



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

Draft

**DECISION (EU) [YYYY/[XX\*]] OF THE EUROPEAN CENTRAL BANK**

**of [date Month YYYY]**

**on the methodology for calculating sanctions for infringements of the oversight requirements for systemically important payment systems**

**([ECB/YYYY/XX])**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the fourth indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the fourth indent of Article 3.1, and Article 34 thereof,

Having regard to Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions<sup>1</sup>, and in particular Article 2 thereof,

Having regard to Regulation (EC) No 2157/1999 of the European Central Bank of 23 September 1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4)<sup>2</sup>,

Having regard to Regulation (EU) No 795/2014 of the European Central Bank of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28)<sup>3</sup>, and in particular Article 23 thereof,

Whereas:

- (1) The Eurosystem promotes the smooth operation of payment systems by, among other things, conducting oversight. In particular, oversight of systemically important payments systems (SIPS) is conducted pursuant to the requirements of Regulation (EU) No 795/2014.
- (2) Article 23 of Regulation (EU) No 795/2014 empowers the ECB to impose sanctions for infringements of that Regulation. For the purposes of enhancing the transparency of the principles

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\* This number will be allocated by the Publications Office of the European Union when the Decision is published in the Official Journal.

1 OJ L 318, 27.11.1998, p. 4.

2 OJ L 264, 12.10.1999, p. 21.

3 OJ L 217, 23.7.2014, p. 16.

and procedures that the ECB will follow when imposing such sanctions, that Article requires the ECB to publish a notice on the methodology for the calculation of the amount of the sanctions.

- (3) By publishing this notice, the ECB demonstrates the manner in which it is guided by the principle of proportionality when determining an appropriate sanction,

HAS ADOPTED THIS DECISION:

#### *Article 1*

##### **Definitions**

For the purposes of this Decision:

1. 'SIPS operator' has the meaning given in point (4) of Article 2 of Regulation (EU) No 795/2014;
2. 'business year' means the period of time in connection with which audited or statutory accounts of the SIPS operator are to be prepared;
3. 'fine' means a single amount of money that a SIPS operator is obliged to pay as a sanction;
4. 'infringement' means any failure by a SIPS operator to fulfil any obligation arising from Regulation (EU) No 795/2014;
5. 'periodic penalty payments' means amounts of money that, in the event of a continued infringement, a SIPS operator is obliged to pay, either as a punishment or with a view to forcing the SIPS operator concerned to comply with its obligations under Regulation (EU) No 795/2014. These amounts shall be calculated for each complete day of continued infringement following notification to the SIPS operator of a decision requiring the termination of the infringement in accordance with the procedure laid down in the second subparagraph of Article 3(1) of Regulation (EC) No 2532/98;
6. 'sanction' means a fine or periodic penalty payments imposed as a consequence of an infringement;
7. 'turnover' means the revenue generated by the SIPS concerned during the business year preceding that in which the infringement occurred;
8. 'value of payments processed' means the total daily average value of euro-denominated payments processed by the SIPS concerned during the business year preceding that in which the infringement occurred.

#### *Article 2*

##### **General principles**

1. This Decision sets out the methodology to be followed by the ECB in calculating the amount of sanctions to be imposed by the ECB on a SIPS operator for infringements of Regulation (EU) No 795/2014.

2. The ECB may impose either a fine or periodic penalty payments as a sanction for infringement of Regulation (EU) No 795/2014.
3. The ECB shall determine the amount of the sanction to be imposed based on a two-stage process, starting with the calculation of the baseline amount of the sanction, which may then be increased or reduced in the light of aggravating or mitigating circumstances of relevance to each specific case.

### *Article 3*

#### **Calculation of the baseline amount of a sanction**

1. The ECB shall calculate the baseline amount of any sanction to be imposed on a SIPS operator by reference to the turnover and the value of payments processed by the SIPS concerned.
2. The baseline amount of the sanction shall represent 50 % of the sum of the following amounts:
  - (a) 1 % of turnover; and
  - (b) 0,0001 % of the value of payments processed.
3. For periodic penalty payments, the baseline amount shall be divided by 180 to calculate the amount payable for each complete day of continued infringement.

### *Article 4*

#### **Aggravating and mitigating circumstances**

When calculating the amount of any sanction, the ECB shall take into consideration, where relevant, the circumstances of the specific case, as provided for in Council Regulation (EC) No 2532/98.

### *Article 5*

#### **Limits**

1. Where, based on the calculation made pursuant to Article 3(2) and any increase or decrease in the baseline amount made pursuant to Article 4, the amount of any fine exceeds EUR 500 000, the amount of the fine the ECB may impose shall be capped at EUR 500 000.
2. Where, based on the calculation made pursuant to Article 3(2) and (3) and any increase or decrease in the baseline amount made pursuant to Article 4, the amount of the periodic penalty payments exceed EUR 10 000 per day of infringement, the amount of the periodic penalty payments the ECB may impose per day of infringement shall be capped at EUR 10 000 in respect of a maximum period of six months following the notification to the SIPS operator of the decision to impose sanctions.

*Article 6*

**Final provisions**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, [date Month YYYY].

*The President of the ECB*

Mario DRAGHI

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