Basic information

2014/0807(CNS) CNS - Consultation procedure Regulation	Procedure completed
European Central Bank (ECB): powers to impose sanctions Amending Regulation (EC) No 2532/98 1998/0809(CNS) **Subject** 5.20.03 European Central Bank (ECB), ESCB	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	SWINBURNE Kay (ECR)	22/07/2014
	Shadow rapporteur FERBER Markus (PPE) MAVRIDES Costas (S&D) VAN NIEUWENHUIZEN Cora (ALDE) MATIAS Marisa (GUE/NGL) GIEGOLD Sven (Verts/ALE)	

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	3366	2015-01-27

Key events

Date	Event	Reference	Summary
11/06/2014	Legislative proposal published	10896/2014	Summary
14/07/2014	Committee referral announced in Parliament		
11/11/2014	Vote in committee		
12/11/2014	Committee report tabled for plenary, 1st reading/single reading	A8-0028/2014	Summary
25/11/2014	Debate in Parliament		
26/11/2014	Decision by Parliament	T8-0062/2014	Summary
26/11/2014	Results of vote in Parliament		

27/01/2015	Act adopted by Council after consultation of Parliament		
27/01/2015	End of procedure in Parliament		
03/02/2015	Final act published in Official Journal		

Technical information

Procedure reference	2014/0807(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 2532/98 1998/0809(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 129-p4
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/00746

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE537.491	17/09/2014	
Amendments tabled in committee		PE539.837	21/10/2014	
Committee report tabled for plenary, 1st reading/single reading		A8-0028/2014	12/11/2014	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0062/2014	26/11/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	10896/2014	11/06/2014	Summary

European Commission

Document type	Reference	Date	Summary
For information	N8-0103/2014 OJ C 461 20.12.2014, p. 0001	18/12/2014	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 2015/0159
OJ L 027 03.02.2015, p. 0001 Summary

European Central Bank (ECB): powers to impose sanctions

2014/0807(CNS) - 26/11/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 361 votes to 118, with 223 abstentions, in the framework of a special legislative procedure (Parliament's consultation), a legislative resolution on the draft Council regulation amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions.

Parliament approved the draft proposed in the recommendation of the European Central Bank (ECB) as amended:

Publication of administrative penalties:

- after notification to the undertaking concerned, **the ECB shall, according to a transparent procedure and rules which it shall make public, publish, as a general rule without undue delay**, any decision imposing on an undertaking administrative pecuniary penalties for breaches of directly applicable Union law and sanctions for breaches of ECB regulations or decisions, provided that all legal means of appeal against such a decision have been exhausted;
- where the ECB considers that immediate publication of a decision would jeopardise the stability of financial markets or be disproportionate considering the degree of severity of the administrative pecuniary penalty or sanction imposed on an undertaking, **it shall have the discretion to delay the publication of the decision until three years** after the date on which the decision was taken;
- upon request the ECB shall hold **confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee** of the European Parliament concerning such cases. The ECB shall provide a justification for the delay in an annex to the published decision.

Division of competences between the ECB and the national competent authorities: in order to avoid conflicts of interest between authorities, Members recommended introducing, in the ECB Recommendation, an **explicit overall delineation of responsibilities**: without prejudice to their other specific competences derived from national law, the national competent authorities remain competent to impose administrative penalties but are to only impose such penalties on credit institutions directly supervised by the ECB if the ECB requires them to initiate proceedings for this purpose.

Proceeds from sanctions: Parliament noted that the proceeds from sanctions imposed by the ECB in the exercise of its supervisory tasks, including the collection of statistical information, shall belong to the **Single Resolution Fund**.

Time limits for administrative penalties: in its Recommendation, the ECB proposes that the right to take a decision to impose an administrative penalty on the infringement case expires five years after the infringement occurred. Members suggested **reducing the five year period to a three year period** which starts to run from the date on which the decision was taken to initiate infringement procedures, rather than the date on which the infringement occurred.

Although the ECB recommends that the time limit shall not exceed a period of ten years after the infringement occurred, Members suggested that the **time limit shall not exceed a period of seven years** after the date on which the decision to initiate an infringement procedure was taken or, in the case of a continued infringement, seven years after the infringement ceased.

The resolution provides guidance as to which types of actions by the ECB should cause the limitation periods to be interrupted.

Dialogue with supervisors outside the Union: in light of the globalisation of banking services and the increased importance of international standards, the ECB should, in association with the competent authorities of participating Member States, establish a regular dialogue with supervisors outside the Union to foster international coordination and to agree on shared principles in the imposition and enforcement of sanctions.

European Central Bank (ECB): powers to impose sanctions

2014/0807(CNS) - 27/01/2015 - Final act

PURPOSE: to adapt Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions in case of a breach of its regulations or decisions.

LEGISLATIVE ACT: Council Regulation (EU) 2015/159 amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions.

CONTENT: this Regulation adapts the framework set out in Regulation (EC) No 2532/98 for the purposes of monetary policy, establishing a regime for the imposition of sanctions by the ECB relating to the performance of its supervisory tasks under the single supervisory mechanism (Council Regulation (EU) No 1024/2013).

The main amendments have been made to Regulation (EC) No 2532/98:

General principles and scope: it is stipulated that 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.

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 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 jeopardise the stability of the financial markets or an ongoing criminal investigation; or cause, in so far as can be determined, disproportionate damage to the undertaking concerned.

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

Upper limits of sanctions: 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:

- **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;
- **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.

Procedural rules: where the ECB considers that there is reason to suspect that one or more breaches of an ECB regulation or decision are being or have been committed, the ECB shall exercise the **relevant investigations**.

On completion of an investigation and before a proposal for a complete draft decision is prepared and submitted to the Supervisory Board, the ECB shall inform the undertaking concerned of its right to make submissions in writing to the ECB on the factual results and the objections raised against the entity. It shall set a reasonable time limit for making such submissions. The ECB may invite the undertaking concerned to attend an **oral hearing**.

Specific time limits for sanctions: the right to take a decision to impose a sanction in case of a breach of an ECB decision or regulation relating to its supervisory tasks, shall expire **five years** after the infringement occurred or, in the case of a continued infringement, five years after the infringement ceased.

The limitation period shall be interrupted with effect from the date on which the action is notified to the supervised entity concerned. Each interruption shall cause the time limit to recommence. However, the time limit shall not exceed a period of **10 years** after the infringement occurred or, in the case of a continued infringement, 10 years after the infringement ceased.

The limitation period for the enforcement of sanctions shall be **suspended**: (i) until the deadline for payment of the imposed sanction has passed; (ii) if enforcement of payment of the imposed sanction is suspended pursuant to a decision of the Governing Council or of the Court of Justice.

ENTRY INTO FORCE: 4.2.2015.

European Central Bank (ECB): powers to impose sanctions

2014/0807(CNS) - 18/12/2014 - For information

The Commission issues **a favourable opinion** regarding the initiative of the ECB to recommend amendments to Council Regulation (EC) No 2532/98 1998 concerning the powers of the European Central Bank to impose sanctions.

In general terms, the Commission suggests the following changes:

- Since the Council Sanctions Regulation is based on Article 132(3) TFEU, it **can only deal with infringements of ECB regulations and decisions**, not with infringements to (other) directly applicable acts of Union law.
- **The interaction** between relevant provisions of the SSM Regulation, the Council Sanctions Regulation and Regulation (EU) No 468/2014 of the European Central Bank 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') deserves to be further clarified.

In **specific terms**, the Commission draws attention to the following points:

- the need to ensure consistency and to create a clear and comprehensive framework for publication of sanctions for infringements of ECB regulations and decisions;
- the ECB recommends that for periodic penalty payments the upper limit is 5 % of the average daily turnover per day of infringement. The reasons for this choice should at least be explained in the recitals of the Council Regulation;
- the recommendation provides a definition of annual turnover that does not correspond to the definitions in the SSM Regulation and provisions of CRD IV that apply to the imposition of administrative pecuniary penalties for the breach of directly applicable Union law. Since such divergent definitions could lead to different interpretations, the Commission would suggest that the provision is consistent with both the SSM Regulation and CRD IV;
- the Regulation should state that by way of derogation from Article 4, the right to take a decision to impose a sanction with regard to infringements of decisions and regulations adopted by the ECB in the exercise of its supervisory tasks, shall expire five years after the infringement occurred or, in the case of continuing or repeated infringements, five years after the infringement ceased;

- in order to provide more legal certainty for undertakings, but also for the ECB itself, the interruption of the limitation period should be linked to an objective moment that can be clearly identified. This could, for instance, be the opening of an infringement procedure or the formal opening of an investigation that is notified to the undertaking concerned.
- the drafting of the provision ensuring that in certain situations the limitation period in Article 4 is automatically extended should be clarified;
- lastly, the provisions regulating the time limits for enforcement of payment or payments terms and conditions should be restructured to stipulate what the limitation period is and when this period starts to run and only then stipulate in which situation the limitation period is interrupted.

European Central Bank (ECB): powers to impose sanctions

2014/0807(CNS) - 12/11/2014 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted, in the framework of a special legislative procedure (Parliament's consultation), the report by Kay SWINBURNE (ECR, UK) on the draft Council regulation amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions.

The committee approved the draft proposed in the recommendation of the European Central Bank (ECB) as amended:

Publication of administrative penalties: Members suggested **obliging the ECB as a general rule to publish** without undue delay its decisions to impose on an undertaking administrative pecuniary penalties for breaches of directly applicable Union law and sanctions for breaches of ECB regulations or decisions, both in the supervisory and non-supervisory fields or until all legal means of appeal have been exhausted.

Where the ECB deems that immediate publication of a decision would jeopardise the stability of financial markets or be disproportionate, considering the degree of severity of the administrative pecuniary penalty or sanction imposed on an undertaking, it should have the discretion to **delay the publication of the decision until three years after the date on which the decision was taken.**

Upon request the **ECB should hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee of the European Parliament** concerning such cases. The ECB should provide a justification for the delay in an annex to the published decision.

Division of competences between the ECB and the national competent authorities: in order to avoid conflicts of interest between authorities, Members recommended introducing, in the ECB Recommendation, an **explicit overall delineation of responsibilities**: without prejudice to their other specific competences derived from national law, the national competent authorities remain competent to impose administrative penalties but are to only impose such penalties on credit institutions directly supervised by the ECB if the ECB requires them to initiate proceedings for this purpose.

Time limits for administrative penalties: in its Recommendation, the ECB proposes that the right to take a decision to impose an administrative penalty on the infringement case expires five years after the infringement occurred. Members suggested **reducing the five year period to a three year period** which starts to run from the date on which the decision was taken to initiate infringement procedures, rather than the date on which the infringement occurred.

Although the ECB recommends that the time limit shall not exceed a period of ten years after the infringement occurred, Members suggested that the **time limit shall not exceed a period of seven years** after the date on which the decision to initiate an infringement procedure was taken or, in the case of a continued infringement, seven years after the infringement ceased.

Lastly, the report provides guidance as to which types of actions by the ECB should cause the limitation periods to be interrupted.

European Central Bank (ECB): powers to impose sanctions

2014/0807(CNS) - 11/06/2014 - Legislative proposal

PURPOSE: to amend Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions in case of a breach of its regulations or decisions.

PROPOSED ACT: Recommendation for a Council Regulation amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: Regulation (EC) No 2532/98 specifies the limits and conditions under which the European Central Bank (ECB) is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

The scope of the ECB's powers to impose sanctions was extended by Council Regulation (EU) No 1024/2013. This Regulation entitles the ECB to impose on the credit institutions it supervises: (a) administrative pecuniary penalties when these institutions breach a requirement under directly applicable Union law; and (b) sanctions in the event of a breach of an ECB regulation or decision.

Against this background, it is of particular importance to **establish a coherent regime for the imposition by the ECB of all administrative penalties** relating to the performance of its supervisory tasks under Regulation (EU) No 1024/2013. Moreover, certain rules contained in Regulation (EC) No 2532 /98 differ from those laid down in Regulation (EU) No 1024/2013. These relate in particular to the upper limits of fines and periodic penalty payments, procedural rules, and the limitation periods laid down in Regulation (EC) No 2532/98.

Taking account of the experience gained following several years of application of Regulation (EC) No 2532/98 in the various fields of competence of the European Central Bank (ECB) and the fact that the scope of the ECB's powers to impose sanctions was extended, the ECB suggests making certain amendments to Regulation (EC) No 2532/98.

CONTENT: in accordance with the procedure laid down in Article 129(4) of the Treaty on the Functioning of the European Union, **the ECB recommends making the following amendments to Regulation (EC) No 2532/98**:

- inserting a new Article to define some **general principles applying to administrative penalties imposed by the ECB** in relation to its supervisory tasks and sanctions imposed in relation to its non-supervisory tasks and specify the scope of the different provisions applying to them;

- inserting new Articles concerning the **regime applicable to administrative penalties imposed by the ECB** in the exercise of its supervisory tasks. This is to ensure that a single regime applies to all ECB administrative penalties imposed in the supervisory field, while also taking into account the rules laid down in Regulation (EU) No 1024/2013;

- making additional amendments to ensure that the principles and procedures governing the imposition of sanctions laid down in Articles 2 to 4 of Regulation (EC) No 2532/98 are **compatible** with those governing the imposition by the ECB of administrative penalties in the exercise of its supervisory tasks under Regulation (EU) No 1024/2013.