



European Securities and
Markets Authority

Report

Penalties and measures imposed under the AIFMD in 2020



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1 Executive Summary

Background

ESMA is required to draw up an annual report on the application of administrative measures and imposition of penalties in the case of breaches of the provisions adopted in the implementation of Directive 2011/61/EU (AIFMD) in the different Member States pursuant to Article 48(3) AIFMD. This report contains information on the penalties and measures imposed by NCAs from 1 January 2020 to 31 December 2020.

Overall, 11 NCAs imposed a total of 61 penalties; the total aggregated value of financial penalties imposed amounted to around EUR 3,354,407. 12 NCAs imposed a total of 70 measures. 13 NCAs did not impose any sanction (penalty or measure) during this reference period.

Broadly, the data gathered under the sanction reports published so far¹ keeps evidencing that the sanctioning powers are not equally used among NCAs and, besides a few NCAs, the number and amount of sanctions issued at national level remains relatively low.²

Work will continue in the future (including by issuing the annual iterations of this report) to promote further convergence in the use of sanctioning powers by NCAs across the EU.

Next Steps

The information reported to ESMA and included in this report will inform ESMA's ongoing work aimed at fostering supervisory convergence in the application of the AIFMD and contribute to ESMA's goal to develop a common EU outcome-focused supervisory and enforcement culture. An annual report will be issued for the future reporting periods.

¹ This is the second report published by ESMA concerning penalties and measures issued under the AIFMD. The AIFMD sanctions report published so far covers the reporting periods 2018-2020. ESMA has also published the UCITS Sanction Report for the reporting period 2016/2020. The 2020 UCITS Sanction Report was published concurrently to this report and is available on the ESMA website.

² For further information on the use of the sanctioning tool at national level, please refer to Section 6 of this report.

2 Background and relevant regulatory framework for reporting on AIFMD sanctions

1. This report is drafted pursuant to Article 48(3) of AIFMD.³ According to this article, ESMA shall draw up an annual report on the application of administrative measures and imposition of penalties in the case of breaches of the provisions adopted in the implementation of the AIFMD in the different Member States. NCAs shall provide ESMA with the necessary information for that purpose.
2. This is the second report published by ESMA concerning penalties and measures issued under the AIFMD.⁴
3. The information submitted by NCAs refer to all the penalties and measures imposed during the previous calendar year.

3 Information on the aggregated penalties and measures imposed

4. Article 48(1) of the AIFMD provides that “*Member States shall lay down the rules on measures and penalties applicable to infringements of the national provisions adopted pursuant to the Directive and shall take all measures necessary to ensure that those rules are enforced [...] [and] shall ensure, in accordance with their national law, that the appropriate administrative measures can be taken or administrative penalties be imposed against the persons responsible where the provisions adopted in the implementation of the Directive have not been complied with*”. According to the same provision, Member States shall also ensure that those measures are “*effective, proportionate and dissuasive*”.
5. For the purpose of this report, only the penalties and measures issued under the AIFMD have been considered. Any infringement of delegated or implementing acts issued under that Directive or national provisions does not fall within the remit of the report, even where notified to ESMA by a relevant NCA.
6. While the above implies that the reported data does not allow to produce granular statistics based on it, ESMA deems that the 2020 data, read in conjunction with data on sanctions issued in previous years⁵, can provide a useful indication on the use of the sanctioning tool at national level.
7. The aggregated information contained in this report reflects the data submitted to ESMA by the NCAs.

³ OJ L 302, 17.11.2009, p. 32.

⁴ The 2018-2019 AIFMD sanctions report published by ESMA is available at the following link: [esma34-32-548_2018-2019_aifmd_sanctions_report.pdf \(europa.eu\)](https://esma.europa.eu/press-material/press-news/press-news-releases-and-other-publications/2020-03-19-2018-2019-aifmd-sanctions-report)

⁵ For the reporting period 2018-2019, see the AIFMD sanctions report mentioned in the previous footnote

4 Guidance for interpretation of penalties and measures reported

8. The penalties imposed may cover more than one legislative provision, therefore the sum of penalties and measures disclosed in Section 5.2 of this report may not correspond to the total number/amount of penalties and total number of measures imposed as disclosed in Section 5.1.
9. If the relevant penalties/measures refer not only to breaches relating to one single article of the AIFMD, but also to another article of the AIFMD or other provisions (at EU and/or national level), and the relevant amounts cannot be disaggregated per article of the AIFMD which was infringed, the mention "AGGREGATED FIGURE" is added to each value in the annexes of this report.
10. The amount of penalties can be submitted in Euro or in the national currency, where this is different from the Euro. In the latter case, information on the equivalent value in Euro of the total amounts of penalties as well as the FX rate is also provided by NCAs.

5 Sanctions imposed by NCAs

5.1 Overview of the penalties and measures imposed in 2020

NCAs' Member States	Sanctions			No sanctions imposed
	- penalties ⁶	- measures ⁷	Total aggregate amount of financial penalties	
Austria		3		
Belgium	2		EUR 35,000	
Bulgaria				X
Croatia		5		
Cyprus				X
Czech Republic	9	9	CZK 700,000 ⁸	
Denmark		4		
Estonia				X
Finland				X
France	1	3	EUR 20,000	
Germany		2		
Greece				X
Hungary	18	22	HUF 15,500,000 ⁹	
Ireland				X
Italy	16		EUR 936,000	
Latvia				X
Lithuania				X
Luxembourg	4		EUR 176,000	
Malta				X
Netherlands				X
Poland	3	2	EUR 1,787,726	
Portugal	4		EUR 290,000	
Romania	2	5	EUR 17,109	
Slovenia	1	1	EUR 3,450	
Slovakia	1		EUR 20,000	
Spain				X
Sweden				X
Liechtenstein		13		
Norway		1		
Iceland				X
Total	61	70	~ EUR 3,354,407	13 NCAs imposed no sanctions

⁶ As the penalties imposed may cover more than one legislative provision, the total number/amount of penalties disclosed in this Section may not correspond to the sum of the number/amount of penalties disclosed in Section 5.2.

⁷ As the measures imposed may cover more than one legislative provision, the total number of measures disclosed in this Section may not correspond to the sum of the number of measures disclosed in Section 5.2.

⁸ Corresponding to EUR 26,672 (CZK/EUR= 0,038)

⁹ Corresponding to EUR 42,450.63 (HUF/EUR=0,0027)

5.2 Overview penalties and measures imposed during 2020 by NCAs' Member States (split by AIFMD Chapter)¹⁰

AIFMD	AIFMD Article	Penalties/Measures	Slovakia	Czech Republic	Belgium	Austria	France
Chapter I <i>General Provisions</i>	Art. 3	Number of penalties	1				
		Amount of penalties	EUR 20,000*				
	Art 3(3)	Number of penalties		9	2		
		Amount of penalties		CZK 700,000 ¹¹	EUR 35,000		
	Art 4	Number of penalties					1
		Amount of penalties					EUR 20,000*
Chapter II <i>Authorisation of AIFMs</i>	Art. 7	Number of measures					1*
		Number of penalties	1				
	Art. 8(1)(a)(e)	Amount of penalties	EUR 20,000*				
		Number of measures				1*	

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

¹⁰ NCAs who have not imposed penalties/measures during the period are not reflected in this table.

¹¹ For the corresponding amount in Euro please refer to footnote 8.

AIFMD	AIFMD Article	Penalties/Measures	Germany	Czech Republic	Austria	Norway	Italy
Chapter II <i>Authorisation of AIFMs</i>	Art. 8(1)(c)	Number of measures	1*				
	Art. 9	Number of measures	1				
		Number of penalties					3
		Amount of penalties					EUR 216,000*
	Art. 9(3)(5)	Number of measures			1*		
	Art. 11(a)	Number of measures			1		
	Art. 11(c)	Number of measures		9			
	Art. 11(e)	Number of measures				1	
Chapter III <i>Operating conditions for AIFMs</i>	Art. 12	Number of measures					
	Art. 14	Number of measures					

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

AIFMD	AIFMD Article	Penalties/ Measures	Croatia	Poland	Luxembourg	Italy	Hungary	Romania
Chapter II <i>Authorisation of AIFMs</i>	Art. 9(5)	Number of measures	1	1*				
	Art. 9(7)	Number of measures		1*				
	Art. 10(1)	Number of penalties			1			
Amount of penalties				EUR 8,500*				
Chapter III <i>Operating conditions for AIFMs</i>	Art. 12	Number of penalties				15		
		Amount of penalties				EUR 876,000*		
	Art. 12(1)	Number of measures		1*				
		Number of penalties		2				
		Amount of penalties		EUR 1,354,338*				
	Art. 12(1)(a)	Number of measures					1	
		Number of penalties						1
		Amount of penalties						EUR 6,841,5
	Art. 12(1)(b)	Number of measures					2	
		Number of penalties					1	
		Amount of penalties					HUF 500,000* ¹²	
	Art. 12(1)(c)	Number of measures					2	
		Number of penalties					2	
		Amount of penalties					HUF 1,200,000* ¹³	
	Art. 12(1)(c)	Number of measures					2	
Number of penalties						2		
Amount of penalties						HUF 1,200,000* ¹⁴		

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

¹² Corresponding to EUR 1,369.37 (HUF/EUR=0,0027)

¹³ Corresponding to EUR 3,286.5 (HUF/EUR=0,0027)

¹⁴ For the corresponding amount in Euro please refer to footnote 13.

AIFMD	AIFMD Article	Penalties/ Measures	Romania	Portugal	Luxembourg	Italy	Hungary	Denmark	
Chapter III <i>Operating conditions for AIFMs</i>	Art. 12(1)(e)	Number of penalties	1	3	1				
		Amount of penalties	EUR 10,268.21	EUR 190,000*	EUR 23,800*				
	Art. 14	Number of penalties				5			
		Amount of penalties				EUR 480,000*			
	Art. 14(1)	Number of measures					1		
	Art. 14(1)(a)	Number of measures						1	
		Number of penalties			1	1		1	
		Amount of penalties			EUR 100,000*	EUR 10,000*		HUF 600,000* ¹⁵	
	Art. 14(2)	Number of measures						2	
		Number of penalties						2	
		Amount of penalties						HUF 3,000,000* ¹⁶	
	Art. 15	Number of measures							1
		Number of penalties					1		
		Amount of penalties					EUR 41,000*		
	Art. 15(2)	Number of measures						4	
		Number of penalties				2		4	
		Amount of penalties				EUR 32,300*		HUF 4,000,000* ¹⁷	
	Art. 15(3)(b)	Number of penalties				1			
		Amount of penalties				EUR 23,800*			
	Art. 15(3)(c)	Number of measures	1*						
	Art. 16	Number of measures						2	1
		Number of penalties						1	
Amount of penalties							HUF 1,000,000* ¹⁸		
Art. 16(1)	Number of penalties				1				
	Amount of penalties				EUR 8,500*				
Art. 16(2)	Number of measures	1*							

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

¹⁵ Corresponding to EUR 1,643.25 (HUF/EUR=0,0027)

¹⁶ Corresponding to EUR 8,216.25 (HUF/EUR=0,0027)

¹⁷ Corresponding to EUR 10,955 (HUF/EUR=0,0027)

¹⁸ Corresponding to EUR 2,738.75 (HUF/EUR=0,0027)

AIFMD	AIFMD Article	Penalties/ Measures	Denmark	France	Italy	Liechtenstein	Austria	Hungary
Chapter III <i>Operating conditions for AIFMs</i>	Art. 18	Number of measures	1	3*		2		
		Number of penalties			10			
		Amount of penalties			EUR 415,000*			
	Art. 18(1)	Number of measures					1*	3
		Number of penalties						4
		Amount of penalties						HUF 3,500,000* ¹⁹
	Art. 19	Number of measures	1					1
		Number of penalties						1
		Amount of penalties						HUF 500,000* ²⁰
	Art. 19(2)	Number of measures				2		

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

¹⁹ Corresponding to EUR 9,585.63 (HUF/EUR=0,0027)

²⁰ Corresponding to EUR 1,369.37 (HUF/EUR=0,0027)

AIFMD	AIFMD Article	Penalties/ Measures	Poland	Croatia	Luxembourg	Portugal	Hungary	Liechtenstein
Chapter III <i>Operating conditions for AIFMs</i>	Art. 19(1)	Number of penalties			1			
		Amount of penalties			EUR 23,800*			
	Art. 19(3)	Number of measures	1*					
		Number of penalties	1					
		Amount of penalties	EUR 433,388*					
	Art. 19(4)(b)	Number of measures		4				
	Art. 20(1)	Number of measures	1*					
		Number of penalties	2					
		Amount of penalties	EUR 1,300,164*					
	Art. 20(1)(f)	Number of penalties			1			
		Amount of penalties			EUR 10,000*			
	Art. 21	Number of penalties				1		
		Amount of penalties				EUR 75,000*		
Art. 21(7)-(9)(a)(b)(c)(e)-(10)-(11)(c)	Number of penalties			1				
	Amount of penalties			EUR 133,700*				
Chapter IV <i>Transparency requirements</i>	Art. 22	Number of measures					1	
	Art. 22(1)	Number of penalties				1		
		Amount of penalties				EUR 75,000*		
	Art. 23(1)(d)	Number of penalties				1		
		Amount of penalties				EUR 75,000*		
Art. 24	Number of measures						9	

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

AIFMD Directive	AIFMD Article	Penalties/Measures	France	Romania	Slovenia	Germany
Chapter IV <i>Transparency requirements</i>	Art. 22(2)(e)(f)	Number of measures		4*		
Chapter VI <i>Rights of EU AIFMS to market and manage EU AIFS in the Union</i>	Art. 31	Number of penalties	1			
		Amount of penalties	EUR 20,000*			
Chapter VII <i>Specific rules in relation to third countries</i>	Art. 35-36-39-40-42	Number of penalties	1			
		Amount of penalties	EUR 20,000*			
Chapter VIII <i>Marketing to retail investors</i>	Art. 43	Number of measures			1	
		Number of penalties	1		1	
		Amount of penalties	EUR 20,000*		EUR 3,450	
Chapter IX <i>Competent authorities</i>	Art. 46(2)(i)	Number of measures				1*

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

6 General observations on the use of the sanctioning tool by NCAs

11. Broadly, the data gathered under this report keeps evidencing that the sanctioning powers are not equally used among NCAs and, besides a few NCAs, the number and amount of sanctions issued at national level remains relatively low.
12. During the period 2018-2020, no sanctions (penalties or measures) were issued under the AIFMD in the following Member States:

Table 1: Member States where no sanctions were issued in 2018-2020

	Member States where no sanctions were issued
2018-2020	Bulgaria, Estonia*, Greece, Ireland*, Latvia*, Lithuania, Sweden, Iceland

* Member States where no sanctions were issued under UCITS either during the reporting period 2016-2020

13. The below tables provide with an overview of aggregate figures on penalties issued under the AIFMD during the reporting periods 2018-2020:

Table 2: global overview of penalties issued by NCAs under the AIFMD in 2018-2020

	Number of NCAs which issued penalties	Total number of penalties	Total amount of penalties in € ²¹
2018	11	63	~4,459,000
2019	13	45	~9,000,000
2020	11	61	~3,354,407

14. While subtracting from the amount of penalties issued in 2018-2020 the highest single sanctions issued in that period, one may notice a very low amount of penalties issued (especially if compared to the total of ~6,4 trillion Euro of the total assets of AIFs domiciled in Europe²²) as well as a declining trend in the amount of sanctions issued.

²¹ Those amounts are mostly made up of high cumulative sanctions issued by some NCA, as follows:

- 2018: 1,017,000 € (IT), 2,465,000 € (PL);
- 2019: 4,135,000 € (PL); 3,930,000 € (FR).
- 2020: 1,787,726 € (PL); 936,000 € (IT)

²² Source: EFAMA report available at [08 Quarterly Statistical Release Q4 2020.pdf \(efama.org\)](https://www.efama.org/08-Quarterly-Statistical-Release-Q4-2020.pdf). For Estonia, Latvia and Lithuania, which are not included in the EFAMA report, ECB data as of 31/12/2020 was used instead. Data for Iceland was not available.

Table 3: overview of the financial amount of penalties issued under the AIFMD in 2018-2020 subtracting the highest single penalties²³

	Total amount of penalties in € A	Highest single penalty(ies) in € B	(A-B) (amounts in €)
2018	~4,459,000	~3,482,000	~977,000
2019	~9,000,000	~8,065,000	~935,000
2020	~3,354,407	~2,723,726	~630,681

Table 4: overview of penalties issued under the AIFMD in 2018-2020 by NCAs in relevant Member States ranked by total amount of financial penalties²⁴

Member State	Number of penalties	Total amount of financial penalties (EUR million ²⁵)	Total net assets of AIFs (Q4 2020) (EUR million) ²⁶
Poland	12	8,388	34,512.2
France	6	4,250	1,182,700.0
Italy	23	2,269	88,258.9
Portugal	13	1,165	11,583.6
Luxembourg	10	0,255	815,350.0
Hungary	10	0,244	17,615.9
Czech Republic	24	0,058	1,692.4
Belgium	2	0,035	10,092.5
Croatia	3	0,035	586.2
Spain	1	0,030	55,300.0
Netherlands	1	0,025	959,051.0
Slovakia	2	0,022	2,040.7
Romania	3	0,018	4,372.3
Cyprus	1	0,015	4,463.0
Austria	3	0,013	111,642.5
Slovenia	2	0,006	182.8

²³ See footnote 21.

²⁴ The financial amount of penalties that can be issued by an NCA is regulated under national law and it is not harmonised at EU level.

²⁵ Figures below 1 million EUR are rounded up or down to the closest thousand of EUR.

²⁶ See footnote 22.

Liechtenstein	1	0,004	26,373.8
Bulgaria	-	-	8.2
Denmark	-	-	170,991.1
Estonia	-	-	1,146
Finland	-	-	15,491.2
Germany	-	-	2,093,239.8
Greece	-	-	3,431.0
Ireland	-	-	796,122.0
Latvia	-	-	224
Lithuania	-	-	1,295
Malta	-	-	11,115.3
Sweden	-	-	24,574.6
Norway	-	-	-
Iceland	-	-	N.A.
Total	169	EUR MILLION 16,83	EUR MILLION 6,443,456

15. During the period 2018-2020, no penalties were issued under the AIFMD in the following Member States:

Table 5: Member States where no penalties were issued in 2018-2020

	Member States where no penalties were issued
2018-2020	Bulgaria, Denmark*, Estonia*, Finland*, Germany*, Greece, Ireland*, Latvia*, Lithuania, Malta, Sweden, Norway*, Iceland

* Members States where no penalties were issued under UCITS either during the reporting period 2016-2020

16. In order to put the data gathered into context, the below charts provide an overview of the proportion of the net assets of the EU AIF industry per Member States (Chart 1) and the proportion of the total amount of financial penalties issued under the AIFMD in 2018-2020 per Member States (Chart 2):

Chart 1: Net assets of the EU AIF industry (end 2020 Q4) by country of domiciliation²⁷

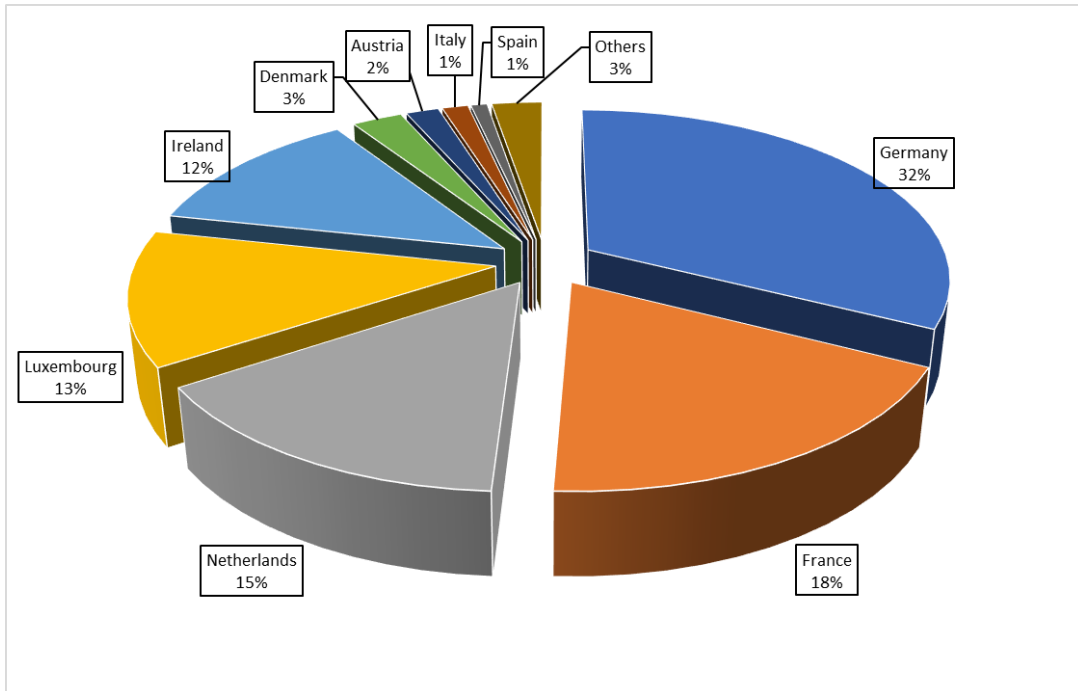
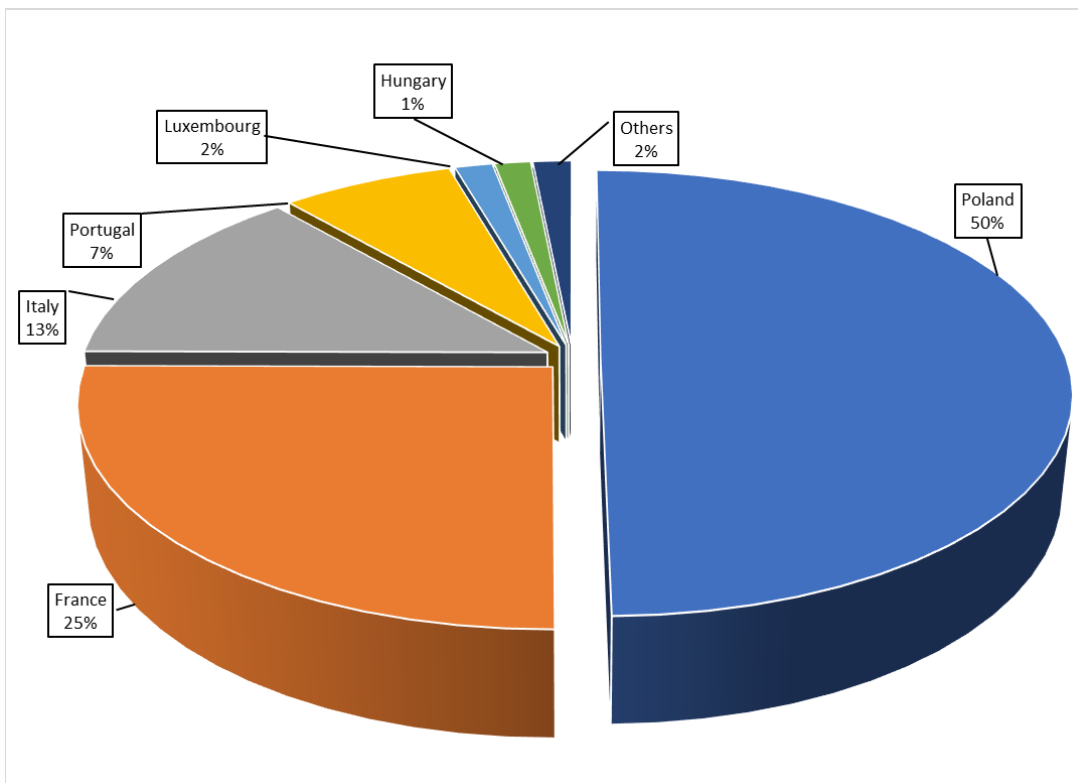


Chart 2: Amount of financial penalties issued under the AIFMD by Member States 2018-2020



²⁷ See footnote 22.

17. The below tables provide an overview of aggregated figures on measures issued under the AIFMD during the reporting periods 2018-2020:

Table 6: global overview of measures issued by NCAs under the AIFMD in 2018-2020

	Number of NCAs which issued measures	Total number of measures
2018	10	34
2019	12	42
2020	12	70

Table 7: overview of measures issued under the AIFMD in 2018-2020 by NCAs in relevant Member States ranked by number of measures²⁸

Member State	Number of measures
Hungary	34
Czech Republic	21
Liechtenstein	21
Romania	12
Croatia	11
Denmark	10
Netherlands	8
Belgium	5
France	5
Poland	5
Austria	4
Slovenia	3
Germany	2
Cyprus	1
Finland	1
Malta	1
Portugal	1

²⁸ Member States whose NCAs who have not imposed measures during the period 2018-2020 are not reflected in this table.

Norway	1
Total	146

18. During the period 2018-2020, no measures were issued under the AIFMD in the following Member States:

Table 8: Member States where no measures were issued in 2018-2020

	Member States where no measures were issued
2018-2020	Estonia*, Greece, Ireland*, Italy, Latvia*, Lithuania, Luxembourg, Slovakia*, Spain*, Sweden*, Iceland

* Members States where no measures were issued under UCITS either during the reporting period 2016-2020

19. ESMA acknowledges that the issue at hand can be complex and multifaceted and that no automatic parallelism should be drawn between the number/amount of sanctions (penalties and measures) issued by the relevant NCA and the quality of their supervisory activity. Moreover, ESMA notes that this report focuses on sanctions issued under the AIFMD; hence, there may be national sanctions that are not included in the report as issued under national provisions going beyond the implementation of the AIFMD. Notwithstanding this, ESMA considers the above data as useful information to prompt discussions with NCAs on the use of sanctioning measures.

20. Work will continue in the future (including by issuing the relevant annual report on sanctions) to promote further convergence in the use of sanctioning powers by NCAs across the EU.