



European Securities and
Markets Authority

Report

**Administrative and criminal sanctions and other administrative
measures imposed under the Market Abuse Regulation in 2019**



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1 Executive Summary

National competent authorities (NCAs) report in total 279 administrative sanctions and measures and 60 criminal sanctions for infringements of Regulation (EU) No 596/2014 on Market Abuse (MAR) in 2019. The value of the financial penalties imposed for the administrative sanctions exceed EUR 82,000,000, while the financial penalties in relation to criminal infringements of MAR reached nearly EUR 6,000,000.

Despite there being a decrease in the number of administrative sanctions under MAR, the overall financial penalties imposed are significantly higher. An increase in the number of criminal sanctions and in the overall value of the financial penalties imposed is also noticeable.

Background

ESMA is required to publish an annual report with aggregated information on all penalties and measures imposed by NCAs pursuant to Article 33 of Regulation (EU) 596/2014 on market abuse (MAR)¹. This report contains aggregated information on the administrative and criminal sanctions and other administrative measures imposed by NCAs in accordance with Article 30 of MAR from 1 January 2019 to 31 December 2019. The report also contains an overview of the applicable legal framework, including the penalties and measures foreseen.

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 MAR and contribute to ESMA's goal to develop an EU outcome-focused supervisory and enforcement culture.

Further detailed information on public sanctions and measures issued by NCAs can be found in the ESMA register available on the ESMA website².

¹ OJ L 173, 12.6.2014, p. 1.

² <https://registers.esma.europa.eu/publication/searchSanction>

2 Background and relevant regulatory framework for reporting on MAR administrative and criminal sanctions and other administrative measures

1. Article 33(1) and (2) of MAR provides that ESMA shall publish an annual report on the administrative sanctions and other administrative measures and on the criminal sanctions imposed.
2. According to this Article, NCAs must provide ESMA annually with:
 - a) aggregated information regarding all administrative sanctions and other administrative measures imposed by them in accordance with Articles 30, 31 and 32 of MAR;
 - b) anonymised and aggregated data regarding all administrative investigations undertaken pursuant to the above Articles;
 - c) where Member States have, in accordance with the second subparagraph of Article 30(1), laid down criminal sanctions for market abuse conduct, anonymised and aggregated data regarding:
 - (i) criminal investigations undertaken pursuant to Articles 30, 31 and 32 of MAR, and
 - (ii) criminal penalties imposed by the judicial authorities for the same Articles.
3. Article 33 of MAR is implemented by Commission Implementing Regulation (EU) 2017/1158³, which sets forth the procedures and forms for submitting the information required.
4. According to Article 3 of Commission Implementing Regulation (EU) 2017/1158, NCAs shall provide ESMA with the information referred to in Article 33 (1) and (2) of the MAR by filling in the form set out in Annex I to the Regulation. That information shall refer to all the sanctions 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.

³ OJ L 167, 30.6.2017, p. 22.

3 Information on the sanctions and measures imposed

5. This is the third report published by ESMA concerning penalties and measures issued under the MAR⁴.
6. Article 30(2) of MAR provides that NCAs should have the power to impose at least the below administrative sanctions and measures for the infringements described in MAR⁵:
 - a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
 - b) the disgorgement of the profits gained, or losses avoided due to the infringement insofar as they can be determined;
 - c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;
 - d) withdrawal or suspension of the authorisation of an investment firm;
 - e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms;

⁴ Previous sanctions report published by ESMA on administrative and criminal sanctions and other administrative measures under the MAR can be found at these links:

- 2019 report: https://www.esma.europa.eu/sites/default/files/library/esma70-156-2005_mar_article_33_report_sanctions.pdf
- 2018 report: https://www.esma.europa.eu/sites/default/files/library/esma70-145-1081_mar_article_33_report_sanctions.pdf

⁵ Article 30 of MAR requires Member States to grant NCAs the power to take administrative sanctions and other administrative measures on at least infringements referring to the following provisions of MAR:

- a) Prohibition of insider dealing and unlawful disclosure of inside information (Article 14 MAR);
- b) Prohibition of market manipulation (Article 15 MAR);
- c) Obligation to detect suspicious transactions and the related reporting to NCAs pursuant to Article 16(1) and (2) MAR;
- d) Publication of inside information by the issuer (Article 17(1), (2), (4) and (5), and (8) MAR);
- e) Drawing up, maintaining and submitting to the NCA upon request insider lists (Article 18(1) to (6) MAR);
- f) Managers' transactions (Article 19(1), (2), (3), (5), (6), (7) and (11) MAR);
- g) Investment recommendations (Article 20(1) MAR), and
- h) Failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 23(2) MAR.

- f) in the event of repeated infringements of Article 14 or 15, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms;
 - g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account;
 - h) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained, or losses avoided because of the infringement, where those can be determined, and
 - i) maximum administrative pecuniary sanctions reaching, at least, the amounts specified in Article 30(2), letters (i) and (j) of MAR⁶.
7. Article 30(1), second subparagraph, of MAR provides that a Member State could decide to not lay down rules for administrative sanctions where the infringements referred to in the same provision were already subject to criminal sanctions in their national law by 3 July 2016.
8. Such option was exercised by Denmark, Finland, Germany, Ireland and Poland. The following is an indication of criminal offences under MAR as of the date of this Report⁷: (i) in Denmark there are criminal offences for all the infringements under MAR; (ii) in Finland there are criminal offences for infringements of Article 14, 15 and 17 of MAR; (iii) in Germany there are criminal offences for infringements of Article 14 and 15 of MAR – where committed intentionally and, for Article 15, if the infringement leads to an influence on the market price of the respective financial instrument -; (iv) in Ireland there is a criminal offence for the infringement set forth in Article 30(1), first subparagraph, letter (b) of MAR, and (v) in Poland there are criminal offences for infringements of Article 14, 15, and for the infringement set forth in Article 30(1), first subparagraph,

⁶ In particular, Article 30(2) letters (i) and (j) of MAR requires Member States to ensure:

- i) "in respect of a natural person, maximum administrative pecuniary sanctions of at least:
 - a. for infringements of Articles 14 and 15, EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;
 - b. for infringements of Articles 16 and 17, EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and
 - c. for infringements of Articles 18, 19 and 20, EUR 500 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and
- j) in respect of legal persons, maximum administrative pecuniary sanctions of at least:
 - a. for infringements of Articles 14 and 15, EUR 15 000 000 or 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;
 - b. for infringements of Articles 16 and 17, EUR 2 500 000 or 2 % of its total annual turnover according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and
 - c. for infringements of Articles 18, 19 and 20, EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014".

⁷ The indication is provided for information only and does not specify conditions triggering criminal offences. In addition, administrative sanctions can, in certain cases, be imposed for infringements under the same Articles (for instance, minor infringements, cases of gross negligence, etc.).

letter (b) of MAR. Moreover, further to administrative sanctions for Article 17 of MAR, in Poland there are criminal offences for Article 17(1), 17(4) and 17(5) of MAR, where certain circumstances provided for by the Act on Public Offering are met.

9. The report provides details on the aggregated number of sanctions imposed by NCAs and judicial authorities under MAR. NCAs may also have the power to impose additional types of measures and sanctions under national law.
10. The report presents the data provided by the 30 EU/European Economic Area Member States despite, as of the date of this Report, MAR is not applicable yet in Iceland, Norway and Liechtenstein. The report also includes for the last time the information in relation to MAR administrative and criminal sanctions and measures in the United Kingdom of Great Britain and Northern Ireland (UK) provided by the UK's Financial Conduct Authority, despite it no longer being a member of the European Union.
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) 2017/1158:
 - The administrative and criminal sanctions and measures imposed may be based on more than one legislative provision. Therefore, the sum of the number of sanctions and measures/values of the sanctions disclosed in the analytical tables of section 5 of this report may not correspond to the total number of sanctions and measures or to the total value of the fines imposed.
 - If the relevant penalties/measures refer not only to breaches relating to one single article of the MAR, but also to other provisions (at EU and/or national level), and the relevant amounts cannot be disaggregated per infringed article, "AGGREGATED FIGURE" would be added to each value.
13. As per Annex I of the Commission Implementing Regulation (EU) 2017/1158, the pecuniary amount imposed by the sanctions can be submitted in Euros, or in the



national currency where different from the Euro. In the latter case, the equivalent value in Euros is also provided in this report⁸.

14. The data presented in this report also appeared in the MAR Review Report⁹.

5 Sanctions imposed by NCAs

5.1 Overview of the administrative sanctions and measures imposed in 2019

15. ESMA underlines that the analysis presented below is based on high level observations on the aggregate penalties imposed and does not reflect an analysis of individual decisions.

16. This report covers the period from 1 January 2019 to 31 December 2019. Over that time frame, NCAs imposed 279 MAR administrative sanctions and measures. This represents a noteworthy decrease compared to the 472 administrative sanctions imposed in 2018. However, there is a significant increase of the aggregated value of the sanctions, that rises from the EUR 10,245,214.83 in 2018, to an aggregate value of EUR 82,824,945 in 2019.

17. This decrease in the overall number of sanctions imposed by the NCAs is consistent with the relatively high number of NCAs that did not impose any sanctions over the reporting period [eleven NCAs]. ESMA also notes that ten NCAs did not impose any administrative sanction in 2018, and that five jurisdictions did not impose any sanctions neither in 2018 nor in 2019.

18. However, it is not possible to extract clear conclusions from this data, since the number of sanctions and the amounts imposed for the MAR infringements are severely impacted by the intrinsic difficulty to demonstrate market abuse, which entails extensive investigations and complex evidence gathering exercises. Furthermore, the number of sanctions and the amounts imposed are also impacted, amongst other circumstances, by the different characteristics of each Member State's financial market, the approach to market surveillance adopted by each NCA or the quantity and quality of the Suspicious Transaction and Order Reports received by NCAs.

19. In this respect, the comments made by ESMA in its MAR Review Final Report¹⁰ remain pertinent: overall, a relatively low number of administrative sanctions were imposed. However, no general overall upward or downward trend can be identified since the

⁸ Based on foreign exchange reference rates at mid-2020; https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html

⁹ https://www.esma.europa.eu/sites/default/files/library/esma70-156-2391_final_report_-_mar_review.pdf, pages 141 to 146 and annex 4.

¹⁰ https://www.esma.europa.eu/sites/default/files/library/esma70-156-2391_final_report_-_mar_review.pdf

entry into application of MAR. Similarly, the data provided by the different NCAs over the three reporting periods (2017, 2018 and 2019) also show divergences that make it difficult to extract clear conclusions about individual or group trends over the years.

20. In particular, ESMA reiterates that “since MAR has been applicable only for a limited period of time, and considering that market abuse cases require extensive investigations, the number of sanctions and other measures (...) did not provide a fair representation of the market abuse activities performed in that time-span by NCAs and by other relevant national authorities. As a matter of fact, parallel sanctions based on the Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁶ (MAD), which was repealed by MAR, were also being issued during 2018”.

21. Moreover, as the MAR Review Final Report indicates, “the information provided repeatedly by NCAs for the purposes of the Annual Reports on MAR administrative and criminal sanctions and for this Report demonstrates that market abuse cases require extensive investigations that may take more than four years to be completed”.

NCAs' Member States	Sanctions		No sanctions imposed
	Total number of penalties and measures	Total aggregate amount of financial penalties	
Austria	16	EUR 476.450	
Belgium	6	EUR 1.507.103	
Bulgaria	0	0	X
Croatia	3	0	
Cyprus	1	EUR 20.000	
Czech Republic	0	0	X
Denmark	28	0	
Estonia	0	0	X
Finland	1	EUR 1.450.000	
France	9	EUR 46.110.000	
Germany	10	EUR 32.300	
Greece	17	EUR 28.401.000	
Hungary	12	HUF 13.950.000 ¹¹	
Ireland	0	0	X
Italy	4	EUR 1.488.371	
Latvia	0	0	X
Lithuania	2	EUR 225.000	
Luxembourg	2	EUR 203.568	
Malta	0	0	X
Netherlands	19	0	
Poland	6	PLN 3.150.000 ¹²	
Portugal	0	0	X

¹¹ Corresponding to EUR 39.940 (HUF/EUR=0.002863)

¹² Corresponding to EUR 713.475 (PLN/EUR=EUR 0.2265)

Romania	0	0	X
Slovenia	0	0	X
Slovakia	0	0	X
Spain	6	EUR 480.000	
Sweden	137	SEK 17.182.900 ¹³	
UK	0	0	X
Liechtenstein	NA	NA	
Norway	NA	NA	
Iceland	NA	NA	

5.2 Overview of the administrative sanctions and measures imposed during 2019 by NCAs (split by MAR Article)¹⁴

22. The tables in section 5.4 set out details on the administrative sanctions and measures imposed by NCAs in 2019 under MAR. In order to properly account for the different MAR provisions, while aiming to facilitate the reading of the reported data, the information on sanctions and measures imposed by NCAs is shown in separate tables for Article 14, Article 15 and for other MAR infringements. The NCAs that did not impose sanctions and measures in 2019 are not represented in the tables below.
23. Consistently with last year's report, the sanctions imposed for "other infringements" have been the most numerous [192], followed by sanctions under Article 15 of MAR (market manipulation) [74] and by sanctions under Article 14 of MAR (prohibition of insider dealing and of unlawful disclosure of inside information) [15].
24. As per last year's report, an increase of the number of sanctions under Article 14 (13 in 2018 and 15 in 2019) is also noticeable, while the number of sanctions under Article 15 (86 in 2018 and 74 in 2019) and under other infringements (373 in 2018 and 192 in 2019) have decreased.
25. In that respect, the intrinsic difficulties in demonstrating an infringement under Article 14 of MAR become even more apparent when considering that only eight NCAs from jurisdictions where MAR is fully applicable imposed sanctions in 2019 under this Article. Eighteen NCAs did not impose any sanction under Article 14 of MAR when considering both 2018 and 2019.
26. Ten NCAs from jurisdictions where MAR is fully applicable imposed sanctions in relation to infringements of Article 15 of MAR in 2019, i.e. one less than in 2018.
27. Thirteen NCAs from jurisdictions where MAR is fully applicable imposed sanctions under other MAR infringements in 2019, i.e. two less than in 2018.

¹³ Corresponding to EUR 1.677.738 (SEK/EUR=EUR 0.09764)

¹⁴ NCAs who have not imposed penalties/measures during the period are not reflected in this table.

28. Regarding the economic value of the sanctions, the aggregated amount imposed for infringements under Article 15 of MAR is the highest, heavily driven by the five sanctions imposed in France (EUR 25,920,000) and the 12 sanctions imposed in Greece (EUR 28,340,000) in the reporting period.

5.3 Overview of the criminal penalties and measures imposed in NCAs' Member States in 2019

29. Overall, 60 criminal sanctions were imposed in 2019 in relation to MAR criminal sanctions to an aggregate value of EUR 5,523,750, heavily driven up by the 42 criminal sanctions imposed in Germany, under Article 14 and 15 of MAR. This represents a significant increase compared to last year's report, where only fifteen criminal sanctions were imposed, for an aggregated amount of EUR 65,650. Only Polish judicial authorities imposed other criminal sanctions on MAR infringements in 2019.

30. Section 5.5 provides the specific information on the sanctions imposed in Germany and Poland over the reporting period.

31. Given that only five Member States decided to not lay down rules for some administrative sanctions for infringements already subject to criminal sanction under their national law, the number of criminal sanctions imposed in 2019 must be lower than the number of administrative sanctions.

32. Moreover, in addition to the caveats mentioned above in relation to administrative sanctions (such as the different characteristics of the financial markets or the quantity and quality of the Suspicious Transaction and Order Reports received by NCAs), the number of sanctions is also affected by the specificities of criminal enforcement procedures.

NCAs' Member States	Sanctions		No sanctions imposed
	Total number of criminal penalties	Total aggregate amount of financial penalties	
Denmark	0	0	X
Finland	0	0	X
Germany	42	EUR 5,444,896	
Ireland	0	0	X
Poland	18	PLN 348,145 [EUR 78,854]	

5.4 Administrative sanctions and measures imposed during 2019 by NCAs (split by MAR Article)

MAR Article	Penalties/measures	Austria	Belgium	Denmark	France	Hungary	Italy	Lithuania	Netherlands
Art. 14	Number	1	2	3	3	2	2	1	1
	Amount	EUR 6,000	EUR 1,457,102 AGGREGATED FIGURE	NA	EUR 190,000	HUF 2,000,000 [EUR 5,726]	EUR 418,371	EUR 200,000	NA

MAR Article	Penalties/measures	Austria	Belgium	Croatia	Denmark	France	Germany	Greece	Hungary	Italy	Spain	Sweden
Art. 15	Number	9	1	3	1	5	10	12	4	1	4	24
	Amount	EUR 4,450	EUR 1,400,000 AGGREGATED FIGURE	NA	NA	EUR 25,920,000	EUR 32,300	EUR 28,340,000	HUF 4,950,000 [EUR 14,171.85]	EUR 1,050,000	EUR 315,000	SEK 2,015,000 [EUR 196,744.6]



MAR Article	Penalties/measures	Austria	Belgium	Cyprus	Denmark	Finland	France	Greece	Hungary	Italy	Lithuania	Luxembourg
Other infringements	Number	6	5	1	24	1	1	5	6	1	1	2
	Amount	EUR 466,000	EUR 1,450,000 AGGREGATED FIGURE	EUR 20,000	NA	EUR 1,450,000	EUR 20,000,000	EUR 61,000	HUF 7,000,000 [EUR 20,041]	EUR 20,000	EUR 25,000 ¹⁵	EUR 203,568

MAR Article	Netherlands	Poland	Spain	Sweden
Other infringements	18	6	2	113
Amount	NA	PLN 3,150,000 [EUR 713,475]	EUR 165,000	SEK 15,167,900 [EUR 1,480,993.756]

¹⁵ This amount has been adjusted to EUR 17,500 due to a settlement agreement which was approved by the court on 5 August, 2020.

5.5 Criminal sanctions imposed during 2019 by NCAs' Member States (split by MAR Article)

MAR Article	Penalties/measures	Germany	Poland
Art. 14	Number	42 (overall)	2
	Amount	EUR 5,387,646	PLN 101,145 [EUR 22,909.3]

MAR Article	Penalties/measures	Germany	Poland
Art. 15	Number	42 (overall)	2
	Amount	EUR 57,250	PLN 247,000 [EUR 55,945.5]