

Report

Annual report on administrative and criminal sanctions and other administrative measures under MAR



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Executive Summary

Reasons for publication

This report (the Report) is drafted pursuant to Article 33 of MAR, which requires ESMA to publish an annual report regarding aggregated information on all administrative sanctions and other administrative measures imposed by national competent authorities (NCAs) and criminal sanctions imposed in a given year.

Content

The Report provides an overview of the applicable legal framework and information on the criminal and administrative sanctions imposed on the basis of MAR from 3 July 2016 to 31 December 2017.

1 Background and relevant regulatory framework for reporting on administrative and criminal sanctions

1. The Report is drafted pursuant to Article 33 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (MAR)¹. According to such Article, NCAs have to provide ESMA annually with:
 - a) aggregated information regarding all administrative sanctions and other administrative measures imposed by them in accordance with Articles 30, 31 and 32 of MAR;
 - b) anonymised and aggregated data regarding all administrative investigations undertaken pursuant to the above Articles;
 - c) where Member States have laid down criminal sanctions for market abuse conducts, anonymised and aggregated data regarding: (i) all criminal investigations undertaken pursuant to Articles 30, 31 and 32 of MAR, and (ii) criminal penalties imposed by the judicial authorities for the same Articles.
2. Article 33 of MAR is implemented by the Commission Implementing Regulation (EU) 2017/1158², which sets forth the procedures and forms for submitting the information required.
3. Article 33(1) and (2) of MAR provides that ESMA shall publish in an annual report the information on administrative sanctions and other administrative measures and on criminal sanctions imposed.
4. As regards the relevant infringements in relation to which sanctions and investigations have to be reported to ESMA, Article 30 of MAR requires Member States to grant NCAs the power to take administrative sanctions and other administrative measures on at least infringements referring to the following provisions of MAR:
 - a) Prohibition of insider dealing and unlawful disclosure of inside information (Article 14 MAR);
 - b) Prohibition of market manipulation (Article 15 MAR);
 - c) Obligation to detect suspicious transactions and the related reporting to NCAs pursuant to Article 16(1) and (2) MAR;

¹ OJ L 173, 12.6.2014, p. 1.

² OJ L 167, 30.6.2017, p. 22.

- d) Publication of inside information by the issuer (Article 17(1), (2), (4) and (5), and (8) MAR);
 - e) Drawing up, maintaining and submitting to the NCA upon request insider lists (Article 18(1) to (6) MAR);
 - f) Managers' transactions (Article 19(1), (2), (3), (5), (6), (7) and (11) MAR);
 - g) Investment recommendations (Article 20(1) MAR), and
 - h) Failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 23(2) MAR.
5. As regards the administrative or criminal nature of the sanctions, Article 30(1), second subparagraph, of MAR provides that Member States could decide not to lay down rules for administrative sanctions where the infringements referred to in the same provision were already subject to criminal sanctions in their national law by 3 July 2016.
6. In this respect, such option was exercised by Denmark, Finland, Germany, Ireland and Poland. The following is an indication of criminal offences under MAR as of the date of this Report³: (i) in Denmark there are criminal offences for all the infringements under MAR; (ii) in Finland there are criminal offences for infringements of Article 14, 15 and 17 of MAR; (iii) in Germany there are criminal offences for infringements of Article 14 and 15 of MAR – where committed intentionally and, for Article 15, if the infringement leads to an influence on the market price of the respective financial instrument -; (iv) in Ireland there is a criminal offence for the infringement set forth in Article 30(1), first subparagraph, letter (b) of MAR, and (v) in Poland there are criminal offences for infringements of Article 14, 15, 17(1), 17(4) and for the infringement set forth in Article 30(1), first subparagraph, letter (b) of MAR.
7. Finally, as regards the administrative sanctions and measures, Article 30(2) of MAR provides that NCAs should have the power to impose at least the below administrative sanctions and measures for the infringements mentioned in letters a) to g) above:
- a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
 - b) the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;
 - c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;

³ The indication is provided for information only and does not specify conditions triggering criminal offences. In addition, administrative sanctions can, in certain cases, be imposed for infringements under the same Articles (for instance, minor infringements, cases of gross negligence, etc.).

- d) withdrawal or suspension of the authorisation of an investment firm;
- e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms;
- f) in the event of repeated infringements of Article 14 or 15, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms;
- g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account;
- h) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement, where those can be determined, and
- i) maximum administrative pecuniary sanctions reaching, at least, the amounts specified in Article 30(2), letters (i) and (j) of MAR⁴.

2 Information on the aggregate administrative and criminal sanctions

8. MAR became applicable as of 3 July 2016, therefore this is the first Report published by ESMA concerning administrative and criminal sanctions issued under it.

⁴ In particular, Article 30(2) letters (i) and (j) of MAR requires Member States to ensure:

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

9. For the purposes of this Report, only the administrative and criminal sanctions issued on the basis of MAR have been considered. In particular, the Report does not consider administrative or criminal sanctions imposed in 2016 and 2017 according to the pre-existing legislative national frameworks, based on the transposition of the Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁵ (MAD).
10. In light of the fact that MAR became applicable in July 2016, and considering that the adoption of market abuse sanctions and measures require the performance of appropriate investigations and that in the meanwhile there were other ongoing investigations and enforcement procedures carried out under MAD, ESMA deems that the data on sanctions imposed in 2016 and 2017:
 - a) Does not allow to observe trends or tendencies in the imposition of sanctions, and
 - b) Does not provide a fair representation of the market abuse activities performed in that time-span by NCAs and by other relevant national authorities.
11. ESMA has compiled and drafted this Report on the basis of the information submitted by the NCAs in accordance with the Commission Implementing Regulation (EU) 2017/1158.
12. No sanctions or supervisory measures were imposed from 3 July to 31 December 2016. Below is information on sanctions and measures imposed in 2017.
13. As regards criminal sanctions, in 2017, seven criminal pecuniary sanctions were imposed, all in Germany. All of them concern market manipulation cases, were imposed on natural persons and amount in total to 12,450 Euro⁶.
14. As regards administrative sanctions, in 2017:
 - a) two other than pecuniary measures were imposed for the infringement of insider dealing and unlawful disclosure of inside information (Article 14 of MAR), by the Slovenian Agencija za trg vrednostnih papirjev (ATVP)⁷, and by the Lithuanian Lietuvos Bankas (LB)⁸.

⁵ OJ L 96, 12.4.2003, p. 16.

⁶ The sanctions are not under appeal.

⁷ The ATVP issued overall five other than pecuniary measures, imposed on three natural persons and on two legal persons. They all were published and are not under appeal.

⁸ LB imposed overall two pecuniary sanctions and five other than pecuniary measures under MAR, one pecuniary sanction on market manipulation, one pecuniary sanction on other infringements, one other than pecuniary measure on insider dealing, two other than pecuniary measures on market manipulation and two other than pecuniary measures on other infringements. All of them were published, imposed on four natural persons and two legal persons and are not under appeal.

- b) 35 pecuniary sanctions and seven other than pecuniary measures were imposed for the infringement of market manipulation (Article 15 of MAR).

In particular, the Austrian Finanzmarktaufsicht issued three pecuniary sanctions for the aggregated amount of 5,000 euro⁹, the French Autorité des Marchés Financiers imposed one pecuniary sanction for the amount of 40,000 Euro¹⁰, the Hungarian Magyar Nemzeti Bank (MNB) imposed one pecuniary sanction for the amount of 1,000,000 HUF¹¹, the LB imposed one pecuniary sanction for the amount of 500 euro¹², the Swedish Finansinspektionen (FI) imposed 29 pecuniary sanctions, for the aggregated amount of 3,150,000 SEK¹³.

As regards the other than pecuniary measures, two were imposed by LB, one by MNB, four by ATVP¹⁴.

- c) 107 pecuniary sanctions and 111 other than pecuniary measures were imposed for the other infringements.

In particular, the Bulgarian Financial Supervision Commission imposed 27 pecuniary sanctions, for an aggregated amount of 27,000 BGN¹⁵. The Latvian Finanšu un kapitāla tirgus komisija imposed one pecuniary sanction for the amount of 1,500 Euro¹⁶. The LB imposed one pecuniary sanction for the amount of 40,000 Euro¹⁷. The Swedish FI imposed 77 pecuniary sanctions, for the aggregated amount of 5,705,120 SEK¹⁸. The United Kingdom's Financial Conduct Authority imposed one pecuniary sanction, settled, for the amount of 70,000 GBP¹⁹.

As regards the non-pecuniary measures, LB imposed two other than pecuniary measures. The Dutch Autoriteit Financiële Markten imposed 27 other than pecuniary measures²⁰. The Portuguese Comissão do Mercado de Valores Mobiliários imposed

⁹ Sanctions published and not under appeal, imposed on three natural persons.

¹⁰ Sanction anonymously published and not under appeal, imposed on a natural and on a legal person.

¹¹ Sanction published and not under appeal, imposed on a legal person. In this respect, also a measure other than pecuniary was imposed on the same legal person.

¹² Sanction published and not under appeal. See footnote No 8 above for information on sanctions and measures imposed by LB.

¹³ Overall, the Swedish Finansinspektionen issued 106 administrative sanctions, 95 of which published, 33 under appeal, and imposed on 90 natural persons and 16 legal persons.

¹⁴ See footnote No 7 above for information on the measures imposed by the ATVP.

¹⁵ The 27 sanctions were published and were imposed on 13 legal persons. 13 sanctions were appealed.

¹⁶ Sanction published and not under appeal, imposed on a legal person.

¹⁷ Sanction published and not under appeal (see above footnote No 8 for aggregated information on the addressees of the pecuniary sanctions and other measures).

¹⁸ See footnote No 13 above for information on all the sanctions imposed.

¹⁹ Sanction published and not under appeal.

²⁰ The measures were not published and are not under appeal.



76 other than pecuniary measures²¹. The Romanian Autoritatea de Supraveghere Financiară imposed six other than pecuniary measures²².

²¹ The measures were not published and are not under appeal, and were imposed on 63 legal persons and 13 natural persons.

²² Five measures were published, none of the six measures is under appeal and they were imposed on six natural persons.