

The Bank of Italy's administrative sanctions: principles, procedure and timeline

Principles

The regulation and supervision of banks and other financial intermediaries is a public function. Its exercise presupposes the attribution of public powers of supervision to the Bank of Italy, the institution mandated to perform it in Italy. But the function is strictly governed by the fundamental principles that limit public powers in democracy, principles now well established in Europe and in Italy.

The principle of explicit powers. The supervision area of the Bank can take only those administrative measures that are expressly envisaged by law. In cases of violations falling under the jurisdiction of other authorities or of penal violations, the Bank conveys the relevant information to the other authorities or the magistracy. Naturally, for all the matters under its competence the Bank cooperates fully with the law enforcement authorities.

The principle of transparency and its limits. As a general rule, administrative activity must be completely transparent for the persons upon which it bears. Accordingly, the persons with legitimate interest in the matter, the subjects of supervisory action, are granted access to all relevant administrative acts and files, but the law limits the access of third parties, to protect the confidentiality of sensitive information relating to the economic activities on which supervision bears. The law also envisages official secrecy, which can be lifted, in the case of criminal investigations, only in the framework of cooperation between the Bank of Italy and the magistracy.

The principle of proportionality. Supervisory intervention, including sanctions, must be proportional to the situation of the supervised intermediary. The scope and severity of the Bank of Italy's measures, that is, must be commensurate with the seriousness of the case. The contents of administrative provisions must be adequately explained, and their severity must be properly motivated, under the general principle that administrative acts must be expressly motivated.

The principle of the right to a hearing. Supervisory interventions restrict the free economic actions of private parties; they may impose measures with very substantial economic effects and pecuniary sanctions. Accordingly, the law has progressively strengthened the rules protecting the right of the persons sanctioned to present their case, not only through access to the administrative files (under the principle of transparency), but also by submitting their defense in written form or in personal hearings. Today, supervisory proceedings tend to resemble judicial procedures.

The principle of separation between prosecution and decision. An additional guarantee for the persons subjected to administrative action is the clear separation between the stage in which the supervisory departments assess the situation of the intermediary, take the latter's justifications into account and propose supervisory measures (the investigation-prosecution stage) and the stage of decision, when the measures are actually taken. This separation is maintained not only between the individuals who are responsible for the two stages but also, and more importantly, between the internal procedures involved. This means that the persons potentially subject to the measures can be

sure that the body called on to decide is truly in a third-party position with respect to the proposals formulated in the prosecution stage, so that the decision is impartial and balanced.

The principle of verification of jurisdiction. Under the Italian constitution, all the acts of the public administration – hence, also the measures taken by the Bank of Italy in its supervisory capacity – are subject to the control of the courts upon the appeal of the party affected. For these matters, the administrative tribunals are competent. As to the imposition of sanctions, a Constitutional Court decision on competence is pending.

Procedure and timeline

An administrative sanction involves the payment of an amount of money that may be substantial; above all, it may involve damage to reputation. Accordingly, a proceeding that results in a sanction must comply with strict rules laid down by law for the protection of the parties subject. These rules impose a definite timeline for the proceedings, long enough to permit an extensive adversary hearing between the Bank and the persons subject to sanctions.

Normally, if not exclusively, sanctions originate in inspections, an instrument accorded by law to the Bank of Italy to gather information and data on-site on the situation and operation of intermediaries.

The reports drafted by the inspectors at the end of the inspection contain observations and criticisms that are made known to the top officers of the inspected bank within 90 days of the conclusion of the inspection. From that time the bank has 30 days to prepare its own counter-observations and specify the measures it intends to take in response to the inspectors' criticism.

The persons against whom a proceeding of verification of sanctionable administrative violations must also be notified within 90 days. In the more important cases, the decision to open a proceeding may be made by a collective body within the Bank, the Group for the Examination of Irregularities. Legal rulings have deemed the legal deadline for notification of the verification of a violation (90 days) to be absolute, subject to no possible extensions or exceptions. This is the deadline beyond which the public administration's power to take punitive action lapses.

Until 1 February 2013, the 90 days for notification commenced, for the Bank of Italy, upon the conclusion of the inspection. Now, under new provisions of the Supervision Area, the term begins on the date of the closure of the preliminary phase of assessment of the inspection report (a movable term), certified by the signature of the Managing Director of the Banking and Financial Supervision Area. This date is communicated to the supervised intermediary in the letter specifying the charges.

When the formal charges are lodged, the investigation-prosecution stage begins. The parties accused have 30 days from the date of the accusation to present their counter-arguments; this deadline may be extended, at their request, by 15 to 30 days. In practice, however, wherever it is possible, within reason, counter-arguments submitted after this deadline are also taken into consideration. During this phase the persons involved may request access to files or a personal hearing, in compliance with the rules on transparency and right to a hearing.

Recently, the Bank's internal procedures have been revised, streamlining some phases to speed up the process. However, there is a limit to the shortening of the time required to examine the counter-arguments – which may well be voluminous, technically complex and relating to the positions of many different individuals – without unduly limiting the right to defense.

After evaluating the defensive counter-arguments, the Supervision Area closes the investigation-prosecution stage and addresses a proposal to the Governing Board of the Bank, observing the distinction between this stage and the decision stage. In the more important cases the proposal is accompanied by the prior opinion of another collegial body, namely the Committee for the Examination of Irregularities.

The Governing Board may accept the proposal and impose the sanctions; it may reject it, specifying the reasons; or it may request additional investigation.

The Bank of Italy, in a provision of its own, has fixed the maximum duration of the stage that begins with the notification of the verification and ends with the decision of the Governing Board at 240 days, in addition to the 90 days within which the notification must be made and, obviously, the term within which the supervised intermediary must present its counter-arguments.