

31 January 2025

The Consob consultation of January 27th, 2025: the amendments to the Sanctioning Proceeding Regulation

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1. Introduction

On January 27th, 2025, the Consob (“**Consob**” or the “**Authority**”) launched a consultation with the market, which will end on next February 26th, regarding proposed amendments to the Regulation on the Sanctioning Proceeding (the “**Regulation**”), to implement the rules on commitments, as provided by Art. 196-ter of the Consolidated Financial Act (TUF) introduced by the Law on Capitals (*Legge Capitali*).

In particular, the submission of a commitment proposal by the entity to which violations have been attributed would start an alternative and optional procedural path (the “**Sub-Proceeding**”) instead of the standard sanctioning proceeding followed to ascertain administrative violations.

The primary law has granted the Authority the power to adopt procedural rules governing the submission and evaluation of such commitments. Therefore, Consob has proposed adding a new Title II-BIS to the Regulation, entitled “Commitments”, which will apply to sanctioning proceedings started after the new rules’ entry into force.

Additionally, the Authority has proposed regulatory amendments aimed at providing clarifications and improvements in terms of efficiency, effectiveness, and timeliness of administrative action. Further measures have also been identified regarding the protection of personal data of the sanctioned entities in relation to the publication of afflictive decisions.

This newsletter focuses on the most significant changes that Consob has suggested introducing to the Regulation.

2. Key amendments proposed in the consultation

2.1. Amendments to the Regulation: the Sub-Proceeding

As previously mentioned, the introduction of the commitment mechanism allows for an early resolution of the Consob sanctioning proceeding, in relation to any type of administrative violation under the Authority’s jurisdiction, without the imposition of any sanctions. This aims to reduce the time of sanctioning proceedings and litigation opportunities, as well as preserve, at the same time, the enforcement of rules protecting the markets.

The regulatory intervention defines the methods and timing for each phase of the Sub-Proceeding. Below is a brief analysis of these phases, including the submission, admissibility, and investigation of the commitment proposal, the decision, and any potential reopening of the sanctioning proceeding.

2.1.1. Submission, admissibility, and investigation of the commitment proposal

A necessary condition for starting the Sub-Proceeding is the initiative of the involved entity, as it cannot be activated *ex officio* by the Authority. The peremptory deadline for submitting the proposal to Consob (Administrative Sanctions Service) is 30 days from the notification of the charge letter. Before assessing admissibility, Consob may request the proposer to provide clarifications regarding the proposal.

The Authority will consider the proposal inadmissible if: (i) it is submitted after the peremptory deadline; or (ii) the proposer fails to promptly respond to requests for clarification, or if the proposal is manifestly vague, unfeasible, or incapable of being effectively and timely implemented, or if the proposed measures consist of economic compensation for the injured parties that are unfeasible due to the financial capacity of the violator.

Conversely, if the assessment is positive, the Authority begins the investigative phase and produces a motivated report containing its final evaluation on the commitment proposal. Contextually, the report – translated into a foreign language if needed – will be sent to the proposer, who may provide written observations within 30 days of receiving it.

Additionally, if deemed appropriate, the Authority may start a consultation on its website for a period not exceeding 30 days to obtain feedback from industry operators and third parties interested in the commitment proposal.

2.1.2. Decision-making phase and possible reopening of the sanctioning proceeding

Once the commitment proposal has been examined, the Authority may either: (i) approve it, which makes the commitments binding and closes the sanctioning proceeding; or (ii) reject the proposal, thereby restarting the sanctioning proceeding.

The final decision of Consob is transmitted to the proposer and, in the case of approval, is published on Consob's website along with the commitments undertaken.

Lastly, the sanctioning proceeding may also be reopened by the Authority, in addition to cases of rejection, if the following situations arise: (i) there is a substantial change in the factual circumstances upon which the decision was based; (ii) the involved parties fail to comply with the commitments; or (iii) the decision was based on incomplete, inaccurate, or misleading information provided by the parties.

2.2. Amendments to the Regulation: the publication of the sanctioning measures

As mentioned, the consultation on the Regulation also proposes other amendments, the most significant of which concerns the protection of data related to the entities involved in the publication of sanctioning measures on Consob's website. This aims to balance the informative-educational function of the publication with the reputational interest of the parties concerned.

In particular, the Authority has suggested inserting a provision whereby information published on its website will remain for a period of 5 years (and no longer) from the date of publication of the sanctioning measure¹.

As specified by Consob in the consultation document, this measure would ensure that information regarding the involved entity remains published only for the necessary period in accordance with EU applicable data protection laws and regulations.

¹ We refer to Art. 8-bis, new Par. 6-bis, of the Regulation.

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