



Sanction procedures in Europe in the event of non-compliance with AML-CFT regulations

Italian framework

Topics

- **INTRODUCTION**
- **ITALIAN REGULATORY FRAMEWORK**
- **COMPETENT SUPERVISORY AUTHORITIES**
- **MAIN INNOVATIONS IN THE SANCTION SYSTEM**
 - ❑ Abolition of some administrative offences
 - ❑ New subdivision of the type of violations
 - ❑ Extension of the scope of the entities subject to AML obligations
- **GENERAL REMARKS ON SANCTION PROCEDURE**
- **TIMING OF SANCTION PROCEDURE**
- **REDUCTION OF THE SANCTIONS**

Introduction

The Italian regulations implementing Directive 2015/849 (IV AMLD) included some relevant amendments to the local AML penalty system, in particular by introducing the following principles:

- 1 *abolitio criminis* principle** according to which no one can be sanctioned for a conduct which, although illegal according to the provisions in force at the time the offence is committed, is no longer provided for as such by the law in force at the time of the imposition of the sanction; and
- 2 *favor rei* principle** according to which - for violations sanctioned administratively - it is possible to apply the new AML regulation retroactively to the offences committed before its entry into force provided that the new regime is more favourable.

Introduction

In particular, the local regulations on AML sanctions implementing the European discipline:

- ➔ determined the abolition with regard to the administrative offences no longer considered to be such, *i.e.* the obligations to register and to omit/regulate the establishment or maintenance of the single database called *Archivio Unico Informatico* and the Customer Register
- ➔ contains a clearer and more detailed subdivision of the type of violations that give rise to the imposition of sanctions, both criminal and administrative
- ➔ extends the scope of the entities obliged to comply with the regulatory provisions (service providers on the use of virtual currencies, professional gold traders, intermediaries with registered office in another Member State but established in Italy without a branch)

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Italian regulatory framework

- ✓ **Legislative Decree of 21 November 2007, n. 231 («Decree 231»)** as amended by
 - ❖ **Legislative Decree of 25 May 2017, n. 90** implementing the Directive (EU) 2015/849 («IV AMLD»)
 - ❖ **Legislative Decree of 4 October 2019, n. 125** implementing the Directive (EU) 2018/843 («V AMLD»)

Further sanctioning procedures for non-compliance with AML local regulations are included in the measures issued by the various Supervisory Authorities and regulating administrative sanctions procedures in general, such as:

- ✓ Bank of Italy Dispositions on sanctions and administrative sanction procedure of 18 December 2012
- ✓ IVASS Regulation of 2 August 2018, n. 39
- ✓ Regulation on Consob sanction procedure adopted by Resolution no. 18750 of 19 December 2013
- ✓ Supplementary Regulation concerning the sanction procedure for violations ascertained by the *Organismo agenti e mediatori* in the exercise of its control duties of 19 December 2019

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Competent Supervisory Authorities



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Main innovations in the sanction system

Abolition of some administrative offences

With the entry into force of the new AML regulations, the registration requirements referred to in the previous version of Decree 231 have been abolished and replaced with data retention requirements (articles 31 – 34 of the updated Decree 231).

As a result, some administrative offences no longer provided for as such in the new regulations were abolished and pending proceedings were closed, with particular reference to the following cases :

- omitted or irregular institution or maintenance of the *Archivio Unico Informatico* and the *Registro della clientela*, since the obligation to establish the aforementioned registers is no longer provided for;
- violation of the obligations to register the information acquired in order to fulfil the customer due diligence obligations with the above mentioned registers, since the obligation to set up them is no longer provided for.

New subdivision of the type of violations

Criminal sanction

The new rules for the implementation of European AML directives place greater emphasis on conducts involving falsification or use of false data related to the client, the beneficial owner, the perpetrator, the purpose of nature of the ongoing relationship or professional service and the transaction.

For example:

- the person who must comply with the obligations of customer due diligence and who falsifies data/information, is punished with imprisonment from 6 months to 3 years, as well as a fine from 10,000 to 30,000 Euro;
- the person required, pursuant to AML regulations, to provide the data and information necessary for the customer due diligence, who provides false data or untrue information, is punished with imprisonment from 6 months to 3 years as well as a fine from 10,000 to 30,000 Euro.

Main innovations in the sanction procedures

Criminal sanctions

In addition, the following offences no longer involve the imposition of criminal sanctions:

- non-compliance with the provisions relating to the obligation of identification;
- omitted, incomplete, late recording of information necessary to fulfil the obligation of customer due diligence;
- failure by the persons in charge of management control to inform the competent supervisory authorities of any infringements of which they are aware (e.g. with regard to the obligation to report suspicious transactions).

Main innovations in the sanction system

Administrative sanctions

The recent revisions have also introduced a clearer breakdown of the types of breaches that may be committed by the various entities subject to AML obligations. In particular, this subdivision provides for the following categories of possible violations:

- non-compliance with customer due diligence and obligation to abstain;
- non-compliance with the obligation to retain data;
- non-compliance with suspicious transaction reporting requirements;
- non-compliance with reporting obligations imposed on the members of the supervisory bodies of the entities subject to AML regulation;
- non-compliance with the reporting obligations vis-à-vis the Financial Intelligence Unit (*Unità di Informazione Finanziaria* or *UIF*) and Ministry of Economy and Finance's inspectors;

Main innovations in the sanction system

Administrative sanctions

- non-compliance with the specific provisions on payment service providers' and e-money issuers' agents;
- specific sanction provisions for regulated entities (reference is made to banking and financial intermediaries who have, for example, committed serious and repeated breaches of internal procedures and controls, as well as persons holding administration, management and control functions in banking and financial intermediaries who have not fulfilled their AML obligations);
- failure to comply with the provisions referred to in Title III of Decree 231 concerning restrictions on the use of cash and bearer securities, prohibition of anonymous accounts and savings accounts or with a fictitious header, etc.

Extension of the scope of the entities subject to AML obligations

One of the most controversial aspects of the new AML regulatory framework is the inclusion among the parties required to comply with Decree 231 of "*banking and financial intermediaries (...) having their registered office and central administration in another Member State, **established without a branch in the territory of the Italian Republic***" (Art. 3(2)(u) of the Decree).

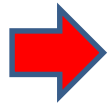


Such wording would therefore seem to extend the Italian AML obligations also to entities **operating under the cross-border regime**.

The point remains controversial to date, also in view of the different implementation methods adopted by the supervisory authorities.

Main innovations in the sanction system

In this regard, consider that:



Bank of Italy “Dispositions on customer due diligence” include in the list of entities subject to AML obligations *“banks, payment institutions and electronic money institutions having their registered office and head office **in another EU Member State** required to designate a central contact point in Italy (...)”*



IVASS Relation on Regulation of 12 February 2019, no. 44 points out that *“Consistently with the rules contained in the Decree 231, the Regulation applies (...) also to companies and intermediaries having their registered office in another EEA country that the AML Decree qualifies as obliged entities «established without branch in the territory of the Italian Republic».* The size and organisational requirements to identify such a subset within companies and intermediaries operating in Italy under the freedom to provide services will be defined in a subsequent regulation containing provisions on risk mitigation procedures.

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General remarks on Sanction Procedure

The administrative sanctioning power for the violation of the AML regulations falls within the powers of the Ministry of Economy and Finance.

In such cases the *Unità di Informazione Finanziaria*, the Supervisory Authorities (Bank of Italy, etc.), the public administrations, *Guardia di Finanza* and the *Anti-Mafia Investigation Directorate*, in relation to their duties and within the limits of their attributions, verify the violations and provide for the contestation of the charges.

Then they transmit the documents to the Ministry of Economy and Finance for the imposition of the sanction.

All phases of the sanctioning procedure relating to administrative violations include a preliminary phase, personal hearings and illustrative reports to the *Commissione Consultiva*, preparation of sanctioning decrees, management of disputes, executive phase, representation in court.

General remarks on Sanction Procedure

The main sanctioning power attributed to the Ministry of Economy and Finance concerns:

- failure to report suspicious transactions to UIF or to the competent Supervisory Authorities, unless the act constitutes a crime, by intermediaries, persons engaged in financial activities, professionals, auditors, and other persons subject to the reporting obligation;
- failure to comply with the order suspending suspicion transactions;
- violation of the prohibition to establish or maintain ongoing relationships, perform transactions or professional services with operators having a connection with blacklisted countries;
- violations of the information obligations towards UIF.

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Timing of Sanction Procedure

The deadline to end the sanctioning procedure is to **2 years**, starting from date of receipt of the complaint. Where the party subject to the procedure request to be heard in course of the procedure, this deadline is extended by **further 6 months**.

In any event, the procedure shall be deemed to have been concluded with the adoption of the decree laying down the penalty.

For sanction proceedings pending on the date of entry into force of the new version of Decree 231 (*i.e.* 4 July 2017) the deadline was extended by a **further 12 months** for cases where, on the above date, the two-year deadline had not yet expired.

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Reduction of the sanctions

Before the expiry of the deadline for appealing against the decree imposing the sanction, the addressee of the decree may request MEF to pay the sanction in a reduced amount.

The reduction allowed is equal to **one third of the amount of the sanction imposed**. The application of the sanction in a reduced amount is not allowed if the addressee has already made use of the same faculty **in the previous five years**.

MEF, **within thirty days** of receipt of the application, shall notify the applicant of the measure of acceptance or rejection of the application, indicating the amount due and how to make the payment.

Payment in a reduced amount shall be made **within ninety days** of notification of the MEF communication. Failure to comply with the deadline and payment methods indicated obliges the recipient of the sanction decree to pay in full the sanction originally imposed.

THANK YOU FOR YOUR ATTENTION!



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