

Administrative sanctions and the supervisor's tools

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Alongside the criminal law the TUF and the TUB provide administrative sanctions, imposed by CONSOB or the Banca d'Italia, for breaches of the rules on authorization and conduct. Under Article 7-octies TUF CONSOB may make public that a provider is not authorized and order it to end the breach, and since Law No. 21 of 5 March 2024 it may also prohibit advertising campaigns conducted on the internet. It may order the blocking of websites under the powers of the Growth Decree and refer cases to the prosecutor under Article 166 paragraph 3. For authorized intermediaries, including the Italian branches of third-country firms, Article 190 TUF provides fines from EUR 30,000 to EUR 5 million or up to 10 per cent of turnover, and Article 144 TUB provides fines from EUR 30,000 up to 10 per cent of turnover for banks.¹ For a regulated Swiss institution the administrative route has an additional dimension. Under the memorandum of understanding of 2023 CONSOB and the Banca d'Italia may ask FINMA for information about a Swiss institution's activities in Italy, and FINMA may itself treat a breach of Italian law as an indication that the institution does not offer the guarantee of proper business conduct required by Swiss law. The Italian supervisor therefore no longer depends on its own investigative powers to learn what a Swiss bank does in Italy.

1 Corporate liability under Legislative Decree No. 231 of 2001

Italian law knows a form of liability of legal entities for offences committed in their interest or to their advantage by their directors or employees, established by Legislative Decree No. 231 of 8 June 2001. The liability is called administrative but is imposed by the criminal court in the criminal proceedings against the individual. It applies only to the offences listed in the decree, and it can lead to fines calculated in quotas, confiscation of the profit and disqualification measures. Abusive financial activity under Article 166 TUF is not among the listed offences, although market abuse

under the TUF is (Article 25-sexies).² Money laundering and self-laundering (*autoriciclaggio*, Article 648-ter.1 of the Criminal Code) are listed, as are, since 2019, a number of tax offences under Legislative Decree No. 74 of 10 March 2000, extended in 2020 to omitted and unfaithful returns and undue set-off in cases of cross-border VAT fraud of EUR 10 million or more.³ A Swiss bank whose employees helped Italian clients to conceal income could therefore face corporate liability in Italy for laundering or tax offences committed in its interest, even if abusive activity as such does not trigger it. A seminar announcement of SUPSI in 2019 listed abusive financial activity, tax fraud, laundering connected with tax offences and Legislative Decree No. 231/2001 as the principal Italian risks for Swiss banks serving Italian clients.⁴

2 Notes

1. Brocardi.it, Art. 7-octies TUF (above), para. 1 and para. 1-bis, inserted by Art. 22 para. 1 of Law No. 21 of 5 March 2024; Teleborsa, 24 September 2026 (above), for the blocking of websites; TUF, Art. 190 para. 1 (Sanzioni amministrative pecuniarie in tema di disciplina degli intermediari, covering among others Art. 28 para. 4 and Art. 29-ter para. 4), <https://www.brocardi.it/testo-unico-intermediazione-finanziaria/parte-v/titolo-ii/art190.html>; TUB, Art. 144 para. 1, <https://www.brocardi.it/testo-unico-bancario/titolo-viii/capo-v/art144.html>. ↩
2. Legislative Decree No. 231 of 8 June 2001, Art. 24 to 26 (catalogue of predicate offences, from Art. 24 to Art. 25-undecies), Brocardi.it, <https://www.brocardi.it/responsabilita-amministrativa-persone-giuridiche/capo-i/sezione-iii/>. The catalogue contains market abuse (Art. 25-sexies) but no reference to Art. 166 TUF or to Art. 130–132 TUB. ↩
3. Legislative Decree No. 231/2001, Art. 25-octies (receiving, laundering, use of illicit funds and self-laundering under Art. 648, 648-bis, 648-ter and 648-ter.1 of the Criminal Code), <https://www.brocardi.it/responsabilita-amministrativa-persone-giuridiche/capo-i/sezione-iii/art25octies.html>, and Art. 25-quinquiesdecies (tax offences, inserted by Decree-Law No. 124 of 26 October 2019, converted by Law No. 157 of 19 December 2019; para. 1-bis on Art. 4, 5 and 10-quater of Legislative Decree No. 74/2000 in cross-border VAT fraud of at least EUR 10 million, amended by Legislative Decree No. 156 of 4 October 2022), <https://www.brocardi.it/responsabilita-amministrativa-persone-giuridiche/capo-i/sezione-iii/art25quinquiesdecies.html>. Para. 1-bis

goes back to Legislative Decree No. 75 of 14 July 2020 implementing Directive (EU) 2017/1371, <https://www.gazzettaufficiale.it/eli/id/2020/07/15/20G00091/sg>. ↩

4. SUPSI, Centro competenze tributarie, seminar "Le banche svizzere come contribuenti italiani?", 20 March 2019, https://www.supsi.ch/documents/d/deass/20190320_banche-svizzere-come-contribuenti-italiani. ↩

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