



5 Miscellaneous

5.1 Sanctions

5.1.1 Council regulation (EC) concerning the powers of the European Central Bank to impose sanctions

5.1.2. ECB regulation (EC) concerning the powers of the European Central Bank to impose sanctions

5.1.3 ECB notice on the imposition of sanctions for breaches of the obligation to hold minimum reserves

COUNCIL REGULATION (EC) No 2532/98
of 23 November 1998
concerning the powers of the European Central Bank to impose sanctions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') and in particular to Article 108a(3) thereof and to Article 34.3 of the Protocol (No 3) on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute'),

Having regard to the recommendation of the European Central Bank (hereinafter referred to as the 'ECB')⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Commission⁽³⁾,

Acting in accordance with the procedure laid down in Article 106(6) of the Treaty and in Article 42 of the Statute, and under the conditions set out in Article 109k(5) of the Treaty and paragraph 7 of the Protocol (No 11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland,

- (1) Whereas this Regulation, according to Article 34.3 of the Statute, in conjunction with Article 43.1 of the Statute, paragraph 8 of Protocol No 11 and paragraph 2 of the Protocol (No 12) on certain provisions relating to Denmark, is not to confer any rights or impose any obligations on a non-participating Member State;
- (2) Whereas Article 34.3 of the Statute requires the Council to specify the limits and conditions under which the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions;
- (3) Whereas infringements of the obligations arising from ECB regulations and decisions can arise in various fields of competence of the ECB;
- (4) Whereas it is appropriate, in order to ensure a uniform approach towards the imposition of sanctions in the various fields of competence of the ECB, that all general and procedural provisions for the imposition of such sanctions are contained in a single

Council Regulation; whereas other Council Regulations provide for specific sanctions in specific fields and refer to this Regulation for the principles and procedures relating to the imposition of such sanctions;

- (5) Whereas, in order to provide an effective regime for the administration of sanctions, this Regulation must allow the ECB a certain discretion, both in relation to the relevant procedures and to their implementation within the limits and conditions laid down in this Regulation;
- (6) Whereas the European System of Central Banks (hereinafter referred to as the 'ESCB') and the ECB have been entrusted with the task of preparing for their full operation in the third stage of Economic and Monetary Union (hereinafter referred to as 'Stage Three'); whereas timely preparation is essential to enable the ESCB to fulfil its tasks in Stage Three; whereas an essential element of preparation is the adoption, ahead of Stage Three, of the regime for the imposition of sanctions on undertakings failing to comply with obligations imposed upon them by ECB regulations and decisions; whereas it is desirable to inform market participants as soon as possible of the detailed provisions the ECB may deem necessary to adopt for the imposition of sanctions; whereas it is therefore necessary to provide the ECB from the date of entry into force of this Regulation with a regulatory power;
- (7) Whereas the provisions of this Regulation can only be effectively applied if participating Member States adopt the necessary measures with a view to ensuring that their authorities have the powers to assist and collaborate fully with the ECB in the implementation of the infringement procedure as required by this Regulation, in accordance with Article 5 of the Treaty;
- (8) Whereas the ECB is to have recourse to the national central banks to carry out the tasks of the ESCB to the extent deemed possible and appropriate;
- (9) Whereas decisions under this Regulation imposing pecuniary obligations are to be enforceable in accordance with Article 192 of the Treaty,

⁽¹⁾ OJ C 246, 6. 8. 1998, p. 9.

⁽²⁾ OJ C 328, 26. 10. 1998.

⁽³⁾ Opinion delivered on 8 October 1998 (not yet published in the Official Journal).

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

1. 'participating Member State' shall mean a Member State which has adopted the single currency in accordance with the Treaty;
2. 'national central bank' shall mean the central bank of a participating Member State;
3. 'undertakings' shall mean those natural or legal persons, private or public, with the exception of public persons in the exercise of their public powers, in a participating Member State, which are the subject of obligations arising from ECB regulations and decisions, and shall include branches or other permanent establishments located in a participating Member State, the head office or registered office of which is outside a participating Member State;
4. 'infringement' shall mean any failure by an undertaking to fulfil an obligation arising from ECB regulations or decisions;
5. 'fine' shall mean a single amount of money which an undertaking is obliged to pay as a sanction;
6. 'periodic penalty payments' shall mean amounts of money which, in the case of a continued infringement, an undertaking is obliged to pay as a sanction, which shall be calculated for each day of continued infringement following the notification of the undertaking of a decision, in accordance with the second subparagraph of Article 3(1), requiring the termination of such an infringement;
7. 'sanctions' shall mean fines and periodic penalty payments imposed as a consequence of an infringement.

Article 2

Sanctions

1. The limits within which the ECB may impose fines and periodic penalty payments on undertakings, unless otherwise provided for in specific Council Regulations, shall be the following:
 - (a) fines: the upper limit shall be EUR 500 000; and
 - (b) periodic penalty payments: the upper limit shall be EUR 10 000 per day of infringement. Periodic penalty payments may be imposed in respect of a maximum period of six months following the notification of the undertaking of the decision in accordance with Article 3(1).
2. In determining whether to impose a sanction and in determining the appropriate sanction, the ECB shall be guided by the principle of proportionality.

3. The ECB shall take into consideration, where relevant, the circumstances of the specific case, such as:

- (a) on the one hand, the good faith and the degree of openness of the undertaking in the interpretation and fulfilment of the obligation arising from an ECB regulation or decision as well as the degree of diligence and cooperation shown by the undertaking or, on the other, any evidence of wilful deceit on the part of officials of the undertaking;
- (b) the seriousness of the effects of the infringement;
- (c) the repetition, frequency or duration of the infringement by that undertaking;
- (d) the profits obtained by the undertaking by reason of the infringement;
- (e) the economic size of the undertaking; and
- (f) prior sanctions imposed by other authorities on the same undertaking and based on the same facts.

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) explicitly states the contrary.

Article 3

Procedural rules

1. The decision on whether or not to initiate an infringement procedure shall be taken by the Executive Board of 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. The same decision may also be taken, on its own initiative or on the basis of a motion to that effect addressed to it by the ECB, by the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred.

Written notification of the decision to initiate an infringement procedure shall be given to the undertaking concerned, to the relevant supervisory authority and to the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred or to the ECB. The notification shall disclose the details of the allegations against the undertaking and the evidence on which such allegations are founded. Where appropriate, the decision shall require the termination of the alleged infringement and shall give notice to the undertaking concerned that periodic penalty payments may be imposed.

2. The decision referred to in paragraph 1 may require the undertaking to submit to an infringement procedure. In carrying out the infringement procedure, the ECB or the national central bank, as the case may be, shall have the right to:

- (a) require the submission of documents;
- (b) examine the books and records of the undertaking;
- (c) take copies or extracts from such books and records; and
- (d) obtain written or oral explanations.

When an undertaking obstructs the conduct of the infringement procedure, the participating Member State where the relevant premises are located shall afford the necessary assistance, including ensuring access by the ECB or the national central bank to the premises of the undertaking, so that the aforementioned rights can be exercised.

3. The undertaking concerned shall have the right to be heard by the ECB or the national central bank, as the case may be. The undertaking shall be given no fewer than thirty days to present its defence.

4. The Executive Board of the ECB shall, as soon as possible after receiving a submission from the national central bank which initiates the infringement procedure or after having consulted the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred, adopt a reasoned decision as to whether an undertaking has committed an infringement together with the sanction, if any, to be imposed.

5. The undertaking concerned shall be notified in writing of the decision and shall be informed of its right of review. Notification of the decision shall also be given to relevant supervisory authorities and to the national central bank of the Member State in whose jurisdiction the infringement has occurred.

6. The undertaking concerned shall have the right to request a review of the decision of the Executive Board by the Governing Council of the ECB. Such a request shall be made within thirty days of the receipt of the notification of the decision and shall include all supporting information and allegations. Such a request shall be addressed in writing to the Governing Council of the ECB.

7. A decision by the Governing Council of the ECB in response to a request submitted under paragraph 6 shall include the reasons for the decision and written notification thereof shall be given to the undertaking concerned, to the relevant supervisory authority of that undertaking and to the national central bank of the Member State in whose jurisdiction the infringement occurred. The notification shall inform the undertaking of its right of judicial review. If no decision has been taken by the Governing Council of the ECB within two months of the request, the undertaking concerned may request a judicial review of the decision of the Executive Board in accordance with the Treaty.

8. No sanction shall be enforced against the undertaking until the decision has become final through either:

- (a) the period of thirty days referred to in paragraph 6 having elapsed without the undertaking making a request for review to the Governing Council of the ECB; or
- (b) the Governing Council notifying the undertaking of its decision, or the period referred to in paragraph 7 having elapsed without the Governing Council having taken a decision.

9. The proceeds from sanctions imposed by the ECB shall belong to the ECB.

10. If an infringement relates exclusively to a task entrusted to the ESCB under the Treaty and the Statute, 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, 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. This provision shall be without prejudice to the application of criminal law and to prudential supervisory competencies in participating Member States.

11. An undertaking shall bear the costs of the infringement procedure if it has been decided that it has committed an infringement.

Article 4

Time limits

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.

2. The right to take the decision to impose a sanction in respect of an infringement, as provided for in this Regulation, shall expire one year after the decision to initiate the procedure as described in Article 3(1) was taken.

3. The right to start an enforcement procedure shall expire six months after the decision has become enforceable pursuant to Article 3(8).

*Article 5***Judicial review**

The Court of Justice of the European Communities shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty over the review of final decisions whereby a sanction is imposed.

*Article 6***General provisions and regulatory power**

1. In the event of a conflict between the provisions of this Regulation and the provisions of other Council Regulations enabling the ECB to impose sanctions, the provisions of the latter shall prevail.

2. Subject to the limits and conditions laid down in this Regulation, the ECB may adopt regulations to specify further the arrangements whereby sanctions may be imposed in accordance with this Regulation as well as guidelines to coordinate and harmonise the procedures in relation to the conduct of the infringement procedure.

*Article 7***Final provisions**

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 6(2) shall apply from the date of entry into force of this Regulation. The remaining Articles shall apply from 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 1998.

For the Council
The President
R. EDLINGER

EUROPEAN CENTRAL BANK REGULATION (EC) No 2157/1999
of 23 September 1999
on the powers of the European Central Bank to impose sanctions
(ECB/1999/4)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community (hereinafter referred to as the Treaty) and in particular to Article 110(3) thereof, to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the Statute) and in particular to Articles 34.3 and 19.1 thereof, and to Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions ⁽¹⁾ (hereinafter referred to as the Council Regulation) and in particular to Article 6(2) thereof;

Whereas:

- (1) according to Article 34.3 of the Statute, in conjunction with Article 43.1 of the Statute, paragraph 8 of Protocol No 25 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland and paragraph 2 of Protocol No 26 on certain provisions relating to Denmark, this Regulation shall not confer any rights or impose any obligations on a non-participating Member State;
- (2) the Council Regulation has established 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;
- (3) Article 6(2) of the Council Regulation provides the ECB with the regulatory power to specify the arrangements whereby sanctions may be imposed in accordance with the Council Regulation;
- (4) other Council or ECB Regulations may provide for specific sanctions in specific fields and may refer to this Regulation for the principles and procedures relating to the imposition of such sanctions;
- (5) when carrying out the procedure to determine the applicable sanction, the ECB must ensure the widest possible respect of the rights of defence of third parties, in accordance with the general principles of law and the case law of the Court of Justice of the European Communities on the matter, in particular existing case law concerning the inquiry powers of the European Commission in the field of competition;
- (6) there are no legal obstacles to the exchange of information within the European System of Central Banks (ESCB) relating to the detection of an infringement of ECB Regulations or Decisions;
- (7) the principle of *ne bis in idem* must be respected as regards the initiation of infringement procedures;
- (8) the rules governing the powers of the ECB and the competent national central bank in the framework of the infringement procedure must ensure the effective conduct of a thorough investigation of an alleged infringement, while at the same time providing for a high level of protection of the rights of defence of the undertaking concerned and the confidentiality of the infringement procedure;
- (9) assistance by the authorities of the Member States may be required to ensure the effective exercise of the powers of the ECB and of the competent national central bank to carry out the infringement procedure;
- (10) the undertaking concerned shall have the right to be heard once the inquiry stage, if any, of the infringement procedure has been completed and once it has received the factual results of the inquiry and the notice of objections;
- (11) an infringement procedure shall be carried out subject to the principles of confidentiality and of professional secrecy; confidentiality or professional secrecy shall not affect the rights of defence of the undertaking concerned;
- (12) a decision on an infringement may be subject to further review by the Governing Council of the ECB; the procedural conditions under which such further review shall take place must be established;
- (13) for the purposes of enhancing the transparency and the effectiveness of its powers to impose sanctions, the ECB may decide to publish its final decisions regarding sanctions or any information relating thereto; in view of the specific features of financial markets, publication of a decision to impose a sanction shall be an exceptional measure which shall only be taken by the ECB after due consideration of the circumstances of the specific case, the likely effects of such a decision on the reputation of the undertaking concerned and the legitimate business interests of the latter; such a decision to publish must

⁽¹⁾ OJ L 318, 27.11.1998, p. 4.

respect the principle of non-discrimination and guarantee a level playing-field; in this context, consultation with the relevant supervisory authorities prior to taking a decision to publish is desirable; the publication of a decision to impose a sanction shall in any event not disclose any information of a confidential nature;

- (14) a decision to impose a pecuniary obligation is to be enforced in accordance with Article 256 of the Treaty; whereas national central banks may be delegated to adopt all measures which are necessary to that end;
- (15) for the sake of sound and efficient administration, it appears appropriate to provide for a simplified infringement procedure for the penalisation of minor infringements;
- (16) this Regulation shall apply to cases of non-compliance foreseen in Article 7(1) of Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank ⁽¹⁾ (hereinafter referred to as the Council Regulation on minimum reserves) within the limits and conditions set out by the same Article 7(2); the particular features of cases of non-compliance with minimum reserve requirements as laid down in Article 7(1) of the Council Regulation on minimum reserves warrant the adoption of a specific legal regime which provides for an expeditious procedure for the imposition of sanctions while, at the same time, not violating the rights of defence of the undertaking concerned;
- (17) the ECB shall act in accordance with the Council Regulation and this Regulation in exercising the powers laid down in Article 7 of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽²⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the term 'competent national central bank' shall mean the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred. Other terms used shall have the same meaning as defined in Article 1 of the Council Regulation.

Article 2

Initiation of an infringement procedure

1. No more than one infringement procedure shall be initiated against the same undertaking based on the same facts. For this purpose, no decision on whether or not to initiate an

infringement procedure shall be taken by the Executive Board of the ECB or by the competent national central bank until they have informed and consulted with one another.

2. Prior to a decision to initiate an infringement procedure, the ECB and/or the competent national central bank may request from the undertaking concerned any information relating to the alleged infringement.
3. Either the Executive Board of the ECB or the competent national central bank, as the case may be, shall, upon request, be entitled to assist and cooperate with the other in carrying out the infringement procedure, in particular by transmitting any information that may be deemed relevant.
4. Unless otherwise agreed between the parties concerned, any communication between the ECB or the competent national central bank, as the case may be, and the undertaking concerned shall be conducted in the official Community language (or in one of the official Community languages) of the Member State in whose jurisdiction the alleged infringement has occurred.

Article 3

Powers of the ECB and the competent national central bank

1. The powers conferred by the Council Regulation upon the ECB and the competent national central bank in carrying out the inquiry shall include, for the purpose of obtaining any information relating to the alleged infringement, the right to search for any items of information and the right to conduct a search without prior notification of the undertaking concerned.
2. The staff of the ECB or of the competent national central bank, as the case may be, who are authorised, in accordance with their respective internal rules, to search for information on the premises of the undertaking concerned, shall exercise their powers upon the production of formal authorisation in writing issued in accordance with their respective internal rules.
3. Any request made to the undertaking concerned on the basis of the powers conferred upon the ECB or the competent national central bank, as the case may be, shall specify the subject matter and purpose of the investigation.

Article 4

Assistance by the authorities of the Member States

1. The assistance of the authorities of the Member States may be requested by the ECB or the competent national central bank, as the case may be, as a precautionary measure.
2. No authority of a Member State can act as a substitute for the ECB or the competent national central bank, as the case may be, in the assessment of the need for the investigations.

⁽¹⁾ OJ L 318, 27.11.1998, p. 1.

⁽²⁾ OJ L 318, 27.11.1998, p. 8.

*Article 5***Notice of objections**

1. The ECB or the competent national central bank, as the case may be, shall notify the undertaking concerned in writing of the factual results of any inquiry carried out and of the objections raised against the undertaking concerned before any decision is taken on the imposition of a sanction.
2. The ECB or the competent national central bank, as the case may be, shall, when giving notice of objections, fix a time limit within which the undertaking concerned may inform in writing the ECB or the competent national central bank, as the case may be, of its views on the objections raised, without prejudice to the possibility to develop these views at an oral hearing, if so requested in its written comments. This time limit shall be no less than 30 working days and shall start to run from receipt of the notification referred to in paragraph 1.
3. Further to the response received from the undertaking concerned, the ECB or the competent national central bank, as the case may be, shall decide whether to carry out further inquiries in order to resolve any outstanding issues. An additional notice of objections pursuant to paragraph 1 shall be sent to the undertaking concerned only if the result of the further inquiries conducted by the ECB or the competent national central bank, as the case may be, is to take new facts into account against the undertaking concerned or to alter the evidence for the contested infringements.
4. The ECB shall, in its decision to impose a sanction, deal only with those objections which have been notified in the manner outlined in paragraph 1 and in respect of which the undertaking concerned has been afforded the opportunity to make its views known.

*Article 6***Rights and obligations of the undertaking concerned**

1. The undertaking concerned shall cooperate with the ECB or the competent national central bank, as the case may be, in the inquiry stage of an infringement procedure. The undertaking concerned shall namely have the right to submit any documents, books or records, or copies or extracts thereof, and to provide any written or oral explanations.
2. The obstruction, non-compliance or non-performance by the undertaking concerned of duties imposed by the ECB or by the competent national central bank, as the case may be, in the exercise of its powers under the infringement procedure may provide sufficient grounds to initiate an infringement procedure under the terms of this Regulation and give rise to the imposition of periodic penalty payments.
3. The undertaking concerned shall have the right to legal representation during the infringement procedure.

4. Once it has been notified in accordance with Article 5(1), the undertaking concerned shall have the right to access the documents and other materials compiled by the ECB or by the competent national central bank, as the case may be, which serve as the basis for the evidence of an alleged infringement.

5. Should the undertaking concerned request in its written comments also to be heard at an oral hearing, this shall be conducted, on the date set, by the persons appointed for that purpose by the ECB or the competent national central bank, as the case may be. Oral hearings will take place on the premises of the ECB or the competent national central bank. Oral hearings shall not be public. Persons shall be heard separately or in the presence of other persons called upon to attend. The undertaking concerned may propose, within reasonable limits, that the ECB or the competent national central bank, as the case may be, should hear persons who may corroborate any aspect of its written comments.

6. The essential content of the statements made by each person heard shall be recorded in minutes which shall be read and approved by such person only in relation to his or her own statements.

7. Information and requests to attend oral hearings from the ECB or the competent national central bank, as the case may be, shall be sent to the addressees by registered post with acknowledgement of receipt, or shall be delivered by hand against receipt.

*Article 7***Confidentiality of the infringement procedure**

1. An infringement procedure shall be carried out subject to the principles of confidentiality and of professional secrecy.
2. Without prejudice to Article 6(4), the undertaking concerned shall not have access to documents or other materials in the possession of the ECB or the competent national central bank that are deemed to be confidential in relation to third parties or to the ECB or the competent national central bank. These shall include, in particular, documents or other materials containing information relating to the business interests of other undertakings, or internal documents of the ECB, the competent national central bank, other Community institutions or bodies, or other national central banks, such as notes, drafts and other working papers.

*Article 8***Review of the decision by the Governing Council of the ECB**

1. The Governing Council of the ECB may request the undertaking concerned, the Executive Board of the ECB and/or the competent national central bank to provide additional information in order to review the decision of the Executive Board of the ECB.

2. The Governing Council of the ECB shall fix a time-limit by which the information shall be provided, but this shall be no fewer than 10 working days.

Article 9

Enforcement of the decision

1. Once the decision on the imposition of a sanction has become final, the Governing Council of the ECB, after consulting the relevant national supervisory authorities, may decide to publish the decision or information relating thereto in the *Official Journal of the European Communities*. Such decision to publish shall have regard to the legitimate interest of the undertaking concerned to protect its business interests, and also to any other individual interest.

2. The decision of the ECB shall establish the manner in which payment of the sanction is to be made.

3. The ECB may request the national central bank of the Member State in whose jurisdiction the sanction is to be enforced to adopt all measures necessary to that end.

4. The national central banks shall report to the ECB on the enforcement of the sanction.

5. The ECB shall store all the information relevant to the determination and enforcement of the sanction in a file that shall be kept for at least five years from the date on which the decision on the imposition of the sanction becomes final. In order for the ECB to fulfil this duty, the competent national central bank shall forward to the ECB all original documentation and materials in its possession relating to the infringement procedure.

Article 10

Simplified procedure for minor infringements

1. In the event of a minor infringement the Executive Board of the ECB may decide to apply a simplified infringement procedure. The sanction to be imposed under this procedure shall not exceed EUR 25 000.

2. The simplified procedure shall entail the following steps:

- (a) the Executive Board of the ECB shall notify the undertaking concerned of the alleged infringement;
- (b) the notification shall contain all the facts which constitute the evidence of the alleged infringement and the corresponding sanction;
- (c) the notification shall inform the undertaking concerned of the fact that the simplified procedure is being applied and of its right to object to this procedure within 10 working days of receipt of the notification; and
- (d) if an objection is raised before the deadline laid down in (c) above, the infringement procedure shall be deemed to be initiated and the time limit of 30 working days within which it is possible to exercise the right to be heard shall start as from expiry of the deadline laid down in (c) above. If no objection is raised before the deadline laid down in (c)

above, the decision of the Executive Board of the ECB on the imposition of a sanction becomes final.

3. This Article shall be without prejudice to the procedure applicable in the event of non-compliance with minimum reserve requirements as laid down in Article 11 of this Regulation.

Article 11

Procedure in the event of non-compliance with minimum reserve requirements

1. In the event of non-compliance as foreseen in Article 7(1) of the Council Regulation on minimum reserves, Article 2(1) and (3), Articles 3, 4 and 5 and Article 6, with the exception of paragraph 3, of this Regulation shall not be applicable. The time limit foreseen in Article 8(2), shall be reduced to five working days.

2. The Executive Board of the ECB may specify and publicise the criteria according to which it will apply the sanctions provided for in Article 7(1) of the Council Regulation on minimum reserves. Such criteria may be published through a notice in the *Official Journal of the European Communities*.

3. Before any sanction is imposed in accordance with Article 7(1) of the Council Regulation on minimum reserves, the Executive Board of the ECB or, on its behalf, the competent national central bank shall notify the undertaking concerned of the alleged non-compliance and of the corresponding sanction. The notification shall contain all relevant facts of the alleged non-compliance and shall also inform the undertaking concerned that, unless it submits any objections, the sanction shall be deemed to be imposed by decision of the Executive Board of the ECB.

4. Upon receipt of the notification, the undertaking concerned shall be given five working days either:

— to acknowledge the alleged non-compliance and agree to the payment of the specified sanction, in which case the infringement procedure shall be deemed to have come to an end,

or

— to present any written information, explanations or objections which may be deemed relevant to a decision on whether or not to impose the sanction. The undertaking concerned may also attach any relevant documents as proof of the content of its reply. The competent national central bank shall without undue delay forward the file to the Executive Board of the ECB, which shall then decide whether or not to impose a sanction.

5. If no written objections are raised by the undertaking concerned within the established time limit, the sanction shall be deemed to be imposed by decision of the Executive Board of the ECB. After the decision has become final in accordance with the provisions of the Council Regulation, the undertaking concerned shall be charged the amount of the sanction specified in the notification.

6. In the situations foreseen in paragraph 4, first indent, and in paragraph 5, the ECB or the competent national central bank, on behalf of the ECB, as the case may be, shall give notification in writing to the relevant supervisory authorities.

Article 12

Time limits

1. Without prejudice to Article 4 of the Council Regulation, the time limits foreseen in this Regulation shall run from the day following receipt of a communication or delivery thereof by hand. Any communication from the undertaking concerned must be received by the addressee or be dispatched by registered post before the relevant time limit has expired.

2. Where the time limit would expire on a Saturday, Sunday or public holiday, it shall be extended up to the end of the following working day.

3. For the purposes of this Regulation, relevant public holidays for the ECB shall be those set out in the Annex to this Regulation, whereas public holidays relevant to national central banks shall be those established by law in the respective area of the Member State in which the undertaking concerned is located. The term 'working day' shall be construed accordingly. The ECB shall update the Annex of this Regulation whenever necessary.

Done at Frankfurt am Main, 23 September 1999.

*On behalf of the Governing Council of the
ECB*

The President

Willem F. DUISENBERG

ANNEX (*Indicative*)**List of public holidays (as referred to in paragraph 3 of Article 12)**

The following public holidays will be observed by the ECB:

New Year's Day	1 January
Carnival Tuesday (half day)	date varies
Good Friday	date varies
Easter Monday	date varies
Labour Day	1 May
Anniversary of the Declaration of Robert Schuman	9 May
Ascension Day	date varies
Whit Monday	date varies
Corpus Christi	date varies
Day of German Unity	3 October
All Saints' Day	1 November
Christmas Eve	24 December
Christmas Day	25 December
26 December	26 December
New Year's Eve	31 December

EUROPEAN CENTRAL BANK

NOTICE OF THE EUROPEAN CENTRAL BANK ON THE IMPOSITION OF SANCTIONS FOR BREACHES OF THE OBLIGATION TO HOLD MINIMUM RESERVES

(2000/C 39/04)

Article 7(1) of Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank states that, *inter alia*, where an institution fails to hold all or part of the minimum reserves imposed in accordance with that Regulation and ECB Regulations or Decisions associated therewith, certain sanctions may be imposed by the European Central Bank (ECB).

In order to ensure transparency as regards the sanctions policy of the ECB in the field of minimum reserves, the ECB has decided to make public the following elements of the sanctions policy that it will apply until further notice:

1. Amount of the sanction imposed by the European Central Bank in the event of a breach of the obligation to hold minimum reserves

In the event of a breach of the obligation to hold the required level of minimum reserves, in accordance with Council Regulations or Regulations or Decisions of the ECB associated therewith, a sanction will be imposed which shall be calculated as a penalty of 2,5 percentage points above the average, taken over the maintenance period in which the breach occurred, of the marginal lending rate of the European System of Central Banks, applied to the daily average amount of minimum reserves the institution concerned failed to provide.

The penalty will be calculated using the following formula:

$$P_t = \frac{D_t \cdot n_t \cdot \sum_{i=1}^n \frac{MLR_i + 2,5}{n_t \cdot 100}}{360}$$

Where:

P_t = penalty to be paid owing to the lack of the required reserves for the maintenance period t

D_t = the amount of required lacking for the maintenance period t (as a daily average)

n_t = number of calendar days in the maintenance period t

i = the calendar day of the maintenance period t

MLR_i = the marginal lending rate on day i

2. Repetitive breaches of the minimum reserve requirements

Should an institution subject to the minimum reserve requirements breach its obligation to hold the required level of minimum reserves more than twice during any 12-month period, it shall be deemed to have committed a repetitive breach.

For each repetitive breach a sanction will be imposed, which shall be calculated in accordance with the formula mentioned under 1 above, as a penalty of five percentage points above the average, taken over the maintenance period in which the repetitive breach occurred, of the marginal lending rate of the European System of Central Banks, applied to the daily average amount of minimum reserves the institution concerned failed to provide.