



European Securities and
Markets Authority

Final report

**Draft Implementing Technical Standards on penalties and measures
under Directive 2009/65/EC (UCITS Directive)**

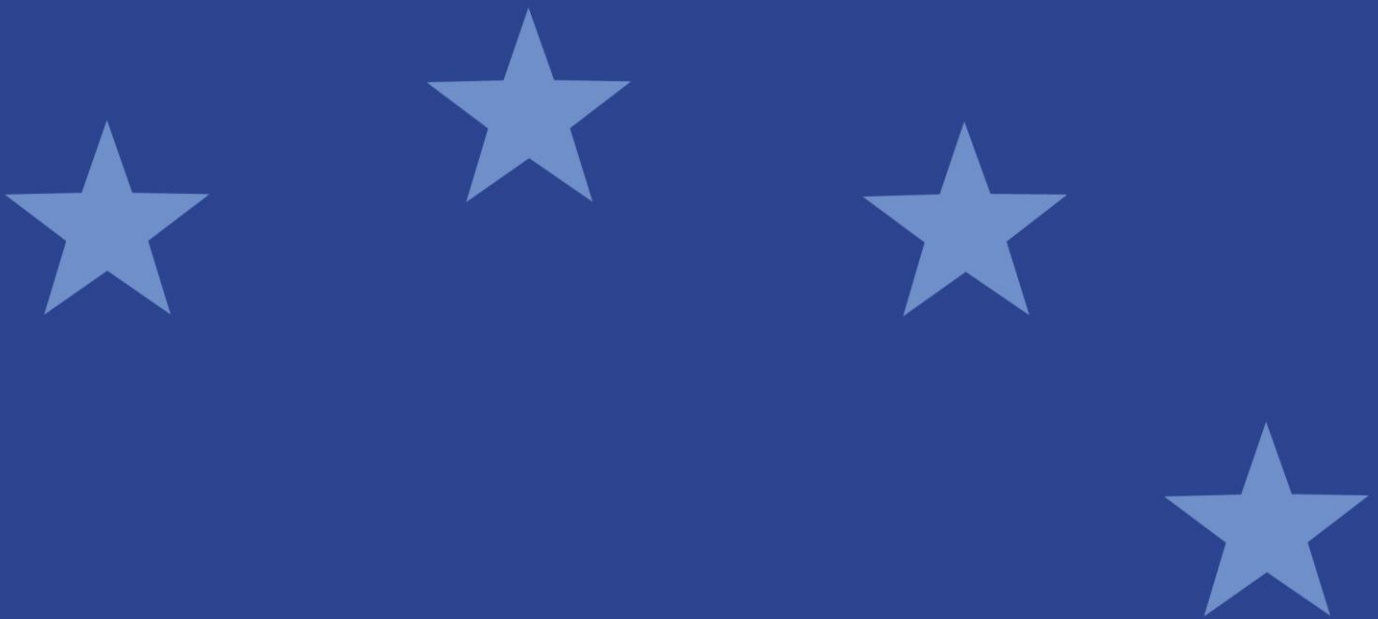


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Acronyms

EEA	European Economic Area
ESMA	European Securities and Markets Authority
ITS	Implementing Technical Standards
NCA	National Competent Authority
UCITS	Undertakings for Collective Investment in Transferable Securities
UCITS Directive	Directive 2009/65/EC
UCITS V Directive	Directive 2014/91/EU

1 Executive Summary

Article 99e(3) of the UCITS Directive, as introduced by the UCITS V Directive requires ESMA to develop draft implementing technical standards (ITS) concerning the procedures and forms for submitting information regarding penalties and measures as referred to in Article 99e of the UCITS Directive.

Article 99e of the UCITS Directive provides for two types of submission of information, which are as follows:

- National competent authorities (NCAs) shall provide ESMA annually with aggregated information regarding all penalties and measures imposed in accordance with Article 99.
- Administrative penalties or measures that are disclosed to the public by NCAs shall simultaneously be reported to ESMA.

ESMA is required to submit the draft ITS to the European Commission by 18 September 2015. ESMA did not conduct open public consultations on the draft ITS, as this would have been disproportionate in relation to their scope and impact, taking into account that the addressees of the ITS would only be NCAs and not market participants.

Annex 1 recalls the legislative mandate to develop draft ITS and Annex 2 sets out the full text of the draft ITS.

2 Annexes

Annex 1 Legislative mandate

1. Regulation (EU) No 1095/2010 of the European Parliament and of the Council (the ESMA Regulation) empowers ESMA to develop draft implementing technical standards where the European Parliament and the Council delegate power to the European Commission to adopt implementing acts by means of delegated acts under Article 291 the Treaty on the Functioning of the European Union (TFEU).
2. Article 99e(3) of the UCITS Directive provides that:

ESMA shall develop draft implementing technical standards to determine the procedures and forms for submitting information as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 18 September 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.



Annex 2 Draft implementing technical standards on the procedures and forms for submitting information to ESMA by competent authorities in relation to penalties and measures in accordance with Article 99e of Directive 2009/65/EC

COMMISSION IMPLEMENTING REGULATION (EU) .../...

laying down implementing technical standards with regard to standard procedures and forms for submitting information in accordance to Directive 2009/65/EC of the European Parliament and of the Council

of [dd mm yyyy]

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of 13 July 2009 of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)¹, and in particular Article 99e(3) thereof,

Whereas:

- (1) It is appropriate to set out common procedures and forms for submitting information to the European Securities and Markets Authority (ESMA) by competent authorities with regard to penalties and measures they impose as referred to in Article 99e of Directive 2009/65/EC.
- (2) In order to enable ESMA to correctly identify and register the information on penalties and measures imposed in accordance with Article 99 of Directive 2009/65/EC, it is appropriate to require competent authorities to provide it with detailed and harmonised information on penalties and measures notified.
- (3) It is necessary to avoid double entries and negative conflicts of competence between multiple reporting authorities within a Member State. Designating a single contact point per Member State with ESMA is the most effective and least onerous means of pursuing such objective.
- (4) With a view to including meaningful information in the annual report on penalties and sanctions to be published by ESMA according to Article 99e of Directive 2009/65/EC, competent authorities should report the information by using specific forms clearly indicating which Articles of Directive 2009/65/EC were infringed.

¹ OJ L 302, 17.11.2009, p.32.

- (5) The reporting of administrative penalties and measures disclosed to the public should clearly identify penalties and measures by offering sufficient details. It is, therefore, appropriate to set out a form to be used by competent authorities for this purpose.
- (6) The application of this Regulation should be deferred in order to be aligned with the date from which Member States shall apply the laws, regulations and administrative provisions necessary to comply with Directive 2014/91/EU.
- (7) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (8) ESMA did not conduct open public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse potential related costs and benefits of introducing the standard forms and procedures for the relevant competent authorities, as this would have been disproportionate in relation to their scope and impact, taking into account that the addressees of the implementing technical standards would only be the national competent authorities of the Member States and not market participants. ESMA requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council².

HAS ADOPTED THIS REGULATION:

Article 1

Contact points

- (1) Competent authorities shall designate contact points for communications on any issue relating to the submission of information according to Articles 2 and 3 and shall notify the European Securities and Markets Authority (ESMA) of those contact points.
- (2) ESMA shall designate a contact point for receiving the information set out in Article 2 and 3 and for communications on any issue relating to the reception of such information.
- (3) ESMA shall publish the contact point referred to in paragraph 2 on its website.

Article 2

Annual submission of aggregated information

Competent authorities shall provide ESMA with the information referred to in Article 99e(1) of Directive 2009/65/EC by filling in the form set out in Annex I to this Regulation. That form shall relate to all the penalties and measures imposed during the previous calendar year. It shall be completed electronically and sent to ESMA by e-mail using the contact point referred to in Article 2(2) of this Regulation no later than 31 March of each year.

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



Article 3

Reporting procedures and forms

- (1) Competent authorities shall report to ESMA the administrative penalties and measures referred to in Article 99e(2) of Directive 2009/65/EC using the existing interfaces provided by the information technology system, and the related database, set up by ESMA to manage the receipt, storage and publication of information on administrative penalties and measures in accordance with Article 99e of Directive 2009/65/EC.
- (2) The administrative penalties and measures shall be submitted to ESMA in a report file in the format set out in Annex II.

Article 4

Invalidation and updating of reports

- (1) Where a competent authority wishes to invalidate an existing report file it has previously submitted to ESMA according to Article 3, it shall cancel the existing report and send a new report file.
- (2) Where a competent authority wishes to update an existing report file it has previously submitted to ESMA according to Article 3, it shall resubmit the report file with the updated information.

Article 5

Entry into force and application

- (1) This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
It shall apply from 18 March 2016.
- (2) This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

On behalf of the President

[Position]



ANNEX I

Form for annual submission of aggregated information regarding all penalties and measures imposed

**Aggregated information regarding all penalties and measures imposed by
[name of the competent authority] in [year]**

FROM:

Member State:

Competent authority:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

ESMA

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with Article 99e(1) of Directive 2009/65/EC, I wish to provide you with aggregated information regarding all penalties and measures imposed by [name of the competent authority].

Penalties:

Article of Directive 2009/65/EC transposed by the national provisions which were infringed	Number of penalties imposed in the reporting period	Amount of penalties imposed in the reporting period
[number of the article, paragraph, sub-paragraph]		[amount of

	[number of penalties]	penalties*
Total penalties	[total number of penalties[†]]	[total amount of penalties*[†]]

* Please insert value in Euro or in national currency. If the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions, add the mention "AGGREGATED FIGURE" to each value.

[†] As penalties imposed may cover more than one legislative provision, the sum of the different lines (number of penalties/amount) may not correspond to the total number/amount of penalties imposed.

Measures:

Article of Directive 2009/65/EC transposed by the national provisions which were infringed	Number of measures imposed in the reporting period
[number of the article, paragraph, sub-paragraph]	[number of measures]
Total measures	[total number of measures[†]]

[†] As measures imposed may cover more than one legislative provision, the sum of the different number of measures may not correspond to the total number of measures imposed.

Yours sincerely,

[signature]

ANNEX II

Form for reporting administrative penalties or measures disclosed to the public

Field	Description	Type
Sanction Identifier	The identification code attributed by the competent authority for the purpose of the submission of the administrative penalty or measure	Optional
Legal Framework	The acronym of the Union legislative text under which the administrative penalty or measure has been imposed.	Mandatory
Member State	The acronym of the Member State of the competent authority submitting the administrative penalty or measure	Mandatory
Entity Identifier	The identification code used to uniquely identify a legal entity on which an administrative penalty or measure has been imposed.	Mandatory (for legal persons only)
Authority Key	The identifier of the competent authority submitting the administrative penalty or measure	Mandatory
Entity Legal Framework	The acronym of the Union legislative text that applies to the entity on which the administrative penalty or measure has been imposed.	Mandatory (for legal persons only)
Entity Full Name	Full name of the entity on which the administrative penalty or measure has been imposed	Optional
Person Full Name	Full name of the persons on whom an administrative penalty or measure has been imposed.	Mandatory (for natural persons only)
Sanctioning NCA	The acronym of the competent authority that has imposed the administrative penalty or measure.	Mandatory
Free Text	Text of the administrative penalty or measure in language 1	Mandatory
Free Text	Text of the administrative penalty or measure in language 2	Optional
Date	The date on which the administrative penalty or measure was imposed by the competent authority	Mandatory
Expiration date	Date on which the effects of the administrative penalty or measure ends	Optional