

Annual Report on Sanctioning Activities in the SSM in 2021

Introduction

This report has been prepared by the SSM Network of Enforcement and Sanctions Experts to present comprehensive statistics on sanctioning activities in relation to breaches of prudential requirements carried out in 2021 by the ECB and the national competent authorities (NCAs) of Member States participating in the Single Supervisory Mechanism (SSM).¹

The activities covered in the report include formal sanctioning proceedings conducted by competent authorities within the scope of their respective powers,² in particular the imposition of administrative penalties for breaches of prudential requirements by supervised entities (groups) or other legal or natural persons falling under the scope of prudential supervision in the context of the SSM.³

The statistics are presented in aggregate for the whole SSM. Data have therefore been collected and compiled using standardised categories to ensure information is harmonised and can be meaningfully compared.⁴

¹ Since the Capital Requirements Directive ([Directive 2013/36/EU](#)) currently ensures only a minimum level of harmonisation with regard to sanctioning, material differences remain in the national laws transposing the Directive applied by the competent authorities when exercising their sanctioning powers. In particular, breaches of the prudential requirements set out in European Union law are not always sanctionable under the national law of participating Member States. Other aspects may also affect a competent authority's decision to pursue a breach, e.g. the length of the limitation period, a statutory obligation to open a procedure in the event a breach is identified or discretion to close a case solely for reasons of proportionality.

² The ECB can directly impose pecuniary penalties on significant institutions that breach directly applicable acts of European Union law, including ECB decisions or regulations, and on less significant institutions for breaches of ECB regulations or decisions imposing obligations vis-à-vis the ECB on those entities. In cases of breaches of national law implementing European Union directives, breaches of "common procedures" rules in the case of less significant institutions, breaches committed by natural persons, or when a non-pecuniary penalty has to be imposed, the ECB may request the relevant NCA to open national sanctioning proceedings, pursuant to Article 18(5) of the SSM Regulation ([Council Regulation \(EU\) No 1024/2013](#)). The ECB may also address such a request to an NCA where penalties may be imposed under national legislation which confers specific powers on the NCA currently not required by the relevant European Union law. This does not affect an NCA's ability to open proceedings on its own initiative under national law for tasks not conferred on the ECB.

³ The report does not cover activities of the ECB and the NCAs which fall outside the scope of prudential supervision within the SSM. In particular, information on sanctioning activities related to payment systems, markets in financial instruments, investment services, prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and consumer protection are excluded from the scope of the report.

⁴ The statistics presented in this report are calculated using data categories that are different from those applied by the competent authorities for supervisory disclosure under Article 143 of [Directive 2013/36/EU](#). The scope of the sanctioning activities is also wider than that specified in Annex IV (Part 5 – Data on supervisory measures and administrative penalties) to [Commission Implementing Regulation \(EU\) No 650/2014](#) laying down implementing technical standards on supervisory disclosure.

Main findings

The focus of formal sanctioning proceedings conducted and penalties imposed in the SSM in 2021 by competent authorities was mainly on breaches of prudential requirements⁵ in the area of internal governance; this was in line with the [SSM Supervisory Priorities for 2021](#), and in particular the general objective of further improvements in banks' governance. It was combined with material sanctioning activities for infringements related to supervisory reporting, which registered an upward trend.

A rise in the pursuit of breaches in other areas of prudential supervision was observed in 2021. The number of proceedings conducted related to large exposures and liquidity went up, and there was an increase in penalties imposed in relation to liquidity, qualifying holdings, recovery and prudential consolidation.

Overall, 142 administrative penalties were imposed in 2021 by competent authorities in the SSM on persons responsible for breaches of prudential requirements. These were mainly pecuniary penalties (75%) and amounted in total to around €31.7 million. The highest pecuniary penalty in 2021 was imposed on a significant institution (SI)⁶ and amounted to €24.5 million. For other types of person sanctioned in 2021, the highest pecuniary penalties were as follows: natural persons €1.5 million; less significant institutions (LSIs) €680,000; other legal persons falling within the remit of the competent authorities' sanctioning activities €160,000. The remaining 25% consisted of penalties of a non-pecuniary nature and periodic penalty payments.

Sanctioning activities mainly concerned natural persons; these represented 42.5% of all proceedings conducted and 37.5% of all administrative penalties imposed. LSIs were on a very similar level, being concerned in 42% of all proceedings conducted; the percentage of administrative penalties imposed on them was even higher, at 44%. By the end of 2021, the focus in terms of number of proceedings ongoing had shifted further towards LSIs.

Based on the statistics for formal proceedings ongoing at the end of 2021, governance is expected to remain in the spotlight of sanctioning activities in the SSM. This remains one of the [SSM Supervisory Priorities for 2022-2024](#).

⁵ Prudential requirements include requirements related to, in particular, own funds and capital requirements; large exposure limits; liquidity; leverage; prudential consolidation; reporting and the public disclosure of information in respect of these areas; and internal governance, including fit and proper criteria, risk management and internal controls, organisational arrangements, and remuneration policies and practices. The scope also covers other requirements, e.g. authorisation requirements (licensing) and requirements for the acquisition of qualifying holdings.

⁶ The respective supervisory roles and responsibilities of the ECB and the NCAs are allocated on the basis of the significance of the supervised entities. Significant institutions are all supervised entities (i.e. credit institutions, financial holding companies, mixed financial holding companies and branches established in participating Member States by credit institutions established in non-participating Member States) that are classified as "significant" and thereby directly supervised by the ECB. Less significant institutions are entities under the ECB's indirect supervision, i.e. they are directly supervised by the NCAs, subject to the oversight of the ECB. Under certain conditions, the ECB can also take over the direct supervision of a less significant institution.

2 Sanctioning proceedings conducted in the SSM in 2021

2.1 Overall figures

At the beginning of 2021, 249 formal sanctioning proceedings⁷ were actively being conducted by competent authorities in the SSM (Table A). Of these, 16 had been opened in previous years by NCAs acting at the ECB's request pursuant to Article 18(5) of the SSM Regulation.⁸ 259 new formal sanctioning proceedings were opened during the year.

Table A

Number of formal sanctioning proceedings conducted in 2021

	Total number of proceedings	of which originally initiated at the ECB's request
Proceedings ongoing at the start of 2021 (opened previously)	249	16
Suspended* at the start of 2021	216	123
Newly opened in 2021	259	0
Total handled in 2021	508	16
Completed in 2021	287	14
of which finalised with a penalty	165	14
of which closed without penalty	122	0
Proceedings ongoing at the end of 2021	221	2
Suspended at the end of 2021	216	123

Note: Suspended due to criminal proceedings pending before national courts against the same person(s) in connection with the same facts.

Together with proceedings ongoing at the beginning of 2021, the competent authorities comprising the SSM conducted a total of 508 formal sanctioning proceedings during the year.

Of these, the highest number related to breaches in the following areas of prudential supervision: internal governance (43%); reporting (23%); large exposures (6%); liquidity requirements (5.5%).

Chart 1 presents a breakdown of the proceedings conducted in 2021 by area of infringement.

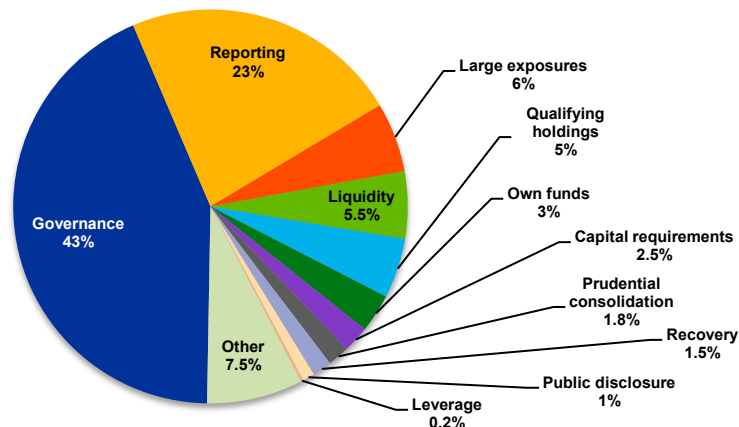
⁷ For the purposes of this report, the term "proceeding" is not the same as "sanctioning case". If a sanctioning case concerns different infringements, these are reported and calculated as multiple proceedings.

⁸ Council Regulation (EU) No 1024/2013. See the explanation in footnote 2. For the purposes of this report, a proceeding is considered as "opened" either (i) when a formal act declaring the opening of the sanctioning proceedings is adopted by the relevant decision-making body of the competent authority before the persons concerned are formally granted the right to be heard for the first time on the facts established and objections raised against them; or (ii) when the person concerned is formally granted the right to be heard for the first time on the facts established and objections raised against them.

Chart 1

Formal sanctioning proceedings conducted in 2021 by area of infringement

(percentages)



Note: "Other" consisted of breaches concerning carrying out the business of taking deposits or other repayable funds from the public without being a credit institution.

In internal governance, the sanctioning proceedings conducted in 2021 again related predominantly to risk management and internal controls, and to organisational requirements (including with regard to management body functions and committees).

As regards the types of person subject to proceedings, of the 508 conducted in 2021, 42.5% concerned natural persons (potentially) responsible for committing breaches of prudential requirements (predominantly officials at LSIs), while 42% concerned LSIs.⁹

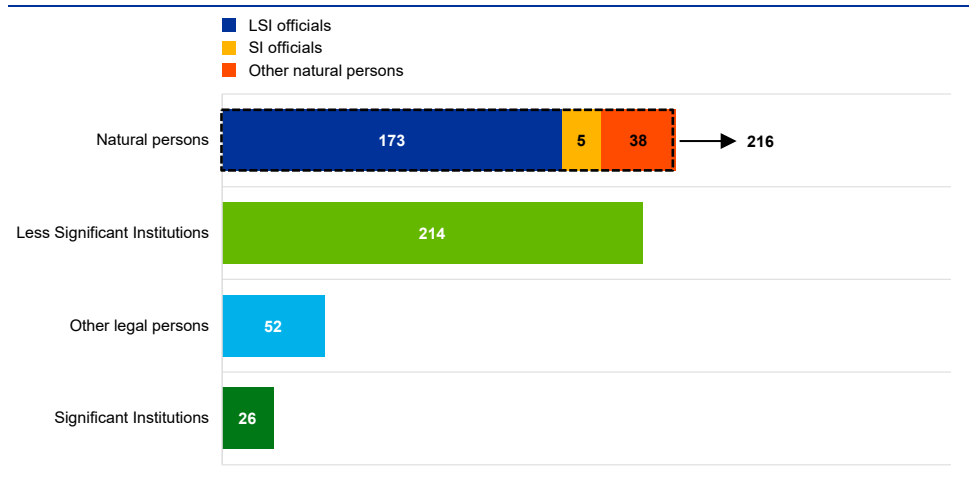
A further 10% of all proceedings conducted in 2021 concerned other legal persons falling within the remit of the competent authorities; the remaining 5.5% concerned SIs.

Chart 2 presents a breakdown of the proceedings conducted in 2021 by type of person concerned.

⁹ The high number of proceedings concerning natural persons in general (not only in 2021) can largely be explained by the fact that separate proceedings are usually opened against multiple natural persons potentially responsible in connection with the same facts constituting the breach, e.g. the members of the supervised entity's board of directors. Where the credit institution itself is held potentially responsible for a breach, only one formal proceeding is opened.

Chart 2

Number of formal sanctioning proceedings conducted in 2021 by type of person concerned



2.2

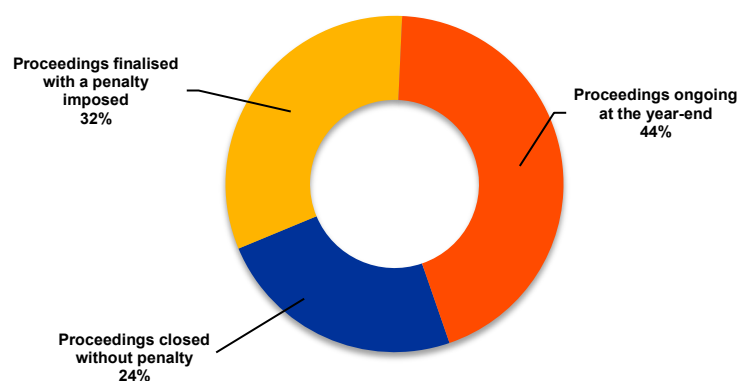
Proceedings completed by the year-end

287 formal sanctioning proceedings in 2021 (56% of the total conducted) ended with a decision either to impose a penalty or to close without imposing any penalty (Table A and Chart 3).

Chart 3

Outcome of formal sanctioning proceedings conducted in 2021

(percentages)



See Section 3 for further information on the proceedings finalised with a penalty.

Of the 287 proceedings completed in 2021, 122 (24% of the total conducted) were closed without a penalty being imposed,¹⁰ mainly because, after closer assessment, it was concluded that no breach had been committed; this was the case in 47.5% of proceedings closed without a penalty.

A significant number, namely 27% of all proceedings closed with no penalty imposed, nevertheless saw formal confirmation of wrongdoer's liability. In most such cases (88%), the legal or natural persons concerned were issued with a warning or reprimand which does not qualify as an administrative penalty under national law.

The third most common reason for closure was that the (alleged) breach was not sufficiently severe; this applied in 12.5% of the proceedings closed without a penalty. The figure for some countries may also reflect policy considerations taken into account by the national legislator or competent authority in deciding which infringements should be pursued.

Other reasons for closing proceedings included lack of a relevant legal basis (6.5% of the proceedings closed without a penalty); for the remaining 6.5% of the proceedings closed without a penalty, this was done on other grounds.

The majority of the proceedings closed without a penalty referred to (alleged) breaches in the following areas of prudential supervision: reporting (25%); internal governance (24%); liquidity (12%).

2.3 Proceedings ongoing and suspended at the year-end

At the end of 2021, 221 formal sanctioning proceedings (44% of total proceedings conducted) were actively being conducted, of which two had been opened by NCAs at the ECB's request in previous years pursuant to Article 18(5) of the SSM Regulation.

The majority of the proceedings ongoing at the end of 2021 related to suspected breaches in the following areas of prudential supervision: internal governance (48%); reporting (15%); large exposures (10%).

In addition, 216 proceedings (of which 123 had been opened by NCAs at the ECB's request in previous years pursuant to Article 18(5) of the SSM Regulation) remained suspended throughout the year.¹¹

¹⁰ Proceedings "closed" means proceedings formally completed with a decision not to impose a penalty adopted by the decision-making body of the ECB or the relevant NCA. It also includes (where applicable) ECB proceedings opened pursuant to Article 18(5) of the SSM Regulation which were ultimately closed without a request being addressed to the relevant NCA.

¹¹ The proceedings were suspended due to criminal proceedings pending before national courts against the same person(s) in connection with the same facts.

3 Administrative penalties imposed in 2021

3.1 Overall figures

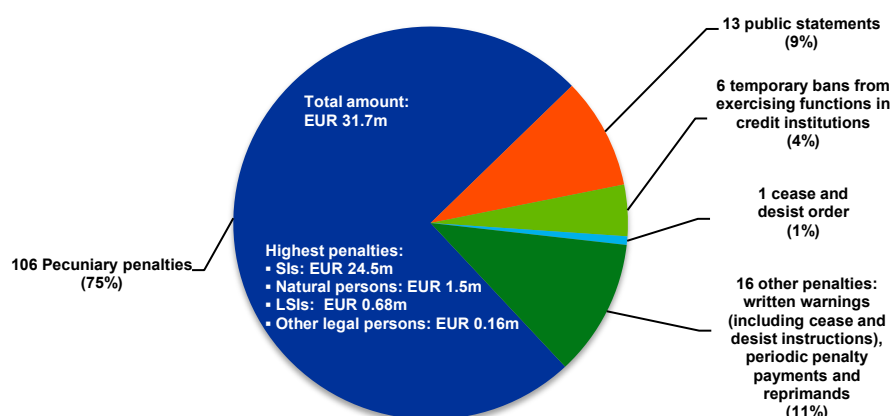
Of the 287 formal sanctioning proceedings completed in 2021, 165 (32% of total proceedings conducted) resulted in 142 administrative penalties in total (106 pecuniary and 36 non-pecuniary) being imposed on persons held responsible for various breaches of prudential requirements. Of those penalties, 19 were imposed in 16 proceedings opened by NCAs at the ECB's request in previous years pursuant to Article 18(5) of the SSM Regulation.

Chart 4 presents an overview of the administrative penalties imposed by competent authorities in 2021 for breaches of prudential requirements.

Chart 4

Administrative penalties imposed by competent authorities in 2021

(percentages)



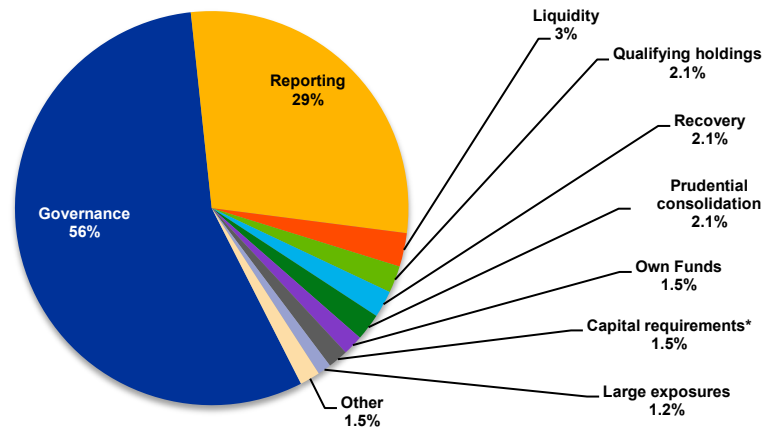
Most administrative penalties were imposed for breaches committed in the following areas of prudential supervision: internal governance (56%); reporting (29%); liquidity (3%); qualifying holdings, recovery and prudential consolidation (2.1%).

Chart 5 presents a breakdown of the breaches sanctioned with an administrative penalty in 2021 by area of infringement.

Chart 5

Administrative penalties imposed in 2021 by area of infringement

(percentages)



Note: "Other" consisted of breaches concerning carrying out the business of taking deposits or other repayable funds from the public without being a credit institution.

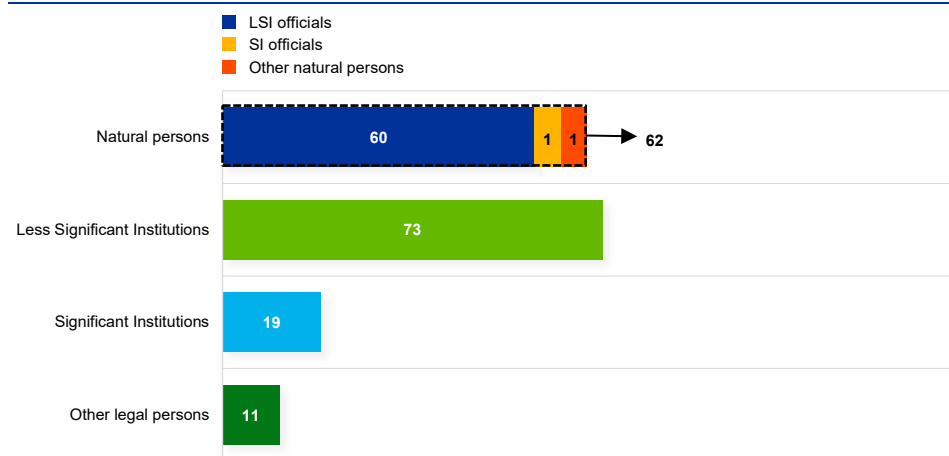
Within the area of internal governance, proceedings finalised with a penalty being imposed related mainly to risk management and internal controls.

In terms of the types of person sanctioned, of the 165 proceedings where an administrative penalty was imposed, 73 (44%) concerned LSIs, 62 (37.5%) were related to natural persons, 19 (12%) concerned SIs, while the remaining 11 (6.5%) related to other legal persons falling within the remit of the competent authorities.

Chart 6 presents a breakdown of proceedings finalised with an administrative penalty in 2021 by type of person sanctioned.

Chart 6

Number of proceedings finalised with an administrative penalty in 2021 by type of person sanctioned



3.2 Pecuniary penalties

Of the 142 administrative penalties imposed in 2021 for breaches of prudential requirements, 75% (106) were of a pecuniary nature for an overall aggregate amount of around €31.7 million. 14 pecuniary penalties totalling €24.75 million were imposed by NCAs in national proceedings opened at the ECB's request in previous years pursuant to Article 18(5) of the SSM Regulation.

The highest pecuniary penalty imposed in 2021 concerned an SI and amounted to €24.5 million. As regards other persons sanctioned in 2021, the highest pecuniary penalties were as follows: natural persons €1.5 million; LSIs €680,000; other legal persons €160,000. Most were related to breaches committed in the following areas of prudential supervision: internal governance (57%); reporting (29%); recovery and public consolidation (3% each).

3.3 Other penalties

Besides the pecuniary penalties mentioned, the competent authorities also imposed 36 penalties of a non-pecuniary nature as an outcome of formal sanctioning proceedings, as well as periodic penalty payments (representing 25% of the total number of administrative penalties imposed). Of these, five were imposed by NCAs in national proceedings opened at the ECB's request in previous years pursuant to Article 18(5) of the SSM Regulation.

This category of penalties included such measures as public statements, cease and desist orders, temporary bans from exercising functions in credit institutions and other penalties such as written warnings (including combined with cease and desist instructions), periodic penalty payments and reprimands.¹²

Most of those penalties were imposed in relation to breaches committed in the following areas of prudential supervision: internal governance (50%), reporting (27.5%), qualifying holdings and liquidity (5.5% each).

¹² In some participating Member States, these measures are categorised differently under national law and may be imposed not as a penalty, but rather as a supervisory or enforcement measure. The data presented in the report does not include such measures since they are not adopted as an outcome of formal sanctioning proceedings.

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The cut-off date for the data included in this report was 31 December 2021.

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

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