

DECISIONS

DECISION (EU) 2021/1815 OF THE EUROPEAN CENTRAL BANK

of 7 October 2021

on the methodology applied for the calculation of sanctions for non-compliance with the requirement to hold minimum reserves and related minimum reserve requirements (ECB/2021/45)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular to 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 to Article 19.1 and Article 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 to Article 6(2) thereof,

Whereas:

- (1) In order to ensure legal certainty and in the interest of transparency, institutions should be informed of the methods applied by the ECB to calculate sanctions imposed pursuant to Article 7(1) of Council Regulation (EC) No 2531/98 ⁽²⁾ for non-compliance with the minimum reserve requirements laid down in Regulation (EU) 2021/378 of the European Central Bank (ECB/2021/1) ⁽³⁾.
- (2) The formula and method applied by the ECB to calculate sanctions for failure to hold all or part of the required minimum reserves are specified in a Notice of the European Central Bank on the imposition of sanctions for breaches of the obligation to hold minimum reserves ⁽⁴⁾. In the interest of legal certainty and in order to prevent further fragmentation of the legal framework regarding the imposition of sanctions in different fields of the ECB's competence, it is appropriate that the Notice be withdrawn and its relevant content be transferred to a new Decision.
- (3) Similarly, it is necessary in the interests of transparency to lay down the formula and method applied by the ECB to calculate sanctions pursuant to Article 7(3) of Council Regulation (EC) No 2531/98 for failure to comply with the requirement to notify the relevant national central bank of any restrictions that would prevent the institution from liquidating, transferring, assigning or disposing of its funds held in minimum reserve pursuant to the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1).
- (4) In order to ensure a harmonised framework for the application of minimum reserve requirements, it is necessary that this Decision apply from the same date as the amendment to Article 11 of Regulation (EC) No 2157/1999 of the European Central Bank (ECB/1999/4) ⁽⁵⁾,

⁽¹⁾ OJ L 318, 27.11.1998, p. 4.

⁽²⁾ 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).

⁽³⁾ Regulation (EU) 2021/378 of the European Central Bank of 22 January 2021 on the application of minimum reserve requirements (ECB/2021/1) (OJ L 73, 3.3.2021, p. 1).

⁽⁴⁾ OJ C 39, 11.2.2000, p. 3.

⁽⁵⁾ 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).

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision establishes the methodology applied by the ECB when calculating sanctions imposed pursuant to Article 7 of Regulation (EC) No 2531/98.

Article 2

Methodology applied for calculation of sanctions for failure to hold minimum reserves

Where the ECB imposes a sanction pursuant to Article 7(1) of Regulation (EC) No 2531/98, the applicable sanction for failure to hold minimum reserves pursuant to Regulation (EU) 2021/378 (ECB/2021/1) shall be calculated based on the formula and method set out in Annex I to this Decision.

Article 3

Methodology applied for calculation of sanctions for failure to comply with notification requirements in relation to minimum reserves

Where the ECB imposes a sanction pursuant to Article 7(3) of Regulation (EC) No 2531/98 for a failure to comply with the requirement to notify the relevant national central bank of any restrictions that would prevent an institution from liquidating, transferring, assigning or disposing of its funds held in minimum reserve pursuant to the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1), the applicable sanction shall be calculated based on the formula and method set out in Annex II to this Decision.

Article 4

Entry into force

This Decision shall enter into force on 3 November 2021.

Done at Frankfurt am Main, 7 October 2021.

The President of the ECB
Christine LAGARDE

ANNEX I

**Formula and method for calculating a sanction pursuant to Article 7(1) of Regulation (EC)
No 2531/98**

1. Amount of the sanction imposed by the European Central Bank for failure to hold the required level of minimum reserves:

If an institution subject to the minimum reserve requirements fails to hold the required level of minimum reserves, in accordance with Council Regulations or regulations or decisions of the ECB associated therewith, a sanction will be imposed which is calculated as a penalty of 2,5 percentage points above the average, taken over the maintenance period in which the non-compliance occurred, of the marginal lending rate of the European System of Central Banks, applied to the daily average amount of minimum reserves the institution concerned failed to hold.

The penalty is calculated using the following formula:

$$P_t = \frac{D_t \cdot n_t \cdot \sum_{i=1}^n \frac{MLR_i + 2.5}{n_t \cdot 100}}{360}$$

Where:

P_t = penalty to be paid owing to the lack of the required reserves for the maintenance period t

D_t = the amount of required holdings lacking for the maintenance period t (as a daily average)

N_t = number of calendar days in the maintenance period t

I = the calendar day of the maintenance period t

MLR_i = the marginal lending rate on day i

Where an institution subject to the minimum reserve requirements fails to comply with the notification obligation set out in the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1), if, following the detection of that non-compliance, it is also ascertained that, as a result of the application of point (d) of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1), that institution has failed to comply with the obligation to hold the required level of minimum over more than one maintenance period, then the relevant maintenance period for the purposes of calculating the sanction in accordance with Section 1 of this Annex is the maintenance period in which the non-compliance is ascertained.

2. Repetitive breach of the minimum reserve requirements:

If an institution subject to the minimum reserve requirements fails to hold the required level of minimum reserves more than twice during a 12-month period, then it is deemed to have committed a repetitive breach.

For each repetitive breach a sanction will be imposed which is calculated as a penalty of five percentage points above the average, taken over the maintenance period in which the repetitive breach occurred, of the marginal lending rate of the European System of Central Banks, applied to the daily average amount of minimum reserves the institution concerned failed to hold. The penalty is otherwise calculated using the formula set out in Section 1 of this Annex.

ANNEX II

Formula and method for calculating a sanction pursuant to Article 7(3) of Regulation (EC) No 2531/98 for a failure to comply with the requirement to notify the relevant national central bank of any restrictions that would prevent an institution from liquidating, transferring, assigning or disposing of its funds held in minimum reserve pursuant to the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1)

1. Amount of the sanction imposed by the European Central Bank in the event of a failure to notify to the relevant national central bank any legal, contractual, regulatory or other restrictions that would prevent an institution from liquidating, transferring, assigning or disposing of its funds held in minimum reserve pursuant to the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1):

In the event of a failure to comply with the obligation to notify to the relevant national central bank any legal, contractual, regulatory or other restrictions that would prevent an institution from liquidating, transferring, assigning or disposing of its funds held in minimum reserve pursuant to the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1), a sanction will be imposed which is calculated as a penalty of 2,5 percentage points above the average, taken over the period in relation to which the sanction is imposed, of the marginal lending rate of the European System of Central Banks, applied to the daily average amount of funds affected by the institution's failure to notify over the period in relation to which the sanction is imposed. If the non-compliance extends over more than one maintenance period then the period in relation to which the sanction is imposed will not exceed the total number of days of the maintenance period in which the non-compliance is detected.

Subject to Section 3 of this Annex, the penalty is calculated using the following formula:

$$P_s = \frac{D_s * n_s * \sum_{i=1}^{n_s} \frac{MLR_i + 2,5}{n_s * 100}}{360}$$

Where:

P_s = penalty to be paid owing to the lack of notification pursuant to the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1)

D_s = the amount of funds affected by the institution's failure to notify under the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1)

n_s = the lesser of: (i) the total number of calendar days without notification; and (ii) the number of days in the maintenance period in which the non-compliance is detected

i = the calendar day of the period in relation to which the sanction is imposed

MLR_i = the marginal lending rate on day i

2. Repetitive breach of the obligation to notify to the relevant national central bank any legal, contractual, regulatory or other restrictions that would prevent an institution from liquidating, transferring, assigning or disposing of its funds held in minimum reserve pursuant to the second subparagraph of Article 3(1) of Regulation (EU) 2021/378 (ECB/2021/1):

Where a sanction has been imposed on an institution for its failure to notify to the relevant national central bank any legal, contractual, regulatory or other restrictions that would prevent the institution from liquidating, transferring, assigning or disposing of its funds held in minimum reserve pursuant to the second subparagraph of Article 3(1), should that institution fail to notify to the relevant national central bank any such restrictions pursuant to the second subparagraph of Article 3(1) during the 12-month period following the date on which the imposition of that sanction has been notified to it, then it is deemed to have committed a repetitive breach.

For each repetitive breach, a sanction will be imposed, which is calculated as a penalty of five percentage points above the average, taken over the period in relation to which the sanction is imposed, of the marginal lending rate of the European System of Central Banks, applied to the daily average amount of funds affected by the institution's failure to notify over the period in relation to which the sanction is imposed. The penalty is otherwise calculated using the formula set out in Section 1 of this Annex.

3. The principle of proportionality and the circumstances of the specific case:

Having been calculated in accordance with the formula set out in Section 1 of this Annex, the amount of the penalty may be adjusted to take into account the principle of proportionality and the circumstances of the specific case in accordance with Article 2(2) and (3) of Regulation (EC) 2532/98. Any adjustment to the amount of the penalty is subject to the limits set out in Article 2(1) of that Regulation.
