



European Securities and  
Markets Authority

# Report

**Penalties and measures imposed under the UCITS Directive in 2021**



## Table of Contents

1	Executive Summary .....	3
2	Background and relevant regulatory framework for reporting on UCITS sanctions .....	4
3	Information on the aggregated penalties and measures imposed .....	4
4	Guidance for interpretation of penalties and measures reported .....	5
5	Sanctions imposed by NCAs .....	7
5.1	Overview of the penalties and measures imposed in 2021 .....	7
5.2	Overview penalties and measures imposed during 2021 by NCAs' Member States (split by UCITS Chapter) .....	8
6	General observations on the use of the sanctioning tool by NCAs .....	11
6.1	Observations on penalties .....	11
6.2	Observations on measures .....	15

# 1 Executive Summary

## Reasons for publication

ESMA is required to publish an annual report with aggregated information on all penalties and measures imposed by National Competent Authorities (NCAs) pursuant to Article 99e(1) of Directive 2009/65/EC (UCITS Directive). This report contains information on the penalties and measures imposed by NCAs in accordance with Article 99e of the UCITS Directive from 1 January 2021 to 31 December 2021.

## Content

Overall, 12 NCAs imposed a total of 61 penalties; the total aggregated value of financial penalties imposed amounted to EUR 38,784,536, with an amount of EUR 37,120,000 imposed by a single NCA. Eight NCAs imposed a total of 64 measures, with one single NCA that used 35 measures. 15 NCAs did not impose any sanction (penalty or measure) during the reference period.

Broadly, the data gathered under the sanction reports published so far<sup>1</sup> 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.<sup>2</sup>

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 UCITS Directive and contribute to ESMA's goal to develop a common EU outcome-focused supervisory and enforcement culture. An annual report will continue to be issued for the future reporting periods.

Further detailed information on public sanctions and measures issued by national competent authorities can be found on the ESMA register available on the ESMA website.

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<sup>1</sup> This is the fifth report published by ESMA concerning penalties and measures issued under the UCITS Directive. The UCITS sanctions reports published so far cover the reporting periods 2016-2020. ESMA previously published the AIFMD sanction reports for the reporting periods 2018-2020. The 2021 AIFMD sanction report (which also include in Annex the sanctions issued under the AIFMD in years 2013-2017) was published concurrently with this report and is also available on the ESMA website.

<sup>2</sup> 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 UCITS sanctions

1. This report is drafted pursuant to Article 99e(1) of the UCITS Directive.<sup>3</sup> According to this article, NCAs shall provide ESMA annually with aggregated information regarding all penalties and measures imposed in accordance with Article 99 of the UCITS Directive.
2. Article 99e of the UCITS Directive is implemented by the Commission Implementing Regulation (EU) 2016/1212<sup>4</sup>, which sets out common procedures and forms for submitting the information required.
3. According to Article 2 of Commission Implementing Regulation (EU) 2016/1212, NCAs shall provide ESMA with the information referred to in Article 99e(1) of 2009/65/EC of the UCITS Directive by filling in the form set out in Annex I to the Regulation. That information shall refer to all the penalties and measures imposed during the previous calendar year. The form shall be completed electronically and be sent to ESMA no later than 31 March of each year.
4. Article 99e(1) of the UCITS Directive provides that ESMA shall publish in an annual report the information regarding all penalties and measures imposed.

## 3 Information on the aggregated penalties and measures imposed

5. This is the fifth report published by ESMA concerning penalties and measures issued under the UCITS Directive.<sup>5</sup>
6. Art. 99(1) of the UCITS Directive provides that "[...] Member States shall lay down rules on administrative sanctions and other administrative measures to be imposed on companies and persons in respect of infringements of national provisions transposing this Directive and shall take all measures necessary to ensure that they are implemented". According to the same provision "Administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive".

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<sup>3</sup> OJ L 302, 17.11.2009, p. 32.

<sup>4</sup> OJ L 199, 26.7.2016, p. 6.

<sup>5</sup> Previous UCITS sanctions report published by ESMA are available at the following links:

- 2016/2017 UCITS sanctions report : [https://www.esma.europa.eu/sites/default/files/library/esma34-45-651ucits\\_sanction\\_report.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-45-651ucits_sanction_report.pdf)
- 2018 UCITS sanctions report: [https://www.esma.europa.eu/sites/default/files/library/esma34-45-756\\_ucits\\_sanction\\_report.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-45-756_ucits_sanction_report.pdf)
- 2019 UCITS sanctions report : [esma34-45-934\\_2019\\_ucits\\_sanctions\\_report.pdf \(europa.eu\)](https://www.esma.europa.eu/sites/default/files/library/esma34-45-934_2019_ucits_sanctions_report.pdf)
- 2020 UCITS sanctions report : [esma34-45-1269\\_2020\\_ucits\\_sanctions\\_report.pdf \(europa.eu\)](https://www.esma.europa.eu/sites/default/files/library/esma34-45-1269_2020_ucits_sanctions_report.pdf)

7. Article 99(6) of the UCITS Directive provides that at least the following administrative penalties and measures may be applied in relation to infringements of Article 99 of that said Directive:
  - a) a public statement which identifies the person responsible and the nature of the infringement (public statement);
  - b) an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct (cease and desist order);
  - c) in the case of a UCITS or a management company, suspension or withdrawal of the authorisation of the UCITS or the management company (suspension or withdrawal of authorisation);
  - d) a temporary or, for repeated serious infringements, a permanent ban against a member of the management body of the management company or investment company or against any other natural person who is held responsible, from exercising management functions in those or in other such companies (temporary or permanent ban from management functions);
  - e) pecuniary sanctions for legal and natural persons (financial penalties).
8. The adoption of the Inventory of Enforcement Measures and Sanctions by the ESMA Board of Supervisors in September 2021 assisted in developing a common understanding of enforcement and sanctioning powers amongst the NCAs. Terms covered by the inventory include sanctions such as administrative fines, public statements, temporary or permanent bans, suspensions or withdrawals of an authorisation, disgorgements of profits gained or losses avoided, gain-based pecuniary sanctions and orders to cease and desist. This common understanding forms the basis of the sanctions reported by the NCAs.
9. For the purpose of this report, only the penalties and measures issued under the UCITS Directive 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.
10. ESMA deems that the 2021 data, read in conjunction with data on sanctions issued in previous years<sup>6</sup>, can provide a useful indication on the use of the sanctioning tool at national level.
11. The aggregated information contained in this report reflects the data submitted to ESMA by the NCAs.

## **4 Guidance for interpretation of penalties and measures reported**

12. This report should be considered in the context of the following provisions as provided for in Annex I to the Commission Implementing Regulation (EU) 2016/2012.

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<sup>6</sup> For the reporting period 2016-2017, 2018, 2019 and 2020 see the UCITS sanctions reports mentioned in the previous footnote.

13. If the relevant penalties/measures refer not only to breaches relating to one single article of the UCITS Directive, but also to another article of the UCITS Directive or other provisions (at EU and/or national level), and the relevant amounts cannot be disaggregated per article of the UCITS Directive which was infringed, the mention "AGGREGATED FIGURE" is added to each value in the annexes of this report.
  
14. As per Annex I to the Commission Implementing Regulation (EU) 2016/2012, 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 2021

NCAs' Member States	Sanctions			No sanctions imposed
	Total number of: -penalties <sup>7</sup>	- measures <sup>8</sup>	Total aggregate amount of financial penalties	
Austria	2		EUR 24,000	
Belgium	1	1	EUR 300,000	
Bulgaria	30		EUR 179,077.66	
Croatia	1	8	EUR 14,700 <sup>9</sup>	
Cyprus				X
Czech Republic		1		
Denmark		3		
Estonia				X
Finland				X
France	2		EUR 37,120,000	
Germany				X
Greece	1		EUR 50,000	
Hungary	3	3	EUR 6,775.06 <sup>10</sup>	
Ireland	1		EUR 385,000	
Italy				X
Latvia				X
Lithuania				X
Luxembourg	7		EUR 666,800	
Malta				X
Netherlands				X
Poland				X
Portugal				X
Romania	4	12	EUR 1,253	
Slovenia				X
Slovakia				X
Spain	3		EUR 35,000	
Sweden				X
Liechtenstein	6	35	EUR 1,929.79 <sup>11</sup>	
Norway				X
Iceland		1		
<b>Total</b>	<b>61</b>	<b>64</b>	<b>~ EUR 38,784,536</b>	<b>15 NCAs imposed no sanctions</b>

<sup>7</sup> 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.

<sup>8</sup> 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 Section 5.2.

<sup>9</sup> Corresponding to HRK 110,000.

<sup>10</sup> Corresponding to HUF 2,500,000.

<sup>11</sup> Corresponding to CHF 2,000.

## 5.2 Overview penalties and measures imposed during 2021 by NCAs' Member States (split by UCITS Chapter)<sup>12</sup>

UCITS Directive	UCITS Article	Penalties/Measures	Luxembourg	Romania	Croatia	France	Belgium	Spain	
Chapter III Obligations regarding management companies	Art. 7	Number of penalties	1						
		Amount of penalties	EUR 50,000*						
	Art. 7(1)	Number of penalties		1					
	Art. 7(1)(a)	Number of penalties				1			
		Amount of penalties				EUR 14,700 <sup>13*</sup>			
	Art. 10(1)	Number of penalties			3				
		Number of measures			4				
	Art. 12	Number of penalties	7				2		
		Amount of penalties	EUR 666,800*				EUR 37,120,000*		
	Art. 12(1)	Number of penalties							3
		Amount of penalties							EUR 35,000
		Number of measures						1	
	Art. 13	Number of penalties	1						
		Amount of penalties	EUR 50,000*						
Art. 14	Number of penalties	1				2			
	Amount of penalties	EUR 50,000*				EUR 37,120,000*			
Art. 14(1)	Number of penalties			1					
	Amount of penalties			EUR 1,253					
Chapter VII Obligations concerning the investment policies of UCITS	Art. 50(1)(e)	Number of measures		4					
	Art. 50(2)	Number of measures		1					
	Art. 51(1)	Number of measures			2				
	Art. 51(4)(a)	Number of measures			6				
	Art. 52(1)(a)(b)	Number of measures		1					
	Art. 55(1)	Number of measures		3					
	Art. 56(2)(b)	Number of measures		3					
Chapter IX Obligations concerning information to be provided to investors	Art. 69(3)	Number of measures		1					
	Art. 77	Number of penalties					1		
Amount of penalties							EUR 300,000		

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

<sup>12</sup> NCAs who have not imposed penalties/measures during the period are not reflected in this table.

<sup>13</sup> Corresponding to HRK 110,000



UCITS Directive	UCITS Article	Penalties/Measures	Bulgaria	Denmark	Ireland	Liechtenstein	Hungary	Austria
<b>Chapter III</b> <i>Obligations regarding management companies</i>	Art. 13(1)(f)	Number of penalties			1			
		Amount of penalties			EUR 385,000*			
	Art. 14(a)(1)	Number of penalties					3	
		Amount of penalties					EUR 6,775.06 <sup>14</sup>	
		Number of measures				3		
<b>Chapter VII</b> <i>Obligations concerning the investment policies of UCITS</i>	Art. 50(2)(a)	Number of penalties	2					
		Amount of penalties	EUR 25,582.52					
	Art. 51(1)	Number of measures		3		34		
	Art. 55	Number of penalties				1		
		Amount of penalties				EUR 385,000*		
	Art. 55(1)	Number of penalties	1					
		Amount of penalties	EUR 10,233.01					
	Art. 56(2)(c)	Number of penalties	1					
Amount of penalties		EUR 10,233.01						
<b>Chapter IX</b> <i>Obligations concerning information to be provided to investors</i>	Art. 72	Number of penalties	9					
		Amount of penalties	EUR 46,048.54					
	Art. 73	Number of measures				1		
	Art. 74	Number of penalties					6	
		Amount of penalties					EUR 1,929.79 <sup>15</sup>	
	Art. 76	Number of penalties	17					
Amount of penalties		EUR 86,980.58						
<b>Chapter X</b> <i>General obligations of UCITS</i>	Art. 83(1)	Number of penalties						1
		Amount of penalties						EUR 2,200*
<b>Chapter XII</b> <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 99	Number of penalties						1
		Amount of penalties						EUR 21,800*

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

<sup>14</sup> Corresponding to HUF 2,500,000.

<sup>15</sup> Corresponding to CHF 2000.

UCITS Directive	UCITS Article	Penalties/ Measures	Czech Republic	Greece	Iceland
<b>Chapter IX</b> <i>Obligations concerning information to be provided to investors</i>	Art. 81(1)	Number of measures			1
<b>Chapter XI</b> <i>Special provisions applicable to UCITS which market their units in Member States other than those in which they are established</i>	Art. 92(2)	Number of penalties		1	
		Amount of penalties		EUR 50,000	
<b>Chapter XII</b> <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 98(2)(k)	Number of measures	1		

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

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

15. Broadly, the data gathered under the sanction reports published so far 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.
16. During the period 2016-2021, no sanctions (penalties or measures) were issued under the UCITS Directive in the following Member States:

**Table 1: Member States where no sanctions were issued in 2016-2021**

	Member States where no sanctions were issued
2016-2021	Cyprus, Estonia*, Finland, Latvia*, Slovakia, Norway

\* Members States where no sanctions were issued under the AIFMD either during the reporting period 2013-2021

### 6.1 Observations on penalties

17. The below tables provide an overview of aggregated figures on penalties issued under the UCITS Directive during the reporting periods 2016-2021:

**Table 2: global overview of penalties issued by NCAs under the UCITS Directive in 2016-2021**

	Number of NCAs which issued penalties	Total number of penalties	Total amount of penalties in € <sup>16</sup>
2016	8	34	~3,100,000
2017	13	57	~36,950,000
2018	14	41	~4,200,000
2019	11	43	~4,155,000
2020	13	57	~1,100,986
2021	12	61	~38,784,536

18. As in previous reporting periods (2016-2019), in 2021 the total amount of penalties issued was mainly made of a high single sanction. While subtracting from the amount of penalties issued in 2016-2019 and in 2021 the highest single sanctions issued in that

<sup>16</sup> Those amounts are mostly made up of high cumulative sanctions issued by one or two NCA, as follows:

- 2016: 2,700,000 € (FR);
- 2017: 35,230,000 € (FR);
- 2018: 1,828,000 € (IT), 958,488 € (SE);
- 2019: 3,120,000 € (FR);
- 2021: 37,120,000 € (FR); 666,800 € (LU).

period, one may notice a very low amount of penalties issued (especially if compared to the total of ~11,6 trillion Euro of the total assets of UCITS domiciled in Europe<sup>17</sup>) as well as a declining trend in the amount of sanctions issued since 2017.

**Table 3: overview of the financial amount of penalties issued under the UCITS Directive in 2016-2021 subtracting the highest single penalties<sup>18</sup>**

	Total amount of penalties in € A	Highest single penalty(ies) in € B	(A-B) (amounts in €)
2016	~3,100,000	~2,700,000	~400,000
2017	~36,950,000	~35,230,000	~1,720,000
2018	~4,200,000	~2,786,488	~1,413,512
2019	~4,155,000	~3,120,000	~1,035,000
2020	~1,100,986	-	~1,100,986
2021	~38,784,536	~37,786,800	~997,736

**Table 4: overview of penalties issued under the UCITS Directive in 2016-2021 by NCAs in relevant Member States ranked by total amount of financial penalties<sup>19</sup>**

Member State	Number of penalties	Total amount of financial penalties (EUR million) <sup>20</sup>	Total net assets of UCITS (Q4 2021) (EUR million) <sup>21</sup>
France	15	78.580	936,043
Italy	5	2.319	258,454.6
Luxembourg	38	1.268	4,924,510
Sweden	1	0.958	579,782.7
Spain	13	0.685	303,961
Malta	1	0.612	3,374.2
Belgium	5	0.580	199,644.5
Portugal	9	0.508	18,920.2
Croatia	12	0.437	2,862.4
Czech Republic	15	0.419	16,176.2

<sup>17</sup> Source: EFAMA report available at [Quarterly Statistical Release Q4 2021.pdf \(efama.org\)](https://www.efama.org/Quarterly-Statistical-Release-Q4-2021.pdf). For Estonia, Latvia and Lithuania, which are not included in the EFAMA report, ECB data as of 31/12/2021 was used instead. Data for Iceland was not available.

<sup>18</sup> See footnote 16.

<sup>19</sup> 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.

<sup>20</sup> Figures below 1 million EUR are rounded up or down to the closest thousand of EUR.

<sup>21</sup> See footnote 17.

Bulgaria	67	0.390	1,224.3
Ireland	1	0.385	3,095,760
Greece	8	0.243	8,101.9
Hungary	41	0.221	1,547.5
Poland	4	0.214	27,296.4
Austria	20	0.142	105,956.9
Lithuania	2	0.140	37.0
Slovenia	4	0.103	4,321.3
Romania	24	0.061	4,546
Liechtenstein	8	0.007	32,925.6
Cyprus	-	-	478.0
Denmark	-	-	186,506.1
Estonia	-	-	82
Finland	-	-	139,595.7
Germany	-	-	527,628.7
Latvia	-	-	277.0
Netherlands	-	-	47,773
Slovakia	-	-	6,729.6
Norway	-	-	181,095
Iceland	-	-	N.A.
<b>Total</b>	<b>293</b>	<b>EUR MILLION 88.3</b>	<b>EUR MILLION 11,615,610</b>

19. During the period 2016-2021, no penalties were issued under the UCITS Directive in the following Member States:

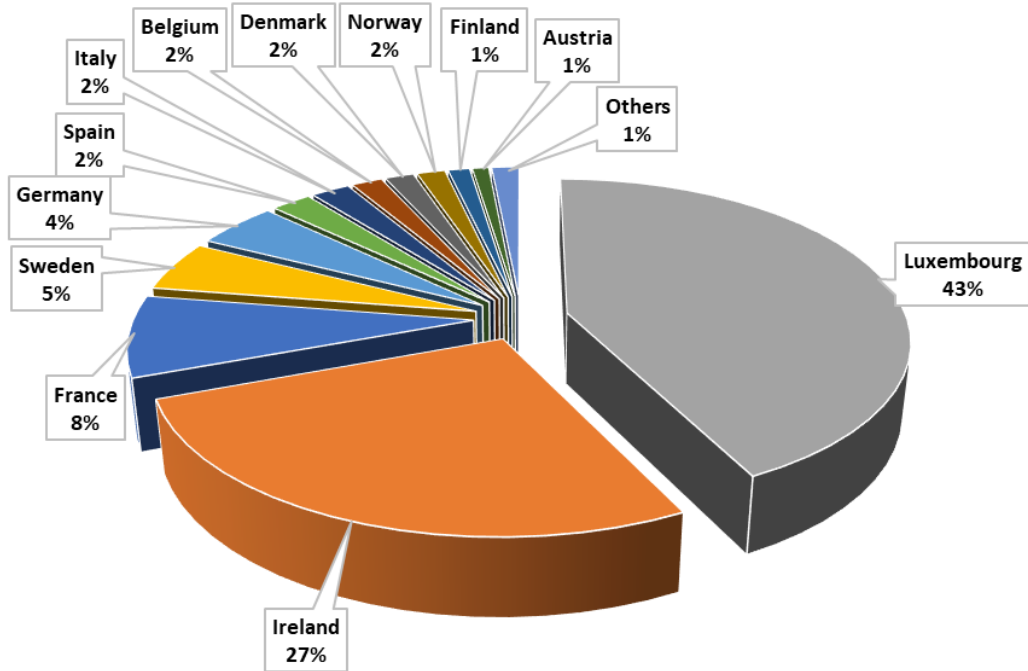
**Table 5: Member States where no penalties were issued in 2016-2021**

	Member States where no penalties were issued
2016-2021	Cyprus, Denmark*, Estonia*, Finland*, Germany*, Latvia*, Netherlands, Slovakia, Norway*, Iceland*

\* Members States where no penalties were issued under the AIFMD either during the reporting period 2013-2021

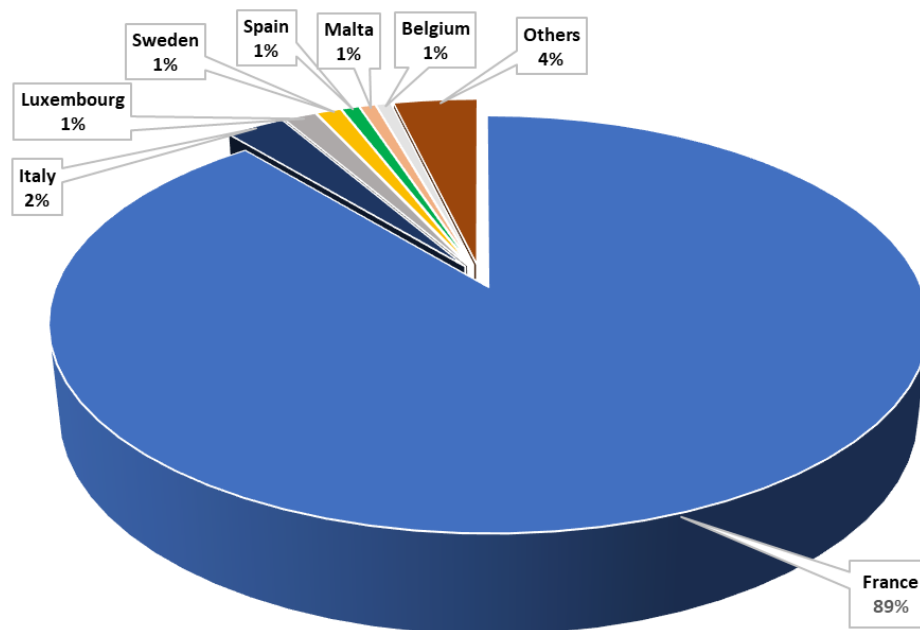
20. In order to put the data gathered into context, the below charts provide an overview of the proportion of the net assets of the EU UCITS industry per Member State (Chart 1) and the proportion of the total amount of financial penalties issued under the UCITS Directive in 2016-2021 per Member State (Chart 2):

**Chart 1: Net assets of the EU UCITS industry (Q4 2021) by country of domiciliation<sup>22</sup>**



**Chart 2: Amount of financial penalties issued under the UCITS Directive by Member States 2016-2021**

<sup>22</sup> See footnote 17.



## 6.2 Observations on measures

21. The below tables provide an overview of aggregated figures on measures issued under the UCITS Directive during the reporting periods 2016-2021:

**Table 6: overview of measures issued by NCAs under the UCITS Directive in 2016-2021**

	Number of NCAs which issued measures	Total number of measures
2016	6	25
2017	9	22
2018	7	19
2019	9	19
2020	11	43
2021	8	64

**Table 7: overview of measures issued under the UCITS Directive in 2016-2021 by NCAs in relevant Member States ranked by number of measures<sup>23</sup>**

Member State	Number of measures
Liechtenstein	39
Croatia	28
Romania	24

<sup>23</sup> Member States whose NCAs who have not imposed measures during the period 2016-2021 are not reflected in this table.

Hungary	20
Slovenia	15
Denmark	15
France	10
Lithuania	10
Luxembourg	5
Malta	4
Netherlands	4
Belgium	4
Iceland	4
Austria	3
Greece	2
Italy	1
Portugal	1
Poland	1
Germany	1
Czech Republic	1
<b>Total</b>	<b>192</b>

22. During the period 2016-2021, no measures were issued under the UCITS Directive in the following Member States:

**Table 8: Member States where no measures were issued in 2016-2021**

	Member States where no measures were issued
2016-2021	Bulgaria*, Cyprus, Estonia*, Finland, Ireland*, Latvia*, Slovakia*, Spain*, Sweden*, Norway

\* Members States where no measures were issued under the AIFMD either during the reporting period 2013-2021

23. 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 UCITS Directive; hence, there may be national sanctions that are not





included in the report as issued under national provisions going beyond the implementation of the UCITS Directive. Notwithstanding this, ESMA considers the above data as useful information to prompt discussions with NCAs on the use of sanctioning measures.

24. 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.