

## PRESS RELEASE

### **ESMA identifies divergence in Member States' use of sanctions under the Market Abuse Directive**

The European Securities and Markets Authority (ESMA) has published a report on the use of administrative and criminal sanctions by European Union (EU) national regulators under the Market Abuse Directive (MAD). The report provides a comparison of the use of administrative sanctioning powers across 29 EEA Member States for 2008-2010. The results of the report will provide input to the legislative process on the new market abuse regime.

The Market Abuse Directive is aimed at combating cross-border market abuse across the EU, by establishing a common approach amongst Member States which will support clean, fair and orderly markets, and maintain investor confidence in their integrity. This work supports ESMA's work on achieving consistent regulatory practices across the EU.

The report compared Member States market abuse regimes across a number of categories, which were:

- The type of sanctioning powers available to competent authorities (CAs) and against whom and for which offences they were applicable;
- The resources allocated by CAs to this issue; and
- The actual use of sanctioning powers available – settlement, administrative and criminal sanctions and publication.

#### **Steven Maijoor, Chair of ESMA, said:**

“ESMA believes that the availability and use of sanctioning powers by market regulators is an important factor in supporting clean and fair markets across the EU. However, today's report indicates that, while most authorities have made use of these powers, differences remain in their availability, regulators' ability to use them and the allocation of resources.

“We believe that this report highlights a number of areas for improvement, which could assist national authorities in calibrating their regimes to achieve the desired outcome of a consistent pan-EU application of the sanctions regime and a harmonised approach to market abuse.”

## Key findings

The reports key findings include:

- **Insider dealing fines** - the size of the penalties varied between those imposed on individuals – ranging from €64 to €6,000,000 – and those imposed on companies – ranging from €2,545 to €1,800,000;
- **Market manipulation fines** – the size of penalties varied from €100 to €1,500,000 for individuals, and from €575 to €5,000,000 for companies;
- **Availability of Sanctions** - 26 Member States provide for both administrative and criminal sanctions;
- **Use of Sanctions** – 24 member states made use of their power to impose sanctions during this period;
- **Imprisonment** – the length of imprisonment imposed in Member States, for insider dealing violations, varied from under one year to three years. For market manipulation this varied from one year to four years;
- **Staff** - the report identifies differences in the organisation and the number of authorities' staff dedicated to tackling market abuse, covering market supervision to the imposition of administrative sanctions. The number of staff dedicated to this range of activities varied from two to 127 staff members;
- **Key criteria to determine the type and the level of sanctions** – authorities took into account a range of factors with the most widely used being the seriousness of the violation; the amount of financial benefits; the cooperative behaviour; financial strength and/or size; duration; impact on market and consumers; degree of culpability; repetitive nature; and level of responsibility/seniority).
- **Settlements** - Member States consider this as an efficient way of dealing with market abuse. However, the concept itself varies to a considerable degree e.g., in some Member States settlement decisions may be subject to review (administrative or judicial), whereas in others, one of the consequences of closing a case by means of settlement is that a review will be precluded.

The Commission is currently reviewing the EU regime dealing with market abuse and a proposal to enhance the administrative and criminal sanctioning of market abuse (MAD II).



## Note for Editors

1. ESMA's report on the actual use of sanctions under the Market Abuse Directive can be viewed on ESMA's website: <http://esma.europa.eu/page/Review-Panel-Documents>
2. The European Commission, Council and Parliament are currently in the process of finalising a new Market Abuse Regulation (MAR) and Directive on criminal sanctions for insider dealings and market manipulation (MAD2).
3. The majority of competent authorities that currently have MAD powers at national level do not have criminal prosecution powers and are not able to initiate or conduct a criminal investigation. This is typically left to public prosecutors and courts in most Member States with only a few exceptions (3 out of 30 EEA countries) where national competent authorities also have criminal prosecuting powers.
4. ESMA is an independent EU Authority that was established on 1 January 2011 according to EU Regulation No. 1095/2010 as published on December 15, 2010, in the Official Journal of the European Union (L 331/84). The Authority contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA fosters supervisory convergence both amongst securities regulators, and across financial sectors by working closely with the other European Supervisory Authorities competent in the field of banking (EBA), and insurance and occupational pensions (EIOPA).
5. ESMA's work on securities legislation contributes to the development of a single rule book in Europe. This serves two purposes; firstly, it ensures the consistent treatment of investors across the Union, enabling an adequate level of protection of investors through effective regulation and supervision. Secondly, it promotes equal conditions of competition for financial service providers, as well as ensuring the effectiveness and cost efficiency of supervision for supervised companies. As part of its role in standard setting and reducing the scope of regulatory arbitrage, ESMA strengthens international supervisory co-operation. Where requested in European law, ESMA undertakes the supervision of certain entities with pan European reach.
6. ESMA also contributes to the financial stability of the European Union, in the short, medium and long-term, through its contribution to the work of the European Systemic Risk Board, which identifies potential risks to the financial system and provides advice to diminish possible threats to the financial stability of the Union. ESMA is also responsible for coordinating actions of securities supervisors or adopting emergency measures when a crisis situation arises.

Further information:

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