



EUROPEAN COMMISSION
DG Competition

***CASE AT.39914 – Euro Interest Rate
Derivatives***

(Only the English text is authentic)

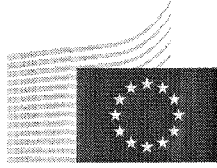
CARTEL PROCEDURE
Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 06/04/2016

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EUROPEAN
COMMISSION

Brussels, 6.4.2016
C(2016) 1995 final

COMMISSION DECISION

of 6.4.2016

**amending Decision C(2013) 8512 final
relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union and Article 53 of the EEA Agreement to the extent that it concerns
Société Générale**

(AT.39914 – Euro Interest Rate Derivatives (EIRD) (Settlement))

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty¹, and in particular Article 7 and Article 23(2) thereof,

Having given the undertaking concerned the opportunity to make known its views,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,²

Whereas:

- (1) Commission Decision C(2013) 8512 final³ states that the addressees of that Decision infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement regarding Euro interest rate derivatives covering the entire EEA. The infringement consisted of agreements and/or concerted practices that had as their object the distortion of the normal course of pricing components in the sector of Euro interest rate derivatives linked to the

¹ OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

² Final report of the Hearing Officer of 4 April 2016.

³ Commission Decision C(2013) 8512 final of 4 December 2013 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT.39914 – Euro Interest Rate Derivatives (EIRD) (Settlement)).

Euro Interbank Offered Rate ("EURIBOR") and/or the Euro Over-Night Index Average ("EONIA") (hereinafter referred to as "EIRD" or "EIRDs")⁴.

- (2) Decision C(2013) 8512 final also imposed a fine of EUR 445 884 000 on Société Générale, one of the addressees of that Decision⁵.
- (3) Section 8.2.3 of Decision C(2013) 8512 final explains that the basic amount of the fine imposed on the undertakings concerned was set by reference to the settling parties⁶ respective value of sales⁷. It further explains that the Commission determined the annual value of sales for all settling parties on the basis of cash flows, that each bank received from their respective portfolio of EIRDs entered into with EEA-located counterparties. The reported cash flows were reduced by a uniform factor applying equally to all settling parties to take account of the particularities of the EIRD industry, such as the netting inherent in this industry, meaning that banks both sell and buy derivatives so that the incoming payments are netted against outgoing payments, and the scale of price variations⁸. On that basis, the figure of EUR [...] was used as the proxy for the value of sales of Société Générale⁹.
- (4) In a letter to the Commission dated 4 February 2016, Société Générale stated that [...] in the data submitted previously in the reply to the Commission's request for information of 12 October 2012 on the value of sales (hereinafter referred to as "the request for information"), it had not netted the cash flows received on over-the-counter EIRDs as specified in the request for information¹⁰ and that it had not mentioned that fact explicitly in the methodological note and audit report submitted previously to the Commission. [...] on 4 February 2016, Société Générale submitted an amended reply to the request for information (hereinafter referred to as "the amended reply"). Société Générale has further indicated that when it submitted the amended reply, it was fully aware of the method used by the Commission to set the value of sales in this Case and of the relative position of Société Générale's value of sales.
- (5) The amended reply includes: new value of sales data, a new methodological note (mentioning the methodology followed by Société Générale, notably with regard to netting) and a new audit report prepared by a different firm of auditors than that which was previously used by Société Générale. The new audit report concludes that the new figures and the new methodological note comply with the Commission's request for information.
- (6) After the Commission's own verification of the amended reply, the Commission informed Société Générale by letter dated 4 March 2016 that it intended to adopt a decision amending Decision C(2013) 8512 final, based on the new value of sales and

⁴ See Article 1 of Decision C(2013) 8512 final, and also recital 1 thereof.

⁵ See Article 2 of Decision C(2013) 8512 final.

⁶ When reference is made in Decision C(2013) 8512 final to the "settling parties", this refers to the addressees of that Decision. See recital 3 and footnote 4 of that Decision.

⁷ See, in particular, recital 89 of Decision C(2013) 8512 final.

⁸ See, in particular, recital 91 of Decision C(2013) 8512 final.

⁹ See recital 92 of Decision C(2013) 8512 final.

¹⁰ The request for information specified the following (underlining added): "*While the notion of net cash settlements includes both cash receipts and cash payments (on a net basis), the notion of cash receipts does not consider the cash payments (those are not to be taken into account, or, in other words, they have to be zero-ed) and only considers the cash receipts (before netting with other derivative contracts: only the netting of individual contract flows can occur).*"

it also set out the main elements of this amending Decision. On 8 March 2016, in its reply to the Commission's letter, Société Générale stated that it had no comments.

(7) In order to properly reflect those considerations, it is necessary to specify what should have been inserted for Société Générale in the Tables set out in recitals 92, 100 and 109 of Decision C(2013) 8512 final.

(8) In Section 8.2.3 of Decision C(2013) 8512 final, the row for Société Générale in Table 1 in recital 92 should have read as follows:

"Undertaking	Proxy for value of sales (EUR)
Société Générale	[...]"

(9) In Section 8.2.4.4 of Decision C(2013) 8512 final, the row for Société Générale in Table 3 in recital 100 should have read as follows:

"Undertaking	Basic amount (EUR)
Société Générale	[...]"

(10) In Section 8.2.9 of Decision C(2013) 8512 final, the row for Société Générale in Table 4 in recital 109 should have read as follows:

"Undertaking	Fines (EUR)
Société Générale	227 718 000"

(11) For the sake of clarity, it should be specified that amendments being made to Decision C(2013) 8512 final by this amending Decision are being made only to reflect the corrected value of sales for Société Générale and consequently the resulting fine and the method of setting it are in line with what was applied for the other addressees of Decision C(2013) 8512 final.

(12) As the amendments being made to Decision C(2013) 8512 final by this amending Decision result in a reduction in the amount of the fine imposed on Société Générale, the Commission considers it reasonable that, in addition to the repayment of the amount of the reduction in the fine, the interest on the EUR 218 166 000 amount of the reduction, which has accrued to the Commission since the provisional payment made by Société Générale on 6 March 2014, should also be paid to Société Générale, to the extent that the interest is more than zero,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Decision C(2013) 8512 final, point (c) of the first paragraph of that Article is replaced by the following:

"(c) Société Générale: EUR 227 718 000;"

Article 2

The interest on the EUR 218 166 000 amount of the reduction, which has accrued to the Commission since the provisional payment made by Société Générale on 6 March 2014, shall be paid to Société Générale, to the extent that the interest is more than zero.

Article 3

This Decision is addressed to:

Société Générale, 29 boulevard Haussmann, 75009 Paris, France.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 6.4.2016

For the Commission
Margrethe VESTAGER
Member of the Commission