

DECISION (EU) 2022/1921 OF THE EUROPEAN CENTRAL BANK
of 29 September 2022
on the methodology for the calculation of sanctions for alleged infringements of statistical reporting requirements (ECB/2022/32)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 132(3) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 5 and 34 thereof,

Having regard to Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions ⁽¹⁾, and in particular Article 6(2) thereof,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽²⁾, and in particular Article 7 thereof,

Whereas:

- (1) Pursuant to Article 7(1) of Regulation (EC) No 2533/98, the European Central Bank (ECB) may impose sanctions on reporting agents for failure to comply with statistical reporting requirements.
- (2) Article 2(2) of Regulation (EC) No 2532/98 provides that, in determining whether to impose a sanction and in determining the appropriate sanction, the ECB must be guided by the principle of proportionality. In addition, Article 2(3) of that Regulation sets out a non-exhaustive list of circumstances which the ECB must take into consideration, where relevant, in a specific case.
- (3) European Central Bank Regulation (EC) No 2157/1999 (ECB/1999/4) ⁽³⁾ sets out the procedure for the submission of a proposal by the ECB's investigating unit or the competent national central bank to the Executive Board of the ECB for the purposes of determining whether a reporting agent has committed an alleged infringement and specifying the proposed amount of the sanction to be imposed, and allows for a simplified infringement procedure for the sanctioning of minor infringements.
- (4) In the interest of equal treatment of reporting agents, and as required by Article 9 of Regulation (EU) 2022/1917 of the European Central Bank (ECB/2022/31) ⁽⁴⁾, the ECB should establish the methodology to be followed by competent Eurosystem central banks in calculating the proposed amount of the sanction. The calculation should be done in two stages. First, a baseline amount is calculated on the basis of quantitative aspects of the alleged infringement and, second, other relevant circumstances and information are taken into consideration as a result of which the baseline amount may be adjusted.
- (5) For that reason, and in order to ensure the transparency and impartiality of the ECB's decisions when imposing sanctions on reporting agents, that methodology should detail the quantitative aspects used in calculating the baseline amount. In addition, that methodology should provide guidance in relation to the circumstances and information that should be taken into consideration, where relevant, by a competent Eurosystem central bank in calculating the proposed amount of the sanction.

⁽¹⁾ OJ L 318, 27.11.1998, p. 4.

⁽²⁾ OJ L 318, 27.11.1998, p. 8.

⁽³⁾ European Central Bank Regulation (EC) No 2157/1999 of 23 September 1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4) (OJ L 264, 12.10.1999, p. 21).

⁽⁴⁾ Regulation (EU) 2022/1917 of the European Central Bank of 29 September 2022 on infringement procedures in cases of non-compliance with statistical reporting requirements and repealing Decision ECB/2010/10 (ECB/2022/31) (see page 6 of this Official Journal).

- (6) Although, in general, the total assets of a reporting agent should be used to determine the economic size of a reporting agent which fails to comply with statistical reporting requirements, when determining the economic size of a reporting agent which fails to comply with certain types of reporting requirements, for example on payment statistics set out in Regulation (EU) No 1409/2013 of the European Central Bank (ECB/2013/43) ⁽⁵⁾ and on securities in custody set out in Regulation (EU) No 1011/2012 of the European Central Bank (ECB/2012/24) ⁽⁶⁾, the total number of its clients, the total value of its payment transactions or the total value of securities deposited with the custodian are more appropriate measures of its economic size for the purposes of calculating the base amount. For these purposes, it is also appropriate to consider the economic size of a reporting agent which fails to comply with statistical reporting requirements relative to the economic size of, in the case of money market statistics set out in Regulation (EU) No 1333/2014 of the European Central Bank (ECB/2014/48) ⁽⁷⁾, the reference reporting population or, in any other case, the relevant actual reporting population.
- (7) For the purposes of the regular production of money market statistics as required by Regulation (EU) No 1333/2014 (ECB/2014/48), errors in the data on the unsecured market segment that are not corrected before the transmission deadline set by the ECB or the NCB, may be sanctioned because it is critical to receive timely, accurate and complete statistical information on the unsecured segment that complies with high standards of integrity for the performance of the ECB's tasks in the field of monetary policy. For this reason, and to ensure consistency with the application of Regulation (EU) 2022/1917 (ECB/2022/31), it is suitable and appropriate for Eurosystem central banks to apply this Decision three months following notification in cases of non-compliance with the statistical reporting requirements under Regulation (EU) No 1333/2014 (ECB/2014/48).
- (8) In order to ensure the coherent application of harmonised rules, NCBs and the ECB should comply with this Decision from the same date as the relevant date of application of Regulation (EU) 2022/1917 (ECB/2022/31).
- (9) However, in order to ensure continuity and clarity, it is appropriate to provide that the competent NCBs and the ECB should continue to comply with the requirements of Decision ECB/2010/10 ⁽⁸⁾ in cases of alleged infringements which occur prior to the relevant date of application of this Decision, including in cases of repeated non-compliance where one or more instances of non-compliance occur before and after the relevant date of application of this Decision.
- (10) The principles followed by the ECB to calculate sanctions from the reference period December 2004 for monthly reporting requirements and fourth quarter 2004 for quarterly reporting requirements for infringements of balance sheet statistical reporting requirements due to failure to comply with the minimum standards laid down in Annex IV to Regulation (EC) No 2423/2001 of the European Central Bank (ECB/2001/13) ⁽⁹⁾ were set out in the Notice of the European Central Bank on the imposition of sanctions for infringements of balance sheet statistical reporting requirements ⁽¹⁰⁾. In the interests of legal certainty, it is appropriate that the Notice be withdrawn,

⁽⁵⁾ Regulation (EU) No 1409/2013 of the European Central Bank of 28 November 2013 on payments statistics (ECB/2013/43) (OJ L 352, 24.12.2013, p. 18).

⁽⁶⁾ Regulation (EU) No 1011/2012 of the European Central Bank of 17 October 2012 concerning statistics on holdings of securities (ECB/2012/24) (OJ L 305, 1.11.2012, p. 6).

⁽⁷⁾ Regulation (EU) No 1333/2014 of the European Central Bank of 26 November 2014 concerning statistics on the money markets (ECB/2014/48) (OJ L 359, 16.12.2014, p. 97).

⁽⁸⁾ Decision ECB/2010/10 of the European Central Bank of 19 August 2010 on non-compliance with statistical reporting requirements (OJ L 226, 28.8.2010, p. 48).

⁽⁹⁾ Regulation (EC) No 2423/2001 of the European Central Bank of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector (ECB/2001/13) (OJ L 333, 17.12.2001, p. 1).

⁽¹⁰⁾ OJ C 195, 31.7.2004, p. 8.

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision sets out the methodology to determine the appropriate proposed amount of a sanction to be imposed by the ECB on a reporting agent which is subject to statistical reporting requirements and which fails to comply with these requirements.
2. The methodology applies to the calculation of the proposed amount of a sanction for one or more alleged infringements in relation to which an infringement procedure has been initiated in accordance with Article 8(1) and (3) of Regulation (EU) 2022/1917 (ECB/2022/31).
3. This Decision shall not prevent the Executive Board of the ECB from exercising its discretion to impose a sanction which it considers appropriate pursuant to Article 7a(6) of Regulation (EC) No 2157/1999 (ECB/1999/4).

Article 2

Definitions

1. For the purposes of this Decision, the definitions in Article 2 of Regulation (EU) 2022/1917 (ECB/2022/31) apply.
2. The following definitions also apply:
 - (1) 'ECB deadline' means the date and hour set by the ECB for receiving statistical information from the national central banks or, in the case of direct reporting, from the reporting agents in accordance with the statistical regulations or decisions adopted by the ECB;
 - (2) 'NCB deadline' means the date and hour set by a national central bank for receiving statistical information from the reporting agents for the purpose of complying with the statistical regulations or decisions adopted by the ECB.

Article 3

Calculation of proposed sanctions

1. Proposed sanctions in the case of a cumulative alleged infringement referred to in Article 8(1) and (2) of Regulation (EU) 2022/1917 (ECB/2022/31) or in the case of an alleged infringement referred to in Article 8(3) of Regulation (EU) 2022/1917 (ECB/2022/31) shall be calculated in accordance with the following procedure:
 - (a) a baseline amount shall first be calculated by the competent Eurosystem central bank on the basis of the quantitative aspects of the alleged infringement, including where relevant:
 - (i) the economic size of the reporting agent;
 - (ii) the frequency of the infringement;
 - (iii) the duration of the infringement;
 - (iv) the size of the discrepancy between the correct and incorrect statistical information;
 - (b) the relevant circumstances in Article 2(3) of Regulation (EC) No 2532/98 which are not referred to in point (a) of this paragraph and any other relevant information shall then be taken into consideration and may require an adjustment to the baseline amount calculated in accordance with point (a).
2. Proposed sanctions in the case of serious misconduct referred to in Article 8(1), point (a), of Regulation (EU) 2022/1917 (ECB/2022/31) shall be calculated in accordance with the following procedure:
 - (a) a baseline amount, shall first be determined by the competent Eurosystem central bank by applying the maximum fines set out in Article 7(4) of Regulation (EC) No 2533/98 as adjusted by reference to the economic size of the reporting agent;

(b) any relevant circumstances in Article 2(3) of Regulation (EC) No 2532/98 and any other relevant information shall then be taken into consideration and may require an adjustment to the baseline amount determined in accordance with point (a).

3. The adjustment referred to in paragraph 1, point (b) shall be limited to a maximum of one third of the baseline amount referred to in paragraph 1, point (a). The adjustment referred to in paragraph 2, point (b) shall be limited to a maximum downward adjustment of one third of the baseline amount referred to in paragraph 2, point (a).

4. Where an alleged infringement relates to the reporting of statistical information which is incorrect, incomplete or in a form not in compliance with reporting requirements, the ECB shall not impose a sanction for negligible errors or where the reporting agent has corrected the non-negligible errors in compliance with the ECB's revisions policy and procedures. This shall not apply where:

(a) there is systematic or intentional failure to report correct or complete statistical information; or

(b) there is failure to comply with the reporting requirements relating to the unsecured segment pursuant to Regulation (EU) No 1333/2014(ECB/2014/48).

5. When calculating sanctions in accordance with paragraphs 1 and 2, competent Eurosystem central banks shall not exceed the maximum fines set out in Article 7(4) of Regulation (EC) No 2533/98.

6. When submitting a proposal to the Executive Board of the ECB in accordance with Article 7a of Regulation (EC) No 2157/1999 (ECB/1999/4), the competent NCB shall describe in sufficient detail the manner in which it has calculated the proposed amount of the sanction to be imposed by the ECB, including whether it has given any weighting to the factors relevant to the calculation of the baseline amount or to the adjustment of the baseline amount in accordance with Article 4 or 5, respectively.

7. Where a weighting has been given to the factors relevant to the calculation of the baseline amount or to the adjustment of the baseline amount in accordance with Article 4 or 5, respectively, the ECB shall inform the reporting agent accordingly. When imposing a sanction, the ECB shall inform the reporting agent of the manner in which the sanction has been calculated, including whether it has given any weighting to the factors relevant to the calculation of the baseline amount or to the adjustment of the baseline amount in accordance with Article 4 or 5, respectively.

8. Where an infringement of statistical reporting requirements also consists of an infringement of minimum reserve requirements and a sanction is imposed on that basis pursuant to Article 7 of Council Regulation (EC) No 2531/98 ⁽¹¹⁾, no further sanction shall be imposed in relation to the infringement of the statistical reporting requirements.

Article 4

Calculation of the baseline amount

1. Where a competent Eurosystem central bank calculates the baseline amount, the quantitative aspects of the alleged infringement on which it bases its calculation referred to in Article 3(1) and the economic size on which it bases its calculation referred to in Article 3(2) shall be determined as relevant in accordance with this Article.

2. The economic size of the reporting agent shall be determined by reference to:

(a) in the case of a failure to comply with reporting requirements on payment statistics set out in Regulation (EU) No 1409/2013 (ECB/2013/43), in respect of account information services only, the total number of clients and, otherwise, the total value of the payment transactions, of the reporting agent most recently reported by it as at the date of the alleged infringement in accordance with that Regulation;

⁽¹¹⁾ Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank (OJ L 318, 27.11.1998, p. 1).

- (b) in the case of a failure to comply with statistical reporting requirements on securities in custody set out in Regulation (EU) No 1011/2012 (ECB/2012/24), the total value of securities deposited with the custodian most recently reported by that custodian as at the date of the alleged infringement in accordance with that Regulation;
- (c) in the case of a failure to comply with statistical reporting requirements other than those referred to in points (a) and (b), the amount of the total assets of the reporting agent as determined from the statistical information on the balance sheet of the reporting agent most recently reported by it as at the date of the alleged infringement in accordance with the applicable ECB regulations.

However, if, as at the date of the alleged infringement, the relevant reporting agent is not in compliance with its obligations to report the statistical information that is necessary for the determination of its economic size, the competent Eurosystem central bank shall instead determine the economic size using the statistical information which has been most recently submitted to that competent Eurosystem central bank or is otherwise available to it.

3. For the purposes of determining the economic size of the reporting agent, the competent Eurosystem central bank shall take into account the economic size of the relevant reporting agent as a proportion of the total economic size of:

- (a) in the case of reporting pursuant to Regulation (EU) No 1333/2014 (ECB/2014/48), all the reporting agents in the relevant reference reporting population;
- (b) in all other cases, all the reporting agents in the relevant actual reporting population.

4. The frequency of the alleged infringement shall be determined by reference to the number of alleged infringements that have occurred in the period of non-compliance to which the infringement procedure relates.

5. Where an alleged infringement relates to the failure to report any statistical information to the ECB or competent NCB by the relevant deadline as described in the applicable ECB regulation or decision, the duration of the alleged infringement shall be determined by reference to:

- (a) in the case of direct reporting, the total number of working days of delay in submitting the statistical information following the ECB deadline;
- (b) in all other cases, the total number of working days of delay in submitting the statistical information following the NCB deadline comprising (i) the number of working days prior to the ECB deadline; and (ii) the number of working days after the ECB deadline.

6. Where an alleged infringement relates to the reporting of information which is incorrect, incomplete or in a form not in compliance with the requirement as described in the applicable ECB regulation or decision, the size of the discrepancy shall be determined by reference to the difference in the absolute value between the incorrect statistical information and the correct statistical information.

Article 5

Adjustment of the baseline amount

Where a competent Eurosystem central bank takes into consideration the circumstances and any other relevant information referred to in Article 3(1), point (b), and Article 3(2), point (b), it shall include in such considerations where relevant:

- (a) the good faith and the degree of openness of the reporting agent in the interpretation and fulfilment of statistical reporting requirements, including by reference to the circumstances in which the alleged infringement was identified, such as whether this was through voluntary notification by the reporting agent or as a result of investigatory action;
- (b) the degree of diligence and cooperation shown by the reporting agent, including by reference to the conduct of the reporting agent, such as its participation in, and assistance with, any infringement procedures or any procedures of the competent Eurosystem central bank which relate to ensuring compliance with statistical reporting requirements, and its readiness to remedy the alleged infringement;

- (c) the seriousness of the effects of the infringement, including by reference to the consequences of the alleged infringement such as the impact that the alleged infringement has on the relevant statistical outputs, or on the use of the statistical information for the tasks of the European System of Central Banks pursuant to the Treaty, or any detrimental third-party effect;
- (d) the repetition of the infringement, including by reference to any failure of the reporting agent to comply with its statistical reporting requirements on a repeated basis outside of the period of non-compliance to which the alleged infringement relates, which has not been the subject of another infringement procedure.

Article 6

Review

The Governing Council shall review the application and implementation of this Decision by no later than five years following the date on which it takes effect, and thereafter every three years, and assess whether it should be amended.

Article 7

Transitional provision

This Decision shall not apply to alleged infringements which occur prior to the relevant date of application of this Decision as specified in Article 9. Pursuant to Article 13 of Regulation (EU) 2022/1917 (ECB/2022/31), Decision ECB/2010/10 shall continue to apply to those alleged infringements, including in cases of repeated non-compliance referred to in Article 3(2), point (b), of that Decision, where one or more instances of non-compliance occur before and after the relevant date of application of this Decision as specified in Article 9.

Article 8

Specific application for infringements of money market statistical reporting

In cases of alleged infringements of Regulation (EU) No 1333/2014 (ECB/2014/48), competent NCBS and the ECB shall comply with the requirements laid out in this Decision from 31 January 2023.

Article 9

Taking effect

1. This Decision shall take effect on the day of its notification to the addressees.
2. It shall apply from 30 April 2024, except for Article 8 which shall apply from 31 January 2023.

Article 10

Addressees

This Decision is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 29 September 2022.

The President of the ECB
Christine LAGARDE
