



EUROPEAN CENTRAL BANK

EUROSYSTEM

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**REGULATION (EU) [YYYY/[XX\*]] OF THE EUROPEAN CENTRAL BANK**

**of [date Month 2021]**

**on infringement procedures in cases of non-compliance with statistical reporting requirements  
and repealing Decision ECB/2010/10**

**([ECB/2021/XX])**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 132(3) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 5 and 34 thereof,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank<sup>1</sup>, and in particular Article 7 thereof,

Having regard to Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions<sup>2</sup>, and in particular Article 6(2) thereof,

Having regard to 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)<sup>3</sup>,

Whereas:

- (1) The European Central Bank (ECB) may impose sanctions on reporting agents pursuant to Article 7(1) of Regulation (EC) No 2533/98 and should establish a framework to further specify the arrangements for the imposition of such sanctions in accordance with Article 6(2) of Regulation (EC) No 2532/98. It is therefore appropriate to determine the procedures within which such sanctions should apply.
- (2) In order to reduce the administrative burden, such procedures should be harmonised as far as possible with existing procedural rules. The infringement and enforcement procedures in this Regulation should therefore take into account European Central Bank Regulation (EC) No 2157/1999 (ECB/1999/4) and Articles 3 and 4 of Council Regulation (EC) No 2532/98. Article 3 of Council Regulation (EC) No 2532/98 provides that the ECB, or the national central bank (NCB) of the Member State in whose jurisdiction the alleged infringement has occurred, may initiate

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<sup>1</sup> OJ L 318, 27.11.1998, p. 8

<sup>2</sup> OJ L 318, 27.11.1998, p. 4.

<sup>3</sup> OJ L 264, 12.10.1999, p. 21.

an infringement procedure, by acting on their own initiative or on the basis of a motion to that effect addressed to the ECB by the relevant NCB, or, addressed to the relevant NCB by the ECB, respectively.

- (3) Regulation (EC) No 2157/1999 (ECB/1999/4) ensures that the principle of *ne bis in idem* is respected with regard to infringement procedures and provides that no more than one infringement procedure may be initiated against the same undertaking based on the same facts. For this purpose, no decision on whether to initiate an infringement procedure should be taken by the ECB or by the competent NCB until they have informed and consulted with one another. Likewise, no decision on whether to initiate an infringement procedure should be taken by the ECB or by the competent NCB until the competent NCB has informed the national competent authority (NCA) which collects statistical information and transmits such information to the competent NCB on the basis of local cooperation arrangements. Similarly, in cases where supervisory information is used to meet statistical reporting requirements, and vice versa, prior to initiating an infringement procedure or imposing a sanction, coordination with the Single Supervisory Mechanism (SSM) may be necessary.
- (4) Regulation (EC) No 2157/1999 (ECB/1999/4) also sets out the procedure for the submission of a proposal by the independent investigating unit of the ECB or by the competent NCB to the Executive Board of the ECB for the purposes of determining whether the reporting agent concerned has committed an infringement and specifying the amount of the sanction to be imposed, and allows for a simplified infringement procedure for the sanctioning of minor infringements.
- (5) It is necessary to ensure a uniform approach towards the imposition of sanctions in the various statistical fields, to clearly define the roles of the ECB and NCBs in infringement procedures, and to ensure that all procedural provisions concerning the initiation of an infringement procedure and the imposition of a sanction in the area of statistics are clearly defined, in the interests of ensuring due process and protecting the rights of the reporting agents concerned.
- (6) To ensure equal treatment of reporting agents, the ECB should adopt a harmonised approach to the elements to be taken into account when monitoring compliance with statistical reporting requirements and assessing alleged infringements, to the infringement procedure itself, and to the calculation and imposition of sanctions for infringements of the reporting requirements.
- (7) In order to reduce administrative burden and take account of the practical application of an infringement procedure, cases of alleged infringements not considered as cumulative alleged infringements should be initiated as considered appropriate, taking into account the relevant circumstances of the specific case.
- (8) It is also necessary to establish harmonised rules for the application of local cooperation arrangements where the competent NCB transmits statistical information to the ECB which it has collected from an NCA, rather than directly from the reporting agent. Local cooperation arrangements should not, in any way, operate to alter or limit the duty of the reporting agent to comply with its statistical reporting requirements under the ECB regulations or decisions. The legal framework on the sanctioning of infringements of the statistical reporting requirements is fully applicable in such cases. There should, however, be sufficient communication between the competent NCB and the

relevant NCA regarding the measures that need to be taken in accordance with this framework, in order to ensure compliance with the principle of *ne bis in idem*.

- (9) With the exception of cases of serious misconduct and infringements of the minimum standards of Regulation (EU) No 1333/2014 of the European Central Bank for which it is considered that remedial plans are unsuitable, it may be possible and appropriate to resolve alleged infringements by cooperating with the reporting agent. Accordingly, the possibility of agreeing on a remedial plan, between the competent NCB or the ECB and the reporting agent, should be facilitated. That remedial plan could also specify, inter alia, the methodologies, processes, resources, and personnel by which the reporting agent proposes to remediate each alleged infringement, the review and oversight processes that the reporting agent will employ for the remediation and the procedural improvements to reduce the likelihood of the recurrence of infringements by the reporting agent.
- (10) In the interest of equal treatment of reporting agents, the competent Eurosystem central banks should make reasonable efforts to treat reporting agents in an equal manner across the various statistical sectors, particularly when considering whether a remedial plan should be made available.
- (11) For reasons of proportionality, it is appropriate to take into account the potential circumstances which may be considered to be beyond the reporting agent's control and to provide for an exemption to the initiation of the infringement procedure in such circumstances. Such exemption should only apply to those reporting agents that have taken all reasonable efforts to avert any infringement of the reporting requirements. In addition, outsourcing by reporting agents of certain activities relevant for the fulfilment of their reporting obligations or difficulties with maintaining or upgrading their IT infrastructure should not, in itself, be considered to amount to circumstances beyond the reporting agent's control. Equally, the competent Eurosystem central bank should not consider circumstances beyond the reporting agent's control in cases of serious misconduct.
- (12) A harmonised approach should apply to all statistical reporting requirements laid down in ECB regulations or decisions. In the interests of proportionality, the power to impose sanctions should not be exercised by the ECB for a period of 12 months after the reporting obligation first arises pursuant to any existing or future applicable ECB regulation, except in cases of serious misconduct for which no transitional period should apply. It is therefore necessary to provide that amendments to the reporting requirements which change the underlying conceptual framework or affect the reporting burden should be considered substantive for the purposes of transitional arrangements.
- (13) In order to harmonise infringement procedures for statistical reporting requirements, and ensure transparency, it is appropriate to adopt a Regulation establishing a harmonised framework in which sanctions may be imposed on reporting agents in cases of non-compliance with statistical reporting requirements. It is therefore necessary to repeal Decision of the European Central Bank on non-compliance with statistical reporting requirements (ECB/2010/10)<sup>4</sup>,

HAS ADOPTED THIS REGULATION:

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<sup>4</sup> 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).

## *Article 1*

### **Subject matter and scope**

This Regulation establishes a harmonised framework in which sanctions may be imposed on reporting agents for non-compliance with statistical reporting requirements laid down by ECB regulations and decisions. In particular, it establishes the scope of monitoring of compliance by the reporting agents with those requirements and defines the following procedures to be applied by the competent Eurosystem central bank:

- (a) monitoring and recording procedure;
- (b) reporting procedure;
- (c) notification procedure;
- (d) agreement and implementation of a remedial plan;
- (e) infringement procedure;
- (f) calculation of fines and imposition of sanctions.

## *Article 2*

### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) 'competent Eurosystem central bank' means the competent national central bank (NCB) or, in case of direct reporting, the ECB;
- (2) 'competent NCB' means the NCB of the euro area Member State in whose jurisdiction the alleged infringement occurred;
- (3) 'cumulative alleged infringement' means any of the series of alleged infringements of one or more statistical reporting requirements listed in Article 8(3) of this Regulation;
- (4) 'direct reporting' means reporting by reporting agents of statistical information directly to the ECB in accordance with the decision of a competent NCB pursuant to a regulation or decision of the ECB;
- (5) 'beyond the reporting agent's control' means an unforeseeable external event beyond a reporting agent's reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary;
- (6) 'reporting agents' means 'reporting agents' as defined in Article 1(2) of Regulation (EC) No 2533/98;
- (7) 'infringement' means 'infringement' as defined in Article 1(4) of Regulation (EC) No 2532/98;
- (8) 'sanctions' means 'sanctions' as defined in Article 1(7) of Regulation (EC) No 2532/98;
- (9) 'statistical reporting requirements' means 'the ECB's statistical reporting requirements' as defined in Article 1(1) of Regulation (EC) No 2533/98;
- (10) 'alleged infringement' means non-compliance by reporting agents with statistical reporting requirements which:
  - (a) has been identified by the competent Eurosystem central bank; and

- (b) has not yet been confirmed to be an infringement in a reasoned decision adopted by the Executive Board of the ECB pursuant to Article 3(4) of Council Regulation (EC) No 2532/98.

#### *Article 3*

##### **Monitoring and recording**

1. Competent NCBs shall monitor compliance with statistical reporting requirements by reporting agents on an ongoing basis and shall record any alleged infringement of those requirements in a dedicated system. Competent NCBs shall maintain that system for the purposes of this Regulation.
2. The ECB shall monitor compliance with statistical reporting requirements by reporting agents in cases of direct reporting on an ongoing basis with the cooperation of the competent NCB upon request by the ECB, and shall record any alleged infringement of those requirements in a dedicated system. The ECB shall maintain that system for the purposes of this Regulation.
3. Where a reporting agent claims that an alleged infringement is due to circumstances beyond the reporting agent's control, the competent Eurosystem central bank shall register the claim when recording the details of the alleged infringement.
4. Where a competent Eurosystem central bank identifies more than one alleged infringement of statistical reporting requirements by the same reporting agent, it shall record each alleged infringement separately.

#### *Article 4*

##### **Local cooperation arrangements**

1. Where a competent NCB reports statistical information to the ECB which it has collected via a national competent authority (NCA) pursuant to local cooperation arrangements, that competent NCB shall ensure that information collected and transmitted via the respective NCA allows for the effective monitoring of compliance with statistical reporting requirements.
2. Where a reporting agent provides statistical information to the competent NCB via an NCA pursuant to local cooperation arrangements prior to the initiation of an infringement procedure, the competent NCB shall liaise with the relevant NCA to obtain information as to whether the alleged infringement occurred as a result of actions or inactions by the reporting agent and to ensure that no more than one infringement procedure based on the same facts is initiated against the same reporting agent at a time.
3. Where a reporting agent provides statistical information to the competent NCB via an NCA pursuant to local cooperation arrangements, the competent NCB shall inform the relevant NCA in cases where a remedial plan referred to in Article 7 has been entered into with the reporting agent, as well as of its outcome, and in cases where a sanction has been imposed on a reporting agent by the Executive Board of the ECB in accordance with Article 3 of Council Regulation (EC) No 2532/98 and Article 7 of Council Regulation (EC) No 2533/1998.

## *Article 5*

### **Reporting**

1. Competent NCBs shall promptly report to the ECB all of the following alleged infringements:
  - (a) any alleged infringement by a reporting agent of daily reporting requirements;
  - (b) three or more alleged infringements by a reporting agent of monthly reporting requirements within six consecutive months;
  - (c) three or more alleged infringements by a reporting agent of quarterly reporting requirements within four consecutive quarters;
  - (d) two or more consecutive alleged infringements by a reporting agent of semi-annual reporting requirements;
  - (e) any alleged infringement by a reporting agent of annual reporting requirements.

For the purposes of reporting alleged infringements referred to in the first subparagraph, competent NCBs shall record those alleged infringements in the same dedicated system as referred to in Article 3(1).

2. Competent NCBs shall report any of the following serious misconduct to the ECB as soon as it is identified:
  - (a) any systematic or intentional failure to report statistical information to the competent NCB within the prescribed deadline;
  - (b) any systematic or intentional failure to report correct or complete statistical information;
  - (c) any systematic or intentional failure to comply with the prescribed form of the statistical reporting requirements;
  - (d) any failure to cooperate effectively with the competent NCB or to apply a reasonable degree of diligence.

For the purposes of identifying serious misconduct, the competent NCB may request additional information from the reporting agent.

For the purposes of reporting serious misconduct pursuant to this paragraph, competent NCBs shall record the serious misconduct in the same dedicated system as referred to in Article 3(1). In cases of direct reporting, the ECB shall record the serious misconduct in the same dedicated system as referred to in Article 3(2).

3. The ECB shall inform the competent NCB without undue delay of any alleged infringements referred to in paragraphs 1 and 2 that it has identified in cases of direct reporting.

## *Article 6*

### **Notification**

1. Prior to the initiation of an infringement procedure pursuant to Article 8, the competent Eurosystem central bank shall provide the reporting agent concerned with written notification of at least the following:
  - (a) the nature of the alleged infringement;

- (b) the possibility that an infringement procedure may be initiated and the possibility, in such case, that a fine may be imposed on the reporting agent;
  - (c) that the agent has an opportunity to provide reasons, including that the alleged infringement was due to circumstances beyond the reporting agent's control;
  - (d) that the alleged infringement is to be corrected, if not already corrected, to ensure compliance with the statistical reporting requirements; and
  - (e) that the competent Eurosystem central bank may agree on the adoption of a remedial plan with the reporting agent, where available.
2. Where a competent Eurosystem central bank has identified a case of serious misconduct pursuant to Article 5, it shall contact the reporting agent concerned, in writing, to notify that reporting agent of at least the following:
- (a) the nature of the serious misconduct;
  - (b) that an infringement procedure shall be initiated and the possibility, in such case, that a fine may be imposed on the reporting agent;
  - (c) that the reporting agent has an opportunity to provide reasons; and
  - (d) that the serious misconduct is to be corrected by the reporting agent to ensure compliance with the statistical reporting requirement and, where relevant, to ensure effective cooperation with the competent Eurosystem central bank, without delay.

#### *Article 7*

#### **Remedial plan**

1. The competent Eurosystem central bank and the reporting agent concerned may agree to adopt a remedial plan. Where they agree to adopt a remedial plan, they shall adopt that plan in accordance with this Article and within 42 calendar days from when a cumulative alleged infringement is notified in accordance with Article 6(1).
2. Competent Eurosystem central banks shall not adopt a remedial plan pursuant to this Article where either of the following apply:
  - (a) serious misconduct referred to in Article 5(2);
  - (b) a cumulative alleged infringement of any of the minimum standards laid down in Annex IV to Regulation (EU) No 1333/2014 of the European Central Bank.<sup>5</sup>
3. Remedial plans shall be prepared by the reporting agent and shall at least:
  - (a) state the reasons for the alleged infringements;
  - (b) set the corrective measures to be taken by the reporting agent, including a provision to submit the correct or missing statistical information without delay;
  - (c) include a timetable for the implementation of the measures referred to in point (b); and

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<sup>5</sup> Regulation (EU) No 1333/2014 of the European Central Bank of 26 November 2014 concerning statistics on the money markets (ECB/2014/48) (OJ L 359, 16.12.2014, p. 97).

- (d) include the details of the responsible contact person(s).
4. Remedial plans shall be submitted by the reporting agent to the competent Eurosystem central bank within 30 calendar days of the notification referred to in Article 6.
  5. Competent NCBs shall submit any remedial plans it has received pursuant to paragraph 4 to the ECB without delay. Where the ECB objects, the competent NCB may not endorse a remedial plan as referred to in paragraph 6(a).
  6. Competent Eurosystem central banks shall assess remedial plans submitted pursuant to paragraph 4 without delay and in any case within 12 calendar days from such submission, and, with due regard for any comments provided by the ECB, shall either:
    - (a) endorse the plan and set a final deadline of not more than 60 calendar days for the overall implementation of that plan from the date of its endorsement; or
    - (b) where the plan is not sufficient to remedy the cumulative alleged infringement, request that the reporting agent prepare and submit a revised plan, provided that that revised plan is submitted within the deadline referred to in paragraph 1.
  7. Where a competent Eurosystem central bank endorses a remedial plan pursuant to paragraph 6(a), it shall monitor the implementation of that plan and verify whether the corrective measures therein have been applied effectively and without delay.
  8. Competent Eurosystem central banks may extend the deadline for the implementation of a remedial plan endorsed pursuant to paragraph 6(a), once, in exceptional circumstances and provided that the reporting agent demonstrates that the remedial plan is being implemented effectively. Any extension shall be limited to the period that the competent Eurosystem central bank considers necessary for the reporting agent to implement the remedial plan, and in any event no longer than 30 calendar days from the expiry of the final deadline referred to in paragraph 6(a).
  9. Competent NCBs and the ECB shall notify each other of any remedial plan agreed with reporting agents as soon as such a plan is endorsed and keep each other informed as to each plan's implementation.
  10. Where a remedial plan is endorsed and implemented pursuant to this Article, the competent Eurosystem central bank shall not initiate an infringement procedure pursuant to Article 8 in relation to the same cumulative alleged infringement by the same reporting agent before the final deadline referred to in paragraph 6(a).
  11. Where the cumulative alleged infringement is not remedied by the final deadline referred to in paragraph 6(a), the competent Eurosystem central bank shall initiate an infringement procedure in accordance with Article 8.
  12. Notwithstanding paragraphs 1 to 11 of this Article, competent Eurosystem central banks shall continue to monitor the alleged infringements which are the subject of a remedial plan, monitor compliance by the reporting agents with statistical reporting requirements, and record and report any alleged infringements in accordance with Articles 3 and 5.



## *Article 8*

### **Infringement procedure**

1. Competent NCBs or the ECB may initiate an infringement procedure against reporting agents in cases of alleged infringements not referred to in paragraph 2.
2. Competent NCBs or the ECB shall initiate an infringement procedure against reporting agents in each of the following cases:
  - (a) serious misconduct as referred to in Article 5(2);
  - (b) a cumulative alleged infringement as referred to in paragraph 3, where no remedial plan has been submitted and endorsed in accordance with Article 7;
  - (c) a cumulative alleged infringement as referred to in paragraph 3, where the final deadline for implementation of a remedial plan as referred to in Article 7(6)(a), or its extension as referred to in Article 7(8), has expired before the non-compliance is remedied.
3. For the purposes of points (b) and (c) of paragraph 2, cumulative alleged infringements shall include any of the following:
  - (a) at least three alleged infringements by a reporting agent of daily reporting requirements within the same month or at least five alleged infringements within any three consecutive calendar months;
  - (b) at least three alleged infringements by a reporting agent of monthly reporting requirements within six consecutive months;
  - (c) at least three alleged infringements by a reporting agent of quarterly reporting requirements within four consecutive quarters;
  - (d) any two consecutive alleged infringements by a reporting agent of semi-annual reporting requirements.
4. For the purposes of paragraphs 1 and 2 of this Article, competent NCBs or the ECB shall initiate an infringement procedure in accordance with both of the following:
  - (a) Article 2 of European Central Bank Regulation (EC) No 2157/1999 (ECB/1999/4); and
  - (b) Articles 3 and 4 of Council Regulation (EC) No 2532/98.
5. Competent NCBs or the ECB may initiate an infringement procedure even where the competent Eurosystem central bank has failed to record or report the alleged infringement pursuant to Article 3 or Article 5.
6. A competent NCB or the ECB shall not initiate an infringement procedure where it considers that the alleged infringement was committed due to circumstances beyond the reporting agent's control. Competent NCBs and the ECB shall take, in particular, the following into account when determining whether an alleged infringement occurred due to circumstances beyond the reporting agent's control:
  - (a) whether the circumstances were sufficiently unusual;
  - (b) whether the circumstances were exceptional;
  - (c) whether the circumstances were unforeseeable;

- (d) whether the circumstances can be attributed to any action or inaction of the reporting agent. Technical difficulties or difficulties related to maintenance and upgrading of IT infrastructure, including outsourced IT infrastructure, shall not be considered to be beyond the reporting agent's control.
7. Competent NCBs and the ECB shall not initiate an infringement procedure against a reporting agent where another infringement procedure has been initiated or a sanction has been imposed against the same reporting agent on the basis of the same facts by another competent authority.
8. A competent NCB or the ECB shall retain electronic records of each infringement procedure it has initiated pursuant to this Regulation in the same dedicated system as referred to in paragraph 1 or 2 of Article 3, respectively.

#### *Article 9*

#### **Calculation and imposition of sanctions**

1. Sanctions shall be calculated in accordance with the following procedure:
- (a) a baseline amount shall first be calculated by the competent Eurosystem central bank on the basis of the quantitative aspects of the infringement, including all of the following:
- (i) the economic size of the reporting agent;
  - (ii) the seriousness of the effects of the infringement;
  - (iii) the repetition and frequency of the infringement;
  - (iv) the duration of the infringement;
- (b) the circumstances in Article 2(3) of Regulation (EC) No 2532/98 which are not referred to in point (a) of this Article, and any other relevant information, shall then be taken into account and may require an adjustment to the baseline amount calculated in accordance with point (a).
2. The adjustment referred to in paragraph 1(b) shall be limited to a maximum of one third of the baseline amount referred to in paragraph 1(a).
3. Where an infringement relates to the minimum standard of transmission as described in the applicable ECB regulations or decisions, the seriousness of the effects of the infringement as referred to in paragraph 1(a)(ii) shall be determined by taking the following into account:
- (a) the number of working days or hours after the deadlines set by the competent NCB and by the ECB until the reporting requirements are fulfilled (delay); and
  - (b) the impact of that delay on the production by the ECB of the relevant euro area aggregates and on the quality of the overall statistical output.
4. Where an infringement relates to the minimum standard of accuracy or compliance with concepts as described in the applicable ECB regulations or decisions, sanctions shall correspond to the seriousness and frequency of the infringement and the economic size of the reporting agent. The ECB shall not take into account negligible errors or ordinary revisions, including non-systematic revisions to the series reported following initial reporting.
5. When calculating sanctions in accordance with paragraph 1, competent Eurosystem central banks may not exceed the maximum fines set out in Article 7(4) of Regulation (EC) No 2533/98.

6. Where an infringement recorded pursuant to Article 3 includes infringement of minimum reserve requirements, no sanction shall be imposed for the infringement of the statistical reporting requirements provided that the infringement of minimum reserve requirements results in a sanction.

#### *Article 10*

#### **Sanction Methodology**

The ECB shall adopt a decision on the methodology for the calculation of the amount of the sanctions.

#### *Article 11*

#### **Review**

The Governing Council shall review the general application of this Regulation by no later than two years following the date on which it enters into force, and thereafter every three years, and assess whether it needs to be amended.

#### *Article 12*

#### **Transitional provisions**

1. Articles 8 and 9 shall not apply for a period of 12 months following first reporting pursuant to an applicable ECB regulation or decision where any of the following applies:
  - (a) the statistical information is reported for the first time pursuant to ECB regulations or decisions;
  - (b) the statistical reporting requirements have been substantively amended by ECB regulations or decisions, such that the underlying conceptual framework is changed or the reporting burden affected, and the corresponding statistical information is reported for the first time since such amendment;
  - (c) the statistical information is reported by new reporting agents or reporting agents of new undertakings which have not previously been subject to statistical reporting requirements under the same regulatory framework.
2. This Article shall not apply in the cases of serious misconduct referred to in Article 5.

#### *Article 13*

#### **Entry into force**

This Regulation shall enter into force on the 20<sup>th</sup> day following its publication in the *Official Journal of the European Union*. It shall apply from [date X to be inserted at adoption]

#### *Article 14*

#### **Repeal**

Decision of the European Central Bank of 19 August 2010 on non-compliance with statistical reporting requirements (ECB/2010/10) is hereby repealed with effect from [insert application date in Article 13].

Done at Frankfurt am Main, [date Month 2021].

*For the Governing Council of the ECB*

*The President of the ECB*

Christine LAGARDE