

IVASS REGULATION NO. 39 OF 02 August 2018

IVASS REGULATION ON THE PROCEDURE FOR APPLYING ADMINISTRATIVE SANCTIONS AND IMPLEMENTATION PROVISIONS UNDER TITLE XVIII (SANCTIONS AND SANCTIONING PROCEEDINGS) PURSUANT TO LEGISLATIVE DECREE NO. 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE

AS AMENDED AND SUPPLEMENTED BY IVASS ORDERS 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 subsequent modifications and integrations;

HAVING REGARD to decree-law no. 95 of 6 July 2012, converted, after amendment, into law no. 135 of 7 August 2012 setting up IVASS;

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 legislative decree no. 209 of 7 September 2005 introducing the Code of Private Insurance, as amended and supplemented by legislative decree no. 68 of 21 May 2018, implementing Directive (EU) 2016/97 on insurance distribution and, in particular, Title XVIII (Sanctions and sanctioning proceedings); Having also regard to article 9, paragraph 3, of the Code of Private Insurance laying down that IVASS shall, by its own regulation, regulate the procedures pertaining to the detection of infringements and the application of sanctions;

HAVING REGARD to legislative decree no. 206 of 6 September 2005, introducing the Consumer Code, in accordance with Article 7 of law no. 229 of 29 July 2003 as subsequently amended and supplemented;

HAVING REGARD to legislative decree no. 58 of 24 February 1998 as subsequently amended and supplemented, introducing the Consolidated law on financial mediation;

HAVING REGARD to legislative decree no. 385 of 1 September 1993 as subsequently amended and supplemented, introducing the Consolidated banking law;

HAVING REGARD to legislative decree no. 231 of 21 November 2007, as amended and supplemented by legislative decree no. 90 of 25 May 2017 implementing Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and amending directives 2005/60/EC and 2006/70/EC and implementing Regulation (EU) 2015/847 on information accompanying transfers of funds and, in particular, Articles 59 (Non-compliance with communication requirements by the members of the control bodies of obliged entities),

62 (Specific provisions governing sanctions for supervised entities), 65 (Sanctioning proceedings) and 66 (Further measures);

HAVING REGARD to Decree-law no. 1 of 24 January 2012, converted into law no. 27 of 24 March 2012, called "Growth for Italy", on urgent measures in favour of competition, development of infrastructures and competitiveness and, in particular, to Article 30, paragraphs 1 and 1-*bis*;

HAVING REGARD to law no. 124 of 4 August 2017, called "Competition law", introducing the annual law promoting the market and competition;

HAVING REGARD to law no. 689 of 24 November 1981 ("Amendments to the penal system"), as regards the applicable provisions;

HAVING REGARD to Article 149 bis of the code of civil procedure and to decree-law no.179 of 18 October 2012, converted into Law no. 221 of 17 December 2012, introducing "Further urgent measures for the growth of the Country", and in particular Article 16 on electronic notifications;

Having regard to law no. 241 of 7 August 1990, on administrative procedure and the right of access to administrative documents and IVASS Regulation no. 19 of 15 March 2016 on the exercise of the right of access to administrative documents;

HAVING REGARD to law no. 262 of 28 December 2005, as subsequently amended and supplemented, laying down provisions on the protection of savings and provisions governing financial markets, and in particular to Article 26, paragraph 3 which has granted ISVAP (now IVASS) the power to adopt sanctions, as well as Article 24, paragraphs 1 and 3, which lays down that ISVAP (now IVASS), by its own regulation, establishes the organisational arrangements for the implementation of the principle of the distinction between investigative functions and decision-making functions in the application of sanctions and other principles on fair administrative proceedings;

HAVING REGARD to IVASS Regulation no. 1 of 8 October 2013, amended and supplemented by IVASS Order no. 28 of 27 January 2015, laying down provisions on the procedure for application of pecuniary administrative sanctions as defined under Title XVIII of legislative decree no. 209 of 7 September 2005;

HAVING REGARD to IVASS Regulation no. 2 of 8 October 2013, concerning the procedure for the application of disciplinary sanctions against insurance and reinsurance intermediaries, and the rules for the functioning of the Guarantee Committee as defined under Title XVIII (Sanctions and sanctioning proceedings), Chapter VIII (Persons subject to disciplinary sanctions and procedure) of legislative decree no. 209 of 7 September 2005;

HAVING REGARD to IVASS Regulation no. 3 of 5 November 2013 implementing Article 23 of law no. 262 of 28 December 2005 on the procedures for the adoption of IVASS' regulatory and general acts;

HAVING REGARD to IVASS Regulation no. 7 of 2 December 2014, concerning the determination of the time-limits and the organisation units responsible for administrative procedures pursuant to Articles 2 and 4 of Law no. 241 of 7 August 1990;

HAVING REGARD to IVASS Organisation Regulation and the relevant organisational chart;

HAVING CONSIDERED the need to redefine the procedure for imposing administrative sanctions as established in the afore-mentioned IVASS Regulations no. 1 and 2 of 8 October 2013, in relation to the breaches committed after the entry into force of this Regulation implementing the amendments to Title XVIII of the Code of private insurance by legislative decree no. 68 of 21 May 2018;

HAVING CONSIDERED the necessity to adjust the sanctioning procedure to the provisions of legislative decree no. 231 of 21 November 2007, as amended and supplemented by legislative decree no. 90 of 25 May 2017;

has adopted the following

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² Sentence replaced by IVASS Order n. 90 of 5 November 2019.

³ Sentence replaced by IVASS Order n. 90 of 5 November 2019.

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⁵ Article inserted by IVASS Order no. 90 of 5 November 2019.

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CHAPTER I General Provisions

Art. 1 (Legislative sources)

1. This Regulation has been adopted pursuant to Articles 9, paragraph 3, 311-bis, 311-
quater, 324-ter, 324-quinquies, 324-octies, paragraph 3, 325-bis, 328, paragraph 3,
and 331-bis of Legislative Decree no. 209 of 7 September 2005, as amended and
supplemented by Legislative Decree no. 68 of 21 May 2018, implementing Directive
(EU) 2016/97 on insurance distribution and pursuant to Article 65, paragraph 7, of
Legislative Decree no. 231 of 21 November 2007, as amended and supplemented by
Legislative Decree no. 90 of 25 May 2017 implementing Directive (EU) 2015/849 on
the prevention of the use of the financial system for the purpose of money laundering
and terrorist financing.

Art. 2 (Definitions)

1. For the purpose of this Regulation, the definitions stated in Legislative Decree no.
209 of 7 September 2005, as amended by Legislative Decree no. 68 of 21 May 2018,
implementing Directive (EU) 2016/97 on insurance distribution, shall apply. In addition,
the following definitions have been developed:

- a) “Code” shall mean: Legislative Decree no. 209 of 7 September 2005, as amended
and supplemented by Legislative Decree no. 68 of 21 May 2018, implementing
Directive (EU) 2016/97 on insurance distribution;
- b) “Joint Directorate” shall mean: the Joint Directorate, as identified in Article 13,
paragraph 10, of Law Decree no. 95 of 6 July 2012, as amended and
supplemented by Law no. 135 of 7 August 2012;
- c) “sanctioning proceedings” shall mean: the procedure for the application of the
administrative sanctions under Title XVIII (Sanctions and Sanctioning
Proceedings) of the Code, and pursuant to Legislative Decree no. 231 of 21
November 2007, as amended and supplemented, concerning the prevention of
the use of the financial system for money-laundering of revenue deriving from
criminal activities and the financing of terrorism and other legal regulations;

⁶ Article inserted by IVASS Order no. 90 of 5 November 2019.

- d) “Subjects responsible for the investigative proceedings” shall mean: The *Sanction and Winding up Directorate*⁷ or the Guarantee Committee;
- e) “Guarantee Committee” shall mean: the body provided for in Article 324-*octies* of the Code;
- f) “off-site checks” shall mean: off-site assessments carried out by IVASS based on the documentation provided by other subjects (undertakings, insurance and reinsurance intermediaries and ancillary insurance intermediaries, consumers, Police forces, other Authorities, etc.) also upon request by IVASS;
- g) “Anti-money laundering violations” shall mean: the violations set forth in Legislative Decree no. 231 of 21 November 2007, as amended and supplemented by Legislative Decree no. 90 of 25 May 2017, implementing Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Legislative Decree 231/2007).

Art. 3
(General principles)

1. The provisions of this Regulation shall govern the sanctioning procedure for violations assessed by IVASS in the exercise of its functions which are intended to guarantee an adequate protection for policyholders and parties entitled to insurance benefits, by ensuring a sound and prudent management by insurance and reinsurance undertakings, transparency and fairness of conduct toward customers by the same undertakings, by insurance and reinsurance intermediaries and ancillary insurance intermediaries as well as by other operators in the sector; stability of the system and of the financial markets as well as the prevention of the use of the financial system for money laundering of revenue deriving from criminal activities and the financing of terrorism

2. The sanctioning provisions and activities aim at ensuring the effective application of the regulations. They are of a punitive nature against the subjects responsible for any violation, and are intended to remedy the detriment to specific protected interests as well as to pursue specific and general prevention.

3. IVASS shall assess violations, carry out investigations, apply sanctions or notify to the involved subjects the dismissal of the proceedings initiated against them, based on the following principles: a) dissuasiveness and prevention, in order to discourage the violation of regulations and the reiteration of unlawful conduct; b) proportionality of the sanctions applied according to the severity of the unlawful act; c) objectivity, to guarantee consistent judgements during the actual assessment process of the reported violation; d) transparency toward the involved subjects whose rebuttal arguments shall supplement and complete the consolidated picture acquired through a documentary analysis and inspection activities; e) cross-examination.

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

4. IVASS, in its assessments, shall take into consideration also the reiteration of violations of the same nature as well as the active cooperation of the subjects involved with reference to the independent assessment and reporting of any irregularity, demonstrating loyalty and integrity in the relationship with IVASS and functional to the achievement of the supervisory purposes.

Art. 4

(Recipients of the sanctioning procedures)

1. These provisions are intended for the subjects who are identified in the Code as being under the supervisory and sanctioning powers of IVASS and include, more specifically:

- a) insurance or reinsurance undertakings with head office in Italy, authorised to carry out insurance activities or operations under Article 2 of the Code;
- b) local undertakings and specific mutual insurance associations under Title IV of the Code;
- c) branches in Italy of insurance or reinsurance undertakings with head office and central administration in a state outside of the European Union or not belonging to the European Economic Area, authorised to carry out insurance activities or operations under Article 2 of the Code;
- d) insurance and reinsurance undertakings with head office and central administration in a member state of the European Union or in a state belonging to the European Economic Area, which carry out insurance activities or operations in Italy as provided for in Article 2 of the Code, under the freedom of establishment or the freedom to provide services;
- e) the ultimate Italian parent company, as set forth in Article 210, paragraph 2 of the Code as regards the violation of the obligations under Title XV of the Code;
- f) insurance holding companies, mixed insurance holding and mixed financial holding companies;
- g) insurance and reinsurance intermediaries, natural persons or companies and related subjects responsible for distribution activities, having their residence or head office in Italy;
- h) ancillary insurance intermediaries, natural persons or companies and related subjects responsible for distribution activities, having their residence or head office in Italy;
- i) insurance and reinsurance intermediaries, natural persons or companies and related subjects responsible for distribution activities, having their residence or head office in a member state of the European Union or in a state belonging to the European Economic Area;
- j) other recipients under the obligations set forth in the Code, responsible for the violation.

2. Natural persons, corporate officers and personnel can also be the recipients of the sanctioning procedure if the prerequisites set forth in articles 311-*sexies* and 324-*septies* of the Code are satisfied. In detail:

- a) those who perform administrative, management or control functions as well as the holders of key functions in insurance and reinsurance undertakings;
- b) the employees of insurance and reinsurance undertakings who have been assigned, within the corporate structure, the responsibility for specific functions in some operating areas or sectors;
- c) those who operate on the basis of relationships, which may be different from subordinate employment contracts, that determine their inclusion in the organisational structure of insurance and reinsurance undertakings, and who have been assigned the responsibility of specific functions in some operating areas or sectors;
- d) the members of the management body of the mediation company.

3. As regards insurance undertakings or intermediaries under the supervisory and sanctioning powers of IVASS pursuant to Legislative Decree 231/2007 for violations of anti-money laundering laws, those subjects shall include:

- a) insurance undertakings with head office in Italy and the Italian branches of insurance undertakings with head office and central administration in a State not belonging to the European Union or to the European Economic Area which are authorised to pursue business in the classes referred to in Article 2, paragraph 1 of the Code;
- b) insurance undertakings with head office in a member state of the European Union or in another state belonging to the European Economic Area, which pursue business in Italy under the right of establishment in the classes referred to in Article 2, paragraph 1 of the Code;
- c) intermediaries referred to in Article 109, paragraph 2, letters a) b) and d) of the Code which pursue business in Italy in the classes referred to in Article 2, paragraph 1, of the Code;
- d) intermediaries under *Article 116-quater and*⁸ *Article 116-quinquies* of the Code as regards the activities carried out in Italy in the classes referred to Article 2, paragraph 1 of the Code;
- e) in the presence of the prerequisites set forth in Article 62, paragraph 2, of Legislative Decree 231/2007, those who carry out administrative, management or control functions in the undertakings or intermediaries indicated above;
- f) in the presence of the prerequisites set forth in Article 59, paragraph 2, of Legislative Decree 231/2007, the members of the control bodies in the undertakings or intermediaries indicated above;

⁸ Letter supplemented by IVASS Order no. 86 of 14 May 2019.

- g) insurance undertakings with head office and central administration in another member state of the European Union, established without branches in Italy and pursuing life assurance business as per Article 2, Paragraph 1 of the Code⁹.*

4. This Regulation shall apply to anyone else who is subject to IVASS sanctioning powers.

Art. 5
(Procedure phases)

1. The sanctioning procedure shall comprise the following phases:

A. Preliminary activities

- Assessment of the breaches

B. Notification of the breaches

C. Investigation

- Submission of the written rebuttal arguments and request for a hearing;
- overall evaluation of the acquired investigative evidence;
- Proposal to the Joint Directorate, or to the subjects delegated by the latter, to apply sanctions or to dismiss the proceedings;
- Transmission of the sanction proposal to the recipients of the notification of the breach in the cases provided for in Article 18, Paragraphs 5 and Article 26, Paragraph 4.

D. Decision

- Submission, by the recipients of the notification of the breach, to the Joint Directorate, or to the subjects delegated by the latter, of written remarks regarding the sanction proposal, in the cases set forth in Articles 18, Paragraph 5, and Article 26, Paragraph 4;
- Adoption, by the Joint Directorate, or the subjects delegated by the latter, of the final measure in relation to the sanction application procedure or the dismissal procedure.

E. Notification, communication and publication of the measure for the application of the sanction or the dismissal procedure.

Art. 6
(Directorates responsible for the assessment and notification of breaches)

⁹ Letter added by IVASS Order no. 86 of 14 May 2019.

1. The following IVASS Directorates, based on their respective responsibilities as defined by the organisation regulations and chart of IVASS, shall be entrusted with carrying out the assessment of breaches and with sending a notification of breaches:

- a) Inspection Directorate;
- b) Prudential Supervision Directorate;
- c) Consumer Protection Directorate;
- d) *Market Conduct Supervision Directorate*¹⁰;
- e) Research and Data Management Directorate.

2. *The Directorates listed in Paragraph 1, shall send to the Sanction and Winding up Directorate, based on the assigned responsibilities and in view of the subsequent investigation phase also before the Guarantee Committee, the documents related to the proceedings.*¹¹

3.¹²

4. *The Sanction and Winding up Directorate, through the Secretariat Office of the Committee, shall forward the Guarantee Committee, for the subsequent investigation phase, the documents related to the proceedings regarding the intermediaries set forth in Article 4, Paragraph 1, Letters g), h) and i), and the natural persons referred to in Paragraph 2, Letter d), except for those related to the proceedings for breaches of anti-money laundering laws.*¹³

5. The Directorates under Paragraph 1, shall also send to the *Sanction and Winding up Directorate*, for the purpose of carrying out the subsequent investigation phase, the technical report as set forth in Article 18, Paragraph 2. The same technical report shall be provided by the Consumer Protection Directorate to the *Sanction and Winding up Directorate* upon request by the latter, as necessary.¹⁴

¹⁰ Sentence replaced by IVASS Order no. 90 of 5 November 2019. The previous version of Letter d) indicated "Intermediaries Supervision Directorate"

¹¹ Paragraph replaced by IVASS order n. 90 of 5 November 2019. The previous version of paragraph 2 laid down: "2. The Directorates listed in Paragraph 1, Letters a), b), c) and e) shall send to the Sanctions Directorate, based on the assigned responsibilities and in view of the subsequent investigation phase, the documents related to the proceedings. The Inspection Directorate shall send the above documents to the Intermediaries Supervision Directorate, if they regard the intermediaries set forth in Article 4, Paragraph 1, Letters g), h) and i), and the related corporate officers and personnel under Paragraph 2 of the same article."

¹² Paragraph deleted by IVASS order n. 90 of 5 November 2019. The previous version of paragraph 3 laid down: "3. Without prejudice to the provisions of Paragraph 2, the Inspection Directorate shall provide the Sanctions Directorate with the documents related to the proceedings for breaches of anti-money laundering laws applied to intermediaries as indicated in Article 4, Paragraph 3, Letters c) and d) and to the natural persons under Letters e) and f) operating at the intermediaries' place of business."

¹³ Paragraph replaced by IVASS order n. 90 of 5 November 2019. The previous version of paragraph 4 laid down: "4. The Intermediaries Supervision Directorate shall provide the Guarantee Committee, for the subsequent investigation phase, with the documents related to the proceedings, including those received from the Inspection Directorate, pursuant to the provisions of Paragraph 2."

¹⁴ IVASS order n. 90 of 5 November 2019 deleted the words ", letters a), b) and e)" after the word "paragraph 1" and replaced the words "Sanctions Directorate," with "Sanction and Winding up Directorate".

Art. 7¹⁵

(Directorate in charge of the proceedings)

1. *The Sanction and Winding up Directorate is the organisational unit in charge of the sanctioning proceedings.*

CHAPTER II

Preliminary phase

Art. 8

(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. The necessary evidence may be also acquired by requesting documents and information from undertakings, from insurance, reinsurance and ancillary insurance intermediaries, from the subjects under assessment and any other subjects involved or in possession of relevant information. The above subjects shall promptly provide the documents and the information requested by IVASS, including those related to the place and date of birth, residence and tax code of the natural persons that may be the recipients of the notifications of the breach, upon verification of their accuracy and completeness. They shall also indicate addresses, powers of attorney of the involved parties and any certified email address as well as all information regarding remunerations, either fixed or variable, that have been recognised or disbursed in any form in the last three years (or, for the offices held or the activities carried out for less than three years, in the shortest reference period); finally, they shall communicate any changes in the provided information.

2. In the areas governed by legal principles, of a general or management nature, consistent with the requirements of certainty and predictability of the sanctions, IVASS shall assess the conduct by keeping also into account any provisions or instructions of a general nature issued for the purpose of specifying, as necessary, the contents of the principle in question. IVASS shall review the cases also in view of the corrective interventions that may have been adopted in regard to the recipients, including

¹⁵ Article replaced by IVASS order n. 90 of 05 November 2019. The previous version of Article 7 laid down:

“Art. 7 (Directorates in charge of the proceedings) 1. The organisational units in charge of the sanctioning proceedings are the following: a) the Sanctions Directorate for all sanctioning proceedings, except for those initiated by the Intermediaries Supervision Directorate and by the Inspection Directorate, regarding the intermediaries indicated in Article 4, Paragraph 1, Letters g), h) and i), and the related corporate officers and personnel under Paragraph 2 of the same article; b) the Sanctions Directorate for all the sanctioning proceedings initiated for breaches of anti-money laundering laws; c) the Intermediaries Supervision Directorate for all sanction proceedings initiated by the Directorate itself and by the Inspection Directorate, regarding the intermediaries indicated in Article 4, Paragraph 1, Letters g), h) and i), and the related corporate officers and personnel under Paragraph 2 of the same article”.

warnings, orders, prohibitions and other particular measures, including the removal of corporate officers.

3. 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.

4. The assessment process is concluded, in the cases of offences that have emerged during inspections and were committed by insurance, reinsurance or ancillary insurance intermediaries, at the signing date of the inspection report. If offences have emerged during inspections of subjects other than insurance, reinsurance or ancillary insurance intermediaries, the assessment is concluded when the Head of the Inspection Directorate signs the relevant documents.

5. 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.

6. The terms for sending the notification of breach to the involved parties shall begin with the assessment date indicated in said notification.

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

Art. 9

(Unitary assessment of breaches of the same nature)

1. IVASS shall carry out a unitary assessment of the breaches of the same nature of the regulations set forth in Articles 311-*quater*, Paragraph 1, 324-*quinquies*, Paragraphs 1 and 6, of the Code. Breaches are considered to be of the same nature if they refer to the breaching of the same regulation or different regulations which, for the type of facts that constitute them or for the way in which they were carried out, are substantially consistent or have common fundamental characteristics, as set forth in Article 8-*bis* of Law no. 689 of 1981.

2. In the case of off-site assessments, the reference time frame of the unitary assessment is six months. The breaches assessed as stated above shall be notified with a single notification of breach to be served within 120 days in the case of subjects residing in Italy, or 180 days in the case of subjects residing abroad, starting from the sixtieth day subsequent to the end of the reference six month period, and entail the

application of the administrative sanction to all the breaches assessed under a unitary approach. For the breaches of the regulations stated in Article 311-*quater*, Paragraph 1, of the Code, the time frame shall refer to the period from 1 March to 31 August and from 1 September to 28/29 February of each year. For the breaches of the regulations stated in Article 324-*quinquies*, Paragraphs 1 and 6, of the Code, the time frame shall refer to the period from 1 January to 30 June and from 1 July to 31 December of each year. This is without prejudice to the provisions of Article 37, Paragraph 2.

3. In the case of on-site inspections, these shall be completed as at the date indicated in Article 8, Paragraph 4. The breaches shall be notified with a single notification of breach to be served within 120 days in the case of subjects residing in Italy, or 180 days in the case of subjects residing abroad, and entail the application of the administrative sanction to all the breaches assessed under a unitary approach.

4. Without prejudice to the provisions of Paragraph 2, IVASS, for the purpose of notifying breaches of the same nature of the regulations, as stated in Article 324-*quinquies*, Paragraph 6 of the Code, concerning the intermediaries or related corporate officers and personnel, may take into consideration a period shorter than six months if the assessment is deemed to have been completed.

Art. 10

(Assessment of breaches of the duties of notification to Data Banks)

1. The breach of the obligations stated in Article 134, Paragraphs 2 or Article 135, Paragraph 2 or Article 154, Paragraphs 4 and 5 of the Code, shall be notified with a single notification to be sent within 120 days from the assessment of the facts in the case of subjects residing in Italy, or 180 days in the case of subjects residing abroad, starting from the sixtieth day subsequent to the end of the reference six months, and entail the application of a single administrative sanction pursuant to Article 310-*quater* of the Code.

2. For the purpose of assessing the breach, the six months shall refer to the period from 1 January to 30 June and from 1 July to 31 December of each year, without prejudice to the provisions of Article 37, Paragraph 3.

Art. 11

(Principle of the relevance of the breach)

1. Pursuant to Articles 311-*bis* and 324-*ter* of the Code, IVASS shall notify the breaches when they are of a relevant nature. In the review of the related cases, the relevance of the breaches can be inferred from at least one of the following elements:

- their likelihood to create significant legal or reputational risks, taking into account all the circumstances of the actual case;
- their widespread or systematic character, also as regards the territorial presence of or operations carried out by the undertaking or the intermediary;

- the non-compliance with warnings or indications of a prescriptive, interpretative or guiding nature issued by the Supervisory Authority;
- the inadequate organisational and supervisory controls adopted to ensure compliance with the law;
- the impact of the conduct on the protection of policyholders and of those entitled to receive insurance benefits, on the transparency and integrity of the behaviour toward the customers and the market, as well as on the sound and prudent management;
- the number of breaches, the duration of the delay or the omission, as well as the degree of the detriment, if assessable, caused to third parties;
- the negative impact caused to the exercise of supervisory functions.

2. As regards the breaches of the anti-money laundering provisions of Article 62 of Legislative Decree 231/2007, administrative sanctions are applied in the cases of severe, repeated or systematic and/or multiple breaches.

CHAPTER III **Initiation of the procedure**

Art. 12 (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 appropriate Directorate of IVASS pursuant to Article 6, Paragraph 1.
2. The notification of the breach is sent to the recipients within 120 days from the assessment of the facts in the case of subjects residing in Italy, or 180 days in the case of subjects residing abroad.
3. The notification of breach shall contain:
 - a) the reference to the inspection assessment, the supervisory activities carried out or 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) the indication of the right, for the recipients of the notification, to submit to IVASS written rebuttal arguments within 60 days from the date of the notification of the breach;

- f) the indication of the right of the recipients of the notification to request a hearing. This request can be attached to the written rebuttal arguments and must be submitted within the terms stated in letter e);
- g) the indication of the right of the recipients of the notification concerning the unitary assessment of breaches of the same nature, as provided for in Articles 311-*quater*, Paragraph 2, and 324-*quinquies*, Paragraphs 2 and 6 of the Code, to submit as a defence, evidence and information that may demonstrate a possible organisational dysfunction that may have caused the breaches, as well as the interventions that have been or will be carried out in order to correct said dysfunction;
- h) *the indication of the Sanction and Winding up Directorate or of the Guarantee Committee as the subject responsible for the investigative proceeding to whom the written rebuttal arguments and the request for a hearing must be sent, preferably by certified email, specifying the relevant certified email addresses;*¹⁶
- i) ¹⁷
- j) the indication of the right of the recipients of the notification, in compliance with Article 18, Paragraph 5 and Article 26, Paragraph 4, to send to the Joint Directorate, or to the subjects delegated by the latter, concise written observations within 30 days from receiving the sanction proposal formulated at the completion of the investigation phase;
- k) 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 j);
- l) as regards the recipient insurance and reinsurance undertakings under Article 4, Paragraph 1, Letters c) and d) and Paragraph 3, Letter a), limited to the subsidiaries stated therein, and *Letters b) and g)*¹⁸, and as regards the recipient mediation companies, the request to provide the information set forth in Annex 2, as necessary for the identification of the turnover;
- m) as regards the recipient natural persons, other than the intermediaries, the request to provide, together with the rebuttal arguments, or by separate written communication, information concerning remunerations, either fixed or variable, that have been in any form recognised or disbursed to them in the last three

¹⁶ Letter replaced by IVASS Order no. 90 of 5 November 2019. The previous version of Letter h) indicated “h) the indication by the subject responsible for the investigative proceeding to whom the written rebuttal arguments and request for a hearing must be sent, preferably by certified email;”

¹⁷ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter i) laid down: “ i) the indication of the other IVASS Directorates, other than the Consumer Protection Directorate to which the rebuttal arguments must be sent in copy, with the indication of the related certified email addresses;”

¹⁸ Letter amended by IVASS Order no. 86 of 14 May 2019. The previous version of Letter l) indicated only “Letter b)” and not “Letters b) and g)”.

years (or, in relation to offices held or activities carried out for less than three years, in the shorter reference period);

- n) as regards the recipient natural persons, or mediation companies, the request to provide, together with the rebuttal arguments, or by a separate written communication, information concerning remunerations, that have been in any form recognised to them in the last three years (or, in relation to offices held or activities carried out for a period of less than three years, in the shorter reference period);
- o) the invitation to provide with the first formal document a certified email address where the involved subject would like to receive communications and notifications related to the sanctioning proceedings;
- p) the indication of the Directorate where the investigation documents can be viewed;
- q) the term for the conclusion of the sanctioning proceedings.

Art. 13

(Sending of the notification of the breach)

1. The notification of the breach is sent to the recipients pursuant to Article 4, 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 representative.
2. For unlawful acts assessed during inspection, the notification of the breach can be delivered directly to the recipients, companies and natural persons, 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 that can be retrieved from public listings or accessible by the public administration or as specifically indicated by the involved parties for sending/receiving notifications and communications to/from IVASS.
4. The date when the notification of the breach is sent to the recipient represents the date for the initiation of the sanctioning proceedings.

Art. 14

(Supplements to the notification of the breach)

1. If during the supervisory activities, some new evidence is found that constitutes a breach of the same provisions to which the sanctioning proceedings refer, IVASS may supplement with the new findings the notification of breach already formulated against the liable subjects, within sixty days from the expiry of the term for submitting the written rebuttal arguments pursuant to Article 15. The supplemented notification of

breach is sent according to the methods set forth in Article 13, Paragraphs 1, 2 and 3 and does not change the deadline for the completion of the proceedings.

2. As regards the supplemented notification of breach, the involved subjects may submit their rebuttal arguments, request a short extension of no more than 30 days and submit a request for a hearing within the time frame and according to the methods set forth in Article 15.

CHAPTER IV

Participation in the proceedings

Art. 15

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

1. Within 60 days from the date of the notification of the breach the recipients may exercise their right of defence by participating in the sanctioning proceedings through the submission to the *Sanction and Winding up Directorate*¹⁹ and to the Guarantee Committee, pursuant to Article 16, preferably by certified email, of written defence arguments and other documents regarding the charges.²⁰

2. The recipients may also send a specific and duly reasoned request for a short extension. An extension, normally of no more than 30 days, can be granted according to proportionality criteria also in relation to the operational/size characteristics of the recipients and the complexity of the charges. The *Sanction and Winding up Directorate*²¹ or the Guarantee Committee shall promptly communicate to the recipients the approval or rejection of the extension request. To this end, if they have not yet done so, those requesting an extension must communicate to IVASS an address, if possible a certified email address, to be used for responding to the request.

3. In the case of a procedure initiated against a company, the defence documents shall be submitted after being signed by a legal representative of the recipient company or mediation company, or by a private attorney or any other subject holding representation powers according to the internal representation criteria, or upon the signature of another expressly designated person. In the case of a procedure initiated against natural persons, the rebuttal arguments shall be submitted, even jointly, by the individual subjects recipient of the notification of the breach or through another person specifically designated thereby. In all cases, the recipients shall also attach documentation referring to any received remunerations pursuant to Article 12, Letters m) and n). The involved subjects shall indicate in the rebuttal arguments the certified

¹⁹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

²⁰ Last sentence deleted by IVASS Order n. 90 of 5 November 2019. The deleted sentence laid down: "The rebuttal arguments shall also be sent in copy to the other Directorates indicated in the notification of the breach."

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

email address where communications concerning the sanctioning proceedings should be sent.

4. 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 reflecting in essence the scope of the charges; if more than 50 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. In the case of paper documentation, the text of the defence documents shall also be transmitted on an electronic medium accompanied by a certificate of conformity with the originals and using the template included in Annex 1 to this Regulation.

5. Within the same term stated in Paragraph 1, the legal representative of the company (or another specifically designated subject) and/or the natural persons, 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 subject responsible for the investigation. The hearing with the natural persons, recipients of the notification of the breach, is of a strictly personal nature; participation is allowed with the assistance of a lawyer or other consultant. The hearing shall take place at the IVASS office normally within 120 days subsequent to receiving the request and, if necessary, with the possible participation of a representative of the Directorate who was responsible for the assessment process and the notification of the charges. If the hearing is held beyond the deadline set for sending the rebuttal arguments, it is not allowed to produce at that time material that supplements the rebuttal arguments, unless the recipient can demonstrate not to have been able to produce supplemental materials within the above deadline for reasons not imputable to him or her. A summary report of the hearing shall be drawn up. The waiver of the hearing shall be promptly communicated in writing, preferably to a certified email address, to the subject responsible 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.

6. Failure to submit written rebuttal arguments or to request a hearing shall not affect the sanctioning proceedings.

CHAPTER V

Investigation Phase

Art. 16

(Subjects responsible for the investigation phase of the proceedings)

1. *The Sanction and Winding up Directorate is responsible for the investigation phase of all sanctioning proceedings except those initiated against the subjects indicated in Paragraph 2.*²² It is also responsible for the investigation related to all the proceedings for breaches of anti-money laundering laws as regards both undertakings and intermediaries.

2. *The Guarantee Committee is responsible for the investigation related to proceedings initiated against the intermediaries indicated in Article 4, Paragraph 1, Letters g), h) and i) and the subjects under Paragraph 2, Letter d) of the same article, and avails itself of the organisational technical support of the Secretariat Office of the Committee at the Sanction and Winding up Directorate.*²³

3. The centralisation of the investigation phase under the *Sanction and Winding up Directorate*²⁴ and the Guarantee Committee is intended to ensure consistency of assessments during the examination of the cases involved, in compliance with the principle of equal treatment as regards the types of recipients of the notification of the breach.

Art. 17

(Concept of turnover)

1. For the purpose of determining the maximum legal amount of pecuniary administrative sanctions to be applied by IVASS to companies, the relevant turnover is the annual turnover according to the last available accounts approved by the management body. This turnover is calculated in compliance with the criteria provided for in Annex 2 to this Regulation.

Section I – Investigation by the Sanction and Winding up Directorate²⁵

Art. 18

²² First sentence of Paragraph 1 replaced by IVASS order n. 90 of 5 November 2019. The previous version of the first sentence of paragraph 1 laid down: "1. The Sanctions Directorate is responsible for the investigation phase of all sanctioning proceedings except those initiated by the Intermediaries Supervision Directorate and the Inspection Directorate against the intermediaries indicated in Paragraph 2, and related corporate officers and personnel under Article 4, Paragraph 2."

²³ Paragraph replaced by IVASS order n. 90 of 5 November 2019. The previous version of paragraph 2 laid down: "2. The Guarantee Committee is responsible for the investigation related to proceedings initiated by the Intermediaries Supervision Directorate and the Inspection Directorate against the intermediaries indicated in Article 4, Paragraph 1, Letters g), h) and i) and the subjects under Paragraph 2 of the same article, operating at their premises, and avails itself of the organisational technical support of the afore-mentioned Intermediaries Supervision Directorate."

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

²⁵ Sentence replaced by IVASS Order n. 90 of 5 November 2019. The previous version of the heading of Section I laid down: "Investigation by the Sanctions Directorate".

(Obligations of the Sanction and Winding up Directorate)²⁶

1. For the purpose of the investigation procedure, the *Sanction and Winding up Directorate*²⁷:

- a) ²⁸;
- b) ²⁹;
- c) ³⁰;
- d) review all the investigation evidence acquired during the proceedings, *including the technical report under Paragraph 2*; ³¹
- e) for the cases under Article 311-*quater*, Paragraph 2 and Article 324-*quinquies*, Paragraph 2 of the Code (unitary assessment of breaches of the same nature):
 - review the specific elements and the information provided in the technical report from the Directorate that has assessed the breach and has sent notification of the charges regarding the organisational dysfunction claimed by the undertaking in its defence;
 - ³²;
 - set a deadline for the undertaking to adopt corrective measures, if not fully or only partially done yet;
 - request that the undertaking informs the *Sanction and Winding up Directorate*³³ about the adoption of the requested corrective measures;
 - verify the suitability of the adopted measures also with the technical support of the other Directorates of IVASS and inform the undertaking about the outcomes;

²⁶ Sentence replaced by IVASS order n. 90 of 5 November 2019. The previous version of the heading of Article 18 laid down: "Obligations of the Sanctions Directorate".

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

²⁸ Letter deleted by IVASS Order no. 90 of 5 November 2019. The previous version of letter a) laid down: "a) 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;"

²⁹ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter b) laid down: "b) review the defence arguments, if submitted, and the hearing process, if requested;"

³⁰ Letter deleted by IVASS Order no. 90 of 5 November 2019. The previous version of letter c) laid down "b) review the technical report under Paragraph 2 sent by the Directorates, as indicated in Article 6, Paragraph 5, that are responsible for assessing the breaches and sending notification of the charges;"

³¹ Letter supplemented by IVASS Order no. 90 of 5 November 2019.

³² Second indent deleted by IVASS order n. 90 of 5 November 2019. The previous version laid down: "- verify that the recipient of the notification meets the requirements for applying for the sanction reduction, as set forth in Paragraph 3 of the same Articles;"

³³ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate and the Directorate that has assessed the breaches and has sent notification of the charges, as indicated in the notification of the breach,"

- review the comments of the undertaking with reference to the remarks formulated on the corrective measures adopted, also availing itself of the technical support of other Directorates of IVASS;

f) ³⁴;

g) ³⁵;

h) ³⁶;

i) ³⁷;

j) allow the recipients of the notification to access the proceedings documentation;

k) prepare, at the completion of the investigation phase, a proposal for the Joint Directorate or for the subjects delegated by the latter;

l) ³⁸

2. The technical report sent by the Directorates, as indicated in Article 6, Paragraph 5, shall:

- 2.1. contain the assessments carried out by the Directorate regarding all defence rebuttal arguments that are also included in the hearing minutes, if any;
- 2.2. include any further evidence gathered by the Directorate for the purpose of a comprehensive assessment of the contested cases, including a possible cessation of the breach;
- 2.3. describe, at the time of completion of the evidence review, whether the alleged breach may be defined as barely offensive or hazardous based on the provisions of Article 311-*ter* of the Code and Article 62, Paragraph 4, Letter a) of Legislative Decree 231/2007. In this case, it shall describe the corrective measures that are believed to be, if adopted, capable of removing the breaches, and shall set out a related deadline;
- 2.4. describe all evidence that may be useful for the application of the additional administrative sanction of temporary prohibition, as set forth in Articles 311-

³⁴ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter f) laid down: “f) carry out an accurate assessment of the notified charges, of any personal liability and of the evidence acquired during the investigation;”

³⁵ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter g) laid down: “g) assess the presence of the prerequisites for the application of the alternative sanction consisting in the order to cease the breaches in place of the pecuniary administrative sanction;”

³⁶ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter h) laid down: “h) assess the presence of the prerequisites for the application of the additional administrative sanction of temporary prohibition to carry out administrative, management and control functions at the insurance and reinsurance undertaking, or in the event of an anti-money laundering breach, at the insurance and reinsurance mediation company;”

³⁷ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter i) laid down: “i) indicate whether the prerequisites exist for a possible adoption of the public statements under Article 324-*bis*, Paragraph 4 of the Code and Article 62, Paragraph 4, Letter b) of Legislative Decree 231/2007;”

³⁸ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter l) laid down: “l) ensure the retention and storage of all documents referring to the files of the sanctioning proceedings.”

sexies, Paragraph 3, and 324-*septies*, Paragraph 3 of the Code and Article 62, Paragraph 3, of Legislative Decree 231/2007;

- 2.5 for the cases under Article 311-*quater*, Paragraph 2 and Article 324-*quinquies*, Paragraph 2 of the Code (unitary assessment of breaches of the same nature), include all evidence and information that may be useful for assessing the organisational dysfunction, reported by the undertaking in its defence, and the deadline to be assigned for the adoption of the necessary measures that would correct the dysfunction, also indicating any corrective measure that is deemed to be necessary; subsequent to the adoption of said measures, the technical report is supplemented with information that may be useful for the assessment;
- 2.6 indicate whether the prerequisites exist for a possible adoption of the public statements under Article 324-*bis*, Paragraph 4 of the Code and Article 62, Paragraph 4, Letter b) of Legislative Decree 231/2007.

3. *In the absence of defence arguments and of a request for a hearing, the technical report under Paragraph 2 shall be sent without the items described at points 2.1. and 2.5..*³⁹

4. The *Sanction and Winding up Directorate*⁴⁰, once the investigation phase is concluded, prepares the proposal for the application of the sanction, as set forth by the law, or for the dismissal of the proceedings, which is sent upon signature for approval by the Secretary General, to the Joint Directorate or the subjects delegated by the latter.

4-bis. The *Sanction and Winding up Directorate*⁴¹, also upon recommendation by the Secretary General, if it believes that the case being investigated is particularly complex or shows elements that are new or profiles that require significant assessments of a technical-legal nature, sends the proceedings file to the Committee for the examination of the irregularities. The Committee, at the completion of the related review, formulates an opinion that is binding for the subsequent proposal sent by the Sanctions Directorate to the Joint Directorate or the subjects delegated by the *Sanction and Winding up Directorate*⁴².

5. As regards all sanctioning proceedings, if the recipients of the charges, during investigation, have submitted written rebuttal arguments or, during the same phase,

³⁹ Paragraph replaced by IVASS order n. 90 of 5 November 2019. The previous version of paragraph 3 laid down: "3. In the absence of defence arguments and of a request for a hearing, the technical report under Paragraph 2 shall be sent without the items described at points 2.1. and 2.5.. In the event of sanctioning proceedings initiated by the Consumer Protection Directorate, the Sanctions Directorate, if it deems it necessary as regards the nature of the charges, sends to said Directorate a copy of the written rebuttal arguments provided by the recipients and of the minutes of the hearing, if any, in compliance with Paragraph 2."

⁴⁰ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced "Sanctions Directorate".

⁴¹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced "Sanctions Directorate".

⁴² Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced "Sanctions Directorate".

have participated in a hearing, the *Sanction and Winding up Directorate*⁴³ sends the proposal for a sanction, under Paragraph 4, to the recipients as well⁴⁴.

Section II – Guarantee Committee: Organisation, functioning and investigation activity

Art. 19

(Composition and structure of the Guarantee Committee)

1. The appointment of the Guarantee Committee, the duration of the mandate, the composition and structure in Sections are governed by Article 324-*octies* of the Code.
2. If the Committee is structured in Sections, each of them is composed of a Chairman and two experts in the field of insurance appointed in compliance with the requirements and methods set forth in Article 324-*octies* of the Code.
3. The Secretariat Office of the Guarantee Committee is established at the *Sanction and Winding up Directorate*⁴⁵.

Art. 20

(Structure in Sections of the Guarantee Committee)

1. In the case of multiple Sections, the Chairman of the First Section assumes the role of Chairman of the Guarantee Committee. In this role, he/she convenes and chairs the assembly of the Sections in a joint meeting when resolutions must be issued pursuant to Article 21 and, normally, once a year, in order to define general assessment principles and criteria so as to ensure consistent guidelines for the resolutions issued in the proceedings managed by each Section.
2. Within the Committee or the Section, the Chairman:
 - a) assigns the conduct of the proceedings to the members of the Committee or the Section;
 - b) ensures the consistency of the guidelines adopted for the proceedings.
3. The provisions of this Regulation, referring to the operation of the Committee, are extended to the Sections into which the Committee is structured.

⁴³ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced “Sanctions Directorate”.

⁴⁴ Paragraph amended by IVASS Order no. 86 of 14 May 2019. The previous version of paragraph 5) laid down: “As regards all sanctioning proceedings, except for those initiated with regard to the breach of the provisions set forth in Articles 310-*bis*, Paragraph 1, 310-*ter* and 310-*quater* of the Code, if the recipients of the charges, during investigation, have submitted written rebuttal arguments or, during the same phase, have participated in a hearing, the Sanctions Directorate sends the proposal for a sanction, under Paragraph 4, to the recipients as well.”

⁴⁵ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced “Intermediaries Supervision Directorate”.

Art. 21
(Assembly of the Sections in a joint meeting)

1. If the Guarantee Committee is structured in Sections, the Chairman of each Section may propose to the Chairman of the Committee to defer the resolutions regarding single proceedings to the assembly of the Sections in a joint meeting. The Chairman of the Committee assesses the deferring proposal and decides, if in agreement, for the convening of the Sections in a joint meeting for the conduct of the proceedings.

*2. The Head of the Directorate which has ascertained and notified the violation and the Head of the Sanction and Winding up Directorate or their designated representatives attend, with no voting rights, the assembly of the Sections in a joint meeting.*⁴⁶

Art. 22
(Incompatibility and abstention)

1. A member who finds him/herself in one of the situations described in Article 51 of the Code of Civil Procedure, with regard to the specific cases reviewed by the Committee or the Section involved, shall abstain from participating in the meeting discussing said cases, with advance notification sent to the Committee or the Section.

Art. 23
(Chronological list and meeting schedule)

1. The Committee or the Sections involved are responsible for their internal organisation and more specifically:

- a) define the chronological list of the meetings as regards the proceedings in question;
- b) are responsible for gathering the minutes of the meetings and of the hearings;
- c) set out, on a quarterly basis, the meeting schedule.

Art. 24
(Obligations of the Directorates which ascertain and notify the violations)⁴⁷

*1. The Directorates which ascertain and notify the violations in the sanctioning proceedings initiated against the subjects indicated in Article 4, Paragraph 1, Letters g), h) and i) and Paragraph 2, Letter d).*⁴⁸

⁴⁶ Paragraph replaced by IVASS order n. 90 of 5 November 2019. The previous version of paragraph 2 laid down: "2. The Head of the Intermediaries Supervision Directorate or the Head of the Inspection Directorate or their designated representatives attend, with no voting rights, the assembly of the Sections in a joint meeting."

⁴⁷ Heading replaced by IVASS order n. 90 of 5 November 2019. The previous version of Article 24 laid down: (Obligations of the Intermediaries Supervision Directorate).

⁴⁸ Paragraph replaced by IVASS order n. 90 of 5 November 2019. The previous version of paragraph 1 laid down: "1. The Intermediaries Supervision Directorate, as the organisational unit responsible for the sanctioning proceedings initiated thereby and for those initiated by the Inspection Directorate concerning the intermediaries as

- a) ⁴⁹;
- b) ⁵⁰;
- c) ⁵¹;
- d) ⁵²;
- e) ⁵³;
- f) *send*⁵⁴ to the Secretariat Office of the Guarantee Committee, after the deadline under Article 15, Paragraph 1, the file of the proceedings including the information under Annex 2 that is necessary for determining the turnover;
- g) ⁵⁵;
- h) *participate*⁵⁶, with no voting rights, through *their*⁵⁷ representative, in the meeting of the Guarantee Committee to report on the assessment of the facts concerning the proceedings;
- i) for the cases under Article 324-*quinquies*, Paragraphs 2 and 6, of the Code (unitary assessment of breaches of the same nature):
 - ⁵⁸;

indicated in Article 4, Paragraph 1, letters g), h) and i) and Paragraph 2, Letter d), and as the structure responsible for providing technical-organisational support to the Guarantee Committee for the proceedings, shall.”

⁴⁹ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter a) laid down: “a) be responsible for maintaining relationships with the Secretariat Office of the Guarantee Committee;”

⁵⁰ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter b) laid down: “b) ensure the regular notification of the charges to the involved party;”

⁵¹ Letter deleted by IVASS Order no. 90 of 5 November 2019. The previous version of letter c) laid down: “c) request to the Secretariat Office of the Guarantee Committee to fix the date of the meeting;”.

⁵² Letter deleted by IVASS Order no. 90 of 5 November 2019. The previous version of letter d) laid down: “d) receive from the Secretariat Office communication about the meeting date, set up based on the schedule under Article 23, taking into account the deadline set out for the submission of the written rebuttal arguments by the involved subject pursuant to Article 15, Paragraph 1, as well as with a reasonable advance notification to allow for the review of the rebuttal arguments;”

⁵³ Letter deleted by IVASS Order no. 90 of 5 November 2019. The previous version of letter e) laid down: e) communicate to the recipient of the notification who has requested a hearing, by registered mail with return receipt or by certified email sent to the address provided thereby for all communications with IVASS, the date of the proceedings meeting before the Guarantee Committee;”

⁵⁴ Amendment introduced by Order no. 90 of 5 November 2019;

⁵⁵ Letter deleted by IVASS Order no. 90 of 5 November 2019. The previous version of letter g) laid down: “g) carry out, upon request by the Guarantee Committee, supplemental investigations to be included with the acquired documented results;”

⁵⁶ Amendment introduced by Order no. 90 of 5 November 2019;

⁵⁷ Pursuant to IVASS Order no. 90 of 5 November 2019 this word has replaced the word “its”.

⁵⁸ First indent deleted by IVASS Order no. 90 of 5 November 2019. The previous version laid down: “- review the specific elements and information that may be useful for assessing the organisational dysfunction claimed by the intermediary in its defence;”

- ⁵⁹;
 - *identify*⁶⁰ the necessary measures that would correct the dysfunction;
 - ⁶¹;
 - ⁶²;
 - *verify the suitability of the adopted measures*;⁶³
 - *review*⁶⁴ the comments of the intermediary with reference to the remarks formulated on the corrective measures adopted, also availing itself of the technical support of other Directorates of IVASS;
 - *prepare*⁶⁵ a report for the Guarantee Committee with the specific elements and information useful for the assessment of the organisational dysfunction claimed by the intermediary in its defence, and the suitability of the adopted corrective measures;
- j) *are responsible*⁶⁶, if the Guarantee Committee has proposed to the intermediary the application of the alternative sanction consisting in the order to cease the breaches, for preparing a report with the identification of the corrective measures to be adopted for eliminating the breaches and the deadline for implementing them⁶⁷;
- k) ⁶⁸;
- l) ⁶⁹;

⁵⁹ Second indent deleted by IVASS Order no. 90 of 5 November 2019. The previous version laid down: “- verify that the recipient of the notification meets the requirements for a sanction reduction, as set forth in Paragraph 3 of the same Article.”

⁶⁰ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words: “- instruct the intermediary, also with the technical support of the other Directorates of IVASS”;

⁶¹ Fourth indent deleted by IVASS Order no. 90 of 5 November 2019. The previous version of the fourth indent laid down: “- set a deadline for the intermediary to adopt corrective measures, if not already fully or partially done;”

⁶² Fifth indent deleted by IVASS Order no. 90 of 5 November 2019. The previous version of the fifth indent laid down: “- request that the intermediary communicates to the Directorate the completed adoption of the necessary corrective measures;”.

⁶³ Sixth indent amended by IVASS Order no. 90 of 5 November 2019. The previous version of the sixth indent laid down: “- verify the suitability of the adopted measures also with the technical support of the other Directorates of IVASS and inform the intermediary about the outcomes;”

⁶⁴ Amendment introduced by Order no. 90 of 5 November 2019;

⁶⁵ Amendment introduced by Order no. 90 of 5 November 2019;

⁶⁶ Pursuant to IVASS Order no. 90 of 5 November 2019 this word has replaced the word “is responsible”;

⁶⁷ Pursuant to IVASS Order no. 90 of 5 November 2019 this word has replaced the word “is responsible”. After the words “deadline for implementing them” the words “, also with the technical support of other Directorates of IVASS” are deleted;

⁶⁸ Letter deleted by IVASS Order no. 90 of 5 November 2019. The previous version of letter k) laid down: “k) send to the Joint Directorate or to the subjects delegated by the latter, the proposal formulated by the Guarantee Committee accompanied, if required, by the report under Letter i) or Letter j)”;

⁶⁹ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter l) laid down: “l) send to the recipients of the notification the sanction proposal, formulated by the Guarantee Committee in the cases set forth in Article 26, Paragraph 4, accompanied, if required, by the report under Letter i) or Letter j);”

m) ⁷⁰;

n) ⁷¹.

Art. 24-bis⁷²

(Obligations of the Sanction and Winding up Directorate)

1. The Sanction and Winding up Directorate, as the organisational unit responsible for the sanctioning proceedings initiated against the subjects indicated in Article 4, Paragraph 1, Letters g), h) and i) and Paragraph 2, Letter d), and as the structure responsible for providing technical-organisational support to the Guarantee Committee for the proceedings, shall:

- a) be responsible for maintaining relationships with the Guarantee Committee and for the functioning of the Secretariat Office;*
- b) carry out, upon request by the Guarantee Committee, supplemental investigations to be included with the acquired documented results;*
- c) participate, with no voting rights, through its representative, in the meeting of the Guarantee Committee;*
- d) for the cases under Article 324-quinquies, Paragraphs 2 and 6, of the Code (unitary assessment of breaches of the same nature):*
 - inform the intermediary of the actions that must be undertaken to eliminate the dysfunction and the deadline to adopt corrective measures, if not already fully or partially done;*
 - request that the intermediary communicates to the Sanction and Winding up Directorate the completed adoption of the necessary corrective measures;*
 - inform the intermediary about the assessment of the suitability of the adopted measures;*
- e) send the Joint Directorate or the subjects delegated by the latter, the proposal formulated by the Guarantee Committee accompanied, if required, by the report under Letter i) or Letter j);*
- f) send to the recipients of the notification the proposal, formulated by the Guarantee Committee in the case set forth in Article 26, Paragraph 4, accompanied, if required, by the report under Article 24, Paragraph 1 Letter i) or Letter j);*
- g) allow the recipients of the notification to access the proceedings documentation.*

⁷⁰ Letter deleted by IVASS order n. 90 of 5 November 2019. The previous version of letter m) laid down: "m) allow the recipients of the notification to access the proceedings documentation;"

⁷¹ Letter deleted by IVASS Order no. 90 of 5 November 2019. The previous version of letter n) laid down: "n) ensure the retention and storage of all documents referring to the files of the sanctioning proceedings."

⁷²Article inserted by IVASS Order no. 90 of 5 November 2019.

Art. 25

(Conduct of the proceedings before the Guarantee Committee)

1. The Guarantee Committee reviews the proceedings documentation, including the written defence arguments submitted by the involved subject, and initiates the discussion at the meeting set up pursuant to Article 23.
2. The Committee is responsible for conducting the requested hearing and the involved subjects may be assisted by a lawyer or other consultant. 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. A summary report of the hearing shall be drawn up. The waiving of the right to a hearing must be promptly communicated in writing, preferably by certified email, to the *Sanction and Winding up Directorate*.⁷³
3. The Committee may ask the *Sanction and Winding up Directorate*⁷⁴ for supplemental investigation evidence to accompany the already acquired documented results.
4. The Committee may also convene a meeting with the subjects who have been informed on the facts of the proceedings, as well as the undertakings and intermediaries with which the recipient of the notification was holding on-going assignments or a collaboration relationship at the time of the occurrence of the facts, in order to provide clarifications on the alleged breach. The Committee sets a deadline for the completion of the supplemental investigations and the convening of a meeting with the indicated subjects.

Art. 26

(Resolution issued by the Guarantee Committee)

1. The Guarantee Committee issues its resolutions in a retreat session. If a member is absent or temporarily incapable of attending, each Section may validly function with the presence, as an alternate, of one or more members of another Section. If the absence or the temporary incapacity regards the Chairman of the Section, he/she is replaced by the Chairman of another Section.
2. The resolution is signed by the Chairman and the person responsible for formulating the reasoned arguments.
3. *The resolution issued by the Committee contains the proposal for the application of a sanction pursuant to the law, including the adoption of a public statement, or for the dismissal of the proceedings, and is sent to the Sanction and Winding up Directorate for its subsequent transmission to the Joint Directorate or to the subjects delegated by*

⁷³ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced "Intermediaries Supervision Directorate".

⁷⁴ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced "Intermediaries Supervision Directorate".

*the latter*⁷⁵. If the proposed sanction consists in the striking off from the Register, the Committee reports also on the presence of the conditions based on which, pursuant to Article 324, Paragraph 2, of the Code, the company where the involved subject operates must be deleted.

4. If the recipients of the notifications, during the investigation phase, have submitted written rebuttal arguments or have participated in the hearing, the sanction proposal under Paragraph 3 is also sent to the same recipients, except in the case of sanctions proposed pursuant to Article 324, Paragraph 1, letters a) and b) of the Code.

CHAPTER VI

Decision Phase

Art. 27

(Submission of additional written remarks)

1. In the cases pursuant to Article 18, Paragraphs 5 and Article 26, Paragraph 4, within 30 days from the reception date of the proposal concluding the investigation phase, the recipients may submit to the Joint Directorate or to the subjects delegated by the latter, preferably by certified email sent to the address indicated in the cover letter of the proposal, directly and/or through a representative duly holding a power of attorney, concise written remarks regarding the formulated proposal. Any document that is submitted after said deadline, will not be taken into consideration.

2. The provisions set forth in Article 15, Paragraph 4, concerning the materiality and pertinence of the contents of the rebuttal arguments, shall apply to the written remarks submitted in this phase of the proceedings.

Art. 28

(Decision)

1. The decision-making function is assigned to the Joint Directorate or to the subjects delegated by the latter. The assignment of powers of attorney to the Chairman and to the Board members is posted on the IVASS website.

2. The Joint Directorate or the subjects delegated by the latter, upon reviewing the additional written remarks submitted by the involved subjects pursuant to Article 27, issue a reasoned order by which they may accept the proposal of the *Sanction and Winding up Directorate*⁷⁶ or the Guarantee Committee; ask for supplemental

⁷⁵ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced “The resolution issued by the Committee contains the proposal to be sent to the Joint Directorate or to the subjects delegated by the latter for the application of a sanction pursuant to the law, including the adoption of a public statement, or for the dismissal of the proceedings.”.

⁷⁶ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced “Sanctions Directorate”.

investigations; deviate, in full or in part, from the proposal or dismiss the proceedings⁷⁷. If deemed necessary, they may obtain, before the decision is made, if a case is particularly complex, the opinion of the Legal Services Office.

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 involved subjects aimed at ending any conduct that is not compliant with the insurance regulations.

4. The sanctioning proceedings shall be completed within the two year deadline from its start date, when the order imposing the sanction pursuant to Article 13, or when the procedure dismissal is notified to the recipient.

Art. 29
(Application of the sanction)

1. The type of administrative sanction to be applied, the amount of the pecuniary sanction and the duration of the additional sanction, if any, are set forth taking into account all relevant circumstances that allow to determine the severity of the breach and its level of offensiveness or hazard. For this purpose, also in relation to the type of breach and liable subject (natural person or company), the following elements shall be assessed:

- a) the duration of the breach;
- b) the financial strength of the liable person, as inferable: in the event of an undertaking or mediation company, according to the annual turnover calculated in compliance with the criteria set forth in Annex 2 to this Regulation; in the case of a natural person, according to the remunerations, either fixed or variable, that have been recognised or disbursed in any form in the last three years for the office held or for the activities carried out in the undertaking or in the mediation company (or for the offices held or the activities carried out for less than three years, in the shortest reference period). The remunerations are inferred from the information provided during the proceedings or from any other information or data available;
- c) the severity of the breach, in particular as regards:
 - its impact, also potential, on customers, on other qualified stakeholders or on the technical, organisational and management position of the company and the group to which the company belongs, as well as the adoption, against the undertaking or the intermediary, of prohibitory measures or other measures of a specific, extraordinary, injunction or crisis nature;
 - the reliability of the representation of the corporate situation provided to the Supervisory Authority;

⁷⁷ In the event of a request for supplemental investigation, the cross-examination regarding the supplemental report sent to the Joint Directorate, or the subjects delegated by the latter, by the Sanction and Winding up Directorate or the Guarantee Committee is conducted according to the same methods set forth for the initial proposal..

- the cases when, with a sole action or omission, the breach of different provisions or multiple breaches of the same provision, are committed;
- d) any previous breaches in the insurance or anti-money laundering field committed by the same subject;
- e) the detriment for third parties caused by the breach, in so far as its amount can be determined;
- f) the importance of the advantage obtained or losses avoided because of the breach, in so far as they can be determined;
- g) the activities carried out by the subjects undergoing the sanctioning procedure in order to eliminate or reduce the consequences arising from the breach;
- h) the degree of liability of the subjects undergoing the sanctioning procedure in relation to the available information (e.g. as regards the officers: actual structure of powers, actual conduct, duration of the office);
- i) the number of breaches, their type, the duration of the delay or omission, the amount of the insurance benefit to which the breach refers, also for the purpose of determining the sanction to be applied to all the breaches under Articles 311-*quater* and 324-*quinquies* of the Code;
- j) in the event of sanctions for breaches of anti-money laundering laws, being applied according to Legislative Decree 231/2007, to be taken into consideration is also the adoption, by the recipient of the notification, of appropriate assessment procedures and mitigation of the risk of money laundering and terrorist financing, proportionate to the nature of the activities carried out and the size of the undertaking or of the insurance intermediary;
- k) the level of cooperation of the person responsible for the breach with IVASS.

2. For the purpose of the application to natural persons of the administrative sanction of temporary prohibition to carry out the functions referred to in Articles 311-*sexies*, 324-*septies* and 324-*novies* of the Code, the presence of one or more of the following circumstances is of great relevance:

- the conduct held in breach of the obligations set forth in the reference regulations has caused a significant impact on the protection of policyholders and parties entitled to insurance benefits, or has materially impaired the sound and prudent management of the undertaking or the mediation company;
- the liable subject has obtained, either directly or indirectly, an advantage from the breach;
- one or more administrative sanctions have already been applied through an executive order to the subject liable for breaches of an insurance regulations committed after the entry into effect of these provisions and in the 5 years prior to the application of the new sanction.

3. In relation to anti-money laundering, in the cases provided for in Article 62, Paragraph 3, of Legislative Decree 231/2007, taking into account the severity of the assessed breach, an additional administrative sanction, consisting in the temporary prohibition to carry out administrative, management and control functions at insurance or reinsurance undertakings or mediation companies, may be applied to the corporate officers.

CHAPTER VII

Notification, publication of and appeal against the order

Art. 30

(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 13, of the order imposing the sanction even if not of a pecuniary nature.⁷⁸

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. An excerpt of the rulings issued by the administrative judges who decide on the appeals and the rulings on extraordinary appeals to the President of the Republic, are posted in the Bulletin. As regards anti-money laundering violations 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 legal proceedings is also published in the Bulletin.

Sanctions, rulings and information referred to in the previous sentences are published in IVASS website for five years⁷⁹.

3. IVASS may decide on posting the order anonymously, and may decide to defer or exclude said posting, or may decide on additional methods for posting the sanctioning order, charging all expenses to the involved subject, while taking into consideration the provisions of Article 325-ter of the Code.

4. Pursuant to Article 66, Paragraph 3 of Legislative Decree 231/2007, the posting of the order imposing the sanctions may be deferred or excluded, in compliance with said decree, if said posting may jeopardise the stability of financial markets or an ongoing investigation.

⁷⁸ Second indent of paragraph 1 deleted by IVASS Order no. 90 of 5 November 2019. The previous version of the second sentence of paragraph 1) laid down: "In the event of a proceeding regarding the intermediaries, IVASS also informs of the order imposing the sanction, the undertakings or intermediaries with which the recipient of the sanction has assignments or collaboration relationships in progress."

⁷⁹ 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 and posted on the website of IVASS, with the indication of the sanctioned subjects, the assessed breaches, the violated provisions and the applied sanctions. An excerpt of the rulings issued by the administrative judges who decide on the appeals and the rulings on extraordinary appeals to the President of the Republic, are posted in the Bulletin and on the Internet website of IVASS."

Art. 31
(Communication to EIOPA)

1. IVASS shall inform EIOPA about the sanctions applied in compliance with the information obligations set forth in Article 325-*quater* of the Code and Article 66, Paragraph 4, of Legislative Decree 231/2007.

Art. 32
(Appeal against the sanctioning order)

1. The sanctioning order may be appealed pursuant to the law. The filing of an appeal does not halt the application of the order.

CHAPTER VIII
Access to documents

Art. 33
(Access to the documents of the sanctioning proceedings)

1. The subjects under sanctioning proceedings may access all related documentation in compliance with the provisions of the Law no. 241 of 7 August 1990.

2. The right to access, with the limitations and exclusions set forth by the law 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.

3. The exercise of the right to access is governed by IVASS Regulation no. 19 of 15 March 2016. The requests for access must be submitted to the *Sanction and Winding up Directorate*⁸⁰, preferably by certified email, through an act separate from any other act submitted during the sanctioning procedure. 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 IX
Methods and terms for the payment of the sanction

Art. 34

⁸⁰ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced “Sanctions Directorate or Intermediaries Supervision Directorate”.

(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, Paragraph 4 of Law no. 689 of 24 November 1981, within 30 days from the notification of the 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.
3. The recipient of the sanction shall inform IVASS – *Sanction and Winding up Directorate*⁸¹– 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 agency 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. If the sanction is not paid, IVASS – *Sanction and Winding up Directorate*⁸²– initiates the procedure for enforced recovery of the amounts due based on the regulations set forth for the collection of direct taxes according to the terms and methods stated in the Decree of the President of the Republic no. 602 of 29 September 1973, as amended.

Art. 35

(Payment of the sanction by instalments)

1. The recipient of the sanction has the right to ask for a payment by instalments of the amount due pursuant to Article 26 of Law no. 689 of 24 November 1981, through a request, duly reasoned and documented, sent to IVASS – *Sanction and Winding up Directorate*⁸³ – to be submitted within the terms of payment under Paragraph 2 of Article 34.

⁸¹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate or Intermediaries Supervision Directorate”.

⁸² Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate or the Intermediary Supervision Directorate”.

⁸³ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Sanctions Directorate or the Intermediary Supervision Directorate”.

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 or the due increase as set forth in Article 27, Paragraph 6 of Law no. 689/1981 and the related deadlines.

CHAPTER X

Final Provisions

Art. 36 **(Scope)**

1. The provisions of this Regulation apply to the sanctioning proceedings initiated in relation to breaches committed after the entry into effect of said Regulation.

Art. 37 **(Transitional provisions)**

1. The provisions contained in IVASS Regulations no. 1 and no. 2 of 8 October 2013, continue to be applied to the sanctioning proceedings initiated in relation to breaches committed before the entry into effect of this Regulation.

2. With reference to Article 9, Paragraph 2, the first reference time frame for a unitary assessment of the breaches indicated in Article 311-*quater*, Paragraph 1 of the Code, corresponds to the period between the date of the entry into effect of this Regulation and 28 February 2019. For the breaches referred to in Article 324-*quinquies*, Paragraphs 1 and 6 of the Code, the first time frame covers the period between the date of the entry into effect of this Regulation and 31 December 2018.

3. With reference to Article 10, Paragraph 2, the first reference six month period for the assessment of a breach of the duties of notification, indicated in the same Article, refers to the period between the date of the entry into effect of this Regulation and 31 December 2018. As at the date of the entry into effect of this Regulation, the reference six month period for the assessment of the breach of the duties under Article 135, Paragraph 2, or Article 154, Paragraphs 4 and 5, of the Code, subject to the sanction set forth in Article 316, in the formulation set forth in Article 1, Paragraph 28, of the Law no. 124 of 4 August 2017, is considered to be concluded.

4. Article 11 of Regulation no. 9 of 19 May 2015 continues to apply to the breaches committed before 1 October 2018.

Art. 37-bis⁸⁴ *(Changes to IVASS Regulations no. 1 and no. 2 of 8 October 2013)*

⁸⁴Article inserted by IVASS Order no. 90 of 5 November 2019.

1. In IVASS Regulation no. 1 of 8 October 2013 the words “Intermediaries Supervision Directorate” have been replaced by the words “Market Conduct Supervision Directorate” and the words “Sanctions Directorate” have been replaced by the words “Sanction and Winding up Directorate”.

2. In IVASS Regulation no. 2 of 8 October 2013 the words “Insurance Intermediaries Supervision Directorate” have been replaced by the words “Market Conduct Supervision Directorate”, except for Article 10, Paragraph 5, and Article 14, Paragraph 1 where the words “Insurance Intermediaries Supervision Directorate” have been replaced by the words “Sanction and Winding up Directorate”.

Art. 38

(Changes to IVASS Regulation no. 7 of 2 December 2014)

1. Paragraph 4 of Article 1 (Scope) of IVASS Regulation no. 7 of 2 December 2014, is replaced as follows:

“4. The provisions of this Regulation do not apply to the sanctioning proceedings initiated by IVASS which remain governed by an appropriate Regulation”.

Art. 39

(Publication and entry into force)

1. This Regulation is published in the Official Journal of the Italian Republic and in IVASS Bulletin and website.

2. This Regulation enters into force on 1 October 2018.

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

TEMPLATE OF A LETTER ATTESTING COMPLIANCE⁸⁵

To IVASS
*Sanction and Winding up
Directorate*⁸⁶
or
Guarantee Committee

Re: Name of the undertaking or intermediary
Notification of breach ref. no. of

With this letter, the undersigned, aware of the sanctions set forth in the Decree of the President of the Republic no. 445 of 2000, state that the defence materials sent to IVASS, pursuant to the applicable provisions, on an electronic medium, is identical to the one sent on paper.

Date

The legal representative of the Company

OR

The intermediary

OR

The Corporate Officer or the employee

Office held⁸⁷

Signature

⁸⁵ Please use this annex when sending rebuttal arguments related to sanctioning proceedings against the undertaking or the intermediary or the corporate officer or employee.

⁸⁶ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Sanctions Directorate".

⁸⁷ Please indicate the corporate office held and any power of attorney; for the employees, please indicate the function (e.g. responsible for compliance, responsible for the preparation of the accounts, etc.). For the subjects no longer in office or no longer employed by the undertaking or the intermediary, please indicate the office/function for which the sanctioning procedure was initiated.

CONCEPT OF TURNOVER

1. For the purpose of this Regulation, turnover shall mean:

1.1. for insurance and reinsurance undertakings⁸⁸:

- the value of the gross premiums written, including all the amounts collected or to be collected in relation to the insurance contracts entered into directly by said undertakings or on their behalf, including outward reinsurance premiums, net of taxes and parafiscal charges collected on the amount of the premiums or on the related overall volume. The afore-mentioned insurance contracts include also those that do not fall under the definition of insurance contract according to the reference international accounting standards.

1.2. for the companies other than the undertakings under point 1.1 and for the Ufficio Centrale Italiano (Italian Central Office):

- the total value of the production according to the last available accounts approved by the competent body or in all events the aggregate equal to the sum of the amounts resulting from the sale of products and the provision of services by the involved companies and in reference to their normal business activities, net of the VAT and other taxes directly related to the turnover;

1.3. for the undertakings and companies under points 1.1 and 1.2, required to draw up consolidated accounts, or for the legal person controlled by a company/undertaking, required to draw up consolidated accounts, the turnover normally is the annual consolidated turnover of the most recent year, the consolidated accounts of which have been approved by the competent body of the parent undertaking/company.

⁸⁸ The definition of turnover is compliant with Article 5, Paragraph 3, Letter b) of Regulation (EEC) no. 4064/89 (now Regulation EC no. 139/2004), on the control of concentrations between undertakings. As regards the concept of turnover aid determination, a "Commission notice" no. 98/C 66/04 was issued on the calculation of turnover, with the following clarifications:

- "gross premiums written: the sum of received premiums (which may include received reinsurance premiums if the undertaking concerned has activities in the field of reinsurance). Outgoing or outward reinsurance premiums, i.e. all amounts paid and payable by the undertaking concerned to get a reinsurance cover, are already included in the gross premiums written within the meaning of the Merger Regulation;
- wherever the word "premiums" is used (gross premiums, net (earned) premiums, outgoing reinsurance premiums, etc.), these premiums are related not only to new insurance contracts made during the accounting year being considered but also to all premiums related to contracts made in previous years, which remain in force during the period taken into consideration".