Regulation (EU) 2017/2095 of the European Central Bank of 3 November 2017 amending Regulation (EC) No 2157/1999 on the powers of the European Central Bank to impose sanctions (ECB/2017/34)

REGULATION (EU) 2017/2095 OF THE EUROPEAN CENTRAL BANK

of 3 November 2017

amending Regulation (EC) No 2157/1999 on the powers of the European Central Bank to impose sanctions *(ECB/2017/34)*

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 34.3 and 19.1 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,

Whereas:

(1) The European Central Bank (ECB) has applied Regulation (EC) No 2157/1999 of the European Central Bank (ECB/1999/4)[(2)] to impose sanctions in its various fields of competence, including in particular the implementation of the monetary policy of the Union, the operation of payment systems and the collection of statistical information.

(2) Regulation (EU) No 795/2014 of the European Central Bank (ECB/2014/28)[(3)] entitles the ECB to impose sanctions on operators of systemically important payment systems (SIPS) in the case of an infringement of that Regulation.

(3) In the area of the oversight of SIPS, the experience gained in conducting the first comprehensive assessment under Regulation (EU) No 795/2014 (ECB/2014/28) has demonstrated that certain amendments need to be made to Regulation (EC) No 2157/1999 (ECB/1999/4) to ensure that sanctions can be effectively imposed for oversight infringements.

(4) In particular, clarification of the definition of a competent national central bank is required to ensure consistency with the definition of a competent authority in Regulation (EU) No 795/2014 (ECB/2014/28). In addition, clarification of the composition of the internal independent investigating unit is required to ensure it can independently perform its investigative functions in the field of payment systems oversight.

(5) Therefore, Regulation (EC) No 2157/1999 (ECB/1999/4) should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/2095 of the European Central Bank. (See end of Document for details)*

Article 1

Amendments

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

1. Article 1 is replaced by the following:

Article 1

Definitions

For the purposes of this Regulation, the term 'competent national central bank' means the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred or, for infringements in the field of oversight of systemically important payment systems, it means the Eurosystem central bank that has been identified as a competent authority within the meaning of Article 2(5) of Regulation (EU) No 795/2014 of the European Central Bank (ECB/2014/28)[(4)]. Other terms used have the same meaning as defined in Article 1 of Regulation (EC) No 2532/98.;

2. in Article 1b, paragraph 1 is replaced by the following:

1. For the purposes of deciding whether to initiate an infringement procedure pursuant to Article 2 and exercise the powers laid down in Article 3, the ECB shall establish an internal independent investigating unit (hereinafter 'investigating unit') composed of investigating officers who shall perform their investigative functions independently from the Executive Board and the Governing Council, and shall not take part in the deliberations of the Executive Board and Governing Council. The investigating unit shall comprise investigating officers with a range of relevant knowledge, skills and experience.;

3. in Article 1b, the following paragraph 1a is inserted:

1a. For the investigation of infringements of Regulation (EU) No 795/2014 (ECB/2014/28), the ECB may appoint as investigating officers: (i) members of staff of the ECB or of a national central bank of a Member State, as long as the appointment is accepted by the relevant national central bank; or (ii) external experts acting on the basis of an appropriate mandate. The ECB may not appoint as investigating officers members of the Market Infrastructure and Payments Committee or members of staff of the ECB or of a national central bank of a Member State who have been directly involved in the activities of the assessment group that carried out the initial oversight assessment identifying an infringement or grounds for suspecting an infringement.;

4. in Article 8, the following paragraph 3 is added:

3. In carrying out the review, the Governing Council may:
   a confirm the decision of the Executive Board;
   b amend the decision of the Executive Board by modifying the amount of the sanction to be imposed and/or the grounds giving rise to an infringement;
   c set aside the decision of the Executive Board.;

5. in Article 10, the following paragraph 4 is added: