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EBOOK

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EU's Regulatory Evolution: Sanctions and Practical Solutions

Compliance professionals operating within European financial markets face a dynamic landscape of regulatory changes, often occurring rapidly and in succession. The lingering impact of the COVID-19 pandemic and subsequent financial upheaval remains fresh in the memory.

Additionally, the urgency of addressing the effects of climate change, technological advancements, digitalisation and global insecurity underscores the challenges and opportunities ahead.

For compliance professionals, awareness both of these challenges and the potential benefits is crucial to achieving optimal outcomes[1].

In keeping with the European Securities and Markets Authority's (ESMA) key strategic priorities for 2023-28 on European Union and national competent authorities have devised a range of regulatory initiatives to address the current challenges.

They place a set of requirements on organisations and their compliance departments, with dissuasive penalties for contravening the new legislation. As such, this adds to the burden on teams and requires innovative methods of streamlining processes to maintain compliance.

This ebook explores the regulatory developments related to the Capital Markets Union and investor protection, helping companies understand their obligations, the sanctions for failing to comply and advice for maintaining compliance through systems and processes.

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PART I: Regulatory Landscape

1.1 Forthcoming legislation

European Union (EU) lawmakers, in collaboration with national competent authorities (NCAs), have devised several regulatory initiatives to tackle current challenges. The rapid digitalisation of the financial sector presents both hurdles and opportunities related to Artificial Intelligence (AI), digital assets and cybersecurity.

The forthcoming AI Act[3] specifically addresses AI-related concerns, while the Markets in Crypto-assets Regulation[4] focuses on various digital assets, including cryptocurrencies. In response to cybersecurity risks, the new Digital Operational Resilience Act mandates measures to mitigate cyber threats and establishes digital compliance standards to safeguard data.

Simultaneously, sustainable finance is gaining unprecedented momentum. The EU's Taxonomy Regulation[5] and Sustainable Finance Disclosure Regulation[6] reflect the ambition to steer the financial sector toward a green and sustainable economy. Complementing these efforts, the Corporate Sustainability Reporting Directive (CSRD)[7] provides essential frameworks and tools for in-scope entities to fulfill reporting obligations related to investment sustainability. On 15 March 2024, agreement was reached in the European Council regarding a related legislative initiative, the Corporate Sustainable Due Diligence Directive (CSDDD). It inter alia creates obligations for in-scope companies to adopt transition plans aimed at restricting global warming in line with the Paris Agreement and obligations for in-scope companies to assess adverse impacts on human rights and the environment in their supply chains. The European Parliament will likely vote on it in April and, subsequently, it will need to be implemented in the national laws of the Member States.

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As the financial landscape evolves, compliance professionals face an array of growing challenges. These challenges are intrinsically tied to the enforcement measures imposed by regulators. Therefore, keeping track and staying in control of relevant obligations and data-recording requirements is key.

Below we highlight a number of relevant future and recent developments.

Capital Markets Union

The EU has formulated its ambition to make the European capital markets more attractive to small and innovative companies and ease the requirements to access finance for small- and medium-sized enterprises (SMEs), whilst simultaneously maintaining high investor protection standards.

In December 2022, the European Commission put forward a legislative package, known as the Listing Act to achieve these goals. This comprehensive proposal encompasses fresh regulations related to prospectuses, market abuse, financial research and multiple-vote share structures. On 1 February 2024 the European Parliament and the Council reached political agreement on the European Commission's proposals.

1.1.1 Market abuse

In the context of market abuse, proposed amendments to the Market Abuse Regulation (MAR) can be summarised in a single word: clarification. The amendments aim to narrow the scope of obligations to disclose information, what information should be disclosed and when to disclose it. Naturally, this proposed change comes in unison with clarification of conditions when delaying disclosure of inside information is permitted and the timing of the notification of delay to the relevant NCA.

Furthermore, a clarification is made that market sounding regimes and safe harbour policies only apply to disclosing market participants. These disclosing market participants still have the responsibility to consider, before conducting market soundings and disclosing information, whether this involves inside information and make a written record of this conclusion in case the NCA requests it.

There are proposed amendments to insider list requirements that will require companies to now only maintain a list of 'permanent insiders'. This alleviates the administrative burden but still provides meaningful information to relevant NCAs. Additionally, the notification threshold of persons discharging managerial responsibility (PDMRs) when conducting transactions could be raised from €5,000 to €20,000. Individual NCAs may decide to raise this further to a maximum of €50,000.

The proposal also adds exemptions to the prohibition on PDMRs carrying out transactions in a closed period. The new law could exclude transactions where the PDMR did not make an investment decision, such as converting financial instruments.

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1.1.2 MiFID II and MiFIR

The proposal to amend the Markets in Financial Instruments Directive II (MiFID II) as part of the Listing Act package presents a set of measures to make public markets more attractive to EU companies and facilitate access to capital for SMEs.

The amendments include an adjustment to the definition of the SME-market, to include Multilateral Trading Facilities. Multilateral Trading Facilities will be able to register as an SME growth market. The new conditions for registration and de-registration will be announced in due course[9].

Moreover, the quality of investment research provided by third parties must be fair, clear and not misleading. Issuer-sponsored research must be prepared in line with a code of conduct and the research must be clearly labeled as issuer-sponsored.

Furthermore, there will be specific conditions for the admission of shares on a regulated market. Such as a minimum market capitalisation requirement of €1 million, as well as a 10% minimum free float requirement.

The Markets in Financial Instruments Regulation (MiFIR) is proposed to be amended to specify that a competent authority can request order book data on an ongoing basis from any trading venue under its supervision.

The changes to MiFID II and MiFIR cannot be considered separately from the overall revision of EU trading rules for investment firms. The revision aims to empower investors, in particular by making consolidated market data easily available at EU level. To create an optimal retail investor environment, the EU authorities propose changes such as non-equity transparency requirements, both pre- and post-trade. Special attention should be paid to over-the-counter derivatives in this context.

Moreover, a framework is set for consolidated tape providers, concerning all asset classes[10] and introduces a ban on payments for order flow.

Member States may exempt certain financial institutions from the ban on payment for order flow. Compliance professionals should confirm with the NCA whether or not the ban on payment for order flow applies in their respective Member State. The final compromise texts on MiFID II and MiFIR have been published on 13 October 2023.

1.1.3 EU Retail Investment Package

On 24 May 2023, the European Commission adopted a Retail Investment Package[11] that places consumers' interests at the centre of retail investing. This follows the Capital Markets Union Action Plan[12] published in September 2020, where the Commission announced its intention to put forward a strategy for retail investment in Europe. The aim is to empower retail investors, sometimes referred to as consumer investors, to make investment decisions that are aligned with their needs and preferences, ensuring that they are treated fairly and duly protected.

The proposed organisational changes relate to product governance requirements to identify the best possible product for the end client[13]. The package provides additional investor protection through a ban on inducements, information provision requirements, clarity requirements on marketing and extra professional requirements for those employees who give direct investment advice or related information to clients.

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1.1.4 AML/CFT

On 18 January 2024, the European Parliament and the Council reached political agreement on the Commission's proposals for the first Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Regulation and the sixth AML/CFT Directive [14].

These proposals establish a unified AML/CFT rulebook, serving as the cornerstone for coordinating the activities of the future Anti-Money Laundering Authority (AMLA). The newly introduced regulations set consistent requirements across the entire European Union private sector, ensuring uniform scrutiny within the Single Market. Additionally, they aim to harmonise the responsibilities and powers of national supervisors and Financial Intelligence Units (FIUs), facilitating effective cross-border cooperation.

Furthermore, this novel framework enhances the authority of beneficial ownership registers, promoting transparency regarding individuals or entities that own or control legal entities and trusts.

For compliance professionals in the financial sector, the new AML framework introduces harmonised customer due diligence requirements; beneficial ownership transparency requirements and data and record-keeping requirements under the new AML/CFT Regulation. Financial institutions will share this information with the relevant FIU, which will cooperate Unionwide under the supranational supervision of the new AMLA.

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1.2 Legislative changes already implemented

While certain legislative modifications are in progress, a number of noteworthy changes have already taken effect recently, as outlined below.

1.2.1 MiFID II quick fix

While certain amendments are pending, MiFID II has recently been updated with the MiFID II quick fix to lower the administrative burden for investment firms with regards to disclosure and reporting requirements. These requirements apply to professional clients and eligible counterparties. They include disclosures on cost transparency, periodic reporting, product governance and a revision in the regime for position limits in commodity derivatives.

It enshrines the idea that the default method of communication between investment firms and clients is through digital media. Exemptions to disclosure obligations reduce costs and charges when dealing with a professional counterparty in case services other than investment advice or portfolio management are provided.

Additionally, an exception to the ex-ante cost transparency requirement was introduced when the purchase or sale of a financial instrument is concluded by remote communication techniques. Issuance of periodic post-transaction reports will no longer be required either, but clients may still opt-in and request these periodic reports.

Prohibitive burdens concerning analysis have been eased as well. An exemption to conduct cost-benefit analysis in the case of switching of financial instruments was introduced. This now does not apply when a professional client specifically requests it.

Secondly, product governance rules do not apply for investment services in respect of bonds without embedded derivatives, other than an early redemption clause, are provided; or if the financial instruments are only traded or distributed among eligible counterparties.

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1.2.2 EU Whistleblowing Directive

The EU Whistleblowing Directive was fully implemented on 17 December 2023, meaning that the last category of companies – those employing between 50-249 employees – should now be fully compliant[15]. The directive aims to establish a minimum level of protection for whistleblowers in all Member States.

EU companies must implement policies that guarantee confidential reporting, with some Member States allowing for anonymous reporting, too. These policies will include procedures to safeguard the identity of the reporting person and any other third party mentioned. To ensure the safety of any whistleblowers, the identity of the reporting person and/or any relevant third parties, will only be accessible by authorised staff members.

Moreover, EU companies will provide for diligent follow-up procedures by a designated person or department, to prevent stagnation on a whistleblower report. The EU Whistleblowing Directive should therefore be considered a benchmark directive in which a minimum protection is laid down. Member States can 'gold-plate' this directive and provide for more stringent whistleblower protections within their individual national laws.

1.3 Enforcement

The enforcement of MAR, MiFID II/MiFIR and EU Whistleblowing Directive all fall under the supervision of NCAs. For compliance professionals it is therefore important to ensure familiarity with the enforcement regime in the relevant Member States.

ESMA publishes annual reports on the sanctioning of violations of the MAR and MiFID II/MiFIR. As of the date of writing, the report of the MAR for 2022 was not yet available.

In 2021, 366 administrative sanctions were taken in respect of violations of the MAR by NCAs, representing a total of Report; sanctions and measures imposed under MiFID II in 2022 €54,273,686.97. Furthermore, 29 criminal sanctions were taken in respect of violations of the MAR by NCAs, representing a total of €5,340,879.

In respect of the MiFID/MiFIR report, there is a downwards trend in the number of sanctions/measures but an upward trend in the value of the fines in EUR.

In 2022, 281 sanctions were taken in respect of violations of MiFID II by NCAs, representing a total of €21,034,117.

There is a breakdown of the sanctions for both MAR and MiFID/MiFIR later in this guide.

Under the EU Whistleblowing Directive, Member States are obliged to provide annual report on the number of reports received, number of investigations and proceedings initiated as a result of the reports and outcome. It should also record any estimated financial damage and any amounts recovered following investigations and proceedings. As the directive only came into full effect on 17 December 2023, the first annual report will cover the reporting year of 2024 and be published in 2025.

Member States sanction non-compliance in different manners, varying from administrative measure to criminal sanctions, whereby administrative measures can include warning letters, instructions to comply and (substantial) administrative fines, sometimes combined with publication. In certain Member States, such measures may also be imposed on the individuals involved and may trigger the need to file reports with the authorities relating to the integrity of such individuals. Therefore, care is advised.

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PART II:
Solutions

With the aforementioned challenges faced by organisations across the European Union, mitigating the risks and maintaining compliance can seem like an overwhelming prospect. However, it is possible to take a methodical and strategic approach to ensuring your organisation creates a culture that prevents contraventions of legislation.

This guide explains how to anticipate, assess and mitigate risks, offering best practice advice for fostering a compliance culture. You will also find out what enforcement measures are available to NCAs and read case studies about companies that failed to prevent misconduct and retaliation. These anonymised true stories help us understand how to act more effectively to eradicate wrongdoing in the future.

2.1 Risk assessment and mitigation

2.1.1 Types of risks

Where the culture of compliance is not sufficiently robust, organisations become vulnerable to a range of risks. These include:

RISK	EXPLANATION
Reputational risk	Compliance lapses can cause damage to an organisation's standing and its public image. By not having the correct risk mitigation processes in place, the entity might be seen as lax and responsible for scandals, involvement in unethical activities and conflicts of interest with clients. The results of this could include a drop in share price, a reduction in revenue and trouble attracting top talent.
Low morale	Poor management and a toxic workplace culture are often highlighted by a negative attitude towards compliance and employee reporting. This can lead to diminished enthusiasm and motivation amongst employees, as well as reduced productivity and high staff turnover rates. Where leadership does not act on whistleblower reports or is otherwise seen to condone or, at least, not actively prevent misconduct, the atmosphere within the organisation will sour.
Criminal proceedings	Where wrongdoing is allowed to flourish, there remains the risk of criminal proceedings for individuals or for the organisation itself. In the context of compliance, this can include fraud, corruption, market manipulation, market abuse and more.
Criminal proceedings	Following criminal or civil investigations, regulators, law enforcement and governments can impose penalties or restrictions on organisations. These can include significant financial sanctions, the revoking of licences or restrictions on business operations in areas related to that in which the wrongdoing occurred.

2.1.2 How to assess and mitigate risks

To mitigate these risks, there is a series of steps organisations should take. They are:

1. Run a risk assessment questionnaire

Utilise a compliance risk assessment questionnaire as a tool to identify, analyse and prioritise the legal and regulatory risks associated with your organisation, helping you to mitigate them more effectively.

The compliance team should consult with colleagues across the organisation to understand the current state of compliance in different departments. There is no one-size-fits-all across a business as the risks will be greater in some departments than others, so gaining oversight is essential.

Ask about the areas of risk and the functions in place to prevent them from causing a problem. Canvas opinion on how effective the policies and procedures are, how respondents view the tone from the top in relation to compliance and what the organisation's response to compliance infringements looks like. In addition, ask employees about the training they have undertaken surrounding compliance, its frequency and effectiveness.

2. Evaluate the organisational commitment to compliance

After canvassing opinion from internal stakeholders on the company's compliance efforts, investigate the structures in place to prevent non-compliant behaviour.

Drill down into the specifics of compliance risk, including your whistleblowing reporting process. Is it fit for purpose? What happens after a report is made? Is it currently effective for reducing misconduct?

Consider how the business deals with inside information to prevent insider trading and the unlawful distribution of the information, as well as how it deals with the risk of market abuse.

Think about how the business communicates its values and ethical stance to employees.

3. Implement adequate compliance policies and procedures

From your questionnaire and investigation into the state of compliance in the organisation, ensure that you have the necessary policies and procedures in place to mitigate the risks your company faces.

This may include, for example:

Whistleblowing procedure

Make sure you have a secure, confidential, digital whistleblowing reporting channel that enables employees to report misconduct and ensures the organisation is compliant with the EU Whistleblowing Directive[16] and local legislation derived from it.

An online whistleblowing platform like IntegrityLog[17] allows investigators to interact with the whistleblower to gain more information whilst maintaining confidentiality. Its dashboard also keeps your compliance team on track with mandatory deadlines under local whistleblowing laws.

Ensure you have an impartial person or department designated to receive and investigate reports and that they are trained to understand their legal obligations.

Consider how you deal with feeding back to the whistleblower and what happens if they are not satisfied with the result. You should also have policies in place for taking action if your investigation proves that unethical activity did take place.

Insider list procedure

There should be training on how to identify inside information, how and when to delay disclosure and the process for creating and maintaining insider lists. You also have to put in place procedures for documenting inside information and reasons for delays in disclosing it. Finally, you have to ensure your insider lists are created in accordance with the technical requirements designated by the European Securities and Markets Authority (ESMA)[18].

In this case, an online insider list solution like InsiderLog[19] provides you with templates to achieve this. It automates the process of reminding insiders to complete their personal details and confirm their knowledge of being added to the list.

Pre-clearance process

In financial institutions, there is a risk that employees can use inside information to inform trades or that they might create a conflict of interest with their clients due to their personal trading. This is why having an employee personal trading policy is essential and, as part of that, implementing a pre-clearance process.

For an efficient workflow, you can use a digital tool to speed up the process of approving prospective employee trades. This also helps you ensure that they do not carry out transactions that could damage the business.

An online personal trade monitoring solution such as TradeLog[20] can help you solve this by allowing you to set parameters for what you consider acceptable trades, while also monitoring employee trading activity for any non-compliant behaviour and alerting the compliance team if it detects non-compliant trades.

4. Appoint a compliance leader

You should task a leader to take control of your compliance efforts and coordinate the internal teams as a point of contact for all related matters.

They will implement the necessary training and education programmes for employees so that everyone understands the reasons for your compliance policies, how to remain compliant and what happens if there are any contraventions.

Having someone focusing full-time on compliance helps to create the right sort of ethical culture within the business.

2.1.3 Best practices

1. Set up a clear reporting process

Establish a clear, accessible and confidential reporting process for employees and other stakeholders to share their experiences with misconduct and wrongdoing within the organisation.

This may include telephone hotlines, online forms or face-to-face meetings with designated reporting personnel as well as a digital platform.

Consider which reporting channels work best for your organisation. For example, in a business where people generally work remotely, an online reporting tool would be a practical option. Consider how you will protect the data you collect.

2.Foster a speak-up culture

Encourage open communication and empower employees to voice concerns about work-related issues. This demonstrates the organisation is not only accepting of employee reports on wrongdoing, but it actively welcomes them and is committed to compliance.

When an organisation openly encourages employees to speak up about the issues they believe are embedded in the company, you are more likely to receive reports that help you eradicate wrongdoing. Show that you are committed to acting on these reports, too.

3. Evaluate reporting mechanisms and channels regularly

Ask employees how they feel about using the channels that you have in place. If there are concerns, find out what they are and consider that when assessing the value of the channels that you use.

You can adjust how they work according to feedback on their ease of use and any concerns that stakeholders have regarding them, adding or removing reporting channels accordingly.

Analyse the workflows too. Is there a point in the process of a report where the whistleblower stops communicating? That could highlight a roadblock that needs solving.

Consider the number of reports being made and whether investigations are resolved to the satisfaction of the reporting person. Look for trends that can tell you whether people find it easy to report and investigate and whether the investigations are getting to the root of issues within the business.

4. Train staff

Implement regular training sessions for employees to educate them on identifying misconduct and the proper channels and procedures for reporting it.

With the shifting compliance landscape, it is essential that you keep employees' knowledge up-to-date and relevant. Bring in external consultants to deliver workshops on the practicalities of implementing the local whistleblowing laws[21], topics relating to the Market Abuse Regulation or any other relevant compliance topics.

Carrying out this training is another way to show your commitment to compliance and helps keep it at the forefront of employees' minds.

PART III: Regulatory Enforcement and Sanctions

By ensuring you detect and mitigate the risks that affect your organisation, you help maintain compliance. Creating a compliance culture within the business is essential because regulators are intent on maintaining a fair market for all participants and preventing misconduct from occurring whilst protecting those who report instances of wrongdoing that they witness.

Europe’s regulators have the power to enforce sanctions on non-compliant organisations and individuals. As an example of this, this section explores the number of penalties served on parties in the EU during 2021, relating to the Market Abuse Regulation (MAR) and the Markets in Financial Instruments Directive (MiFID II).

Read this section to discover the maximum financial penalties available to regulators relating to these pieces of legislation. In addition, discover the remedies for retaliation against whistleblowers across Europe as a result of each member state’s transposition of the EU Whistleblowing Directive.

3.1 Market Abuse Regulation

The number of parties penalised for contraventions of MAR trended upwards between 2017 and 2021 [22]. There were fewer than 300 sanctions in 2017, with 366 administrative penalties and 29 criminal penalties issued in 2021. This year's number of sanctions is lower than in 2020, but it shows that regulators are serious about acting on infringements of the law on market abuse.

The financial penalties issued during 2021 totalled €54,273,686.97 for administrative sanctions and €5,340,879 in criminal sanctions, both rising significantly from 2020 levels.

3.1.1 Annual report on MAR administrative sanctions

TYPE OF PENALTY	NUMBER OF INFRINGEMENTS	AGGREGATE TOTAL IN €
Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) administrative	13	€5,506,907.20
Article 14 criminal	22	€2,304,808
Article 15 (market manipulation) administrative	118	€41,149,145.62
Article 15 criminal	19	€3,038,631
Other administrative fines	230	€8,367,033.85

3.1.2 Potential fines for breaches of MAR

Here are the maximum possible sanctions for breaches of the Market Abuse Regulation:

	ARTICLE INFRINGEMENT	MAXIMUM SANCTION
FOR NATURAL PERSONS	14 and 15	€5,000,000
	16 and 17	€1,000,000
	18, 19 and 20	€500,000
FOR LEGAL PERSONS	14 and 15	€15,000,000 or 15% of the annual turnover from the last available accounts
	16 and 17	€2,500,000 or 2% of the annual turnover from the last available accounts
	18, 19 and 20	€1,000,000

3.2 Markets in Financial Instruments Directive

There were fewer MiFID II sanctions in 2022 than in 2021, but they were of greater aggregated value[23]. During 2021, there were 411, totalling €12,203,000. In 2022, 281 sanctions resulted in fines worth €21,034,117.

ESMA suggests the dramatic rise in the value of sanctions is due to NCAs in a small number of EU countries issuing fines towards the maximum value allowed under the law. For example, there were two sanctions brought in Sweden during 2022, but the value of the fines was €9,588,184, nearly half the total aggregate value of fines across the whole of the EU during that year.

Within this total, there were 13 sanctions under Article 23, relating to conflicts of interest, resulting in fines of nearly €3,000,000.

3.2.1 Potential fines for MiFID II

The potential fines for breaches of the Markets in Financial Instruments Directive currently stand at:

ENTITY	MAXIMUM SANCTION
Natural	€5,000,000
Legal	€5,000,000 or up to ten per cent of total annual turnover.

3.3 Remedies for retaliation against whistleblowers across Europe

Under the EU Whistleblowing Directive, Member States are obligated to provide an annual report on the number of reports received and number of investigations and proceedings initiated as a result of the reports and outcome. There should also be a record of the estimated financial damage and any amounts recovered following investigations and proceedings. As the directive only came into effect on 17 December 2023, the first annual report will cover the reporting year of 2024 and be published in 2025.

Member States sanction non-compliance in different manners, varying from administrative measures to criminal sanctions, whereby administrative measures can include warning letters, instructions to comply and (substantial) administrative fines. In certain Member States, such measures may also be imposed on the individuals involved and may trigger the need to file reports with the authorities relating to the integrity of such individuals.

One of the key tenets of the EU Whistleblowing Directive is to prevent retaliation against people who report wrongdoing. Suppose companies or individuals demote, fire, abuse or act in any other detrimental way toward a whistleblower as a response to them making their report. In that case, each member state has its own remedy as per the law it created when it transposed the directive.

Here are some examples of remedies in different jurisdictions:

ENTITY	MAXIMUM SANCTION
Belgium	For employees, compensation of between 18 and 26 weeks' salary. Non-employees are due compensation that represents the true value of the damage inflicted.
Denmark	Up to one year's salary or re-employment if they lost their job as a result of the report.
France	Criminal sanctions against the party responsible for the retaliation. Actions such as dismissal can be reversed.
Poland	Compensation at no less than the minimum monthly salary, with fines and imprisonment possible for perpetrators.
Sweden	Between 16 and 32 months' salary for termination or summary dismissal.

3.4 Enforcement and sanctions case studies

Here are some anonymised examples of companies that failed to meet the standards required by some of the above-mentioned legislation within the European Union.

3.4.1 Large fines for insider trading

A European regulator imposed fines exceeding €3,000,000 on three firms and several individuals for market abuse violations. The sanctions related to the sale of a stake in a major real estate firm, Company A.

A major financial services firm (Company B) was in line to invest. However, this inside information leaked and two additional companies (Companies C and D) and a number of individuals bought shares in Company A, knowing that when the news of Company B's interest became public, the share price would move upwards.

Following an investigation, Companies C and D were sanctioned, as were individuals connected with the firms, for insider trading. A subcontractor of Company A was also fined for inciting relatives to commit insider trading. Company A was sanctioned for failing to properly maintain its insider lists.

Find out more about this case on the ComplyLog website[24].

3.4.2 When whistleblowers are blamed

Organisation A employed a pioneering surgeon (Person A) who gained acclaim for a groundbreaking technique that he championed. However, colleagues came to suspect that the treatment was not as effective as he claimed and that he was lying about his results. Not only did this constitute fraudulent behaviour, but it also put patients' lives at risk at this European establishment.

Four employees documented Person A's actions and found evidence of misrepresentation of results. They complained to Organisation A, but managers ignored their report. The organisation employed an external investigation but overturned the decision when it backed up the whistleblowers.

Eventually, the evidence was too much and Person A was sacked. But the organisation also found one of the whistleblowers guilty of misconduct and two more were branded 'blameworthy'. This was despite the fact that they had tried to expose the wrongdoing for years. If this had happened under the new whistleblower laws, Organisation A would have faced censure for retaliation. The case might also have discouraged others from coming forward with life-saving information.

Find further information on this case on the ComplyLog website[25].

3.4.3 Large fine for MiFID II breaches

A major international bank was fined nearly €40 million for violating transaction reporting regulations outlined in MiFID, the precursor to MiFID II. The bank failed to provide precise and prompt reports for more than 200 million transactions over a ten-year period.

The regulator found that reporting on the majority of these transactions was incomplete, inaccurate and not received in good time. It also misreported more than 6 million transactions as non-reportable.

This information is essential for the regulator to be able to monitor for market abuse and was branded as irresponsible in this case. That is borne out in the magnitude of the fine.

PART IV:
Recommendations

With the compliance burden increasing continually for organisations, here are some actions you can implement to help enhance your compliance practices and mitigate the risks your businesses faces as a result of current and upcoming EU legislation.

4.1 Actions to identify and address compliance gaps

- Monitor industry publications, websites and information from regulatory bodies to stay ahead of legislative changes that affect your organisation
- Perform a conduct risk assessment questionnaire
- Analyse the data regarding your reporting procedures, regarding response times, employee satisfaction and other relevant measures

4.2 Actions to strengthen your compliance culture

- Appoint a compliance leader to drive the compliance culture within the organisation
- Create rigorous policies and procedures for compliance and make them accessible to all employees
- Commit to regular employee training about legislation and your systems to maintain compliance

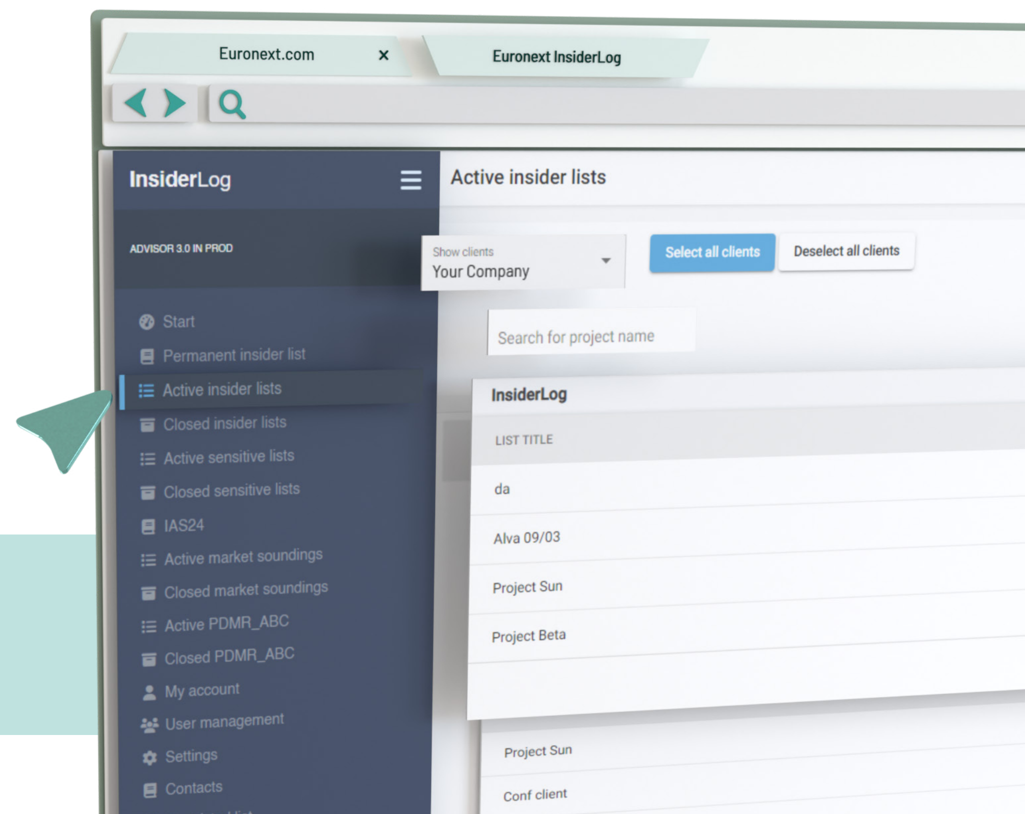
4.3 Actions to enhance whistleblowing mechanisms and protections

- Encourage reporting and open communication, empowering employees to voice concerns
- Implement a straightforward, compliant and user-friendly whistleblowing reporting tool
- Develop and enforce a robust anti-retaliation policy to demonstrate the safety of reporting misconduct

4.4 Actions to prevent and detect market abuse and insider trading

- Implement a code of conduct and ethics outlining employee responsibilities and obligations
- Create an automated pre-clearance process for employee personal trades

Utilise a tool to create, populate and maintain insider lists in accordance with the mandated format.



PART V: Conclusion

European authorities have shown their commitment to evolving legislation in order to meet new challenges in the financial markets. From the Market Abuse Regulation shoring up the processes for maintaining integrity in the markets to the EU Whistleblowing Directive encouraging companies to instil a speak-up culture that alerts them to misconduct before it can become endemic.

Established legislation is being finessed and updated, including amendments to MiFIR and MiFID II, and new regulations are in the pipeline, such as the Listing Act and Retail Investment Package. All of this requires the attention of compliance teams seeking to keep ahead of the many regulatory changes.

National competent authorities across the union have shown that they are serious about upholding these laws, delivering significant sanctions to those whom they find to have failed to meet their requirements.

This is why compliance teams must continue to look ahead and anticipate what is coming next. By encouraging reporting from employees and other stakeholders, training staff to understand their obligations and adapting processes to tackle the administrative burden in as streamlined a manner as possible, compliance teams can steer their companies through the choppy regulatory waters.

To help adhere to a range of legislation whilst reducing the administrative burden on your team, visit the ComplyLog website and discover our expertly designed compliance toolset[26].

ComplyLog

ComplyLog is the leading provider of specialised compliance solutions that enable compliance teams to meet EU regulatory requirements with lower risk and higher efficiency. Our solutions are built with the latest EU legislation in mind and updated constantly to ensure compliance, helping you eliminate cumbersome paperwork and reduce manual reporting errors. Developed by legal experts, each tool addresses complex compliance challenges with precision.

Loyens & Loeff

As a leading firm, Loyens & Loeff is the logical choice for a legal and tax partner if you do business in or from the Netherlands, Belgium, Luxembourg and Switzerland, our home markets. You can count on personal advice from any of our 1000 advisers based in one of our offices in the Benelux and Switzerland or in key financial centres around the world. Thanks to our full-service practice, specific sector experience and thorough understanding of the market, our advisers comprehend exactly what you need.

The Loyens & Loeff Financial Markets & Products group counsels all types of financial institutions – including banks, investment firms, fund managers, trading platforms, payment institutions, insurers, financial service providers and crypto-asset service providers – on legal and financial regulatory aspects of their businesses and transactions in the Benelux and Switzerland and, where relevant, the continental European markets. The group also handles financial regulatory litigation (both civil and government enforcement), regulatory investigations and capital markets transactions. Market participants like corporate issuers and in-house banks also regularly call upon our expertise.

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