



Garante Nazionale
dei diritti delle persone private della libertà personale
Presidente

Code of Self-Regulation¹

Article 1

Definitions

1. In the following text:
 - a) "Guarantor" means the collegial body of the National Guarantor for the Rights of Persons Deprived of Liberty², provided for by the founding law. The Guarantor, composed of the President and two Members, was designated by the Italian State, by diplomatic letter April 25, 2014 from the Permanent Representation of Italy to the United Nations, as the NPM under the UN Protocol, with all the powers and prerogatives that the latter provides for such Mechanisms. This designation was included in primary legislation by Decree-Law No. 130 of October 21, 2020, converted into Law No. 173 of December 18, 2020. The Guarantor was also identified by the Italian State, in a note from the Presidency of the Council of Ministers dated March 12, 2015 (DPE0002621P-4.22.23), as the National Monitoring Body for forced return operations pursuant to Article 8 paragraph 6 of Directive 2008/115/EC;
 - b) "Office" means the Office of the Guarantor, that is the technical body assisting the Guarantor;
 - c) "Components" means the staff of the Office;
 - d) "UN Protocol" means the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 18, 2002, ratified by Law No. 195 of November 9, 2012;
 - e) "Founding law" means Article 7 of Decree-Law No. 146 of December 23, 2013, converted, with amendments, into Law No. 10 of February 21, 2014, as amended by Article 1 paragraph 317 of Law No. 208 of December 28, 2015, by Article 1 paragraph 476 of Law No. 205 of December 27, 2017, by Article 3 of Decree-Law No. 113 of October 4, 2018 converted, with amendments, into Law No. 132 of December 1, 2018, and by Decree-Law No. 130 of October 21, 2020, converted, with amendments, into Law No. 173 of December 18, 2020;
 - f) "Regulations" means the Regulations concerning the determination of the structure and the composition of the Office placed under the authority of the Guarantor, adopted by Decree No. 89 of the President of the Council of Ministers of April 10, 2019;
 - g) "Directive 2008/115/EC" means Directive No. 115 of the European Parliament and of the

¹ The previous Code was approved by the Guarantor by resolution May 31, 2016, updated by resolutions of December 6, 2017, August 29, 2019, and January 8, 2021. This new Code was adopted by resolution March 30, 2021.

² The name of the Guarantor was changed by Decree-Law No. 130 of October 21, 2020, converted with amendments into Law No. 173 of December 18, 2020.



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Council of December 16, 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals;

- h) "ECHR" means the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe and signed in Rome on November 4, 1950;
- i) "UN Subcommittee" means the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment constituted - pursuant to the UN Protocol - within the "Committee against Torture" established by Article 17 of the UN Convention of December 10, 1984, ratified by Italy by Law No. 498 of November 3, 1988, in force since February 11, 1989;
- j) "Cpr" means the Centers for Stay for Repatriation, pursuant to Decree-Law No. 13 of February 17, 2017, converted with amendments into Law No. 46 of April 13, 2017;
- k) "Code" means this Self-Regulatory Code;
- l) "Code of Ethics" means the Guarantor's Code of Ethics;
- m) "NPM" means the National Preventive Mechanism under the UN Protocol;
- n) "CRPD" means the UN Convention on the Rights of Persons with Disabilities, ratified by Law No. 18 of March 3, 2009;
- o) "Prison Law" means Law No. 354 of July 26, 1975, as amended, setting forth norms on the enforcement of measures of deprivation and restriction of liberty.

Article 2

Functions of the Guarantor

1. The Guarantor, in compliance with the powers attributed by the founding law and the Regulations and in accordance with the principles and provisions of Part I, Articles 3 and 4 and Part IV, Articles 17 to 23, of the UN Protocol:
 - a) determines the guidelines and general criteria to which the activities of the Office shall comply and defines the objectives to be achieved, which outcomes are periodically assessed;
 - b) adopts the Code, setting out its tasks, the activities of the Office and their regulation as well as the guiding principles of the action of its components and that of those who, in any capacity, collaborate with it;
 - c) regularly examines the conditions of persons deprived of liberty who are in any place, referred to in Article 4 of the UN Protocol, exercising the powers set forth in that Protocol;
 - d) makes active efforts to improve the conditions of deprivation of liberty whether *de jure* or *de facto* and the treatment of persons subject to them and to prevent torture and other cruel, inhuman or degrading treatment or punishment, promoting and fostering collaborative relationships with the territorial Guarantors and other institutional bodies, however called, who have competence in the same domains as the Guarantor as well as with social organisations operating in this field;



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- e) proposes, if necessary, the strengthening of its preventive action through measures of protection to the definition of which it also comes through exchanges of information and mutual collaboration with the UN Subcommittee and other NPMs;
- f) establishes a continuity of communication with the State authorities that have jurisdiction in the matter of its preventive action.

Article 3

Tasks of the Guarantor

1. In a free manner, the Guarantor carries out his mandate to protect the rights of persons who in any form and even in the absence of a formal measure are deprived of their personal liberty by a public authority or as a result of its decisions or omissions.
2. In full independence and without any condition, the Guarantor visits the places referred to in Article 4 of the UN Protocol; conducts confidential in-person interviews with detainees, without witnesses, as well as with any other person who can provide useful elements for the exercise of its preventive function; inspects any document deemed necessary, having the concerned person's consent, also oral, including those of a medical nature. In particular, it visits:
 - a. the penitentiary institutions, accessing any section, any outside places in the perimeter area of the prison; the Residences for the execution of security measures (Rems); the therapeutic and reception communities or in any case public or private facilities where persons subject to alternative measures to detention or to house arrest are accommodated; the Youth Offender Institutions and reception communities for minors subject to measures of the judicial authority; any other place, including means of transportation, which may host persons deprived of liberty;
 - b. the holding cells in law enforcement stations, accessing any facility used for detaining people;
 - c. the Immigration Detention Centres, all places where the illegal foreign citizens may be detained for any reason, including "temporary detaining facilities" at police stations, the so-called hotspots and in any case any other premises referred to in Article 6 paragraph 3-bis first sentence, of Legislative Decree No. 142 of 18 August 2015 and those facilities at the borders for temporarily holding persons deprived of liberty;
 - d. the psychiatric establishments - Psychiatric Service for Diagnosis and Care (Spdc) - and public and private health care facilities where compulsory health treatments are enforced;
 - e. residential facilities for the elderly or persons with disabilities, for adults or minors, also in fulfillment of obligations arising from the CRPD, ratified by Italy, in order to prevent situations in which a limitation to the people's self-determination may result in a *de facto* deprivation of liberty;
 - f. any place that, due to a contingent emergency, holds persons who are not authorized to leave such a place at their own will.



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3. The exercise of these powers is aimed at:
- supervising that the enforcement of deprivation of liberty orders on detainees, internees, people in pre-trial detention or other forms of restriction of personal liberty, the enforcement of administrative orders or provisions of a medical nature affecting the liberty of persons, and anyhow all forms of deprivation of personal liberty that are not arbitrary and take place in accordance with the norms and principles established by the Constitution, international conventions on the promotion and protection of the rights of persons and of their dignity ratified by Italy, and any law in force;
 - supervising the consistency of regulatory acts with the principles referred to in point a), making recommendations to the Authorities in cases of lack of consistency or any implementation that contradicts such consistency;
 - formulating opinions on legislation of a primary and secondary nature in force or in the process of being drafted and approved that affects personal freedom, basing them on the results of its own observation activities and on national and international human rights principles and standards;
 - formulating reasoned findings and specific recommendations to the responsible administrations, which are obliged to enter into dialogue with the Guarantor on the measures to be taken, with respect to critical issues found in the facilities visited, or as a result of reports, requests or complaints received.
4. Requests - from the responsible Administrations - the information and documents deemed necessary for the performance of its duties. In the event that the Administration does not provide a response within thirty days, it shall inform the competent authorities so that they may intervene by ordering the delivery of the requested documentation, and in cases relating to the facilities referred to in paragraph 2 letter a) of this article, it shall also inform the competent judicial authority to which it may request the issuance of an order to exhibit.
5. In cases in which the circumstances referred to in Article 4, paragraph 2, second sentence, and Article 5, paragraph 1, letter e) apply, it intervenes in proceedings as offended party, with the rights and faculties established by Article 90 of the Code of Criminal Procedure, and evaluates in individual cases its constitution as a civil party in the trial.
6. In the exercise of its powers with respect to paragraph 2 letters c), d) and e) of this article, when special circumstances require it, the National Guarantor may delegate a territorial Guarantor to exercise its function on their relevant territorial area, for a period of six months, which may be extended.
7. Monitors the methods applied to the enforcement of forced returns and removals from the national territory of irregularly present foreign nationals referred to in Directive 2008/115/EC, Article 8, paragraph 6. By presidential decision, the activity of monitoring forced-return operations may be also carried out, in addition to the components, by staff belonging to the national monitoring network.
8. Where it ascertains violations of rights and corresponding obligations of the responsible administrations, it shall make findings and recommendations with a view to improving the treatment and situation of the persons involved and preventing the phenomena of torture and other inhuman or degrading cruel punishment or treatment, proposing, if necessary,



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the strengthening or modification of any protective measures in force.

9. Draws up reports on the conducted visits which are sent to the Administrations concerned and, made public, without indication of the names of the persons involved, only at the end of an "embargo" period during which the Administrations are called upon to make their own observations, which are published together with the report. The reports are also sent, should the Guarantor deem it appropriate, to the supranational bodies that oversee the accomplishments achieved by the Guarantor in the implementation of its tasks.
10. It promotes or participates in training initiatives targeting external stakeholders, schools and universities, as well as, through agreements, understandings or protocols, and interested administrations. Such initiatives are generally involving the components.

Article 4
Duties of the Guarantor

1. The Guarantor shall carry out its duties under Article 3 with independence, impartiality and professionalism, respecting the guiding principles set forth in Article 5. To this end, it shall develop continuing refresher training programmes.
2. The Guarantor establishes a cooperative dialogue with all the Authorities concerned in order to look for shared solutions to overcome the critical issues detected during its visiting activities and in its objective to safeguard the rights of the persons deprived of liberty and of all persons working in those places.
If during a visit or a forced return monitoring, the Guarantor considers that it occurs a violation of Article 3 of the ECHR, as interpreted by the European Court of Human Rights, or a violation of the constitutional safeguards of any person's dignity and inviolability, it shall promptly inform the competent Authority in order to interrupt without delay the detected violation. It also sent immediate notice to the Judicial Authority for action within its jurisdiction.
3. The Guarantor shall prepare the Annual Report on the activity carried out, containing the presentation of its objectives and an analysis of the results of its activity. The Report is transmitted to the President of the Republic, also in his capacity as President of the Superior Council of the Judiciary, to the President of the Constitutional Court, the President of the Senate of the Republic, to the President of the Chamber of Deputies, to the President of the Council of Ministers, to the Minister of Defense, to the Minister of Justice, to the Minister of the Interior, and to the Minister of Health. The Report is published in the Guarantor's website.
4. The Guarantor defines the strategic objectives on the prevention of corruption and transparency, based on which the Responsible for Corruption Prevention and Transparency (Rpct) proposes the Triennial Corruption Prevention Plan (Ptpc). The Rpct adopts the Ptpc and provides for the further fulfillments required by the provisions of Law 190/2012, as amended by Presidential Decree 97/2016, and the determinations of the National



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Anticorruption Authority, including those relevant to its staff training and refresher training, with particular attention to those working in areas where the risk of corruption is high.

Article 5
Guiding Principles

1. The Guarantor, the Office and all persons who in any capacity cooperate with the Guarantor in institutional activities shall abide by the following guiding principles:
 - a) absolute independence of conduct in compliance with the principles of the UN Protocol, in particular Article 18, and the Code of Ethics;
 - b) privacy of information confidentially collected by the Guarantor. In particular, no personal information may be made public without the express consent of the person concerned;
 - c) storage of collected data and information in full adherence to the rules governing the privacy of data and information;
 - d) confidentiality of the documentation and contents of the monitoring activity acquired during oversight visits and in the performance of the Guarantor's other duties;
 - e) confidentiality of the outcomes of the visits referred to in Article 3, until their publication in the Guarantor's website;
 - f) obligation to report without delay to the Guarantor all information of criminal offences against persons deprived of liberty of which they have become aware in the performance of their institutional duties, so that the President may promptly send them to the competent judicial authority.
2. The Guarantor shall actively work to ensure that no public Authority or official orders, enforces, permits, or tolerates a sanction against a person or organisation for communicating to the Guarantor any information, whether true or false. The Guarantor shall equally work to ensure that such individual or organisation does not suffer any kind of prejudice.

Article 6
The President

1. The President represents the Guarantor in institutional relations. He proposes to the Guarantor's Board the approval of the guidelines and general criteria to which the activity of the Office must adhere, defining the objectives to be achieved and their priorities.
2. The President convenes the Board's meetings, also at the request of one of its members, to be held periodically, and in any case at least once a month to deliberate on the institutional activity. The Guarantor's Board approves the budget and the final balance. The Board's decisions are taken with the approval of the President and of one member at least.
3. By his own decision and with the consent of the interested person, the President may grant the Board members specific operational and representative remits to be carried out directly or with the assistance of the components. The results shall be reported to the President,



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evaluated by the Board and referred to in the Annual Report on the activity of the Guarantor as per Article 4.

4. In case of necessity, the President can take urgent decisions, communicating them promptly to the Board members for their ratification.
5. The President, having heard the Board members, adopts the Code of Ethics.
6. To carry out institutional tasks, the President may decide to appoint experts and consultants of proven professionalism and competence. He may also establish consultation and study commissions, working or research groups composed of expert components, even supplemented by outside experts.
7. The President authorizes the implementation of oversight missions, without charge to the Board members, the expense to be allotted, the purchase of goods and the provision of services in the manner set forth in Article 10 of the Code.
8. The President shall determine the manner, time and presence of the components with respect to visits and other institutional tasks of the Guarantor, as well as monitoring activities referred to in Article 3 of the Code.
9. In case of prolonged absence or temporary impediment, the President may delegate his duties to the Board members, also individually.
10. The President appoints the Responsible of Corruption Prevention and Transparency (Rpct), choosing them from among the Heads of the Organisational Units. He also appoints the medical staff operational for the Office, the Prevention and Protection Safety Officer (Rspp), the Personal Data Processing Officer and the Data Processing Officer (Dpo), also employing external consultants.

Article 7

Composition and management of personnel assigned to the Office

1. Twenty-five staff members are assigned to the Office, at least twenty of whom shall come from the Ministry of Justice, including an Executive (Director), no more than two from the Ministry of the Interior, and no more than three from the National Health Service.
2. When necessary, the Guarantor can make use of additional staff units by entering into special assignment agreements also with other public Administrations involved in the performance of the tasks referred to in Article 3 of this Code.
3. The personnel to be assigned shall be selected by the Guarantor on the basis of the knowledge and positive experience acquired in the Guarantor's domains of intervention.
4. The Guarantor shall provide for the management and evaluation of personnel assigned to the Office. The staff shall work exclusively under the authority of the Guarantor and cannot be assigned to other tasks without the Guarantor's authorisation.
5. The Guarantor may ask the competent Administrations, by a reasoned opinion and also at the request of the interested party, to revoke the assignment of a component. Revocation at the initiative of the Administration to which the component belongs is subject to the laissez-passer review of the Guarantor.



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Article 8
Office Organisation and lay-out

1. The organisation of the Office meets the principles of transparency, effectiveness, economy and efficiency of the public administration, as well as the need for flexibility in the employment of personnel in operational activities.
2. The Executive assigned to the Office shall serve as the Office Director and as the Officer delegated to the management of the resources allotted to the Guarantor. They oversee the enforcement of the Guarantor's provisions and the implementation of its programmes and objectives, while coordinating and directing the activities of the staff in this regard.
3. The following Organisational Units (individually indicated as OU) are identified in relation to the operational needs for the performance of the Guarantor's functions and duties and they are susceptible to modification and adaptation in relation to practical experience:

OU 1. General secretariat, accounting and IT support:

Secretarial area: secretariat of the Office; administrative management of personnel and reporting on staff's additional monthly revenues to the relevant administrations of origin; in/out office correspondence and transmission to the OUs; filing; office logistics; organisation of the Office missions and institutional initiatives foreseen by the Board.

Accounting area: support to the Director in the implementation of the Guarantor's budget; preparation of the budget and its final balance; adoption, implementation and assessment of the Guarantor's economic management measures; implementation of the Guarantor missions' budget.

IT area: hardware and software configuration of workstations; help desk; Lan network management; management of publications on the Internet site; management and maintenance of the Intranet; relationship with the Ministry of Justice's directorates and external enterprises providing connection networks and secure data storage; digital management of the flow of documents and related archives.

OU 2. Deprivation of liberty in criminal justice system:

Monitoring and visiting the facilities of the Department of Penitentiary Administration and of the Department of Juvenile and Community Justice. Relations with the relevant Administrations, in particular with the Prosecutor's Offices and the competent Courts as well as with research and Universities working in the field of deprivation of liberty and human rights.

Inspection of records, requests for documentation, contacts with the Supervisory Courts.

Handling of complaints on conditions of prisons and of prisoners.

Monitoring of criminal proceedings involving acts committed against persons deprived of liberty in the criminal justice system and the disciplinary effects on the officials involved.

Preparation of periodic reports on the main critical issues observed in the facilities based on the analysis of critical events, monitoring of detention rooms and community spaces, as well as on the overall numerical consistency of complaints and appeals under Article 35-bis of the Prison Law.

Analysis of jurisprudential developments, in particular to the judgements by the Court of



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Cassation and by the Constitutional Court in the field of penal detention.

OU 3. Deprivation of liberty by the Police Forces:

Monitoring and visiting the facilities managed by Police Forces, which are otherwise used in situations of deprivation of liberty.

Relations with the relevant Administrations as well as with research and university bodies and institutions in the area of competence. Reading and requesting documentation.

Control over the development of criminal proceedings dealing with actions committed against persons deprived of liberty under the responsibility of Police Forces and the disciplinary effects on the officials involved.

OU 4. Deprivation of liberty and migrants:

Monitoring and visiting the facilities depriving migrants of their liberty such as the Immigration Removal Centres (CPR), Hotspots, First Reception Centres, Centres for unaccompanied minors, the so-called suitable facilities and premises, premises in transit and border zones and in any case the premises referred to in Article 3(2)(c) of this Code.

Relations with the relevant Administrations as well as with research and university bodies and institutions in the area of competence. Reading and requesting documentation.

Handling of complaints and reports relating to the area of intervention of the Organisational Unit.

Control over the development of criminal proceedings dealing with actions committed against persons deprived of liberty in administrative detention facilities.

Monitoring of forced-return operations, at the different stages of their implementation.

Reporting to the Guarantor of problems concerning compliance with the principles of proportionality and necessity in the use of force during such operations.

Coordination of additional resources related to projects under the Asylum, Migration, Integration Fund (AMIF).

OU 5. Deprivation of liberty in health and social care facilities:

Monitoring and visiting of the Psychiatric Service for Diagnosis and Care (Spdc) and facilities where persons undergoing Compulsory Health Treatment (Tso) are admitted.

Monitoring and visiting health and social care homes including, in particular, residences for the disabled - minors or adults - or the elderly where *de facto* forms of deprivation of liberty may occur.

Monitoring and visiting the Residences for the Execution of Security Measures (Rems). Handling complaints concerning places of deprivation of liberty in the social, health and socio-medical domain and the persons housed therein.

Relations with the relevant Administrations as well as with research and university bodies and institutions in the area of competence.

Reading and requesting documentation.

Control over the development of criminal proceedings dealing with actions committed against persons deprived of liberty in the area of competence.



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4. The following Organisational Units are established under the direct authority of the Board:

OU 6. Board Secretariat:

Handling relations with institutional authorities, related ceremonial and participation to institutional events. Board Secretariat functions, management of the Agendas of the President and of the two Members of the Board.

Handling of files directly managed by the President: evaluations, in-depth studies, analysis of issues.

Management of internal and external information flows, relating to the Board, with particular reference to correspondence addressed to the President.

Drafting and collating provisions and minutes of the Board's meetings.

Definition of the preliminary phase of complaints processing pursuant to Article 35 of the Prison Law and secretariat functions of the relative deliberating Commission.

Final co-ordination for sending the Annual Report to Parliament, through the collection of material prepared by the Organisational Units, and organisation of the event.

Uo 7. Studies, National and International Relations: Study and research activities.

Coordination of the Guarantor's publications of a general nature.

Legislative updating and national and international regulatory processes.

Relations with research and university bodies and institutions operating in the area of competence of the Guarantor.

Institutional relations with the territorial Guarantors, with international HR bodies and with other bodies operating within the framework of the system for the protection of persons deprived of liberty.

Cooperative participation in international projects.

Translation and interpreting service.

5. By means of collective resolutions, subject to the consent of the persons concerned, after consulting the Director, and taking into account the staff resources, the Guarantor shall assign the available personnel to the different Organisational Units, defining their tasks and competences, appointing the person in charge and, if necessary, the deputy in charge and one or more contact persons.
6. The components may participate in national and international visits and missions relating to the various activities of the Guarantor regardless of the Organisational Unit to which they belong.
7. Modalities and participation of the components in the visits and monitoring activities of the Guarantor are established by specific provisions by the President, after sharing them with the Board.
8. All the Organisational Units, with the co-ordination of the Guarantor
- a) participate in internal and external training with State and local Administrations, Judicial Authorities, Associations, Universities, regional and local Guarantors;



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- b) prepare memoranda of understanding for research and cooperation projects with national and international bodies and organisations;
- c) draft thematic reports and opinions in the relevant field;
- d) draft contributions to the Report to Parliament and take care of the collection of data in their field of competence;
- e) prepare the set of recommendations and standards relating to each field of competence.

Article 9
Office premises and assets

1. The Guarantor's Office is sited in Rome at the premises made available by the Ministry of Justice, in via di San Francesco di Sales, 34, 00165.
2. The Garante avails of the resources made available by the State Administrations in accordance with the provisions of its Regulation. It also makes use of the facilities put at the Guarantor's disposal by the Ministry of Justice, by other State Administrations, by community and international Organisations operating in line with the purposes of its institutive law, as well as of those freely offered by Bodies that share the respect for the principles of the UN Protocol.
3. The Ministry of Justice shall allocate to the Office the assets, including computer equipment, a dedicated website, necessary for its operation, ensuring its full maintenance. By means of its own structures and assets, the Ministry of Justice also provides for any organisational and logistic support needed for the performance nationwide of the tasks of the Guarantor.

Article 10
Financial, administrative and cost-related resources

1. The financial resources, which are necessary for the performance of the Guarantor's institutional tasks, shall be administered in a cost-effective and transparent way. Within the limits of these resources, the President, by means of his own decisions, shall justify and authorise expenditure on missions, the purchase of goods and the provision of services, having obtained the laissez-passer on their financial regularity.
2. The Guarantor shall arrange the annual expenditure plans in accordance with and within the limits of the allocated resources, modulating the expenditure items on the basis of objective criteria which should be functional to the Office's needs, in compliance with the Internal Accounting Regulation.
3. The Guarantor's financial resources are allocated by the national budget law and flow into a specific budget chapter the Guarantor uses in full autonomy and independence. Expenditure is managed by the Director of the Office, in their function as delegated official, who is assisted by the staff of the General Secretariat, Accounting and IT Support Unit, according to the provisions issued by the President.



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4. The control on the administrative-accounting regularity of the expenses incurred by the Guarantor is carried out by the Ministry of Economy and Finances, which is the administration in charge of verifying the legitimacy of any public expenditure.
5. A summary statement of the expenses incurred during the calendar year, charged to the chapter referred to in paragraph 3 above, shall be included in a specific section of the Annual Report to be submitted to Parliament.
6. For the management of budget chapters other than that referred to in paragraph 3, which are relevant for the purposes of the Office's staff expenditure, the specific provisions of the Internal Accounting Regulation shall apply.

Article 11

Validity and Amendment of the Code

The provision adopting this Code is an integral part thereof. The Code shall enter into force on the day following the approval provision by the Guarantor. The amendment of one or more articles of the Code requires the unanimous approval of the Guarantor. The procedure followed for its adoption shall be repeated in the event of the adoption of a new Code.

Rome, 30 March 2021

Mauro Palma, President

Daniela de Robert, Board member

Emilia Rossi, Board member