

CMS Banking and Finance webinars

EU cross-border regulatory enforcement



Your hosts for today's webinar



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Agenda

1. Cross border enforcement in
 - The United Kingdom
 - France
 - Italy

2. What are the regulators' approaches?

3. What are the current trends and issues?

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CMS webinar: **Cross border enforcement in the United Kingdom**

The United Kingdom – enforcement trends

- The enforcers – the FCA & the PRA
- The Enforcement process
 - Event => investigation => redress => discipline
- Drivers into Enforcement
 - Retail detriment
 - Egregious conduct
 - Subject attitude
 - Securing publicity
- Trends in the Enforcement
 - Judgemental inception
 - Transparent process
 - Determined execution
 - Individual focus

The United Kingdom – cross-border elements (1)

The current trends

- Regulators' remit is domestic & most comfortable acting locally
- International issues shared out
 - Rely overseas regulator
 - But may not address UK issue
- Alert to proportionality
 - Cessation may be acceptable
- But will act cross-border
 - Financial crime
 - Mass retail detriment
 - Prudential issues
 - Resource availability
 - Controller

Issues on co-operation

- Not every cross-border element needs co-operation
- The message is more important than collecting the fine
- Requests “in” – will cooperate if EU, will usually if G20/OECD
- Requests out – keen to secure informally
- The “college” effect
- Will observe MoU protocols
- Extradition sought on serious criminal issues

The United Kingdom – cross-border elements (2)

Points on process

- Powers normally exercised compulsorily
- Exercise of investigation
- Conduct of interviews
- Preservation of privilege

So in summary

- UK regulators have determined record in leading with enforcement
- Are focusing on high profile cases and individuals
- Are familiar with cross-border issues and can navigate the problem areas

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CMS webinar: **Cross border enforcement in France**

France

- The enforcers : the AMF and the ACPR (criminal courts are also competent)
- The enforcement process
- Event => investigation => sanction proceedings opened by the ACPR/AMF Board
=> examination of the case by the Rapporteur of the Enforcement Committee
=>hearings => deliberations => decision =>publication
- Main features of the enforcement Committees' decisions :
 - **reasoned** and setting out the factual & legal grounds on which the ruling is based;
 - **adversarial procedure** ;
 - decisions reached by a **majority vote** ;
 - **published** : publication on the AMF/ACPR websites unless publication could seriously disrupt financial markets or cause undue damage to the parties involved;
 - **appealable** : appeals are heard by either the Paris Court of Appeals (for market abuse cases) or the Conseil d'Etat for the other cases involving regulated market players.

France

– General principles

- Separation of prosecutorial and enforcement powers of the ACPR/AMF since 2003 under the pressure of the ECHR and ECJ 'cases
- Ability from respondents to request disqualification of an Enforcement Committee Decision for non-impartiality
- Right to debate

France

– Kind of sanctions issued

Person sanctioned	Type of breach	Disciplinary sanction	Fine (*)
Professional under AMF supervision, such as an investment services provider or management company.	Individual acting under the authority or on behalf of a professional	Warning, reprimand, temporary or permanent ban on providing some or all services	Up to €100 million or ten times any profit earned
Individual acting under the authority or on behalf of a professional	Failure to meet professional obligations	Warning, reprimand, temporary suspension or withdrawal of professional licence, temporary or permanent ban on conducting some or all businesses	Up to €300,000 or five times any profit earned
Individual acting under the authority or on behalf of a professional	Market abuse	Warning, reprimand, temporary suspension or withdrawal of professional licence, temporary or permanent ban on conducting some or all businesses	Up to €15 million or ten times any profit earned
Other persons (issuers and their executives, auditors, others)	Market abuse	N/A	Up to €100 million or ten times any profit earned

(*) For breaches committed on or after 24/10/2010 (cf. Act 2010-1249 of 22 October 2011).

France

- Recent changes in the Enforcement process:
- Banking and Financial Regulation Act 2010-1249 of 22 October 2011 has reinforced/increased :
 - **the powers of the AMF/ACRP Boards (“Collèges de l’ACPR et de l’AMF”)**: which can 1.have access to the case file, 2. make observation in response to the rapporteur’s report, 3. suggest a sanction , 4. offer observations to support the respondent’s objections ;
 - **the transparency of the Enforcement process** : sanction hearings are now open to the public;
 - **the maximum fines the Enforcement Committees may issue** :
 - from € 10 million to € 100 million (or ten times any profits earned) for legal entities charged with failure to meet professional obligations or with market abuses
 - from € 1.5 million to € 15 million (or ten times any profits earned) for individuals charged with market abuses

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CMS webinar: **Cross border enforcement in Italy**

Italy

- The enforcers – Consob – Bank of Italy
- criminal Courts are also competent (coordination with enforcers)
- The Enforcement process
 - Investigation/assessment of the violation
 - service of notice specifying the alleged violations
 - submission of written observations by the investigated person
 - report by the Authority on applicable sanctions
 - further observations by the investigated person
 - Ruling
 - Publication

Italy

– Specifics of the proceeding

- No specific criteria to start investigation
- Wide powers in the preliminary investigation phase
- Proceeding is mainly carried out on a documentary basis
- Possibility to require a personal hearing
- Parties are required to appear personally but can be assisted (but not replaced) by a legal advisor
- No procedure for reaching settlement

Italy

– Recent changes

- Ruling on the investigated person's rights (administrative supreme court)
- ECHR ruling: administrative sanctions to be treated as criminal sanctions
- Recent amendments to the enforcement primary and secondary rules
- Appeal before civil courts

Italy

– General principles

- Knowledge of the investigation documentation
- Recording of process
- Right to debate
- Distinction between investigation function and decision function
- Publicity

– Relations with foreign authorities

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