

**REGULATION (EU) 2023/1092 OF THE EUROPEAN CENTRAL BANK****of 25 May 2023****amending Regulation (EC) No 2157/1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4) (ECB/2023/13)**

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 thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 19.1 and 34.3 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 <sup>(1)</sup>, and in particular Article 6(2) thereof,

Whereas:

- (1) Penalties imposed by the European Central Bank (ECB) for breaching obligations arising from ECB regulations or decisions should be effective, proportionate and dissuasive. In order to further enhance the effectiveness and the dissuasive effect of its powers to impose sanctions, and in the interests of consistency and legal certainty, the ECB should publish a decision to impose a sanction or information relating thereto as the default rule. This ensures that the exercise of the ECB's sanctioning power is more effective to act as a deterrent to the undertakings that are required to fulfil obligations arising from ECB regulations or decisions, enhancing the dissuasive effect of a pecuniary sanction.
- (2) The publication of sanctions reinforces the transparency of decision-making and the accountability of the ECB when imposing them, including by allowing sanctions imposed on different undertakings to be compared. Hence, the publication of sanctions benefits the undertakings that are required to fulfil obligations arising from ECB regulations or decisions by promoting fair and equitable treatment. Publishing the amount, moreover, ensures that it can be verified that sanctions do not diverge without justification from one another, strengthening the principle of non-discrimination and guaranteeing a level playing field.
- (3) Publishing sanctions imposed by the ECB in the field of its central banking tasks is consistent with the regime applicable to sanctions imposed in the field of supervision, where all sanctions are published <sup>(2)</sup> unless specific exceptions apply. Considerations regarding the principle of consistency encourage the publication of sanctions in relation to all tasks of the ECB, because a similar rationale for publication applies. The publication of sanctions serves, on the one hand, as a signal to the market and, in certain cases, to potential counterparties of the sanctioned entity. On the other hand, the publicity enhances the dissuasive effect of the sanction.
- (4) The publication of sanctions reinforces the visibility of efficient enforcement, fostering public confidence in the ECB, and Union institutions in general.
- (5) In view of the specific features of financial markets, publication of the details of a sanction should be subject to carefully defined exceptions, to take into account justified market, security and business interests. In particular, if publication would jeopardise the stability of the financial markets or the financial system or an ongoing criminal investigation or cause disproportionate damage to the undertaking concerned, the publication of details of a sanction should either be anonymised or postponed where such circumstances are likely to cease within a reasonable period of time. This reflects the generally applicable principle of proportionality. Lastly, there should be

<sup>(1)</sup> OJ L 318, 27.11.1998, p. 4.

<sup>(2)</sup> Article 18(6) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63), and Article 132 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

an exception where publication would result in the publication of confidential information and the ECB considers that the risk to legitimate public interests in security may not be mitigated. This is of particular importance in the field of banknotes and the oversight of systemically important payment systems.

- (6) In line with the general competence to decide whether a sanction is imposed, the Executive Board also decides whether an exception from publication applies. In this regard, the Executive Board takes note of the grounds brought forward by the investigating unit or the competent national central bank. If it decides that an exception applies, this should be indicated in its decision to impose the sanction, otherwise, the sanction will be published.
- (7) In each case, in determining the appropriate sanction and whether an exception to publication of certain information should apply, the ECB is guided by the principle of proportionality.
- (8) Therefore, Regulation (EC) No 2157/1999 of the European Central Bank (ECB/1999/4) <sup>(1)</sup> should be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### Article 1

#### Amendments

Regulation (EC) No 2157/1999 (ECB/1999/4) is amended as follows:

- (1) Article 7a is amended as follows:

- (a) in paragraph 1, the following sentence is added:

‘If the investigating unit or the competent national central bank considers that one or more of the exceptions set out in Article 9(1) applies, it shall specify this in its proposal.’;

- (b) the following paragraph 7a is inserted:

‘7a. If the Executive Board, on the basis of a complete file, considers that a sanction shall be imposed, but that one or more of the exceptions set out in Article 9(1) applies, it shall decide whether and to what extent the sanction shall be published.’;

- (2) in Article 8(3), point (b) is replaced by the following:

‘(b) amend the decision of the Executive Board by modifying any of the following:

- (i) the amount of the sanction to be imposed;
- (ii) the grounds giving rise to an infringement;
- (iii) whether and to what extent the sanction is published.’;

- (3) in Article 9, paragraph 1 is replaced by the following:

‘1. The ECB shall publish any decision imposing sanctions in case of a breach of an ECB regulation or decision on its official website without undue delay, once the decision has become final in accordance with Article 3(8) of Regulation (EC) No 2532/98.

The publication shall include information on the type and nature of the breach and the identity of the undertaking concerned, as well as the amount and the nature of the sanction, unless the Executive Board determines that such publication would:

- (a) jeopardise the stability of the financial markets or the financial system or an ongoing criminal investigation;
- (b) cause, in so far as can be determined, disproportionate damage to the undertaking concerned; or

<sup>(1)</sup> 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) (OJ L 264, 12.10.1999, p. 21).

- (c) result in the publication of confidential information, which would put at risk legitimate public interests in security, such as the security and protection of the integrity of euro banknotes or the secure management of cyber or operational risks to systemically important payment systems.

In the circumstances referred to in the second subparagraph, points (a) to (c), 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.

For the purposes of second subparagraph, point (c), the ECB may choose not to publish a decision imposing a sanction where it considers that the risk to legitimate public interests in security may not be mitigated by publishing the relevant decisions on an anonymised basis or by postponing their publication, as referred to in the previous subparagraph.

Where a decision imposing a sanction is under appeal before the Court of Justice of the European Union, the ECB shall, without undue delay, also publish on its official website information on the status of the appeal in question and the outcome thereof.

The information published pursuant to this paragraph shall remain on the official website of the ECB for at least five years.’;

- (4) in Article 11, the following paragraph 7 is added:

‘7. In the situations foreseen in paragraph 4, first indent, and in paragraph 5, the ECB shall publish the imposed sanction in accordance with Article 9(1). Where the Executive Board accepts a proposal submitted by the competent national central bank determining that one or more of the exceptions set out in Article 9(1), second subparagraph, applies, it may decide to publish that decision on an anonymised basis or postpone such publication. Where the exception in Article 9(1), second subparagraph, point (c), applies, the Executive Board may decide not to publish the imposed sanction.’

#### Article 2

#### Final provisions

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 25 May 2023.

For the Governing Council of the ECB  
The President of the ECB  
Christine LAGARDE

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