



European Securities and
Markets Authority

Report

**Penalties and measures imposed under the UCITS Directive in 2016
and 2017**



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1 Executive Summary

Reasons for publication

This report is drafted pursuant to Article 99e(1) of Directive 2009/65/EC (UCITS Directive), which requires ESMA to publish an annual report regarding aggregated information on all penalties and measures imposed by national competent authorities (NCAs) in a given year.

Contents

This report contains an overview of the applicable legal framework and information on the penalties and measures imposed by NCAs in accordance with Article 99e of the UCITS Directive from 1 January 2016 to 31 December 2016 and from 1 January 2017 to 31 December 2017.

Next Steps

Separate reports will be issued for the subsequent reporting periods.



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.¹ 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) 2016/1212², 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 Directive 2009/65/EC 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 Directive 2009/65/EC 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 first report published by ESMA concerning penalties and measures issued under Directive 2009/65/EC.
6. 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.
7. As further specified in Annex I to the Commission Implementing Regulation (EU) 2016/2012:
 - The penalties imposed may cover more than one legislative provision, therefore the sum of penalties disclosed in the annexes of this report may not correspond to the total number/amount of penalties imposed.
 - The measures imposed may cover more than one legislative provision, therefore the sum of measures disclosed in the annexes of this report may not correspond to the total number of measures imposed.
 - If the relevant penalties 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.

¹ OJ L 302, 17.11.2009, p. 32.

² OJ L 199, 26.7.2016, p. 6.



8. In light of the above, ESMA deems that the data on sanctions imposed during 2016 and 2017 does not allow to observe clear trends or tendencies in the imposition of sanctions, nor to produce detailed statistics based on it.
9. As per Annex I to the Commission Implementing Regulation (EU) 2016/1212, 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 is also provided (calculations were made using the ECB Euro foreign exchange reference rates at year-ends 2016 and 2017).³
10. The aggregated information contained in this report reflects the data submitted to ESMA by the NCAs.

³ https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html

4 Annexes

4.1 Annex I: Overview of the notifications for the 2016 reporting period

NCAs' Member States	Type of sanctions			No sanctions
	Total number of penalties ⁴	Total amount of penalties	Total number of measures ⁵	
Austria	4	EUR 7,200		
Belgium	1	EUR 120,000		
Bulgaria	3	EUR 15,339		
Croatia			5	
Cyprus				X
Czech Republic	4	CZK 3,050,000 ⁶		
Denmark				X
Estonia				X
Finland				X
France	4	EUR 2,700,000	1	
Germany				X
Greece				X
Hungary				X
Ireland				X
Italy				X
Latvia				X
Lithuania			1	
Luxembourg	1	EUR 6,000		
Malta			2	
Netherlands				X
Poland				X
Portugal				X
Romania	15	RON 255,824 ⁷	3	
Slovenia			13	
Slovakia				X
Spain	2	EUR 90,000		
Sweden				X
UK				X
Liechtenstein				X
Norway				X
Iceland				X

⁴ As the penalties imposed may cover more than one legislative provision, the total number/amount of penalties disclosed in this Annex may not correspond to the sum of the number/amount of penalties disclosed in Annex II.

⁵ As the measures imposed may cover more than one legislative provision, the total number of measures disclosed in this Annex may not correspond to the sum of the number of measures disclosed in Annex III.

⁶ Corresponding to EUR 112,880.50. For year 2016, the amounts denominated in CZK were converted at the ECB foreign exchange reference rate on 30 December 2016 (CZK/EUR=0.03701).

⁷ Corresponding to EUR 56,358.03. For year 2016, the amounts denominated in RON were converted at the ECB foreign exchange reference rate on 30 December 2016 (RON/EUR=0.2203).

4.2 Annex II: Overview on number and amount of penalties imposed during 2016 by NCAs' Member States (split by UCITS Chapter)

UCITS Directive	UCITS Article	Penalties	Austria	Bulgaria	France	Romania	Spain
Chapter I <i>Subject matter, scope and definition</i>	Art. 2	Number				1	
		Amount				RON 10,000* ⁸	
Chapter III <i>Obligations regarding management companies</i>	Art. 6	Number				9	
		Amount				RON 90,000* ⁹	
	Art. 7(1)(b)	Number	2			1	
		Amount	EUR 1,200*				
	Art. 10	Number				1	
		Amount					
	Art. 12	Number				1	2
		Amount				EUR 950,000*	
	Art.12(1)(a)	Number					2
		Amount					EUR 90,000
	Art. 13	Number				1	
		Amount				EUR 200,000*	
	Art. 13(1)(a)	Number	2	1			
		Amount	EUR 1,200*	EUR 5,113			
	Art. 14	Number				3	5
		Amount				EUR 2,500,000*	RON 60,000 ¹⁰
	Art. 14(1)	Number					
		Amount					
	Art. 15	Number				1	
		Amount				EUR 50,000*	
Art. 19(6)	Number	2					
	Amount	EUR 6,000*					
Art. 21	Number				1		
	Amount				EUR 950,000*		

* 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.

⁸ Corresponding to EUR 2,203. For the foreign exchange rate used in the calculation please see footnote 7.

⁹ Corresponding to EUR 19,827. For the foreign exchange rate used in the calculation please see footnote 7.

¹⁰ Corresponding to EUR 13,218. For the foreign exchange rate used in the calculation please see footnote 7.

UCITS Directive	UCITS Article	Penalties	Belgium	Bulgaria	Czech Republic	France	Luxembourg	Romania
Chapter IV <i>Obligations regarding the depositary</i>	Art. 25	Number				1		
		Amount				EUR 200,000*		
Chapter V <i>Obligations regarding investment companies</i>	Art. 30	Number						1
		Amount						RON 2,000* ¹¹
	Art. 31	Number						1
		Amount						RON 2,000* ¹²
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50(2)(a)	Number						1
		Amount						RON 18,324* ¹³
	Art. 51	Number						5
		Amount						RON 45,000* ¹⁴
	Art. 52(2)	Number						1
		Amount						RON 18,324* ¹⁵
	Art. 56(2)(b)	Number						1
		Amount						RON 18,324* ¹⁶
Art. 57(2)	Number			2				
	Amount			EUR 10,226				
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 77	Number	1			2		
		Amount	EUR 120,000			EUR 1,550,000*		
	Art. 79	Number						1
		Amount						
Chapter X <i>General obligations of UCITS</i>	Art. 88	Number						1
		Amount						RON 10,000* ¹⁷
	Art. 90	Number				1		
		Amount				EUR 200,000*		
Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 98(2)(b)	Number					1	
		Amount					EUR 6,000	
	Art. 99(1)	Number			4			
		Amount			CZK 3,050,000 ¹⁸			

* 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.

¹¹ Corresponding to EUR 440.6. For the foreign exchange rate used in the calculation please see footnote 7.

¹² Corresponding to EUR 440.6. For the foreign exchange rate used in the calculation please see footnote 7.

¹³ Corresponding to EUR 4,036.78. For the foreign exchange rate used in the calculation please see footnote 7.

¹⁴ Corresponding to EUR 9,913.5. For the foreign exchange rate used in the calculation please see footnote 7.

¹⁵ Corresponding to EUR 4,036.78. For the foreign exchange rate used in the calculation please see footnote 7.

¹⁶ Corresponding to EUR 4,036.78. For the foreign exchange rate used in the calculation please see footnote 7.

¹⁷ Corresponding to EUR 2,203. For the foreign exchange rate used in the calculation please see footnote 7.

¹⁸ Corresponding to EUR 112,880.50. For the foreign exchange rate used in the calculation please see footnote 6.

4.3 Annex III: Overview on number of measures imposed during 2016 by NCAs' Member States (split by UCITS Chapter)

UCITS Directive	UCITS Article	Croatia	France	Lithuania	Malta	Romania	Slovenia
Chapter III <i>Obligations regarding management companies</i>	Art. 6					1	
	Art. 7(1)(a)						2
	Art. 7(1)(b)						2
	Art. 10(1) and (2)			1			
	Art. 12		1				
	Art. 12(1)						43
	Art. 12(1)(a)	2					
	Art. 13(1)(a)						1
	Art. 14		1			1	
	Art. 14(1)						7
	Art. 15						1
	Art. 21			1			
	Art. 21(8)					2	
Chapter V <i>Obligations regarding investment companies</i>	Art. 30					1	
	Art. 31					1	
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50					1	
	Art. 50(1)(g)					1	
	Art. 51					1	
	Art. 52					1	
	Art. 52(1)(a) and (2)	1					
	Art. 52(1)(b)	1					
	Art. 55(1) and (2)	1					
Art. 56						1	
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 68 (1)(a)			1			
	Art. 74			1			
	Art. 77		1				
	Art. 79(1)			1			
	Art. 82(1)			1			
Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 98(2)(b)						1
	Art. 99					2	
	Total number of measures¹⁹	5	1	1	2	3	13

¹⁹ As the measures imposed may cover more than one legislative provision, the total number of measures may not correspond to the sum of the number of measures disclosed in this Annex for each UCITS chapter.

4.4 Annex IV: Overview of the notifications for the 2017 reporting period

NCAs' Member States	Type of sanctions			No sanctions
	Total number of penalties ²⁰	Total amount of penalties	Total number of measures ²¹	
Austria	1	EUR 1,500		
Belgium	1	EUR 50,000		
Bulgaria				X
Croatia	1	HRK 153,000 ²²	3	
Cyprus				X
Czech Republic	7	CZK 2,700,000 ²³		
Denmark				X
Estonia				X
Finland				X
France	3	EUR 35,230,000	4	
Germany				X
Greece				X
Hungary	12	HUF 40,000,000 ²⁴	5	
Ireland				X
Italy	2	EUR 291,000	1	
Latvia				X
Lithuania				X
Luxembourg	19	EUR 116,000		
Malta	1	EUR 612,473.85	2	
Netherlands			2	
Poland	2	PLN 535,000 ²⁵		
Portugal				X
Romania	2	RON 14,516 ²⁶	3	
Slovenia	3	EUR 97,100	1	
Slovakia				X
Spain	3	EUR 160,000		
Sweden				X
UK				X
Liechtenstein				X
Norway				X
Iceland			1	

²⁰ As the penalties imposed may cover more than one legislative provision, the total number/amount of penalties disclosed in this Annex may not correspond to the sum of the number/amount of penalties disclosed in Annex V.

²¹ As the measures imposed may cover more than one legislative provision, the total number of measures disclosed in this Annex may not correspond to the sum of the number of measures disclosed in Annex VI.

²² Corresponding to EUR 128,563.20. For year 2017, the amounts denominated in HRK were converted at the ECB foreign exchange reference rate on 29 December 2017 (HRK/EUR=0.1344).

²³ Corresponding to EUR 105,732. For year 2017, the amounts denominated in CZK were converted at the ECB foreign exchange reference rate on 29 December 2017 (CZK/EUR=0.03916).

²⁴ Corresponding to EUR 128,880. For year 2017, the amounts denominated in HUF were converted at the ECB foreign exchange reference rate on 29 December 2017 (HUF/EUR=0.003222).

²⁵ Corresponding to EUR 128,079. For year 2017, the amounts denominated in PLN were converted at the ECB foreign exchange reference rate on 29 December 2017 (PLN/EUR=0.2394).

²⁶ Corresponding to EUR 3,116.59. For year 2017, the amounts denominated in RON were converted at the ECB foreign exchange reference rate on 29 December 2017 (RON/EUR=0.2147).

4.5 Annex V: Overview on number and amount of penalties imposed during 2017 by NCAs' Member States (split by UCITS Chapter)

UCITS Directive	UCITS Article	Penalties	France	Hungary	Italy	Malta	Romania	Slovenia	Spain	
Chapter III <i>Obligations regarding management companies</i>	Art. 7(1)(a)	Number						1		
		Amount						EUR 26,600		
	Art. 11(1)	Number							1	
		Amount							EUR 27,000	
	Art. 12	Number	1					1		
		Amount	EUR 180,000*							
	Art. 12(1)(a)	Number			6					2
		Amount			HUF 40,000,000* ²⁷					EUR 100.000
	Art. 14	Number	3		1					
		Amount	EUR 35,230,000*		HUF 40,000,000* ²⁷					
	Art. 14(1)	Number				2				
		Amount				EUR 291,000				
	Art. 14(1)(d)	Number			1					
		Amount			HUF 40,000,000* ²⁷					
	Art. 19(4)	Number			1					
		Amount			HUF 40,000,000* ²⁷					
Art. 21	Number	1								
	Amount	EUR 180,000*								
Art. 21(3)(4)(5)(7)(8)	Number					1				
	Amount					EUR 612,473.85*				

* 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.

²⁷ See footnote 24.

UCITS Directive	UCITS Article	Penalties	Belgium	France	Hungary	Poland	Romania	Slovenia	Spain
Chapter IV <i>Obligations regarding the depositary</i>	Art. 25	Number		2					
		Amount		EUR 35,050,000*					
	Art. 25(2)	Number							1
		Amount							EUR 43,500
Chapter V <i>Obligations regarding investment companies</i>	Art. 31	Number			2				
		Amount			HUF 40,000,000* ²⁸				
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50(2)	Number					1		
		Amount					RON 14,516* ²⁹		
	Art. 51	Number			1				
		Amount			EUR 180,000*				
	Art. 52(1)(a)	Number					1		
		Amount					PLN 450,000* ³⁰		
	Art. 52(2)(a)	Number						1	
		Amount						RON 14,516* ³¹	
	Art. 52(5)	Number					1		
		Amount					PLN 450,000* ³²		
Art. 56(1)	Number					1			
	Amount					PLN 85,000 ³³			
Art. 56(2)(b)(d)	Number					1			
	Amount					PLN 450,000* ³⁴			
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 69	Number		1					
		Amount		EUR 35,000,000*					
	Art. 69(1)	Number							1
		Amount							EUR 60,000
	Art. 77	Number	1		2				
		Amount	EUR 50,000		EUR 35,050,000*				
	Art. 78	Number			1				
		Amount			EUR 50,000*				
Art. 78(4)	Number				1				
	Amount				HUF 40,000,000* ²⁸				

* 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.

²⁸ See footnote 24.

²⁹ Corresponding to EUR 3,116.59. For the foreign exchange rate used in the calculation please see footnote 26.

³⁰ Corresponding to EUR 107,730. For the foreign exchange rate used in the calculation please see footnote 25.

³¹ Corresponding to EUR 3,116.59. For the foreign exchange rate used in the calculation please see footnote 26.

³² Corresponding to EUR 107,730. For the foreign exchange rate used in the calculation please see footnote 25.

³³ Corresponding to EUR 20,349. For the foreign exchange rate used in the calculation please see footnote 25.

³⁴ Corresponding to EUR 107,730. For the foreign exchange rate used in the calculation please see footnote 25.

UCITS Directive	UCITS Article	Penalties	Austria	Croatia	Czech Republic	France	Greece	Luxembourg	Malta	
Chapter X <i>General obligations of UCITS</i>	Art. 83(2)	Number	1							
		Amount	EUR 1,500							
	Art. 90	Number				1				
		Amount				EUR 50,000				
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. 91(1)	Number					2			
		Amount					EUR 140,000*			
	Art. 93(1)	Number					2			
		Amount					EUR 140,000*			
	Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 98(2)(b)	Number						16	
			Amount						EUR 34,000	
Art. 99		Number							1	
		Amount							EUR 612,473.85*	
Art. 99(1)		Number			7					
		Amount			CZK 2,700,000 ³⁵					
Art. 99a(j)(m)		Number						1		
		Amount						EUR 6,000		
Art. 99a(n)	Number						2			
	Amount						EUR 76,000*			
Art. 99a(p)	Number			1						
	Amount			HRK 153,000 ³⁶						

* 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

³⁵ Corresponding to EUR 105,732. For the foreign exchange rate used in the calculation please see footnote 23.

³⁶ Corresponding to EUR 20,563.20. For the foreign exchange rate used in the calculation please see footnote 22.

4.6 Annex VI: Overview on number of measures imposed during 2017 by NCAs' Member States (split by UCITS Chapter)

UCITS Directive	UCITS Article	Croatia	France	Hungary	Italy	Malta	Netherlands	Romania	Slovenia	Iceland
Chapter III <i>Obligations regarding management companies</i>	Art. 6				1					
	Art. 7(1)(a)			2						
	Art. 10(1)							1		
	Art. 12		2					1		
	Art. 12(1)								1	
	Art. 12(a)			1						
	Art. 12(1)									
	Art. 14		3							
	Art. 19(4)			2						
	Art. 21		2							
Chapter IV <i>Obligations regarding the depositary</i>	Art. 21 (3)(4)(5) (7)(8)					1				
	Art. 22(3)							1		
	Art. 25		1							
	Art. 32(3)							1		
Chapter VII <i>Obligations concerning the investment policies of UCITS</i>	Art. 50(1)						1			
	Art. 51		1							
	Art. 55 (1)(2)						1			
	Art. 55(3)	1								
Chapter IX <i>Obligations concerning information to be provided to investors</i>	Art. 56 (2)(b)									1
	Art. 77		1							

UCITS Directive	UCITS Article	Croatia	France	Hungary	Italy	Malta	Netherlands	Romania	Slovenia	Iceland
Chapter X <i>General obligations of UCITS</i>	Art. 90	2								
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. 94						1			
Chapter XII <i>Provisions concerning the authorities responsible for authorization and supervision</i>	Art. 98(2)(e)								1	
	Art. 99					1				
	Total number of measures³⁷	3	4	5	1	2	2	3	1	1

³⁷ As the measures imposed may cover more than one legislative provision, the total number of measures may not correspond to the sum of the number of measures disclosed in this Annex for each UCITS chapter.