



Guide to the method of setting administrative pecuniary penalties pursuant to Article 18(1) and (7) of Council Regulation (EU) No 1024/2013

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1 Introduction

1. Compliance with the prudential requirements that are imposed on credit institutions, financial holding companies and mixed financial holding companies (hereinafter “supervised entities”) is essential in order to ensure their safety and soundness and preserve the stability of the financial system, both at the level of the Union as a whole and in individual Member States.
2. It is therefore crucial that the European Central Bank (ECB) takes timely and appropriate action when a supervised entity fails to comply with the prudential requirements or obligations that are imposed on it.
3. To this end, Council Regulation (EU) No 1024/2013¹ gives the ECB the power to impose administrative pecuniary penalties on supervised entities in order to carry out its supervisory tasks in application of the Treaty on the Functioning of the European Union.
4. Under Article 18(1) and (7) of Regulation (EU) No 1024/2013, the ECB may, by decision, impose administrative pecuniary penalties² on supervised entities where, either intentionally or negligently, those entities breach (i) a requirement established by directly applicable acts of Union law in relation to which administrative pecuniary penalties are available to competent authorities under relevant Union law or (ii) a requirement set out in ECB regulations and decisions.
5. In exercising its power to impose such administrative pecuniary penalties, the ECB enjoys a wide margin of discretion³ within the limits set by Regulation (EU)

¹ 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).

² For the purposes of this guide, the term “administrative pecuniary penalties” covers both (i) “administrative pecuniary penalties” provided for in and imposed under Article 18(1) of Council Regulation (EU) No 1024/2013 and (ii) “fines” provided for in Article 2 of Council Regulation (EC) No 2532/98 and imposed under Article 18(7) of Council Regulation (EU) No 1024/2013.

³ See the judgment in *Crédit Agricole SA v European Central Bank*, T-576/18, ECLI:EU:T:2020:304, paragraph 133.

No 1024/2013 and Council Regulation (EC) No 2532/98⁴. In this respect, the penalties applied must meet the criteria set out in Article 18(3) of Council Regulation (EU) No 1024/2013 – i.e. they must be effective, proportionate and dissuasive.⁵ Furthermore, the ECB must not exceed the limits specified in Article 18(1) of Regulation (EU) No 1024/2013 and Article 4a(1)(a) of Regulation (EC) No 2532/98.

6. In order to ensure the transparency and impartiality of the ECB's decisions, this guide sets out the principles which will guide the ECB when it imposes administrative pecuniary penalties pursuant to Article 18(1) and (7) of Regulation (EU) No 1024/2013.
7. In determining the level of such penalties, the ECB takes account of all relevant circumstances relating to the breach, in order to ensure the consistent application of penalties and ensure that penalties are dissuasive even for larger institutions.⁶ Indeed, administrative pecuniary penalties should have a deterrent effect in order to prevent the supervised entity concerned (specific deterrence) or any other entity supervised by the ECB (general deterrence) from engaging in the same or similar conduct in the future.
8. It is therefore appropriate to take account of all relevant factors relating to (i) the impact of the breach and (ii) the supervised entity's misconduct when deciding on the level of an administrative pecuniary penalty. Furthermore, taking account of the size of the supervised entity⁷ as determined by the relevant metrics used in prudential supervision (which, as detailed below, normally relate to the total assets of the supervised entity⁸) and, whenever relevant in a given case, the benefits derived from the breach guarantees the proportionality of the administrative pecuniary penalty.
9. Those factors provide a good indication of the appropriate level for an administrative pecuniary penalty, but they should not be regarded as the basis for an automatic and arithmetic calculation method.

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Method of setting administrative pecuniary penalties

10. When deciding on the administrative pecuniary penalty to be imposed on a supervised entity, the ECB will apply the two-step approach set out below. The

4 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).

5 See the judgment in Case T-576/18, as cited above, paragraph 135.

6 See Article 65 and Recitals 36 and 37 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

7 At individual or consolidated level, depending on whether the breach was committed on an individual or consolidated basis, respectively.

8 For example, when determining the significance of a supervised entity pursuant to Article 50 of 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 (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

ECB will first determine the appropriate base amount (see Section 2.1), and it may then decide to adjust that base amount by increasing or reducing it (see Section 2.2).

2.1 Determining the base amount for the penalty

2.1.1 Assessing the severity of the breach

11. The base amount for the penalty will be set on the basis of the severity of the breach. For this purpose, the ECB will classify breaches as “minor”, “moderately severe”, “severe”, “very severe” or “extremely severe” on the basis of the impact of the breach and the degree of misconduct on the part of the supervised entity. That assessment of severity will be carried out on a case-by-case basis for all types of breach, taking account of all relevant circumstances relating to the case in question.

(i) Determining the impact of the breach

12. The ECB will classify the impact of the breach as “low”, “medium” or “high”. For this purpose, it will take account of a number of factors, including (i) the effect that the breach has on the prudential situation of the supervised entity and its effective supervision, (ii) the duration of the breach, (iii) the extent of the damage caused to third parties and (iv) the actual and potential consequences of the breach on the reputation of and confidence in the banking sector.

13. The effect that the breach has on the prudential situation of the supervised entity will be determined, where applicable, on the basis of the extent of the deviation from the legal requirements. The more important a legal requirement is for the safety and soundness of a supervised entity, the smaller the degree of deviation will need to be in order to classify the impact of the breach as “high”. In addition, the ECB will consider that, all other things being equal, the longer the duration of a breach, the greater its impact will be.

(ii) Determining the degree of misconduct

14. The ECB will also classify the degree of misconduct on the part of the supervised entity as “low”, “medium”, or “high”. For this purpose, the ECB will take into account whether the supervised entity committed the breach intentionally or negligently, as well as all other circumstances relevant to its degree of responsibility.

15. To this end, the ECB will consider that a supervised entity which fails to comply with its special duty of care by committing a breach that an entity which was normally informed and diligent would have avoided can generally be regarded as having shown a low degree of misconduct if there are no other circumstances pointing to more serious misconduct.

16. The degree of misconduct will be considered higher where the supervised entity (i) could not have been unaware that its conduct would potentially result in a breach of its prudential requirements, or (ii) where it committed the breach because of deficiencies in its internal controls (unless those deficiencies are addressed by means of a separate administrative penalty) or (iii) as a result of a gross misinterpretation of a legal requirement.
17. The highest degree of misconduct can usually be assumed where the supervised entity (i) knew that its conduct would certainly or almost inevitably result in a breach of its prudential requirements, (ii) prevented or hindered the ECB from obtaining a comprehensive picture of its prudential situation, or (iii) sought to conceal a breach of its prudential requirements or deceive the ECB.

(iii) Classifying the breach

18. A breach may be considered “minor” where its impact and the degree of misconduct are both “low”; it may be regarded as “moderately severe” where both are “medium”; it may be considered “severe” where one of the two is “high”; and it may be regarded as “very severe” where both the impact of the breach and the degree of misconduct are “high”. Without prejudice to other breaches which may be classified as “extremely severe”, breaches which have (or could potentially have) systemic consequences will be considered “extremely severe”.

2.1.2 Setting the base amount

19. Once the severity of the breach has been determined, the ECB will set the base amount for the penalty. For breaches classified as “very severe” or below, this will be done either with reference to a penalty grid, as set out in point (i) below, or by multiplying the amount of profits gained or losses avoided (if they can be determined) by an amount corresponding to the severity of the breach, as explained in point (ii)⁹. That second method may only be used if the proportionality of the overall level of the penalty is ensured.
20. Where breaches are classified as “extremely severe”, the ECB will set the base amount for the penalty as a percentage of the supervised entity’s total annual turnover¹⁰.

(i) Penalty grid for average supervised entities in each group for each category of severity

21. Depending on their size in terms of total assets, supervised entities fall into one of five groups on the basis of the table below:

⁹ In deciding which method to apply in a given case, the ECB will ensure that the penalty applied is effective, proportionate and dissuasive, in accordance with Article 18(3) of Council Regulation (EU) No 1024/2013.

¹⁰ As defined under Article 128 of Regulation (EU) No 468/2014.

Table 1

Group	Total assets (EUR billions)
1	$x > 500$
2	$100 < x \leq 500$
3	$20 < x \leq 100$
4	$3 < x \leq 20$
5	$x \leq 3$

22. The ECB may determine the base amount on the basis of the penalty grid below, which shows the base amount for the average supervised entity in each group for each category of severity.
23. For “minor” to “very severe” breaches, the base amount for the penalty is calculated on the basis of the total assets of the supervised entity in question and the base amounts for average supervised entities in the penalty grid below, which ensures that the penalty is effective and dissuasive.

Table 2

Penalty grid for average supervised entities in each group (EUR millions)				
Group	Minor	Moderately severe	Severe	Very severe
1	0.5	4	20	100
2	0.3	2	10	50
3	0.2	1	5	25
4	0.1	0.5	2.5	12.5
5	0.05	0.25	1.25	6.25

24. In order to ensure a proportionate outcome, the ECB sets the base amount for each individual supervised entity by adjusting the relevant base amount in the penalty grid proportionately to the differences between the size of the relevant entity and the sizes of (i) the average supervised entity in its group and (ii) the average entity in the group above or below. Where the supervised entity in question is larger than the average size for its group, it is compared with the average for its group and the average for the group above; where it is smaller than the average for its group, it is compared with the average for its group and the average for the group below.
25. Exceptionally, base amounts for supervised entities that are above the average size in group 1 or below the average size in group 5 are calculated proportionately to the difference between their size and the average size of the supervised entities in their group.
26. For “extremely severe” breaches, the ECB will set the base amount for the penalty as a percentage of the supervised entity’s total annual turnover. In determining that percentage, the ECB will take account of all circumstances pointing to an “extremely severe” breach, as well as looking at whether the breach had (or could potentially have had) systemic consequences.

(ii) Setting administrative pecuniary penalties on the basis of profits gained or losses avoided

27. Where the ECB is able to determine the profits that have been gained or the losses that have been avoided as a result of the breach, the base amount may be calculated by increasing the profits gained or losses avoided by up to two-thirds, depending on the severity of the breach. In setting the base amount, the ECB will ensure that the penalty is at least equal to the profits gained or losses avoided and that it is proportionate, effective and dissuasive.

2.2 Adjusting the base amount

28. The ECB may then increase or reduce the base amount determined in Section 2.1 in order to take account of all mitigating and aggravating circumstances and ensure that the penalty is proportionate, effective and dissuasive. In addition, the ECB will also look at whether multiple breaches are derived from the same set of facts.

29. The ECB will apply these adjustments to the base amount on the basis of an overall assessment which takes account of all relevant circumstances.

2.2.1 Aggravating and mitigating circumstances

30. The ECB may adjust the base amount where it finds that there are aggravating or mitigating circumstances. For example, delays or a reluctance to cooperate with the ECB's exercise of its investigatory powers may lead to an increase in the base amount. Conversely, the base amount may be reduced where the supervised entity cooperates with the ECB in a timely manner before, during and after the investigatory measures (e.g. by providing relevant information in order to help establish the facts) or where the supervised entity takes steps to effectively remedy the breach on its own initiative.

2.2.2 Multiple breaches derived from the same set of facts

31. Where multiple breaches are derived from the same set of facts, the ECB may adjust the base amount if it believes that a penalty corresponding to the sum of the individual penalties for the various breaches would not be proportionate given the circumstances of the case.

2.3 Legal maximum

32. The final amount must not exceed 10% of the total annual turnover of the supervised entity concerned in the preceding business year¹¹, or twice the amount of profits gained or losses avoided as a result of the breach, depending on the method used to set the base amount as explained in Section 2.1.2.

2.4 Final considerations

33. As an overarching consideration, the ECB will, as part of its assessment of proportionality, look at the appropriateness of the penalty in the light of the financial situation of the supervised entity and the potential impact on that financial situation, in order to ensure that the penalty does not cause the supervised entity to become insolvent, cause it serious financial distress or represent a disproportionate percentage of its total annual turnover.
34. In addition, the ECB may, in certain cases, impose a symbolic administrative pecuniary penalty. The justification for imposing such a penalty will be indicated in its decision.
35. Finally, the particularities of a given case or the need to impose an effective, proportionate and dissuasive penalty in a particular instance may justify a departure from the standard method of setting administrative pecuniary penalties that is detailed in this guide.

¹¹ Where the supervised entity that has committed the breach belongs to a supervised group, the total annual turnover that is used for this purpose will be the total annual turnover resulting from the most recent available consolidated annual financial accounts for the supervised group.

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For specific terminology please refer to the [SSM glossary](#) (available in English only).