework.

2. The new corporate liability provided for by the Decree

In Italy, by means of the Decree no. 231/2001 it was introduced a new kind of responsibility - the so-called “corporate liability” - of companies and, generally, of entities (whether public, only economic) and associations, whether or not provided with legal status.

Such regulation obliges companies to set up programs in order to avoid the wide range of measures taken by the Decree, in addition to the penalties established for the perpetrators of the crimes, and to be applied by the competent Judge.

Having the above in mind, it must be underlined that such reform represents, without doubt, one of the most significant reforms of law in the last years, through which Italy is attempting to make the transition to a more balanced approach to corporate-related issues.

In this connection, if the directors, managers, representatives or employees commit - in the interest or benefit of the company itself - one of the offences listed by the Decree, the law provides for a specific and corporate liability.

Of course, depending on the gravity of the crimes committed, the sanctions may be distinguished as outlined below:

- (i) pecuniary sanctions (in a range up to an amount of one million and five hundred thousand Euros);

- (ii) legally imposed ban (*e.g.* interdiction, suspension of the authorizations issued by the Italian Public Administration (hereinafter, the “P.A.”); prohibition of stipulating agreement with P.A.; exclusion (or revocation) from tax relief, financing, aids and, finally, prohibition of advertising goods and services);
- (iii) confiscation of crime’s price or proceed (*i.e.* profits gained by the company following the infringement);
- (iv) publication of sentence;
- (v) company’s compulsory administration.

Indeed, the Decree excludes the criminal liability provided that the company may give evidence to have done its best to prevent crimes, far from facilitating the offence committed.

In particular, the company will have to prove:

- i) the effective and real adoption of compliance programs (hereinafter, the “C.P.”) just before the offence, aimed at avoiding fraudulent behaviours of people acting on behalf of the company;
- ii) the setting up of a Vigilance Authority, provided with independent powers, and carrying out tasks of checking the adoption and effective compliance of the C.P. (hereinafter, the “V.A.”);
- iii) the fraudulent infringement of the C.P. by perpetrators of the crimes;
- iv) the exact fulfilment by the V.A. of the tasks charged with.

Having said that, even in the absence of an *ad-hoc* Vigilance Authority, the effective implementation of the C.P. represents the main obligation required

by the Decree in order to exclude or reduce the corporate liability in case of offences committed by individuals performing their activity for the company.

Likewise, companies have to observe such legal rules and, consequently, to install the C.P. for avoiding the measures provided for by the Decree in the case at hand.

Of course, the compliance programs have to result suitable for preventing offences of kind that occurred in practice (article 6 of Decree).

For this purposes, the law states that the C.P. must be contained by:

- indication of the so-called “business area of risk”;
- specific protocols for decision-making;
- setting up of an internal Vigilance Authority;
- information’s obligation of the Vigilance Authority;
- internal disciplinary system;
- system of financial resources management.

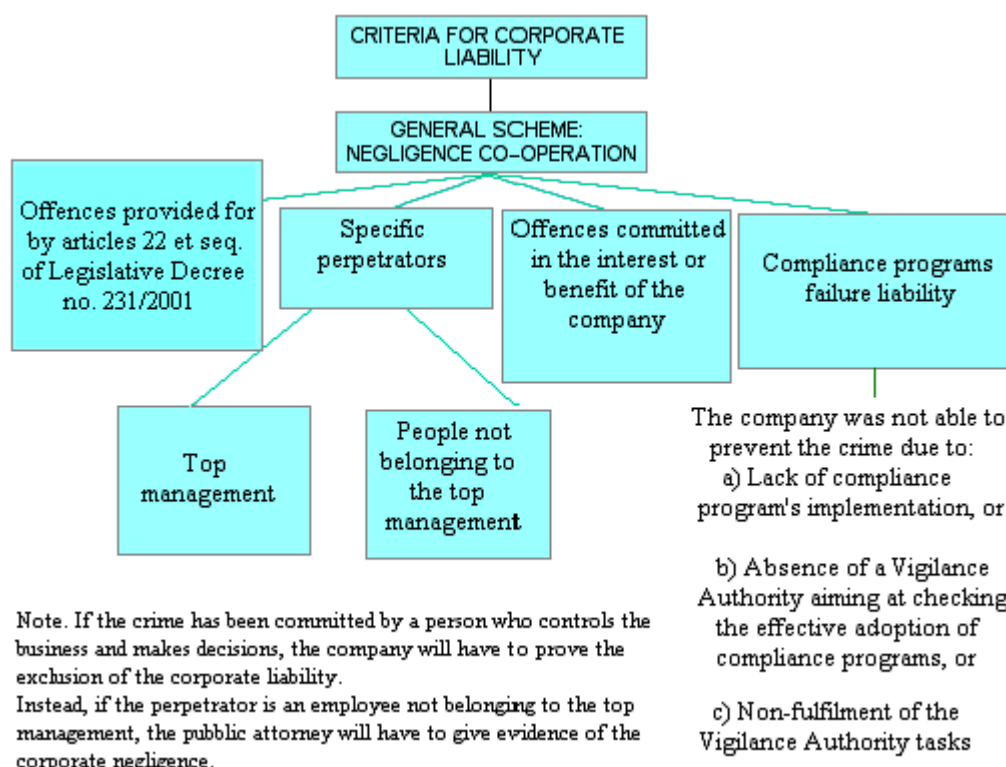
Accordingly, other and detailed requirements depend on the specific features of companies and, indeed, singled out on the basis of technical evaluations (by criminal and/or corporate lawyers called to install the C.P.).

In this framework, authors of the C.P. will have to compare the organization, features and the same history of the company involved with the prevention’s aims set by the Decree, in order to identify key points (*e.g.* mapping of risks, duties and composition of the V.A., decision-making procedures in different areas) able to ensure the highest level of suitability with reference to the case at issue.

Furthermore, the points to be taken into account for the assessment are described as follows:

- i) *the composition and powers of the V.A.:* the more V.A. manages to put together, in addition to a strong control, a balanced mix of general skills (e.g. one or more corporate lawyers or statistical experts) and specific skills (e.g. an auditor who officially examines the accounts of the company and, contextually, benefits from a position of relative autonomy), the more the C.P. will be considered suitable and effective;
- ii) *the range of sharing to the decisions of the company:* the more the number of the top management is close, the more the risk to facilitate the crime is high; the above-mentioned risk decreases in proportion to the largeness of the decision-making area: as a consequence, the C.P. will be considered more “suitable” if the same will attempt to implement a system of collective responsibilities.

For sake of completeness and for a more prompt understanding of the corporate scheme imposed by the Decree, we deem it useful to provide you with a brief chart on the Italian rules governing the matter, so as to have a more complete picture of the Italian legal background:



3. The relevant Case Law

For the time being, it must be noted that the decisions issued by the Italian Supreme Court regarding the corporate liability were no. 273 until 2009. Among these, no. 22 concerned the issue of the compliance programs' suitability.

In this respect, the Supreme Court confirmed that the company omitting to adopt and to apply a compliance program is not liable for the presupposed offence committed by its top management (article 5, par. 2) only if the perpetrator acted in the sole him/her or third party interest (Supreme Court's ruling no. 36083, dated July 9, 2009).

On the other hand, under a civil law profile, the Criminal Court declared the liability of company's president and managing director for the

damages triggered by the non-adoption of the C.P. (Milan Criminal Court's ruling, dated February 13, 2008).

Nevertheless, please be informed that the mere adoption of the C.P. (articles 6-7 of the Decree) is insufficient, since the Case Law clarified that a compliance program should be provided with appropriate instruments to recognize risk assessment in the business areas, in order to identify, *inter alia*, the "symptomatic" elements of the offences (*e.g.* presence of classified current accounts abroad; use of foreign intermediaries through which it is hard to find out the payments' "provenance"; the timetable of payments linked with the call for tenders announced by the company) (Milan Criminal Court's ruling, dated October 28, 2004).

As you may appreciate, according to the same Criminal Court, the C.P. have to meet the following requirements: a) a precise location of the business areas within it could be committed the offences; b) specific protocols aimed at planning creation and corporate decisions in relation with the offences to prevent; c) the management procedures of the financial resources in order to avoid the offences; d) the compliance with the obligation to inform the Vigilance Authority carrying out the duty to check the adoption and the observance of the C.P.; e) the implementation of an internal sanctions system calculated to punish the infringements.

To sum up, the compliance program has to be qualified for its concrete and specific effectiveness-dynamism on the basis of a realistic and economic approach to the "corporate" phenomenon.

In light of the above, the authors of the C.P. have necessarily to take into account the story of the company involved, as well as a clear examination of the risk factors (Milan Criminal Court's ruling, dated September 20, 2004).

With reference to benefits gained by the company (article 5, par. 1), in a case concerning market manipulation, the Criminal Court established the

corporate liability in the event company earned a benefit from stabilization of stocks' prices, taking advantage of the "bull trend", even if it had bought the stocks for a price higher than the market value (Milan Criminal Court's ruling, dated February 26, 2007).

In addition to this, the C.P. play another significant role within the framework of legal sanctions provided for by Decree, since Article 17 offers the chance to avoid the legally imposed ban, in case the company involved removed the structural deficiencies installing compliance programs which are suitable to prevent crimes.

However, the Supreme Court specified that the (i) entire compensation for the damages, (ii) removal of the offence's consequences, as well as (iii) offer of the profit gained by the crime, are sufficient to avoid the measures provided for by the Decree only in case the company rides out the organizational lacks by means of the C.P. implementation, calculated to prevent other similar offences (Supreme Court's ruling no. 40749, dated October 10, 2009; Supreme Court's ruling no. 32627, dated June 23, 2006; Milan Court's ruling, dated April 27, 2004).

Also, the Court clarified that the assessment of the C.P. suitability should be more strict in case the company adopted the compliance programs "*ex post*" the offence, so as to remove the operating lacks which encouraged the offences committed (Rome Court's ruling, dated April 14, 2003).

Generally speaking, the pecuniary sanctions is reduced in the event the company implemented the compliance program before the beginning of the public hearing (Pordenone Court's ruling, dated November 4, 2002).

By the end, it must be outlined that the Court stated that the Decree applies to companies operating in Italy even if the Country the company belongs to does not provide with a similar regulatory framework above-mentioned (Milan Court's ruling, dated April 27, 2004).

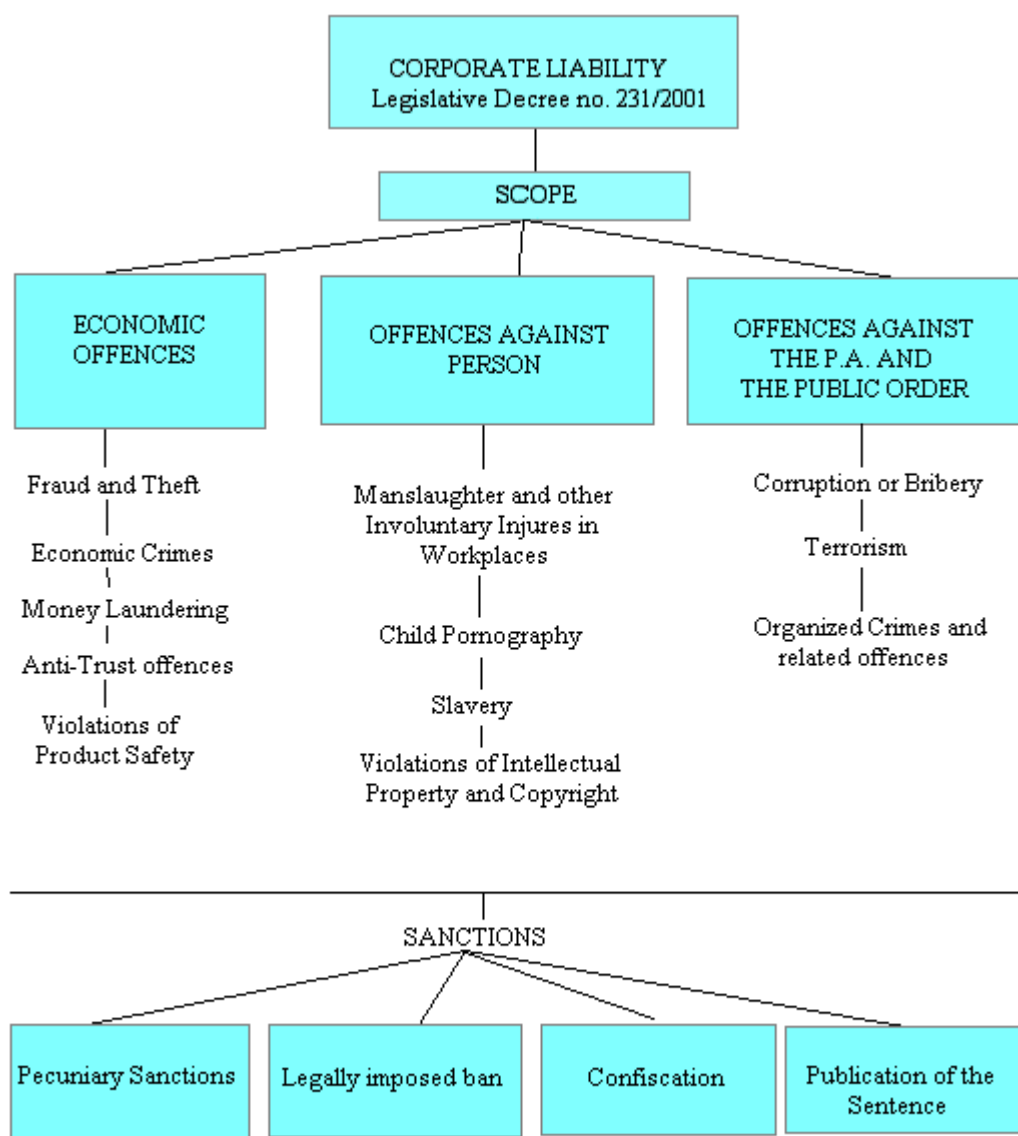
4. The economic offences

With reference to the critical issues, it must be noted that the Decree selects a list of the possible offences (committed by individuals as defined by article 5) which may involve the criminal liability for the company pursuant to the chart outlined.

In particular, the Decree takes into account the following crime's categories:

- i) economic offences: "Fraud and Theft" - "Economic Crimes" - "Money Laundering" - "Anti-Trust offences" - "Violations of Product Safety";
- ii) offences against person: "Manslaughter and other Involuntary Injures in Workplaces" - "Child pornography" - "Slavery" - "Violations of Intellectual Property and Copyright";
- iii) offences against the P.A. or Public Order: "Corruption" - "Terrorism" (e.g. Terrorism Financing) - "Organized Crimes and related offences".

For a more prompt understanding of the specific categories of offences listed by law, please note the chart as indicated below:



5. Organization of research: criteria and conditions

For the purposes of this analysis, the group met regularly in order to identify the procedure to be followed during the activity at issue and, in particular, occurred:

- several meetings and conference calls, directed by Prof. Catenacci, introducing the project and the relevant timetable;

- several meetings and conference calls, directed by Prof. Catenacci, working out the questionnaire;
- several meetings aiming at fixing the criteria of choice with reference to the interviewed companies;
- several meetings with legal representatives of the General Confederation of the Italian Industry, which is the main representative organization of the Italian Manufacturing and Services companies (hereinafter, "CONFINDUSTRIA") and the Italian Banking Association, representing and promoting the Financial and Banking Italian System's interests (hereinafter, "ABI"), having the purpose to describe the project and create a collaboration during all the research's period, especially in connection with the distribution of the questionnaire;
- several meetings and conference calls for reporting on the activity carried out and fixing a new timetable for processing the data collected following the questionnaire's distribution.

With regard to the compliance with the new provisions regulating corporate liability by companies involved in the research, we deemed the statistical method as the proper and useful model to be applied.

In this view, we used a specific questionnaire processed on the basis of the general scheme provided us by Waseda University of Tokyo and adapted to the Italian regulatory framework, to be sent to the companies selected in accordance to the criteria as indicated below.

The above-mentioned questionnaire is divided in four different parties by subject and composed by seventeen multiple-choice questions.

In this respect and for a clearer understanding of the questionnaire, we selected brief, precise and detailed questions only; in addition to this, in order to facilitate a correct processing of the data, most of the available answers are already prepared, being able the interviewed person to give his/her answer

putting “X” on the solution considered more consistent with the strategy adopted by the entity.

The prepared questionnaire appears as follow:

- the first part (Section A) containing questions concerning the features of the interviewed entity (in particular: legal form, main sector activity, number of employees, tasks and duties performing by people acting on behalf of the entity, international/domestic market; personnel staffed in Italy or abroad; turnover; interviewee’s experience in the relevant sector; authority for the report);
- the second part (Section B) relating the eventual structural measures (C.P.) installed by the entity, aiming at avoiding the infringements committed by individuals controlling the business and making decisions or by employees not belonging to the top management.
In this regard, the research focused on (i) the development of the Vigilance Authority (V.A.) implemented to control the proper establishment of the compliance programs; (ii) the information and training system of the personnel staffed concerning the measures adopted to prevent crimes; (iii) the formalities of denouncing the irregularities eventually met by the employees performing their duties; (iv) the general scheme of identifying crimes (*e.g.* internal audit, external audit, compliance officer) used by entity, as well as the internal measures in case of breach of law;
- the third part (Section C) asks for the interviewed person’s evaluations regarding the efficiency of:
 - i) different and general legal measures adopted by law to prevent corporate crimes (*e.g.* criminal sanctions, civil law damages);

- ii) measures concretely implemented by the company, if any (*e.g.* screening employees prior to hiring, informing them about legal regulations and sanctions, explaining them the ethical reasons behind the legal provisions). Especially, we focused on the real reasons bringing the interviewed entities to install the compliance programs (*e.g.* ethical considerations, company reputation, legal obligation with specific sanctions in the case of non-installment);
- the fourth part (Section D) concerning the availability of the person interviewed to issue further information by means of different methods (*e.g.* telephone interviews, personal interviews) or to receive details on the research's results he/she contributed to provide with.

5.1 Criteria to select the companies to be interviewed

For the purposes of this analysis and following several meetings with the legal representatives of CONFINDUSTRIA and ABI as already defined, we singled out some criteria for selecting the companies to be interviewed, which appear suitable and in compliance with the precise features of the rules provided for by the Decree.

In particular, based on the above-mentioned meetings and conference calls, as well as the available information on the Italian Productive and Banking system, we considered more proper to restrict our search to only companies or lending institutions of large or average size (*i.e.* companies, even multinational ones, performing their business in different market frameworks or within entities providing a financial service by means of an extremely complex organizational structure).

Indeed, with reference to the Italian Industry, it must be underlined that the latter may be distinguished from the other different productive systems since it makes use of small or medium sized business (hereinafter, “SMB”).

On the basis of the Recommendation no. 1442 of May 6, 2003, the European Commission updated the necessary rules and conditions to define a “SMB” company.

In particular, a business may be defined:

- “medium sized business” in case (i) the employer staffs with less than 250 employees, and (ii) the annual income does not exceed the amount equal to fifty million Euros or the assets do not exceed an amount equal to forty-three million Euros¹.
- “small sized business” in case (i) the employer staffs with less of 50 employees, and (ii) the annual income or the assets do not exceed an amount equal to ten million Euros¹.
- “mini-business” in case (i) the employer staffs with less than 10 employees, and (ii) the annual income or the assets do not exceed an amount of two million Euros¹.

For the reasons indicated below, the small and mini sized companies seem to be very reluctant to adopt the compliance programs pursuant to the Decree and, accordingly, the same arise not right or appropriate for our current purposes.

Under a “structural” point of view, in consideration of the small or “micro” size, the companies at issue do not consider the necessity of installing compliance programs (among other things, in order to avoid additional costs)

¹ Please be informed that it is sufficient to exceed one of the two requirements under point (i) e (ii) to access to the upper class.

since the employer works, almost every day, at close quarters with his/her employees, or since the employer is used to managing individually the relations with third people.

Likewise, regarding the economic profile, the implementation of the measures provided for by law implies an useless increase of the relevant costs appearing hardly endurable from companies with an income not exceeding a high threshold.

For all the reasons set up above, the large and average sized companies only are deemed suitable for an interview concerning the matter at issue: indeed, such kind of business shows an extremely strong focus on the corporate liability established by the new provisions, especially taking into account their natural confidence with the illegal risk due to the physiologically complex and protean structure of their organizational system.

In light of the aforesaid economic issues and in consideration of the short time of the research herein, we restricted the analysis scope to the Italian large sized companies only, provided with a complex structure (the so-called “holding companies”) performing their activity within the main economic sectors and representing, alone, more than 10% of the Gross Domestic Product.

Finally, the questionnaire has been distributed - with the precious assistance of CONFINDUSTRIA and ABI - to fifty entities set in business group, which represent the main recipients of the legal rules indicated in details.

However and to avoid uncertainty, we do not intend to involve more than one hundred companies so as to collect more accurate and precise information to be screened.

Of course, the research group is keeping in touch with the representatives of the companies involved, supervising the activity and providing the persons concerned with a technical and informative assistance.

PRELIMINARY CONSIDERATIONS

By way of background, it is first of all important to argue that, just before the adoption of Legislative Decree no. 231/2001 (hereinafter, the “Decree”) regulating the corporate liability, in Italy - as in other European countries - it was strongly perceived the necessity to identify and define a set of principles and uniform procedures in order to create a more proper and functional business decision-making.

In particular, among countries belonging to the Organization for Economic Cooperation and Development (hereinafter, the “OECD”), in the late 90’s the so-called “*Codes of Best Practice*” had already been experimented and developed by trade associations and economic operators.

The Codes contained a set of standard principles, as well as control-information and compliance procedures, aimed at disciplining the relevant behaviours within corporate structures.

From an international standpoint, it was particularly important the OECD’s drafting of the so-called “*Principles of Corporate Governance*” (1999), which might be defined as “*good governance*” criteria and rules, motivated by the need to guarantee the transparency and accountability in the business management.

Several European countries followed the abovementioned trend by means of the adoption of specific codes, such as the “*Recommendations of the Committee on Corporate Governance*” in France (1999), or the “*Combined Code*” relating the “*Principles of Good Governance and Code of Best Practice*”, in Great Britain (1998).

In Italy, the “*Quoted Companies Code of the Committee on Corporate Governance*” - issued in 1999 by the Italian Stock Exchange Ltd - was the first draft inspired by the ideal of a fair business management and protection of the interests claimed by shareholders/minority shareholders and creditors, as well as the use of certain rules and see-through/clear procedures.

The code was “optional” since its adoption was referred to the involved companies’ self determination: it promoted the international comparability of the Italian Corporate Governance rules, in compliance with minimum standards of behaviours, unanimously considered (as) essential to create value for the benefit of shareholders.

However, in the more specific implementation of measures aiming at preventing and discouraging crimes, the technique used in 2001 by Italian Lawmaker was inspired by the U.S. model of the so-called “Compliance Programs” (hereinafter, the “C.P.”).

As noted, by means of the *Federal Sentencing Guidelines* (hereinafter the “Guidelines”) designed for the corporate entities (1991) and prepared by U.S. Sentencing Commission (which represents an independent federal agency established on that purpose), in the United States emerged a new operational "anti-crime" approach based on the voluntary implementation and adoption by the companies of the C.P..

In particular, we are talking about some specific organization and crime prevention models to be adopted by the single company in order to benefit from a rewarding treatment, in case of criminal acts committed by her own employees.

The same Guidelines, following the principles of other codes of ethics voluntarily adopted by U.S. companies in the early 60’s, indicate the essential requirements for a suitable and effective prevention of guilty activities, in order to justify the penalty reduction to be applied in case of offences.

In the wake of the American model, Italy has opted for a system of crime prevention based on the voluntary cooperation of companies through schemes of a "self-regulation" (*i.e.* Compliance Programs).

We deem it proper to make further clarifications.

In the U.S. system, adoption and effective implementation of such organizational programs just allow company to benefit from a remission, whereas in Italy by means of Legislative Decree no. 231 of 2001 the compliance programs, when

suitable for crime prevention, produce the radical exclusion of entity's liability, despite the commission of a guilty offence.

Therefore, the research herein is aimed at analyzing the impact and the incidence of the provisions at issue, ten years elapsed from the Decree.

In this purpose, instruments and criteria are contained in the previous pages.

With reference to the methods for selecting the companies to be interviewed, we referred to the two main representative organizations of the Italian Manufacturing and Services Companies (CONFINDUSTRIA) and the Italian Financial and Banking Sector (ABI).

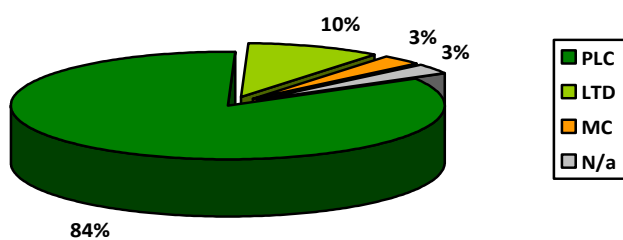
In particular, we used a specific questionnaire already processed by ABI and CONFINDUSTRIA which have always been controlling the effective implementation on the territory of the Decree.

SECTION A

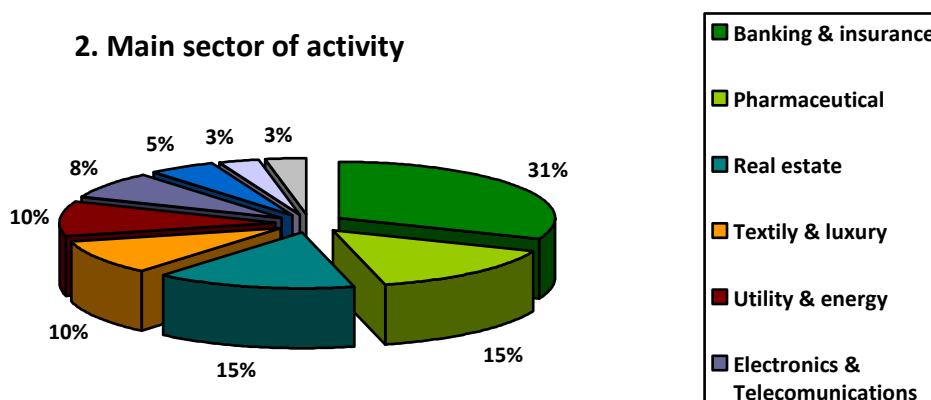
Description of interviewed
companies and interviewee

Q1. Description of the company

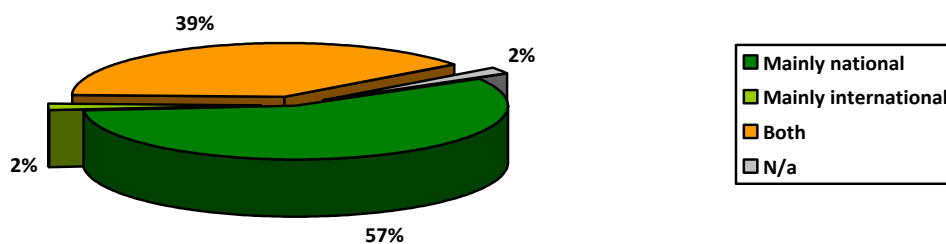
1. Legal form



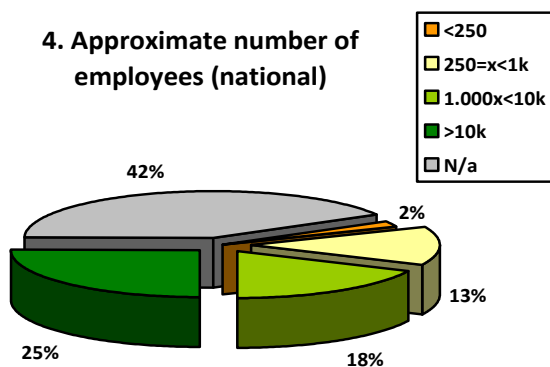
2. Main sector of activity



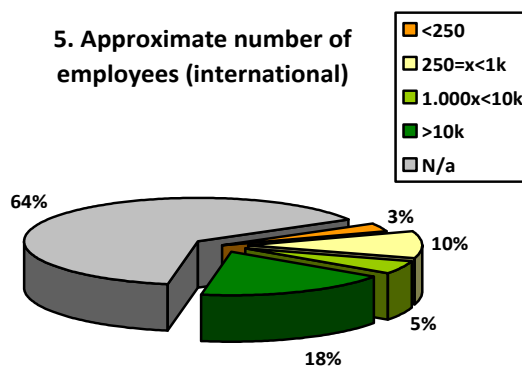
3. Market



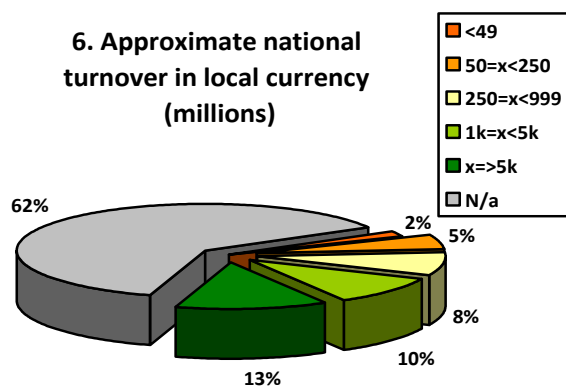
4. Approximate number of employees (national)



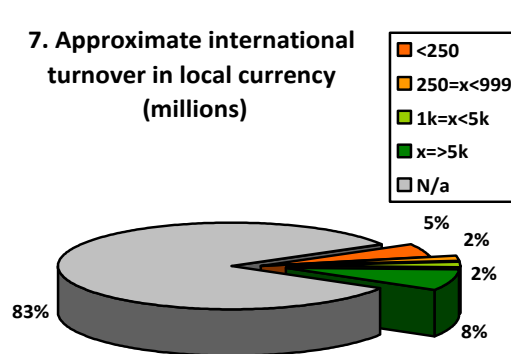
5. Approximate number of employees (international)



6. Approximate national turnover in local currency (millions)



7. Approximate international turnover in local currency (millions)

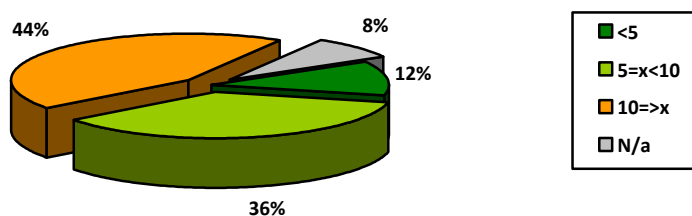


Q2. Position of the interviewed person

Present position

Manager	20,5 %
Legal	46 %
Internal Audit Officer	8 %
Compliance Officer	18%
Vigilance Committee	2,5 %
Other	2,5 %
N/a	2,5 %

Experience in the present position and in other positions dealing with compliance issues



Reporting to

Compliance Office	1 0 %
Chief Executive Office	4 9
Legal Department	2 6
Chief of Internal Auditor	5 %
N/a	1 0 %

SECTION B

Description of compliance measures

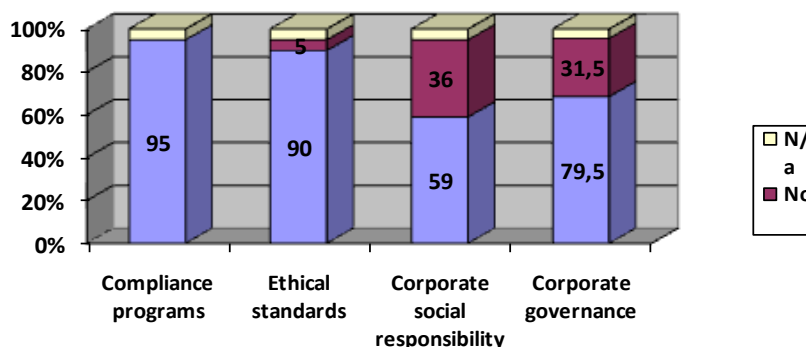
adopted by interviewed companies

Q3. Types of programs

“Does your company have programs or other procedures aiming at one or more of the following achievements:

- ✎ *Training employees to comply with legal provisions
(so-called “compliance programs” provided for by the Legislative Decree no. 231/2001)?*
- ✎ *Applying ethical standards beyond legal requirements
(often called “ethics code” or “business ethics”)?*
- ✎ *Engaging in social activities and charities (e.g. supporting schools)
(often called “corporate social liability”)?*
- ✎ *Describing and making transparent the corporate structure and the control mechanisms*

of the company to the public and, especially, to shareholders (corporate governance)?"



Many interviewed companies replied to the question, since only 5% did not mark any box.

In particular, companies were allowed to mark more than one box, so as the unmarked boxes are considered as a negative answer.

Based on the chart herein, all the interviewed companies confirm to have implemented many instruments aiming at training their employees to comply with the rules set out by the Decree.

Data provided is hardly surprising: the knowledge and observe of regulatory framework represent an interest of society.

Of course, it must be underlined that real implementation of organizational-management models able to prevent the commission of criminal offences indicated by the Decree removes the entity's liability (Articles 6 and 7 of the Decree).

Differently, another data is surprising: high number (90%) of companies claims to adopt programs or procedures in order to implement ethical standards exceeding their legal obligations (*e.g.* by means of draft, such as "ethics code" to be associated with the C.P.).

Such data appear even higher (about 10% only) than data relating the corporate

governance.

Instead, it is more clearly separated the engaging in social activities and charities, taken into account by only 59% of the interviewees.

Q4. Areas of Compliance Programs

If you have programs in place to prevent the illegal or unethical behaviors of employees, which areas do they target?	
Economic crimes (<i>e.g.</i> market abuse)	98%
Corruption	98%
Fraud and theft	85%
Manslaughter and other unintentional injures	79%
Money-laundering	77%
Viol. of intellectual property and copyright	59%
Competition (anti-trust offences)	54%
Terrorism (<i>e.g.</i> terrorism's financing)	46%
Organized crimes	36%
Product safety	31%
Child pornography	25%
Slavery	21%
Other (informatic crimes)	8%
N/a	

What are the three most important areas?			
I	II	III	Tot
25%	36%	5%	66%
25%	2%	10%	37%
	14%	15%	29%
8%	2%	2%	12%
18%	16%	10%	44%
		2%	2%
8%		5%	13%
2%		5%	7%
	2%	2%	4%
		2%	2%
14%	28%	42%	

From the responses provided in the first chart on the left, it may be noted that almost all companies (98%) included corruption and economic crimes in the area of risk's mapping.

To follow, we find a first set of three hypotheses consisting in fraud and theft (85%), homicide, unintentional injuries (79%) and money-laundering (77%), which are marked in about 80% of the completed questionnaires.

These crimes represent a natural part of the business-risk area, with the possible exception of corruption which seems to draw the company's special attention for a sort of "judicial risk" evaluation, being the corruption the most common crime involved in legal proceedings concerning the liability set up by the Decree.

The second group of offences - less common than the other ones but still indicated by most people - concerns the violation of copyright and intellectual property (59%) and the rules provided for by competition law (54%).

Just under half of the companies are concerned to indicate terrorism or terrorism's financing in the area of risk (46%), while about one-third marked the organized-crimes (36%) and product safety (31%).

Only a one-fourth and one-fifth of companies are worried to prevent the commission of serious criminal acts, such as child pornography and enslavement which, presumably, are offences hardly realizing within the traditional business activities context.

Finally, under the "other" cases, 8% of the interviewees indicated the informatic crimes.

If we look towards the chart on the right (particularly in the last column offering the sum) and compare it with the left one, it will be confirmed the special attention - with a percentage of 44% - that companies draw to money-laundering which tends increasingly to hide itself behind the business activities.

Furthermore, it is obvious that the corresponding numerical values drop drastically in the other two hypotheses in the chart on the left.

Indeed, if only 30% of companies included in C.P. fraud and theft considered as acts particularly laid on the line, in some way it may be surprising the very low data (12%) for manslaughter and unintentional injuries, all the more if we consider the

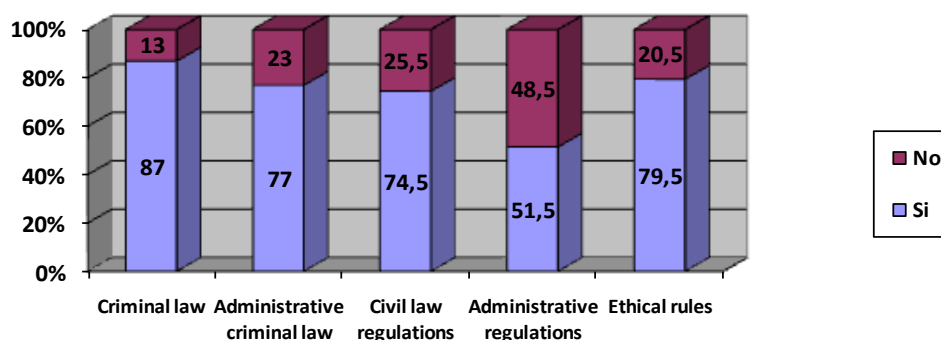
very proper awareness campaign aiming at decreasing the number of so-called "*white deaths*" and injuries at work.

In this sense, please be focused on the current legal provisions increasing the penalties in cases at issue, breaching rules oriented to avoid the industrial accidents.

The same regulation introduces the punish-ability "*ex officio*" in case of breach of legal provisions concerning either accidents at work, employment's health, or in case of occupational disease (Article 1 of Decree no. 92, dated May 23, 2008, converted into Law no. 125, dated July 24, 2008).

Q5. Rules to be enforced by Compliance Programs

"If you have programs preventing illegal or unethical behaviours, which types of rules do they enforce?"



All interviewed companies answered the question.

Based on the data collected, it may be proper to note that most companies tend to give importance to all kind of rules applied to the C.P., either legal rules or criminal, administrative, civil rules, even ethical ones.

As you may appreciate thorough question no. 3, it is interesting to point out that ethical provisions, although not legal, are held in high esteem: following criminal rules (87%), in the questionnaire returned these offer a majority vote (79,5%) even if by means of a narrow gap compared to the criminal-administrative (77%) and civil rules

providing with a civil damages (74,5%).

Among the five options open in the questionnaire, the merely administrative provisions are selected by the lowest number of companies (51,5%) thereby demonstrating that companies give importance to the ethical guidelines which refer to legal rules, as well as that kind of rule (civil, criminal-administrative) providing with a compensation for damages.

Q6. Organizational liability for Compliance Programs

<i>"If you have programs preventing illegal or unethical behaviours, who is responsible for the implementation and control of these programs?"</i>	
Compliance office	56%
Legal office	51%
Audit office	41%
Finance office	8%
Others: vigilance internal committee; supervisory board ex the Decree; ODV; compliance function	23%

<i>"To whom does the responsible department report?"</i>	
Chief executive officer	64%
Legal department	23%
ODV	5%
Chief risk officer	2%
N/a	15%

The answers collected by us show a clear division among the interviewed companies' several departments with regard to the "functions" in C.P.'s implementation.

Sure enough, in addition to an office specifically assigned to the C.P., some businesses present a legal office and another one dealing with the internal-audit as well as, in only 80%, a finance office.

In such cases, we deem it is interesting to note that the reference department is usually the chief executive officer.

Otherwise, in case the company indicated the legal office only, basically the reports

tend to be sent to the same office.

The aforesaid choice may be presumably linked to a cost-effective evaluation.

However, this fact entails an undue admixture of the structure performing the C.P.'s implementing and monitoring activity and, on the other hand, the office carrying out the supervision of C.P., even if reports arrive, in all probability, to the legal department's top office.

Finally, it is remarkable to observe that some companies state it proper to insert in the open space under the category "*Other*" the vigilance authority, the supervisory board provided for by the Decree, or a vigilance internal committee, as if these were different instruments from the compliance department.

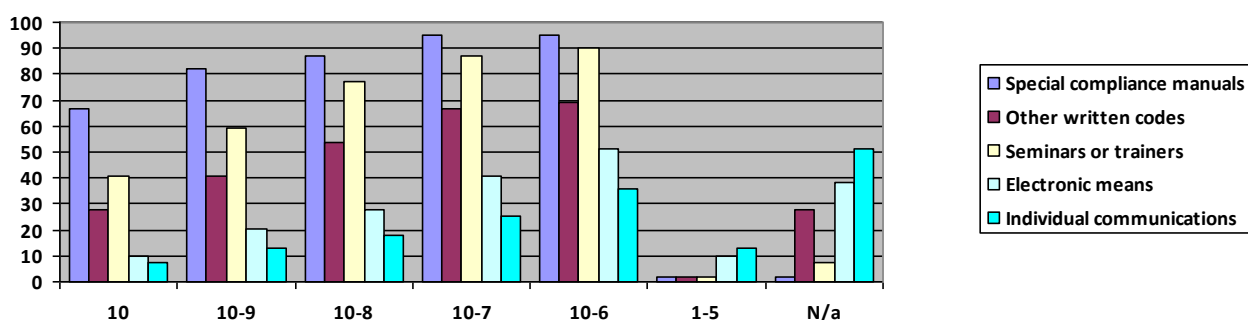
Maybe, the latter is considered in a more generic sense than an office designed to act specifically in the area of C.P. provided for by the Decree and aimed at preventing the commission of guilty acts.

A similar meaning could be justified even with the fragmentation of implementation and monitoring activity, where different structures control the risk of unethical, illegal or criminal behaviours.

Q7. Information and training measures

“If you have programs preventing illegal or unethical behaviours, which means do you use to make public and enforce these procedures.

How important are these procedures in your company?”



The precise aim of the question herein is to understand and size in terms of importance, in a range from 1 to 10, the several instruments used by interviewed companies for spreading and coming into effect the C.P.

In case the business provides with a response, the results show a fair importance given to all kind of the measures, since the numerical values range from 6 to 10.

However, in order to better appreciate the close gathering of the responses, we decided to compare the results starting from a peak of 10 and then summing 10 and the value of the next column, which represents the amount of responses with a lower value, in order to obtain the amount of responses in the 10-6 range.

In the column on the right, we reported for each instrument the number companies did not reply.

The chart outlines the utmost significance designed by the clear majority of the interviewees to the compliance manual, with a particularly high value (a percentage of 67% gives the maximum vote, reaching the 82% and 87% if we consider, respectively, the range 9-10 and 8-10).

To follow, entities demonstrate to take into consideration the staff-training by means of workshops or test, since only 40% give the maximum value but, in the successive ranges 9-10 and 8-10 the percentages reach, respectively, the 59% and 77%.

In order of importance, other written codes represent the third instrument used by companies, including the ethical code which, as anticipated, holds a significant task in the corporate liability framework.

However, although significant, data are much reduced, since only 30% of companies give the maximum value and it is necessary to drop to the lower range from 7-10 for having a particularly high concentration in the responses (67%).

Moreover, it should be noted that the same percentage indicates the maximum value of 10, in case of the manual.

It is quite surprising to notice that, within the current information and telematic age, the electronic instruments, compared to the so-called "traditional" tools, are held in low regard as it is necessary to fall to the lowest threshold (range from 6-10) to obtain a concentration level of just over 50 %.

Even less importance is given to the individual communications, for which you can see an unimportant interest, since about half of companies feel not to deliver any value, and only 36% of companies place a higher value than the sufficiency.

Furthermore, please be advised that these three categories of instruments are characterized by an element: while the level of concentration decreases in high values, the number of the companies which do not respond increases in inverse proportion (51% in case of individual communications, 38% for electronics, 28% for other written codes).

Such information seem to confirm a minor interest in the instrument.

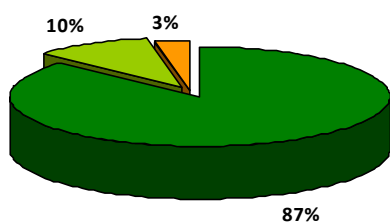
As a final consideration, we would assert that entities tend to recognize the greater importance to the measures with general nature than individual means, preferring the use of more traditional ones, such as paper-made manual and collective training and exercises, rather than IT and individual communications.

If a similar result looks to be more functional and cheaper than a legal proceeding, it seems to overlook, however, some relevant instruments especially with regard to the C.P.'s effectiveness.

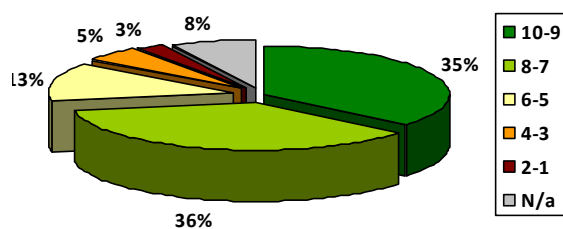
Q8. Measures to detect irregular or unethical behaviours

I) *“Which of the following measures do you use to detect irregularities (especially crimes) and how important are these measures in your company?”*

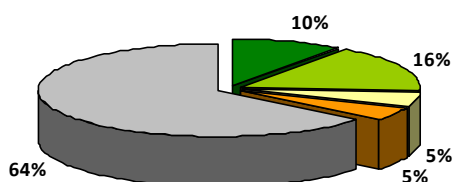
a) Internal audit



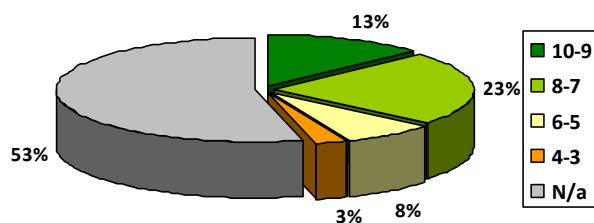
b) External audit



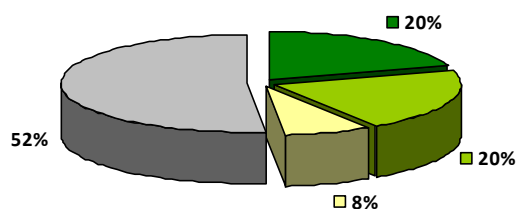
c) Ombudsman can be contacted by employees confidentially



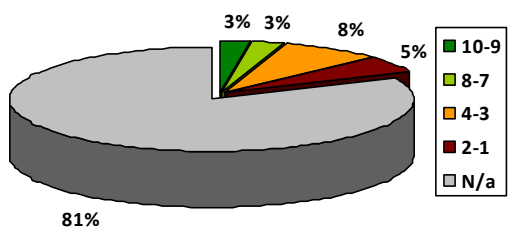
d) Special technical hotline used by employees for reporting irregularities



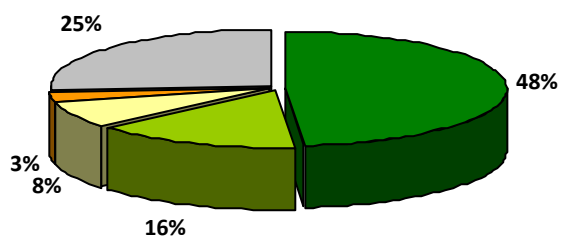
e) Anonymous, free sanction & confidential reporting of irregularities ("whistle blowing")

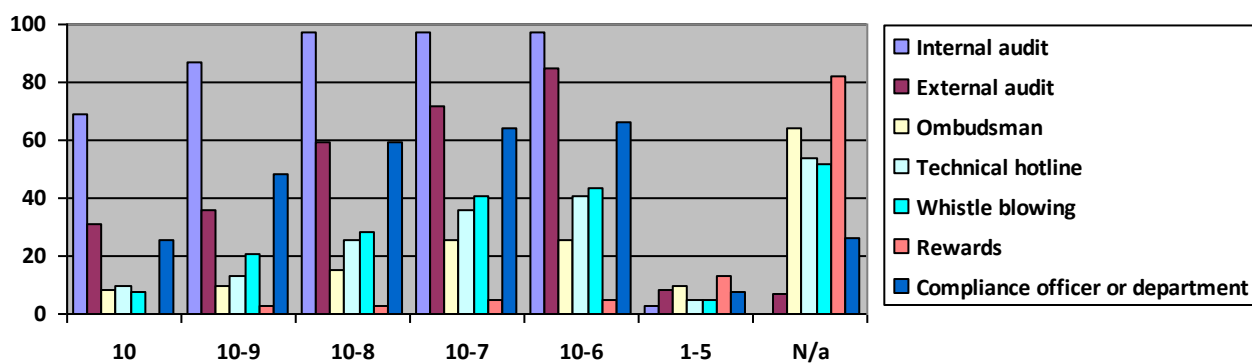


f) Rewards for relevant information



g) Compliance officer or compliance department

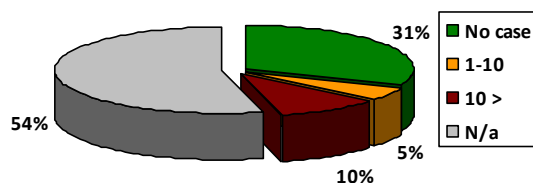




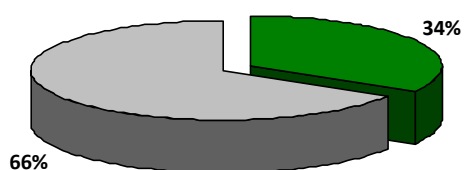
II) A - "How many cases each year are voluntary reported by employees in your company?"

B - "How many of these offences are committed in the benefit of your company?"

II) A - Cases reported



II) B - Cases in advantage of company



The question is structured around two sections.

In the first part we request to select and size, in a range from 1 to 10, the measures adopted for identifying any kind of irregular behaviour, with particular reference to

the criminal offences.

In particular, several options are divided into three "blocks": the first two concern the audit activity, divided between internal/external audit, pursuant to the chart a) and b).

The following four blocks provide with the direct involvement of employees having the power to report the irregularities, as indicated in the charts b), c), d), e), f).

The last one concerns the compliance (chart g).

Please be informed that companies were allowed to add other measures considered proper to be indicated and sized.

In the second part of the question, we ask to indicate how many cases were voluntarily reported by employees and, if any, many of these had been committed in the company's benefit.

From the collected data, we can draw several conclusions.

As regards the first part of the question, it is clear evident the importance assigned to the audit activity which is considered more serious than the other items listed.

In the framework at hand, the involved companies seem to give more priority to the internal-audit than the external one, as outlined by the first two charts a) and b) - a value between 9 and 10 in the 87% of responses against a more modest 35%.

Such deduction could be also inferred from the gap between the respective columns in the following bar-chart, where the two values are close only if we look the widest range from 6 to 10.

This difference remains even if we analyze the low value set.

Furthermore, the 8% of companies did not reply with regard to the external-audit, while all entities voted in relation to the internal-audit.

Finally, entities give the impression to believe in the effectiveness of an internal review system much more than the external one, although the latter is still considered effective from a clear majority, representing the second measure in order of importance.

Also, it should be remembered that in Italy, under certain conditions, companies

are obliged to be submitted to the audit by specific auditors enrolled in apposite register.

The issue at hand is subject of recent changes made by the Legislative Decree no. 39, dated 27 January, 2010 which implemented the European Directive 2006/43/EC.

The appointment of an official or the setting up of a specific department in charge of the compliance are considered (as) third instrument in order of importance, so far from the external-audit.

Data confirm the great significance of this measure in the corporate organization, as emerged from the responses to questions no. 6 and no. 7, as well as the aforesaid fragmentation of the C.P.'s implementation and control functions to prevent and single out the illegal and unethical behaviours in different organisms (which are internal and external to the structure of the entity itself).

The four hypotheses concerning the employees' direct involvement contain values significantly lower than the previous three, not counting that more than half of interviewees decided not to pronounce upon it.

A similar "abstention" reaches the extreme point of 81% in case of rewards for the relevant information, which represents without doubt the instrument the companies are more puzzled thereon.

It is not entirely easy to grasp the true-meaning of the high percentage of non-responses: maybe, as failure of these instruments; maybe as an "evasion" arising from a certain embarrassment at having to acknowledge the low importance attributed to them.

Anyway, we deem it is possible to affirm that most companies believe in the effectiveness of "institutional" and organized control systems, rather than control measures voluntary adopted by personnel (e.g. in case of "ombudsman" or specific technical hotline, or by means of reward mechanisms, in cases of "whistle blowing", or recompense for relevant information).

Finally, please be advised that, in the category "*Others*", one of the interviewed entities assigned a high value (8 in a range from 1-10) to the system of reports so-called

"stakeholders" and internal-audit.

In particular, it is a really interesting mechanism which allows the great and heterogeneous category of those considered "stakeholders" (*e.g.* shareholders, bondholders, providers and users/customers) to interact formally and directly with the corporate office performing the internal-audit, which is obliged to take into account the contents of the received reports.

Many of companies chose not to answer the second part of the question.

In this case, if the answer was structured so that the interviewed company should have indicate the number of irregularities spontaneously reported, the high percentage of "abstention" seems to express a data which is consistent with the results stated in the first part of the question (with reference to the control measures voluntary adopted by personnel).

In other words, the little attention and confidence that business shows to address to these instruments could be reflected also at the operational level of the same.

The whole issue needs clarification.

A percentage of 15% of interviewees admitted to have found, by means of voluntary employees' report, a certain number of "cases" per year, but no company indicates any value when we ask to specify which of "crime" was committed in the benefit of the business (the responses are divided between about two-third of abstentions and one-third without any kind of indication).

Based on information concerning the high abstention, in the assessment of the last answer we can not overlook the probable embarrassment of the entity which is apparently worried about the risk of legal proceeding.

As a matter of fact, crime committed in the benefit of business is just one of the conditions requested by the Decree for corporate liability.

Therefore, companies maybe "jumped" to the next question in order to avoid a sort of "self-denunciation" coming from the admission to have found cases of that kind.

Finally, if we compare the last results with the question no. 6 and no. 7 and based on the answers provided with by the interviewed companies, it will be possible to

draw a brief outline concerning the C.P. aiming at preventing any illegal or unethical behaviour by employees:

- from an organizational standpoint, entities equip themselves with different and several structures in charge of C.P.'s implementing and monitoring activity.

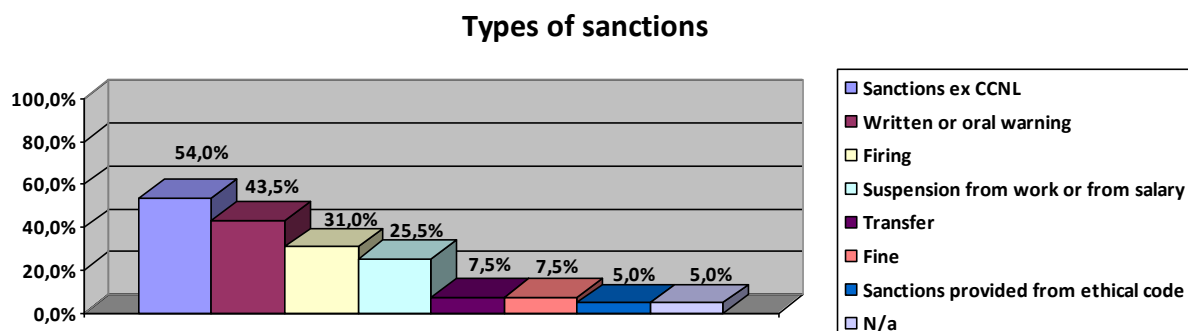
In particular, the main structure is the specific office for the compliance, followed by the audit and legal office;

- from an applicative standpoint, entities prefer using specific compliance manuals (followed by the staff-training through workshops or test seminars and considering other written manuals, such as "ethics code") than individual instruments;
- from an operative standpoint, businesses show to appeal and give the highest importance to the internal-audit, followed by external-audit and the office of compliance.

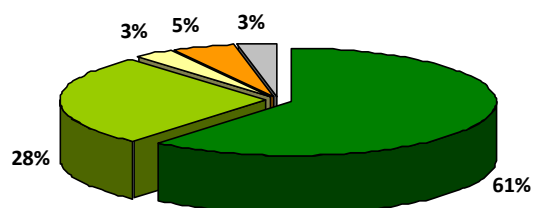
Moreover, people involved consider less effective the control measures directly adopted by employees.

Q9. Internal sanctions

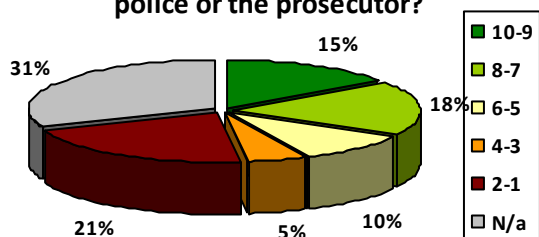
“Which types of internal sanctions do you apply if employees infringe legal provisions?”



How important are internal sanctions in your company?



Do you solve infringements of criminal law committed by employees reporting cases to the police or the prosecutor?



The question focuses on the internal sanctions which companies are obliged to introduce in their C.P. in accordance with the Decree (Article 6, par. 2 - Article 7 par. 4).

In particular, the first part of the question consists in an open-ended question, where business was free to indicate one or more sanctions to be applied in case of legal provision infringements.

Many interviewed companies replied to the question (95%), also indicating more than one type of sanction.

The highest numerical data consists in a generic reference to the disciplinary sanctions provided for by National Collective Bargaining Agreements (hereafter, the “NCBA”), followed by verbal or written warnings and other penalties, up to the termination of employment (all measures provided for by the NCBA).

In this regard, it should be noted that Case Law stated that Italian criminal system should comply with the principle of legality requiring that crime and penalty have to be expressly provided in a legal rule.

Therefore, a model not in compliance with the aforesaid provision (*e.g.* drawing the disciplinary sanctions provided for by the NCBA without any further specification) would be not considered suitable for avoiding the liability of the involved company.

In the second part of the question, the first between the two charts shows the great importance attached by the interviewees to the internal disciplinary system, since the 89% indicate a value ranging from 7 to 10.

Otherwise, the second chart offers a more different framework (we asked whether the discovered crimes had been reported to the competent Public Authorities): just under one-third shows a certain “reticence” on the matter, neglecting to respond; more than one-third admits to do it occasionally or frequently; a company among three states to do it always or very often.

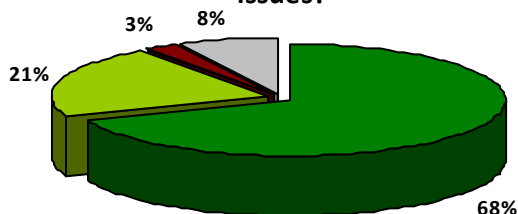
Despite it still presents many significant profiles to be improved, we deem that the latter percentage could be considered (as) a “comforting” data: the denounce to the competent authorities of crime committed by an employee may expose the company to the risk of a direct legal proceeding.

Finally, even for the sanctions and as indicated about the vigilance, it seems to

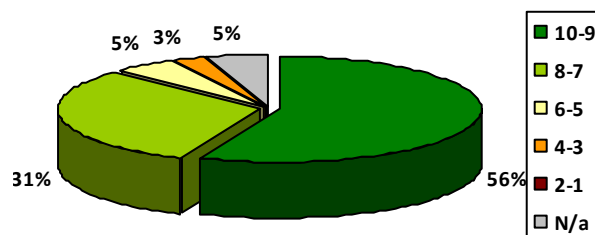
emerge the tendency of the interviewed companies to prefer internal prevention system than the external ones.

Q10. Special commitment of top management

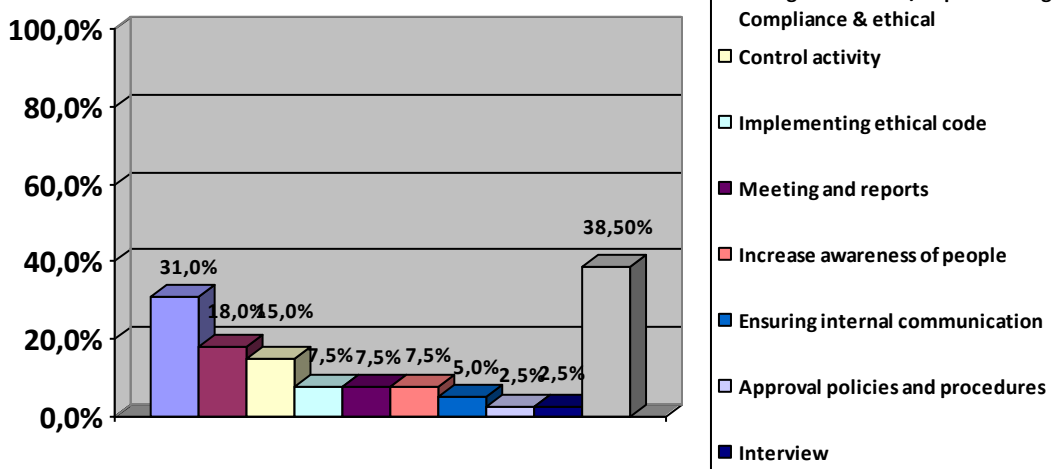
Is the top management of your company personally involved in compliance issues?



How visible for the majority of your employees is the personal involvement of your top management in compliance issues?



What are the personal activities of top management in the field of compliance?



The first two charts show that, in almost all of the interviewed companies, top management is heavily involved in the corporate liability issues (89%) as well as such involvement is highly visible to most employees (87%).

The so high percentages provided in the available data ought to lead to the inference that top management is one of the main pillars of compliance.

As anticipated, such undertaking has a high visibility towards the personnel, in order to ensure the maximum “internal” transparency even in the behaviour of top management.

However, when we asked to specify which activities show the real participation of top management in the context of compliance, the results do not appear consistent.

With reference to an important question like this, it is surprising that so much as the 40% of interviewed companies do not provide with any indication and, whereas provided, these appear mostly generic.

In light of the above, last part of the question casts a shadow on the value to be attributed to information (in appearance, very positive) reported on the first two charts.

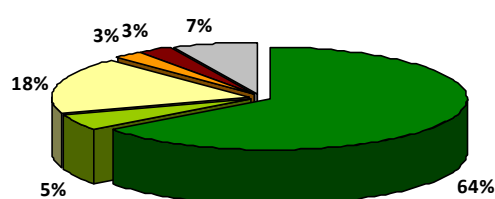
In other words, assuming the answers’ truth, the presence of a so decisive “public” top management’s involvement in the compliance and, on the other hand, the absence (or vagueness) of information relating the activities through which this involvement emerges, brings to suppose that top’s participation is more formal than real, or an aspiration yet to be realized and no really effective.

On the issue, we deem it proper to underline that the Decree does not provide with particular information, limiting to offer a different mode to ascribe liability in case of crime committed by a person belonging to top management (Articles 5-6), without providing any precise prescription in order to involve top management in the compliance activity.

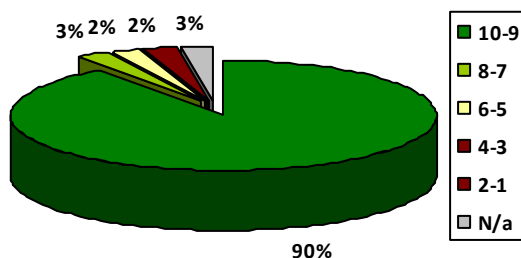
Q11. Culture and values

"To what degree are the following activities tolerated or clearly rejected in your company by most employees?"

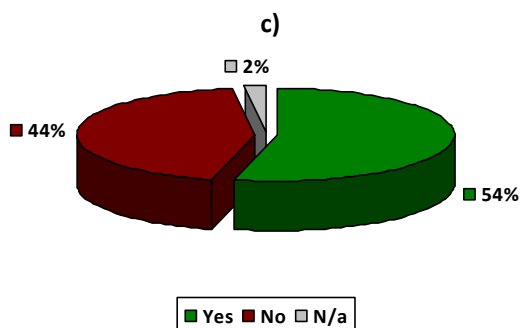
**a) Giving gifts or small bribes
(e.g. 500 \$) for the sake of the
company**



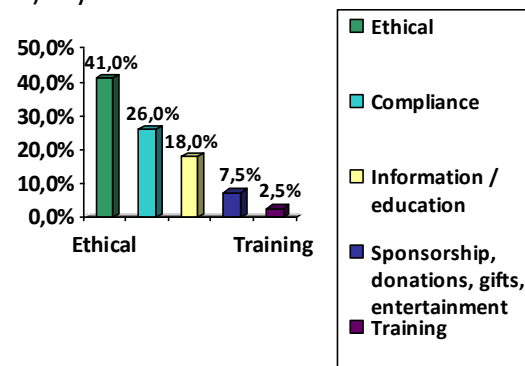
**b) Minor thefts or fraud
(e.g. 500 \$) against the company**



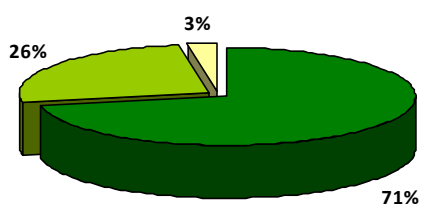
"Do you have special procedures in place (with or without the aforesaid general compliance measures) to improve the ethical culture in your company and the attitudes of the employees to comply with lay provisions?"



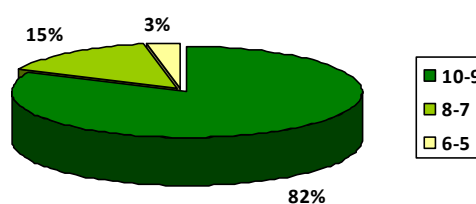
d) If yes what are these measures?



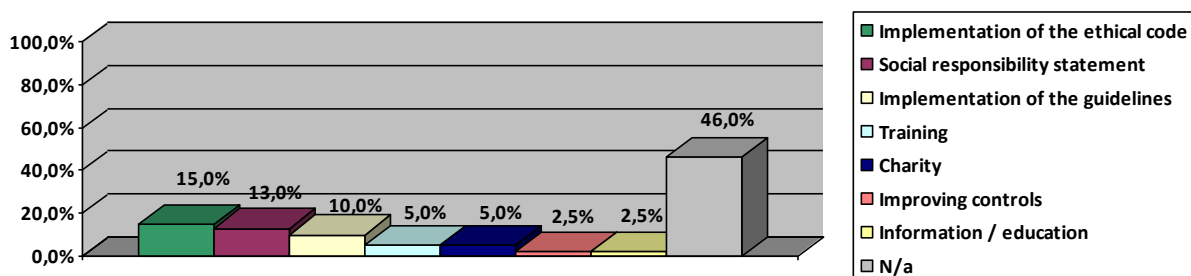
e) Does the top level of your management (CEO, board members) play a visible role for all employees in the setting of ethical values?



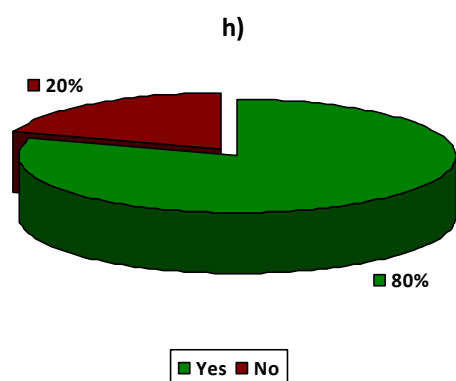
f) Is it important that your company considers not only applicable rules and company's financial goals, but also additional fosters moral rules and values?



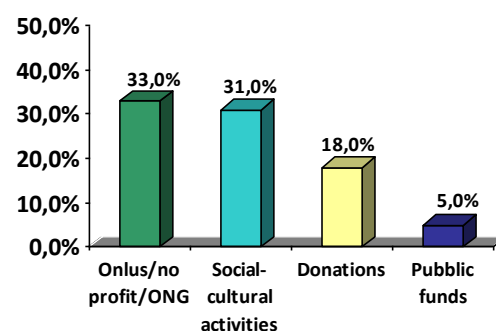
g) What concrete means do you apply to foster such aims?



“Does your company make special contributions to the wellbeing of society (e.g. donations to schools or other social activities)?”



i) If so, please specify concrete activities



The question focuses on the circulation and significance of cultural and ethical values within the business.

In particular, in the first two charts we indicated, in a range from 1 to 10, the results concerning the tolerance level of small gifts or briberies committed in the interests of company, as well as little theft or fraud committed against the company itself.

In each case, we choose crimes with little importance in terms of damage to property, since we used the sum of \$ 500 as order of magnitude.

From the available results, it is clear that there is an almost zero-tolerance of embezzlements against the company, tolerated by only 4% of the interviewees.

Less predictable than the other, we registered a similar zero-tolerance with respect to the phenomena of corruption or gifts committed in the benefit of the entity (tolerated by only 6% of companies), even if the 18% of answers indicate a generally more permissive point of view.

The lack of tolerance towards these crimes seems likely to be ascribed to the ethical values' circulation, as well as to the legal proceeding's fear.

In the next part it was required to specify procedures, if any, designed to increase the ethical culture and employees' attitude to comply with the provisions of law, even in addition to the compliance measures set out in the previous questions.

With regard to the case at issue, a significant percentage (44%) of interviewed companies provide with a negative answer, showing to have no interest in developing

a culture of values not holding a tangible benefit for the business.

Notwithstanding, in the next chart f), the 97% of companies state that promotion of ethical and extrajudicial values is very important.

However, it seems encouraging that a higher percentage than the majority (54%) answered to have specific procedures for the implementation of ethical values.

Therefore, although there are still appreciable spaces for improvement, it makes its way the idea that companies can not be limited only to observe the rules imposed by law, but that should orientate their structure and their functional activity also in order to respect cultural and extrajudicial values.

Also, it seems to be helpful that the highest percentage of answers in the bar-chart, following the generic reference to the implementation of ethics code, refers to the so-called corporate social liability.

Moreover, we deem it useful to point out that a suitable advertising of this kind of company policy, such as the environment's safeguard, could lead to a significant return in terms of image and income.

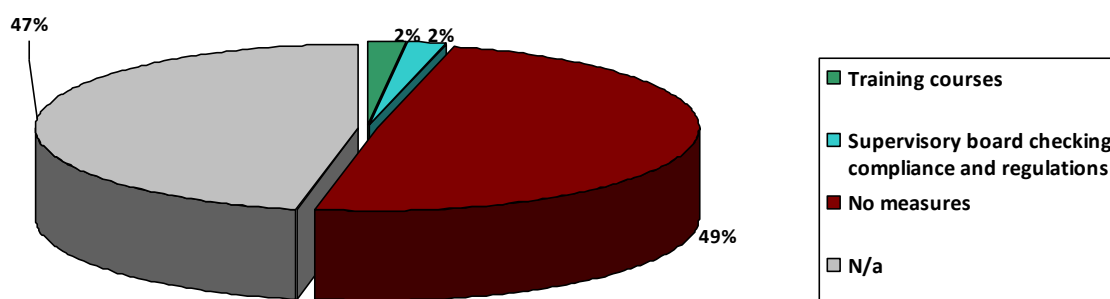
Data under chart e) is particularly positive, since the 97% of companies intended to give the *"good example"* by means of the top management's involvement in the organization of ethical values, although, as above mentioned, it would remain to understand whether this is an effective role and not to all outward appearances.

The last part of the question indicates an unexpectedly high, to be welcomed, information: the 80% of interviewed companies confirm they specifically contribute to social health, demonstrating to prefer private entity and charitable donations rather than donations to public entity.

Q12. Other components of compliance programs

“Compliance programs for the prevention of crime can consist of (1) measures of information and education (e.g. compliance manuals), (2) measures to detect irregular or unethical behaviours (e.g. whistle-blowing systems), (3) internal sanctions, (4) special commitments of top management regarding compliance issues, as well as (5) measures to foster a culture of values within the respective companies (as asked above).

Does your company use any other additional measures to foster compliance and the prevention of crime that have not been specifically asked for above?”



The question requests whether the involved companies are used to adopt other measures to implement compliance programs and crime prevention, in addition to the measures listed.

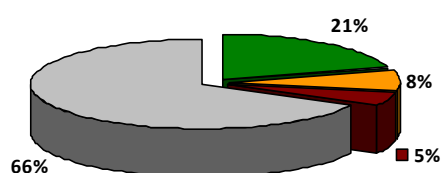
The chart shows that almost all businesses are divided between a negative answers and a lack of answer.

The only two measures indicated by a very small percentage of the interviewees (*i.e.* training system and surveillance activity of the vigilance authority) represent some instrument already considered and analyzed in the previous questions.

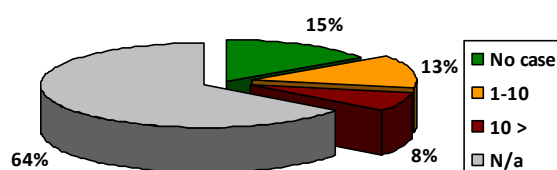
Q13. Victimization of your company

"How many cases in the last few years came to your attention in which your company assumed to be the victim of a crime (e.g. fraud)?"

Crimes committed by employees



Crimes committed by outsiders



In which area is your company particularly affected by crime?

Crimes committed by employees			Crimes committed by outsiders	
Appropriation	13%		Frauds	20%
Frauds	8%		Forgery	10%
Corruptions	2%		Informatic crimes	8%
Financial services	2%		Financial services	5%

	%			%
Postal services	2 %		Robbery	2 %
Damaging allocations	2 %		Money laundering	2 %
N/a	77 %		Illegal requests of payment	2 %
			N/a	7 4%

As final question of Section B, we request to indicate the number of crimes, if any, distinguishing whether committed by internals or outsiders, as well as specifying the real kind of the offence.

The answers are characterized by a high level of abstention (presumably justified by a certain embarrassment linked with the nature of the question) and by low admission percentages: respectively, only 13% and 21% state to be victim of crimes committed by employees and outsider people.

As regard to the specific crimes, the percentage of the lack of answers increases (respectively, 77% and 74%).

Relating the offences committed by employees, data show the highest values in the appropriation and fraud.

Relating the crimes committed by external people, we find the highest value in fraud, forgery, informatic and financial services crimes.

SECTION C

Evaluation of the compliance measures

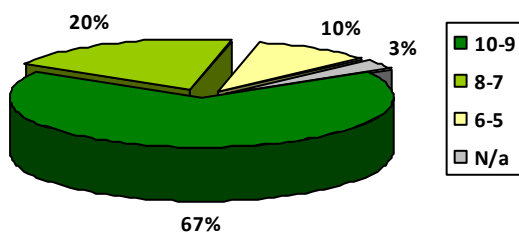
Q14. Effectiveness of components of compliance programs

“There has been much dispute over the question concerning the measures able to foster the compliance with legal and ethical rules.

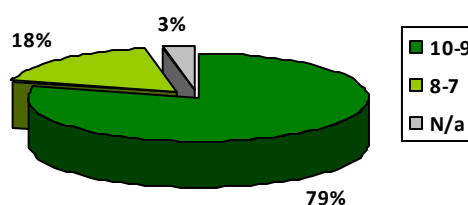
How effective do you consider the following measures in order to prevent criminal acts committed by your employees?”

a) Legal measures

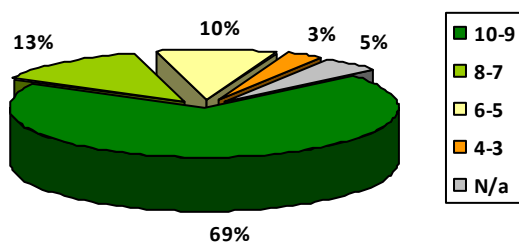
1. Legal provisions



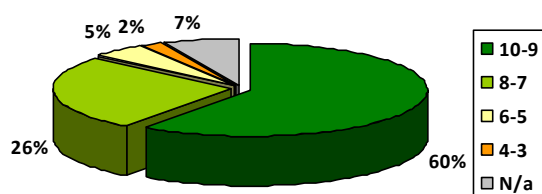
2. Legal provisions with criminal law sanctions against the perpetrator



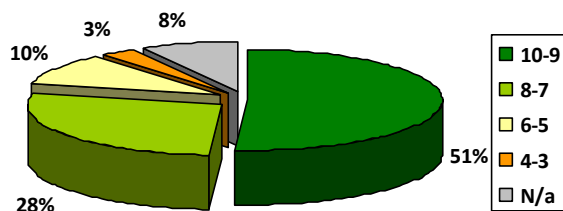
3. Legal provisions with criminal sanctions against your company



4. Civil law damages against the perpetrator



5. Civil law damages against your company



The several options open to the interviewed companies may be divided into two different classes: on the one hand, we ask to value the effectiveness of the criminal penalties and, on the other hand, we refer to the civil sanctions.

In both cases, we provide the companies with an additional choice between the measures to be taken against human beings and sanctions imposed directly on the company.

In this framework and from an abstract standpoint, we deem it proper to underline that most interviewed companies seem to agree about effectiveness of the legal measures, generally considering criminal action (as) most suitable and useful instrument in order to prevent crimes committed by employees staffed by the entity itself.

Having such purpose in mind, penalties imposed directly against crime perpetrators give the impression to be more successful for the prevention of fraudulent behaviours, even if the criminal measures adopted against the company maintains, however, a relevant meaning in the corporate-related issues.

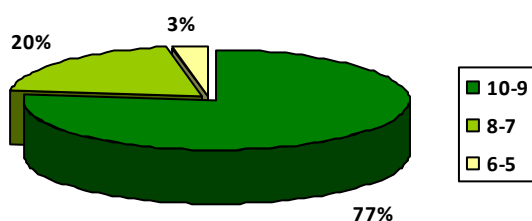
With regard to the real efficiency of the C.P., the unimportant value and interest given to the civil means, including the eventual obligation for damages on behalf of the crimes' victims - is probably due to the general "mistrust" of the civil legal system which results, *de facto*, more muddled, heavy and lasting longer than the criminal legal system.

In this sense, the above-mentioned information do not seem to depend on a lack of confidence in the “substantial” remedy of the civil liability, rather than in the procedural instruments by which that remedy should be guaranteed.

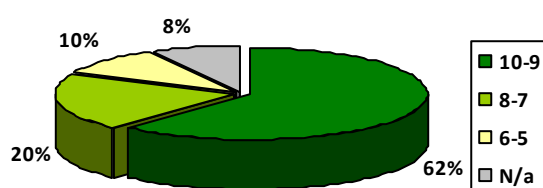
In this view, given its length and complexity, the civil proceedings do not appear suitable to ensure the implementation of the rules provided for by law within regulatory framework of the civil liability.

b) Compliance measures of your company

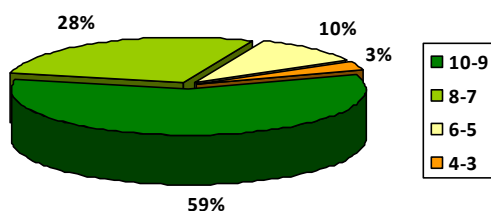
1. Informing employees about legal provisions and sanctions



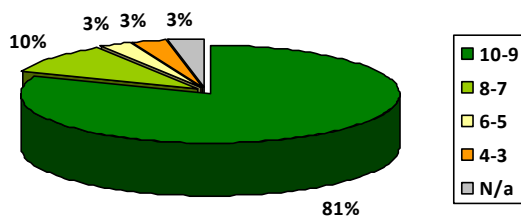
2. Explaining to employees the ethical reasons behind the legal regulation



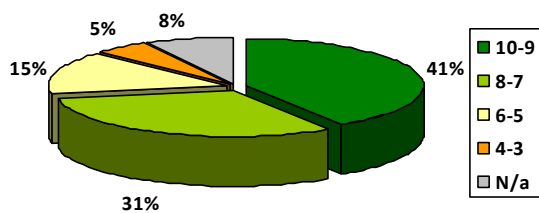
3. Screening employees prior to hiring



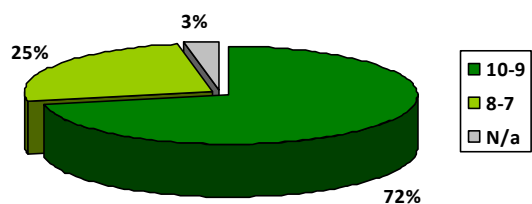
4. Internal audits and controls



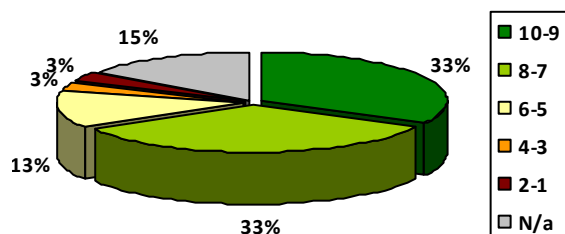
5. External audits



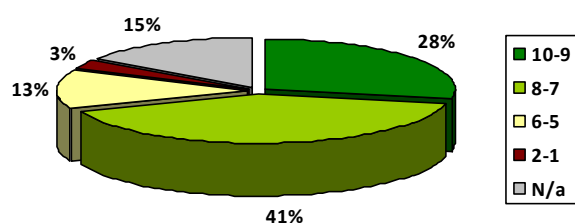
6. Creation of a good value system within the company, which is supported by collaborators and t.m.



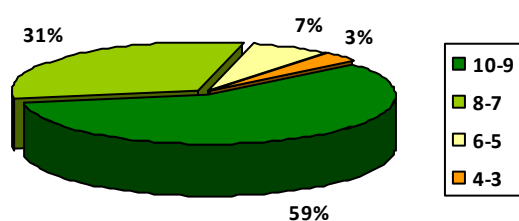
7. Procedures for reporting irregularities and problems (e.g. hotlines)



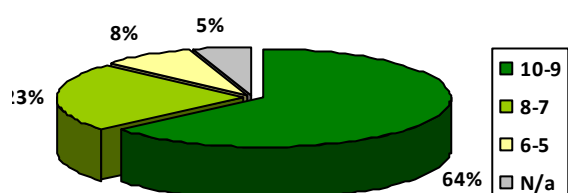
8. Special protections for whistle-blowers (including providing confidentiality)



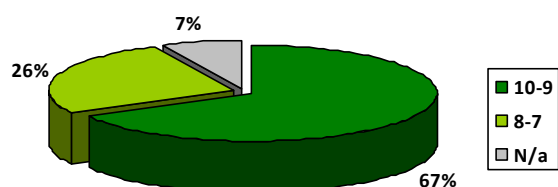
9. Comprehensive compliance programs



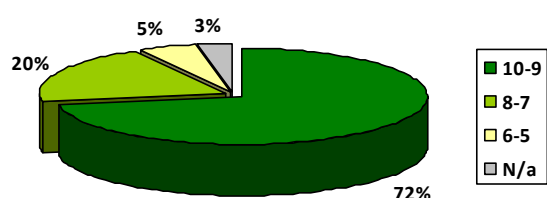
10. Compliance Training workshops or test



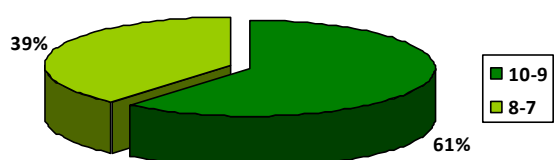
11. Appointment of compliance officers



12. Involvement of top management in compliance issues



13. Internal sanction system within the company



The relevant value given by interviewed companies to the personnel's information and training procedure concerning rules and legal sanctions provided for by the Decree may be defined a "*misleading*" data.

In particular, the collected answers seem to be caused not by a free choice made by the company in its organizational autonomy, but rather a legal obligation: really, such informative procedure is required directly by law (*i.e.* the Decree).

In this connection, answers cannot be considered completely reliable and consistent.

Instead, data relating the procedure for selection of employees entering or before hiring are likely and supported.

The decision to give importance and effectiveness to the measure is entirely “*natural*”, since not required by law: the collected results allow to extract a truthful business attitude and approach to a real cooperation in the prevention of guilty acts.

Likewise, it is possible to argue about the effectiveness of procedures aimed at creating an internal system of values practiced by employees and top management.

More in general, we have to analyze top management’s involvement in the actual implementation of values relating to the compliance programs.

Sure, the interest shows the interviewee’s awareness of the significant role and linked tasks and responsibilities assigned by the Decree in charge of top management.

Therefore, it would not surprise if the compulsory provisions place a great trust in the “*good example*” of people who control the business and make decisions.

The aforesaid instrument produces a higher effectiveness than other systems (control, complaint, prevention, training and information) which operate on a lower level and involve only employees (*i.e.* hotlines, whistle-blowers, workshops or test, compliance manuals).

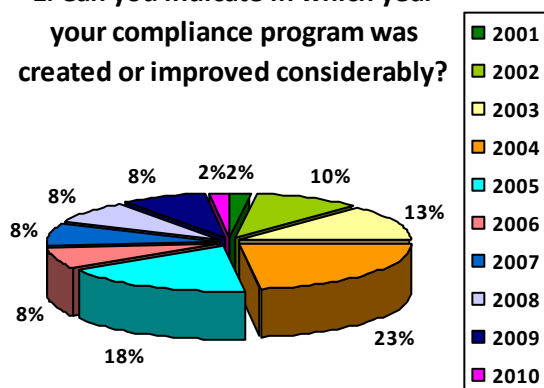
Data is confirmed by the meaning referred to the internal audit by interviewed companies: of course, the following check and control system offers a real instrument able to “reaffirm” the rule’s meaning, in addition to be qualified as a formal notice from a crime prevention point of view.

In other words, the more the control on the rule’s compliance is effective, the more the rule can be reaffirmed with regards its value.

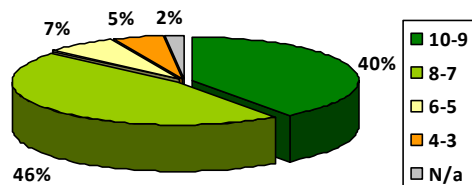
In this sense, implementation of internal audit system is well-designed to avoid and prevent the commission of offences, as well as to strengthen the values implied in the rules concerning corporate liability.

Q15. Effectiveness of your company's compliance efforts

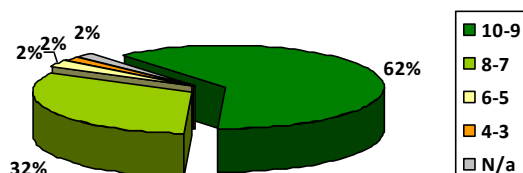
1. Can you indicate in which year your compliance program was created or improved considerably?



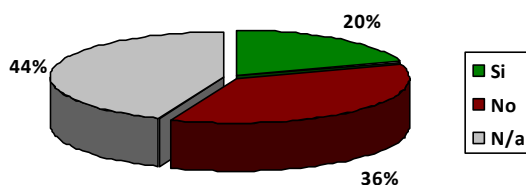
2. Did this change improve the prevention and detection of illegal acts in your company?



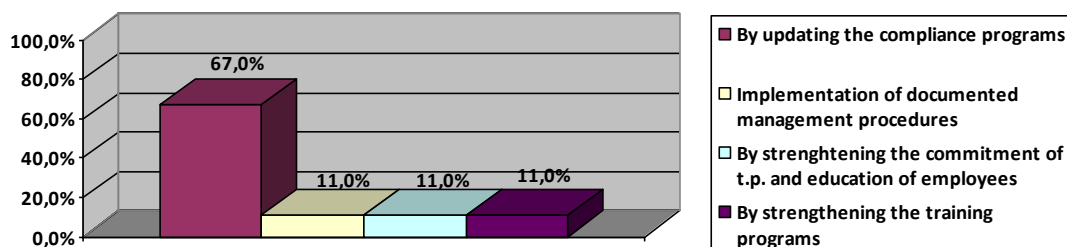
3. How effective do you consider the present compliance program of your company to be in the prevention and detection of crimes?



4. Do you have plans to change your compliance program(s)?



4.1 If so, in which way?



The question at issue produces a very reasonable and precise consequence: at first, we ask to indicate when it has taken the adopting or improving process of the C.P.; secondly, we ask the entities whether the prevention or discovery of illegal activities would be strengthened or improved than before (compared with time before the C.P. implementation and support).

Furthermore, we ask to give an opinion on the C.P.'s functionality and current effectiveness, in addition to an evaluation about eventual and necessary future changes to be applied on the compliance system.

Most companies declare to have created or helped to improve their compliance system in a period ranging from 2003 to 2005.

Such result should be analyzed taking into account that in Italy, by means of the Decree, it was introduced the so-called “corporate liability” which obliges companies to set up programs in order to avoid criminal offences.

Based on the available information, it must be noted that the most medium or large sized businesses, performing their activity in Italy, had to implement and comply with the new rules in a relatively short time.

Although the lack of C.P. does not imply, by itself, the entity’s direct liability, it must be underlined that the simple “burden” to make and organize some effective compliance measures aiming at preventing crimes was sufficient to prompt the businesses to create or to implement their own defence system.

With regard to the eventual improvement of the deterrence aims following the C.P.’s adoption, the collected data can be defined “encouraging” and positive, in perfect and consequential harmony with the answers relating question no. 3, which focuses on the current Italian compliance system’s efficacy and effectiveness.

In particular, based on available information, we understand that Italian Economic Operators consider the system provided for by the Decree (as) “not useless” but rather “practical” and successful.

The above-mentioned regulation appears to have contributed to reinforce and support the organizational structure aiming at the compliance with the juridical and ethical rules against illegal and improper behaviours.

Instead, with reference to future and eventual changes to be applied to the internal C.P., in most cases the interviewed companies do not take a clear position. Information at issue can be explained taking into account the “*short life*” of the Decree, since it is very likely that it will be necessary to wait for a longer period in order to verify the C.P.’s real fullness and comprehensiveness.

Hence, in all probability we will have to wait in order to find other or new kind of instruments, in addition to those already applied, which are able to prevent the criminal acts.

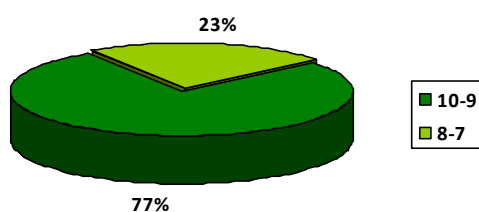
As a consequence, the lack of a positive/negative answer to our question may mean that the interviewees are not sure, to this day, whether and how implement or modify the C.P.

Q16. Possible enforcement of compliance programs

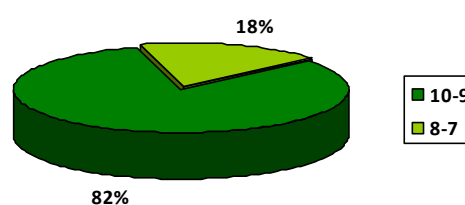
“Which means (reasons, sanctions, rewards) motivate you and your company to implement a compliance program to prevent and avoid crimes committed by employees?”

a) Preliminary considerations

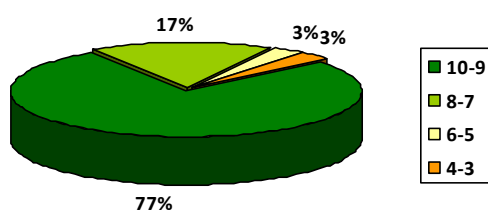
1. Ethical considerations



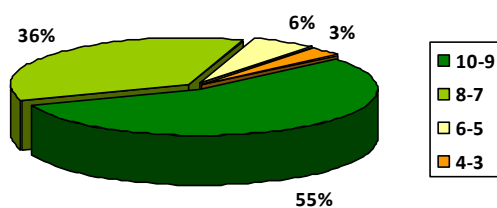
2. Reputation of your company (with regard to public opinion)



3. Shareholders expectations



4. Market expectations



The several options open to the interviewed companies may be divided as follows: apart from any ethical consideration - which forms an autonomous category - we find all the other evaluations linked to the corporate image, not only as external reputation in the market, but also as opinion of its own shareholders.

Under the first profile, interviewees show to have a sensitive understanding and to pay attention to the compliance with general ethical rules which, as such, may be justified by themselves.

In this connection, the adoption of ethical codes as internal self-regulation arises out from a natural company's choice, locating outside by a legal and juridical ban imposed by law.

Likewise, the entity decides to implement a set of ethical rules not in order to obtain benefits or avoid penalties, but since the compliance with a system of shared values results right and proper by itself.

Notwithstanding the introduction of a specific compulsory regulation on corporate liability (which may be sufficient to protect the entities from several penalties imposed in case of offences committed by employees), it may be interesting to note that Italian companies choose to give prominence to the application of "*meta-juridical*" and not legally imposed rules, in addition to the traditional legal system.

However, the reasons pushing the entity to organize itself so as to discover or prevent crimes have different origins: based on the provided answers, what matters is the business' reputation.

Such image depends, first of all, on the expectations of the shareholders (as "internal" subjects) and the market (as set of "external" subjects or interests) for the stability and proper entity's functioning under a legal point of view, as well as from an economic standpoint (assuming the close link between the two plans).

Despite the interviewees' high attention paid to the ethical requirements, the necessity to safeguard the company's image (and connected injuries which could

lead) remains the first reason bringing the business to install some C.P. aiming at avoiding the commission of criminal offences.

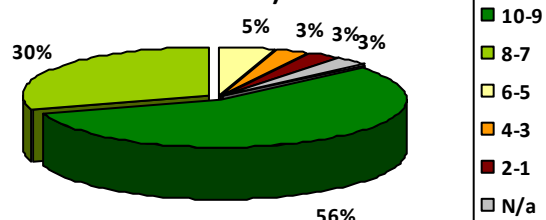
In this framework, we can state that “utilitarian” profile prevails against the merely ethical and purely juridical point of view.

Indeed, the compliance method seems to be justified even without the legal provisions requiring the same.

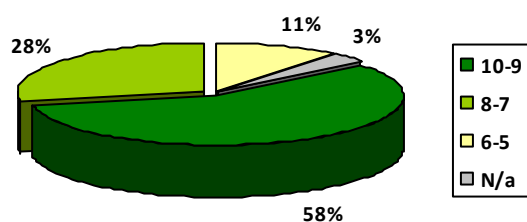
In other words, companies adopt the C.P. in order to preserve and protect the interests inevitably linked with the entity’s image and reputation, rather than to avoid the “criminal risk” following any offence committed by employees.

b) Direct enforcement

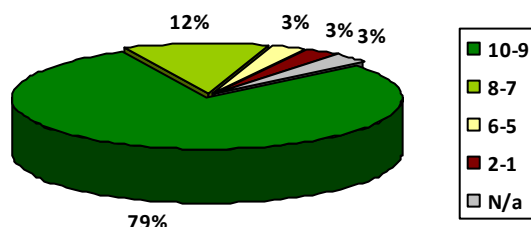
1. Legal obligation to install a compliance program (without specific sanctions in case of non-installment)



2. Legal obligations with specific civil sanctions in case of non-installment



3. Legal obligations with criminal law sanctions in case of non-installment

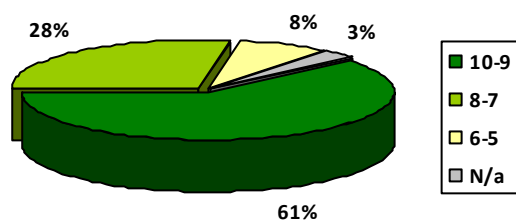


To confirm the previously analyzed data, we deem it proper to underline how the criminal sanctions imposed directly on the company (in case of breach of rules provided for by law) represents the strongest boost to the real and effective co-operation of the economic operator in the prevention activity of guilty acts.

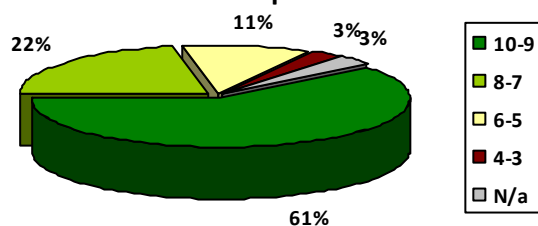
Furthermore, interviewees acknowledge that criminal sanctions are the most suitable, among the measures imposed directly by the law to encourage the entity to comply with the compliance system.

c) Indirect enforcement

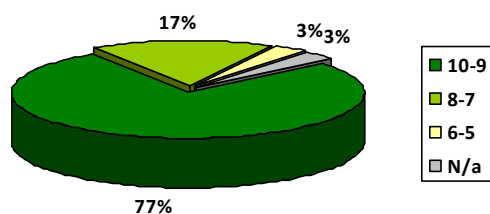
1. Criminal sanctions imposed on employees for future crimes



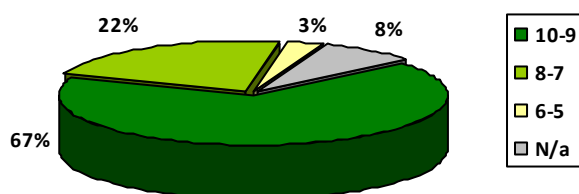
2. Criminal sanctions against superior for future crimes committed by employees, in case of an insufficient supervision



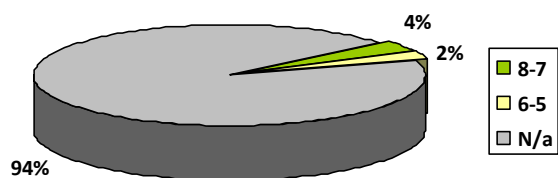
3. Criminal sanctions for the company for future crimes of its employees



4. Providing company with privileges in case its employees commit a crime, despite the generally implementation of an effective compliance program

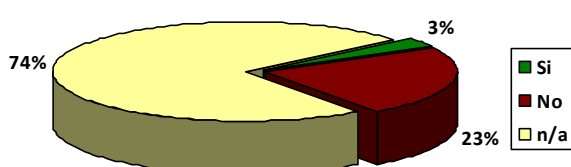


5) Other (Fraud prevention-Reinforcement of compliance)



Q17. Other aspects

“Do you have additional ideas for improving and/or implementing compliance programs in companies or for preventing and detecting company crimes?”



Answer	No.
Continuously improving the training procedure of all employees	1
Persevering relationships between business areas and compliance	1
Shareholder's commitment and supervision on the compliance	1

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