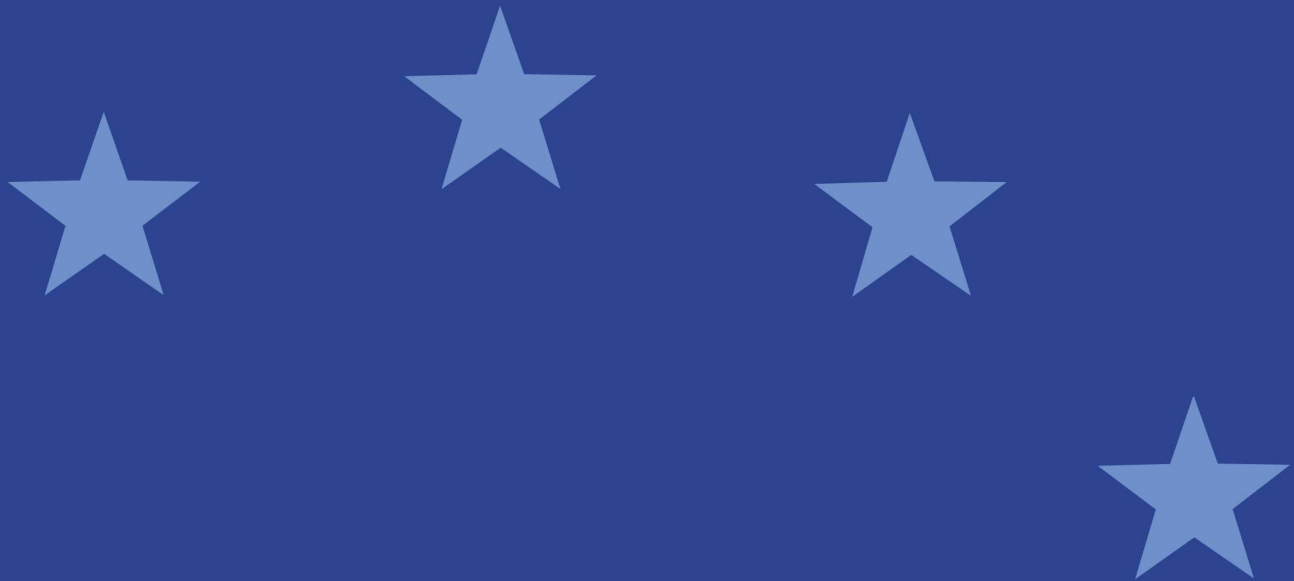


Final report

**Draft Implementing Technical Standards on sanctions and measures
under Regulation (EU) No 596/2014 on market abuse**



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Acronyms

EEA	European Economic Area
ESMA	European Securities and Markets Authority
ITS	Implementing Technical Standards
MAR	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
NCA	National Competent Authority

I. Executive summary

1. This report contains ESMA's proposed draft Technical Standards on how competent authorities should notify ESMA annually of the investigations they conduct and the sanctions and measures imposed in their Member States under Article 33 of the Market Abuse Regulation (MAR).

II. Background and key content of the report

2. Article 33(5) of the Market Abuse Regulation (MAR) requires ESMA to develop draft ITS concerning the procedures and forms for submitting information regarding administrative and criminal investigations, administrative and criminal sanctions and other administrative measures as referred to in Article 33 of MAR.
3. Article 33 of MAR provides for two types of submission of information, which are as follows:
 - NCAs shall provide ESMA annually with aggregated information regarding all administrative and criminal sanctions and other administrative measures imposed in accordance with Articles 30, 31 and 32 of MAR as well as regarding administrative and criminal investigations undertaken in accordance with those articles.
 - Administrative and criminal sanctions and other administrative measures that are disclosed to the public by NCAs shall simultaneously be reported to ESMA.
4. ESMA is required to submit the draft ITS to the European Commission by 3 July 2016.
5. In accordance with Article 33(1) and (2), ESMA is required to publish in an annual report the aggregated information received on administrative measures and sanctions as well as on criminal sanctions.
6. In order to facilitate communication between competent authorities and ESMA, competent authorities should designate contact points specifically for the purpose of submitting the information required. They may not be always physical persons, but could be mailboxes or any other point that ensure the reception, avoiding thus unnecessary delays or failed deliveries of information.
7. For the purpose of reporting to ESMA annual and anonymised information on the number of investigations undertaken, the competent authorities should consider the activities where they have exercised their investigatory powers and not take into account mere supervisory or market monitoring activities. The notion of "investigation" shall refer to the matter which constitutes the object of the investigation, without considering the number of persons or entities

involved in each investigation or the preliminary activities to the investigation such as market analyses. This would ensure consistency in the information reported to ESMA by the competent authorities on the number of investigations.

8. Recital 78 of MAR states that the data to be provided to ESMA should comprise the number of investigations that have been opened, the number of those that are ongoing and the number that have been closed during the relevant period. Therefore, to properly reflect the activity of the relevant authorities under MAR, the total number of investigations on which the authority has been active and worked on during the relevant period should be presented as well as information about those investigations that were opened or closed, or opened and closed, during the relevant period. This would also allow covering those investigations which are ongoing despite not being opened or closed during the relevant period. Even if this approach may result in double counting some of the investigations in the same relevant period (for example, an investigation that has been opened during the relevant period and which is still ongoing at the end of the period will be counted twice, as well as an investigation opened during a relevant period and closed during the next relevant period) or during several periods (for instance, when an investigation is carried through several relevant periods), it is an appropriate way to reflect the actual number of investigations on which competent authorities have worked at any point during the relevant period while complying with the method for counting established under Recital (78) of MAR.
9. Annex I recalls the legislative mandate to develop draft ITS and Annex II sets out the full text of the draft ITS.

Annex I: Legislative mandate

1. Article 33(5) of Regulation (EU) No 596/2014 provides that:

“In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”



Annex II: Draft implementing technical standards on the procedures and forms for competent authorities exchanging information with ES-MA as referred to in Article 33 of Regulation (EU) No 596/2014 of the European Parliament and of the Council



EUROPEAN COMMISSION

Brussels, **XXX**
[...](2016) **XXX** draft

COMMISSION IMPLEMENTING REGULATION (EU) No .../..

of **XXX**

[...]



COMMISSION IMPLEMENTING REGULATION (EU) No.../... laying down implementing technical standards with regard to procedures and forms for exchanging information with ESMA as referred to in Article 33 of Regulation (EU) No 596/2014 of the European Parliament and of the Council

of **XXX**

(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/EC¹, and in particular Article 33(5) thereof,

Whereas:

- (1) It is appropriate to set out common procedures and forms for competent authorities for the exchange of information with the European Securities and Markets Authority (ESMA) with regard to the investigations, sanctions and measures referred to in Article 33 of Regulation (EU) No 596/2014.
- (2) In order to facilitate such communication, competent authorities should designate contact points specifically for the purpose of submitting the information required. The contact points should ensure the reception of the relevant information, avoiding thus unnecessary delays or failed deliveries of it.
- (3) With a view to including meaningful information in the annual report on measures and sanctions to be published by ESMA, competent authorities should report the information by using specific forms.
- (4) In order to enable ESMA to correctly identify and register the information on sanctions and measures, it is appropriate for competent authorities to provide ESMA with detailed

¹ OJ L 173, 12.6.2014, p. 1.

and harmonised information on each sanction or measure notified and to set out a form to be used by competent authorities for this purpose.

- (5) Information about investigations to be provided to ESMA should be consistent and comparable in order to reflect the actual investigatory activity carried out under MAR on a given year by the relevant authorities. Therefore, the information should only include the investigations on all the issues on which the relevant authorities have worked on during the reference period.
- (6) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (7) 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.
- (8) 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 Council²,

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. Competent authorities shall designate contact points for communication of any issue relating to the submission of information according to Articles 3, 4 and 5 and shall notify ESMA of those contact points.

²OJ L 331, 15.12.2010, p. 84.

2. ESMA shall designate a contact point for receiving the information set out in Articles 3 and 4 and for any communication on any issue relating to the reception of such information. ESMA shall publish information on its contact point on its website.

Article 3

Annual submission of aggregated information

1. Competent authorities shall provide ESMA annually with the information referred to in paragraphs 1 and 2 of Article 33 of Regulation (EU) No 596/2014, by filling in the relevant sections of the form set out in Annex I to this Regulation.

Where Member States have, in accordance with the second subparagraph of Article 30(1) of Regulation (EU) No 596/2014, laid down criminal sanctions for the infringements referred to in that Article, competent authorities shall fill in sections 2 and 4 of the form set out in Annex I.

2. The information referred to in paragraph 1 shall relate to all investigations undertaken and sanctions and measures imposed by competent authorities or judicial authorities during the previous calendar year.
3. Competent authorities shall provide ESMA, through the contact point referred to under Article 2(1) of this Regulation, with the form set out in Annex I. This form shall be completed electronically and sent to the contact point referred to in Article 2 (2), no later than 31 of March of each year by secure electronic means of transmission. ESMA shall specify the secure electronic means to be used. Those electronic means shall ensure 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 administrative and criminal sanctions and on other administrative measures.
2. The sanctions and measures 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 according to 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 according to 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.

It shall apply as from its entry into force.

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

Done at Brussels,

For the Commission
The President

On behalf of the President

[Position]



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:
Requested 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		
	Decided	Published	Under appeal	Natural persons	per-	Legal persons
Total administrative measures and sanctions						

Number of measures and sanctions by type of infringements and nature of the measure/ sanction	Pecuniary (including sub-total for disgorgement where applicable)		Other than pecuniary	Settlement (where applicable)	
	In numbers (+)	Aggregated monetary amount *	In numbers (+)	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 “decided” in the previous table.

* 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	
	Decided	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	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 “decided” in the previous table.

* 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)	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)	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 text 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 ³ , UCITS ⁴ or AIFMD ⁵ 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	Mandatory

³ 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.

⁴ 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.

⁵ 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.

	imposed the administrative or criminal sanctions or other administrative measures.	
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 penalty 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 penalty or measure ends.	Optional