



Legal Update

ESMA publishes Reports on sanctions for UCITS and under AIFMD

The European Securities and Market Authority (“ESMA”) published its reports on the use by National Competent Authorities (“NCAs”) including the Central Bank of Ireland of sanctions under the UCITS Directive and the Alternative Investment Fund Managers Directive (“AIFMD”) on 18 July 2023.

Background

These reports with regards to AIFMD and UCITS sanctions and measures were drafted pursuant to Article 48(3) of AIFMD and pursuant to Article 99(e)1 of the UCITS Directive. According to these articles ESMA is required to draw up an annual report on the application of administrative measures and the imposition of penalties for breaches of the provisions implementing the AIFMD and the UCITS Directive. Only measures and penalties issued under the AIFMD and the UCITS Directive have been considered. ESMA states that the 2022 data can be read in connection with the data on sanctions issued in previous years which provides a useful indication of trends in the use of the sanctioning tool at national level. In line with these articles NCAs are required to provide ESMA annually with aggregated information regarding all penalties and measures imposed. The aggregated information contained within these reports reflects the data submitted to ESMA by NCAs.

Contents

The AIFMD report shows that overall, 10 NCAs imposed a total of 128 penalties with a total aggregated value of the penalties-imposed

amounting to over two million euro. The UCITS report shows that overall, nine NCAs imposed a total of 38 penalties amounting to a total aggregated value of 97 million euro. The data gathered from both the reports shows that the regulatory sanctioning powers are not equally used by NCAs.

Next Steps

Work will continue in the future to promote further convergence in the use of sanctioning powers by NCAs across the EU. The information reported to ESMA and included in the reports will inform ESMA’s ongoing work aimed at fostering supervisory convergence in the application of the AIFMD and UCITS and contribute to ESMA’s goal to develop a common EU outcome-focused supervisory and enforcement culture.

How can Clerkin Lynch help?

Clerkin Lynch can assist in defending regulatory prosecutions with its experienced litigation team. We can also assist clients to ensure compliance to prevent any sanctions being imposed.



Mark Browne

Partner

Email:

markbrowne@clerkinlynch.com



Andrew Mc Kenna