



European Securities and
Markets Authority

Report

Penalties and measures imposed under the UCITS Directive in 2018



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1 Executive Summary

Reasons for publication

This report is drafted pursuant to Article 99e(1) of Directive 2009/65/EC (UCITS Directive), which requires ESMA to publish an annual report regarding aggregated information on all penalties and measures imposed by national competent authorities (NCAs) in a given year.

Contents

This report contains an overview of the applicable legal framework and information on the penalties and measures imposed by NCAs in accordance with Article 99e of the UCITS Directive from 1 January 2018 to 31 December 2018.

Next Steps

The information reported to ESMA and disclosed in the present report will inform ESMA's ongoing work aimed at fostering supervisory convergence in the application of the UCITS Directive.

Separate reports will be issued annually for the subsequent reporting periods.

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.¹ 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) 2016/1212², 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 Directive 2009/65/EC 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 Directive 2009/65/EC 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 second report published by ESMA concerning penalties and measures issued under Directive 2009/65/EC.³
6. For the purpose of this report, only the penalties and measures issued under Directive 2009/65/EC 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.
7. As further specified in Annex I to the Commission Implementing Regulation (EU) 2016/2012:
 - The penalties imposed may cover more than one legislative provision, therefore the sum of penalties disclosed in the annexes of this report may not correspond to the total number/amount of penalties imposed.
 - The measures imposed may cover more than one legislative provision, therefore the sum of measures disclosed in the annexes of this report may not correspond to the total number of measures imposed.
 - If the relevant penalties 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

¹ OJ L 302, 17.11.2009, p. 32.

² OJ L 199, 26.7.2016, p. 6.

³ The first UCITS sanctions report published by ESMA can be found at this link https://www.esma.europa.eu/sites/default/files/library/esma34-45-651ucits_sanction_report.pdf

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.

8. While the above implies that the reported data does not allow to produce granular statistics based on it, ESMA deems that the 2018 data, read in conjunction with data on sanctions issued in previous years⁴, can provide a useful indication on the use of the sanctioning tool at national level.
9. As per Annex I to the Commission Implementing Regulation (EU) 2016/1212, 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 is also provided.⁵
10. The aggregated information contained in this report reflects the data submitted to ESMA by the NCAs.

⁴ For the reporting period 2016-2017, see the UCITS sanctions report mentioned in the previous footnote.

⁵ https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html

4 Annexes

4.1 Annex I: Overview of the notifications for the 2018 reporting period

NCAs' Member States	Type of sanctions			No sanctions
	Total number of penalties ⁶	Total amount of penalties	Total number of measures ⁷	
Austria	6	EUR 22,400	3	
Belgium				X
Bulgaria	7	EUR 46,017		
Croatia	7	HRK 1,165,000 ⁸	10	
Cyprus				X
Czech Republic	1	CZK 5,000,000 ⁹		
Denmark				X
Estonia				X
Finland				X
France	1	EUR 300,000	1	
Germany				X
Greece	2	EUR 13,000		
Hungary				X
Ireland				X
Italy	2	EUR 1,828,000		
Latvia				X
Lithuania				X
Luxembourg	2	EUR 151,000	1	
Malta				X
Netherlands				X
Poland	2	PLN 370,000 ¹⁰		
Portugal	7	EUR 332,500		
Romania	1		1	
Slovenia	1	EUR 6,000	1	
Slovakia				X
Spain	1	EUR 85,000		
Sweden	1	SEK 10,000,000 ¹¹		
UK				X
Liechtenstein				X
Norway				X
Iceland			2	

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

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

⁸ Corresponding to EUR 157,432.43 (HRK/EUR=0.135)

⁹ Corresponding to EUR 194,363 (CZK/EUR=0.0388).

¹⁰ Corresponding to EUR 86,134 (PLN/EUR=0.233)

¹¹ Corresponding to EUR 958,488 (SEK/EUR 0.096).

4.2 Annex II: Overview on number and amount of penalties imposed during 2018 by NCAs' Member States (split by UCITS Chapter)

UCITS Directive	UCITS Article	Penalties	Croatia	France	Italy	Portugal	Slovenia	Sweden
Chapter II <i>Authorisation of UCITS</i>	Art. 5	Number	1					
		Amount	HRK 154,000* ¹²					
Chapter III <i>Obligations regarding management companies</i>	Art. 7(1)(a)	Number					1	
		Amount					EUR 6,000	
	Art. 12	Number			1	2		
		Amount			EUR 300,000*	EUR 1,828,000*		
	Art. 12(1)	Number						1
		Amount						SEK 10,000,000* ¹³
	Art. 12(1)(b)	Number	2					
		Amount	HRK 500,000* ¹⁴					
	Art. 14	Number			1	1		
		Amount			EUR 300,000*	EUR 1,688,000*		
	Art. 14(1)	Number						1
		Amount						SEK 10,000,000* ¹⁵
Art. 14(1)(d)	Number					2		
	Amount					EUR 125,000*		
Art. 14(1)(e)	Number					1		
	Amount					EUR 12,000		

* 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.

¹² Corresponding to EUR 20,810.81.

¹³ For the corresponding amount in Euro please refer to footnote 11.

¹⁴ Corresponding to EUR 67,576.57.

¹⁵ For the corresponding amount in Euro please refer to footnote 11.

UCITS Directive	UCITS Article	Penalties	Austria	Bulgaria	Croatia	Poland	Romania	Spain	Sweden
Chapter IV <i>Obligations regarding the depositary</i>	Art. 22 (3)(b)	Number					1		
		Amount							
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50	Number			5				
		Amount			HRK 701,000* ¹⁶				
	Art. 50(2)(a)	Number		1		1			
		Amount		EUR 10,226		PLN 300,000 ¹⁷			
	Art. 51(1)	Number			1				
		Amount			HRK 310,000* ¹⁸				
	Art. 51(1)(3)	Number							1
		Amount							SEK 10,000,000* ¹⁹
	Art. 52	Number						1	
		Amount						EUR 85,000	
Art. 52(1)(2) (5)	Number	3							
	Amount		EUR 17,000*						

* 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.

¹⁶ Corresponding to EUR 94,729.73.

¹⁷ Corresponding to EUR 69,930.

¹⁸ Corresponding to EUR 41,891.89.

¹⁹ For the corresponding amount in Euro please refer to footnote 11.

UCITS Directive	UCITS Article	Penalties	Austria	Bulgaria	Czech Republic	Greece	Luxembourg	Poland	Portugal	
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 52(1)	Number				1				
		Amount				EUR 7,000*				
	Art. 52(2)	Number			1		1			
		Amount			EUR 10,226		EUR 7,000*			
	Art. 56(1)	Number							1	
		Amount							PLN 70,000 ²⁰	
Art. 57	Number					1				
	Amount					EUR 6,000				
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 76	Number		1						
		Amount		EUR 5,113						
	Art. 78(3)	Number			2					
		Amount			EUR 10,226					
	Art. 82(2)	Number			2					
		Amount			EUR 10,226					
Chapter X <i>General obligations of UCITS</i>	Art. 83(2)	Number	3							
		Amount	EUR 5,400*							
	Art. 83(2) (a)	Number							4	
		Amount							EUR 195,000*	
Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 99a(j)	Number					2			
		Amount					EUR 151,000*			
	Art. 99a(m)	Number					1			
		Amount					EUR 91,000*			
	Art. 99a(n)	Number					1			
		Amount					EUR 91,000*			
	Art. 99a(q)	Number					1			
		Amount					EUR 60,000*			
	Art. 99(1)	Number				1				
		Amount				CZK 5,000,000 * ²¹				

* 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.

²⁰ Corresponding to EUR 16,204.

²¹ For the corresponding amount in Euro please refer to footnote 9.

4.3 Annex III: Overview on number of measures imposed during 2018 by NCAs' Member States (split by UCITS Chapter)

UCITS Directive	UCITS Article	Austria	Croatia	France	Iceland	Luxembourg	Slovenia
Chapter III <i>Obligations regarding management companies</i>	Art. 6(2)				2		
	Art. 7(1)(a)						1
	Art. 7(1)(b)	1					
	Art. 12(1)(a)		2				
	Art. 13(1)(f)		2				
	Art. 14				1		
Chapter IV <i>Obligations regarding the depositary</i>	Art. 22(2)	1					
	Art. 22a(2)(c)	1					
	Art. 22(3)(b)		1				
	Art. 22(3)(c)		1				
	Art. 22(3)(e)		1				
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 51		4				
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 74		1				
	Art. 77			1			
Chapter X <i>General obligations for UCITS</i>	Art. 85		1				
Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 99(6)(c)					1	
	Total number of measures²²	3	10	1	2	1	1

²² As the measures imposed may cover more than one legislative provision, the total number of measures may not correspond to the sum of the number of measures disclosed in this Annex for each UCITS chapter.