



European Securities and  
Markets Authority

# Report

**Report on administrative sanctions and measures and criminal sanctions imposed under the Benchmarks Regulation in 2021.**



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## 1 Executive Summary

This is the first annual sanctions report pursuant to Regulation (EU) 2016/1011 (Benchmarks Regulation) published by ESMA, as this is the first time a national competent authority (NCA) imposed an administrative sanction under the Benchmarks Regulation. The Benchmarks Regulation entered into force on 30 June 2016 and the majority of the provisions applied as of 1 January 2018. In 2021 one administrative sanction and one administrative measure were imposed on a supervised contributor by one NCA for one infringement of the Benchmarks Regulation. Additionally, no criminal sanctions were imposed in 2021. Taking into account that only one administrative sanction and measure were imposed in 2021 and that no other administrative sanctions under the Benchmarks Regulation have been imposed so far, there is limited scope for observation of clear trends in the imposition of sanctions and measures.

ESMA publishes on annual basis a report with aggregated information on all administrative sanctions and measures imposed by NCAs and data on criminal sanctions imposed (where relevant) pursuant to Article 45 of the Benchmarks Regulation. Greater transparency around sanctions and measures act as a deterrent by clarifying the infringement under the Benchmarks Regulation and promote enhanced compliance conduct.

This report contains information on the administrative sanctions and measures imposed by NCAs from 1 January 2021 to 31 December 2021.

### **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 Benchmarks Regulation.

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

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## 2 Regulatory framework for reporting administrative sanctions and measures and criminal sanctions under the Benchmarks Regulation

1. According to Article 45 of the Benchmarks Regulation<sup>1</sup> (BMR), NCAs shall provide ESMA annually with aggregated information regarding all administrative sanctions and measures and data on criminal sanctions imposed in accordance with Article 42 BMR. On the basis of Article 45 BMR, ESMA publishes an annual report regarding all the administrative sanctions and measures and criminal sanctions imposed.
2. As regards the relevant infringements in relation to which sanctions and investigations have to be reported to ESMA, Article 42 BMR requires Member States to grant NCAs the power to take administrative sanctions and other administrative measures in relation to infringements of the provisions as listed in BMR.
3. As regards the administrative or criminal nature of the sanctions, Article 42(3), second subparagraph of BMR 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 under national law.
4. Article 42 BMR foresees that in the event of an infringement of the obligations set out in Article 42(1), competent authorities shall have the power to impose at least the following administrative sanctions and other administrative measures:
  - an order requiring the administrator or supervised entity responsible for the infringement to cease the conduct and to desist from repeating that conduct;
  - the disgorgement of the profits gained or losses avoided because of the infringement where those can be determined;
  - a public warning which indicates the administrator or supervised entity responsible and the nature of the infringement;
  - withdrawal or suspension of the authorisation or the registration of an administrator;
  - a temporary ban prohibiting any natural person, who is held responsible for such infringement, from exercising management functions in administrators or supervised contributors;
  - the imposition of 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;
5. Additional sanctions and measures may also be foreseen under national legislation. The Benchmarks Regulation also foresees that Member States may choose to lay down criminal sanctions for infringements of the provisions referred to in Article 42(1) of the Benchmarks Regulation.
6. The aggregated information contained in this report reflects the data submitted to ESMA by the NCAs.

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<sup>1</sup> Regulation (EU) 2016,1011, OJ L 171, 29.6.2016, p. 1–65

### 3 Sanctions imposed by NCAs

#### 3.1 Overview of the sanctions and measures imposed in 2021

7. The Benchmarks Regulation entered into force on 30 June 2016 and the majority of the provisions applied as of 1 January 2018. For EU benchmark administrators there was also a transitional period until 1 January 2020 while for EU critical benchmark administrators this transitional period was extended to 31 December 2021. Furthermore, for third country benchmarks administrators, there is currently still a transitional period applicable until 31 December 2023.
8. During the transitional period under BMR for EU benchmarks, no administrative or criminal sanctions were imposed.

NCAs' Member States	Sanctions		No sanctions imposed
	Total number of Sanctions and measures	Total aggregate amount of administrative sanctions	
Austria			X
Belgium			X
Bulgaria			X
Croatia			X
Cyprus			X
Czech Republic			X
Denmark			X
Estonia			X
Finland			X
France			X
Germany <sup>2</sup>	2	€ 8.663.200	
Greece			X
Hungary			X
Ireland			X
Italy			X
Latvia			X
Lithuania			X
Luxembourg			X
Malta			X
Netherlands			X
Poland			X
Portugal			X
Romania			X
Slovenia			X
Slovakia			X
Spain			X
Sweden			X
Liechtenstein			X
Norway			X
Iceland			

<sup>2</sup>See for more details: [https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Massnahmen/40c\\_neu\\_124\\_WpHG/meldung\\_211229\\_deutsche\\_bank\\_ag\\_geldbusse\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Massnahmen/40c_neu_124_WpHG/meldung_211229_deutsche_bank_ag_geldbusse_en.html)

### 3.2 Overview of administrative sanctions and measures imposed during 2021 by NCAs' Member States<sup>3</sup>

9. The below table sets out detail on the measures and sanctions imposed by NCAs in 2021. NCAs who did not impose any measures or sanctions 2021 are not represented in the tables below.

NCAs' Member States	Administrative sanctions under Article 16(2)(a)		Administrative measures under Articles 16(1)(b) and 15(2)(c)(d) and Annex 1 under 7 and 8		Other infringements		No sanctions or measures imposed
	Number of sanctions in 2021	Aggregate amount of financial sanctions in 2021	Number of measures in 2021	Aggregate amount of financial sanctions in 2021	Number of sanctions and measures in 2021	Aggregate amount of financial sanctions in 2021	
Germany	1	€8.663.200	1	X	X	X	

10. The imposed sanction and measure were imposed on a supervised contributor for not complying with article 16 of the BMR which affirms the importance of accurate and reliable input data in the calculation of the benchmarks.

11. In particular, article 16 BMR specifically requires the supervised contributor to have in place a control framework that ensures the integrity, accuracy and reliability of input data including effective systems and controls to ensure this integrity and reliability of all contributions of input data to the administrator.

12. No sanctions were imposed on benchmark administrators in 2021.

<sup>3</sup> NCAs who have not imposed any administrative sanctions/measures during the period are not reflected in this table.