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COUNCIL REGULATION (EC) No 2532/98

of 23 November 1998

concerning the powers of the European Central Bank to impose sanctions

(OJ L 318, 27.11.1998, p. 4)

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COUNCIL REGULATION (EC) No 2532/98

of 23 November 1998

concerning the powers of the European Central Bank to impose sanctions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') and in particular to Article 108a(3) thereof and to Article 34.3 of the Protocol (No 3) on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute'),

Having regard to the recommendation of the European Central Bank (hereinafter referred to as the 'ECB') ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Commission ([3]),

Acting in accordance with the procedure laid down in Article 106(6) of the Treaty and in Article 42 of the Statute, and under the conditions set out in Article 109k(5) of the Treaty and paragraph 7 of the Protocol (No 11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland,

(1) Whereas this Regulation, according to Article 34.3 of the Statute, in conjunction with Article 43.1 of the Statute, paragraph 8 of Protocol No 11 and paragraph 2 of the Protocol (No 12) on certain provisions relating to Denmark, is not to confer any rights or impose any obligations on a non-participating Member State;

(2) Whereas Article 34.3 of the Statute requires the Council to specify the limits and conditions under which the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions;

(3) Whereas infringements of the obligations arising from ECB regulations and decisions can arise in various fields of competence of the ECB;

(4) Whereas it is appropriate, in order to ensure a uniform approach towards the imposition of sanctions in the various fields of competence of the ECB, that all general and procedural provisions for the imposition of such sanctions are contained in a single Council Regulation; whereas other Council Regulations provide for specific sanctions in specific fields and refer to this Regulation for the principles and procedures relating to the imposition of such sanctions;

([1]) OJ C 246, 6. 8. 1998, p. 9.
([2]) OJ C 328, 26. 10. 1998.
([3]) Opinion delivered on 8 October 1998 (not yet published in the Official Journal).

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(5) Whereas, in order to provide an effective regime for the administration of sanctions, this Regulation must allow the ECB a certain discretion, both in relation to the relevant procedures and to their implementation within the limits and conditions laid down in this Regulation;

(6) Whereas the European System of Central Banks (hereinafter referred to as the 'ESCB') and the ECB have been entrusted with the task of preparing for their full operation in the third stage of Economic and Monetary Union (hereinafter referred to as 'Stage Three'); whereas timely preparation is essential to enable the ESCB to fulfil its tasks in Stage Three; whereas an essential element of preparation is the adoption, ahead of Stage Three, of the regime for the imposition of sanctions on undertakings failing to comply with obligations imposed upon them by ECB regulations and decisions; whereas it is desirable to inform market participants as soon as possible of the detailed provisions the ECB may deem necessary to adopt for the imposition of sanctions; whereas it is therefore necessary to provide the ECB from the date of entry into force of this Regulation with a regulatory power;

(7) Whereas the provisions of this Regulation can only be effectively applied if participating Member States adopt the necessary measures with a view to ensuring that their authorities have the powers to assist and collaborate fully with the ECB in the implementation of the infringement procedure as required by this Regulation, in accordance with Article 5 of the Treaty;

(8) Whereas the ECB is to have recourse to the national central banks to carry out the tasks of the ESCB to the extent deemed possible and appropriate;

(9) Whereas decisions under this Regulation imposing pecuniary obligations are to be enforceable in accordance with Article 192 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

1. 'participating Member State' shall mean a Member State which has adopted the single currency in accordance with the Treaty;

2. 'national central bank' shall mean the central bank of a participating Member State;

3. 'undertakings' shall mean those natural or legal persons, private or public, with the exception of public persons in the exercise of their public powers, in a participating Member State, which are the subject of obligations arising from ECB regulations and decisions, and shall include branches or other permanent establishments located in a participating Member State, the head office or registered office of which is outside a participating Member State;

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4. ‘infringement’ shall mean any failure by an undertaking to fulfil an obligation arising from ECB regulations or decisions;

5. ‘fine’ shall mean a single amount of money which an undertaking is obliged to pay as a sanction;

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6. ‘periodic penalty payments’ shall mean amounts of money which, in the case of a continued infringement, an undertaking is obliged to pay either as a punishment, or with a view to forcing the persons concerned to comply with the ECB supervisory regulations and decisions. Periodic penalty payments shall be calculated for each complete day of continued infringement:

   (a) following notification of the undertaking of a decision requiring the termination of such an infringement in accordance with the procedure laid down in the second subparagraph of Article 3(1); or

   (b) when the continued infringement falls under the scope of Article 18(7) of Council Regulation (EU) No 1024/2013 ([1]) in accordance with the procedure laid down in Article 4b of this Regulation;

7. ‘sanctions’ shall mean fines and periodic penalty payments.

Article 1a

General principles and scope

1. This Regulation shall apply to the imposition by the ECB of sanctions on undertakings for failure to comply with obligations arising from ECB decisions or regulations.

2. The rules applying to the imposition by the ECB, in the exercise of its supervisory tasks, of sanctions in case of a breach of an ECB regulation or decision shall derogate from the rules laid down in Articles 2 to 4 to the extent laid down in Articles 4a to 4c.

3. The ECB shall publish any decision imposing sanctions on an undertaking in case of a breach of an ECB regulation or decision, in the supervisory field, whether or not such decision has been appealed.

The ECB shall carry out such a publication on its website without undue delay, and after the decision has been notified to the undertaking concerned. The publication shall include information on the type and nature of the breach and the identity of the undertaking concerned, unless publication in this manner would either:

(a) jeopardise the stability of the financial markets or an ongoing criminal investigation; or

(b) cause, in so far as can be determined, disproportionate damage to the undertaking concerned.

([1]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

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In these circumstances, decisions regarding sanctions shall be published on an anonymised basis. Alternatively, where such circumstances are likely to cease within a reasonable period of time, publication under this paragraph may be postponed for such period of time.

If an appeal to the Court of Justice in respect of a decision imposing a sanction is pending, the ECB shall, without undue delay, also publish information on the status of the appeal in question and the outcome thereof on its official website.

The ECB shall ensure that information published under this paragraph remains on its official website for at least five years.

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Article 2

Sanctions

1. The limits within which the ECB may impose fines and periodic penalty payments on undertakings, unless otherwise provided for in specific Council Regulations, shall be the following:

(a) fines: the upper limit shall be EUR 500 000; and

(b) periodic penalty payments: the upper limit shall be EUR 10 000 per day of infringement. Periodic penalty payments may be imposed in respect of a maximum period of six months following the notification of the undertaking of the decision in accordance with Article 3(1).

2. In determining whether to impose a sanction and in determining the appropriate sanction, the ECB shall be guided by the principle of proportionality.

3. The ECB shall take into consideration, where relevant, the circumstances of the specific case, such as:

(a) on the one hand, the good faith and the degree of openness of the undertaking in the interpretation and fulfilment of the obligation arising from an ECB regulation or decision as well as the degree of diligence and cooperation shown by the undertaking or, on the other, any evidence of wilful deceit on the part of officials of the undertaking;

(b) the seriousness of the effects of the infringement;

(c) the repetition, frequency or duration of the infringement by that undertaking;

(d) the profits obtained by the undertaking by reason of the infringement;

(e) the economic size of the undertaking; and

(f) prior sanctions imposed by other authorities on the same undertaking and based on the same facts.

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4. Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the undertaking from its performance, unless the decision adopted in accordance with Article 3(4) or Article 4b explicitly states the contrary.

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Article 3

Procedural rules

►M1 1. The decision on whether to initiate an infringement procedure shall be taken by the ECB, acting on its own initiative or on the basis of a motion to that effect addressed to it by the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred. ◄ The same decision may also be taken, on its own initiative or on the basis of a motion to that effect addressed to it by the ECB, by the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred.

Written notification of the decision to initiate an infringement procedure shall be given to the undertaking concerned, to the relevant supervisory authority and to the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred or to the ECB. The notification shall disclose the details of the allegations against the undertaking and the evidence on which such allegations are founded. Where appropriate, the decision shall require the termination of the alleged infringement and shall give notice to the undertaking concerned that periodic penalty payments may be imposed.

2. The decision referred to in paragraph 1 may require the undertaking to submit to an infringement procedure. In carrying out the infringement procedure, the ECB or the national central bank, as the case may be, shall have the right to:

(a) require the submission of documents;

(b) examine the books and records of the undertaking;

(c) take copies or extracts from such books and records; and

(d) obtain written or oral explanations.

When an undertaking obstructs the conduct of the infringement procedure, the participating Member State where the relevant premises are located shall afford the necessary assistance, including ensuring access by the ECB or the national central bank to the premises of the undertaking, so that the aforementioned rights can be exercised.

3. The undertaking concerned shall have the right to be heard by the ECB or the national central bank, as the case may be. The undertaking shall be given no fewer than thirty days to present its defence.

4. The Executive Board of the ECB shall, as soon as possible after receiving a submission from the national central bank which initiates the infringement procedure or after having consulted the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred, adopt a reasoned decision as to whether an undertaking has committed an infringement together with the sanction, if any, to be imposed.

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5. The undertaking concerned shall be notified in writing of the decision and shall be informed of its right of review. Notification of the decision shall also be given to relevant supervisory authorities and to the national central bank of the Member State in whose jurisdiction the infringement has occurred.

6. The undertaking concerned shall have the right to request a review of the decision of the Executive Board by the Governing Council of the ECB. Such a request shall be made within thirty days of the receipt of the notification of the decision and shall include all supporting information and allegations. Such a request shall be addressed in writing to the Governing Council of the ECB.

7. A decision by the Governing Council of the ECB in response to a request submitted under paragraph 6 shall include the reasons for the decision and written notification thereof shall be given to the undertaking concerned, to the relevant supervisory authority of that undertaking and to the national central bank of the Member State in whose jurisdiction the infringement occurred. The notification shall inform the undertaking of its right of judicial review. If no decision has been taken by the Governing Council of the ECB within two months of the request, the undertaking concerned may request a judicial review of the decision of the Executive Board in accordance with the Treaty.

8. No sanction shall be enforced against the undertaking until the decision has become final through either:

(a) the period of thirty days referred to in paragraph 6 having elapsed without the undertaking making a request for review to the Governing Council of the ECB; or

(b) the Governing Council notifying the undertaking of its decision, or the period referred to in paragraph 7 having elapsed without the Governing Council having taken a decision.

9. The proceeds from sanctions imposed by the ECB shall belong to the ECB.

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10. If an infringement relates exclusively to a task entrusted to the ESCB or the ECB under the Treaty and the Statute, an infringement procedure may be initiated only on the basis of this Regulation, irrespective of the existence of any national law or regulation which may provide for a separate procedure. If an infringement also relates to one or more areas outside the competence of the ESCB or the ECB, the right to initiate an infringement procedure on the basis of this Regulation shall be independent of any right of a competent national authority to initiate separate procedures in relation to such areas outside the competence of the ESCB or the ECB. This provision shall be without prejudice to the application of criminal law and of national law relating to prudential supervisory competencies in participating Member States, in accordance with Regulation (EU) No 1024/2013.

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11. An undertaking shall bear the costs of the infringement procedure if it has been decided that it has committed an infringement.

Article 4

Time limits

1. The right to take the decision to initiate an infringement procedure, as provided for in this Regulation, shall expire one year after the existence of the alleged infringement first became known either to the ECB or to the national central bank of the Member State in whose jurisdiction the alleged infringement occurred and, in any case, five years after the infringement occurred or, in the case of a continued infringement, five years after the infringement was terminated.

2. The right to take the decision to impose a sanction in respect of an infringement, as provided for in this Regulation, shall expire one year after the decision to initiate the procedure as described in Article 3(1) was taken.

3. The right to start an enforcement procedure shall expire six months after the decision has become enforceable pursuant to Article 3(8).

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Article 4a

Specific rules regarding the upper limits of sanctions imposed by the ECB in the exercise of its supervisory tasks

1. By way of derogation from Article 2(1), in the case of infringements relating to decisions and regulations adopted by the ECB in the exercise of its supervisory tasks, the limits within which the ECB may impose fines and periodic penalty payments shall be as follows:

(a) for fines, the upper limit shall be twice the amount of the profits gained or losses avoided because of the infringement where these can be determined, or 10 % of the total annual turnover of the undertaking;

(b) for periodic penalty payments, the upper limit shall be 5 % of the average daily turnover per day of infringement. Periodic penalty payments may be imposed in respect of a maximum period of six months from the date stipulated in the decision imposing the periodic penalty payment.

2. For the purposes of paragraph 1:

(a) ‘annual turnover’ means the annual turnover of the undertaking concerned in the preceding business year, as defined in relevant Union law, and where this is not available, according to the most recently available annual financial accounts of such person. Where the undertaking concerned is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the most recently available consolidated annual financial accounts in the preceding business year, and where this is not available, according to the most recently available annual financial accounts of such person;

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(b) ‘average daily turnover’ means the annual turnover, as defined under point (a), divided by 365.

Article 4b

Specific procedural rules for sanctions imposed by the ECB in the exercise of its supervisory tasks

1. By way of derogation from Article 3(1) to (8) of this Regulation, the rules laid down in this Article shall apply to infringements relating to decisions and regulations adopted by the ECB in the exercise of its supervisory tasks.

2. Where the ECB, in carrying out its tasks under Regulation (EU) No 1024/2013, considers that there is reason to suspect that one or more breaches of an ECB regulation or decision as referred to in Article 18(7) of Regulation (EU) No 1024/2013 are being or have been committed by an undertaking having its head office in an euro area Member State, the ECB shall exercise the relevant investigations in accordance with the following provisions.

3. On completion of an investigation and before a proposal for a complete draft decision is prepared and submitted to the Supervisory Board, the ECB, in its capacity to investigate breaches in the field of supervision, shall notify the undertaking concerned in writing of the findings under the investigation carried out and of any objections raised thereto.

In the notification referred to in the first subparagraph, the ECB, in its capacity to investigate breaches in the field of supervision, shall inform the undertaking concerned of its right to make submissions in writing to the ECB on the factual results and the objections raised against the entity as set out therein, including the individual provisions which have been allegedly infringed, and it shall set a reasonable time limit for making such submissions. The ECB shall not be obliged to take into account written submissions made after the time limit set by the ECB in its capacity to investigate breaches in the field of supervision has expired.

The ECB, in its capacity to investigate breaches in the field of supervision may also, following notification in accordance with the first subparagraph, invite the undertaking concerned to attend an oral hearing. The parties subject to investigation may be represented and/or assisted by lawyers or other qualified persons at the hearing. Oral hearings shall not be held in public.

The right of access to the file by the undertaking concerned under investigation shall be guaranteed. It shall not extend to confidential information.

4. The Supervisory Board shall propose a complete draft decision to the Governing Council, determining whether or not the undertaking concerned has committed a breach and specifying the sanctions to be imposed, if any, in accordance with the procedure under Article 26(8) of Regulation (EU) No 1024/2013.

5. The undertaking concerned shall have the right to request a review by the Administrative Board of Review of the decision taken by the Governing Council pursuant to paragraph 4, in accordance with the procedure laid down in Article 24 of Regulation (EU) No 1024/2013.

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Article 4c

Specific time limits for sanctions imposed by the ECB in the exercise of its supervisory tasks

1. By way of derogation from Article 4, the right to take a decision to impose a sanction in case of a breach of an ECB decision or regulation relating to its supervisory tasks, shall expire five years after the infringement occurred or, in the case of a continued infringement, five years after the infringement ceased.

2. Any action taken by the ECB for the purposes of the investigation or proceedings with respect to an infringement shall cause the time limit laid down in paragraph 1 to be interrupted. The limitation period shall be interrupted with effect from the date on which the action is notified to the supervised entity concerned. Each interruption shall cause the time limit to recommence. However, the time limit shall not exceed a period of 10 years after the infringement occurred or, in the case of a continued infringement, 10 years after the infringement ceased.

3. The time limits described in the preceding paragraphs can be extended if:

(a) a decision of the Governing Council is subject to review before the Administrative Board of Review or appeal proceedings before the Court of Justice of the European Union; or

(b) criminal proceedings are pending against the concerned undertaking in connection with the same facts. In such a case, the time limits described in the previous paragraphs shall be extended for the period of time it takes for the Administrative Board of Review or the Court of Justice to review the decision or until conclusion of the criminal proceedings against the concerned undertaking.

4. The right of the ECB to enforce a decision to impose a sanction shall expire five years after such decision has been taken. Any action of the ECB designed to enforce payment or payment terms and conditions under the imposed sanction shall cause the limitation period for the enforcement to be interrupted.

5. The limitation period for the enforcement of sanctions shall be suspended:

(a) until the deadline for payment of the imposed sanction has passed;

(b) if enforcement of payment of the imposed sanction is suspended pursuant to a decision of the Governing Council or of the Court of Justice.

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Article 5

Judicial review

The Court of Justice of the European Communities shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty over the review of final decisions whereby a sanction is imposed.

Article 6

General provisions and regulatory power

1. In the event of a conflict between the provisions of this Regulation and the provisions of other Council Regulations enabling the ECB to impose sanctions, the provisions of the latter shall prevail.

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2. Subject to the limits and conditions laid down in this Regulation, the ECB may adopt regulations to specify further the arrangements whereby sanctions may be imposed in accordance with this Regulation as well as guidelines to coordinate and harmonise the procedures in relation to the conduct of the infringement procedure.

Article 7

Final provisions

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 6(2) shall apply from the date of entry into force of this Regulation. The remaining Articles shall apply from 1 January 1999.

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