

## **List of administrative measures and sanctions applicable in Member States to infringements of Regulation on short selling and credit default swaps**

According to Article 41 of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (the SSR), ESMA shall publish on its website and update regularly a list of existing penalties and administrative measures applicable to infringements of this Regulation in each Member State.

The data provided in this list have been compiled from notifications of Member States to ESMA under Article 41 of the SSR.

Among the EEA countries, the SSR is applicable in Norway as of 1 January 2017. It will be applicable in the other EEA countries (Iceland and Liechtenstein) upon implementation of the Regulation under the EEA agreement.

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## Austria

The national provisions implementing Regulation (EU) 236/2012 have been enshrined in [the Austrian Stock Exchange Act 1989 \(FLG. No. 555/1989\), as amended by Federal Law Gazette I No. 184/2013](#) (SEA).

Art. 48q par. 1 in conjunction with art. 48u of the SEA grant the following supervisory powers to the FMA:

1. It shall have the right to inspect all types of documents and receive copies;
2. It shall have the right to request information from any person, including persons involved in the forwarding of orders or in the execution of the respective sequence of actions, as well as from their clients, and, if necessary, to issue a summons to such a person for an interrogation;
3. It shall have the right to conduct investigations on site;
4. It shall have the right to inspect the results of a request for information on telecommunication data and the surveillance data on telecommunication already included in the court files (art. 134 fig. 5 and art. 145 Code of Criminal Procedure) and to receive copies thereof (art. 140 par. 3 Code of Criminal Procedure).

Art. 48q par. 4 and 4a in conjunction with Art 48u of the SEA state that in accordance with the conditions set out in fig. 1 through 3 the FMA has the right to give information on or to publicly disclose administrative measures or sanctions taken by the FMA because of violations of art. 48a through 48f.

According to art. 48u, any person violating the provisions of Regulation (EU) 236/2012 or measures taken by the FMA pursuant to art. 18 par 1, 19 par. 2, 20 par. 2, 21 par. 1 or 23 par. 1 of Regulation (EU) 236/2012 shall be committing an administrative offence and shall be punished by the FMA with an administrative fine up to EUR 150,000 unless the act constitutes a criminal offence falling under the jurisdiction of the courts.

In addition, in 2008 the FMA has issued a [Circular](#) detailing statutory obligation to report suspicious transactions in connection with short selling. Relevant Q&A can be found [here](#).

## **Belgium**

The Law of 2 August 2002 on the supervision of the financial sector and on financial services, as amended by Article 28 of the Law of 30 July 2013, establishes the existing administrative sanctions for market abuse applicable to infringements of the SSR.

These sanctions are laid down in article 36 of the Law of 2 August 2002. As a consequence, the FSMA will be able to take the following measures in case of infringements of the SSR:

- make public its opinion with regard to the infringement or shortcoming concerned;
- impose the payment of a penalty, which, per calendar day, shall not be less than EUR 250 or greater than EUR 50,000 euros, or in total exceed EUR 2,500,000;
- impose an administrative fine on the offender that, for the same offence or same totality of offences, shall not be less than EUR 2,500 and not more than EUR 2,500,000. Where the infringement has resulted in the offender obtaining a capital gain, that maximum shall be raised to twice the capital gain and, in the event of a repeat offence, to three times the capital gain.

## Bulgaria

Markets in Financial Instruments Act amended and supplemented, SG No. 103/28.12.2012

Article 127.

(1) Any person, who shall commit or who shall suffer another to commit aviolation of:

...

5. (New, SG No.103/28.12.2012) Article 6, paragraph 1 of Regulation (EC) No 236/2012 on short selling and certain aspectsof credit default swaps, hereinafter "Regulation (EC) N<sup>o</sup> 236/2012"shall be liable by a fine of BGN 2,000 (~EUR 1,000) or exceeding this amount but not exceeding BGN 10,000(~EUR 5,000);

6. (New, SG No.103/28.12.2012) Article 5, paragraph 1, Article 7, paragraph 1, Article 8,Article 9 and Article 15 of Regulation (EC) N<sup>o</sup> 236/2012, shall be liable by a fine of BGN 5,000 (~EUR 2,500) orexceeding this amount but not exceeding BGN 20,000 (~EUR 10,000);

7. (New, SG No.103/28.12.2012) Article 12, paragraph 1 of Regulation (EC) N<sup>o</sup> 236/2012,shall be liable by a fine of BGN 5,000 (~EUR 2,500) or exceeding this amount but not exceeding BGN 50,000 (~EUR 25,000);

(2) In the event of a repeated violation covered under Paragraph 1, theoffender will be liableto a fine in an amount as follows:

5. (New, SG No.103/28.12.2012) for violations under Paragraph 1, item 5: BGN 5,000 (~EUR 2,500) orexceeding this amount but not exceeding BGN 20,000 (~EUR 10,000);

6. (New, SG No.103/28.12.2012) for violations under Paragraph 1, item 6: BGN 10,000 (~EUR 5,000) orexceeding this amount but not exceeding BGN 40,000 (~EUR 20,000);

7. (New, SG No.103/28.12.2012) for violations under Paragraph 1, item 7: BGN 10,000 (~EUR 5,000) orexceeding this amount but not exceeding BGN 100,000 (~EUR 50,000);

(5) (Amended, SG No.103/28.12.2012) In the event of non-compliance with an enforcementadministrative measure applied under:

...

2. Article 18, Article 19, Article 20 and Article 23 of Regulation (EC) N<sup>o</sup> 236/2012 theoffenders and the sufferers will be liable to a fine of BGN 10,000 (~EUR 5,000) or exceeding this amount but notexceeding BGN 100,000 (~EUR 50,000).

(7) For any violation covered under Paragraphs 1 - 5, any legal person or sole trader shall beliable to a pecuniary penalty in amounts as follows:

...

5. (New, SG No.103/28.12.2012) for any violations covered under Paragraph 1, item 5: BGN5,000 (~EUR 2,500) or exceeding this amount but not exceeding BGN 20,000 (~EUR 10,000) and, for a repeated violation, BGN10,000 (~EUR 5,000) or exceeding this amount but not exceeding BGN 40,000 (~EUR 20,000);

6. (New, SG No.103/28.12.2012) for any violations covered under Paragraph 1, item 6: BGN10,000 (~EUR 5,000) or exceeding this amount but not exceeding BGN 40,000 (~EUR 20,000) and, for a repeated violation, BGN20,000 (~EUR 10,000) or exceeding this amount but not exceeding BGN 80,000 (~EUR 40,000);

7. (New, SG No.103/28.12.2012) for any violations covered under Paragraph 1, item 7: BGN10,000 (~EUR 5,000) or exceeding this amount but not exceeding BGN 100,000 (~EUR 50,000) and, for a repeated violation, BGN 20,000 (~EUR 10,000) or exceeding this amount but not exceeding BGN 200,000 (~EUR 100,000).

## **Croatia**

Republic of Croatia adopted an Act on the implementation of Regulation (EU) No 236/2012 on Short Selling (SSR), which is published in The Official Gazette of the Republic of Croatia No. 54/13, and entered into force on 1 July 2013. Pursuant to its Articles 15 and 16, the list of offences is provided for violations of SSR.

Penalties amount between 100.000– 1.000.000 HRK (approx. EUR 13.000 - 130.000) for legal persons and 30.000– 50.000 HRK (approx. EUR 4.000 - 6.500) for individuals. Special fines apply to central counterparties and/or clearing houses, which amount between 200.000 – 500.000 HRK (approx. EUR 26.000 - 65.000)

## **Cyprus**

Pursuant to sections 2 and 37 of the Law Regulating the Structure, Responsibilities, Powers, Organization of the Cyprus Securities and Exchange Commission, any person acting in violation of any provision of the SSR, will be subject to an administrative fine not exceeding the amount of three hundred and fifty thousand euro (EUR 350.000) and, in case of a repeated violation, an administrative fine not exceeding seven hundred thousand euro (EUR 700.000) depending on the seriousness of the violation.

## Czech Republic

Act No. 256/2004 Coll., as amended by the Act No. 254/2012 Coll.

Article 1 par (3):

This Act further provides for, in relation to the directly applicable Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps and Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, competences of the Czech National Bank and the Ministry of Finance and administrative offenses in the area covered by these regulations.

Article 135 par (1) z):

An entity which is obliged to fulfil duties or comply with prohibitions stipulated by the SSR shall be subject to supervision performed by the Czech National Bank.

Article 164 par (1) k):

A legal entity or a natural person operating a business commits an administrative offence by failing to fulfil a duty or by violating a prohibition stipulated by the SSR.

Article 166 par (1) j):

A natural person commits a misdemeanour by failing to fulfil a duty or by violating a prohibition stipulated by the SSR.

Article 164 par (3) a) / Article 166 par (3) a):

A fine up to CZK 10 000 000 may be imposed for the administrative offence/misdemeanour laid down in Articles 164 (3) a) and 166 (3) a) of this Act.

Article 192a :

- (1) Pursuant to the SSR, the Czech National Bank shall be the competent authority in the Czech Republic.
- (2) In relation to government bonds issued by the Czech Republic and to Credit Default Swaps thereon, the exercise of the Czech National Bank's powers in accordance with Article 13 (3), Article 14 (2) and Article 20-24 of the SSR requires a prior consent of the Ministry of Finance.



## Denmark

According to section 84 of the Securities Trading Act, Danish FSA is appointed the competent authority regarding the SSR. It has the ability to issue a public statement regarding violations of the provisions of the SSR.

As to pecuniary penalties, Danish FSA has issued Executive Order 86 dated 30 January 2013 establishing sanctions for violations of the SSR. Executive Order 86 states the following:

1. (1) Unless a more severe penalty is prescribed by other legislation, offenders shall be liable to a fine for violating the following provisions of Regulation (EU) No 236/2012

- 1) Article 5(1),2) Article 6(1),
- 2) Article 7(1),
- 3) Article 8,
- 4) Article 9(1)-(3),
- 5) Article 12(1),
- 6) Article 13(1),
- 7) Article 14(1),
- 8) Article 15(1)-(2), or
- 9) Article 17(9)-(11).

(2) Unless a more severe penalty is prescribed by other legislation, offenders shall be liable to a fine for not complying with the requirements implemented by Danish FSA according to Article 19(2) of Regulation (EU) No 236/2012.

(3) Unless a more severe penalty is prescribed by other legislation, offenders shall be liable to a fine for violating prohibitions or conditions laid down by Danish FSA according to Article 20(2) of Regulation (EU) No 236/2012.

(4) Unless a more severe penalty is prescribed by other legislation, offenders shall be liable to a fine for violating restrictions laid down by Danish FSA according to Article 21 of Regulation (EU) No 236/2012.

2 (1) Companies etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the Criminal Code.

If Danish FSA finds there has been a violation of the SSR and this violation is subject to a penalty following executive order 86, Danish FSA will ask the public prosecutor to start a criminal investigation into the violation and subsequently bring charges against the suspected person. The courts will then determine the level of fines appropriate for breaches of the SSR.

The Danish FSA referral of cases to the public prosecutor will if the case concerns a legal person be made public on the Danish FSA website, unless investigatory considerations prohibit such publication.

## **Estonia**

According to § 230 (1) of the Estonian Securities Market Act (“SMA”) the Estonian FSA has all the rights established in this SMA and in the Financial Supervision Authority Act in exercising supervision over the due compliance with the provisions of Regulation (EU) No 236/2012.

According to § 237<sup>46</sup> of the SMA, violation of requirements of the SSR are punishable as misdemeanours.

Violation by natural person of the requirements provided in Articles 3–8 and 12–15 of Regulation (EU) No 236/2012 is punishable by a fine of up to 300 fine units. According to the Penal Code § 47 (1) for a misdemeanour, the Estonian FSA may impose a fine of up to three hundred fine units. A fine unit is the base amount of a fine and is equal to four euros.

The same act, if committed by a legal person, is punishable by a fine of up to EUR 32,000.

## Finland

The FIN-FSA may impose an administrative fine on anyone who wilfully or negligently fails to comply with or violates the obligation to:

- notify or publicly disclose significant net short positions in shares,
- notify significant net short positions in sovereign debt or uncovered positions in sovereign credit default swaps,

or doesn't obey:

- restrictions on uncovered short sales in shares or uncovered short sales in sovereign debt or uncovered sovereign credit default swaps,
- the FIN-FSA's decision on notification and disclosure in exceptional circumstances.

The administrative fine payable by a legal person shall amount to no less than EUR 5 000 and no more than EUR 100 000.

The administrative fine payable by a natural person shall amount to no less than EUR 500 and no more than EUR 10 000.

If the act or neglect is particularly reprehensible, FIN-FSA may impose a penalty payment instead of an administrative fine.

The FIN-FSA may impose a penalty payment on anyone who wilfully or negligently fails to comply with or violates to obey the decision of the FIN-FSA or the European Securities and Markets Authority referred in articles 20, 21, 23 and 28 of Regulation (EU) No 236/2012.

The penalty payment for a legal person shall amount to maximum 10% of legal person's turnover in the financial year preceding imposition of the penalty payment, not however exceeding EUR 10 million. The maximum penalty imposed by FIN-FSA is EUR 1 million. Penalty payments exceeding EUR 1 million are imposed by the Market Court, upon the proposal of FIN-FSA.

## France

According to Article L.621-15 of the French Monetary and Financial Code, *the Commission des sanctions* of the AMF may impose a sanction against any entity which is regulated by the AMF and against its employees, in relation to a breach of their professional obligations, and also against any person in relation to a breach of investor protection provisions or the orderly functioning of the market.

*The Commission des sanctions* of the AMF may also impose a sanction in the event of a breach of the provisions of the European regulations which are directly enforceable in all Member States of the European Union, provided that the considered European regulation falls within the remit of the AMF.

Sanctions which may be imposed are:

- For regulated legal entities: disciplinary sanctions (a warning, a reprimand, a temporary or permanent ban on providing some or all of the services provided, removal, if applicable, from the professional register) and/or a fine up to EUR 100 million or ten times the amount of any profit potentially made;
- For natural persons acting under the authority or on behalf of a regulated entity: disciplinary sanctions (a warning, a reprimand, a temporary or permanent withdrawal of their professional license, a temporary or permanent ban on conducting some or all of their business activities) and/or a fine up to 15 million Euros or ten times the amount of any profit potentially made in some cases or up to EUR 300,000 or five times the amount of any profit made in other cases;
- For non-regulated legal entities or natural persons: a fine up to EUR 100 million or ten times the amount of any profit potentially made.

## Germany

Section 39 par. 2d, par. 3a and par. 4 Securities Trading Act (Wertpapierhandelsgesetz – WpHG) contains the following administrative sanctions:

1. Intentional or reckless violations of the duty to notify BaFin due to Articles 5(1), 7(1), 8(1) will be punished by a fine up to EUR 200.000;
2. Intentional or reckless violations of the duty to disclose net short positions due to Article 6(1) will be punished by a fine up to EUR 200.000;
3. Intentional or reckless violations of the restrictions on short selling due to Articles 12(1) and 13(1) will be punished by a fine up to EUR 500.000;
4. Intentional or reckless violations of the restrictions on sovereign credit default swaps due to Article 14(1) will be punished by a fine up to EUR 500.000;
5. Intentional or reckless violations of the duty to establish procedures due to Article 15(1) will be punished by a fine up to EUR 500.000, and
6. Intentional or reckless violations of decrees due to Article 18(2) sentence 2 and 3 and Articles 19(2), 20(2), 21(1) or 23(1) will be punished by a fine up to EUR 50.000.

Finally, according to sec. 17(4) of the Act on Breaches of Administrative Regulations (Gesetz über Ordnungswidrigkeiten – OWiG) BaFin is always empowered to absorb any profit of the offence, even if the profit exceeds the provided maximum fine.

## Greece

Article 18 of Law 4141/2013 provides for the sanctions for the infringements of article 41 of Regulation (EU) No 236/2012, as follows:

### Article 18

Sanctions in accordance with article 41 of Regulation (EU) No 236/2012 of the European Parliament and the Council of 14 March 2012 on short selling and certain aspects of Credit Default Swaps:

1. The Hellenic Capital Market Commission, as the competent authority for the purposes of the Regulation (EU) 236/2012, imposes to any natural person or legal entity who violates the provisions of said Regulation, the provisions of the Delegated and Implementing Regulations defining the implementing technical standards, a fine equal to the double of profits that may be derived by the violator, and if this cannot be estimated, a fine ranging from EUR 1,000 up to EUR 1,000,000. For the imposition of sanctions the impact of the violation to the smooth operation of the market, the endanger of the interests of investors, the losses incurred by the investors and the possibility for restitution of these losses, the adoption of measures for the omission of relevant violations in the future, the degree of co-operation with the Hellenic Capital Market Commission during the investigation, the need of special and general preventive measures and any relapse of the same violation as well as of any violation of the capital market legislation are, indicatively, taken into consideration.
2. The Hellenic Capital Market Commission imposes a fine up to EUR 100,000 in case of non co-operation in an investigation, which is falling under the provisions of the Regulation (EU) 236/2012. For the estimation of the fine the second sentence of para 1 applies.
3. The Hellenic Capital Market Commission informs the public about any measures or sanctions imposed in case of violations of the provisions of the Regulation (EU) 236/2012, the provisions of the Delegated and Implementing Regulations defining the implementing technical standards, unless, this announcement is considered that it has a significant impact on the markets in financial instruments.

## Hungary

Act CLI of 2012 introduced new provisions on the application of the SSR in Hungary and respectively amended Act CLVIII of 2010 on the Hungarian Financial Supervisory Authority. The SSR related amendments entered into force on 1 November 2012.

Amended Article 77 of Act CLVIII of 2010 on the Hungarian Financial Supervisory Authority provides that the HFSA may :

- order disclosure in case of infringing the provisions of Articles 5-8 of the SSR,
- order compliance in case of infringing the provisions of Articles 12-14 of the SSR, and/or
- impose a fine in the range of HUF 100.000 – 500.000.000 (approximately EUR 350 – 1.764.040 based on 1 EUR = 283.44 HUF).

Act CXXXIX of 2013 on the Central Bank of Hungary (MNB Act) has been enacted in 2013, and accordingly HFSA's tasks have been taken over by the Central Bank of Hungary (MNB) as of 1 October 2013.

According to Subsection (7) of Section 40 of the MNB Act, within the framework of its responsibilities, the MNB shall provide for the implementation of Regulation (EU) No. 236/2012, functioning as the competent authority referred to in Article 32 of Regulation 236/2012.

## Iceland

### **Administrative measures and sanctions in relation with the Short Selling Regulation**

Icelandic Financial Supervisory Authority may impose an administrative fine on legal or natural person if it finds any breach of the following provisions of Regulation (EU) No. 236/2012.

1. Article 5(1)
2. Article 6(1)
3. Article 7(1)
4. Article 8
5. Article 12(1)
6. Article 13(1)
7. Article 14(1)
8. Article 15
9. Article 18(1)
10. Article 19(2)
11. Article 20(2)
12. Article 21(1)
13. Article 23(1)

All relevant events are taken into account when fines are determined, including:

- a. severity of the breach
- b. duration of the breach
- c. responsibility of the offender within the legal entity
- d. financial circumstances of the offender
- e. gain or avoided loss resulting from the breach
- f. if the breach has caused loss to third party
- g. every possible systemic effects from the breach
- h. willingness of the offender to cooperate
- i. former offences and if the offence is repeated

Penalties amount between ISK 100.000 to ISK 65.000.000 (about EUR 900 to EUR 564.500) for individuals and between ISK 500.000 to ISK 800.000.000 (about EUR 4.300 to EUR 6.947.500) for legal entities, but can be higher or up to 10% of total turnover according to the last approved Annual Financial Statements for the legal entity or 10% of total turnover according to last approved Consolidated Annual Financial Statements if the legal entity is part of a group and another legal entity within the group has benefitted from the offence.



## Ireland

The relevant pieces of Irish legislation are the European Union (Short Selling) Regulations 2012 (S.I. No. 340 of 2012) and the Central Bank Act 1942 (with respect to administrative sanctions).

The Central Bank of Ireland (“Bank”) is designated as the competent authority in the State for the purposes of the Regulation (EU) No. 236/2012 (Regulation 3 of S.I. No. 340 of 2012).

The following provisions apply in Ireland in relation to Regulation (EU) No. 236/2012:

- **Criminal Penalties (Regulation 5 of S.I. No. 340 of 2012)**  
The Bank can issue a notice to a person requiring them to comply with a requirement of Regulation (EU) No. 236/2012. It is a criminal offence to fail to comply with such notice and a person so convicted is liable:
  - (a) on summary conviction, to a class A fine (not exceeding EUR 5,000), or
  - (b) on conviction on indictment, to a fine not exceeding EUR 500,000.
- **Administrative Sanctions (Part IIIC, section 33AQ of the Central Bank Act 1942)** - applicable in circumstances where a regulated financial service provider fails to comply with a notice issued pursuant to Regulation 5 of S.I. No 340 of 2012:

### *Monetary Penalties*

- (a) If the financial service provider is a body corporate or an unincorporated body, the maximum monetary penalty which can be imposed is the greater amount of:
  - a) EUR 10,000,000, and
  - b) an amount equal to 10 per cent of the turnover of the body for its last complete financial year before the finding is made.
- (b) If the financial service provider is a natural person, the maximum monetary penalty which can be imposed is EUR 1,000,000.
- (c) In the case of the participation by a person concerned in the management of a regulated financial service provider in the commission by a financial service provider of a prescribed contravention, the maximum monetary penalty which can be imposed on that person is EUR 1,000,000.

### *Limitations on monetary penalties*

- (a) If the Bank decides to impose a monetary penalty on a regulated financial service provider under section 33AQ or 33AR of the Central Bank Act 1942, it may not impose an amount that would be likely to cause the financial service provider to cease business.
- (b) If the Bank decides to impose a monetary penalty on a person under section 33AQ or 33AR of the Central Bank Act 1942, it may not impose an amount that would be likely to cause the person to be adjudicated bankrupt.

### *Other Sanctions*

A caution or reprimand; a suspension of a regulated financial service provider’s authorisation for such period not exceeding 12 months as the Bank considers appropriate; revocation of its authorisation; a direction to cease committing the contravention; a direction to pay to the Bank all or a specified part of the costs incurred by the Bank in holding an inquiry and in investigating the matter to which the inquiry relates; or a direction to refund or withhold all or part of an amount of money charged or paid for the provision of a financial service by the financial service provider. In addition a natural or legal person may be disqualified from being concerned in the management of a regulated financial service provider for a specified period.

## **Italy**

The penalties for breaches of the SSR are provided by the newly introduced article 193-ter of the Italian Legislative Decree No. 58 of 24 February 1998 (Consolidated Law on Finance).

In particular, a fine ranging from EUR 25.000 to 2.500.000 is provided for breaches of articles 5, 6, 7, 8, 9, 15, 17, 18 and 19 of the SSR.

Those who fail to comply with articles 12, 13, 14, 20, 21, 23 of the SSR are subject to the same penalties, which shall be increased up to three times or up to the larger amount of ten times the product of the offence or the profit therefrom when, in view of the personal situation of the guilty party, the magnitude of the product of the offence or the profit therefrom or the effects produced on the market, they appear inadequate even if the maximum amount is applied.

Moreover, the imposition of pecuniary administrative sanctions shall always entail the confiscation of the product of the offence or the profit therefrom.

## Latvia

The national provisions regarding administrative measures and sanctions related to Regulation 236/2012 have been implemented in the following laws of Latvia:

Article 147.<sup>4</sup> of the Law on the Financial Instruments Market:

In supervising compliance with provisions of Regulation No 236/2012, in addition to the rights conferred by the Law on the Financial and Capital Market Commission, the Commission shall be entitled to:

- a. request the person to cease any activities contrary to the requirements of Regulation No 236/2012;
- b. request credit institutions and investment firms to freeze the assets or impose restrictions on using them by a person carrying out any activities contrary to the requirements of Regulation No 236/2012.

Article 148, Paragraph 14 of the Law on the Financial Instruments Market:

(14) Where the financial instruments market participant or any other person who is subject to the requirements of directly applicable laws and regulations issued by the European Union authorities, fails to comply with them, the Commission shall be entitled to warn the person or impose a penalty. A fine up to EUR 142 300 shall be imposed on legal persons, up to EUR 57 000 on natural persons.

Article 7 of the Law on the Financial and Capital Market Commission

- (2) Executing the functions specified under Article 6 hereof, the Commission shall have authority:
  - 1) to issue regulations and take decisions, governing activities of financial and capital market participants;
  - ....
  - 3) to, in cases stipulated under the regulations, set forth restrictions on the activities of financial and capital market participants;
  - ....
  - 5) to apply sanctions set forth by the regulatory requirement to financial and capital market participants, their officials in case said requirements are violated. These powers the Commission may use also regarding the persons related to potential non-compliance with laws and regulations or the persons at whose disposal there is information that may be of importance to clarification of circumstances of the breach.

## Lithuania

The provisions of Article 1735 of the Code of Administrative Transgressions of Law of the Republic of Lithuania (Official Gazette, 1985, No 1-1; 2011, No 163-7758) and the provisions of Article 93 of the Republic of Lithuania Law on Markets in Financial Instruments (Official Gazette, 2007, No 17-627; 2011, No 145-6818) correspond to the provisions of Article 41 of Regulation (EU) No 236/2012 regarding the establishment of the rules on penalties and administrative measures, applicable to infringements of this Regulation.

Code of Administrative Transgressions of Law of the Republic of Lithuania (Liability of natural persons):

“Article 1735. Violation of Legal Acts Regulating Markets in Financial Instruments

Violation of legal acts regulating the markets in financial instruments or the activities of financial brokerage firms, intermediaries of public trading or associations thereof, operators of the regulated market, the Central Securities Depository of Lithuania or its participants, except for the transgressions of law referred to in paragraph 4 and 5 of this Article, is subject to a penalty ranging from LTL 1,000 to LTL 10,000.

The transgressions of law referred to in paragraph 1 of this Article made by person, which has been already imposed an administrative penalty for infringements laid down in paragraph 1 of this Article, are subject to a penalty ranging from LTL 5,000 to LTL 15,000”.

The Republic of Lithuania Law on Markets in Financial Instruments (Liability of legal persons):

“Article 93. Pecuniary Penalties for Infringements of this Law

The Supervisory Institution shall have the right to impose pecuniary penalties:

10) on the legal persons who fail to comply with instructions of the Supervisory Institution, provide information specified in this Law and other laws to the Supervisory Institution or who hinder the Supervisory Institution or the persons authorised by it from carrying out investigations or verifications – in the amount of up to LTL 100,000”.

The process of tightening liability for violation of all SSR provisions is on-going. It is expected to adopt the following provisions of The Republic of Lithuania Law on Markets in Financial Instruments:

- A fine of up to EUR 5 million would be possible to impose on a natural person;
- A fine of up to 10 % of annual gross income would be possible to impose on a legal person.

## Luxembourg

The law of 12 July 2013 on Short Selling and Certain aspects of credit default swaps implements Regulation (EU) No 236/2012 into Luxembourg legislation. In its article 1 said law designates the CSSF as the competent authority for the application of the regulation (EU) No 236/2012. The law may be consulted in French on the website of the CSSF (see [here](#)).

Article 5 of the law of 12 July 2013 lays down the sanctions that may be inflicted by the CSSF for infringements of said law as well as the regulation (EU) No 236/2012 and its implementing measures.

According to article 5 (unofficial translation):

- (1) Natural persons or legal persons submitted to the regulation (EU) No 236/2012 or its implementing measures as well as natural or legal persons submitted to article 4 of the law of 12 July 2013 may be sanctioned by the CSSF in the event that:
  - a) they fail to comply with articles 5,6,7,8,9,12,13,14,15,17,18,19,20,21,23,or 28 of Regulation EU No 236/2012 or the implementing measures of said articles;
  - b) they fail to comply with the delays provided for in articles 9, 18 or 19 of Regulation EU No 236/2012 or the implementing measures of said articles for the notification and publication of information;
  - c) they fail to comply with article 4 of present law;
  - d) within the scope or in application of the provisions of Regulation No 236/2012 they publish incomplete, incorrect or false information;
  - e) within the scope or in application of the provisions of Regulation No 236/2012 they refuse to provide documentation or any other requested information;
  - f) within the scope or in application of the provisions of Regulation No 236/2012 they have provided documentation or other information that proves to be incomplete, incorrect or false;
  - g) within the scope or in application of the provisions of Regulation No 236/2012 they block out the powers of supervision, intervention, inspection and enquiries of the CSSF;
  - h) within the scope or in application of the provisions of Regulation No 236/2012 they fail to act in response to injunctions of the CSSF;
- (2) In order of seriousness, the CSSF may impose the following sanctions:
  - a warning;
  - a reprimand,
  - a fine of between EUR 125 and 1.500. 000 or when the infringement resulted in a direct or indirect pecuniary advantage a fine which shall in no circumstances be less than the profit and more than five times than the said profit.

When determining the sanction, the CSSF takes into account the nature, the duration and gravity of the breach, the behaviour and previous history of the natural or legal person to be sanctioned, the damages caused to third persons and the advantages and potential gain or effective gains obtained through the infringement.

(3) The CSSF may disclose to the public any sanctions imposed under this Article, unless such disclosure would jeopardise the financial markets or cause disproportionate damage to the parties involved. The costs of disclosure shall be borne by the persons sanctioned.

## Malta

[L.N. 344 of 2012 of Malta's Financial Markets Act \(Short Selling\) Regulations 2012](#), implements the relevant provisions of Regulation (EU) No 236/2012.

Where a person engaged in short selling and, or who trades in credit default swaps contravenes or fails to comply with any provisions of the EU Regulation, these regulations and any Financial Markets Rules issued thereunder, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty not exceeding one hundred and fifty thousand euro (EUR 150,000).

## The Netherlands

According to Article 2 of the Decree on implementation EU Regulations for the Financial Markets (“Besluit uitvoering EU-verordeningen financiële markten”) the Authority for the Financial Markets (AFM) is the competent authority within the meaning of Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps (the SSR), and is responsible for the supervision and enforcement of the rules laid down by or pursuant to the SSR.

The AFM may impose an order for incremental penalty payments or an administrative fine (with publication) on anyone who will fully or negligently fail to comply with or violate the obligations of the SSR.

Table of articles of the SSR and of the corresponding articles in the Decree.

Article of the SSR	Article of the Decree	Measure
12 (1); 13 (1); 14 (1); 20; 21; 23 (1-3,5); 28 (1-3)	a. 4 and Annex 1	Order for incremental penalty payments

Article of the SSR	Article of the Decree	Measure*	Publication
5 (1), (2); 6 (1), (2); 7 (1), (2); 8; 9 (1), (2)	5 and Annex 2	Administrative fine between EUR 500,000 and EUR 1,000,000	yes
12 (1); 13 (1); 14 (1)	5 and Annex 2	Administrative fine between EUR 2,000,000 and EUR 4,000,000	no
15	5 and Annex 2	Administrative fine of EUR 10,000	no
17 (7), (9-11); 18	5 and Annex 2	Administrative fine between EUR 500,000 and EUR 1,000,000	yes
19	5 and Annex 2	Administrative fine between EUR 500,000 and EUR 1,000,000	yes
20; 21; 23 (1-3), (5); 28 (1-3)	5 and Annex 2	Administrative fine between EUR 2,000,000 and EUR 4,000,000	no

\*Article 1:81 of the Act on Financial Supervision (“Wet op het financieel toezicht”) states that if, during the committing of the offence less than five years have expired since the imposition of an administrative fine on the offender in respect of the same offence, the amount of the administrative penalty, for a separate offence can be multiplied. The AFM can determine the amount of the administrative fine to a maximum of twice the amount of the benefit that the offender has obtained through the offence if his advantage is greater than EUR 2,000,000.

## **Norway**

The national provisions for penalties and administrative sanctions of Regulation (EU) 236/2012, Short selling regulation ("SSR"), have been incorporated in the Securities Trading Act (norwegian: verdipapirhandelloven) as of January 1, 2017. Refer to the below mentioned sections in the Securities Trading Act for full legal reference:

Pursuant to § 17-2(1) of Securities Trading Act, intentional or negligent violation of SSR article 12-15, which results in a financial gain, may result in an order to surrender those financial gains.

Pursuant to § 17-3(2) of Securities Trading Act, intentional or negligent violation of SSR article 12-15 may result in fines or imprisonment of maximum 1 year.

Pursuant to § 17-3(3) of Securities Trading Act, serious or repeated, intentional or negligently violation of SSR article 5-11 may result in fines.

Pursuant to § 17-4(1) of Securities Trading Act, intentional or negligent violation of SSR article 5-11 may result in administrative sanctions by Finanstilsynet.



## **Poland**

The legislative process implementing the SSR is on-going.

## Portugal

The Portuguese Securities Code has two important rules regarding the levying of penalties on the infringement of duties established in other legal instruments.

Firstly, article 388(3) states that the penalties established in articles 389 to 399 of the same Code not only refer to the duties and prohibitions established in the Securities Code but also in regulations that supplement the provisions thereof, as well as in other national or European Union legislation, including related regulations, concerning the subject matters identified in subparagraphs (a) and (b) of paragraph (3). Subparagraph (a) includes a reference to financial instruments, which is understood to include the instruments and contracts referred to in the Regulation. Therefore, the penalty provisions of the Securities Code apply to the infringements of such duties.

Secondly, article 400 levies penalty on the infringements of duties and prohibitions in said legislation which are not covered by the aforementioned articles 389 to 399.

Therefore, as regards the infringements of the rules in the Regulation, the penalties are already provided for, either in one of the specific penalty provisions of articles 389 to 399 or in article 400 of the Securities Code, as specified in the table below:

Table of provisions of the Regulation and of the corresponding penalty provisions in Portuguese legislation

Provisions of the Regulation: duties	Penalty provision of the Portuguese Securities Code	Limits of the pecuniary penalty
Transparency rules, method and time of notification and disclosure: Article 5(1) and (2) Article 6(1) and (2) Article 7(1) Article 8 Article 9(1), (2) and (4)	Notification to the CMVM: article 389(1)(c) and 388(3);  Disclosure to the public: article 389(1)(b) and 388(3);	Between EUR 25,000 and EUR 5,000,000
Records of gross positions: Article 9(1)	Article 400(a)	Between EUR 2,500 and EUR 500,000
Locate rules: Article 12 Article 13	Article 395(1)(b)	Between EUR 25,000 and EUR 5,000,000
Restrictions on Credit Default Swaps Article 14(1)	Article 395(1)(b)	Between EUR 25,000 and EUR 5,000,000
Duties of exempted market makers or prime brokers Article 17(9) and (10)	Article 389(c)	Between EUR 25,000 and EUR 5,000,000
Restrictions on exceptional circumstances Article 20 Article 21 Article 23	Article 395(1)(b)	Between EUR 25,000 and EUR 5,000,000

The English version of the Securities Code can be consulted at: [CMVM - Legislation / Regulations - Securities Code](#)

## Romania

Regulation No. 6/2012 of the Romanian Financial Supervisory Authority (FSA) regarding the application of article 41 of Regulation (EU) No 236/2012:

Art.1 This regulation establishes rules regarding the application of article 41 of Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps, hereinafter referred to as Regulation (EU) No 236/2012.

Art. 2 The terms and the phrases used in this regulation have the significance specified under Regulation (EU) No 236/2012, under Romanian Capital Market Law No 297/2004, and under the regulations issued by the Romanian Financial Supervisory Authority (FSA) by applying the law.

Art. 3 FSA exercises its powers and takes the necessary measures as competent authority under Regulation (EU) No 236/2012, responsible for supervising the application of the provisions of Regulation (EU) No 236/2012 in the case of shares admitted to trading on a trading venue in Romania, according to Regulation (EU) No 236/2012, and the FSA Statute.

Art. 4 FSA applies effective, proportionate and dissuasive penalties and administrative measures in case of breach of the following obligations specified under Regulation (EU) No 236/2012:

- a) Notifying FSA of significant net short positions in shares, according to article 5 and article 9 of Regulation (EU) No 236/2012;
- b) Public disclosure of information on significant net short positions in shares, according to article 6 and article 9 of Regulation (EU) No 236/2012;
- c) Keeping, for a period of 5 years, records of the gross positions which make a significant net short position, according to article 9 of Regulation (EU) No 236/2012;
- d) Entering into a short sale of a share admitted to trading on a trading venue, by observing the conditions specified under Regulation (EU) No 236/2012, and under the regulations issued in its application;
- e) Establishment of procedures by the central counterparty that provides clearing services for shares, according to article 15 of Regulation (EU) No 236/2012;
- f) Notifying FSA of the intention to benefit from the exemption specified under article 17 paragraph 1 of Regulation (EU) No 236/2012, according to paragraph 5 and, as the case may be, paragraph 8 of the same article;
- g) Notifying FSA where there are any changes affecting a person's eligibility to use the exemption, or if it no longer wishes to use the exemption, according to article 17 paragraph 9 of Regulation (EU) No 236/2012;
- h) Providing to FSA, not later than 4 calendar days after the request is made, the information on short positions held or activities conducted under the exemption, according to article 17 paragraph 11 of Regulation (EU) No 236/2012.

Art. 5 Committing the infringements specified under article 4 shall be sanctioned by FSA according to article 272 paragraph 2 letter a) and letter g) and article 273 of Title X of Law No 297/2004.

Art. 6 Decisions regarding the committing of the infringements specified under article 4 shall be taken by FSA according to Law No 297/2004.

Art. 7 FSA shall disclose to the public all the sanctions applied according to this regulation, unless such disclosure to the public would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

Art. 8 This Regulation shall enter into force on the day of its publication in the Official Journal of Romania, Part I, and it shall be published in the FSA Gazette on the [CNVM website](#).

## Spain

The national provisions implementing Regulation (EU) 236/2012 have been enshrined in Article 85.2.j, Art. 99.x), Art. 99.z quinquies and Art. 100.e) of the Spanish Securities Market Law (Act 24/1988, of 28 July, on the securities market):

“Article 85. Powers of the National Securities Market Commission. Supervision and inspection.

... 2. The National Securities Market Commission's powers of supervision and inspection shall include, in the form and subject to the limitations established by law, the power to:

.... j) order the suspension or limitation of the type or volume of transactions or activities that natural or legal persons may perform in the securities markets;”

“Article 99

The following acts or omissions constitute very serious violations by the natural and legal persons referred to in Article 95 of this Act:

...

x) Breach by investment firms, other financial institutions or commissioners for oaths of the obligations, restrictions or prohibitions deriving from article 36 of this Act, or of the provisions or rules issued under articles 43 and 44 of this Act.

z.quinquies) Breach of the precautionary measures imposed in parallel with the penalties measures imposed by the National Securities Market Commission and, in particular, those envisioned in items e), g), i), j) and k) of article 85.2 of this Act.”

“Article 100

The following acts or omissions by the natural and legal persons referred to in Article 95 of this Act constitute serious infringements:

...

e) Failure by parties other than investment firms, financial institutions or commissioners for oaths to comply with the obligations, restrictions or prohibitions deriving from article 36 of this Act, or with the provisions and regulations under articles 43 and 44 of same.”

Comments:

Article 36.1 of the Spanish Securities Market Law (Act 24/1988, of 28 July, on the securities market) provides that “Purchase and sale transactions and other deals for a consideration on each market shall be deemed to be official secondary securities market transactions where they relate to transferable securities or financial instruments listed in such market and are made in that market in accordance with its rules of operation.”

Paragraph 2 of the above mentioned article 36 states that “Transfers for a consideration other than those envisaged in the preceding section and transfers for no consideration of securities or financial instruments listed in an official secondary market shall not be deemed to be official secondary market transactions.”

Regarding the “rules of operation” of the market, article 64 of the Regulation of Stock Exchanges approved by the Decree 1506/1967, of 30 June, states that “it may only be negotiated by the investors those securities they own previously”.

## **Slovakia**

Sanctions in accordance with Article 41 of Regulation (EU) No 236/2012 are stipulated in Article 144 paragraph 23 of Act No 566/2001 Coll. on Securities and Investment Services (The Securities Act) and on amendments and supplements to certain laws (hereinafter referred as “Securities and Investment Services Act”) and were introduced in the amendment of the Securities and Investment Services Act – Act No. 132/2013 Coll. dated 15 May 2013 which entered into force on 10 June 2013.

Article 144 paragraph 23 of the Securities and Investment Services Act stipulates as follows:

where the National Bank of Slovakia finds any breach of the provision of Regulation (EU) No 236/2012, the National Bank of Slovakia may impose sanctions on legal or natural persons pursuant to Article 144 paragraph (1) point a.), c.), e.) and i.) of the Securities and Investment Services Act, namely:

- a) impose measures designed to eliminate the shortcomings;
- b) require to supply special statements, reports and information;
- c) charge a fine of between EUR 332 and EUR 663 878;
- d) order the publication of a correction of incomplete, incorrect or untrue information published by these persons under an obligation imposed by law.

## Slovenia

The Government of the Republic of Slovenia has adopted the Regulation on the implementation of regulation (EU) on short selling and certain aspects of credit default swaps (Official Gazette of the Republic of Slovenia No 54/2012). This Regulation establishes administrative measures and sanctions regarding the application of Article 41 of Regulation (EU) No. 236/2012. The competent authority, responsible for supervising the application of provisions of Regulation (EU) No. 236/2012 is Securities Market Authority (the Agency). The Regulation on the implementation of regulation (EU) on short selling and certain aspects of credit default swaps entered into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia No 54/2012.

Regulation applies penalties and administrative measures in case of violation of duties established in Regulation (EU) No. 236/2012 as follows:

### Article 4:

The Agency is authorised to issue the following administrative measures if it establishes a violation of Regulation (EU) No. 236/2012 hereof:

- measures for eliminating the established violation,
- order temporary suspension of trading in a financial instrument,
- prohibit individual person to dispose of its financial instruments or other property,
- temporarily prohibit individual person to perform an activity or profession.

### Article 5:

A fine of EUR 12,000 up to 150,000 shall be imposed on a legal person who violates duties due to Articles 5(1), 6(1), 7(1), 8, 9(1), 12(1), 13(1), 14(1), 18(1), 19(2), 20, 21(1), 23(1) of the Regulation (EU) No. 236/2012.

A fine of EUR 25,000 up to 250,000 shall be imposed on a legal person considered a medium or large company according to Companies Act (Uradni list No. 65/09 – ZGD-1-UPB3, 33/11, 91/11, 100/11 – Decision US in 32/12, 57/12, 44/13 – Decision US in 82/13, hereinafter: Companies Act), who violates duties under the preceding paragraph.

A fine of EUR 6,000 up to 100,000 shall be imposed on an entrepreneur or individual who independently pursues an activity, who violates duties under the first paragraph of this Article.

A fine of EUR 800 up to 10,000 shall be imposed on a responsible person of a legal person or an entrepreneur or individual who independently pursues an activity, who violates duties under the first paragraph of this Article.

A fine of EUR 200 up to 5,000 shall be imposed on an individual, who violates duties under the first paragraph of this Article.

### Article 6:

A fine of EUR 12,000 to 150,000 shall be imposed on a central counterparty, who violates duties under the Article 15 of the Regulation (EU) No. 236/2012.

A fine of EUR 25,000 to 250,000 shall be imposed on a central counterparty, considered a medium or large company according to Companies Act, who violates duties under the preceding paragraph.

A fine of 800 to 10,000 shall be imposed on the responsible person of a central counterparty, who violates duties under the first paragraph of this Article.

## Sweden

For the enforcement of the provisions of the SSR Finansinspektionen may, under the Act with complementary provisions to the EU SSR (lag med kompletterande bestämmelser till EU:s blankningsförordning), order a company or someone else to provide information, documents or other material. Finansinspektionen may also order a person to appear for questioning. Further, Finansinspektionen will be able to decide that a person in breach of its obligations under the SSR shall take a certain action to remedy the situation or that such a person ceases a particular behavior. Such a decision may be subject to a monetary fine.

Under the Act Finansinspektionen will also be able to decide that a person or a company who violates its obligations under the SSR shall pay a special fee. A special fee may be imposed for: violations of the duty to notify Finansinspektionen due to art. 5, 7, 8; violations of the duty to disclose net short positions due to art. 6; violations of art. 9; violations of the restrictions on short selling due to art. 12 and 13; violations of the restrictions on sovereign credit default swaps due to art. 14; violations of art. 15, 17(9) and 17(10); violations of decrees due to art. 18, 19, 20, 21, 23, 28(1)a and 28(1)b.

Depending on the violation the special fee can be decided between SEK 5 000 and SEK 10 million.



## United Kingdom

Under section 131G of the Financial Services and Markets Act 2000, if the Financial Conduct Authority (FCA) is satisfied that a person has:

- (a) contravened any provision of the SSR, or
- (b) has failed to provide specified information or documents that the FCA has reasonably required the person to provide for the purpose of the exercise by the FCA of functions under the SSR; then the FCA may impose a penalty of such amount as it considers appropriate (without limit).

The FCA may, instead of imposing a penalty on a person, publish a statement censuring the person.

In addition, under section 380 of the Financial Services and Markets Act 2000 the court may make an order restraining the contravention of a qualifying EU provision such as the SSR.

In such a situation, under 382 Subsection (1) the court may, on the application of the Authority or the Secretary of State, make an order if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and

- (a) that profits have accrued to him as a result of the contravention; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

Subsequently, according to subsection (2) the court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard:

- (a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;
- (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
- (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

Any amount paid to the Authority must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.