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(Preparatory acts)

EUROPEAN CENTRAL BANK

Recommendation for a Council Regulation amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions**(ECB/2014/19)***(presented by the European Central Bank)*

(2014/C 144/02)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

On 23 November 1998, the Council of the European Union adopted Council Regulation (EC) No 2532/98⁽¹⁾. 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 by Council Regulation (EU) No 1024/2013⁽²⁾, certain amendments to Regulation (EC) No 2532/98 should now be considered. For this purpose, the procedure provided for in Article 129(4) of the Treaty on the Functioning of the European Union must be followed.

II. GENERAL CONSIDERATIONS

In order to carry out the tasks conferred on it by Regulation (EU) No 1024/2013, the ECB may, pursuant to Article 18 thereof, impose administrative pecuniary penalties 'where credit institutions, financial holding companies, or mixed financial holding companies, intentionally or negligently, breach a requirement under relevant directly applicable acts of Union law in relation to which administrative pecuniary penalties shall be made available to competent authorities under the relevant Union law'⁽³⁾, and sanctions 'in case of a breach of its regulations or decisions'⁽⁴⁾ (hereinafter jointly referred to as 'administrative penalties'). As regards breaches of national law in the context of the Single Supervisory Mechanism (SSM), 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.

The principles and procedures applicable to the imposition of administrative pecuniary penalties for breaches of directly applicable Union law under Article 18(1) of Regulation (EU) No 1024/2013 are laid down in Regulation (EU) No 1024/2013 and in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)⁽⁵⁾. Under Article 18(7) of Regulation (EU) No 1024/2013 the ECB may impose sanctions for breaches of ECB regulations and decisions in accordance with Regulation (EC) No 2532/98. Article 18(4) of Regulation (EU) No 1024/2013 provides that the ECB shall apply Article 18 in accordance with the acts referred to in the first subparagraph of Article 4(3) of Regulation (EU) No 1024/2013, including the procedures contained in Regulation (EC) No 2532/98, as appropriate.

⁽¹⁾ Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4). The European Central Bank had previously submitted to the Council its Recommendation ECB/1998/9 for a Council Regulation (EC) concerning the powers of the European Central Bank to impose sanctions (OJ C 246, 6.8.1998, p. 9).

⁽²⁾ 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 (OJ L 287, 29.10.2013, p. 63).

⁽³⁾ Article 18(1) of Regulation (EU) No 1024/2013.

⁽⁴⁾ Article 18(7) of Regulation (EU) No 1024/2013.

⁽⁵⁾ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 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) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

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.

Therefore, the following amendments to Regulation (EC) No 2532/98 are recommended:

- (a) A new Article 1a should be inserted 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.
- (b) New Articles 4a to 4c should be inserted concerning the regime applicable to administrative penalties imposed by the ECB in the exercise of its supervisory tasks. The purpose of these new articles is to achieve a differentiation between the regime applying to the imposition of administrative penalties by the ECB in relation to its supervisory tasks and the provisions applicable to sanctions that the ECB may impose in relation to its non-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.
- (c) Additional amendments should be made 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.

III. COMMENTS ON THE ARTICLES

Article 1 — Definitions

Definition of periodic penalty payments

The definition of periodic penalty payments should be amended for two reasons. First, in line with other Union law provisions on this issue⁽¹⁾, it should be clearly spelled out that the ECB may use periodic penalty payments not only to punish a continued infringement, but also to compel undertakings to comply with an ECB regulation or decision. Second, the definition currently refers to the second subparagraph of Article 3(1) of Regulation (EC) No 2532/98 as regards the notification of a decision requiring the termination of an infringement. As a different decision-making procedure should apply to sanctions imposed in relation to the ECB's supervisory tasks, reference to such procedure should be added in the definition.

As a result, the definition of 'sanctions' should also be amended so that the reference to periodic penalty payments being imposed 'as a consequence of an infringement' is deleted.

⁽¹⁾ See e.g. the second subparagraph of Article 4 of Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions (OJ L 282, 16.10.2012, p. 23); Article 66(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1); Article 16(1) of Commission Implementing Regulation (EU) No 646/2012 of 16 July 2012 laying down detailed rules on fines and periodic penalty payments pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 187, 17.7.2012, p. 29); Article 36b(1) of Regulation (EU) No 513/2011 of 11 May 2011 of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies (OJ L 145, 31.5.2011, p. 30); Article 25(1)(b) of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1); Article 15 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1); Article 24 of 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 Treaty (OJ L 1, 4.1.2003, p. 1).

*Article 1a – General principles and scope***Scope**

While Regulation (EC) No 2532/98 lays down, in accordance with Article 34.3 of the Statute of the European System of Central Banks and of the European Central Bank, the conditions under which the ECB is entitled to impose sanctions on undertakings that fail to comply with obligations laid down in ECB regulations or decisions, due consideration needs to be given to Regulation (EU) No 1024/2013, which contains a wide range of provisions that are of direct relevance to the ECB's powers to impose administrative penalties relating to the exercise of its supervisory tasks. Hence, while in principle the provisions of Regulation (EC) No 2532/98 apply to any sanction that the ECB is entitled to impose for breaches of ECB regulations or decisions, certain provisions of Regulation (EC) No 2532/98 that conflict with Regulation (EU) No 1024/2013 as regards the imposition of administrative penalties relating to the ECB's supervisory tasks should be either disapplied or amended.

Publication

The ECB shall be entitled to publish any decision to impose an administrative penalty in relation to its supervisory tasks or a sanction in relation to its non-supervisory tasks, whether such decision is subject to an appeal or not, so that all decisions taken by the ECB are subject to the same publication regime. The ECB shall apply relevant Union law, irrespective of any national law or regulation, as regards such publication, and must accordingly consider the proportionality of the publication of a decision with regard to the degree of severity of the sanction or administrative penalty imposed, as well as the impact of the publication on the stability of the financial system.

*Article 2 – Sanctions***Failure to perform a duty**

Article 2(4) refers to the procedure provided for in Article 3(4) of Regulation (EC) No 2532/98, which should not apply to the imposition of administrative penalties relating to the ECB's supervisory tasks. A reference to the decision-making procedure set out in Article 4b should therefore be added.

*Article 3 – Procedural rules***Competence to initiate an infringement procedure**

The reference in the first sentence of Article 3(1) to the Executive Board as the body that is competent to initiate an infringement procedure should be deleted to allow the ECB to determine, by means of a Regulation to be adopted pursuant to Article 6(2), which internal body should carry out the investigation of an alleged breach. The competence to adopt decisions imposing a sanction shall remain with the Executive Board, subject to the new Article 4b.

Relationship with national competence

Article 3(10) should be amended so that it does not only refer to tasks entrusted to the European System of Central Banks but also to tasks entrusted to the ECB pursuant to Article 127(6) of the Treaty. The last sentence of Article 3(10) should be amended to also reflect the ECB's new supervisory competence.

Article 4a – Specific rules regarding the upper limits of sanctions imposed by the ECB in the exercise of its supervisory tasks

The upper limit of administrative pecuniary penalties the ECB may impose under Article 18(1) of Regulation (EU) No 1024/2013 for breaches of directly applicable Union law greatly exceeds that permissible under Regulation (EC) No 2532/98. This difference is not considered justifiable since an infringement of an ECB regulation or decision is not necessarily less serious than a breach of directly applicable Union law. Therefore, all administrative penalties imposed by the ECB on the credit institutions it supervises within the SSM should be subject to the same upper limits. The upper limit for periodic penalty payments imposed by the ECB in the supervisory field should also be amended in line with the above.

As a result, Article 2(1) should not apply to administrative penalties imposed by the ECB in the exercise of its supervisory tasks.

Article 4b – Specific procedural rules for sanctions imposed by the ECB in the exercise of its supervisory tasks

Decision-making procedure

Article 25(2) of Regulation (EU) No 1024/2013 lays down the principle of separation, whereby tasks conferred on the ECB by Regulation (EU) No 1024/2013 shall be exercised separately from the monetary policy tasks and any other tasks of the ECB. Pursuant to this article, Regulation (EC) No 2532/98 should be amended to provide for a decision-making procedure involving the Supervisory Board and the Governing Council of the ECB, in line with Article 26 of Regulation (EU) No 1024/2013, as regards the imposition of administrative penalties in the supervisory field. This would also be in line with the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision⁽¹⁾ and the need to ensure that the authorities that impose sanctions on entities are also those which supervise them.

Review procedure

A decision to impose an administrative penalty taken by the Governing Council in the supervisory field will be subject to review by the Administrative Board of Review, as provided for under Article 24 of Regulation (EU) No 1024/2013, if a natural or legal person requests review of such decision, provided it is addressed to or is of direct and individual concern to that person. Consequently, Regulation (EC) No 2532/98 should be amended to provide for a review procedure involving the ECB's Administrative Board of Review, in line with Article 24 of Regulation (EU) No 1024/2013, as regards the imposition of administrative penalties in the supervisory field.

In view of the above, Article 3(1) to (8) should not apply to administrative penalties relating to the exercise by the ECB of its supervisory tasks.

Article 4c – Specific time limits for administrative penalties imposed in the supervisory field

Time limits

The time limits applicable to the imposition and enforcement of sanctions relating to the non-supervisory tasks of the ECB have proven to work well, particularly due to the relative simplicity of the investigation required to ascertain whether an infringement has been committed, e.g. breach of minimum reserve requirements, rules on the eligibility of collateral, statistical reporting requirements. Given the fact that investigations of alleged infringements in the supervisory field are more complex, the power to impose and enforce administrative penalties in that field should be subject to longer time limits than those provided for sanctions relating to non-supervisory tasks. This is also in line with the time limits laid down in Regulation (EC) No 1/2003 for infringements of competition rules. As all administrative penalties that the ECB may impose on undertakings in the supervisory field should be subject to the same time limits, whether these administrative penalties refer to a breach of an ECB decision or regulation or a breach of directly applicable Union law, the time limits set out in Article 4c should apply to any administrative penalties imposed by the ECB in the exercise of its supervisory tasks.

The suspension and interruption of these time limits should be regulated accordingly, also taking into account that infringement procedures in the supervisory field could overlap with criminal investigations and criminal proceedings that are based on the same facts.

In view of the above, Article 4 should not apply to administrative penalties relating to the exercise by the ECB of its supervisory tasks.

⁽¹⁾ See Principle 1, and in particular Essential Criterion 6(b), and Principle 11, and in particular Essential Criterion 7 of the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision, September 2012, both of which require an effective system of banking supervision to have clear responsibilities and objectives for each authority involved in the supervision of banks and banking groups, including the power for the supervisor to impose a range of sanctions, and also require the supervisor to have at its disposal an adequate range of supervisory tools to bring about timely corrective actions, including imposing sanctions on banks. Available on the Bank for International Settlements' website at www.bis.org

Recommendation for a:**'COUNCIL REGULATION
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 to 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,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Commission,

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⁽¹⁾ specifies, in accordance with Article 34.3 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the "Statute of the ESCB"), 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.
- (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) Council Regulation (EU) No 1024/2013⁽²⁾ 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 (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 this regulation in case of breach of ECB regulations and decisions, the ECB may impose sanctions in accordance with Regulation (EC) No 2532/98.
- (5) Regulation (EU) No 1024/2013 contains a wide range of provisions that are directly relevant to the ECB's powers to impose administrative penalties relating to its supervisory tasks. In this regard, certain provisions of Regulation (EC) No 2532/98 conflict with Regulation (EU) No 1024/2013. It is therefore necessary to identify the rules laid down in Regulation (EC) No 2532/98 that should be amended in order to establish a coherent regime governing the imposition of sanctions by the ECB in the exercise of the supervisory tasks conferred on it by Regulation (EU) No 1024/2013.
- (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.

⁽¹⁾ Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4).

⁽²⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

- (7) 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.
- (8) 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.
- (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 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.
- (10) Due to the complexity of the investigation of infringements in the supervisory field, the power to impose and enforce administrative penalties 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.
- (11) Regulation (EC) No 2532/98 should 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:

“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.”;

(b) point 7 is replaced by the following:

“sanctions’ shall mean fines and periodic penalty payments.”;

2. the following Article 1a 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, unless otherwise expressly provided.

2. The rules applying to the imposition by the ECB, in the exercise of its supervisory tasks, of administrative pecuniary penalties for breaches of directly applicable Union law and of sanctions for breaches of ECB regulations and decisions (hereinafter jointly referred to as ‘administrative penalties’) 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 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. 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:

“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:

“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.”;

5. the following Articles 4a to 4c 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) 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) 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 purpose of paragraph 1: (a) 'annual turnover' means the annual turnover of a legal person, as defined in relevant Union law, according to the most recently available annual financial accounts of such person. Where the undertaking is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the most recently available consolidated annual financial accounts of the ultimate parent undertaking in the group supervised by the ECB; (b) 'average daily turnover' means the annual turnover, as defined under (a), divided by 365.

Article 4b

Specific procedural rules for sanctions imposed by the ECB in the exercise of its supervisory tasks

1. By way of derogation from Article 3(1) to (8), the rules laid down in this Article shall apply to infringements relating to decisions and regulations adopted by the ECB in the exercise of its supervisory tasks.
2. After the infringement procedure has been carried out pursuant to rules to be laid down by the ECB in accordance with Article 6(2), the Supervisory Board shall propose to the Governing Council a complete draft decision to impose a sanction on the undertaking concerned, in accordance with the procedure laid down in Article 26(8) of Regulation (EU) No 1024/2013. A hearing with regard to the alleged infringement committed by the undertaking concerned shall precede the submission by the Supervisory Board of the complete draft decision to the Governing Council.
3. The undertaking concerned shall have the right to request a review by the Administrative Board of Review of the decision taken by the Governing Council pursuant to paragraph 2, in accordance with the procedure laid down in Article 24 of Regulation (EU) No 1024/2013.

Article 4c

Specific time limits for administrative penalties imposed by the ECB in the exercise of its supervisory tasks

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.
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 10 years after the infringement occurred or, in the case of a continued infringement, 10 years after the infringement ceased.
3. The time limits described in the preceding paragraphs can be extended if: (a) a decision of the Governing Council is subject to review before the Administrative Board of Review or appeal proceedings before the Court of Justice of the European Union; or (b) criminal proceedings are pending against the concerned undertaking in connection with the same facts. In such a case, the time limits described in the previous paragraphs shall be extended for the period of time it takes for the Administrative Board of Review or the Court of Justice to review the decision or until conclusion of the criminal proceedings against the concerned undertaking.

4. Any action of the ECB designed to enforce payment or payment terms and conditions under the imposed administrative penalty shall cause the limitation period for the enforcement to be interrupted. The right of the ECB to enforce a decision to impose an administrative penalty shall expire five years after such decision has been taken. The limitation period for the enforcement of administrative penalties shall be suspended:

- (a) until the deadline for payment of the imposed administrative penalty has passed;
- (b) if enforcement of payment of the imposed administrative penalty is suspended pursuant to a decision of the Governing Council or of the Court of Justice.”

Article 2

This Regulation shall enter into force on [date].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty.’

Done at Frankfurt am Main, 16 April 2014.

The President of the ECB

Mario DRAGHI
