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Olivier Guersent
Director General
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European Commission
Rue de Spa 2
1000 Brussels
Belgium

EBA/2016/D/731

15 June 2016

Report on Administrative Penalties under Article 112(4) of the Bank Recovery and Resolution Directive (BRRD)¹

Dear Mr Guersent

I am writing to you in relation to the mandate provided to the EBA under Article 112(4) of the BRRD. Article 112(4) of the BRRD provides:

By 3 July 2016, EBA shall submit a report to the Commission on the publication of penalties by Member States on an anonymous basis as provided for under paragraph 2 and in particular whether there have been significant divergences between Member States in that respect. That report shall also address any significant divergences in the duration of publication of penalties under national law for Member States for publication of penalties.

Article 113 of the BRRD obliges resolution authorities and competent authorities, subject to the obligations of professional secrecy, to inform the EBA of all administrative penalties imposed by them under Article 111 of the BRRD and of the status of any appeal as well as the outcome thereof.

As you are aware, the transposition of BRRD into the national laws of Member States, as well as the adoption of Level 2 legislation, has been delayed; as a result, the legislative framework governing BRRD matters is not yet complete.

At the date of this letter, the EBA has received no notifications from either resolution authorities or competent authorities under Article 113 of the BRRD. The EBA has reminded authorities of their notification obligations under Article 113 of the BRRD on a number of occasions. In the circumstances, it appears that no administrative penalties under Article 111 of the BRRD have yet been imposed. As a result, the EBA has no data with which to complete its report to fulfil the mandate given to it under Article 112(4) of the BRRD.

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council

In these circumstances, and in order to avoid submitting a meaningless report to the European Commission for the sake of complying with Article 112(4), the EBA proposes to revisit this mandate at the end of 2017. By that time, the recovery and resolution regimes will be more established under national law and some data will possibly be available to the EBA on which to conduct the required analysis. Therefore, the EBA is writing to you to inform you that we aim to submit the required report to the European Commission by 31 December 2017.

Should you have any questions on this, please do not hesitate to contact me.

Yours sincerely

(signed)

Andrea Enria

CC: John Berrigan, DG Financial Stability, Services and Capital Markets Union, Deputy Director-General
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