

**D.Lgs. n. 231/2001**

**Compliance Program**

***Methodological Approach***

**2011**

## Legislative Decree no. 231/01

- ✓ The Decree Scope
- ✓ Subjects
- ✓ Liability of legal entities
- ✓ Crimes provided by the Decree
- ✓ Exemption of the legal entities
- ✓ Compliance Programs
- ✓ Confindustria Guidelines

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- ✓ Compliance Program
- ✓ Implementation

**LEGISLATIVE DECREE No. 231/2001**

According to Legislative Decree 8th June 2001 no. 231 a company is liable for crimes committed in its interest and/or its favour by its directors, managers, employees, or third parties who act on its behalf.

Company liability does not exclude personal responsibility for crime.



**... Societas delinquere potest !**

**Article 1** of the Decree establishes the **subjects** of the regulation:

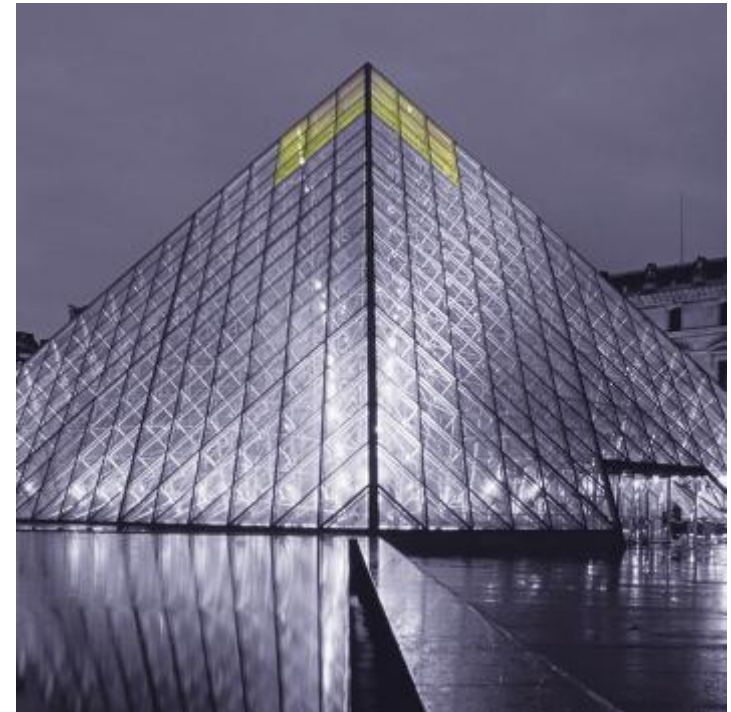
- legal entities (companies, foundations, institutional investors, associations, public companies);
- entities without legal personality (no profit organizations, labor unions, professional associations).



According to the article no. 5 of the Decree, a company (art. 5 of the Decree), may be responsible for crimes committed in its *interest* and/or its *favour* by:

- **“soggetti apicali”**: directors, representatives, managers, directors of units provided with financial and functional independence persons carrying out “*de facto*” management or control activities;
- **“sottoposti”**: persons acting under the supervision or direction of the above said “*soggetti apicali*”

MANAGEMENT  
EMPLOYEES



# Legislative Decree no. 231/2001

## Crimes provided in D. Lgs. 231/2001



Company liability is connected only to the crimes provided by the Legislative Decree no. 231/2001:

As of today, the following offences may determine the liability of a company:

- Offences Against the Public Administration Art. 25
- Offences Against the Assets of the Public Administration Art. 24
- Cybercrimes and Unlawful Data Handling Art. 24 bis
- Organized Crime Offences Art. 24 ter
- Offences against the Public Faith Art. 25 bis
- Crimes against Industry and Trade Art. 25 bis 1
- Corporate Offences Art. 25 ter
- Offences for the Purposes of Terrorism Art. 25 quater
- Female genital mutilation Art. 25 quater 1
- Offences against the individual Art. 25 quinquies
- Market abuse Art. 25 sexies
- Transnational Offences L.146/2006

# Legislative Decree no. 231/2001

## Crimes provided in D. Lgs. 231/2001



Company liability is connected only to the crimes provided by the Legislative Decree no. 231/2001:

- Offences of Non-voluntary Damage and Manslaughter (L.123/2007) Art. 25 septies
- Receiving, Laundering and Use of Money, Goods or Utilities of Unlawful Origin (D. Lgs. 231/07) Art. 25 octies
- Crimes of Copyright Violations Art. 25 novies
- Induction not to make statements or make false statements to the judicial authorities Art. 25 novies



The company shall be liable unless it proves that:

- a suitable **compliance program** has been adopted by its management **before** the commission of the crime;
- an independent and authoritative body within the company has been appointed with the task of surveying the implementation of said “*compliance program*” as well as its observance (“**The Supervisory Body**”);
- the crime has been committed by a person who **intentionally** breached the compliance program’s rules exclusively in his/her own interest;
- there were **no lack nor care of control** by the Supervisory Body.



The **Compliance Program** is regulated by article 6 of the Decree:

- **identification of the potential risk** activities of the company in order to the commission of crimes;
- **arrangement of an organization and authorization system;**
- **representation of the specific controls** existing in the company within the scope of the Decree;
- **management of the financial resources;**
- definition of an **information flow toward and from the Supervisory Body;**
- arrangement of a **disciplinary system.**



According to subparagraph no. 3 of article 6 of the Decree, Compliance Programs are adopted following the model published by **Trading Organizations** “**Guidelines**” (defined as “codes of conduct”) reviewed by Ministry of Justice such as:

- **CONFINDUSTRIA;**
- **ABI**
- **ANIA;**
- **AIIA;**
- **ANCE;**
- **ASSOSIM;**
- **ANIE FEDERAZIONE;**
- **ASSOBIOMETICA;**
- **ASSOGESTIONI;**
- **UNINDUSTRIA VENEZIA;**
- **ASSTRA;**
- **ASSIFACT;**
- **CONFCOOPERATIVE;**
- **FEDERAZIONE ITALIANA DELLE INDUSTRIE DEL LEGNO,;**
- **ANCC-COOP;**
- **CONFARTIGIANATO;**
- **ARIS.**





### The arrangement of a System of control requires:

- Ethical code;
- Organizational system;
- Computer and manual procedures;
- Authorizational system;
- Budget control;
- Communication and training plans.

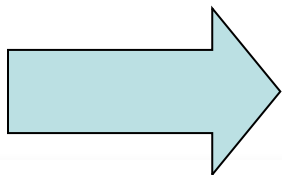
### Principles:

- Every single operation or transaction must be verifiable, **documented**, coherent and reasonable;
- **Segregation of duties**;
- **Specific sanctions** in case of violation of the Compliance Program provisions;
- **Definition** of management control and control over financial resources;
- **Reporting** toward the Supervisory Body.

# SANCTIONS

Measures are:

- **Pecuniary fines** from € 25.823 up to € 1.549.371;
- **Interdictive sanctions** - (interdiction; suspension or revocation of authorization, licence or concession related to the illicit deed; prohibition to enter into agreement with the Public Administration; exclusion from concessions, financing, subsidies; prohibition to advertise goods or services);
- **Mandatory seizure**;
- **Pubblication of judgement.**

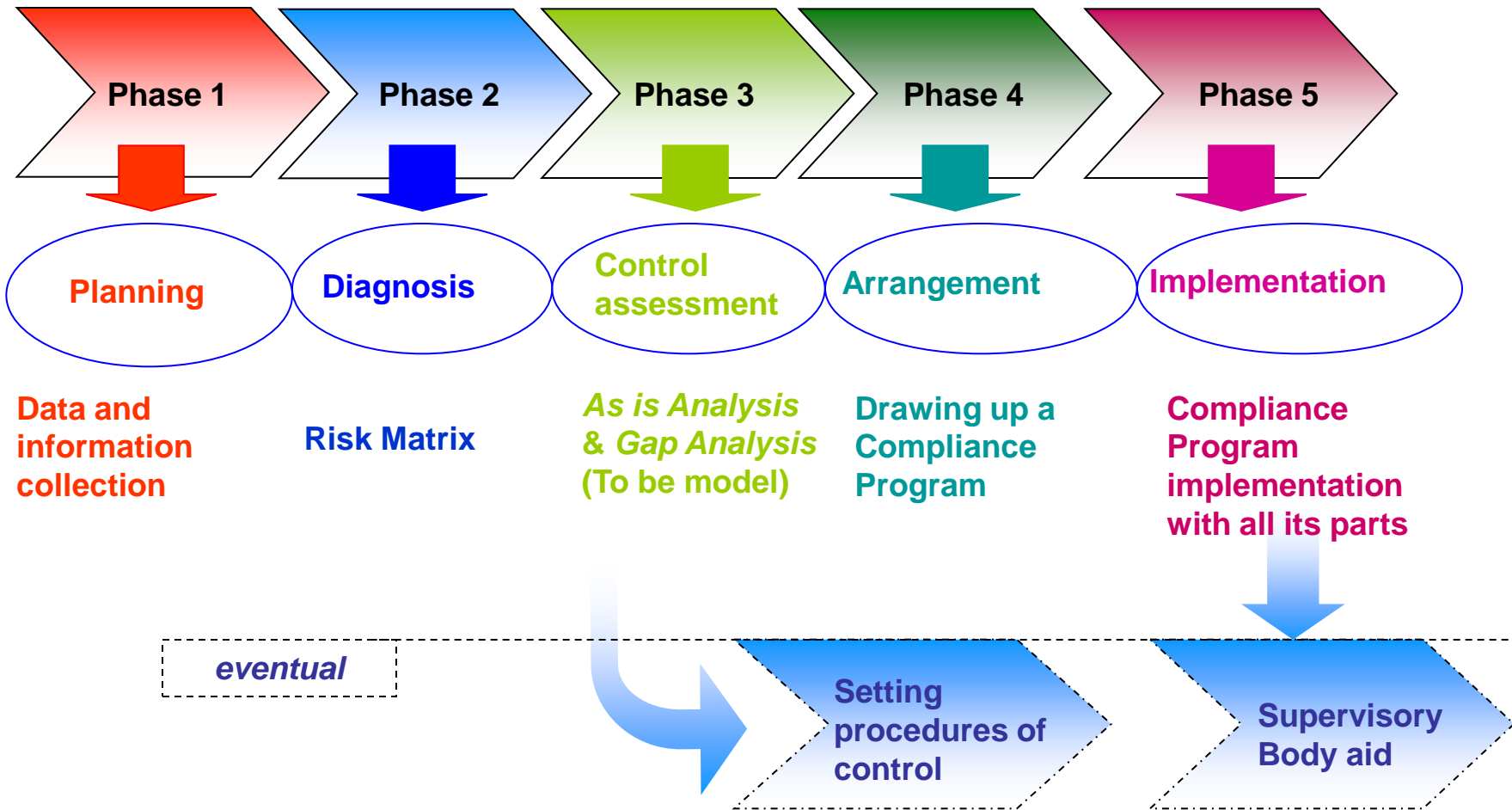


Company could be **interdicted** on a pre-trial phase.

# METHODOLOGY

# Project phases

Project phases are 5:





# Risk and control assessment

## - Output – Risk Matrix 1/2

Direzione	Funzione/Soggetto	Sezione	Attività	Contatti	Reati	Gravità	Probabilità di Rischio Potenziale		Rischio Residuo					
							Specifico	Percentuale di copertura del Rischio						
Resp.Area Scientifica	Agostini	1	Rapporti Istituzionali	AlFA, Ministero della Salute	Corruzione per un atto d'ufficio (impropria) (art.318-321 c.p.)	MOLTO BASSA	4,00	2,00	0,40	2,40				
					Istigazione alla corruzione per un atto d'ufficio (impropria) (art.322 c.p.)	MOLTO BASSA								
					Istigazione alla corruzione per un atto contrario ai doveri d'ufficio (propria) (art.322 c.p.)	ALTA								
					Corruzione per un atto contrario ai doveri d'ufficio (propria) (art.319-321 c.p.)	ALTA								
					Corruzione aggravata (art. 319-bis c.p.)	MOLTO ALTA								
					Corruzione per un atto d'ufficio (impropria) (art.318-321 c.p.)	MOLTO BASSA					4,00	1,60	0,32	2,72
					Istigazione alla corruzione per un atto d'ufficio (impropria) (art.322 c.p.)	MOLTO BASSA								
					Istigazione alla corruzione per un atto contrario ai doveri d'ufficio (propria) (art.322 c.p.)	ALTA								
					Corruzione per un atto contrario ai doveri d'ufficio (propria) (art.319-321 c.p.)	ALTA								
					Corruzione aggravata (art. 319-bis c.p.)	MOLTO ALTA								



Business Unit

Persons Interviewed

Public Administration Department involved

Direzione	Funzione/Soggetto	Sezione	Attività	Contatti	Reati	Gravità
Resp.Area Scientifica	Agostini	1	Rapporti Istituzionali	AlFA, Ministero della Salute	Corruzione per un atto d'ufficio (impropria) (art.318-321 c.p.)	MOLTO BASSA
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					Corruzione per un atto contrario ai doveri d'ufficio (propria) (art.319-321 c.p.)	ALTA
					Corruzione aggravata (art. 319-bis c.p.)	MOLTO ALTA

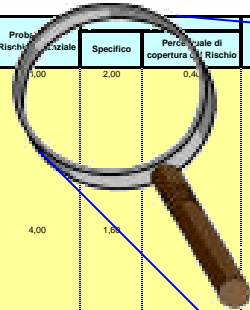
Risk impact referred to the possibility of sanctions

Which crimes are considered as eventual in that company activity

# Risk and control matrix

## - Output – Risk Matrix 2/2

Direzione	Funzione/ Soggetto	Sezione	Attività	Contatti	Reati	Gravità	Probabilità Rischio Potenziale	Specifico	Percentuale di copertura del Rischio	Rischio Residuo	
Resp.Area Scientifica	Agostini	1	Rapporti Istituzionali	AIFA, Ministero della Salute	Corruzione per un atto d'ufficio (impropria) (art.319-321 c.p.)	MOLTO BASSA	1,00	2,00	0,40	2,40	
					Istigazione alla corruzione per un atto d'ufficio (impropria) (art.322 c.p.)	MOLTO BASSA					
					Istigazione alla corruzione per un atto contrario ai doveri d'ufficio (propria) (art.322 c.p.)	ALTA					
					Corruzione per un atto contrario ai doveri d'ufficio (propria) (art.319-321 c.p.)	ALTA					
					Corruzione aggravata (art. 319-bis c.p.)	MOLTO ALTA					
					Corruzione per un atto d'ufficio (impropria) (art.319-321 c.p.)	MOLTO BASSA	4,00	1,80	0,40		2,72
					Istigazione alla corruzione per un atto d'ufficio (impropria) (art.322 c.p.)	MOLTO BASSA					
					Istigazione alla corruzione per un atto contrario ai doveri d'ufficio (propria) (art.322 c.p.)	ALTA					
					Corruzione per un atto contrario ai doveri d'ufficio (propria) (art.319-321 c.p.)	ALTA					
					Corruzione aggravata (art. 319-bis c.p.)	MOLTO ALTA					



Probabilità di Rischio Potenziale	Specifico	Percentuale di copertura del Rischio	Rischio Residuo
4,00	2,00	0,40	2,40

Potential Risk value (without the value of specific control impact)

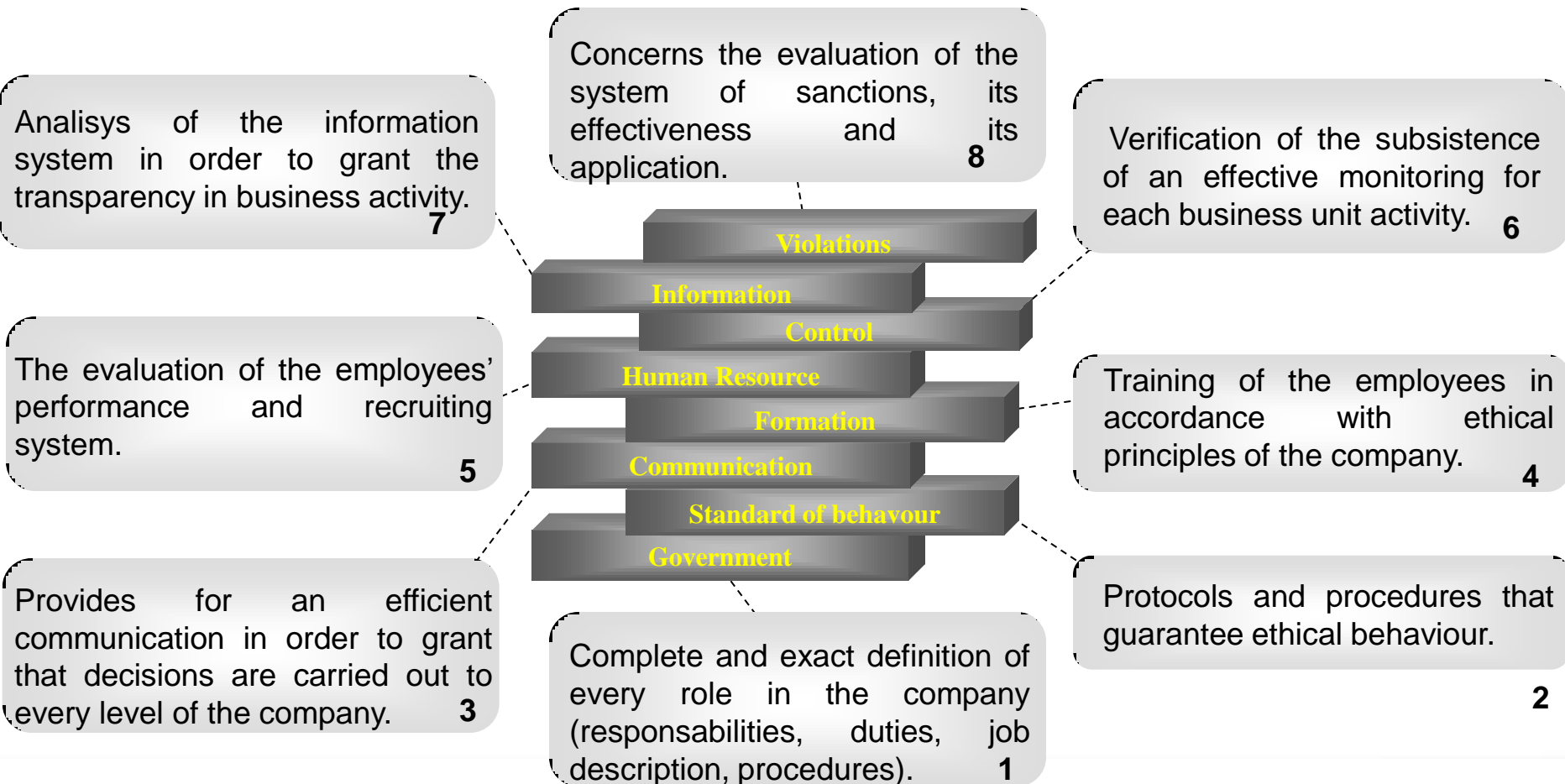
Specific Control

Coverage risk percentage

*Residual risk: it is calculated considering proportionally the impact of controls on the potential risk value*

# Internal System of Control: details and definition

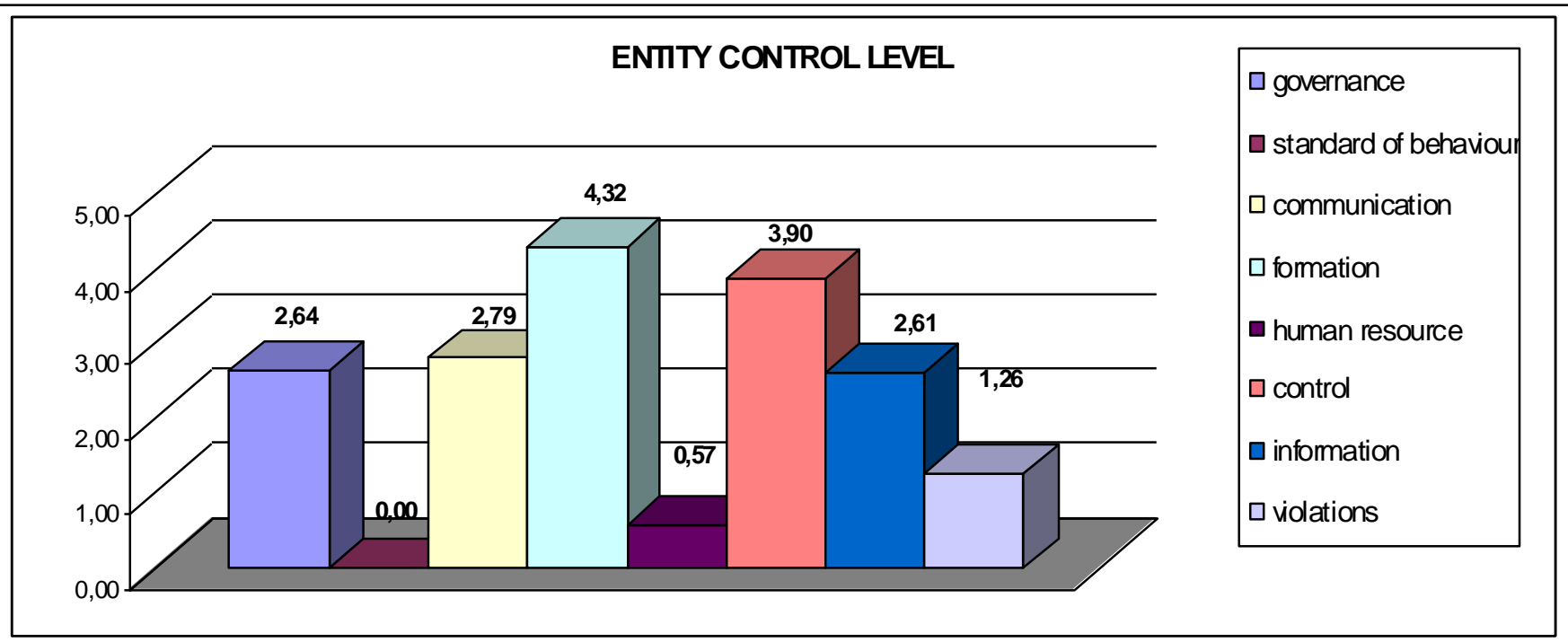
Internal System of Control is composed by 8 parts:



# Examples of output :

## entity control level

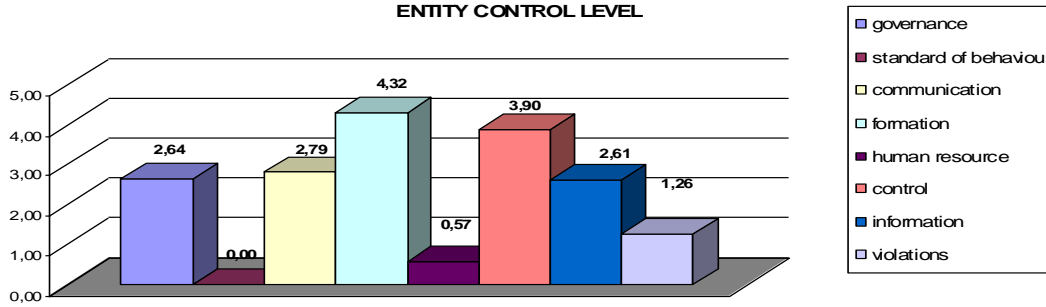
Entity control level is represented by the average value chart of each part of Internal System of Control; the values are given by the control assessment process.



# Examples of output:

## As is & Gap Analysis

ENTITY CONTROL LEVEL



As  
is

- Subsistence of organization chart, lack of formalization and communication;
- *Job description* lack of determination and up dating;
- Inexistence of proxies definition;
- Uncomplete procedures;

Gap/To do

- Communication of organization chart, process for the timely adoption of modications;
- Definition of *job description* system;
- Definition of proxies;
- Procedures to up-date:
  - recruiting
  - balance sheet process
  - revenue
  - advisors

Responsibility

HR  
CEO,  
HR  
CEO,  
HR

# Compliance Program

Elements of Compliance Program:

- Risk Matrix
- Authorization and organizational system
- Principles of Control
- Budget Control
- Ethical Code
- Supervisory Body
- Reporting to Supervisory Body
- Communication of the Compliance Program
- Disciplinary System



- **Legal aid** for the Compliance Program start up
- **Constitution** of Supervisory Body

Compliance Program and its elements must be approved by the Board of Directors of the company.

The Company shall draw up a **communication plan** in order to communicate internally and externally the Program.

Afterwards the company shall arrange a **training plan** about the Compliance Program and its elements through courses directed to all the staff.

Company is also required to appoint the **members of Supervisory Body**.



# OUR REFERENCES

**KStudio**  
Associato

Adecco SPA Altana Pharma Spa Amplifon Spa Beckam & Coulter Spa Gruppo CVA Spa Gruppo Auchan- inclusa Sma Spa DHL Srl Elettra **LOTTOMATICA** Gram Sgr Finaosta Spa Galderma Spa Impregilo Spa IKB Lamberti Spa Mecaer S **LOTTO** eb Spa Parmalat S.p.S. Premafin Spa Ital **Takeda** na Spa Messer Italia Spa Finaosta Spa Business Solutions Fidis Spa Autostrade Spa Benetton Spa Itea Spa Abiogen Pharma Spa Aeroporti di F **news** imor Spa As **FERROVIE DELLO STATO** d'Italia Asa **PHILIP MORRIS INTERNATIONAL** gelantoni Spa BBC Spa Chiron Spa Consor **Meridiana** Consorzio Servizi e Crediti Cooperativa centro-sud Eli Lilly Spa Edil Coop Costruzioni Eurovinil Spa Farmigea Spa Fin-Part Spa Firenze Pitti Immagine Srl Firenze Fiera Spa Grazini costruzioni Spa Gruppo Sita Trasporti General Electric: Nuovo pignone; GE Trans **UNITED COLORS OF BENETTON.** o Roberto Cavalli Gruppo Gucci Hardis Spa Istituto vaccinogeno Pozzi Spa Catania Farmaco Spa Master Spa **saes getters** Vaccines & Diagnostic Srl Ubi Sistemzentrale S gi Peretola Srl Siena Biotech ire Spa Teseco Spa Tissulab Spa (in corso) Unicoop del Tirreno Ammeraal Srl Berco Spa **ERICSSON** a Cementi rossi Spa Consorzio Centrale Adriatica Coop Estense Coop Nord Est Ervet Spa Gruppo Georg Fisher Italia Interpump Spa Iter Spa Merloni Termosanitari Spa Neos Banca Spa Poltrone Frau Spa Gruppo Securitas Alfa Wasse **TAKING YOU FORWARD** Spa Bidachem Spa Biomasse Italia Spa Boehringer Ingelheim Italia Spa Centost **LOTTO** si Farmaceutici Spa Dompé Farmaceutici Spa (e sue controllate) **LOTTO** Ericsson Spa Eur **LOTTO** MG: 231 e 262) Farchemia Srl Farindustria Ferrin **parmalat** a Fondo BNL Gan Assicurazioni Spa Gema Spa Grandi Stazioni Spa Intertab **LOTTO**aceutica Serono Spa Iritech Spa Ismett Srl **LOTTO** Spa Gruppo Lottomatica **LOTTO**eridiana Corporate Spa Philip Morris Italia **LOTTO** Soa Saes Getters Spa Sankyo **LOTTO** Pharma Italia Spa (ora Daichii-Sankyo Italia Spa) Shell Italia E&P Spa Shire Spa Sviluppo Italia Spa Takeda Italia Farmaceutici Spa Trenitalia Spa (e sue controllate) Wyeht Lederle Spa