

Report

Report on administrative sanctions and measures and criminal sanctions imposed under the Benchmarks Regulation in 2022

Table of Contents

1	Executive Summary	3
2	Regulatory framework for reporting administrative sanctions and measures and criminal sanctions under the Benchmarks Regulation.....	4
3	Sanctions imposed by NCAs.....	5
3.1	Overview of the sanctions and measures imposed in 2022.....	5
3.2	Detailed overview of administrative sanctions and measures imposed during 2022.....	6
4	Concluding observations	7

1 Executive Summary

Reasons for publication

This is the second annual sanctions report pursuant to Regulation (EU) 2016/1011 (Benchmarks Regulation) published by ESMA. The Benchmarks Regulation entered into force on 30 June 2016 and the majority of the provisions applied as of 1 January 2018.

In 2022, one administrative sanction and one administrative measure were imposed on respectively a supervised entity (user of benchmarks) and a supervised contributor by two NCAs for two infringements of the Benchmarks Regulation. Additionally, no criminal sanctions were imposed in 2022. Taking into account that only one administrative sanction and one administrative measure were imposed in 2022, there is limited scope for observation of clear trends in the overall 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 2022 to 31 December 2022.

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.

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

1. According to Article 45 of the Benchmarks Regulation¹ (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, first paragraph 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. Article 42, second paragraph BMR foresees that in the event of an infringement of the BMR provisions, 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;
4. Moreover, Article 42, third paragraph BMR provides that Member States could decide not to lay down rules for administrative sanctions where the relevant infringements are already subject to criminal sanctions under national law.
5. Member States may grant other powers to NCAs to impose additional sanctions and measures under national legislation.
6. The aggregated information contained in this report reflects the data submitted to ESMA by the NCAs.

¹ 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 2022

7. The BMR entered into force on 30 June 2016 and the majority of the provisions applied as of 1 January 2018. For EU benchmark administrators, a transitional period was granted until 1 January 2020. 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 2025.
8. In 2022, a total of two administrative sanctions and measures were imposed by two NCAs for infringements of the BMR respectively on a supervised entity (user of benchmarks) and a supervised contributor.

NCAs' Member States or ESMA	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 ²	1	€ 0	
Greece			X
Hungary			X
Ireland			X
Italy			X
Latvia			X
Lithuania			X
Luxembourg ³	1	€ 45.800	
Malta			X
Netherlands			X
Poland			X
Portugal			X
Romania			X
Slovenia			X
Slovakia			X
Spain			X
Sweden			X
Liechtenstein			X
Norway			X
Iceland			X
ESMA ⁴			X

² The measure was not published as the competent authority regarded a publication as disproportionate (Article 45(2) BMR).

³ For more details see the following publication: https://www.cssf.lu/wp-content/uploads/S_56_GFI_FundRock_Management_Company_S.A._2022.11.30_en.pdf (cssf.lu).

⁴ ESMA is the EU competent authority for EU critical benchmark administrators and for recognised third country administrators.

3.2 Detailed overview of administrative sanctions and measures imposed during 2022

9. The below table sets out detail on the measures and sanctions imposed by NCAs in 2022. NCAs who did not impose any measures or sanctions 2022 are not represented in the tables below.

NCAs' Member States	Administrative sanctions under Article 28(2) and 29(2)		Administrative measures under Articles 16(1)(b) and 15 and Annex 1 under 7		Other infringements	
	Number of sanctions in 2022	Aggregate amount of financial sanctions in 2022	Number of measures in 2022	Aggregate amount of financial sanctions in 2022	Number of sanctions and measures in 2022	Aggregate amount of financial sanctions in 2022
Germany	X	X	1	X	X	X
Luxembourg	1	€45.800	X	X	X	X

10. The administrative measure was imposed by the Germany NCA on a supervised contributor for not complying with the articles 11, 15 and 16 of BMR and article 3 of the Regulatory Technical Standards (RTS) on input data⁵ of the BMR, which affirms the importance for contributors to have adequate internal oversight and verification procedures in place in order to ensure accurate and reliable input data in the calculation of the benchmarks.
11. In particular, article 3 of the RTS requires the supervised contributor to have in place independent first and second levels of controls of the input data to be performed both prior and after the submission of contributions. This is to ensure the integrity, accuracy and reliability of the contributed input data.
12. The administrative sanction was imposed by the Luxembourg NCA on a supervised entity (user of benchmarks) for not complying with article 28 and 29 of the BMR.
13. Article 28 BMR requires supervised entities that use a benchmark shall produce and maintain robust written contingency plans that they would implement in the event that

⁵ Commission Delegated Regulation (EU) 2018/1638, OJ L 274, 5.11.2018, p. 6–10.

a benchmark materially changes or ceases to be provided. In particular and where feasible and appropriate, such plans shall designate one or several alternative benchmarks that could be referenced under those circumstances.

14. In addition, article 29 of the BMR requires that supervised entities, when managing an investment fund, include also clear and prominent information in their prospectuses stating whether the benchmark is provided by an administrator included in the ESMA register.

4 Concluding observations

15. The below tables provide an overview of aggregated figures on sanctions issued under the BMR during the periods 2020-2022.

Year	Member states	Total number of sanctions and measures	Amount of administrative sanction
2020	NA	NA	NA
2021	Germany	2	€ 8.663.200
2022	Luxembourg	1	€ 45.800
	Germany	1	0
Total		4	€ 8.709.000

16. No sanctions were imposed on benchmark administrators in the period 2020-2022.
17. The BMR is a relatively new regulation and it is too early to draw definite conclusions based on the sanctions and measures taken so far by competent authorities. Nevertheless, those actions are a reminder that the BMR is a multifaceted regulation setting important obligations on a variety of market participants beyond the benchmarks administrators, notably on supervised entities which are either users of benchmarks or contribute input data to an administrator.