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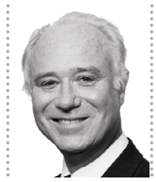

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The EU Regulatory Enforcement Outlook

The EU Regulatory Enforcement Outlook: A review of financial regulatory enforcement by NCAs across the EU27

Belgium

National Bank of Belgium ("**NBB**"); Financial Services and Markets Authority ("**FSMA**"); Directorate-General Economic Inspection, Ministry for the Economy and Ministry of the Treasury

> FSMA's powers extend to conducting anonymous inspections by officers posing as clients; the NBB's powers are more limited
> FSMA does not officially state its enforcement priorities but in practice appears to focus on insider trading, market abuse, and infringements relating to the public offering of investment instruments
> Due to MiFID II, some fine caps were increased and the regulators received increased powers regarding the suspension of trade in certain investment instruments

France

Prudential Supervision and Resolution Authority (*Autorité de contrôle prudentiel et de resolution* "**ACPR**"); Financial Market Authority (*Autorité des Marchés Financiers* "**AMF**")

> AMF/ACPR cannot compel attendance at interview, but refusal may constitute a regulatory wrongdoing or the criminal offence of obstruction
> Following an investigation, the AMF may decide to close a case by sending a letter setting a deadline for the remediation of weaknesses
> For the ACPR, AML continues to be a major concern, alongside life insurance and banking recovery/resolution plans
> The AMF is turning its attention to EMIR and AIFM compliance, monitoring short selling by market intermediaries, and asset managers' outsourcing of certain real estate services

Ireland

ARTHUR COX

Central Bank of Ireland ("CBI")

> The CBI cannot impose a monetary penalty that would put a regulated financial services provider out of business
> An increased focus on individual liability and responsibility is anticipated. A proposed new Senior Executive Accountability Regime will break the 'participation link' which presently requires the regulator to find a firm in breach before taking action against an individual
> The CBI's enforcement work otherwise has no fixed trends, however enforcement in respect of industry-wide issues with tracker mortgages is likely to continue. The quantum of CBI's penalties is generally expected to increase

Portugal

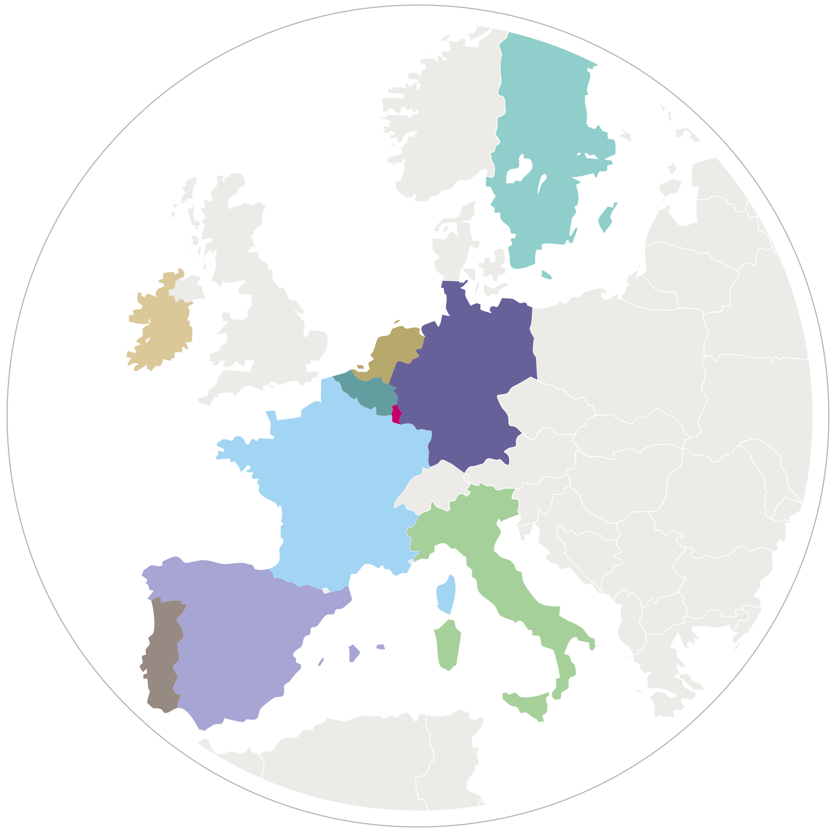
Portuguese Central Bank ("**Bank of Portugal**"); Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* "**CMVM**")

> CMVM can agree to reduce the sanction amount if the subject makes a full confession and/or provides valuable information and decisive evidence
> Recent changes to the securities market law and CMVM's enforcement powers have resulted in higher caps for fines for administrative offences, and more severe penalties for breaches of the law relating to inside information and market manipulation
> The Bank of Portugal will likely sustain its focus on conflicts and AML/CTF; other areas include misleading disclosures to the regulator, disclosure of underlying beneficial owners ("**UBOs**"), and bank transfers without clients' consent
> CMVM is likely to continue its enforcement emphasis on mis-selling, conflicts of interest between regulated companies and their shareholders, and breach of auditors' regulatory duties

Overview

Although the financial services sector is a global business, responsibility for the regulation, supervision and enforcement of regulatory requirements rests largely with national competent authorities (**NCAs**). This note highlights points of interest in relation to enforcement against financial services firms by NCAs in ten key EU jurisdictions (our thanks to Arthur Cox for their contribution for Ireland).

> Almost all of the NCAs surveyed conduct their own investigations and have information-gathering powers.
> Fines are often capped and the top level is generally well below typical UK and US fines, though MAR and MiFID II are exerting some upward pressure here. Most NCAs can impose various other types of sanctions.
> A range of non-enforcement powers (e.g. product intervention) are also being used increasingly in several jurisdictions.
> Some NCAs have no formal early settlement process; others provide for early resolution with a reduced fine, accepting liability or providing valuable information.
> Action against individuals tends to focus on individual misconduct (direct involvement in the breach by the firm, or a direct failure by board / senior managers to prevent such a breach) rather than responsibility for broader managerial or supervisory failings, although several jurisdictions are considering reform in light of the Financial Stability Board's misconduct toolkit.
> Several jurisdictions cited AML and counter-terror financing breaches as a key area of focus.
> A number of jurisdictions reported a general increase in enforcement activity around transparency, in the wake of the implementation of MiFID II.



Spain

National Securities Market Commission (*Comisión Nacional del Mercado de Valores* "**CNMV**"); Bank of Spain (*Banco de España*)

> Enforcement action is generally limited in duration to one year from the decision to initiate proceedings
> Refusal to co-operate with either regulator during enforcement proceedings is a very serious administrative infringement
> The CNMV recently focused on market transparency to improve the general perception of the Spanish market; it now plans to review a sample of entities for compliance in several specific areas including CFDs and binary options, leverage levels, CIS fee models and product suitability
> The Bank of Spain has recently focused on mortgages, consumer credit, marketing activity, pre-contract information in the digital space, transparency in payment services, and establishments which buy and sell foreign cash and travellers' cheques

Italy

Bank of Italy ("**BoI**"); *Commissione Nazionale per la Società e la Borsa* ("**Consob**")

> Prescribed time limits apply to the procedure for determining enforcement proceedings
> For certain breaches of the Italian Financial Act, the subject of an investigation may settle an action by paying twice the minimum monetary sanction within 30 days of service of the Notice of Breach
> The BoI has sanctioned numerous entities for AML violations including internal controls and due diligence obligations
> Consob's enforcement activity is concentrated in the areas of financial products issuers and public disclosure of corporate and financial information, unauthorised provision of reserved services, and conduct of business rules

Sweden

Swedish Financial Supervisory Authority (*Finansinspektionen* "**SFSA**")

> SFSA must conduct investigations in reasonable time (within six months if possible)
> There is no framework for early settlement
> SFSA sanctions are often challenged in the courts. In part this is because more information about SFSA investigations is publicly available than in other European jurisdictions, reducing the reputational impact of mounting a challenge
> The SFSA may impose remedies or sanctions on individual board members where they contributed to a breach by the firm intentionally, or through gross negligence

Germany

Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* "**BaFin**")

> BaFin can engage accounting firms to investigate specific issues (a "special audit") and ask Bundesbank experts to examine a bank or credit institution's files
> BaFin will consider settlement, offering a discount for early settlement of up to 30 per cent
> AML is one of the hottest enforcement topics in Germany at present. AML requirements have recently changed and key areas of focus include client onboarding and reporting obligations in relation to shareholdings

The Netherlands

Dutch Central Bank (*De Nederlandsche Bank* "**DNB**"); Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten* "**AFM**")

> Once a supervisor concludes an investigation with a draft report, the DNB/AFM has 13 weeks to decide whether to impose a fine
> There is no formal settlement process, despite AFM asking the Minister of Finance to introduce one
> The DNB/AFM can make an order with an incremental penalty for non-compliance attached, and from March 2018 has had more power to use public warnings
> The DNB is concentrating on AML/CTF, late prudential reporting, sound and controlled business operations, prudential requirements (especially solvency) and unlicensed financial institutions
> The AFM is especially active in respect of transaction reporting, conduct of business, MAR, timely and accurate disclosure of voting rights and capital interest in listed companies, and unauthorised conduct of regulated business

Luxembourg

Commission de Surveillance du Secteur Financier ("**CSSF**")

> Professional secrecy obligations cannot be invoked against the CSSF
> Types of sanctions vary depending on the specific sector under investigation - some sanctions require judicial authority before being imposed
> Caps on administrative fines imposed by the CSSF have increased substantially following Luxembourg's transposition of recent European directives
> Current areas of focus include concerns around firms' AML/CTF controls, corporate governance issues and collective investment undertakings