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Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC

Topic
Transparency

Historic Question Reference
[ESMA31-67-127 TD Q24]

Subject Matter
Publication of sanctions and administrative measures without “undue delay”; TD Art 29

Question
As regards the decision making process, shall National Competent Authorities (NCAs) publish decisions on sanctions and measures only after the exhaustion of all relevant legal

remedies (or the expiry of the deadline to exercise them)?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q24]

No. According to Art 29(1) of the TD, decisions on administrative measures and sanctions as referred to in Art 28b of the TD shall be published by NCAs without undue delay without prejudice to any legal remedy of appeal against such decisions.

Given the presumption of lawfulness of administrative acts, final decisions on administrative measures and sanctions shall be published immediately after they have been adopted by the national competent authority, in compliance with the relevant national administrative procedures. Prompt publication of such decisions is an important tool for the competent authorities to inform market participants of what practices are to be considered an infringement of the TD and should not be dependent on the legal remedies against them, which are not harmonized across Member States.

The publication of such administrative measures and sanctions adopted by national competent authorities does not have any impact on the right of appeal. Indeed, pursuant to Article 29 (2) of TD, where an appeal is submitted against the adopted decision, national competent authorities are obliged either to include information to that effect in the publication at the time of the publication or to amend the publication if the appeal is submitted after the initial publication.