Criminal Ruling Division 2 No. 43112 Year 2021

President: GALLO DOMENICO

Rapporteur: DE SANTIS ANNA MARIA

Hearing Date: 6 October 2021.

RULING

On the appeals brought by

1) GENERAL PUBLIC PROSECUTOR AT THE COURT OF APPEAL OF MILAN
2) GESTORE DEI SERVIZI ENERGETICI-GSE S.P.A.
3) EAM SOLAR ASA -EAM SOLAR ITALY HOLDING S.R.L. as well as by
4) PILOTTO GIUSEPPINA born in Castelfranco Veneto on 12 May 1968 against

the ruling of the Court of Appeal of Milan of 20 January 2021

having regard to the acts, the challenged ruling and the appeals;

having read the new pleas submitted by the lawyer of the civil parties Eam Solar ASA and EAM Solar Italy Holding;

having read the request for correction of the notice of hearing made by the Lawyer Mr. L. Scuderi for EVIVA SpA in liquidazione, formerly Energetic Source SpA;

having read the defensive briefs of Lawyer Mr. Antonio Miriello for Cavacece Alessandro, Lawyer Mr. Carlo Paliero for ENS SOLAR FIVE srl; Lawyers Mrs. Chiara Padovani and Mr. Vincenzo Saponara for Igor Akhmerov; Lawyers Mr. Michele Laforgia and Mr. Raffaele Padrone for Sebastiano Maggi; Lawyer Mr. Alceste Campanile for the company Energia Fotovoltaica 73; Lawyer Mr. Rino Caiazzo for Enovos Luxembourg

(followed by a rejoinder brief filed on 30 September 2021); Lawyer Mr. Luca Luparia Donati for Ens Solar Four, Energia Fotovoltaica 3, Soc. Agricola a.r.l., Energia Fotovoltaica 44, Energia Fotovoltaica 71, Energia Fotovoltaica 18, Energia Fotovoltaica 46; Lawyer Mr. Enrico De Castiglione for SAEM Energie Alternative s.r.l.;

having heard the report of the Judge Mrs. Anna Maria De Santis;

having heard the indictment of the General Public Prosecutor, Mr. Alessandro Cimmino, who concluded that the challenged ruling should be set aside with remittal to the previous degree of judgment as regards charges B), D) and F), with reference to the position of Cavacece Alessandro for civil law purposes only, and that the appeal of Pilotto Giuseppina is inadmissible;

having heard the lawyers of the applicant civil parties, Lawyer Mr. Sarandrea Agostino for G.S.E. S.p.A.; Lawyer Mrs. Bongiorno Giulia, for EAM Solar Italy Holding and EAM Sola Asa, who set out their pleas, requesting the upholding, and filed written prayers for relief and a bill of costs;

having heard the lawyers of the civil parties, Lawyer Mr. Dresda Vincenzo for UNICREDIT S.p.A.; Lawyer Mrs. Ticconi Anna Lisa for UBI Leasing S.p.A.; Lawyer Mr. Vaira Michele for Soc. Agr. Energia Fotovoltaica 60; Lawyer Mr. Cerboni Roberto for Interporto Toscano

having heard the lawyers of the defendants Mr. La Forgia Michele and Mr. Padrone Raffaele Emilio for Maggi Sebastiano; Lawyer Mrs. Padovani Chiara for Akhmerov Igor; Lawyer Mr. Pisano Roberto for Giorgi Marco, Lawyer Mr. Miriello Antonio for Cavacece Alessandro, who urged the dismissal of the appeals brought by the General Public Prosecutor and the civil parties;

having heard the Lawyer Mrs. Stocco Malagrazia for the applicant Pilotto Giuseppina, who referred to the appeal, requesting the upholding;

having heard the lawyers of the parties civilly liable: Lawyer Mr. De Castiglione Enrico Maria for SAEM Energie Alternative s.r.l.; Lawyer Mr. Masucci Massimiliano for AVELAR Management Ltd and AVELAR Energy Ltd; Lawyer Mr. Bettolini Clerici Niccolò for AVELEOS S.A, Layer Mr. Caiazzo Salvatore for Enovos Luxembourg S.A., who referred to the filed briefs, seeking dismissal of the appeals;

having heard the Lawyers Mr. De Sanna Fabrizio for ENS Solar Five and Energetic Source S.p.A. (now EVIVA S.p.A. in liquidazione); Mr. Accinni Giovanni Paolo for ENOVOS SOLAR; Mr. Campanile Alceste for EN.F073 a.r.l.; Mr. Luparia Donati Luca for ENS SOLAR FOUR , EN.FO 3, EN.FO 44, EN.F071, EN.F0 18, EN.FO 46; Mr. Cerboni Roberto for Interporto Toscano; Mr. Caiazzo Salvatore for ENOVOS Luxembourg S.A.

DEEMED IN FACT

1. By ruling dated 18 April 2019, the Court of Milan declared:

-Akhmerov Igor and Cavacece Alessandro guilty of the offences of aggravated fraud and forgery in complicity ascribed under charges B) and E) of the heading, limited to some of the contested photovoltaic fields and with reference to the "II Conto Energia" *[II Energy Account]*;

-Akhmerov Igor, Marco Giorgi, Sebastiano Maggi and Giuseppina Pilotto guilty of the offences of fraud and forgery ascribed under charges D) and E) of the heading in relation to the "IV Conto Energia" *[IV Energy Account]*;

-Akhmerov Igor and Giorgi Marco responsible for the offence of fraud under F).

It also declared the partial extinction due to statute of limitations of the alleged offences under charge E), acquitting the defendants of the remaining charges due to the non-existence of the fact and imposing the penalties deemed fair; it declared the liability of the companies under trial in relation to the administrative offences alleged pursuant to Legislative Decree 231/2001 to be non-existent. Convicted Igor Akhmerov, Alessandro Cavacece, Marco Giorgi, Sebastiano Maggi and Giuseppina Pilotto, jointly and severally with Avelos S.A., Avelar Management and SAEM sr.l., to pay compensation to GSE SPA for the damage caused by the offences referred to in charges B) and D) of the heading, to be settled separately, with the award of a provisional sum. In addition, it convicted Akhmerov and Giorgi, together with the party civilly liable Aveleos SA, to pay damages to EAM SOLAR ITALY HOLDING and EAM SOLAR ASA with the award of a provisional sum; Akhmerov, Giorgi and Pilotto to pay damages to Interporto Toscano Amerigo Vespucci with the award of a provisional sum; Akhmerov, Giorgi, Maggi and Pilotto to pay damages to Agr.En.Fo 60 a r.l. with the award of a provisional sum; Akhmerov to pay damages to Unicredit Spa with the award of a provisional sum; Akhmerov and Cavacece to pay damages to Ubi Leasing with the award of a provisional sum. Finally, it ordered the confiscation by equivalent value of the profits of the offences under charges B) and D) of the heading.

The challenged ruling, partially reforming the first instance ruling issued by the Court of Milan on 18 April 2019 and challenged by the Public Prosecutor, by the civil parties GSE, EAM SOLAR ASA and EAM SOLAR ITALY HOLDING, by the parties civilly liable SAEM Energie Alternative srl, Aveleos SA, Avelar Management Ltd and by the defendants, acquitted the defendants Akhmerov and Cavacece of the offence of fraud under B) for non-existence of the fact; Akhmerov, Giorgi and Maggi from the offence under D) in part for non-existence of the fact and in part for not having committed it, as well as with the latter formula from charge E); partially acquitted Pilotto from the charge under D) in relation to some of the contested plants and declared extinction due to statute of limitations

of the conducts ascribed to her under E). Acquitted Akhmerov and Giorgi of the offence under F) for non-existence of the charge, revoked the civil judgments against Akhmerov, Giorgi, Maggi and Cavacece and the parties civilly liable Aveleos S.A., Avelar Management and Saem Energie Alternative srl. It revoked the civil judgments against Pilotto in favour of Interporto Toscano and revoked the conviction to pay a provisional sum in favour of GSE. It revoked the ordered confiscation of the profit of the offences against Akhmerov, Cavacece, Giorgi and Maggi, setting the amount to be confiscated against Pilotto at EUR 1,219.52.

2. The General Public Prosecutor of the Republic at the Court of Appeal of Milan appealed before the Italian Supreme Court in relation to the positions of Giorgi Marco, Akhmerov Igor and Maggi Sebastiano, alleging:

2.1. the deficiency and manifest illogicality of the statement of reasons with reference to the acquittal declared in relation to charges B) and D) of the heading.

As regards fraud sub B), consisting in the false certification of the completion of the works by 31 December 2010 in order to gain access to the fares of the "Secondo Conto energia" *[Second Energy Account]*, the appeal court held that the measurements carried out by the subcontractor SAEM regarding the quantity of works carried out and included in the Progress of Work [SAL] alone cannot constitute proof of the actual performance of the works, especially since the Progress of Work [SAL] were not signed by the construction manager or his/her appointee. According to the applicant General Public Prosecutor, the Lower Court gave incomplete, illogical and de-contextualised statement of reasons, referring to irrelevant civil law principles in support of its belief.

The challenged ruling failed to take account of the fact that the documents at issue originated from Saem and were certainly intended for the client companies Kerself-Aion and Avelar, to which they were sent together with invoices to be paid for the work carried out and documented. The invoices attached to the unsigned Progress of Work [SAL] were duly paid in the absence of any dispute and the fact that they were not signed is not such as to undermine the reliability of the documents, especially since there was no reason that could have induced Saem to certify only partially the works.

The General Public Prosecutor adds that the assumption made in the challenged ruling that the delivery of the panels after 31 December 2010 could be justified by storage or replacement requirements is illogical, since it is mere conjecture, whereas from the e-mails acquired it was possible to reconstruct the delivery to the fields of no less than 30 megawatts of panels that arrived at the harbour of Taranto between the end of 2010 and the beginning of 2011.

Moreover, in assuming that the panels had been replaced due to damage, the Court did not consider that the owner companies were required to notify GSE of the replacement of the modules by attaching the documentation including the list of the serial numbers of the panels removed and the new ones to be installed. Nor is the reference to the need to store the panels on the photovoltaic fields reasonable on the ground that they were already stored at the bonded warehouses under more secure conditions.

2.2 The statement of reasons put forward in support of the finding that the confessional statements made by Vito Losurdo and the accuse of complicity against Cavacece Alessandro were unreliable is also illogical and incomplete, since the declarant has provided sufficient information to identify the photovoltaic fields in relation to which false certifications had been drawn up, namely seven fields in which he carried out construction management activities, which in fact began in November 2010 and continued the following year, making it clear that they did not include those of ESI II.

The Lower Court overlooked the multiple elements of corroboration of Losurdo's statements arising from the Progress of Work [SAL], from the transport documents and from Paolo Russo's emails, basing its judgment on a fragmented and compartmentalised assessment of the evidence, recognising the reports of commencement of works in the file to be of decisive importance, even though they were contradicted by documentary evidence such as the photographs and the GSE inspections.

With regard to the assessment of Cavacece's liability profiles, the challenged ruling made only a partial assessment of the evidence gathered, failing to evaluate it as a whole. Specifically, the General Public Prosecutor denounces the failure to take into account the statements of Cabibbo and Maggi, who described the defendant, the head of the technical department of Avelar Management, as the person who monitored the progress of the work on the photovoltaic fields and have overlooked the fact that the defendant's knowledge of the failure to complete certain fields on time is logically inferred from the email of 30 December 2010 by which he informed Christnach and Akhmerov of the completion of the ESI I and ESI II plants and in this context should be included the statements of Losurdo about the pressure suffered by Cavacece in order to draw up false certifications.

2.3 With regard to the charge D), a case in which the fraud is substantiated by the use of false documentation to obtain the feed-in tariff in relation to 26 fields and for 18 of them by the implementation of tricks and deception aimed at obtaining the European bonus, the Lower Court excluded that the defendants Akhmerov and Giorgi were aware of the unlawful conducts to be attributed only to Coppola with the complicity of Marco Bertoldo and the defendant Pilotto.

The applicant submits that the challenged ruling limited itself to assessing only the formal data in relation to the invoices issued by the Chinese company Eopply and the Polish company Revolution Six to Helios but paid by Aion, without noting the intrinsic anomaly, consisting of the fact that the company Revolution Six, which was supposed to assemble the panels, issued invoices to Helios for 1.01 cents per watt against the much higher amounts invoiced for the supply of materials by Eopply, a circumstance that points to the fictitious interposition of the Polish company in order to obtain the European bonus and to the awareness of the fraudulent mechanism on the part of the company's top management, i.e. the Chairman of the Board of Directors Akhmerov and Managing Director Giorgi.

The applicant adds that the partiality of the assessment of the appeal judges emerges from the failure to take into account the state of crisis in which the group was in, engaged in a recovery plan, circumstance which renders implausible the ordinary nature of the checks on the disbursement of the invoices in question as supported by the defendant Giorgi, but even more from the doubts raised on the prices invoiced by the administrative director of Aion, Mr. Crotti, in an email sent to Coppola, Managing Director of Helios. The General Public Prosecutor adds that the Regional Court also totally failed to assess the events following the importation by Energetic Source, of which Akhmerov was Chairman of the Board of Directors and Giorgi Managing Director, of more than 20 thousand panels supplied by Eopply, which arrived in the harbour of Taranto in May 2011, were purchased by Energetic Source and, after regularisation by affixing a plate indicating their origin, were sold to Kerself, which cleared them through customs at the end of August. Although that transaction was held to be entirely lawful by the trial judges, the challenged ruling failed to take account of a series of circumstances connected with that transaction which are capable of proving fraud in order to obtain the European bonus and the involvement of the defendants Akhmerov and Giorgi in that fraud.

The applicant maintains that there is evidence that in the majority of the plants referred to in charge D) of the heading, which were admitted to the benefit of the 10 % increase as a result of the concealment of the non-European origin of the panels implanted, modules of Chinese origin were used which were not imported by Helios through Revolution Six but by Energetic Source, which were then resold to Kerself-Aion and transformed into European products. Although at the time of the sale to Kerself, the modules purchased by Energetic bore the wording relating to manufacture in China, they were subsequently found in the fields with tampered labels and the Court did not take into account that on 12 September 2011 Sebastiano Maggi sent an email to Coppola and Giorgi informing them of the mobilisation of 40 workers to replace the labels,

operation which, contrary to Giorgi's assertion, could not be traced back to the operation necessary for the customs clearance of the panels, which had taken place about 15 days earlier, and which presupposed that the goods had already been regularised with the indication of the country of manufacture. Nor was it considered that Sebastiano Maggi had no relationship with Energetic Source and therefore had no reason to send the abovementioned email.

The appeal judges have not considered the further documentary evidences constituted by the email of 24 August 2011, contemporary to the operations of customs clearance of the panels from the Harbour of Taranto, in which Pilotto communicated to Coppola and Paolo Russo, an employee of Avelar, the availability of five thousand labels Made in Europe, asking directions on where to send them, the response of Russo to that email, also addressed to Cabibbo, direct collaborator of Giorgi, containing a table of fields with annotations of the numbers of labels needed for each: six of the eight fields indicated in said communication received and implanted Eopply modules coming from the Taranto customs warehouse and, therefore, of Chinese origin; the further e-mail of 29 August 2011 from Giuseppina Pilotto, containing a request for quotation to Arte Grafica Munari for 16 thousand labels Made in Europe. According to the applicant, General Public Prosecutor, such evidences demonstrate that it is impossible to attribute the conception and implementation of the fraud only to Coppola in the light of the above-mentioned communications, since the mechanism described by Coppola himself, which involved the interposition of Revolution Six, was only one of the ways in which the criminal plan was implemented.

2.4 As regards the position of Sebastiano Maggi, owner of the subcontractor SAEM, the General Public Prosecutor notes that the Lower Court held that the defendant was extraneous to the facts ascribed to the same on the basis of the statements made by Coppola who, although he stated that the replacement of the labels was carried out by someone employed by SAEM, he excluded that it was Maggi without however explaining how it is possible that Coppola involved SAEM in the relabelling activity without having any interlocutor in the company and without anyone wondering why, since it was an operation that was outside the company's competence and involved not insignificant costs. In this context, Maggi's e-mail of 12 September 2011 appears to be totally devalued in the light of the defendant's role as technical manager and signatory of the final sheets of the plants, although he disavowed the signatures relating to the second and fourth "conto energia" *[energy account]*, even though there is no evidence whatsoever to identify persons alternatively responsible within the company for such tasks.

The assessment of the challenged ruling in relation to the European bonus fraud is manifestly illogical, since the appeal judges stated that the fraudulent mechanism had benefited Helios alone, without taking into account

the proven link between all the companies involved, so that the interest of Helios cannot be distinguished from that of the parent company Aion and of Avelar, itself the parent company of Aion, which during the period of interest was undergoing a serious financial crisis which threatened to overwhelm the whole group. Therefore, from a logical point of view, it appears totally implausible that Mr. Coppola was able to involve, on his own, various companies such as Energetic Source, Kerself, Aion, the clients, Saem, keeping Akhmerov and Giorgi in the dark, i.e. the only persons who could coordinate all the natural and legal persons involved in order to obtain the GSE contributions.

Finally, the General Public Prosecutor notes that the Lower Court ruled out the existence of the offence with respect to the fields for which the 10% increase of the so-called European bonus had not been requested, referring in an irrelevant manner to Council of State Plenary Assembly ruling no. 18/2020. After pointing out that the system for the payment of the contribution is based on the mechanism of self-declarations and posthumous checks, he notes that the separation of the components of the basic fare and of the mark-up for European production and their separate assessment as set out in the decision of the Council of State cannot be exported to criminal proceedings where, as in the present case, there is a systematic and prearranged infringement of the conditions for access to the contribution.

In conclusion, according to the applicant, in unhinging the detailed statements of reasons given by the first judge in relation to the conducts relating to the II and IV "conto energia" *[energy account]* (charges B and D), the appeal judges failed to take into account the close ownership and managerial ties between all the companies in the photovoltaic fields production chain, both the clients and the contractors and subcontractors, all of which were controlled both directly and indirectly by Avelar Energy and Avelar Management, in which Akhmerov and Giorgi held senior positions.

The original appeal was supplemented by a deed filed on 1 June 2021, in which the following was alleged:

2.5 failure to state statement of reasons in relation to the acquittal of the defendants Akhmerov and Giorgi in respect of charge F).

According to the applicant, the challenged ruling distorted the evidence in so far as it found that the defendants had not committed significant omissions of communication during the negotiations with EAM, arguing that - although the search minutes of 19 December 2012 were not handed over to EAM's representatives in the course of the negotiations - the information contained in those documents was the same as that contained in the minutes drawn up by the Cerignola Italian Tax Police in relation to the inspection of certain plants.

The applicant notes that, contrary to the findings of the challenged ruling, that document did not contain information on the nature of the investigation and the purpose of the investigations which was far more significant than the content of the 2012 search decree, since there is no reference to the provisional charge and the nature of the fraudulent conducts alleged.

Lawyer Mr. Angelo Nanni as lawyer and special attorney of the civil party GESTORE DEI SERVIZI ENERGETICI GSE SpA

3. Manifest illogicality of the statement of reasons in relation to the acquittal of the defendants Akhmerov and Cavacece for the offences referred to in charge B) of the heading, also from the point of view of the failure to make an overall assessment of the evidence acquired and of the distortion of the evidence.

3.1 The Court of Appeal overtly reversed the logical order followed by the Court of First Instance in its assessment of the evidence and used as the basis of its acquittal the existence of declarations of completion of works signed by Engineer Mr. Lo Surdo, while at the same time devaluing his statements with regard to the lack of truthfulness of some of them. Specifically, the Regional Court found Lo Surdo to be unreliable in that he did not specify in relation to which fields the false certifications had been drawn up, indicating them as fields in which work had commenced in November 2010, a fact that was allegedly denied by the reports of commencement of work in the file. However, the applicant notes that the formal submission of the report of commencement of activities does not constitute certain information as to the actual commencement of the works and the Court of Appeal did not take into account that Lo Surdo's statements are reflected in the document prepared for the meeting of the Board of Directors of Aveleos SA of 16 November 2010, which acknowledged the lack of panels and Avelar's decision to recover through Energetic Source part of the modules necessary to complete the solar fields.

The Regional Court dismissed the applicant's first ground of appeal, devaluing the evidentiary significance of the various Progress of Work [SAL] in the file, denying that they could be used to demonstrate that the works relating to the II "conto energia" *[energy account]* were not completed in good time, and similarly held that the transport documents subsequent to 31 December 2010 were irrelevant in the absence of any recognition of the places of delivery and the reasons for the specific allocation. The applicant company notes that the challenged ruling improperly referred to civil case-law on the legal classification of the Progress of Work [SAL], transposing principles relevant to contractual matters into criminal law, without considering that the same decision cited by the appeal judges states that, where there is no dispute, the Progress of Work [SAL] constitute full evidence of the works carried out. Furthermore, it failed to take into account that the Progress of Work [SAL], in the present case, are not

disputed by the contractor Kerself-Aion or the clients and the relevant invoices have been paid. As regards the failure to sign, the Regional Court disregarded the fact that it is undisputed that the Progress of Work [SAL] came from SAEM, while the alleged impossibility of ascertaining whether or not the percentages of realisation referred to the work as a whole or to a portion of it is of no relevance to the proceedings, given that as at 31 December 2010 the works had to be completed in their entirety.

The multiple transport documents attesting the delivery of photovoltaic panels to the contested plants under B) after 31 December 2010 were also illogically devalued, as the challenged ruling failed to link such emergency with the other data that emerged during the investigation, such as the Progress of Work [SAL], censuring the lack of inspections at the place of destination and resorting to mere conjecture with reference to the possibility that the deliveries were intended to replace panels already installed, an eventuality which required notification to the GSE of the serial numbers of the modules removed and those replaced.

3.1.2 As regards the position of Cavacece, the applicant company complains that the Regional Court excluded the involvement of Avelar Management Ltd and the employee Cavacece in the preparation and sending to GSE of the applications for admission to the feed-in tariffs of the II "conto energia" *[energy account]* on the basis of an unjustified selection of the investigative material, devaluing the statements of Mr. Cristnach and favouring the version of Lawyer Mr. Zucca and Mr. Cabibbo, who attribute this task to the contractor, notwithstanding the discovery at Avelar's Milan office during the search, on 23 September 2014, of numerous original documents transmitted electronically to GSE and partly signed by Akhmerov; the declaratory sources that qualify the defendant as the head of the technical management of Avelar Management in contact with the construction managers and aware of the progress of the works on the photovoltaic plants; the ascertained preparation by the defendant of the presentation for the Board of Directors of Aveleos of 16 November 2010, containing clear reference to the delay in the execution of works due to lack of panels; the direct competence together with Coppo, reported by the witness Christnach, to deal with the feed-in tariffs.

3.2 Lack of, contradictory and manifest illogicality of the statement of reasons in relation to the acquittal of the defendants Akhmerov, Giorgi, Pilotto and Maggi on the ground of the non-existence of the fact for the offences referred to in charge D) also from the point of view of the failure to make an overall assessment of the evidences acquired and of the distortion of the evidence.

The defence maintains that the Regional Court unjustifiably overstated the ruling of the Council of State of 11 September 2020 by delimiting the charge under D) in contrast to the description of the facts that constitute the offence and were the subject of the investigation. Indeed, it deemed that, on the basis of

the wording of the charge, the Chinese origin of the photovoltaic panels is an irrelevant circumstance for the purpose of obtaining the non-increased feed-in tariff although, according to the indictment, one of the methods of the frauds is the use of false certificates of compliance with the technical rules IEC 61215 and 61730 (independently challenged in charge E), this instrumental conduct differs from the conducts aimed at profiting from the European bonus, so much so that the charge states that the GSE was misled, disbursing the amounts of the feed-in tariff for 26 plants and also the increased contribution for 18. The statement of reasons of the appeal judges is therefore manifestly illogical in so far as they ruled out the existence of the offence in respect of the plants (8) in relation to which the European bonus had not been applied for.

On the other hand, the statement of reasons is erroneous in so far as it finds that the deceptive conduct concerned only the component consisting of the European bonus, finding that the request for the basic feed-in tariff was lawful on the ground that the plants complied with the technical rules laid down in the Ministerial Decree 5 May 2011, an assessment that incorporated the contents of the report by Mrs. Roncarolo, Energetic Source's defence consultant, which was based on the tests carried out by Eurotest Laboratori srl on 1 October 2010 with the consequent issue of international certification of compliance with the requirements of technical rules CEI EN 61215 and 61730. The applicant maintains that the Lower Court misinterpreted declaratory and documentary evidences in holding that the frames of the photovoltaic panels were not among the required technical requirements and in consequently affirming the irrelevance of the fact that the panels installed in the plants referred to in charge D) had frames manufactured by a company other than Marioli snc and of uneven dimensions. In fact, with regard to the document issued by Eurotest on 9 July 2010, it was overlooked that the new tests had been carried out with reference to the replacement of the external frames and the subject of the tests were the frames of Marioli Service, which had never been installed in the fields under D), nor was it taken into account that the qualification process and the validity of the results were expressly conditioned on the correctness of the data provided for the purpose of verifying the technical standards.

Besides, the Regional Court omitted the witness statements of Lgt Epifani on this point and did not take into consideration the technical regularity of the panels installed on the remaining plants, supplied by Helios through the fictitious intermediation of Revolution Six. In this regard, the challenged ruling omitted any comparison with the content of ruling no. 898/2017 rendered for the same facts in the proceedings against the co-defendant Bertoldo, acquired pursuant to Article 238 bis of the Italian Code of Criminal Procedure, nor did it take into account the statements made to the Public Prosecutor by Coppola in the questioning of 23 July 2014, acquired in the file with the consent of the parties, from which it expressly results that Eopply only initially succeeded

in producing the panels according to the client's specific, non-standard specifications, while subsequently, when orders were not placed well in advance, it supplied "its own panels, with its own specifications".

The applicant adds that the statement of reasons is furthermore contradictory with regard to the offences of forgery alleged under charge E), in relation to which the defendants Akhmerov, Giorgi and Maggi were acquitted for not having committed the fact although the charge related to the falsity of the certificates of compliance of the modules with the IEC technical rules, which the Court held did not exist in relation to charge D).

3.3 The manifest illogicality of the statement of reasons in relation to the acquittal for not having committed the fact of the defendants Akhmerov, Giorgi and Maggi from the offences under D) also from the point of view of failure to assess the evidences acquired and distortion of the evidence. The applicant company complains that the censured acquittal is the result of the illogical choice of the Lower Court to disregard the circularity of the roles assumed and the functions performed by the defendants in the many companies involved, in the absence of any plausible justification. The challenged ruling omitted any reference to the declarative and documentary evidences attesting to the existence of a group logic, such as the testimony of Coppola and Gasperini or the presentation prepared for the meeting of the Avaleos SA Board of Directors of 16 November 2010 which shows the direct intervention of Avelar Energy in deciding the procurement of solar panels, the report pursuant to art. 67 Bankruptcy Law of Mrs. Chiaruttini or, again, the report on the management performance of the Kerself Aion group, signed by Akhmerov, relating to the proposal of a financial manoeuvre to support Kerself and its subsidiaries and the clauses of the procurement contracts so-called Energy Performance Contracts, EPCs, which exclude a conflict of interest between the companies of the Avelar group. Contrary to the view taken by the challenged ruling as to whether the liability of the defendants Akhmerov and Giorgi was attributable to the position they held in the companies, the applicant points out that the finding of liability made at first instance was supported by evidence of awareness of the fraudulent mechanisms, which could be inferred from the chain of communication linking Coppola to Giorgi and Giorgi to Akhmerov and from the weekly conference calls for updates on the photovoltaic projects.

3.3.1 The allegations of illogicality made with regard to the failure to take disciplinary measures against Coppola following the searches in December 2012 are also based on a fragmented and atomistic view of the evidences, even though Giorgi was fully aware, also for intervening by telephone with the officers, of

the purpose of the activity in place, and the evaluations expressed in relation to the matter of the delegation of payment of the invoices of Eopply and Revolution Six directly by Kerself instead of Helios.

Similarly, the lawyer of the civil party complains the illogicality of the statement of reasons with reference to the assessment of the email of 12 September 2011 sent by Sebastiano Maggi to Coppola and for information to Giorgi containing the statement that he had employed 40 workers to replace the panel nameplates. The Lower Court excluded that the said communication could be used as evidence of the knowledge and co-participation of Maggi and Giorgi in the so-called European bonus fraud, considering reliable the version of Giorgi about the fact that the replacement of the labels constituted a physiological activity due to the fact that the same had to be adapted to the regulatory changes with the mandatory indication of the production site and the certification body, alleging, moreover, the plausibility of the traceability of the email to the customs clearance operations of the panels purchased from Energetic Source and received at the Harbour of Taranto from China and the unavailability on that date (12 September 2011) of the false Made in Europe labels. The challenged ruling failed to take into account the fact that, in the light of the e-mails of 24 and 26 August 2011 between Pilotto and Paolo Russo, an employee of Avelar Management, it is apparent that, on that date, at least 5,000 Made in Europe labels were available to Pilotto, who asked to know their destination and received instructions from Russo to return them to SAEM, while a few days later Pilotto herself asked Arte Grafica Munari for an estimate for the printing of 16,000 labels with the wording Made in Europe and the indication of the certifying body. This order was processed on the following 2 September, as is evident from the documentation acquired, and the labels were forwarded to Saem Energie Rinnovabili. The applicant adds that the reference to the need to adapt the panels to the supervening technical indications is also erroneous since, on the date on which the abovementioned communications were exchanged, the implementing rules issued by the GSE on 9 August 2011 were in force which, for the plants which had entered into operation up to December 2011, derogated from the need to update the labels and all 18 plants referred to in charge D), in which the 26608 panels supplied by Energetic Source SPA were installed, had entered into operation before the end of December 2011.

3.3.2 The challenged ruling also unjustifiably overturned the judgement of the partial unreliability of the statements of the co-defendant Coppola with regard to the involvement of Maggi, considering reliable the statement of Coppola to have never involved Mr. Maggi in the criminal project and that he had no contact person in Saem with whom to coordinate the affixing of thousands of false labels. The applicant maintains that it is logically untenable that Maggi, the technical director of Saem, had no knowledge of the activities in which the

company's 40 employees were engaged in relation to the panels imported through Energetic Source, a transaction to which Coppola was formally uninvolved.

In addition, the applicant states that the denial that Maggi was involved is also illogical on account of the fact that he was not qualified as a technician responsible for the final project documentation in relation to the signing of the technical final sheets of the plants for the orders referred to in charge D), which certified the use of modules of European origin. In fact, the Lower Court, relying on the formal qualification set out in the installation agreements between AION and Saem, failed to take into account that no alternative indication was given as to who was to take care of that task which, in relation to the plants covered by the II and III "conto energia" *[energy account]*, had been carried out by the defendant. Finally, it is contradictory and the result of an atomistic assessment of the evidences the assumption that Giorgi and Akhmerov were unaware of the Chinese origin of the panels installed, even though the supply agreements for the Chinese panels produced by Eopply were signed by Giorgi on behalf of Energetic Source, of which the co-defendant was chairman of the Board of Directors, and were installed on 18 plants.

3.4 The manifest illogicality of the statement of reasons in relation to the revocation *vis-à-vis* the defendant Pilotto of the conviction to pay the provisional sum in favour of GSE SPA. Misapplication of Article 42(3) of Legislative Decree No 28/2011. The applicant maintains that the Regional Court revoked the provisional sum against the defendant Pilotto on the ground of the non-explicitation of the criteria on which the equitable settlement was based, without taking into account the fact that Article 43(3) of Legislative Decree No 28/2011 would have made it possible to determine the extent of the damage to be settled at least in the amount of 20% of the feed-in tariff received, whereas, following the amendments introduced by Law No 18/2019 , since the facts in question are the subject of criminal proceedings concluded with a conviction, albeit not a final one, the amount to be paid by way of provisional sum, following the termination *ex tunc* of the agreement entered into with GSE, entitles the party to recover the entire amount paid.

Lawyer Mrs. Giulia Bongiorno on behalf of the civil parties EAM SOLAR ASA and EAM SOLAR ITALY HOLDING s.r.l.

4. The contradictory and manifest illogicality of the statement of reasons, also in relation to Article 192 of the Italian Code of Criminal Procedure. The applicant civil parties claim that the challenged ruling is supported by incomplete and illogical arguments, is based on a breakdown of the evidences relied on at first instance and was rendered in breach of the principle requiring the appellate court to state a strengthened statement of reasons, on which its decision is based,

in the event of a different assessment of the evidences from that of the first instance court.

In the present case, the Lower Court partly ignored decisive data such as the transport documents proving the completion of the plants after the legal deadline and partly attempted to neutralise with illogical arguments the highly circumstantial content of objective elements such as the various Progress of Work [SAL], by resorting to criteria for the assessment of legal evidence proper to civil proceedings. Furthermore, the defence points out that the challenged ruling has sterilised the circumstantial content of the evidences acquired, in breach of the rules of Article 192 of the Italian Code of Criminal Procedure, as a result of an atomistic and fragmented assessment of the evidences.

4.1 With regard to the acquittal of the defendants from the offence of fraud damaging the companies EAM under charge F) of the heading, the Regional Court referred to the assessments that led to their acquittal from the "predicate" offences under charges B) and D) of the heading. With respect to the conducts aimed at obtaining the fares under the second "conto energia" *[energy account]*, the applicants note that Akhmerov's liability was established by the first instance judge on the basis of the evidentiary convergence of several elements attesting to the failure to complete the works at the plants benefiting from the subsidised fares by the deadline of 31 December 2010, and, specifically, on the basis of the transport documents, the communications in the emails of Paolo Russo, an employee of Avelar, the photographs of the plants uploaded on the GSE portal for deceptive purposes and the self and hetero accusatory statements of the co-defendant in related proceedings Vito Losurdo. The challenged ruling overturned the consistent motivational logic of the first judge, debasing the overall scope of the evidences acquired, incongruously devaluing Losurdo's statements, extrapolating and isolating them from the documentary compendium, on the basis of which many of the fields for which the incentive under the second "conto energia" *[energy account]* had been requested had received the photovoltaic panels necessary to complete the installation only after the final date of 31 December 2010, and making an erroneous reference to the reports of commencement of activities, documents from which the date of the actual commencement of work cannot be inferred automatically. Moreover, the challenged ruling found Losurdo to have intended to slander the defendant Cavacece without explaining the reasons for doing so and failed to take into account the many elements confirming his reliability. As regards the absence of a subordinate relationship between the declarant and Cavacece and the alleged absence of pressure from the former to induce the latter to sign false certificates of completion of the works, the challenged ruling overlooked the fact that Losurdo was linked by consultancy relationships with the various vehicle companies controlled by Avelar, of which Cavacece

was the technical director and the one who approved the invoices sent to Avelar by Losurdo himself.

4.1.1 The applicants add that the challenged ruling stripped of all circumstantial significance the metric calculations or Progress of Work [SAL] attached to the invoices relating to the construction of the fields benefiting from the incentives under the second "conto energia" *[energy account]* on the basis of a purely formalistic reading of the documentary data, even though they were never called into question by the clients. In this regard, the Court of Appeal failed to take into account the commonality of interests between the client and the contractor, although it is not disputed that the client company Kerself Aion had long been a majority shareholder of the contractor SAEM. Moreover, the appeal judges' reference to civil case-law is irrelevant since, according to constant case-law in criminal proceedings, the Progress of Work [SAL] constitute documents pursuant to Article 234 of the Italian Code of Criminal Procedure, which are subject to the judge's free belief and not to the principles of legal evidence according to the criteria of civil proceedings.

With regard to the analysis of the photographs uploaded on the GSE website at the time of the application for the feed-in tariffs, the Regional Court gave merely apparent statement of reasons, ascribing to error the production of identical images or images taken a few seconds apart in order to certify the date of completion of certain photovoltaic plants.

In addition, the challenged ruling circumvented a number of elements considered decisive by the first judge in establishing the defendants' liability. This is the case of the transport documents, which were only partially assessed with reference to the communications of the employee Paolo Russo, while various documents certifying the arrival of the photovoltaic panels at the fields subject to sale to EAM and beneficiaries of the incentives of the second "conto energia" *[energy account]* on a date certainly subsequent to 31 December 2010, such as Giordano D., Selvaggi, Lorusso, Ninivaggi SCN, Cagnazzi, Gentile, were disregarded. According to the applicants, this is a decisive omission, since the fields were all eligible for the benefits of the second "conto energia" *[energy account]* and were subsequently transferred to EAM. Nor is the fact that the first judge had excluded the existence of adequate evidence in relation to the fraud in respect of the Ninivaggi, Cagnazzi and Gentile plants sufficient to exclude the alleged defect, since the defence had brought an appeal against that finding precisely on the basis of the transport documents referred to and the ruling should have answered the appeal in this respect. Furthermore, the assumption in the challenged ruling that the target photovoltaic fields could serve as storage sites is a mere inference, since there is no evidence in the file to support such a conclusion in relation to the fields Giordano D., Selvaggi, Lorusso, Ninivaggi SCN, Cagnazzi and Gentile and the

transport documents attest to the delivery of quantities of materials necessary for the completion of individual plants.

Similarly, the Lower Court ignored the results of the GSE's verification procedures, including on-site inspections and documentary analysis, which led to the forfeiture of the incentive agreements in November 2014;

4.2. The contradictory and manifest illogicality of the statement of reasons in relation to the Enfol4 plant, which is eligible for the fares under the Fourth "Conto Energia" *[Energy Account]*. The challenged ruling ruled out the existence of fraudulent conduct to the detriment of EAM since the use of modules from China for the construction of the plant was ignored by the defendants and the offence was attributable *o*nly to Gianpiero Coppola. In any event, the information provided by Akhmerov and Giorgi to the purchasers during the negotiations would have been comprehensive. The Regional Court contradicted the first judges, who had found Coppola unreliable insofar as he had excluded the involvement of Akmerov and Giorgi in the fraudulent scheme, stressing that after the searches of 19 December 2012, carried out at the offices of Aion, Ecoware and Helios, no disciplinary measures had been taken against him and no explanation had been requested from him as to what had happened, claiming that the above-mentioned decrees had been issued in proceedings against unknown persons and it does not appear that the defendants had been made aware of them. Such an assessment is in contrast with the results of the search minutes at Aion Renowables Spa, from which it appears that an officer of the General Public Prosecutor contacted Giorgi by telephone and informed him of the purpose of the operation; with the leading roles held by the defendants in the searched companies; with Akherov's own statements during the trial. According to the applicant companies, the statements of reasons of the Regional Court are also manifestly illogical in relation to the circumstantial evidence relating to Marco Giorgi's involvement in the fraud concerning the plants that had benefited from the fares of the Fourth "Conto Energia" *[Energy Account]*, consisting of the email of 12 September 2011 in which Maggi informed Coppola and - for information - also Giorgi and Cavacece of the mobilisation of 40 workers for the replacement of the nameplates. According to the challenged ruling, the communication must relate to the affixing of the Made in China nameplates for the purpose of customs clearance of the Chinese panels imported by Eopply and purchased by Energetic Source. The Court failed to take into account that Maggi did not provide such an explanation, merely stating that he did not remember the reason for sending the email, whereas it is not disputed that the customs clearance operations, which presupposed the regularisation of the Chinese-made panels, took place between 18 and 29 August 2011. Furthermore, it was not taken into account that Maggi had no connection with Energetic Source and that, in the light of previous communications, the nameplates to be affixed were marked Made in Europe in order to

conceal the EU origin of the panels in order to obtain the feed-in tariffs under the IV "conto energia" *[energy account]*. The e-mail communications between Giuseppina Pilotto and Paolo Russo, an employee of Avelar Energy, bear this out;

4.3 The contradictory and manifest illogicality of the statement of reasons in relation to the failure to communicate by the defendants Marco Giorgi and Igor Akhmerov as a constituent element of the fraud suffered by the companies EAM.

The parties complain that, although the Regional Court acknowledged that, during the negotiations between Aveleos and EAM, the search decrees of 19 December 2012 and the relevant minutes of the operations carried out had not been made available, it held that that circumstance had no substantial effect, since Aveleos, and on its behalf Akhmerov, had in any event provided absolutely complete information on all the circumstances relevant to the correct formation of the contractual will, referring to the inclusion in the data room of the minutes of the inspections carried out by the Cerignola Italian Tax Police, on the basis of a delegation of the Public Prosecutor of Milan, allegedly containing information on the nature and the purposes of the investigations that is much more significant than what can be deduced from a reading of the provisional indictment contained in the search decree of December 2012. The defence complains in this regard that the evidence has been misrepresented in that, contrary to what was claimed by the appeal judges, only the search decree of December 2012 specifies the plants under investigation, identifying them as those that benefited from the so-called European bonus, and contains the explanation of the hypothesis of indictment, elements not found in the minutes of the Italian Tax Police, from which it emerges only generically the existence of investigations while the interest of EAM was directed to the knowledge of the reasons for the same, a circumstance that would have allowed to have a picture of the possible defects of the plants that had benefited from the European bonus, including Info 14;

4.4 the absence of statement of reasons for the objections raised in the appeal by the parties with regard to the existence of the offence of fraud in relation to the photovoltaic plant in Piangevino. The applicants point out that, in the face of the decision of the first instance, which had ruled out the perpetration of fraud to the detriment of EAM for the sale of the Piangevino plant, which was eligible for incentives under the Third "Conto Energia" *[Energy Account]*, the parties had lodged an appeal, which the Lower Court did not consider.

On 20 September 2021, Lawyer Mrs. Giulia Bongiorno has filed new pleas by which she has deepened the issues introduced with the main pleas, complaining:

4.5 the contradictory and manifest illogicality of the statement of reasons in relation to the plants admitted to the fares of the Second "Conto Energia" *[Energy Account]*.

The first new plea, in line with the main appeal, further criticises the manifest illogicality and contradictory of the statement of reasons.

The defence lawyer reiterates that the Court of Appeal, in finding that the contrived conduct described under Charge B (which is a precondition for the fraud perpetrated against the civil parties EAM) was not proved, did not take into account decisive evidences, such as the transport documents and the various Progress of Work [SAL], and did not adequately assess the participation of Akhmerov, Cacavece and Avelar in the operation aimed at building the plants. Contrary to the correct finding of the first judge, the Court of Appeal failed to take into account that the application for the obtainment of the feed-in tariff had to be mandatorily submitted by the legal representative of the vehicle companies, i.e. the defendant Igor Akhmerov. The presentation of Avelar Management to the Board of Directors of Aveleos (of which Igor Akhmerov and Marco Giorgi were members) of 6 December 2010 reveals the central role of the defendants, who held the position of Chairman of the Board of Directors and Managing Director of Energetic Source, and the operational strategy of Aveleos for the completion of the fields of the II "Conto Energia" *[Energy Account]*;

4.6 contradictory and manifest illogicality of the statement of reasons in relation to the plants eligible for the fares under the IV "Conto Energia" *[Energy Account]*.

With regard to Akhmerov's and Giorgi's knowledge of the use of photovoltaic panels of Chinese origin for the construction of the "En. Fo. 14" plant the first instance ruling, unlike the appeal ruling, had adequately stated the statements of reasons, highlighting the lack of reaction by the top management to the discovery of the investigations into the companies they managed; illustrated, with a complete argumentative process, consistent and free of flaws, how such conduct constituted a revealing index of the prior awareness of the defendants themselves of the frauds perpetrated in relation to the public incentive plans and stressed how, with artifice and deception, the label showing the non-EU origin of the solar panels to be installed in the national territory had been replaced with false labels certifying the EU origin. Giorgi's awareness is also evidenced by the fact that on 20 November 2012, he was heard by the Italian Tax Police in relation to the specific matter of the relabelling of the panels, the intra-company relations within the Avelar group and, in general, the manner of acquisition of the photovoltaic modules.

The illogicality of the statement of reasons of the challenged ruling is also found in the fact that it was excluded that elements of liability could be drawn against Giorgi and Akhmerov from the circumstance that eighteen of the twenty-six photovoltaic plants - including En.Fo 14 - had been realised with the use of Chinese modules imported by Energetic Source, cleared directly by Aion/Kerself and sold to the vehicle companies without the intermediation of the company Helios. The appeal judges have

considered that Energetic Source has transparently imported Chinese photovoltaic modules and labelled them as "Made in China". The actions of Energetic Source, up to the time when it maintained the availability of the modules arrived at the Harbour of Taranto, were therefore regular, so that no liability can be attributed from this circumstance to Igor Akhmerov and Marco Giorgi. However, the defence points out that due consideration was not given to the segment of conduct subsequent to that of the acquisition of the availability of the modules and to the undisputed fact that in the majority of the plants admitted to the benefit, the result of concealment of the non-European origin of the panels, modules of Chinese origin were used, imported not by Helios through Revolution Six but by Energetic Source, then transformed into European products by means of accounting manipulations and replacement of the labels. Therefore, if the fraud mechanism through Helios and Revolution Six proved to be only one of the ways of implementing the criminal plan, according to the applicants, from a logical point of view, it must be considered that the fraud was conceived and carried out by persons placed at a level of the corporate hierarchy higher than Coppola, capable of involving and coordinating multiple companies of the group.

The Court of Appeal also failed to assess the invoice dated 5 April 2012, relating to the balance of the construction works of the En.Fo.14 plant, which shows that materials of Chinese origin were certified as Made in Europe and that the document was submitted to the "Gestore dei Servizi Energetici" *[Energy Services Manager]* in order to apply for the European bonus.

The challenged ruling is also illogical as regards the assessment of the consequences of the fraud, since it does not compare with the first instance ruling, which had shown that the advantage deriving from the European bonus was not at all small and that the transaction provided for the achievement of that surplus by means of the sale of the plants to other market operators, on whom the risks of revocation of the fares were passed on, as occurred in the case of the applicant companies. Nor did the appeal judges give due weight to the fact that the fictitious interposition of Revolution Six made it possible to clear the Chinese panels in Belgium or the Netherlands without payment of VAT, since they were apparently intended for assembly in Poland, with the consequent further advantage of significant tax evasion, given the high amounts on which the tax should have been calculated;

4.6 contradictory and manifest illogicality of the statement of reasons in relation to the failure to communicate by the defendants Marco Giorgi and Igor Akhmerov as a constituent element of the fraud suffered by the company EAM.

According to the defence, the challenged ruling is characterised by logical leaps and flawed conclusions when it denies the omissions of information which characterised

communications from Aveleos to EAM during the negotiations. The Lower Court did not limit itself to excluding the defendants' liability towards EAM as a result of their alleged unawareness of the lack of eligibility for public incentives in relation to the plants sold, but went so far as to state that there had been no "significant failure to communicate" during the negotiations. Yet, according to the applicant civil parties, the information provided by both defendants during the negotiations had always confirmed the legitimate access of the plants to the feed-in tariffs of the various "Conti Energia" *[Energy Accounts]* and they, like the other representatives of Aveleos, had denied that there were conditions likely to lead to the forfeiture of the benefit, making communications on this decisive aspect objectively untrue. In fact, the defence argues that the assessment of the information acquired by the appeal judges was inadequate, as it have not been taken into account the continuous assurances given to the purchaser's representatives that the ongoing investigations into the plants were totally groundless.

The applicant companies add that the ruling also erroneously found that Viktor Jacobsen's letter was sent on 26 March 2014 instead of 20 March 2014, when the minutes had not yet been drawn up and this error is emblematic of the lack of rigour with which the Court examined the facts and reached its decision, finally arguing that the liability for the fraud suffered is to be ascribed to the acquiring company with misrepresentation of the evidence on this point since the reconstruction of the alleged recklessness of EAM's representatives during the negotiations is based on the use of a non-existent piece of evidence, indicated as a decisive circumstance in the statement of reasons of the appeal ruling.

In conclusion, according to the applicant civil parties, the challenged ruling is vitiated by numerous omissions, errors and oversights, since it

- denied the non-completion of the plants admitted to the feed-in tariffs of the Second "Conto Energia" *[Energy Account]* by failing to analyse both the transport documents relating to shipments other than those covered by Paolo Russo's emails, and the GSE's measures revoking the benefits;

- misinterpreted the unequivocal significance of decisive evidences, in order to assess the full reliability of Vito Losurdo's testimony, such as the reports of commencement of activities of the plants under the Second "Conto Energia" *[Energy Account]* and the role played by Alessandro Cavacece within the organisation of Avelar and the vehicle companies;

- attributed the nature of slander to Vito Losurdo's self and hetero accusatory statements in the absence of any statement of reasons;

- excluded the circumstantial value of the metric calculations relating to the plants of the Second "Conto Energia" *[Energy Account]*, moreover using irrelevant criteria for the assessment of legal evidence which are typical of civil proceedings;

- failed to assess the numerous pieces of evidences relied on by the first instance ruling which demonstrate the central role played by the defendants (through the companies Avelar Energy, Avelar Management and Energetic Source) in the late procurement of photovoltaic modules, in the construction of the plants and in the application for feed-in tariff from G.S.E.

- denied the actual knowledge by Igor Akhmerov and Marco Giorgi of the reasons that justified the searches at the headquarters of Aiòn, Ecoware and Helios of 19 December 12 - in clear contrast with the evidence to the contrary acquired in the course of the investigation - and distorted the content of the minutes of summary witness information given by Marco Giorgi on 20 November 12, in order to justify the failure to take action against Gianpiero Coppola after the discovery of the fraudulent mechanism relating to the Fourth "Conto Energia" *[Energy Account]* plants;

- failed to compare with the precise conclusions of the Court of first instance's ruling, which had emphasised the functions performed by Igor Akhmerov and Marco Giorgi within all the companies involved in the fraud (Energetic Source, Aiòn, Helios, SAEM, vehicle companies), also involving structures in which Gianpiero Coppola (wrongly considered to be the exclusive master of the fraudulent mechanism) did not play any role;

- provided an illogical reconstruction, detached from the acts of the trial, of the e-mail sent by Sebastiano Maggi to Marco Giorgi concerning the replacement of the labels on the PV panels, claiming that it could not refer to the replacement of the labels attesting to the false Italian origin of the Chinese panels, contrary to the unequivocal evidence in the file;

- omitted any reference to the accounting and technical tricks used to make the panels of Chinese origin installed in the En.FO.14 plant appear to be products MADE IN THE EU, excluding with manifestly illogical statement of reasons the structure of the complex fraud committed against G.S.E. and the EAM companies;

- denied any failure to communicate on the part of Igor Akhmerov and Marco Giorgi during the negotiations for the sale of the so-called Portfolio 31 to EAM, in contrast with the literal content of documents - never communicated to the other party and available to Aveleos - in which details of the methods of carrying out the frauds (replacement of the label affixed to the photovoltaic modules of non-EU origin to be installed in Italy) were explained;

- found alleged negligence on the part of the representatives of the EAM civil parties during the negotiations on the basis of a glaring error, assuming that the letter sent by Viktor Jacobsen on 20 March 2014 was dated 26 March 2014.

Lawyer Mrs. Maria Grazia Stocco on behalf of Pilotto Giuseppina

5. Misapplication of Article 8 of the Italian Code of Criminal Procedure and contradictory of the statement of reasons with regard to the lack of territorial jurisdiction of the Milan Judicial Authority. According to the defence, the Court of Appeal erred in holding that the territorial jurisdiction was correctly determined at the Milan Judicial Authority since, having regard to the case of association pursuant to Article 416 of the Italian Criminal Code originally charged, the place of conception and planning of the illegal activities of the association was at the Milan headquarters of Avelar Management Ltd. According to the defence, on the contrary, the competent authority should be the Court of Brescia, since the association was active in the area of that Court and, above all, in Paderno Franciacorta, and it is apparent from the file that Avelar Energy, Aveleos s.a. and all the companies owning the plants under B) had their domicile or registered office in Paderno Franciacorta, Akmerov himself had his domicile in Italy in said city, and the current accounts of the various companies owning the fields to which the public funds were credited were opened at banks in Brescia. In the alternative, the competent authority should have been identified in Bari, since the Pisicoli, Lagonigro and Masiello plants owned by Energetic Source Solar Production and Enovos Solar Investments II, located in Gravina di Puglia and Poggiorsini, were the first to benefit from the feed-in tariffs in March 2011;

5.1. the distortion of the evidence, contradictory and manifest illogicality of the statement of reasons in relation to the accuse of complicity towards Gianpiero Coppola. The Court of Appeal, like the Court of First Instance, also based its finding of the defendant's liability on the accuse of complicity towards Coppola, Managing Director of Helios Technology spa and the defendant's employer, whose statements were deemed to be complete, consistent and accurate, as well as corroborated by Marco Bertoldo's statements. Nevertheless, the Lower Court, according to the defence, distorted the declaratory evidence by crediting Coppola's statements with a content logically different from their actual meaning. In fact, the declarant, in addition to stating that he had spoken to Pilotto about the fraudulent mechanism, also claimed that Pilotto was not aware of the reference legislation relating to the feed-in tariffs and stated that he had never discussed such matters with the applicant. The Court did not note the internal contradictions in Coppola's statement, which affected the wilful misconduct of the case, and held that the lack of full knowledge of the specific legislation on feed-in tariffs

does not eliminate the fact that Pilotto had been made aware of the mechanism bearing deceptive character.

The Court failed to grasp the consequences of the circumstantial statements in terms of wilful misconduct and identified the defendant's participatory conduct mainly in the management of the issue of labels, the printing and shipping of which she was actively involved in. The challenged ruling overlooked the fact that, according to the indictment, Pilotto had also contributed to the fraud by organising the transport of the photovoltaic modules, a charge which was not supported by the documents in file and is contradicted by the statements of the defence witnesses Scolari, Bergamin and Carlon. The Court of Appeal, therefore, did not properly apply the rules laid down in Article 192(3) of the Italian Code of Criminal Procedure, which require an assessment of the intrinsic consistency and overall characteristics of the hetero-accusatory statements;

5.2 the distortion of the evidence, contradictory and manifest illogicality of the statement of reasons in relation to the accuse of complicity towards Marco Bertoldo, and failure to state statement of reasons in relation to the assessment of decisive evidence and, specifically, the testimony of Eva Gnoatto, Arianna Bergamin and Diana Carlon. According to the defence, the challenged ruling erroneously attributed to the accuse of complicity towards Coppola confirmatory value to Bertoldo's statements, without assessing the e-mails reported by the defence in the appeal writ, from which it appears that Bertoldo himself was in charge of graphics and technical data as well as printing and organising the shipping of the labels. Such findings are decisive in that they demonstrate the unreliability of Bertoldo, who, on the contrary, indicated Pilotto as being responsible for the aforementioned activities. The Lower Court held that the content of the communications attached by the defence did not contradict the declarant Bertoldo, who had not credited the defendant's exclusive competence in handling the labels. Moreover, the Court violated the rules for assessment of evidences under Article 192, paragraph 3, of the Italian Code of Criminal Procedure in terms of the reliability of the declarant and ignored the testimony submitted by the defence, from which it emerges that Bertoldo had a role in coordinating and managing the printing of the labels;

5.3 distortion of the evidence in relation to the emails dated 8 May 2012, 23 January 2012, 11 October 2012, 26 July 2012, referred to on page 190 of the challenged ruling; the contradictory and manifest illogicality of the statement of reasons in relation to the subjective element of the offence under Article 640 bis of the Italian Criminal Code referred to in charge D). The defence submits that the challenged ruling found Pilotto's participation in the fraudulent mechanism designed to conceal the Chinese origin of the modules through the fictitious interposition of Revolution Six on the basis of a series of emails assessed out of context, as in the case of the email dated 8 May 2012

in relation to which it was not taken into account that Mar. Goglia stated at trial that the false CMRs were to be attributed to Marco Bertoldo, i.e. the e-mails of 2 and 3 January 2011 relating to communications between the defendant and employees of Revolution Six, the Court having failed to consider that, according to what was reported by the witness Carlon, the indications concerning the alphanumeric codes of the flash lists were the result of specific indications given by Coppola, while no statement of reasons was given in relation to the email of 11 October 2011 and the reference to the communication between Bertoldo and Franco Tadiotto, the defendant's direct superior, on 26 July 2011, cannot be reconciled with the ascertained lack of knowledge on the part of the defendant of the sectoral legislation;

5.4 apparent statement of reasons concerning the results of the party's IT consultancy and Pierobon's testimony with regard to the file called "special orders" and their impact on the existence on the part of the applicant of the subjective element referred to in charge D). The applicant's defence complains that, with regard to the assessment of the so-called special orders file, the Regional Court merely reiterated the assessments made by the first court without providing a response to the grounds of appeal which had shown that the proven sharing of the contents of the file on the company's server with other Helios employees, as well as with Bertoldo and Coppola, should have led to the defendant's liability being excluded;

5.5 misapplication of Article 640 bis of the Italian Criminal Code and failure to state statement of reasons in relation to the applicant's obtaining of an unfair profit in connection with charge D). The defence submits that the Lower Court disregarded the defence's allegations relevant to unfair profit, stating that Pilotto had derived an advantage in the form of keeping her job without considering the lack of the requirement of unfairness in such a case.

The challenged ruling also inconsistently assessed the email of S January 2012 in which the defendant represented her financial difficulties, considering it as the incentive to accept the proposal to collaborate in the fraudulent plan hatched by Coppola, although the document shows that the defendant had not received her salary for months and Coppola himself had excluded that the applicant had derived any advantage from the alleged involvement in the affair.

6. The following defensive briefs have been filed

6.1. The Lawyers Mr. Raffaele Padrone and Mr. Michele Laforgia on behalf of Sebastiano Maggi argue that the appeals brought by the General Public Prosecutor and the civil party GSE SPA are inadmissible, the Lower Court having reached an acquittal in relation to the plants DiLeo5, DiLeo6, Zella, Bufalaria, CArlucci, DiLeo7, Di Stasi, Interporto Toscano, Arcadia and Covelli on the basis of a coherent line of reasoning which, starting from the content of the indictment, excluded all unlawfulness in relation to the aforesaid fields since no application was made for, and no

increase was obtained for, the so-called European bonus, resulting in a lack of deceptive conduct. The defence denies the relevance of the arguments put forward by the General Public Prosecutor concerning the impossibility of splitting the basic fare, by separating the Made in Europe increase, in the event of a systematic breach of the conditions for access to the contribution because the basic feed-in tariff does not presuppose the European origin of the photovoltaic panels.

As regards the appeal by the civil party GSE, the defence notes that the reference made to the conducts of forgery alleged in charge E), from which Maggi was acquitted by the Regional Court for not having committed the fact, with a ruling not challenged by any of the applicants, leads to the inadmissibility of the appeal on this point. The exponents add that the applicant civil party has, in any event, failed to set out the elements from which to draw the illogicality of the statement of reasons offered by the challenged ruling.

With regard to the acquittal in relation to the other plants referred to in the Fourth "Conto Energia" *[Energy Account]*, Maggi's defence submits that the criticisms of the assessment of the statements made by Coppola Gianpiero result in the presentation of an alternative hypothesis that has already been reasonably excluded by the appeal judges and is devoid of any evidence, and aim to re-evaluate the intrinsic content of the statements. In relation to the doubts expressed by the General Public Prosecutor concerning Maggi's extraneousness to the fraudulent mechanism referred to by Coppola, the elements relied on by the applicant appears partly irrelevant and partly erroneous in that the defendant's role, with particular reference to the fourth "conto energia" *[energy account]*, was that of designing the plants and the assertion relating to the failure to indicate alternative persons responsible for drafting the technical sheets is completely irrelevant, as is the reference to the email of 12 September 2011 in that it relates to the customs clearance of panels of Chinese origin.

In addition, the defence points out that the defendant's qualification as owner, manager or director of Saem is totally groundless, since the witnesses heard (Cabibbo, Zucca, Bruno), like the defendants in the related proceedings Coppola and Bertoldo, made conflicting statements, agreeing that Maggi was a technical collaborator, without any administrative role, and pointing out that the acquittal of Maggi in relation to the conducts of forgery under E) is irrevocable since it was not challenged by either the General Public Prosecutor or the civil party, and this ruling implies that the defendant is not involved in the charge of fraud, which against him is based exclusively on the forgery alleged at charge E).

The lawyers add that, in view of the falsity of the signatures on the technical sheets, the observation that Maggi had qualified as a technician responsible for the final project documentation under the Third "Conto Energia" *[Energy Account]* is not decisive.

Lawyers Mr. Vincenzo Saponara and Mrs. Chiara Padovani on behalf of Igor Akhmerov

6.2 The defence asked for a declaration that the appeal brought by the General Public Prosecutor was inadmissible on the ground that it was based on an alternative reading of the evidences, in the face of a statement of reasons which explained in a logical and consistent manner the reasons for the acquittal of Akhmerov. The defence then argued that the appeal was totally groundless, pointing out that the challenged ruling set out in a logical and consistent manner the reasons that led to the acquittal of Akhmerov and Cavacece for the plants in relation to which the Court of first instance had found them guilty. With regard to the Progress of Work [SAL], it noted that the first judge's assumption that they constituted "indisputable evidence of the completion or non-completion of the plants at the date of the expertise certifying completion of the works" was effectively refuted by the Court of Appeal on the basis of extensive civil case-law, adding that, for the purposes of assessing such documents, neither the fact that the Progress of Work [SAL] were intended for Kerself Aion and Avelar (a company which, during the period covered by the Second "Conto Energia" *[Energy Account]*, was not even administered by persons who could be linked to Avelar, but by Angelo Maselli) nor that they had been sent together with the invoices, is relevant, such documents being incomplete, unsigned and unformed in cross-examination, so that the Milan Court's assessment is not open to criticism. Moreover, the fact that SAEM's representatives never denied the origin is groundless, since, apart from the defendant Maggi, no SAEM employee was ever heard as a witness.

The lawyers of the defendant Akhmerov also point out that it must be considered correct the assessment of the accuse of complicity towards Vito Losurdo, who, in the hearing of 21 November 2017, stated that six or seven fields were not complete as at 31 December 2010 and that the false certifications on the state of the plants were signed under threat from Engineer Mr. Cacavece. Also in this case, the challenged ruling, adopting the teachings of case-law, identified and set out the reasons underlying the assessment of the declarant's unreliability, highlighting how Losurdo's statements lack precision (he was not able to state in relation to which fields he had drawn up the false certifications) and are contradicted by decisive documentary evidence, such as the reports of commencement of works, the authenticity of which has never been doubted. The arguments put forward by the applicant concerning the email of 30 December 2010 sent by Cavacece to Christnach, Akhmerov and Giorgi concerning the completion of the plants also constitute an alternative reconstruction of the evidence

According to the complainants, the complaints relating to charge D) are also totally groundless, since the Regional Court correctly distinguished between the plants according to whether or not they had benefited from the increase for the European bonus, the only one allegedly the subject of the deceptive conduct. The failure to request the increase for the bonus is a circumstance that alone would have allowed a ruling of acquittal for non-existence of the fact although the Lower Court has, however, analysed the evidence in the file, including the expert evidence of Mrs. Oriana Roncarolo, submitted by Energetic Source on 7 June 2018, which shows that "the applicant companies could still have access to the feed-in tariff, hence the impossibility of considering the disbursement of the corresponding sums as unfair profit with equivalent damage to the granting body". Contrary to the assumption of the applicant General Public Prosecutor, the challenged statement of reasons is complete and extremely precise, even touching on aspects that it would have been sufficient to consider absorbed, since the European origin of the panels was necessary only to obtain the 10% increase.

The lawyers add that the challenged ruling accurately explained the reasoning that led to the acquittal of Akhmerov for not having committed the fact in relation to the plants that benefited from the feed-in tariff. Specifically, the challenged ruling focused extensively on the statements made by Gianpiero Coppola, who was found to be entirely credible and who had always maintained that he was the author and main responsible of the frauds connected with the Fourth "Conto Energia" *[Energy Account]* and that he had kept the defendants Akhmerov and Giorgi in the dark about such conducts. On this point, the applicant General Public Prosecutor put forward an alternative reading of the facts, distorting the logic path of the appeal judges and relying on an alleged liability on the basis of position, according to the assumption made by the Court.

In so doing, he neglects to consider that the defendant did not have any operational delegation within Aion, nor was he in charge of payments, which did not even require prior authorisation by the Board of Directors, and were handled by Mirco Crotti.

In the absence of objective and documentary evidence, the Lower Court correctly held that it could not share the first judge's assessment that Mirco Crotti had certainly expressed his doubts as to the inconsistency of the prices to Igor Akhmerov and Marco Giorgi. On the other hand, the Court emphasised the correctness of Energetic Source's actions and affirmed the complete lack of involvement of the defendant Akhmerov with respect to the relabelling operation following the clearance of the panels of Chinese origin, pointing out that "no element, of a declaratory or documentary nature, allows an active role to be attributed to the defendants, not even in terms of induction or mere knowledge". The group logic which, according to the applicant, united all the companies involved in the case was also analytically contradicted by the Regional Court.

With respect to charge F), in which Akhmerov is charged with concealing, in complicity with Giorgi, the lack of the conditions for the admission to the feed-in tariffs granted by G.S.E. on the occasion of the sale of numerous project companies to the EAM Solar group, the Court of Appeal correctly held that the acquittal from the conducts of fraud alleged in charges B) and D) of the heading could only lead to a liberating outcome also in relation to charge F and, nevertheless, held to exclude the existence of significant communication omissions in the contractual negotiations, stating the reasons for such belief with ample statement of reasons.

6.2.1 The lawyers also pleaded the inadmissibility of the appeal before the Italian Supreme Court brought by the civil party G.S.E. S.P.A. In fact, the appeal of the civil party G.S.E. shows the same limits as the appeal of the General Public Prosecutor, encroaching on the merits of the proceedings. The civil party submits, with arguments on the merits, that Losurdo's statements are indirectly corroborated by the presentation prepared for the meeting of the Board of Directors of Aveleos ("Aveleos has decided to recover directly through Energetic Sourc part of the modules necessary for the completion of the solar fields under development and construction") without, however, taking into account that the decision to recover through Energetic Source part of the modules necessary for the completion of the fields was part of a procurement already in progress. With regard to the evidentiary relevance of the various Progress of Work [SAL], the lawyers reiterate that they are documents that were not signed by the construction manager or by a third certifying body (it is therefore unknown who - and in what capacity - materially filled them in); they were not drawn up in cross-examination with the client and present inexplicable technical approximations in the description of activities and components installed.

With reference to charge D), the defendant's defence believes that Akmerov's acquittal was correctly reasoned because of the non-existence of the fact with respect to the plants under the Fourth "Conto Energia" *[Energy Account]*, which did not benefit from the feed-in tariff known as the European bonus, and emphasises that Energetic Source's actions have never been called into question, not even by the Court of Milan, which rejected all claims for damages against it. In fact, the panels purchased through this company met all the technical requirements for obtaining of the incentive provided for in the Fourth "Conto Energia" *[Energy Account]* and consequently the constituent elements of fraud under Article 640bis of the Italian Criminal Code do not exist.

On the other hand, according to the complainants, the statements of Coppola on the fact that the entire transaction of procurement of Chinese panels and replacement of labels took place within the company Helios administered by him without the involvement of top management and in order to acquire revenue to save the company, are precise, consistent and extrinsically corroborated, nor at the time Akhmerov had any operational role in Aion since the Avelar Energy Ltd became a shareholder of reference of Kerself spa only in January 2012 and since March 2011 the defendant within Kerself was dealing exclusively with the restructuring of debt. Moreover, there is no evidence in the file from which it can be inferred that the defendant Akhmerov was informed of the searches at Aion and of the reasons for them, and even before that he was aware of the fraudulent scheme devised

and carried out by three isolated persons within the Helios company, moreover, for a short period of time.

6.2.2 As regards the appeal of the civil parties EAM Solar Italy s.r.l. and EAM Solar ASA, the defence of the defendant Akhmerov first of all points out that the two companies have been admitted as civil parties only in relation to the charge F) of the indictment and complains that nevertheless the applicants have surreptitiously introduced in the grounds also complaints relating to the charges B), C) and D), in an attempt to unduly extend the interlocutory platform. It follows that the appeal is inadmissible in relation to charge B), charge C) in relation to the Piangevino plant and charge D) in relation to En.fo 14. With reference to the complaint of failure to state statement of reasons in the appeal in relation to the point concerning the Piangevino plant, which was eligible for incentives under the third "conto energia" *[energy account]*, for which the Court had pronounced an acquittal, Akhmerov's lawyers pointed out, in addition to the lack of legitimacy, a radical lack of dispute. They reiterate, therefore, the reasons why the various Progress of Work [SAL] cannot be considered proof of the completion or non-completion of the plants on the date of the certification of completion of works and consider misleading the complained assessment of such documents as legal evidence, proper to civil proceedings. Nor do the complaints concerning the photographic production by the civil party appear to be grounded, since the latter confine themselves to an apodictic objection without examining the statement of reasons of the Lower Court. Similarly, with regard to the transport documents that were not attached to Paolo Russo's e-mails for the Cagnazzi, Ninivaggi and Gentile plants, the defence submits that the case was *res judicata* as a result of the acquittal in respect of charge B) and, in any event, the documents constituted the subject of examination by the defence's expert witness, who pointed out the erroneous data and inconsistencies.

With respect to the En.Fo.14 plant, admitted to benefit from the European bonus under the incentives related to the Fourth "Conto Energia" *[Energy Account]*, the complainants recall that Akhmerov was acquitted with the formula for not having committed the fact, since, according to the correct prospect of the Court, the authors of the fraud related to the European origin of the panels were Coppola and other employees of Helios, reaffirming also that the assumption that Akhmerov and Giorgi could not have been unaware of the investigation carried out on the Fourth "Conto Energia" *[Energy Account]* is an attempt to anchor the responsibility of them to the position held, although the defendant Akhmerov had no operational role, simply performing the function of legal representative. With regard to charge F), the lawyers point out that the challenged ruling did not merely rely on the Cerignola Italian Tax Police's minutes but on a whole series of documents from which it is clear that Avaleos had no deceptive intent. In fact, among the documents included in the "data room" was the decree of the Court of Reggio Emilia of 6 March 2012 revoking Aion's composition plan, which expressly refers to the investigation underway at the Public Prosecutor's Office of Milan for the offence referred to in Article 640, paragraph 2, of the Italian Criminal Code. They also refer to the extensive correspondence between the parties, pointing out that in relation to Enfo 14, with respect to which the defendant was extraneous as he was neither legal representative nor signatory of the self-declaration affidavit for the

purposes of admission to the feed-in tariffs, the minutes of the inspections were uploaded in the "data room" and Avaleos declared itself willing to provide guarantees in the event of suspension or revocation of the fares.

6.3 Lawyer Mr. Antonio Miriello on behalf of Alessandro Cavacece

Cavacece Alessandro's lawyer requested that the appeal of the civil party GSE be declared inadmissible or, in any event, rejected, specifically refuting the objections of the applicant with regard to the assessment of the statements of the co-defendant Vito Losurdo, which made the accuse of complicity, the assessment of the Progress of Work [SAL] relating to the photovoltaic fields of the II "conto energia" *[energy account]*, the transport documents and the e-mail of Paolo Russo dated 31 January 2011; the identification of the role of the defendant and Avelar Management with reference to the request for the feed-in tariff. Specifically, he challenged the assumption that the call of Losurdo was wrongly assessed, arguing that the statements made by Losurdo were correctly assessed in the light of all the other available evidence, including the statements of the eyewitnesses De Nisi and Chiloro, which the applicant does not mention, and the documentary sources.

6.4 Lawyer Mr. Roberto Pisano on behalf of Marco Giorgi

Marco Giorgi's lawyer, after an extensive review of the results of the previous stages of the proceedings, argued: a) the inadmissibility of the General Public Prosecutor's appeal in in relation to charge D) of the heading, on the ground that the complaints made are manifestly groundless and tend towards an impermissible review of the merits, with specific considerations being developed below in relation to the individual aspects of the complaints made by the applicant concerning the delegation of payment of Helios' invoices in favour of Eopply and Revolution Six by Aion; regarding the role of Energetic Source in the fraudulent mechanism; regarding the alleged role of the co-defendant Maggi, regarding the alleged commonality of interests between Aion and Avelar Energy; regarding the alleged inapplicability in criminal proceedings of the principles laid down by the Council of State in plenary session in ruling 18/2020; b) the inadmissibility of the appeal brought by the General Public Prosecutor in relation to charge F), pointing out the acquittal arbitration decision of 2 April 2019 confirmed by the Court of Appeal of Milan on 22 April 2021; c) the inadmissibility due to manifest groundlessness of the appeal of the civil party GSE in relation to charge D) with an illustration of the reasons for such conclusion with specific regard to the role of the Avelar group in the conception and implementation of the fraud, to the conduct of the defendant after the search of 19 December 2012 and, specifically, with regard to the failure to adopt disciplinary measures against Coppola, to the alleged anomaly of Aion's payments to Eopply; to the email of the co-defendant Maggi of 12 September 2011, to the role of Energetic Source; d) the inadmissibility of the appeal of the civil parties Eam;

6.5 Lawyer Mr. Enrico De Castiglione on behalf of SAEM ENERGIE ALTERNATIVE s.r.l.

The lawyer of the party civilly liable SAEM ENERGIE ALTERNATIVE s.r.l. submits that the appeals of the General Public Prosecutor and of the civil party GSE are inadmissible because, although they refer to alleged motivational defects, they actually tend to re-evaluate the merits on the basis of alternative reconstructions and different assessments

of the trial results. The lawyer then argues that the acquittal due to the non-existence of the fact in relation to the DiLeo5, DiLeo6, DiLeo7, Zella, Bufalaria, Carlucci, Di Stasi and Interporto Toscano fields under charge D) was correct and that the Lower Court was right to apply the principles laid down by the Council of State in its ruling 18/2020. In this regard, the applicant civil party GSE, in order to refute the consistency of the arguments used by the appellate court in support of the legitimacy of the achievement of the basic fare by the above fields, requests a reconsideration of the merits, enhancing the testimony of the worker Epifani to the detriment of the conclusions filed by the expert witness of Energetic Source, Mrs. Roncarolo, despite the fact that the ruling has excluded the relevance of the non-use of the frames produced by Marioli 5ervices s.n.c..

It also points out that the acquittal of the defendants Akhmerov, Giorgi and Maggi from the offences of forgery alleged in charge E), which was unchallengeable due to the absence of appeals on this point, necessarily entails the impossibility of recognising the responsibility of the aforementioned defendants for the related hypothesis of fraud charged against them.

As regards the acquittal pronounced in relation to the remaining fields admitted to the benefits of the Fourth "Conto Energia" *[Energy Account]* for not having committed the fact, the complainant argues that the statement of reasons put forward in support of the acquittal of the defendant Maggi is fully logical and complete, which was contrasted by the applicant GSE by resorting to mere suppositions or alternative reconstructions deemed to be more plausible in an attempt to access a reassessment of the evidence acquired also in the appeal by the General Public Prosecutor. According to Saem, the findings relating to the email charged to Maggi on 12 September 2011 and the related relabelling affair also appear to be unsuitable to undermine the soundness of the reasoning system. The acquittals of the defendants Giorgi and Akhmerov are also supported by comprehensive argumentation, which the applicants counter with apodictic assumptions and self-referential reasoning suggesting that the defendants are liable for their position. As to charge B), in which SAEM is held party civilly liable in relation to the position of the defendant Akhmerov alone, the defence points out that the applicants have not contested the reference made by the Regional Court to the emails received by the defendant on 29/30 and 31 December 2010, from which it inferred the timely completion of the photovoltaic fields, a circumstance which alone is sufficient to create a reasonable doubt as to the defendant's liability. The defence adds that the challenged ruling stated statement of reasons which was free from logical defects both in its assessment of the Progress of Work [SAL] and the transport documents and in its assessment of the statements made by the co-defendant Losurdo, which were found to be vague and imprecise.

6.6 Lawyer Mr. Niccolò Bertolini Clerici on behalf of Aveleos S.A., party civilly liable in respect of charges D) and F)

According to the complainant, the criticisms made by the applicants, the General Public Prosecutor and the civil parties GSE and EAM, concern profiles of merit and are resolved in an impermissible request to re-read the declaratory and documentary sources and in a criticism of the persuasiveness of the statement of reasons. In relation to the

individual complaints, Avaleos maintains that the statements made by the defendant in related proceedings, Coppola Gianpiero, cannot be split up and that the Regional Court properly assessed the evidence available in relation to the defendants Giorgi and Akmerov, since the appeal judges adequately argued that Giorgi had no knowledge of Coppola's criminal activity, both with regard to the email sent by Maggi on 12 September 2011 and to the payment of Helios invoices by Aion, ruling out the possibility of significant corporate involvement. As to the observations made by the civil party GSE with regard to the certifications of technical conformity IEC 61215 and 61730, the defence submits that the Court of Appeal examined the possible existence of a breach of the technical requirements of the legislation, excluding that possibility on the basis of the conclusions of the expert witness Mrs. Roncarolo. With regard to GSE's objection to the fact that the test reports were carried out on panels with different frames from those actually installed, the complainant considers that the grievance is aimed at reintroducing in the proceedings elements of a technical nature already assessed by the consultant and validated by the challenged ruling. As regards the failure to assess the ruling against the co-defendant Bertoldo, separately judged, acquired pursuant to Article 238 bis of the Italian Code of Criminal Procedure, the lawyer claims that the Court was not bound by what was held there, while it provided ample justification for the reasons why it reached different conclusions.

6.7 Lawyer Mr. Salvatore Caiazzo of the Rome Bar, special attorney of ENOVOS Luxembourg S.A., party civilly liable in relation to charge F), filed an electronic brief on 20 September 2021 and rejoinder defensive notes on 30 September 2021.

In rebuttal of the reasons set out in the appeal of the civil parties EAM, the defence points out, in line with the assessments of the challenged ruling, the unreliability of Losurdo in view of the uncertainties in the statements, and the correct assessment of the Progress of Work [SAL] and the metric calculations which, due to the fragmentary nature of the acquisition and the drafting anomalies, do not lend themselves to constitute evidence of the non-completion of the works subject to incentives, also in light of the development of civil case-law.

As regards the photographs uploaded on the portal of the G.S.E., the complainant agrees with the low evidentiary significance accorded to such documents by the appeal ruling, which excluded the possibility of deducting evidence of a deceptive purpose, if we consider that identical photographs were submitted for fields both considered by the Court to have been completed on time or both considered incomplete, a circumstance that leads us to consider the production of pairs of identical photographs to be the consequence of an error in the collection of material to be attached to the applications. The appeal ruling is therefore well reasoned, precise in explaining the reasons why it decided to depart from the first instance ruling and logically consistent.

On the contrary, EAM's reconstruction, which results in a repetition of the Court of First Instance's reasoning, calls for a mere alternative reading to that made by the Court, which cannot be used in the proceedings.

As regards the En.Fo.14 plant, the complainant refers to the statements of the co-defendant Coppola, who stated that he had conceived the fraud in order to be able to

resell the panels with a higher margin, so as to face the financial difficulties of the company Helios, denying the involvement of the top management of the client Aion, namely Akhmetovic and Giorgi, and points out that the challenged ruling has made a detailed analysis of the findings in the trial, reasonably excluding that the defendants were aware of the criminal plan. EAM's appeal is limited to contrasting the assessment of the challenged ruling with that of the first judge, whose reconstruction, however, in the absence of elements capable of incontrovertibly demonstrating awareness of the criminal plan on the part of the defendants Akhmerov and Giorgi, risks constituting impermissible positional liability.

The appeal ruling ruled out the existence of fraud to the detriment of EAM not only because of the absence of the predicate offences (or of the criminal liability of the defendants for them), but also because Aveleos and, on its behalf, Akhmerov and Giorgi, had in any event provided EAM with an adequate amount of information during the negotiations, so as to make it aware of the possible risks of discovery of irregularities in the plants sold to it.

The ruling found all the plants transferred to EAM to be regular, with the exception of the En.fo.14 plant and only limited to the receipt of the 10% European bonus. This makes it possible to rule out at the root the possibility of the defendants Akhmerov and Giorgi being liable, since the only duty incumbent on them was to pass on the information in their possession concerning the risks of the detection of irregularities in the plants, which only then began to become apparent, and which they complied with.

As regards the alleged distortion of the evidence in relation to the search decree of December 2012, according to the defence, the argument put forward by the civil party EAM and the General Public Prosecutor results in a reconstruction of the evidence that is merely alternative to that made by the appeal ruling, aimed at favouring the informative scope of the search decree and, indeed, at attributing to that act the power to exclude any informative value to the other evidence considered by the appeal ruling (such as the inspection minutes and the Massimi and Fiorini report).

The lawyer also points out that the omission of material information by Aveleos to EAM during the negotiations was excluded by the award issued at the end of an arbitration proceedings raised by EAM against Aveleos in parallel with the criminal proceedings at first instance, pursuant to an arbitration clause contained in the sale and purchase agreement of the plants. The arbitration panel ruled out the possibility that Aveleos was aware of the alleged plant irregularities and fraudulently or maliciously concealed them from EAM in order to induce it to complete the transaction. In fact, a complete, continuous and symmetrical information flow was recognised.

The appeal ruling also reasoned in relation to the Massimi e Fiorini report, which was drawn up in performance of the verification activity on certain negotiated plants requested by EAM and commissioned from Massimi e Fiorini, as a third party with technical knowledge of the sector. The results of

this activity was transposed in a report, which was filed and issued in two versions. In both versions, critical issues emerged and related risks of loss of incentives for plants.

In the defensive notes filed on 30 September 2021, Enovos' lawyer refutes the new pleas of the civil parties EAM Solar Asa and EAM Italy Holding

6.8 The lawyer Mr. Carlo Enrico Paliero on behalf of the party civilly and administrative liable Ens Solar Five

The lawyer argued:

- the irrevocability of the ruling of acquittal of the entity with regard to the charge under Article 24 of Legislative Decree 231/01 in the absence of an appeal by the General Public Prosecutor.

- the inadmissibility of the appeal brought by the civil party GSE, specifically of grounds 2 and 3, with reference to the party civilly liable Ens Solar Five as a result of the original inadmissibility of the appeal writ, in the absence of specific grounds

- inadmissibility of the appeal, specifically of grounds 2 and 3 for failure to comply with Article 581 of the Italian Code of Criminal Procedure for failure to state the reasons of fact and law in relation to the position of the body

6.9 Lawyer Mr. Alceste Campanile on behalf of EN.FO 73

The lawyer submits that En.Fo 73, which was sued for administrative offences in relation to charge D) and acquitted at first instance, had that decision upheld on appeal without any of the applicants raising any objection to it, with the result that the ruling is irrevocable

6.10 Lawyer Mr. Luca Luparia Donati on behalf of the parties civilly liable EN5 SOLAR FOUR s.r.l., ENFO 3, EN.FO 44, EN.FO 71

The lawyer points out that the four companies indicated were summoned to appear in court in the dual capacity of parties civilly liable and accused entities pursuant to Legislative Decree no. 231/2001 in relation to charge D) and the first judge excluded the liability of the so-called vehicle companies, holding only Avaleos S.A., Avelar Management Ltd S.A. and Saem Energie alternative jointly and severally civilly liable with the convicted defendants. The Court of Appeal rejected the appeal of the civil party GSE against that decision and the ruling is not challenged in this case, with the result that the appeal ruling is res judicata in so far as it concerns the exclusion of civil liability of the entities Ens Solar Four, Enfo 3, Enfo 44 and Enfo 71.

6.11 Lawyer Mr. Luca Luparia Donati on behalf of ENS SOLAR FOUR 5RL, EN.FO 3, EN.FO 44, EN.FO 71, EN.FO 18, EN.FO 46 as defendant entities pursuant to Legislative Decree 231/2001. The lawyer notes that the challenged ruling confirmed the first instance ruling in relation to the acquittal of all the accused entities pursuant to Legislative Decree No 231/2001, rejecting the appeal of the Public Prosecutor on this point, and against this

charge no appeal has been lodged by the General Public Prosecutor, with the result that the acquittal has become res judicata.

DEEMED IN LAW

1. It should be noted in advance that all the entities that had already been summoned to appear in court pursuant to Legislative Decree 231/2001 lacked standing, and their liability was excluded by the first judge with a ruling confirmed by the Court of Appeal following an appeal by the Public Prosecutor. Given that there has been no further appeal, the point has become res judicata, and it follows that the companies Fallimenti Energetic Source Green Investments srl, Energetic Source Solar Production srl and Energetic Source Green Power srl (already on trial for the administrative offences respectively charged against them in relation to the photovoltaic fields indicated under charge B) of the indictment, named Lorusso (no. 236482), Selvaggi (no. 248818), Giordano Domenica (no. 241258), Marnili Quattromini (no. 231801), Antonacci (no. 216677), Scaltrito (no. 213260) and Di Mauro (244581); Enovos Solar Investments (charge B), Ens Solar Four srl, Ens Solar Five srl, Soc. Agr.En.Fo 3 a r.l., Soc. Agr.En.Fo 18 a r.l., Soc. Agr.En.Fo 44 a r.l., Soc. Agr.En.Fo 46 a r.l., Soc. Agr.En.Fo 60 a r.l., Soc. Agr.En.Fo 71 a r.l., Soc. Agr.En.Fo 73 a r.l., Fallimento Soc. Agr.En.Fo 14 a r.l. (charge D), have no procedural status in the present proceedings. The briefs lodged by the lawyers of the aforementioned entities are relevant and are appreciable solely for the purposes of the plea of lack of standing.

2. The issue of territorial jurisdiction raised by the defendant Pilotto's defence is a logical priority. The Lower Court held that the territorial jurisdiction was correctly established before the Court of Milan, pointing out that there is a teleological connection pursuant to Article 12(1)(c) of the Italian Code of Criminal Procedure, so that the judge with territorial jurisdiction, by virtue of the provisions of Article 16(1) of the Italian Code of Criminal Procedure, must be identified in relation to the most serious offence or, in decreasing order, with reference to the most serious of the remaining offences. It then pointed out that in the trial the most serious offence was correctly identified by the Preliminary Hearing Judge in the offence of criminal association, to which reference must continue to be made, despite the occurred acquittal, by effect of the principle of permanence of jurisdiction and, on the basis of the hermeneutical coordinates established by the case-law of legitimacy, it pointed out the reasons that make it necessary to consider that the associative structure began to be concretely operational in Milan, the place of conception, planning and management of the illegal activities. Such an assessment, in so far as it adheres to the principles constantly laid down by this Court with regard to the criteria for the ex ante assessment of the proposed objection and to the circumstances inferable from the grievances made by the Public Prosecutor, is not open to censure in this case, given the generic and non-specific content

of the arguments put forward in support of the appeal in the light of the exhaustive and correct examination carried out on the merits.

3. The appeals of the General Public Prosecutor and of the civil parties G.S.E. and EAM can be considered together in so far as they criticise the challenged ruling from the point of view of the defect in the statement of reasons with largely overlapping arguments and are grounded within the limits set out below.

The objection of the defendant Akhmerov's defence which, in the brief filed, claimed that the civil parties EAM had no standing in relation to charges B), C) and D) because they had only appeared in relation to charge F) must first be rejected. The Court notes that the right to challenge the acquittal findings in respect of the aforementioned charges B) and D) is linked to the nature of the indictment under F) and, specifically, to the composition of Portfolio 31, which was the subject of the disputed transfer to the applicants and which includes fields which are the subject of the indictment under those charges.

3.1 With regard to charge B), it is not out of place to state that the indictment assumes the failure to complete the installation of 21 photovoltaic plants, expressly referred to in the heading, by 31 December 2010, on the basis of completion percentages taken from the invoices and Progress of Work [SAL] issued by Saem Energie Alternative S.r.l. in 2011. The first judge considered that the criminal liability of Igor Akhmerov and Alessandro Cavacece for the offences ascribed to them had been proven, limited to the photovoltaic fields named Lorusso (no. 236482), Selvaggi (no. 248818), Giordano Domenica (no. 241258), Marnili Quattromini (no. 231801), Antonacci (No. 216677), Scaltrito (No. 213260), Di Mauro (No. 244581), and, with regard to the conducts of instrumental forgery alleged under E), for the plants Lorusso, Marnili, Antonacci, Scaltrito and Di Mauro in relation to the requests for the granting of the feed-in tariff, at the same time issuing a ruling of extinction due to statute of limitations of the further charges under E) with reference to the sworn expertise certifying the completion of the works and the technical final sheets of the plants relating to the above mentioned photovoltaic fields.

The Regional Court overturned the conviction and reached an acquittal that is open to criticism in terms of the completeness and logical congruence of the statements of reasons.

2.1 The highest court of justice (Italian Supreme Court , Joint Divisions, no. 14800 of 21 December 2017, filed 2018, General Public Prosecutor in proc. Troise, Rv. 272430), in ruling out that the appeal judge who overturns the first instance conviction in the sense of an acquittal is obliged to renew the preliminary hearing through the examination of the persons who made statements considered decisive, has, however, clarified that it must offer a precise and adequate statement of reasons, which provides a

rational justification for the differing conclusion adopted, including by summarising, if necessary, the decisive declaratory evidence.

It has been - in a shareable way - pointed out, in the interpretative line drawn by the Dasgupta ruling, (Italian Supreme Court , Joint Divisions, no. 27620 of 28 April 2016, Rv. 267486), that the acquittal pronounced after a conviction at first instance must not overcome any doubt; it is in fact the conviction that must take place beyond all reasonable doubt, certainly not the acquittal, which is also possible under article 530, paragraph 2, of the Italian Code of Criminal Procedure, so that the presumption of innocence and reasonable doubt impose asymmetrical evidentiary thresholds in relation to the different type of decisional epilogue: the certainty of guilt for the conviction, the procedurally plausible doubt for the acquittal. The different modulation of the obligation to state statement of reasons in the event of a total reform at the appeal stage also follows from this, since in the hypothesis of overturning the acquittal ruling, the obligation is imposed to argue about the plausibility of the different assessment as the only one that can be reconstructed beyond all reasonable doubt, due to obvious logical flaws or evidentiary inadequacies that have invalidated the permanent sustainability of the first judgement; for the overturning of the conviction, on the contrary, the appeal judge may limit itself to justifying the sustainability of alternative reconstructions of the fact, on the basis of an essentially demolition-type operation. It must, however, be a matter of reconstructions which are not only theoretically conceivable, but whose plausibility in the specific case is anchored in the trial results, taken in their objective consistency.

The need for the appeal judge to provide an exhaustive and precise statement of reasons even in the event of a conviction being overturned as an acquittal does not constitute an innovative approach in case-law, and is the result of the interventions of the rulings of Italian Supreme Court, Joint Divisions, Dasgupta, Patalano and Troise, since even earlier the case-law of legitimacy had authoritatively pointed out (Italian Supreme Court, Joint Divisions, no. 33748 of 12 July 2005, Mannino, Rv. 231679; Italian Supreme Court, Joint Divisions, no. 6682 of 4 February 1992, Musumeci, Rv. 191229) that an acquittal reform of the conviction at first instance requires the judge to provide a complete rebuttal of the previous arguments, in order to disrupt the logical and demonstrative path of the first judge. Therefore, the appeal judge, in overturning the conviction pronounced at first instance by a ruling of acquittal, may not refrain from examining the reasons put forward in support of the challenged decision or justify the complete overturning by inserting generic critical or dissenting remarks into the argumentative structure of the appeal ruling; it is also required to re-examine the evidence examined by the first judge and that which may have been acquired subsequently, in order to offer a new and complete motivational structure that gives adequate reasons for the different conclusions assumed.

Whether or not one intends to attribute such an obligation to the syntagm "strengthened statement of reasons", which plastically summarises the need to give full reasons, with an autonomous justification apparatus, for the decision, what is certain is that in the event of overturning the ruling of conviction at first instance, the appeal judge is required to account for the different demonstrative value assigned to the evidence already examined at first instance and to explain the logical steps that make the decisive result taken legally and factually sustainable, with the necessary persuasive force (Division 6 , no. 51898 of 11 July 2019,P., Rv. 278056; Division 4, no. 4222 of 20 December 2016 dep.2017, Civil party in proc. Mangano and others, Rv. 268948; Division 2, no. 50643 of 18 November 2014, Civil party in proc. Fu and others; Rv. 261327).

In the present case, the Regional Court did not fulfil its obligation to state statement of reasons in the terms referred to above, since the justification apparatus is in several parts affected by obvious illogicality and inconsistencies of assessment, which can be related to the erroneous assessment of the evidence, declaratory and documentary in nature, acquired.

3.2 In fact, the verification of the intrinsic reliability of the hetero-accusatory statements of Lo Surdo Vito with regard to the pressure reportedly brought to bear by Cavacece in order to induce him to sign the certificates of completion of the works in relation to seven unfinished fields in mid-December 2010 is partial and incomplete. The Regional Court denied the credibility of the declarant, relying on the statements of the witnesses Denisi and Chiloiro who, present at the meeting, excluded discussions and pressures and argued that Lo Surdo had no subordinate role with respect to Cavacece.

In fact, the challenged ruling, on the one hand, did not hesitate to regard as an indication of Lo Surdo's lack of intrinsic credibility his inability, seven years after the events, to indicate precisely the fields in relation to which the certificates of completion of the works were untrue and, on the other hand, did not entertain any doubts as to the reliability of the exculpatory statements made by the witnesses, who said they were certain that at no time were the two men alone. This was despite the fact that Cavacece's access was entirely routine and that no specific circumstances characterised the meeting in terms of particular significance.

3.2.1 Nor does the assessment of unreliability appear to be consistent in substance with the declaratory data since the rulings on the merits show that, during the hearing on 21 November 2017, Lo Surdo expressed his certainty as to the timely completion of the works relating to the plants known as Giordano Giovanna, Pisicoli Teresa, Stacca, Lagonigro and Masiello, asserting that Cavacece had put pressure on him to positively certify the completion of the works in relation to all the fields included in the second "conto energia" *[energy account]* (p. 153) even though for 6 or 7 of them, whose construction had only started in the previous November, the installations

were incomplete. He added that these plants did not include those built by ESI II, which were completed on time.

The Court of first instance found that Lo Surdo's statements were certainly corroborated by the reconstruction of the events relating to the seven fields for which a conviction was handed down at first instance, in respect of which, on the basis of the evidence consisting of the Progress of Work [SAL] as at 30 December 2010 and 31 May 2011, of the documentation on the transport of the modules and of Paolo Russo's e-mails, it was ascertained that the plants belonging to ESI II had not been completed within the legal deadlines (page 155) and that they had been properly executed.

3.2.2. The Court also found that Lo Surdo's statements concerning the falsity of the certificates of completion of the works in relation to the photovoltaic fields for which a conviction was handed down at first instance are disproved by the reports of commencement of works in the file, recorded between 9 April and 25 November 2009 and not included in the hypotheses of forgery ascribed under charge E), as a result of which it must be concluded that the works on the incriminated fields began significantly earlier than November 2010 (page 141).

In this regard, it should be noted that the failure to include the documents in question among those accused of falsity, in accordance with the charge under E), is a completely neutral fact, since there is no basis for doubting the untruthfulness of the declarations in question, while the asserted automaticity between the report of commencement of activities and the actual start of works is the result of a logical distortion in that it necessarily links the performance of the planned activities to an administrative requirement. The Lower Court did not address the findings of the first judge, which had expressly ruled out that the concept of "commencement of construction" could be understood, according to the defence's submissions, as coinciding with prodromal activities such as the application for the report of commencement of activities or the processing of administrative procedures and not with the actual carrying out of the electrical and building works necessary for access to the fare under the second "conto energia" *[energy account]* (page 156).

3.2.3 The challenged ruling, in a perspective that isolates the evidence without fully grasping the interference, has also excluded that Cavacece, at the time of the facts employee of Avelar Management, had the power to influence and direct the decisions of Lo Surdo, although the first judge had, on the contrary, highlighted how the defendant was "the interface on the side of the client of the construction management" since the witness Giorgio Cabibbo, part of the structure "strategy and business" of Avelar Management, had indicated Alessandro Cavacece as a reference figure for Avelar in the verification of the progress of work on photovoltaic fields, specifying

that the defendant, in his capacity as head of the company's technical department, followed the projects relating to the plants under the Second "Conto Energia" *[Energy Account]* in all the three fundamental phases concerning them: from the initial phase of selecting the possible plant, following the due diligence, to the subsequent phase of monitoring the progress of the works and the final phase of managing the completed plant (page 158).

Nor, for the purposes of assessing Lo Surdo's reliability, did the Regional Court adequately consider Cavacece's role and the related operational connotations in the light of the many sources acquired at trial, which show that the company Avelar Management was, in substance, a structure intended to meet the operational needs of Avelar Energy, as confirmed by Akhmerov himself, who - although he had no position in the companies, which passed under the control of Enovos Luxemburg - observed that "the division between Avelar Energy and Avelar Management was quite artificial. Avelar Management was a part of the Avelar group".

4. The applicants' allegations concerning the illogical assessment of the documentary evidence consisting of the Progress of Work [SAL] and the transport documents, the circumstantial capacity of which, according to the rules governing the assessment of evidence, should have been assessed individually and as a whole in order to adequately verify the ability to confirm the accusatory hypothesis formulated in charge B), appear to be well-grounded.

The Regional Court held that "the Progress of Work [SAL] in the file, given their nature as a document instrumental to the issuance of an invoice and, moreover, given their incomplete drafting and uncertain origin, cannot constitute, contrary to the Court of first instance's findings, incontrovertible evidence that the works had not been completed by the date imposed by the II "Conto Energia" *[Energy Account]* for the granting of the feed-in tariff" (page 136/137). In order to assess the independent evidentiary function of the Progress of Work [SAL], it has resorted to the interpretative aid of civil case-law, according to which, on the subject of procurement contracts, the certificate on the progress of works does not constitute legal proof in favour of the contractor, not even when it is drawn up by the client or a person appointed by him/it, that the works have been carried out to the extent specified therein and for the prices paid therein, excluding that the results of the measurement made by the contractor or subcontractor of the quantity of works already carried out, as they emerge from the certificate on the progress of works, can, by themselves, constitute proof of the actual execution of the works.

The appeal judges also pointed out the presence of editorial anomalies, such as the failure to sign by the construction manager or other appointed technician and the consequent impossibility of identifying who materially filled in the Progress of Work [SAL] acquired in the file, which were moreover drawn up unilaterally.

4.1 In this respect, it should be noted as a matter of priority that the documents in question were acquired, in the absence of objections, at the hearing of 20 June 2017 and that there is no dispute as to the existence of an established practice between the parties whereby SAEM periodically sent invoices with attached Progress of Work [SAL] to Aion and Avelar by email from the employee Rosa Falcicchio.

The assumption of the Lower Court in replacing the ordinary criteria for assessing documentary evidence with those of civil law in the matter of procurement contracts, which are based on standards quite different from the criminal procedural parameters, cannot be accepted. While in matters of contracts the rights of the opposing parties are at issue, who have full access to evidence in support of their mutual claims, in criminal proceedings the cross-examination right is accompanied by the principles of non-exhaustiveness of the means of evidence and of the judge's freedom of belief.

Article 193 of the Italian Code of Criminal Procedure expressly provides that in criminal proceedings, the limits of evidence laid down by civil law shall not be observed, with the exception of those concerning family status and citizenship. In accordance with this provision, the case-law of legitimacy has held that:

-the disavowal pursuant to Article 2712 of the Italian Civil Code of telematic messages not bearing a digital signature is not relevant in criminal proceedings, in which the limits of evidence laid down by civil law are not observed, and the checks relating to the origin of the computer document constitute matters of fact referred to the assessment of the judge on the merits. (Division 2, no. 16599 of 17 December 2010, filed 2011) *Rv.* 250216);

-in the field of asbestos-related pathologies, the existence and extent of exposure to asbestos can also be demonstrated through witness evidence, since the current system of criminal proceedings does not recognise hypotheses of legal proof and, even in areas where there are regulatory indications of specific methods for the measurement of threshold values, the relative assessment can be made by any means of evidence (Division 4, no. 16715 of 14 November 2017, filed 2018, Rv. 273096);

-for the purposes of the configurability of the offence of preferential bankruptcy and the violation of the "equal treatment of creditors", the existence of other unsatisfied receivables as a result of the payment made to the preferential creditor cannot be inferred on the basis of the civil law principle of "non-challenge" (Division 5, no. 3797 of 15 January 2018, Rv. 272165);

-on the exercise of civil actions in criminal proceedings, provisions contained in an agreement entered into between the parties, which refer the determination of certain facts to arbitrators or subject it to particular procedures, do not are binding on the criminal court, which is called upon to rule on the liability of the defendant and to determine the compensable damage, without any evidentiary constraint of a conventional nature being able to influence its determinations (Division 2, no. 4699 of 16 January 2019, Rv. 276452), (a principle that is specifically relevant to the arbitration award in relation to the charge under F);

-in the procedure for the application of measures of patrimonial prevention, the evidence of the donation of real estate is not subject to the limits of admissibility provided by the civil law discipline for declaratory evidence and, therefore, can be provided also through witnesses (Division 6, no. 46904 of 30 April 2019, Rv. 277563).

4.2 This error of law is accompanied by a widespread illogicality of motivation in the assessment of the evidence, since the Regional Court made an impermissible pulverisation of the evidence, segmenting its assessment and neglecting the reciprocal inferences, an aspect that can be censured in the proceedings, since the assessment of the logical

evidence, which can be deduced from an articulated framework of evidence, must be comprehensive and not fragmented, and its unreasonable minimisation or devaluation can be noted by the Italian Supreme Court (among others, Division 6, no. 1979 of 16 May 1997, Rv. 209110).

In the case at trial, the first judge carried out an exhaustive reconstruction of the contents of the Progress of Work [SAL] in relation to each of the fields in dispute, assessing their evidentiary aptitude to corroborate the prosecution's thesis with positive verification only in relation to the seven fields for which it convicted the defendants. It argued that the origin of those documents from Saem must be considered to be undisputed in substance, since the company is undisputedly the subcontractor of the works for the construction of the photovoltaic plants on the basis of the subcontracting agreements in the file and it is also proven that the various Progress of Work [SAL] were transmitted by computer to the recipient companies, Kerself/Aion and Avelar, at their Milan offices by SAEM employee Falcicchio. Therefore, it ruled out the decisive importance of the non-signature of the documents, since their actual origin was ascertained and never disowned by the representatives of the company, while the invoices to which the metric calculations referred were never disputed by Avelar, either formally or in substance, and were regularly paid. Finally, the Court of first instance added that Saem clearly had no interest in submitting underestimated Progress of Work [SAL] to the clients and, after comparing the data from the subsequent documents, dated 31 May 2011, in order to verify the consistency of the items relating to the installation of the solar panels, it concluded that "the function of the Progress of Work [SAL] is genuinely descriptive of the sequence of works carried out".

Such an argumentative structure, strictly adhering to the documentary data and fully explicative of the logical path followed by the first judges, was subverted on appeal with legally erroneous arguments and the debasement of the individual pieces of evidence with representative capacity, without the motivational framework demonstrating a depth and logical rigour capable of fully and persuasively explaining the reasons underlying the antithetic decisional outcomes drawn on appeal.

4.2.1 Indeed, the challenged ruling, in view of the fragmentation of the evidence, held that the existence of transport documents after 31 December 2010 cannot be considered as relevant from an evidentiary standpoint, in the absence of timely recognition of the place of delivery, of the allocation of the individual photovoltaic modules transported and of the verification of the reasons for the delivery, whether for the completion of the plants, the replacement of other modules already installed, mere storage or the construction of fields relating to subsequent "Conti Energia" *[Energy Accounts]* (page 137)), completely ignoring the considerations made by the Court of First Instance in rebuttal to the above-mentioned profiles on p. 118 et seq, from which it appears that the judges of first instance had taken charge of the detailed analysis of the defensive's remarks regarding the transport documents, stating that "for all those loads, received in Italy between November and December 2010, for which, due to the lack of the identification code of the container, it is not possible to make a match between the load arrived in Taranto and the destination mail of Paolo Russo, remains, in the opinion of the

Panel, an undoubted uncertainty about the possibility of assigning to each independent transport document a reconnaissance value of the final location of the modules. For these modules, in fact, in no case can it be affirmed that the location reported in the transport document is also that of the actual installation of the modules, as it could well be a temporary storage centre, pending the final destination of the load defined by Avelar's e-mail".

The challenged ruling also held that Paolo Russo's e-mails were not intended to give instructions as to the destination of the modules but constituted "a mere communication, for reconnaissance and reporting purposes, in favour of the original importer" (page 148). This is an apodictic assumption which does not take into account that the first judge, on page 120 et seq, had addressed the issue and pointed out that the Italian Tax Police, in the reconstruction contained in the synoptic table named Annex 295 bis, had identified the existence of "first delivery" locations, distinct from the final ones, exemplifying the procedure followed for the delivery of the 644 modules identified by customs bill no. 11357/E of 17 December 2010, which arrived on 27 December 2010 at the harbour of Taranto and were delivered to the Schenker warehouse to be, finally, destined to the Scaltrito plant only with the e-mail of 31 January 2011. In this, as in other cases, the correspondence between Russo and Baronio of 21 March 2011 concerning the actual arrival of the panels at the site already identified in the e-mail of 31 January is sufficient to exclude the merely reconnaissance value of Russo's e-mail.

5. The Court of Appeal acquitted the defendants Igor Akhmerov, Marco Giorgi and Sebastiano Maggi from the offence referred to under charge D) for non-existence of the fact in relation to the DiLeo5, DiLeo6, Zella, Bufalaria, Carlucci, DiLeo7, Di Stasi, Interporto Toscano, Arcadia and Covelli fields and for not having committed the fact in relation to the remaining fields referred to in the indictment. According to the appeal judges, with regard to the aforementioned fields, in respect of which no request for granting of the so-called European bonus has been made, the Court of First Instance erred in considering the deceptive purpose of the submission of untrue documentation, without considering that, even if the communication of totally or partially false data on the origin of the installed photovoltaic sails is admitted, access to the feed-in tariff is not precluded by the non-European origin of the panels, with the consequent impossibility of configuring the benefit of the fare as an unfair profit of the offence.

With regard to the remaining plants, it argued that the statements made by Gianpiero Coppola were entirely reliable with regard to their participation in the fraud and that there was no evidence of the defendants' involvement in the offence.

5.1 The offence of aggravated fraud ascribed under D) concerns the Fourth "Conto Energia" *[Energy Account]*, governed by the Ministerial Decree of 5 May 2011, applicable to plants which entered into operation after 31 May 2011 and until 27 August 2012, which provided for a 10% increase in the feed-in tariff in favour of plants whose investment cost, in terms of components other than labour, was at least 60% attributable to production within the European Union (European bonus). According to the detailed reconstruction of the first judge, the application regulation issued by the GSE on 11 July 2011, subsequently updated, for the granting of the feed-in tariff made the person in

charge of the plant responsible for the transmission, through the GSE computer system, of the application for the grant of the benefit, accompanied by a signature and the attachment of documents such as the technical final sheet of the plants, the list of photovoltaic modules, a copy of the minutes of the activation of the meters for measuring the energy produced and the connection to the electricity grid. The photovoltaic plants and their components had to comply with the requirements of the technical regulations also with regard to the information sheets (and "data sheef") and the plates, which had to bear the name and trademark of the manufacturer or supplier, as well as the data concerning the type designation, the protection classification and the maximum permissible voltage; moreover, each module had to be identifiable by "a serial number containing the name of the manufacturer", affixed "in such a way as not to be removable (preferably by means of protection and readable after installation)". In the application regulation and in the CEI 82-25 guide, amended in September 2011, it was also provided that the conformity to the technical standards had to be documented by the certificate of control of the production process in the factory (so-called "Factory Inspection Attestation") and that on the back of the module a label would be affixed containing the identification code of the production site and the logo of the certification body, referred to in the "Factory Inspection Attestation", without, however, it being necessary to indicate the serial number of the module.

Article 21 of the Ministerial Decree of 5 May 2011, concerning the verifications and controls entrusted to GSE, provided, in paragraph 2, that "without prejudice to the other consequences provided by law, the verification of the untruthfulness of data and documents or the falsity of statements, made by the persons responsible for obtaining the feed-in tariffs referred to in this decree shall entails, pursuant to Article 23, paragraph 3 of Legislative Decree no. 28 of 2011, the forfeiture of the right to the feed-in tariff and any premiums granted under Articles 13 and 14, as well as the recovery of the undue payment by GSE, in the case of incentives already received, and the exclusion from the incentives, for ten years from the date of the assessment, for the natural and legal persons who have submitted the request for incentives and for the other persons indicated in Article 24".

5.2 In accordance with the findings of the challenged ruling and set out in detail on pp. 179 *et seq*. of the judgment of the Court of First Instance, it is unquestionable that the companies of the Kerself-Aion group, within the fields eligible to benefit from the Fourth Energy Account, used HEP type photovoltaic panels, the Chinese origin of which had been concealed, which were primarily installed at sites in Southern Italy (Puglia and Basilicata), and became operational at the end of 2011: those panels were purchased through the intermediary of Energetic Source which become operational in 2012, and procured through the artificial imposition of the Polish company, Revolution Six, which was used to conceal the non-European origin of the panels and create the appearance that the manufacturing had been taken place in Poland.

Even if one were to accept the view expressed by the judgment of the Council of State in Plenary Session of 11 September 2020 as to the possibility of separating the European bonus from the basic feed-in tariff, the Regional Court's findings are open to criticism, as

it has erroneously underestimated the relevance of the multiple instances of deception which amount to self-serving conduct for the purpose of the unlawful obtainment of the regulatory benefits.

5.2.1 In this regard, it should be pointed out that acquittals under charge E) on the grounds of not having committed the offence or declarations of inadmissibility due to the lapse of the statute of limitations do not *ipso jure* mean that it is impossible to establish the forgeries referred to therein as instrumental conduct with respect to the events referred to under charges B) and D) of the indictment, as claimed by the defence counsel for the defendant Maggi and the civilly liable party Saem s.r.l. The case-law of this Court is clear in considering that there is a material complicity between the offence of forgery of a public document and that of fraud when the forgery constitutes an artifice for committing the offence under Article 640 of the Italian Criminal Code. In such case, there is no complex criminal offence, for which the law must provide for one offence as a constituent element or aggravating circumstance of another, and not where the specific way in which the offence is actually carried out gives rise to an occasional joining of several provisions (in this respect, see, Division 5, no. 21409 of 5 February 2008, journal no. 240081; no. 45965 of 10 October 2013, journal no. 257946; no. 2935 of 5 November 2018, journal no. 274589).

Therefore, since the fabrication and use of the forged document are not constituent elements of the offence of fraud, as opposed to artifice or deception, which need not necessarily constitute an autonomous offence, where the instrumental element consists in the preparation and use of forged documents, prepared for that purpose, there is a case of complicity between fraud and the offence of forgery, with the aggravating circumstance of the teleological link (Division 5, no. 520 of 23 March 1971, journal no. 118398; no. 2990 of 18 January 1984, journal no. 163439; no. 3949 of 28 February 1991, journal no. 186887).

Moreover, since forgery is included into the offence of fraud as a factual element in a causal relationship with the inducement to make an error, the procedural outcomes concerning the relevant concurrent offences of forgery that do not exclude their legal existence are not likely to affect the applicability of the offence (in cases where forgery is not punishable, Division 5, no. 9968 of 7 May 1975, journal no. 131680).

5.2.2 According to the charges summarised in the indictment under charge D), the defendants' self-serving conduct consisted not only in concealing the Chinese origin of the photovoltaic modules installed through the application of Made in EU serial numbers, but also in exhibiting "false documentation, specifically final technical data sheets of the system from which the EU origin of the installed modules is revealed, flash-lists of the modules, declarations in lieu of affidavit, warranty certificates, serial and technical labels stuck on the modules, technical data sheets of the modules, certificates of conformity to technical standards IEC 61215 and 61730 and certificates of factory inspections obtained by TUV Intercert... based on untrue documentation, inducing the Paying Agency GSE spa to pay for the 26 systems the amounts referred to in the feed-in tariff and, for 18 of them, also the contribution increased by the feed-in tariff of them, also the increased contribution", thus obtaining an unjustified

profit with the resulting substantial financial damage to the State finances, by crediting a total of EUR 21,776,772.19.

The Court failed to take into account the fact that the decisions of the Council of State are not decisive when assessing the overall evidence since, even if it is possible to separate the European bonus from the basic tariff for administrative purposes, the fact that the origin of the modules installed was altered by provision of falsified documentation still constitutes the basis for misleading the paying authority and gives rise to an unjustified nature of the entire profit achieved.

In essence, the principles laid down in administrative case-law do not automatically flow freely into the criminal justice system on account of the different jurisdictions and autonomous criteria for ascertaining the facts.

In the case at hand, the exclusion of the offence in relation to the fields in respect of which the bonus request was not made is not adequately measured in terms of the procedural evidence relied on at first instance in support of the existence of multiple instances of instrumental falsification referred to in the indictment. More specifically, as claimed by the civil party Gse, under Article 238 *bis* of the Italian Code of Criminal Procedure, no consideration is given to the irrevocable conviction of the competitor Bertoldo Marco, separately judged by summary judgment, and the statements made by Bertoldo himself during the examination under Article 210 of the Italian Code of Criminal Procedure are also disregarded. (p. 188 *et seq.* of the Court of First Instance judgment), in the part where it describes the operations aimed at making the imported modules compatible with the data of Helios' Factory Inspection, an operation that also involved personnel of the certification body TUV Intercet, which Bertoldo had informed of the fraudulent intentions that were sought to be achieved by charging the certifications: "With... with my direct contact in Tuv Intercert I had a very cordial relationship and it happened that after my ....umpteenth request to change the certificates I shared with him the reason why... that is because there were photovoltaic modules with a serial number that did not really conform to what it was, which were produced by Helios Technology and it was necessary in some way, in spite of myself I told him, it was necessary in some way that these modules were also covered by certification".

Nor did it take into account the fact that, as pointed out by the Court of First Instance (p. 195), Coppola himself acknowledged that the modules installed in the fields, which came from Eoplly, were not those envisaged in the branding agreement and had different dimensions: "It was still an effort for Eoplly to produce panels compliant with our specifications, because our specifications were different from standard production. So the panels, as long as we asked them well in advance, they produced the panels to our specifications, then at some point....when we

needed panels later on, the panels were what they had. That is, they were their own panels, with their own specifications."

On this point, the Regional Court merely referred (p. 153) to the statements made by the expert Roncarolo, without any critical comparison with the many additional sources examined by the Court of First Instance and attesting to different results as regards the compliance of the panels installed with the regulations. Therefore, the general counterfeiting of serial numbers and the involvement of representatives of the certification body in the falsification of certificates of conformity are entirely underestimated. Nor can it be overlooked that the Court of First Instance also referred to that expert in order to establish that the adhesive labels on the back of the modules had been tampered with in all the fields, therefore both those acquired from Helios through Eoplly by means of the artificial interposition of Revolution Six (installed on 8 fields indicated in under charge D) and those coming from Eoplly and originally seized at the Taranto customs office, sold by Energetic Source to Kerself and installed on 18 of the fields indicated under charge D. Roncarolo, Energetic Source's expert, in her report, pages 79-80, stated that on some of the HEPxxxP type panels there were glue residues, as if a label had been removed (reliably the one bearing the words "Made in China imported by Energetic Source SpA Milano Italy" affixed by Energetic Source during the regularisation procedure at the Taranto Customs Office), while on others, although that label remained, there was a second one bearing the guarantee of origin Made in Europe with the logo of the TUV Intercert certification company and the serial number associated with the production site 00009509 Site A (*i.e.* the Italian site).

Indeed, it is of no consequence the fact that there was no obligation, under the provisions issued by the G.S.E., to indicate on the labels the module serial number, but only the production site, since even the latter untruthful indication is alone sufficient to account for the concealment and is decisive, as it is linked to a certification of conformity of the modules which is also false as a result of the effect of the artificial changes to the alphanumeric strings made by Bertoldo with TUV Intercert personnel.

6. With regard to the acquittal of the defendants under charge D) on the grounds that they did not commit the offence in relation to the fields that were eligible for the European bonus, the Court did not agree with the fragmented assessment of the statements made by Coppola Gianpiero, examined under Article 197 *bis* of the Italian Code of Criminal Procedure, having settled his case by means of a plea bargain. More specifically, the appeal judges considered the statements made by the defendant to be entirely reliable, not only with regard to the means of fraud but also with regard to the assumption that

Akhmerov, Giorgi and Maggi had nothing to do with it, finding that the elements put forward by the court at first instance as a basis to support the contrary determination were "vague and abstract".

The assessment of the Court has a number of shortcomings in its reasoning, resulting from the recusal of logical evidence, in its methodological approach to the trial materials and in the consequent lack of understanding of the overall demonstrative capacity of the sources, which were examined in a fragmentary manner, devoid of any context. In view of offences that are part of a complex corporate network, characterised by the concentration and overlapping of top management roles of the defendants Akhmerov and Giorgi, which the Court of First Instance examined on page 89 *et seq.*, correctly considering the reconstruction of the corporate interests to be an unavoidable requirement for assessing the subjective liability profiles, the challenged ruling entirely failed to address the issue of the group structure which, according to the indictment, governed the operating guidelines and choices, including those of an illegal nature, of the companies involved. Once the actual events in question have been separated from the specific analysis of the reference context, a context marked by a serious entrepreneurial crisis and the consequent need to act for economic and financial recovery, the analysis of the challenged ruling is based on parameters that measure the subjective chargeability profiles on the basis of merely procedural criteria, with results that are often inconsistent and unconvincing.

6.1 With regard to the full reliability of Coppola, the appeal judges focused their attention on elements that, according to the reasoning of the Court of First Instance, only had a confirmatory value, such as the fact that the top management did not take disciplinary measures against the declarant once the existence of investigations into the fields of the fourth account, in connection with the searches carried out at the offices of Aion, Ecoware and Helios on 19 December 2012, was ascertained, that is, the recruitment of the same as an employee of Kerself-Aion in the spring of the same year.

On the contrary, the Court of First Instance carried out at pages 204-2014 a detailed examination of the circumstances considered indicative of the personal and direct awareness of the defendants of the fraudulent mechanism put in place, in the interest of the entire group, by Coppola, with reference to specific circumstances which, far from being mere conjecture, deserved to be fully and comprehensively rejected.

As a matter of fact, in the grounds given by the Court at First Instance, the only partial degree of reliability accorded to Coppola derives from the identification of a series of circumstantial elements that contradict the alleged non-involvement of the defendants in the criminal scheme, which have been analytically outlined and whose relevance has been amply argued. Starting from some excerpts of Coppola's cross-examination by the Public Prosecutor on 23 July 2014, from which it appears

that his appointment as director of Helios was accompanied by a mandate to take action "to keep the company afloat", in view of the difficulties of the parent company and its subsidiaries; the reference to the mechanism of delegation of payment, whereby the invoices issued by Eoplly to Helios were paid by Kerself (an operation which for the importance of the disbursements, amounting to around EUR two million and four hundred thousand, had been endorsed at top level) while, at the same time, the same supplies were resold, with a consistent mark-up, by Helios to Kerself for EUR three million and seven hundred thousand, a triangulation that Coppola himself justified by saying that "it was part of the group's internal distribution logic" in that "the final requirement, our final requirement was to move on, to get back on our feet, to reschedule the debt, all this would have ended up - let's say! the big pot and we would start again".

6.1.2 Nor does the fact that 18 of the 26 systems referred to in charge (D) above were equipped with modules bought and sold by Eoplly and Energetic Source allow the challenged ruling to disregard this, since Coppola and Helios were not involved in the purchase, clearance and transport of those components to the fields, and therefore the argument that Coppola and his close associates were solely responsible for the fraud is open to fundamental conflict in terms of its reconstruction.

In this regard, according to Akhmerov, since the Chinese manufacturer did not intend to negotiate with Kerself, Energetic Source, in the person of its managing director Mr Giorgi, stepped in and took over the purchase, without prejudice to the allocation of the materials to the fields under construction by Kerself, which repurchased them in their entirety in a short time at a price of EUR 6.2 million, as shown by Ms Roncarolo's expert opinion. No one has raised any doubts as to the regularity of such a transaction but, nevertheless, the consequences cannot be ignored in relation to the overall factual reconstruction of the case at hand and the logical implications in terms of the defendants' awareness of the destination and use of the over 20,000 panels imported and cleared through customs, after affixing on each one a label indicating the country of production, between 18 and 29 August 2011. This is the date that marks the watershed between the relabelling of the modules after affixing serial numbers indicating their Chinese origin and the subsequent events of closer interests to proceedings concerning the concealment of the non-EU origin of the canopies installed in the fields. The reliability of Giorgi's and Maggi's claims of innocence must be assessed based on such data, as also the evidential value of the e-mail sent by the latter on 12 September, following which he announced that he had engaged 40 SAEM employees in the replacement of the serial numbers, unquestionably supplied by Bertoldo and Pilotto di Helios,

on Coppola's instructions, containing the forged data concerning the European manufacture of the panels.

6.1.3 Also with regard to the modules purchased by Helios through the artificial interposition of Revolution Six, the challenged ruling against overlooked, when assessing subjective liability, important evidential elements such as the unusual nature of the small amounts requested by Revolution Six for the alleged activity of assembling components of Chinese origin and the exorbitant value of the purchases invoiced by Eopply, which led to a call for explanations addressed to Coppola by the administrative director of Kerself, Mr Crotti, abruptly rebuked, because, as the declarant explained, "what Crotti did not understand was that when Helios failed, Aion also failed". As recalled by the Court at First Instance on page 209, in an email sent on 7 May 2011 to Paolo Fietta, Kerself's administrative, finance and control director, and to Coppola, Mr Crotti wrote that it was "unacceptable to buy panels at EUR 0.93 per watt (plus transport costs) and resell them at EUR 0.83 per watt... Please correct your Purchase order and agree with Mr Coppola a fair price for Kerself".

The deafening silence in response to Crotti's complaints, which is all the more incomprehensible given the group's obvious economic difficulties, and Coppola's arrogance in telling him to "mind his own business" are hardly consistent with the presumed total ignorance on the part of the company's top management of what Coppola was orchestrating to create the best conditions for access to the incentives of the fourth energy account.

6.1.4 With regard to the specific case of Marco Giorgi and Sebastiano Maggi, it should be further noted that the Court has repeatedly committed inconsistencies in reconstructing the events and has substantially misrepresented the procedural evidence when, with regard to the email dated 12 September 2011, whereby Sebastiano Maggi informed Coppola and, for information purposes also Giorgi and Cavacece, that "for the replacement of the serial numbers we have mobilised 40 workers", it maintains that "even if Marco Giorgi had seen the email, its content does not in any way reveal the deceptive manner in which the procedure for the replacement of labels was structured" and that the subject of the email in question is generic and refers to "serial numbers and PV panels", while, in the other communications, the subject is almost always identified with express reference to HEP modules. These are arguments that have no logical basis, since they do not take into account the fact that the communication follows the importation from China of the considerable quantity of panels purchased by Energetic Source with a contract signed by Marco Giorgi himself, resold to Kerself and intended for the fields under construction in Southern Italy; the timing of the email did not allow there to be any misunderstanding with the relabelling operation for the purpose of clearing the modules through customs, since it took place before the release of the

goods, of which it was an express condition; nor could the operation be regarded as routine following the regulatory indications of the GSE, since in such case neither the large use of manpower nor the need to inform not only Coppola but also Cavacece and Giorgi could be justified.

It should be added that the fact that Giorgi was not the addressee of the e-mails from Giuseppina Pilotto and Marco Bertoldo, regarding the procurement of Made in Europe labels, cannot be considered significant, since it is clear that in the Helios corporate structure they did not have a role that would justify having a relationship with the defendant, which was managed, as recalled by Bertoldo himself, exclusively by Coppola. It is also alleged, contrary to the evidence, that on 12 September 2011 the Made in Europe serial numbers were not even ready.

Indeed, as noted in the challenged ruling, on 28 July 2011 Pilotto forwarded to Paolo Russo, and for information purposes to Gianpiero Coppola and Marco Bertoldo, an e-mail containing, as an attachment, the "frame" of the labels to be affixed to the EOPPLY modules, bearing the wording "Made in Europe", while on 24 August 2011, at 5:05 p.m., Pilotto herself informed the managing director of Helios, Gianpiero Coppola, that she had 5,000 labels with the TUV logo and "made in Europe" at her disposal and that she was waiting for indications from Paolo Russo as to where they were to be sent (Court at First Instance judgment, p. 118). Pilotto also informed Coppola of the cost, asking for confirmation that he would "invoice this amount to Kerself. In addition, I am waiting for confirmation to proceed with printing the remainder for the total... of Eopply modules". In response, on 26 August Russo sent the defendant "the details of the fields, with the number of labels required on the side. You could send all the labels to Saem and divide them up into as many envelopes as there are fields involved."

This was followed, on 29 August, by an email whereby the defendant Pilotto sent a quotation request to Arte Grafica Munari for approximately 16,000 labels with the wording "Made in Europe", which were delivered to Helios on 2 September 2011 and subsequently, as usually occurred, sent to Saem (Court at First Instance judgment, p. 210).

On the one hand, the considerable number of "made in Europe" labels (at least 21,000) made available at the beginning of September fundamentally contradicts the argument that panels or serial numbers were replaced afterwards owing to damage, malfunctioning or theft and, on the other hand, does not take into account the fact that, unquestionably, the owner companies were required to notify the GSE of the replacement of the modules, by sending the relevant documentation, including the list of the serial numbers of the removed panels and of the new ones to be installed, requirements that were not documented in this case.

Moreover, the chronological sequence which may be inferred from the document on record and extensively highlighted by the Court of First Instance proved the illogical nature of the explanations provided

in support of the defendant Maggi's non-involvement in the offence and his acquiescence accorded to the argument put forward by Coppola that Saem, the contractor for the construction of almost all the fields under dispute, had no clear point of contact for the operation of concealing the Chinese origin of the modules used, which required a considerable amount of time and manpower that could not be ignored by the company managers.

Nor, in view of the fact that it has been ascertained that there were no top management roles other than that of Sebastiano Maggi, who were actually operating in the worksites contracted out to SAEM, does it appear sufficient to assume that they were not involved in the offences under investigation solely based on their contractually recognised responsibilities, and overlooking the fact that SAEM is a purely family-owned company where the defendant was entrusted with the management and technical direction of the fields, while his brother Francesco, who at the time was a member of the Board of Directors of Aion, was in charge of the managerial and financial running of the company. The definition of the defendant Maggi as the "owner" of Saem, even though this is not reflected in the shareholding structure, does provide operational and decision-making evidence in which Camilla De Nisi, an electronic engineer who provided continuous consultancy services to Avelar, collaborating in particular with Saem, and, as pointed out by the Court of First Instance, was the recipient of several e-mails concerning the replacement of labels, reported at trial that she did not have free access to the worksites of Saem, including for security reasons, however, he clarified that in Saem particularly as regards the "technical part", and in reply to a specific question on who coordinated the group of technicians, replied, clarifying that the technical manager was "the *owner,* Maggi... the engineer, Mr Maggi, is the technical head of Saem" (page 74).

This is also true with regard to the failure to acknowledge the signing of the technical data sheets of the systems, since the Court of Appeal did not address the detailed considerations made in this regard by the Court of First Instance, preferring to give more importance to the form rather than the substance, which does not appear to be in line with the findings of the case concerning the corporate structure and the professional skills of the defendant.

7. The action brought on behalf of Giuseppina Pilotto is inadmissible in so far as it is generic and reproduces complaints which have been fully examined and rejected on the basis of a statement of reasons by the Regional Court. Given that Pilotto, like the co-defendants Akhmerov and Giorgi, was acquitted of the offence under charge D) of the indictment, solely in respect of the DiLeo5, DiLeo6, DiLeo7, Zella, Bufalaria, Carlucci, Di Stasi, Interporto Toscano Amerigo Vespucci S.p.a., Arcadia and Covelli systems, on the ground that the offence was not committed, with a ruling which has not been challenged by any of the appellants, and from the offence of forgery under charge E) on the ground that it is time-barred, therefore, the conviction against her

refers to the fraud perpetrated in relation to the photovoltaic fields for which the request was made for a 10% increase in the feed-in tariff by simulating the European origin of the photovoltaic panels used for their construction.

7.1 Indeed, the defence's counsel's claim of a fundamental lack of wilfulness on the part of the defendant, being allegedly unaware of the incentive mechanisms under the Fourth Energy Account, cannot be accepted in view of the call of Gianpiero Coppola, corroborated by the statements of Marco Bertoldo, who explained the reasons which made it necessary to involve the two Helios employees in order to carry out the fraud which he assumes to have been personally and individually engineered.

The abovementioned statements on this point were estimated to be accurate, consistent, detailed and corroborated by the many relevant documents acquired during the investigation. As a matter of fact, on 19 December 2012, during the search warrant at Helios Technology's headquarters, a folder named "Special orders" was found on the defendant's computer, containing documentation certifying the relationships of the company with the Chinese company Eopply and the Polish company Revolution Six, from which decisive elements were drawn with regard to the interposition of the latter for the purposes of conferring a European status to the Chinese produced modules and the falsification of the transport documents, apparently issued by Schenker S.p.A. of Peschiera Borromeo, while the numerous e-mails extracted, which attest to the full and conscious participation of the appellant in the criminal offence, are particularly relevant in terms of criminal intent.

Among other things, the Court referred to the emails exchanged between 2 and 3 January 2012 with Khrystyna Johnson and Kamil Kowalsky of Revolution Six, containing, *inter alia*, indications from Pilotto as to the correct alphanumeric code of the flash lists; the computer correspondence with Alessandro Wang of EOPPLY, containing invoices from that company to Revolutions Six; the continuous contacts with Coppola and Bertoldo concerning the preparation, printing and transport of the labels. The e-mail sent by Marco Bertoldo dated 26 July 2011, which was also sent to Pilotto for information purposes, concerning a Helios document intended for TUV Intercert, defined as a "ploy" necessary to ensure "that the HEPxxxP modules are eligible for the +10% made in EU", as well as the subsequent computer transmission to Paolo Russo of the file relating to the label of the Eopply modules with the attached "frame" of a label bearing the wording "Made in Europe", is clear and indisputably relevant.

The appeal judges correctly pointed out that the alleged lack of knowledge of the technical rules of the fourth energy account was irrelevant, since it had been proven that the defendant had been "made aware of a mechanism of an obviously deceptive nature (trivially; selling one asset for another, concealing its real origin)", to which she had knowingly contributed, primarily as regards the issue of managing the labels.

The fact that Pilotto, like Bertoldo, was reluctant to cooperate in the fraudulent offence, according to what is stated by Coppola, and with the sole aim of saving the company and her own job, while being relevant from the point of view of the motives for committing the crime and the determination of the sentence, does not affect such conduct as being qualified as having efficiently and consciously participated in the contested offence.

7.2 As regards the complaint concerning the alleged absence of the requirement of unfair profit, it must be noted that it is entirely unfounded since, as this is a case of offence committed by more than one person, the assessment must be based on the financial results achieved by the joint and synergic actions of the persons responsible, in this case the undue access to public funds, and not on the favourable impact on the position of the individual participant, which may also be completely non-existent. In essence, Pilotto's personal difficulties and her desire to help safeguard her job are not relevant circumstances from the point of view of liability, since they are included in the assessment under Article 133 of the Italian Criminal Code for the purposes of determining the penalty.

Therefore, the Regional Court provided an extensive response to the defence counsel's argument on liability without there being any obvious gaps or inconsistencies, so that the challenge is an unacceptable request by the defence counsel to re-read all the evidence, which cannot be addressed here.

7.3 With regard to the revocation of the provisional enforcement, which is the subject of an appeal by GSE ("DEEMED IN FACT" under paragraph 3.4), it must be noted that the provision with which the lower court, in pronouncing a general sentence of compensation for damages, assigns to the civil party an amount to be included in the final settlement, cannot be challenged in cassation since by its nature it is not capable of becoming final and is intended to be overturned by the actual settlement of the full compensation for damages (among many others, Division 2, no. 43886 of 26 April 2019, journal no. 277711), a principle which is also applicable in the event of revocation, since the challenged ruling is not decisive in that case either.

8. As to charge F), the Regional Court stated that the acquittal of the defendants Akhmerov and Giorgi was directly based on the acquittal decisions taken in relation to charges B) and D), while excluding, at the same time, the possibility that Akhmerov's conduct during the negotiations with the EAM companies could be considered as "any significant omission of communication", given that the *data room* contained the minutes of the transactions carried out prepared by the Italian Tax Police during the accesses to the photovoltaic fields, bearing the

number of the criminal proceedings (General Criminal Record Docket no. 44638/13), the Judicial Authority in charge of the proceedings, as well as various information on the nature of the investigations and the type of activity carried out; the order of the Court of Reggio Emilia of 6 March 2013 revoking the deadline for the submission of AION's composition with creditors, containing an express reference to the existence of a "criminal investigation in progress at the Public Prosecutor's Office of Milan concerning the offence referred to in Article 640, paragraph 2, no. 1, of the Italian Criminal Code". Moreover, the appeal judges pointed out that the Massimi and Fiorini report, drafted in two versions dated 13 and 24 June 2014, had expressly represented the presence of criticalities relating to the EN.F014 field, reiterated following the submission of a Factory Inspection certificate.

Therefore, according to the Lower Court, the defendants - within the scope of their respective competences - had fulfilled their duty to provide information during the negotiations, and the failure to disclose the search order of 19 December 2012 was irrelevant, given that the amount of information was such as to enable the purchaser to give informed consent to the transaction.

The Court states that the appeal court's acquittal is based on only a partial assessment of the evidence in the proceedings and that it underestimated the fundamental nature of the negotiations. As reconstructed by the first instance judgment on pages 226 *et seq*, after the start of negotiations in June 2013, on 31 December 2013, Aveleos S.A. and EAM entered into a sale agreement ("Share purchase Agreement"), filed by the appellants, whereby the seller, *inter alia*, warranted that the photovoltaic systems owned by the project companies had already been built, connected to the national electricity distribution grid and were fully operational in full compliance and in accordance with the relevant authorisations, and that they complied with all applicable laws, rules and regulations and/or provisions; that the photovoltaic systems duly benefited from the feed-in tariffs provided by the Italian Ministry of Economic Development in agreement with the Italian Ministry for the Environment, Land and Sea Protection, in compliance with all applicable laws and regulations thereto that the seller, the project companies and their respective directors, legal representatives or employees were not involved in criminal proceedings and there was no reason to believe that such persons were or could be involved in criminal proceedings with reference to the office held in any of the aforesaid entities; *that all documents and information to be provided by the seller up to the date of the actual transfer, in relation to the photovoltaic systems, were and would continue to be true, complete and accurate in all respects* (article S.1 of the aforementioned agreement).

The seller also ensured that there were no facts or circumstances - known to the seller and not disclosed to the buyer or its advisers - which, if disclosed, would have reasonably induced a professional investor not to enter into the agreement or to enter into on terms and conditions other than those agreed.

These contractual clauses remained effective between the parties until the drafting of the final agreement on 15 July 2014, which expressly referred to them, stating that "this deed of sale does not replace, annul, supersede or modify in any part or in any way any previous agreements, understandings or contracts between the Parties concerning the same subject matter[...]".

8.1 The Court carried out a kind of resistance test in order to hold that the failure to notify the opposing party of the search warrant of 19 December 2012 did not harm the purchaser, since the information contained in the document could be inferred from other documents uploaded to the data room. Such interpretation is not in line with the duty to inform borne by the promisor seller nor with the established case-law of the Italian Supreme Court, according to which, with regard to contractual fraud, even silence, if maliciously withheld in relation to circumstances relevant to the assessment of the reciprocal performance by the person who has the duty to make them known, represent an element of deception, capable of influencing the negotiating will of the injured party (among many others, Division 2, no. 28791 of 18 June 2015, journal no. 264400; Division 6, no. 13411 of 5 March 2019, journal no. 275463). In essence, the contractual clauses imposed the disclosure of the deed in fulfilment of the obligation of good faith that permeates negotiated relations. The deceptive effect of the failure to fulfil obligations is thus based on the omission of a required act, which is all the more relevant in the light of the disclosure of subsequent acts which presupposed it, such as the inspection reports of the Italian Tax Police.

Nor did the challenged ruling adequately address, for the purposes of assessing the relevance of the contested omission, the strict chronological sequence of communications between the parties from February 2014, when press reports on investigation into the photovoltaic fields belonging to Aveleos were leaked.

Indeed, the Court of First Instance noted that, on 4 February 2014, EAM sent a letter to Igor Akhmerov and Peter Hamacher (communications contact person), also addressed for information purposes to Giorgi, Cabibbo and Zucca, requesting clarification on the involvement of the special purpose vehicles, of the seller shareholders and directors in any type of criminal proceedings, expressly inviting them to "specify whether the seller, the target companies and their respective directors, officers or employees are currently involved in criminal proceedings and whether there is a legal basis for bringing criminal proceedings against any of them. Please specify whether the seller's shareholders and their respective directors, officers or employees are currently involved in criminal proceedings and whether there is a legal basis for bringing criminal proceedings against any of them (provided that any criminal proceedings could potentially affect the seller, the target companies and the systems) (judgment of Tribunal, page 230). In response to the request, by letter dated 10 February 2014, Akhmerov informed EAM that on 18 December 2013 and 22 January 2014, Aveleos had been informed of inspections conducted by the Italian Tax Police (upon the Court of Milan's request) on the same date on the systems owned by ENS Solar Five S.r.l. (ENS 5), formerly owned by Aveleos and sold to the investment fund Venice European Investment (VEI) Capital S.p.A. in August 2012, specifying that the investigation was "focused on technical specifications

(dimensions, identifications, etc.) and relevant information provided to the GSE and the Authorities" and that "Aveleos is not aware of the facts that led to these investigations and is also not aware of the lack of compliance with the relevant regulations. Therefore, Aveleos does not expect any problems arising from such investigations".

At the next meeting on 4 March, expressly requested by EAM, according to the statements of the witness Jakobsen, "Mr Giorgi continued to reiterate the notion that there was no risk in view of my representations, and the fact that I asked that there should be no risk". On 20 March 2014, EAM sent a further notice whereby it reiterated that it did not want to undertake criminal risks and complained about the lack of information provided by the opposing party.

The appellants EAM also pointed out that the Regional Court erroneously dated the letter of 26 March, claiming that Jacobsen's complaints were unfounded, as the Italian Tax Police's reports had already been uploaded to the *data room*, which in fact had only been done only after the communication, and in any event, could not provide an answer to the promissory purchaser's requests to know the origins and reasons for the investigation.

8.2 Therefore, it is in this context that we must consider the examination of the deceptive effect of the failure to produce the search warrant and seizure order of 19 December 2012, a document which, as pointed out by the defence counsel of the parties who brought the civil suit, was the only one which - through the provisional indictment - explicitly set out the nature of the fraudulent conduct and the fields involved. As a matter of fact, the provisional indictment clearly stated that the offence "referred to in Article 640, paragraph II, no. 1, of the Italian Criminal Code" was committed, indicating that the fraudulent conduct consisted in replacing the "label certifying the non-EU origin of solar panels to be installed in Italy with false EC labels of origin, inducing the paying agency of the Italian Ministry of the Economy, GSE S.p.A., which is wholly owned by the Authority, to pay the contribution increased by 10% referred to in Article 14 para. I, letter d) of Italian Ministerial Decree of 5 May 2011 (the "Fourth Energy Account"), resulting in unfair profit and damage to public funds".

Nor, with regard to the subsequent development of the negotiations, can it be disregarded that the verification summarised in the Massimi and Fiorini report was carried out in a very short timeframe (approximately one month), based on the documentation made available by Avelar's technical department and the clarifications provided by Cavacece and Cabibbo, so that the consultants concluded in the summary report that the inspected companies met the requirements to obtain the European 10% bonus, also on the basis of the document control relating only to the cost of the invoiced materials. They only expressed a residual doubt as to "the possibility to refer the Factory Inspection certificate to the modules referred to in the product sheet marked "Rev02010" (installed on the site) (In.fo 14, editor's note) or to those referred to in the product sheet marked "Rev02012" (not installed on the site)".

Therefore, they formulated a judgement of "formal compatibility", while not excluding the abstract possibility of further investigation by the GSE and "in case of ascertained and recognised lack... of the appropriate certification" the consequent loss of the 10% bonus on the incentive and the recovery of amounts paid in the past, in accordance with the provisions of Italian Ministerial Decree of 11 May 2011 and by Italian Ministerial Decree of 31 January 2014.

Moreover, we should wonder whether the nature of the investigations entrusted to the third-party consultants was such as to certify *not* the formal correctness but the lawfulness of the fields investigated, in view of the nature of the contested instrumental infringements and the manner in which they were carried out.

Therefore, the statement of reasons of the challenged ruling did not correctly and comprehensively address the substantial amount of evidence in the case file, setting out arguments in support of the acquittal that are not relevant and omitting crucial elements for the purposes of proving the serious charge and the related subjective liability, so that the grounds for the appeal are also founded in relation to charge F).

9. Therefore, based on the above considerations, the challenged ruling must be quashed with referral to another Division of the Court of Appeal of Milan for a new trial with regard to the specific cases of Akhmerov Igor, Giorgi Marco and Maggi Sebastiano in relation to the offences charged under charges B), D) and F) of the indictment whereas, in the absence of an challenge by the Public Prosecutor's Office, the referral in relation to the specific case of Alessandro Cavacece under charge B) must be made to the civil judge having jurisdiction in terms of value at the level of appeal following the finding of the grounds for appeal for civil action brought by G.S.E.

Giuseppina Pilotto's application must be declared inadmissible and she must be ordered to pay the costs of the proceedings and the fine set out in the operative part of the judgment, since there are no grounds for exoneration.

9.1 It is not out of place to reiterate with regard to the quashing for criminal purposes that, according to the established case-law of this Court on the issue subject of reviewing the failure of the statement of reasons, the role of the Italian Supreme Court is not to superimpose its own analysis carried out by the lower court judges as regards the reliability of the sources of evidence but to establish whether the latter had examined all the evidence at its disposal, whether they have correctly interpreted them, giving exhaustive and persuasive responses to the parties' submissions, and whether they have exactly applied the rules of logic in developing the arguments that have justified their choice of certain conclusions as opposed to others (Joint Divisions, no. 930 of 13/12/1995, dep. 1996, Clarke, journal no. 203428). It follows that, when the flaw that leads to the quashing of the ruling concerns the statement of reasons, the referring court retains its full powers of assessment and evaluation, so that any factual elements contained in the ruling are relevant as points of reference for the purpose of identifying the flaw but not as data that is required for the decision entrusted to it, which can and indeed must proceed to entirely review the evidence, by correctly applying the principles of law and the rules of logic as outlined above.

10. It also follows from the above rulings that the defendants and those liable under civil law, as set out in the operative part of this judgment, are ordered to reimburse the costs of legal representation and defence incurred in these proceedings by the civil parties, awarded in accordance with the amounts specified therein.

ON THESE GROUNDS

This Court quashes the challenged ruling against Giorgi Marco, Akhmerov Igor and Maggi Sebastiano and refers the case back to another Division of the Court of Appeal of Milan for further proceedings.

Declares the action brought by Giuseppina Pilotto to be inadmissible and orders her to pay the costs of the proceedings and the sum of EUR 3,000 to the *Cassa delle Ammende*.

Quashes the challenged ruling against Alessandro Cavacece, with respect to the civil effects, and refers the case back to the civil court having jurisdiction for the value at the level of the appeal, to which it also refers the determination of the costs between the parties for this instance.

Orders Marco Giorgi, Igor Akhmerov, Sebastiano Maggi, Giuseppina Pilotto, Aveleos S.A., Avelar Management Ltd and Saem s.r.l., jointly and severally, to reimburse the costs of legal representation and defence incurred in these proceedings by the civil party G.S.E., Gestore Servizi Energetici S.p.A., for a total of EUR 3,510.00, plus accessory costs required by law.

Orders Marco Giorgi, Igor Akhmerov and the civilly liable parties Aveleos S.A., Avelar Energy LTD and Enovos Luxembourg S.A., jointly and severally, to reimburse the costs of legal representation and defence incurred in these proceedings by the civil parties Eam Solar Asa and Eam Solar Italy Holding s.r.l., to which they shall pay the total amount of EUR 4,000.00, plus accessory costs required by law.

Orders Marco Giorgi, Igor Akhmerov, Sebastiano Maggi and Giuseppina Pilotto, jointly and severally, to reimburse the costs of legal representation and defence incurred in these proceedings by the civil party Società Agricola a.r.l. EN.FO 60, to be paid a total amount of EUR 3,510.00, plus accessory costs required by law.

Orders Igor Akhmerov to reimburse the costs of representation and defence incurred in the present proceedings by the civil parties Unicredit S.p.A and UBI Leasing S.p.A., which are settled for each party for the sum of EUR 3,000.00, plus legal costs.

Thus decided in Rome, on 6 October 2021.

The Judge Rapporteur	The President
Anna Maria De Santis	Domenico Gallo
[signature]	[signature]

Repertorio n. 7253

VERBALE DI ASSEVERAZIONE DI TRADUZIONE

(Art.1, n. 4 del R.D.L. 14.7.1937 n. 1666)

Il ventuno dicembre duemilaventuno

21 dicembre 2021

in Milano, Piazza di Santa Maria delle Grazie n. 1, nel mio studio.

Avanti a me Dottor **Mathias BASTRENTA**, Notaio in Milano, iscritto presso il Collegio Notarile di Milano, è presente il signor:

= **Francesco DAMERI,** nato a Modena il 2 ottobre 1990, domiciliato a Milano, via Carroccio n. 8.

Detto Comparente, della cui identità personale io Notaio sono certo, mi presenta la traduzione dall'italiano all'inglese del documento che precede e mi chiede di asseverarla con giuramento.

Aderendo alla richiesta, ammonisco ai sensi di legge il Comparente, il quale presta quindi il giuramento di rito ripetendo la formula: "Giuro di avere bene e fedelmente proceduto alle operazioni a me affidate e di non avere avuto altro scopo che quello di far conoscere la verità.".

Richiesto io Notaio ho ricevuto il presente atto, del quale ho dato lettura al Comparente, che lo approva e con me lo sottoscrive.

Consta di un foglio scritto da persona di mia fiducia per una facciata sin qui.

Francesco Dam.

MATHIAS BASTRENTA NOTAIO IN MILANO