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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	18 December 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	ANNEX to the COMMISSION OPINION on the European Central Bank's Recommendation for a Council Regulation amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions (ECB/2014/19)
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Delegations will find attached document C(2014) 9658 final ANNEX 1.

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Brussels, 18.12.2014
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ANNEX 1

ANNEX

to the

COMMISSION OPINION

on the European Central Bank's Recommendation for a Council Regulation amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions (ECB/2014/19)

DRAFTING PROPOSALS

Article	Text recommended by the ECB	Amendments proposed by the Commission
1a (1)	1. This Regulation shall apply to the imposition by the ECB of sanctions on undertakings for failure to comply with obligations arising from ECB decisions or regulations, unless otherwise expressly provided.	1. This Regulation shall apply to the imposition by the ECB of sanctions on undertakings for failure to comply with obligations arising from ECB regulations or decisions.
1a (2)	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.	2. The rules applying to the imposition by the ECB, in the exercise of the tasks conferred upon it by Council regulation No 1024/2013, of sanctions for breaches of ECB regulations and decisions shall derogate from the rules laid down in Articles 2 to 4 to the extent laid down in Articles 4a to 4c.
1a (3)	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.	<p>3. The ECB shall without undue delay publish on its official website any decision imposing on an undertaking sanctions for breaches of ECB regulations or decisions, both in the supervisory and non-supervisory fields. Publication shall take place after the decision has been notified to the undertaking concerned and include information on the type and nature of the breach and the identity of the undertaking concerned, unless publication in this manner would either:</p> <p>(a) jeopardise the stability of financial markets or an on-going criminal investigation; or</p> <p>(b) cause, insofar as it can be determined, disproportionate damage to the undertaking concerned.</p> <p>In these circumstances, such decisions shall be published on an anonymised basis. Alternatively, where such circumstances are likely to cease within a reasonable period of time, publication under this paragraph may be postponed for such period of time.</p> <p>If an appeal to the Court of Justice in respect of a decision is pending, the ECB shall, without undue delay, also publish on its official website information on the status of the appeal in question</p>

		and the outcome thereof. The ECB shall ensure that information published in accordance with this paragraph remains on its official website for at least five years.
4a (2)	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) ‘average daily turnover’ means the annual turnover, as defined under (a), divided by 365.	2. For the purpose of paragraph 1: (a) ‘total annual turnover’ means the total annual net turnover of a legal person, including the gross-income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees of the undertaking in the preceding business year. Where the undertaking is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income in the preceding business year resulting from the consolidated annual financial accounts of the ultimate parent undertaking in the group supervised by the ECB; (b) ‘average daily turnover’ means the total annual turnover, as defined under (a), divided by 365.
4b (1)	<p>1. By way of derogation from Article 3(1) to (8), the rules laid down in this Article shall apply to infringements relating to decisions and regulations adopted by the ECB in the exercise of its supervisory tasks.</p> <p>2. After the infringement procedure has been carried out pursuant to rules to be laid down by the ECB in accordance with Article 6(2), the Supervisory Board shall propose to the Governing Council a complete draft decision to impose a sanction on the undertaking concerned, in accordance with the procedure laid down in Article 26(8) of Regulation (EU) No 1024/2013. A hearing with regard to the alleged infringement committed by the undertaking concerned shall precede the submission by the Supervisory Board of the complete draft decision to the Governing Council.</p> <p>3. The undertaking concerned shall have the right to request a review by the Administrative Board of Review of the decision taken by the Governing Council pursuant to paragraph 2, in accordance</p>	By way of derogation from Article 3(1) to (8), decisions of the ECB concerning infringements relating to ECB regulations and decisions in the supervisory field are taken in accordance with the procedures foreseen in Regulation (EU) No 1024/2013.

	with the procedure laid down in Article 24 of Regulation (EU) No 1024/2013.	
4c (1)	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.	1. By way of derogation from Article 4, the right to take a decision to impose a sanction with regard to infringements of 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 continuing or repeated infringements, five years after the infringement ceased.
4c (3)	3. The time limits described in the preceding paragraphs can be extended if: (a) a decision of the Governing Council is subject to review before the Administrative Board of Review or appeal proceedings before the Court of Justice of the European Union; or (b) criminal proceedings are pending against the concerned undertaking in connection with the same facts. In such a case, the time limits described in the previous paragraphs shall be extended for the period of time it takes for the Administrative Board of Review or the Court of Justice to review the decision or until conclusion of the criminal proceedings against the concerned undertaking.	3. The time limits described in the preceding paragraphs shall be automatically extended if: (a) a decision of the ECB is subject to review before the Administrative Board of Review or to legal challenge before the Court of Justice of the European Union; or (b) criminal proceedings are pending against the concerned undertaking in connection with the same facts. In such a case, the time limits described in the previous paragraphs shall be extended for the period of time it takes for the Administrative Board of Review or the Court of Justice to conclude the proceedings or until conclusion of the criminal proceedings against the concerned undertaking.
4c(4)	4. Any action of the ECB designed to enforce payment or payment terms and conditions under the imposed administrative penalty shall cause the limitation period for the enforcement to be interrupted. The right of the ECB to enforce a decision to impose an administrative penalty shall expire five years after such decision has been taken. The limitation period for the enforcement of administrative penalties shall be suspended: (a) until the deadline for payment of the imposed administrative penalty has passed;	4. The right of the ECB to enforce a decision imposing a sanction shall expire five years after the deadline for payment of the imposed sanction has passed. Any action of the ECB designed to enforce payment or payment terms and conditions under the imposed sanction shall cause the limitation period for the enforcement to be interrupted. The limitation period for the enforcement of sanctions shall be suspended if its enforcement of payment is suspended pursuant to a decision of the ECB or of the Court of Justice."

	(b) if enforcement of payment of the imposed administrative penalty is suspended pursuant to a decision of the Governing Council or of the Court of Justice.	
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