



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Economic and Monetary Affairs

2014/0807(CNS)

21.10.2014

AMENDMENTS

9 - 25

Draft report
Kay Swinburne
(PE537.491v01-00)

on the draft Council regulation amending Regulation (EC) No 2532/98
concerning the powers of the European Central Bank to impose sanctions

(10896/2014 – C8-0090/2014 – 2014/0807(CNS))

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Amendment 9
Hugues Bayet

Draft regulation
Recital 6

Draft of the European Central Bank

(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.

Amendment

(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. ***Where the ECB considers that immediate publication of a decision would jeopardise the stability of financial markets or be disproportionate considering the degree of severity of the administrative pecuniary penalty or sanction imposed on an undertaking, it should have the discretion to delay the publication in question by up to one year from the date on which the decision was taken. Upon request the ECB should hold confidential discussions behind closed doors with the Chair and Vice-Chairs of the European Parliament committee with responsibility for such cases. The ECB should state the reasons for the delay in an annex to the publication in which the decision appears.***

Or. fr

Justification

Three years is too long. It would be better to reduce the time limit to one year.

Amendment 10
Markus Ferber

Draft regulation
Recital 6

Draft of the European Central Bank

(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.

Amendment

(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 ***all legal means of appeal against those sanctions have not yet been exhausted and*** 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.

Or. de

Justification

Any published sanction automatically entails punishment by the market. In order to avoid unjustified punishment, only those sanctions against which all legal means of appeal have been exhausted should be published.

Amendment 11
Costas Mavrides

Draft regulation
Recital 6 a (new)

Draft of the European Central Bank

Amendment

(6a) Article 1 of Regulation (EU) No 1024/2013 stresses that the ECB shall act with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit

institutions with a view to preventing regulatory arbitrage or comparative advantage that promotes unfair competition and that no action, proposal or policy of the ECB shall, directly or indirectly, discriminate against any Member State or group of Member States as a venue for the provision of banking or financial services in any currency.

Or. en

Amendment 12 **Markus Ferber**

Draft regulation **Recital 9**

Draft of the European Central Bank

(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

Amendment

(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 avoid conflicts of interest, this principle is to be followed without restriction in all the actions carried out by the ECB.*** 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

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.

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.

Or. de

Amendment 13
Burkhard Balz

Draft regulation
Recital 10 a (new)

Draft of the European Central Bank

Amendment

(10a) Given the globalisation of banking services and the increased importance of international standards, the ECB should, in association with the competent authorities of participating Member States, establish a regular dialogue with supervisors outside the Union to foster the international coordination and to agree on shared principles in the imposition and application of sanctions. The dialogue should include a common understanding on the implications of diverging sanctions policies on market access and competition, and should aim to improve the international level playing field.

Or. en

Amendment 14
Markus Ferber

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Draft regulation

Article 1 – point 2

Regulation (EC) No 2532/98

Article 1 a – paragraph 2

Draft of the European Central Bank

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.

Amendment

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.

Notwithstanding this provision, the competent national authorities shall remain responsible for imposing administrative penalties. In the case of institutions subject to direct supervision by the ECB, however, they may impose such penalties only in consultation with the ECB.

Or. de

Amendment 15

Hugues Bayet

Draft regulation

Article 1 – point 2

Regulation (EC) No 2532/98

Article 1 a – paragraph 3

Draft of the European Central Bank

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

Amendment

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.

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. *Where the ECB considers that immediate publication of a decision would jeopardise the stability of financial markets or be disproportionate considering the degree of severity of the administrative pecuniary penalty or sanction imposed on an undertaking, it shall have the discretion to delay the publication of the decision by up to one year from the date on which the decision was taken.*

Or. fr

Justification

Three years is too long. It would be better to reduce the time limit to one year.

Amendment 16 **Markus Ferber**

Draft regulation

Article 1 – point 2

Regulation (EC) No 2532/98

Article 1 a – paragraph 3

Draft of the European Central Bank

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

Amendment

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, *provided that all legal means of appeal against* such decision *have been exhausted*. The ECB shall carry out such publication in accordance with relevant Union law, irrespective of any national law or regulation and, where

Directives, of any national legislation transposing those Directives.

relevant Union law is composed of Directives, of any national legislation transposing those Directives.

Or. de

Amendment 17

Alfred Sant

Draft regulation

Article 1 – point 2

Regulation (EC) No 2532/98

Article 1 a – paragraph 3

Draft of the European Central Bank

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.

Amendment

3. The ECB *shall, according to a transparent procedure and rules which it will make public*, 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.

Or. en

Justification

It is important not only to have transparency in any "name and shame" provision, but also to have such transparency applied in a manner that ensures all cases are treated in a similar manner and according to methods that are not changed on a case by case basis. Rules and procedures laid out by the ECB and duly published should ensure this.

Amendment 18

Sven Giegold

on behalf of the Verts/ALE Group

Draft regulation

Article 1 – point 2

Regulation (EC) No 2532/98

Article 1 a – paragraph 3

Draft of the European Central Bank

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.

Amendment

3. The ECB **shall** 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 the cases and in accordance with the conditions set out in*** 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.

Or. en

Justification

Change reflects text in Art 18(6) SSM regulation and is intended to clarify i) that there is a general obligation to publish and ii) that whether or not publication occurs in a particular case, as well as the modalities of any publication, will be determined in accordance with the relevant Union legislation (and therefore in the same manner for all banks whether in or out of SSM)

Amendment 19

Jonás Fernández

Draft regulation

Article 1 – point 4 – point aa (new)

Regulation (EC) No 2532/98

Article 3 – paragraph 9

Present text

Amendment

(aa) paragraph 9 is replaced by the following:

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

"9. The proceeds from sanctions imposed by the ECB shall belong to the **Bank Resolution Fund**. **Alternatively they shall become an own resource of the Union.**"

Or. en

Justification

Since the ECB is a money-creation institution the proceeds will have no productive use if they are parked at an ECB account. It is unclear for what purpose shall the ECB keep the proceeds of the sanctions, taking into account that it is a money-creation institution and that its current expenditures are covered by the European Union budget. Hence, the proceeds may sit in a non-productive fashion in an ECB account unless the ECB is directed to use them for capital expenditures. This is why the proceeds, which may be substantial, will be put to a better use by the Bank Resolution Fund, or alternatively they shall become a new own resource of the European Union.

Amendment 20
Jonás Fernández

Draft regulation
Article 1 – point 4 – point b
Regulation (EC) No 2532/98
Article 3 – paragraph 10

Draft of the European Central Bank

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

Amendment

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.

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. ***Furthermore, the proceeds accruing from the sanctions referred to in Article 9 of this Regulation shall remain at the disposal of the ECB provided that that Institution specifies a purpose for those proceeds other than financing current expenditure, and provided that it reports on their use to the European Parliament and the Court of Auditors. Otherwise, the ECB shall cede the proceeds to the Bank Resolution Fund, failing which they shall become an own resource of the European Union.***

Or. es

Justification

It is unclear for what purpose shall the ECB keep the proceeds of the sanctions, taking into account that it is a money-creation institution and that its current expenditures are covered by the European Union budget. Hence, the proceeds may sit in a non-productive fashion in an ECB account unless the ECB is directed to use them for capital expenditures. This is why the proceeds, which may be substantial, will be put to a better use by the Bank Resolution Fund, or alternatively they shall become a new own resource of the European Union.

Amendment 21

Sven Giegold

on behalf of the Verts/ALE Group

Draft regulation

Article 1 – point 5

Regulation (EC) No 2532/98

Article 4a – paragraph 1 – point b

Draft of the European Central Bank

(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.

Amendment

(b) Periodic penalty payments: the upper limit shall be **2 %** of the ***limit in point (a)*** 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.

Or. en

Justification

For non-supervisory sanctions the ratio of "one shot" to daily fines is 500 K / 10 K or 50:1. As formulated, the ratio for supervisory fines:period penalties is 730:1 There is no reason why the relative size of daily fines (to force compliance) should be less for supervisory sanctions. The simplest way to align the two is to cap the latter at 1/50th of the cap for "one shot" fines.

Amendment 22

Sven Giegold

on behalf of the Verts/ALE Group

Draft regulation

Article 1 – point 5

Regulation (EC) No 2532/98

Article 4a – paragraph 2

Draft of the European Central Bank

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)**

Amendment

2. For the purpose of paragraph 1 “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.

"average daily turnover" means the annual turnover, as defined under (a), divided by 365.

Or. en

Justification

Reference to "average daily turnover" removed to be consistent with Green AM for Article 4a(new) paragraph 1 point b

Amendment 23

Sven Giegold

on behalf of the Verts/ALE Group

Draft regulation

Article 1 – point 5

Regulation (EC) No 2532/98

Article 4c - Paragraph 1

Draft of the European Central Bank

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.

Amendment

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 **three years after the existence of the alleged infringement first became known to the ECB and, in any case, seven** years after the infringement occurred or, in the case of a continued infringement, **seven** years after the infringement ceased.

Or. en

Justification

Given the difficulty, particularly in the case of supervision of banks, of detecting some infringements/building a case, it would be prudent to extend both the periods referred to (time since ECB first became aware of a possible infringement and the time since last occurrence).

The corresponding periods in Article 4 could also be extended to have the same principle for all fines.

Amendment 24
Jonás Fernández

Draft regulation
Article 1 – point 5a (new)
Regulation (EC) No 2532/98
Article 5

Present text

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.

Amendment

5a. Article 5 is replaced by the following:

“Article 5

Judicial review

As stated in article 263 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union shall have unlimited jurisdiction over the review of final decisions whereby a sanction is imposed.”

Or. en

Justification

The current reading quotes an outdated Treaty numbering. Also, the current article 5 is written in a way that gives the impression that judicial review is granted by the Regulation when in fact derives from the Treaty on the Functioning of the European Union itself.

Amendment 25
Burkhard Balz

Draft regulation
Article 1 – point 5 a (new)
Regulation (EC) No 2532/98
Article 6a (new)

Draft of the European Central Bank

Amendment

5a. The following Article is inserted:

“Article 6a

International Dialogue

***Pursuant to Article 8 of Regulation (EU)
No 1024/2013 the ECB shall establish a
regular dialogue with supervisory
authorities outside the Union to work
towards a coherent application of
sanctions and sanction
mechanisms on the international level.”***

Or. en