

part of eex group



Announcements of the Management of the Exchange

*The English version is for information
purposes only. Only the German version
is legally binding.*

28.06.2022
Leipzig

Version 0001a

Table of Contents

1.	Announcement from 28 June 2022	3
1.1	Administrative Praxis in relation to § 50a (3) BörsG	3
1.2	Grounds	4

1. Announcement from 28 June 2022

1.1 Administrative Praxis in relation to § 50a (3) BörsG

Starting on 1 July 2022, the Management of EEX (“Management Board of the Exchange”) will exercise the discretion granted to it in § 50a (3) German Exchange Act¹ (*Börsengesetz*; “BörsG”) as described below:

1. As a rule, the Management Board of the Exchange will publish decisions on measures and sanctions against trading participants pursuant to § 22 (2) sentence 1 BörsG on the EEX website, provided that
 - a) the trading participant has been subject to either an exclusion from the exchange or a fine of more than EUR 5,000.00, and
 - b) the sanction has become final.
2. Only insofar as this is exceptionally necessary on the basis of the weighing of interests, the Management Board of the Exchange – deviating from No. 1 – will also publish in individual cases in accordance with § 50a (3) BörsG:
 - a) decisions on sanctions pursuant to § 22 (2) sentence 1 BörsG, provided that the trading participant has been fined either with a reprimand or a fine of EUR 5,000.00 or less;
 - b) Decisions on measures and sanctions pursuant to § 22 (2) sentence 1 BörsG that have not yet become final;
 - c) the initiation of sanction proceedings against a trading participant by the Management Board of the Exchange pursuant to § 34 SächsBörsDVO² together with the information that it is merely the initiation of such proceedings; as well as
 - d) other decisions on measures and sanctions.
3. Insofar as the sanction concerns an exchange trader and thus a natural person, the Management Board of the Exchange will only publish the decisions on the sanction anonymously; personal data of the exchange trader within the meaning of Art. 4 No. 1 GDPR³, § 3 BDSG⁴ (name, Trader ID, etc.) will generally not be disclosed by the Management Board of the Exchange.

¹ Exchange Act of 16 July 2007 (Federal Law Gazette I p. 1330) in its respective valid version.

² Ordinance of the Saxon State Ministry of Economics, Labour and Transport on the Implementation of Exchange Law (Sächsische Börsenrechtsdurchführungsverordnung – SächsBörsDVO) of 6 November 2020 (SächsGVBl. p. 614), in its respective valid version.

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), in its respective valid version.

⁴ Federal Data Protection Act of 30 June 2017 (Federal Law Gazette I p. 2097) in its respective valid version.

1.2 Grounds

In accordance with § 50a (3) BörsG, the Management Board of the Exchange may publish decisions on measures and sanctions pursuant to § 22 (2) sentence 1 against trading participants on the website of the exchange.

- A. The Management Board of the Exchange is thus granted discretion to decide whether and under what circumstances an “announcement” should be made, after due consideration of the public and private interests concerned. The discretionary decision and considerations of the Management Board of the Exchange may be revised by the administrative court to determine whether the statutory limits of discretion have been exceeded or whether the discretion has been exercised in a manner that does not correspond to the purpose of the authorization (§ 1 SächsVwVfZG⁵ in conjunction with § 40 VwVfG⁶, § 114 VwGO⁷).

The discretion of the Management Board of the Exchange is limited, in particular by the principle of equal treatment (Art. 3 GG⁸) and the principle of proportionality (Art. 20 GG). In addition, the Management Board of the Exchange must take into account discretionary administrative regulations from the empowering law (here: § 50a (3) sentence 2, (2) sentence 2 to 9 BörsG). According to this provision, in particular, decisions may not be made known with which measures are imposed “with an investigative character”, § 50a (2) sentence 2 BörsG. In connection with information that – as here – may impair the reputation of the persons concerned, the general personal right (*allgemeines Persönlichkeitsrecht*) of the persons concerned by the announcement must be observed (Art. 2 (1) in conjunction with Art. 1 (1) GG, Art. 19 (3) GG). Personal data relating to exchange traders is subject to data protection law.

- B. Against this background, the Management Board of the Exchange assumes that the balancing of the public interest in the announcement (information interest of the market and public interest in prevention) against the protectable (secrecy) interest of the trading participant concerned usually requires to proceed as described in Sect. 1.1. This is due to the following key considerations:
1. Decisions on sanctions pursuant to § 22 (2) sentence 1 BörsG must be published regularly if the trading participant (a) has been subject to either an exclusion from the exchange or a fine of more than EUR 5,000.00 and (b) the sanction has become final. Under these preconditions, the statutory purposes pursued by the legislature – the need for information of the capital market on the one hand, and the deterrence of misconduct on the other – will regularly outweigh any conflicting interest in secrecy of the trading participant that is worth protecting.

The more serious the infringement of which the person concerned is accused (and thus its significance for the capital market), the more serious the public interest in disclosure.

⁵ Act on the Regulation of the Law on Administrative Procedure and Administrative Service for the Free State of Saxony (SächsVwVfZG) of 19 May 2010 (SächsGVBl. p. 142) in its respective valid version.

⁶ Act on Administrative Procedure (VwVfG) of 23 January 2003 (Federal Law Gazette I p. 102) in its respective valid version.

⁷ Code of Administrative Procedure (VwGO) of 19 March 1991 (Federal Law Gazette I p. 686) in its respective valid version.

⁸ Basic Law for the Federal Republic of Germany (GG) of 23 May 1949 (Federal Law Gazette p. 1)

Conversely, in exceptional cases, it can even be omitted altogether if it is an insignificant infringement and the effects of which are irrelevant for the capital market (de minimis threshold), and the prevention interest is sufficiently safeguarded by the threat of sanctions as such. The interest in secrecy of the trading participant (i.e., the exchange participant or exchange trader, § 2 (8) BörsG) weighs all the more heavily, the weaker the factual basis for the raised accusations is secured at the time of the measure. If the sanction has become final, its interest in secrecy must take second place to a considerable (see de minimis threshold) public interest.

2. As a rule, however, the following are not to be disclosed

- a) Decisions on sanctions pursuant to § 22 (2) sentence 1 BörsG, provided that the trading participant has been fined either with a reprimand or with a fine of EUR 5,000.00 or less.

These sanctions are below the de minimis threshold to be considered for an announcement in principle. If, from the point of view of the capital market participants, it is a case of misconduct which obviously affects the public interest in the announcement of the decision pursuant to § 50a (3) BörsG at most insignificantly, the announcement would be disproportionate. The Management Board of the Exchange regularly assumes this to be the case for sanctions below the threshold mentioned here.

- b) Decisions on measures and sanctions that have not yet become final.

In these cases, the trading participant's interest in secrecy will usually outweigh the public interest in disclosure. This is because the reputation of the person concerned will potentially already be considerably impaired by informing the public about merely preliminary, introductory, and not final measures (for example, the opening of sanction proceedings). Even the reprimand as the mildest sanction encroaches on the fundamentally protected sphere of the exchange participant's or exchange trader's professional practice and constitutes a quasi-disciplinary measure that can justify an interest in rehabilitation worthy of protection. In contrast, the interest of the capital market in the information will normally have less weight.

- c) Decisions on the initiation of sanction proceedings against a trading participant on the part of the Management Board of the Exchange pursuant to § 34 SächsBörsDVO.

In the opinion of the Management Board of the Exchange, an announcement must not only be omitted if it concerns an investigative measure prior to the initiation of sanction proceedings, the announcement of which is already excluded pursuant to § 50a (3) sentence 2, (2) sentence 2 BörsG. As a rule, the public announcement of the initiation of sanction proceedings is also disproportionate. This is because this will de facto already be just as damaging for the reputation of the person concerned as the announcement of his imposition of a sanction by the Sanction Committee, while at this time it is not yet at all certain whether the accusation of the Management Board of the Exchange against the trading participant will be confirmed in the sanction proceedings – in the course of which the parties involved are protected by concrete procedural rights (esp. §§ 37 (2), 39 SächsBörsDVO). In this respect, the risk of a “pre-judgement” by a public that may have

little interest in procedural and competence-related details must be taken into consideration. As a result, the publication of the fact that sanction proceedings have been initiated against a trading participant does not achieve enough from the point of view of the purposes of § 50a (3) sentence 2 BörsG to outweigh the opposing interest of the trading participant which is worth protecting.

For these decisions (in the case of: reprimands or administrative fines of EUR 5,000.00 or less; measures and sanctions that are not final; initiation of sanction proceedings), the Management Board of the Exchange must reserve the right to make an announcement, insofar as this is exceptionally required in the individual case due to the due balancing of interests. This is necessary to ensure fairness in individual cases and an appropriate balance of interests also for atypical cases.

3. The disclosure of personal data (Art. 4 no. 1 DSGVO, § 3 BDSG) of concerned exchange traders must generally be omitted, so that a disclosure required under No. 1 must be made anonymously. The exchange trader's interest in secrecy regularly weighs particularly heavily and regularly outweighs the public interest in disclosure, since his name, his trader ID, etc. are personal data within the meaning of Art. 4 no. 1 DSGVO, § 3 BDSG and are therefore particularly worthy of protection according to the assessment of the European and German legislator.

If you have any questions, please contact legal@eex.com.