

Report

Penalties and measures imposed under the UCITS Directive in 2022



Table of Contents

1	Executive Summary	4
2	Background and relevant regulatory framework for reporting on UCITS sanctions	5
3	Information on the aggregated penalties and measures imposed.....	5
4	Guidance for the interpretation of reported penalties and measures.....	6
5	Sanctions imposed by NCAs	8
5.1	Overview of the penalties and measures imposed in 2022	8
5.2	Overview penalties and measures imposed during 2022 by NCAs' Member States (split by UCITS Chapter)	9
6	General observations on the use of the sanctioning tool by NCAs.....	14
6.1	Observations on penalties	14
6.2	Observations on measures.....	19
6.3	Concluding observations	20

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 the UCITS Directive. This report contains information on the penalties and measures imposed by NCAs from 1 January 2022 to 31 December 2022.

Contents

Overall, nine NCAs imposed a total of 38 penalties; the total aggregated value of financial penalties imposed amounted to over 97 million Euro, with an amount of over 95 million Euro imposed by a single NCA.¹ Seven NCAs imposed a total of 18 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 far² keeps evidencing that the sanctioning powers are not equally used among NCAs. More specifically, the pattern evidenced throughout the years shows that, besides a limited number of NCAs issuing an increasing number/amount of sanctions³, the level of sanctions issued at national level remains stable and generally low, in particular when it comes to penalties.⁴

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.

¹ The AMF issued 5 penalties for a total amount of EUR 95,570,000.

² This is the sixth report published by ESMA concerning penalties and measures issued under the UCITS Directive. The UCITS sanctions reports published so far cover the reporting periods 2016-2021. ESMA previously published the AIFMD sanction reports for the reporting periods 2013-2021. The 2022 AIFMD sanction report was published concurrently with this report and is also available on the ESMA website. Sanctions report published by ESMA are available in the fund management page of the ESMA website, available at the following link: [Fund Management \(europa.eu\)](https://www.esma.europa.eu/fund-management).

³ As shown by Section 6.1 of this report, in the reporting period 2016-2022, the AMF issued 94% of the total amount of financial penalties (for a total amount of over 174 million Euro).

⁴ 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.⁵ 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) 2016/1212⁶, 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 sixth report published by ESMA concerning penalties and measures issued under the UCITS Directive.⁷
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".
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 the said Directive:

⁵ OJ L 302, 17.11.2009, p. 32.

⁶ OJ L 199, 26.7.2016, p. 6.

⁷ Previous UCITS sanctions report published by ESMA are available in the fund management page of the ESMA website, available at the following link: [Fund Management \(europa.eu\)](https://www.esma.europa.eu/fund-management).

- 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. 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 an NCA.
9. ESMA deems that the 2022 data, read in conjunction with data on sanctions issued in previous years⁸, can provide a useful indication on the use of the sanctioning tool at national level.
10. The aggregated information contained in this report reflects the data submitted to ESMA by NCAs.

4 Guidance for the interpretation of reported penalties and measures

11. This report should be considered in the context of the following provisions as provided for in Annex I to the Commission Implementing Regulation (EU) 2016/1212.
12. 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.

⁸ For the reporting periods 2016-2021 see the UCITS sanctions reports mentioned in the previous footnote.

13. 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 provided by NCAs.

5 Sanctions imposed by NCAs

5.1 Overview of the penalties and measures imposed in 2022

NCAs' Member States	Sanctions			No sanctions imposed
	Total number of:		Total aggregate amount of financial penalties (EUR)	
	penalties ⁹	measures ¹⁰		
Austria	4		34,580	
Belgium		1		
Bulgaria	8		56,242.12	
Croatia		4		
Cyprus				X
Czech Republic	2		219,779 ¹¹	
Denmark				X
Estonia				X
Finland				X
France	5		95,570,000	
Germany				X
Greece				X
Hungary				X
Ireland	1		117,600	
Italy				X
Latvia				X
Lithuania		1		
Luxembourg	2		167,668	
Malta				X
Netherlands				X
Poland				X
Portugal				X
Romania	12	4	26,317	
Slovenia		1		
Slovakia				X
Spain	3		350,000	
Sweden	1	1	926,016	
Liechtenstein		6		
Norway				X
Iceland				X
Total	38	18	~ 97,468,422	

⁹ 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.

¹⁰ 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.

¹¹ Corresponding to CZK 5,300,000.

5.2 Overview penalties and measures imposed during 2022 by NCAs' Member States (split by UCITS Chapter)¹²

UCITS Directive	UCITS Article	Penalties/Measures	Belgium	Czech Republic	France	Lithuania	Romania	Slovenia	
Chapter II <i>Authorisation of UCITS</i>	Art. 5	Number of penalties		1					
		Amount of penalties		EUR 207,339 ¹³					
Chapter III <i>Obligations regarding management companies</i>	Art. 7(a)(iii)	Number of penalties					4		
		Amount of penalties					EUR 6,145*		
	Art. 7(1)(b)	Number of measures					1		
	Art. 7(5)(a)	Number of measures				1			
	Art. 10(1)	Number of penalties						4	
		Amount of penalties						EUR 6,145*	
		Number of measures						1	
	Art. 12(1)	Number of measures	1						
	Art. 14	Number of penalties				2			
		Amount of penalties				EUR 270,000*			
	Art. 14(a)	Number of measures							1
	Art. 14(1)(c)(e)	Number of penalties						1	
		Amount of penalties						EUR 13,906	
		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.

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

¹³ Corresponding to CZK 5,000,000.

UCITS Directive	UCITS Article	Penalties/Measures	Czech Republic	France	Liechtenstein	Luxembourg	Sweden	
Chapter III <i>Obligations regarding management companies</i>	Art. 12	Number of penalties		2		2		
		Amount of penalties		EUR 270,000*		EUR 167,688		
	Art. 12(1)(b)	Number of penalties						1
		Amount of penalties						EUR 926,016 ^{14*}
		Number of measures						1
	Art. 14(1)(a)(d)(e)	Number of penalties						1
		Amount of penalties						EUR 926,016 ^{15*}
		Number of measures						1
Art. 14(1)(e)	Number of measures			4				
Chapter IV <i>Obligations regarding the depositary</i>	Art. 22	Number of penalties	1					
		Amount of penalties	EUR 12,440 ¹⁶					
	Art. 22(3)	Number of penalties			1			
		Amount of penalties			EUR 500,000*			
	Art. 25(2)	Number of penalties			1			
Amount of penalties				EUR 1,800,000*				
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50	Number of penalties		1				
		Amount of penalties		EUR 93,000,000*				

* 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.

¹⁴ Corresponding to SEK 10,000,000.

¹⁵ Corresponding to SEK 10,000,000.

¹⁶ Corresponding to CZK 300,000.

UCITS Directive	UCITS Article	Penalties/Measures	Bulgaria	Croatia	France	Liechtenstein	Spain
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50(1)(g)	Number of penalties					1
		Amount of penalties					EUR 170,000
	Art. 50(2)(a)	Number of penalties	1				
		Amount of penalties	EUR 20,451.68				
	Art. 51(1)	Number of penalties			2		1
		Amount of penalties			EUR 93,150,000*		EUR 170,000*
		Number of measures		4		1	
	Art. 51(2)	Number of penalties			1		
		Amount of penalties			EUR 93,000,000*		
	Art. 51(3)	Number of penalties					1
		Amount of penalties					EUR 170,000*
	Art. 52	Number of penalties					1
		Amount of penalties					EUR 10,000

* 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	France	Ireland	Liechtenstein	Romania
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 52(1)	Number of penalties	1				2
		Amount of penalties	EUR 10,400*				
		Number of measures					2
	Art. 52(2)	Number of penalties	1				2
		Amount of penalties	EUR 10,400*				EUR 505*
		Number of measures					2
	Art. 52(3)	Number of penalties	1				
		Amount of penalties	EUR 12,880*				
	Art. 56(1)	Number of penalties	1				
		Amount of penalties	EUR 9,200*				
	Art. 56(2)	Number of penalties	1 ¹⁷		1		
		Amount of penalties	EUR 9,200*		EUR 93,000,000*		
Chapter VIII <i>Master-feeder structures</i>	Art. 63(3)	Number of penalties	1				
		Amount of penalties	EUR 12,880*				
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 68(2)(b)	Number of measures				1	
	Art. 69(1)	Number of penalties			1		
		Amount of penalties			EUR 117,600*		
	Art. 69(3)	Number of penalties					6
Amount of penalties						EUR 5,945*	

* 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 Letters a), b), c), d).

UCITS Directive	UCITS Article	Penalties/ Measures	Austria	Bulgaria	France	Ireland	Romania	
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 72	Number of penalties				1		
		Amount of penalties				EUR 117,600*		
	Art. 74	Number of penalties	1					
		Amount of penalties	EUR 12,880*					
	Art. 76	Number of penalties			2			
		Amount of penalties			EUR 5,112.92			
	Art. 78(2)	Number of penalties					1	
		Amount of penalties					EUR 117,600*	
	Art. 82	Number of penalties	1					
		Amount of penalties	EUR 12,880*					
	Art. 82(2)	Number of penalties			4		1	
		Amount of penalties			EUR 20,451.68		EUR 117,600*	
Chapter X <i>General obligations of UCITS</i>	Art. 83	Number of penalties	1		1			
		Amount of penalties	EUR 2,100*		EUR 93,000,000*			
	Art. 84(3)	Number of penalties			1			
		Amount of penalties			EUR 10,225.84			
	Art. 85	Number of penalties				1		
		Amount of penalties				EUR 120,000*		
	Art. 88	Number of penalties	1					
		Amount of penalties	EUR 2,100*					
Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 99	Number of penalties					1	
		Amount of penalties					EUR 5,761*	

* 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

14. 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 limited number of NCAs, the number and amount of sanctions issued at national level remains relatively low.

15. During the period 2016-2022, 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 2016-2022

Member States where no sanctions were issued	
2016-2022	Cyprus, Estonia*, Finland, Latvia*, Slovakia, Norway

* Members States where no sanctions were issued under the AIFMD either during the reporting period 2013-2022

6.1 Observations on penalties

16. The below tables provide an overview of aggregated figures on penalties issued under the UCITS Directive during the reporting periods 2016-2022:

Table 2: global overview of penalties issued by NCAs under the UCITS Directive in 2016-2022

	Number of NCAs which issued penalties	Total number of penalties	Total amount of penalties in € ¹⁸
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
2022	9	38	~97,468,422

¹⁸ Those amounts are mostly made up of high cumulative sanctions issued by one or two NCAs, 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);
- 2022: 95,570,000 € (FR); 926,016 € (SE).

17. As in most of the previous reporting periods (2016-2019 and 2021), in 2022 the total amount of penalties issued was mainly made of high single sanctions. While subtracting from the amount of penalties issued in 2016-2019 and in 2021 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 ~10,1 trillion Euro of the total assets of UCITS domiciled in Europe¹⁹), as well as a declining trend in the amount of sanctions issued since 2017.

Table 3: global overview of the financial amount of penalties issued under the UCITS in 2016-2022 subtracting the highest single penalties²⁰

	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
2022	~97,468,422	~96,496,016	~972,406

Table 4: overview of penalties issued under the UCITS Directive in 2016-2022 by NCAs in relevant Member States ranked by total amount of financial penalties²¹

Member State	Number of penalties	Total amount of financial penalties (EUR million)	Total net assets of UCITS (Q4 2022) (EUR million) ²²
France	20	174.15	836,188
Italy	5	2.32	228,338.1
Sweden	2	1.88	470,249.1
Luxembourg	40	1.44	4,077,723
Spain	16	1.04	288,674
Czech Republic	17	0.64	18,777.4

¹⁹ Source: EFAMA report available at [230228_EFAMA_Quarterly_Statistical_Release_Q4_2022.pdf](https://www.efama.eu/~/media/EFAMA/Reports/230228_EFAMA_Quarterly_Statistical_Release_Q4_2022.pdf). For Estonia, Latvia and Lithuania, which are not included in the EFAMA report, ECB data as of 31/12/2022 was used instead. Data for Iceland was not available.

²⁰ See footnote 18.

²¹ The financial amount of penalties that can be issued by an NCA is regulated under national law and not harmonised at EU level.

²² See footnote 19.

Member State	Number of penalties	Total amount of financial penalties (EUR million)	Total net assets of UCITS (Q4 2022) (EUR million) ²³
Malta	1	0.61	2,756.5
Belgium	5	0.58	181,337.8
Portugal	9	0.51	16,325.5
Ireland	2	0.50	2,814,091
Bulgaria	75	0.45	1,158.6
Croatia	12	0.44	2,165.2
Greece	8	0.24	8,159.8
Hungary	41	0.22	1,252.1
Poland	4	0.21	20,474.9
Austria	24	0.18	90,757.6
Lithuania	2	0.14	28.0
Slovenia	4	0.10	3,934.5
Romania	36	0.09	3,015.2
Liechtenstein	8	0.01	32,925.6
Cyprus	-	-	450
Denmark	-	-	157,399.8
Estonia	-	-	60
Finland	-	-	118,210.4
Germany	-	-	451,950
Latvia	-	-	192.0
Netherlands	-	-	70,894.2
Slovakia	-	-	5,994.2
Norway	-	-	181,095
Iceland	-	-	N.A.
Total	331	185.74	10,084,577

18. During the period 2016-2022, no penalties were issued under the UCITS Directive in the following Member States:

²³ See previous footnote.

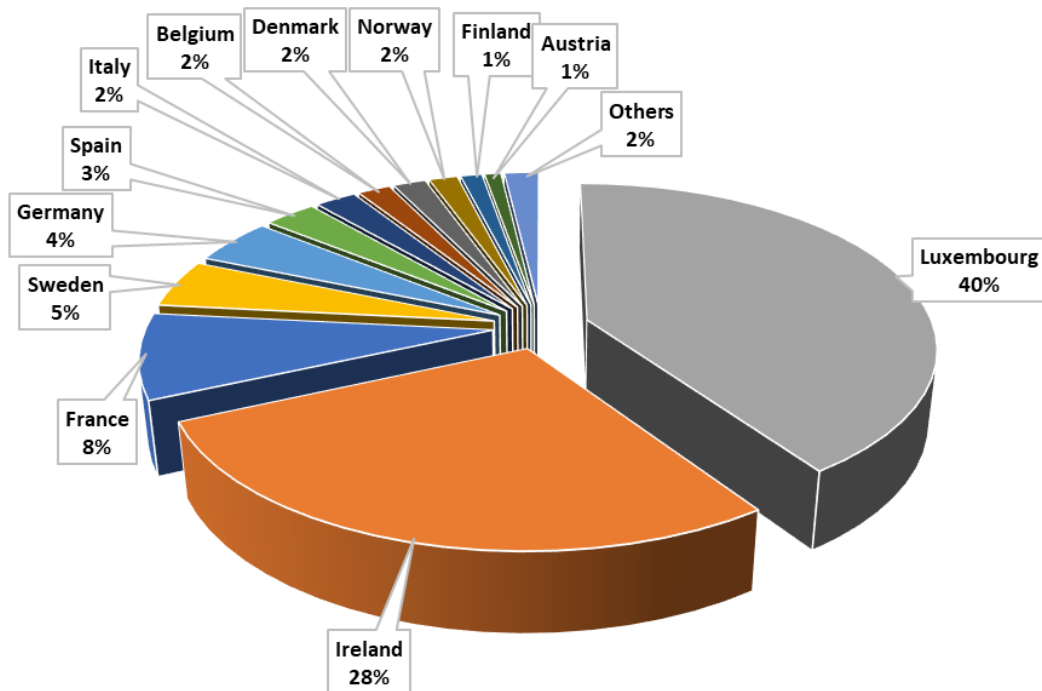
Table 5: Member States where no penalties were issued in 2016-2022

Member States where no penalties were issued	
2016-2022	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 2013-2022

19. 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), the proportion of the total amount of financial penalties issued under the UCITS Directive in 2016-2022 per Member State (Chart 2), as well as a combined representation of these data (Chart 3).

Chart 1: Net assets of the EU UCITS industry (Q4 2022) by country of domiciliation²⁴



²⁴ See footnote 19.

Chart 2: Amount of financial penalties issued under the UCITS Directive by Member State 2016-2022

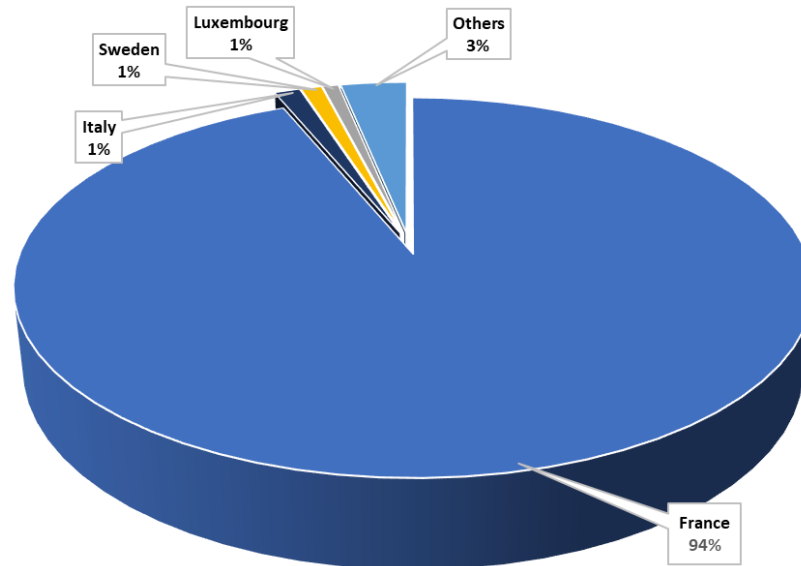
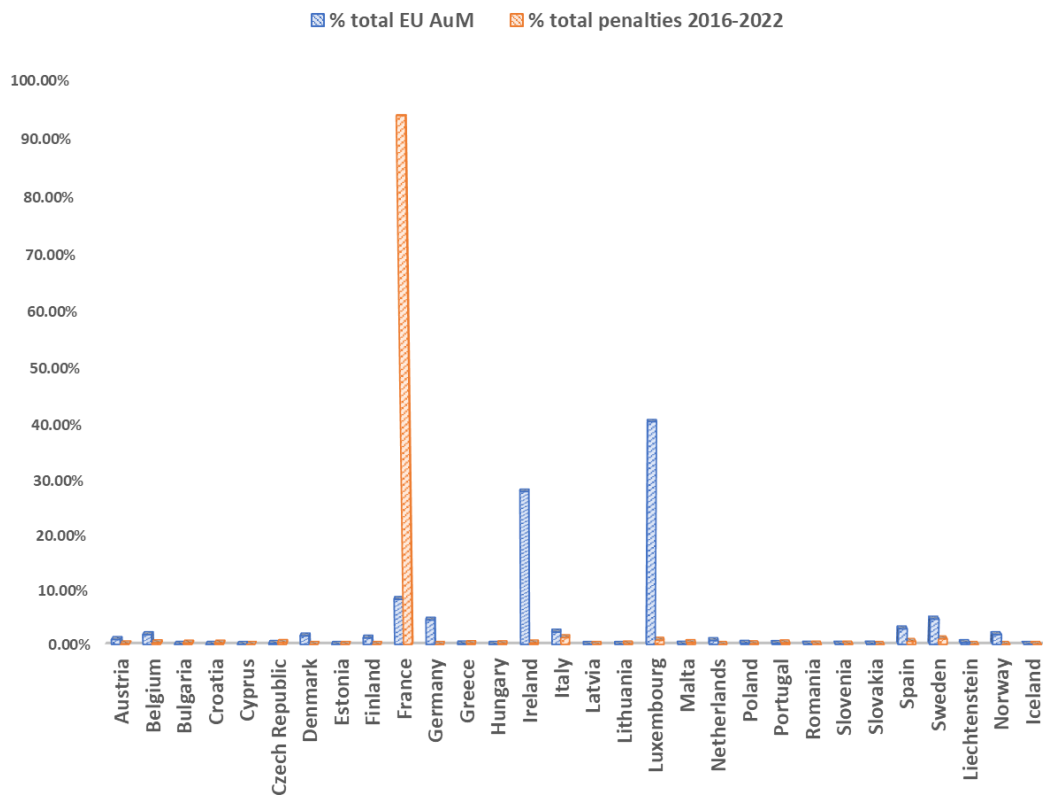


Chart 3: % net assets of the EU UCITS industry (Q4 2022) by country of domiciliation²⁵ vs. % of total amount of financial penalties issued under the UCITS Directive in 2016-2022 per Member State



²⁵ See previous footnote.

6.2 Observations on measures

20. The below tables provide an overview of aggregated figures on measures issued under the UCITS Directive during the reporting periods 2016-2022:

Table 6: global overview of measures issued by NCAs under the UCITS Directive in 2016-2022

	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
2022	7	18

Table 7: overview of measures issued under the UCITS Directive in 2016-2022 by NCAs in relevant Member States ranked by number of measures²⁶

Member State	Number of measures
Liechtenstein	45
Croatia	32
Romania	28
Hungary	20
Slovenia	16
Denmark	15
Lithuania	11
France	10
Belgium	5
Luxembourg	5

²⁶ Member States whose NCAs have not imposed measures during the period 2016-2022 are not reflected in this table.

Member State	Number of measures
Malta	4
Netherlands	4
Iceland	4
Austria	3
Greece	2
Italy	1
Portugal	1
Poland	1
Germany	1
Czech Republic	1
Sweden	1
Total	210

21. During the period 2016-2022, no measures were issued under the UCITS Directive in the following Member States:

Table 8: Member States where no measures were issued in 2016-2022

Member States where no measures were issued	
2016-2022	Bulgaria*, Cyprus, Estonia*, Finland, Ireland*, Latvia*, Slovakia*, Spain*, Norway

* Members States where no measures were issued under the AIFMD either during the reporting period 2013-2022

6.3 Concluding observations

22. 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 an NCA and the quality of their supervisory activity. Notwithstanding this, ESMA considers the above data as useful information to prompt discussions with NCAs on the use of sanctioning measures.

23. As highlighted in previous occasions²⁷, ESMA acknowledges many NCAs' general preference to use escalated supervisory measures instead of taking enforcement measures (in particular, penalties). In this context, ESMA reiterates the importance

²⁷ See, *inter alia*, the Final Report on the 2022 CSA on valuation (ESMA34-45-1802), available at [ESMA34-45-1802 2022 CSA on Asset Valuation - Final Report.pdf \(europa.eu\)](#).

of using the full range of the supervisory and enforcement toolkit they have been provided with under the UCITS Directive. This is particularly important in light of the requirement under the UCITS framework for Member States to ensure the existence of sanctions that are “*effective, proportionate and dissuasive*”.²⁸ Against this background, ESMA would like to encourage NCAs to consider the use of sanctions in case of significant regulatory breaches.

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.

²⁸ See Article 99c(1) of the UCITS Directive.