

## COMP AM Article 78

### 08.10.2013

#### Article 78

##### Penalties

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, proportionate and dissuasive. ~~*The rules on penalties adopted in accordance with this Article shall be subject to appropriate procedural safeguards in conformity with the general principles of Union law and the Charter of Fundamental Rights, including those concerning the right to an effective judicial remedy, due process and the principle of ne bis in idem.*~~
2. Where the controller has established a representative, any penalties shall be applied to the representative, without prejudice to any penalties which could be initiated against the controller.
3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

#### Recitals

(119) Penalties should be imposed to any person, whether governed by private or public law, who fails to comply with this Regulation. Member States should ensure that the penalties should be effective, proportionate and dissuasive and should take all measures to implement the penalties. *The rules on penalties should be subject to appropriate procedural safeguards in conformity with the general principles of Union law and the Charter of Fundamental Rights, including those concerning the right to an effective judicial remedy, due process and the principle of ne bis in idem.*

*(119a) In applying penalties, Member States should show full respect for appropriate procedural safeguards, including the right to an effective judicial remedy, due process, and the principle of ne bis in idem.*

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.