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REPORT ON THE PUBLICATION OF ADMINISTRATIVE PENALTIES ON AN ANONYMOUS BASIS

EBA

EUROPEAN
BANKING
AUTHORITY

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1. Background of the report

1.1 Requirements of Directive 2013/36/EU

1.1.1 Publication by competent authorities

Pursuant to Article 68 of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, Member States are required to ensure that the competent authorities publish on their official website at least any administrative penalties against which there is no appeal and which are imposed for breach of the national provisions transposing Directive 2013/36/EU or of Regulation (EU) No 575/2013, including information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed, without undue delay after that person is informed of those penalties. Competent authorities should also publish information on the appeal status and outcome thereof, should Member States permit publication of penalties against which there is an appeal.

The principle set out in Directive 2013/36/EU is that the identity of the person subject to sanctions should be made public, unless one of the exceptions foreseen in the Directive applies. Thus, competent authorities are required to publish the penalties on an anonymous basis, in a manner in accordance with national law, in any of the following circumstances:

- where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- where publication would jeopardise the stability of financial markets or an ongoing criminal investigation; and
- where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved.

Furthermore, competent authorities are required to ensure that information so published remains on their official website for at least five years.

1.1.2 EBA report

In accordance with Article 68(4) of Directive 2013/36/EU, the European Banking Authority (EBA) is required to submit a report to the Commission:

- on the publication of penalties by Member States on an anonymous basis as provided for under Article 68(2) of Directive 2013/36/EU, in particular where there have been significant divergences between Member States in this respect; and

- on any significant divergences in the duration of the publication of penalties under national law.

This document is meant to satisfy the requirements set out under the first bullet point above. Considering the requirement in Article 68(3) of Directive 2013/36/EU to the effect that the information on penalties should remain on the official website of competent authorities for at least five years, it is too early to prepare the report on significant divergences in the duration of the publication of penalties under national law.

1.2 Basis of the report

This report has been prepared by the EBA on the basis of the information provided directly by competent authorities and of information available on the official websites of the authorities under the links provided by such authorities, and not under other parts of such websites.

Furthermore, the general approach has been to review the information on administrative penalties that was published after the date of Directive 2013/36/EU, even though various such decisions might have been taken prior to the transposition of the Directive into national law. Considering the fact that the EBA is required to report on the application of Directive 2013/36/EU, older information did not appear to be relevant for the purposes of this document.

This document is based on the information that was available on 27 July 2015.

2. Review of the publication of sanctions on an anonymous basis

2.1.1 General findings

The responses received by the EBA from national authorities, as well as the findings of the EBA following a review of the information published on the websites of the national authorities, are set out in the table of findings attached to this document.

Certain authorities have not set up dedicated sections on their websites in respect of the administrative penalties contemplated in Article 68 of Directive 2013/36/EU. Furthermore, certain authorities informed the EBA that no relevant administrative penalties were imposed for the period under review. It should also be noted that most websites only set out the relevant information in the national language.

From the administrative penalties that were reviewed, it appears that the relevant natural and legal persons are generally named. Where the publication is on an anonymous basis, it appears that, most frequently, the relevant authority has relied on Article 68(2) of Directive 2013/36/EU

and withheld the identity of the sanctioned person in the case of natural persons. The EBA assumes that such a decision satisfied the requirements of Article 68(2). Furthermore, in certain cases the stability of financial markets was also considered.

Following the review of the information provided, the EBA identifies the need to make the following recommendations.

Recommendation 1: Accessibility of publication

In the interests of ensuring that the information is readily accessible, the EBA recommends that the administrative penalties contemplated in Article 68(1) of Directive 2013/36/EU be published on a dedicated section of the website.

Rationale

If the sanctions are published on a dedicated section of the website, the information will be more easily accessible than if published as news items or in other sections of the website. This should also be considered in light of the fact that the information should be maintained on the official website for at least five years.

Recommendation 2: Language of publication

The EBA recommends that, where it is not already the case for the language of original publication, (i) a translation of the relevant decision into a European Union official language commonly used for international supervisory cooperation or (ii) a summary of the decision setting out in such a language at least the information identified in Article 68(1) of Directive 2013/36/EU be published as well.

Rationale

If the sanctions are published solely in a language that is not widely used, the information may not be readily available to interested parties outside the relevant Member State.

Recommendation 3: Grounds for publication on an anonymous basis

Where publication of a relevant penalty is made on an anonymous basis, the EBA recommends that the legal grounds pursuant to which the decision to publish the penalty on an anonymous basis was made be mentioned, where appropriate.

Rationale

Directive 2013/36/EU lists a number of circumstances in which the identity of the relevant person should be withheld from the publication of the administrative penalty. In order to ensure that it is apparent on which specific legal grounds the decision to publish the penalty on an anonymous basis was made, it is recommended that they be identified in the publication of the administrative penalty.

2.1.2 Specific findings

The general findings are summarised in paragraph 2.1.1 above. Set out below are certain specific findings, which might constitute significant divergences.

On the basis of the information received by the EBA, it appears that one authority (the Central Bank of Cyprus) publishes the information solely on an anonymised and aggregated basis, in the form of a summary for the relevant year. This approach does not appear to be consistent with the requirements of Article 68 of Directive 2013/36/EU, which contemplates the publication of each specific administrative penalty, such publication being on an anonymous basis solely under certain defined scenarios.

Furthermore, on the basis of the information received by the EBA, it appears that one other authority (the National Bank of Hungary) does not publish such decisions on administrative penalties, the disclosure of which would jeopardise the sound and smooth functioning of the financial intermediary system. This approach might also not be consistent with Article 68 of Directive 2013/36/EU, which does not contemplate the non-publication of administrative penalties for which there is no appeal and only foresees publication on an anonymous basis or, alternatively, a delay in publication where the circumstances that would justify publication on an anonymous basis are likely to cease within a reasonable period of time.

Summary table of findings

Breakdown of key findings by Member State and authority

| Member State, authority | Key findings |
|---|---|
| AT – FMA | <p>Penalties are published at: https://www.fma.gv.at/de/ueber-die-fma/presse/sanktionen.html</p> <p>The authority advised that certain sanctions were published on an anonymous basis. In each case, such publications concerned sanctions applied to natural persons and dealt with failures to notify acquisitions of qualifying holdings.</p> |
| BE – Banque Nationale de Belgique | <p>Penalties are published at: https://www.nbb.be/fr/supervision-financiere/controle-prudentiel/sanctions-et-reglements-transactionnels/amendes</p> <p>The reviewed decision was published on an anonymous basis. The authority advised that such decisions identify the sanctioned person; however, the publication is on an anonymous basis if legal proceedings are pending.</p> |
| BG – Bulgarian National Bank | <p>No link was provided.</p> <p>The authority advised that no administrative penalties were imposed between January 2014 and January 2015 under Article 68 of Directive 2013/36/EU.</p> |
| CY – Central Bank of Cyprus | <p>Penalties are published at: http://www.centralbank.gov.cy/nqcontent.cfm?a_id=3578</p> <p>On the basis of the information reviewed on the English language version of the site, the data appears to be published on an anonymised, aggregated basis.</p> |
| CZ – Czech National Bank | <p>Penalties are published at: http://www.cnb.cz/en/supervision_financial_market/conduct_of_supervision/final_administrative_decisions/</p> <p>The authority advised that no penalties were published on an anonymous basis since the entering into effect of the law empowering the authority to publish administrative sanctions.</p> |
| DE – BaFin (Federal Financial Supervisory) | <p>Penalties are published at: http://www.bafin.de/EN/Supervision/BanksFinancialServicesProviders/Measures/Publications/publications_node.html</p> <p>The authority advised that a decision on an administrative pecuniary penalty that has</p> |

| Member State, authority | Key findings |
|---|---|
| Authority) | become non-appealable may not be published if such publication would seriously jeopardise the stability of the financial markets of the Federal Republic of Germany or one or more of the signatory states to the Agreement on the European Economic Area, or if such publication would cause disproportionate damage to the institutions or natural persons involved. |
| DK – Danish Financial Supervisory Authority | <p>Penalties are published at:</p> <p>https://www.finanstilsynet.dk/da/Regler-og-praksis/Reaktioner.aspx</p> <p>https://www.finanstilsynet.dk/da/Tal-og-fakta/Vurderinger-af-finansielle-virksomheder.aspx</p> <p>The authority advised that no relevant penalties were published on an anonymous basis.</p> |
| EE – Finantsinspektion | <p>No link was provided.</p> <p>The authority advised that no relevant administrative penalties were imposed.</p> |
| EL – Bank of Greece | <p>No link was provided.</p> <p>The authority advised that no relevant administrative penalties were imposed.</p> |
| ES – Bank of Spain | <p>Penalties will be published at:</p> <p>http://www.bde.es/bde/en/areas/supervision/sancion/sanciones-impues/</p> <p>The authority advised that no relevant administrative penalties were imposed.</p> |
| FI – Financial Supervisory Authority | <p>Penalties are published at:</p> <p>http://www.finanssivalvonta.fi/en/Supervision/Administrative_sanctions/Supervisory_measures/Pages/Default.aspx</p> <p>The authority advised that no relevant administrative penalties were published on an anonymous basis.</p> |
| FR – ACPR Banque de France | <p>Penalties are published at:</p> <p>http://acpr.banque-france.fr/commission-des-sanctions/recueil-de-jurisprudence.html</p> <p>The authority advised that no relevant administrative penalties were imposed. Nevertheless, the competent authority has imposed administrative penalties under Directive 2010/76/EU relating to provisions still applicable under Directive 2013/36/EU, which are of a similar nature to the ones it can impose under the national law transposing Directive 2013/36/EU.</p> |

| Member State, authority | Key findings |
|--|---|
| HR – Croatian National Bank | <p>No link was provided.</p> <p>The authority advised that no penalties were published as there has been no final verdict on penalties imposed for breach of the relevant national provisions.</p> |
| HU – National Bank of Hungary | <p>Penalties are published at: http://felugyelet.mnb.hu/bal_menu/hatarozatok/hatarozatok_keresese</p> <p>The authority advised that it publishes nearly all of its decisions on administrative penalties (except when such disclosure would jeopardise the sound and smooth functioning of the financial intermediary system). In certain cases, the authority may publish its decisions on an anonymous or delayed basis.</p> |
| IE – Central Bank of Ireland | <p>Penalties are published at: http://www.centralbank.ie/regulation/processes/Enfl/Pages/PressReleases.aspx</p> <p>All reviewed settlement agreements identify the sanctioned person.</p> <p>The Central Bank is also required by the relevant applicable legislation to publish the findings of an inquiry. Details of the authority’s policy in this regard are set out on pages 23-24 of its Inquiry Guidelines, which can be found at: https://www.centralbank.ie/regulation/processes/Enfl/asp/Documents/Inquiry%20Guidelines%202014.pdf</p> |
| IT – Banca d’Italia | <p>Penalties are published at: http://www.bancaditalia.it/pubblicazioni/bollettino-vigilanza/index.html</p> <p>The authority advised that the national legislation in force prior to the transposition of Directive 2013/36/EU did not foresee publication on an anonymous basis.</p> <p>The legislation transposing Directive 2013/36/EU was published recently. As such, the authority advised that publications during the relevant period will have been made pursuant to the previous regime.</p> |
| LT – Bank of Lithuania | <p>Penalties are published at: http://www.lb.lt/capital_requirements_directive_and_regulation_crd_iv/_crr</p> <p>The authority advised that no relevant penalties were imposed.</p> |
| LU – Commission de Surveillance du Secteur Financier | <p>The authority advised that, as a general rule, penalties are published in the monthly newsletters as well as the annual reports, in principle on an anonymous basis and, occasionally, on a non-anonymised basis. The monthly newsletters are available at http://www.cssf.lu/documentation/publications/newsletters/ and the annual reports at http://www.cssf.lu/en/documentation/publications/annual-reports/</p> |

| Member State, authority | Key findings |
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| | <p>The authority advised that the national law transposing Directive 2013/36/EU was published on 23 July 2015. No penalties for breach of Regulation (EU) No 575/2013 or of the national provisions transposing Directive 2013/36/EU have been imposed yet. Nevertheless, the competent authority has imposed administrative penalties under Directive 2010/76/EU that are of a similar nature to the ones it can now impose under the national law transposing Directive 2013/36/EU.</p> |
| LV – Financial and Capital Market Commission | <p>Penalties are published at:</p> <p>http://www.fktk.lv/en/market/credit-institutions/2014-10-23-sanctions-imposed-by-fcmc.html</p> <p>http://www.fktk.lv/lv/tirgus-dalibnieki/kreditiestades/2014-10-22-fktk-piemerotas-sankcijas.html</p> |
| | <p>All reviewed publications identify the sanctioned person.</p> |
| MT – Financial Services Authority | <p>No link was provided.</p> <p>The authority advised that no relevant penalties were published on an anonymous basis.</p> |
| NL – De Nederlandsche Bank | <p>The authority advised that no generic link is available.</p> <p>The authority advised that three administrative fines were published in 2014 concerning the same violation and two cease and desist orders that were published in 2014 and 2015. The penalties were published at:</p> <p>http://www.dnb.nl/nieuws/nieuwsoverzicht-en-archieff/nieuws-2014/dnb311940.jsp</p> <p>http://www.dnb.nl/nieuws/nieuwsoverzicht-en-archieff/nieuws-2014/dnb311942.jsp</p> <p>http://www.dnb.nl/nieuws/nieuwsoverzicht-en-archieff/nieuws-2014/dnb311946.jsp</p> <p>http://www.dnb.nl/nieuws/nieuwsoverzicht-en-archieff/nieuws-2014/dnb304980.jsp</p> <p>http://www.dnb.nl/nieuws/nieuwsoverzicht-en-archieff/nieuws-2015/dnb318325.jsp</p> |
| | <p>The authority advised that publication is sometimes on an anonymous basis, based on national provisions derived from Article 68(2) of Directive 2013/36/EU.</p> |
| PL – Financial Supervision Authority | <p>Penalties are published at: http://bip.knf.gov.pl/?!/=/Komisja/050_Kary/kary.html</p> <p>Most publications identify the sanctioned person. The authority advised that publication is sometimes on an anonymous basis, based on national provisions derived from Article 68(2) of Directive 2013/36/EU.</p> |
| PT – Banco de Portugal | <p>Penalties will be published at: http://www.bportugal.pt/en-US/Pages/inicio.aspx</p> <p>Although no publications were made as of the date of the response, the authority</p> |

| Member State, authority | Key findings |
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| | indicated that one sanction would be published shortly. |
| RO – National Bank of Romania | <p>Penalties are published at: http://www.bnr.ro/Sanc%c8%9biuni-emise-de-BNR-12553.aspx</p> <p>Five sanctions appear to have been published during the relevant period. Of the reviewed penalties, four publications were made on an anonymous basis. In all such cases, these were natural persons, employees of a credit institution.</p> |
| SE – Finansinspektio nen | <p>Penalties are available at: http://www.fi.se/Tillsyn/Sanktioner/</p> <p>The authority advised that no publications were made on an anonymous basis.</p> |
| SI – Bank of Slovenia | <p>Penalties will be published at: http://www.bsi.si/en/banking-supervision.asp?Mapald=1820</p> <p>Although no publications were made as of the date of the response, the authority indicated that some publications would be made shortly.</p> |
| SK – National Bank of Slovakia | <p>Penalties are published at: http://www.nbs.sk/sk/dohlad-nad-financnym-trhom/vyroky-pravoplatnych-rozhodnuti/_1/dDatumVydanja/-/-/2/-/pp</p> <p>On the face of it, the publications appear to identify the sanctioned person. However, as the sanctions were only published in Slovak, the EBA could not verify this point and did not request confirmation from the competent authority due to the large number of published sanctions and the disproportionate effort such a check might have entailed.</p> |
| UK – Bank of England | <p>Penalties are published at: http://www.bankofengland.co.uk/pru/Pages/supervision/regulatoryaction/enforcementnotices.aspx</p> <p>All reviewed publications identify the sanctioned person.</p> |
| European Central Bank | <p>Penalties will be published at: www.bankingsupervision.europa.eu</p> <p>For the purpose of carrying out its supervisory tasks, Article 18 of Council Regulation (EU) 1024/2013 entrusts the European Central Bank (ECB) with certain sanctioning powers. In this regard, pursuant to Article 132 of Regulation (EU) No 468/2014 of the ECB of 16 April 2014 (SSM Framework Regulation), the ECB shall publish on its website, without undue delay, any decision imposing an administrative penalty, including information on the type and nature of the breach and the identity of the supervised entity concerned. Decisions regarding administrative penalties shall be published on an anonymised basis where the publication would either: (i) jeopardise the stability of the financial markets or an ongoing criminal investigation; or (ii) cause, insofar as it can be</p> |

**Member State,
authority**

Key findings

determined, disproportionate damage to the supervised entity concerned.

The ECB advised that no sanctions have yet been imposed.



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