Council Regulation (EU) 2015/159 of 27 January 2015 amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions

COUNCIL REGULATION (EU) 2015/159

of 27 January 2015

amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions

THE COUNCIL OF THE EUROPEAN UNION,

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 Article 34.3 thereof,

Having regard to the Recommendation of the European Central Bank[(1)],

Having regard to the opinion of the European Parliament[(2)],

Having regard to the opinion of the European Commission[(3)],

Acting in accordance with the procedure laid down in Article 129(4) of the Treaty and in Article 41 of the Statute of the European System of Central Banks and of the European Central Bank,

Whereas:

(1) Regulation (EC) No 2532/98[(4)] is founded on Article 132(3) TFEU and Article 34.3 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute') that empower the Council to establish the limits and the conditions for the European Central Bank (hereinafter the 'ECB') to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. The content of Regulation (EC) No 2532/98 should therefore be confined to the infringements of regulations and decisions adopted by the ECB. For infringements of directly applicable Union law, other than regulations and decisions adopted by the ECB, the relevant provisions laid down by Regulation (EU) No 1024/2013[(5)] should apply.

(2) The ECB has applied Regulation (EC) No 2532/98 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.

(3) Regulation (EU) No 1024/2013 vested the ECB with some supervisory tasks and entitled the latter to impose on the credit institutions it supervises: (a) administrative pecuniary penalties when these institutions breach a requirement under directly applicable Union law in relation to which administrative pecuniary sanctions shall be made available to competent authorities under the relevant Union law; and (b) sanctions

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in accordance with Regulation (EC) No 2532/98 in case of a breach of ECB regulations or decisions (hereinafter jointly referred to as 'administrative penalties').

(4) Article 18(7) of Regulation (EU) No 1024/2013 provides that for the purposes of carrying out the tasks conferred on it by that Regulation in case of breach of ECB regulations and decisions, the ECB may impose sanctions in accordance with Regulation (EC) No 2532/98.

(5) In this regard, certain provisions of Regulation (EC) No 2532/98 are not coherent with a wide range of provisions contained in Regulation (EU) No 1024/2013 that are directly relevant to the ECB's powers to impose sanctions in case of a breach of ECB regulations and decisions. It is therefore necessary to identify the rules laid down in Regulation (EC) No 2532/98 that should be amended when referring to the imposition of sanctions by the ECB in case of a breach of ECB regulations or decisions relating to its supervisory tasks.

(6) On the basis of its power to implement the supervisory tasks allocated to it by the Treaties, laid down under Article 34 of the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, the ECB has adopted Regulation (EU) No 468/2014[(6)]. In order to organise the ECB task of ensuring compliance with the rules contained under the directly applicable Union law, Regulation (EU) No 468/2014 further specifies, in accordance with Article 4(3) of Regulation (EU) No 1024/2013 and in accordance with the fundamental rights and principles laid down in the Charter of Fundamental Rights of the European Union, the framework for administrative penalties laid down in Article 18 of Regulation (EU) No 1024/2013. It also establishes rules concerning the imposition of administrative penalties in case of a breach of an ECB regulation or decision. Regulation (EU) No 468/2014 is an instrument implementing secondary legislation. Accordingly, in case of conflict between the provisions laid down in that Regulation and the provisions of Regulation (EC) No 2532/98, Regulation (EC) No 2532/98 will prevail.

(7) The ECB should publish decisions imposing sanctions in case of a breach of an ECB regulation or decision in the supervisory field, unless such publication would jeopardise the stability of financial markets or would cause, in so far as it can be determined, disproportionate damage to the undertaking involved.

(8) The upper limit of a fine that the ECB may impose on an undertaking for failure to comply with an ECB regulation or decision in the supervisory field should not differ from the upper limit of a fine that the ECB may impose on an undertaking for a breach of directly applicable Union law, in order to ensure consistency in the treatment of equally serious infringements. All fines imposed by the ECB in the exercise of its supervisory tasks should therefore be subject to the same upper limits.

(9) The ECB should be able to impose periodic penalty payments on undertakings in order to compel them to comply with ECB regulations or decisions in the supervisory field, or to put an end to a continued infringement thereof. The upper limit of periodic penalty payments should be commensurate with the upper limit of fines applicable in the supervisory field.

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(10) Article 25 of Regulation (EU) No 1024/2013 lays down the principle of separation, whereby the ECB carries out the tasks conferred on it by Regulation (EU) No 1024/2013 without prejudice to and separately from its tasks relating to monetary policy and any other tasks. This principle is to be followed without restriction in all tasks carried out by the ECB. In order to strengthen this principle of separation, a Supervisory Board has been established pursuant to Article 26 of Regulation (EU) No 1024/2013, which, inter alia, is responsible for preparing complete draft decisions for the Governing Council of the ECB in the supervisory field. In addition, the decisions taken by the Governing Council of the ECB are subject to review by the Administrative Board of Review, under the conditions laid down in Article 24 of Regulation (EU) No 1024/2013. Taking account of the principle of separation and the establishment of the Supervisory Board and the Administrative Board of Review, two distinct procedures should apply: (a) where the ECB contemplates the imposition of administrative penalties in the exercise of its supervisory tasks, decisions to this effect are taken by the Governing Council of the ECB based on a complete draft decision from the Supervisory Board and subject to review by the Administrative Board of Review; and (b) where the ECB contemplates the imposition of sanctions in the exercise of its non-supervisory tasks, decisions to this effect are taken by the Executive Board of the ECB and subject to review by the Governing Council of the ECB.

(11) Due to the complexity of the investigation of infringements in the supervisory field, the power to impose and enforce sanctions relating to the supervisory tasks of the ECB should be subject to longer time limits than those provided for sanctions relating to the non-supervisory tasks of the ECB. The suspension and interruption of these time limits should be regulated accordingly, also taking into account that infringement procedures in the supervisory field may overlap with criminal investigations and criminal proceedings that are based on the same facts.

(12) Regulation (EC) No 2532/98 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments

Regulation (EC) No 2532/98 is amended as follows:

(1) Article 1 is amended as follows:

(a) point 6 is replaced by the following:

6. "periodic penalty payments" shall mean amounts of money which, in the case of a continued infringement, an undertaking is obliged to pay either as a punishment, or with a view to forcing the persons concerned to comply with the ECB supervisory regulations and decisions. Periodic penalty payments shall be calculated for each complete day of continued infringement:

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(a) following notification of the undertaking of a decision requiring the termination of such an infringement in accordance with the procedure laid down in the second subparagraph of Article 3(1); or

(b) when the continued infringement falls under the scope of Article 18(7) of Council Regulation (EU) No 1024/2013[7] in accordance with the procedure laid down in Article 4b of this Regulation;;

(b) point 7 is replaced by the following:

7. "sanctions" shall mean fines and periodic penalty payments.;

(2) the following Article is inserted:

Article 1a

General principles and scope

1 This Regulation shall apply to the imposition by the ECB of sanctions on undertakings for failure to comply with obligations arising from ECB decisions or regulations.

2 The rules applying to the imposition by the ECB, in the exercise of its supervisory tasks, of sanctions in case of a breach of an ECB regulation or decision shall derogate from the rules laid down in Articles 2 to 4 to the extent laid down in Articles 4a to 4c.

3 The ECB shall publish any decision imposing sanctions on an undertaking in case of a breach of an ECB regulation or decision, in the supervisory field, whether or not such decision has been appealed.

The ECB shall carry out such a publication on its website without undue delay, and after the decision has been notified to the undertaking concerned. The publication shall include information on the type and nature of the breach and the identity of the undertaking concerned, unless publication in this manner would either:

a jeopardise the stability of the financial markets or an ongoing criminal investigation; or

b cause, in so far as can be determined, disproportionate damage to the undertaking concerned.

In these circumstances, 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.

If an appeal to the Court of Justice in respect of a decision imposing a sanction is pending, the ECB shall, without undue delay, also publish information on the status of the appeal in question and the outcome thereof on its official website.

The ECB shall ensure that information published under this paragraph remains on its official website for at least five years.;

(3) in Article 2, paragraph 4 is replaced by the following:

4. Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the undertaking from its performance, unless the decision adopted in accordance with Article 3(4) or Article 4b explicitly states the contrary.;

(4) Article 3 is amended as follows:

(a) the first sentence of paragraph 1 is replaced by the following:

1. The decision on whether to initiate an infringement procedure shall be taken by the ECB, acting on its own initiative or on the basis of a motion to that effect addressed to it by the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred.;

(b) paragraph 10 is replaced by the following:

10. If an infringement relates exclusively to a task entrusted to the ESCB or the ECB under the Treaty and the Statute, an infringement procedure may be initiated only on the basis of this Regulation, irrespective of the existence of any national law or regulation which may provide for a separate procedure. If an infringement also relates to one or more areas outside the competence of the ESCB or the ECB, the right to initiate an infringement procedure on the basis of this Regulation shall be independent of any right of a competent national authority to initiate separate procedures in relation to such areas outside the competence of the ESCB or the ECB. This provision shall be without prejudice to the application of criminal law and of national law relating to prudential supervisory competencies in participating Member States, in accordance with Regulation (EU) No 1024/2013.;

(5) the following Articles are inserted:

Article 4a

Specific rules regarding the upper limits of sanctions imposed by the ECB in the exercise of its supervisory tasks

1 By way of derogation from Article 2(1), in the case of infringements relating to decisions and regulations adopted by the ECB in the exercise of its supervisory tasks, the limits within which the ECB may impose fines and periodic penalty payments shall be as follows:

a for fines, the upper limit shall be twice the amount of the profits gained or losses avoided because of the infringement where these can be determined, or 10 % of the total annual turnover of the undertaking;

b for periodic penalty payments, the upper limit shall be 5 % of the average daily turnover per day of infringement. Periodic penalty payments may be imposed in respect of a maximum period of six months from the date stipulated in the decision imposing the periodic penalty payment.

2 For the purposes of paragraph 1:

a "annual turnover" means the annual turnover of the undertaking concerned in the preceding business year, as defined in relevant Union law, and where this is not available, according to the most recently available annual financial