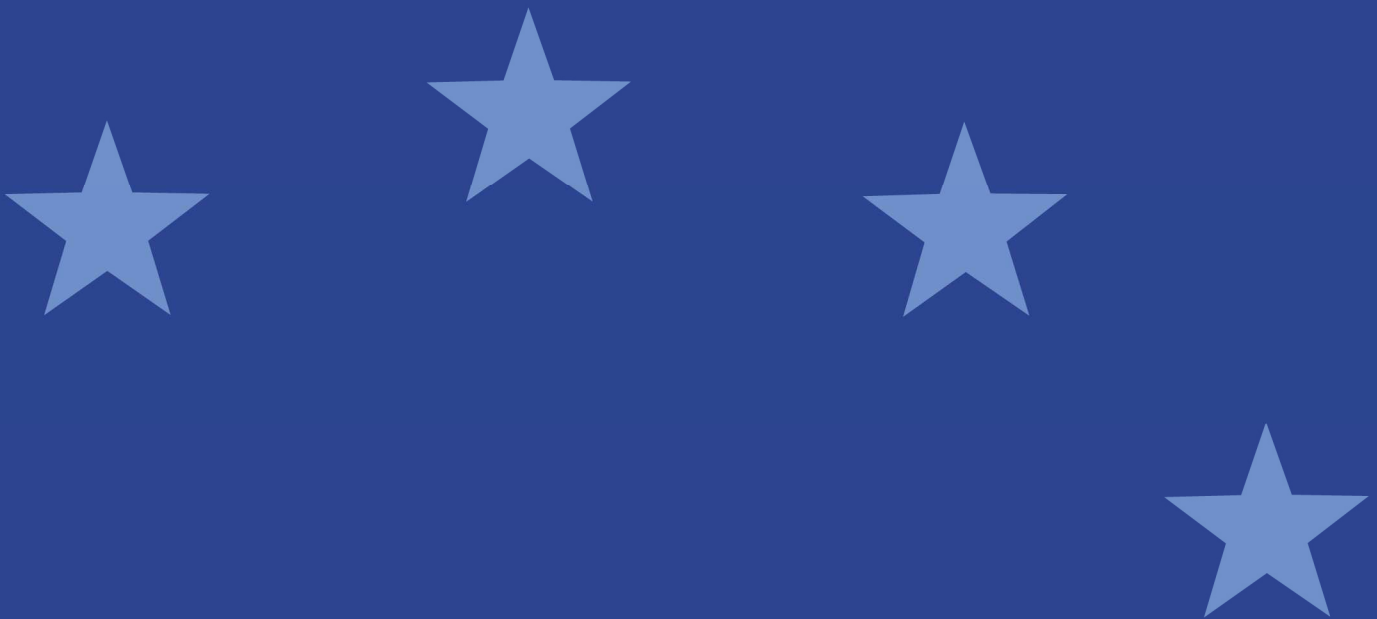




European Securities and
Markets Authority

REPORT

Actual use of sanctioning powers under MAD





REPORT

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Country codes and acronyms of Competent Authorities and Member States
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Country codes Member States EC/EEA		Competent Authorities-Acronyms	
AT	Austria	Financial Market Authority	FMA
BE	Belgium	Financial Services and Markets Authority	FSMA
BG	Bulgaria	Financial Supervision Commission	FSC
CY	Cyprus	Cyprus Securities and Exchanges Commission	CySEC
CZ	Czech Republic	Czech National Bank	CNB
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
DK	Denmark	Finanstilsynet	Finanstilsynet
EE	Estonia	Estonian Financial Supervision Authority	EFSA
EL	Greece	Capital Market Commission	HCMC
ES	Spain	Comision Nacional del Mercado de Valores	CNMV
FI	Finland	Finanssivalvonta	FIN-FSA
FR	France	Autorité des Marchés Financiers	AMF
HU	Hungary	Hungarian Financial Supervisory Authority	HFSA
IE	Ireland	Central Bank of Ireland	CBoI
IS	Iceland	Financial Supervisory Authority	FME
IT	Italy	Commissione Nazionale per le Società e la Borsa	Consob
LT	Lithuania	Lietuvos Bankas	LB
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
LV	Latvia	Financial and Capital Markets Commission	FCMC
MT	Malta	Malta Financial Services Authority	MFSA
NL	Netherlands	Autoriteit Financiële Markten	AFM
NO	Norway	Finanstilsynet	Finanstilsynet
PL	Poland	Polish Financial Supervision Authority	KNF
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
RO	Romania	Romanian National Securities Commission	CNVMR
SE	Sweden	Finansinspektionen	Finansinspektionen
SI	Slovenia	Securities Market Agency	SMA
SK	Slovakia	National Bank of Slovakia	NBS
UK	United Kingdom	Financial Services Authority	FSA

Other acromyms used:

CA(s) – Competent Authority (Authorities)

MS(s) – Member State(s)

I. INTRODUCTION

1. Sanctions that are applied in a more coherent manner across the EU will contribute to a credible EU supervisory system, essential to maintaining the integrity and efficient functioning of the financial markets. In its first study in 2007 assessing the powers available to Competent Authorities (CAs) to deal with market abuse, CESR recognised that there are considerable differences as to the sanctions such as financial penalties that CAs can pronounce.
2. On the basis of the mandate approved by the CESR Chairs at their November 2010 meeting, the Review Panel launched a mapping with regard to the actual use of sanctioning powers in the EU Member States in cases of market abuse, in particular as stipulated by the Market Abuse Directive, 2003/6/EC (MAD). The mapping, focused primarily on the actual use of sanctions concerning the two main offences of insider dealing and market manipulation based on the MAD. Article 14 of the MAD obliges Member States to ensure that appropriate administrative measures can be taken or administrative sanctions be imposed against the person responsible where the provisions implementing the Directive have not been complied with. Member States under the existing Directive maintain the right (and they do not have an obligation) to impose also criminal sanctions, however no harmonisation is provided in this respect. As far as possible, this report attempts to give information in areas which are not covered by the Directive or not harmonised under the Directive such as articulation of administrative and criminal proceedings, settlement, appeals, aggrieved investors, time elapsing, publication and recovery of sanctions.
3. The mapping primarily concentrates on analysing the actual use of administrative sanctions concerning the two main offences of insider dealing and market manipulation based on the MAD. As explained above, while the main focus has been the use of administrative sanctioning powers, information was collected from CAs on administrative sanctions, and- to the extent possible - when possible or available on criminal sanctions. Information was obtained through a questionnaire covering data for a three-year period (i.e. 2008, 2009 and 2010, the “review period”).
4. This mapping was already underway when the European Commission (EC) issued in December 2010 a Communication on “Reinforcing sanctioning regimes in the financial services sectors” (*The EC Communication*). In its response to the Communication, in February 2011 ESMA stated (*ESMA’s Response to the EC*) that it considers “it is of utmost importance to work towards a consistent application of common rules in all Member States while being in line with the various particularly justified needs of the relevant markets.” Concerning administrative sanctions, ESMA agreed in principle that some minimum common standards should be set at an EU level but stated that “taking into consideration that the appropriate sanction in a particular enforcement case depends on the unique circumstances of each case, it is considered that minimum harmonisation would be more appropriate than maximum harmonisation”.
5. In October 2011, the European Commission issued proposals¹ which include: the review of the EU regime dealing with market abuse: a proposal for regulation repealing the MAD and also enhancing administrative sanctioning of market abuse and a proposal in relation to criminal sanctions.

¹ Proposal for a Regulation on insider dealing and market manipulation (market abuse) [COM (2011) 651]; Proposal for Directive on criminal sanctions for insider dealing and market manipulation [COM (2011) 654]

6. Certain aspects need to be highlighted when presenting the results of this mapping. Firstly, the legal framework and powers available to deal with market abuse differ among Member States, including the differences in relationship between CAs and judicial authorities in implementing the provisions of Articles 11-12 of the MAD. For the purpose of this report, judicial authorities might be, in addition to courts, the prosecutors in some Member States. Moreover, this mapping is a snapshot on the activities of CAs and judicial authorities during the review period based on the information available to CAs. Information relating to sanction decisions that are taken by judicial authorities may not be easily accessible to the CAs. Further, every case of market abuse is unique and may involve various circumstances which would underlie the decision taken. As such, the report aims at presenting some findings rather than comparing the detail of data among Member States. Finally, the size of the market may impact the data reflected in this report. Issues such as the number of listed companies, the volume of transactions, the use of OTC trading may have a direct impact on the number and type of market abuse cases as well as the number of staff that is dedicated to dealing with market abuse in different Member States.
7. Through this mapping, “sanctions” are understood in line with the EC Communication as “*a broad notion covering the whole spectrum of actions applied after a violation is committed, and intended to prevent the offender as well as the general public from committing further infringements*”. Moreover, the terms “fines”, “pecuniary sanctions” or “penalties” are used in this report interchangeably. Finally, it has to be noted that the mapping followed the CESR Review Panel Methodology for Mapping Exercises (CESR 07-664 of September 2007).
8. This mapping exercise has required a preliminary overview of the Member States’ administrative and criminal procedures in relation to market abuse sanctioning. An overview of the main steps followed in each Member States’ administrative and criminal procedures on the basis of the responses provided by the 29 CAs (for more information, see Annex).
9. Administrative and criminal procedures cover the whole chain of market abuse sanctioning starting with the surveillance and identification of abnormal moves on the markets, through the opening of an investigation, until the pronouncing of a sanction, which may be reviewed or appealed, and the recovery of the sanction’s amount. There is diversity in the legal systems of Member States in the market abuse sanctioning area.
10. National CAs have different powers in relation to market abuse sanctioning (as detailed under “Articulation Administrative/Criminal Proceedings”, and whose actual use is to be found under “Administrative Sanction Decisions taken by the CAs” and “Criminal Sanction Decisions Taken by Judicial Authorities”). The main division lines can be summarised in terms of whether Member State and its CA have administrative and/or criminal proceedings at their disposal and how these interact with each other, whether they can apply these powers to natural and/or legal persons and whether there are any differences to market manipulation and insider dealing cases as regards powers and/or procedures. Few Member States can and do apply settlement proceedings in market abuse cases (see “Settlement within the Framework of Administrative Proceedings”).
11. Concerning the different procedural steps in (possible) market abuse cases, we can in general distinguish between a surveillance- or pre-investigative- phase that covers actions to identify any abnormal moves on the market based on surveillance and complaints, an investigative phase aiming at “finding evidence” and usually concluded at the CA by drawing up an investigation report, a sanctioning phase of administrative and/or criminal nature as provided by the national legislation.
12. In relation to CAs and administrative proceedings however, there is difference in whether these phases are formally identified or are informally followed. There is also difference in the stage of the process in

the CAs when the person concerned is informed about possible breaches he/she may have committed. Furthermore, the way how decisions are taken in relation to MAD sanctioning within the CA may differ together with the person or the body responsible for taking such decisions (see also “Organisation and number of Staff in the CAs”).

13. In those Member States where both administrative and criminal sanctions are available, the factors considered in deciding whether to launch one or the other procedures, or both at the same time and in parallel, are different. This can be more or less automatic as soon as market abuse is identified, this can be based on the seriousness of the violation, considering for example whether there is intent behind it.
14. The cooperation between the CAs and the judicial authorities takes different forms in the Member States and is of course influenced by the mandate entrusted to the CA (see also Section “Articulation of Administrative and Criminal Proceedings”). In those Member States where the CA does not have sanctioning powers for market abuse cases, the relationship is mainly based on assisting the judicial authorities in fulfilling their tasks. For those Member States where the CA has sanctioning powers (at least to certain cases), sometimes exchange of information is an obligation on both the CA and to judicial authorities. In other cases, it is the CA that has an obligation to keep the judicial authorities informed about the cases under examination, while in others it is the judicial authorities that have such an obligation towards the CA.
15. As already mentioned, sanctions are to be understood in a wide sense along the lines of the EC Communication. This is also confirmed by the fact that there are differences in the exact tools that are available to the Member States and to CAs in terms of sanctions, whether and how these cover sanctions other than pecuniary ones such as issuing warning or public reprimands and imprisonment for criminal sanctions (see also sections “Administrative Sanction Decisions Taken by the CAs” and “Criminal Sanction Decisions Taken by Judicial Authorities”). Concerning appeals, these are available in Member States, but the types of appellate bodies or courts and of their jurisdiction may be quite different in each Member States (see also section “Appeals”). Aggrieved investors have different tools at their disposal in the Member States to ask for indemnity (see also Section “Aggrieved Investors”).
16. Concerning the time elapsing between the discovery of the first facts of market abuse and the first sanctioning decisions, in some Member States, time limits may exist for the sanctioning procedures set by legislation depending on whether the proceedings are administrative or criminal (see section “Time Elapsing”). Member States practice also differs in terms of publication of administrative and criminal sanction decisions (as described also under sections “Publication of Decisions Taken on the Grounds of market abuses”). Finally, there is diversity among the bodies responsible for the recovery of sanctions and the use of the money recovered (see section “Recovery of Sanctions”).

II. EXECUTIVE SUMMARY

This Executive Summary provides a brief description of the different topics addressed in the Report. The sections follow the structure of the Report and give a short summary of the major findings including the description of the underlying issues.

PART I. CONTEXT TO THE ACTUAL USE OF SANCTIONING FOR MARKET ABUSE

17. To gain a thorough understanding of the actual use of sanctions for market abuse in the Member States (MSs), one has to be aware inter alia of the differences in terms of the organisation and the number of the CAs' staff and as to the market abuse sanctioning powers available across the EU. These might have an impact on the actual sanctioning processes, for instance in regard to the length and to the average time elapsing between the beginning and the end of the processes as well as to the number of investigations and sanctions carried out. In addition, it should be noted that sanctioning is one of the various tools that is available to Member States.

I. Organisation and number of staff in the CAs

18. This mapping identifies differences in the organisation and the number of the CA's staff dedicated to market abuse sanctioning, covering the activities ranging from market supervision (i.e. the detection of possible abnormal moves on the market) to the imposing of administrative sanctions.

19. The number of staff in full-time equivalent (staff members) dedicated to the whole range of activities ranges from two staff members to 127 staff members. 16 CAs reported that fewer than 10 staff members are dedicated to these tasks.

20. Specialisation of staff to certain activities in the market abuse sanctioning process is a choice pursued by most CAs, but the approaches differ. Overall it appears that CAs dedicate less staff to market supervision than to dealing with the enforcement process. In 18 CAs where the precise information in "full time equivalent" is available, the number of staff dedicated to market abuse enforcement process is the same or higher than the number of staff dedicated to market supervision. Furthermore, in 14 CAs the enforcement staff is split between (a) persons that gather the evidence and establish the facts of a case and (b) persons that are involved in the administrative procedure of imposing sanctions.

21. In terms of decision making in relation to market abuse sanctioning, in 15 CAs (AT, CY, EE, EL, ES, FI, IS, IT, LU, LV, NL, NO, PL, PT, RO) the Board/Governing body of the CA takes decisions in relation to market abuse sanctioning. However, this decision can also be entrusted to the Chairperson or the Deputy Chairperson of the CA (BG, HU), a dedicated Sanctioning Committee taking these decisions (BE, FR), a Committee that has a wider mandate than sanctioning, composed of members internal (MT) or both internal and external members (SI) to the CA, the Enforcement Department (CZ, DE, SK) or an External Assessor (IE) who makes the sanctioning decisions. In one CA (UK) the decision making process depends on whether the case is contested or not; sanctioning in settled cases is decided by two Directors at the CA who have not been involved in the case, whereas sanctioning in contested cases is decided by a Regulatory Decisions Committee made up of practitioners and non-practitioners, who are appointed by the Board and represent the public interest.

II. Articulation of Administrative and Criminal proceedings

22. The availability of sanctioning powers is essential to an understanding of the actual use of these powers. Accordingly, the report briefly addresses whether a Member State and its CA have

administrative and/or criminal proceedings at their disposal and how these interact with each other, whether they can apply these powers to natural and/or legal persons and whether there are any differences between market manipulation and insider dealing cases as regards powers and/or procedures.

Limited options in only a few MSs

23. As regards market abuse cases, the majority of Member States in principle provide for both administrative and criminal sanctions: This applies to 26 Member States (AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) for insider dealing and 25 Member States (AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) for market manipulation.

Different legal approaches among MSs regarding the relationship between administrative and criminal sanctions

24. Concerning the relationship between administrative and criminal sanctions four basic approaches may be identified among Member States:

- Market abuse can give rise to administrative sanctions only and criminal sanctions would not be applicable to market abuse. This concept is followed for insider dealing in one Member State (BG) and for market manipulation in 2 Member States (BG, HU).
- Market abuse cases can give rise to criminal sanctions only. The CA does not have administrative sanctions at their disposal. This approach is followed in two Member States (DK, SE).
- National legislation provide for both administrative and criminal sanctions, but at least in practice it is either criminal sanctions or administrative sanctions that are applied, not both of them. This approach is followed by 15 Member States (AT, CZ, DE, EE, ES, FI, IE, IS, LT, LU, MT, NL, NO, PT, SI) regarding insider cases and by 15 Member States (AT, CZ, DE, EE, ES, FI, IE, IS, LT, LU, MT, NL, NO, PL, SI) regarding cases of market manipulation.
- Finally, market abuse might be subject to both kinds of sanctions cumulatively. This concept is also quite common as it is applied in 11 Member States (BE, CY, EL, FR, HU, IT, LV, PL, RO, SK, UK²) for insider dealing and 10 Member States (BE, CY, EL, FR, IT, LV, PT, RO, SK, UK) for market manipulation.

Natural persons vs. legal persons

25. In all the 27 Member States (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) where market abuse may give rise to administrative sanctioning proceedings, administrative sanctions may be imposed on both natural and legal persons. Furthermore, both natural and legal persons may be subject to criminal sanctions in 21 Member States (AT, BE, CY, DK, EE, ES, FI, FR, HU, IE, IS, IT, LT, LV, MT, NL, NO, RO, SI, SK, UK), whereas in

² Although this is legally permissible, the FSA's published policy is not to pursue both criminal and administrative market abuse cases in practice.

seven Member States (CZ, DE³, EL, LU, PL, PT, SE), market abuse can give rise to criminal sanctions only for a natural person.

Criminal sanction proceedings influencing administrative sanction proceedings

26. Criminal sanction proceedings may have a significant influence on administrative sanction proceedings. The former halts the latter in 14 (AT, CZ, DE, EE, ES, FI, IS, IE, LT, LU, MT, NL, NO, SI) Member States where administrative and criminal proceedings are possible (although not necessarily at the same time) concerning at least one of the respective infringements. As regards pecuniary sanctions, in nine Member States (BE, CY, FR, HU, IT, PL, PT, SK, UK), criminal fines and administrative fines may be imposed cumulatively for the same set of facts. In seven of these Member States (BE, CY, FR, HU, IT, PL, UK), CAs and judicial authorities, when making a sanctioning decision, will usually take into account what has been imposed by the other authority. Five Member States (CY, HU⁴, IT, PL, UK) have, in principle, no specific figure limiting the total cumulative administrative and criminal financial sanctions which can be imposed.

Cooperation between CAs and judicial or other prosecuting authorities

27. The cooperation between the CAs and judicial authorities takes different forms in the Member States and is influenced by the mandate entrusted to the CA. In those Member States where the CA does not have sanctioning powers for market abuse cases, the relationship is mainly based on assisting the judicial authorities in fulfilling their tasks. For those Member States where the CA has sanctioning powers (at least in certain cases), sometimes the exchange of information is an obligation on both the CA and the judicial authorities. In other cases, it is the CA that has an obligation to keep the judicial authorities informed about the cases under examination, while in others it is the judicial authorities that have such an obligation towards the CA.

28. In all the 28 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) where market abuse may give rise to criminal proceedings, there is cooperation between CAs and judicial authorities. In four of these Member States (EL, IE, PL, UK), the respective CA itself is in the position to prosecute criminal offences concerning market abuse in front of the competent criminal courts. Cooperation between authorities is formalized in 13 (DE, EE, IE, IS, IT, NL, NO, PL, PT, RO, SE, SK, UK) Member States. The formalization is based on legal provisions in six Member States (DE, IE, IT, PL, SE, SK) and by cooperation agreement in seven Member States (EE, IS, NL, NO, PT, RO, UK).

³ For the purpose of financial sanctioning, German criminal courts may under certain circumstances impose administrative fines on legal persons in the course of criminal proceedings, though.

⁴ HU: The HFSA in the course of the administrative procedure might impose the maximum of the administrative fine and the Court in the course of the criminal procedure might impose the maximum of the criminal fine as defined by law.

PART 2 - THE ACTUAL USE OF SANCTIONING POWERS FOR MARKET ABUSE

29. In terms of the use of sanctioning powers to deal with market abuse, it should be noted that administrative sanctions, settlement procedures and criminal sanctions are part of a wider set of regulatory tools available to CAs in pursuing their objective of maintaining the integrity and efficient functioning of the financial markets.

I. Settlement within the framework of administrative proceedings

30. Settlement is part of the overall picture on the actual use of sanctions as some Member States consider this as an efficient way of dealing with market abuse. Where settlement is available, the concept itself varies to a considerable degree depending on the MS. For example, 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. In two (DE, UK) of the seven Member States (BE, CY, DE, HU, IE, IS, UK) where settlement is available to deal with market abuse, the outcome of a settlement is considered to constitute a sanctioning decision. Where this is the case settlement data was included also under the information provided for administrative sanctions.

31. Of the seven CAs for which settlement in market abuse cases is available, three CAs (BE, DE, UK) actually made use of this instrument in market abuse cases during the review period. Of these, two CAs (BE, DE) used it in less than five cases in the review period, whereas in one Member State (UK), 23 cases were closed by means of settlement during the review period. Where settlement was used during the review period, it was applied in a variety of cases. Most settlements, but not all, led to payments of pecuniary sanctions ranging from €2,500 to €1,101,498.

II. Administrative Sanctions imposed by CAs

32. ESMA stressed the need for CAs to be able to take administrative measures or impose sanctions on those who do not comply with the relevant provisions of EU Directives to allow them to effectively perform their tasks.⁵

Availability of pecuniary sanctions

33. Legislative or in some cases, constitutional provisions/principles may limit the minimum or maximum fines available in the Member States. Since the CESR mapping of 2007 on the powers available to CAs under MAD, there has been an increase in the maximum amount available when imposing a pecuniary sanction in eight Member States (AT, ES, FR, HU, NL, PT, LT, LU). Two CAs (NO, UK) have no maximum penalty amount when imposing pecuniary sanctions in relation to market abuse. For the CAs who had a maximum penalty amount in 2010, the maximum amounts available ranged from € 1,200 (EE) to € 25,000,000 (increasable up to three times or up to the higher amount of 10 times the profit of the offence) (IT).

34. Concerning minimum amounts, 10 CAs (CY, CZ, FR, IE, LV, MT, NL, NO, PL, UK) had no minimum amount for insider dealing sanctions while 11 CAs (CY, CZ, ES, FR, IE, LV, MT, NL, NO, PL, UK) had no minimum amount for market manipulation in the review period. Seven CAs (DE, EE, FI, HU, IS, LU, SK) have minimum amounts below €1,000 for insider dealing; eight CAs (AT, DE, EE, FI, HU, IS,

⁵ See page 1 of ESMA's response to the Communication.

LU, SK) have minimum amounts below €1,000 for market manipulation; one CA (IT) has a minimum amount above €100,000 for both insider dealing and market manipulation.

Sanctions imposed

35. Overall, there have been 23 CAs that imposed administrative sanctions in relation to market abuse (insider dealing and market manipulation) during the review period. The number of CAs that actually imposed administrative sanctions on natural persons in the review period is relatively higher than the number that imposed administrative sanctions on legal persons in the same period.

36. At the same time, five CAs (IE, IS, LU, NO, SK) did not impose any administrative sanctions during the review period. These CAs reported :

- IE stated that this is because the establishment of links between market behaviours and outcomes is difficult, especially in the context of insider dealing and market manipulation which may require an element of intention to be established.
- IS launched one procedure that ended with the discharge of the legal person concerned. IS considers that due to the small size of its markets, there were few market abuse cases that were concluded during the period. All cases pertaining to market abuse are referred to the Special Prosecutor for further investigation and criminal procedure if applicable.
- LU introduced administrative fines for insider dealing and market manipulation when amending its Law relative to market abuse on 26 July 2010. As the new provisions are only applicable to facts that happened after the amendment, there were no administrative fines imposed by the CSSF during the review period of this mapping exercise.
- In NO the CA has the power to order surrender of gain obtained from market abuse. This is the only administrative sanction available. However, serious breaches of the regulation regarding insider dealing and market manipulation are considered as major crime and are reported to the criminal authorities for prosecution. During the relevant period the CA established evidence for market abuse in 18 cases. All the cases were considered as serious cases and were reported to the criminal authorities for prosecution.
- SK launched a procedure that ended up in discharging the concerned person. In addition, SK considers that the lack of market abuse cases is due to the small size of its market.

37. Concerning insider dealing the following CAs imposed sanctions on natural persons: in 2008 - 13 CAs (BE, BG, CY, EL, ES, FI, FR, HU, IT, LT, NL, PL, UK); in 2009 - 12 CAs (BG, CZ, EL, ES, FI, FR, IT, LT, MT, PL, PT, UK); in 2010 - 11 CAs (BE, CY, EL, ES, FR, HU, IT, LT, NL, PL, UK). For insider dealing the following CAs imposed sanctions on legal persons: in 2008 - three CAs (EL, FR, IT); in 2009 five CAs (ES, FR, IT, LT, PT); in 2010 four CAs (EL, ES, IT, PL). 7 CAs (EL, ES, FR, IT, LT, PL, UK) imposed sanctions on natural persons for insider dealing in all three years and one CA (IT) imposed sanctions on legal persons for insider dealing in all three years.

38. Concerning market manipulation, the following CAs imposed sanctions on natural persons: in 2008 - 10 CAs (AT, BG, CY, DE, EL, ES, FR, LT, PT, UK); in 2009 - 14 CAs (AT, BG, CY, DE, EE, EL, FI, FR, IT, LT, PL, PT, SI, UK); in 2010 17 CAs (AT, BE, BG, CY, DE, EE, EL, FR, HU, IT, LV, NL, PL, PT, RO, SI, UK). For market manipulation, the following CAs imposed sanctions on legal persons: in 2008 -

seven CAs (BG, EE, EL, FR, HU, LT, PT); in 2009 - 10 CAs (CY, CZ, EE, EL, FR, HU, IT, LT, NL, PT); in 2010 – 10 CAs (BG, CY, CZ, EE, EL, FR, HU, NL, SI, UK). Eight CAs (AT, BG, CY, DE, EL, FR, PT, UK) imposed sanctions on natural persons for market manipulation in all three years. Four CAs (EE, EL, FR, HU) imposed sanctions on legal persons for market manipulation in all three years.

Pecuniary administrative sanctions

39. During the period, the minimum penalty amount that was imposed against a natural person was € 64 (EE) in relation to insider dealing and € 100 (FR) for market manipulation. The minimum penalty amount imposed on legal persons was respectively of € 2,545 (PL) for insider dealing and € 575 (EE) for market manipulation.

40. The maximum penalty amount that has been imposed against a natural person was 6,000,000 (CY) in relation to insider dealing and € 1,500,000 (FR) for market manipulation. The maximum imposed on legal persons was respectively of € 1,800,000 (IT) for insider dealing and € 5,000,000 (PT) for market manipulation. In the review period, there were 8 CAs (CY, HU, ES, FR, EL, IT, PT, UK) that imposed at least one sanction higher than € 1,000,000 mostly against natural persons for insider dealing.

41. In ESMA's response to the EC, 12 indicative key criteria were identified that CAs must take into account, where relevant, to determine the type of and the level of sanctions. While all these factors were used in determining pecuniary administrative sanctions imposed during the review period the nine factors that were widely used were 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; level of responsibility/seniority. The extent of steps to compensate those impacted, the loss incurred by clients or those impacted and compliance history of a regulated entity were less frequently used in practice.

Non pecuniary administrative sanctions

42. Non-pecuniary sanctions were imposed by 11 CAs (AT, CY, FI, FR, IT, LT, LV, PL, PT, SI, UK) during the review period. The types of non-pecuniary sanctions imposed varied. Those that were reported by more than one CA are:

- Reprimand addressed to a regulated entity - two CAs (CY, PT),
- Reprimand/warning on natural persons four CAs (AT, FI, FR, SI),
- Temporary disqualification of natural persons - two CAs (IT, PT),
- Withdrawal of licenses - three CAs (LT, PL, SI).

Evidence/Standards of Proof

43. In the absence of tangible proof of market abuse, 23 CAs (AT, BE, CY, CZ, DE, EE, EL, ES, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SI, UK) were able to use serious, specific and convergent evidence. One CA (PL) indicated that it was not able to use such evidence. 24 CAs (AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HU, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, UK) indicated that intent was not a requirement to prove a wrongdoing within administrative sanction proceedings. One CA (EE)



required intent to prove a wrongdoing. It should be noted, however, that no specific definition of intent was provided to CAs.

III. Criminal Sanction Decision Taken by Judicial Authorities

44. In relation to the European Commission's considerations in the EC Communication on the possible introduction of criminal sanctions for specific violations, ESMA noted that criminal sanctions may be particularly dissuasive due to their severity and social stigma associated with them. However, ESMA also emphasised that criminal sanctions may also have disadvantages that should be taken into account when assessing their effectiveness to ensure regulatory compliance and enforcement.

Availability of pecuniary sanctions and imprisonment

45. With regard to pecuniary sanctions available, around half of the Member States have no specified minimum penalty defined for insider dealing (12: CY, DK, ES, FI for natural persons, FR, IE, IS, LV, PL, RO, SE, UK) or for market manipulation (12: CY, DK, FI for natural persons, FR, IE, IS, LV, NO, PL, RO, SE, UK). For insider dealing violations, where there is a minimum and/or a maximum amount of fines applicable for criminal sanctions, the minimum pecuniary sanction applicable was € 1 (LT) while the maximum pecuniary sanction applicable was € 16,000,000 (EE). For market manipulation violations, the minimum pecuniary sanction applicable was € 1 (LT) while the maximum pecuniary sanction applicable was € 16,000,000 (EE). There is no specified minimum penalty defined but the benefit obtained from the infringement sets the minimum limit to pecuniary sanctions in 3 Member States (ES, FR, RO) in case of insider dealing and in 2 Member States (FR, RO) for market manipulation. In four Member States (BE, FR, IT, LU) the maximum amount of fines is also linked to the profit realised from the infringement.

46. With regard to imprisonment, minimum and maximum length of imprisonment for market abuse violations might be provided for in national legislation. Where it is the case, the range of minimum and maximum varies considerably across Member States. The range of the minimum length of imprisonment applicable for insider dealing violations varies from 15 days (SI) to three years (SK), while the range of the maximum length of imprisonment applicable varies from 30 days (EE) to 12 years (IT, SK). The range of the minimum length of imprisonment applicable for market manipulation violations varies from 15 days (SI) to two years (IT), while the range of the maximum length of imprisonment applicable varies from 30 days (EE) to 15 years (SK).

Information available to CAs about criminal proceedings

47. The results of this section are limited to the information that was accessible to the CAs in relation to the decisions of first level judicial courts on the grounds of market abuse. It is however also of interest to know how far CAs are able to and do actually follow the decisions taken on the grounds of market abuses by judicial courts, i.e. how many of the CAs have easily accessible information about the criminal proceedings on-going in their Member State.

48. Based on these differences in the extent to which such information is available to CAs, the results are presented under the following three subsets:

- criminal sanction decisions that were taken by courts on market abuse cases originated and dealt with from the outset by judicial authorities within the framework of criminal proceedings ;

- information relative to the four CAs (EL, IE, PL, UK) that can prosecute market abuse cases criminally in front of judicial courts within the framework of criminal proceedings;
- cases that are originated by the CA, but transmitted to the judicial authorities within the framework of criminal proceedings.

Decisions taken by courts on market abuse cases originated and dealt with from the outset by judicial authorities within the framework of criminal proceedings

49. There are 16 CAs (AT, DE, DK, EE, EL, FI, IE, IS, LT, LU, MT, NL, NO, PL, PT, UK) that reported having easily accessible information about the criminal sanction decisions that were taken by courts on market abuse cases originated and dealt with from the outset by criminal authorities within the framework of criminal proceedings. Out of these, six CAs (DK, EE, EL, IS, NL, NO) reported having such cases during the review period and they reported having fewer decisions against legal persons than against natural persons.

Possibility for CAs to criminally prosecute market abuse cases in front of judicial court within the framework of criminal proceedings

50. Of the four CAs (EL, IE, PL, UK) that can do so, three CAs prosecuted market abuse cases criminally in front of criminal courts within the framework of criminal proceedings (EL, PL, UK); one (IE) has the power but did not use it during the review period. As regards insider dealing violations, criminal sanctions were imposed on nine persons in the review period and there were no criminal sanctions imposed on legal persons. As regards market manipulation, criminal sanctions were imposed on six persons in the review period and there were no criminal sanctions imposed on legal persons.

Cases originated by the CA and transmitted to the judicial authorities within the framework of criminal proceedings

51. Depending on the national legal system, the CA transmits certain or all cases of market abuse to the criminal judicial authorities. The nature and the conditions of this transmission depend on the legislation and the investigative powers allocated to the CA, whether the transmission is done on an automatic basis, etc. There are 15 CAs (AT, BE, DE, DK, EE, EL, FR, IT, LV, NL, NO, PL, PT, SE, SI) that transmitted cases to the judicial authorities in each year of the review period. Four CAs (IE, MT, SK, UK) did not report any cases in the same period.

52. Not all CAs have easily accessible information about the decisions taken by the judicial authorities on the cases reported by the CA to them but there are 17 CAs (AT, DE, DK, EE, EL, FI, FR, IE, IS, LU, MT, NL, NO, PL, PT, SK, UK) that reported that they have such access⁶. Among these MSs, there were natural and/or legal persons sanctioned in 10 MSs (DE, DK, EL, FI, FR, IS, NL, NO, PL, PT). In one of the Member States (SE) where only criminal sanctions are available to deal with market abuse, the CA reported that it has no easily accessible information about the decisions of judicial authorities take on the cases referred to them.

⁶ 1 CA (IT) specified that, although it may not possess up-to-date information on the outcome of all, it does not have easy access to detailed information related to criminal proceedings possibly brought forward by various judicial authorities, it has the following aggregated figures: - 8 criminal proceedings were ended in 2008; - 2 criminal proceedings were ended in 2009; - 3 criminal proceedings were ended in 2010.

Pecuniary sanctions

53. Fifteen CAs (AT, DE, DK, EE, FI, FR, IE, IS, LU, MT, NL, NO, PL, PT, UK) reported having easy access to information on fines/pecuniary sanctions imposed by the criminal authorities in their MSs. In three (DE, FI, NL) natural persons and/or legal persons were ordered to pay fines for market abuse violations in each year of the review period, while in six other MSs (DK, FR, NO, PL, PT, UK) fines for market abuse violations were imposed in at least one case during the review period. In the remaining six MSs (AT, EE, IE, IS, LU, MT) neither natural persons nor legal persons were ordered to pay fines during the review period.
54. There were differences in the amounts of fines actually imposed by criminal courts which ranged for insider dealing from € 670 (DK) to € 773,495 (DK) for natural persons and from € 50,000 (FI) to € 320,000 (FI) for legal persons. The fines imposed on natural persons for market manipulation ranged from € 255 (PL) to € 300,000 (FR). No legal persons were ordered to pay fines for market manipulation during the review period.
55. While the list of key factors to aid determining the level of pecuniary sanctions was identified for administrative sanctions, it can also be useful to assess their use for criminal sanctions. In the eight MSs where fines for market abuse violations were imposed and information provided about this issue, seven factors were used by judicial authorities in most of the MSs to actually determine the fines imposed: seriousness of the violation; amount of financial benefits derived from the violation; financial strength and/or size of the author of the violation; duration of the violation; impact on the market in general and on consumers; degree of culpability on the part of the author of the violation; and level of responsibility/seniority of an individual. It should be noted that there might be other factors relevant in criminal cases in addition to the factors listed in the questionnaire.

Imprisonment

56. According to information available, in nine MSs (DE, DK, EL, FI, FR, IS, NO, PL, UK) there were cases of imprisonment for insider dealing and/or market manipulation in at least one of the year of the review period. Imprisonment was imposed as a sanction for insider dealing violations in seven MSs (DE, DK, EL, FI, FR, NO, UK) and in seven MSs (DE, DK, IS, FR, PL, EL, NO) for market manipulation.
57. In terms of length of imprisonment imposed in the Member States, for insider dealing violations, the minimum length was below one year and the maximum length was three years. For market manipulation violations, the minimum length was below one year and the maximum length was three years and nine months. In most MSs, the maximum length was up to one year.
58. In the nine MSs (DE, DK, EL, FI, FR, IS, NO, PL, UK) where imprisonments for market abuse were imposed in the review period, the following factors were used in the majority of these MSs: seriousness of the violation; amount of financial benefits derived from the violation; cooperative behaviour of the author of the violation with the competent authority; impact on the market in general and on consumers; loss incurred by clients of those impacted; degree of culpability of the author of the violation; repetitive nature of the violation; and level of responsibility/seniority of an individual.

Other non pecuniary sanctions

59. Besides fines and imprisonments, cases of market abuse violations led in five MSs (DK, FI, PL, PT, SE) to other types of sanctions such as community service (DK); business prohibition (FI); money

donation to the foundation and license suspension (PL); disqualification and publication on the conviction in an economic newspaper (PT) and a conditional sentence combined with fines (SE).

Evidence/Standard of Proof

60. In 16 MSs (AT, BE, CZ, EE, EL, FR, HU, IE, IT, LT, LU, PL, PT, RO, SI, SK) proof of intent is required in order to have a guilty verdict in a market abuse case. However, “proof of intent” and “level of culpability” are interpreted differently by MSs.
61. The level of culpability required to impose criminal sanction in market abuse cases differs across the 26 MSs for which CAs provided information on this issue. The concept of a “guilty mind” itself, viewed as one of the necessary element of the crime which must accompany the criminal action varies from just negligence to intent. In 23 MSs (AT, BE, CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LV, NL, NO, PL, PT, RO, SE, SI, UK), it is possible to use a body of serious, specific and convergent evidence to prove market abuse cases. However, from the experiences reported by the above CAs, it appears that there are differences in the level of culpability required.

IV. Appeals

62. Data received from CAs confirm differences among MSs’ as to the courts’ jurisdiction, the appeal process and the outcome of appeals. Furthermore, it should be noted that not all CAs are systematically aware of all the appeals and this is even more valid for criminal proceedings. Finally, it should be kept in mind that the number of appeals which were totally or partially reversed/ cancelled in respect of a given Member State can be low. Given the limitations on the availability of data to the CAs (especially regarding appeals within criminal proceedings) it is a first insight that is provided rather than a complete picture.
63. As regards appeals to administrative sanction decisions, 19 CAs (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IT, LT, NL, PL, PT, RO, SI, UK) reported that appeals have been lodged regarding administrative sanctions imposed by the CA for market abuse cases. The numbers of reported appeals varied from one appeal to 39 appeals for a CA in one year. Notwithstanding the limitation on the available data, the report identifies a few common features among the reasons for fully or partially successful appeals against administrative sanctions imposed by CAs (i.e. successful to the person sanctioned). In some cases, the Courts annulled CA’s decisions on the basis of lack of evidence, lower degree of culpability of the offenders, mitigating circumstances, the reverse of the facts and findings of the case and problems with the procedures followed by the CAs.
64. As regards appeal to criminal sanction decisions, 15 CAs (AT, DE, DK, EE, EL, FI, FR, IE, IS, LU, MT, NO, PL, PT, UK) responded that they have easily accessible information on appeals on market abuse cases that were originated by the CA and dealt with by judicial authorities within the framework of criminal proceedings whereas 14 CAs (BE, BG, CY, CZ, ES, HU, IT, LT, LV, NL, RO, SE, SI, SK) do not.
65. In relation to criminal sanctions for market abuse cases, for which an appeal has been lodged, ten CAs (DE, DK, EE, EL, FI, FR, NO, PL, PT, UK) have provided information. The reported appeals varied from one appeal to 12 appeals by a CA in one year. Six CAs (AT, IS, LU, LT, LV, MT) reported no criminal cases for market abuse for the review period and one CA (IE) did not provide information on how many persons were concerned by the rulings for the review period although they responded that they have easily accessible information.

66. It is difficult to draw any general conclusions as to specific reasons for fully and partially successful appeals regarding criminal sanctions imposed in market abuse cases during the review period because the Courts follow many different ways of interpreting the facts and the evidence of the cases.

V. Aggrieved Investors

67. In the majority of Member States, both administrative and criminal sanction decisions can be used by aggrieved investors to help them obtaining compensation. However, the binding effect of such decision on judges in charge of deciding the compensation claim varies: for administrative sanctions there is no binding effect in general, for criminal sanctions, the picture is fairly diverse.

68. In 20 MSs (AT, BE, BG, CY, CZ, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, PL, PT, SK) administrative sanction decisions can be used by aggrieved investors to help them in obtaining compensation. However, in the majority of Member States, including those listed above, administrative sanctions will not bind a judge that is deciding the compensation case.

69. In 25 MSs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, PL, PT, SE, SK, UK) criminal sanction decisions can be used by aggrieved investors to help them in obtaining compensation. It is more difficult to identify a common position in relation to the binding effect of criminal sanction decisions for the judge deciding on a compensation claim of the aggrieved investor. In a number of MSs a criminal sanction would bind the judge. As with the administrative sanction decision, in a number of Member States it was possible that a criminal sanction decision could be used as supportive evidence by the aggrieved investor.

VI. Time elapsing

70. The time elapsing between the date of an act of market abuse and the date when the sanction decision is taken is a factor of efficiency for sanctioning systems, such as its dissuasive effect. For the 12 MSs (BE, CY, DE, EE, EL, ES, FI, FR, NL, PL, PT, UK) where information can be compared, overall criminal sanctioning generally took longer than administrative sanctioning. In particular, in nine MSs (CY, EE, EL, ES, FI, FR, NL, PL, UK) criminal sanctioning tended to take longer than administrative sanctioning; in one MS (DE) administrative sanctioning tended to take longer than criminal sanctioning and in two MSs (BE, PT) the length of time elapsing was similar for administrative and criminal sanctioning. For administrative sanctioning, 12 CAs (AT, BG, CY, EE, FI, HU, LT, PL, PT, RO, SI, UK) reported a period of time elapsing up to two years in all years of the review period.

VII. Publication of sanction decisions

71. Publication of administrative and criminal sanction decisions is part of the whole sanctioning process and has a dissuasive effect because it provides information to the general public about the fact of breach of law.

72. While MAD provides for a discretionary power to publish decisions unless certain exceptions apply, ESMA noted⁷ that it endorses the European Commission's view that the publication of sanctions should be made mandatory for CAs, in particular for market abuse cases, unless such disclosure would seriously jeopardise the financial market, lead to liability issues or cause disproportionate damage to the parties involved.

⁷ See page 3 of ESMA's response to the EC.

Administrative sanction decisions

73. For administrative sanction decisions, 16 CAs (BE, CZ, ES, FI, FR, HU, IE, IT, LT, MT, NL, NO, PT, RO, SK, UK) have an obligation for publication in general. 12 of these CAs (CZ, ES, FI, FR, IE, LT, MT, NL, NO, PT, SK, UK) provide for some exceptions to publication such as when the sanction is imposed for what the law defines as minor infringements if the seriousness of the breach and the “culpability” of the defendant are low, when disproportionate damage might be caused to the financial market or to the parties involved or when the sanction is suspended by the administrative decision. In substantially the same limited circumstances as described above, 18 CAs (BE, BG, CY, DE, EE, EL, FR, HU, IS, IT, LU, LV, PT, PL, NO, SI, SK, UK) may publish their administrative sanctioning decisions on an anonymous basis.
74. In each year of the review period, 12 CAs published all their sanction decisions taken in that year. Although three CAs (CY, DE⁸, PL) do not have publication as a general principle, they published all sanction decisions taken in the review period. Two CAs (AT, BG) that reported administrative sanction decisions in each year of the review period have not published any decisions.

Sanction decisions within the framework of criminal proceedings

75. In 19 MSs (BE, EE, EL, ES, FI, FR, IE, IT, LT, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK), criminal sanction decisions on market abuse cases are to be made public. Of these, 13 MSs have some exceptions (BE, EE, ES, FI, IE, LT, MT, NL, NO, PT, SI, SK, UK) to the publication of criminal sanction decisions. The exceptions take into consideration different factors such as the public interest, the protection of the market participants; the legal interest of the case law and the right of privacy of the sanctioned person.
76. In 11 MSs (CY, ES, FI, FR, IE, IT, LV, PL, PT, SE, RO) the content of the criminal sanction decisions is published in full, so anonymity is not accepted in principle.
77. The two MSs (CZ, HU) where an administrative decision must be published but not a criminal decision while in four MSs (EE, EL, LV, SI) a criminal decision must be published, but for administrative decision publication is not mandatory.
78. In eight Member States (DK, EL, FI, IT, NL, NO, SE, UK) all sanction decisions were published in each year of the review period.

VIII. Recovery of sanctions

79. Due to its actual dissuasive effect, recovery of sanctions imposed by the authorities may be an indicator of the efficiency of sanctioning system.
80. Concerning administrative pecuniary sanctions, 11 CAs (CY, DE, HU, IE, IS, LU, MT, NL, PL, PT, UK) have responsibility for recovering the administrative pecuniary sanctions they impose. In most of the cases the amount of sanctions recovered is additional revenue for the public budget. Six CAs (BG, IE, LU, MT, NL, UK) receive, at least, a portion of the amounts recovered. In one CA (UK) the amount recovered is used solely for the benefit of regulated firms that pay fees and it is returned to them in the proportion of the amount paid to the CA.
81. Concerning criminal pecuniary sanctions, one CA (UK) receives a portion of the pecuniary sanctions recovered from market abuse cases in criminal proceedings. Regarding the purpose for which the



money recovered is used, in 27 Member States (AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK and UK (partially) the amount of sanctions recovered is an additional revenue for the public budget.

PART 1

CONTEXT TO THE ACTUAL USE OF SANCTIONING FOR MARKET ABUSE

To gain a thorough understanding of the actual use of sanctions for market abuse in the Member States (MSs), one has to be aware inter alia of the differences in terms of the number and organisation of the CAs' staff and as to the market abuse sanctioning powers available across the EU. These might have an impact on the actual sanctioning processes, among others to their length, to the average time elapsing between the beginning and the end of the processes as well as to the number of investigations and sanctions carried on.

III. ORGANISATION AND NUMBER OF STAFF IN THE CAs

82. An overview on the number of staff allocated to the activities related to market abuse sanctioning within the different CAs is of importance when mapping the actual use of sanctions, because it provides an important element of context that influences the sanctioning activities of the CAs. The number of staff in the CA might have an impact in different ways on the actual processes, for instance, it might have an impact on their length, the average time elapsing between beginning and end of sanction process as well as to the number of actions carried out. At the same time, the size of the Member State's market, the legal framework and the internal organisation of the CA may impact on, for example the number of staff dedicated to market abuse sanctioning.

Staff in the administrative authority dedicated to the activities related to market abuse sanctioning

83. The data included under this section are based on staffing levels estimated in "full-time equivalents" dedicated solely to the MAD sanctioning activities and relate to staff who are based in the CA and not to those working in judicial authorities, external counsel or anyone else not based at the CA as either a permanent member of staff, temporary member of staff or contractor.

Overall number of staff dedicated to the activities related to market abuse sanctioning

84. The CAs' activities related to market abuse sanctioning range from the detection of possible abnormal moves on the market to the imposing of administrative sanctions. Depending on the legal framework and based on internal decisions, CAs are organised in different ways and their staff is more or less specialised in certain aspects of the process. For the purposes of this mapping exercise, information is provided on the general number of staff in the CA dedicated in general to the activities related to market abuse sanctioning. This staff may be divided into those persons dedicated to market supervision and those dedicated to the market abuse enforcement process.

85. Because of internal organisational specificities, one CA could not provide with an exact estimation in full-time equivalents of staff solely dedicated to market abuse within other sanctioning activities and five CAs could not provide with a precise estimation of how the staff dedicated to market abuse sanctioning is *exactly split in terms of "full-time equivalent"* between the staff dedicated to market supervision and that to the market abuse enforcement.

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86. In general, there is diversity among CAs in the number of staff whose work is dedicated to the activities related to market abuse sanctioning.
87. In relation to the CA staff dedicated to the whole range of activities to market abuse sanctioning, the number of staff in full-time equivalent (staff members) ranges between two staff members and 127 staff members. 16 CAs reported that fewer than 10 staff members are dedicated to these tasks. There are between 10 and 30 staff members responsible for these tasks in eight CAs. In three CAs there are between 60 and 80 staff members responsible for these tasks and in one CA more than 120.
88. Within this global staff number dedicated to the whole range of market abuse sanctioning activities, staff may be divided between those dedicated to market supervision and those dedicated to the market abuse enforcement process. For the CAs that could give an estimation of the division between these two kinds of activities:
89. Concerning numbers of staff dealing with market supervision, and among those CAs where the precise information in “full-time equivalent” is available, out of the total staff dedicated to the market abuse sanctioning, in one CA two-third of the staff is dedicated to market supervision, in 11 CAs between two-third and half in two CAs about one-third, and in four CAs less than one-third.
90. Concerning numbers of staff dealing with market abuse enforcement process, and among those CAs where the precise information in “full time equivalent” is available, in five CAs the number of staff in the CA dedicated to market supervision and staff dedicated to the market abuse enforcement process is the same, in 13 CAs the number of staff dedicated to the market abuse enforcement process is higher than the number of staff dedicated to market supervision and in four CAs the number of staff dedicated to market supervision is higher than the number of staff dedicated to market abuse enforcement process.

Enforcement staff

91. Among the staff that is dedicated to the market abuse enforcement process, there might be a division of staff between those that gather the evidence and establish the facts of a case and those that are involved in the administrative procedure of imposing sanctions.

92. In 14 CAs the enforcement staff is split between (a) persons that gather the evidence and establish the facts of a case and (b) persons that are involved in the administrative procedure of imposing sanctions. In 15 CAs this staff is not split.

93. Among the 14 CAs where the whole enforcement staff is split between a) persons that gather the evidence and establish the facts of a case and (b) persons that are involved in the administrative procedure of imposing sanctions, in 10 CAs less than five staff members are involved in the administrative procedure of imposing sanctions. In four of these CAs there are more than five staff members involved. Overall it appears that the number of staff involved in the administrative sanctioning procedure is generally lower than the number of staff involved in gathering evidence.

Bodies or persons entrusted to take sanctioning decisions

94. Within the CAs, different bodies or persons are entrusted to take sanctioning decisions. It depends on the exact mandate of the CA, on the internal organisation put in place which body or person fulfils this role.

95. The bodies or persons that take decisions in relation to market abuse sanctioning are diverging among the Member States:

- in the majority of cases, that is in 15 CAs (AT, CY, EE, EL, ES⁸, FI, IS, IT, LU, LV, NL, NO, PL, PT, RO) the Board/ Governing Body of the CA;
- the Chairperson or the Deputy Chairperson of the CA (BG, HU)
- a dedicated Sanctioning Committee taking these decisions (BE, FR)
- a Committee that has a wider mandate than sanctioning, composed of members internal (MT) to the CA
- sanctioning decision in settled cases is made by two Directors of the CA who have not been involved in the case and sanctioning in contested cases is decided by a Regulatory Decisions Committee made up of practitioners and non-practitioners, who are appointed by the Board and represent the public interest (UK)
- The body in SI that takes decision in relation to market abuse sanctioning is the Agency's Council, which is a body composed of internal (three) and external (two) members.
- The Enforcement Department (CZ, DE, SK)
- an External Assessor (IE)

96. There are two CAs (DK, SE) that do not impose sanctions on market abuse and its staff only takes part in the enforcements tasks before the cases are forwarded to the judicial authorities.

⁸ In ES, for minor and serious infringements, sanctions are imposed by the CNMV's Board. For extremely serious infringements, sanctions are imposed by the Minister of Finances at the proposal of the CNMV's Board. If the sanction imposed includes the repeal of the authorization, the decision must be taken at the Council of Ministers.

Major findings

97. In general, there are differences among CAs in the number of staff whose work is dedicated to activities related to market abuse sanctioning

98. In relation to the whole range of activities related to market abuse sanctioning the number of staff in full-time equivalent varies between 2 staff members and 127 staff members. 16 CAs reported that fewer than 10 staff members are dedicated to these tasks.

99. Specialisation of staff to certain activities in the market abuse sanctioning chain is a choice pursued by most CAs, but the approaches differ. Overall it appears that CAs dedicate less staff to market supervision than to dealing with the enforcement process. Among those CAs where the precise information in “full time equivalent” is available, in 18 CAs the number of staff dedicated to market abuse enforcement process is the same or higher than the number of staff dedicated to market supervision. Moreover, in 14 CAs the enforcement staff is split between (a) persons that gather the evidence and establish the facts of a case and (b) persons that are involved in the administrative procedure of imposing sanctions.

100. In 15 CAs (AT, CY, EE, EL, ES, FI, IS, IT, LU, LV, NL, NO, PL, PT, RO) the Board/Governing Body of the CA takes decisions in relation to market abuse sanctioning. However, this decision can also be entrusted to the Chairperson or the Deputy Chairperson of the CA (BG, HU), a dedicated Sanctioning Committee taking these decisions (BE, FR), a Committee that has a wider mandate than sanctioning, composed of internal CA’s members (MT), a Committee with both internal and external members (SI) to the CA, the Enforcement Department (CZ, DE, SK) or an External Assessor (IE). In one CA (UK) the decision making process depends on whether the case is contested or not; sanctioning in settled cases is decided by two Directors at the CA who have not been involved in the case, whereas sanctioning in contested cases is decided by a Regulatory Decisions Committee made up of practitioners and non-practitioners, who are appointed by the Board and represent the public interest.

IV. ARTICULATION OF ADMINISTRATIVE AND CRIMINAL PROCEEDINGS

101. At the beginning of 2011, it was highlighted in ESMA's response to the EC Communication that it is important for securities regulators to be able to take administrative measures or impose sanctions on those who do not comply with the relevant provisions of EU Directives to allow them to effectively perform their tasks. With the proposal for a Directive on criminal sanctions on insider dealing and market manipulation, the European Commission has recently stressed the significance of dissuasive, effective and proportionate criminal sanctions in the field of market abuse.
102. This section highlights the options for imposing sanctions that exist in Member States with regard to dealing with market abuse cases. All of the following sections about the actual use of sanctioning powers should be read against this background, mainly with regard to whether administrative sanctions, criminal sanctions or both were potentially available as a reaction to an infringement found by the CA and to what extent each type of sanction could be used by the CA. Whether and in how far powers are available and applied with regard to natural and/or legal persons is presented in further sections.
103. This section describes,
- the available sanction mechanisms (administrative and/or criminal) in MSs to pursue sanction in relation to market abuses;
 - the way the proceedings may be combined or one of them selected when there is place for several ways to pursue such abuses;
 - co-operation between administrative authorities and judicial authorities which may take place further to the proceedings themselves; the impact of parallel proceedings on the calculation of pecuniary sanctions.

Concepts of availability of sanctioning mechanisms

104. With regard to the availability of options on whether to prosecute market abuse as a criminal offence or by administrative action, national legislation in the Member States provides for a variety of solutions. Nevertheless, the following four main approaches can be identified:
105. **“Administrative sanctions only” approach:** Market abuse can give rise to administrative sanctions only and criminal sanctions would not be applicable from the perspective of market abuse. This approach is followed for insider dealing in one Member State (BG) and for market manipulation in two Member States (BG, HU).
106. **“Criminal sanctions only” approach:** Market abuse cases can give rise to criminal sanctions only. The CA does not have administrative sanctions at their disposal. This approach is followed in two Member States (DK, SE).
107. **“Either or” approach:** National legislation provides for both administrative and criminal sanctions concerning cases of market abuse, but at least in practice it is either criminal sanctions or administrative sanctions that are applied, not both of them. This approach is followed by 15 Member States regarding insider cases (AT, CZ, DE, EE, ES, FI, IE, IS, LT, LU, MT, NL, NO, PT, SI) and by 15

Member States regarding cases of market manipulation (AT, CZ, DE, EE, ES, FI, IE, IS, LT, LU, MT, NL, NO, PL, SI).

108. **“Both” approach:** Finally, market abuse might be subject to both kinds of sanctions cumulatively. Under this approach, in practice both CAs and judicial authorities might open proceedings in order to impose a sanction even if the case is not closed yet in the other authority. This concept is applied in 11 Member States (BE, CY, EL, FR, HU, IT, LV, PL, RO, SK, UK⁹) for insider dealing and 10 Member States (BE, CY, EL, FR, IT, LV, PT, RO, SK, UK¹⁰) for market manipulation.
109. The same set of facts can give rise to both administrative sanction proceedings and to criminal sanction proceedings if such parallel proceedings are legally permissible. However, being allowed to run proceedings in parallel does not necessarily mean that the CA and their judicial authorities will in practice conduct separate parallel proceedings.
110. As regards Member States that have the “either one or the other” approach, at least in practice it is either exclusively the administrative authority or exclusively the judicial authority that imposes a sanction. On the other hand, in Member States that apply the “both” approach, both authorities might impose a sanction even if the case is not closed yet for the other authority. This might, in practice, lead to cumulative sanctions for the same facts.
111. In the context of the abovementioned categories, it has to be mentioned that four Member States (EL, IE, PL, UK) are legally able to prosecute criminal offences relating to market abuse in front of criminal courts, so that the distinction between administrative and criminal proceedings is not necessarily accompanied by a division of tasks between different authorities. As far as the “both” approach is concerned, this leads to the consequence that the respective CAs themselves are in the position to open parallel proceedings for the cumulative imposition of administrative and criminal sanctions.
112. **Table D.1.) As regards insider dealing, proceedings available for the same set of facts of possible market abuse (whether the same set of facts can give rise to both administrative sanction proceedings and to a referral to the judicial authorities within the framework of criminal proceedings, to either one or the other (but not both), or if there is only one way available)**

Sanctioning mechanisms available as regards insider dealing	Member States	Number of Member States
Administrative Sanctions only	BG	1
Criminal sanctions only	DK, SE	2
Either administrative sanctions or criminal sanctions (“either or” approach)	AT, CZ, DE, EE, ES, FI, IE, IS, LT, LU, MT, NL, NO, PT, SI	15

⁹ Although this is legally permissible, the FSA’s published policy is not to pursue both criminal and administrative market abuse cases in practice.

¹⁰ Same as previous footnote.

Both of administrative sanctions and criminal sanctions (“both” approach)	BE, CY, EL, FR, HU IT, LV, PL, RO, SK, UK	11
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113. **Table D.3) As regards market manipulation, proceedings available for the same set of facts of possible market abuse (whether the same set of facts can give rise to both administrative sanction proceedings and to a referral to the judicial authorities within the framework of criminal proceedings, to either one or the other (but not both), or if there is only one way available))**

Sanctioning mechanisms available as regards market manipulation	Member States	Number of Member States
Administrative Sanctions only	BG, HU	2
Criminal sanctions only	DK, SE	2
Either administrative sanctions or criminal sanctions (“either or” approach)	AT, CZ, DE, EE, ES, FI, IE, IS, LT, LU, MT, NL, NO, PL, SI	15
Both of administrative sanctions and criminal sanctions (“both” approach)	BE, CY, EL, FR, IT, LV, PT, RO, SK, UK	10

114. When dealing with cases of market abuse, the vast majority of Member States have administrative action and criminal investigation at their disposal. This applies to 26 Member States (AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) for insider dealing and 25 Member States (AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) for market manipulation.

115. In one Member State (UK) although there is no legal prohibition to pursue administrative sanction proceedings once criminal proceedings have started, it is the FSA’s policy not to impose a sanction for market abuse where a person is being prosecuted for market misconduct or has been finally convicted or acquitted of market misconduct (following the exhaustion of all appeal processes) in a criminal prosecution arising from substantially the same allegations. Similarly, it is the FSA’s policy not to commence a prosecution for market misconduct where the FSA has brought or is seeking to bring disciplinary proceedings for market abuse arising from substantially the same allegations.

116. Fourteen Member States (AT, CZ, DE, EE, ES, FI, IS, IE, LT, LU, MT, NL, NO, SI) follow the “either one or the other” concept for insider dealing and market manipulation, nine Member States (BE, CY, EL, FR, IT, LV, RO, SK, UK) apply the “both” concept to insider dealing and market manipulation. In 2 Member States (DK, SE), criminal sanction is the only instrument available and in one Member State (BG), only administrative sanctions may be imposed. In three Member States (HU, PL, PT) there are different approaches depending on the kind of market abuse: in two Member States (PL, PT) the “either one or the other” concept is applied to one kind of market abuse whereas the



“both” concept is applied to the other one and in one Member State (HU) the approach is to utilize the “both” concept for insider dealing and the “administrative sanctions only” concept for market manipulation. A number of CAs has responded that proceedings have to be suspended until the court’s final decision (CZ, DE, EE, ES). Two CAs (BE, CZ) explicitly mentioned that the “ne bis in idem” principle will limit sanctioning in their Member States.

Decisions taken whether to pursue administrative or criminal proceedings / connections between administrative proceedings and criminal proceedings

117. There are various reasons governing the choice of whether to pursue administrative or criminal sanctioning proceedings.

Basis/reasons on which the decision is taken whether to pursue administrative or criminal sanctions

118. As regards Member States that apply the “either or” approach, the basis/reasons for the distinction between administrative and criminal proceedings or the decision whether to pursue administrative or criminal sanctions includes, but it is not limited to the following

- According to seriousness of violation: EE, IE, IS, LT, MT, NL, NO
- Different description of criminal offence and administrative offence: AT, DE, ES, FI, LU, PL, PT

119. Within the group that has responded “either or” there are two main approaches for how to differentiate between cases that qualify for public prosecution by judicial authorities and those that the regulators will deal with. One approach is to make a decision according to the seriousness of the violation and other circumstances of the offence (EE, IE, IS, LT, MT, NL, NO). The other approach uses different legal descriptions of the respective administrative and criminal offences for criminal offences on the one hand and for administrative offences on the other hand (AT, DE, ES, FI, LU, PL, PT). The latter approach may involve differentiation between certain groups of offenders (i.e. insiders with access to restricted information because of their professional activity such as directors of an issuer of insider instruments) (DE) depend on the amount of benefit obtained (or lose avoided) by the wrongdoer (ES), be according to the offender’s conduct (i.e. dealing in insider instruments on the one hand and disclosing insider information on the other hand, using fraudulent means, dealing with intent) (FI, LU, PT) or be based on a combination of several of the previously mentioned elements (DE, PL).

Connections between administrative proceedings and criminal proceedings

120. **Table D.5) Prevention of administrative proceedings due to criminal proceedings**

When the case is referred to judicial authorities within the framework of criminal proceedings, does it prevent administrative sanction proceedings from starting or continuing?	Number of MSs
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YES	AT, CZ, DE, EE, ES, FI, IS, IE, LT, LU, MT, NL, NO, SI	14
NO	BE, CY, EL, FR, HU, IT, LV, PL, PT, RO, SK, UK	12

121. Referring the case to the authorities responsible for criminal prosecution of market abuse prevents the administrative sanction proceedings from continuing in the above mentioned 14 Member States where both kinds of proceedings are generally available. In three Member States (BG, DK, SE), administrative proceedings and judicial proceedings could not interfere with each other because the respective other option was not available. In one Member State (AT), administrative proceedings have to be stopped if the facts of a market manipulation case give rise to the suspicion of a criminal offence (other than market manipulation), but supervisory powers are not suspended. In one Member State (PT), referral to the judicial authorities prevents administrative proceedings from starting for insider dealing cases, but not for market manipulation cases.

Cooperation between the administrative authority and judicial authorities

122. Cooperation between administrative and judicial authorities may be desirable in order to properly pursue market abuse. When existing, such cooperation can take place at various stages of the proceedings and in a more or less defined framework.

Existence of cooperation

123. **Table D.6) Existence of cooperation between the administrative authority and judicial authorities**

Is there cooperation between administrative authority and judicial authorities?		
YES	AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK,	
NO	BG	

124. All but one Member States have cooperation between the administrative and the judicial authorities. In one Member State (BG) where there is no cooperation with the judicial authorities, there are no criminal sanctions applicable to cases of market abuse.

Purposes and stages of cooperation between administrative authority and judicial authorities

125. **Table D.7) Purposes and stages of cooperation between administrative authority and judicial authorities**

Cooperation at the beginning of	Provide information, including	Provide other kind of assistance	Cooperation at later stages	Influence on the outcome of the
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the proceedings	opinions			proceedings
AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK	AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK	DK, EL, ES, MT, NO, RO, UK	BE, CY, DE, DK, EE, EL, ES, FI, FR, IE, PT, RO, UK	EE, EL, IE, IT, PL, UK

126. Cooperation usually takes place at the beginning of the investigation. It comprises providing information to the judicial authorities, including opinions on the case, also on points of law. Some regulators are required to provide all kind of assistance. 13 CAs (BE, CY, DE, DK, EE, EL, ES, FI, FR, IE, PT, RO, UK) cooperate with the judicial authorities at later stages of the proceedings.

127. Especially in the context of co-operation between administrative and judicial authorities, it has to be kept in mind that four CAs (EL, IE, PL, UK) are in the position to prosecute criminal offences concerning market abuse in front of the competent criminal courts. This may impact on their cooperation with other prosecution authorities. Besides the four CAs which are legally able to criminally prosecute market abuse cases, there are two further CAs (EE, IT) which have a formalized role in criminal proceedings and therefore also have a substantial influence on the outcome of criminal proceedings.

128. In one CA (BG), insider dealing and market manipulation are subject to administrative sanctions only. In cases of market abuse there is no area for cooperation between regulator and judicial authorities. It must be noted that the Bulgarian FSC and judicial authorities cooperate in other cases, different from market abuse ones.

Formalized cooperation

129. Cooperation between national administrative and judicial authorities may be formalised. For example, legislation may provide for a formal context or a MoU or an organised body may institutionalize and standardise the relationship between these authorities.

130. **Table D.8) Formalised cooperation between administrative authorities and judicial authorities**

Is there a formalised cooperation between your administrative authorities and judicial authorities?	
No formalized cooperation	AT, BE, BG, CY, CZ, DK, EL, ES, FI, FR, HU, LT, LU, LV, MT, SI
Formalized cooperation	DE, EE, IE, IS, IT, NL, NO, PL, PT, RO, SE, SK, UK

131. In 16 Member States (AT, BE, BG, CY, CZ, DK, EL, ES, FI, FR, HU, LT, LU, LV, MT, SI) there is no formalized cooperation between the regulator and the judicial authorities.

Details of formalised cooperation

132. Where there is formalized cooperation, it is formalized by legal provisions in six Member States (DE, IE, IT, PL, SE, SK). It is detailed in a kind of cooperation agreement in seven Member States (EE, IS, NL, NO, PT, RO, UK).

133. Formalized cooperation regulates the exchange of information in all 13 Member States (DE, EE, IE, IS, IT, NL, NO, PL, PT, RO, SE, SK, UK) in which it exists.

Impact of parallel proceedings on final sanctions

134. Where criminal fines and administrative financial penalties might be imposed for the same facts, there might be a limit to the total amount of the sanctions which can be imposed.

135. **Table D.10)**, Limit to the total amount of the sanctions which can be imposed in total where criminal fines and administrative financial penalties might be imposed for the same facts.

Where criminal fines and administrative financial penalties might be imposed for the same facts, is there a limit to the total amount of the sanctions which can be imposed in total?	
YES	BE, FR, PT, SK
NO	CY, HU ¹¹ , IT, PL, UK

136. Out of the nine Member States where criminal fines and administrative fines might be imposed for the same set of facts, five Member States have, in principle, no specific figure limiting the total amount of cumulative administrative and criminal fines. Among the four MS that principally have such limits, for one (SK) it is an absolute amount. In FR, the French Conseil constitutionnel stated that where both administrative and criminal proceedings are based on the same facts of market abuses, the proportionality principle requires that the combined amount of sanctions which may be imposed cannot exceed the highest penalty provided for in the law. In practice, double sanction cases are rare, because, for criminal proceedings, the proof of intentionality is required. One MS (BE) does not have a special amount as a limit, but the limiting factor for them is the principle of proportionality.

137. **Table D.11) Possibility to take into account what has been imposed by the other authority in order to avoid/limit the situation of cumulative sanctions**

Can an authority in such a case take into account what has been imposed by the other authority in order to avoid/limit the situation of cumulative sanctions?		
YES	BE, CY, FR, HU, IT, PL, UK	7
NO	PT, SK	2

¹¹ HU: The HFSA in the course of the administrative procedure might impose the maximum of the administrative fine and the Court in the course of the criminal procedure might impose the maximum of the criminal fine as defined by law.

138. In seven MSs (BE, CY, FR, HU, IT, PL, UK) where administrative and criminal fines may be imposed cumulatively, CAs will usually take into account the amount which has been imposed by the judicial authority when setting a specific amount of fine. Accordingly, judicial authorities in the Member States of these CAs will take into account the CAs' decisions when imposing fines.

Major findings

139. As regard market abuse cases, the large majority of Member States in principle provide for administrative sanctions as well criminal sanctions: This applies to 26 MSs (AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) concerning insider dealing and 25 MSs (AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) concerning market manipulation.

140. With respect to the relationship between administrative and criminal sanctions, there are four basic approaches among Member States:

- Market abuse can give rise to administrative sanctions only and criminal sanctions would not apply (“administrative sanctions only” approach followed for insider dealing in one Member State (BG) and for market manipulation in two Member States (BG, HU));
- Market abuse cases can give rise to criminal sanctions only (“Criminal sanctions only” approach followed in two Member States (DK, SE));
- Market abuse may be dealt with administrative and criminal sanctions, but at least in practice it is either criminal sanctions or administrative sanctions that are applied, not both of them (“Either or” approach followed by 15 Member States regarding insider cases (AT, CZ, DE, EE, ES, FI, IE, IS, LT, LU, MT, NL, NO, PT, SI) and by 15 regarding cases of market manipulation (AT, CZ, DE, EE, ES, FI, IE, IS, LT, LU, MT, NL, NO, PL, SI));
- Market abuse might be subject to both kinds of sanctions cumulatively (“Both” approach, applied in 11 Member States (BE, CY, EL, FR, HU, IT, LV, PL, RO, SK, UK) for insider dealing and ten Member States (BE, CY, EL, FR, IT, LV, PT, RO, SK, UK) for market manipulation).

141. Criminal sanctions proceedings may have significant influence on administrative sanctions proceedings. The former halt the latter in 14 MSs (AT, CZ, DE, EE, ES, FI, IS, IE, LT, LU, MT, NL, NO, SI). As regards pecuniary sanctions, in seven MSs (BE, CY, FR, HU, IT, PL, UK) where administrative and criminal fines may be imposed cumulatively for the same set of facts, CAs and judicial authorities will usually take into account what has been imposed by the other authority when setting a fine. In five of these MSs (CY, HU, IT, PL, UK), in principle, there is no specific figure limiting the total amount of cumulative administrative and criminal fines which can be imposed.

142. In all 28 MSs, where market abuse may give rise to criminal proceedings, there is cooperation between CAs and judicial or other prosecuting authorities. Cooperation between authorities is formalized in 13 MSs (DE, EE, IE, IS, IT, NL, NO, PL, PT, RO, SE, SK, UK).



PART 2

THE ACTUAL USE OF SANCTIONING POWERS FOR MARKET ABUSE

V. SETTLEMENT WITHIN THE FRAMEWORK OF ADMINISTRATIVE PROCEEDINGS

143. The use of settlement is an option for dealing with market abuse cases that has to be taken into account when studying proceedings related to market abuse sanctions. Some Member States are of the view that settlement can be an efficient way of dealing with market abuse violations. Furthermore, an overview of the possibilities for the use of settlement is of importance as some MSs might consider that it facilitates CAs' work in terms of procedure, for instance concerning the evidence to be brought forth.

Settlement in the context of market abuse cases

144. In the context of administrative proceedings, the notion of settlement exists for market abuse proceedings in seven Member States (BE, CY, DE, HU, IE, IS, UK).

The concept of settlement

145. The concept of settlement varies to a considerable degree from MS to MS. Depending on the particular national legal understanding, the outcome of a settlement is considered to constitute a sanctioning decision (DE, UK) or may not (in IE).

146. In BE, a person has to admit the factual elements of the results of the investigation, but not their legal qualifications. In DE, all the charged person has to do to reach a settlement is not to challenge the regulator's final proposal. In IE, settlement requires that the suspect, following a discussion of the suspected breach with the CA, admits guilt. Thereafter, the CA will usually impose a sanction. The settlement agreement is publicized and generally no party to the settlement agreement remains anonymous. Until the settlement agreement is signed, the CA may pursue administrative sanctions. In the UK, the target person has to agree with the CA's findings that their actions have been unlawful and not to challenge the sanctioning decision; the person sanctioned can receive an appropriate penalty discount of up to a 30% depending on the stage at which agreement is reached.

147. Also, in some Member States, settlement decisions are subject to review whilst in others they are not. Among the CAs which can use settlement in relation to market abuse cases, five CAs (BE, DE, IE, IS, UK) reported that a settlement will preclude a review of the case (administrative or judicial), while two (CY, HU) mentioned that settlement is subject to review (administrative or judicial).

Actual use of settlement

148. Three CAs (BE, DE, UK) reported cases in the review period.

Number of cases settled in the years 2008-2010

149. **Table E.4) Number of cases settled in the review period**

How many cases were settled in the years 2008-2010?						
BE	CY	DE	HU	IE ¹²	IS	UK
1	0	4	0	0	0	23

150. Of the seven CAs that us settlement is for market abuse cases, four had no settled cases in the review period (CY, HU, IE, IS). Two other CAs (BE, DE) had few settled cases in the review period. One CA (UK) had 23 cases settled in the review period.

151. Consequently, for those CAs where the outcome of a settlement is considered to constitute a sanctioning decision (DE, UK), the settlement cases have also been counted as administrative sanctions in the section “Administrative Sanction Decisions Taken by the CAs”.

Detailed information on cases settled in the review period

152. CAs that had settlement cases provided information on the outcome of these proceedings in terms of amount to be paid and whether the settlements were made public.

153. Of the CAs that had settlement cases, two (BE, DE) did not require the targeted persons to admit guilt and one did (UK).

154. **Table E.5-E.7) Overview on the amounts that target agreed to pay, based on responses from three CAs (BE, DE, UK)**

Amounts in Euro	2008	2009	2010
Highest	134,060	200,769	1,101,498
Lowest	59.802	0 ¹³	0
Average	95.749	36,541	169,445
Sum	287.247	475,039	2,033,336

155. The amounts show a considerable degree of variation under all aspects.

¹² In IE, while there were no settlement cases in relation to market abuse falling under the scope of this report, it should be noted that there were two settlements in relation to the improper maintenance of insider lists.

¹³ The minimum amount is « zero euros » given that the settlement did not result in pecuniary sanctions, but in other types of sanctions.

156. The fact that there had been a settlement was made public by two CAs (BE, UK). The publication has been anonymised by one CA (BE) and not anonymised by one CAs (UK).

Major findings

157. Settlement is part of the overall picture on the actual use of sanctions as some Member States consider this as an efficient way of dealing with market abuse. Where settlement is available, the concept itself varies to considerable degree depending on the MS. For example, in some Member States, settlement decisions may be subject to review (administrative or judicial), whereas in others, one of the consequences of a case that is settled is that a review will be precluded.
158. In two (DE, UK) of the seven Member States (BE, CY, DE, HU, IE, IS, UK) where settlement is available to deal with market abuse, the outcome of a settlement is considered to constitute a sanctioning decision. Where this is the case settlement data was included also under the information provided for administrative sanctions.
159. Settlement in market abuse cases, is currently available in seven Member States (BE, CY, DE, HU, IE, IS, UK). Of these seven CAs, three CAs (BE, DE, UK) actually made use of this instrument in market abuse cases during the review period. Of these, two CAs (BE, DE) used it in less than five cases in the review period, whereas in one Member State (UK), 23 cases were closed by means of settlement during the review period.
160. Where settlement was used during the review period, it was applied in a variety of cases. Most settlements, but not all, led to payments of pecuniary sanctions ranging up from €2,500 €1,101,498.

VI. ADMINISTRATIVE SANCTION DECISIONS TAKEN BY THE CAS

161. In its response to the European Commission's Communication on reinforcing sanctioning regimes in the financial service sector ESMA highlighted the importance of the ability of securities regulators to take administrative measures or impose sanctions on those who do not comply with the relevant provisions of EU directives to allow them to effectively perform their tasks. ESMA recognised the importance of administrative sanctioning being applicable to both natural and legal persons.
162. This section focuses on the actual use of administrative sanctions by CAs in terms of market abuse during the review period. By way of background it should be noted that the administrative sanctioning is one of the regulatory tools available to CAs in pursuing their objective of maintaining the integrity and efficient functioning of the financial markets. In some of the Member States such as DK and SE the possibility to use administrative sanctioning proceedings is not available. Where administrative sanctioning proceedings are available to CAs, both the type and scale of market abuse they had to deal with may explain differences in the way CAs use their power on this issue. Finally it should be noted that the processes for administrative proceedings vary among CAs on account of varying legal systems. Accordingly, the timing of when a case is put to the target may also vary among the CAs.¹⁴
163. In the first part of this section, the power of CAs to impose administrative sanctions on individual and/or legal persons is presented. Where they have such powers, the section provides information on the minimum and maximum pecuniary penalties available to CAs when imposing administrative sanctions. Data may have changed since 2007 when CESR carried out a study on the availability of pecuniary administrative sanctions within the framework of sanctioning market abuse.
164. The section then focuses on the actual use of administrative sanctions in the period (with the number of persons sanctioned and discharged after the case was put to the target) and especially on
- the actual use of pecuniary sanctions (number of sanctions imposed),
- lowest, highest and total pecuniary sanctions imposed.
165. Based on the factors suggested in the European Commission's Communication and the minimum indicative criteria stated in the ESMA response to that Communication, the section reflects the factors which the CAs were able to consider when determining both pecuniary and non pecuniary sanctions. Then a point is made on the factors actually used.
166. Finally, evidence which may be considered to find whether a breach occurred, of which will depend whether or not a sanction will be imposed is also presented.
167. It should be noted that the processes for administrative proceedings vary among CAs on account of varying legal systems. Accordingly, the timing of when a case is put to the target may also vary among the CAs.¹⁵ Data provided in this section are based on non-criminal decisions handed down in the review period by CAs (excluding appeals) on the grounds of insider dealing and market manipulation.

¹⁴ Some further information about the processes used in the various Member States is available in the Annex, although processes can not be easily compared as to when the case is put to the target. Nonetheless, the differences in timing and procedures could help explain why some CAs have reported more discharges than others, being recalled that figures may also vary greatly from one year to the other, according to the cases decided.

¹⁵ Idem as previous note.

GENERAL ISSUES OF IMPOSING ADMINISTRATIVE SANCTIONS

Powers to Impose Administrative Sanctions

168. **Table F.1 – Power of the CA to address administrative sanctions to a) the natural person who has committed a violation, and b) a legal person in the interest of or on whose behalf a violation has been committed**

	Market abuse can give rise to administrative sanctions (YES)	Market abuse can not give rise to administrative sanctions (NO)
For Natural person	27 (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK)	2 (DK, SE)
For Legal person	27 (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE ¹⁶ , IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK)	2 (DK, SE)

169. As per the table above, two CAs (DK, SE) can impose neither administrative sanctions on natural persons nor on administrative sanctions to legal persons.

170. Therefore the information that follows:

- in relation to natural persons refers to the 27 CAs that can impose administrative sanctions to natural persons
- in relation to legal persons refers to the 27 CAs that can impose administrative sanctions to legal persons.

Actual use of power to impose administrative sanctions

Number of CAs that sanctioned natural / legal persons

171. **Table F. 3. 1.) CAs that sanctioned one or more natural/legal persons**

	CAs that sanctioned		CAs that did not sanction		N/A	
Insider dealing - natural persons						
2008	13	BE, BG, CY, EL, ES, FI, FR, HU, IT, LT, NL, PL, UK	14	AT, CZ, DE, EE, IE, IS, LU, LV, MT, NO, PT, RO, SI, SK	2	DK, SE
2009	12	BG, CZ, EL, ES, FI, FR, IT, LT, MT, PL, PT, UK	15	AT, BE, CY, DE, EE, HU, IE, IS, LU, LV, NL, NO, RO, SI, SK	2	DK, SE

¹⁶ Concerning IE, while it is true to say that while administrative sanctions can be addressed to legal persons, in practice the Central Bank of Ireland would look to sanction the natural persons who actually make decisions in the name of the legal person.

2010	11	BE, CY, EL, ES, FR, HU, IT, LT, NL, PL, UK	16	AT, BG, CZ, DE, EE, FI, IE, IS, LU, LV, MT, NO, PT, RO, SI, SK	2	DK, SE
Insider dealing - legal persons						
2008	3	EL, FR, IT	24	AT, BE, BG, CY, CZ, DE, EE, ES, FI, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK	2	DK, SE
2009	5	ES, FR, IT, LT, PT	22	AT, BE, BG, CY, CZ, DE, EE, EL, FI, HU, IE, IS, LU, LV, MT, NL, NO, PL, RO, SI, SK, UK	2	DK, SE
2010	4	EL, ES, IT, PL	23	AT, BE, BG, CY, CZ, DE, EE, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PT, RO, SI, SK, UK	2	DK, SE
Market manipulation - natural persons						
2008	10	AT, BG, CY, DE, EL, ES, FR, LT, PT, UK	17	BE, CZ, EE, FI, HU, IE, IS, IT, LU, LV, MT, NL, NO, PL, RO, SI, SK	2	DK, SE
2009	14	AT, BG, CY, DE, EE, EL, FI, FR, IT, LT, PL, PT, SI, UK	14	BE, CZ, EE, ES, HU, IE, IS, LU, LV, MT, NL, NO, RO, SK	2	DK, SE
2010	17	AT, BE, BG, CY, DE, EE, EL, FR, HU, IT, LV, NL, PL, PT, RO, SI, UK	11	CZ, EE, ES, FI, IE, IS, LT, LU, MT, NO, SK	2	DK, SE
Market manipulation - legal persons						
2008	7	BG, EE, EL, FR, HU, LT, PT	20	AT, BE, CY, CZ, DE, ES, FI, IE, IS, IT, LU, LV, MT, NL, NO, PL, RO, SI, SK, UK	2	DK, SE
2009	10	CY, CZ, EE, EL, FR, HU, IT, LT, NL, PT	17	AT, BE, BG, DE, ES, FI, IE, IS, LU, LV, MT, NO, PL, RO, SI, SK, UK	2	DK, SE
2010	10	BG, CY, CZ, EE, EL, FR, HU, NL, SI, UK	17	AT, BE, DE, ES, FI, IE, IS, IT, LT, LU, LV, MT, NO, PL, PT, RO, SK	2	DK, SE

Number of CAs using sanctioning powers by year

172. Five CAs (IE, IS, LU, NO, SK) have not imposed any administrative sanctions (for natural or legal persons) in the review period.

- IE stated that this is because the establishment of links between market behaviours and outcomes is difficult especially in the context of insider dealing and market manipulation which may require an element of intention to be established.
- IS launched one procedure that ended with discharge of the legal person concerned. IS considers that due to the small size of its markets, there were few market abuse cases that were concluded during the period. All cases pertaining to market abuse are referred to the Special Prosecutor for further investigation and criminal procedure if applicable.
- In LU the MAD law has been amended by the law of 26 July 2010 in order to introduce among others administrative fines for insider dealing and market manipulation. As the amendments are only

applicable to facts that happened after the amendment of the MAD law, there were no administrative fines imposed by the CSSF during the review period of this mapping exercise.

- In NO the CA has the power to order surrender of gain obtained from market abuse. This is the only administrative sanction available. However, serious breaches of the regulation regarding insider dealing and market manipulation are considered as major crime and are reported to the criminal authorities for prosecution. During the relevant period the CA established evidence for market abuse in 18 cases. All the cases were considered as serious cases and were reported to the criminal authorities for prosecution.
- SK launched a procedure that ended with the discharge of the concerned person. In addition, SK considers that the lack of market abuse cases is due to the small size of its market.

Insider dealing

173. For natural persons, at least 11 CAs imposed sanctions in the review period with an upper number of 13 CAs imposing sanctions in one year.
174. Seven CAs (EL, ES, FR, IT, LT, PL, UK) imposed sanctions on natural persons for insider dealing in all three years.
175. For legal persons, at least three CAs imposed sanctions in the review period with an upper number of five CAs imposing sanctions in one year.
176. One CA (IT) imposed sanctions on legal persons for insider dealing in all three years.

Market manipulation

177. For natural persons, at least 10 CAs imposed a sanction in the review period with an upper number of 17 CAs imposing sanctions in one year.
178. Seven CAs (AT, BG, CY, DE, EL, FR, PT, UK) imposed sanctions on natural persons for market manipulation in all three years.
179. For legal persons - at least seven CAs imposed a sanction in the review period with an upper number of ten CAs imposing sanctions in one year.
180. Four CAs (EE, EL, FR, HU) imposed sanctions on legal persons for market manipulation in all three years.

Number of natural persons/ legal persons who were sanctioned/discharged in the review period

181. **Table F.3.2.) Insider dealing - natural persons/ Insider dealing - legal persons/ Market manipulation - natural persons/ Market Manipulation - legal persons**

A- Insider dealing - natural persons						
	2008		2009		2010	
	Sanctions	Discharges	Sanctions	Discharges	Sanctions	Discharges
BE	1	3		5	1	7
BG	3		1			
CY	1	1			1	
CZ			1			1
DE		2				
EE		5		5		5
EL	3		1		11	2
ES	2	3	1		15	
FI	1		1	1		
FR	29	38	5	39	14	16
HU	2	1		1	3	
IT	5		14		12	3
LT	3		1		1	
LU		2		3		
MT		1	3	2		
NL	1				1	1
PL	14		2		1	
PT			3			
RO						3
UK	6		5		10	1

B- Insider dealing - legal persons						
	2008		2009		2010	
	Sanctions	Discharges	Sanctions	Discharges	Sanctions	Discharges
BE		1		4		
EE		5		5		5
EL	5				7	
ES			1		4	
FR	1	3	2	8		3
IT	1		2		1	
IS						1
LT			1			
MT				2		
PL					1	
PT			1			

C- Market manipulation - natural persons						
	2008		2009		2010	
	Sanctions	Discharges	Sanctions	Discharges	Sanctions	Discharges
AT	21	1	12	6	6	20
BE		1			1	
BG	1		6	2	7	
CY	3		1	3	6	
CZ						1
DE	1	1	3	1	2	2

EE		5	1	5	1	5
EL	11		56	3	26	
ES	1					
FI			1			
FR	6	8	7	10	6	10
HU		7			6	
IT			6		7	
LT	4		5	1		
LV					1	
NL					2	
PL			4		1	
PT	2		1	1	10	2
RO				1	1	
SI			3		5	3
SK		1				
UK	1		1	4	6	3

D- Market Manipulation - legal persons						
	2008		2009		2010	
	Sanctions	Discharges	Sanctions	Discharges	Sanctions	Discharges
BE		1				
BG	1				1	1
CY			2		3	
CZ			1	1	3	
EE	4	1	1	9	6	3
EL	6		19	1	9	
FR	4	6	8	3	7	3
HU	5	3	2	3	2	
IT			1			
LT	1		6			
NL			2		2	1
PT	1		4			
RO		4				
SI					1	
UK					1	

182. The data in this section were counted on the basis that if the person's conduct (or alleged conduct) covers both insider dealing and market manipulation, these should be counted as two separate cases (i.e. listed under both insider dealing and market manipulation). Each person was not counted more than once within each category.

183. In order to give a broader picture of the activities for the CAs in the review period, the information was collected for both sanctions imposed and for discharges which for the purpose of the questionnaire was considered to be cases that progressed at least to the point when the case is put to target, but did not result in a sanction. There are CAs (SK) that have not imposed a sanction in the review period, but at the same time, reported cases that led to the discharge of the person concerned.

PECUNIARY SANCTIONS

Minimum and maximum of pecuniary administrative sanctions

184. In 2007 CESR carried out a mapping on the issue of pecuniary administrative sanctions imposed within the framework of sanctioning market abuse (CESR 07/693 report¹⁷). Since there might have been some changes in the meantime, it was of interest to provide more data on the issue. Further to describe the powers made available to the CAs, it is worth examining how they actually used these powers during the review period.

¹⁷ "Report on Administrative Measures and Sanctions as well as the Criminal Sanctions available in the Member States under MAD" November 2007, CESR/07-693).

Minimum Pecuniary Penalties available to the CA

185. **Table F.6.1.) Minimum penalties available to the CA (For further comparison, please see the Annex, responses to the "Report on Administrative Measures and Sanctions as well as the Criminal Sanctions available in the Member States under MAD (November 2007, CESR/07-693)**

	Insider Dealing Minimum		Market Minimum	Manipulation
	Natural persons	Legal persons	Natural persons	Legal persons
N/A	AT, DK, SE	AT, DK, SE	DK, SE	AT, DK, SE
No minimum	CY, CZ, FR ¹⁸ , IE, LV, MT, NL, NO, PL, UK	CY, CZ, FR, IE, LT, MT, NL, NO, PL, UK, LV	CY, CZ, ES, FR, IE, LV, MT, NL, NO, PL, UK	CY, CZ, ES, FR, IE, LT, MT, NL, NO, PL UK, LV
€1 to 999	DE, EE, FI, HU, IS, LU, RO, SI, SK	DE, EE, FI, HU, IS, LU, SK	AT, DE, EE, FI, HU, IS, LU, RO, SI, SK	DE, EE, FI, HU, IS, LU, SK
€1,000 to 9,999	BE, LT	BE	BE, LT	BE
€10,000 to 99,999	BG, EL, ES, PT	BG, EL, ES, PT, SI	BG, EL, PT	BG, EL, PT, SI
€100,000+	IT	IT	IT	IT
Half the amount obtained	RO	RO ¹⁹	RO	RO ²⁰

186. Ten CAs (CY, CZ, FR, IE, LV, MT, NL, NO, PL, UK) had no minimum amount for insider dealing sanctions while 11 CAs (CY, CZ, ES, FR, IE, LV, MT, NL, NO, PL, UK) had no minimum amount for market manipulation.

187. In terms of the range of minimum amounts:

¹⁸ FR: The following comment applies to all four categories: the notion of minimum amount does not exist in French law for administrative pecuniary sanctions. However, the profit derived from the breach (i.e. the capital gains made out of the breach or the avoided loss) may be taken into account by the Enforcement Committee of the AMF when setting the amount of the pecuniary sanction so that the sanction imposed is not lower than this profit.

¹⁹ For legal persons (concerning both insider dealing and market manipulation), the minimum sanction is either the half of the value of the transaction, or, if there was no transaction, 0,5% of the paid-up share capital

²⁰ Same as footnote 14

- Seven CAs (DE, EE, FI, HU, IS, LU, SK) have minimum amounts below €1,000 for insider dealing
- Eight CAs (AT, DE, EE, FI, HU, IS, LU, SK) have minimum amounts below €1,000 for market manipulation
- One CA (IT) has a minimum amount above €100,000 for both insider dealing and market manipulation.
- One CA (RO) the minimum amount would depend on the particular circumstances (e.g. whether it concerns a natural or legal person, the severity of the offence).

Maximum Pecuniary Penalties available to the CA

188. **Table F.6.2.) Maximum penalties available to the CA (For further comparison, please see the Annex, responses to the "Report on Administrative Measures and Sanctions as well as the Criminal Sanctions available in the Member States under MAD (November 2007, CESR/07-693)**

	Insider Dealing Maximum		Market Maximum	Manipulation
	Natural persons	Legal persons	Natural persons	Legal persons
N/A	AT, DK, SE	AT, DK, SE	DK, SE	AT, DK, SE
No maximum	ES ²¹ , NO, UK	ES, NO, UK	ES, NO, UK	ES, NO, UK
€1 to 4,999	SI		SI	
€5,000 to 9,999				
€10,000 to 19,999	FI, LT, LV, RO	LV	FI, LT, LV, RO	LV
€20,000 to 49,999	BG, EE		BG, EE	
€50,000 to 99,999	BG (if repeated), MT, PL	BG, LT, MT, PL	AT, BG (if repeated), MT, PL	BG, LT, MT, PL
€100,000 to 999,999	CY, CZ, DE, IS, SI, SK	BG (if repeated), CY, CZ, DE, EE, FI, IS, SI, SK	CY, CZ, IS, SI, SK	BG (if repeated), CY, CZ, EE, FI, IS, SI, SK
€1,000,000 to €4,999,999	EL, HU, IE, LU, NL	EL, HU, IE, LU, NL	DE, EL, HU, IE, LU, NL	DE, EL, HU, IE, LU, NL

²¹ In ES, the maximum pecuniary penalty available is up to the highest of the following amounts: five times the gross profit obtained as a result of the acts or omissions comprising the infringement; 5 per cent of the infringing firm's own funds; five per cent of the total funds, owned by the firm or third parties, that were used in the infringement; or €600,000.

€5,000,000 or more	FR, IT, PT	FR, IT, PT	FR, IT, PT	FR, IT, PT
Amount of profit obtained or value of transaction may increase the maximum ²²	BE, DE, FR, IT, RO	BE, DE, FR, RO ²³	BE, DE, FR, PL, RO	BE, DE, FR, PL, RO ⁷

189. It should be noted that national legislation might prevent a CA from imposing a pecuniary sanction beyond a certain limit (maximum amount). The CA might not have the direct ability to change such a maximum as it falls within the competence of the legislator. The ESMA response to the Commission’s Communication suggests that there might be “*common minimum levels for the upper limit of administrative fines*”. This would mean that when setting a maximum for pecuniary sanction, national legislation could not go below a certain amount.

190. Concerning the available maximum penalties, these were the lowest during the review period in EE (€1,200) for natural persons (both insider dealing and market manipulation) and PL (€50,911) for legal persons (both insider dealing and market manipulation).

191. Two CAs (NO, UK) had no maximum amounts for market manipulation and for insider dealing.

192. In terms of the range of maximum amounts:

- One CA (EE) had maximum amount of € 32,000 for both insider dealing and market manipulation
- One CA (IT) had a maximum amount of €15,000,000 for insider dealing and €25,000,000 for market manipulation.

193. The details of the individual CAs’ maximum amounts for 2010 and an extract from the 2007 CESR 07/693 report²⁴ in relation to maximum amounts are reflected in Annex. The key points to note when comparing information between the two sets of maximum amounts are listed below:

194. The maximum amount remains the same for 14 CAs (BE, BG, CY, CZ, DE, EL, FI, IE, IT, MT, PL, SI, SK, RO). One CA (UK) continues to have no maximum amounts for both insider dealing and market manipulation. It has to be noted that for Member States where the national currency is not the euro, the exchange rate will influence the amounts indicated in this section.

195. Changes to the maximum amount were noted for the following eight CAs (AT, ES, FR, HU, NL, PT, LT, LU):

- AT – increase of market manipulation maximum amount from €50,000 to €75,000

²² This category differs from those above in that it is an additional factor which may increase the maximum amount beyond that which would otherwise apply. Some CAs may also be able to increase their usual maximum amounts based on others factors such as the amount of the firm’s available funds and/or turnover; the value of the transaction involved; and/or whether or not the offender repeated the offence.

²³ For legal persons (concerning both insider dealing and market manipulation), the maximum sanction is either the value of the transaction or, if there was no transaction, 5% of the paid-up share capital.

²⁴ “Report on Administrative Measures and Sanctions as well as the Criminal Sanctions available in the Member States under MAD” November 2007, CESR/07-693).

- EE- the maximum administrative fine applicable to legal persons for insider dealing, market manipulation and other misdemeanours increased since the beginning of 2007 ten times – i.e from €3,200 to €32,000.
 - ES - increase from €300,000 to €600,000 the amount used as a reference to impose sanctions when no other criteria are applicable.
 - FR - increase of both insider dealing and market manipulation amounts from €1,500,000 to €10,000,000 (and to €100,000,000 for market abuses committed from October 24, 2010 onwards)²⁵
 - HU - increase of both insider dealing and market manipulation amounts from €400,000 to € 1,885,369
 - NL - increase of both insider dealing and market manipulation amounts from €96,000 to €4,000,000
 - PT – increase of both insider dealing and market manipulation amounts from €2,500,000 to €5,000,000
 - LT – increase of both insider dealing and market manipulation amounts for natural persons from €1,450 to €17,400 and for legal persons from €30,000 to €58,000
 - LU – change from ‘no administrative pecuniary sanction’ to €1,500,000.
196. It is not possible to compare information for three CAs (IS, NO, PL). For NO a maximum amount is not provided for 2007. For two CAs (IS, PL) the maximum amounts appear to have been reduced, but this is a result of exchange rate.

Actual use of pecuniary administrative sanctions available

197. If the same person has been ordered to pay pecuniary sanction for both insider dealing and market manipulation, these are counted as two separate cases (i.e. listed under both insider dealing and market manipulation). Each person should not be counted more than once within each category

Use of pecuniary sanctions – number of CAs that imposed pecuniary sanctions on natural / legal persons

198. **Table F.5.1.) CAs that imposed pecuniary sanctions in the review period**

²⁵ FR: Regarding maximum amounts for administrative pecuniary sanctions which are provided for in cases of market abuses (art. L. 621-15 Monetary and financial code), French law has been amended several times in the last few years (www.legifrance.com). Hence, under the terms of an Act of 1 Aug. 2003, the maximum amount for market abuses cannot exceed €1.5 million or ten times the amount of any profit realised. This maximum sum was amended by an Act of 4 Aug. 2008 and by an Act of 22 Oct. 2010. As a result, for market abuses committed after the Act of 2008 came into force on this point and before the modification in 2010: by principle the maximum amount cannot exceed €10 million or ten times the amount of any profit realised. There is an exception for market abuses committed by individuals acting under the authority of, or acting on behalf of, financial markets professionals mentioned in the relevant legal provisions of the French Monetary and Financial Code (against these individuals, the amount cannot exceed €1.5 million or ten times the amount of any profit realised). For market abuses committed after the modification resulting from the Act of 2010 came into force, the amounts of €10 million and €1.5 million become €100 million and €15 million.

	CAs that imposed pecuniary sanctions	CAs that did not impose pecuniary sanctions	N/A
Pecuniary sanctions - insider dealing natural persons			
2008	12 BE, BG, CY, EL, ES, FR, HU, IT, LT, NL, PL, UK	14 CZ, DE, EE, FI, IE, IS, LU, LV, MT, NO, PT, RO, SI, SK	3 AT, DK, SE
2009	12 BG, CZ, EE, EL, ES, FR, IT, LT, MT, PL, PT, UK	14 BE, CY, DE, FI, HU, IE, IS, LU, LV, NL, NO, RO, SI, SK	3 AT, DK, SE
2010	9 BE, CY, EL, ES, FR, HU, IT, LT, UK	17 BG, CZ, DE, EE, FI, IE, IS, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK	3 AT, DK, SE
Pecuniary sanctions – insider dealing legal persons			
2008	3 EL, FR, IT	23 BE, BG, CY, CZ, DE, EE, ES, FI, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK	3 AT, DK, SE
2009	5 ES, FR, IT, LT, PT	23 BE, BG, CY, CZ, DE, EE, EL, FI, HU, IE, IS, LU, LV, MT, NL, NO, PL, RO, SI, SK, UK	3 AT, DK, SE
2010	4 EL, ES, IT, PL	22 BE, BG, CY, CZ, DE, EE, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PT, RO, SI, SK, UK	3 AT, DK, SE
Pecuniary sanctions – market manipulation natural persons			
2008	9 AT, BG, CY, EL, DE, FR, LT, PT, UK	18 BE, CZ, EE, ES, FI, HU, IE, IS, IT, LU, LV, MT, NL, NO, PL, RO, SI, SK	2 DK, SE
2009	12 AT, BG, CY, DE, EE, EL, FR, IT, LT, PL, PT, UK	15 BE, CZ, ES, FI, HU, IE, IS, LU, LV, MT, NL, NO, RO, SI, SK	2 DK, SE
2010	16 AT, BE, BG, CY, DE, EE, EL, FR, HU, IT, NL, PL, PT, RO, SI, UK	11 CZ, ES, FI, IE, IS, LT, LU, LV, MT, NO, SK	2 DK, SE
Pecuniary sanctions – market manipulation legal persons			
2008	6 BG, EL, FR, HU, LT,	20 BE, CY, CZ, DE, EE, ES, FI, IE, IS, IT, LU, LV, MT, NL, NO, PL, RO,	3 AT, DK,

		PT		SI, SK, UK		SE
2009	9	CY, CZ, EE, EL, FR, HU, IT, LT, PT	17	BE, BG, DE, ES, FI, IE, IS, LU, LV, MT, NL, NO, PL, RO, SI, SK, UK	3	AT, DK, SE
2010	9	BG, CY, CZ, EE, EL, FR, HU, NL, UK	17	BE, DE, ES, FI, IE, IS, IT, LT, LU, LV, MT, NO, PL, PT, RO, SI, SK	3	AT, DK, SE

Number of CAs imposing pecuniary sanctions for insider dealing

199. For natural persons, at least 9 CAs imposed a pecuniary sanction in the review period with an upper number of 12 CAs imposing sanctions in one year.
200. Six CAs (EL, ES, FR, IT, LT, UK) imposed pecuniary sanctions on natural persons for insider dealing in all three years.
201. For legal persons, at least three CAs imposed a sanction in the review period with an upper number of five CAs imposing sanctions in one year.
202. One CA (IT) imposed sanctions on legal persons for insider dealing in all three years.

Number of CAs imposing pecuniary sanctions for market manipulation

203. For natural persons, at least 9 CAs imposed a sanction in the review period with an upper number of 16 CAs imposing sanctions in one year.
204. Eight CAs (AT, BG, CY, DE, EL, FR, PT, UK) imposed such sanctions in all three years.
205. For legal persons - at least six CAs imposed a sanction in the review period with an upper number of 9 CAs imposing sanctions in one year.
206. Three CAs (EL, FR, HU) imposed sanctions on legal persons for market manipulation in all three years.
207. Precise information on the breakdown of the number of sanctions imposed by each CA in the review period can be found in the Annex.
208. By way of example, nine CAs (BE, BG, CY, CZ, DE, HU, IT, LT, MT) that imposed administrative sanctions during the review period only used pecuniary administrative sanctions (i.e. and no other type of sanctions); ten CAs (AT, ES, FI, FR, LV, NL, PL, PT, SI, UK) imposed non pecuniary administrative sanctions at least once during the review period (all categories of market abuse and persons sanctioned taken into account).
209. **Table: Use of pecuniary sanctions – highest numbers of pecuniary sanctions imposed on natural / legal persons**

210. Highest number of pecuniary sanctions imposed by an CA	Highest number of pecuniary sanctions imposed by an CA		
	2008	2009	2010
Insider dealing – natural persons	29 (FR)	14 (IT)	13 (FR)
Insider dealing – legal persons	5 (EL)	2 (FR, IT)	7 (EL)
Market manipulation – natural persons	21 (AT)	56 (EL)	26 (EL)
Market manipulation – legal persons	6 (EL)	19 (EL)	9 (EL)

The number of pecuniary sanctions imposed per CA per year during the review period per category was: 56 sanctions (for market manipulation concerning natural persons), 29 sanctions (for insider dealing concerning natural persons), 19 sanctions (for market manipulation concerning legal persons) and 7 sanctions (for insider dealing concerning legal persons).

Lowest, highest and total pecuniary sanctions

Lowest pecuniary sanctions imposed in each year

211. **Table F.8.1) Range of lowest financial penalties issued in each year**

	2008		2009		2010	
	From	To	From	To	From	To
Insider dealing – natural persons	€255 (PL)	€600,000 (ES)	€64 (EE)	€100,000 (IT)	€1,885 (HU)	€6,000,000 (CY)
Insider dealing – legal persons	€10,000 (EL)	€256,000 (IT)	€23,188 (LT)	€350,000 (IT)	€2,545 (PL)	€356,280 (IT)
Market manipulation – natural persons	€376 (LT)	€134,060 (UK)	€100 (FR)	€97,995 (UK)	€500 (FR)	€100,000 (IT)
Market manipulation – legal persons	€7,541 (HU)	€60,000 (PT)	€575 (EE)	€700,000 (IT)	€1,000 (FR)	€4,556,328 (UK)

Highest pecuniary sanctions imposed in each year

212. **Table F.8.2) Range of highest financial penalties issued in each year**

	2008		2009		2010	
	From	To	From	To	From	To
Insider dealing – natural persons	€8,000 (BE)	€5,000,000 (FR)	€435 (LT)	€2,550,000 (EL)	€1,885 (HU)	€6,000,000 (CY)
Insider dealing – legal persons	€10,000 (EL)	€256,000 (IT)	€23,188 (LT)	€1,800,000 (IT)	€2,545 (PL)	€356,280 (IT)
Market manipulation – natural persons	€405 (LT)	€1,500,000 (FR)	€435 (LT)	€1,500,000 (FR)	€1,055 (EE)	€1,000,000 (PT)
Market manipulation – legal persons	€10,145 (LT)	€301,659 (HU)	€575 (EE)	€5,000,000 (PT)	€1,055 (EE)	€4,556,328 (UK)

Total pecuniary sanctions imposed in each year

213. **Table F.8.3) Total financial penalties issued in each year**

	2008		2009		2010	
	From	To	From	To	From	To
Insider dealing – natural persons	€2,030 (LT)	€12,804,000 (FR)	€435 (LT)	€5,340,000 (IT)	€5,656 (HU)	€6,000,000 (CY)
Insider dealing – legal persons	€30,000 (FR)	€256,000 (IT)	€23,188 (LT)	€2,150,000 (IT)	€2,545 (PL)	€356,280 (IT)
Market manipulation – natural persons	€1,591 (LT)	€2,620,000 (FR)	€575 (EE)	€2,590,100 (FR)	€1,055 (EE)	€4,325,000 (PT)
Market manipulation – legal persons	€10,145 (LT)	€450,000 (FR)	€575 (EE)	€5,180,000 (PT)	€1,055 (EE)	€4,556,328 (UK)

Lowest, highest and total pecuniary sanctions (per authority)

214. **Table Lowest pecuniary sanctions**

	€1 to 4,999	€5,000 to 9,999	€10,000 to 19,999	€20,000 to 99,999	€100,000 or more
Insider dealing: natural persons					
2008	HU, LT, PL	BE, FR, UK	BG	CY, EL, IT, NL	ES
2009	EE, LT, MT, PL	FR	BG	CZ, ES, PT, UK	IT
2010	FR, HU		EL, ES	BE, IT, UK	CY
Insider dealing: legal persons					
2008			EL	FR	IT
2009				ES, LT, PT	FR, IT
2010	PL		EL	ES	IT
Market manipulation: natural persons					
2008	AT, DE, LT		BG, EL	CY, FR	PT, UK
2009	AT, CY, DE, EE, EL, FR, LT		BG	IT, PL, PT, UK	
2010	AT, CY, EE, FR, HU, RO, SI		BG, EL	BE, DE, NL, PL, PT, UK	IT
Market manipulation: legal persons					
2008		HU	EL, FR, LT	BG, PT	
2009	CY, EE, LT		CZ, EL, FR	PT	HU, IT
2010	EE, FR		CY, CZ, EL	BG, HU	NL, UK

215. Concerning the lowest pecuniary sanctions imposed by the CAs in the review period, there were 8 CAs that at least in one year during the review period only imposed sanctions higher than € 100,000.

216. **Table Highest pecuniary sanctions**

	€1 to 4,999	€5,000 to	€10,000	€20,000 to	€50,000	€100,000	€1m or more
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		9,999	to 19,999	49,999	to 99,999	to 999,999	
Insider dealing: natural persons							
2008	LT	BE	BG, PL	HU, NL	CY, UK	EL	ES, FR, IT
2009	EE, LT, PL		BG	ES, MT, PT	CZ	UK	EL, FR, IT
2010	HU			BE		EL, ES, FR, IT	CY, UK
Insider dealing: legal persons							
2008			EL	FR		IT	
2009				ES, LT, PT			FR, IT
2010	PL					EL, ES, IT	
Market manipulation: natural persons							
2008	DE, LT		BG		AT	CY, EL, PT, UK	FR
2009	CY, EE, LT		BG	AT, DE, PL	PT, UK	EL, IT	FR
2010	EE, RO, SI		BG, HU	AT, BE, NL	DE, PL	CY, EL, FR, IT, UK	PT
Market manipulation: legal persons							
2008			LT	BG	PT	EL, FR, HU	
2009	EE		CZ, LT	CY		EL, FR, IT	HU, PT
2010	EE			BG, CZ	FR, HU	CY, EL, NL	UK

217. Concerning the highest pecuniary sanctions imposed by the CAs in the review period, there were eight CAs (CY, EL, ES, FR, HU, IT, PT, UK) that at least in one year of the review period imposed sanction equal to or higher than €1, 000, 000. Maximum pecuniary sanction imposed by three CAs (BE, LT, SI) never went above €50,000 during the review period.

218. **Table Total pecuniary sanctions**

	€1 to 4,99	€5,000 to 9,999	€10,000 to	€20,000 to 49,999	€50,000 to 99,999	€100,000 to	€1m to 4,999,999	€5m or more

	9		19,999			999,999		
Insider dealing: natural persons								
2008	LT	BE		BG, HU, NL, PL	CY	EL, UK	ES, IT	FR
2009	LT, PL		BG	ES, PT	CZ, MT	EE, UK	EL, FR	IT
2010		HU		BE		EL, ES	FR, IT	CY, UK
Insider dealing: legal persons								
2008				ES, FR	EL	IT		
2009				LT, PT			FR, IT	
2010	PL					EL, ES, IT		
Market manipulation: natural persons								
2008	DE, LT		BG			AT, CY, EL, PT, UK	FR	
2009	CY, EE, LT			DE, PL	AT, BG, PT, UK		EL, FR, IT	
2010	EE, PT, RO, SI			AT, BE, HU, NL	BG, PL	CY, DE, EL, FR, UK	IT	
Market manipulation: legal persons								
2008			LT	BG	PT	EL, FR, HU		
2009	EE		CZ	CY, LT		EL, IT	FR, HU	PT
2010	EE			BG	CZ, HU	CY, EL, FR, NL	UK	

Insider dealing

219. In terms of natural persons for insider dealing: the lowest sanction imposed ranged from €64 (EE) to € 6,000,000 (CY) while the highest sanctions imposed ranged from €435 (LT) to €6,000,000 (CY). The total sanctions imposed by a CA in a single year ranged from €435 (LT) to €12,804,000 (FR).
220. In terms of legal persons for insider dealing: the lowest sanction imposed ranged from €2,545 (PL) to € 356,280 (IT) while the highest sanctions imposed ranged from €2,545 (PL) to €1,800,000 (IT). The total sanctions imposed by a CA in a single year ranged from €2,545 (PL) to €2,150,000 (IT).

Market manipulation

221. In terms of natural persons for market manipulation: the lowest sanction imposed ranged from €100 (FR) to €134,060 (UK) while the highest sanction imposed ranged from €405 (LT) to €1,500,000 (FR). The total sanctions imposed by a CA in a single year ranged from €575 (EE) to €4,325,000 (PT).
222. In terms of legal persons for market manipulation: the lowest sanction imposed ranged from €575 (EE) to €4,556,328 (UK) while the highest sanctions imposed ranged from €575 (EE) to €5,000,000 (PT). The total sanctions imposed by a CA in a single year ranged from €575 (EE) to €5,180,000 (PT).
223. It is recalled that circumstances of the case and legal provisions will have an impact on the amount of the sanction imposed. It also has to be kept in mind when reading the total amounts for a single year that some CAs imposed only one sanction during the year concerned.

Factors in determining pecuniary administrative sanctions

Factors that may be taken into account in determining pecuniary sanctions

224. The Commission recommended in its Communication on Sanctions that there were five factors that CAs should consider in determining sanctions. ESMA added seven factors in its response to the Commission, which it argued should be the minimum indicative key criteria for CAs to consider where relevant²⁶.
225. **Table F.12) Factors that may be taken into account according to law and established case-law and in concrete cases**

²⁶ The five factors suggested by the Commission are:

1. Seriousness of the violation
2. Amount of financial benefits derived from the violation
3. Cooperative behaviour of the author of the violation with the competent authority
4. Financial strength and/or size of the author of the violation
5. Duration of the violation

The further seven key criteria suggested by ESMA are:

1. Impact on the market in general and on consumers
2. Loss incurred by clients or those impacted
3. Extent to which the author of the violation may have taken steps to compensate those impacted by the violation
4. Degree of culpability on the part of the author of the violation
5. Repetitive nature of the violation
6. Compliance history of the author of the violation if it is a regulated entity
7. Level of responsibility/seniority of an individual

		Have to be taken into account been used	Do not have to be taken into account	N/A: CA did not answer (particularly when no concrete case during the review period or no competence)		
Criteria based on the EC Communication of 8 December 2010						
Seriousness of the violation	23	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IS, IT, LT, LU ²⁷ , LV, NL, PL, PT, RO, SI, SK, UK	0		5	DK, FI, IE, MT, NO, SE.
Amount of financial benefits	22	BE, CY, CZ, DE, EE, EL, ES, FR, HU, IS, IT, LT, LU, LV, NL, NO, PL, PT, RO, SI, SK, UK	2	AT, BG		
Cooperative behaviour	19	AT, BE, BG, CY, CZ, DE, EL, ES, HU, IS, IT, LT, LU, LV, NL, PL, PT, SI, UK	4	EE, FR, RO, SK		
Financial strength and/or size	18	AT, BE, CY, CZ, DE, ES, FR, HU, IT, LT, LU, NL, PL, PT, RO, SI, SK, UK	5	BG, EE, EL, IS, LV		
Duration	18	AT, BE, CY, CZ, DE, EE, ES, HU, IS, IT, LT, LU, LV, NL, PL, PT, SK, UK	5	BG, EL, FR, RO, SI		
Other criteria identified by ESMA in response to EC						
Impact on market and consumers	22	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IS, IT, LT, LU, LV, NL, PL, PT, RO, SK, UK	1	SI	5	DK, FI, IE, MT, NO, SE
Loss incurred by clients or those impacted	18	BE, CY, CZ, DE, ES, FR, HU, IS, IT, LT, LU, LV, NL, PL, PT, RO, SK, UK	5	AT, BG, EE, EL, SI		
Extent of steps to compensate those impacted	17	AT, BE, CY, CZ, DE, EE, ES, FR, HU, IT, LT, LU, NL, PL, PT, SI, UK	10	BG, EL, IS, LV, NO, RO, SK		

²⁷ In LU there is no predefined list of criteria to be taken into account. All relevant factors, and thus also those listed in table F12 will be taken into account when appropriate on a case by case basis.

Degree of culpability	19	AT, BE, CY, CZ, DE, EL, ES, HU, IS, IT, LT, LU, NL, PL, PT, RO, SI, SK, UK	4	BG, EE, FR, LV
Repetitive nature	19	AT, BE, BG, CY, CZ, DE, EL, ES, FR, HU, IS, IT, LT, LU, LV, NL, PL, PT, RO, SI, SK, UK	1	EE
Compliance history (if a regulated entity)	19	BE, BG, CY, CZ, DE, EL, ES, FR, HU, IT, LT, LU, LV, NL, PL, PT, RO, SI, UK ²⁸	4	AT, EE, IS, SK
Level of responsibility/seniority	19	AT, BE, CY, CZ, DE, EL, ES, FR, HU, IS, IT, LT, LU, LV, NL, PL, PT, RO, UK	4	BG, EE, SI, SK
Other	8	BE, DE, FR, IT, PT, SI, SK, UK	15	AT, BG, CY, CZ, EE, EL, ES, HU, IS, LT, LU, LV, NL, PL, RO

226. CAs were asked to indicate whether or not they were able to consider the factors listed in the questionnaire, which match those suggested by ESMA in its response to the European Commission’s Communication on sanctions as minimum indicative key criteria. Most CAs could take each of these factors into account: all of them could be taken into account by at least 17 CAs (exact composition of CAs varies depending on the particular factor). Eight CAs (BE, DE, FR, IT, PT, SI, SK, UK) indicated that they would also consider other factors.

227. Please note that two factors, namely the duration and repetitive nature, may have had different interpretations for different CAs. In some cases, duration may have been seen as being similar to repetition, where, for instance, an insider dealing was committed on more than one occasion over several days. For others, duration may have been considered not applicable to insider dealing cases, as the actual insider dealing transaction may have been considered to occur instantaneously. For others, duration may be taken into account not as such but when assessing the seriousness of the market abuse.

228. There may also have been differences in the way in which the compliance history of regulated entities was interpreted. Some CAs may have interpreted regulated entities as applying only to legal persons, (and therefore excluded natural persons here), whereas others may have considered authorised natural persons to be regulated entities.

Actual use of factors in determining pecuniary sanctions

Factors established by law or case-law

²⁸ UK responses include only legal entities here; compliance history of approved persons is thus excluded (although compliance history of the person concerned when not a legal entity is listed by UK under “other factors” in F.19).

229. **Table F.13-F.18) Factors that have been taken into account (where relevant, in at least one case) for the three lowest and three highest amounts of pecuniary sanction imposed in the course of 2008, 2009 and 2010**

Concerning the lowest sanctions:

Lowest sanctions	Used by 50% or more of CAs that imposed sanctions in the relevant year		
	2008	2009	2010
Criteria based on the EC Communication			
Seriousness of the violation	Yes (15 of 16)	Yes (16 of 16)	Yes (16 of 18)
	AT, BE, BG, CY, DE, EE, ES, FR, HU, IT, LT, NL, PL, PT, UK	AT, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IT, LT, MT, PL, PT, UK	AT, BE, BG, CY, CZ, DE, EE, ES, FR, HU, IT, NL, PL, PT, SI, UK
Amount of financial benefits	Yes (13 of 16)	Yes (13 of 16)	Yes (13 of 18)
	BE, CY, DE, EE, ES, FR, HU, IT, LT, NL, PL, PT, UK	CY, CZ, DE, EE, EL, ES, FR, HU, IT, LT, MT, PL, UK	BE, CY, CZ, DE, EE, EL, ES, FR, HU, IT, NL, PL, UK
Cooperative behavior	Yes (8 of 16) :	Yes (11 of 16)	Yes (11 of 18)
	BG, CY, DE, HU, LT, NL, PL, UK	AT, BG, CY, CZ, DE, HU, LT, MT, PL, PT, UK	AT, BE, BG, CY, CZ, DE, EL, HU, NL, PL, UK
Financial strength and/or size	Yes (8 of 16)	Yes (10 of 16)	Yes (11 of 18)
	AT, CY, DE, LT, NL, PL, PT, UK	AT, CY, CZ, DE, FR, LT, MT, PL, PT, UK	AT, BE, CY, CZ, DE, HU, NL, PL, PT, SI, UK
Duration	Yes (9 of 16)	Yes (8 of 16)	Yes (11 of 18)
	AT, CY, DE, IT, LT, NL, PL, PT, UK	CY, CZ, DE, EE, LT, MT, PL, UK	CY, CZ, DE, EE, FR, HU, NL, PL, PT, SI, UK
Further Criteria identified by ESMA			
Impact on market and consumers	Yes (13 of 16)	Yes (13 of 16)	Yes (14 of 18)
	AT, BE, BG, CY, DE, DK, HU, IT, LT, NL, PL,	AT, BG, CY, CZ, DE, EE, HU, IT, LT, MT, PL, PT,	AT, BE, BG, CY, CZ, DE, FR,

	PT, UK	UK	HU, IT, NL, PL, PT, RO, UK
Loss incurred by clients or those impacted	No (6 of 16) CY, DE, EE, NL, PL, UK	No (7 of 16) : CY, CZ, DE, MT, PL, PT, UK	No (6 of 18) CY, CZ, DE, NL, PL, UK
Extent of steps to compensate those impacted	No (3 of 16) CY, DE, PL	No (6 of 16) CY, CZ, DE, EE, MT, PL	No (4 of 18) CY, CZ, DE, PL
Degree of culpability	Yes (12 of 16) AT, BE, CY, DE, ES, HU, IT, LT, NL, PL, PT, UK	Yes (11 of 16) AT, CY, CZ, DE, HU, IT, LT, MT, PL, PT, UK	Yes (14 of 18) AT, BE, CY, CZ, DE, ES, HU, IT, NL, PL, PT, RO, SI, UK
Repetitive nature	Yes (9 of 16) BE, BG, CY, DE, EE, NL, PL, PT, UK	Yes (7 of 16) BG, CY, CZ, DE, MT, PL, UK	Yes (11 of 18) BG, CY, CZ, DE, EE, HU, IT, NL, PL, PT, UK
Compliance history (if a regulated entity)	No (6 of 16) BG, CY, EL, NL, PL, PT	No (6 of 16) BG, CY, CZ, MT, PL, PT	Yes (8 of 18) BG, CY, CZ, EL, NL, PL, PT, SI
Level of responsibility/seniority	Yes (11 of 16) : BE, CY, DE, EE, ES, HU, IT, LT, NL, PL, UK	Yes (10 of 16) : CY, CZ, DE, FR, IT, LT, MT, PL, PT, UK	Yes (14 of 18) : BE, CY, CZ, DE, EE, ES, HU, IT, NL, PL, PT, RO, SI, UK

Concerning the highest sanctions:

Highest sanctions	Used by 50% or more of CAs that imposed sanctions in the relevant year		
	2008	2009	2010
Criteria based on the EC Communication			
Seriousness of the violation	Yes (15 of 15) : AT, BG, CY, DE, EE,	Yes (16 of 16) : AT, BG, CY, CZ, DE,	Yes (17 of 18) : AT, BE, BG, CY, CZ,

	EL, ES, FR, HU, IT, LT, NL, PL, PT, UK	EE, EL, ES, FR, HU, IT, LT, MT, PL, PT, UK	DE, EE, EL, ES, FR, HU, IT, NL, PL, PT, SI, UK
Amount of financial benefits	Yes (13 of 15) : AT, CY, DE, EE, EL, ES, FR, HU, IT, LT, NL, PL, UK	Yes (12 of 16) : CY, CZ, DE, EE, EL, ES, FR, IT, LT, MT, PL, UK	Yes (12 of 18) : BE, CY, CZ, DE, EE, ES, FR, HU, IT, NL, PL, UK
Cooperative behaviour	Yes (8 of 15) : BG, CY, DE, HU, LT, NL, PL, UK	Yes (10 of 16) : AT, BG, CY, CZ, DE, HU, LT, MT, PL, UK	Yes (9 of 18) : BG, CY, CZ, DE, EL, HU, NL, PL, UK
Financial strength and/or size	Yes (9 of 15) : AT, CY, DE, EL, ES, LT, NL, PL, PT	Yes (10 of 16) : AT, CY, CZ, DE, EL, HU, LT, MT, PL, PT	Yes (10 of 18) : AT, CY, CZ, DE, ES, HU, NL, PL, PT, SI
Duration	Yes (10 of 15) : AT, CY, DE, EE, IT, LT, NL, PL, PT, UK	Yes (10 of 16) : AT, CY, CZ, DE, EE, LT, MT, PL, PT, UK	Yes (11 of 18) : BE, CY, CZ, DE, EE, IT, NL, PL, PT, SI, UK
Further Criteria identified by ESMA			
Impact on market and consumers	Yes (13 of 15) : AT, BG, CY, DE, EE, EL, HU, IT, LT, NL, PL, PT, UK	Yes (13 of 16) : AT, BG, CY, CZ, DE, EE, FR, IT, LT, MT, PL, PT, UK	Yes (15 of 18) : AT, BE, BG, CY, CZ, DE, EE, EL, FR, IT, NL, PL, PT, RO, UK
Loss incurred by clients or those impacted	No (5 of 15) : CY, DE, LT, NL, PL	No (7 of 16) : CY, CZ, DE, LT, MT, PL, UK	No (7 of 18) : CY, CZ, DE, FR, NL, PL, UK
Extent of steps to compensate those impacted	No (4 of 15) : CY, DE, EE, PL	No (6 of 16) : CY, CZ, DE, EE, MT, PL	No (6 of 18) : CY, CZ, DE, EE, HU, PL
Degree of culpability	Yes (11 of 15) : AT, CY, DE, EL, ES, HU, IT, NL, PL, PT, UK	Yes (12 of 16) : AT, CY, CZ, DE, EL, ES, HU, IT, MT, PL, PT, UK	Yes (14 of 18) : AT, BE, CY, CZ, DE, ES, HU, IT, NL, PL, PT, RO, SI, UK

Repetitive nature	Yes (9 of 15) : AT, BG, CY, DE, LT, NL, PL, PT, UK	Yes (9 of 16) : BG, CY, CZ, DE, LT, MT, PL, PT, UK	Yes (12 of 18) : BE, BG, CY, CZ, DE, EL, HU, IT, NL, PL, PT, UK
Compliance history (if a regulated entity)	No (6 of 15) : BG, CY, HU, NL, PL, PT	No (6 of 16) : BG, CY, CZ, MT, PL, PT	Yes (9 of 18) : BG, CY, CZ, HU, NL, PL, PT, SI, UK
Level of responsibility/seniority	Yes (10 of 15) : CY, DE, EL, HU, IT, LT, NL, PL, PT, UK	Yes (8 of 16) : CY, CZ, DE, EL, IT, MT, PL, UK	Yes (13 of 18) : BE, CY, CZ, DE, EL, ES, IT, NL, PL, PT, RO, SI, UK

230. The tables above show which factors were used by at least half of the CAs that imposed sanctions in each year, for both the lowest and the highest sanctions.

231. Of the 12 factors, nine factors²⁹ were actually used during the review period by at least 15 CAs for at least one of the three lowest or highest cases in at least one year. Three factors (the extent of steps to compensate those impacted, the loss incurred by clients or those impacted and compliance history, if a regulated entity) were less frequently used in practice.³⁰

²⁹ Seriousness of the violation; amount of financial benefits; cooperative behaviour; financial strength and/or size; duration; impact on market and consumers; degree of culpability; repetitive nature; level of responsibility/seniority

³⁰ It may be noted that these factors may be interpreted differently by CAs. In addition, whether or not they have actually been used in determining sanctions may also be interpreted differently. For instance, for some CAs seriousness may be judged to have been taken into account when a case is considered not to be particularly serious; however, another CA may in such a situation consider that seriousness has been a factor because whether or not the case was serious was taken into account (even if the ultimate decision was that the case was not serious).

Other factors taken into account in determining pecuniary sanctions

Table F.19) Other criteria that have been taken into account according to law or established case-law in application of the highest and lowest case of each year covered, 2008-2010

Additional factors – categories	Examples (non-exhaustive)	Nr of CAs	CAs that have considered this category of factor
Factors related to the individual offender	Age, good character, health, employment status, whether a natural or a legal person, impropriety, recklessness	6	DE, EL, FR, IT, PT, UK
Circumstances or nature of the violation	Regulatory or compliance culture at the company where abuse happened; nature, character or circumstances of the abuse; whether more than one person acting jointly; timing	7	DE, EL, FR, HU, SI, SK, UK
History/connection to other misconduct	Prior fines, relapses, compliance history (if not a legal person)	5	DE, BE, DE, EL, UK
Value, size and/or impact	Quantity and/or cost of shares involved, number of shares owned	4	DE, EL, IT, UK
Communications with the market and/or public	Channels to disseminate information, impact of information on share price	4	DE, EL, IT, UK
Motive	Motive for a person's action, whether financial profit pursued, whether deliberate	4	DE, EL, SI, UK
Preventing reoffence and/or punishing	Steps taken to avoid similar violations in the future, deterrence/need to punish	4	DE, EL, PT, UK

232. In addition to the factors listed in the questionnaire, eight CAs (BE, DE, FR, IT, PT, SI, SK, UK) indicated that they also considered additional factors, which may be grouped into the six categories in the table above (please note that these may, in some cases, overlap to some degree with the Commission and ESMA factors).

Calculation of the amount of pecuniary administrative penalty where there is no calculable profit or no personal benefit for the author of the violation

233. There is a wide range of approaches to setting the amount of the financial penalty where there is no calculable or no personal benefit for the author of the violation.

234. Responses include:

- References to non-pecuniary criteria used, such as intent or those listed in the questionnaire (AT, BE, CY, CZ, DE, EL, FR³¹, HU, IS, IT, LU, PL, PT, SK, UK)
- Reference to minimum and maximum amounts and/or mathematical calculations (BG, EE, ES, HU, LU, MT, NL, RO, SI, UK)
- Reference to previous similar decisions (IT, LT)
- Note that they have not imposed such sanctions and/or are not familiar with how it is done (LV)
- In Norway, the only administrative sanction is surrender of gain.

OTHER TYPES OF ADMINISTRATIVE SANCTIONS

Use of (non-pecuniary) administrative sanctions

235. **Table F.22.1.) Other types of administrative sanctions imposed for market abuse in the three years covered**

	Yes		No		N/A	
2008	4	CY, FI, IT, PT	22	AT, BE, BG, CZ, DE, EE ,EL, ES, FR ³² , HU, IE, IS, LT, LV, LU, MT, NL, PL, RO, SI, SK, UK	3	DK, NO, SE
2009	7	CY, FI, IT, PT, PL, SI, UK	19	AT, BE, BG, CZ, DE, EE ,EL, ES, FR, HU, IE, IS, LT, LV, LU, MT, NL, RO, SK	3	DK, NO, SE
2010	7	AT ³³ , LT, LV, FR, IT, PT, PL, SI, UK	19	BE, BG, CY, CZ, DE, EE ,EL, ES, FI, HU, IE, IS, LU, MT, NL, RO, SK	3	DK, NO, SE

236. Of the 27 CAs that could impose administrative sanctions, 11 CAs (AT, CY, FI, FR, IT, LT, LV, PL, PT, SI, UK) imposed non-pecuniary sanctions during the review period.

³¹ FR: the maximum amount provided for in the law must not be exceeded.

³² FR: Sanctions other than pecuniary sanctions may only be pronounced against financial markets professionals as listed in the relevant legal provisions of the French Monetary and Financial Code and against individuals acting under the authority or on behalf of such professionals.

³³ These non-pecuniary sanctions were two reprimands imposed within administrative penal proceedings to natural persons. Reprimands may only be imposed for minor offences.

237. Two CAs (IT, PT) imposed administrative sanctions other than pecuniary sanctions each year of the review period and eight CAs (AT, CY, FI, FR, LT, LV, SI, UK) imposed administrative sanctions other than pecuniary sanctions at least once during the review period.

238. By way of example, the following non-exhaustive list of other sanctions that have been reported by certain CAs.

239. **Table F.22.2) Types and numbers of other (non-pecuniary) sanctions imposed during the review period**

Type	Year	1	2	3	4	6	10	12	24	25
Reprimand addressed to a regulated entity	2008	CY, PT								
	2009		CY, PT							
	2010	PT	AT							
Temporary prohibition to provide financial services	2008									
	2009									
	2010	UK								
Permanent prohibition to provide financial services	2008									
	2009									
	2010					UK				
Withdrawal of licenses	2008									
	2009		PL	SI						
	2010	LT, PL			SI					
Other	2008	FI	SI				IT			
	2009		FI		UK			PT	IT	
	2010	LV, UK		FR						IT

240. It is understood that non-pecuniary sanctions may be imposed in addition to, or instead of, pecuniary sanction, so therefore the figures related to non-pecuniary sanctions listed in the table above might be higher than the figures listed in the previous section for non-pecuniary sanctions.

Factors taken into account imposing other administrative sanctions

Factors that are to be taken into account according to law or established case law

241. Of the 14 CAs which responded that factors were taken into account according to law or established case-law, at least 8 CAs indicated that each of the factors stipulated in the questionnaire (which reflect the factors identified in ESMA’s response to the Commission’s communication on sanctions), could be taken into account. There were four CAs (FR, IT, PT, UK) that indicated that they are also able to consider other factors.

242. **Table F.24) In relation to the “other sanctions” as indicated above, which factors are to be taken into account according to law or established case law (where relevant)?**

	Yes		No		N/A
Criteria based on the EC Communication					
Seriousness of the violation	15	AT, CY, DE, EE, ES, FI, FR, IT, LT, LU ³⁴ , LV, PL, PT, SI, UK	0		BE, BG, CZ, DK, EL, HU, IE, IS, MT, NL, NO, RO, SE, SK
Amount of financial benefits	12	DE, EE, ES, FI, IT, LT, LU, LV, PL, PT, SI, UK	3	AT, CY, FR	
Cooperative behaviour	10	AT, DE, ES, IT, LT, LU, LV, PL, PT, UK	5	CY, EE, FI, FR, SI	
Financial strength and/or size	8	AT, DE, ES, IT, LT, LU, PT, UK	7	CY, EE, FI, FR, LV, PL, SI	
Duration	13	AT, DE, EE, ES, FI, IT, LT, LU, LV, PL, PT, SI, UK	2	CY, FR	
Other criteria identified by ESMA in response to EC					
Impact on market and consumers	13	AT, DE, EE, ES, FI, IT, LT, LU, LV, PL, PT, SI, UK	2	CY, FR	14 BE, BG, CZ, DK, EL, HU, IE, IS, MT, NL, NO, RO, SE, SK
Loss incurred by clients or those impacted	10	DE, ES, IT, LT, LU, LV, PL, PT, SI, UK	5	AT, CY, EE, FI, FR	
Extent of steps to compensate those impacted	9	AT, DE, EE, ES, IT, LU, PL, PT, UK	6	CY, FI, FR, LT, LV, SI	
Degree of culpability	10	AT, DE, ES, FI, IT, LU, LV, PL, PT, UK	5	CY, EE, FR, LT, SI	
Repetitive nature	11	AT, DE, ES, FI, IT, LU, LV, PL, PT, SI, UK	4	CY, EE, FR, LT	
Compliance history (if a regulated entity)	9	DE, ES, IT, LU, LV, PL, PT, SI, UK	6	AT, CY, EE, FI, FR, LT	
Level of responsibility/seniority	12	AT, DE, ES, FI, FR, IT, LT, LU, LV, PL, PT, UK	3	CY, EE, SI	
Other	4	FR, IT, PT, UK	10	CY, DE, EE, ES, FI, LT, LU, LV, PL, SI	

Factors that have been taken into account by the CA in the years covered 2008-2010

243. Of the 12 factors, four factors (seriousness of the violation; duration; impact on market and consumers; and level of responsibility/seniority) were actually used during the review period by at least seven of the 11 CAs (CY, EE, FI, FR, IT, LT, LV, PL, PT, SI, UK) that had relevant cases during the review period.

244. **Table F.25) In relation to the “other sanctions” as indicated above, which of the following factors have been taken into account by the administrative authority in the years covered 2008-2010?**

	Yes		No		N/A
Criteria based on the EC Communication					

³⁴ In LU there is no predefined list of criteria to be taken into account. All relevant factors, and thus also those listed in table F24 will be taken into account when appropriate on a case by case basis.”

Seriousness of the violation	12	AT, CY, EE, FI, FR, IT, LT, LV, PL, PT, SI, UK	0		17	BE, BG, CZ, DE, DK, EL, ES, HU, IE, IS, LU, MT, NO, NL, RO, SE, SK
Amount of financial benefits	3	EE, IT, UK	8	CY, FI, FR, LT, LV, PL, PT, SI		
Cooperative behaviour	1	UK	10	CY, EE, FI, FR, IT, LT, LV, PL, PT, SI		
Financial strength and/or size	2	PT, UK	9	CY, EE, FI, FR, IT, LT, LV, PL, SI		
Duration	7	EE, IT, LV, PL, PT, SI, UK	4	CY, FI, FR, LT		
Other criteria identified by ESMA in response to EC						
Impact on market and consumers	7	EE, FI, IT, LV, PL, PT, UK	4	CY, FR, LT, SI	17	BE, BG, CZ, DE, DK, EL, ES, HU, IE, IS, LU, MT, NO, NL, RO, SE, SK
Loss incurred by clients or those impacted	2	PL, UK	9	CY, EE, FI, FR, IT, LT, LV, PT, SI		
Extent of steps to compensate those impacted	1	EE	10	CY, FI, FR, IT, LT, LV, PL, PT, SI, UK		
Degree of culpability	5	AT, FI, IT, PT, UK	7	CY, EE, FR, LT, LV, PL, SI		
Repetitive nature	4	IT, PL, PT, UK	7	CY, EE, FI, FR, LT, LV, SI		
Compliance history (if a regulated entity)	1	PT	10	CY, EE, FI, FR, IT, LT, LV, PL, SI, UK		
Level of responsibility/seniority	7	FI, FR, IT, LT, PT, SI, UK	4	CY, EE, LV, PL		
Other	3	IT, PT, UK	8	CY, EE, FI, FR, LT, LV, PL, SI		

245. **Table F.26) Additional factors considered when imposing other sanctions**

Additional factors – categories	Examples (non-exhaustive)	Nr of CAs	CAs that have considered this category of factor
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Factors related to the individual offender	Good character, whether a natural or a legal person, impropriety, recklessness, unfitness	3	IT, PT, UK
Circumstances or nature of the violation	Active concealing of actions, acting without authority, entering into unauthorised transactions	2	PT, UK
Preventing reoffence and/or punishing	Deterrence, furthering public awareness, maintaining confidence in the financial system	2	PT, UK
Value, size and/or impact	Quantity and importance of financial instruments and markets involved, number of shares owned, amounts invested in the market abuse	2	IT, UK
Communications with the market and/or public	Channels to disseminate information, impact of information on share price	2	IT, UK

246. As was also the case with pecuniary sanctions, in addition to the 12 factors listed in the questionnaire, three (IT, PT, UK) CAs indicated that they also applied additional factors when imposing non-pecuniary administrative sanctions. The other factors used by the three relevant CAs (IT, PT, UK) can be grouped into the categories in the table above. Please note that these may in some cases overlap to some degree with Commission and ESMA factors. The most commonly considered other factors used related to the individual offender.

EVIDENCE / STANDARD OF PROOF

247. If in an insider dealing case there is “direct” evidence that someone was in possession of the privileged information ahead of a person’s transactions (e.g. because there are phone recordings or e-mails establishing it), this may be considered in some Member States that there is a tangible proof that the person possessed this inside information before trading on the market.

Circumstantial Evidence

248. In the absence of tangible proof as defined above of market abuse, 23 CAs (AT, BE, CY, CZ, DE, EE, EL, ES, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SI, UK) were able to use serious, specific and convergent evidence. One CA (PL)³⁵ indicated that it was not able to use such evidence.

249. **Table F.27/28) Possibility to use of a body of serious, specific and convergent evidence to prove the case in the absence of tangible proof**

YES	AT, BE, BG, CY, CZ, DE, EE, EL ³⁶ , ES, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SI, UK	24
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³⁵ The questionnaire asked virtually identical questions at F.27 and F.28; in most cases, responses to both questions were the same. F.28 differed from F.27 in that it did not include the pre-text: “Evidence/standard of proof - For example, if in an insider dealing case there is “direct” evidence that someone was in possession of the privileged information ahead of a persons transactions (e.g. because there are phone recordings or e-mails establishing it), it may be considered in some Member States that there is a tangible proof that the person possessed this inside information before trading on the market.” One CA (PL) clarified that its responses to F.27 and F.28 varied because the type of proof necessary to impose an administrative sanction for specific cases of insider dealing (information manipulation by a non-journalist, trading in closed periods by primary insiders, transaction reports by PDMR) differs from the level of intent described in question F. 27 due to national regulations. Thus, the “no” response from PL only applies when this pre-text is not considered.

NO	PL, SK	2
N/A	DK, FI, SE	3

Requirement of intent

250. 24 CAs (AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HU, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, UK) indicated that intent was not a requirement to prove a wrongdoing within administrative sanction proceedings. One CA (EE) required intent to prove a wrongdoing. It should be noted, however, that the questionnaire did not include a specific definition of intent³⁷.

251. **Table F.29) The requirement of intent to prove wrongdoing**

YES	EE	1
NO	AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HU, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK	25
N/A	DK, IE, SE	3

³⁶ In EL in order to establish a market abuse case the competent investigators apart from analysing the details of all the transactions involved, gather any evidence available, including telephone conversations, contact details, even bank account details and transactions to establish whether there are any connections among the persons involved. For the same purpose, the competent investigators may summon persons involved for an official testimony in the premises of the HCMC. A market abuse case is based on details of transactions, which provide conclusive evidence. To prove the case other additional serious convergent evidence may also be used.”

³⁷ Although in Estonia intent is required to prove the wrongdoing, it is not required to prove deliberate intent or direct intent, but proving the indirect intent also meets the requirement to prove the intent. Penal Code Art. 16)

Major findings

252. ESMA stressed the need for CAs to be able to take administrative measures or impose sanctions on those who do not comply with the relevant provisions of EU Directives to allow them to effectively perform their tasks.

Availability of pecuniary sanctions

253. Legislative or in some cases, constitutional provisions/principles may limit the minimum or maximum fines available in the Member States. Since the CESR mapping of 2007 on the powers available to CAs under MAD, there has been an increase in the maximum amount available when imposing a pecuniary sanction in eight Member States (AT, ES, FR, HU, NL, PT, LT, LU). For the CAs that have a maximum limit when imposing pecuniary sanctions in relation to market abuse, the maximum amounts available in 2010 when imposing sanction ranged from € 1,200 (EE) to €25,000,000 (increasable up to three times or up to the higher amount of ten times the profit of the offence) (IT).

254. Concerning minimum amounts, 10 CAs (CY, CZ, FR, IE, LV, MT, NL, NO, PL, UK) had no minimum amount for insider dealing sanctions while 11 CAs (CY, CZ, ES, FR, IE, LV, MT, NL, NO, PL, UK) had no minimum amount for market manipulation in the review period. Seven CAs (DE, EE, FI, HU, IS, LU, SK) have minimum amounts below €1,000 for insider dealing; eight CAs (AT, DE, EE, FI, HU, IS, LU, SK) have minimum amounts below €1,000 for market manipulation; one CA (IT) has a minimum amount above €100,000 for both insider dealing and market manipulation.

Sanctions imposed

255. Overall, there have been 23 CAs that imposed administrative sanctions in relation to market abuse during the review period. The number of CAs that have actually imposed administrative sanctions in the review period is relatively higher in regard to natural persons than to legal persons.

At the same time, five CAs (IE, IS, LU, NO, SK) did not impose any administrative sanctions during this same period.

- IE stated that this is because gathering sufficient evidence of probative value in order to prosecute an insider dealing or a market manipulation offence is very intricate and time consuming. This is particularly the case for market manipulation offence under MAD as the Central Bank would have to prove a causal link between the suspected manipulative behaviour and the movement in the share price.
- IS launched one procedure that ended in the discharge of the legal person concerned. IS considers that due to the small size of its markets, there were few market abuse cases that were concluded during the period. All cases pertaining to market abuse are referred to the Special Prosecutor for further investigation and criminal procedure if applicable.
- LU introduced administrative fines for insider dealing and market manipulation when amending its Law relative to market abuse on 26 July 2010. As the new provisions are only applicable to facts that happened after the amendment, there were no administrative fines imposed by the CSSF during the review period of this mapping

exercise.

- In NO the CA has the power to order surrender of gain obtained from market abuse. However, serious breaches of the regulation regarding insider dealing and market manipulation are reported to the criminal authorities for prosecution. All the cases where evidence for market abuse was established during the period concerned were considered as serious cases and were reported to the criminal authorities for prosecution.
- SK launched a procedure that ended in the discharge of the person concerned. In addition, SK considers that the lack of market abuse cases is due to the small size of its market.

256. Concerning insider dealing, the following CAs imposed sanctions on natural persons: in 2008 – 13 CAs (BE, BG, CY, EL, ES, FI, FR, HU, IT, LT, NL, PL, UK); in 2009 – 12 CAs (BG, CZ, EL, ES, FI, FR, IT, LT, MT, PL, PT, UK) in 2010 – 11 CAs (BE, CY, EL, ES, FR, HU, IT, LT, NL, PL, UK) and the following CAs imposed sanctions on legal persons: in 2008 – three CAs (EL, FR, IT); in 2009 five CAs (ES, FR, IT, LT, PT); in 2010 four CAs (EL, ES, IT, PL). Seven CAs (EL, ES, FR, IT, LT, PL, UK) imposed sanctions on natural persons for insider dealing in all three years and one CA (IT) imposed sanctions on legal persons for insider dealing in all three years.

257. Concerning market manipulation, the following CAs imposed sanctions on natural persons: in 2008 – 10 CAs (AT, BG, CY, DE, EL, ES, FR, LT, PT, UK); in 2009 – 14 CAs (AT, BG, CY, DE, EE, EL, FI, FR, IT, LT, PL, PT, SI, UK); in 2010 17 CAs (AT, BE, BG, CY, DE, EE, EL, FR, HU, IT, LV, NL, PL, PT, RO, SI, UK) and the following CAs imposed sanctions on legal persons: in 2008 7 CAs (BG, EE, EL, FR, HU, LT, PT); in 2009 10 CAs (CY, CZ, EE, EL, FR, HU, IT, LT, NL, PT); in 2010 10 CAs (BG, CY, CZ, EE, EL, FR, HU, NL, SI, UK). Eight CAs (AT, BG, CY, DE, EL, FR, PT, UK) imposed sanctions on natural persons for market manipulation in all three years. Four CAs (EE, EL, FR, HU) imposed sanctions on legal persons for market manipulation in all three years.

Administrative pecuniary sanctions

258. During the period, the minimum penalty amount that was imposed against a natural person was €64 (EE) in relation to insider dealing and €100 (FR) for market manipulation. The minimum penalty amount imposed on legal persons was respectively of €2,545 (PL) for insider dealing and €575 (EE) for market manipulation.

259. The maximum penalty amount that was imposed on a natural person was €6,000,000 (CY) in relation to insider dealing and €1,500,000 (FR) for market manipulation. The maximum imposed on legal persons was respectively of €1,800,000 (IT) for insider dealing and €5,000,000 (PT) for market manipulation. In the review period, there were eight CAs (CY, HU, ES, FR, EL, IT, PT, UK) that imposed at least one sanction higher than €1,000,000, mostly against natural persons for insider dealing.

260. In its Response to the EC, ESMA identified 12 key indicative criteria/factors to be used where relevant by CAs to determine the type and level of sanctions. While all these factors were used in determining pecuniary administrative sanctions during the review period nine factors that were widely used were 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 the level of responsibility/seniority. The extent of steps to compensate those impacted, the loss incurred

by clients or those impacted and compliance history, if a regulated entity were less frequently used in practice.

Non pecuniary administrative sanctions

261. Non-pecuniary sanctions were imposed by 11 CAs (AT, CY, FI, FR, IT, LT, LV, PL, PT, SI, UK) during the review period. The types of non-pecuniary sanctions imposed varied. Those that were reported by more than one CA are:

- Reprimand addressed to a regulated entity - two CAs (CY, PT)
- Reprimand/warning on natural persons - four CAs (AT, FI, FR, SI)
- Temporary disqualification of natural persons - two CAs (IT, PT)
- Withdrawal of licenses - three CAs (LT, PL, SI)

Evidence/Standards of Proof

262. In the absence of tangible proof of market abuse, 23 CAs (AT, BE, CY, CZ, DE, EE, EL, ES, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SI, UK) were able to use serious, specific and convergent evidence. One CA (PL) indicated that it was not able to use such evidence. 24 CAs (AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HU, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, UK) indicated that intent was not a requirement to prove a wrongdoing within administrative sanction proceedings. One CA (EE) required intent to prove a wrongdoing. It should be noted, however, that the no specific definition of intent was provided in the questionnaire.

VII. CRIMINAL SANCTION DECISIONS TAKEN BY JUDICIAL AUTHORITIES

263. As a context to this section it should be noted that ESMA dealt with the question of criminal sanctions for the most serious violations in the financial services sector in its response to the European Commission's Communication on sanctioning regimes: "ESMA notes the Commission's considerations on the possible introduction of criminal sanctions for specific violations in that criminal sanctions may be particularly dissuasive due to their severity and social stigma associated with them. However, ESMA would like to indicate that criminal sanctions may also have disadvantages that should be taken into account when assessing their effectiveness to ensure regulatory compliance and enforcement."
264. Article 14 of the MAD obliges Member States to ensure that appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions implementing the Directive have not been complied with. Member States under the existing Directive maintain the right (and they do not have an obligation) to impose also criminal sanctions, however no harmonisation is provided in this respect. As far as possible, this report attempts to give information in areas which are not covered by the Directive or not harmonised under the Directive.
265. This section provides an overview of sanctions imposed in Member States by first level judicial courts on the grounds of market abuse within the framework of criminal proceedings. Given that criminal sanctions are in general outside of CAs' competencies, it is important to highlight at this stage that the information has been collected on the basis of information available at the CAs in relation to criminal sanctioning, which might in some cases not be exhaustive. Beside obtaining a first picture of decisions taken by courts in the framework of criminal proceedings, this section also considers how far CAs are able to and actually follow the decisions taken on the grounds of market abuses by criminal courts, i.e. how many of the CAs have easily accessible information about the criminal proceedings on-going in their Member State.
266. In the first part of this section, the powers of Member States' judicial authorities to apply criminal sanctions to cases of market abuse are presented. This information sets the context and clarifies which Member States have the ability to use the criminal sanctions.
267. Given the different level of available information at the CAs, the actual use of criminal sanctions is presented under three separate headings. The first heading presents the information on decisions taken by courts on market abuse cases originated and dealt with from the outset by judicial authorities within the framework of criminal proceedings. The second heading presents the cases where there is a possibility for the CA to criminally prosecute market abuse cases in front of judicial courts within the framework of criminal proceedings. Finally, the last heading provides more detailed information about decisions taken by the courts on market abuse cases within the framework of criminal proceedings for cases originated by the CA.
268. When providing the data Member States used various approaches to calculate the number of decision to be taken into account.
269. Most CAs (AT, BE, CY, DK, EL, ES, FR, HU, IE, IS, LV, MT, NL, NO, PL, PT, SE, SI, UK) provided data on the basis that this section was interpreted as a way to reflect the activity of first level judicial courts in *pronouncing* sanctions for each of the year 2008, 2009 and 2010. As a result, figures as to the amount of sanctions or the number of persons sanctioned or discharged were taken from the decisions *handed down* by the first level judicial courts in charge of pronouncing sanctions, regardless whether these decisions had become final or had been reviewed on appeals when applicable. On the other hand, some Member States (DE, EE, FI) took the approach, for the purposes this section, to consider decisions of sanctions taken by first level judicial courts only if they were final and therefore,

statistics provided may include amendments resulting from appeal court decisions when applicable (e.g. reduction of the amount of the financial penalty).

POSSIBILITY FOR MEMBER STATES TO APPLY CRIMINAL SANCTIONS TO MARKET ABUSE VIOLATIONS

270. The possibility to criminally sanction market abuse violation might depend on whether the person involved is a natural person or a legal person.

271. Table G.1) - Possibility for market abuse to give rise to criminal sanctions for a natural person/ for a legal person?

	Market abuse can give rise to criminal sanctions (Yes)	Market abuse can not give rise to criminal sanctions (No)
For Natural person	28 (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK)	1 (BG)
For Legal person	20 (AT, BE, CY, DK, EE, ES, FI, FR, HU, IE, IS, IT, LT, LV, MT, NL, NO, RO, SI, SK, UK)	9 (BG, CZ, DE ³⁸ , EL, LU, PL, PT, SE)

272. In all Member States, but one (BG), market abuse can entail a criminal offence and can give rise to criminal sanctions. In 21 Member States (AT, BE, CY, DK, EE, ES, FI, FR, HU, IE, IS, IT, LT, LV, MT, NL, NO, RO, SI, SK, UK), market abuse can give rise to criminal sanctions for both natural persons and legal persons. In seven Member States (CZ, DE, EL, LU, PL, PT, SE), market abuse can give rise to criminal sanctions only for a natural person. In AT market manipulation is a criminal offence only if the same facts constitute fraud. In HU only insider dealing is a criminal offence. In EL the representatives of the legal person can be criminally sanctioned for the actions of the legal person that gives grounds to criminal sanctions.

273. To recall from previous sections, in two Member States (DK, SE), criminal sanctions are the only way of proceeding against cases of market abuse as these Member States do not apply administrative sanctioning for these offences. One of the relevant CAs (SE) stated that it does not have an easy access to information about decisions taken by the judicial authorities.

CASES ORIGINATED AND DEALT WITH FROM THE OUTSET BY JUDICIAL AUTHORITIES

274. This section provides an overview about the decisions taken in the review period by criminal courts on market abuse cases originated and dealt with from the outset by judicial authorities. As information has been gathered to this survey through the CAs of Member States, the data and the

³⁸ While it is true to say that under German law, there are no criminal sanctions applicable to legal entities, nevertheless in the course of criminal proceedings, criminal courts may impose administrative fines of up to €1,000,000 on legal entities, if a criminal offence committed by a natural person is legally attributable to the legal entity (e.g., if the offender, when committing the offence, has been in an executive position within the legal entity and the infringement has led to an economic benefit to the entity). For the purposes of disgorgement of benefits obtained from the offence, the maximum amount may be exceeded.

conclusions of this section must be read with the understanding that they are only based on information available to the CAs.

Access to information on decisions taken by criminal Courts in relation to market abuse cases

275. **Table G.4) - Access to information about the decisions taken by criminal courts in relation to market abuse cases that were originated by and dealt with by judicial authorities within the framework of criminal proceedings**

Does the administrative authority have any easily accessible information about the decisions taken by criminal courts in relation to market abuse cases that were originated by and dealt with by judicial authorities within the framework of criminal proceedings?		
YES	AT, DE, DK, EE, EL, FI, IE, IS, LT, LU, MT, NL, NO, PL, PT, UK	16
NO	BE, CY, CZ, ES, FR, HU, IT, LV, RO, SE, SI, SK	12
N/A	BG	1

276. Sixteen CAs (AT, DE, DK, EE, EL, FI, IE, IS, LT, LU, MT, NL, NO, PL, PT, UK), have easy access to information about the decisions taken by criminal courts in relation to market abuse cases that were originated by and dealt with by judicial authorities within the framework of criminal proceedings. A substantial number of CAs (12) responded that cannot easily access such information. Among these, BE specified that to its knowledge, one natural person only had been sanctioned by a criminal court for market abuse, in 2008.

Natural and legal persons concerned by court decisions in the review period

General findings

277. On the basis of information available in the CAs, the table below presents the findings on the decisions taken by criminal courts originated and dealt with from the outset by judicial authorities.

278. **Table G.5.1.) Natural persons/individuals and legal persons sanctioned/discharged by court decisions for cases originated by the judicial authorities (among Member States where information is easily accessible to the CA)**

	Number of Member States that imposed at least one criminal sanction in the following years				Number of Member States where there were at least one person discharged in criminal proceedings in the following years			
	2008	2009	2010	2008-2010	2008	2009	2010	2008-2010
Insider dealing – natural persons	3 (DK, NL, NO)	2 (DK, NO)	4 (DK, EL, NL, NO)	4 (DK, EL, NL, NO)	2 (EL, NL)	1 (NL)	2 (EL, NL)	2 (EL, NL)

Market manipulation – natural persons	2 (DK, NO)	3 (DK, EE, IS)	2 (DK, EL)	5 (DK, EE, EL, NO, IS)	0	2 (EE, EL)	0	2 (EE, EL)
Insider dealing – legal persons	0	0	0	0	0	0	0	0
Market manipulation – legal persons	1 (DK)	0	0	1 (DK)	0	0	0	0

279. In relation to criminal sanctioning of insider dealing by natural persons, out of 16 CAs with easy access to information, four CAs (DK, EL, NL, NO) that had information about at least one case where judicial authorities have decided on an insider dealing case during the review period. For criminal sanctioning of natural persons in market manipulation cases, there have also been five Member States (DK, EE, EL, NO, IS) where such decisions were taken.

280. Concerning legal persons, among the 10 responding CAs where such power is available, one CA (DK) reported cases where the judicial authorities have taken sanctioning decisions.

281. In six (DK, EE, EL, IS, NL, NO) out of the above 16 Member States, judicial authorities originated and dealt with criminal proceedings for market abuse toward natural persons and/or legal persons in at least one of the three years covered by the survey. In one Member State (DK) judicial authorities took sanctioning decisions in relation with proceedings that they had originated for market abuse every year of the review period. In one of the Member States (DK) concerned, there are no administrative sanctioning proceedings available for market abuse.

Decisions in relation to insider dealing - natural persons

282. In particular, there were natural persons concerned by criminal proceedings for insider dealing in four Member States (DK, EL, NL, NO) in 2008, in three Member States (DK, NL, NO) in 2009 and in four Member States (DK, EL, NL, NO) in 2010. The total number of natural persons concerned was equal to 13 persons in 2008 (of which ten were sanctioned and four discharged), four persons in 2009 (of which three were sanctioned and one discharged) and eight persons in 2010 (of which six were sanctioned and two discharged).

283. **Table G.5.2.) Insider dealing: number of natural persons concerned by court decisions for cases originated by the judicial authorities (among Member States where information is easily accessible to the CA)**

		None	1 to 5	6 or more
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2008	Sanctioned	AT, DE, EE, FI, IE, IS, LT, LU, MT, PL, PT, UK	DK(4), NL(3), NO(3)	-
	Discharged	AT, DE, EE, FI, IE, IS, LT, LU, MT, PL, PT, UK	EL(2), NL(1)	-
2009	Sanctioned	AT, DE, EE, EL, FI, IE, IS, LT, LU, MT, PL, PT, UK	DK(2), NO(1)	-
	Discharged	AT, DE, EE, EL, FI, IE, IS, LT, LU, MT, PL, PT, UK	NL (1)	-
2010	Sanctioned	AT, DE, EE, FI, IE, IS, LT, LU, MT, PL, PT, UK	DK(2), EL(3), NO (1)	-
	Discharged	AT, DE, EE, FI, IE, IS, LT, LU, MT, PL, PT, UK	EL (1), NL (1)	-

Decisions in relation to market manipulation - natural persons

284. As regards market manipulation, there were natural persons concerned by criminal proceedings in 2 Member States (DK, NO) in 2008, in four Member States (DK, EE, EL, IS) in 2009 and in two Member States (DK, EL) in 2010. The total number of natural persons concerned was equal to 18 persons in 2008 (of which none was discharged), 20 persons in 2009 (of which 17 were sanctioned and 3 discharged) and 9 persons in 2010 (of which none was discharged).

285. **Table G.5.3.) Market manipulation: number of natural persons concerned by court decisions for cases originated by the judicial authorities (among Member States where information is easily accessible to the CA)**

		None	1 to 5	6 or more
2008	Sanctioned	AT, DE, EE, EL, FI, IE, IS, LT, LU, MT, NL, PL, PT, UK	NO (3)	DK (15)
	Discharged	AT, DE, EE, EL, FI, IE, IS, LT, LU, MT, NL, PL, PT, UK	-	-

2009	Sanctioned	AT, DE, FI, IE, LT, LU, MT, NL, NO, PL, PT, UK	EE (3), IS (2)	DK (12)
	Discharged	AT, DE, FI, IE, LT, LU, MT, NL, NO, PL, PT, UK	EE (2), EL (1)	-
2010	Sanctioned	AT, DE, EE, FI, IE, IS, LT, LU, MT, NL, NO, PL, PT, UK	DK (3)	EL (6)
	Discharged	AT, DE, EE, FI, IE, IS, LT, LU, MT, NL, NO, PL, PT, UK	-	-

Decisions in relation to insider dealing – legal persons

286. Market abuse can give rise to criminal sanctions also for legal persons in 10 (AT, DK, EE, FI, IS, LT, MT, NL, NO, UK) of the 16 Member States which reported information on criminal proceedings originated by the judicial authority. In these ten Member States, no legal person was concerned by criminal proceedings for insider dealing in 2008 and 2010.

287. **Table G.5.4.) Insider dealing: number of legal persons concerned by court decisions for cases originated by the judicial authorities (among Member States where information is easily accessible to the CA)**

		None	1 to 5	6 or more
2008	Sanctioned	AT, DK, EE, FI, IS, LT, MT, NL, NO, UK	-	-
	Discharged	AT, DK, EE, FI, IS, LT, MT, NL, NO, UK	-	-
2009	Sanctioned	AT, DK, EE, FI, IS, LT, MT, NL, NO, UK		-
	Discharged	AT, DK, EE, FI, IS, LT, MT, NO,	-	-

		UK		
2010	Sanctioned	AT, DK, EE, FI, IS, LT, MT, NL, NO, UK	-	-
	Discharged	AT, DK, EE, FI, IS, LT, MT, NL, NO, UK	-	-

Decisions in relation to market manipulation – legal persons

288. As regards market manipulation, only in 1 Member State (DK) of 10, there were legal persons concerned by criminal proceedings in 2008 and 2009. The total number of legal persons concerned was equal to 5 entities in 2008 (out of which 2 were sanctioned and 3 discharged) and 1 entity discharged in 2009. No legal person was concerned by criminal proceedings for market manipulation in 2010.

289. **Table G.5.5.) Market manipulation: number of legal persons concerned by court decisions for cases originated by the judicial authorities (among Member States where information is easily accessible to the CA)**

		None	1 to 5	6 or more
2008	Sanctioned	AT, EE, FI, IS, LT, MT, NL, NO, UK	DK (2)	-
	Discharged	AT, EE, FI, IS, LT, MT, NL, NO, UK	-	-
2009	Sanctioned	AT, EE, FI, IS, LT, MT, NL, NO, UK	-	-
	Discharged	AT, EE, FI, IS, LT, MT, NL, NO, UK	-	-
2010	Sanctioned	AT, DK, EE, FI, IS, LT, MT, NL, NO	-	-

		UK		
	Discharged	AT, DK, EE, FI, IS, LT, MT, NL, NO, UK	-	-

CASES CRIMINALLY PROSECUTED BY CAS IN FRONT OF JUDICIAL CRIMINAL COURTS

290. Some CAs have the ability to criminally prosecute market abuse cases in front of judicial courts within the framework of criminal proceedings. This means that the cases are originated by CAs and then prosecuted in front of judicial criminal courts.

291. **Table G.6) - Ability of the administrative authority to criminally prosecute market abuse cases in front of judicial courts within the framework of criminal proceedings**

Can the administrative authority criminally prosecute market abuse cases in front of judicial courts within the framework of criminal proceedings?		
YES	EL, IE, PL, UK	4
NO	AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK	24

292. There are four CAs that have the power to criminally prosecute market abuse cases in front of judicial courts within the framework of criminal proceedings (EL, IE, PL, UK). These CAs provided details on the persons prosecuted for market abuse in relation to each year covered by the review period, as follows. In three of these CAs (EL, IE, PL) market abuse cannot give rise to criminal sanctions for legal persons, therefore only one CA (UK) can prosecute legal persons for criminal market abuse violations.

	CAs that prosecuted natural/legal persons (and the number of persons sanctioned)			CAs that prosecuted natural/legal persons (and the number of persons discharged)		
	2008	2009	2010	2008	2009	2010
Insider dealing – natural persons		UK (4)	EL(3), UK(2)	EL (2)		EL(1), PL(1), UK(3)
Market manipulation – natural persons			EL (6)		EL (1)	PL (1)

Insider dealing – legal persons						
Market manipulation – legal persons						

293. **Table G.7.) CAs that prosecuted natural/legal persons and the number of persons sanctioned/discharged**

294. As regards insider dealing violations, two natural persons were prosecuted (and discharged) in 2008, four natural persons were prosecuted (and sanctioned) in 2009 and ten natural persons were prosecuted in 2010 (out of which five were sanctioned and five discharged). No legal person was prosecuted for insider dealing in the review period.

295. As regards market manipulation violations, no natural person was prosecuted in 2008, one natural person was prosecuted (and discharged) in 2009 and seven natural persons were prosecuted in 2010 (of which six were sanctioned and one discharged). No legal person was prosecuted for market manipulation in the review period.

CASES ORIGINATED BY THE CAS AND THEN TRANSMITTED TO CRIMINAL COURTS

296. Depending on the national legal system, the CA transmits certain or all cases of market abuses to the judicial authorities. This transmission is largely determined by legislation and by different factors such as the investigative powers allocated to the CA, whether the transmission is done on an automatic basis, etc. For example, some CAs are under an obligation to transmit all cases to the criminal prosecutor, for instance because in their jurisdiction there are not administrative sanctions proceedings for market abuse violations (SE, DK).

OVERVIEW OF SANCTION DECISIONS

Number of cases transmitted by the CAs to the judicial authorities

297. **Table G.8) – Number of cases transmitted by the CA to the judicial authorities within the framework of criminal proceedings**

	None	1 to 20	21 to 50	51 to 100	Above 100
2008	CY, IE, IS, LT, LU, MT, RO, SK, UK	AT(1), BE(1), CZ(1), EE(1), EL(2), ES(1), FI(5), FR(20), HU(1), IT(6), LV(1), NL(11), NO(6), PT(4), SI(1)	DK(34), PL(24)	DE (59)	SE (304)
2009	CZ, ES, FI, HU, IE, LU, MT, SK, UK	AT(4), BE(6), CY(1), EE(4), EL(1), FR(16), IS(13), IT(7), LT(2), LV(2), NL(4), NO(7), PT(3), RO(2), SI(2)	DK(35), PL(26)	DE(88)	SE(262)
2010	HU, IE, LT, MT, SK, UK	AT(1), BE(2), CY(3), CZ(1), EE(1), EL(10), ES(10), FI(2), FR(16), IS(6), IT(8), LU(3), LV(2), NL(3), NO(5), PL(12), PT(4), RO(2), SI(2)		DK(66), DE(72)	SE(249)

298. 15 CAs (AT, BE, DE, DK, EE, EL, FR, IT, LV, NL, NO, PL, PT, SE, SI) reported cases of market abuse to the judicial authorities cases of market abuse in all the three years covered by the review period. Nine CAs (CY, CZ, ES, FI, HU, IS, LT, LU, RO) reported cases in at least one of the three years. Four (IE, MT, SK, UK) CAs did not report any case in the period. The number of cases reported to the judicial authorities by each CA varies from 1 case to 304 cases in 2008, from 1 case to 262 cases in 2009 and from 1 case to 249 cases in 2010.

299. This data seems to confirm the diversity existing in the national legal systems for the transmission of information from the CA to the judicial authorities for criminal proceedings in relation to market abuse.

Access to information on decisions taken by judicial courts on the cases referred to them by the CAs

300. **Table G.9) – Access to information about the decisions taken by the criminal courts on the cases that were referred to them by the administrative authority on market abuse cases**

Does the administrative authority have any easily accessible information about the decisions taken by the criminal courts on the cases that were referred to them by the administrative authority on market abuse cases?		
YES	AT, DE, DK, EE, EL, FI, FR, IE, IS, LU, MT, NL, NO, PL, PT, SK, UK	17
NO	BE, CY, CZ, ES, HU, IT, LT, LV, RO, SE, SI	11
N/A	BG	1

301. Seventeen CAs have an easy access to information about the decisions taken by criminal courts on the market abuse cases that were referred to them by the CAs³⁹.

General findings

302. **Table G.10.1.) Number of Member States that imposed at least one criminal sanction/discharged at least one person in criminal proceedings**

	Number of Member States that imposed at least one criminal sanction in the following years				Number of Member States where there was at least one person discharged in criminal proceedings in the following years			
	2008	2009	2010	2008-2010	2008	2009	2010	2008-2010
Insider dealing – natural persons	8 (DE, DK, FI, FR, NL, NO, PL, PT)	5 (DE, DK, FI, NO, PT)	7 (DE, DK, EL, FI, FR, NL, NO, PL)	9 (DE, DK, EL, FI, FR, NL, NO, PL, PT)	6 (DE, DK, EL, FI, LV, NL)	6 (AT, DE, DK, FI, FR, NL)	3 (AT, DE, DK, EL, FI, FR, LU, NL, PL)	9 (AT, DE, DK, EL, FI, FR, LU, NL, PL)
Market manipulation – natural persons	5 (DE, DK, FR, NO, PL)	7 (DE, DK, FR, IS, NO, PL, PT)	6 (DE, DK, EL, FR, NO, PL)	8 (DE, DK, EL, FR, IS, NO, PL, PT)	2 (DE, DK)	4 (DE, DK, EL, SK)	4 (DE, DK, FR, PL)	6 (DE, DK, EL, FR, PL, SK)
Insider dealing	1 (NO)	2 (FI, NO)	1 (FI)	2 (FI, NO)	0	1 (FI)	0	1

³⁹ 1 CA (IT) specified that, although it does not have easy access to detailed information related to criminal proceedings, it has the following aggregated figures:

- 8 criminal proceedings were ended in 2008;
- 2 criminal proceedings were ended in 2009;
- 3 criminal proceedings were ended in 2010.

– legal persons		NO)		NO)				(FI)
Market manipulation – legal persons	1 (DK)	1(NO)	1(NO)	2 (DK, NO)	1 (DK)	1 (DK)	1 (FR)	2 (DK, FR)

303. In 10 (DE, DK, EL, FI, FR, IS, NL, NO, PL, PT) of the above 18 Member States, there were natural persons and/or legal persons concerned by criminal proceedings for market abuse in at least 1 of the three years of the review period. In the remaining five Member States, no natural or legal person was concerned by criminal proceedings for market abuse in cases transmitted by the CA to judicial authorities in the review period.

Decisions in relation to insider dealing – natural persons

304. **Table G.10.3.) Insider dealing: number of natural persons concerned by court decisions in cases transmitted by the CA (in Member States where information is easily accessible to the CA)**

		None	1 to 9	10 or more
2008	Sanctioned	AT, EE, IE, IS, LU, MT, SK, UK	DE (5), DK (4), FI (2), FR (2), NL (2), NO (3), PL (2), PT (2)	
	Discharged	AT, EE, IE, IS, LU, MT, PL, SK, UK	DK (14), EL (2), FI (1), LV (1), NL (2)	DE (97)
2009	Sanctioned	EE, EL, IE, IS, LU, LV, MT, PL, SK, UK	DK (2), NO (4), PT (3)	DE (25), FI (11)
	Discharged	EE, EL, IE, IS, LU, LV, MT, PL, SK, UK	DK (4), AT (5), FI (3), FR (1), NL (3)	DE (28)
2010	Sanctioned	EE, IE, IS, LV, MT, PT, SK, UK	DK (2), EL (3), FI (5), FR (1), NL (3), NO (2), PL (2)	DE (37)
	Discharged	EE, IE, IS, LV, MT, PT, SK, UK	DK (1), EL (1), FI (1), FR (1), NL (1), PL (1)	AT (10), DE (32), LU (13)

305. There were natural persons concerned by criminal proceedings for insider dealing in ten Member States in 2008, in eight Member States in 2009 and in ten Member States in 2010. The total number of natural persons concerned was equal to 139 persons in 2008 (out of which 22 were sanctioned and 117 discharged), 88 persons in 2009 (out of which 45 were sanctioned and 43 discharged) and 116 persons in 2010 (out of which 55 were sanctioned and 61 discharged).

Decisions in relation to insider dealing – legal persons

306. **Table G.10.4.) Insider dealing: number of legal persons concerned by court decisions in cases transmitted by the CA (in Member States where information is easily accessible to the CA)**

		None	1 to 9	10 or more
2008	Sanctioned	AT, DK, EE, FI, FR, IS, LV, MT, NL, SK, UK	NO (1)	-
	Discharged	AT, DK, EE, FI, FR, IS, LV, MT, NL, SK, UK	-	-
2009	Sanctioned	AT, DK, EE, FR, IS, LV, MT, NL, SK, UK	FI (2), NO (1)	-
	Discharged	AT, DK, EE, FR, IS, LV, MT, NL, SK, UK	FI (2)	-
2010	Sanctioned	AT, DK, EE, FR, IS, LV, MT, NL, NO, SK, UK	FI (1)	-
	Discharged	AT, DK, EE, FR, IS, LV, MT, NL, NO, SK, UK	-	-

307. There were legal persons concerned by criminal proceedings for insider dealing in one Member State in 2008, in two Member States in 2009 and in one Member States in 2010. The total number of legal persons concerned was: one entity (sanctioned) in 2008, five entities in 2009 (of which three were sanctioned and two discharged) and one entity (sanctioned) in 2010.

Decisions in relation to market manipulation - natural persons

308. **Table G.10.2.) Market manipulation: number of natural persons concerned by court decisions in cases transmitted by the CA (in Member States where information is easily accessible to the CA)**

		None	1 to 9	10 or more
2008	Sanctioned	AT, EE, EL, FI, IE, IS, LU, LV, MT, NL, SK, UK	FR (3), NO (3)	DE (10), DK (15), PL (11)
	Discharged	AT, EE, EL, FI, IE, IS, LU, LV, MT, NL, PL, SK, UK	DK (1)	DE (12)
2009	Sanctioned	AT, EE, FI, IE, LU, LV, MT, NL, SK, UK	FR (2), IS (2), NO (3), PL (6), PT (2)	DE (23), DK (12)
	Discharged	AT, EE, FI, IE, LU, LV, MT, NL, UK	DK (3), EL (1), SK (1)	DE (18)
2010	Sanctioned	AT, EE, FI, IE, IS, LU, LV, MT, NL, PT, SK, UK	DK (3), EL (6), FR (3), NO (3), PL (9)	DE (23)
	Discharged	AT, EE, FI, IE, IS, LU, LV, MT, NL, PT, SK, UK	DK (3), FR (1), PL (1)	DE (44)

309. There were natural persons concerned by criminal proceedings for market manipulation in five Member States in 2008, in eight Member States in 2009 and in six Member States in 2010. The total number of natural persons concerned was equal to 55 persons in 2008 (which 42 were sanctioned and 13 discharged), 73 persons in 2009 (which 50 were sanctioned and 23 discharged) and 96 persons in 2010 (which 47 were sanctioned and 49 discharged).

Decisions in relation to market manipulation – legal persons

310. **Table G.10.5.) Market manipulation: number of legal persons concerned by court decisions in cases transmitted by the CA (in Member States where information is easily accessible to the CA)**

		None	1 to 9	10 or more
2008	Sanctioned	AT, EE, FI, FR, IS, LV, MT, NL, NO, SK, UK	DK (2)	-
	Discharged	AT, EE, FI, FR, IS, LV, MT, NL, NO, SK, UK	DK (1)	-
2009	Sanctioned	AT, DK, EE, FI, FR, IS, LV, MT, NL, SK, UK	NO (1)	-
	Discharged	AT, EE, FI, FR, IS, LV, MT, NL, SK, UK	DK (1)	-
2010	Sanctioned	AT, DK, EE, FI, IS, LV, MT, NL, SK, UK	NO (1)	-
	Discharged	AT, DK, EE, FI, IS, LV, MT, NL, SK, UK	FR (1)	-

311. There were legal persons concerned by criminal proceedings for market manipulation in one Member State in 2008, in two Member States in 2009 and in two Member States in 2010. The total number of legal persons concerned was equal to three entities (which two were sanctioned and one discharged) in 2008, two entities (one sanctioned and one discharged) in 2009 and two entities (which one was sanctioned and one discharged) in 2010.

PECUNIARY SANCTIONS

312. Criminal sanctions, often lead to pecuniary sanctions. In one Member State (EL), criminal sanctions for market abuse do not include pecuniary sanctions. Here is described the range of pecuniary criminal sanction applicable within the Member States and the use judicial authorities made of them during the review period.

313. Information for this section was only collected for cases originated by the CAs and then transmitted to criminal courts.

Minimum, maximum and minimum level for the upper limit of criminal fines applicable to market abuse violations

Minimum criminal pecuniary penalties applicable

314. **Table G.2.1.: Minimum criminal pecuniary penalties applicable**

	Insider Dealing Minimum		Market Manipulation Minimum	
N/A				
None	9	CY, DK, FI for natural persons, IE, IS, LV, PL, SE, UK	11	CY, DK, FI for natural persons, IE, IS, LV, NL, NO, PL, SE, UK
None, but the benefit obtained from the infringement puts a minimum limit	3	ES, FR, RO	2	FR, RO
€ 1 to 999	12	AT, BE, CZ, DE, EE, FI for legal persons, HU ⁴⁰ , LT, LU, NL, PT, SK	9	CZ, DE, EE, ES for natural persons, FI, for legal persons, LT, LU, PT, SK
€ 1,000 to 9,999	2	MT, NO	2	BE, MT
€ 10,000 to 99,999	2	IT, SI	3	ES for legal persons, IT, SI
€ 100,000 to 999,999	0	-	0	-
above € 1,000,000	0	-	0	-

315. In the 16 Member States where specific minimum penalties apply concerning insider dealing for natural persons they are as follows: AT € 4 (negligent behaviour)⁴¹; BE €275; CZ €80; DE €5; EE €96; FI €850 (legal persons); HU €300; IT⁴² €40,000; LT €1; LU €125; MT €2,329.37; NL €3; NO €5,000; PT €50; SI €10,000; SK €160.

⁴⁰ Under Hungarian criminal law only 'insider dealing' is a separate criminal offence. For further information see Annex.

⁴¹ In AT, pecuniary sanctions apply to cases of deliberate usage of inside information by secondary insiders or negligent usage of insider information by primary or secondary insiders.

⁴² IT indicated that, as regards market abuse violations committed before the entry into force of the Law no. 262 of December 28, 2005, the following minimum and maximum criminal fines apply.

- Insider dealing minimum amount €20,000
- Insider dealing maximum amount €3,000,000

316. In the 13 Member States where specific numerical criminal penalties apply concerning market manipulation they are as follows: BE €1,650; CZ €80; DE €5; EE €96; ES €720 for natural persons and €10,800 for legal entities; FI €850; IT €40,000; LT €1; LU€ 125; MT €2,329.37; PT €50; SI €50,000; SK €160.

Maximum criminal pecuniary penalties applicable

Table G.2.2.: Maximum criminal pecuniary penalties applicable

	Insider Dealing Maximum		Market Manipulation Maximum	
N/A	1	EL	1	EL
None	7	DK, ES, FI for natural persons, IS, NO, SE, UK	7	AT, DK, FI for natural persons, IS, NO, SE, UK
€ 1 to 999	0	-	0	-
€ 1.000 to 9.999	0	-	0	-
€ 10.000 to 99.999	4	BE, LT for natural persons, LV, NL	4	BE, LT for natural persons, LV, NL
€ 100.000 to 999.999	7	AT, CY, FI for legal persons, HU, MT, PT, SK	6	CY, ES for natural persons, FI for legal persons, MT, PT, SK
€ 1.000.000 to 4.999.999	6	CZ, FR, LT for legal persons, LU, PL, SI	7	CZ, ES for legal persons, FR, LT legal persons, LU, PL, SI
Above € 5.000.000	4	DE, EE, IE, IT,	4	DE, EE, IE, IT
The benefit obtained from the infringement puts a second limit	3	BE, IT, LU, FR	3	BE, IT, LU, FR

317. Concerning insider dealing, in eight Member States (DK, ES⁴³, FI for natural persons, IS, NO, RO, SE, UK) there is no maximum stipulated penalty. Where maximum penalties are stipulated they are as follows: AT €1,800,000 (negligent behaviour); BE €55,000; CY €170,860; CZ €1,460,000; DE €10,800,000; EE €16,000,000; FI €850,000 (legal persons); FR €1,500,000 or ten times the profit made, if any (natural persons) and five times the amount imposed on natural persons (legal persons); HU €405,000; IE €10,000,000; IT €6,000,000; LT €18,840 (natural persons) or €1,884,058 (legal persons); LU€ 1,500,000; LV €57,000; MT €931,749.36 (or three times the profit made or loss avoided by virtue of the offence); NL €18,500; PL €1,272,783; PT €180,000; SI €1,000,000; SK €331,930.

318. In four Member States (BE, FR, IT, LU) the fine can be increased from the normally stipulated amounts, as follows:

- Market manipulation minimum amount €20,000
- Market manipulation maximum amount €5,000,000

Also in these cases, the criminal fines can be increased up to three times or up to the higher amount of ten times the product of the offence or the profit therefrom when, in view of the seriousness of the offence, the personal situation of the offender or the magnitude of the product of the crime or the profit therefrom, the fine appears inadequate even if the maximum is applied.

⁴³ In ES, the minimum amount is equal to the benefit obtained from the infringement, and the maximum amount is three times the above mentioned benefit.

- BE, of an amount equal to a maximum of thrice the capital gain obtained, directly or indirectly, from the infringement.
- IT has an exception to the normal stipulated maximum when, in view of the seriousness of the offence, the personal situation of the offender or the magnitude of the product of the crime or the profit gained from it, the fine appears inadequate even if the maximum is applied; in these exceptional cases, the maximum is increased and can be up to three times the fine that would otherwise be applied or up to the higher amount of ten times the product of the crime or the profit from the crime.
- LU may increase a fine up to ten times the amount of the profit realised (under no circumstances should the fine be less than the profit gained from the crime).
- In FR, the normally stipulated numericable maximum can be increased up to 10 times the profit made for a natural person and up to 5 times the amount imposed for a natural person for a legal person.

319. For market manipulation, in seven Member States (DK, FI for natural persons, IS, NO, RO, SE, UK) there is no maximum penalty applicable to market manipulation violations. Where specific numerical maximum penalties these are as follows: BE €55,000; CY €170,860; CZ €1,460,000; DE €10,800,000; EE €16,000,000; ES €288,000 (natural persons) and €3,600,000 (legal persons); FI €850,000 (legal persons); FR €1,500,000 or 10 times the profit made, if (natural persons); five times the amount imposed to natural persons (legal persons); IE €10,000,000; IT €10,000,000; LT €18,840 (natural persons) and €1,884,058 (legal persons); LU €1,500,000; LV €57,000; MT €931,749.36 (or three times the profit made or loss avoided by virtue of the offence); NL €18,500; PL €1,272,783; PT €180,000; SI €1,000,000; SK €331,930.

320. In three Member States (FR, IT, LU), the fine can be increased from the normally stipulated maximum amounts as follows:

- IT has an exception to the normal stipulated maximum when, in view of the seriousness of the offence, the personal situation of the offender or the magnitude of the product of the crime or the profit gained from it, the fine appears inadequate even if the maximum is applied; in these exceptional cases, the maximum is increased and can be up to three times the fine that would otherwise be applied up to three times the fine that would otherwise be applied or up to the higher amount of ten times the product of the crime or the profit from the crime.
- In LU, up to ten times the amount of the profit realised and shall under no circumstances be less than the said profit.
- In FR, the normally stipulated numericable maximum can be increased up to 10 times the profit made for a natural person and for a legal person up to 5 times the amount imposed for a natural person.

321. The survey shows that among Member States there is great divergence in the maximum of pecuniary criminal penalties applicable to market abuse cases. In particular, the maximum penalty applicable varies from €18,500 in NL to €16,000,000 in EE.

Actual use of pecuniary criminal sanctions available

Access to information on the use of pecuniary criminal sanctions available

322. **Table G.12) - Fines/Pecuniary sanctions - Access to information about the fines/pecuniary sanctions imposed by the judicial authorities concerning criminal proceedings?**

Concerning criminal proceedings, does the administrative authority have easily accessible information about the fines/pecuniary sanctions imposed by the judicial authorities in the jurisdiction?		
YES	AT, DE, DK, EE, FI, FR, IE, IS, LU, MT, NL, NO, PL, PT, UK	15
NO	BE, CY, CZ, EL, ES, HU, IT, LT, LV, RO, SE, SI, SK	13

323. Fifteen CAs (AT, DE, DK, EE, FI, FR, IE, IS, LU, MT, NL, NO, PL, PT, UK), have easy access to information on the fines/pecuniary sanctions imposed by the judicial authorities in their Member States, while 13 CAs (BE, CY, CZ, EL, ES, HU, IT, LT, LV, RO, SE, SI, SK) reported not having such access. Therefore, when reading this section, consideration should be given to the fact that the data presented is partial and does not cover all 29 Member States. These 15 CAs provided details on the number of natural persons and/or legal persons imposed by the judicial authorities to pay fines in the review period.

Number of pecuniary criminal sanctions imposed by the judicial authorities during the review period

324. To recall, out of the above 15 CAs that have easy access to information on fines/pecuniary sanctions imposed by the judicial authorities in their Member States, in 5 Member States (DE, IE, LU, PL, PT), market abuse can give rise to criminal sanctions only for natural persons and not for legal persons.

MSs where pecuniary criminal sanctions were imposed by the judicial authorities within the review period

325. **Table G.13.1) Member States where pecuniary sanctions were imposed by the judicial authorities**

	Member States where pecuniary sanctions were imposed by the judicial authorities		
	2008	2009	2010
Insider dealing – natural persons	8 (DE, DK, FI, FR, NL, NO, PL, PT)	2 (DE, FI)	8 (DE, DK, FI, FR, NL, PL, PT, UK)
Market manipulation – natural persons	4 (DE, DK, FR, PL)	4 (DE, DK, FR, PL)	4 (DE, DK, PL, PT)
Insider dealing – legal persons	None	2 (FI, NL)	1 (FI)
Market manipulation – legal persons	None	None	None

Insider dealing: number of persons concerned by pecuniary sanctions imposed by judicial authorities

326. **Table G.13.2) Number of persons concerned by pecuniary sanctions imposed by judicial authorities in relation to insider dealing**

		None	One or more persons (number of persons concerned)
2008	Natural persons	AT, EE, IE, IS, LU, MT, UK	DE (5), DK(2), FI(2), FR(2), NL(2), PL(2), PT(2), NO (1)
	Legal persons	AT, DK, EE, FI, FR, IS, MT, NL, NO, UK	
2009	Natural persons	AT, DK, EE, FR, IE, IS, LU, MT, NL, NO, PL, PT, UK	DE (23), FI (10)
	Legal persons	AT, DK, EE, FR, IS, MT, NO, UK	FI (2), NL (1)
2010	Natural persons	AT, EE, IE, IS, LU, MT, NO	DE (37), DK(2), FI(5), FR(1), NL(3), PL(2), PT(3), UK(1)
	Legal persons	AT, DK, EE, FR, IS, MT, NL, NO, UK	FI (1)

327. Of the 15 CAs that have easy access to information on fines/pecuniary sanctions imposed by the judicial authorities in their Member States, three CAs (DE, FI, NL) reported that, in their Member States, natural persons and/or legal persons were ordered to pay fines for market abuse violations in all three years, while in other six Member States (DK, FR, NO, PT, PL, UK), fines for market abuse violations were imposed in at least one of the three years. In the remaining six Member States (AT, EE, IE, IS, LU, MT) neither natural persons nor legal persons were ordered to pay fines in the review period.

328. In particular, there were natural persons ordered to pay fines for insider dealing in 8 Member States (DE, DK, FI, FR, NL, NO, PL, PT) in 2008, in two Member States (DE, FI) in 2009 and in 8 Member States (DE, DK, FI, FR, NL, PL, PT, UK) in 2010. The total number of natural persons sanctioned was 18 persons in 2008, 33 persons in 2009 and 54 persons in 2010. Legal persons were ordered to pay fine for insider dealing only in two MS during the review period.

Market manipulation: number of persons concerned by pecuniary sanctions imposed by judicial authorities

329. **Table G.13.3) Number of persons concerned by pecuniary sanctions imposed by judicial authorities in relation to market manipulation**

		None	One or more persons (number of persons concerned)
2008	Natural persons	AT, EE, FI, IE, IS, LU, MT, NL, NO, PT, UK	DE (10), DK (8), FR (3), PL (11)
	Legal persons	AT, DK, EE, FI, FR, IS, MT, NL, NO, UK	-
2009	Natural persons	AT, EE, FI, IE, IS, LU, MT, NL, NO, PT, UK	DE (22), DK (10), FR (1), PL (6)
	Legal persons	AT, DK, EE, FI, FR, IS, MT, NL, NO, UK	-
2010	Natural persons	AT, EE, FI, FR, IE, IS, LU, MT, NL, NO, UK	DE (22), DK (2), PL (9), PT (2)
	Legal persons	AT, DK, EE, FI, FR, IS, MT, NL, NO, UK	-

330. As regards market manipulation, natural persons ordered to pay fines in four Member States in each of the years covered by the survey (DE, DK, FR, PL in 2008 and 2009; DE, DK, PL, PT in 2010). The total number of natural persons' sanctions to 32 persons in 2008, 39 persons in 2009 and 35 persons in 2010.

331. As regards market manipulation, no legal person was ordered to pay fines in the review period.

332. Altogether it can be concluded that market abuse can give rise to criminal sanctions also for legal persons in 10 (AT, DK, EE, FI, FR, IS, MT, NL, NO, UK) out of the 15 Member States which reported information on fines/pecuniary sanctions imposed by the judicial authorities. Only in two (FI, NL) out of these 10 Member States, there were legal persons concerned by criminal proceedings for market abuse in the review period.

Lowest and highest fines and total amount of sanctions imposed by judicial authorities within the review period

For insider dealing against natural persons

333. As mentioned above in Table G. 13, in nine Member States (DE, DK, FI, FR, NL, NO, PL, PT, UK) natural persons were ordered by judicial criminal courts to pay fines for insider dealing in the review period. The relevant nine CAs provided details about the amounts of the lowest and the highest fines as well as the total amounts of fines imposed.

334. **Table G.14.2) Lowest and the highest fines and total amount of sanctions imposed on natural persons for insider dealing**

		€1 to €999	€1,000 to €9,999	€10,000 – €99,999	€100,000 – €999,99	above €1,000,000
2 0 0 8	Lowest amounts	DK	PL, DE, NL, FR, NO	FI, PT	-	-
	Highest amounts	-	PL	DE, FI, NL, PT	DK, FR	-
	Total amounts	-	NO, PL	DE, FI, FR, NL, PT	DK	-
2 0 0 9	Lowest amounts	-	DE, FI	-	-	-
	Highest amounts	-	FI	-	DE	
	Total amounts	-	FI	-	DE	
2 0 1 0	Lowest amounts	DK	DE, FI, NL, PL	PT, UK	FR	-
	Highest amounts	-	DK	FI, NL, PL, PT, UK	DE, FR	-
	Total amounts	-	DK	FI, NL, PL, UK	DE, PT, FR	-

335. Where fines have been imposed to natural persons for insider dealing violations, there are considerable differences in the fines actually imposed by judicial criminal courts.

336. In 2008, the range of minimum pecuniary sanctions imposed by judicial authorities on natural persons for insider dealing varies from €670 in DK to €63,000 in FI, while the range of the maximum pecuniary sanctions imposed in the same period varies from € in PL to €773,495 in DK. The range of the total amounts of fines imposed on natural persons for insider dealing in 2008 varies from € in to €774,165 in DK.

337. In 2009, the range of minimum pecuniary sanctions imposed by judicial authorities to natural persons for insider dealing varies from €1,000 in FI to €1,800 in DE, while the range of the maximum pecuniary sanctions imposed in the same period varies from €3,000 in FI to €500,000 in DE. The range of the total amounts of fines imposed on natural persons for insider dealing in 2009 varies from € 4,000 in FI to €911,000 in DE.

338. In 2010, the range of minimum pecuniary sanctions imposed by judicial authorities to natural persons for insider dealing varies from € in 670 DK to €450,000 in FR, while the range of the

maximum pecuniary sanctions imposed in the same period varies from €1,341 in DK to €450,000 in FR. The range of the total amounts of fines imposed to natural persons for insider dealing in 2010 varies from €2,011 in DK to €450,000 in FR.

For insider dealing against legal persons

339. As mentioned above, in two Member States (FI, NL) legal persons were imposed by judicial criminal courts to pay fines for insider dealing in the review period. The relevant two CAs provided details on the amounts of the lowest and the highest fines as well as on the total amounts of fines imposed.

340. **G.15.2) Lowest and the highest fines and total amount of sanctions imposed on legal persons for insider dealing**

		€1 to €999	€1,000 to €9,999	€10,000 – €99,999	€100,000 – €999,999	above €1,000,000
2008	Lowest amounts	-	-	-	-	-
	Highest amounts	-	-	-	-	-
	Total amounts	-	-	-	-	-
2009	Lowest amounts	-	-	FI, NL	-	-
	Highest amounts	-	-	NL	FI	-
	Total amounts	-	-	NL	FI	-
2010	Lowest amounts	-	-	FI	-	-
	Highest amounts	-	-	FI	-	-
	Total amounts	-	-	FI	-	-

341. In 2008, no legal person was ordered to pay fines for insider dealing. Concerning 2009, in FI, the lowest fine imposed was equal to €50,000, while the highest fine was equal to €320,000. In NL, only one legal person was ordered to pay fines in 2009 and the relevant fine was equal to €60,000. The total amounts of fines imposed in 2009 were: €370,000 in FI; €60,000 in NL. In 2010, the only fine imposed was equal to €50,000 in FI.

For market manipulation against natural persons

342. As mentioned above, in five Member States (DE, DK, FR, PL and PT) natural persons were ordered by judicial criminal courts to pay fines for market manipulation in the review period. The relevant five CAs provided details on the amounts of the lowest and the highest fines as well as on the total amounts of sanctions imposed.

343. **Table G.16) Lowest and the highest fines and total amount of sanctions imposed to natural persons for market manipulation**

		€1 to €999	€1,000 to €9,999	€10,000 – €99,999	€100,000 – €999,999	above €1,000,000
2008	Lowest amounts	DK, PL	DE	FR	-	-
	Highest amounts	-	-	DE, PL	DK, FR	-
	Total amounts	-	-	DE	PL, DK, FR	-
2009	Lowest amounts	DK, PL	DE	FR	-	-
	Highest amounts	-	PL, DK	DE, FR	-	-
	Total amounts	-	PL	DK, FR	DE	-
2010	Lowest amounts	DE, DK, PL	PT	-	-	-
	Highest amounts	-	DK, PT	DE	PL	-
	Total amounts	-	DK, PT	-	DE, PL	-

344. In 2008, the lowest amounts of fines imposed vary as follows: €255 in PL; €282 in DK; €1,000 in DE; €50,000 in FR. In the same year, the highest fines vary as follows: €15,000 in DE; €63,639 in PL; €134,059 in DK; €300,000 in FR. The total amounts of fines imposed on natural persons for market manipulation in 2008 were: €71,150 in DE; €113,532 in PL; €139,240 in DK; €450,000 in FR.

345. In 2009, the lowest amounts of fines imposed vary as follows: €255 in PL; €268 in DK; €2,000 in DE; €20,000 in FR. In the same year, the highest fines vary as follows: €3,309 in PL; €3,941 in DK; €40,500 in DE. The total amounts of fines imposed on natural persons for market manipulation in 2009 were: € 8,909 in PL; € 14,182 in DK; € 20,000 in FR; € 309,300 in DE.

346. In 2010, the lowest amounts of fines imposed vary as follows: €255 in PL; €688 in DK; €1,000 in PT; €500 in DE. In the same year, the highest fines vary as follows: €2,000 € in PT; €2,134 in DK; €40,000 in DE; €254,557 in PL. The total amounts of fines imposed on natural persons for market manipulation in 2010 were: € 2,821 in DK; €3,000 in PT; €237,600 in DE; €464,057 in PL.

347. Where fines have been imposed on natural persons in case of market manipulation violations, there are considerable differences in the fines actually imposed by judicial criminal courts.

348. In 2008, the range of minimum fines imposed by judicial criminal courts to natural persons for market manipulation violations varies from €255 in PL to €50,000 in FR, while the range of maximum fines imposed in the same period varies from €15,000 in DE to €300,000 in FR. The range of the total amounts of fines imposed on natural persons for market manipulation in 2008 varies from €71,150 in DE to €450,000 in FR.

349. In 2009, the range of minimum fines imposed by judicial criminal courts to natural persons for market manipulation violations varies from €255 in PL to €20,000 in FR, while the range of maximum fines imposed in the same period varies from €3,309 in PL to €40,500 in DE. The range of

the total amounts of fines imposed on natural persons for market manipulation in 2009 varies from €8,909 in PL to €309,300 in DE.

350. In 2010, the amount of minimum fines imposed by judicial criminal courts to natural persons for market manipulation violations is €255 in PL, while the range of maximum fines imposed in the same period varies from €2,000 in PT to €254,557.00 in PL. The range of the total amounts of fines imposed on natural persons for market manipulation in 2010 varies from €2,821 in DK to €464,057 in PL.

For market manipulation against legal persons

351. In the review period, no pecuniary sanctions were imposed on legal persons for market manipulation in any Member States.

Factors in determining fines imposed by judicial authorities

352. This heading presents information provided by CAs as whether according to their knowledge; judicial authorities in their Member State are to consider certain factors when determining the financial penalties. Moreover, the CAs also provided information, according to their knowledge, whether in their Member State, judicial authorities are considering these factors when determining fines.

353. While in its response to the European Commission's Communication on sanctions, ESMA indicated minimum indicative key factors in determining administrative fines, it seemed to be of interest to use as a start point the same list of criteria for criminal pecuniary sanctions.

354. Ability to take account of stipulated factors in determining fines according to law and established case-law and in concrete cases.

Key Factors

355. Twenty-two CAs (AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, IS, IT, LU, LV, NL, NO, PL, PT, RO, SE, SI, UK) mentioned that the following factors are to be taken into account by judicial criminal courts when imposing a pecuniary criminal sanction for market abuse. This list is mainly based on the list indicated by ESMA for determining administrative pecuniary sanctions.

- Seriousness of the violation (20: AT, BE, CZ, DE, DK, EE, ES, FI, FR, IS, IT, LU, LV, NL, NO, PL, PT, RO, SE, UK);
- Amount of financial benefits derived from the violation (18: AT, BE, DE, DK, EE, ES, FI, IS, IT, LU, LV, NL, NO, PL, PT, RO, SE, UK);
- Cooperative behaviour of the author of the violation with the competent authority (16: AT, DE, CZ, DK, ES, FI, IS, IT, LU, LV, NL, NO, PL, PT, RO, UK);
- Financial strength and/or size of the author of the violation (17: AT, CZ, DE, DK, ES, FI, FR, IT, LU, NL, NO, PL, PT, RO, SE, SI, UK);
- Duration of the violation (17: AT, CZ, DE, DK, EE, ES, FI, IS, IT, LU, NL, NO, PL, PT, RO, SE, UK);

- Impact on the market in general and on consumers (18: AT, DE, DK, EE, ES, FI, IS, IT, LU, LV, NL, NO, PL, PT, RO, SE, SI, UK);
- Loss incurred by clients or those impacted (17: AT, CZ, DE, DK, ES, FI, IS, IT, LU, LV, NL, NO, PL, PT, RO, SE, UK);
- Extent to which the author of the violation may have taken steps to compensate those impacted by the violation (15: AT, CZ, DE, DK, EE, ES, FI, IT, LU, LV, PL, PT, SE, SI, UK);
- Degree of culpability on the part of the author of the violation (18: AT, BE, DE, DK, ES, FI, IS, IT, LU, LV, NL, NO, PL, PT, RO, SE, SI, UK);
- Repetitive nature of the violation (16: AT, CZ, DE, DK, ES, FI, IS, IT, LU, LV, NL, PL, PT, RO, SE, UK);
- Compliance history of the author of the violation if it is a regulated entity (13: CZ, DE, DK, ES, FI, IT, LU, NL, PL, PT, RO, SI, UK);
- Level of responsibility/seniority of an individual (14: AT, DE, DK, ES, FI, IT, LU, NL, NO, PL, PT, RO, SE, UK);
- Others (7: BE, CY, DE, DK, NO, SI, UK).

356. Seven CAs (BG, EL, HU, IE, LT, MT, SK) provided information that this list is not-applicable for them.

357. BE clarified that the main two factors taken into account in its jurisdiction are the seriousness of the violation and the degree of culpability of the offender and that the other factors listed above might be taken into account as sub-elements of those two main factors. In CY, the relevant CA does not have specific information but it presumes that all the factors listed above are taken into account.

Other factors mentioned by the CAs

358. Five CAs mentioned other factors which can be taken into account by judicial authorities when imposing a pecuniary criminal sanction for market abuse. The factors mentioned by the CAs are:

- amount of planning that went into committing the offence (DE, UK);
- criminal records of the defendant (DE, SI);
- personality of the offender (FR, SI, UK)
- preservation of trust to the market (NO) and protection of the public order (FR);
- consideration of general prevention (FR, NO);
- low risk for detection (NO);

- professionalism (NO);
- motives for which the offence was committed (SI);
- intensity of danger or injury caused to the property protected by law (SI);
- recovery of damages caused (SI);
- existence of family responsibilities (UK);
- effect of conviction on the offender (UK);
- any other circumstance of the case (SI, UK).

359. In the majority of Member States, most of the factors proposed by ESMA as minimum indicative key criteria for administrative sanctions in its response to the European Commission’s Communication on Sanctions can be used by the judicial courts. Two of these factors are to be taken into account in fewer Member States: In particular, the compliance history of the author of the violation can be taken into account in 13 Member States (CZ, DE, DK, ES, FI, IT, LU, NL, PL, PT, RO, SI, UK) and the level of responsibility/seniority of an individual can be taken into account in 13 Member States (AT, DE, DK, ES, FI, IT, LU, NL, PL, PT, RO, SE, UK).

360. Some CAs mentioned also other factors that judicial courts can consider when determining fines. The most quoted additional factors are: (i) personality of the offender (FR, SI, UK); (ii) amount of planning that went into committing the offence (DE, UK); (iii) criminal records of the defendant (DE, SI); (iv) consideration of general prevention (FR, NO); (v) any other circumstance of the case (SI, UK).

Actual use of factors in determining fines

361. Eight CAs (DE, DK, FI, FR, NL, PL, PT, UK) provided details on the factors taken into account by their judicial authorities for the three lowest and the three highest amounts of pecuniary sanctions imposed in the review period.

Factors taken into account for the three lowest fines

362. **Table G.19.1) Factors that have been taken into account for the three lowest amounts of pecuniary sanctions imposed**

	Used at least by half of the Member States for the lowest pecuniary sanctions ordered in the relevant year		
	2008	2009	2010
Seriousness of the violation	Yes (6 out of 8)	Yes (6 out of 8)	Yes (6 out of 8)
Amount of the financial benefits derived from the violation	Yes (6 out of 8)	Yes (6 out of 8)	Yes (6 out of 8)
Cooperative behaviour of the author with the competent authority	No (3 out of 8)	Yes (4 out of 8)	Yes (4 out of 8)

Financial strength and/or size of the author of the violation	Yes (5 out of 8)	Yes (5 out of 8)	Yes (7 out of 8)
Duration of the violation	Yes (5 out of 8)	Yes (5 out of 8)	Yes (5 out of 8)
Impact on the market in general and on the consumers	Yes (6 out of 8)	Yes (6 out of 8)	Yes (4 out of 8)
Loss incurred by clients and those impacted	No (3 out of 8)	No (3 out of 8)	No (3 out of 8)
Extent to which the author of the violation may have taken steps to compensate those impacted by the violation	No (3 out of 8)	Yes (4 out of 8)	No (2 out of 8)
Degree of culpability on the part of the author of the violation	Yes (5 out of 8)	Yes (4 out of 8)	Yes (6 out of 8)
Repetitive nature of the violation	No (3 out of 8)	Yes (4 out of 8)	No (3 out of 8)
Compliance history of the author of the violation if it is a regulated entity	Yes (4 out of 8)	Yes (3 out of 8)	Yes (4 out of 8)
Level of responsibility/seniority of an individual	Yes (6 out of 8)	Yes (5 out of 8)	Yes (6 out of 8)
Others	Yes (3 out of 8)	Yes (2 out of 8)	Yes (3 out of 8)
Non -applicable ⁴⁴	7 MSs	8 MSs	7 MSs

2008

363. In the seven Member States (DE, DK, FI, FR, NL, PL, PT) where fines for market abuse were imposed, the factors most frequently used (i.e. used in the majority of these Member States) by judicial authorities to actually determine the three lowest fines imposed in 2008 were: (i) level of responsibility/seniority of an individual (six Member States); (ii) amount of financial benefits derived from the violation (five Member States); (iii) impact on the market in general and on consumers (five Member States); (iv) seriousness of the violation (five Member States); (v) financial strength and/or size of the author of the violation (five Member States); (vi) degree of culpability on the part of the author of the violation (five Member States); and (vii) duration of the violation (four Member States).

364. The other factors included in the list proposed by ESMA were used in a minority of Member States. In one Member State (FR) none of the factors included in the list proposed by ESMA was taken into account by judicial authorities but other factors were considered. In one Member State (DE) additional factors were also taken into account.

⁴⁴ Because no fine imposed or no info provided about the factors used when determining the amount of the fine.

2009

365. In 2009, the following factors were taken into account for the three lowest amounts of pecuniary sanctions imposed in the 6 Member States (DE, DK, FI, FR, NL, PL) where fines were imposed.
366. In the majority of Member States where fines for market abuse were imposed, most of the factors that ESMA proposed as minimum indicative key criteria in its response to the European Commission's Communication on sanctions of 8 December 2010 were used by judicial authorities to actually determine the three lowest fines imposed in 2009.
367. Only two of these factors were used by judicial authorities in a minority of Member States. In particular, loss incurred by clients or those impacted and compliance history of the author of the violation were used in only three Member States. In one Member State (FR) none of the factors included in the list proposed by ESMA was taken into account by judicial authorities but other factors were considered. In one Member State (DE) additional factors were also taken into account.

2010

368. In the eight Member States (DE, DK, FI, FR, NL, PL, PT, UK) where fines for market abuse were imposed in 2010, the factors most frequently used (i.e. used in the majority of these Member States) by judicial authorities to actually determine the three lowest fines imposed in 2010 were: (i) financial strength and/or size of the author of the violation (seven Member States); (ii) amount of financial benefits derived from the violation (6 Member States); (iii) seriousness of the violation (six Member States); (iv) degree of culpability on the part of the author of the violation (six Member States); (v) level of responsibility/seniority of an individual (six Member States); (vi) duration of the violation (five Member States); (vii) impact on the market in general and on consumers (four Member States).
369. The other factors included in the list proposed by ESMA were used in a minority of Member States.
370. In one Member State (FR) none of the factors included in the list proposed by ESMA was taken into account by judicial authorities but other factors were considered. In two Member States (DE, UK) additional factors were also taken into account.

Factors taken into account for the three highest fines

371. **Table G.19.2) Factors that have been taken into account for the three highest amounts of pecuniary sanctions imposed.**

	Used at least by half of the Member States for the highest pecuniary sanctions ordered in the relevant year		
	2008	2009	2010
Seriousness of the violation	Yes (5 out of 6)	Yes (6 out of 6)	Yes (8 out of 8)

Amount of the financial benefits derived from the violation	Yes (5 out of 6)	Yes (6 out of 6)	Yes (8 out of 8)
Cooperative behaviour of the author with the competent authority	No (3 out of 6)	Yes (4 out of 6)	Yes (5 out of 8)
Financial strength and/or size of the author of the violation	Yes (4 out of 6)	Yes (5 out of 6)	Yes (7 out of 8)
Duration of the violation	No (3 out of 6)	Yes (4 out of 6)	Yes (5 out of 8)
Impact on the market in general and on the consumers	Yes (4 out of 6)	Yes (5 out of 6)	Yes (5 out of 8)
Loss incurred by clients and those impacted	No (3 out of 6)	No (3 out of 6)	Yes (3 out of 8)
Extent to which the author of the violation may have taken steps to compensate those impacted by the violation	No (2 out of 6)	No (3 out of 6)	No (2 out of 8)
Degree of culpability on the part of the author of the violation	Yes (4 out of 6)	Yes (5 out of 6)	Yes (7 out of 8)
Repetitive nature of the violation	No (3 out of 6)	Yes (4 out of 6)	Yes (4 out of 8)
Compliance history of the author of the violation if it is a regulated entity	No (3 out of 6)	No (3 out of 6)	Yes (4 out of 8)
Level of responsibility/seniority of an individual	Yes (5 out of 6)	Yes (5 out of 6)	Yes (6 out of 8)
Others	No (2 out of 6)	No (1 out of 6)	No (2 out of 8)
Non -applicable ⁴⁵	7 MSs	9 MSs	7 MSs

2008

372. In two Member States (NO, PT), fewer than three fines were imposed in 2008, therefore NO and PT did not provide information on factors taken into account by judicial authorities in determining the three highest fines issued in 2008.

373. In the six Member States (DE, DK, FI, FR, NL, PL) where more than three fines for market abuse were imposed in 2008, the factors most frequently used (i.e. used in the majority of these Member States) by judicial authorities to actually determine the three highest fines imposed in 2008 were: (i) seriousness of the violation (five Member States); (ii) amount of financial benefits derived from the violation (five Member States); (iii) level of responsibility/seniority of an individual (five Member States); (iv) financial strength and/or size of the author of the violation (four Member States); (v) degree of culpability on the part of the author of the violation (four Member States); (vi) impact on the

⁴⁵ Because no fine imposed or no info provided about the factors used when determining the amount of the fine.

market in general and on consumers (four Member States); (vii) duration of the violation (three Member States); (viii) repetitive nature of the violation (three Member States).

374. The other factors included in the list proposed by ESMA were used in a minority of Member States.

375. In one Member State (DE), additional factors were also taken into account by the judicial authority.

2009

376. Two of the factors that ESMA proposed as minimum indicative key criteria in its response to the European Commission's Communication on Sanctions of 8 December 2010 (i.e. seriousness of the violation and amount of financial benefits derived from the violation) were used by judicial authorities to actually determine the three highest fines imposed in 2009 in all of the six Member States (DE, DK, FI, FR, NL, PL) where fines were imposed.

377. Most of the other factors included in the list proposed by ESMA were used by judicial authorities in the majority of these Member States.

378. Only two of these factors were used by judicial authorities in a minority of Member States. In particular, loss incurred by clients or those impacted and compliance history of the author of the violation were used in only three Member States.

379. In one Member State (DE), additional factors were also taken into account by judicial authorities.

2010

380. Two of the factors that ESMA proposed as minimum indicative key criteria in its response to the EC Communication on Sanctions (i.e. seriousness of the violation and amount of financial benefits derived from the violation) were used by judicial authorities to actually determine the three highest fines imposed in 2010 in all of the eight Member States (DE, DK, FI, FR, NL, PL, PT, UK) where fines were imposed.

381. The other factors most frequently used (i.e. used in the majority of these Member States) by judicial authorities to actually determine the three highest fines imposed in 2010 were: (i) financial strength and/or size of the author of the violation (seven Member States); (ii) degree of culpability on the part of the author of the violation (seven Member States); (iii) level of responsibility/seniority of an individual (six Member States); (iv) impact on the market in general and on consumers (five Member States); (v) duration of the violation (five Member States); and (vi) cooperative behaviour of the author of the violation with the competent authority (five Member States).

382. The remaining four factors included in the list proposed by ESMA were used in a minority of Member States.

383. In two Member States (DE, UK), additional factors were also taken into account by judicial authorities.

Other factors taken into account

384. Three CAs (DE, FR, UK) indicated other factors taken into account by judicial criminal courts in the application of the highest and lowest fines imposed in the review period. The other factors mentioned by these CAs vary. Such other factors included, for example:

- Criminal records of the defendant (DE);
- Personality of the offender (FR, UK);
- Protection of the public order (FR);
- Preventing the violation to occur again (FR);
- Admission of facts (FR);
- Existence of family responsibilities (UK);
- Effect of conviction on the offender (UK);
- Amount of planning that went into committing the offence (DE, UK);

Calculation of criminal pecuniary sanctions where there is no calculable profit or no personal benefit for the author.

385. Eighteen CAs (AT, BE, CY, DE, DK, ES, FI, FR, IE, IT, LU, LV, NO, PL, PT, RO, SE, SI) provided information on how the amount of the fine is set where there is no calculable profit or no personal benefit for the author of the violation.

Factors taken into account for calculating criminal pecuniary sanctions where there is no calculable profit or no personal benefit for the author

386. Among the 17 CAs that provided information on this issue, four CAs (CY, IE, LU, LV) stated that the amount of fine is determined on a case by case basis by the judicial authorities, in ES the fine is imposed by the Judge within a range of daily units set out in law. The other 13 CAs indicated that the following main factors are taken into account by the judicial authorities:

- seriousness of the violation (five: BE, FI, RO, SI, SE);
- degree of culpability (three: AT, BE, SI)
- financial strength and/or size of the author of the violation (three: FI, FR, PT)
- all the other criteria indicated above (five: DE, DK, IT, NO, PL);
- circumstances of the offence (three: FR, RO, SI);
- personality of the author of the offence (2: FR, SI);
- motives for the offence (one: SI);
- intensity of danger or injury occurred to the property protected by law (one: SI).

387. Eighteen CAs (AT, BE, CY, DE, DK, ES, FI, FR, IE, IT, LU, LV, NO, PL, PT, RO, SE, SI) provided information on how the amount of fines is set by the judicial authorities when there is no calculable profit or no personal benefit for the author of the violation. In the majority of these Member States (13: AT, BE, DE, DK, FI, FR, IT, NO, PL, PT, RO, SE, SI), alternative factors are considered by criminal courts to determine the amount of fines. These alternative factors vary across Member States. The most quoted alternative factors are the seriousness of the violation (five Member States) and “all the other criteria available” (five Member States).

Method of calculating the amount of the fine in criminal cases compared to that used in administrative cases

388. In 15 Member States (AT, CY, DE, DK, EE, ES, FI, FR, HU, IE, LV, NO, SI, SK, UK), the method of calculating the amount of a fine in criminal cases varies from the method used in administrative cases. On the contrary, in 12 MS (BE, CZ, EL, IS, IT, LT, LU, MT, NL, PL, PT, RO), the method of calculating the amount of a fine in criminal cases is substantially as that used in administrative cases. CAs provided the following details on the differences of the method of calculating the amount of the fine in criminal cases and in administrative cases.

389. In two Member States (CY, ES), the maximum amount of administrative fines can be higher than criminal fines in amount.

390. In four Member States (AT, DE, EE, HU), a criminal fine is imposed in so-called daily units calculated on the basis of the economic circumstances of the offender, while an administrative fine is set as an amount of money within a certain range which is given by the respective legal provisions.

391. In the other Member States, the method of calculating the amount of the fine varies in relation to the criteria to be taken into account by the criminal courts and the administrative authorities (FI⁴⁶, FR, SI) and the legal grounds on which the method is based (SI).

392. In the UK fines for criminal cases are calculated by judges taking into account the various factors in the particular case and may vary from case to case and there is no maximum limit to the fine that can be imposed.

393. To conclude, in 15 Member States (AT, CY, DE, DK, EE, ES, FI, FR, HU, IE, LV, NO, SI, SK, UK), the method of calculating the amount of a fine in criminal cases varies from the method used in administrative cases. The differences in the methods of calculation of fines respectively used by judicial authorities and administrative authorities vary from jurisdiction to jurisdiction. Some commonalities can be found in four Member States, where the criminal fines are imposed in daily units while administrative fines are set as an amount within a certain range, and in other three Member States, where there are differences in the criteria respectively used to calculate criminal fines and administrative fines.

394. Table G.27) - Method of calculating the amount of the fine in criminal cases compared to that used in administrative cases

Does the method of calculating the amount of the fine in criminal cases vary from that used in administrative cases?		
YES	AT, CY, DE, DK, EE, ES, FI, FR, HU, IE, LV, NO, SI, SK, UK	15

⁴⁶ In FI, financial strength and/or size of the author of the violation is not a criterion to be taken into account in administrative cases. However, this will change when the planned law will be implemented in the country.

IMPRISONMENT AND OTHER SANCTIONS

395. There are other sanctions than pecuniary sanction applicable for market abuse violations. These are mostly imprisonment sanctions. However, in some Member States, judicial authorities have the power to use other sanctions at their disposal. To recall, in one Member State (EL), criminal sanctions for market abuse do not include pecuniary sanctions.

396. It has to be noted that information for this section was collected irrespective of where the case was handled or originated.

Imprisonment

397. This section describes: i) the ability of judicial authorities to use imprisonment sanctions within the Member States, ii) the use judicial authorities made of imprisonment sanctions in the review period, when available, and iii) the factors taken into account when imposing imprisonment sanctions. In some of the Member States (UK), fines and imprisonment in criminal cases are not mutually exclusive.

Availability of minimum and maximum length of imprisonment for market abuse violations

Insider dealing

398. In 15 Member States (CY, CZ, DK, EE, FI, FR, IE, IS, LT, LV, MT, NL, NO, PT, UK), the law does not fix a minimum length of imprisonment for insider dealing violations.

399. In the other Member States, the minimum length of imprisonment for insider dealing violations is:

- up to six months in nine Member States (AT, BE, DE, HU, LU, PL, RO, SE, SI);
- one year in two Member States (EL, ES);
- two years in one Member States (IT);
- three years in one Member States (SK).

400. The maximum length of imprisonment for insider dealing violations is:

- up to one year in one Member State (BE);
- two years in four Member States (FR, LT, LU, NL);
- Up to three years in one (EE, HU);
 - four years in three Member States (DK, FI, SE);

- five years in six Member States (AT, DE, PL, PT, RO, SI);
- six years in three Member States (ES, IS, NO);
- seven years in two Member States (MT, UK);
- ten years in five Member States (CY, CZ, EL, IE, LV);
- 12 years in two Member States (IT, SK).

401. **Table G 29.1) Insider dealing violations: minimum and maximum length of imprisonment**

	None	Up to 6 months	1 year	2 to 5 years	6 to 9 years	10 or more years
Minimum length						
	CY, CZ, DK, EE, FI, FR, IE, IS, LT, MT, NL, NO, PT, UK, LV	AT, BE, DE, LU, PL, RO, SE, SI	EL, ES, HU	IT, SK	-	-
Maximum length						
	None		Up to 1 year	2 to 5 years	6 to 9 years	10 or more years
	FI, IE, IS, LT, NL		BE, EE	AT, DE, DK, , FI, FR, HU, LT, LU, NL, PL, PT, RO, SE, SI	ES, IS, MT, NO, UK	CY, CZ, EL, IE, LV, IT, SK

402. Where provided for in national legislations, minimum and maximum length of imprisonment for market abuse violations varies considerably across Member States.

The range of the minimum length of imprisonment applicable for insider dealing violations varies from 15 days (SI) to 3 years (SK), while the range of the maximum length of imprisonment applicable varies from 30 days (EE) to 12 years (IT, SK).

Market manipulation

403. In 14 Member States (CY, DK, EE, FI, FR, IE, IS, LT, LV, MT, NL, NO, PT, UK), the law does not fix a minimum length for imprisonment. In the other Member States the minimum length of imprisonment for market manipulation violations is:

- up to six months in ten Member States (BE, CZ, DE, DK, ES, LU, PL, RO, SE, SI);
- one year in two Member States (EL, SK);
- two years in one Member State (IT).

404. The maximum length of imprisonment for market manipulation violations is:

- one year and six months in one Member State (NO);
- two years in five Member States (BE, ES, FR, LU, NL);
- three years in two Member States (EE, LT);
- four years in three Member States (DK, FI, SE);
- five years in five Member States (DE, PL, PT, RO, SI);
- six years in two Member States (IS, NO);
- seven years in two Member States (MT, UK);
- ten years in five Member States (CY, CZ, EL, IE, LV);
- 12 years in one Member State (IT);
- 15 years in one Member State (SK).

405. **Table G.29. 2) Market manipulation violations: minimum and maximum length of imprisonment for**

	None	Up to 1 year	2 to 5 years	6 to 9 years	10 or more years
Minimum length					
	CY, EE, FR, FI, IE, IS, LT, MT, NL, NO, PT, UK, LV	BE, CZ, DE, DK, ES, LU, PL, RO, SE, SI, EL, SK	IT	-	-
Maximum length					
	-	NO, EE	BE, , ES, FR, LU, NL, LT, DK, FI, SE, DE, PL, PT, RO, SI	IS, MT, NO, UK	CY, CZ, EL, IE, IT, LV, SK

406. Where provided for in national legislations, minimum and maximum length of imprisonment for market abuse violations varies considerably across Member States.

407. The range of the minimum length of imprisonment applicable for market manipulation violations varies from 15 days (SI) to two years (IT), while the range of the maximum length of imprisonment applicable varies from 30 days (EE) to 15 years (SK).

Actual use of imprisonment

Access to information on imprisonment imposed by criminal courts in relation to market abuse cases

408. Seventeen CAs (AT, DE, DK, EE, EL, FI, FR, IE, IS, LT, LU, MT, NL, NO, PL, PT, UK), have easy access to information on the imprisonments ordered by the judicial authorities in their Member States.

409. **Table G.30) - Access to information about the imprisonments imposed by the judicial authorities**

Does the administrative authority have easily accessible information about the imprisonments imposed by the judicial authorities in the jurisdiction?		
YES	AT, DE, DK, EE, EL, FI, FR, IE, IS, LT, LU, MT, NL, NO, PL, PT, UK	17
NO	BE, CY, CZ, ES, HU, IT, LV, RO, SE, SI, SK	11

Number of imprisonment cases in the Member States

410. Eight CAs (AT, EE, IE, LT, LU, MT, NL, PT) out of the above mentioned 17 indicated that no physical imprisonment had been used for market abuse cases in the review period. The remaining nine CAs (DE, DK, EL, FI, FR, IS, NO, PL, UK) reported the following cases of legal or physical imprisonment in relation to market abuse violations in the review period. IS and PL reported no cases of imprisonment for insider dealing violations. FI and UK reported no cases of imprisonment for market manipulation violations.

411. NO reported six cases of imprisonment for market abuse violations in the three years.

Insider Dealing

412. Six Member States (DE, DK, EL, FI, FR, UK) imposed imprisonment for insider dealing violations during the review period. The total number of imprisonments imposed for insider dealing was six cases in 2008, eight cases in 2009 and 6 cases in 2010.

413. **Table G. 31. 1) Insider dealings violations: number of imprisonment cases in the Member States**

	Insider dealings violations: number of imprisonment cases in the Member States
2008	DK (2), FI (2), FR (2), NO (2)
2009	DE (2), FI (2), NO (2), UK (4)
2010	EL (3), FR (1), UK (2)

Market Manipulation

414. Seven Member States (DE, DK, EL, FR, IS, NO, PL) imposed imprisonment for market manipulation violations during the review period. As regards market manipulation, imprisonment was imposed in 11 cases in 2008, 10 cases in 2009 and in 18 cases in 2010.

415. **Table G. 31. 2) Market manipulation violations: number of imprisonment cases in the Member States**

	Market manipulation violations: number of imprisonment cases in the Member States
2008	DK (2), FR (3), NO (1), PL (5)
2009	DE (2), IS (2), FR (2), PL (4)
2010	DE (2), DK (2), EL (6), FR (3), NO (1), PL (4)

Shortest and longest period of imprisonment imposed

416. As mentioned above, in the review period there were cases of imprisonment for market abuse violations in nine Member States (DE, DK, EL, FI, FR, IS, NO, PL, UK). The relevant CAs reported the following information on the shortest and longest periods of imprisonment imposed. In NO, where there were in total 8 cases of imprisonment for insider dealing in the three years, the shortest period of imprisonment imposed was 1 month while the longest one was 1,5 years

Insider dealing

417. **Table G. 32. 1) Insider dealing violations: shortest and longest period of imprisonment imposed**

	Up to 1 year (period exact)	More than a year (period exact)
Shortest period		
2008	DK (1 mths); FI (5 mths, suspended); FR (6 mths)	-
2009	FI (6 mths suspended), UK (8 mths suspended)	DE (1 yr and 3 mths)
2010	EL (1 yr), FR (1 yr)	UK (1 yr and 9 mths)
Longest period		
2008	DK (2 mths); FI (7 mths, suspended); FR (1 yr)	-
2009	UK (10 mths, suspended)	FI (2 yrs and 4 mths, unconditional), DE (3 yrs)
2010	FR (1 yr)	UK (2 yrs), EL (3 yrs)

418. For insider dealing, the shortest periods of imprisonment imposed ranged from 1 month to one year and nine months, while the longest periods of imprisonment imposed ranged from two months to three years within the review period.

Market manipulation

419. **Table G. 32. 2) Market manipulation violations: shortest and longest period of imprisonment imposed**

	Up to 1 year (period exact)	More than a year (period exact)
Shortest period		
2008	DK (1 mth), FR (8 mths), PL (1 yr, suspended for 2 yrs)	-

2009	FR (3 mths), PL (6 mths , in suspension for 2 yrs), IS (8 mths), DE (9 mths)	-
2010	DK (1 mth), PL (6 mths, in suspension for 2 yrs), FR (8 mths) , DE (10 mths), EL (1 yr)	-
<i>Longest period</i>		
2008	DK (2 mths), PL (1 yr, in suspension for 4 yrs)	FR (1 yr and 6 mths)
2009	FR (4 mths), PL (6 mths, in suspension for 2 yrs), IS (8 mths)	DE (3 yrs and 9 mths)
2010	DK (4 mths), FR (9 mths), PL (1 yr, in suspension for 4 yrs)	DE (2 yrs), EL (3 yrs)

420. For market manipulation, the shortest periods of imprisonment imposed ranged from one month to one year, while the longest periods of imprisonment imposed ranged from two months to three years and nine months in the review period.

Factors taken into account by judicial criminal courts when imposing imprisonments for market abuse violations

421. The relevant CAs of the nine Member States where imprisonments for market abuse violations were imposed in the review period (DE, DK, EL, FI, FR, IS, NO, PL, UK) provided details on the factors taken into account by judicial criminal courts for the three shortest and the three longest terms of imprisonment.

422. In particular, the following factors were mentioned as having been taken into account in at least one case during the review period by judicial criminal courts when imposing imprisonments for market abuse violations:

- Seriousness of the violation (seven: DE, DK, EL, FI, FR, IS, PL, UK);
- Amount of financial benefits derived from the violation (six: DE, DK, EL, FI, FR, PL, UK);
- Cooperative behaviour of the author of the violation with the competent authority (five: DE, EL, NO, PL, UK);
- Financial strength of the author of the violation (four: DK, EL, PL, UK);
- Duration of the violation (four: DK, EL, PL, UK);
- Extent of the cooperative behaviour of the author of the violation (four: DK, EL, PL, UK);
- Impact on the market in general and on consumers (seven: DK, EL, FI, IS, NO, PL, UK);
- Loss incurred by clients or those impacted (five: DE, DK, EL, PL, UK);
- Extent to which the author of the violation may have taken steps to compensate those impacted by the violation (four: DE, DK, EL, PL);

- Degree of culpability on the part of the author of the violation (eight: DE, DK, EL, FI, IS, NO, PL, UK);
- Repetitive nature of the violation (six: DE, DK, EL, FR, IS, PL, UK);
- Compliance history of the author of the violation if it is a regulated entity (three: DK, EL, PL);
- Level of responsibility/seniority of an individual (six: DK, EL, FI, FR, IS, PL, UK);
- Any other mitigating or aggravating factor (three: DK, EL, UK).

423. In addition to the factors listed above, three CAs (FR, NO, UK) indicated other criteria taken into account by judicial criminal courts when imposing imprisonments for market abuse violations, such as:

- recognition of the violation, totally or partially, as a mitigating factor (FR);
- if the person has planned/well organized the market abuse (NO);
- potential winning/amount of financial benefits (NO, UK);
- professionalism (NO);
- Personal circumstances (e.g. age, good character, psychological circumstances; family and personal impact (UK);
- Professional circumstances (e.g. effect on professional position and on future career, the nature of the defendant's employment) (UK);
- Precedent of the Court of Appeal (UK).

Other types of sanctions used in addition to fines or imprisonment

424. Eight CAs (DE, EE, EL, IS, LT, LU, LV, MT) reported that in their Member States no others type of sanctions were used in addition to pecuniary sanctions or imprisonment in cases of market abuse violations.

425. Five CAs (DK, FI, PL, PT, SE) indicated that judicial authorities imposed other types of sanction (in addition to fines and imprisonment) in cases of market abuse violations. According to these CAs, the following other types of sanctions have been used:

- community service (DK);
- business prohibition order (FI);
- money donation to the foundation (PL);
- license suspension (PL);

- disqualification from the practice as agent of the profession or activity associated with the crime, including prohibition of the practice of management, administration, control or supervision and, in general, representation of any financial intermediary (PT);
- publication of the conviction, at the expense of the defendant, in newspaper (PT);
- conditional sentence combined with fines (SE).

EVIDENCE/ STANDARD OF PROOF WITHIN CRIMINAL PROCEEDINGS

Proof of intent

426. Sixteen CAs (AT, BE, CZ, EE, EL, FR, HU, IE, IT, LT, LU, PL, PT, RO, SI, SK) reported that, in general, proof of intent is required in order to have a guilty verdict in a market abuse case in criminal proceedings. 1 CA (UK) noted that proof of intent is not required to have a guilty verdict in market manipulation cases, but for insider dealing it is necessary to prove that the person knew both that he/she had inside information and that it was from an inside source; for market manipulation it can be committed both unintentionally and recklessly.

427. **Table G.35) – Requirement for proof of intent in order to have a guilty verdict in a market abuse case**

Is proof of intent required in order to have a guilty verdict in a market abuse case?		
YES	AT, BE, CZ, EE, EL, FR, HU, IE, IT, LT, LU, PL, PT, RO, SI, SK	16
NO	CY, DE, DK, ES, FI, IS, LV, MT, NL, NO, SE, UK	12

428. It is to be noted that the concept of what proof of intent varies.

Level of culpability required to impose a sanction in a market abuse case

429. The level of culpability required to impose a criminal sanction in a market abuse case differs across Member States. 26 CAs (AT⁴⁷, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, SE, SI, UK) provided details about the level of culpability required to impose a sanction in a market abuse case in criminal proceedings. However, it is worth noting that CAs highlighted diverse aspects and interpreted the concept of “level of culpability” quite differently.

430. For example, CY and LU understood what seems to be “level of proof needed”, which is something procedural, while for example CZ and PT understood that question as aiming at the elements of crime, meaning it was a question of substantial law.

431. These differences being noted, the following can be highlighted:

432. Four CAs (CY, LT, LU, PL) stated that guilt has to be proven beyond any reasonable doubt, while 1 CA (FR) reported that there is no such notion of “level of culpability” (e.g. beyond any reasonable doubt) under French law with respect to market abuse cases. EL indicated that the level of culpability required is the standard of proof imposed to establish the administrative part of the abuse plus proof of intent.

⁴⁷ In AT, only insider dealing is a criminal offence per se; market manipulation is a criminal offence only if the facts constitute fraud.

433. LV stated that it is under the competence of the court, while in MT the level of culpability in a market abuse case is still to be determined since there were no criminal cases to date.
434. The remaining 18 CAs (AT, BE, CZ, DE, DK, EE, ES, FI, HU, IE, IS, IT, NL, PL, PT, SE, SI, UK) provided details about the guilty mind (*mens rea/dolus*), viewed as one of the necessary element of the crime, which must accompany the criminal action.
435. In particular, five CAs (DK, ES, IS, NO, SE) confirmed that just negligence is required to impose a sanction in a market abuse case. ES clarified that in insider dealing cases there is a presumption that those who trade when in possession of inside information are using this inside information and intend to use it and that in market manipulation cases proof of intent is not necessary.
436. In FI, intent is required only in gross market abuse cases (maximum 4 years imprisonment) and in normal cases (maximum 2 years imprisonment) only gross negligence (carelessness) is required.
437. Five CAs (CZ, EE, IT, PT) stated that the intent is required in both insider dealing cases and market manipulation cases. Three CAs (CY, EE, PT) specified that it is not necessary to demonstrate that the offender aimed at the consequences of his conduct (specific intent) or that the offender did not primary aim for the consequences but considered them certain to occur (direct intent), but it is sufficient that the offender foresaw the consequences and accepted the risk that they possibly could occur (indirect intent). In IT, it is necessary to prove that the offender acted knowingly and willingly and indirect intent is sufficient.
438. Two CAs (AT, DE) reported that, while market manipulation entails a criminal offence only when committed intentionally (DE) this is not always the case in insider dealing cases. In AT and DE, disclosure of inside information and recommending another persons to trade on the basis of inside information always require intentional wrongdoing by the offender (in DE, indirect intent is sufficient), while using of inside information may also be committed with negligence (AT) or gross negligence (DE).
439. IE, making reference to Spector case, stated that it seems that there is a legal presumption that anyone possessing inside information who enters a market transaction in relation to the relevant instrument is found guilty of insider dealing if he/she fails to rebut the presumption. In IE, the level of proof of intent in market manipulation cases has not yet been clarified.
440. NL reported that in insider dealing cases it is required that the inside information was known to the person when the person started trading, while in market manipulation cases the culpability is not relevant, only the initiation of the behaviour is relevant.
441. One CA (UK) noted that the proof of intent is not required to have a guilt verdict in market abuse cases, but for insider dealing it is necessary to prove that the person knew both that he/she had inside information and that it was from an inside source and for market manipulation it can be committed both intentionally and recklessly.

Possibility to use a body of serious, specific and convergent evidence to help proving the case in the absence of tangible proof of market abuse

442. In 23 Member States (AT, BE, CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LV, NL, NO, PL, PT, RO, SE, SI, UK), in the absence of tangible proof of market abuse, it is possible to use a body of serious, specific and convergent evidence to help prove the case as indicated in the table below.

443. **Table G.37) – Possibility of using a body of serious, specific and convergent evidence to help prove the case in the absence of tangible proof of market abuse**

In the absence of tangible proof of market abuse, is it possible to use a body of serious, specific and convergent evidence to help prove the case?		
YES	AT, BE, CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LV, NL, NO, PL, PT, RO, SE, SI, UK	23
NO	CZ, LT, LU, MT, SK	5

444. CAs provided the following main experiences on the use a body of serious, specific and convergent evidence to help criminal courts proving the market abuse cases in their Member States.

445. By way of example the following were mentioned:

- The need to convince the court beyond reasonable doubt that the accused is guilty (DE, ES, FI, IT, PL);
- The need to establish a motive (DK);
- Prosecutors’ and judges’ reliance on the reports and findings of the supervisory authorities (EL);
- The absence of any other rational explanation for the behaviour of the suspect (ES);
- The evidential use of telephone traffic records to demonstrate that disclosure of inside information took place between the trader and the insider (FI);
- Circumstances that are indirectly proven and judged according to the rules of experience (for instance, on the basis of a “pattern of insider” evidence) (PT);
- Difficulties in proving that it has been a matter of inside information and that the suspect has obtained the inside information (SE).

446. A number of CA also made the following observations:

- the method of a body of serious, specific and convergent evidence has been used in a very few cases when the persons accused did not acknowledge the facts and wrongdoings (FR);
- It has proven very difficult to convict someone for insider trading (NL);
- Tangible proof is often used in market abuse cases (NO);

- Unless there was a whistleblower, most of cases in UK were based on circumstantial evidence and FSA has been successful in obtaining convictions.

Major findings

447. In relation to the European Commission's earlier considerations on the possible introduction of criminal sanctions for specific violations, ESMA noted that criminal sanctions may be particularly dissuasive due to their severity and social stigma associated with them. However, ESMA also emphasised that criminal sanctions may also have disadvantages that should be taken into account when assessing their effectiveness to ensure regulatory compliance and enforcement.

448. It has to be noted that Article 14 of the MAD obliges Member States to ensure that appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions implementing the Directive have not been complied with. Member States under the existing Directive maintain the right (and they do not have an obligation) to impose also criminal sanctions, however no harmonisation is provided in this respect. As far as possible, this report attempts to give information in areas which are not covered by the Directive or not harmonised under the Directive.

Availability of pecuniary sanctions and imprisonment

449. With regard to pecuniary sanctions available, around half of the Member States have no specified minimum penalty defined for insider dealing (12: CY, DK, ES, FI for natural persons, FR, IE, IS, LV, PL, RO, SE, UK) or for market manipulation (13: CY, DK, FI for natural persons, FR, IE, IS, LV, NL, NO, PL, RO, SE, UK). For insider dealing violations, where there is a minimum and/or a maximum amount of fines applicable by judicial authorities, the minimum pecuniary sanctions applicable was € 1 (LT) while the maximum pecuniary sanction applicable was € 16,000,000 (EE). For market manipulation violations, the minimum pecuniary sanction applicable was € 1 in (LT) while the maximum pecuniary sanction applicable was € 16,000,000 (EE). There is no specified minimum penalty defined but the benefit obtained from the infringement sets the minimum limit to pecuniary sanctions in 3 MSs (ES, FR, RO) in case of insider dealing and in 2 MSs (FR, RO) for market manipulation. There are 4 MSs (BE, FR, IT, LU) that also link the maximum amount of fines to the profit realised from the infringement.

450. With regard to imprisonment, minimum and maximum length of imprisonment for market abuse violations might be provided for in national legislation. Where it is the case, the range of minimum and maximum length varies considerably across Member States. The range of the minimum length of imprisonment applicable for insider dealing violations varies from 15 days (SI) to 3 years (SK), while the range of the maximum length of imprisonment applicable varies from 30 days (EE) to 12 years (IT, SK). The range of the minimum length of imprisonment applicable for market manipulation violations varies from 15 days (SI) to 2 years (IT), while the range of the maximum length of imprisonment applicable varies from 30 days (EE) to 15 years (SK).

Information available to CAs

451. The results of this section are limited to the information that was accessible to the CAs in

relation to the decisions of first level judicial courts on the grounds of market abuse. It is however also of interest to know how far CAs are able to and do actually follow the decisions taken on the grounds of market abuses by criminal courts, i.e. how many of the CAs have easily accessible information about the criminal proceedings on-going in their Member State. Based on these differences about the extent to which such information is available to CAs, the results are presented under three headings:

- criminal sanctions imposed by courts on market abuse cases originated and dealt with from the outset by judicial authorities within the framework of criminal proceedings ;
- information relative to the 4 CAs (EL, IE, PL, UK) that can prosecute market abuse cases criminally in front of judicial court within the framework of criminal proceedings; ;
- cases that are originated by the CA but transmitted to the judicial authorities within the framework of criminal proceedings.

Decisions taken by courts on market abuse cases originated and dealt with from the outset by judicial authorities within the framework of criminal proceedings

452. There are 16 CAs (AT, DE, DK, EE, EL, FI, IE, IS, LT, LU, MT, NL, NO, PL, PT, UK) that reported having easily accessible information about the criminal sanction decisions taken by courts on market abuse cases originated and dealt with from the outset by judicial authorities within the framework of criminal proceedings. Of these, six CAs (DK, EE, EL, IS, NL, NO) reported having such cases during the review period and they reported about less decisions against legal persons than against natural persons.

Possibility for CAs to criminally prosecute market abuse cases in front of judicial court within the framework of criminal proceedings;

453. Of the four CAs (EL, IE, PL, UK) that can do so, three CAs prosecuted market abuse cases criminally in front of criminal court within the framework of criminal proceedings (EL, PL, UK); one (IE) has the power but did not use it during the review period. As regards insider dealing violations, nine persons were sanctioned in the review period, among which there were no legal persons. As regards market manipulation, six persons were sanctioned in the review period, among which there were no legal persons. ;

Cases originated by the CA and transmitted to the judicial authorities within the framework of criminal proceedings

454. Depending on the national legal system, the CA transmits certain or all cases of market abuse to the judicial authorities. The nature and condition of the transmission depend on national legislation and the investigative powers allocated to the CA, whether the transmission is done on an automatic basis, etc. There are 15 CAs (AT, BE, DE, DK, EE, EL, FR, IT, LV, NL, NO, PL, PT, SE, SI) that transmitted cases to the judicial authorities in each year of the review period. 4 CAs (IE, MT, SK, UK⁴⁸) did not report any cases in the same period.

455. Not all CAs have easily accessible information about the decisions taken by the judicial authorities on the cases reported by the CA to them. There are 17 CAs (AT, DE, DK, EE, EL, FI, FR, IE, IS, LU, MT, NL, NO, PL, PT, SK, UK) that reported having such access⁴⁹. Among these

⁴⁸ In the UK the CA can prosecute market abuse cases criminally in front of criminal courts

⁴⁹ 1 CA (IT) specified that, although it does not have easy access to detailed information related to criminal proceedings, it has the following aggregated figures: - 8 criminal proceedings were ended in 2008; - 2 criminal proceedings were ended in 2009; - 3 criminal proceedings were ended in 2010.

MSs, there were natural and/or legal persons sanctioned in ten MSs (DE, DK, EL, FI, FR, IS, NL, NO, PL, PT). In one of the MSs (SE) where only criminal sanctions are available to deal with market abuse, the CA reported that it has no easily accessible information about the decisions that the judicial authorities take on the cases reported to them.

Pecuniary sanctions

456. Fifteen CAs (AT, DE, DK, EE, FI, FR, IE, IS, LU, MT, NL, NO, PL, PT, UK) reported of having easy access to information on fines/pecuniary sanctions imposed by the judicial authorities in their MSs. In three MSs (DE, FI, NL) natural persons and/or legal persons were ordered to pay fines for market abuse violations in each year of the review period, while in six other MSs (DK, FR, NO, PT, PL, UK), fines for market abuse violations were imposed in at least one case during the review period for natural and/or legal persons. In the remaining six MSs (AT, EE, IE, IS, LU, MT) neither natural persons nor legal persons were ordered to pay fines during the review period.

457. There are differences in the amounts of fines actually imposed by criminal courts in their respective MSs that ranged for insider dealing from € 670 (DK) to € 773,495 (DK) for natural persons and from € 50,000 (FI) to € 320,000 (FI) for legal persons. The fines imposed on natural persons for market manipulation ranged from € 255 (PL) to € 300,000 (FR). No legal persons were ordered to pay fine for market manipulation during the review period.

458. While the list of key factors determining pecuniary sanctions were identified in ESMA's response for administrative sanctions, it can also be useful to assess their use for criminal sanctions. In the eight MSs where fines for market abuse violations were imposed and that provided information on the issue, seven factors were used by judicial authorities in most of the MSs to actually determine the fines imposed: seriousness of the violation; amount of financial benefits derived from the violation; financial strength and/or size of the author of the violation; duration of the violation; impact on the market in general and on consumers; degree of culpability on the part of the author of the violation; and level of responsibility/seniority of an individual. It should be noted that there might be other factors relevant in criminal cases in addition to the factors listed in the questionnaire that served as a basis for this mapping.

Imprisonment

459. According to the information available, in nine MSs (DE, DK, EL, FI, FR, IS, NO, PL, UK) there were cases of imprisonment for insider dealing and/or market manipulation in at least one of the years of the review period. For insider dealing violations, sanctions in terms of imprisonment were imposed in seven MSs (DE, DK, EL, FI, FR, NO, UK) and in seven MSs (DK, DE, EL, FR, IS, NO, PL) for market manipulation.

460. In terms of length, for insider dealing violations, the minimum length was below one year and the maximum length was less than three years. For market manipulation violations, the minimum length was below one year and the maximum length was less than three years and nine months. In most MSs, the maximum length is up to one year.

461. In the nine MSs (DE, DK, EL, FI, FR, IS, NO, PL, UK) where imprisonments for market abuse were imposed in the review period, the following factors were used in the majority of these MSs: seriousness of the violation; amount of financial benefits derived from the violation;

cooperative behaviour of the author of the violation with the competent authority; impact on the market in general and on consumers; loss incurred by clients of those impacted; degree of culpability of the author of the violation; repetitive nature of the violation; and level of responsibility/seniority of an individual. It should be noted that there might be other factors relevant in criminal cases in addition to the factors listed in the questionnaire that served as a basis for this mapping.

Other non-pecuniary sanctions

462. Besides fines and imprisonments, cases of market abuse violations led in five MSs (DK, FI, PL, PT, SE) to other types of sanctions such as community service (DK); business prohibition (FI); money donation to the foundation and license suspension (PL); disqualification and publication on the conviction in an economic newspaper (PT); conditional sentence combined with fines (SE).

Evidence/Standard of Proof

463. In 16 MSs (AT, BE, CZ, EE, EL, FR, HU, IE, IT, LT, LU, PL, PT, RO, SI, SK), in general, proof of intent is required in order to have a guilty verdict in a market abuse case. However, “proof of intent” and “level of culpability” are interpreted differently by MSs.

464. The level of culpability required to impose criminal sanction in market abuse cases differs across the 26 MSs for which CAs provided information on this issue. The concept of guilty mind itself, viewed as one of the necessary elements of the crime which must accompany the criminal action, varies from just negligence to intent. In 23 MSs (AT, BE, CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LV, NL, NO, PL, PT, RO, SE, SI, UK), it is possible to use a body of serious, specific and convergent evidence to prove market abuse cases. However, from the experiences reported by the above CAs, it appears that there are differences in the level of culpability required.

VIII. APPEALS

465. An overview presenting the use of administrative and criminal sanctions in the Member States for breaches of market abuse can not be complete without dealing with appeals. The actual penalty incurred by the accused persons is often not known until the end of the appeal process. Data on appeal may provide background information about the use of sanctioning powers by CA's or judicial authorities by indicating whether the first level decisions have been generally confirmed or not.
466. Data received from CAs confirm a high diversity among the Member States about courts' jurisdiction and the process which should be followed during the appeals. Furthermore, it should be noted that CAs are not systematically aware of all the appeals and this is even more valid for criminal proceedings. On this basis, it has proven quite difficult for this exercise to draw firm conclusions about appeals occurring in the Member States.
467. Therefore, this section provides, based on information received from CAs, a first insight into the number of appeals regarding administrative sanctions which were imposed by CAs, as well as criminal sanctions imposed by criminal judicial courts for market abuse cases. In addition to this, an attempt was made to present the reasons for fully successful appeals and partially successful appeals for the individual decisions that were reported by the CAs for the review period. It should be kept in mind that, in this report, "successful appeal" means an appeal successful to the person against whom the sanction was imposed, i.e. the sanction decision was reversed. Also, it should be noted that this is only a presentation of the individual decisions and can by no means lead to general conclusions.

Appeals to administrative sanctions

468. Twenty-seven (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) responded in relation to appeals as to administrative sanctions. DK replied N/A in all cases arguing that, if there was proof of market abuse, MAD article 2 to 5⁵⁰ the case was referred to the police. SE replied N/A in all cases arguing that, if there is reason to believe that an offence has been committed according to MAD article 2 to 5⁵¹ the case was referred to the police.

⁵⁰ Articles 2 to 5 of MAD provide as follows:

Article 2

1. Member States shall prohibit any person referred to in the second subparagraph who possesses inside information from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

The first subparagraph shall apply to any person who possesses that information:

(a) by virtue of his membership of the administrative, management or supervisory bodies of the issuer; or (b) by virtue of his holding in the capital of the issuer; or (c) by virtue of his having access to the information through the exercise of his employment, profession or duties; or (d) by virtue of his criminal activities.

2. Where the person referred to in paragraph 1 is a legal person, the prohibition laid down in that paragraph shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

3. This Article shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded before the person concerned possessed inside information.

Article 3

Member States shall prohibit any person subject to the prohibition laid down in Article 2 from:

(a) disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties; (b) recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates

Article 4

Member States shall ensure that Articles 2 and 3 also apply to any person, other than the persons referred to in those Articles, who possesses inside information while that person knows, or ought to have known, that it is inside information.

Article 5

Member States shall prohibit any person from engaging in market manipulation.'

Number of appeals concerned by rulings in relation to administrative sanctions

469. In 19 (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IT, LT, NL, PL, PT, RO, SI, UK) out of 29 MSs, appeals were lodged regarding administrative sanctions during the review period.

470. **Table H.1). Number of appeals lodged in the review period regarding administrative sanctions**

	2008	2009	2010
Number of successful appeals	BG (2), CZ (1), EL (8), FR (2), NL (1)	AT (14), EL (27), FR (1), IT (3), LT (2), PT (1)	AT (1), BE (2), BG (1), DE (1), EE (1), EL (12), FR (3), IT (2), LT (2), PT (2), SI (5)
Number of partially successful appeals	AT (3), EL (4), FR (1), IT (1), PT (1)	AT (5), FR (4), LT (2), PT (1)	AT (4), DE (1), IT (1), LT (1)
Number of lost appeals	AT (3), BG (7), CZ (1), EL (14), ES (2), FR (33), HU (1), IT (9), PL (1), UK (2)	AT (1), BG (8), CY (1), EL (12), ES (1), FR (8), HU (2), IT (3), LT (1), PL (2), RO (2), SI (3), UK (1)	AT (4), BG (3), EL (2), ES (1), FR (20), HU (5), IT (7), NL (1), PL (2), PT (1), SI (1), UK (9)

471. Information provided in the table above should be read in conjunction with the following complementary information provided by the CAs confirming the diversity of Member States' sanctioning procedures, differences in their systems of appeals (i.e. the level and type of appeals available):

472. AT commented that the numbers listed are second level appeals decisions only. Regarding the appeals lodged to the Constitutional/Administrative Supreme courts following numbers apply: 2008: 6; 2009: 5; 2010: 8. All these appeals had not been decided by the end of 2010.

473. BE responded that the CA imposed an administrative fine on one legal person and one individual on the ground of insider dealing. The investigated practices dated back to 2003. Those persons lodged an appeal to the Court of Appeal in Brussels. The appeal was successful, mainly on a point of law. In the context of that appeal, the European Court of Justice (ECJ) has been asked to interpret some provisions of the Market Abuse Directive (see ruling of ECJ in the Spector case - December 23, 2009 - C-45/08).

474. CY commented that that there are 6 pending appeals for 2010, the outcome of which is yet unknown.

475. DE commented that two appeals were lodged against administrative sanctioning decisions in 2010. In one of the cases, proceedings were terminated by a dismissal decision of the competent court whereas in the other case, the competent court imposed an administrative fine lower than the amount originally imposed by BaFin."

476. EL commented that according to the Hellenic legislation, there was no provision for an appeal on market abuse cases. The Appellate Court tries the case in "first and last" degree. The party interested can file a "petition for annulment" in front of the Supreme Cassation Court (Conseil d'Etat – Symvoulío tis Epikrateias) only if the financial object of the case exceeds the amount of €40,000. The

table above refers to all the cases submitted to the Appellate Court, which tries the cases in ‘first and last’ degree in each respective year.

477. The statistics for FR in the above table concern applications for review which led to decisions of the Court of appeal, except for four of them over the examined period which led to decisions of the Conseil d’Etat (as both the Court of appeal and the Conseil d’Etat may review cases decided by the AMF Enforcement Committee on their merits, depending on the person sanctioned for market abuse).

FR also responded that the AMF has not had the mandate to file an application for review of the Enforcement Committee's decisions. This has now been revised with the new legislation adopted in October 2010 ("Loi de régulation bancaire et financière") according to which the AMF Chairman after agreement with the Board of the AMF is also entitled to file an application for review. This provision entered into force with the publication of a statutory instrument dated August 16, 2011.

Cour de cassation’s decisions, which only deal with appeals on points of law against court of appeal decisions, concerned in 2008, 2009 and 2010, appeals on points of law lodged by 4, 12 and 5 persons sanctioned respectively. These appeals were dismissed by the Cour de cassation and therefore, decisions of the Court of Appeal confirming decisions of sanctions handed out by the Enforcement Committee of the AMF were upheld. Besides in 2010, on an appeal on a point of law lodged by the AMF against a decision of the Court of appeal which had reversed in 2009 a decision of the Enforcement Committee of the AMF, the Cour de cassation quashed the 2009 decision of the Court of Appeal and therefore, the case will be tried again before the Paris Court of Appeal.

478. MT responded that the appeals lodged in 2009 are still being considered by the Financial Services Tribunal.

479. SI responded that the Agency provides appeals and the results related to enforcement actions. The only one Agency’s administrative decision issued in 2010 regarding market manipulation was appealed to. So far there has been no decision taken by the competent court and the Agency has no information about whether the appeal has been successful, partially successful or lost. In addition, SI noted that appeals lodged in one year have not been ruled in the same year and that the numbers provided represent only the cases for which the Agency received Supreme Court decisions regardless of the time of lodging the appeal.

For the individual appeal decisions reported by CAs, reasons identified for successful appeals

480. For the individual appeal decisions reported by the CAs during the review period, the following reasons were identified for fully successful appeals and partially successful appeals. When reading these aspects, it should be noted that this is only a presentation of reasons identified for the individual decisions reported by the CAs for the review period and that the number of appeals or the rate of sanctions which were totally or partially reversed/cancelled in respect of a given Member State can be very low. For the appeal decisions reported in the review period, the following aspects could be identified as bases for the Courts to totally or partially reverse CA’s decisions:

481. **Lack of evidence** (For example, newly prepared documents were presented in the Court and lead to the annulment of the decision of the CA (BG), the direct ties of relationship (father-son) as a tangible proof for possession of inside information by the violator (son) was not accepted (BG), the mere error does not constitute a violation of the rules governing the profession of journalists (CZ),

insider dealing could not be proved (FR), the conduct of the sanctioned person did not amount to market manipulation since the information disseminated was neither ‘false’ nor ‘misleading’ (IT) and effected market manipulation was not proved (SI)).

482. **Lower degree of culpability of the offenders** (For example, the intention of market manipulation could not be proved (AT, DE), it was not established that the offenders knew or ought to have known that the information provided to the public was false or misleading (FR), the defendant did not act with an intent to commit the infraction (PT) and the accused was not responsible for the offence committed by the legal person (AT)).

483. **Mitigating circumstances** (For example, the role of the person in the breach committed by the company for dissemination of false information was minor (FR), the ‘sell’ trades had been carried out over a long period of time so there were not pure speculative trades (FR), the limited impact of the breach on the value of the shares and because it was not established nor claimed that the person sanctioned had made a direct profit out of the breach (FR), the financial situation of the company was deteriorated (FR)).

484. **Reversal of facts and findings of the case** (For example, reversal of the facts and findings of the case (EL), the factors taken into account by the CA had been reconsidered by the Courts (IT) and the defendants did not violate the law under which they convicted by the administrative authority (PT)). In EL, numerous cases were tried according to the previous legal regime which was altered with the implementation of Directive 2003/6/EC. Under the previous regime, Hellenic Courts assessed that transactions do not qualify as “information” pertaining to the supply of, demand for or price of financial instruments and therefore market manipulation cannot be effected via transactions and the information derived thereof. The Supreme Court considers (but has not yet decided) to overturn the prevailing case law and apply the actual legal regime to the old cases as well.

485. **Problems with the procedures followed by the CAs** (For example, the administrative penalty procedures had to be ceased due to the investigation of the case by the public prosecutor and the second instance decision (within a Tribunal) was annulled by law after 15 months from when the appeal had been lodged (AT), the application of the rule of prohibition of double jeopardy (AT), other procedural violations – late notification of charges to offenders-(IT), and new jurisprudence changed the ability for the CA to fine natural persons (NL)).

Appeals as to criminal sanctions

Information available about appeals to criminal sanctions

486. **Table H.6.) As regards criminal sanctions for market abuse cases for which an appeal has been lodged, does the CA have easily accessible information about the appeals on the market abuse cases that originated by the CA and dealt with by judicial authorities within the framework of criminal proceedings?**

Easy access to information about the appeals on the market abuse cases that were originated by the CA and dealt with by judicial authorities within the framework of criminal proceedings.		
Yes	AT, DE, DK, EE, EL, FI, FR, IE, IS, LU, MT, NO, PL, PT, UK ⁵²	15

⁵² UK: Easy access to information about the appeals on the market abuse cases that were originated by the administrative authority and dealt with by judicial authorities within the framework of criminal proceedings.

No	BE, BG, CY, CZ, ES, HU, IT, LT, LV, NL, RO, SE, SI, SK	14
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487. Fifteen CAs (AT, DE, DK, EE, EL, FI, FR, IE, IS, LU, MT, NO, PL, PT, UK) responded that they have easily accessible information about the appeals on the market abuse cases that were originated by the CA and dealt with by judicial authorities within the framework of criminal proceedings.

488. Accessible information is not necessarily complete. FR commented that it could only take into consideration criminal market abuse cases originated by the CA and referred to judicial authorities (but not the cases that originated and were dealt with by judicial authorities). DE commented that BaFin does not necessarily have all the information available, because they cannot be sure that all courts and public prosecutors will pass on the relevant information in each and every case to BaFin. As a result of that, they cannot rule out that additional information will come up at some later point in time. IE responded that due to the operations of the legal system in Ireland, information on criminal prosecutions for market abuse would be easily accessible to the Central Bank of Ireland. Among the CAs having easily accessible information about the market abuse cases that were originated and dealt with by judicial authorities within the framework of criminal proceedings five CAs (AT, IS, LT, LU, MT) reported no criminal cases for market abuse for the review period.

489. The remaining 14 CAs (BE, BG, CY, CZ, ES, HU, IT, LT, LV, NL, RO, SE, SI, SK) responded that they do not have easily accessible information. Among these, BG does not consider market abuse cases as being criminal law cases (no criminal proceedings for the accused). ES responded that although information is not easily accessible the CNMV tries to obtain information about the Court decisions (including appeals) on those cases that have been forwarded by the CNMV for criminal prosecution. SE commented that the CA receives all verdicts in full. However neither SE nor ES keep any easily available statistics on sanctions.

Number of persons concerned by rulings in criminal proceedings

490. Ten CAs (DE, DK, EE, EL, FI, FR, NO, PL, PT, UK) have responded about how many persons were concerned by the rulings in criminal proceedings for the review period. One CA (IE) did not provide information on how many persons were concerned by the rulings for the years 2008, 2009 and 2010, although they responded that they have easily accessible information about the appeals on the market abuse cases that originated by the CA and dealt with by judicial authorities within the framework of criminal proceedings.

491. **Table H.7.) Number of appeals lodged in the review period regarding criminal sanctions**

	2008	2009	2010
Number of successful appeals	PL (1)	FI (10)	PL (3)
Number of partially successful appeals		PL(2)	DE (5), EE (1)
Number of lost appeals	DK (5), FI (1) PL (3), PT (2)	DK (2), FI (2), FR (2), NO (1), PT (5), UK(1)	DK (1), EE (1), EL (1), PL (1)

492. This information should be read in the general context of the diversity of Member States' judicial systems and the level and type of appeals available. They should also be read in conjunction with the complementary information provided by the CAs, such as.

- NO commented that they had only 1 appeal in this period and another appeal will be heard in 2011.
- PL reported a successful appeal during the course of 2008. According to the Member State the appeal was subject to prescription by a regional Court.

Reasons for successful appeals

493. In the context of criminal proceedings and for the individual appeal decisions reported by the CAs for the review period, the following reasons were identified for fully successful appeals and partially successful appeals. When reading these aspects, it should be noted that this is only a presentation of reasons identified for the individual decisions reported for the review period and that the number of appeals or the rate of sanctions which were totally or partially reversed/cancelled in respect of a given Member State can be very low. Also, few CAs have responded to this question and therefore the findings are based on this limited information provided. There is diversity in the reasons for fully or partially successful appeals to criminal sanctions during the years 2008, 2009 and 2010 that should in addition be looked at in the context of the diverging number of appeals, successful or lost, in the Member States.

494. Based on the responses provided by the CAs, the following can be specified:

- One CA (FI) highlighted the fact that it is difficult to state any reasons for successful appeals since there are usually many different ways of interpreting the facts of the cases, the proofs and the legal norms; however, it reported a second degree appeal, where the court of appeal found 10 persons guilty for market abuse and reversed the lower court's decision to dismiss all the charges.
- One CA (PT) also pointed out that the appeals are filed not by the defendants against a sanction decision but by the Public Prosecutor in relation to first instance decisions which have acquitted the defendants. In these cases, the appeals overturned such sentences and replaced them with convictions. The cases were sent back to first instance for the judge to decide about the sanction to be imposed. Therefore, in such cases, there are two judicial decisions: one that decides that the person should be charged and a second one which decides on the concrete sanctions.
- One CA (DE) responded that the reason why the appeals on points of law were partly successful was in two cases that the money the court ordered to be confiscated could not be confiscated because of a potential claim by the victims. The penalty was not reduced. In the three other cases offenders' gains had been calculated too high by the courts. In one of these cases this led to a reduction of the amount that was confiscated, while the penalty was not reduced. In the two other cases the Federal Court of Justice concluded that since the offenders' gains had been calculated too high, the court of first instance had also overestimated one of the factors to be taken into consideration when imposing a sanction. Therefore it ordered the sentence to be imposed at a reduced level and the confiscation order to be reduced, too.

- One CA (EE) responded that there was a miscarriage of justice in the procedure of the court of II instance and the case will be tried again. 1 CA (PL) mentioned that one appeal was successful subject to prescription (falls under the statute of limitations) by the Regional Court.

Major Findings

495. Data received from CAs confirm differences among MSs' as to the courts' jurisdiction, the appeal process and the outcome of appeals. Furthermore, it should be noted that not all CAs are systematically aware of all the appeals and this is even more valid for criminal proceedings. Given the limitations on the availability of data to the CAs (especially regarding appeals within criminal proceedings) it is a first insight that is provided rather than a complete picture.
496. As regards appeals of administrative sanction decisions, 19 (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IT, LT, NL, PL, PT, RO, SI, UK) CAs reported that appeals have been lodged against administrative sanctions imposed by CA for market abuse cases. The numbers of reported appeals varied from 1 appeal to 39 appeals for one CA in one year. Of seven CAs (FI, IE, IS, LU, LV, NO, SK) which reported that no appeals have been lodged against administrative sanctions, five CAs (IE, IS, LU, NO, SK) have not imposed any administrative sanctions and therefore the issue of appeals does not arise. Notwithstanding the limitation on the available data, the report identifies a few common features among the reasons for fully or partially successful appeals (i.e. successful to the person sanctioned) against administrative sanctions imposed by CAs. In some cases, the Courts annulled CA's decisions on the basis of lack of evidence, lower degree of culpability of the offenders, mitigating circumstances, the reversal of the facts and findings of the case and problems with the procedures followed by the CAs.
497. As regard appeal to criminal sanction decisions, 15 CAs (AT, DE, DK, EE, EL, FI, FR, IE, IS, LU, MT, NO, PL, PT, UK) responded that they have easily accessible information on appeals on market abuse cases that were originated by the CA and dealt with by judicial authorities within the framework of criminal proceedings whereas 14 CAs (BE, BG, CY, CZ, ES, HU, IT, LT, LV, NL, RO, SE, SI, SK) do not.
498. In relation to criminal sanctions for market abuse cases, for which an appeal has been lodged, 10 CAs (DE, DK, EE, EL, FI, FR, NO, PL, PT, UK) provided information. The reported appeals varied from 1 appeal to 12 appeals by CA in one year. Six CAs (AT, IS, LU, LT, LV, MT) reported no criminal cases for market abuse for the review period and one CA (IE) did not provide information on how many persons were concerned by the rulings for the review period although they responded that they have easily accessible information.
499. It is difficult to draw any general conclusions as to specific reasons for fully and partially successful appeals against criminal sanctions for market abuse cases during the review period, in particular because it is difficult to state specific reasons since the Courts follow many different ways of interpreting the facts and the evidence of the cases. Furthermore, limited information available on this issue prevents the drawing general conclusions as criminal proceedings fall out of the scope of the competence of a number of CAs.



IX. AGGRIEVED INVESTORS

500. This section provides an overview of the number and ways in which aggrieved investors can use administrative sanctions decisions to help them in obtaining compensation. This section also provides an overview as to whether judges in charge of deciding the compensation claim are bound by the pertinent administrative and/or criminal administrative sanctions decisions.

501. A sanction decision might have a potential effect on the situation of aggrieved investors if it has an impact on the compensation that such investors might obtain. Also, as an offender might be ordered to pay damage to victims of market abuse, the sanction may also have a potential effect on civil proceedings.

Possibility for aggrieved investor to use administrative sanction decisions to support a claim for compensation

502. In total, 20 CAs (AT, BE, BG, CY, CZ, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, PL, PT, SK) responded that aggrieved investors could use administrative sanction decisions to help them in obtaining compensation. On the contrary, seven CAs (DE, EE, LV, NO, RO, SI, UK) responded that administrative sanction decisions cannot be used by aggrieved investors to help them in obtaining compensation. In two MSs (DK, SE), market abuse cannot give rise to administrative proceedings.

503. **Table I.1) Can administrative sanction decisions be used by aggrieved investors to help them in obtaining compensation?**

	Can administrative sanction decisions be used by aggrieved investors to help them in obtaining compensation?	Number of Member States
YES	AT/BE/BG/CY/CZ/EL/ES/FI/FR/HU/IE/IS/IT/LT/LU/MT/NL/PL/PT/SK	20
NO	DE/ EE/ LV/NO/RO/ SI/UK	7
N/A	DK/ SE	2

504. In the majority of the 20 MSs where aggrieved investors have the possibility to use administrative sanction decision to help them in obtaining compensation, an administrative sanction decision can be used as supporting evidence in a claim for compensation, but the administrative sanction decision will not bind a judge on charge of deciding the compensation claim. EL has commented that if the respective administrative sanctions ruling is challenged in front of an administrative court and is found valid, then its evidentiary power is conclusive and binding.

Possibility for aggrieved investors to use criminal sanctions to support a claim for compensation

505. In 25 MSs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, PL, PT, SE, SK, UK) criminal sanction decisions can be used by aggrieved investors to help them in obtaining compensation, whereas in three MSs (NO, RO, SI) there is no such possibility. In one MS (BG), market abuse can not give rise to criminal sanctions. One MS (UK) noted that although it is possible that aggrieved investors would be able to qualify as victims under the compensation scheme, this is very unlikely and to date it has not happened.

506. It is more difficult to identify a common position in relation to the use of criminal sanction decisions by aggrieved investors and the possibility of binding effect for the judge in charge of deciding on the compensation claim. It would seem that this is due to the precedents that relate to the criminal legal systems in each MS. A number of CAs answered that a criminal sanction would bind the judge deciding the compensation claim of the aggrieved investor. A number of CAs stated that it was possible that a criminal sanction could be used as supportive evidence by the aggrieved investor.

Major Findings

507. In the majority of Member States, both administrative and criminal sanction decisions can be used by aggrieved investors to help them in obtaining compensation. However, the binding effect of such decision on judges in charge of deciding the compensation claim varies: for administrative sanctions there is no binding effect in general while for criminal sanction, the picture is fairly diverse.

508. In 20 MSs (AT, BE, BG, CY, CZ, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, PL, PT, SK) administrative sanction decisions can be used by aggrieved investors to help them in obtaining compensation, whereas in 7 MSs (DE, EE, LV, NO, RO, SI, UK) there is no such possibility. In the majority of Member States an administrative sanction can be used by an aggrieved investor as supporting evidence in their claim for compensation and will not bind a judge that is deciding the compensation case.

509. In 25 MSs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, PL, PT, SE, SK, UK) criminal sanction decisions can be used by aggrieved investors to help them in obtaining compensation, whereas in 3 MSs (NO, RO, SI) there is no such possibility. It is more difficult to identify a common position as in a number of MSs a criminal sanction would bind the judge deciding the compensation claim of the aggrieved investor and in a number of MSs it was possible that a criminal sanction could be used as supportive evidence by the aggrieved investor.

X. TIME ELAPSING

510. Efficient use of administrative and criminal sanctions implies swift proceedings as otherwise legislation and regulatory action may have a less dissuasive effect for perpetrators of market abuses.

511. This section provides an overview of the usual or average period of time elapsing between the date of the first act of market abuse covered by the decision and the date of the first sanction imposed for the decisions taken during the review period either by the CAs for administrative proceedings or by the judicial authorities for criminal proceedings. Further to this information, a comparison of the length of time elapsing for administrative versus criminal sanctioning proceedings in individual Member States is drawn where it is possible to do so on the basis of the information provided by the CAs.

512. When reading this section, it has to be kept in mind that there was less information available for criminal proceedings compared to information related to administrative proceedings.

Length of time elapsing in relation to administrative and criminal decisions

513. **Table J/K.1) Length of time elapsing – general picture**

	2008		2009		2010	
	Administrative	Criminal	Administrative	Criminal	Administrative	Criminal
No powers or N/A	DK, SE, LU	BG	DK, SE, LU	BG, LV	DK, SE, LU	BG, LV
Not used in the year	IE, IS, LV, NO, SK ⁵³	AT, HU, IE, IS, IT, LT, LU, LV, MT, SI, RO, UK	IE, IS, LV, NO, SK	AT, BE, IE, IS, IT, LT, LU, HU, MT, SI, RO	IE, IS, NO, SK	AT, BE, HU, IE, IS, IT, MT, LT, LU, MT, RO, SI
<1 year	FI, LT	DK	FI, LT		FI, LT, LV, UK	
1 to 2 years	AT, BG, CY, EE, HU, PL, PT, RO, SI, UK	PT, SE, SK	AT, BG, CY, EE, HU, PL, PT, RO, SI, UK	DK, PT, SE, SK	AT, BG, CY, CZ, EE, HU, PL, PT, RO, SI	DK, PT, SE, SK
2 to 3 years	BE, CZ, EL, ES, IT, NL	BE, DE, EE, NO	BE, CZ, EL, ES, FR, IT, NL	DE, EE, NO	BE, EL, FR, NL	DE, EE, NO
3 to 5 years	DE, FR	CY, EL, FR, NL, PL	DE	CY, EL, FR, NL, PL, UK	DE, ES, IT	CY, EL, FR, NL, PL, UK
>5 years	MT	ES, FI	MT	ES, FI	MT	ES, FI

⁵³ In SK there was no administrative sanction imposed in market abuse cases during the review period. However, SK indicated that it is stipulated in its legislation that the period of time elapsing between the date of the first act of market abuse covered by the administrative decision and the date of the first administrative sanction imposed in SK should be below 2 years (Act No. 566/2001 Coll. On Securities and Investments Services).

514. For administrative sanctioning, the information was provided by 25 CAs and a period of time elapsing of up to two years was reported by 12 CAs (AT, BG, CY, EE, FI, HU, LT, PL, PT, RO, SI, UK) in all years of the review period.

515. For criminal sanctioning, the information was provided by 21 CAs and cases were reported for each year by 14 CAs (CY, DE, DK, EE, ES, EL, FI, FR, NL, NO, PL, PT, SE, SK). The period of time elapsing of three to five years or more was reported by seven CAs (CY, EL, ES, FI, FR, NL, PL) in each year of the review period.

Comparison between administrative and criminal sanctioning proceedings

516. Table J/K Comparison of time elapsing by Member State

The table compares the length of time elapsing between the date of the first act of market abuse covered by the decision and the date of the first sanction imposed for the decisions taken during the review period for administrative versus criminal sanctions in individual Member States where it is possible to do so. Where one kind of sanctioning proceedings does not exist or has not been used within the review period, there is no possibility to draw a comparison in terms of time elapsing between administrative and criminal sanctioning proceedings for the individual Member State. It is recalled that little information was available for criminal proceedings regarding some of the Member States. The following comparison has to be read with that in mind.

517. When looking at the information captured in the tables below it should be noted that:

- a comparison between time elapsing in relation to administrative sanctions and criminal sanctions is only possible for 12 MSs in view that: a) in some MSs there are no administrative sanctions (DK, SE) or criminal sanctions (BG) available for market abuse; b) sanctions were not imposed in the review period by 5 CAs regarding administrative sanctions and in 10 MSs regarding criminal sanctions
- for some MSs the comparison is only possible for one or two out of the three years in the review period
- there may be legal or other national constraints that may impact on the time elapsed, such as set maximum time periods noted by one CA (BG).

518. As can be seen in the table below, for the 12 MSs where information can be compared, criminal sanctioning generally has taken longer than administrative sanctioning. In particular,

- In nine Member States (CY, EE, EL, ES, FI, FR, NL, PL, UK) criminal sanctioning tended to take longer than administrative sanctioning;
- In one Member State (DE) administrative sanctioning tended to take longer than criminal sanctioning;
- In two Member States (BE, PT) the length of time elapsing was similar for administrative and criminal sanctioning.

519. Notwithstanding the relatively limited data that can be compared, the information reflected in this section is in line with the assertion in the ESMA Response to the EC Communication on Sanctions that “criminal proceedings generally take longer than administrative sanction proceedings.”

520. In terms of time elapsing when an appeal was lodged against a decision of sanction and the sanction decision was upheld (where limited information was available) the following can be indicated:

- In case of administrative decisions in the period of 2008-2010 where an appeal (or an appeal only on a point of law) was lodged, and the decision of sanction taken by the administrative authority was upheld, the usual period of time between the first act of market abuse covered by the decision and the date of the decision upholding the sanction was varying between 1 and 5 years.
- In case of criminal decisions in the review period where an appeal (or an appeal only on a point of law) was lodged, and the decision of sanction taken by the lower courts was upheld, the usual period of time between the first instance of market abuse and the date of the decision upholding the sanction varied between 1 and 8, 5 years.

521. **Table: Information that can be compared**

	2008		2009		2010		Which tends to be longer?
	Admin.	Criminal	Admin.	Criminal	Admin.	Criminal	
BE	2 to 3 years	2 to 3 years	2 to 3 years	Not used	2 to 3 years	Not used	Similar
CY	1 to 2 years	3 to 5 years	1 to 2 years	3 to 5 years	1 to 2 years	3 to 5 years	Criminal
DE	3 to 5 years	2 to 3 years	3 to 5 years	2 to 3 years	3 to 5 years	2 to 3 years	Admin.
EE	1 to 2 years	2 to 3 years	1 to 2 years	2 to 3 years	1 to 2 years	2 to 3 years	Criminal
EL	2 to 3 years	3 to 5 years	2 to 3 years	3 to 5 years	2 to 3 years	3 to 5 years	Criminal
ES	2 to 3 years	>5 years	2 to 3 years	>5 years	3 to 5 years	>5 years	Criminal
FI	<1 year	>5 years	<1 year	>5 years	<1 year	>5 years	Criminal
FR	3 to 5 years	3 to 5 years	2 to 3 years	3 to 5 years	2 to 3 years	3 to 5 years	Criminal
NL	2 to 3 years	3 to 5 years	2 to 3 years	3 to 5 years	2 to 3 years	3 to 5 years	Criminal
PL	1 to 2 years	3 to 5 years	1 to 2 years	3 to 5 years	1 to 2 years	3 to 5 years	Criminal
PT	1 to 2 years	1 to 2 years	1 to 2 years	1 to 2 years	1 to 2 years	1 to 2 years	Similar
UK	1 to 2 years	Not used	1 to 2 years	3 to 5 years	<1 year	3 to 5 years	Criminal

522. **Table: Information cannot be compared**

	2008		2009		2010	
	Admin.	Criminal	Admin.	Criminal	Admin.	Criminal
AT	1 to 2 years	Not used	1 to 2 years	Not used	1 to 2 years	Not used
BG	1 to 2 years	No powers	1 to 2 years	No powers	1 to 2 years	No powers
CZ	2 to 3 years	N/A	2 to 3 years	N/A	1 to 2 years	N/A
DK	No powers	<1 year	No powers	1 to 2 years	No powers	1 to 2 years
HU	1 to 2 years	Not used	1 to 2 years	Not used	1 to 2 years	Not used
IE	Not used	Not used	Not used	Not used	Not used	Not used
IS	Not used	Not used	Not used	Not used	Not used	Not used
IT	2 to 3 years	N/A	2 to 3 years	N/A	3 to 5 years	N/A
LT	<1 year	Not used	<1 year	Not used	<1 year	Not used
LU	N/A	Not used	N/A	Not used	N/A	Not used
LV	Not used	Not used	Not used	Not used	<1 year	Not used
MT	>5 years	Not used	>5 years	Not used	>5 years	Not used
NO	Not used	2 to 3 years	Not used	2 to 3 years	Not used	2 to 3 years
RO	1 to 2 years	Not used	1 to 2 years	Not used	1 to 2 years	Not used
SE	No powers	1 to 2 years	No powers	1 to 2 years	No powers	1 to 2 years
SI	1 to 2 years	Not used	1 to 2 years	Not used	1 to 2 years	Not used
SK	Not used	1 to 2 years	Not used	1 to 2 years	Not used	1 to 2 years

Major findings

523. The time elapsing between the date of an act of market abuse and the date when the sanction decision is taken is a factor in the efficiency of sanctioning systems, such as its dissuasive effect.

524. For the 12 MSs (BE, CY, DE, EE, EL, ES, FI, FR, NL, PL, PT, UK) where information can be compared, overall criminal sanctioning generally took longer than administrative sanctioning. In particular, in nine MSs (CY, EE, EL, ES, FI, FR, NL, PL, UK) criminal sanctioning tended to take longer than administrative sanctioning; in one MS (DE) administrative sanctioning tended to take longer than criminal sanctioning and in two MSs (BE, PT) the length of time elapsing was similar for administrative and criminal sanctioning.

525. For administrative sanctioning, 12 CAs (AT, BG, CY, EE, FI, HU, LT, PL, PT, RO, SI, UK) reported of a period of time elapsing below two years in all years of the review period.

XI. PUBLICATION OF DECISIONS TAKEN ON THE GROUNDS OF MARKET ABUSES

526. Publication of administrative and criminal sanction decisions is part of the whole sanctioning process and has a dissuasive effect because information being provided to the general public and consequences of breaches of law relating to the market abuse.
527. This section describes whether administrative and criminal sanction decisions are to be published by legislation, whether publication can or must be made on an anonymous basis, and the criteria if any to be used to decide whether a sanction should be published, and whether it should be done on an anonymous basis. Finally, the percentages of sanctions actually published per CA/Member State are presented.

PUBLICATION OF ADMINISTRATIVE SANCTION DECISIONS

528. With regard to the publication of the administrative sanction decision, MAD provides for a discretionary power to publish decision unless certain exceptions apply.
529. It has to be noted that regarding the publication of sanctions, ESMA in its Response to the EC set out that “ESMA generally endorses the Commission’s view that the publication of sanctions should be made mandatory for CAs, in particular for market abuse cases, unless such disclosure would seriously jeopardise the financial market, lead to liability issues or disproportionate damage to the parties involved. However, there is no common position among CAs regarding further limitation of current exemptions from the publication of sanctions allowed in various EU directives. Furthermore, measures that aim at restoring the financial viability of an investment firm or a market operator (e.g. recovery plans) should not be subject to mandatory publication, as such publication may exacerbate the financial condition of the entity and therefore contradict the very purpose of the measure. The form and the content of the publication of a sanction or measure may be left to the discretion of each CA. This may continue to be done on an anonymous basis or by disclosing only the summary of the case. In principle, without prejudice to the exceptions mentioned, ESMA believes that the final decision of the CA should be published, whether or not that decision is appealed in front of a higher judicial body. In addition, should they wish, CAs should retain the discretion to publicise investigations, carried out by themselves (but not on behalf of other CAs), at an earlier stage than the final decision.”
530. It is also worth mentioning that on the “Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)” (COM(2011) 651 final. 2011/0295(COD)), Article 26.3 sets out that “*Every administrative measure and sanction imposed for breach of this Regulation shall be published without undue delay, including at least information on the type and nature of the breach and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions on an anonymous basis.*”

Rules for the publicity of decisions

531. Firstly, there is difference among MSs' legislation as to whether the CA is required by law to publicise administrative sanction decisions as a matter of principle. In case the CA is to follow this general rule of publicity, legislation may provide for certain exceptions.

532. The second aspect that has to be looked into is whether the sanction decisions are to be or can be published by a CA on an anonymous basis.

General rule of publicity

533. **Table L.1) Does the law require that decisions must be publicized in principle?**

YES	BE, CZ, ES, FI, FR ⁵⁴ , HU, IE, IT, LT, MT, NL, NO, PT, RO, SK, UK	16
NO	AT, BG, CY, DE, EE, EL, IS, LU, LV, PL, SI	11
N/A	DK, SE	2

534. Legislation in 16 MSs (BE, CZ, ES, FI, FR, HU, IE, IT, LT, MT, NL, NO, PT, RO, SK, UK) require that administrative decisions must generally be published as a principle. The CZ legislation requires that the sentence of the administrative decision (not reasoning) generally must be publicized. On the contrary, 11 MSs (AT, BG, DE, CY, EE, EL, IS, LU, LV, PL, SI) do not require that administrative decisions to be published. In two MSs (DK, SE), there are only criminal sanctions applicable to market abuse.

Exceptions to general rule of publicity

535. Of the 16 MSs (BE, CZ, ES, FI, FR, HU, IE, IT, LT, MT, NL, NO, PT, RO, SK, UK) which require that administrative decisions generally must be publicized, 12 MSs (CZ, ES, FI, FR, IE, LT, MT, NL, NO, PT, RO, UK) state having some exceptions:

- The main exception to the sanctioning decision being made public is to avoid jeopardising the financial market, or causing damages to the parties involved. This reason has been pointed out by 6 CAs (FR, LT, MT, PT, RO, UK). In some MSs the goal of not publicizing the decisions is to protect the investors. For example, in UK the CA may not publish the decision where it would be unfair to the person with respect to whom the action was taken or where it would be prejudicial to the interests of consumers.
- In other MSs publicizing depends on the level of the sanctions. In ES and PT minor sanctions may not be published. FI states that the FIN-FSA may decide not to publish a public reprimand if the error or omission is minor. PT replies that the exception may be applied when the seriousness of the infraction and the culpability of the defendant are low. Within NL the main exception to the decision to be made public is in the case where publication would jeopardise the AFM's supervision.
- In PT, the decision may not be made public when the sanction was suspended by the administrative decision.

⁵⁴ FR: Since the Act n° 2010-1249 of 22 October 2010

Anonymity of administrative decisions published

536. In 18 MSs (BE, BG, CY, DE, EE, EL, FR, HU, IS, IT, LU, LV, NO, PT, PL, SI, SK, UK) it is possible to anonymize the person(s) that are the subject of the sanctioning decision. In 9 MSs (AT, CZ, DK, ES, FI, IE, LT, NL, RO) the content of the decisions (in CZ the sentence of the decision) is made public. In 1 MS (SE) no administrative sanctions are available.

537. For those 15 MSs where the persons concerned by the administrative decision could be left being anonymous, the main criteria in deciding to anonymise include:

- Risk of causing serious damages to the integrity of the market (BE, BG, DE, IS, IT, LU) or to avoid disproportionate damage to the parties included (BE, DE, FR, IS, IT, LU, PT). In PT the criterion used is the damage caused to the person involved compared with the benefits from publishing the name of the infractors.
- In NO, in some cases, the criterion used is the right of privacy demands or the nature of the case, and require that the person is held anonymously.
- In PL, this exception is applied only to natural persons.
- In CY the criterion used is not to publish the names of persons included if they have not been found guilty.
- In EL enforcement decisions taken by the Board of Directors of the HCMC are made publicly known on the same date of the decision with (via) a press release, which incorporates a public announcement of the sanctions in brief (amounts, persons involved) when pecuniary sanctions above a predetermined limit (above € 3,000) have been imposed. The full text of the enforcement decisions of the HCMC is notified to the relevant natural or legal persons.
- The UK notes that, although it is able to publish sanctions decisions on an anonymous basis, in practice it publishes without anonymity.

538. In most MSs, as we can see above, there is an attempt to avoid disproportionate damage to the parties involved.

Decisions made public by the CAs

Percentage of the decisions made public

539. In terms of actual use of publication, the table below shows the percentage of the administrative decisions in market abuse cases published for each year of the review period.

540. **Table L.6) Percentage of the decisions made public for each year of the review period**

		2008	2009	2010
100%	where publication is a general principle	BE, CZ, ES, FI, IT, LT, NL, UK	BE, CZ, ES, FI, IT, LT, NL, UK	CZ, ES, FI, HU ⁵⁵ , IT, LT, NL, UK
	where publication is not a general principle	CY, DE ⁵⁶ , EL, PL	CY, DE, EL, PL	CY, DE, EL, PL
Between 0% and 100 %	where publication is a general principle	HU (22%), PT (66%)	HU (71%), PT (80%)	PT (90%)
	where publication is not a general principle	FR (83%)	EE (3%), FR (66%)	EE (1%), FR (85%)
0%		AT, BG, EE,	AT, BG, SI	AT, BE, BG, LV, SI
N/A or no administrative sanction decision imposed		DK, IS, LV, SE, SI	DK, IS, LV, SE	DK, IS, SE

541. In 2008 and 2009, all administrative sanctioning decisions in market abuse cases were made public by 12 CAs (BE, CY, CZ, DE, EL, ES, FI, IT, LT, NL, PL, UK). In 2008 in HU the percentage of publication was 22%, in FR 83% and in PT 66%. In 2008, three CAs (AT, BG, EE) did not publish the administrative decisions of market abuse cases. In 2009 the percentage of publication in EE was 3%, in FR 66% in HU 71 % and in PT 80%. In 2009 in 3 Member States (AT, BG, SI) the administrative decisions in market abuse cases were not published. In 2010 all administrative decisions in market abuse cases were made public by 12 CAs (CY, CZ, DE, EL, ES, FI, HU, IT, LT, NL, PL, UK). In 2010 the percentage of publication in EE was 1%, in FR 85%. In 2010, five CAs (AT, BE, BG, LV, SI) did not publish administrative decisions in market abuse cases.

In BE only definitive sanction decisions had to be published according to the law in force during the period under review. The administrative sanction decisions taken in 2010 have not been published because appeals have been lodged against those decisions.⁵⁷ The Law has recently been amended and

⁵⁵ HU: From 2010, regulation requires the HFSA to publish all administrative decisions

⁵⁶ All sanctioning decisions between 2008 and 2010 have been published in anonymous and aggregated form in BaFin's annual report.

⁵⁷ They have been published early 2012, together with the decisions of the court of appeal.

now provides that all decisions (and not only sanction decisions) must be published and that, in case an appeal is lodged, the publication is anonymous until the final decision.

Criteria used to determine whether a decision should be made public where Member State's law does not require in principle the publicity of decisions

542. Where the law does not require that administrative decisions to be made public, the policy used in practice as to whether a decision should be made public varies:

- Some CAs, such as (AT, BG, DE, IS, LU, SI), apply criteria as to whether the interests of the market participants and the stability of financial markets are protected.
- In others such as CY, the policy is to publish all decisions when sanctions are imposed.
- In EL the press releases are issued by the HCMC, which inform the public about situations where pecuniary sanctions above a predetermined limit (above €3,000) have been imposed by the Board of Directors of the HCMC to named supervised entities or individuals.

543. The general criteria used by the CAs, which responded to this question, depends on different grounds, such as if the person involved is natural or legal, on transparency an educational grounds, on the protection of the market participants and the integrity of the financial market, and especially, on the amount of the sanction imposed. Interestingly, among those CAs to which the law does impose administrative decisions to be made public as a general principle, similar criteria are used to decide whether to publish or not, as the criteria applied to identify exceptions by those CAs that follow the general principle of publicity.

PUBLICATION OF CRIMINAL SANCTION DECISIONS

544. This section describes whether criminal sanction decisions are to be published by legislation, whether there is a rule to publish on an anonymous basis, and which criteria are used to decide whether a sanction should be published, and whether on an anonymous basis. Finally, the percentages of sanctions actually published per MS are presented, where this information was available.

Rules for the publicity of decisions

545. Firstly, there is difference among MSs' legislation as to whether there is a legal requirement to publicise criminal sanction decisions in principle. In case that the authorities are to follow this general rule of publicity, legislation may provide for certain exceptions.

546. The second aspect that has to be looked into is whether the sanction decisions are to be or can be published by the authorities on an anonymous basis.

General rule of publicity

547. **Table M.1) Does the law require that criminal sanction decisions must be publicized in principle?**

	Does the law require that criminal sanction decisions must be publicized in principle?	
YES	BE, EE, EL, ES, FI, FR, IE, IT, LT, LV, MT, NL, PT, RO, SE, SI, SK, NO, UK	19
NO	AT, CY, CZ, DE, DK, HU, IS, LU, PL	9
N/A	BG	1

548. Nineteen MSs (BE⁵⁸, EE, EL, ES, FI, FR, IE, IT, LT, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK) require that criminal sanction decisions must be made public, whereas in nine MSs (AT, CY, CZ, DE, DK, HU, IS, LU, PL) criminal sanction decisions are not published in principle. In 1 MS (BG), market abuse does not constitute a criminal offence.

Exceptions to general rule of publicity

549. Of 19 CAs (BE, EE, EL, ES, FI, FR, IE, IT, LT, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK), which replied that criminal sanction decisions must be publicized, 13 MSs (BE, EE, ES, FI, IE, LT, MT, NL, NO, PT, SI, SK, UK) have some exceptions to the publication of the judicial decisions.

550. Among those that have certain exceptions, seven CAs (BE, EE, FI, MT, NO, SK, UK) reported that there is generally a presumption by their judicial authorities in favour of publicizing sentences. In PT, the main exception to the criminal sanction decision to be made public is that the disclosure regime applies to conviction decisions and subsequent appeals. In UK the decision will not be published if there are particular issues of concern, for example where the offender is known to have a specific vulnerability and publication might risk unwarranted adverse consequences or where wider disclosure

⁵⁸ BE reported that it refers in its answer to the general principle according to which court decisions are pronounced publicly. This is not to be understood as an active publicity on a website or through other media.

might undermine a police investigation. In EE the principle of public access applies to the pronouncement of court decisions without restrictions unless the interest of a minor, spouse or victim requires pronouncement of a court decision in a court session held in camera. In NO if the right of privacy demands so, or the nature of the case requires that the case should not be publicized; the decision will not be published.

Anonymity of decisions published

551. In 11 MSs (CY, ES, FI, FR, IE, IT, LV, PL, PT, SE, RO), the content of the criminal sanction decisions is fully publicized, so the anonymity is not accepted as a principle. On the contrary, in 17 MSs (AT, BE, CZ, DE, DK, EE, EL, HU, IS, LT, LU, MT, NL, NO, SI, SK, UK), it is possible to leave the persons concerned by the criminal sanction decision anonymous.

552. In the Member States, there is diversity among the criteria on which basis the decisions are published on an anonymous basis. In AT, NL and SK the criminal sanction decisions may only be published anonymously. The same applies, in principle, to DE. The names of the persons concerned by the sanction are only included in cases of overriding public interest and after the court issued a press release. In EL with respect to the data protection and privacy legislations as well as under specific legislation, and under the presumption of innocence principle, the names can be concealed when a decision is not definite, namely adjudicated in the second degree.

553. There are Member States where the decision is anonymous because it tries to avoid disproportionate damage (LT), in another the reasons are to protect the rights of privacy demands (NO), in another the anonymity is applied to natural persons (DK), whereas in another, the practice between different types and levels of court is not harmonized (CZ).

554. In BE some decisions of criminal courts are published in online databases. In that case, the publication includes the initials of the persons concerned by the sanction, instead of their full names.

555. In UK there is a presumption that reporting restrictions will apply in criminal cases when the defendant is a juvenile (under 18) unless explicitly lifted. The court might otherwise impose specific restrictions to protect witnesses or if the defendant is involved in other criminal proceedings where identity might be an issue.

Decisions made public

556. In terms of actual use of publication, the table below shows the percentage of the criminal sanction decisions in market abuse cases published for each year of the review period, where this information was available. In total, 14 CAs (AT, BE, CZ, DE, DK, EE, EL, FI, IS, IT, NL, NO, SE, UK) provided information about the percentage of the decisions made public in the review period.

557. **Table M. 6.) Percentage of the decisions made public for each for the three years of the review period**

	2008	2009	2010

100%	BE, DK, EL, FI, IT, NL, NO, SE, UK	DK, EL, FI, IS, IT, NL, NO, SE, UK	DK, EL, FI, IT, NL, NO, SE, UK
0%			
Other		EE 4%	EE 1%, DE 50%,
N/A or no criminal sanction imposed	AT, CZ, EE	AT	AT, CZ

558. In 2008 all of the criminal sanction decision of market abuse cases were made public in nine MSs (BE⁵⁹, DK, EL, FI, IT, NL, NO, SE, UK.). In 2009 all of the criminal sanction decisions of market abuse cases were made public in nine MSs (DK, EL, FI, IS, IT, NO, NL, SE, UK.). In 2009 the percentage of publication in EE was 4%. In 2010 all of the criminal sanction decisions of market abuse cases were made public in eight Member States (DK, EL, FI, IT, NL, NO, SE, UK.). In 2010 the percentage of publication in EE was 1%, in DE 50%.

559. In each year of the review period, at least eight CAs reported that all criminal sanction decisions were published by the judicial authorities in the given year.

Criteria used to determine whether a decision should be made public where Member State’s law does not require in principle the publicity of decisions

560. When the law does not require that criminal sanction decisions must be made public the criteria used to determine whether a decision should be made public are different. In DE there are no general criteria in terms of publication; the evaluation of which case might arouse public interest is up to the competent courts` decision. In CY the court decisions are available to those interested. In LU only the case law (jurisprudence) will be published in a specific quarterly magazine. In PL the Court may decide to make information on the penalty imposed public.

561. The general criteria used by Member States, which responded to this question, depends on different grounds such as the public interest, the protection of the market participants the legal interest of the case law and the right of privacy of the condemned person.

Major Findings

⁵⁹ See comment for BE under previous footnote.

562. Publication of administrative and criminal sanction decisions is part of the whole sanctioning process and has a dissuasive effect because of information being provided to the general public about the fact and consequences of breaches of law.

563. While MAD provides for a discretionary power to publish decisions unless certain exceptions apply, ESMA noted⁶⁰ that it endorses the EC's view that the publication of sanctions should be made mandatory for CAs, in particular for market abuse cases, unless such disclosure would seriously jeopardise the financial market, lead to liability issues or disproportionate damage to the parties involved.

Administrative sanction decisions

564. For administrative sanction decisions, 16 CAs (BE, CZ, ES, FI, FR, HU, IE, IT, LT, MT, NL, NO, PT, RO, SK, UK) have an obligation for publication in general. Twelve of these CAs (CZ, ES, FI, FR, IE, LT, MT, NL, NO, PT, SK, UK) provide for some exceptions to publication such as when the sanction is imposed for what the law defines as minor infringements or if the seriousness of the breach and the "culpability" of the defendant are low, when disproportionate damage might be caused to the financial market or to the parties involved or when the sanction is suspended by the administrative decision. In substantially the same limited circumstances described above, 18 CAs (BE, BG, CY, DE, EE, EL, FR, HU, IS, IT, LU, LV, NO, PT, PL, SI, SK, UK) may publish their administrative sanctioning decisions on an anonymous basis.

565. In each year of the review period, 12 CAs published all their sanction decisions taken in that year. Although three CAs (CY, DE⁶¹, PL) do not have publication as a general principle, they published all sanction decisions taken in the review period. 2 CAs (AT, BG) that reported administrative sanction decisions in each year of the review period have not published any decisions.

Sanction decisions within the framework of criminal proceedings

566. In 19 MSs (BE, EE, EL, ES, FI, FR, IE, IT, LT, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK), criminal sanction decisions on market abuse cases are to be made public. Of these, 13 MSs have some exceptions (BE, EE, ES, FI, IE, LT, MT, NL, NO, PT, SI, SK, UK) to the publication of judicial courts' decisions. The exceptions take into consideration different factors such as the public interest, the protection of the market participants, the legal interest of the case law and the right of privacy of the condemned person.

567. In 11 MSs (CY, ES, FI, FR, IE, IT, LV, PL, PT, SE, RO) the content of the criminal sanction decisions is published in full, so anonymity is not accepted in principle.

568. The two MSs (CZ, HU) where an administrative decision must be published but not a criminal decision while in four MSs (EE, EL, LV, SI) a criminal decision must be published, but for administrative decision publication is not mandatory.

569. In eight Member States (DK, EL, FI, IT, NL, NO, SE, UK) all sanction decisions were published in each year of the review period.

⁶⁰ See page 3 of ESMA's response to the EC.

⁶¹ In DE, publications have been carried out in aggregated and anonymised form.

XII. RECOVERY OF SANCTIONS

570. The actual recovery of sanctions imposed by the CAs or the judicial authorities is important from the perspective of ensuring the dissuasive effect of sanctions. Recovery is a signal to market participants that sanctioning authorities fully use their powers.

RECOVERY OF ADMINISTRATIVE PECUNIARY SANCTIONS

571. This Section presents the main characteristics of MSs' systems for the recovery of administrative pecuniary sanctions: the responsible authority, whether the CAs have information on the amount of sanctions recovered, the purposes for what the money recovered is being used is as well as the portion received by the CA of the administrative pecuniary sanctions recovered and the percentage that it represents in the budget of the CA. Finally, the percentage that was recovered out of the total amount of pecuniary sanction imposed and the total value of the pecuniary sanction recovered in the review period are presented, as well as any difficulties encountered in practice.

Authority responsible to recover the administrative pecuniary sanctions

572. Among the 27 CAs that can pronounce administrative sanctions against breaches of market abuse, 11 CAs (CY, DE, HU, IE, IS, LU, MT, NL, PL, PT and UK) are responsible for recovering the administrative pecuniary sanctions they impose.⁶²

573. On the contrary, 16 CAs (AT, BE, BG, CZ, EE, EL, ES, FI, FR, IT, LT, LV, NO, RO, SI and SK) are not responsible for the recovery of administrative pecuniary sanctions. In these cases, the authority responsible for recovering the administrative sanctions is another administrative body "Bezirksverwaltungsbehörde" (AT); the Treasury or the Tax or Revenues Authorities (BE, BG, CZ, EL, ES, FI, FR, IT, NO, RO, SI (for minor offences), SK); the judiciary or bailiffs (DK, EE, LT for those decisions that include monetary obligation of a person). In FR, fines imposed on persons affiliated to a Guarantee Fund are collected by that Fund. In LV no administrative fines are provided for market abuse cases and, thus, there is no authority responsible for collecting administrative pecuniary sanctions.

Accessibility of the administrative authorities to information on the amount of sanctions recovered

574. Of the 16 CA which impose administrative pecuniary sanctions under MAD but which are not responsible for the recovery of administrative pecuniary sanctions, 9 of them (AT, BE, BG, EE, ES, FI, IT, LT and NO) have easily accessible information on the amount of sanctions recovered, while 7 CAs (CZ, DK, EL, FR, RO, SI and SK) do not have easily accessible information.

Purposes for what the money recovered is being used: Regulator's budget, Public budget, victims, and/or other uses.

575. Regarding the purpose for which the money recovered is used, in most of the cases the amount of sanctions recovered is an additional revenue for the State's budget (BE, BG (when the sanction is not paid during the "voluntary period of payment"), CY, CZ, DE, DK, EE, EL, ES, FI, FR (except for sanctions imposed on persons affiliated to a Guarantee Fund), IS, IT, LT, NO, PL, RO, SI and SK); in AT, the FMA is obliged to transfer the amounts recovered to municipality of Vienna for social welfare purposes; in HU the use of the amount recovered has changed depending on the year (in 2008 was

⁶² To recall, there are two Member States (DK, SE) where administrative sanctions are not applicable to market abuse.

used to raise financial customers' awareness, increasing financial culture developing financial institutions' risk management and supervisory methodology; in 2009 for training programs for teachers and in 2010 to support the operation of civil consumers protection networks); in five jurisdictions (BG (when payment is done during the "voluntary period of payment"), IE, LU, MT and NL) sanctions recovered go to the Regulator's budget; in PT sanctions recovered are assigned to the Investors Compensation Scheme; in the UK sanctions recovered are used solely for the benefit of regulated firms that pay fees to the FSA and is returned to them in proportion to the amount of fees they have paid to the FSA.

Portion received by the CA of the administrative pecuniary sanctions that are recovered and percentage that it represents in the budget of the administrative authority

576. Twenty-two CAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU⁶³, IS, IT, LT, LV, NO, PL, PT, RO, SI and SK) do not receive any portion of the administrative pecuniary sanctions that are recovered. On the contrary, six CAs (BG, IE, LU, MT, NL and UK) receive, at least, a portion of the amounts recovered, however not always the amounts recovered that are received by the CA go to the regulator's budget (they are received by the authority but to be used for other purposes rather than their budget as explained in the previous paragraph) or these amounts do not seem to represent a material percentage of the total budget of the CA (or there is not information in this regard). However, in the case of IE and MT that represents 100% of the authority's budget.

Types of difficulties encountered in practice

577. The main difficulties that have been reported regarding the recovery of administrative sanctions are the length and cost of the procedures to recover sanctions; problems of coordination between the authority that imposes the sanction and the authority in charge of collecting the pecuniary fine; difficulty in enforcing cross-border sanctions; inability to pay the sanction by the wrongdoer.

Recovery of Criminal Pecuniary Sanctions

578. This Section presents the main characteristics of MSs' systems for the recovery of criminal pecuniary sanctions, and in particular whether the CAs are receiving a portion of the pecuniary sanction recovered from market abuse cases in criminal proceedings and the purposes for which the money recovered is being used.

CAs receiving a portion of the pecuniary sanction recovered from market abuse cases in criminal proceedings

579. Among CAs, only one (UK) receives a portion of the pecuniary sanctions recovered from market abuse cases in criminal proceedings. In the period 2009-2010 the FSA obtained five confiscation orders in the Crown Court totalling €1,067,242 (£939,066); there were no orders obtained in 2008. These orders (made under the provisions of the Proceeds of Crime Act 2002) were obtained against five of the six individuals convicted of insider dealing offences. All orders have been satisfied. These

⁶³ HU: The HFSA's revenues from fines may be used for: a) training of bank, insurance, capital market and fund personnel; b) provision of information to customers of the bodies and persons referred to in Section 4; c) compensation for losses stemming from the liquidation of nonprofit business associations established by the Authority for the liquidation of bodies referred to in Section 4, and contributions to the operating expenses of such companies; d) supporting the preparation and publication of studies related to the reinforcement and spread of financial culture, and to regulatory and regulated activities; e) supporting the activities of civil consumer protection organizations.

figures relate to confiscation orders (representing the disgorgement of the benefit sum) and not fines imposed as part of judges' sentencing. UK stated that confiscation order were not included in the criminal fines under section on "Criminal Sanction Decisions taken by Judicial Authorities" where only pecuniary fines were included.

Purposes for which the money recovered is being used

580. Regarding the purpose for which the money recovered is used, in most of the cases, for 27 MSs, the amount of sanctions recovered is at least in part an additional revenue for the Public budget (AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK).

581. In BE part of the money recovered is also used for the financing of a fund for victims of intentional crimes of violence. In PT the economic benefits seized are firstly applied to remedy the victims who have incurred damages and submitted their claims in the context of criminal proceedings and the remainder is declared forfeited in favour of the State (60%) and the Investor Compensation Scheme (40%). In BG market abuse is not a criminal offence.

Major Findings

582. Concerning administrative pecuniary sanctions, 11 CAs (CY, DE, HU, IE, IS, LU, MT, NL, PL, PT, UK) have responsibility for recovering the administrative pecuniary sanctions they impose. In most of the cases the amount of sanctions reconvered is additional revenue for the Public Budget. Six CAs (BG, IE, LU, MT, NL, UK) receive, at least, a portion of the amount recovered. In one CA (UK) the amount recovered is used solely for the benefit of regulated firmas that pay fees and it is returned to them in the proportion of the amount paid to the CA.

583. Among CAs, only one (UK) receives a portion of the pecuniary sanctions recovered from market abuse cases in criminal proceedings.

584. Regarding the purpose for which the money recovered is used, in most of the cases, for 27 MSs, the amount of sanctions recovered is, at least in part, an additional revenue for the Public Budget (AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK and UK).

ANNEX

Table A.1. Overview of the exact steps of the administrative and criminal procedures in relation to sanctioning under MAD

<p>AT</p>	<p>I. According to Art. 48c ASEA (Börsegesetz) market manipulation per se is no criminal offense and can therefore only be subject to administrative penal proceedings. Administrative proceedings in market manipulation cases <u>Investigation</u></p> <ul style="list-style-type: none"> • Initiated and conducted by FMA (there is no formal opening). • Drafting of an investigation report by FMA’s department for market surveillance. • The case is handed over to FMA’s department for legal and enforcement affairs. <p>Administrative penal proceedings.</p> <ul style="list-style-type: none"> • The department for legal and enforcement affairs decides upon opening administrative penal proceedings after examination of the investigation report. • Administrative penal proceedings can only be opened within 18 months after the infringement and have to be concluded within 3 years after the infringement. • The administrative penal proceeding is opened formally by FMA’s department for legal and enforcement affairs. The accused has the possibility to respond to the charges made by the authority orally or in writing. • The department for legal and enforcement affairs then files its decision either imposing an administrative fine on the accused or ceasing the proceedings by abandoning prosecution. • If an administrative fine is imposed the accused has the possibility to appeal FMA’s decision within two weeks. • The appeal is heard by a tribunal (“Unabhängiger Verwaltungssenat Wien”). • If the appeal is turned down and FMA’s decision is confirmed by the tribunal, the accused has the right to file an appeal to the Administrative Supreme Court (“Verwaltungsgerichtshof”) and/or the Constitutional Supreme Court (“Verfassungsgerichtshof”) against the tribunal’s decision within six weeks. If FMA’s decision is quashed, FMA has the right to file an appeal against the tribunal’s decision to the Administrative Supreme Court (“Verwaltungsgerichtshof”) within six weeks. In both cases the tribunal’s decision remains legally effective until the Supreme Courts have decided on the appeal(s). The decision becomes final when all possibilities for appeal have been exhausted or the accused (respectively FMA in second instance) does not file an appeal within the period for appeal. <p>II. According to Art. 48b ASEA insider dealing is a criminal offense and can therefore not be subject to administrative penal proceedings. Criminal proceedings in insider dealing cases. It is the public prosecutor’s decision to open preliminary inquiries and criminal proceedings in insider dealing cases. The public prosecutor’s inquiries may be opened before FMA’s involvement in the case. <u>Investigation</u></p> <ul style="list-style-type: none"> • Initiated and conducted by FMA without public prosecutor’s order (there is no formal opening). • Drafting of an investigation report by FMA’s department for market surveillance. • The case is handed over to the public prosecutor. The public prosecutor decides upon conducting further inquiries and opening criminal proceedings. <p><u>OR</u></p> <ul style="list-style-type: none"> • Opening of preliminary inquiries by the public prosecutor. • Public prosecutor orders FMA to conduct an investigation and draft an investigation report. • Drafting of an investigation report. The case is handed over to the public prosecutor. The public prosecutor decides upon conducting further inquiries and opening criminal proceedings.
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	<p><u>Court proceedings</u></p> <ul style="list-style-type: none"> • If there is a case to be tried, the public prosecutor will charge the accused for insider dealing. Competent authority is the Criminal Court in Vienna (“Landesgericht für Strafsachen Wien”). • If convicted, the accused has the right to file a full appeal against the Criminal Court’s decision to the Court of Appeal (“Oberlandesgericht Wien”). The decision becomes final when all possibilities for appeal have been exhausted. According to Art. 30 para 2 Administrative Penal Law (Verwaltungsstrafgesetz) FMA is obliged by law to halt opened administrative penal proceedings if the facts of a case may constitute a criminal offence other than market manipulation and these facts are subject to criminal proceedings. However, FMA’s market supervisory powers remain unaffected.
BE	<p>The Law of 2 August 2002 on the supervision of the financial sector and on financial services (hereafter "the Law of 2 August 2002") provides for both an administrative and a criminal sanctioning regime for market abuses. We will comment hereafter on (1) the administrative procedure (competence of the FSMA) and (2) the criminal procedure (competence of the judicial authorities):</p> <p>1. Administrative procedure</p> <p>1.1 We describe hereafter the main steps of the administrative procedure in relation to sanctioning under MAD, as applicable during the period covered by this questionnaire (i.e. 2008, 2009 and 2010). Please note that: - there are no differences in process for market manipulation vs. insider dealing cases; - the administrative procedure has recently been amended by the Law of 2 July 2010. The new provisions have entered into force on July 15, 2011.</p> <p>1.2. The FSMA can impose administrative fines in case of infringements of, a.o., Article 25, §1, 1° (insider dealing) and Article 25, §1, 2° to 4° (market manipulation) of the Law of 2 August 2002. The main steps of the administrative procedure can be described as follows:</p> <p>1.2.1. Supervisory and inquiry phase (pre-investigation) - During the supervisory and inquiry phase, the FSMA staff identifies indications of a practice liable to give rise to an administrative fine: (a) either in the course of the FSMA's supervisory tasks (supervision of information, market surveillance, etc.) (b) or following a complaint.</p> <p>1.2.2. Decision of the Management Committee of the FSMA as to the existence of serious indications of an infringement - The Management Committee assesses the seriousness of the indications identified by the FSMA's staff. Possible outcome: (a) the case is dismissed; (b) or the Management Committee determines that there are serious indications of a practice liable to give rise to an administrative fine, and submits the file to the FSMA's Investigations Officer for investigation. Usually, when there are indications of a practice liable to give rise to both an administrative fine and a criminal sanction, the Management Committee will also forward the case to the judicial authorities.</p> <p>1.2.3. Referral of the case to the FSMA's Investigations Officer - The Investigations Officer - who is an independent body within the FSMA - has the legal duty to investigate the case. The Investigations Officer will perform all necessary tasks in order to investigate the charges and the defence of the case and he will check whether the allegations under investigation are substantiated and examine the allegations in light of the applicable laws. For each case, a rapporteur is appointed from among the FSMA staff, who will report exclusively to the Investigations Officer. The Investigations Officer may exercise all the powers of investigation vested in the FSMA by the legal and regulatory provisions governing the matter concerned. At the end of the investigation, and before submitting the findings to the Sanctions Committee, the Investigations Officer: (a) notifies the perpetrator(s) of the practice in question of the existence of an investigation, specifying the nature of the practice under investigation; (b) summons the perpetrator(s) of the practice under investigation in order to permit them to present their observations. After</p>

<p>having heard the observations of the perpetrator(s) of the practice under investigation, the Investigations Officer submits his findings (in the form of a written report with evidentiary documents) simultaneously to the Sanctions Committee of the FSMA and to the perpetrator(s) of the practice under investigation (see 1.2.4). However, the Investigations Officer can also, at any stage of the procedure, propose a settlement to the perpetrator(s) of the practice in question (see 1.2.5).</p> <p>1.2.4. The Sanctions Committee and administrative fines -The Law has installed within the FSMA an independent entity in charge of imposing administrative fines. This Sanctions Committee is composed of the Chairman and six members of the FSMA's supervisory board. An adversarial debate takes place. The Sanctions Committee deliberates on the basis of the conclusions of the Investigations Officer and the perpetrator of the practice has the right to be heard by the committee. The Sanction Committee: (a) either concludes that an illegal practice exists and imposes an administrative fine as laid down in the legal and regulatory provisions that regulate the matter concerned; (b) or concludes that no administrative fine should be imposed. Sanctions decisions shall be described under section II/F below.</p> <p>1.2.5. The Management Committee and settlements - When the factual elements of the case are not disputed, the Investigations Officer may propose a settlement to the perpetrator of the practice under investigation. If the perpetrator accepts the proposed settlement, the proposal is submitted to the Management Committee. The Management Committee: (a) either accepts the settlement; (b) or refuses the settlement, in which case the file is transmitted to the Sanctions Committee. No appeal can be lodged against such settlements. Settlements shall be described under section I/E below.</p> <p>1.2.6. Appeals lodged with the Court of Appeal at Brussels against the decisions of the FSMA to impose an administrative fine - Appeals can be lodged with the Court of Appeal at Brussels against the decisions of the (Sanctions Committee of the) FSMA to impose an administrative fine. The review by the Court of Appeal at Brussels is a full judicial review (possible annulment and/or reformation of the disputed decision). The appeal has a suspensive effect on the decision of the FSMA.</p> <p>1.2.7. Publication - The sanctions decisions of the (Sanctions Committee of the) FSMA are published on the website of the FSMA once they are final (i.e. after the decision of the Court of Appeal in case an appeal has been lodged). The publication includes the name of the perpetrator(s), unless this would result in a severe disruption of the financial markets or a disproportionate prejudice to the persons concerned. Settlements are published according to the same rules.</p> <p>2. Criminal procedure</p> <p>2.1. Criminal sanctions can be imposed in case of infringements of article 39 (market manipulation) and article 40 (insider dealing) of the Law of 2 August 2002. Infringements of those provisions are handled according to the common rules of criminal procedure. There are no differences between the process for market manipulation and the one for insider dealing cases. It is not possible, within the limited scope of this questionnaire, to describe in detail the Belgian criminal procedure. A distinction has to be made between the pre-trial and the trial stages:</p> <p>2.1.1. Pre-trial stage - The pre-trial phase starts when a crime is discovered or a complaint or a re-port is brought before a judicial authority. The pre-trial investigation is led by a magistrate, the public prosecutor. For issuing enforcement orders (arrest warrant, telephone tap, house search, etc.) there is an investigating magistrate with special competence, namely the investigating judge. In many cases, the investigating judge actively leads the investigation (this is usually the case in market abuse investigations). The investigative proceedings are put in writing and are bundled in a criminal file which will serve as the basis for the second stage, the trial stage. At the end of the pre-trial stage, in case an investigating judge has led the investigation, an investigating court (a chamber of the court of first instance) will verify whether there are sufficient indications of guilt to bring the suspect before the trial judge and make a decision on the arrangement of the procedure.</p>
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	<p>2.1.2. Trial Stage - The proceedings during the trial stage are public, oral and accusatorial. The trial stage is based mainly on the investigative proceedings executed during the pre-trial stage. The judge prepares the case on the basis of the file. He then leads the trial and decides if certain additional inquiries are necessary. The equality of arms is guaranteed. The competent trial court is determined by taking into account a.o. the nature of the offence. The Correctional Courts (criminal section of the Court of First Instance) are competent for market abuse. The competent Correctional Court will have to be determined by taking into account the place where the offence was committed. An appeal can be lodged with the Court of Appeal.</p>
BG	<p>In Bulgaria there is only administrative procedure in relation to sanctioning under MAD. There are not any differences in the process for market manipulation vs. insider dealing cases. When there is a suspicion for violation of MAD, an investigation is opened. The inspection team gathers documents and information and conducts hearings. If they find out a breach of MAD, they draw up a statement for the establishment of administrative violation committed. Apart from any objections made at the time of drawing up the statement of violation, an offender may additionally lodge in writing his or her objections thereto within three days following the said signing.</p> <p>The objections of the offender, together with all evidence gathered in the course of the administrative proceedings, are taken into consideration by the Deputy-Chairperson of the Financial Supervision Commission (FSC) in charge of the Investment Activity Supervision Division for the purpose of deciding whether to issue a penal decree or a resolution.</p> <p>When established that an offender has committed the act guiltily the Deputy-Chairperson of FSC in charge of the Investment Activity Supervision Division shall issue a penal decree whereby the relevant administrative sanction shall be imposed on the offender. A penal decree shall be subject to appeal before the regional court in the area of which the violation was committed or completed. The offender shall be entitled to appeal against a decree within seven days following its delivery. The ruling shall be subject to cassation appeal before the respective administrative court.</p>

CY	<p>Administrative procedure: Following a complaint or the Commission's⁶⁴ autonomous decision to launch an investigation on a certain matter, an investigation takes place, the outcome of which is presented to the Commission in the form of a report or findings of the investigation.</p> <p>The Commission will decide whether the information collected amounts to a possible breach of the MAD legislation, in which case it can deal with the case itself and/or decide to send all relevant information to the Attorney General's office in order for them to decide whether to launch a criminal investigation.</p> <p>In case the Commission decides to deal with the case itself, the party concerned will be called to present its case in written form and state all relevant facts in its favour (the hearing stage). The Commission will then decide whether there was a breach of the MAD legislation and the amount of the administrative fine it wishes to impose. The party concerned will be informed in writing of the Commission's decision and any fine imposed.</p> <p>The said letter will state that the party concerned has the right to appeal the Commission's decision by virtue of Article 146 of the Constitution (the relevant Article for judicial review). After communicating the Commission's decision to the party concerned, the Commission makes public its decision by posting it on its website.</p> <p>Criminal procedure: Criminal proceedings are investigated and presented in court by the Attorney General's office. Decisions of the Court are public and can be made available; however they are not posted on any website. There are no differences in the process for the market manipulation vs. insider dealing cases.</p>
CZ	<p>First of all it should be mentioned that there are no procedural differences in dealing with market manipulation and insider dealing cases. The opening of the preliminary investigation does not require any formal decision. In case the ascertained facts indicate that an insider trading or market manipulation offence might have been committed by a concrete natural or legal person, an administrative proceeding with a concrete individual (natural or legal person) is commenced. The administrative proceeding is initiated by a formal announcement/notification that is delivered to the suspect who then becomes the party to the administrative proceeding with number of procedural rights (right to access the administrative file, submit evidence, propose interrogation of witnesses, etc.).</p> <p>After the sufficient and credible evidence is gathered to prove that the offence was committed by the party to the proceedings, a condemning administrative decision imposing a sanction or remedy is rendered. Such decision might be appealed by the offender within 15 days of the delivery of the decision. As a result, the case is reviewed by the Board of the CNB and its Advisory committee composed of external experts (financial law experts, attorneys, scholars, etc.). If the appeal is found to be just and well-founded, the administrative decision is revoked.</p> <p>If the contrary is true, the administrative decision is upheld by the Board. At this stage, a judicial review process might take place meaning that the decision of the CNB may be contested in administrative courts. In general, offenders have the possibility to file an appeal to the Regional administrative court which is authorized to review both the questions of facts and the questions of law. The court may either uphold or annul the administrative decision. Once a decision (judgment) of the Regional administrative court is rendered, either party (offender or CNB) may file another appeal ('cassation complaint') to the Supreme administrative court (cour de cassation) which is the supreme judicial body specialized exclusively in the field of administrative justice and whose decision is final and may not be challenged.</p>

⁶⁴The Board of the Cyprus Securities and Exchange Commission

	<p>Criminal enforcement is a distinct and independent type of procedure carried out solely by criminal authorities (police, public prosecutor and criminal courts). The role of the CNB in criminal proceedings is very limited since criminal legislation does not confer on the financial regulator any rights or powers. Although the concept of criminal liability of legal persons was introduced as of 1st January 2012, a crime of insider dealing/market manipulation can be committed solely by a natural person.</p> <p>To the contrary, the Act implementing MAD assumes that an administrative offence of insider dealing/market manipulation can be committed either by natural persons or by legal entities. Against this background, the conflict of competences between the CNB and criminal authorities might arise should the behaviour of a natural person exhibit the characteristics of both the administrative offence and the crime. Under such circumstances there is a priority of the criminal proceedings/sanctions over the administrative penalty.</p> <p>The CNB has a statutory duty to refer the case to the public prosecutor if the circumstances of the case indicate that a particular crime has been committed (if criminal proceedings against concrete natural person was initiated, the CNB is precluded from commencing or continuing administrative proceedings relating to the same set of facts).</p> <p>However, the situation is rather different in cases of insider dealing/market manipulation committed by legal persons /or, more precisely, by natural persons (employees) acting within the course of their employment and for the benefit and to the account of the particular legal person/. In such cases, the CNB might inflict an administrative sanction on a legal person (respondeat superior doctrine) which is held liable for the actions of its employees. Nevertheless, it is also conceivable that criminal court will deal with the same set of facts vis-à-vis concrete individual (natural person) who personally committed a violation as an employee of the legal person (criminal law does not recognize vicarious liability concept).</p> <p>From this perspective, the co-existence of administrative and criminal sanction for the same set of facts is possible. Put differently, a criminal penalty imposed by criminal court to a natural person (e.g. manager/employee of the legal person) who has personally committed a violation may co-exist with an administrative sanction inflicted by the CNB on a legal person. Such situation would probably not be considered as a breach of ne bis in idem principle.</p>
DE	<p>Under German law, infringements of legal provisions implementing the respective requirements of the MAD may constitute either an administrative offence or a criminal offence. The distinction between these two categories of offences is accompanied by a division of competencies as regards the prosecution: BaFin is the competent authority for the prosecution of administrative offences, whereas the respective criminal offences are prosecuted by the competent public prosecutor (BaFin will be regularly involved in the investigations, though). Criminal sanctions are imposed by criminal courts.</p> <p>In this context, insider dealing in the sense of actual or attempted transactions is a criminal offence under German law, irrespective whether it is committed by primary insiders (Art. 2 MAD) or secondary insiders (Art. 4 MAD). Furthermore, the unlawful disclosure of inside information and the enticing of others to enter into transactions on the basis of inside information will also constitute a criminal offence, if it is committed by a primary insider and with intent. If in such a case the primary insider does not act with intent but with gross negligence only, there is no criminal offence but the elements of an administrative offence are fulfilled. As regards secondary insiders, the unlawful disclosure and the enticing of others does not constitute a criminal offence but an administrative offence, if it is committed</p>

	<p>with intent or at least gross negligence.</p> <p>Market manipulation constitutes a criminal offence under German law, if a potentially manipulative act (as specified in section 20a par. 1 of the German Securities Trading Act) is committed with intent and leads to an actual price effect. In cases where such a price effect is not detectable, an administrative offence is generally given, if the potentially manipulative act has been committed with intent. If the respective conduct consists in the provision of false or misleading information or the unlawful withholding of true information in contravention of other statutory provisions (e.g. the ad-hoc disclosure obligation), the elements of an administrative offence are also fulfilled, if the unlawful act has been committed with gross negligence only.</p> <p>For the purpose of sanctioning of administrative offences, BaFin may impose administrative fines on both natural persons and legal entities (the latter applies, if the wrongdoing of a natural person is legally attributable to the legal entity). Furthermore, concerning natural persons, criminal offences may be sanctioned by criminal courts by means of imprisonment or criminal fines. As regards legal entities, criminal courts may not impose criminal fines but administrative fines of up to €1,000,000, if a criminal offence committed by a natural person is legally attributable to the legal entity. For the purposes of disgorgement of benefits obtained from the offence, the maximum amount may be exceeded.</p>
DK	<p>When an investigation is opened by Finanstilsynet the normal procedure is to collect as much data as possible. Sometimes the data collection can involve asking the suspect for an explanation of why the trade(s) were carried out. This direct contact to the suspect happens very rarely as there is a risk of self incrimination and the contact can be obstructive for any further investigations. If the investigation shows that market abuse has taken place the case is either brought forward for the Danish Securities Council or referred directly to the police.</p> <p>The main task of the Danish Securities Council is to safeguard market interests. In accordance with the Securities Trading Act, the Danish Securities Council must be instrumental in promoting a smooth Danish securities market which is so efficient, transparent and competitive that it is attractive to issuers, investors and securities dealers and which complies with international standards.</p> <p>The Danish Securities Council has given Finanstilsynet authorisation to refer cases regarding price manipulation directly to the police. All other cases regarding market manipulation needs to be presented and approved by the Danish Securities Council before they are referred to the police.</p> <p>The Danish Securities Council is presented with the result of the investigation carried out by Finanstilsynet. The result is presented in a draft referral to the police. The Danish Securities Council has to approve the referral.</p> <p>Depending on whether or not there are investigative considerations the accused will be granted an audience with the Danish Securities Council in order to explain their point of view. In cases regarding market manipulation there are investigative considerations and it is not very common for the accused to be granted an audience. During the meeting the Danish Securities Council has the possibility of asking questions regarding the investigation and the outcome of the investigation. After a thorough discussion the Danish Securities Council approves the draft and it is very seldom that the Council requires changes in the draft.</p> <p>When the draft has been approved the case is referred to the police.</p> <p>After the case has been referred to the police the police start their own investigation. This involves securing evidence and investigation of the market abuse. After the investigation has been finalised the case is tested by the prosecutors. If the case is found to be strong enough it is brought to court. After the</p>

	<p>court has sentenced the suspect the normal rules for appeal apply.</p>
EE	<p>Market abuse is penalised in the Estonian legislation both as an offence and as a criminal offence. Criminal Procedure Act (giving also the basis for misdemeanour proceedings) Art. 6 states that it is imperative to initiate criminal/misdemeanour proceedings upon the appearance of facts referring to an offence or a criminal offence unless there are circumstances precluding criminal/misdemeanour procedure or grounds to terminate criminal/proceedings. According to Penal Act Art. 3 (5) if a person commits an act which comprises the necessary elements of both a misdemeanour and a criminal offence, the person shall be punished only for the criminal offence.</p> <p>If a punishment is not imposed for the criminal offence, the same act may be punished for the misdemeanour. The misdemeanour proceedings of the violations of MAD will be conducted by the Financial Supervision Authority. According to the Criminal Procedure Act and Misdemeanour Procedure Act both misdemeanour proceeding and criminal proceeding are commenced by the first procedural act and upon performance of the first procedural act of the misdemeanour proceedings, the person subject to proceedings shall be notified of the rights and obligations. According to Criminal Procedure Act Art. 61 materials of a misdemeanour matter will be referred to the prosecutor, in case in the due course of misdemeanour proceedings elements of criminal offence become evident.</p> <p>If the body conducting extra-judicial proceedings is a pre-trial investigation authority, criminal proceedings shall be commenced without the materials being sent to the prosecutor. A decision on the commencement of criminal proceedings may be made until the making of the decision on the punishment for the misdemeanour. If a prosecutor, after examining the materials of a misdemeanour matter, decides not to commence criminal proceedings or terminates the criminal proceedings concerning the matter but there is reason to believe that the act contains elements of a misdemeanour, he or she shall immediately return the materials to the body conducting extra-judicial proceedings for resumption of the misdemeanour proceeding.</p> <p>In case Financial Supervision Authority (in cases pertaining to MAD issues, normally Market Supervision Department) identifies information indicating that an offence has taken place, the information will be double-checked and upon the proposal of the relevant department the Management Board of the Financial Supervision Authority will take the decision to commence a misdemeanour proceedings. Evidences will be collected and other procedural acts will be carried out by the relevant department (in cases pertaining to MAD issues, market Supervision Department) according to the mandate given in the decision of the Management Board of the Financial Supervision Authority. On the basis of the analysis of the collected evidence and other procedural acts the relevant department will elaborate a draft decision and submit it to the Management Board who will either adopt it or refer to further investigation.</p>
EL	<p>The process is described as follows:</p> <p><u>Step 1:</u> Initiation of a market abuse case:</p> <ul style="list-style-type: none"> • Market alerts (Division of Market Supervision) • Complaints • Suspicious Transaction Reports (STRs) • STR's which are sent to the Hellenic Capital Market Commission (hereinafter HCMC) by foreign authorities • Referrals from Greek judicial or other authorities <p><u>Step 2:</u> Preliminary investigation is being effected for each possible market abuse case.</p> <ul style="list-style-type: none"> • Opening a preliminary investigation by sending letters asking for clarifications. <p>After that, we evaluate the replies to the abovementioned letters and prepare a recommendation to the Executive Committee of HCMC. The Executive Committee</p>

<p>consists of the Chairman and the two Vice- Chairman and is entrusted with the execution of the decisions made by the Board of Directors. It has the responsibility for the Commission's daily management and the supervision of its operations. It also represents the HCMC judicially in Hellenic and foreign courts.</p> <ul style="list-style-type: none"> • HCMC's Executive Committee decides whether the preliminary investigation should pass on to the next stage of the procedure or not. • Depending on the details of each case, the case may be closed without further action, Or may be sent to the Enforcement Division for further investigation. <u>Step 3:</u> <p><u>Investigation (Enforcement)</u></p> <ul style="list-style-type: none"> • Assignment of the case to a competent officer. Analysis of transactions, collection of evidence (on site investigations, hearings, requests for info from other Hellenic or foreign authorities) • Preparation of a "Findings report", including also the persons involved in the market abuse case. The Findings reports are submitted to the Executive Committee of the HCMC. A relevant decision is taken by the latter for the closing of the case or the continuance of the enforcement proceedings as follows. • Letter sent to the person/s that will be sanctioned, providing all the evidence of the case, giving him/them the right to provide in writing any objections, allegations and supporting documentation within a specified timeline (usually 10 working days, which is in most of the cases extended to enable the preparation of the response) (right of prior hearing provided in the Code of Administrative Procedure). • After that, we evaluate the replies to the abovementioned letters and prepare a recommendation report to HCMC's Board of Directors. The seven-member Board of Directors of the HCMC is entrusted, among others, with the imposition of sanctions. Said Report to the Board of Directors of the HCMC, whereby the case is presented, includes the details of the letter sent to the person involved, together with an evaluation of the allegations of the latter, submitted in writing to the HCMC. <p><u>Step 4:</u> Sanction decision taken by the Board of Directors of the HCMC.</p> <p><u>Step 5:</u> Public announcement of the sanctions (amounts, persons involved) in brief.</p> <p><u>Step 6:</u> Formal service of the Decision of the Board of Directors to the person involved.</p> <p><u>Step 7:</u> Notification to other competent Greek Authorities, such as the criminal judicial authorities or the Greek FIU.</p> <p><u>Step 8:</u> The person that has been sanctioned may appeal against the Decision towards the HCMC within 30 days. The HCMC examines the merits of the case if new elements (that were not submitted before) are brought to the HCMC's attention.</p> <p><u>Step 9:</u> The person that has been sanctioned may appeal towards the Greek Courts (three members Administrative Court of Appeal) for the annulment of the sanctions decision.</p> <p><u>Step 10:</u> Following the Court Decision, the case may be referred to the Conseil d' Etat (High Court-ultimate degree) to decide on a legal issue of the case (not on the merits of the same which have been judged in first and last degree by the three member Court of Appeal). No differences are observed in the process for the market manipulation vs. insider dealing.</p>

ES	<p>ADMINISTRATIVE PROCEEDINGS IN SPAIN: In Spain, the only proceeding available to the CNMV is the administrative proceeding. Civil or criminal proceedings can only be carried out by the Judge. If in the course of a CNMV's investigation a criminal matter arises, we are obliged to communicate the matter to the Public Prosecutor and the administrative proceeding must be stopped till the criminal proceeding ends. CNMV is not part in the civil or criminal proceedings.</p> <p><u>Stages:</u> When as a result of the CNMV's supervision tasks, CNMV's own decision, a complaint, a foreign regulator's warnings or notices, or when by any other means the CNMV suspects that market abuse or any other illegal securities or futures activity is being carried out, we open an investigation on the facts detected. When from the investigation any kind of illegal action or activity arises, the CNMV's inspectors prepare a "technical report" that is submitted to the CNMV's Executive Committee (EC) describing the facts that have arisen during the investigation. When the EC considers that additional actions should be taken then they ask for a "legal report". This report analyses whether the facts included in the "technical report" are contemplated in the legislation as a breach of the rules or not. The EC, considering both reports, the technical and the legal reports, makes a decision on whether instituting administrative proceedings or not. Once the CNMV's EC decides to open a sanctioning file the inspectors in charge of this file (instructors) inform to the people and/or entities involved about this opening. These people and entities have 15 days to allege whatever they consider opportune in their defense. After these 15 days, the instructors prepare and submit to the people and entities involved the "pliego de cargos" (charge sheet) that includes: - Facts supposedly committed. - Consequences of these facts. The people and entities involved have 20 business days to allege, send documents and propose those additional pieces of evidence that they consider necessities for their defense. The instructors have the power to decide whether the proposed additional actions are necessary or not or whether other additional actions, different from those proposed by the persons or entities involved, are necessary. When the instructors do not accept an additional action proposed by the persons and entities involved, they have to justify their decision, and the only reasons why they can deny the proposed additional actions are because they consider those actions as unnecessary or irrelevant to the case. When the instructors accept some or all of the proposed additional actions, a minimum period of 15 business days and a maximum of 30 business days are given to carry out the proposed actions. The instructors must inform to the people and entities involved about the result of the additional actions. During the period of time between the opening of the sanctioning file and the charge sheet, the instructors can perform whatever actions they consider necessities. In the same way, the people and entities involved can add to the file any kind of documents or representations that they consider opportune for their defense. Once the period of additional actions is over, the instructors prepare the resolution proposal. At this stage, the facts are considered proved, the facts are legally justified (in the sense that it is explained that the facts are within the type that the law considers as an infringement, that the facts are against the law and that the facts are guilty), and the instructors propose an administrative sanction. The resolution proposal is submitted to the people and entities involved who have 20 business days to allege. At the stage of resolution proposal, the people and entities involved have "locus standi" and they can access to the file and ask for copies. The resolution proposal together with the representations made by the people and entities involved are submitted to the CNMV's EC who prepares the resolution. If the sanction to be imposed affects a credit institution and is for a</p>
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	<p>serious or extremely serious infringement, a binding report from the Bank of Spain is mandatory.</p> <p>TYPES OF SANCTIONS: Minor and serious infringements are decided by the CNMV's Board. Extremely serious infringements are referred by the CNMV's Board to the Minister of Economy who is in charge of the resolution of the file for extremely serious infringements. Only in the case that the resolution includes the repeal of the authorization, the decision must be taken at the Council of Ministers.</p> <p>APPEAL PROCEDURE Under Spanish law, the decisions mentioned in the above paragraphs can be appealed in the following manner:</p> <p>a) Regulations and resolutions adopted by the CNMV in the exercise of the administrative powers conferred upon in the Securities Market Act (licensing of investment firms and collective investment schemes, verification of issue prospectuses, suspension of trading, etc.) shall be conclusive at the administrative stage and may be appealed before the courts dealing with administrative matters.</p> <p>b) Resolutions in the exercise of administrative enforcement powers (which impose administrative sanctions) may be appealed according to the following:</p> <p>b.1) Decisions taken by the Board of the CNMV (minor and serious infringements): at a first stage, they may be appealed before the Minister of Economy. If the disagreement remains after the Minister's decision, an appeal before the Audiencia Nacional (National Court – judicial context) is still possible. At a third stage, the Audiencia Nacional's decision may be appealed to the Tribunal Supremo (Supreme Court).</p> <p>b.2) Decisions taken by the Minister of Economy (extremely serious infringements), at the proposal of the CNMV: the appeal system is the same as the one stated above. However, at a first stage, the appeal before the Minister of Economy is voluntary, at the interested parties' choice. That is to say, if the individual or body that disagrees wishes so, she/he/it may appeal directly to the Audiencia Nacional.</p> <p>b.3) Decisions taken by the Council of Ministers (repeal of the authorization): the appeal must be made directly to the Tribunal Supremo (Supreme Court).</p> <p>c) Resolutions in the exercise of administrative powers of intervention and replacement of Directors and managerial officials. The appeal system is similar to that stated under item b.1).</p>
FI	<p>In Finland, market abuse is both a criminal offence as well as subject to administrative sanctions. However the disclosure of inside information to third persons (Paragraph a) of Article 3 of the Market Abuse Directive) is only subject to administrative sanctions.</p> <p>The Act on the Financial Supervisory Authority stipulates that if the FIN-FSA has reasonable grounds to suspect that a suspected market abuse case fulfils the description of a criminal offence as stipulated in the Criminal Code, the FIN-FSA shall refer the case to the police for further investigation, and may not issue an administrative sanction. Regarding the misuse of inside information, the Criminal Code stipulates that if a person intentionally or through gross negligence takes advantage of inside information in order to obtain financial benefit for himself or herself or someone else, it is a criminal offence. With respect to market manipulation, the Criminal Code stipulates that if a person intentionally manipulates the market in order to obtain financial benefit for himself or herself or for someone else, it is a criminal offence.</p> <p>In such cases where the suspected market abuse case does not fulfil the description of a criminal offence as stipulated in the Criminal Code, the FIN-FSA may issue an administrative sanction. According to the Act on the Financial Supervisory Authority, the sanction may be (in the order of stringency) the following: i) a public reprimand, ii) a public warning, iii) in addition to a public warning, a penalty payment. The FIN-FSA may also take other administrative measures in market abuse cases with respect to authorized supervised entities. If e.g. it is noticed that in</p>

	<p>the operations of an investment firm or a credit institution market abuse has been committed, the FIN-FSA may e.g. restrict the operations of the said entity, or in severe cases, withdraw its authorization. Also, the FIN-FSA may prohibit, for a maximum of five years, a person from acting as member or deputy member of the board of directors, managing director or deputy managing director or any other senior management staff member of an authorised supervised entity had he or she been e.g. involved in market abuse.</p> <p>The day-to-day supervision of market abuse is carried out by the FIN-FSA's Market Supervision department, which conducts the preliminary investigations and obtains evidence in a suspected market abuse case. If due to the investigation there are reasonable grounds to suspect that market abuse may have occurred, the department shall hand out the case to the General Secretariat of the FIN-FSA, which is responsible for the enforcement process (preparing of the decisions on administrative sanctions or the decision to refer the case to the police).</p> <p>The final decision to refer a suspected market abuse case to the police for further investigation is made by the Director General of the FIN-FSA. Once the case has been referred to the police, it shall conduct further investigations in the matter (in co-operation with the public prosecutor). Once the relevant District Court has issued its final decision in the criminal case, the decision is subject to appeal to the Court of Appeal. According to the Act on the Financial Supervisory Authority, the decision to issue an administrative sanction is made by the board of the FIN-FSA. This decision is subject to appeal to the Helsinki Administrative Court.</p> <p>It should be noted that a suspected market abuse case cannot be subject to both criminal and administrative proceedings. According to the Act on the Financial Supervisory Authority, if a case is under investigation by the police, the case is being prosecuted or the court has given its decision in the matter, the FIN-FSA cannot issue a penalty payment in the same case (due to the principle of <i>ne bis in idem</i>). Although not expressly stated in the law, the FIN-FSA follows the similar approach also with respect to other administrative sanctions (public reprimand or public warning).</p> <p>What is stated above, applies both to market manipulation and insider dealing cases.</p>
FR	<p>In France, cases relating to market abuses within the meaning of the Directive 2003/ 6/EC may lead to both administrative and criminal sanctions proceedings, which are separate from one another and may run in parallel.</p> <p>ADMINISTRATIVE PROCEEDINGS</p> <p>I) Detection</p> <p>One of the missions of the Autorité des marchés financiers (AMF) is to supervise the markets, to monitor transactions and orders on financial instruments so as to detect possible violations to securities laws and regulation, notably with respect to market abuse. When an abnormal situation is detected and a market abuse is suspected, a formal investigation can be opened. An investigation can also be opened upon request from another competent authority (whether national or foreign) or on the basis of a complaint.</p> <p>II) Investigation</p> <p>In pursuance of its statutory mission, and typically in cases of possible market abuses, the AMF will conduct investigations. The decision to initiate such actions is taken by the Secretary General, under whose authority they are carried out.</p> <p>III) Decisions of the AMF Board whether to open sanction proceedings and forward the case to the public prosecutor.</p> <p>Following every investigation, a report is sent to the AMF Board. The Board examines the investigation report drawn up by the AMF staff. If the Board decides to open sanction proceedings, it will serve a statement of complaint to the person(s)</p>

<p>whose conduct is/are in question and will refer it to the Enforcement Committee which will examine the file.</p> <p>It can be specified here that the Enforcement Committee of the AMF, which is separated and independent from the Board, meets the requirement that the AMF's administrative “prosecutorial” and disciplinary functions should be segregated. If the suspicions involve criminal offences of market abuses, the Board will immediately forward the investigation report to the Paris Public Prosecutor.</p> <p>IV) Administrative sanction proceedings</p> <p>The Chairman of the Enforcement Committee appoints a member of the Enforcement Committee to act as a Rapporteur. The Rapporteur will appraise the case and writes up a report on the results of his/her work, which counts as an opinion in the proceedings (the Enforcement Committee is not bound by this report), but the Rapporteur will not take part to the deliberations following the hearing. The respondent whose behaviour is put in question will appear before the Enforcement Committee or one of its divisions for a public hearing. When the public hearing is complete, the Committee (or its division) reaches its decision. Only its members and an AMF employee, acting as secretary for hearing, are present to the deliberation.</p> <p>V) Review of Enforcement Committee’s decisions (“Appeals”)</p> <p>The Enforcement Committee's decisions may be reviewed by administrative or judicial courts, if an application for review is made by the respondent. According to the new legislation adopted in October 2010 (“Loi de régulation bancaire et financière”), the AMF Chairman - after receiving the approval of the Board of the AMF - is also entitled to file an application for review. This provision has entered into force with the publication of a Decree dated 16 August 2011, it being specified that no such proceedings have been launched since then.</p> <p>The “appeals” are heard by the Paris Court of Appeal, and may then be heard, but only on a point of law by the French Judicial Supreme Court, the Cour de cassation. The exceptions to this are for sanctions concerning professionals mentioned in the relevant provisions of the French Monetary and Financial Code (amongst those professionals are authorised investment services providers, investment advisors, custodians, etc.) and individuals acting under their authority or acting on their behalf (managers, investment services compliance officers, sales-persons, investment managers etc.) which are heard by the French Administrative Supreme Court, the Conseil d'Etat.</p> <p>CRIMINAL PROCEEDINGS</p> <p>When opened, criminal proceedings run parallel to and separately from the administrative sanction proceedings. They may start either on the own motion of judicial authorities or, typically in the case of possible market abuses, where possible criminal market offences occurred, after such a case was referred to the Paris Public Prosecutor by the Board of the AMF.</p> <p>I) Public Prosecutor’s decision whether to start proceedings</p> <p>The Public Prosecutor will take the decision whether or not to start criminal proceedings. If he decides to open them, he may either conduct preliminary inquiries or open a preliminary judicial investigation conducted by an investigating judge (juge d’instruction).</p> <p>II) Paris Correctional Court</p> <p>If it turns out that there is a case to be tried, the case is sent to the Paris Correctional Court (tribunal correctionnel) where a public hearing will be held before the court gives its decision.</p> <p>III) Appeal An appeal may be lodged in front of the Paris Court of Appeal and then, only on a point of law, before the French Highest Judicial Court, the Cour de cassation.</p>
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<p>HU</p>	<p>Market abuse cases (insider dealing, market manipulation) are investigated within the framework of market surveillance procedure, which is an ex officio investigation conducted by the department for market supervision (Market Surveillance Department). The procedural steps in relation to insider dealing and market manipulation are the same. Prior to launching the investigation certain data, information related to the fact or circumstance giving rise to the suspicion of market abuse may also be collected (continuous supervision). In case investigation has been launched, the person subjected to the investigation (if known) has to be notified of the procedure within eight days following the first procedural step. The notification may be omitted if it is likely to jeopardize the outcome of the proceeding. In this case the notification should take place following the evidentiary procedure (within eight days). If the available information is sufficient to judge the case or the case is simple, the decision may be adopted without evidencing. However, evidentiary procedure is usually needed for the establishment of the facts and matters of the case. The supervisor responsible for the case prepares a schedule on the possible procedural steps aiming at the collection of evidence. Client statements, documents, testimonies (witness/expert), minutes, physical objects serve primarily as evidence, but other relevant instruments may also be used for evidencing. Upon official request, supervised institutions have the legal duty to present documents, information and data related to the subject of the investigation. Based on ex officio data, information and/or those collected during the evidentiary procedure a report summarising the establishments (findings) of the investigation is prepared (investigatory report). The formal decision is drafted on the basis of the investigatory report. In case measure (sanction) is applied the decision is signed and issued officially by the President of HFSA. The person sanctioned may contest HFSA's decision by appealing to the Metropolitan Court of Budapest for the judicial review of the decision (legal remedy against HFSA's decisions). In Hungary, only insider dealing is penalised. Criminal procedures are conducted separately from the administrative proceedings. In case the administrative investigation finds, that insider dealing was committed, information containing the allegation of the offence of insider dealing is submitted to the competent criminal authorities (police). During the inquiry (first phase of the criminal procedure) the competent criminal authority may request the provision of further data and documents related to the administrative procedure. Upon the result of the inquiry the prosecutor decides whether to serve an indictment, i.e. bring charge against the offender. The second phase of the criminal procedure starts when an indictment is served to the criminal court and ends with the decision (sentence) of the court.</p>
<p>IE</p>	<ol style="list-style-type: none"> 1. Receive referrals on potential breaches of Irish Market Abuse Law. 2. An initial review of suspected/ reported breach is conducted. 3. Decision to close the matter or open an investigation is taken. 4. Investigation Stage: The purpose of the investigation is to gather all relevant information with the aim of establishing whether the Central Bank has reason to suspect that a breach of Irish Market Abuse law is being/ has been committed. 5. Compilation and composition of a case report which forms the basis of the discussion as to whether the case in question is going to be progressed to Assessor phase. 6. If the case is passed to an Assessor the Central Bank will give notice to the subject in question that examination is taking place. At this point the Central Bank will also notify the criminal authorities of the case and will offer the case to them should they wish to continue the investigation in question. The subject of the investigation is also advised of the possibility to avail of a settlement agreement with the Central Bank of Ireland. The external Assessor makes an impartial judgment as to whether there has been a breach of Irish Market Abuse law in the case in question. 7. If the Assessor finds against the subject (s)he will publish an adverse assessment, this will include a recommendation as to the appropriate enforcement/ sanctions

	<p>measure that should be applied.</p> <p>8. The subject is entitled to appeal a decision made against them (subject to a time limit of 28 days to commence the appeal) and they also have the right to further take an appeal on a point of law to the Supreme Court.</p> <p>There are no procedural differences between the process for market manipulation and insider dealing.</p> <p><u>There are four key decision stages:</u></p> <ol style="list-style-type: none"> a) Opening of a case b) Close case or refer the case to an Assessor. c) Finding of the Assessor d) Amount of sanction to be imposed.
IS	<p>According to Article 133 of Act No. 108/2007 on Securities Transactions the Financial Supervisory Authority, Iceland (FME) shall supervise the implementation of the Act and rules established under the Act. Act No. 108/2007 covers market abuse (both insider trading and market manipulation).</p> <p>According to Article 141 of Act No. 108/2007, FME may impose administrative fines on any party violating Article 123 on insider misconduct and Article 117 on market abuse and intermediation by a financial undertaking. If a case is considered major, FME is required to refer the case to the police. Violations of Act No. 108/2007 are subject to police investigation only following charges submitted the FME according to Article 148 of Act No. 108/2007.</p> <p>If the case concerns market abuse (insider misconduct or market manipulation), FME will start an investigation and decide if the case will be referred to the police or finished with administrative measures. Major decisions shall be referred to the Board of FME for approval or rejection. The Board has to approve decisions regarding referrals to the police or administrative fines.</p>
IT	<p>ADMINISTRATIVE PROCEDURE</p> <p>Consob's internal procedures distinguish between two main steps of the investigation stage: 1) the detection, where preliminary analysis are carried out to identify potential market abuses, and 2) the formal investigation, where evidences are sought to build up a market abuse case. The investigation stage is followed by the sanctioning stage, on its turn distinguished in two main steps, where the administrative sanctions are resolved and formally imposed.</p> <p><u>Sanctioning stage:</u></p> <ol style="list-style-type: none"> 1) Analysis of first defence The offender can present its defence within 30 days of receipt of the notification letter whereby he is informed of the charges and relevant underlying facts. At the latest 210 days of the above notification to the offender (390 days if the offender is resident abroad), the Market Abuse Investigation Unit shall move the proceeding forward before the Administrative Sanctions Unit. To this purpose, the Market Abuse Investigation Unit addresses a report (so-called relazione istruttoria) to the Administrative Sanctions Unit describing the outcome of the investigation and any further evaluation based on the offender's first defence. If there are grounds for suspecting that a criminal violation has occurred, a report is sent to the public prosecutor. The report to the Judicial Authority is prepared by the Market Abuse Investigation Unit and is subject to the Commission's (Board) approval. 2) Undertaking the sanctioning decision: The Administrative Sanctions Unit shall notify the offender of the opening of the second stage of the sanctioning proceeding and shall provide a copy of the aforementioned report (relazione istruttoria) of the Market Abuse Investigation. The Administrative Sanctions Unit shall also inform the offender about its right of presenting additional defensive documents and of being heard within 30 days. The Administrative Sanctions Unit shall be responsible to evaluate the offender's second set of defence, resolve on whether or not issuing a sanction and, in case of a positive, determine the amounts of the

<p>sanctions. The Administrative Sanctions Unit has 150 days to complete its review and make a proposal to the Commission (Board). The Commission (Board) is responsible for undertaking the final decision on sanctions. The sanctioning proceeding ends with such Commission's (Board) decision.</p> <p>The whole sanctioning proceeding shall last for no longer than 360 days (540 days if the offender is resident abroad) of the first notification of charges to the offender by the Market Abuse Investigation Unit. The measure imposing sanctions shall be notified to the offender and published in abridged form in Consob's (Board) Bulletin. Taking into account the nature of the offence and the interests involved, Consob may establish further methods of publicizing the measure, charging the related expenses to the offender or excluding publication of the measure where such publication may place the financial markets at serious risk or cause disproportionate damage to the parties.</p> <p>CRIMINAL PROCEEDINGS:--</p> <p>Interaction between administrative and criminal proceedings. The Italian legislative framework is characterised by the so called "dual track regime": insider trading and market manipulation may give rise to both criminal and administrative liability. The same conduct can be independently investigated by Consob and the Office of the Public Prosecutor, who each has a duty to share information with the other (see below).</p> <p>The same individuals and corporate entities may be punished by both Consob and the Criminal Courts. In our system, this does not constitute a breach of the "ne bis in idem principle" (i.e.: the rule against "double jeopardy"). It should be noted in this respect that the nature and purposes of the two sanctions are different. The criminal sanction is meant to punish most serious violations where there is evidence of fraud / malice and concrete risks to affect the proper functioning of the market. Conversely, the evidence of fault is sufficient to trigger administrative violations. Therefore, the onus of proof in administrative violations is lighter than in criminal cases. Moreover, the conducts of market manipulation triggering the administrative and the criminal sanctions are not identical.</p> <p>The autonomy between the administrative and the criminal proceedings is set forth under Article 187-duodecies of the Consolidated Law on Finance, according to which the market abuse administrative proceedings (including the appeal) may not be suspended on the grounds that criminal proceedings are pending on the same or prejudicial facts. In order to avoid the application of pecuniary sanctions twice for the same offence, Article 187-terdecies provides that when a market abuse pecuniary administrative sanction has been already imposed for the same facts, the amount of the due pecuniary criminal fine shall be reduced to the portion exceeding the amount of the pecuniary administrative sanction already applied.</p> <p>Coordination between Consob and the Public Prosecutor Special rules ensuring coordination between Consob and the prosecutor are laid down in Article 187-decies of the Consolidated Law on Finance, in a view of ensuring that the enforcement actions are effective and efficient. More in details: § Upon receiving notice of the commission of insider trading or market manipulation, the public prosecutor must without delay inform the Chairman of Consob.</p> <p>The Chairman of Consob must forward the public prosecutor the evidence gathered during Consob investigation, along with a reasoned report in cases where there are grounds for suspecting that a criminal offence may have been committed. The documents must be forwarded to the public prosecutor at the very latest by the end of the investigation phase.</p> <p>Consob and the Judicial Authorities cooperate with each other, including through the ex-change of information, in order to facilitate the investigation of market abuse violations, including in cases where such violations do not constitute criminal offences. Consob's powers in criminal proceedings: According to Article 187-undecies of the Consolidated Law on Finance:</p> <p>In proceedings for crimes of insider trading and market manipulation, Consob may exercise the rights and powers granted by the Italian Criminal Procedure Code to</p>
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	<p>the bodies and associations representing the interests injured by the crime. Consob may also join the criminal proceeding as a civil claimant; as such, Consob has the power to ask for damages for breaches of market integrity (the amount shall be determined by the Court taking account of the seriousness of the crime, the personal situation of the offender and the amount of the proceeds or the profit of the crime).</p>
LT	<p>In Lithuania there are no differences between market manipulation and insider dealing sanctioning mechanisms. However, we do have two different processes: administrative and criminal. Also there are differences regarding natural and legal person sanctioning. Regarding administrative violations conducted by natural persons, the Lithuanian Securities Commission (the LSC) opens, investigates, makes a decision to write a protocol if the violation was committed and then transfers the case to the district court where the judge imposes the relevant sanction. There is an appeal possibility to the higher court.</p> <p>Regarding legal person – the investigation process is the same; however, the relevant sanction is being imposed or the decision to close the case is being made by the LSC (not the court). In this case there is a possibility of appeal to the judicial authority. If the LSC suspects that criminal market abuse violation (market manipulation or insider dealing) was committed – all relevant information for further investigation must be transferred to the office of prosecutor. In that case administrative procedure, conducted by the LSC, for the same violation regarding the same person is not possible.</p>
LU	<p><u>1. Principles – administrative/criminal proceedings under Luxembourg Law</u></p> <p>The Luxembourg Law of 6 May 2006 on Market abuse transposing the European Union Market abuse directive (“the MAD Law”) provides the possibility to investigate and to sanction insider dealings and market manipulations either under an administrative or under a criminal procedure. The MAD Law itself contains a provision which designates the applicable administrative or criminal procedure according to certain criteria. As a consequence, the administrative and criminal proceedings are mutually exclusive in order to avoid that facts are subject to double investigations and sanctioning, which would violate the legal principle non bis in idem. When the CSSF MAF department (“surveillance des marches d’actifs financiers) in charge of the supervision of securities markets records a breach of the prohibition on insider dealing or market manipulation committed intentionally or through carelessness or by negligence, the CSSF may impose an administrative fine [amende administrative] of between 125 and 1,500,000 euros on the person responsible for the breach. On the other hand, criminal sanctions, including imprisonment are only taken against natural persons who violate these prohibitions with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect. Where there are indications that might substantiate the opening of an administrative proceeding by the CSSF department in charge of the supervision of securities markets liable to result in an administrative fine, it informs the State Prosecutor (Procureur d’Etat) thereof. The State Prosecutor decides within three days from the receipt of this information whether prosecution is initiated, and gives opinion on his decision to the CSSF. If the State Prosecutor decides to prosecute, the MAD Law provides that the CSSF department in charge of the supervision of securities markets shall refrain from proceeding. In case of a negative decision or in the absence of a reply by the State Prosecutor after the period of three days, the CSSF relevant department shall proceed. Furthermore, where, during an administrative proceeding, the CSSF department in charge of the supervision of securities markets notices that there are indication of a possible breach of the prohibition on insider dealing and market manipulation by the persons suspected, with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect, it shall relinquish the file and transmit it to the State Prosecutor to carry on with the proceedings. On the other hand, where the State Prosecutor is referred to be based on a complaint of facts liable to constitute a breach of the prohibition of insider dealing or market manipulation, and he decides to prosecute, he shall</p>

<p>inform the CSSF thereof. In this case, the CSSF department in charge of the supervision of securities markets refrains from proceeding. If the State Prosecutor decides not to prosecute, the CSSF relevant department shall proceed. If, during the course of his investigation and before summoning to appear, the State Prosecutor deems that the conditions for a criminal prosecution are not fulfilled, but that the facts might be subject to administrative proceedings, he shall transmit the file to the CSSF department in charge of the supervision of securities markets to carry on with the proceedings.</p> <p><u>2. Administrative procedure:</u></p> <p>According to the MAD Law, the CSSF is the administrative authority competent to supervise the application of the provisions of the MAD Law. In that context, the CSSF investigates inter alia breaches of the prohibition on insider dealing or market manipulation. In the context of its supervision of securities markets, the CSSF department in charge of the supervision of securities markets either initiates inquiries itself or conducts them following a request for assistance from a foreign administrative authority within the framework of international cooperation. Procedure guidelines set out internal rules and procedures for the processing of information and investigations relating to market abuse.</p> <p>The analysis of the daily transaction reports by the CSSF within the framework of article 25 of MiFID may also be a source for opening of an investigation for eventual breaches of the prohibition to commit an insider dealing (or a market manipulation). Finally, the suspicious transaction reports submitted by a credit institution or other professional of the financial sector established in Luxembourg pursuant to article 6, paragraph 3 of the MAD Law can also trigger the opening of an investigation.</p> <p>If there is a suspicion of market or price manipulation or insider trading, or where there are doubts about compliance with the transparency and integrity of financial markets, the CSSF department in charge of the supervision of securities markets decides in a first step, whether or not it is necessary to open preliminary inquiries. The decisions to open an investigation or to intervene against a professional of the financial sector are based on preliminary enquiry made by a specialized division of the CSSF department in charge of the supervision of securities markets pursuant to internal guidelines. This stage is largely internal: systematic exploitation of information available internally and publicly available information. An investigation can be launched either after a preliminary enquiry or directly (without preliminary enquiry) if the context is sufficiently accurate.</p> <p>The investigation is conducted by another specialized division of the CSSF department in charge of the supervision of securities markets. This division extends the analysis further by also collecting information from professionals who are in the market and with the issuer. In the context of an administrative procedure, the CSSF division in charge of an enquiry decides on the opening of an administrative procedure. It leads the proceedings independently by following the general principles of public law applicable in Luxembourg and the appropriate provisions contained in procedural provisions (Procédure administrative non contentieuse). According to those principles and internal guidelines of the CSSF, after the opening of an administrative procedure, the CSSF division in charge of enquiries firstly collects the relevant facts and evidence in order to establish an administrative file which may be inspected by the suspected persons during the proceedings and prior to a final decision. In that context, the MAD Law provides all supervisory and investigatory powers to the CSSF which are necessary for the exercise of its functions.</p> <p>For example, the CSSF division in charge of investigations may have access to any document in any form whatsoever, and to receive a copy of it, may demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and hear any person, may carry out on-site inspections with all the persons referred to in the MAD Law, may require communication of existing telephone and existing data traffic records, may order</p>

	<p>the cessation of any practice contrary to the MAD Law, may suspend trading of the financial instruments concerned or may petition the President of the Court to freeze and/or sequester assets or pronounce a temporary prohibition of professional activity in the financial sector by persons subject to its prudential supervision. The possible on-site inspections carried-out by the CSSF with persons referred to in the MAD Law, but not subject to its prudential supervision, may not be carried out without the express consent of the person with whom the inspection shall take place. Where this consent is not given, the on-site inspection and seizing of any document, electronic file or other things that seem useful to ascertaining the truth must be subject to a prior authorisation, upon reasoned request by the CSSF, by order of the investigating magistrate with the district court of the district in which the inspection shall be carried out. In a next step, the findings which are mentioned in that administrative file are submitted to a contradictory debate with the suspected person, in which the latter can present its observations. The suspected person may be assisted by a lawyer or other technical advisors. Only after this contradictory debate, the executive board of the CSSF can take a final decision. The whole administrative proceeding and investigation is conducted by the department/ divisions of the CSSF which is in charge of the supervision of securities markets, possibly assisted by other internal specialists or by the legal department. The final decision is taken by the executive board of the CSSF pursuant to the applicable legal provisions, after having both considered the elements presented by the CSSF division in charge of investigations and the person suspected. This final decision is subject to a full judicial review by the Luxembourg administrative Member States (recours en reformation; Tribunal administratif and Cour administrative as a second court). There are no formal decisions of the executive board of directors of the CSSF neither to pass from an internal enquiry to an investigation, nor to pass on to the next stage of the procedure or upon which the next step of the procedure is conditional. Furthermore, the law does not require the application of all steps or investigatory powers during an enquiry. As a consequence, the lack of application of one specific investigatory power cannot prevent the enquiry from going on. Judicial action before the administrative Member States can only be brought against the final decision of the CSSF imposing a sanction for breach of the prohibition on insider dealing or for market manipulation. However, during these judicial proceedings the whole administrative proceeding is subject to review. Finally, there are no differences in administrative proceedings for the market manipulation compared to insider dealing cases.</p>
LV	<p>Responsibility for insider dealing and market manipulation is determined by the Criminal Law, this means the Authority does not impose administrative fines in such cases but the Authority has rights to impose administrative measures.</p> <p>During the process of market supervision, the FCMC obtains and gathers information on suspicious transactions from daily market surveillance, STR form of investment firms, market participant complaints etc. If any suspicious transactions/market abnormalities arise, the authority carries out an investigation. In practice, responsible employees inform a head of division on suspicious transactions and primary analyse of a case. The head of division takes a decision whether is necessary to launch formal investigation. During the formal investigation the FCMC requests information from related parties (investment firm, stock exchange, investor etc.) and obtain evidence. The FCMC brings the outcome of the formal investigation to the Board and the Board takes a decision on further steps. If the Board decides that the evidence is sufficient for building a case then that information is forwarded to the Police for criminal proceeding. In addition, the Board decides whether it is necessary to apply administrative measures, for example, to suspend operations of financial instruments in an investor's account, restrict the business of an investment firm etc. When the Board decides that the evidence is sufficient for building a case and</p>

	<p>forwards information to the Police for criminal proceeding, the police then carry out a formal investigation under Criminal process Law. Decisions in market manipulation/ insider dealing cases are then made by the Court.</p> <p>The FCMC gives all necessary assistance to judicial authorities during the investigation process.</p>
MT	<p>Following a trigger of suspected market abuse, the Malta Financial Services Authority ('MFSA') opens a preliminary review into the relevant trading activity. If at this stage it appears that there may be grounds for possible market abuse (the same procedure is applied for both market manipulation and insider dealing cases), and upon the approval of the Authority's Supervisory Council, an administrative investigation is opened. After collecting evidence on the case, the Supervisory Council determines the way forward, i.e. [i] drop the case for lack of evidence or basis for proving market abuse, [ii] issue an administrative sanction on the basis of the evidence collected, or [iii] forward the case to the Commission of Police to continue a criminal investigation on the case. At this stage the Commissioner of Police would continue the investigation and subsequently determine whether to close the case or issue a sanction for a criminal offence.</p>
NL	<p>Usually, an investigation starts after a signal from the AFM monitoring team. The signal will first be analysed by the investigation team (in cooperation with the monitoring team) to determine whether it is worth to further investigate. Aspects that play a role within this analysis are: whether it really is a violation/breach of law, the severity of the violation, priorities/capacity/resources of the investigating team, ability to prove the violation etc. During the investigation one can decide to proceed or not, or to carry the investigation over to the public prosecutor. In case it is decided to proceed with the investigation and when eventually turns out sufficient information is gathered, it is likely the AFM will decide to impose an administrative fine. One can lodge an objection against this decision with the AFM and first and second appeal with the judicial authorities.</p> <p>Both insider trading and market manipulation can be subject to an administrative fine as well as criminal proceedings. If the AFM is of the opinion such case should be fined, a choice has to be made for one of these two options. The AFM, Public Prosecutors Office (Openbaar Ministerie) and the Fiscal Investigators Office (FIOD) will assess such case together.</p> <p>A decision will be reached whether the specific case should be handed over to the Public Prosecutors Office or the AFM will remain responsible.</p> <p>In case the Investigation team deems it possible to impose an administrative fine for an infringement, it will prepare a report with findings of the investigation. The concerned party will be able to respond to these findings. After processing the response, the investigation team will (through their Head of Department and the Head of the Legal Department) hand over the final report and the entire file to AFM's Fines Officer. The Fines Officer has not been involved in the investigations and independently assesses the findings of the investigation team. The Fines Officer notifies the party of the intention of the AFM to impose a fine. This notification contains an invitation to the party to give his view on the facts, and on the circumstances and legal qualifications as set out in the final report. The final report is attached to the notification.</p> <p>The Fines officer assesses the file (thus including the view of the party) and advises the AFM Board on whether or not to impose an administrative fine. The AFM Board takes the final decision. A decision to impose an administrative fine on matters of market abuse will usually also include a decision to make the administrative fine public. To prevent a decision from being made public the interested party can ask an administrative judge for a provisional ruling.</p>

	<p>Interested parties can submit the AFM's decision for review in an administrative procedure. At first by filing an objection against the decision (this is an internal review procedure). The entire file is then handed over to employees of the Legal Department who haven't been involved in earlier stages of the specific case. They will assess the case and prepare a second decision to confirm or reverse the previous decision. After that procedure it is possible to submit the AFM's decision to an administrative court.</p> <p>When the AFM, Public Prosecutors Office and the Fiscal Investigators Office decide it is preferable for the AFM to hand over a specific case, the AFM Investigation team prepares a report. The Investigation team will provide the AFM Board with the report and advise to agree to hand over the report.</p>
NO	<p>The tasks related to "first line" monitoring and detection of market abuse are carried out primarily by the Oslo Stock Exchange (Oslo Børs) as they are responsible for the real time surveillance of the market (by using SMARS). Market abuse cases are therefore often initiated by Oslo Børs, which sends reports to Finanstilsynet at a low level of suspicion. Some of the reports have been prepared exhaustively, but most reports are sent to Finanstilsynet as a short summary of the events.</p> <p>Finanstilsynet cooperates closely with Oslo Børs. We have regular meetings regarding specific cases and we have of ad hoc contact several times a week discussing cases or happenings in the market.</p> <p>Finanstilsynet investigates all the cases received from Oslo Børs. In addition, Finanstilsynet carries out market surveillance at its own initiative. This is not a real time market monitoring, but is often initiated by events in the market.</p> <p>Finanstilsynet also receives Suspicious Transaction Reports (STRs) from investment firms; cf. the Securities Trading Act (STA) section 3-11. The STR-reports, the reports from the Stock Exchange, cases initiated by Finanstilsynet itself and cases initiated by reports from other parties such as media, will be investigated. Many of the cases reported on a low level of suspicion from the Oslo Børs will be dropped after a short investigation in Finanstilsynet. In many cases further investigations are needed. Finanstilsynet has a wide range of powers to investigate market abuse. Finanstilsynet has the authority to collect all information relevant to the case from any party in any form, cf. the STA sections 15-2 and 15-3 and have access to a number of public registers, including the national register, register of employees, securities register. When Finanstilsynet suspect market abuse, any party may be ordered to disclose information in an interview (note though limits regarding self-incrimination) or by submitting electronically stored information or any other mean required. Finanstilsynet may secure evidence by demanding access to any premises, properties and other storage areas where evidence can be found, demand access to private homes if there is reason to believe that evidence is being kept there and can confiscate items if it is deemed necessary in the investigations. When the investigation is complete, Finanstilsynet will report the case to the prosecuting authority (or drop the case if the evidence turns out to be too weak). As a main rule, it is the Board of Finanstilsynet) that takes the decision on whether a case shall be reported to the prosecuting authority.</p> <p>There is a special police department dedicated to economic crime; The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim). In this department there is a specialist team dedicated to cases related to crime in the securities market. The specialist team is supposed to handle big or complex cases, or cases of fundamental importance.</p> <p>Finanstilsynet can also report market abuse cases to the local police departments. When the police/Økokrim investigates a case, Finanstilsynet is often asked to assist the police in e.g. examination of witnesses, in police actions or by testifying in court. Finanstilsynet have a close cooperation with both the local police and Økokrim. We have regular meetings with both authorities were we discuss ongoing cases or other general topics. Finanstilsynet also have ad hoc contact with both the local police and Økokrim before we report a case and as a following-up of ongoing cases.</p>

	<p>Finanstilsynet may also impose an administrative sanction (pursuant to STA section 17-2 Finanstilsynet has the power to order that a party must surrender his gain). Where unlawful gain is obtained by negligent or wilful violation of the market abuse regime, Finanstilsynet can order the party to whom such gain has accrued to surrender all or part of it. If the size of the gain cannot be established, the amount shall be fixed on a discretionary basis. If the decision of surrender of gain is not accepted by the party, Finanstilsynet may within three months of the expiry of the period allowed for acceptance bring legal action against the party in question. Finanstilsynet has only ever had two cases where a party has been ordered to surrender his gain, once in 2005 and the other in 2006. Market manipulation and insider trading is regarded as serious violations of the securities regulation. When evidence of such crimes is established it has been considered as appropriate to report the case to the criminal authorities for prosecution.</p>
<p>PL</p>	<p>Criminal offences: Market manipulation except for information manipulation by a non-journalist. Insider trading.</p> <p>Administrative offences: Information manipulation by a non-journalist. Trading in closed periods by primary insiders. (the same misconduct may be prosecuted from both criminal and administrative angles) Transaction reports by PDMR.</p> <p>Criminal path: After conducting an internal investigation the KNF may close the case or file a notification of a suspected offence with the Public Prosecutor who then carries out investigation in cooperation with the police. The Public Prosecutor basing on the conclusions derived from the investigation may: - Issue an order on the commencement of formal investigation - Dismiss the case If the case is dismissed the KNF may accept Public Prosecutor’s decision or lodge a complaint that is being assessed by the Prosecutor’s supervisor or court (in some cases). If this complaint is dismissed this is the end of legislative path available at this stage. If it is accepted, the Prosecutor issues a decision to commence formal investigation. If the formal investigation is being commenced the Public Prosecutor may issue an indictment (and then the case is handed over to the court) or dismiss the formal investigation. The KNF may accept Public Prosecutor’s decision or lodge a complaint. If the complaint is overruled it is the end of legislative path available for the KNF. If the complaint is accepted, the Public Prosecutor shall further examine the case and either issue an indictment or dismiss the case. If the case is dismissed at this particular stage the KNF itself may file a so called subsidiary indictment with the court. The documents in court are subject to a preliminary analysis.. If the documentation is complete the case is subject to the court proceedings. The judge issues a sentence. If one of the parties is not satisfied with the sentence they have the right of appeal. If the court of appeal revokes the sentence it is examined for the second time by the court of the first instance. 1st instance – district court 2nd instance (court of appeal) - regional court</p> <p>Administrative path: Basing on the results of the vetting activities or explanatory proceedings the KNF dismisses the case or commences administrative proceedings. The administrative proceedings may be terminated without further action if the misconduct cannot be proven, or it may be handed over to the Commission⁶⁵ to decide whether to dismiss the case or impose a fine. In case the fine is imposed the party has the right to file a petition concerning case review. After the case is reviewed it is decided by the Commission whether to impose a fine (same amount, lower amount) or dismiss the case. If the party is still unsatisfied with the sentence it may lodge a complaint with the Regional Administrative Court. Both parties may</p>

⁶⁵ The Commission composed of a Chairperson, two Vice-Chairpersons and four members (the minister competent for financial institutions or such minister’s representative, the minister competent for social security or such minister’s representative, the Governor of the National Bank of Poland or Deputy Governor of the National Bank of Poland delegated by the Governor, a representative of the President of the Republic of Poland).

	lodge a complaint after the Regional Administrative Court issues a sentence – in this case National Administrative Court is the appeal court.
PT	<p>In order to maintain the integrity, transparency and equity of the markets' functioning, CMVM pays special attention to the detection of abnormal or irregular trading patterns.</p> <p>Besides the suspicious transactions reported to the CMVM mainly by financial intermediaries or the market operator, the input for the start of a transactions' analysis arises primarily from SIVAM's warnings. The SIVAM is a surveillance technology system that identifies the abnormal behavioural patterns of some trading variables (i.e. process, assets returns, trading volumes, business turnover and offers) as well as abnormal behavioural patterns of the executors of transactions. If the analysis of transactions establishes facts that may be qualified as a market abuse crime, the Executive Board orders the opening of preliminary investigation proceedings (formal decision), which include the actions necessary to determine the possible existence of such a crime.</p> <p>Once such preliminary investigation proceedings have been concluded by the Trading Analysis and Enforcement Department (i.e. the persons that gather the evidence and establish the facts of a case):</p> <p>a. Administrative procedure If an administrative report is obtained, the Executive Board refers the process to the Legal Affairs Department, which is involved in the administrative procedure of imposing sanctions. The administrative procedure is structured in two main stages: the administrative stage and the judicial stage.</p> <p>On the administrative stage there are two main steps (formal acts): the accusation and the decision. At the end of the investigation, CMVM notifies the defendant of a formal act (the accusation), in which the administrative authority sets out: the facts for which the defendant is accused; the sanctions that can be imposed; and the period of time for the defendant to present his defense. After analyzing all the arguments and evidence brought to the process by the defendant, CMVM may decide to either apply a sanction or to close the case (acquittal), which ends the administrative stage of the procedure.</p> <p>If the defendant does not agree with the administrative decision of CMVM, he can appeal to the judicial courts and the procedure enters in the judicial stage. The decision of the court is also appealable to a second level court of appeals. There are no differences between the administrative procedure for market manipulation and for insider dealing.</p> <p>b. Criminal procedure: If a crime report is obtained, the Executive Board refers the relevant details to the Public Prosecutor. The information sent by the CMVM gives rise to an inquiry by the Public Prosecutor. At the conclusion of that investigation, the Public Prosecutor closes the case or decides to accuse. If the decision to accuse by the Public Prosecutor is appealed, a judge will be asked to open a preparatory inquiry to confirm that decision. At the end of such preparatory inquiry, the judge decides whether the case is to be brought to trial or not. Following the trial, both the defendants and the Public Prosecutor may file an appeal in relation to a conviction or acquittal sentences passed at first instance.</p> <p>From the time that the information passes to the Public Prosecutor, CMVM does not take part in the case but its Executive Board should be notified of every decision taken either throughout the criminal investigation or trial.</p>
RO	<p>STEPS IN DETECTING AND INVESTIGATING MARKET ABUSE:</p> <ul style="list-style-type: none"> • software alerts or a notification from other sources (stock exchanges, investors, intermediaries, issuers etc); • basic analysis of the situation; • client code/codes are sent to the market operator (or intermediaries in case of derivatives trading) for identification; • the counterparty/counterparties of the trade/trades are identified and a connection between the client and the latter is verified; • intermediaries are asked to send copies of the documents related to transactions and if the case maybe phone records on clients' orders;

	<ul style="list-style-type: none"> • preliminary analysis; • the decision regarding further investigation (is taken by the national Commission); • after an extensive analysis and if the case presents enough arguments for being suspected of market manipulation or insider dealing, the findings are brought to the national Commission's attention; • if the national Commission agrees with the conclusions: Ø further investigation is requested or sanctions are applied Ø and/or the case is send to prosecutor's office for further investigation. • appeals in front of the national Commission (when sanctions are applied) • appeals in front of the Court (when sanctions are applied) There are no major differences in the process for the market manipulation vs. insider dealing cases.
SE	<p>Finansinspektionen (FI), the competent authority, can open an investigation as a result of a tip or because of something an investigator has observed. The decision whether an investigation is to be opened or not is made by the team of market abuse investigators. FI does not investigate STRs as national law stipulates that they should be forwarded to the Swedish Economic Crimes Authority (EBM) as soon as possible.</p> <p>An investigation at FI must be forwarded to EBM as soon as there is reason to believe that an offence has been committed pursuant to the Market Abuse Penalties Act. Powers are delegated to the investigators to decide whether an investigation should be closed or has reached "reason to believe" stage and therefore should be forwarded to EBM. The decision must be made in agreement of at least two investigators. Prosecutors at EBM then decide if there should be a pre-trial/ preliminary investigation or not, and further on whether to prosecute or not. The same procedure is applied for market manipulation and insider dealing cases. The trial is public and all verdicts are public and available to anyone upon request. However, they are not automatically published on any web-site. There are no administrative sanctions available regarding MAD articles 2-5, only criminal sanctions.</p> <p>There are three judicial instances; district court, court of appeal and the supreme court.</p>
SI	<ul style="list-style-type: none"> • SUPERVISION a) SUPERVISORY procedures / steps taken for market manipulation assessment: <ul style="list-style-type: none"> ü supervision and establishing of any deviations in trading (as regards prices and turnover); ü detailed overview of orders and transactions (analysis of orders and transactions and the description of trading procedures); ü estimation if there could be a case of market manipulation. b) Procedures / steps taken for insider trading assessment: <ul style="list-style-type: none"> ü review of published information; ü review of trading with financial instruments data; ü collecting of reports and documentation; ü estimation if there could be a case of insider information <ul style="list-style-type: none"> o information should be detailed and should indicate a complex of circumstances or an event that has happened or it could reasonably be expected it to occur / information should be detailed enough to allow reasoning of certain effects of those circumstances or of an event to prices of financial instruments) o information has not been published yet; o information relates to financial instruments or issuers of financial instruments, o information could if it became public have important effect on price of financial instruments; ü judgement (opinion) if there is a case of prohibited action. <p>LEGAL PROCEDURES Legal department performs the procedures on the basis of propositions as prepared by supervisory department or capital market department. Both departments</p>

	<p>prepare reports with major statements, violations/irregularities established during the supervision and the proposed sanctions. Enforcement measures are decided in accordance with the law, Market in Financial Instruments Act (Zakon o trgu finančnih instrumentov, ZTFI-1), by Agency's bodies which are the Senate or a President of the Senate. Appeal to the decisions made by the president of the Senate is possible in a form of complaint. The Senate decides about those complaints. In cases decisions on enforcement measures are made by the Senate the appeal is allowed in a form of a complaint addressed to the Supreme Court. From a legal procedures perspective there are no differences between the ones conducted in case of insider trading and market manipulation on the other side. The other set of sanctioning are administrative sanctions that are also executed on the basis of proposals prepared by supervisory and capital market departments. Individuals within legal department are empowered to run administrative procedures in accordance with the Minor Offences Act (Zakon o prekrških ZP-1), Securities Market Agency (Agency) being one of the minor offences authorities in accordance with the law. Administrative sanctions are: a warning, a reprimand or a monetary fine. Appeal addressed to District Court is a legal measure against the decision on administrative sanction. Appeal against the decision made by District Court could be addressed to the competent Higher Court.</p>
SK	<p>The main steps of the administrative procedure: 1. Investigation (findings of the violation) 2. Announcement of initiating the case 3. Possible statement of the author of the violation and summarizing relevant evidence 4. Announcement of a decision 5. Appeal of procedure (in case the author of the violation appeals) 6. Supplement of the evidence 7. Announcement of an appeal decision (reverse or recall a decision of the first instance authority, or revoke an appeal and confirm a decision of the first instance authority). The main steps concerning criminal procedures: we are not competent to provide you with an answer to this question.</p>
UK	<p>The FSA process for investigating market abuse (assuming that the case is not closed without any enforcement action being taken):</p> <ol style="list-style-type: none"> 1. The Markets Division discusses with the Enforcement and Financial Crime Division (EFCD) whether a particular case should be investigated by EFCD. 2. EFCD and the Markets Division jointly consider which cases are to be opened for investigation by EFCD, based on certain criteria (e.g. Is there evidence that the firm/individual has profited from the action? What was the reaction of the firm/individual to the breach? Overall, is the use of the enforcement tool likely to further the FSA's aims and objectives?). For more information about our referral criteria, please see http://www.fsa.gov.uk/pages/Doing/Regulated/Law/criteria.shtml 3. A case is opened on our internal administrative database. 4. In most cases an individual or a company being investigated must be informed that named FSA staff have been appointed to investigate a breach. 5. Investigative tools are used to determine whether market abuse or criminal insider dealing have been committed. The tools include compulsory information requirements, interviewing suspects and witnesses and/or searching process. 6A. If it is decided to pursue the administrative market abuse route (including both insider dealing and market manipulation) then: <ol style="list-style-type: none"> a. a preliminary investigative report usually is sent to the target of the investigations. This report sets out the FSA's preliminary view of its case and allows the target of the investigation ("the target") to respond; b. the appropriate action for the FSA to take will be submitted to the FSA's independent Regulatory Decisions Committee (RDC). The RDC decides whether to

<p>issue a Warning Notice. (The RDC is a group made up of practitioners and non-practitioners, who are appointed by the FSA Board and represent the public interest.) This formally sets out the FSA’s case;</p> <ul style="list-style-type: none"> c. the RDC receives written and oral representations from the target; d. the RDC issues a notice setting out its decision on whether market abuse has taken place; e. the target can appeal the decision to the Upper Tribunal; and f. if no appeal is made the decision will be published, except where to do so would be unfair to the target or prejudicial to the interests of consumers. <p>Note that settlement discussion between the FSA and the person concerned are possible at any stage of the enforcement process. If the target decides to settle a case, the decision maker will not be the RDC but two individuals drawn from a pool of FSA Directors who have not been involved in investigating the case.</p> <p>6B. If the FSA decides to instigate a criminal prosecution the process is as follows:</p> <ul style="list-style-type: none"> a. the Chairman of the RDC agrees to launch a criminal prosecution; b. the FSA instigates the criminal proceedings either through requesting that a court summons the target to attend court or by asking the police to charge the target and require him to attend court. The FSA sets out to the target and the court the instances where it is accusing the target of committing insider dealing; c. a lower court determines whether the matter is sufficiently serious to need to be tried in front of a jury, or whether it should be tried in front of a lower court Magistrate; d. various court case management hearings are held with the judge and the target to determine the time table of various things (e.g. when the disclosure of the FSA’s evidence to the target will take place and how long the trial will take); e. in almost all cases the trial takes place before a jury; f. in the lower courts the Magistrates determine whether the target is guilty; in the upper courts a jury determines if the target is guilty; g. the judge sentences the target to jail and/or sets a fine. There may be a gap between the jury’s guilty verdict and the sentencing as in some cases the judge will request further information before imposing a sentence and/or fine; and h. the FSA can apply to a court for any benefits from the illegal trades to be confiscated. It can also apply for a target to pay its legal costs of bringing the prosecution. <p>Further information about our Enforcement work is available on our website: http://www.fsa.gov.uk/pages/doing/regulated/law/index.shtml</p>

Table Annex A.2.: Administrative sanctions imposed for insider dealing on natural persons

	2008			2009			2010		
	Sanc-tions	Pecu-niary	Non-pecuniary	Sanc-tions	Pecu-niary	Non-pecuniary	Sanc-tions	Pecu-niary	Non-pecuniary
BE	1	1					1	1	
BG	3	3		1	1				
CY	1	1					1	1	
CZ				1	1				
EL	3	3		1	1		11	11	
ES	2	2		1	1		6	6	0
FI	1		1	1		1			
FR	29	29		5	5		14	13	1
HU	2	2					3	3	
IT	5	5		14	14		12	12	
LT	3	3		1	1		1	1	
MT				3	3				
NL	1	1							
NO	3		3	4		4	2		2
PL	14	14		2	2		1		1
PT				3	1	2			
UK	6	6		5	3	4	10	10	8

Table Annex A.3.: Insider dealing – legal persons

	2008			2009			2010		
	Sanctions	Pecuniary	Non-pecuniary	Sanctions	Pecuniary	Non-pecuniary	Sanctions	Pecuniary	Non-pecuniary
EL	5	5					7	7	
ES				1	1		4	3	1
FR	1	1		2	2				
IT	1	1		2	2		1	1	
LT				1	1				
NO	1		1	1		1			
PL							1	1	
PT				1	1				

Table Annex A.4.: Administrative sanctions imposed for market manipulation on natural persons

	2008			2009			2010		
	Sanctions	Pecuniary	Non-pecuniary	Sanctions	Pecuniary	Non-pecuniary	Sanctions	Pecuniary	Non-pecuniary
AT	21	21		12	12		6	4	2
BE							1	1	
BG	1	1		6	6		7	7	
CY	3	3		1	1		6	6	
DE	1	1		3	3		2	2	
EE				1	1		1	1	
EL	11	11		56	56		26	26	
ES	1		1						

FI				1		1			
FR	6	6		7	7		6	6	
HU							6	6	
IT				6	6		7	7	
LT	4	4		5	5				
LV							1		1
NL							2	2	
NO	3		3	3		3	3		3
PL				4	1	3	1	2	
PT	2	1	1	1	1		10	9	1
RO							1	1	
SI				3		3	5	3	2
UK	1	1		1	1		6	6	

Table Annex A.5.: Administrative sanctions imposed for market manipulation on legal persons

	Sanc- tions	Pecunia ry	Non- pecuni ary	Sanc- tions	Pecuni ary	Non- pecuni ary	Sanc- tions	Pecuni ary	Non- pecuni ary
BG	1	1					1	1	
CY				2	2		3	3	
CZ				1	1		3	3	
EE	4		4	1	1		6	6	
EL	6	6		19	19		9	9	
FR	4	4		8	8		7	7	
HU	5	5		2	2		2	2	

IT				1	1				
LT	1	1		6	6				
NL							4	4	
NO				1		1	1		1
PT	1	1		4	4				
SI							1		1
UK							1	1	

Table Annex A.6. Maximum and minimum penalties available in each Member State (Cf. "Report on Administrative Measures and Sanctions as well as the Criminal Sanctions available in the Member States under MAD (November 2007, CESR/07-693)

2010	Maximum penalties amounts	
	Insider Dealing	Market manipulation
AT	N/A	€75,000
BE	Maximum €2,500,000 for the same offence or the same totality of offences. Where the infringement has resulted in the offender obtaining a capital gain, that maximum shall be raised to twice the capital gain and, in the event of a repeated offence, to 3 times the capital gain.	Maximum €2,500,000 for the same offence or the same totality of offences. When the infringement has resulted in the offender obtaining a capital gain, that maximum shall be raised to twice the capital gain and, in the event of a repeated offence, to 3 times the capital gain.
BG	€25,564.99 for natural persons and €51,129.97 for legal persons. In case of a repeated offence the maximum amount of the sanction is €51,129.97 for natural persons and €102,259.94 for legal persons.	€25,564.99 for natural persons and €51,129.97 for legal persons. In case of a repeated offence the maximum amount of the sanction is €51,129.97 for natural persons and €102,259.94 for legal persons.
CY	€854,000	€854,000
CZ	€400,000	€800,000
DE	€200,000	€1,000,000
DK	N/A	N/A
EE	amount up to €32,000 for natural persons, €16,000,000 for legal persons	up to €32,000 for natural persons, €16,000,000 for legal persons
EL	€2,000,000	€2,000,000
ES	Up to the highest of the following amounts: five times the gross profit obtained as a result of the acts or omissions comprising the infringement; 5 per cent of the infringing firm's own funds; five per cent of the total funds, owned by the firm or third parties, that were used in the infringement; or €600,000.	Up to the highest of the following amounts: five times the gross profit obtained as a result of the acts or omissions comprising the infringement; 5 per cent of the in-fringing firm's own funds; five per cent of the total funds, owned by the firm or third parties, that were used in the infringement; or €600,000.
FI	Insider dealing maximum €10,000 (natural persons), €200,000 legal persons, however not more than 10 % of the turnover of the previous financial year.	Market manipulation maximum €10,000 (natural persons), €200,000 legal persons, however not more than 10 % of the turnover of the previous financial year.
FR	see F7	see F7
HU	€1,885,369	€1,885,369
IE	€2,500,000	€2,500,000
IS	€303,000	€303,000

IT	€15,000,000	€25,000,000
LT	Natural person ~ €17,400 Legal person ~ €58,000 or a fine double in the amount of the illegally generated proceeds, other pecuniary benefit, loss avoided, or the damage incurred.	Natural person ~ €17,400 Legal person ~ €58,000 or a fine double in the amount of the illegally generated proceeds, other pecuniary benefit, loss avoided, or the damage incurred.
LU	€1,500,000	€1,500,000
LV	€57,000	€57,000
MT	€93,174.94	€9,3174.94
NL	€4,000,000	€4,000,000
NO	-	-
PL	€50,911	€50,911 and/or 10 times profit
PT	€5,000,000	€5,000,000
RO	Full of the amount of the transaction carried out; In case no transaction is carried out:5% of the paid-up share capital for legal persons or €13,000 for natural persons	The full amount of the transaction carried out. In case no transaction is carried out:5% of the paid-up share capital for legal persons or €13,000 for natural persons
SE	0	0
SI	€370,000	€370,000
SK	€663,878	€663,878
UK	no maximum	no maximum

Table Annex A.7.: The information below is an extract of the 2007 MAD report – the intent is to reflect the maximum amount for both insider dealing and market manipulation offences

	Insider Dealing	Market manipulation
AT	N/A	€50,000
BE	€2,500,000. Where the infringement has resulted in the offender obtaining a capital gain, that maximum shall be raised to twice the capital gain and, in the event of a repeat offence, to 3 times the capital gain.	€2,500,000. Where the infringement has resulted in the offender obtaining a capital gain, that maximum shall be raised to twice the capital gain and, in the event of a repeat offence, to 3 times the capital gain.
BG	50 000 BGN /approx. €25 000 / .In case of repetition of the violation the upper limit is doubled (100,000 BGN /approx. €50,000). Legal persons and sole proprietors may be subject to financial sanction imposed by means of penal decree in the amount of 100,000 BGN /approx. €50,000/ and in case of repetition the amounts are doubled.	50 000 BGN /approx. €25 000 / .In case of repetition of the violation the upper limit is doubled (100,000 BGN /approx. €50,000). Legal persons and sole proprietors may be subject to financial sanction imposed by means of penal decree in the amount of 100 000 BGN /approx. €50,000/ and in case of repetition the amounts are doubled.
CY	Up to 500.000 CYP (approximately €855,000) and, in case of a repeated violation, an administrative fine not exceeding 1.000.000 CYP. - 1.710.000), depending on the gravity of the violation	Up to 500.000 CYP (approximately €855,000) and, in case of a repeated violation, an administrative fine not exceeding 1,000,000 CYP. – approximately €1,710,000), depending on the gravity of the violation.
CZ	€350,000	€700,000
DE	€200,000	€1,000,000
DK	Not available	Not available
EE	Not available	50,000 EEK
EL	€2,000,000	€2,000,000
ES	<p>a) A fine of no less than the amount of the gross profit obtained as the result of the actions or omissions of which the infringement consists and no more than five times that amount; or, in the event that this criterion is inapplicable, up to the greatest of the following amounts: 5% of the offender's own funds, 5% of the total funds used in the infringement, whether own or borrowed funds, or €300,506.05.</p> <p>b) A fine of up to the amount of the gross profit obtained as the result of the actions or omissions of which the infringement consists; or, in the event that this criterion is inapplicable, up to the greatest of the following amounts: 2% of the offender's</p>	<p>a) A fine of no less than the amount of the gross profit obtained as the result of the actions or omissions of which the infringement consists and no more than five times that amount; or, in the event that this criterion is inapplicable, up to the greatest of the following amounts: 5% of the offender's own funds, 5% of the total funds used in the infringement, whether own or borrowed funds, or €300,506.05.</p> <p>b) A fine of up to the amount of the gross profit obtained as the result of the actions or omissions of which the infringement consists; or, in the event that this criterion is inapplicable, up to the greatest of the following amounts: 2% of the offender's own</p>

	own funds, 2% of the total funds used in the infringement, whether own or borrowed funds, or €150,253.03.	funds, 2% of the total funds used in the infringement, whether own or borrowed funds, or €150,253.03. response as in insider dealing
FI	natural person €10,000 and for legal persons €200,000	natural person €10,000 and for legal persons €200,000
FR	Up to €1,500,000 or ten times the profit realized (For supervised entities and natural persons placed under its authority of, or acting on its behalf, or, any other person)	Up to €1,500,000 or ten times the profit realized (For supervised entities and natural persons placed under its authority of, or acting on its behalf, or, any other person)
HU	€400,000 or 400% of the profit if it can be proved.	€400,000 or 400% of the profit if it can be proved.
IE	€2,500,000	€2,500,000
IS	20,000,000 ISK (approx. €235,294) for Individuals and from 50,000 ISK (approx. €588) to 50,000,000 ISK (approx. €588,235) for legal persons	20,000,000 ISK (approx. €235,294) for Individuals and from 50,000 ISK (approx. €588) to 50,000,000 ISK (approx. €588,235) for legal persons
IT	15,000,000.	€25,000,000
LT	<ul style="list-style-type: none"> • Fine a private person from 1,000 to 5,000 Lt (€290 to €1450) • For legal persons fine may reach up to 100,000 Lt (approx. €30,000) if the profit gained is less than 100,000 Lt; if the profit gained is more than 100,000 Lt – three times as much as the profit is. 	<ul style="list-style-type: none"> • Fine a private person from 1,000 to 5,000 Lt (290 – 1450) • For legal persons fine may reach up to 100,000 Lt (approx. €30 000) if the profit gained is less than 100,000 Lt; if the profit gained is more than 100,000 Lt – three times as much as the profit is.
LU	No administrative pecuniary sanctions	No administrative pecuniary sanctions
LV	No information provided	No information provided
MT	LM 40,000 (approx. €93,200)	LM 40,000 (approx. €93,200)
NL	€96,000	€96,000
NO	Surrender of gain, cf. STA section 14-2, if a gain has resulted form negligent and wilful violation.	Surrender of gain, cf. STA section 14-2, if a gain has resulted form negligent and wilful violation.
PL	Information not available	PLN 200,000 (approx. €52,910.10); pecuniary penalty of up to 10 times financial benefits gained; pecuniary penalty of up to PLN 1,000,000 (approx. €264,550.30) on public companies; 2) pecuniary penalty up to 3 months salary imposed on members of public companies board of directors
PT	€2,500,000	€2,500,000,
RO	Full of the amount of the transaction carried out; In case no transaction is carried out: 5% of the paid up share capital for legal persons or 13000 Euro for natural persons.”	Full of the amount of the transaction carried out; In case no transaction is carried out: 5% of the paid up share capital for legal persons or 13000 Euro for natural persons.”
SE	There are no administrative pecuniary sanctions available	There are no administrative pecuniary sanctions available
SI	€370,000	€370,000

SK	SKK 20,000,000 (approx. €600,000)	SKK 20,000,000 (approx. €600,000)
UK	Unlimited	Unlimited

	Minimum amounts	Minimum amounts
	Insider Dealing	Market manipulation
AT	0	€7
BE	Minimum €2,500 for the same offence or the same totality of offences.	Minimum €2,500 for the same offence or the same totality of offences.
BG	€10,225.99 for natural persons and €25,564.99 for legal persons. In case of a repeated offence the minimum amount of the sanction is €25,564.99 for natural persons and €51,129.97 for legal persons.	€10,225.99 for natural persons and €25,564.99 for legal persons. In case of a repeated offence the minimum amount of the sanction is €25,564.99 for natural persons and €51,129.97 for legal persons.
CY	-	-
CZ	0	0
DE	5	5
DK	N/A	N/A
EE	natural person from 3 up to 300 fine units (one fine unit is €4), i.e. from €12 minimally, legal person from 32 fine units i.e. €128	natural person from 3 up to 300 fine units (one fine unit is €4), i.e. from €12 minimally, legal person from 32 fine units i.e. €128
EL	€10,000	€10,000
ES	€30,000 for very serious infringements or €12,000 for serious infringements	Spanish securities legislation does not provide for a minimum amount of financial penalty to be imposed but, in practice, the minimum fine imposed in market manipulation cases is at least the benefit obtained (or lose avoided) with the infringement.
FI	Insider dealing minimum €100 (natural persons), €500 legal persons.	Market manipulation minimum €100 (natural persons), €500 legal persons.
FR	N/A	N/A
HU	€377	€377
IE	0	0
IS	€61	€61
IT	€ 100,000.00	€ 100,000.00
LT	Natural person ~ €1 450, Legal person ~ €0	Natural person ~ €1 450, Legal person ~ €0
LU	€125	€125
LV	0	0
MT	0	0
NL	0	0
NO	-	-
PL	not stipulated	not stipulated
PT	€25,000	€25,000

RO	half of the amount of the transaction carried out; in case no transaction is carried out: 0,5% of the paid up share capital for legal persons or €130 for natural persons	Half amount of the transaction carried out. In case no transaction is carried out:0,5% of the paid-up share capital for legal persons or €130 for natural persons
SE	0	0
SI	€25,000	€25,000
SK	€332	€332
UK	0	0