

DECISION OF THE EUROPEAN CENTRAL BANK
of 19 August 2010
on non-compliance with statistical reporting requirements
(ECB/2010/10)
(2010/469/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

HAS ADOPTED THIS DECISION:

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 5.1 and 34.1 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 ⁽¹⁾, and in particular Article 7 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 ⁽²⁾, and in particular Article 6(2) thereof,

Having regard to Regulation (EC) No 2157/1999 of the European Central Bank of 23 September 1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4) ⁽³⁾,

Whereas:

- (1) Regulations (EC) No 25/2009 of the European Central Bank of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (recast) (ECB/2008/32) ⁽⁴⁾ and (EC) No 63/2002 of the European Central Bank of 20 December 2001 concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations (ECB/2001/18) ⁽⁵⁾ lay down the European Central Bank's (ECB's) statistical reporting requirements which reporting agents must comply with.
- (2) Article 7(1) of Regulation (EC) No 2533/98 provides that the ECB has the power to impose sanctions on reporting agents which fail to comply with statistical reporting requirements set out in ECB regulations or decisions.
- (3) To ensure equal treatment of reporting agents, the ECB should adopt a harmonised approach to the calculation of sanctions for infringements of the reporting requirements, to the infringement procedure and to any preceding phase,

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ OJ L 318, 27.11.1998, p. 4.

⁽³⁾ OJ L 264, 12.10.1999, p. 21.

⁽⁴⁾ OJ L 15, 20.1.2009, p. 14.

⁽⁵⁾ OJ L 10, 12.1.2002, p. 24.

Article 1

Definitions

For the purposes of this Decision:

1. 'reporting agent' has the same meaning as in Article 1 of Regulation (EC) No 2533/98;
2. 'monetary financial institution' (MFI) has the same meaning as in Article 1 of Regulation (EC) No 25/2009 (ECB/2008/32);
3. 'infringement' and 'sanction' have the same meaning as in Article 1 of Regulation (EC) No 2532/98;
4. 'serious misconduct' includes any of the following infringements of reporting requirements by reporting agents:
 - (a) systematic reporting of incorrect data;
 - (b) systematic failure to comply with the minimum standards for revisions;
 - (c) intentional incorrect, delayed or incomplete reporting;
 - (d) insufficient degree of diligence or cooperation with the relevant NCB or the ECB;
5. 'competent national central bank' (competent NCB) means the NCB of the Member State in whose jurisdiction the infringement occurred;
6. 'NCB deadline' means the date set by each NCB for receiving data from the reporting agents.

Article 2

Scope of application

1. The ECB and the NCBs shall monitor the compliance of reporting agents with the minimum standards required to meet their reporting obligations, as set out in Annex IV to Regulation (EC) No 25/2009 (ECB/2008/32) and Annex III to Regulation (EC) No 63/2002 (ECB/2001/18). In the event of non-compliance, the ECB and the competent NCB may decide to conduct an assessment phase and/or initiate an infringement procedure as referred to in Article 3(1) and (2). Following an infringement procedure the ECB may impose sanctions in line with Article 7 of Regulation (EC) No 2533/98.

2. Sanctions may be imposed following an infringement procedure in the event of failure to comply with minimum standards for transmission (in relation to timeliness and technical reporting requirements), accuracy (in relation to linear constraints and data consistency across frequencies) and conceptual compliance (in relation to definitions and classifications). Sanctions are also applied in the case of serious misconduct.

Article 3

Assessment phase and infringement procedure

1. Prior to the initiation of an infringement procedure under Regulation (EC) No 2532/98 and Regulation (EC) No 2157/1999 (ECB/1999/4):

- (a) the competent NCB may, where it has logged non-compliance with the reporting requirements, give a warning to the reporting agent concerned informing it of the nature of the non-compliance logged, and recommend corrective measures to be taken in order to avoid repetition of the non-compliance;
- (b) the ECB or the competent NCB may ask the reporting agent concerned for any information relating to the non-compliance pursuant to Article 2(2) of Regulation (EC) No 2157/1999 (ECB/1999/4);
- (c) the reporting agent concerned shall be given an opportunity to provide explanations if it considers that the non-compliance was due to circumstances beyond its control.

2. Either the ECB or the competent NCB may initiate an infringement procedure in line with Article 3 of Regulation (EC) No 2532/98 and Article 5 of Regulation (EC) No 2157/1999 (ECB/1999/4). The following rules shall also apply:

- (a) an infringement procedure shall be initiated, without any assessment phase, in the case of serious misconduct;
- (b) without prejudice to point (a), an infringement procedure shall be initiated after repeated non-compliance has been logged by the competent NCB, unless:
 - (i) the ECB or the competent NCB consider that no infringement procedure should be initiated as one or more of the logged cases of non-compliance is beyond the reporting agent's control; or
 - (ii) the potential fine would not reach the minimum threshold for the imposition of a sanction.

3. If the ECB or the competent NCB initiates an infringement procedure, the procedure shall be carried out in accordance with Article 3 of Regulation (EC) No 2532/98, including the issuing of a written notification and the adoption of a reasoned decision by the ECB.

Article 4

Application of sanctions

1. Sanctions shall be calculated following a two-stage procedure. First a baseline amount is calculated which reflects quantitative aspects. The circumstances of the case as referred to in Article 2(3) of Regulation (EC) No 2532/98 are then taken into account and may affect the actual amount of the sanction.

2. In the case of infringements relating to timeliness, the seriousness of the infringement shall depend on the number of working days of delay vis-à-vis the NCB deadline.

3. In the case of infringements relating to inaccuracy and/or conceptual compliance, the seriousness of the infringement shall depend on the size of the error. The ECB shall not take into account errors of a rounding nature or negligible errors. In addition, as regards conceptual compliance, ordinary revisions, i.e. non-systematic revisions to the series reported within the period (month or quarter) following the initial reporting, shall not be considered as cases of conceptual non-compliance.

4. Article 7(4) of Regulation (EC) No 2533/98 sets forth the maximum sanctions which the ECB may impose on reporting agents.

5. If an infringement of statistical reporting requirements also results in an infringement of minimum reserve requirements, no sanction shall be imposed for the infringement of the statistical reporting requirements.

Article 5

Final provision

This Decision shall enter into force on 1 September 2010. It shall apply from the reference period December 2010 for monthly and annual reporting requirements and the fourth quarter 2010 for quarterly reporting requirements.

Done at Frankfurt am Main, 19 August 2010.

The President of the ECB
Jean-Claude TRICHET