



European Securities and
Markets Authority

Report

Penalties and measures imposed under the UCITS Directive in 2020



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1 Executive Summary

Background

ESMA is required to publish an annual report with aggregated information on all penalties and measures imposed by National Competent Authorities (NCAs) pursuant to Article 99e(1) of Directive 2009/65/EC (UCITS Directive). This report contains information on the penalties and measures imposed by NCAs in accordance with Article 99e of the UCITS Directive from 1 January 2020 to 31 December 2020.

Overall, 13 NCAs imposed a total of 57 penalties; the total aggregated value of financial penalties imposed amounted to around EUR 1,100,986. 11 NCAs imposed a total of 43 measures. 13 NCAs did not impose any sanction (penalty or measure) during the reference period.

Broadly, the data gathered under the sanction reports published so far¹ keeps evidencing 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 remains relatively low.²

Work will continue in the future (including by issuing the annual iterations of this report) to promote further convergence in the use of sanctioning powers by NCAs across the EU.

Next Steps

The information reported to ESMA and included in this report will inform ESMA's ongoing work aimed at fostering supervisory convergence in the application of the UCITS Directive and contribute to ESMA's goal to develop a common EU outcome-focused supervisory and enforcement culture. An annual report will continue to be issued for the future reporting periods.

Further detailed information on public sanctions and measures issued by national competent authorities can be found on the ESMA register available on the ESMA website.

¹ This is the fourth report published by ESMA concerning penalties and measures issued under the UCITS Directive. The UCITS sanctions reports published so far cover the reporting periods 2016-2020. ESMA has also published the AIFMD Sanction Report for the reporting period 2018/2019 and the 2020 AIFMD Sanction Report was published concurrently to this report and is available on the ESMA website.

² For further information on the use of the sanctioning tool at national level, please refer to Section 6 of this report.

2 Background and relevant regulatory framework for reporting on UCITS sanctions

1. This report is drafted pursuant to Article 99e(1) of the UCITS Directive.³ According to this article, NCAs shall provide ESMA annually with aggregated information regarding all penalties and measures imposed in accordance with Article 99 of the UCITS Directive.
2. Article 99e of the UCITS Directive is implemented by the Commission Implementing Regulation (EU) 2016/1212⁴, which sets out common procedures and forms for submitting the information required.
3. According to Article 2 of Commission Implementing Regulation (EU) 2016/1212, NCAs shall provide ESMA with the information referred to in Article 99e(1) of 2009/65/EC of the UCITS Directive by filling in the form set out in Annex I to the Regulation. That information shall refer to all the penalties and measures imposed during the previous calendar year. The form shall be completed electronically and be sent to ESMA no later than 31 March of each year.
4. Article 99e(1) of the UCITS Directive provides that ESMA shall publish in an annual report the information regarding all penalties and measures imposed.

3 Information on the aggregated penalties and measures imposed

5. This is the fourth report published by ESMA concerning penalties and measures issued under the UCITS Directive.⁵
6. Article 99(6) of Directive 2009/65/EC provides that at least the following administrative penalties and measures may be applied in relation to infringements of Article 99 of Directive 2009/65/EC:
 - a public statement which identifies the person responsible and the nature of the infringement (public statement);
 - an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct (cease and desist order);
 - in the case of a UCITS or a management company, suspension or withdrawal of the authorisation of the UCITS or the management company (suspension or withdrawal of authorisation);

³ OJ L 302, 17.11.2009, p. 32.

⁴ OJ L 199, 26.7.2016, p. 6.

⁵ Previous UCITS sanctions report published by ESMA are available at the following links:

- 2016/2017 UCITS sanctions report : https://www.esma.europa.eu/sites/default/files/library/esma34-45-651ucits_sanction_report.pdf
- 2018 UCITS sanctions report: https://www.esma.europa.eu/sites/default/files/library/esma34-45-756_ucits_sanction_report.pdf
- 2019 UCITS sanctions report : [esma34-45-934_2019_ucits_sanctions_report.pdf \(europa.eu\)](https://www.esma.europa.eu/sites/default/files/library/esma34-45-934_2019_ucits_sanctions_report.pdf)

- a temporary or, for repeated serious infringements, a permanent ban against a member of the management body of the management company or investment company or against any other natural person who is held responsible, from exercising management functions in those or in other such companies (temporary or permanent ban from management functions);
 - pecuniary sanctions for legal and natural persons (financial penalties)
7. For the purpose of this report, only the penalties and measures issued under Directive 2009/65/EC 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.
 8. While the above implies that the reported data does not allow to produce granular statistics based on it, ESMA deems that the 2020 data, read in conjunction with data on sanctions issued in previous years⁶, can provide a useful indication on the use of the sanctioning tool at national level.
 9. 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

10. This report should be considered in the context of the following provisions as provided for in Annex I to the Commission Implementing Regulation (EU) 2016/2012.
11. If the relevant penalties/measures refer not only to breaches relating to one single article of the UCITS Directive, but also to another article of the UCITS Directive or other provisions (at EU and/or national level), and the relevant amounts cannot be disaggregated per article of the UCITS Directive which was infringed, the mention “AGGREGATED FIGURE” is added to each value in the annexes of this report.
12. As per Annex I to the Commission Implementing Regulation (EU) 2016/2012, 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 as well as the FX rate is also provided by NCAs.

⁶ For the reporting period 2016-2017, 2018 and 2019, see the UCITS sanctions reports mentioned in the previous footnote.

5 Sanctions imposed by NCAs

5.1 Overview of the penalties and measures imposed in 2020

NCAs' Member States	Sanctions		No sanctions imposed	
	Total number of: -penalties ⁷	- measures ⁸		Total aggregate amount of financial penalties
Austria	4		EUR 48,400	
Belgium	1	3	EUR 50,000	
Bulgaria	17		EUR 93,568	
Croatia	2		HRK 1,724,000 ⁹	
Cyprus				X
Czech Republic	3		CZK 150,000 ¹⁰	
Denmark		9		
Estonia				X
Finland				X
France	2	2	EUR 110,000	
Germany		1		
Greece	5	1	EUR 180,000	
Hungary	11	12	HUF 3,700,000 ¹¹	
Ireland				X
Italy				X
Latvia				X
Lithuania		5		
Luxembourg	5	1	EUR 93,700	
Malta				X
Netherlands				X
Poland		1		
Portugal	2		EUR 175,000	
Romania	2	5		
Slovenia				X
Slovakia				X
Spain	2		EUR 100,000	
Sweden				X
Liechtenstein	1	3	CHF 5,000 ¹²	
Norway				X
Iceland				X
Total	57	43	~ EUR 1,100,986	13 NCAs imposed no sanctions

⁷ 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.

⁸ As the measures imposed may cover more than one legislative provision, the total number of measures disclosed in this Section may not correspond to the sum of the number of measures disclosed Section 5.2.

⁹ Corresponding to EUR 229,860 (HRK/EUR=0,133)

¹⁰ Corresponding to EUR 5,715 (CZK/EUR=0,038)

¹¹ Corresponding to EUR 10,133 (HUF/EUR=0,0027)

¹² Corresponding to EUR 4,610 (CHF/EUR=0,922)

5.2 Overview penalties and measures imposed during 2020 by NCAs' Member States (split by UCITS Chapter)¹³

UCITS Directive	UCITS Article	Penalties/Measures	Austria	France	Spain	Denmark	Lithuania	Luxembourg
Chapter II <i>Authorisation of UCITS</i>	Art. 5(4)	Number of penalties	1					
		Amount of penalties	EUR 2,800*					
Chapter III <i>Obligations regarding management companies</i>	Art. 6	Number of measures		1*				
	Art. 6(2)	Number of penalties			1			
		Amount of penalties			EUR 50,000			
	Art. 7(1)	Number of penalties	1					
		Amount of penalties	EUR 2,800*					
	Art. 12	Number of measures				2	1	
		Number of penalties			2			5
		Amount of penalties			EUR 110,000*			EUR 93,700*
	Art. 12(1)	Number of measures			2*			
		Number of penalties				1		
		Amount of penalties			EUR 50,000			

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

¹³ NCAs who have not imposed penalties/measures during the period are not reflected in this table.

UCITS Directive	UCITS Article	Penalties/Measures	Austria	Belgium	Poland	Denmark	Lithuania	Luxembourg
Chapter III <i>Obligations regarding management companies</i>	Art. 10(1)(2)	Number of measures			1			
	Art. 12(1)	Number of measures		1				
	Art. 12(1)(a)(b)	Number of penalties						
		Amount of penalties						
	Art. 13	Number of penalties						1
		Amount of penalties						EUR 21,200*
	Art. 13(1)	Number of measures				1		
		Number of penalties						
		Amount of penalties						
	Art. 14a(1)(2)(3)	Number of measures		2				
Number of penalties								
Art. 14(1)	Number of penalties	1						
	Amount of penalties	EUR 32,000*						
Art. 14(1)	Number of measures				5 ¹⁴	1		
Art. 25(2)	Number of measures				1			

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

¹⁴ One measure was issued under Art. 14(1)(d) and four measures were issued under Art. 14(1)(c).

UCITS Directive	UCITS Article	Penalties/Measures	Hungary	Liechtenstein	Romania	France
Chapter III <i>Obligations regarding management companies</i>	Art. 12(1)(a)	Number of penalties	3			
		Amount of penalties	HUF 1,200,000* ¹⁵			
		Number of measures	3			
	Art. 12(1)(b)	Number of penalties	1			
		Amount of penalties	HUF 200,000 ¹⁶			
		Number of measures	1			
	Art. 14	Number of penalties			1	2
		Amount of penalties			CHF 5,000 ¹⁷	EUR 110,000*
		Number of measures			3	2*
	Art. 14(a)(2)	Number of measures	1			
Art. 14(1)	Number of penalties			2		

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

¹⁵ Corresponding to EUR 3,286.5 (HUF/EUR=0,0027)

¹⁶ Corresponding to EUR 547.75 (HUF/EUR=0,0027)

¹⁷ For the corresponding amount in Euro please refer to footnote 12.

UCITS Directive	UCITS Article	Penalties/Measures	Hungary	Greece	Bulgaria	Portugal	France
Chapter III <i>Obligations regarding management companies</i>	Art. 14(1)(a)	Number of measures	1				
		Number of penalties	1		2		
		Amount of penalties	HUF 200,000 ¹⁸		EUR 10,226		
	Art. 14(1)(b)	Number of measures	3				
		Number of penalties	3				
		Amount of penalties	HUF 1,200,000* ¹⁹				
	Art. 14(1)(d)	Number of measures	1				
		Number of penalties	1			1	
		Amount of penalties	HUF 100,000 ²⁰			EUR 100,000*	
	Art. 14(1)(e)	Number of penalties			2	1	
		Amount of penalties			EUR 130,000	EUR 100,000*	
	Art. 14(2)(b)	Number of measures	2				
		Number of penalties	2				
Amount of penalties		HUF 800,000* ²¹					
Art. 15	Number of penalties					1	
	Amount of penalties					EUR 110,000*	
Chapter VII <i>Obligations concerning the investment policies</i>	Art. 51	Number of measures				1*	

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

¹⁸ For the corresponding amount in Euro please refer to footnote 16.

¹⁹ For the corresponding amount in Euro please refer to footnote 15.

²⁰ Corresponding to EUR 273.88 (HUF/EUR=0,0027)

²¹ Corresponding to EUR 2,191 (HUF/EUR=0,0027)

UCITS Directive	UCITS Article	Penalties/ Measures	Austria	Bulgaria	Croatia	Romania	Lithuania	Portugal	
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50(1)(2)	Number of penalties	1						
		Amount of penalties	EUR 1,600*						
	Art. 50(2)(a)	Number of penalties			2				
		Amount of penalties			EUR 23,001				
	Art. 51	Number of measures							
		Number of penalties				1			
		Amount of penalties			HRK 1,504,000* ²²				
	Art. 52(2)	Number of measures				1			
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 68(1)	Number of measures					1		
	Art. 69(3)	Number of measures				4	1		
	Art. 72	Number of penalties			6				
		Amount of penalties			EUR 30,678				
	Art. 74	Number of penalties							2
		Amount of penalties							EUR 175,000*
Art. 76	Number of penalties			5					
	Amount of penalties			EUR 25,565					

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

²² Corresponding to EUR 200,530 (HRK/EUR=0,133)

UCITS Directive	UCITS Article	Penalties/Measures	Austria	Bulgaria	Croatia	Greece	Lithuania	Belgium	Portugal
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 77	Number of penalties				2		1	1
		Amount of penalties				EUR 20,000		EUR 50,000	EUR 100,000*
	Art. 78	Number of penalties			1				
		Amount of penalties			HRK 220,000 ²³				
	Art. 81(1)	Number of penalties			2				
		Amount of penalties			EUR 4,091				
Art. 82	Number of measures					1			
Chapter X <i>General obligations of UCITS</i>	Art. 83(2)	Number of penalties	1						
		Amount of penalties	EUR 12,000*						
	Art. 85	Number of penalties			1				1
		Amount of penalties			HRK 1,504,000* ²⁴				EUR 100,000*

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

²³ Corresponding to EUR 29,330 (HRK/EUR=0,133)

²⁴ Corresponding to EUR 200,530 (HRK/EUR=0,133)

UCITS Directive	UCITS Article	Penalties/Measures	Czech Republic	Greece	Luxembourg	Germany
Chapter XI <i>Special provisions applicable to UCITS which market their units in Member States other than those in which they are established</i>	Art. 92	Number of measures		1		
	Art. 94(1)	Number of penalties		1		
		Amount of penalties			EUR 30,000	
Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 98(2)(a)(b)	Number of measures				1
	Art. 99(1)	Number of penalties	3			
		Amount of penalties	CZK 150,000 ²⁵			
	Art. 99(6)©	Number of measures			1	

* AGGREGATED VALUE: the relevant penalties refer not only to breaches relating to the relevant article of Directive 2009/65/EC, but also to other provisions.

²⁵ Corresponding to EUR 5,715 (CZK/EUR=0,038)

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

13. Broadly, the data gathered under the sanction reports published so far keeps evidencing that the sanctioning powers are not equally used among NCAs and, besides a few NCAs, the number and amount of sanctions issued at national level remains relatively low.
14. During the period 2016-2020, no sanctions (penalties or measures) were issued under the UCITS Directive in the following Member States:

Table 1: Member States where no sanctions were issued in 2016-2020

	Member States where no sanctions were issued
2016-2020	Cyprus, Estonia*, Finland, Ireland*, Latvia*, Slovakia, Norway

* Member States where no sanctions were issued under the AIFMD either during the reporting period 2018-2020

15. The below tables provide an overview of aggregated figures on penalties issued under the UCITS Directive during the reporting periods 2016-2020:

Table 2: global overview of penalties issued by NCAs under the UCITS Directive in 2016-2020

	Number of NCAs which issued penalties	Total number of penalties	Total amount of penalties in € ²⁶
2016	8	34	~3,100,000
2017	13	57	~36,950,000
2018	14	41	~4,200,000
2019	11	43	~4,155,000
2020	13	57	~1,100,986

16. Unlike previous reporting periods (2016-2019), in 2020 the total amount of penalties issued was not mainly made of any high single sanction. While subtracting from the amount of penalties issued in 2016-2019 the highest single sanctions issued in that period, one may notice a very low amount of penalties issued (especially if compared to the total of ~9,7 trillion Euro of the total assets of UCITS domiciled in Europe²⁷) as well as a declining trend in the amount of sanctions issued since 2018.

²⁶ Those amounts are mostly made up of high cumulative sanctions issued by one or two NCA, as follows:

- 2016: 2,700,000 € (FR);
- 2017: 35,230,000 € (FR);
- 2018: 1,828,000 € (IT), 958,488 € (SE);
- 2019: 3,120,000 € (FR).

²⁷ Source: EFAMA report available at [08 Quarterly Statistical Release Q4 2020.pdf \(efama.org\)](https://www.efama.org/08-Quarterly-Statistical-Release-Q4-2020.pdf). For Estonia, Latvia and Lithuania, which are not included in the EFAMA report, ECB data as of 31/12/2020 was used instead. Data for Iceland was not available.

Table 3: overview of the financial amount of penalties issued under the UCITS Directive in 2016-2020 subtracting the highest single penalties²⁸

	Total amount of penalties in € A	Highest single penalty(ies) in € B	(A-B) (amounts in €)
2016	~3,100,000	~2,700,000	~400,000
2017	~36,950,000	~35,230,000	~1,720,000
2018	~4,200,000	~2,786,488	~1,413,512
2019	~4,155,000	~3,120,000	~1,035,000
2020	~1,100,986	-	~1,100,986

Table 4: overview of penalties issued under the UCITS Directive in 2016-2020 by NCAs in relevant Member States ranked by total amount of financial penalties²⁹

Member State	Number of penalties	Total amount of financial penalties (EUR million ³⁰)	Total net assets of UCITS (Q4 2020) (EUR million) ³¹
France	13	41,460	884,296.0
Italy	5	2,319	241,183.3
Sweden	1	0,958	455,338.5
Spain	10	0,650	249,106.0
Malta	1	0,612	2,602.0
Luxembourg	31	0,602	4,158,430.0
Portugal	9	0,508	13,920.5
Croatia	11	0,423	2,412.1
Czech Republic	15	0,419	13,541.3
Belgium	4	0,28	160,285.3
Poland	4	0,214	27,005.0
Hungary	38	0,214	1,335.6
Bulgaria	37	0,211	839.2
Greece	7	0,193	6,237.3

²⁸ See footnote 26.

²⁹ 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.

³⁰ Figures below 1 million EUR are rounded up or down to the closest thousand of EUR.

³¹ See footnote 27.

Lithuania	2	0,140	54.0
Austria	18	0,118	89,947.2
Slovenia	4	0,103	3,227.5
Romania	20	0,059	4,037.2
Liechtenstein	2	0,005	28,647.7
Cyprus	-	-	409.0
Denmark	-	-	157,819.7
Estonia	-	-	200.0
Finland	-	-	116,898.7
Germany	-	-	418,145.0
Ireland	-	-	2,528,072.0
Latvia	-	-	246.0
Netherlands	-	-	39,694.0
Slovakia	-	-	5,791.9
Norway	-	-	142,623.2
Iceland	-	-	N.A.
Total	232	EUR MILLION 49,49	EUR MILLION 9,752,345.20

17. During the period 2016-2020, no penalties were issued under the UCITS Directive in the following Member States:

Table 5: Member States where no penalties were issued in 2016-2020

	Member States where no penalties were issued
2016-2020	Cyprus, Denmark*, Estonia*, Finland*, Germany*, Ireland*, Latvia*, Netherlands, Slovakia, Norway*, Iceland*

* Members States where no penalties were issued under the AIFMD either during the reporting period 2018-2020

18. In order to put the data gathered into context, the below charts provide an overview of the proportion of the net assets of the EU UCITS industry per Member State (Chart 1) and the proportion of the total amount of financial penalties issued under the UCITS Directive in 2016-2020 per Member State (Chart 2):

Chart 1: Net assets of the EU UCITS industry (Q4 2020) by country of domiciliation³²

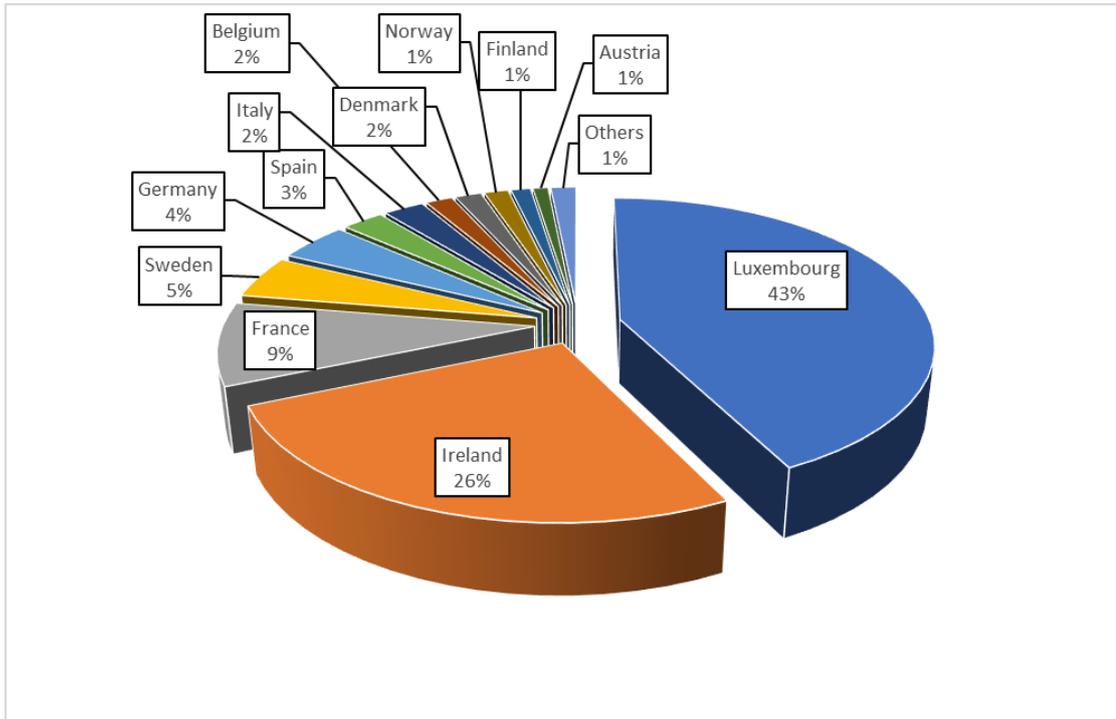
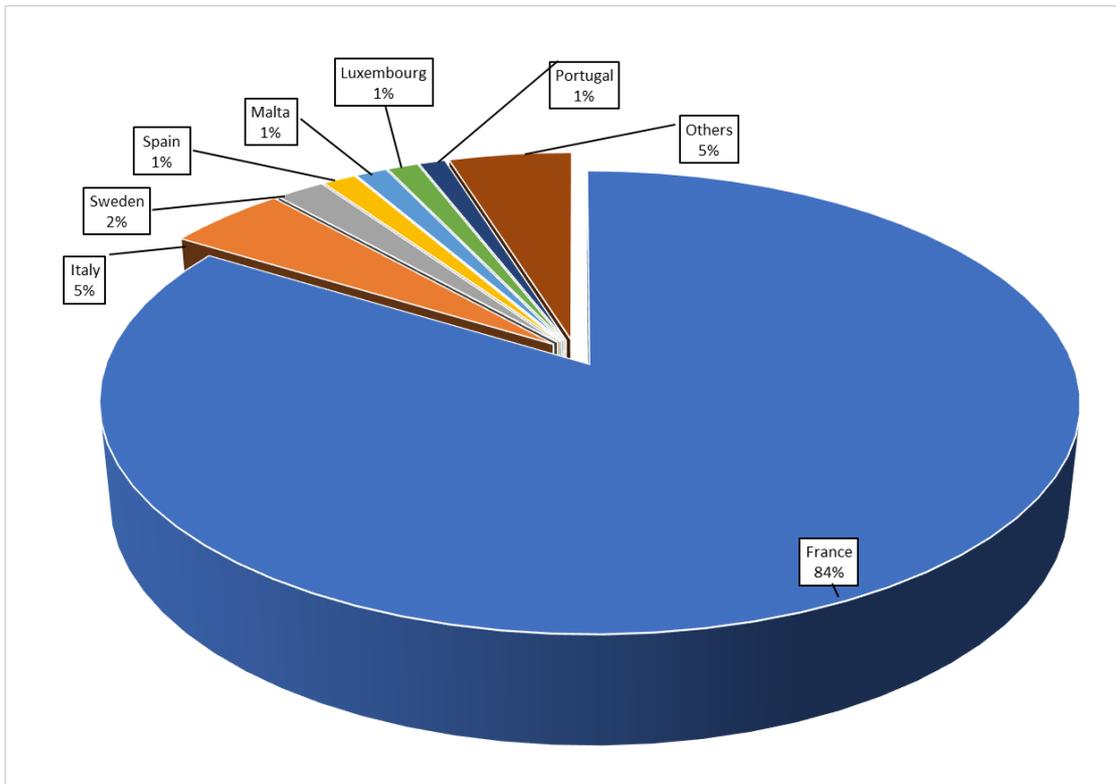


Chart 2: Amount of financial penalties issued under the UCITS Directive by Member States 2016-2020



³² See footnote 27.

19. The below tables provide an overview of aggregated figures on measures issued under the UCITS Directive during the reporting periods 2016-2020:

Table 6: overview of measures issued by NCAs under the UCITS Directive in 2016-2020

	Number of NCAs which issued measures	Total number of measures
2016	6	25
2017	9	22
2018	7	19
2019	9	19
2020	11	43

Table 7: overview of measures issued under the UCITS Directive in 2016-2020 by NCAs in relevant Member States ranked by number of measures³³

Member State	Number of measures
Croatia	20
Hungary	17
Slovenia	15
Denmark	12
Romania	12
France	10
Lithuania	10
Luxembourg	5
Malta	4
Netherlands	4
Liechtenstein	4
Austria	3
Belgium	3
Iceland	3
Greece	2
Italy	1

³³ Member States whose NCAs who have not imposed measures during the period 2016-2020 are not reflected in this table.

Portugal	1
Poland	1
Germany	1
Total	128

20. During the period 2016-2020, no measures were issued under the UCITS Directive in the following Member States:

Table 8: Member States where no measures were issued in 2016-2020

	Member States where no measures were issued
2016-2020	Bulgaria, Cyprus, Czech Republic, Estonia*, Finland, Ireland*, Latvia*, Slovakia*, Spain*, Sweden*, Norway

* Members States where no measures were issued under the AIFMD either during the reporting period 2018-2020

21. 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 UCITS Directive; hence, there may be national sanctions that are not included in the report as issued under national provisions going beyond the implementation of the UCITS Directive. Notwithstanding this, ESMA considers the above data as useful information to prompt discussions with NCAs on the use of sanctioning measures.

22. Work will continue in the future (including by issuing the relevant annual report on sanctions) to promote further convergence in the use of sanctioning powers by NCAs across the EU.