



EUROPEAN CENTRAL BANK

EUROSYSTEM

Feedback statement

Public consultation on the ECB
Regulation on infringement
procedures in cases of non-
compliance with statistical reporting
requirements

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Executive summary

On 23 June 2021 the European Central Bank (ECB) launched a public consultation on an ECB Regulation on infringement procedures in cases of non-compliance with statistical reporting requirements and repealing Decision ECB/2010/10.

The ECB Regulation would form part of a wider legal framework aimed at ensuring that the European System of Central Banks (ESCB) has high-quality statistics available to support its tasks. The ECB Regulation would also repeal Decision ECB/2010/10 on non-compliance with statistical reporting requirements¹.

The ECB Regulation is in line with the existing provisions and procedural rules of the applicable legal framework concerning non-compliance with statistical reporting requirements:

- Article 5 and Article 34.3 of the Statute of the ESCB² and Article 299 of the Treaty on the Functioning of the European Union (TFEU)³;
- Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank⁴, in particular Article 7;
- Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions⁵;
- 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)⁶.

The ECB Regulation will be complemented by an ECB Decision on the sanction calculation methodology, which will be adopted at the same time as the ECB Regulation.

The public consultation on the ECB Regulation was launched on 23 June 2021, following the approval of the Governing Council of the ECB. The public consultation lasted six weeks, and the deadline for submission of comments was 4 August 2021.

¹ [Decision of the European Central Bank of 19 August 2010 on non-compliance with statistical reporting requirements \(ECB/2010/10\) \(OJ L 226, 28.8.2010, p. 48\).](#)

² [Protocol \(No 4\) on the Statute of the European System of Central Banks and of the European Central Bank \(OJ C 202, 7.6.2016, p. 230\).](#)

³ [Consolidated version of the Treaty on the Functioning of the European Union \(OJ C 202, 7.6.2016, p. 1\).](#)

⁴ [Council Regulation \(EC\) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank \(OJ L 318, 27.11.1998, p. 8\).](#)

⁵ [Council Regulation \(EC\) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions \(OJ L 318, 27.11.1998, p. 4\).](#)

⁶ [European Central Bank Regulation \(EC\) No 2157/1999 of 23 September 1999 on the powers of the European Central Bank to impose sanctions \(ECB/1999/4\) \(OJ L 264, 12.10.1999, p. 21\).](#)

The ECB gratefully acknowledges the efforts of the sole respondent to this consultation.

The ECB received one written response with 12 comments. Following the public consultation, the ECB analysed and gave due consideration to all the comments received from the respondent and subsequently revised the ECB Regulation. The main changes to the text of the ECB Regulation which resulted from the comments raised in the public consultation are:

1. clarification of when revisions would not be considered to be infringements and therefore would not be subject to monitoring and reporting to the ECB;
2. deletion of the terms “ordinary revisions” and “non-systematic revisions”;
3. revision of the definition of “cumulative alleged infringement” to clarify that it can include infringements of one or more statistical reporting requirements arising from the same ECB Regulation or ECB Decision;
4. extension of the time frame to adopt remedial plans from a total of 42 calendar days to 60 calendar days, and clarification of the time frame and procedure that apply in cases where reporting agents need to prepare and submit remedial plans.

This feedback statement presents the ECB’s assessment of the comments received.

Following the assessment of the comments received during the public consultation and further comments suggested by the different committees consulted, a revised ECB Regulation was submitted to the Governing Council for adoption as ECB Regulation on non-compliance with statistical reporting requirements and repealing Decision ECB/2010/10. The Regulation will be published on the ECB’s website following its adoption together with this feedback statement and the questions submitted by the respondent to the public consultation.

1 Overview and analysis of responses

In accordance with the procedure approved on 4 October 2016 by the Governing Council to enhance transparency in the legislative process of European Statistics, the ECB conducted a public consultation on the ECB Regulation. The public consultation, which started on 23 June and ran until 4 August 2021, gave interested parties the opportunity to comment on the ECB Regulation. As part of this consultation, a set of frequently asked questions (FAQs) was published on the ECB's website as background information. The ECB also informed the European Parliament of the public consultation.

A total of one written response with 12 comments from one respondent was received. The submission was made by Banking & Payments Federation Ireland (BPFi). Table 1 provides a breakdown of the types of comments made and the parts of the ECB Regulation to which they refer.

The respondent welcomed the opportunity to comment on the ECB Regulation. The comments made by the respondent requested clarification of terms which were not clearly defined in the ECB Regulation (such as “ordinary revisions” and “non-systematic revisions”) and pointed out the lack of clarity in relation to the time frame for the submission and approval of remedial plans. Furthermore, the respondent highlighted the importance of further clarifying the circumstances for initiating infringement procedures in cases of alleged infringement (for example, whether revisions to improve overall data quality would be included as an alleged infringement) and, in particular, the justification for initiating an infringement procedure where the competent Eurosystem central bank has failed to record or report the alleged infringement in order to ensure transparency and equal treatment of reporting agents.

Finally, the respondent requested that, when new statistical regulations are adopted, the technical difficulties that may arise during their implementation should also be covered by the transitional period mentioned in the ECB Regulation. Lastly, the respondent requested the inclusion in the ECB Regulation of an additional instance in which infringement procedures would not be initiated against reporting agents in order to allow them sufficient time to implement all the changes that may be required by new regulations.

Table 1

Types of comments made and the parts of the ECB Regulation to which they refer

	Amendment	Clarification	Deletion	Total
Preamble	0	0	0	0
Articles	4 <ul style="list-style-type: none">• Article 2• Article 8(6)• Article 8(8)• Article 12(1)(b)	6 <ul style="list-style-type: none">• Article 2(7)• Article 3(1)• Article 5(1)• Article 5(1)(b)• Article 7(6)(b)• Article 9(4)	2 <ul style="list-style-type: none">• Article 8(1)• Article 8(5)	12
Total	4	6	2	12

2 Rationale for and scope of the ECB Regulation

2.1 Rationale for the ECB Regulation

The ECB Regulation is needed in order to ensure a consistent and harmonised approach in various statistical fields, to clearly define the roles of the ECB and the national central banks (NCBs) in infringement procedures, and to ensure that all procedural provisions concerning the initiation of infringement procedures and the imposition of sanctions in the area of statistics are clearly defined in the interest of ensuring due process and protecting the rights of the reporting agents in accordance with the principles of transparency and equal treatment.

To reduce the administrative burden and ensure legal certainty, such infringement procedures should be harmonised using existing procedural rules insofar as possible. The infringement and enforcement procedures and requirements provided for in the ECB Regulation are in line with the existing provisions and procedural rules of the applicable legal framework concerning non-compliance with statistical reporting requirements.

2.2 Scope of the ECB Regulation

The ECB Regulation is addressed to the ECB and competent NCBs, which, among other things, are responsible for monitoring compliance with statistical reporting requirements by reporting agents in cases of direct reporting or/and on an ongoing basis and for recording any alleged infringements of those requirements in a dedicated system. The Regulation also concerns all reporting agents with a legal obligation to satisfy the ECB's statistical reporting requirements.

The reporting requirements embedded in the statistical regulations adopted by the ECB entail a need to monitor compliance with minimum quality standards, including standards for transmission, accuracy and conceptual compliance. At the same time, reporting agents should continue to provide revisions of statistical information and it has been further clarified in the ECB Regulation when revisions to correct an inaccuracy or conceptual non-compliance may not result in a sanction.

3 Legal basis

Article 132(3) TFEU empowers the ECB, within the limits and under the conditions adopted by the Council under the procedure laid down in Article 129(4) TFEU, to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 5 of the Statute of the ESCB empowers the ECB, assisted by the NCBs, to collect the statistical information necessary to undertake the tasks of the ESCB. Article 5 of the Statute of the ESCB further provides that the Council shall define the appropriate provisions for, amongst other things, enforcement. On this basis, the Council adopted Council Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank.

In accordance with Article 34 of the Statute of the ESCB, the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

In accordance with Article 6(2) of Council Regulation (EC) No 2532/98, the ECB may adopt regulations to specify further the arrangements whereby sanctions may be imposed in accordance with that Regulation as well as guidelines to coordinate and harmonise the procedures in relation to the conduct of the infringement procedure.

The power of the ECB to impose sanctions on reporting agents for failure to comply with the obligations resulting from regulations or decisions of the ECB and the limits and conditions under which this power may be exercised are defined in Article 7 of Council Regulation (EC) No 2533/98.

4 Comments on specific parts of the amending ECB Regulation

4.1 Request for amendment of definitions provided in Article 2

Comment. The respondent requested the inclusion of the terms “ordinary revisions” and “non-systematic revisions” in Article 2 of the ECB Regulation. According to the respondent’s understanding, these two terms, which were mentioned in Article 9(4) at the time of the public consultation, were not clear enough, thereby jeopardising the transparency and full disclosure of the document.

Assessment. We agree with the comment and have decided to refer to revisions more generally. We have therefore deleted the words “ordinary” and “including non-systematic” from Article 9(4) (now Article 3(4) of the ECB Decision on the methodology for the calculation on sanctions). Furthermore, we have clarified in Article 3(4) of the ECB Decision (former Article 9(4) of the ECB Regulation) when revisions to correct an inaccuracy or conceptual non-compliance may not result in a sanction.

For this reason, definitions of the terms “ordinary revisions” and “non-systematic revisions” have not been included in Article 2 of the ECB Regulation.

4.2 Request for clarification of the concept of “infringement” referred in Article 2(7)

Comment. The respondent asked for a clarification of the term “infringement” and for the criteria to be more transparently defined. According to the respondent, the apparent criteria for assessing whether an undertaking is fulfilling its statistical reporting obligations are cited only in reference to “cumulative alleged infringement”.

Assessment. The term “infringement” used in the ECB Regulation is defined by reference to Article 1(4) of Council Regulation (EC) No 2532/98, which states: “‘infringement’ shall mean any failure by an undertaking to fulfil an obligation arising from ECB regulations or decisions”.

Furthermore, the definition of the term “cumulative alleged infringement” in Article 2(3) has been revised to clarify that it can include infringements of one or more statistical reporting requirements arising from the same ECB regulation or decision. A corresponding amendment has also been made in recital 6 of the ECB Regulation.

Consequently, the concept of “infringement” referred to in Article 2(7) is clear and does not need further clarification.

4.3 Request for clarification of the monitoring referred in Article 3(1)

Comment. The respondent asked for clarification regarding the monitoring mentioned in Article 3. Would monitoring include all revisions (i.e. ordinary revisions and non-systematic revisions)? If reporting agents remain encouraged to report revisions in accordance with relevant policies to improve overall data quality, clarity is needed as to whether revisions to improve overall data quality would be included as an alleged infringement.

Assessment. As explained in section 4.1 above, we have decided to refer to revisions more generally. In all cases, revisions will still be monitored.

Thus, the monitoring mentioned in Article 3(1) has been clarified as requested.

4.4 Request for clarification of the reporting referred to in Article 5(1)

Comment. The respondent asked for clarification regarding the reporting mentioned in Article 5(1) and asked whether it would include all revisions (i.e. ordinary revisions and non-systematic revisions). If reporting agents remain encouraged to report revisions in accordance with relevant policies to improve overall data quality, clarity is needed as to whether revisions to improve overall data quality would be included as an alleged infringement.

Assessment. As explained in section 4.1 above, we have decided to refer to revisions more generally and to make no distinction between “ordinary” and “non-systematic” revisions. In all cases, reporting agents will still be encouraged to report revisions.

Thus, the reporting mentioned in Article 5(1) has been clarified as requested.

4.5 Request for clarification as to whether the alleged infringements referred in Article 5(1)(b) are seen as cumulative

Comment. Article 5(1)(b) refers to the requirement to report three or more alleged infringements by a reporting agent of monthly reporting requirements within six consecutive months. This sub-paragraph does not state whether these alleged infringements should be due to the same issue or could be due to different issues.

Assessment. In response to this comment, recital 6 of the ECB Regulation now clarifies that frequent cases of alleged infringement of reporting requirements should be monitored and reported to the ECB or the competent NCB, as appropriate, and the definition of “cumulative alleged infringement” has been revised to clarify that it

can include infringements of one or more statistical reporting requirements found in the same ECB regulation or decision (Article 2(3)).

Thus, whether the alleged infringements referred in Article 5(1)(b) are seen as cumulative has been clarified as requested.

4.6 Request for clarification of the time frame for remedial plans in Article 7(6)(b)

Comment. The respondent mentioned that the deadline referred to in paragraph 1 relates to the time frame for the competent Eurosystem central bank and the reporting agent, while former paragraph 6(b) refers only to the deadline for the reporting agent to submit a revised plan. This is potentially confusing, and this paragraph should explicitly state the relevant time frame.

Assessment. To allow for more clarity on the time frame for remedial plans and in order to facilitate their approval and implementation, the total number of days within which a remedial plan shall be adopted has been extended from 42 to 60 calendar days. The reporting agent has 30 calendar days following notification to submit a remedial plan to the competent Eurosystem central bank, and the deadline for the competent Eurosystem central bank to assess the remedial plan is 12 calendar days from the date of submission. The time frame within which a reporting agent needs to prepare and submit a revised remedial plan has now been clarified in Article 7(5)(b). Accordingly, the reporting agent will have to submit such plan within ten calendar days, and the competent Eurosystem central bank will then have eight calendar days to assess it.

Thus, Article 7(6)(b) has been amended and clarified as requested.

4.7 Request for deletion of Article 8(1)

Comment. The respondent considers that Article 8(1) gives broad powers to the competent NCBs or the ECB to initiate infringement procedures against reporting agents. Furthermore, the respondent considers that the circumstances for initiating infringement procedures in cases of alleged infringements not referred to in paragraph 2 should be stated clearly to ensure transparency and equal treatment of reporting agents.

Assessment. This provision is based on Article 3(1) of Council Regulation (EC) 2532/98, which grants both the competent NCB and the ECB the power to initiate an infringement procedure, either on its own initiative or on the basis of a motion addressed to it by the other. Article 8(1) defines the specific cases in which the ECB or the competent NCB shall initiate an infringement procedure. However, further clarifications have been included in Article 8(3) of the ECB Regulation to explain the concrete circumstances of the specific case to take into account by the competent

NCB or the ECB when determining whether or not to initiate an infringement procedure.

Therefore, the requested deletion of Article 8(1) has not been implemented because the circumstances for initiating infringement procedures in cases of alleged infringements not referred in paragraph one have been clearly stated in Article 8(3).

4.8 Request for deletion of Article 8(5)

Comment. The respondent asked what justification will be used to initiate infringement procedures where the competent Eurosystem central bank has failed to record or report the alleged infringement as required by the ECB Regulation. Furthermore, the respondent considers that Article 8(5) contradicts Article 6, under which reporting agents must be notified of an infringement procedure initiated pursuant to Article 8.

Assessment. Article 6 of the ECB Regulation applies notwithstanding the requirements of Articles 3 (monitoring and recording) and 5 (reporting). An infringement can be initiated on the basis of information recorded by the competent Eurosystem central bank, even if that information was not recorded in the dedicated ECB system or reported to the ECB or the competent NCB in full detail. The provision in Article 8(5) is intended to address cases where the reporting agent fails to provide or does not cooperate in providing all the required information to allow proper monitoring and reporting by the NCB to the ECB, which should not constrain the ECB from initiating an infringement procedure.

Therefore, the requested deletion of Article 8(5) has not been implemented.

4.9 Request for amendment of Article 8(6)

Comment. The respondent considers that technical difficulties are not being considered to be beyond the reporting agent's control. However, there should be a reference here to the transitional period after new regulations are imposed so that technical difficulties would also be covered by this provision.

Assessment. Article 11 of the ECB Regulation provides for a transitional period of 12 months following the first reporting pursuant to an applicable ECB regulation or decision. This transitional period would allow reporting agents sufficient time to address the technical difficulties which may arise following the adoption of the new regulation. Furthermore, recital 12 has been amended accordingly to make a reference to the application of this transitional provision.

Therefore, the requested amendment of Article 8(6) has not been implemented.

4.10 Request for amendment of Article 8(8)

Comment. The respondent considers that an additional instance should be included where infringement procedures would not be initiated in relation to the adoption of new regulations. When new regulations are imposed, the notice period provided by NCBs to the reporting agents should be sufficient to allow all changes to be considered and IT systems to be updated.

Assessment. As explained in section 4.9 above, Article 11 of the ECB Regulation provides for a transitional period for reporting agents after new regulations or decision have been adopted. This is also referred to in recital 12 except for cases of serious misconduct.

Therefore, the requested amendment of Article 8(8) has not been implemented.

4.11 Request for clarification of the terms “ordinary revisions” and “non-systematic revisions”

Comment. The reporting agent asked for further clarification in Article 9(4), which has been moved to the ECB Decision, of the terms “ordinary revisions” and “non-systematic revisions”.

Assessment. We agree with the comment, and, as explained in section 4.1 above, we have decided to refer to revisions more generally. We have therefore deleted the words “ordinary” and “including non-systematic” from the former Article 9(4) (now included in the ECB Decision on the sanction calculation methodology as part of Article 3) of the ECB Regulation. Furthermore, we have clarified in the former Article 9(3) of the Regulation now Article 3 of the ECB Decision when revisions may not be sanctioned in cases of inaccuracy or conceptual non-compliance.

4.12 Request for amendment of the word “substantively” in Article 12(1)(b)

Comment. The respondent asked for the removal or clarification of the word “substantively” in Article 12(1)(b) (current Article 11(1)(b)). The respondent considers it a subjective term and considers that the transitional provisions should apply to any ECB statistical reporting requirements amended by ECB regulations or decisions. This is especially important for smaller institutions which may have limited resources available to implement the changes required by regulations and decisions.

Assessment. The word “substantively” has been further clarified in the current Article 11(1)(b) to explain when the statistical reporting requirements are substantively amended.

Thus, Article 12(1)(b) (current Article 11(1)(b)) has been further clarified as requested.

5 Amendments made following the public consultation

Following the public consultation on the ECB Regulation, the ECB made an assessment of the outcome and adapted the proposed ECB Regulation accordingly.

Table 2 below summarises the key changes in the new ECB Regulation as a result of the comments received during the public consultation and the changes that have been implemented to align it with the ECB Decision on the sanction calculation methodology. Purely editorial changes are not listed.

Table 2
Key changes made in the new ECB Regulation

Articles amended	Heading	Amendment
Article 2(3) and Recital 6	Definitions	In response to the comment raised during the public consultation on whether alleged infringements are seen as cumulative (Article 5(1)(b)), the definition of "cumulative alleged infringement" has been revised to clarify that it can include infringements of one or more statistical reporting requirements arising from the same ECB regulation or decision. Recital 6 has also been amended to add clarity in this regard.
Recital 12		Recital 12 has been amended to refer to the transitional provisions in response to the comments raised during the public consultation in relation to Article 8(6) and (8) of the ECB Regulation.
Article 7 has been substantively amended	Remedial plan	Article 7 has been amended to allow for more clarity in the time frame to implement remedial plans and to facilitate their timely approval. Thus, the total number of days within which a remedial plan shall be adopted has been extended from 42 to 60 calendar days. Furthermore, a specific reference to the time frame for reporting agents to prepare and submit a revised remedial plan where the original remedial plan was not considered sufficient has been added.
Article 9(1)(a) and (b) and Article 9(3) and (4). This Article has been moved to the ECB Decision	Calculation and imposition of sanctions	The order of the quantitative aspects for the calculation of sanctions has been amended to align them with the quantitative aspects considered in the ECB Decision on the sanction calculation methodology. The former paragraph 3, which referred to the calculation of sanctions, has been deleted from the ECB Regulation and moved to the ECB Decision on the sanction calculation methodology which accompanies the ECB Regulation. Specific wording has been added to clarify that an adjustment of the baseline amount shall not apply in cases of serious misconduct. The terms "ordinary revisions" and "non-systematic revisions" have been removed from the former paragraph 4 (now paragraph 3).
Article 12 (now Article 11)	Transitional provisions	The term "substantively" has been further clarified
Article 13	Repeal	Former Article 14 of the ECB Regulation is now Article 13.
Article 14	Entry into force	Former Article 13 of the ECB Regulation is now Article 14.

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For specific terminology please refer to the [ECB glossary](#) (available in English only).