POLITECNICO DI TORINO
Repository ISTITUZIONALE

Towards a Reform of the Italian TUF Sanctioning System: Stronger Safeguards and Litigation-Reducing Tools

Original
Towards a Reform of the Italian TUF Sanctioning System: Stronger Safeguards and Litigation-Reducing Tools / Rainelli, P.. - (2026).

Availability:
This version is available at: 11583/3010782 since: 2026-05-12T14:30:51Z

Publisher:

Published
DOI:

Terms of use:

This article is made available under terms and conditions as specified in the corresponding bibliographic description in the repository

Publisher copyright

(Article begins on next page)

26 November 2026

ALERT MEMORANDUM

Towards a Reform of the Italian TUF Sanctioning System: Stronger Safeguards and Litigation-Reducing Tools

April 8, 2026

The Italian Council of Ministers, acting on a mandate by Parliament, has given its preliminary approval to a draft legislative decree (the Draft Decree) introducing a comprehensive reform of the sanctioning system under Legislative the Italian Consolidated Law on Finance (Decree No. 58/1998 – TUF). The Draft Decree, to be enacted after Parliament's review, aims to strengthen the effectiveness of the sanctions framework, enhance procedural safeguards, and reduce litigation.

The main proposed changes include:

- A significant strengthening of procedural safeguards in sanctioning proceedings (new Article 195 of the TUF);
- The introduction of a materiality threshold for TUF violations (new Article 194-*bis*.01 of the TUF), likely to result in a more selective approach to enforcement;
- A broader application of non-monetary sanctions, including cease and desist orders (new Article 194-*bis*.1 of the TUF);
- The extension of the commitments framework and the introduction of a settlement mechanism for the negotiated application of administrative sanctions (Article 196-*ter* and new Article 196-*quater* of the TUF);
- The application of the *lex mitior* principle to all administrative sanctions under the TUF (new Article 195.1 of the TUF); and
- The revision of confiscation rules (Article 187-*sexies* of the TUF).

For any questions regarding the topics discussed in this note, please contact any attorney at our firm with whom you are in regular contact or the authors listed below.

MILAN

Paolo Rainelli
+39 02 7260 8246
prainelli@cgsh.com

Giulia Checcacci
+39 02 7260 8224
gcheccacci@cgsh.com

ROME

Giuseppe Scassellati-Sforzolini
+39 06 6952 2220
gscassellati@cgsh.com

Bernardo Massella Ducci Teri
+39 06 6952 2290
bmassella@cgsh.com

Laura Prosperetti
+39 06 6952 2640
lprosperetti@cgsh.com

Paola Maria Onorato
T: +39 06 6952 2654
ponorato@cgsh.com

© Cleary Gottlieb Steen & Hamilton LLP,2026 . All rights reserved.
This memorandum, which contains general information and should not be construed as legal advice, is intended for Cleary Gottlieb's clients and friends to update them on regulatory developments that may be of interest to them. Throughout this memorandum, "Cleary Gottlieb" and the "firm" refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions; the term "offices" includes the locations of such affiliated entities.

1. Regulatory Framework and Objectives of the Reform

The reform is based on the following key guiding principles set out by Law no. 21/2024 (the Capital Markets Law): (i) identifying and coordinating unlawful conduct and related sanctions according to their level of seriousness; (ii) clarifying when the *ne bis in idem* principle applies and applying the more favorable law principle (*lex mitior*) to administrative sanctions; (iii) revising sanctioning procedures to ensure the right to be heard, full access to the case file, and a clear separation between investigative and decision-making functions; (iv) introducing litigation-reducing mechanisms, including settlement procedures; (v) streamlining judicial review by granting exclusive jurisdiction to administrative courts; and (vi) providing for sanctions alternative to monetary penalties, together with a review of confiscation and seizure rules.

Against this background, the Draft Decree seeks to enhance both the efficiency and effectiveness of the administrative sanctions system in financial markets. It aims to provide stronger safeguards for parties involved in proceedings while also helping to reduce litigation, ultimately supporting the functioning of supervisory authorities and overall market stability. The reform primarily concerns Titles I-*bis*, II, and II-*bis* of Part V of the TUF, and includes a number of coordinating amendments in Part VI and in other provisions outside the TUF.

2. Key Changes

The reform primarily focuses on the following areas:

2.1. Reform of Sanctioning Proceedings

The Draft Decree rewrites Article 195 of the TUF on sanctioning proceedings, extending its scope to all administrative sanctions imposed under the TUF by the Bank of Italy or Consob.[1] The main changes concern:

- Enhanced right to be heard: the revised provision allows the addressee of the charges to access the case file and, within 30 days of notification of the notice of charges, submit defense briefs, request a hearing during the investigative phase, and present evidence – such as documents, expert reports, opinions, and witness statements – which the prosecuting authority must take into account. Moreover, it allows the defendant to submit written arguments or, in particularly complex or significant cases, request a hearing also during the decision-making phase, before the authority's decision-making body, with the right to be assisted by counsel.
- Separation of functions: the distinction between investigative and decision-making functions is reaffirmed as a core principle of the proceedings, with its detailed implementation to be defined in regulations to be adopted by the Bank of Italy and Consob.
- Mandatory deadline for the conclusion of sanctioning proceedings: the proceedings must be concluded within a mandatory deadline to be set by the authorities in their procedural regulations (to be adopted within nine months of the entry into force of the legislative decree).
- Judicial review: challenges to sanctioning decisions will fall within the exclusive jurisdiction of the administrative courts, specifically the Lombardy Regional Administrative Court (TAR), Milan division, under the fast-track proceedings set out in Article 119 of the Code of Administrative Procedure. Ordinary jurisdiction (civil Court of Appeal) continues to apply to sanctions imposed by Consob or the Bank of Italy for breaches of provisions other than those of the TUF (such as certain violations of Legislative Decree No. 129/2024 on crypto-asset markets).

[1] Under its current wording, Article 195 of the TUF applies the sanctioning procedure described therein only to administrative sanctions (as set out in Title II of Part V of the TUF) relating to intermediaries, markets and market infrastructures, public offerings and corporate disclosure, takeover bids, corporate governance, shareholdings, crowdfunding, digital operational resilience, and EU financial regulations, as imposed by the Bank of Italy or Consob.

2.2. Principle of Materiality of Violations

The Draft Decree introduces new Article 194-*bis*.01 of the TUF, under which administrative sanctions apply only to violations deemed "material". The determination of whether a violation is material will be defined, within their respective competences, by regulations issued by the Bank of Italy and Consob, based on specific criteria. These include, among others: the impact of the conduct on the organisation and risk profile of the entity; the systematic or widespread character of the breach; the level of risk posed to investors or financial stability; any interference with the timely exercise of supervisory functions; the extent of the benefit obtained or the harm caused; and the effects on market transparency and integrity.

In any event, violations subject to a minimum penalty of at least € 10,000 are automatically considered material. The introduction of this provision also leads to the repeal of Article 194-*sexies* of the TUF, concerning harmless conduct.[2]

2.3. Alternative Sanctions

The Draft Decree introduces new Article 194-*bis*.1 of the TUF, significantly broadening the scope of the so-called "alternative sanctions", which are currently available only in limited cases.[3] Under the new provision, the Bank of Italy and Consob may, for any violation of the TUF, impose (either as a substitute for or in addition to monetary penalties): (i) a cease and desist order, requiring the termination of the infringement and the adoption of specific remedial measures within a set timeframe; or (ii) a public statement identifying the breach and the responsible party. Failure to comply with such an order within the prescribed deadline may lead to either an increase of up to one-third of the monetary sanction already imposed, or the imposition of the monetary penalty provided for the underlying violation, increased by up to one-third.

2.4. Extension of the Commitments Framework and Introduction of a Settlement Mechanism

The Draft Decree revises and strengthens the commitment mechanism set out in Article 196-*ter* of the TUF.[4] In particular, it:

- Extends the scope of application of the commitment mechanism to include not only violations within Consob's remit, but also those sanctioned by the Bank of Italy under the TUF;
- Removes the optional consultation phase with market participants on proposed commitments;[5]
- Clarifies that the timely submission of a commitment proposal interrupts the deadline of the sanctioning proceedings and suspends the limitation period, which resumes only if the proposal is rejected or the proceedings are reopened;
- Provides that decisions accepting commitments cannot be challenged, while rejections may be challenged only together with the final sanctioning decision;
- Excludes the use of commitments in cases involving the exercise of supervisory intervention powers by the authorities under the TUF;[6] and

[2] Under the current Article 194-*sexies* of the TUF: *"In the cases provided for in Article 194-quinquies, Consob shall not proceed with the notification of violations where there is no harm to investor protection, market transparency, corporate governance, or the timely exercise of supervisory functions."* Article 194-*quinquies* specifically addresses cases involving reduced penalties.

[3] Specifically, Articles 194-*quater* and 194-*septies* of the TUF, which the draft decree would repeal, currently provide for alternative sanctions in the form of a cease and desist order and a public declaration. These measures apply only to specific violations deemed of low severity or risk, and, in the case of a public declaration, only to violations that have already ceased.

[4] The commitment mechanism was introduced in March 2024 by Article 23 of the Capital Markets Law. In January 2025, Consob submitted the relevant regulations for public consultation, and in June 2025, a revised version of the regulatory text was adopted.

[5] To-date, according to official data available on the Consob website, consultation with industry operators has never been conducted.

[6] Pursuant to Articles 7 (Intervention powers over authorised entities), 7-*bis* (Intervention powers under Title VII, Chapter I, of Regulation (EU) No 600/2014), 7-*ter* (Injunctive powers *vis-à-vis* domestic and non-EU intermediaries), 7-*quater* (Injunctive powers *vis-à-vis* EU intermediaries), as well as Part II (concerning the

- Requires the Bank of Italy and Consob to adopt, within nine months of the entry into force of the legislative decree, implementing regulations setting out the criteria, the rules for submitting and assessing commitments, and the cases where this mechanism cannot be used.

Moreover, new Article 196-*quater* introduces a settlement mechanism for the negotiated application of administrative sanctions, based on a proposal by the party subject to the sanctioning proceedings and a reasoned decision by the authority. The key features are the following:

- The proposal must be submitted within 30 days of notification of the notice of charges (as an alternative to commitments) or within 30 days of the rejection of a commitment proposal.
- If admissible, the authority opens discussions with the party concerned, who must submit a proposal specifying the type, amount, and duration of the sanction to be agreed upon,[7] as well as any corrective measures.
- If the proposal is accepted, the authority imposes the agreed sanctions by a reasoned decision, which is published without delay.[8] The sanction thus determined remains relevant for five years for the assessment of repeat violations[9] and may affect the "fit and proper" eligibility of corporate officers.
- The timely submission of a settlement proposal interrupts procedural deadlines and suspends the limitation period, which resumes only if the proposal is rejected or the proceedings are reopened.
- In case of non-compliance, the authority applies the sanction determined for the original violation, increased by up to one-third (without prejudice to the applicable statutory maximum limits).
- Submitting a settlement proposal entails a waiver of the right to challenge a decision accepting it, while a rejection may be challenged only together with the final sanctioning decision.
- The Bank of Italy and Consob may, within nine months of the entry into force of the legislative decree, adopt regulations governing how proposals are submitted, their admissibility, and the criteria for their assessment.

2.5. *Lex mitior* and Concurrent Violations

The Draft Decree introduces new Article 195.1 of the TUF, clarifying how the more favorable law principle (*lex mitior*) applies to the sanctioned party when the penalty regime is amended. In particular:

- For market abuse provisions (Articles 187-*bis*, 187-*ter*, and 187-*quater* of the TUF), any more lenient rules apply to the sanctioned party,[10] provided that the sanctioning decision has not yet become final.
- This principle is extended to all administrative violations under the TUF: if the penalty rules change, the more favorable regime applies to the sanctioned party,[11] while the determination of whether a

regulation of intermediaries), Title IV (Injunctive measures and crisis management) of the TUF.

[7] The monetary penalty must be no less than the statutory minimum and no more than the statutory maximum reduced by one-fifth.

[8] The party concerned may also request payment of the monetary penalty in instalments even if the financial hardship conditions generally required by Article 26 of Law No. 689 of 1981 for the granting of instalment payments are not met.

[9] Pursuant to Article 194-*bis*, paragraph 1, letter g), of the TUF, which includes *"previous violations in banking or financial matters committed by the same person*" among the criteria that the authority must take into account for the purpose of determining the type, duration, and amount of sanctions.

[10] This principle already applies in practice – although it is not yet formally codified – following Constitutional Court Judgment No. 63 of 2019. In that ruling, the Court recognized the punitive, and therefore quasi-criminal, nature of the administrative sanctions provided for in Articles 187-*bis*, 187-*ter*, and 187-*quater* of the TUF, in line with the established case law of the European Court of Human Rights. For further details, see our alert memorandum of March 29, 2019, available here: https://www.clearygottlieb.com/-/media/files/alert-memos-2019/constitutional-court-greater-safeguards-against-punitive-administrative-penalties.pdf.

[11] Provided that the sanctioning decision has not yet become final.

violation occurred remains based on the law in force at the time the conduct took place.

- In cases where the same party commits multiple breaches of the TUF through a single action or omission, the sanction for the most serious violation applies, increased by up to three times.

The Draft Decree also introduces new Article 195.2 of the TUF, governing cases in which the same conduct breaches provisions enforced by both the Bank of Italy and Consob. In particular, it: (i) aims to coordinate the sanctioning actions of the two authorities, ensuring that they are proportionate and limited to what is strictly necessary to achieve their respective objectives; (ii) establishes mutual information-sharing obligations between the two authorities, including notification to the person concerned.

2.6. Revision of Confiscation

The Draft Decree aligns the rules on confiscation under Article 187-*sexies* of the TUF with Constitutional Court Ruling No. 112/2019.[12] In particular, it (i) limits confiscation to the proceeds of the offense; (ii) introduces the possibility of confiscation of assets of equivalent value (*i.e.*, assets other than cash, where the offender lacks sufficient liquidity); (iii) allows Consob to order confiscation by requiring the payment of a sum equal to the proceeds of the offense.

2.7. Publication of Sanctions

The Draft Decree also revises Article 195-*bis* of the TUF, introducing a more structured framework for the publication of sanctions. In particular, it (i) requires that publication include a brief description of the violation, an unofficial English translation, and an indication of any pending judicial appeal; (ii) harmonizes the rules on anonymous publication and deferral,[13] limiting full exemption from publication to cases where neither anonymization nor deferral is sufficient to safeguard financial market stability.

3. Timeline for the Adoption of the Decree

The Draft Decree is currently under parliamentary review, which may result in clarifications or amendments to the text. The deadline to enact the legislative decree has been extended until the end of June 2026.

4. Potential Practical Impacts

The Draft Decree introduces several measures aimed at strengthening procedural safeguards and making the sanctioning system more efficient and predictable.

First, a key development is the introduction of the provision allowing the recipient of the notice of charges to request a personal hearing before the authority's decision-making body during the decision-making phase of the sanctioning proceedings. This change would fill a long-standing gap in the current sanctioning proceedings, where the defendant has no opportunity to address the decision-making body directly. It therefore represents a significant improvement in terms of defense rights.

Another remarkable innovation is the introduction of the settlement mechanism for the negotiated application of sanctions. Together with the commitment procedure, this tool may facilitate a faster resolution of proceedings and reduce litigation. Notably, a settlement may be requested not only within 30 days of notification of the notice of charges, but also within 30 days following the rejection of a commitment proposal. This would permit a flexible defense strategy: the party concerned may first attempt the commitment mechanism and, if unsuccessful, subsequently opt for settlement.

[12] In Judgment No. 112 of May 10, 2019, the Constitutional Court declared Article 187-*sexies* of the TUF unconstitutional, holding that the mandatory confiscation – whether direct or of assets of equivalent value – of the proceeds of the offense, rather than being limited to the profit, was incompatible with the principle of proportionality of sanctions..

[13] Such measures shall be adopted where standard publication: (i) involves personal data within the meaning of Regulation (EU) 2016/679 (GDPR) and its disclosure would be disproportionate to the violation; (ii) may jeopardize the stability of financial markets or interfere with an ongoing criminal investigation; or (iii) may cause disproportionate and quantifiable harm to the parties concerned.

However, because negotiated sanctions are taken into account for five years when assessing repeat violations and may affect the eligibility of corporate officers, careful, case-by-case consideration will be required before proposing a settlement.

The reform also significantly expands the authority's power to issue cease and desist orders (new Article 194-*bis*.1 of the TUF). Unlike the current framework, this measure will no longer be limited to cases of minor severity and may be combined with the monetary sanction. As a result, parties may be encouraged to proactively propose remedial measures through the commitment mechanism, knowing that the authority could otherwise impose such measures unilaterally.

However, the reform is mainly procedural and does not amend the offenses, the applicable penalties or the dual-track sanctioning system governing market abuse enforcement proceedings under the TUF (although the Capital Markets Law had explicitly mandated an alignment of the supervisory authorities' powers over market abuse with the safeguards set out by the Court of Justice of the European Union[14] and European Court of Human Rights). As a result, the same conduct may still give rise to parallel proceedings criminal and administrative, within the limits established by the landmark *Grande Stevens* judgment [15] and the Italian Supreme Court case law.[16]

…

CLEARY GOTTLIEB

[14] Judgments of the Court of Justice of the European Union, Grand Chamber, March 20, 2018, cases C-537/16 (*Garlsson Real Estate SA* and others), C-524/15 (*Menci*), and C-596/16 & C-597/16 (*Di Puma* and others), which, in the context of *ne bis in idem* and market abuse, emphasized the importance of compensation mechanisms to ensure that the overall amount of penalties imposed is proportionate.

[15] European Court of Human Rights, Second Section, *Grande Stevens v. Italy* of March 4, 2014, in which certain features of Italy's dual-track sanctioning system governing market abuse enforcement proceedings under the TUF were found in breach of the European Human Rights Convention.

[16] See Italian Supreme Court, judgment no. 45829 of June 21, 2018, which, recalling the principles established by the European Court of Human Rights in the *Grande Stevens* and *A. and B. v. Norway* judgments, clarified that there is no violation of the *ne bis in idem* principle when the same conduct gives rise to two proceedings – both of a substantially punitive nature – against the same person, provided that: (i) the two proceedings are complementary; (ii) there is a sufficiently close connection in substance and time between them; and (iii) the overall sanctions comply with the principle of proportionality. In particular, in relation to market abuse, the Court held that the combination of criminal and administrative sanctions is possible, as long as the overall severity of the penalties is not excessive in relation to the seriousness of the conduct and is limited to what is strictly necessary.