

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1158**of 29 June 2017****laying down implementing technical standards with regards to the procedures and forms for competent authorities exchanging information with the European Securities Market Authority as referred to in Article 33 of Regulation (EU) No 596/2014 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ⁽¹⁾, and in particular Article 33(5) thereof,

Whereas:

- (1) It is appropriate to set out common procedures and forms for competent authorities to submit information to the European Securities and Markets Authority (ESMA) with regard to investigations, sanctions and measures referred to in Article 33 of Regulation (EU) No 596/2014.
- (2) In order to facilitate the communication between competent authorities and ESMA and avoid unnecessary delays or failed submissions, each competent authority should designate a contact point specifically for the purpose of submitting the information required.
- (3) To ensure that all required information concerning sanctions and measures imposed by competent authorities is correctly identified and registered by ESMA, competent authorities should provide detailed and harmonised information using specific forms to that purpose.
- (4) Information about investigations to be provided to ESMA should be consistent and comparable in order to reflect the actual investigatory activity carried out under the Market Abuse Regulation on a given year. Therefore, the information should only include the investigations on which the relevant authorities have worked on during the reference period.
- (5) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (6) ESMA did not conduct open public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse potential related costs and benefits of introducing the standard forms and procedures for the relevant competent authorities, as this would have been disproportionate in relation to their scope and impact, taking into account that the addressees of the implementing technical standards would only be the national competent authorities of the Member States and not market participants.
- (7) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾,

⁽¹⁾ OJ L 173, 12.6.2014, p. 1.

⁽²⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

Article 1

Definition

For the purposes of this Regulation, 'electronic means' are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

Article 2

Contact points

1. Each competent authority shall designate a single contact point for sending the information referred to in Article 3 and for communications on any issue relating to submission of that information.
2. Competent authorities shall notify the European Securities and Markets Authority (ESMA) of the contact points designated in accordance with paragraph 1.
3. ESMA shall designate a contact point for receiving the information set out in Articles 3 and 4 and for communications on any issue relating to the reception of that information.
4. ESMA shall publish the contact point referred to in paragraph 2 on its website.

Article 3

Annual submission of aggregated information

1. Competent authorities shall provide ESMA with the information referred to in paragraphs 1 and 2 of Article 33 of Regulation (EU) No 596/2014, by filling in, as appropriate, the form set out in Annex I to this Regulation.
2. The information referred to in paragraph 1 shall be provided to ESMA no later than 31 of March of each year and shall relate to all investigations undertaken and all sanctions and measures imposed during the previous calendar year.
3. Competent authorities shall provide ESMA with the information referred to in paragraph 1 by secure electronic means of transmission.
4. For the purposes of paragraph 1, ESMA shall specify and identify the secure electronic means to be used. Those means shall ensure that the completeness, integrity and confidentiality of the information is maintained during its transmission.

Article 4

Reporting procedures and forms

1. Competent authorities shall report to ESMA the sanctions and measures referred to in Article 33(3) of Regulation (EU) No 596/2014 using the interfaces provided by the information technology system, and the related database, set up by ESMA to manage the receipt, storage and publication of information on those sanctions and measures.

2. The sanctions and measures referred to in paragraph 1 shall be submitted to ESMA in a report file in the format set out in Annex II.

Article 5

Invalidation and updating of reports

1. Where a competent authority wishes to invalidate an existing report file it has previously submitted to ESMA in accordance with Article 4, it shall cancel the existing report file and send a new report file.
2. Where a competent authority wishes to update an existing report file it has previously submitted to ESMA in accordance with Article 4, it shall resubmit the report file with the updated information.

Article 6

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Form for annual submission of aggregated and anonymous information regarding all sanctions and measures imposed and investigations undertaken**Aggregated and anonymous information regarding measures and sanctions imposed and investigations undertaken in accordance with Articles 30, 31 and 32 of Regulation (EU) No 596/2014 in [year]**

FROM:

Member State:

Competent authority:

Address:

(Contact details of the designated contact point)

Name:

Telephone:

Email:

TO:

ESMA

(Contact details of the designated contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

In accordance with Article 33(1) and (2) of Regulation (EU) No 596/2014, I wish to provide you with the following aggregated information regarding:

- all administrative sanctions and measures imposed by *[name of the competent authority]*, in section 1;
- all criminal sanctions imposed by judicial authorities in *[name of the Member State]*, in section 2, if applicable;
- all administrative investigations undertaken *[name of the competent authority]*, in section 3;
- all criminal investigations undertaken by judicial authorities in *[name of the Member State]*, in section 4, if applicable.

Yours sincerely,

[signature]

SECTION 1 Administrative measures and sanctions imposed (including settlement decisions where applicable) over the reporting period

	Number of measures and sanctions			Number of persons concerned by the measures and sanctions	
	Imposed (*)	Published	Under appeal	Natural persons	Legal persons
Total administrative measures and sanctions					

Number of measures and sanctions by type of infringements and nature of the measure/sanction	Pecuniary sanctions (including sub-total for disgorgement where applicable)		Other than pecuniary In numbers (+)	Settlement decisions (where applicable)	
	In numbers (+)	Aggregated monetary amount (*)		In numbers (+)	Aggregated monetary amount (**)
For prohibitions under Article 14 of Regulation (EU) No 596/2014					
For prohibitions under Article 15 of Regulation (EU) No 596/2014					
For other infringements					

(+) As measures and sanctions may cover more than one infringement, the sum of the number of measures and sanctions in this table may not correspond to the total number of measures or sanctions contained in the box under 'imposed' in the previous table.

(*) The figure expected concerns the sanctions and measures that a competent authority has decided to impose.

(**) Please insert value in Euro or in national currency. If the relevant penalties refer not only to breaches relating to the relevant article of Regulation (EU) No 596/2014, but also to other provisions, add the mention 'AGGREGATED FIGURE' to each value.

SECTION 2 Criminal sanctions imposed over the reporting period in accordance with the second subparagraph of Article 30(1) of Regulation (EU) No 596/2014 (if applicable)

	Number of sanctions		Number of persons concerned by the sanctions	
	Imposed (*)	Under appeal	Natural persons	Legal persons
Total criminal sanctions				

Number of sanctions by type of infringements and nature of the criminal sanction (+)	Pecuniary (**)	Imprisonment	Settlement decisions	Other kind
For prohibitions under Article 14 of Regulation (EU) No 596/2014				
For prohibitions under Article 15 of Regulation (EU) No 596/2014				
For other infringements				

(+) As measures and sanctions may cover more than one infringement, the sum of the number of measures and sanctions in this table may not correspond to the total number of measures or sanctions contained in the box under 'imposed' in the previous table.

(*) The figure expected concerns the sanctions and measures that an authority has decided to impose.

(**) Please insert value in Euro or in national currency. If the relevant penalties refer not only to breaches relating to the relevant article of Regulation (EU) No 596/2014, but also to other provisions, add the mention 'AGGREGATED FIGURE' to each value.

SECTION 3 **Administrative investigations undertaken over the reporting period**

Type of investigation	Number of investigations that have been ongoing during year [yyyy] (+)			Outcome of the closed investigations			
	Total	Opened	Closed	Initiation of administrative enforcement proceedings (including settlement decisions)	Referral to criminal authorities	Other actions (e.g., prohibitions)	Closed without further actions
For prohibitions under Article 14 of Regulation (EU) No 596/2014							
For prohibitions under Article 15 of Regulation (EU) No 596/2014							
For other type of infringements							

(+) Some investigations can cover several infringements and concern more than one person.

SECTION 4 Criminal investigations undertaken over the reporting period in accordance with the second subparagraph of Article 30(1) of Regulation (EU) No 596/2014 (if applicable)

Type of investigation	Number of investigations that have been ongoing during year [yyyy] (+)			Outcome of the closed investigations		
	Total	Opened	Closed	Initiation of criminal enforcement proceedings (including settlement decisions)	Closed without further actions	Other actions (e.g.: prohibitions)
For prohibitions under Article 14 of Regulation (EU) No 596/2014						
For prohibitions under Article 15 of Regulation (EU) No 596/2014						
For other type of infringements						

(+) Some investigations can cover several infringements and concern more than one person.

ANNEX II

Format for notifying administrative or criminal sanctions or other administrative measures disclosed to the public

Field	Description	Type
Legal Framework	The acronym of the Union legislative act under which the administrative or criminal sanctions or other administrative measures have been imposed.	Mandatory
Sanction identifier	The identification code attributed by the competent authority for the purpose of the notification of the administrative or criminal sanctions or other administrative measures	Optional
Member State	The acronym of the Member State of the competent authority submitting the sanction or measure	Mandatory
Entity Identifier	The identifier used to uniquely identify a legal entity on which an administrative or criminal sanction or other administrative measures have been imposed, in case the entity is an authorised entity under MiFID ⁽¹⁾ , UCITS ⁽²⁾ or AIFMD ⁽³⁾ legal framework.	Optional (for legal persons only)
Authority Key	The identifier of the authority submitting the sanction or measure	Mandatory
Entity Legal Framework	The acronym of the Union legislative text that applies to the entity on which the administrative or criminal sanction or other administrative measures have been imposed.	Optional (for legal persons only)
Nature of sanction	Information on whether the sanction notified is a criminal sanction, an administrative sanction or an administrative measure.	Mandatory (only for sanctions)
Entity Full name	Full name of the entity the sanction is imposed to, in case the entity is not authorised under MiFID, UCITS or AIFMD legal framework.	Optional (for legal persons only)
Person Full Name	Full name of the persons on whom an administrative or criminal sanction or other administrative measures have been imposed.	Optional (for natural persons only)
Sanctioning NCA	The acronym of the competent authority that has imposed the administrative or criminal sanctions or other administrative measures.	Mandatory
Free Text	Text of the administrative or criminal sanctions or other administrative measures in a national language or in English.	Mandatory
Free Text	Text of the administrative sanction or measure in English.	Optional
Date	The date on which the administrative or criminal sanction or other administrative measure was imposed.	Mandatory
Expiration Date	Date on which the effects of the administrative sanction or measure ends.	Optional

(1) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(2) Directive 2009/65/EC of 13 July 2009 of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

(3) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).