

## **Regulation concerning the procedures for the adoption of general regulatory acts pursuant to Article 23 of Law no. 262 of 28 December 2005, as amended**

(Adopted by Consob with resolution no. 19654 of 5 July 2016 and subsequently amended with resolution no. 22203 of 10 February 2022)<sup>1</sup>

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### Art. 1 *(Scope of application)*

1. This regulation governs the adoption of general regulatory acts by Consob, meaning regulations and general measures of a prescriptive nature.
2. The following fall outside the scope of this regulation:
  - a) answers to questions relating to specifically identified cases;
  - b) acts relating to the organisation and operation of Consob, including those concerning personnel, expenditure management and access to documents;
  - c) the regulations adopted pursuant to Law no. 241 of 7 August 1990, as amended;
  - d) the general regulatory acts adopted by Consob outside its performance of supervisory functions attributed to it by law;
  - e) *...omissis...<sup>2</sup>*;
  - f) the opinions and other assessments formulated by Consob in relation to regulatory acts or acts of general content falling within the competence of other Authorities
3. Consob shall take the provisions of this regulation into account in its institutional collaboration and cooperation activity performed, including at international level, on account of

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1 Published in Official Journal no. 180 of 3.8.2016. Resolution no. 22203 of 10.2.2022 is published in Official Journal no. 43 of 21.2.2022 and in CONSOB Fortnightly bulletin no. 2.1, February 2022; this entered into force from the day following its publication in the Official Journal.

2 Paragraph repealed with resolution no. 22203 of 10.2.2022.

the supervisory functions assigned to it, as well as in the adoption of general communications providing interpretations or clarifications of primary or secondary rules and recommendations.

Art. 2  
*(Planning)*

1. Consob, for the purposes of the effective and efficient pursuit of its objectives, annually defines a non-binding planning document containing the plan of the activities it intends to carry out for the adoption of general regulatory acts. The planning of the regulatory impact assessment referred to in Article 8 shall be scheduled on a two-year basis<sup>3</sup>.
2. For the purposes of the planning referred to in paragraph 1, Consob shall take into account:
  - a) the higher-level regulatory sources, including European Union law, to be transposed or implemented by its own general regulatory acts;
  - b) the commitments assumed in national and international fora for cooperation between financial market supervisory authorities;
  - c) the results of the regulatory impact assessment previously carried out pursuant to Article 8<sup>4</sup>;
  - d) the need to carry out the regulatory impact assessment of the legislation referred to in Article 8<sup>5</sup>;
  - e) any indications and proposals received from supervised entities, investors, savers as well as associations representing such entities.
3. The activity indicated in the planning document is supplemented or amended during the reference year if new regulatory needs arise. Consob may in any case proceed with the adoption of acts of general regulation not provided for in the programming document.
4. The planning document and the amendments made to the activity plan shall be published on the Consob website.

Art. 3  
*(Principle of proportionality and regulatory impact analysis)*

1. In defining the content of its general regulatory acts, Consob applies the principle of proportionality by adopting the solutions reasonably suitable to achieve the purposes of the regulatory act with the lowest additional costs for the recipients.

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3 Paragraph thus replaced with resolution no. 22203 of 10.2.2022.

4 Paragraph thus amended with resolution no. 22203 of 10.2.2022 which replaced the words: “periodic review” with the words: “impact assessment of the regulation”.

5 Paragraph thus amended with resolution no. 22203 of 10.2.2022 which replaced the words: “periodic review” with the words: “impact assessment of the regulation”.

2. In order to apply the principle of proportionality, Consob carries out the regulatory impact analysis on the basis of the European Commission Guidelines on better regulation, grading the analysis methods and procedures according to the relevance of the risks related to the supervisory purposes, the complexity of the matter and the margin of discretion resulting from the higher-level legislation<sup>6</sup>.
3. The regulatory impact analysis, in compliance with the provisions of paragraph 2:
  - (a) indicates the addressees, scope, sectors and markets affected by the regulatory act, the basis and objectives of the regulatory action, after carrying out the market and regulatory failures analysis<sup>7</sup>;
  - b) defines the regulatory options, also considering, where permitted by law, the option of not carrying out any regulatory intervention;
  - (c) estimates the expected costs and benefits of the regulatory options, including in view of the timing of their implementation, the type of recipients of the rules and the findings of the consultation procedures;
  - (d) indicates the administrative burdens introduced or eliminated for investors and undertakings, estimating their impact;
  - (e) identifies indicators to be used for the subsequent review of the act;
  - (f) gives an account of the exceptional circumstances in relation to which it is necessary to exceed the minimum level of European regulation.

Art. 4  
*(Drafting of the rules)*

1. Consob, in drafting the provisions, adopts clear, understandable language that is consistent with the higher-level legislative framework.

Art. 5  
*(Consultation)*

1. General regulatory acts shall be adopted after public consultation.
2. For the purposes of preparing the outline of a general regulatory act, Consob may carry out preliminary consultations aimed at collecting evidence and opinions on matters subject to regulatory action. Consob may establish committees, composed of market operators, stakeholders' representatives and experts, to request a prior opinion on the documents to be submitted for consultation. The committees may also make proposals and observations on the effectiveness of the activities carried out by Consob pursuant to this regulation. The committees

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6 Paragraph thus amended with resolution no. 22203 of 10.2.2022 which replaced the words: "according to the" with the words: "on the basis of the".

7 Paragraph thus amended with resolution no. 22203 of 10.2.2022 which after the word: "indicates" inserted the words: "the addressees, scope, sectors and markets affected by the regulatory act,".

shall be set up and governed by Article 28 of the Organisation and Operation Regulations, adopted with resolution No 8674 of 17 November 1994, as amended.

2-bis. Unless otherwise stated and justified by Consob, the time limit for concluding the consultation is not less than sixty calendar days from the date of commencement of the consultation<sup>8</sup>.

3. Before adopting the general regulatory act, Consob shall issue a document containing:

- (a) an outline of the act and an illustration, including a summary, of its contents;
- (b) a description of the motives, objectives and consequences of the measure, the preliminary consultations carried out, as well as the regulatory impact analysis activities conducted and the regulatory impact assessment activity performed, if any, pursuant to Article 8<sup>9</sup>;
- c) the methods and deadline by which the observations can be sent to Consob.

4. The Consultation Paper shall be published on the Consob website<sup>10</sup>.

5. Each party concerned may submit their comments on the Consultation Paper to Consob in the manner and by the deadline indicated in the actual paper.

6. Observations on the document are published, with names, on the Consob website within thirty days of the end of the consultation, unless a request is made to publish them anonymously or not to disclose them by the party that sent them<sup>11</sup>.

7. During the consultation stage, Consob may also hold meetings open to the public and meetings with small groups of interested parties<sup>12</sup>.

8. Consob may, if it deems it necessary, hold further consultations on an outline of a general regulatory act.

9. Consob shall submit the adoption of recommendations to the consultation procedures envisaged in this article, if they are general in content.

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8 Paragraph included with resolution no. 22203 of 10.2.2022.

9 Letter thus amended with resolution no. 22203 of 10.2.2022 that after the words: "regulatory impact analysis activities conducted" added the words: "and the regulatory impact assessment activity performed, if any, pursuant to Article 8".

10 Paragraph thus amended with resolution no. 22203 of 10.2.2022 which repealed the last sentence.

11 Paragraph thus amended with resolution no. 22203 of 10.2.2022 which replaced the words: "at the end" with the words: "within thirty days of the end".

12 Paragraph thus amended with resolution no. 22203 of 10.2.2022 which repealed the last sentence.

Art. 6

*(Illustrative report on the results of the consultation  
and the regulatory impact)<sup>13</sup>*

1. Consob, having concluded the consultation, shall adopt the final act accompanied by a report setting out the consequences on the regulation, on the businesses of enterprises and operators and on the interests of investors and savers. It shall also contain: the reasons for and the objectives of the measure, the results of the regulatory impact analysis activity conducted and of the regulatory impact assessment activity performed, if any, pursuant to Article 8, the results, including in summary form, of the consultations carried out, the evaluation elements that emerged during any meetings with interested parties not open to the public and the indicators that will be used for the purposes of subsequent review of the act<sup>14</sup>.
2. Without prejudice to the forms of publication envisaged by law, general regulatory acts are also published, together with the illustrative report, on the Consob website.

Art. 7

*Cases of waiver*

1. Consob may, stating the reasons in its motivation for the act, fully or partly waive the provisions of this regulation in cases of necessity and urgency or for reasons of confidentiality, when one of the following reasons applies:
  - market situations likely to jeopardise the orderly functioning and integrity of financial markets and investor protection, requiring the timely adoption of general regulatory acts;
  - the deadline for implementation set by a higher-level regulatory source prevents compliance;
  - specific and justified needs for the protection of the interested parties require the immediate adoption of general regulatory acts.
2. Consob may, stating the reasons in its motivation for the act, fully or partly waive the provisions of this regulation when the regulatory act does not involve the exercising of discretionary choices and:
  - a) is limited to implementing or transposing, without introducing innovative elements, the content of acts, including non-binding acts, of European Authorities already subject to consultation or regulatory impact analysis procedures; or
  - b) is merely to comply with directly applicable or binding regulatory provisions or acts of other Authorities<sup>15</sup>.

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13 Heading thus replaced with resolution no. 22203 of 10.2.2022.

14 Paragraph thus amended with resolution no. 22203 of 10.2.2022 that after the words: "regulatory impact analysis activity conducted" inserted the words: "and of the regulatory impact assessment activity performed, if any, pursuant to Article 8" and replaced the words: "of the consultation" with the words: "of the consultations carried out, the evaluation elements that emerged during any meetings with interested parties not open to the public".

15 Paragraph added with resolution no. 22203 of 10.2.2022.

Art. 8

*(Regulatory impact assessment)*<sup>16</sup>

1. Based on the planning referred to in Article 2, Consob submits the provisions contained in the acts referred to in Article 1, paragraph 1, or in parts thereof, that have not been subject to amendment in the last three years, to regulatory impact assessment, giving priority to those on which regulatory impact analysis has been carried out pursuant to Article 3 and that have, in any case, determined significant impacts on the recipients, or on the overall economic and financial system, or for which the existence of critical issues was found during implementation or due to changes in the reference socio-economic context, assessing their suitability to achieve the objectives pursued in relation to the overall cost of the regulatory framework<sup>17</sup>.

2. ...*omissis*...<sup>18</sup>

Art. 9

*(Acts adopted jointly with other Authorities)*

1. The provisions of this Regulation shall apply to general regulatory acts to be adopted in agreement or jointly with other Authorities, in accordance with the memoranda of understanding or the relevant agreements concluded with those Authorities aimed at regulating the implementation of the principles referred to in Article 23 of Law No. 262 of 28 December 2005<sup>19</sup>.

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<sup>16</sup> Heading thus replaced with resolution no. 22203 of 10.2.2022.

<sup>17</sup> Paragraph thus replaced with resolution no. 22203 of 10.2.2022.

<sup>18</sup> Paragraph repealed with resolution no. 22203 of 10.2.2022.

<sup>19</sup> Paragraph thus replaced with resolution no. 22203 of 10.2.2022.