

AMENDMENTS 001-014

by the Committee on Economic and Monetary Affairs

Report**Kay Swinburne****A8-0028/2014**

The powers of the European Central Bank to impose sanctions

Draft regulation (10896/2014 – C8-0090/2014 – 2014/0807(CNS))

Amendment 1**Draft regulation****Recital 6***Draft of the European Central Bank**Amendment*

(6) The ECB should publish decisions imposing 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, ***unless such*** publication would be disproportionate, considering the degree of severity of the administrative pecuniary penalty or sanction imposed on an undertaking, ***or jeopardise the stability of financial markets.***

(6) The ECB should ***as a general rule*** publish ***without undue delay*** decisions imposing 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. ***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, or until all legal means of appeal have been exhausted. 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.

Amendment 2

Draft regulation Recital 6 a (new)

Draft of the European Central Bank

Amendment

(6a) Article 1 of Regulation (EU) No 1024/2013 states that the ECB shall act with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage and that no action, proposal or policy of the ECB shall, directly or indirectly, discriminate against any Member State or group of Member States as a venue for the provision of banking or financial services in any currency. In this regard, the ECB should act with a view to preventing a comparative advantage that promotes unfair competition.

Amendment 3

Draft regulation Recital 9

Draft of the European Central Bank

Amendment

(9) 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. In order to bolster this principle of separation, a Supervisory Board has been established pursuant to Article 26, which, inter alia, is responsible for preparing draft decisions for the Governing Council of the ECB in the supervisory field. In addition, the decisions taken by the Governing Council

(9) 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. ***In order to avoid conflicts of interest, this principle is to be followed without restriction in all tasks carried out by the ECB.*** In order to bolster this principle of separation, a Supervisory Board has been established pursuant to Article 26, which, inter alia, is responsible for preparing draft

of the ECB are, under the conditions laid down in Article 24 thereof, subject to review by the Administrative Board of Review. 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.

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, under the conditions laid down in Article 24 thereof, subject to review by the Administrative Board of Review. 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.

Amendment 4

Draft regulation Recital 10 a (new)

Draft of the European Central Bank

Amendment

(10a) 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. The dialogue should include a common understanding on the implications of diverging sanctions policies on market access and competition, and should aim to improve the international level playing field.

Amendment 5

Draft regulation

Article 1 – point 1 – point a

Regulation (EC) No 2532/98

Article 1 – point 6

Draft of the European Central Bank

“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 day of continued infringement (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 of 15 October 2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (*) in accordance with the procedure laid down in Article 4b of this Regulation;

(*) OJ L 287, 29.10.2013, p. 63.

Amendment

‘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 (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 of 15 October 2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (*) in accordance with the procedure laid down in Article 4b of this Regulation;

(*) OJ L 287, 29.10.2013, p. 63.

Justification

This amendment clarifies that periodic penalty payments shall be calculated for each complete day (24 hours period) of continued infringement.

Amendment 6

Draft regulation

Article 1 – point 2

Regulation (EC) No 2532/98

Article 1a – paragraph 3

3. The ECB *may* publish 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, both in the supervisory and non-supervisory fields, ***whether such decision has been appealed or not***. The ECB shall carry out ***such*** publication in accordance with relevant Union law, irrespective of any national law or regulation and, where relevant Union law is composed of Directives, of any national legislation transposing those Directives.

3. ***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, both in the supervisory and non-supervisory fields, 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.*** The ECB shall carry out publication ***in the cases and in accordance with the conditions set out in*** relevant Union law, irrespective of any national law or regulation and, where relevant Union law is composed of Directives, of any national legislation transposing those Directives.

Amendment 7

Draft regulation

Article 1 – point 2

Regulation (EC) No 2532/98

Article 1a – paragraph 3 a (new)

3a. Without prejudice to their other specific competences derived from national law, the competent national authorities shall remain competent to impose administrative penalties but shall impose such penalties on credit institutions directly supervised by the ECB only where the ECB requires them to initiate proceedings for that purpose.

Justification

The past has shown that deficient supervision came often about from lack of clarity on who is finally competent to take infringement initiatives. This amendment aims at avoiding conflicts between authorities which is of utmost importance.

Amendment 8

Draft regulation

Article 1 – point 4 – point b

Regulation (EC) No 2532/98

Article 3 – paragraph 10

If an infringement relates exclusively to a task entrusted to the ESCB or the ECB under the Treaty and the Statute of the ESCB, 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 Council Regulation (EU) No

10. If an infringement relates exclusively to a task entrusted to the ESCB or the ECB under the Treaty and the Statute of the ESCB, 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 Council Regulation (EU) No

1024/2013.

1024/2013. *Furthermore, the proceeds accruing from the sanctions referred to in Article 2 of this Regulation shall remain at the disposal of the ECB provided that it specifies a purpose for those proceeds other than financing current expenditure, and provided that it reports on their use to the European Parliament and the Court of Auditors.*

Amendment 9

Draft regulation

Article 1 – point 4 a (new)

Regulation (EC) No 2532/98

Article 4 – paragraph 1

Present text

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.

Amendment

4a. Article 4(1) is replaced by the following:

"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 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, **three** years after the **date on which the decision to initiate an infringement procedure was taken** or, in the case of a continued infringement, **three** years after the infringement was terminated."

Justification

In the current wording, the right to take a decision to initiate an infringement procedure expires in any case five years after the infringement occurred. This may be troublesome as in certain complex cases it can take years before an infringement is known. Your rapporteur suggests reducing the five years period to a three years 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.

Amendment 10

Draft regulation

Article 1 – point 5

Draft of the European Central Bank

1. By way of derogation from Article 4, the right to take a decision to impose an administrative penalty, with regard to infringements relating to relevant directly applicable acts of Union law as well as to 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 a continued infringement, five years after the infringement ceased.

Amendment 11

Draft regulation

Article 1 – point 5

Regulation (EC) No 2532/98
Article 4c – paragraph 2

Draft of the European Central Bank

2. Any action taken by the ECB for the purposes of the investigation or proceedings with respect to an infringement shall cause the time limit laid down in paragraph 1 to be interrupted. 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 *ten* years after the infringement *occurred* or, in the case of a continued infringement, *ten* years after the infringement ceased.

Amendment

1. By way of derogation from Article 4, the right to take a decision to impose an administrative penalty, with regard to infringements relating to relevant directly applicable acts of Union law as well as to decisions and regulations adopted by the ECB in the exercise of its supervisory tasks, shall expire five years after the *date on which the decision to initiate an infringement procedure was taken* or, in the case of a continued infringement, five years after the infringement ceased.

Amendment

2. Any action taken by the ECB for the purposes of the investigation or proceedings with respect to an infringement shall cause the time limit laid down in paragraph 1 to be interrupted. 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 *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.

Justification

The ECB recommends that the time limit shall not exceed a period of ten years after the infringement occurred. This may be troublesome as in certain complex cases it can take years before an infringement is known. Your rapporteur suggests reducing the ten years period to a

seven years 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.

Amendment 12

Draft regulation

Article 1 – point 5

Regulation (EC) No 2532/98

Article 4c – paragraph 4 a (new)

Draft of the European Central Bank

Amendment

4a. Actions which interrupt the running of the limitation period shall include in particular the following:

(a) a written request for information by the ECB or by a competent national authority of a Member State;

(b) written authorisations to conduct inspections issued to officials by the ECB or a competent national authority of a Member State;

(c) the initiation of proceedings for infringement by a competent national authority of a Member State.

Justification

This amendment aims at providing guidance with regard to the type of actions that should allow an interruption of the limitation period. It is loosely based on Article 25 paragraph 3 of Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

Amendment 13

Draft regulation

Article 1 – point 5 a (new)

Regulation (EC) No 2532/98

Article 5

Present text

Amendment

Article 5

Judicial review

The Court of Justice of the European Communities shall have unlimited

5a. Article 5 is replaced by the following:

“Article 5

Judicial review

As stated in Article 263 of the Treaty on the Functioning of the European Union,

jurisdiction within the meaning of Article 172 of the Treaty over the review of final decisions whereby a sanction is imposed.

the Court of Justice of the European Union shall have unlimited jurisdiction over the review of final decisions whereby a sanction is imposed.”

Justification

The current reading quotes an outdated Treaty numbering. Also, the current article 5 is written in a way that gives the impression that judicial review is granted by the Regulation when in fact derives from the Treaty on the Functioning of the European Union itself.

Amendment 14

Draft regulation

Article 1 – point 5 b (new)

Regulation (EC) No 2532/98

Article 6 a (new)

Draft of the European Central Bank

Amendment

5b. The following Article is inserted:

“Article 6a

International Dialogue

Pursuant to Article 8 of Regulation (EU) No 1024/2013 the ECB shall establish a regular dialogue with supervisory authorities outside the Union to work towards a coherent application of sanctions and sanction mechanisms on the international level.”