

EUROPEAN CENTRAL BANK

NOTICE OF THE EUROPEAN CENTRAL BANK ON THE IMPOSITION OF SANCTIONS FOR INFRINGEMENTS OF BALANCE SHEET STATISTICAL REPORTING REQUIREMENTS

(2004/C 195/10)

1. Introduction

Article 7(1) of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾ states that the European Central Bank (ECB) shall have the power to impose sanctions on reporting agents which are subject to reporting requirements and residing in a participating Member State and which fail to comply with the obligations resulting from that Regulation or from ECB regulations or decisions defining and imposing the ECB's statistical reporting requirements.

Article 7(4) of Regulation (EC) No 2533/98 sets forth the maximum sanctions which the ECB may impose on reporting agents: in the event of an infringement of the obligation of timeliness, a daily penalty not exceeding EUR 10 000, with the total fine not exceeding EUR 100 000; in the event that the statistical information supplied is incorrect, incomplete or in a form not complying with the requirement, a fine not exceeding EUR 200 000; and in the event of an infringement of the obligation to allow the ECB or the national central banks (NCBs) to verify the accuracy and quality of the supplied statistical information, a fine not exceeding EUR 200 000.

Within the abovementioned limits, to ensure the transparency of the ECB's sanctioning policy, this notice explains the principles which the ECB will follow, from the reference period December 2004 for monthly reporting requirements and fourth quarter 2004 for quarterly reporting requirements, in imposing sanctions for infringements of balance sheet statistical reporting requirements due to failure to comply with the minimum standards laid down in Annex IV to Regulation ECB/2001/13 of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector ⁽²⁾.

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ OJ L 333, 17.12.2001, p. 1. Regulation as last amended by Regulation ECB/2003/10 (OJ L 250, 2.10.2003, p. 17).

2. General principles

Sanctions may be applied in the event of failure to comply with minimum standards for transmission, including timeliness (see Article 7(2)(a) of Regulation (EC) No 2533/98 and Section 1 of Annex IV to Regulation ECB/2001/13), and with minimum standards for accuracy and conceptual compliance (see Article 7(2)(b) of Regulation (EC) No 2533/98 and Sections 2 to 4 of Annex IV to Regulation ECB/2001/13).

A reporting agent complies with the minimum standards for timeliness if it reports its balance sheet data by the deadline set by the relevant NCB (see Section 1(a) of Annex IV). Verification of compliance with the minimum standards for timeliness will only take place with respect to a balance sheet that meets the technical reporting requirements set by the NCB (e.g. in terms of format) (see Section 1(b) to (d) of Annex IV).

A reporting agent complies with the minimum standards for accuracy if its balance sheet data fulfil all linear constraints (e.g. subtotals add up to totals) and data are consistent across frequencies.

A reporting agent complies with the minimum standards for conceptual compliance if its balance sheet data meet the definitions and classifications set out in Regulation ECB/2001/13.

For these types of infringements, the method of determining the sanction will be based on the principles laid down in Sections 3 and 4 below, starting with the derivation of a baseline amount which may then be reduced or increased in the light of attenuating or aggravating circumstances as referred to in Article 2(3) of Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions ⁽³⁾.

Exceptionally, the ECB may decide not to sanction an infringement due to particularly important attenuating circumstances.

⁽³⁾ OJ L 318, 27.11.1998, p. 4.

In the case of serious misconduct, the ECB will not follow the principles laid down in Sections 3 and 4 below, rather it will determine the sanction on a case-by-case basis, subject to the principle of proportionality and the limit of EUR 200 000 laid down in Article 7(4) of Regulation (EC) No 2533/98. The term 'serious misconduct' refers to infringements of reporting requirements by reporting agents such as intentional incorrect reporting and/or a manifestly insufficient degree of diligence or cooperation. Serious misconduct includes the following situations:

- (a) systematic failure to comply with the minimum standards for revisions;
- (b) incorrect reporting due to fraudulent behaviour;
- (c) systematic reporting of incorrect data;
- (d) blatant failure to cooperate with the relevant NCB and/or the ECB.

3. Baseline amount of the sanction applied to infringements other than serious misconduct

The determination of the sanction starts from the derivation of a baseline amount. This amount reflects quantitative aspects. The baseline amount will increase according to the seriousness of the infringement.

In the case of infringement of the obligation of timeliness, the seriousness of the infringement will depend on the number of working days of delay with respect to the deadline set by the relevant NCB. In addition, the amount of the sanction will vary in accordance with the economic size of the reporting agent, measured by the total assets/liabilities of its balance sheet.

In the case of inaccuracy and/or conceptual non-compliance, the seriousness of the infringement will depend on the size of the discrepancy between the inaccurate and/or conceptually non-compliant balance sheet data and accurate and/or conceptually compliant data. The amount of the sanction will also reflect the economic size of the reporting agent. In assessing infringements concerning inaccuracy and/or conceptual non-compliance, the ECB will not take into account errors of a

rounding nature or negligible errors. In addition, as regards conceptual non-compliance, ordinary revisions, i.e. non-systematic revisions to the series reported within the period (month or quarter) following the first reporting, will not be considered as cases of conceptual non-compliance.

4. Aggravating and attenuating circumstances concerning infringements other than serious misconduct

Aggravating and/or attenuating circumstances will be taken into account and may result in an increase or decrease of the baseline amount.

Aggravating circumstances include the following situations, as referred to in Article 2(3) of Regulation (EC) No 2532/98:

- (a) repeated and/or frequent infringements;
- (b) refusal to cooperate or ineffective cooperation;
- (c) prior sanctions imposed by other authorities on the same reporting agent and based on the same facts;
- (d) profits obtained by the reporting agent by reason of the infringement.

Attenuating circumstances include the following situations, as referred to in Article 2(3) of Regulation (EC) No 2532/98:

- (a) diligence and effective cooperation shown by the reporting agent, in particular, if the reporting agent continues to report data to the NCB;
- (b) good faith;
- (c) openness of the reporting agent in the interpretation and fulfilment of its reporting requirements;
- (d) lack of impact of the infringement (e.g. concerning infringements of the obligation of timeliness, a lower sanction will be applied if, although late, the reporting agent reports its balance sheet data in time to allow the NCB to include it in the transmission of the national aggregates to the ECB);
- (e) infrequent infringements.