



European Securities and
Markets Authority

Report

Penalties and measures imposed under the UCITS Directive in 2019



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	6
5.1	Overview of the penalties and measures imposed in 2019	6
5.2	Overview penalties and measures imposed during 2019 by NCAs' Member States (split by UCITS Chapter)	7
6	General observations on the use of the sanctioning tool by NCAs.....	11

1 Executive Summary

Background

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 2019 to 31 December 2019.

Overall, 11 NCAs imposed a total of 43 penalties; the total aggregated value of financial penalties imposed amounted to around EUR 4,155,000. 9 NCAs imposed a total of 19 measures. 16 NCAs did not impose any sanction (penalty or measure) during the reference period.

Broadly, the data gathered under the sanction reports published so far¹ shows 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 seems relatively low.²

ESMA has considered the above data as a useful starting point to prompt discussions with NCAs on the use of sanctioning measures, including through the organisation of a one-day workshop on sanctions in UCITS and AIFs.

Further work will be carried out 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.

¹ This is the third report published by ESMA concerning penalties and measures issued under the UCITS Directive. The UCITS sanctions reports published so far cover the reporting periods 2016-2019. Building on the experience gathered with the collection and publication of aggregated data on sanctions under the UCITS Directive, ESMA has also produced the first AIFMD Sanction Report for the reporting period 2018/2019 which 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 UCITS sanctions

1. This report is drafted pursuant to Article 99e(1) of the UCITS Directive.³ 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) 2016/1212⁴, 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 third report published by ESMA concerning penalties and measures issued under the UCITS Directive.⁵
6. Article 99(6) of Directive 2009/65/EC provides that at least the following administrative penalties and measures may be applied in relation to infringements of Article 99 of Directive 2009/65/EC:
 - a public statement which identifies the person responsible and the nature of the infringement (public statement);
 - an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct (cease and desist order);

³ OJ L 302, 17.11.2009, p. 32.

⁴ OJ L 199, 26.7.2016, p. 6.

⁵ 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
- 2018 UCITS sanctions report: https://www.esma.europa.eu/sites/default/files/library/esma34-45-756_ucits_sanction_report.pdf

- 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);
 - 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);
 - pecuniary sanctions for legal and natural persons (financial penalties)
7. 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.
8. While the above implies that the reported data does not allow to produce granular statistics based on it, ESMA deems that the 2019 data, read in conjunction with data on sanctions issued in previous years⁶, can provide a useful indication on the use of the sanctioning tool at national level.
9. 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

10. 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.
11. 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.
12. 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 is also provided.

⁶ For the reporting period 2016-2017 and 2018, see the UCITS sanctions report mentioned in the previous footnote.

5 Sanctions imposed by NCAs

5.1 Overview of the penalties and measures imposed in 2019

NCAs' Member States	Sanctions			No sanctions imposed
	Total number of: -penalties ⁷	- measures ⁸	Total aggregate amount of financial penalties	
Austria	3		EUR 38,400	
Belgium	1		EUR 60,000	
Bulgaria	10		EUR 56,243	
Croatia	1	2	HRK 110,000 ⁹	
Cyprus				X
Czech Republic				X
Denmark		3		
Estonia				X
Finland				X
France	3	2	EUR 3,120,000	
Germany				X
Greece		1		
Hungary	15		HUF 26,500,000 ¹⁰	
Ireland				X
Italy	1		EUR 200,000	
Latvia				X
Lithuania	2	4	EUR 140,000	
Luxembourg	4	3	EUR 234,800	
Malta				X
Netherlands		2		
Poland				X
Portugal		1		
Romania				X
Slovenia				X
Slovakia				X
Spain	2		EUR 215,000	
Sweden				X
United Kingdom				X
Liechtenstein	1	1	CHF 1,000 ¹¹	
Norway				X
Iceland				X
Total	43	19	~ EUR 4,155,000	16 NCAs imposed no sanctions

⁷ 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.

⁸ 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.

⁹ Corresponding to EUR 14,800 (HRK/EUR=0,134)

¹⁰ Corresponding to EUR 74,789 (HUF/EUR=0,0028)

¹¹ Corresponding to EUR 921,3 (CHF/EUR=0,9213)

5.2 Overview penalties and measures imposed during 2019 by NCAs' Member States (split by UCITS Chapter)¹²

UCITS Directive	UCITS Article	Penalties/Measures	France	Greece	Hungary	Luxembourg	Croatia	Italy
Chapter II <i>Authorisation of UCITS</i>	Art. 6	Number of penalties	3					
		Amount of penalties	EUR 3,120,000*					
Chapter III <i>Obligations regarding management companies</i>	Art. 7(5)(c)	Number of measures		1				
	Art. 10(1)	Number of penalties			3			
		Amount of penalties			HUF 26,500,000 ^{13*}			
	Art. 12	Number of penalties	3					
		Amount of penalties	EUR 3,120,000*					
	Art. 12(1)	Number of penalties			9			
		Amount of penalties			HUF 26,500,000 ^{14*}			
	Art. 12(1)(a)	Number of penalties				3		
		Amount of penalties				EUR 101,400*		
	Art. 13	Number of penalties	1			2		
		Amount of penalties	EUR 70,000*			EUR 91,400*		
	Art. 14	Number of measures	1					
		Number of penalties	3			3		
		Amount of penalties	EUR 3,120,000*			EUR 101,400*		
Art. 14(a)	Number of penalties			1				
	Amount of penalties			HUF 26,500,000 ^{15*}				
Art. 14(d)	Number of measures					1		
Art. 14(1)	Number of penalties			1				1
	Amount of penalties			HUF 26,500,000 ^{16*}				EUR 200,000

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

¹³ For the corresponding amount in Euro please refer to footnote 10.

¹⁴ For the corresponding amount in Euro please refer to footnote 10.

¹⁵ For the corresponding amount in Euro please refer to footnote 10.

¹⁶ For the corresponding amount in Euro please refer to footnote 10.

UCITS Directive	UCITS Article	Penalties/Measures	France	Denmark	Lithuania	Luxembourg	Portugal	Spain
Chapter III <i>Obligations regarding management companies</i>	Art. 14(1)(a)	Number of penalties			1			
		Amount of penalties			EUR 100,000			
	Art. 14(1)(c)	Number of measures			2*			
		Number of penalties			1			
Art. 14(1)(d)	Amount of penalties				EUR 40,000			
	Number of measures					1*		
Chapter IV <i>Obligations regarding the depositary</i>	Art. 22	Number of penalties	1					
		Amount of penalties	EUR 3,000,000*					
	Art. 22(3)(a)	Number of measures			1			
		Number of penalties				1		
		Amount of penalties				EUR 133,400*		
	Art. 22(3)(b)	Number of measures		1				
	Art. 22(3)(c)(d)(e)	Number of penalties				1		
		Amount of penalties				EUR 133,400*		
	Art. 23	Number of penalties	1					
		Amount of penalties	EUR 3,000,000*					
Art. 24	Number of measures		1					
Art. 25(2)	Number of penalties						1	
	Amount of penalties						EUR 125,000	
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50(2)(a)	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.

UCITS Directive	UCITS Article	Penalties/ Measures	Austria	Belgium	Bulgaria	France	Lithuania	Netherlands	Spain	
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 51(1)(a)	Number of penalties			1					
		Amount of penalties			EUR 10,226					
	Art. 52(1)(a)	Number of measures						1*		
	Art. 52(2)	Number of measures							1*	
		Number of penalties	1							
	Art. 52(2)(c)	Amount of penalties	EUR 5,600*							
		Number of measures								
	Art. 52(3)	Number of penalties	1							
Amount of penalties		EUR 28,000*								
Art. 56(2)(c)	Number of measures							1*		
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 69(3)	Number of penalties							1	
		Amount of penalties							EUR 90,000	
	Art. 72	Number of measures					2*			
		Number of penalties			2					
	Art. 74	Amount of penalties			EUR 10,226					
		Number of measures					1*			
	Art. 76	Number of penalties			6					
		Amount of penalties			EUR 30,678					
	Art. 77	Number of measures				2	1*			
		Number of penalties		1		3				
Amount of penalties			EUR 60,000		EUR 3,120,000					

* 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.

UCITS Directive	UCITS Article	Penalties/Measures	Austria	Bulgaria	Croatia	Liechtenstein	Luxembourg
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 77	Number of measures				1	
	Art. 78(2)(3)(4)(5)	Number of penalties			1		
		Amount of penalties			HRK 110,000 ¹⁷		
	Art. 78(3)	Number of penalties			1		
		Amount of penalties			EUR 5113		
	Art. 80(1)	Number of penalties				1	
Amount of penalties					CHF 1,000 ¹⁸		
Chapter X <i>General obligations of UCITS</i>	Art. 83(2)	Number of penalties	1				
		Amount of penalties	EUR 10,400*				
	Art. 85	Number of measures			1		
Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 99(6)(c)	Number of measures					3

* 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.

¹⁷ For the corresponding amount in Euro please refer to footnote 9.

¹⁸ For the corresponding amount in Euro please refer to footnote 11.

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

13. Broadly, the data gathered under the sanction reports published so far shows 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 seems relatively low.
14. During the period 2016-2019, 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 2016-2019

	Member States where no sanctions were issued
2016-2019	Cyprus, Estonia, Finland, Germany, Ireland, Latvia, Slovakia, Norway, United Kingdom

15. The below tables provide with an overview of aggregated figures on penalties issued under the UCITS Directive during the reporting periods 2016-2019:

Table 2: global overview of penalties issued by NCAs under the UCITS Directive in 2016-2019

	Number of NCAs which issued penalties	Total number of penalties	Total amount of penalties in € ¹⁹
2016	8	34	~3,100,000
2017	13	57	~36,950,000
2018	14	41	~4,200,000
2019	11	43	~4,155,000

¹⁹ 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).

Table 3: overview of penalties issued under the UCITS Directive in 2016-2019 by NCAs in relevant Member States ranked by total amount of financial penalties²⁰

Member State	Total amount of financial penalties	Number of penalties
France	41,350,000	11
Italy	2,319,000	5
Sweden	958,488	1
Malta	612,473.85	1
Spain	550,000	8
Luxembourg	507,800	26
Czech Republic	412,975.50	12
Portugal	332,500	7
Belgium	230,000	3
Poland	214,213	4
Hungary	203,669	27
Croatia	192,795	9
Lithuania	140,000	2
Bulgaria	117,599	20
Slovenia	103,100	4
Austria	69,500	14
Romania	59,474	18
Greece	13,000	2
Liechtenstein	921.3	1
Total	EUR 48,386,588	175

²⁰ 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.

16. During the period 2016-2019, no penalties were issued under the UCITS Directive in the following Member States:

Table 4: Member States where no penalties were issued in 2016-2019

	Member States where no penalties were issued
2016-2019	Cyprus, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Netherlands, Slovakia, Norway, Iceland, United Kingdom

17. The below tables provide with an overview of aggregated figures on measures issued under the UCITS Directive during the reporting periods 2016-2019:

Table 5: overview of measures issued by NCAs under the UCITS Directive in 2016-2019

	Number of NCAs which issued measures	Total number of measures
2016	6	25
2017	9	22
2018	7	19
2019	9	19

Table 6: overview of measures issued under the UCITS Directive in 2016-2019 by NCAs in relevant Member States ranked by number of measures

Member State	Number of measures
Croatia	20
Slovenia	15
France	8
Romania	7
Hungary	5
Lithuania	5
Luxembourg	4
Malta	4
Netherlands	4
Austria	3

Denmark	3
Iceland	3
Greece	1
Italy	1
Portugal	1
Liechtenstein	1
Total	85

18. During the period 2016-2019, no measures were issued under the UCITS Directive in the following Member States:

Table 7: Member States where no measures were issued in 2016-2019

	Member States where no measures were issued
2016-2019	Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Germany, Ireland, Latvia, Poland, Slovakia, Spain, Sweden, Norway, United Kingdom

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 UCITS Directive²¹; 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 has considered the above data as a useful starting point to prompt discussions with NCAs on the use of sanctioning measures.

20. In this context, some NCAs have highlighted that, once potential infringements are identified, those can be addressed with various tools, ranging from more intrusive escalated supervisory response to enforcement action. NCAs have a broad range of supervisory and enforcement tools at their disposal which can be escalated to address infringing behaviours, including cases where sanctioning tools would not be judged effective by NCAs.

21. Against this background, on 16 July 2020 ESMA has organised a one-day workshop on sanctions in UCITS and AIFs in order to better understand the use of the sanctioning tool by NCAs (see the box underneath for more detail). Further work will be carried out 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.

²¹ As stated in paragraph 7 above.

ESMA workshop on sanctions in UCITS and AIFs

Background

On 16 July 2020, ESMA has organised a one-day workshop for NCAs' staff working in supervision and enforcement teams on the topic of sanctions in UCITS and AIFs, building on the data gathered under the ESMA Annual Sanction Reports.

Objective

The objective of the workshop was to better understand the possible reasons behind the uneven use of the sanctioning power among NCAs and the relatively low number of sanctions issued during recent years.

The workshop, through NCA presentations and discussions, explored cases where supervisors identified infringements of UCITS or AIFs and how such infringements were addressed, ranging from more intrusive escalated supervisory response to, or including, enforcement action.

Specific attention was paid not only on the use of the sanctioning tool, but also to national approaches regarding the use of escalated supervisory measures, in particular:

- in which cases a formal enforcement action would not be considered as an effective response to a suspected breach;
- how/why the supervisory action would be deemed to ensure a more effective outcome than starting a formal enforcement process;
- which factors would trigger a referral to enforcement.

The event featured presentations from a number of NCAs and two roundtables were held to enable an open discussion on key issues.

The workshop was an important step in recognising and addressing the importance of the topic of sanctions and enforcement.

Given the relevance of the topic in terms of investors' protection and orderly functioning of financial markets, ESMA expects NCAs to increase their focus on sanctions. The workshop will inform ESMA's ongoing work aimed at fostering supervisory convergence in the application of the UCITS Directive and the AIFMD and contribute to ESMA's goal to develop an EU outcome-focused supervisory and enforcement culture.