

REGULATION NO. 1 OF 8 OCTOBER 2013 ON THE PROCEDURE FOR THE APPLICATION OF PECUNIARY ADMINISTRATIVE SANCTIONS

AS AMENDED AND SUPPLEMENTED BY IVASS ORDERS NO. 28 OF 27 JANUARY 2015, NO. 86 OF 14 MAY 2019 AND NO. 90 OF 5 NOVEMBER 2019. THE AMENDMENTS OR INTEGRATIONS ARE SHOWN IN ITALICS.

THE INSURANCE SUPERVISORY AUTHORITY

HAVING REGARD to law no. 576 of 12 August 1982, on the reform of insurance supervision and the setting up of ISVAP;

HAVING REGARD to Legislative Decree no. 209 of 7 September 2005 concerning the Code of Private Insurance and, in particular, article 9, paragraph 3, which provides that ISVAP (now IVASS) regulates, with its own regulations, the procedures pertaining to the detection of violations and the application of sanctions;

HAVING REGARD to Legislative Decree no. 206 of 6 September 2005 ("Consumer Code, in accordance with article 7 of Law no. 229 of 29 July 2003");

HAVING REGARD to Legislative Decree no. 231 of 21 November 2007, ("Implementation of Directive 2005/60/EC on prevention of the use of the financial system for laundering the proceeds of criminal activities and for financing terrorism, and Directive 2006/70/EC setting out implementation measures"); in particular, articles 56, 57, 58 and 60;

HAVING REGARD TO Law no. 689 of 24 November 1981 ("Changes to the criminal justice system"), which applies to aspects of the sanctions procedure that are not regulated by Legislative Decree no. 209 of 7 September 2005;

HAVING REGARD to Law no. 241 of 7 August 1990 on administrative procedure and the right of access to administrative documents;

HAVING REGARD to Decree Law no. 95 of 6 July 2012, converted with amendments into Law no. 135 of 7 August 2012, concerning urgent provisions for the review of public expenditure with unchanged services to citizens, establishing IVASS and, in particular, article 13, paragraph 20, which provides that the exclusive competence, inter alia, of the adoption of measures of a legislative nature, falls within the province of the Joint Directorate;

HAVING REGARD to the Decree of the President of the Italian Republic of 12 December 2012, published in the Official Journal of the Italian Republic - General series - no. 303 of 31 December 2012, that has approved the Statute of IVASS, which entered into force on 1 January 2013;

HAVING REGARD to article 149-bis of the Italian Civil Procedure Code and Decree Law no. 179 of 18 October 2012 converted into Law no. 221 of 17 December 2012, concerning "Further urgent measures for the growth of the Country" and in particular article 16 on notifications by electronic means;

HAVING REGARD to Law no. 262 of 28 December 2005 containing provisions for the protection of savings and the regulation of financial markets, in particular article 26, paragraph 3, which has attributed to ISVAP (now IVASS) the power to adopt sanctioning measures, and article 24, paragraphs 1 and 3, which provides that ISVAP (now IVASS) regulates, with its own regulations, the organisational procedures for implementing the principle of distinction between investigatory and decision-making functions in the application of sanctions and other principles on fair administrative proceedings;

HAVING REGARD to ISVAP Regulation no. 1 of 15 March 2006, governing the administrative sanctioning procedure as referred to in Title XVIII of Legislative Decree no. 209 of 7 September 2005;

HAVING REGARD to IVASS Organisation Regulation and its organisation chart, approved by the IVASS Board of Directors with resolutions no. 46 of 24 April 2013, no. 63 of 5 June 2013, no. 68 of 10 June 2013 concerning IVASS reorganisation plan, issued pursuant to article 13, paragraph 34, of Decree Law no. 95 of 6 July 2012, converted with amendments by Law no. 135 of 7 August 2012, and pursuant to article 5, paragraph 1, letter a), of the Statute of IVASS;

HAVING CONSIDERED the need to redefine the procedure for the application of pecuniary administrative sanctions governed by ISVAP Regulation no. 1 of 15 March 2006, which therefore is repealed as a result of the establishment of IVASS and of its reorganisation plan;

TAKING INTO ACCOUNT the outcomes of the public consultation;

HAVING REGARD to the Resolution taken by the Joint Directorate of IVASS in the meeting of 8 October 2013 under which this Regulation was approved,

has adopted the following

REGULATION

INDEX

CHAPTER I General Provisions

- Art. 1 (Definitions)
- Art. 2 (General principles)
- Art. 3 (Sanctioning proceedings)

CHAPTER II Initiation of the proceedings

- Art. 4 (Assessment of breaches)
- Art. 5 (Lack of detriment)
- Art. 6 (Notification of the breaches)
- Art. 7 (Sending of the notification of the breach)

CHAPTER III Investigation Phase

- Art. 8 (Submission of the written rebuttal arguments, of the request for a hearing and of the application for suspension)
- Art. 9 (Suspension of the sanctioning proceedings)
- Art. 10 (Requirements regarding the investigation phase)
- Art. 11 (Requirements in case of multiple breaches of the same provision and corrective measures pursuant to article 327 of the Decree)

CHAPTER IV Decision Phase

- Art. 12 (Decision)
- Art. 13 (Application of the sanction)
- Art. 14 (Communication, notification and publication of the final order)
- Art. 15 (Payment of the sanction)
- Art. 16 (Payment of the sanction by instalments)
- Art. 17 (Appeal against the sanctioning order)

CHAPTER V Access to documentation

- Art. 18 (Request for access to the documents of the sanctioning proceedings)

CHAPTER VI Final provisions

Art. 19 (Scope)

Art. 20 (Repeals)

Art. 21 (Publication and entry into force)

CHAPTER I General Provisions

Art. 1 (Definitions)

1. For the purposes of this Regulation:

- a) “decree” shall mean: legislative decree n. 209 of 7 September 2005;
- b) “sanctioning proceedings” shall mean: the procedure for the application of pecuniary administrative sanctions provided for in Title XVIII, Chapters from I to VII, of Legislative Decree no. 209 of 7 September 2005, and in the other regulations applicable to the supervised subjects;
- c) “supervised subjects” shall mean: insurance and reinsurance undertakings, insurance and reinsurance intermediaries and other entities that are subject to the sanctioning power of IVASS according to the provisions of Legislative Decree no. 209 of 7 September 2005, and of other regulations applicable to them;
- d) “intermediaries” shall mean: any natural or legal person, registered in the single electronic register of insurance and reinsurance intermediaries referred to in article 109 of legislative decree n. 209 of 7 September 2005, who pursues insurance or reinsurance mediation for remuneration;
- e) “off-site checks” shall mean: documentary checks carried out at the head office of IVASS based on the documentation acquired by other subjects (undertakings, intermediaries, consumers, Police bodies, other Authorities, etc.) also upon request by IVASS.

Art. 2 (General principles)

1. This regulation lays down the sanctioning procedure relative to the application of administrative pecuniary sanctions provided for the violation of the regulations referred to in the Decree and the other provisions to which the supervised subjects shall conform.

2. The sanctioning provisions respond to the need to censure the failure to comply with the regulations established to ensure the sound and prudent management of undertakings, the transparent and correct behaviour of undertakings, intermediaries and other operators of the sector, the stability, efficiency, competitiveness and proper functioning of the insurance system, the protection of policyholders and other persons entitled to insurance benefits, consumer information and protection and the prevention of the use of the financial system for money laundering and terrorist financing.

3. The sanctioning provisions and activities are aimed to ensure the effectiveness of the rules; they are not exclusively punitive against the subjects responsible for the violation, but also corrective against the detriment to the specific interests protected.

4. IVASS detects violations, carries out the preliminary investigation, imposes sanctions and communicates to the persons concerned the dismissal of the proceeding initiated against

them, taking into account the principles of dissuasion in order to discourage violations of regulations and the repetition of unlawful conduct, of proportionality of the sanctioning intervention to the seriousness of the offence, of objectivity to ensure the homogeneity of the judgement in the factual assessment of the case detected and of transparency in respect of the supervised subjects whose rebuttal arguments integrate and complete the knowledge framework acquired by means of the documentary check and the inspection activity.

5. In its evaluations IVASS also takes account of the non-compliance with specific warnings, orders, bans or other measures that may have been adopted in respect of the supervised subjects, of the repetition of violations of the same nature as well as of the active collaboration of the subjects with reference to the autonomous identification and reporting of any irregularities, that is expression of fairness and honesty in the relationship with IVASS and a practical instrument for the achievement of the supervisory purposes.

Art. 3 (Sanctioning proceedings)

1. The sanctioning procedure shall comprise the following phases:

A. Initiation of the procedure

- assessment of the breaches;
- notification of the breaches;

B. Investigation Phase

- any submission of rebuttal arguments and of the request for a hearing;
- overall evaluation of the acquired investigative evidence;

C. Decision Phase

- adoption by the Joint Directorate, or by the subjects delegated by it, of the final measure consisting either in the injunction order or in the dismissal of the proceeding;
- notification and publication of the measure imposing the sanction or communication to the person concerned of the dismissal of the proceedings.

2. The competence for the initiation of sanctioning proceedings and of the preliminary investigation phase is thus divided between IVASS' Directorates:

- Inspection Directorate: ascertains and notifies the breaches; carries out the preliminary investigations of the proceedings initiated by it ¹;*
- Consumer Protection Directorate: ascertains and notifies the breaches;*
- Prudential Supervision Directorate: ascertains and notifies the breaches concerning supervised entities other than insurance and reinsurance intermediaries; carries out the preliminary investigations of the proceedings initiated by it ²;*

¹ Letter amended by IVASS Order no. 28 of 27 January 2015. The previous version of letter a) laid down: "Inspection Directorate: ascertains and notifies the breaches;"

² Letter amended by IVASS Order no. 28 of 27 January 2015. The previous version of letter c) laid down: "Prudential Supervision Directorate: ascertains and notifies the breaches concerning supervised entities other than insurance and reinsurance intermediaries; carries out the preliminary investigations of both the proceedings initiated by it and of those initiated by the Inspection Directorate;"

- d) *Market Conduct Supervision Directorate*³: ascertains and notifies the breaches concerning insurance and reinsurance intermediaries; carries out the preliminary investigations of the proceedings initiated by it⁴;
- e) Research and Data Management Directorate: ascertains and notifies the breaches; carries out the preliminary investigations of the proceedings initiated by it;
- f) *Sanction and Winding up Directorate*⁵: carries out the preliminary investigations of the proceedings initiated by the Consumer Protection Directorate and evaluates the findings of the preliminary investigations initiated by other Directorates; prepares the concluding deeds of all IVASS sanctioning procedures, formulating the final proposal for the application of the sanction or dismissal of the proceedings.

CHAPTER II

Initiation of the procedure

Art. 4

(Assessment of breaches)

1. IVASS shall initiate the sanction procedure in all cases where it assesses a breach of the regulations for which administrative sanctions apply, upon acquisition of the evidence necessary to demonstrate the presence of said breach.
2. In the cases where some sanctionable facts have been found within the scope of investigations carried out by other Authorities, IVASS shall review the reported facts for possible assessment of the presence of a sanctionable breach. If necessary for assessing the breach, IVASS may acquire additional evidence.
3. The assessment process is concluded, in the cases of breaches that have emerged during inspections and were committed by intermediaries, at the signing date of the inspection report and in the case of breaches that emerged during inspections of subjects other than intermediaries, when the Head of the Inspection Directorate signs the relevant documents. The terms for sending the notification of breach to the involved parties shall begin with the assessment date indicated in said notification.
4. The assessment of offences that have emerged during off-site checks is concluded at the time of the completion of the evaluation of all subjective and objective evidence that compose the case and that may lead to the application of a sanction. The terms for sending the notification of breach to the involved parties shall begin with the assessment date indicated in said notification.
5. As regards the parent companies of insurance groups, in the event of assessments, either off-site or on-site, that are part of a single assessment process, IVASS, if the conduct under assessment cannot be individually analysed, may evaluate the results of said assessments at the completion of the last assessment, keeping into account all acquired information. In this case, IVASS shall formally inform the subject being inspected, at the completion of the first

³ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Intermediaries Supervision Directorate".

⁴ Letter amended by IVASS Order no. 28 of 27 January 2015. The previous version of letter d) laid down: "Insurance Intermediaries Supervision: ascertains and notifies the breaches; carries out the preliminary investigations of both the proceedings initiated by it and of those initiated by the Inspection Directorate concerning insurance and reinsurance intermediaries;"

⁵ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

review, that the related outcomes shall be jointly evaluated upon completion of the last assessment.

Art. 5
(Lack of detriment)

1. According to article 326, paragraph 1 of the Decree, notification shall not be made in cases of absolute lack of detriment to the timely exercise of the supervisory functions, or to the interests of policyholders and those entitled to insurance benefits.

Art. 6
(Notification of the breaches)

1. The sanctioning proceedings are initiated with a formal notification sent by IVASS to the subjects deemed as responsible for the assessed breaches. The notification is issued by the competent Directorate of IVASS pursuant to article 3, paragraph 2, of this Regulation.

2. The notification of the breach is sent to the recipients, pursuant to article 326, paragraph 1 of the Decree, within 120 days from the assessment of the facts in the case of persons resident in Italy, or within 180 days in the case of persons resident abroad.

3. The notification of breach shall contain:

- a. the reference to the inspections, to the supervisory activities or to the documentation acquired from which the breach was inferred;
- b. the date when the breach assessment process was completed;
- c. the description of the breach;
- d. the indication of the violated rules and the related sanctions;
- e. In case, pursuant to article 327 of the Decree, repeated breaches of the same provision of the decree or of the implementation regulations are ascertained, the indication of the fulfilments provided in the same article and the IVASS Directorate to which the relative communication must be made;
- f. the invitation, to the recipients of the notification, to submit to IVASS any rebuttal arguments within 60 days;
- g. the indication of the right of the recipients of the notification to request a hearing with a specific application, which can be attached to the defences, to be submitted within 60 days;
- h. limited to the violations referred to in articles 148 and 149 of the Decree, the indication of the right of the recipients of the notification to file an application for suspension of the sanctioning proceedings pursuant to article 326, paragraph 1 of the Decree;
- i. the Directorate of IVASS to which the rebuttal arguments must be sent as well as the request for a hearing and the application referred to in letter h);
- j. the Directorate of IVASS responsible for the proceedings as well as the one where the investigation documents can be viewed;

- k. the deadline for the conclusion of the sanctioning proceedings.
 - l. the indication of the right of the recipients of the notification, in compliance with Article 10, Paragraph 6-bis, to send to the Joint Directorate, or to the subjects delegated by the latter, further written observations within 30 days from receiving the sanction proposal formulated at the completion of the investigation phase;*
 - m. the warning, in the case of no participation in the investigation phase through the submission of rebuttal arguments and/or by not attending the hearing, that it will not be allowed to submit additional written remarks to the Joint Directorate or to the subjects delegated by the latter, as regards the proposal under Letter l)⁶.*
4. The initiating of a disciplinary proceedings against insurance and reinsurance intermediaries referred to in Chapter VIII of Title XVIII of the Decree does not preclude the initiating against the same parties of the sanctioning proceedings regulated by this regulation, even if it concerns the same facts.

Art. 7

(Sending of the notification of the breach)

1. The notification of the breach is sent according to the methods set forth in the regulations. Based on Article 14, Paragraph 4, of the Law no. 689 of 24 November 1981, the notification may also be sent, according to the forms provided for by the Code of Civil Procedure, by an IVASS official. According to paragraph 5 of the same article, for subjects residing abroad, whenever the head office, the residence or the domicile are not known, the notification of the breach is not mandatory.
2. For unlawful acts assessed during inspection, the notification of the breach can be delivered directly to the recipients or during a meeting held at the premises of the involved subject or at the IVASS office.
3. The notification of the breach may also be sent out in the cases and in the forms set forth in the applicable provisions, to the certified email address as specifically indicated by the involved parties for sending/receiving communications to/from IVASS.
4. The date when the notification of the breach is sent represents the date for the initiation of the sanctioning proceedings.

CHAPTER III Investigation Phase

Art. 8

(Submission of the written rebuttal arguments, of the request for a hearing and of the application for suspension)

1. Within 60 days from the date of the notification of the breach the recipients may exercise the right of defence by participating in the sanctioning proceedings through the submission of written defences and other documents regarding the charges, and requesting, if necessary, to be heard at a hearing directly and/or through their own representatives, with power of attorney

⁶ Letters l) and m) added by IVASS Order no. 86 of 14 May 2019.

in the case of absence of the recipients. Failure to submit written rebuttal arguments shall not affect the sanctioning proceedings.

2. The competence to receive rebuttal arguments, the request for a hearing and the application for suspension of the proceedings pursuant to article 326 of the Decree is divided as follows:

- a) for the documents notified by the Consumer Protection Directorate, the rebuttal arguments, the request for a hearing and the application for suspension of the proceedings pursuant to article 326 of the Decree shall be submitted to the *Sanction and Winding up Directorate*⁷;
- b) for the documents notified by the Inspection Directorate, the rebuttal arguments, the request for a hearing and the application for suspension of the proceedings pursuant to article 326 of the decree shall be submitted to the *aforementioned Directorate*⁸;
- c) for the documents notified by the Prudential Supervision Directorate, the Market Conduct Supervision Directorate⁹ and the Research and Data Management Directorate, the rebuttal arguments and the request for a hearing shall be submitted to the *Directorate which started the sanctioning proceedings*¹⁰.

3. Without prejudice to the validity of the right of defence, this shall be carried out in compliance with the principle of cooperation in good faith among the parties during administrative proceedings. Given the above and keeping into account the need to ensure the cost-effectiveness of the administrative proceedings, the rebuttal arguments shall also be presented in order to improve the understanding of the submitted defence arguments, which must be concise and relate to the scope of the charges; if more than 20 pages, they shall contain a summary and end with a summary of the main defence arguments. The attached documentation shall pertain to the alleged facts and to the submitted defence arguments. The attachments shall be submitted in an orderly fashion and accompanied by a list thereof, and any excessive amount of documentation or documentation that is disorganised or immaterial must be avoided.

4. Within the same deadline referred to in paragraph 1, the recipients of the notification of the breach may ask for a hearing by a specific request that can also be attached to the defence arguments, addressed to the competent Directorate according to the provisions of paragraph 2. The hearings take place at the head office of IVASS normally within 120 days after receiving the request. If the hearing is held beyond the deadline set for sending the rebuttal arguments,

⁷ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

⁸ Letter amended by IVASS Order no. 28 of 27 January 2015, replacing letters b) and c). The previous version of letters b) and c) laid down:

"b) for the documents notified by the Inspection Directorate concerning supervised entities other than insurance and reinsurance intermediaries, the rebuttal arguments, the request for a hearing and the application for suspension of the proceedings pursuant to article 326 of the decree shall be submitted to the Prudential Supervision Directorate;"

"c) for the documents notified by the Inspection Directorate concerning insurance and reinsurance intermediaries, the rebuttal arguments and the request for a hearing shall be submitted to the Insurance Intermediaries Supervision Directorate;"

⁹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Intermediaries Supervision Directorate".

¹⁰ Letter amended by IVASS Order no. 28 of 27 January 2015, replacing letter d). The previous version of letter d) laid down:

"d) for the documents notified by the Prudential Supervision Directorate, the Insurance Intermediaries Supervision Directorate and the Research and Data Management Directorate, the rebuttal arguments and the request for a hearing shall be submitted to the same Directorates."

it is not allowed to produce at that time material that supplements the rebuttal arguments. A summary report of the hearing shall be drawn up. Any waiver of the hearing shall be promptly communicated in writing to the Directorate competent for the investigation. During the hearing, the involved parties shall present their rebuttal arguments avoiding duplications or mere references to the arguments already submitted in the written defence documents.

5. In accordance with the principles of separation and autonomy of the disciplinary proceedings with respect to the procedure laid down in this Regulation, insurance and reinsurance intermediaries, wherever affected by both proceedings also for the same facts, shall present separate written defences and make distinct requests for a hearing.

Art. 9 (Suspension of the sanctioning proceedings)

1. According to article 326, paragraph 1 of the Decree, and only for breaches referred to in articles 148 and 149 of the same Decree, the deadlines of the sanctioning proceedings can be suspended for up to 90 days, upon formal application of the undertaking to whom a notification of the breach has been sent, in the case that it demonstrates that investigations in progress are due to a founded suspicion of fraud. The application for suspension shall be submitted to the competent Directorate as provided for by article 8, paragraph 2 of this Regulation within the terms established in paragraph 1 of article 8 itself and shall contain an illustration of the facts ascertained, of the reasons underlying the suspicion of fraud and of the moment at which the undertaking had detected it.

2. IVASS, having assessed the facts and reasons presented, may order the suspension of the sanctioning proceedings for a period not exceeding 90 days, starting from the date on which the undertaking has received the notification of acceptance of the application for suspension.

3. In the event that the undertaking, at the expiry date of the suspension period allowed, is unable to demonstrate that it has submitted a report or accusation by sending the relative documentation to IVASS, the remaining period referred to in article 8, paragraph 1, of this Regulation shall resume, within which it can submit written defence and request for a hearing.

4. In the event that the undertaking demonstrates, within the period of suspension allowed, that it has submitted a report or accusation, the deadlines of the sanctioning proceedings remain suspended from the date of receipt of the relative documentation by IVASS and up to the final measure, which concludes the criminal proceedings. If the undertaking communicates the successful submission of a report or accusation for well-founded suspicion of fraud before the notification of the breach, the suspension shall be arranged through the same document and shall start from the date of the notification.

5. The undertaking shall send to IVASS, within thirty days after the date of the final judgement in criminal court, a copy of the judgement or of the different measure of the judge who decides the criminal proceedings issued against the subjects involved. Having received the document, IVASS, in the event of a conviction sentence or decision against the subjects, shall communicate to the undertaking the termination of the violation and of the sanctioning proceedings. In the event of a judgement or decision in favour of the defendants or the reported subjects, the deadlines of the sanctioning proceedings shall resume from the date of sending to IVASS of the communication and of the documents referred to in this paragraph. In the remaining period, the undertaking can transmit its written defences and the request for a hearing.

6. As an effect of the suspension of the sanctioning proceedings referred to in paragraph 4, also the deadline set for its conclusion shall be suspended.

Art. 10

(Requirements regarding the investigation phase)

1. During the preliminary investigation phase of the sanctioning proceedings, the competent Directorates shall:

- verify that the cross-examination is correctly established with the recipients of the notification of the breach and that their opportunity to participate in the sanctioning proceedings is ensured;
- review all the investigation evidence acquired during the proceedings; in the light of the defences presented by the persons concerned and of the documents presented by the parties, as well as the entire information collected, carry out an accurate assessment of the notified charges and of the evidence of the violations;
- be responsible for the preservation and archiving of documents constituting the file of the sanctioning proceedings and enable the recipients the access to the documents of the proceedings.

2. In the case of notification of breaches by the Consumer Protection Directorate, the examination of the defences, where submitted, the conduct of the hearing, where requested, and the verification of other documents of the proceedings shall be handled by the *Sanction and Winding up Directorate*¹¹.

3. In the case of notification of breaches by Directorates other than that referred to in paragraph 2, the examination of the defences, where submitted, the conduct of the hearing, where requested, and the verification of other documents of the proceedings shall be handled by the competent Directorates, according to article 3 of this Regulation.

4. The outcomes of the requirements referred to in paragraph 3 shall be disclosed in a reasoned report to be transmitted to the *Sanction and Winding up Directorate*¹², together with the documents of the proceedings, containing the description of the charges, the defensive arguments also contained in the minutes of the hearing, the comments by the competent Directorate in regards to the rebuttal arguments, the evaluations made regarding the existence of the breaches and the additional information elements available to be taken into account also for the purposes of the scaling of the sanction or the dismissal of the proceedings. In the absence of written defences and requests for a hearing, the same Directorates shall transmit to the *Sanction and Winding up Directorate*¹³, together with the documents of the proceedings, a reasoned report containing their comments on the notified violations and any additional information and evaluation elements to be taken into account also for the purposes of the scaling of the sanction or the dismissal of the proceedings.

¹¹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

¹² Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

¹³ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

5. In the case of notification of breaches by the Consumer Protection Directorate, the *Sanction and Winding up Directorate*¹⁴, having examined and evaluated the defences, where produced, the minutes of the hearing, if any, and other documents of the proceedings, shall prepare the final measure to be submitted to the decision, containing the reasoned proposal for the application of the sanction or the dismissal of the proceedings.

6. In the case of notification of breaches referred to in paragraph 3, the *Sanction and Winding up Directorate*¹⁵, having examined and evaluated the findings contained in the reasoned report of the competent Directorates and having verified the other documents of the proceedings, shall prepare the final measure to be submitted to the decision, containing the reasoned proposal for the application of the sanction or the dismissal of the proceedings;

*6-bis If the recipients of the charges, during investigation, have submitted written rebuttal arguments or, during the same phase, have participated in a hearing, the Sanction and Winding up Directorate*¹⁶ *sends the proposal under Paragraphs 5 and 6 to the recipients as well*¹⁷.

7. The organisational units in charge of the sanctioning proceedings are the following:

- a) the *Sanction and Winding up Directorate*¹⁸ for the breaches referred to under paragraph 2;
- b) *the Inspection Directorate, the Prudential Supervision Directorate, the Market Conduct Supervision Directorate*¹⁹ *and the Research and Data Management Directorate according to their respective competences, for the breaches referred to under paragraph 3*²⁰.

Art. 11

(Requirements in case of multiple breaches of the same provision and corrective measures pursuant to article 327 of the Decree)

1. The recipient of the notification of the breach sent by the Consumer Protection Directorate pursuant to article 327 of the Decree, if it intends to invoke the right provided for in paragraph 2 of the same article, shall - within 60 days from the notification – notify its intention to the *Sanction and Winding up Directorate*²¹ which, if necessary, shall transmit the documents of the procedure to the Inspection Directorate so that the same, within 30 days from the expiry date

¹⁴ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate”.

¹⁵ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate”.

¹⁶ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate”.

¹⁷ Paragraph inserted by Order no. 86 of 14 May 2019.

¹⁸ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate”.

¹⁹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Intermediaries Supervision Directorate”.

²⁰ Letter amended by IVASS Order no. 28 of 27 January 2015. The previous version of letter b) laid down: “the Prudential Supervision Directorate, the Insurance Intermediaries Supervision Directorate and the Research and Data Management Directorate according to their respective competences, for the breaches referred to under paragraph 3”.

²¹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate”.

of the term assigned to eliminate the dysfunction detected, carries out checks regarding the adoption by the subject of the corrective measures provided for. In this case the Inspection Directorate shall send to the *Sanction and Winding up Directorate*²², together with the documents of the proceedings, a report containing the findings of those checks, the judgement on the suitability of the corrective measures to eliminate the dysfunction found and any comments it has formulated with reference to the corrective measures, also taking account of the remarks submitted by the person concerned in relation to the comments received. In the case in which the recipient of the notification of the breach communicates to the *Sanction and Winding up Directorate*²³ within 60 days from the notification that it does not intend to carry out the corrective measures, or does not make any communication within the same deadline, the same Directorate shall continue with the proceedings, according to the provisions referred to in article 327, paragraph 3 of the Decree, without prejudice to the provisions referred to in article 15, paragraph 1 of this Regulation.

2. The recipient of the notification of the breach sent by the Inspection Directorate pursuant to article 327 of the Decree, if it intends to invoke the right provided for in paragraph 2 of the same article, shall - within 60 days from the notification of the charges – notify its intention to the same Directorate which, if necessary, within 30 days from the expiry date of the term assigned to eliminate the dysfunction detected, shall carry out checks regarding the adoption by the subject of the corrective measures provided for. In this case the reasoned report that the Inspection Directorate shall send to the Sanction and Winding up Directorate²⁴ pursuant to article 10, paragraph 4 of this Regulation includes in its annexes the report prepared by the same Directorate containing the findings of those checks, the judgement on the suitability of the corrective measures to eliminate the dysfunction found and any comments it has formulated with reference to the corrective measures, also taking account of the remarks submitted by the person concerned in relation to the comments received. In the case where the recipient of the notification of the breach communicates to the Inspection Directorate within 60 days from the notification that it does not intend to carry out the corrective measures, or does not make any communication within the same term, the proceedings shall continue, according to the provisions of article 327, paragraph 3 of the Decree, without prejudice to the provisions of article 15, paragraph 1 of this Regulation; the Inspection Directorate shall notify the Sanction and Winding up Directorate²⁵ with the reasoned report²⁶.

²² Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

²³ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

²⁴ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

²⁵ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

²⁶ Paragraph replaced by IVASS Order no. 28 of 27 January 2015. The previous version of paragraph 2) laid down: "The recipient of the notification of the breach sent by the Inspection Directorate pursuant to article 327 of the Decree, if it intends to invoke the right provided for in paragraph 2 of the same article, shall - within 60 days from the notification of the charges – notify its intention to the same Directorate which, if necessary, within 30 days from the expiry date of the term assigned to eliminate the dysfunction detected, shall carry out checks regarding the adoption by the subject of the corrective measures provided for. The Inspection Directorate shall send a report to the Directorate competent for the preliminary investigation pursuant to article 3, paragraph 2, of this Regulation, together with the documents of the proceedings, to be attached to the reasoned report referred to in paragraph 4 of the following article 10, containing the results of the checks carried out regarding the adoption by the recipient of the notification of the corrective measures provided for and their suitability to eliminate the dysfunction found, as well as any comments made by the Inspection Directorate with reference to the corrective measures, also taking account of the remarks submitted by the person concerned in relation to the comments received. In the case where the recipient of the notification of the breach communicates to the Inspection Directorate within 60 days from the notification that it does not intend to carry out the corrective measures, or does not make any communication within

3. The recipient of the notification of the breach by other IVASS Directorates pursuant to article 327 of the Decree, if it intends to invoke the right provided for in paragraph 2 of the same article, shall - within 60 days from the notification – notify its intention to the Directorates which, if necessary, shall send the documents of the proceedings to the Inspection Directorate so that the same, within 30 days from the expiry date of the term assigned to eliminate the dysfunction detected, carries out checks regarding the adoption by the subject of the corrective measures provided for. In this case the Inspection Directorate shall send the Directorates a report containing the findings of those checks, the judgement on the suitability of the corrective measures to eliminate the dysfunction found and any comments it has formulated with reference to the corrective measures, also taking account of the remarks submitted by the subject concerned in relation to the comments received. The reasoned report that the Directorates of IVASS shall send to the *Sanction and Winding up Directorate*²⁷ pursuant to article 10, paragraph 4 of this Regulation includes in its annex the report prepared by the Inspection Directorate. In the case where the recipient of the notification of the breach communicates to the Directorates competent for the preliminary investigation, within 60 days from the notification, that it does not intend to carry out the corrective measures, or does not make any communication within the same deadline, the procedure shall continue, according to the provisions of article 327, paragraph 3 of the decree, without prejudice to the provisions of article 15, paragraph 1 of this Regulation; the Directorates shall notify the *Sanction and Winding up Directorate*²⁸ with the reasoned report.

CHAPTER IV

Decision Phase

Art. 12 **(Decision)**

1. The decision-making function is assigned to the Joint Directorate or to the subjects delegated by the latter.
2. The Joint Directorate, after seeking, if necessary, the opinion of the Legal Services Office for the cases of particular complexity, shall adopt by an order the reasoned final decision of application of the sanction or shall arrange the dismissal of the proceeding. Where appropriate, it may request additional investigations.
3. This does not prejudice, in each phase of the proceedings, the possibility of adopting, pursuant to the provisions in effect, specific measures applicable to the supervised subjects aimed at ending any conduct that is not compliant with the insurance regulations as well as disciplinary measures in the case of insurance and reinsurance intermediaries.
4. The sanctioning proceedings shall be completed within two years from its start date, when the order imposing the sanction or when the dismissal are notified to the recipient.

the same term, the same Directorate shall inform the Directorate competent for the preliminary investigation, transmitting the documents for the continuation of the proceedings, according to the provisions of article 327, paragraph 3 of the Decree, without prejudice to the provisions of article 15, paragraph 1 of this Regulation; the competent Directorate shall notify the Sanctions Directorate with the reasoned report.”

²⁷ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate”.

²⁸ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate”.

Art. 13
(Application of the sanction)

1. The amount of the sanction, established within the limits provided by law, shall be fixed having regard to the criteria defined in art. 11 of Law no. 689 of 24 November 1981 and article 326 of the decree.
2. In relation to individual cases of infringement, the severity of the breach is evaluated taking into account, inter alia, the following elements:
 - a) the duration of the breach;
 - b) cases of repetition of the breach;
 - c) the cases when, with a sole action or omission, the breach of different provisions or multiple breaches of the same provision, are committed;
 - d) the activities carried out by the subject undergoing the sanctioning proceedings in order to eliminate or reduce the consequences arising from the breach, even cooperating with IVASS.

Art. 14
(Communication, notification and publication of the final order)

1. IVASS shall inform the recipients of the dismissal of the sanctioning proceedings or notify them, according to the methods indicated in Article 7 of this regulation, of the order imposing the sanction.
2. *The order imposing the sanction is published, as an excerpt, in the Bulletin and is available on the website of IVASS, with the indication of the sanctioned subjects, the assessed breaches, the violated provisions and the applied sanctions. As regards anti-money laundering breaches per Legislative Decree no. 231 of 21 November 2007, as amended by Legislative Decree no. 90 of 25 May 2017, an excerpt of the start of the legal proceedings and of its outcome are also published in the Bulletin. Sanctions and information referred to in the previous sentences are published in IVASS website for five years²⁹.*

Art. 15
(Payment of the sanction)

1. Article 16 of Law no. 689 of 24 November 1981 concerning the payment of the reduced amount does not apply to the pecuniary administrative sanctions.
2. The payment of the sanction, together with the proceedings expenses, is made, pursuant to Article 18 of Law no. 689 of 24 November 1981, within 30 days from the notification of the final order to be sent to the recipient residing in Italy. The term for payment is 60 days if the recipient resides abroad. The order imposing the sanction shall indicate the methods of payment.

²⁹ Paragraph replaced by IVASS Order no. 86 of 14 May 2019. The previous version of paragraph 2) laid down: "The order imposing the sanction is published, as an excerpt, in the Bulletin, with the indication of the sanctioned subjects, the assessed breaches, the violated provisions and the applied sanctions".

3. The recipient of the sanction shall inform IVASS about the payment of the sanction within 10 days from the set out deadline, pursuant to Paragraph 2, by sending documented evidence of the payment.

4. After expiry of the terms of payment, as per Paragraph 2, for any delay shorter than six months, default interests shall be due at the legal rate as from the expiry of the due date for payment and until the date of payment. In the event of a delay of six months or more, the amount due for the sanction is increased, pursuant to Article 27, Paragraph 6, of Law no. 689 of 24 November 1981, by one tenth for each six month period starting from the day following the expiry of the due date for payment and until the day when information about the amount due is sent to a collection service or until the actual day of payment, whichever is the earlier. In this case the increase includes the default interests accrued in the same period.

5. In the event of non-payment of the sanction, IVASS shall start the the enforced recovery of the sum due according to the provisions on the collection of direct taxes.

Art. 16

(Payment of the sanction by instalments)

1. The recipient of the sanction has the right to request the instalment payment of the amount due pursuant to article 26 of Law no. 689 of 24 November 1981, by filing an application, duly substantiated and documented, with IVASS - *Sanction and Winding up Directorate*³⁰ within the deadline of payment referred to in paragraph 2 of article 15 of this Regulation, after which any request presented shall be rejected with communication sent to the applicant.

2. If the request for payment by instalments is approved, the related communication, sent to the recipient, contains the number of instalments of the amount due, the amount of each instalment including interests, based on the legal rate, and the related deadlines.

Art. 17

(Appeal against the sanctioning order)

1. The sanctioning order may be appealed pursuant to the law. The filing of an appeal does not suspend the payment of the sanction.

CHAPTER V

Access to documents

Art. 18

(Request for access to the documents of the sanctioning proceedings)

1. The right to access, with the limitations and exclusions set forth by Law no. 241 of 7 August 1990, and taking also account of the protection, ensured by the law, of personal data and third party confidentiality, is exclusively recognised to the holder of direct interests, material and current, based on a situation that is legally protected and related to the documentation for which the access is requested. The requests for access must be duly reasoned in order to allow, in particular, for the assessment of the presence of the afore-mentioned interests.

³⁰ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

2. For the breaches notified by the Consumer Protection Directorate, the requests for access shall be submitted to the *Sanction and Winding up Directorate*³¹. In other cases, the access requests shall be submitted to the *Inspection Directorate*, to the *Prudential Supervision Directorate*, to the *Market Conduct Supervision Directorate*³² and to the *Research and Data Management Directorate* in accordance with the competencies provided for in article 3 paragraph 2 of this Regulation³³. The requests for access must be submitted to the competent Directorate, through an act separate from any other act submitted during the sanctioning proceedings. The request must include in the subject line the following wording: “*Sanctioning proceedings against – Notification of breach no. of – Request for access to administrative documentation*”. If the request for access is submitted after the notification of the final order, instead of the reference to the notification of the breach, the reference to the order itself is included.

CHAPTER VI

Final Provisions

Art. 19 **(Scope)**

1. The provisions of this Regulation shall apply to sanctioning proceedings started as from the day of its entry into force and to those pending on that date, without prejudice to the acts already adopted.

Art. 20 **(Repeals)**

1. As from the date of entry into force of this Regulation, ISVAP Regulation no. 1 of 15 March 2006 is repealed.

Art. 21 **(Publication and entry into force)**

1. This Regulation shall be published in the Official Journal of the Italian Republic and in IVASS’ Bulletin. It is also published in IVASS website.

2. This Regulation shall enter into force on 31 October 2013.

On behalf of the Joint Directorate
The Governor of the Bank of Italy

³¹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate”.

³² Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Intermediaries Supervision Directorate”.

³³ Sentence replaced by IVASS Order no. 28 of 27 January 2015. The previous version of the period laid down: In other cases, the access requests shall be submitted to the Prudential Supervision Directorate, to the Insurance Intermediaries Supervision Directorate and to the Research and Data Management Directorate in accordance with the competencies provided for in article 3 paragraph 2 of this Regulation.”