



European Securities and  
Markets Authority

# Report

**Penalties and measures imposed under the AIFMD Directive in 2018-  
2019**



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# 1 Executive Summary

## Background

ESMA is required to draw up an annual report on the application of administrative measures and imposition of penalties in the case of breaches of the provisions adopted in the implementation of Directive 2011/61/EU (AIFMD) in the different Member States pursuant to Article 48(3) AIFMD. This report contains information on the penalties and measures imposed by NCAs from 1 January 2018 to 31 December 2018 and from 1 January 2019 to 31 December 2019.

During the 2018 reporting period, 11 National Competent Authorities (NCAs) imposed a total of 63 penalties; the total aggregated value of financial penalties imposed amounted to around EUR 4,459,000. 10 NCAs imposed a total of 34 measures. 17 NCAs did not impose any sanction (penalty or measure) during this reference period.

During the 2019 reporting period, 13 NCAs imposed a total of 45 penalties; the total aggregated value of financial penalties imposed amounted to around EUR 9,000,000. 12 NCAs imposed a total of 42 measures. 14 NCAs did not impose any sanction (penalty or measure) during this reference period.

Broadly, the data gathered under this report 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.

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

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## 2 Background and relevant regulatory framework for reporting on AIFMD sanctions

1. This report is drafted pursuant to Article 48(3) of AIFMD.<sup>1</sup> According to this article, ESMA shall draw up an annual report on the application of administrative measures and imposition of penalties in the case of breaches of the provisions adopted in the implementation of the AIFMD in the different Member States. NCAs shall provide ESMA with the necessary information for that purpose.
2. This is the first report published by ESMA concerning penalties and measures issued under the AIFMD.
3. For the purpose of drafting this report and collecting the relevant information from NCAs, ESMA has built on the experience gathered with the collection and publication of aggregated data on sanctions under Directive 2009/65/EU (UCITS Directive).<sup>2</sup>
4. The information submitted by NCAs refer to all the penalties and measures imposed during the previous calendar year. The form should be completed electronically and be sent to ESMA no later than 31 March of each year.

## 3 Information on the aggregated penalties and measures imposed

5. Article 48(1) of the AIFMD provides that “*Member States shall lay down the rules on measures and penalties applicable to infringements of the national provisions adopted pursuant to the Directive and shall take all measures necessary to ensure that those rules are enforced (...) [and] shall ensure, in accordance with their national law, that the appropriate administrative measures can be taken or administrative penalties be imposed against the persons responsible where the provisions adopted in the implementation of the Directive have not been complied with*”. According to the same provision, Member States shall also ensure that those measures are “*effective, proportionate and dissuasive*”.
6. For the purpose of this report, only the penalties and measures issued under the AIFMD 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.

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<sup>1</sup> OJ L 302, 17.11.2009, p. 32.

<sup>2</sup> Article 99e(1) of the UCITS Directive provides that ESMA shall publish in an annual report the information regarding all penalties and measures imposed. NCAs are required to provide ESMA, annually, with aggregated information regarding all penalties and measures imposed under Article 99 of the UCITS Directive, by electronically filling in the form set out in Annex I of the Commission Implementing Regulation (EU) 2016/1212. Notwithstanding the lack of an empowerment for developing ITS under the AIFMD (contrary to what was foreseen under Article 99e(3) of the UCITS Directive), NCAs have to provide ESMA with the necessary information for the purpose of the AIFMD report on sanctions. NCAs agreed to use the same template employed under the UCITS sanctions reporting [Annex I of the Commission Implementing Regulation (EU) 2016/1212] for the purpose of submitting to ESMA the sanctions issued under the AIFMD framework.

UCITS sanctions reports published by ESMA on the UCITS Directive are available on the ESMA website.

7. While the above implies that the reported data does not allow to produce granular statistics based on it, ESMA deems that the 2018-2019 data can provide a useful indication on the use of the sanctioning tool at national level.<sup>3</sup>
8. 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**

9. ESMA has used the same template employed under the UCITS sanctions reporting for the purpose of submitting the sanctions issued under the AIFMD framework.<sup>4</sup>
10. The penalties imposed may cover more than one legislative provision, therefore the sum of penalties disclosed in Section 5.2 and Section 5.4 of this report may not correspond to the total number/amount of penalties imposed as disclosed in Section 5.1 and Section 5.3.
11. The measures imposed may cover more than one legislative provision, therefore the sum of measures disclosed in in Section 5.2 and Section 5.4 of this report may not correspond to the total number of measures imposed as disclosed in Section 5.1 and Section 5.3.
12. If the relevant penalties/measures refer not only to breaches relating to one single article of the AIFMD, but also to another article of the AIFMD or other provisions (at EU and/or national level), and the relevant amounts cannot be disaggregated per article of the AIFMD which was infringed, the mention “AGGREGATED FIGURE” is added to each value in the annexes of this report.
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 also provided.

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<sup>3</sup> For further information, please refer to Section 6 of the 2019 ESMA UCITS Sanction Report.

<sup>4</sup> For further information, please refer to footnote 2.

## 5 Sanctions imposed by NCAs

### 5.1 Overview of the penalties and measures imposed in 2018

NCAs' Member States	Sanctions			No sanctions imposed
	Total number of: - penalties <sup>5</sup>	- measures <sup>6</sup>	Total aggregate amount of financial penalties	
Austria	3	1	EUR 13,000	
Belgium				X
Bulgaria				X
Croatia	2	2	HRK 180,000 <sup>7</sup>	
Cyprus				X
Czech Republic	9	7	CZK 500,000 <sup>8</sup>	
Denmark		4		
Estonia				X
Finland				X
France	1	1	EUR 300,000	
Germany				X
Greece				X
Hungary	29	12	HUF 44,950,000 <sup>9</sup>	
Ireland				X
Italy	2		EUR 1,017,000	
Latvia				X
Lithuania				X
Luxembourg	4		EUR 42,000	
Malta		1		
Netherlands	1	4	EUR 25,000	
Poland	4		EUR 2,465,000	
Portugal	7	1	EUR 425,000	
Romania		1		
Slovenia				X
Slovakia	1		EUR 2,000	
Spain				X
Sweden				X
United Kingdom				X
Liechtenstein				X
Norway				X
Iceland				X
<b>Total</b>	<b>63</b>	<b>34</b>	<b>~ EUR 4,459,000</b>	<b>17 NCAs imposed no sanctions</b>

<sup>5</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>6</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 in Section 5.2.

<sup>7</sup> Corresponding to EUR 24,000 (HRK/EUR=0,133)

<sup>8</sup> Corresponding to EUR 19,498 (CZK/EUR= 0,039)

<sup>9</sup> Corresponding to EUR 126,384.75 (HUF/EUR=0,0028)

## 5.2 Overview penalties and measures imposed during 2018 by NCAs' Member States (split by AIFMD Chapter)<sup>10</sup>

AIFMD	AIFMD Article	Penalties/Measures	Portugal	Czech Republic	Austria	Malta	Croatia	Denmark	Hungary
<b>Chapter I</b> <i>General Provisions</i>	Art. 3(3)	Number of penalties	2	9					
		Amount of penalties	EUR 75,000	CZK 500,000 <sup>11</sup>					
	Art 4(2)(b)	Number of measures			1*				
	Art 5(1)	Number of measures			1*				
<b>Chapter II</b> <i>Authorisation of AIFMs</i>	Art 6(2)	Number of measures			1*				
	Art 6(7)	Number of measures				1*			
	Art. 9	Number of measures						1	
		Number of penalties					1		
	Art. 9(3)	Amount of penalties					HRK 60,000 <sup>12</sup>		
		Number of penalties							2
	Art. 9(7)(a)	Amount of penalties							HUF 44,950,000* <sub>13</sub>
		Number of measures							1
		Number of penalties							4
	Art. 9(7)(b)	Amount of penalties							HUF 44,950,000* <sub>14</sub>
		Number of penalties							2
	Art. 10(1)	Amount of penalties							HUF 44,950,000* <sub>15</sub>
		Number of measures					1*		
Art. 11(c)	Number of measures			7		1*			
	Amount of penalties								

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

<sup>10</sup> NCAs who have not imposed penalties/measures during the period are not reflected in this table.

<sup>11</sup> For the corresponding amount in Euro please refer to footnote 8.

<sup>12</sup> Corresponding to EUR 8,000 (HRK/EUR=0,133)

<sup>13</sup> Corresponding to EUR 126,384 (HUF/EUR=0,0028)

<sup>14</sup> For the corresponding amount in Euro please refer to footnote 13.

<sup>15</sup> For the corresponding amount in Euro please refer to footnote 13.

AIFMD	AIFMD Article	Penalties/Measures	France	Italy	Portugal	Hungary	Croatia	Slovakia	
<b>Chapter III</b> <i>Operating conditions for AIFMs</i>	Art. 12	Number of measures	1*						
		Number of penalties	1	2					
		Amount of penalties	EUR 300,000*	EUR 1,017,000*					
	Art. 12(1)(a)	Number of penalties				1			
		Amount of penalties				EUR 300,000*			
	Art. 12(1)(a)(b)(c)(d)	Number of measures						1*	
		Number of penalties					17		
		Amount of penalties					HUF 44,950,000* <sup>16</sup>		
	Art. 12(1)(c)	Number of measures				7			
	Art. 12(1)(e)	Number of measures				1		1*	
		Number of penalties				2			
		Amount of penalties				EUR 25,000			
	Art. 13	Number of penalties							1
		Amount of penalties							EUR 2,000
	Art. 14	Number of measures	1*					1*	
		Number of penalties	1	1					
		Amount of penalties	EUR 300,000*	EUR 570,000*					
	Art. 14(1)(a)	Number of penalties					2		
		Amount of penalties					HUF 44,950,000* <sup>17</sup>		
	Art. 14(1)(2)	Number of measures					2		
Art. 15(2)	Number of measures					2			
	Number of penalties					1			
	Amount of penalties					HUF 44,950,000* <sup>18</sup>			

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

<sup>16</sup> For the corresponding amount in Euro please refer to footnote 13.

<sup>17</sup> For the corresponding amount in Euro please refer to footnote 13.

<sup>18</sup> For the corresponding amount in Euro please refer to footnote 13.



AIFMD	AIFMD Article	Penalties/ Measures	Netherlands	Denmark	Italy	Malta	France	Portugal	Luxembourg
<b>Chapter III</b> <i>Operating conditions for AIFMs</i>	Art. 13(1)	Number of measures	1*						
	Art. 14	Number of measures	1*						
	Art. 15	Number of measures			2				
		Number of penalties			1				
		Amount of penalties			EUR 447,000*				
	Art. 15(1)	Number of measures	1*				1*		
	Art. 15(2)	Number of measures	1*						
	Art. 15(3)	Number of measures	1*						
	Art. 18	Number of measures			1			1*	
		Number of penalties				1			
		Amount of penalties				EUR 447,000*			
	Art. 18(1)	Number of measures					1*		
		Number of penalties						1	
		Amount of penalties						EUR 300,000*	
	Article 19	Number of measures					1*		
	Art. 19(3)(1)	Number of penalties							1
Amount of penalties								EUR 25,000	
Art. 19(8)	Number of penalties								1
	Amount of penalties								EUR 5,000*
<b>Chapter IV</b> <i>Transparency requirements</i>	Art. 24	Number of penalties			1				
		Amount of penalties			EUR 447,000*				
	Art. 24(2)(d)	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 2011/61/EU, but also to other provisions.

AIFMD	AIFMD Article	Penalties/Measures	Austria	Netherlands	Poland	Romania	Luxembourg	Croatia
<b>Chapter III</b> <i>Operating conditions for AIFMs</i>	Art. 21(2)	Number of penalties	3	1				
		Amount of penalties	EUR 13,000*	EUR 25,000				
	Art. 21(3)	Number of measures		1*				
	Art. 21(8)	Number of penalties				1		
		Amount of penalties				EUR 1,163,000*		
	Art. 21(8)(a)	Number of measures		1*				
	Art. 21(9)	Number of measures					1*	
		Number of penalties				1		
		Amount of penalties				EUR 1,419,000*		
	Art. 21(9)(c)	Number of penalties						1
		Amount of penalties						EUR 7,500*
	Art. 21(10)	Number of penalties				1		
		Amount of penalties				EUR 1,163,000*		
	Art. 21(11)	Number of measures			3*		1*	
		Number of penalties						2
		Amount of penalties						EUR 30,000*
	Art. 21(11)(b)	Number of penalties						1
		Amount of penalties						EUR 22,500*
	Art. 21(11)(c)	Number of penalties	3					1
		Amount of penalties	EUR 13,000*					EUR 22,500*
Art. 21(11)(d)	Number of penalties						2	
	Amount of penalties						EUR 29,500	
Art. 21(12)	Number of measures			1*				
<b>Chapter IV</b> <i>Transparency requirements</i>	Art. 22(3)	Number of measures						1*
	Art. 23(1)(a)	Number of penalties						1
		Amount of penalties						HRK 120,000 <sup>19</sup>

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

<sup>19</sup> Corresponding to EUR 16,000 (HRK/EUR=0,133)

### 5.3 Overview of the penalties and measures imposed in 2019

NCAs' Member States	Sanctions		No sanctions imposed
	Total number of: - penalties <sup>20</sup>	- measures <sup>21</sup> Total aggregate amount of financial penalties	
Austria			X
Belgium		5	
Bulgaria			X
Croatia	1	4	HRK 80,000 <sup>22</sup>
Cyprus	1	1	EUR 15,000
Czech Republic	6	5	CZK 305,000 <sup>23</sup>
Denmark		2	
Estonia			X
Finland		1	
France	4	1	EUR 3,930,000
Germany			X
Greece			X
Hungary	15		HUF 26,500,000 <sup>24</sup>
Ireland			X
Italy	5		EUR 316,000
Latvia			X
Lithuania			X
Luxembourg	2		EUR 37,100
Malta			X
Netherlands		4	
Poland	5	3	EUR 4,135,000
Portugal	2		EUR 450,000
Romania	1	6	LEI 2,000 <sup>25</sup>
Slovenia	1	2	EUR 2,900
Slovakia			X
Spain	1		EUR 30,000
Sweden			X
United Kingdom			X
Liechtenstein	1	8	CHF 4,000 <sup>26</sup>
Norway			X
Iceland			X
<b>Total</b>	<b>45</b>	<b>42</b>	<b>~ EUR 9,000,000</b> <b>14 NCAs imposed no sanctions</b>

<sup>20</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 5.4.

<sup>21</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 in Section 5.4.

<sup>22</sup> Corresponding to EUR 10,700 (HRK/EUR=0,133)

<sup>23</sup> Corresponding to EUR 11,932 (CZK/EUR=0,039)

<sup>24</sup> Corresponding to EUR 74,789 (HUF/EUR=0,0028)

<sup>25</sup> Corresponding to EUR 418,47 (LEI/EUR=0,209)

<sup>26</sup> Corresponding to EUR 4,341 (CHF/EUR=0,9213)

## 5.4 Overview penalties and measures imposed during 2019 by NCAs' Member States (split by AIFMD Chapter)<sup>27</sup>

AIFMD	AIFMD Article	Penalties/Measures	Czech Republic	Slovenia	Spain	Netherlands	Croatia	Hungary
<b>Chapter I</b> <i>General Provisions</i>	Art. 3(3)	Number of penalties	6					
		Amount of penalties	CZK 305,000 <sup>28</sup>					
	Art. 3(3)(d)	Number of measures		1				
		Number of penalties		1	1			
		Amount of penalties		EUR 2,900	EUR 30,000			
<b>Chapter II</b> <i>Authorisation of AIFMs</i>	Art. 8(3)	Number of measures				1*		
	Art. 9(5)	Number of penalties					1	
		Amount of penalties					HRK 80,000 <sup>29</sup>	
	Art. 10	Number of measures				4*		
	Art. 10(1)	Number of penalties						3
		Amount of penalties						HUF 26,500,000* <sub>30</sub>
Art. 11(c)	Number of measures	5						

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

<sup>27</sup> NCAs who have not imposed penalties/measures during the period are not reflected in this table.

<sup>28</sup> For the corresponding amount in Euro please refer to footnote 23.

<sup>29</sup> For the corresponding amount in Euro please refer to footnote 22.

<sup>30</sup> For the corresponding amount in Euro please refer to footnote 24.

AIFMD	AIFMD Article	Penalties/Measures	France	Italy	Hungary	Netherlands	Poland	Portugal	Croatia	
<b>Chapter III</b> <i>Operating conditions for AIFMs</i>	Art. 12	Number of measures	1							
		Number of penalties	1	4						
		Amount of penalties	EUR 680,000*	EUR 285,000*						
	Art. 12(1)	Number of measures					1*	3*		
		Number of penalties				9		4		
		Amount of penalties				HUF 26,500,000* <sub>31</sub>		EUR 3,816,000*		
	Art. 12(1)(a)	Number of penalties							3	
		Amount of penalties							EUR 450,000*	
	Art. 12(1)(e)	Number of measures								1
	Art. 14	Number of penalties		2						
		Amount of penalties		EUR 3,680,000*						
	Art. 14(a)(b)	Number of penalties				2				
		Amount of penalties				HUF 26,500,000* <sub>32</sub>				
Art. 14(1)(a)	Number of measures								1	

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

<sup>31</sup> For the corresponding amount in Euro please refer to footnote 24.

<sup>32</sup> For the corresponding amount in Euro please refer to footnote 24.

AIFMD	AIFMD Article	Penalties/ Measures	Luxembourg	Hungary	Croatia	Romania	Poland	Liechtenstein
<b>Chapter III</b> <i>Operating conditions for AIFMs</i>	Art. 12(1)(c)	Number of penalties	1					
		Amount of penalties	EUR 11,600*					
	Art. 14(1)	Number of measures				1*	1*	
		Number of penalties			1		2	
	Art. 15(2)	Amount of penalties			HUF 26,500,000* <sup>33</sup>			EUR 319,000*
		Number of measures				1		1
		Number of penalties	1					
	Art. 15(3)(b)	Amount of penalties	EUR 11,600*					
		Number of penalties	1					
	Art. 16(2)	Amount of penalties	EUR 11,600*					
Number of measures							2	
Art. 19(4)(b)	Number of measures					1*		
	Number of penalties					1		
	Amount of penalties					LEI 2,000* <sup>34</sup>		
<b>Chapter IV</b> <i>Transparency requirements</i>	Art. 22(2)(e)(f)	Number of measures				5*		
	Art. 23(1)(a)	Number of measures			1			

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

<sup>33</sup> For the corresponding amount in Euro please refer to footnote 24.

<sup>34</sup> For the corresponding amount in Euro please refer to footnote 25.

AIFMD	AIFMD Article	Penalties/ Measures	Belgium	Italy	Netherlands	Cyprus	France	Liechtenstein
<b>Chapter III</b> <i>Operating conditions for AIFMs</i>	Art. 15	Number of measures	1		1*			
		Number of penalties		2				
		Amount of penalties		EUR 195,000 *				
	Art. 15(1)	Number of measures				1		
		Number of penalties				1		
		Amount of penalties				EUR 15,000		
	Art. 16	Number of measures	1					
	Art. 18	Number of measures	1					
		Number of penalties			4		1	
		Amount of penalties			EUR 285,000 *		EUR 680,000*	
	Art. 19	Number of measures	1			1*		
		Number of penalties			2			
		Amount of penalties			EUR 195,000 *			
	Art. 19(1)(2)	Number of measures						2
Art. 20	Number of measures	1					1	
<b>Chapter IV</b> <i>Transparency requirements</i>	Art. 23	Number of penalties		1				
		Amount of penalties		EUR 31,000				

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

AIFMD Directive	AIFMD Article	Penalties/ Measures	Netherlands	Poland	Liechtenstein	Luxembourg	France	Denmark
<b>Chapter III</b> <i>Operating conditions for AIFMs</i>	Art. 20(1)	Number of measures	1*	2*				
		Number of penalties		2				
		Amount of penalties		EUR 2,348,000*				
	Art. 20(1)(f)	Number of measures			1			
		Number of penalties				1		
		Amount of penalties				EUR 11,600*		
	Art. 21	Number of penalties					3	
		Amount of penalties					EUR 930,000*	
	Art. 21(8)(b); 21(9); 21(11)(b); 21(11)(c)	Number of penalties				1		
		Amount of penalties				EUR 25,500*		
Art. 21(9)(a) (b)	Number of measures						2	
<b>Chapter IV</b> <i>Transparency requirements</i>	Art. 22	Number of measures					1	
	Art. 22(1)	Amount of penalties			1			
		Number of measures			CHF 4,000 <sup>35</sup>			
Art. 23(4)(c)	Number of measures			1				

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

<sup>35</sup> For the corresponding amount in Euro please refer to footnote 26.



AIFMD Directive	AIFMD Article	Penalties/Measures	Netherlands	France	Finland	Portugal	Slovenia
<b>Chapter IV</b> <i>Transparency requirements</i>	Art. 23	Number of measures	1*	1			
		Number of penalties					
		Amount of penalties					
	Art. 23(1)	Number of measures			1*		
	Art. 24(2)(d)	Number of penalties				2	
		Amount of penalties				EUR 50,000*	
Art. 31(4)	Number of measures			1*			
<b>Chapter VI</b> <i>Rights of EU AIFMs to market and manage EU AIFs in the Union</i>	Art. 34	Number of penalties		2			
		Amount of penalties		EUR 880,000*			
	Art. 43	Number of measures					1
	Art. 43(1)	Number of measures			1*		

\* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2011/61/EU, but also to other provisions.

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

14. Broadly, the data gathered under this report 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.
15. During the period 2018-2019, no sanctions (penalties or measures) were issued under the AIFMD in the following Member States:

**Table 1: Member States where no sanctions were issued in 2018-2019**

	Member States where no sanctions were issued
2018-2019	Bulgaria, Estonia, Germany, Greece, Ireland, Latvia, Lithuania, Sweden, Norway, Iceland, United Kingdom

16. The below tables provide with an overview of aggregate figures on penalties issued under the AIFMD during the reporting periods 2018-2019:

**Table 2: global overview of penalties issued by NCAs under the AIFMD in 2018-2019**

	Number of NCAs which issued penalties	Total number of penalties	Total amount of penalties in € <sup>36</sup>
2018	11	63	~4,459,000
2019	13	45	~9,000,000

**Table 3: overview of penalties issued under the AIFMD in 2018-2019 by NCAs in relevant Member States ranked by total amount of financial penalties<sup>37</sup>**

Member State	Total amount of financial penalties	Number of penalties
Poland	6,600,000	9
France	4,230,000	5
Italy	1,333,000	7
Portugal	875,000	9
Hungary	201,173	44

<sup>36</sup> Those amounts are mostly made up of high cumulative sanctions issued by some NCA, as follows:

- 2018: 1,017,000 € (IT), 2,465,000 € (PL);
- 2019: 4,135,000 € (PL); 3,930,000 € (FR).

<sup>37</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.

Luxembourg	79,100	6
Croatia	34,700	3
Czech Republic	31,430	15
Spain	30,000	1
Netherlands	25,000	1
Cyprus	15,000	1
Austria	13,000	3
Liechtenstein	4,341	1
Slovenia	2,900	1
<b>Total</b>	<b>EUR 13,477,062</b>	<b>108</b>

17. During the period 2018-2019, no penalties were issued under the AIFMD in the following Member States:

**Table 4: Member States where no penalties were issued in 2018-2019**

	Member States where no penalties were issued
2018-2019	Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Ireland, Latvia, Lithuania, Malta, Sweden, Norway, Iceland, United Kingdom

18. The below tables provide with an overview of aggregated figures on measures issued under the AIFMD during the reporting periods 2018-2019:

**Table 5: global overview of measures issued by NCAs under the AIFMD in 2018-2019**

	Number of NCAs which issued measures	Total number of measures
2018	10	34
2019	12	42

**Table 6: overview of measures issued under the AIFMD in 2018-2019 by NCAs in relevant Member States ranked by number of measures**

Member State	Number of measures
Czech Republic	12
Hungary	12
Netherlands	8
Liechtenstein	8
Romania	7
Austria	6
Croatia	6
Denmark	6
Belgium	5
Poland	3
France	2
Slovenia	2
Cyprus	1
Finland	1
Malta	1
Portugal	1
<b>Total</b>	<b>76</b>

19. During the period 2018-2019, no measures were issued under the AIFMD in the following Member States:

**Table 7: Member States where no measures were issued in 2018-2019**

	Member States where no measures were issued
2018-2019	Estonia, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Slovakia, Spain, Sweden, Norway, Iceland, United Kingdom

20. 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 AIFMD<sup>38</sup>; hence, there may be national sanctions that are not included in the report as issued under national provisions going beyond the implementation of the AIFMD. Notwithstanding this, ESMA has considered the above data as a useful starting point to prompt discussions with NCAs on the use of sanctioning measures.
21. 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.
22. 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.

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<sup>38</sup> As stated in paragraph 6 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.