

Recommendation of the European Central Bank for a Council Regulation (EC) concerning the powers of the European Central Bank to impose sanctions

(98/C 246/07)

(Submitted by the European Central Bank on 7 July 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community (the Treaty) and in particular Article 108a(3) thereof and to Article 34.3 of the Statute of the European System of Central Banks and of the European Central Bank (the Statute),

Having regard to the recommendation of the European Central Bank (the ECB),

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Commission,

In accordance with the procedure foreseen in Article 106(6) of the Treaty and in Article 42 of the Statute,

(1) Whereas this Regulation, according to Article 34.3 of the Statute, in conjunction with Article 43.1 of the Statute, paragraph 8 of the Protocol (11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland and paragraph 2 of the Protocol (12) on certain provisions relating to Denmark, shall not confer any rights or impose any obligations on a non-participating Member State;

(2) Whereas Article 34.3 of the Statute requires the Council to specify the limits and conditions under which the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions;

(3) Whereas infringements of the obligations arising from ECB regulations and decisions can arise in various fields of competence of the ECB;

(4) Whereas it is appropriate, in order to ensure a uniform approach towards the imposition of sanctions in the various fields of competence of the ECB, that all general and procedural provisions for

the imposition of such sanctions are contained in a single Council regulation; whereas other Council regulations provide for specific sanctions in specific fields and refer to the present Regulation for the principles and procedures relating to the imposition of such sanctions;

(5) Whereas, in order to provide an effective regime for the administration of sanctions, this Regulation must allow the ECB a certain discretion, both in relation to the relevant procedures and to their implementation within the limits and conditions laid down in this Regulation; whereas the provisions of this Regulation can only be effectively applied if participating Member States have adopted the necessary measures with a view to ensuring that their authorities have the powers to assist and collaborate fully with the ECB in the implementation of the infringement procedure as required by this Regulation, in conformity with Article 5 of the Treaty;

(6) Whereas the ECB shall have recourse to the national central banks to carry out the tasks of the European System of Central Banks (the ESCB) to the extent deemed possible and appropriate;

(7) Whereas decisions under this Regulation imposing pecuniary obligations shall be enforceable in accordance with Article 192 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

1. *participating Member State*: shall mean a Member State which has adopted the single currency in accordance with the Treaty;

2. *national central bank*: shall mean the central bank of a participating Member State;
3. *undertakings*: shall mean those natural or legal persons, private or public, with the exception of public persons in the exercise of their public powers, in a participating Member State, which are the subject of obligations arising from ECB regulations and decisions, and shall include branches or other permanent establishments located in a participating Member State, the head office or registered office of which is outside a participating Member State;
4. *infringement*: shall mean any failure by an undertaking to fulfil an obligation arising from ECB regulations or decisions;
5. *fine*: shall mean a single amount of money which an undertaking is obliged to pay as a sanction;
6. *periodic penalty payments*: shall mean amounts of money which, in the case of a continued infringement, an undertaking is obliged to pay periodically as a sanction, which shall be calculated for each day of continued infringement following the notification of the undertaking of a decision, in accordance with Article 3(1), second paragraph, of this Regulation, requiring the termination of such an infringement;
7. *sanctions*: shall mean fines and periodic penalty payments imposed as a consequence of an infringement.

Article 2

Sanctions

1. The limits within which the ECB may impose fines and periodic penalty payments on undertakings, unless otherwise provided for in specific Council regulations, shall be the following:
 - (a) fines: the upper limit shall be EUR 500 000, and
 - (b) periodic penalty payments: the upper limit shall be EUR 10 000 per day of infringement. Periodic penalty payments may be imposed in respect of a maximum period of six months following the notification of the undertaking of the decision in accordance with Article 3(1) of this Regulation.

2. In determining whether to impose a sanction and in determining the appropriate sanction, the ECB shall be guided by the principle of proportionality.

3. The ECB shall take into consideration, where relevant, the circumstances of the specific case, such as:

- (a) on the one hand, the good faith and the degree of openness of the undertaking in the interpretation and fulfilment of the obligation arising from an ECB regulation or decision as well as the degree of diligence and cooperation shown by the undertaking or, on the other, any evidence of wilful deceit on the part of officials of the undertaking;
- (b) the seriousness of the effects of the infringement;
- (c) the repetition, frequency or duration of the infringement by that undertaking;
- (d) the profits obtained by the undertaking by reason of the infringement;
- (e) the economic size of the undertaking, and
- (f) prior sanctions imposed by other authorities on the same undertaking and based on the same facts.

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) of this Regulation explicitly states the contrary.

Article 3

Procedural rules

1. The decision on whether or not to initiate an infringement procedure shall be taken by the Executive Board of 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. The same decision may also be taken, on its own initiative or on the basis of a motion to that effect addressed to it by the ECB, by the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred.

Written notification of the decision to initiate an infringement procedure shall be given to the undertaking concerned, to the relevant supervisory authority and to the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred or to the ECB. The notification shall disclose the details of the allegations against the undertaking and the evidence on which such allegations are founded. Where appropriate, the decision shall require the termination of the alleged infringement and shall give notice to the undertaking concerned that periodic penalty payments may be imposed.

2. The decision may require the undertaking to submit to an infringement procedure. In carrying out the infringement procedure, the ECB or the national central bank, as the case may be, shall have the right to:

- (a) require the submission of documents;
- (b) examine the books and records of the undertaking;
- (c) take copies or extracts from such books and records, and
- (d) obtain written or oral explanations.

When an undertaking obstructs the conduct of the infringement procedure, the participating Member State where the relevant premises are located shall afford the necessary assistance, including ensuring access by the ECB or the national central bank to the premises of the undertaking, so that the aforementioned rights can be exercised.

3. The undertaking concerned shall have the right to be heard by the ECB or the national central bank, as the case may be. The undertaking shall be given no fewer than 30 days to present its defence.

4. The Executive Board of the ECB shall, as soon as possible after receiving a submission from the national central bank which initiates the infringement procedure or after having consulted the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred, adopt a reasoned decision as to whether an undertaking has committed an infringement together with the sanction, if any, to be imposed. The undertaking concerned shall be notified in writing of the decision and shall be informed of its right of review, to which the following paragraph refers. Notification of the decision shall also be given to the relevant supervisory authorities and to the national central bank of the Member State in whose jurisdiction the infringement has occurred.

5. The undertaking concerned shall have the right to request a review of the decision of the Executive Board by the Governing Council of the ECB. Such a request shall be made within 30 days of the receipt of the notification of the decision and shall include all supporting information and allegations. Such a request shall be addressed in writing to the Governing Council of the ECB.

6. A decision by the Governing Council of the ECB in response to a request submitted under paragraph 5 shall include the reasons for the decision and written notification thereof shall be given to the undertaking concerned, to the relevant supervisory authority of that undertaking and to the national central bank of the Member State in whose jurisdiction the infringement occurred. The notification shall inform the undertaking of its right to judicial review. If no decision has been taken by the Governing Council of the ECB within two months of the request, the undertaking concerned may request a judicial review of the decision of the Executive Board in accordance with the Treaty.

7. No sanction shall be enforced against the undertaking until the decision has become final through either:

- (a) the period of 30 days referred to in paragraph 5 having elapsed without the undertaking making a request for review to the Governing Council of the ECB; or
- (b) the Governing Council notifying the undertaking of its decision, or the period referred to in paragraph 6 having elapsed without the Governing Council having taken a decision.

8. The proceeds from sanctions imposed by the ECB shall belong to the ECB.

9. If an infringement relates exclusively to a task entrusted to the ESCB under the Treaty and the Statute, an infringement procedure may only be initiated 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, 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. This provision shall be without prejudice to the application of criminal law and to prudential supervisory competencies in participating Member States.

10. An undertaking shall bear the costs of the infringement procedure if it has been decided that it has committed an infringement.

*Article 4***Time limits**

1. The right to take the decision to initiate an infringement procedure, as provided for in this Regulation, shall expire one year after the existence of the alleged infringement first became known either to the ECB or to the national central bank of the Member State in whose jurisdiction the alleged infringement occurred and, in any case, five years after the infringement occurred or, in the case of a continued infringement, five years after the infringement was terminated.

2. The right to take the decision to impose a sanction in respect of an infringement, as provided for in this Regulation, shall expire one year after the decision to initiate the procedure as described in Article 3(1) was taken.

3. The right to start an enforcement procedure shall expire six months after the decision has become enforceable pursuant to Article 3(7).

*Article 5***Judicial review**

The Court of Justice of the European Communities shall have unlimited jurisdiction within the meaning of Article

172 of the Treaty over the review of final decisions whereby a sanction is imposed.

*Article 6***General provisions**

1. In the event of a conflict between the provisions of this Regulation and the provisions of other Council regulations enabling the ECB to impose sanctions, the provisions of the latter shall prevail.

2. Subject to the limits and conditions laid down in this Regulation, the ECB may adopt regulations to specify further the arrangements whereby sanctions may be imposed in accordance herewith as well as guidelines to coordinate and harmonise the procedures in relation to the conduct of the infringement procedure.

*Article 7***Final provisions**

This Regulation shall enter into force on 1 January 1999.

This Regulation shall be binding in its entirety and shall be directly applicable in all Member States.

Recommendation of the European Central Bank for a Council Regulation (EC) concerning the collection of statistical information by the European Central Bank

(98/C 246/08)

(Submitted by the European Central Bank on 7 July 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (the Statute) and in particular Article 5.4 thereof,

Having regard to the recommendation of the European Central Bank (the ECB),

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Commission,

In accordance with the procedure foreseen in Article 106(6) of the Treaty establishing the European Community (the Treaty) and in Article 42 of the Statute,

(1) Whereas Article 5.1 of the Statute requires the ECB, assisted by the national central banks, to collect either from the competent national authorities or directly from economic agents the statistical information which is necessary for the tasks of the European System of Central Banks (the ESCB) to be performed; whereas to facilitate the execution of these tasks, set out in Article 105 of the Treaty, and in particular the conduct of monetary policy, this statistical information is primarily used for the production of aggregated statistical information, for which the identity of individual economic agents is irrelevant, but may also be used at the level of individual economic agents; whereas Article 5.2 of the Statute requires the national central banks to carry out, to the extent possible, the tasks described in Article 5.1 of the Statute; whereas Article 5.4 of the Statute