



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Legal Framework for Banking Supervision

Volume I

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Foreword

It is with great pleasure that the European Central Bank (ECB) presents this updated digital compilation of Union legal acts on banking supervision.

The digital compilation contains legal acts on banking supervision focusing primarily on the acts the ECB has adopted since the inception of the Single Supervisory Mechanism (SSM) in 2014. The compilation consists of three volumes.

Council Regulation (EU) No 1024/2013 conferred on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and established specific types of legal acts which the ECB may adopt for the purpose of exercising its tasks under that Regulation. When acting in its supervisory function, the ECB also exercises regulatory powers and adopts legal acts of general application within the scope granted to it by the legislator. For practical reasons, the digital compilation does not include a comprehensive collection of relevant Union law to which the ECB is subject when carrying out its supervisory tasks.

The fundamentals of the SSM are included in Volume I. This volume consists of *Council Regulation (EU) No 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions*, which establishes the SSM and lays down several general rules and principles, and *Regulation (EU) No 468/2014 establishing the framework for cooperation within the SSM between the ECB and the national competent authorities and with national designated authorities* (the ‘SSM Framework Regulation’), which lays down more detailed rules with regard to the actual functioning of the SSM. The Statute of the European System of Central Banks and of the European Central Bank also contains a number of institutional provisions that apply to the ECB when acting in its supervisory capacity.

Volume II includes legal acts on: (i) the implementation of the principle of separation; (ii) the accountability framework; (iii) rules on options and discretions available under Union law; (iv) delegating supervisory powers; (v) reporting; (vi) supervisory fees; and (vii) sanctions. The rules concerning close cooperation between the ECB and the national competent authorities of Member States whose currency is not the euro have also been included.

In Volume III, the reader will find legal acts on the internal organisation of the supervisory function of the ECB, which cover rules on internal bodies and procedures, ethics and public access to documents. Finally, a list of legal acts has been included for further information on issues related to those covered in the three volumes.

We trust that this digital compilation of Union legal acts on banking supervision will provide a useful reference tool for supervisors, legal practitioners and interested members of the public seeking access to the various legal acts constituting a key part of the legal framework for banking supervision.

First digital publication: Frankfurt am Main, April 2021

Andrea Enria



Chair of the Supervisory Board

Frank Elderson



Vice-Chair of the Supervisory Board

COUNCIL REGULATION (EU) No 1024/2013
of 15 October 2013
conferring specific tasks on the European Central Bank concerning policies relating to
the prudential supervision of credit institutions

BG ES CS DA DE ET EL EN FR GA HR IT LV LT HU MT NL PL PT RO SK SL FI SV

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Central Bank,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Over the past decades, the Union has made considerable progress in creating an internal market for banking services. Consequently, in many Member States, banking groups with their headquarters established in other Member States hold a significant market share, and credit institutions have geographically diversified their business, within both the euro area and non-euro area.
- (2) The present financial and economic crisis has shown that the integrity of the single currency and the internal market may be threatened by the fragmentation of the financial sector. It is therefore essential to intensify the integration of banking supervision in order to bolster the Union, restore financial stability and lay the basis for economic recovery.
- (3) Maintaining and deepening the internal market for banking services is essential in order to foster economic growth in the Union and adequate funding of the real economy. However this proves increasingly challenging. Evidence shows that the integration of banking markets in the Union is coming to a halt.
- (4) At the same time, in addition to the adoption of an enhanced Union regulatory framework, supervisors must step up their supervisory scrutiny to take account of the lessons of the

financial crisis in recent years, and be able to oversee highly complex and inter-connected markets and institutions.

- (5) Competence for supervision of individual credit institutions in the Union remains mostly at national level. Coordination between supervisors is vital but the crisis has shown that mere coordination is not enough, in particular in the context of a single currency. In order to preserve financial stability in the Union and increase the positive effects of market integration on growth and welfare, integration of supervisory responsibilities should therefore be enhanced. This is particularly important to ensure a smooth and sound overview over an entire banking group and its overall health and would reduce the risk of different interpretations and contradictory decisions on the individual entity level.
- (6) The stability of credit institutions is in many instances still closely linked to the Member State in which they are established. Doubts about the sustainability of public debt, economic growth prospects, and the viability of credit institutions have been creating negative, mutually reinforcing market trends. This may lead to risks to the viability of some credit institutions and to the stability of the financial system in the euro area and the Union as a whole, and may impose a heavy burden for already strained public finances of the Member States concerned.
- (7) The European Supervisory Authority (European Banking Authority) (EBA), established in 2011 by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), ⁽¹⁾, and the European System of Financial Supervision (ESFS) established by Article 2 of that Regulation, and Article 2 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) ⁽²⁾ (EIOPA) and Article 2 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European

Supervisory Authority (European Securities and Markets Authority) ⁽³⁾ (ESMA) have significantly improved cooperation between banking supervisors within the Union. EBA is making important contributions to the creation of a single rulebook for financial services in the Union, and has been crucial in implementing in a consistent way the recapitalisation agreed by the euro Summit of 26 October 2011 of major Union credit institutions, consistent with the guidelines and conditions relating to State aid adopted by the Commission.

- (8) The European Parliament has called on various occasions for a European body to be directly responsible for certain supervisory tasks over financial institutions, starting with its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan ⁽⁴⁾ and of 21 November 2002 on prudential supervision rules in the European Union ⁽⁵⁾.
- (9) The European Council conclusions of 29 June 2012 invited the President of the European Council to develop a road map for the achievement of a genuine economic and monetary union. On the same day, the euro Summit pointed out that when an effective single supervisory mechanism is established involving the European Central Bank (ECB) for banks in the euro area, the European Stability Mechanism (ESM) could, following a regular decision, have the possibility to recapitalise banks directly which would rely on appropriate conditionality, including compliance with State aid rules.
- (10) The European Council on 19 October 2012 concluded that the process towards deeper economic and monetary union should build on the Union institutional and legal framework and be characterised by openness and transparency towards Member States whose currency is not the euro and by respect for the integrity of the internal market. The integrated financial framework will have a single supervisory mechanism which will be open to the extent possible to all Member States wishing to participate.
- (11) A banking union should therefore be set up in the Union, underpinned by a comprehensive and detailed single rulebook for financial services for the internal market as a whole and composed of a single supervisory mechanism and new frameworks for deposit insurance and resolution. In view of the close links and interactions between Member States whose currency is the euro, the banking union should apply at least to all euro area Member States. With a view to maintaining and deepening the internal market, and to the extent that this is

institutionally possible, the banking union should also be open to the participation of other Member States.

- (12) As a first step towards a banking union, a single supervisory mechanism should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. In particular, the Single Supervisory Mechanism (SSM) should be consistent with the functioning of the internal market for financial services and with the free movement of capital. A single supervisory mechanism is the basis for the next steps towards the banking union. This reflects the principle that the ESM will, following a regular decision, have the possibility to recapitalise banks directly when an effective single supervisory mechanism is established. The European Council noted in its conclusions of 13/14 December 2012 that 'In a context where banking supervision is effectively moved to a single supervisory mechanism, a single resolution mechanism will be required, with the necessary powers to ensure that any bank in participating Member States can be resolved with the appropriate tools' and that 'the single resolution mechanism should be based on contributions by the financial sector itself and include appropriate and effective backstop arrangements'.
- (13) As the euro area's central bank with extensive expertise in macroeconomic and financial stability issues, the ECB is well placed to carry out clearly defined supervisory tasks with a focus on protecting the stability of the financial system of the Union. Indeed many Member States' central banks are already responsible for banking supervision. Specific tasks should therefore be conferred on the ECB concerning policies relating to the supervision of credit institutions within the participating Member States.
- (14) The ECB and the competent authorities of Member States that are not participating Member States ('non-participating Member States') should conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to the financial institutions referred to in this Regulation. The memorandum of understanding could, inter alia, clarify the consultation relating to decisions of the ECB having effect on subsidiaries or

branches established in the non-participating Member State whose parent undertaking is established in a participating Member State, and the cooperation in emergency situations, including early warning mechanisms in accordance with the procedures set out in relevant Union law. The memorandum should be reviewed on a regular basis.

- (15) Specific supervisory tasks which are crucial to ensure a coherent and effective implementation of the Union's policy relating to the prudential supervision of credit institutions should be conferred on the ECB, while other tasks should remain with national authorities. The ECB's tasks should include measures taken in pursuance of macroprudential stability, subject to specific arrangements reflecting the role of national authorities.
- (16) The safety and soundness of large credit institutions is essential to ensure the stability of the financial system. However, recent experience shows that smaller credit institutions can also pose a threat to financial stability. Therefore, the ECB should be able to exercise supervisory tasks in relation to all credit institutions authorised in, and branches established in, participating Member States.
- (17) When carrying out the tasks conferred on it, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the banking industry of the Union.
- (18) The exercise of the ECB's tasks should contribute in particular to ensure that credit institutions fully internalise all costs caused by their activities so as to avoid moral hazard and the excessive risk taking arising from it. It should take full account of the relevant macroeconomic conditions in Member States, in particular the stability of the supply of credit and facilitation of productive activities for the economy at large.
- (19) Nothing in this Regulation should be understood as changing the accounting framework applicable pursuant to other acts of Union and national law.
- (20) Prior authorisation for taking up the business of credit institutions is a key prudential technique to ensure that only operators with a sound economic basis, an organisation capable of dealing with the specific risks inherent to deposit taking and credit provision, and suitable directors carry out those activities. The ECB should therefore have the task of authorising credit institutions that are to be established in a participating Member State

and should be responsible for the withdrawal of authorisations, subject to specific arrangements reflecting the role of national authorities.

- (21) In addition to the conditions set out in Union law for the authorisation of credit institutions and the cases for withdrawal of such authorisations, Member States may currently provide for further conditions for authorisation and cases for withdrawal of authorisation. The ECB should therefore carry out its task with regard to authorisation of credit institutions and withdrawal of the authorisation in case of non-compliance with national law on a proposal by the relevant national competent authority, which assesses compliance with the relevant conditions laid down in national law.
- (22) An assessment of the suitability of any new owner prior to the purchase of a significant stake in a credit institution is an indispensable tool for ensuring the continuous suitability and financial soundness of credit institutions' owners. The ECB as a Union institution is well placed to carry out such an assessment without imposing undue restrictions on the internal market. The ECB should have the task of assessing the acquisition and disposal of significant holdings in credit institutions, except in the context of bank resolution.
- (23) Compliance with Union rules requiring credit institutions to hold certain levels of capital against risks inherent to the business of credit institutions, to limit the size of exposures to individual counterparties, to publicly disclose information on credit institutions' financial situation, to dispose of sufficient liquid assets to withstand situations of market stress, and to limit leverage is a prerequisite for credit institutions' prudential soundness. The ECB should have the task of ensuring compliance with those rules, including in particular by granting approvals, permissions, derogations, or exemptions foreseen for the purposes of those rules.
- (24) Additional capital buffers, including a capital conservation buffer, a countercyclical capital buffer to ensure that credit institutions accumulate, during periods of economic growth, a sufficient capital base to absorb losses in stressed periods, global and other systemic institution buffers, and other measures aimed at addressing systemic or macroprudential risk, are key prudential tools. In order to ensure full coordination, where national competent authorities or national designated authorities impose such measures, the ECB should be duly notified. Moreover, where necessary the ECB should be able to apply higher requirements and more stringent measures, subject to close coordination with national authorities. The

provisions in this Regulation on measures aimed at addressing systemic or macroprudential risk are without prejudice to any coordination procedures provided for in other acts of Union law. National competent authorities or national designated authorities and the ECB shall act in respect of any coordination procedure provided for in such acts after having followed the procedures provided for in this Regulation.

- (25) The safety and soundness of a credit institution depend also on the allocation of adequate internal capital, having regard to the risks to which it may be exposed, and on the availability of appropriate internal organisation structures and corporate governance arrangements. The ECB should therefore have the task of applying requirements ensuring that credit institutions in the participating Member States have in place robust governance arrangements, processes and mechanisms, including strategies and processes for assessing and maintaining the adequacy of their internal capital. In case of deficiencies it should also have the task of imposing appropriate measures including specific additional own funds requirements, specific disclosure requirements, and specific liquidity requirements.
- (26) Risks for the safety and soundness of a credit institution can arise both at the level of an individual credit institution and at the level of a banking group or of a financial conglomerate. Specific supervisory arrangements to mitigate those risks are important to ensure the safety and soundness of credit institutions. In addition to supervision of individual credit institutions, the ECB's tasks should include supervision at the consolidated level, supplementary supervision, supervision of financial holding companies and supervision of mixed financial holding companies, excluding the supervision of insurance undertakings.
- (27) In order to preserve financial stability, the deterioration of an institution's financial and economic situation must be remedied at an early stage. The ECB should have the task of carrying out early intervention actions as laid down in relevant Union law. It should however coordinate its early intervention action with the relevant resolution authorities. As long as national authorities remain competent to resolve credit institutions, the ECB should, moreover, coordinate appropriately with the national authorities concerned to ensure a common understanding about respective responsibilities in case of crises, in particular in the context of the cross-border crisis management groups and the future resolution colleges established for those purposes.
- (28) Supervisory tasks not conferred on the ECB should remain with the national authorities. Those tasks should include the power to receive notifications from credit institutions in relation to the right of establishment and the free provision of services, to supervise bodies which are not covered by the definition of credit institutions under Union law but which are supervised as credit institutions under national law, to supervise credit institutions from third countries establishing a branch or providing cross-border services in the Union, to supervise payments services, to carry out day-to-day verifications of credit institutions, to carry out the function of competent authorities over credit institutions in relation to markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and consumer protection.
- (29) The ECB should cooperate, as appropriate, fully with the national authorities which are competent to ensure a high level of consumer protection and the fight against money laundering.
- (30) The ECB should carry out the tasks conferred on it with a view to ensuring the safety and soundness of credit institutions and the stability of the financial system of the Union as well as of individual participating Member States and the unity and integrity of the internal market, thereby ensuring also the protection of depositors and improving the functioning of the internal market, in accordance with the single rulebook for financial services in the Union. In particular the ECB should duly take into account the principles of equality and non-discrimination.
- (31) The conferral of supervisory tasks on the ECB should be consistent with the framework of the ESFS and its underlying objective to develop the single rulebook and enhance convergence of supervisory practices across the whole Union. Cooperation between the banking supervisors and the supervisors of insurance and securities markets is important to deal with issues of joint interest and to ensure proper supervision of credit institutions operating also in the insurance and securities sectors. The ECB should therefore be required to cooperate closely with EBA, ESMA and EIOPA, the European Systemic Risk Board (ESRB), and the other authorities which form part of the ESFS. The ECB should carry out its tasks in accordance with the provisions of this Regulation and without prejudice to the competence and the tasks of the other participants within the ESFS. It should also be required to cooperate with relevant resolution

authorities and facilities financing direct or indirect public financial assistance.

- (32) The ECB should carry out its tasks subject to and in compliance with relevant Union law including the whole of primary and secondary Union law, Commission decisions in the area of State aid, competition rules and merger control and the single rulebook applying to all Member States. EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The ECB should not replace the exercise of those tasks by EBA, and should therefore exercise powers to adopt regulations in accordance with Article 132 of the Treaty on the Functioning of the European Union (TFEU) and in compliance with Union acts adopted by the Commission on the basis of drafts developed by EBA and subject to Article 16 of Regulation (EU) No 1093/2010.
- (33) Where necessary the ECB should enter into memoranda of understanding with competent authorities responsible for markets in financial instruments describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to financial institutions referred to in this Regulation. Such memoranda should be made available to the European Parliament, to the Council and to the competent authorities of all Member States.
- (34) For the carrying out of its tasks and the exercise of its supervisory powers, the ECB should apply the material rules relating to the prudential supervision of credit institutions. Those rules are composed of the relevant Union law, in particular directly applicable Regulations or Directives, such as those on capital requirements for credit institutions and on financial conglomerates. Where the material rules relating to the prudential supervision of credit institutions are laid down in Directives, the ECB should apply the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and in areas where, on the date of entry into force of this Regulation, those Regulations explicitly grant options for Member States, the ECB should also apply the national legislation exercising such options. Such options should be construed as excluding options available only to competent or designated authorities. This is without prejudice to the principle of the primacy of Union law. It follows that the ECB should, when adopting guidelines or recommendations or when taking decisions, base itself on, and act in accordance with, the relevant binding Union law.
- (35) Within the scope of the tasks conferred on the ECB, national law confers on national competent authorities certain powers which are currently not required by Union law, including certain early intervention and precautionary powers. The ECB should be able to require national authorities in the participating Member States to make use of those powers in order to ensure the performance of full and effective supervision within the SSM.
- (36) In order to ensure that supervisory rules and decisions are applied by credit institutions, financial holding companies and mixed financial holding companies, effective, proportionate and dissuasive penalties should be imposed in case of a breach. In accordance with Article 132(3) TFEU and Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions ⁽⁶⁾, the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. Moreover, in order to enable the ECB to effectively carry out its tasks relating to the enforcement of supervisory rules set out in directly applicable Union law, the ECB should be empowered to impose pecuniary penalties on credit institutions, financial holding companies and mixed financial holding companies for breaches of such rules. National authorities should remain able to apply penalties in case of failure to comply with obligations stemming from national law transposing Union Directives. Where the ECB considers it appropriate for the fulfilment of its tasks that a penalty is applied for such breaches, it should be able to refer the matter to national competent authorities for those purposes.
- (37) National supervisors have important and long-established expertise in the supervision of credit institutions within their territory and their economic, organisational and cultural specificities. They have established a large body of dedicated and highly qualified staff for those purposes. Therefore, in order to ensure high-quality, Union-wide supervision, national competent authorities should be responsible for assisting the ECB in the preparation and implementation of any acts relating to the exercise of the ECB supervisory tasks. This should include, in particular, the ongoing day-to-day assessment of a credit institution's situation and related on-site verifications.
- (38) The criteria laid down in this Regulation defining the scope of institutions that are less significant should be applied at the highest level of consolidation within participating Member States based on consolidated data. Where the ECB carries out the tasks conferred on it

by this Regulation with regard to a group of credit institutions that is not less significant on a consolidated basis, it should carry out those tasks on a consolidated basis with regard to the group of credit institutions and on an individual basis with regard to the banking subsidiaries and branches of that group established in participating Member States.

- (39) The criteria laid down in this Regulation defining the scope of institutions that are less significant should be specified in a framework adopted and published by the ECB in consultation with national competent authorities. On that basis, the ECB should be responsible to apply those criteria and verify, through its own calculations, whether those criteria are met. The ECB's request for information to perform its calculation should not force the institutions to apply accounting frameworks differing from those applicable to them pursuant to other acts of Union and national law.
- (40) Where a credit institution has been considered significant or less significant, that assessment should generally not be modified more often than once every 12 months, except if there are structural changes in the banking groups, such as mergers or divestitures.
- (41) When deciding, following a notification by a national competent authority, whether an institution is of significant relevance with regard to the domestic economy and should therefore be supervised by the ECB, the ECB should take into account all relevant circumstances, including level-playing field considerations.
- (42) As regards the supervision of cross-border credit institutions active both inside and outside the euro area the ECB should cooperate closely with the competent authorities of non-participating Member States. As a competent authority the ECB should be subject to the related obligations to cooperate and exchange information under Union law and should participate fully in the colleges of supervisors. In addition, since the exercise of supervisory tasks by a Union institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States whose currency is not the euro should therefore also have the possibility to participate in the SSM. However, it is a necessary pre-condition for an effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay. Member States wishing to participate in the SSM should therefore undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB. The ECB should be

able to establish a close cooperation with the competent authorities of a Member State whose currency is not the euro. It should be obliged to establish the cooperation where the conditions set out in this Regulation are met.

- (43) Taking into account that participating Member States whose currency is not the euro are not present in the Governing Council for as long as they have not adopted the euro in accordance with the TFEU, and they cannot fully benefit from other mechanisms provided for Member States whose currency is the euro, additional safeguards in the decision-making process are provided for in this Regulation. However, those safeguards, in particular the possibility of the participating Member States whose currency is not the euro to request the immediate termination of the close cooperation after informing the Governing Council of its reasoned disagreement with a draft decision of the Supervisory Board, should be used in duly justified, exceptional cases. They should only be used as long as those specific circumstances apply. The safeguards are due to the specific circumstances in which participating Member States whose currency is not the euro are under this Regulation, since they are not present in the Governing Council and cannot fully benefit from other mechanisms provided for Member States whose currency is the euro. Therefore, the safeguards cannot and should not be construed as a precedent for other areas of Union policy.
- (44) Nothing in this Regulation should alter in any way the current framework regulating the change of legal form of subsidiaries or branches and the application of such framework, or be understood or applied as providing incentives in favour of such change. In this respect, the responsibility of competent authorities of non-participating Member States should be fully respected, so that those authorities continue to enjoy sufficient supervisory tools and powers over credit institutions operating in their territory in order to have the capacity to fulfil this responsibility and effectively safeguard financial stability and public interest. Moreover, in order to assist those competent authorities in fulfilling their responsibilities, timely information on a change of legal form of subsidiaries or branches should be provided to depositors and to the competent authorities.
- (45) In order to carry out its tasks, the ECB should have appropriate supervisory powers. Union law on the prudential supervision of credit institutions provides for certain powers to be conferred on competent authorities designated by the Member States for those purposes. To the extent that those powers fall within the scope of the supervisory tasks conferred on

- the ECB, for participating Member States the ECB should be considered the competent authority and should have the powers conferred on competent authorities by Union law. This includes powers conferred by those acts on the competent authorities of the home and the host Member States and the powers conferred on designated authorities.
- (46) The ECB should have the supervisory power to remove a member of a management body in accordance with this Regulation.
- (47) In order to carry out its tasks effectively, the ECB should be able to require all necessary information, and to conduct investigations and on-site inspections, where appropriate in cooperation with national competent authorities. The ECB and the national competent authorities should have access to the same information without credit institutions being subject to double reporting requirements.
- (48) Legal profession privilege is a fundamental principle of Union law, protecting the confidentiality of communications between natural or legal persons and their advisors, in accordance with the conditions laid down in the case-law of the Court of Justice of the European Union (CJEU).
- (49) When the ECB needs to require information from a person established in a non-participating Member State but belonging to a credit institution, financial holding company or mixed financial holding company established in a participating Member State, or to which such credit institution, financial holding company or mixed financial holding company has outsourced operational functions or activities, and when such requirements will not apply and will not be enforceable in the non-participating Member State, the ECB should coordinate with the competent authority in the non-participating Member State concerned.
- (50) This Regulation does not affect the application of the rules established by Articles 34 and 42 of Protocol No 4 on the statute of the European System of Central Banks and of the European Central Bank, attached to the Treaty on European Union (TEU) and to the TFEU ('Statute of the ESCB and of the ECB'). The acts adopted by the ECB under this Regulation should not create any rights or impose any obligations in non-participating Member States, except where such acts are in accordance with relevant Union law, in accordance with that Protocol and with Protocol No 15 on certain provisions related to the United Kingdom of Great Britain and Northern Ireland, attached to the TEU and to the TFEU.
- (51) Where credit institutions exercise their right of establishment or to provide services in another Member State, or where several entities in a group are established in different Member States, Union law provides for specific procedures and for attribution of competences between the Member States concerned. To the extent that the ECB takes over certain supervisory tasks for all participating Member States, those procedures and attributions should not apply to the exercise of the right of establishment or to provide services in another participating Member State.
- (52) When carrying out its tasks under this Regulation and when requesting assistance from national competent authorities, the ECB should have due regard to a fair balance between the involvement of all national competent authorities involved, in line with the responsibilities set out in applicable Union law for solo supervision and for supervision on a sub-consolidated basis and on a consolidated basis.
- (53) Nothing in this Regulation should be understood as conferring on the ECB the power to impose penalties on natural or legal persons other than credit institutions, financial holding companies or mixed financial holding companies, without prejudice to the ECB's power to require national competent authorities to act in order to ensure that appropriate penalties are imposed.
- (54) As established by the Treaties, the ECB is an institution of the Union as a whole. It should be bound in its decision-making procedures by Union rules and general principles on due process and transparency. The right of the addressees of the ECB's decisions to be heard should be fully respected as well as their right to request a review of the decisions of the ECB according to the rules set out in this Regulation.
- (55) The conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the Union, and to use its supervisory powers in the most effective and proportionate way. Any shift of supervisory powers from the Member State to the Union level should be balanced by appropriate transparency and accountability requirements. The ECB should therefore be accountable for the exercise of those tasks towards the European Parliament and the Council as democratically legitimised institutions representing the citizens of the Union and the Member States. That should include regular reporting, and responding to questions by the European Parliament in accordance with its Rules of Procedure, and by the euro Group in accordance with its procedures. Any reporting obligations should

be subject to the relevant professional secrecy requirements.

- (56) The ECB should also forward the reports, which it addresses to the European Parliament and to the Council, to the national parliaments of the participating Member States. National parliaments of the participating Member States should be able to address any observations or questions to the ECB on the performance of its supervisory tasks, to which the ECB may reply. The internal rules of those national parliaments should take into account details of the relevant procedures and arrangements for addressing the observations and questions to the ECB. In this context particular attention should be attached to observations or questions related to the withdrawal of authorisations of credit institutions in respect of which actions necessary for resolution or to maintain financial stability have been taken by national authorities in accordance with the procedure set out in this Regulation. The national parliament of a participating Member State should also be able to invite the Chair or a representative of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority. This role for national parliaments is appropriate given the potential impact that supervisory measures may have on public finances, credit institutions, their customers and employees, and the markets in the participating Member States. Where national competent authorities take action under this Regulation, accountability arrangements provided for under national law should continue to apply.
- (57) This Regulation is without prejudice to the right of the European Parliament to set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law pursuant to Article 226 TFEU or to the exercise of its functions of political control as laid down in the Treaties, including the right for the European Parliament to take a position or adopt a resolution on matters which it considers appropriate.
- (58) In its action, the ECB should comply with the principles of due process and transparency.
- (59) The regulation referred to in Article 15(3) TFEU should determine detailed rules enabling access to documents held by the ECB resulting from the carrying out of supervisory tasks, in accordance with the TFEU.
- (60) Pursuant to Article 263 TFEU, the CJEU is to review the legality of acts of, inter alia,

the ECB, other than recommendations and opinions, intended to produce legal effects vis-à-vis third parties.

- (61) In accordance with Article 340 TFEU, the ECB should, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties. This should be without prejudice to the liability of national competent authorities to make good any damage caused by them or by their servants in the performance of their duties in accordance with national legislation.
- (62) Council Regulation No 1 determining the languages to be used by the European Economic Community (7) applies to the ECB by virtue of Article 342 TFEU.
- (63) When determining whether the right of access to the file by persons concerned should be limited, the ECB should respect the fundamental rights and observe the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and to a fair trial.
- (64) The ECB should provide natural and legal persons with the possibility to request a review of decisions taken under the powers conferred on it by this Regulation and addressed to them, or which are of direct and individual concern to them. The scope of the review should pertain to the procedural and substantive conformity with this regulation of such decisions while respecting the margin of discretion left to the ECB to decide on the opportunity to take those *decisions*. For that purpose, and for reasons of procedural economy, the ECB should establish an administrative board of review to carry out such internal review. To compose the board, the Governing Council of the ECB should appoint individuals of a high repute. In making its decision, the Governing Council should, to the extent possible, ensure an appropriate geographical and gender balance across the Member States. The procedure laid down for the review should provide for the Supervisory Board to reconsider its former draft decision as appropriate.
- (65) The ECB is responsible for carrying out monetary policy functions with a view to maintaining price stability in accordance with Article 127(1) TFEU. The exercise of supervisory tasks has the objective to protect the safety and soundness of credit institutions and the stability of the financial system. They should therefore be carried out in full separation, in order to avoid conflicts of interests and to ensure that each function is exercised in accordance with the applicable

objectives. The ECB should be able to ensure that the Governing Council operates in a completely differentiated manner as regards monetary and supervisory functions. Such differentiation should at least include strictly separated meetings and agendas.

- (66) Organisational separation of staff should concern all services needed for independent monetary policy purposes and should ensure that the exercise of the tasks conferred by this Regulation is fully subject to democratic accountability and oversight as provided for by this Regulation. The staff involved in carrying out the tasks conferred on the ECB by this Regulation should report to the Chair of the Supervisory Board.
- (67) In particular, a Supervisory Board responsible for preparing decisions on supervisory matters should be set up within the ECB encompassing the specific expertise of national supervisors. The board should therefore be chaired by a Chair, have a Vice Chair and include representatives from the ECB and from national competent authorities. The appointments for the Supervisory Board in accordance with this Regulation should respect the principles of gender balance, experience and qualification. All members of the Supervisory Board should be timely and fully informed on the items on the agenda of its meetings, so as to facilitate the effectiveness of the discussion and the draft decision making process.
- (68) When exercising its tasks, the Supervisory Board should take account of all relevant facts and circumstances in the participating Member States and should perform its duties in the interest of the Union as a whole.
- (69) With full respect to the institutional and voting arrangements set by the Treaties, the Supervisory Board should be an essential body in the exercise of supervisory tasks by the ECB, tasks which until now have always been in the hands of national competent authorities. For this reason, the Council should be given the power to adopt an implementing decision to appoint the Chair and the Vice-Chair of the Supervisory Board. After hearing the Supervisory Board, the ECB should submit a proposal for the appointment of the Chair and the Vice-Chair to the European Parliament for approval. Following the approval of this proposal, the Council should adopt that implementing decision. The Chair should be chosen on the basis of an open selection procedure, on which the European Parliament and the Council should be kept duly informed.
- (70) In order to allow for an appropriate rotation while ensuring the full independence of the Chair, the Chair's term of office should not exceed five years and should not be renewable. In order to ensure full coordination with the activities of EBA and with the prudential policies of the Union, the Supervisory Board should be able to invite EBA and the Commission as observers. The Chair of the European Resolution Authority, once established, should participate as observer in the meetings of the Supervisory Board.
- (71) The Supervisory Board should be supported by a steering committee with a more limited composition. The steering committee should prepare the meetings of the Supervisory Board, perform its duties solely in the interest of the Union as a whole, and work in full transparency with the Supervisory Board.
- (72) The Governing Council of the ECB should invite the representatives from participating Member States whose currency is not the euro whenever it is contemplated by the Governing Council to object to a draft decision prepared by the Supervisory Board or whenever the concerned national competent authorities inform the Governing Council of their reasoned disagreement with a draft decision of the Supervisory Board, when such decision is addressed to the national authorities in respect of credit institutions from participating Member States whose currency is not the euro.
- (73) With a view to ensuring separation between monetary policy and supervisory tasks, the ECB should be required to create a mediation panel. The setting up of the panel, and in particular its composition, should ensure that it resolves differences of views in a balanced way, in the interest of the Union as a whole.
- (74) The Supervisory Board, the steering committee and staff of the ECB carrying out supervisory duties should be subject to appropriate professional secrecy requirements. Similar requirements should apply to the exchange of information with the staff of the ECB not involved in supervisory activities. This should not prevent the ECB from exchanging information within the limits and under the conditions set out in the relevant Union legislation, including with the Commission for the purposes of its tasks under Articles 107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.
- (75) In order to carry out its supervisory tasks effectively, the ECB should exercise the supervisory tasks conferred on it in full independence, in particular free from undue political influence and from industry interference which would affect its operational independence.

- (76) The use of cooling-off periods in supervisory authorities forms an important part of ensuring the effectiveness and independence of the supervision conducted by those authorities. To this end, and without prejudice to the application of stricter national rules, the ECB should establish and maintain comprehensive and formal procedures, including proportionate review periods, to assess in advance and prevent possible conflicts with the legitimate interest of the SSM/ECB where a former member of the Supervisory Board begins work within the banking industry he or she once supervised.
- (77) In order to carry out its supervisory tasks effectively, the ECB should dispose of adequate resources. Those resources should be obtained in a way that ensures the ECB's independence from undue influences by national competent authorities and market participants, and separation between monetary policy and supervisory tasks. The costs of supervision should be borne by the entities subject to it. Therefore, the exercise of supervisory tasks by the ECB should be financed by annual fees charged to credit institutions established in the participating Member States. It should also be able to levy fees on branches established in a participating Member State by a credit institution established in a non-participating Member State to cover the expenditure incurred by the ECB when carrying out its tasks as a host supervisor over these branches. In the case a credit institution or a branch is supervised on a consolidated basis, the fee should be levied on the highest level of a credit institution within the involved group with establishment in participating Member States. The calculation of the fees should exclude any subsidiaries established in non-participating Member States.
- (78) Where a credit institution is included in supervision on a consolidated basis, the fee should be calculated at the highest level of consolidation within participating Member States and allocated to the credit institutions established in a participating Member State and included in the supervision on a consolidated basis, based on objective criteria relating to the importance and risk profile, including the risk weighted assets.
- (79) Highly motivated, well-trained and impartial staff is indispensable to effective supervision. In order to create a truly integrated supervisory mechanism, appropriate exchange and secondment of staff with and among all national competent authorities and the ECB should be provided for. To ensure a peer control on an on-going basis, particularly in the supervision of large credit institutions, the ECB should be able to request that national supervisory teams involve also staff from competent authorities of other participating Member States, making it possible to install supervisory teams of geographical diversity with specific expertise and profile. The exchange and secondment of staff should establish a common supervisory culture. On a regular basis the ECB should provide information on how many staff members from the national competent authorities are seconded to the ECB for the purposes of the SSM.
- (80) Given the globalisation of banking services and the increased importance of international standards, the ECB should carry out its tasks in respect of international standards and in dialogue and close cooperation with supervisors outside the Union, without duplicating the international role of EBA. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, while coordinating with EBA and while fully respecting the existing roles and respective competences of the Member States and the institutions of the Union.
- (81) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽⁸⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁹⁾ are fully applicable to the processing of personal data by the ECB for the purposes of this Regulation.
- (82) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽¹⁰⁾ applies to the ECB. The ECB has adopted Decision ECB/2004/11 ⁽¹¹⁾ concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank.
- (83) In order to ensure that credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations, and that the negative mutually reinforcing impacts of market developments which concern credit institutions and Member States are addressed in a timely and effective way, the ECB should start carrying out specific supervisory tasks as soon as possible. However, the transfer of supervisory tasks from national supervisors to the ECB requires

a certain amount of preparation. Therefore, an appropriate phasing-in period should be provided for.

- (84) When adopting the detailed operational arrangements for the implementation of the tasks conferred on the ECB by this Regulation, the ECB should provide for transitional arrangements which ensure the completion of ongoing supervisory procedures, including any decision and/or measure adopted or investigation commenced prior to the entry into force of this Regulation.
- (85) The Commission has stated in its Communication of 28 November 2012 on a Blueprint for a deep and genuine economic and monetary union that Article 127(6) TFEU could be amended to make the ordinary legislative procedure applicable and to eliminate some of the legal constraints it currently places on the design of the SSM (e.g. enshrine a direct and irrevocable opt-in by Member States whose currency is not the euro to the SSM, beyond the model of 'close cooperation', grant Member States whose currency is not the euro participating in the SSM fully equal rights in the ECB's decision-making, and go even further in the internal separation of decision-making on monetary policy and on supervision). It has also stated that a specific point to be addressed would be to strengthen democratic accountability over the ECB insofar as it acts as a banking supervisor. It is recalled that TEU provides that proposals for treaty change may be submitted by the Government of any Member State, the European Parliament, or the Commission, and may relate to any aspect of the Treaties.
- (86) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and has to be implemented in accordance with those rights and principles.
- (87) Since the objectives of this Regulation, namely setting up an efficient and effective framework for the exercise of specific supervisory tasks over credit institutions by a Union institution, and ensuring the consistent application of the single rulebook to credit institutions, cannot be sufficiently achieved at the Member State level and can therefore, by reason of the pan-Union structure of the banking market and the impact of failures of credit institutions on other Member States, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that

Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject matter and definitions

Article 1

Subject matter and scope

This Regulation confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage.

The institutions referred to in Article 2(5) of the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ⁽¹²⁾ are excluded from the supervisory tasks conferred on ECB in accordance with Article 4 of this Regulation. The scope of the ECB's supervisory tasks is limited to the prudential supervision of credit institutions pursuant to this Regulation. This Regulation shall not confer on the ECB any other supervisory tasks, such as tasks relating to the prudential supervision of central counterparties.

When carrying out its tasks according to this Regulation, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB shall have full regard to the different types, business models and sizes of credit institutions.

No action, proposal or policy of the ECB shall, directly or indirectly, discriminate against any Member State or group of Member States as a venue for the provision of banking or financial services in any currency.

This Regulation is without prejudice to the responsibilities and related powers of the competent authorities of the participating Member States to carry out supervisory tasks not conferred on the ECB by this Regulation.

This Regulation is also without prejudice to the responsibilities and related powers of the competent or designated authorities of the participating Member States to apply macroprudential tools not provided for in relevant acts of Union law.

Article 2

Definitions

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

- (1) ‘participating Member State’ means a Member State whose currency is the euro or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7;
- (2) ‘national competent authority’ means a national competent authority designated by a participating Member State in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms ⁽¹³⁾ and Directive 2013/36/EU;
- (3) ‘credit institution’ means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013;
- (4) ‘financial holding company’ means a financial holding company as defined in point 20 of Article 4(1) of Regulation (EU) No 575/2013;
- (5) ‘mixed financial holding company’ means a mixed financial holding company as defined in point 15 of Article 2 of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate ⁽¹⁴⁾;
- (6) ‘financial conglomerate’ means a financial conglomerate as defined in point 14 of Article 2 of Directive 2002/87/EC;
- (7) ‘national designated authority’ means a designated authority of a participating Member State, within the meaning of the relevant Union law;
- (8) ‘qualifying holding’ means a qualifying holding as defined in point 36 of Article 4(1) of Regulation (EU) No 575/2013;
- (9) ‘Single supervisory mechanism’ (SSM) means the system of financial supervision composed by the ECB and national competent authorities of participating Member States as described in Article 6 of this Regulation.

CHAPTER II

Cooperation and tasks

Article 3

Cooperation

1. The ECB shall cooperate closely with EBA, ESMA, EIOPA and the European Systemic Risk Board (ESRB), and the other authorities which form part of the ESFS, which ensure an adequate level of regulation and supervision in the Union.

Where necessary the ECB shall enter into memoranda of understanding with competent authorities of Member States responsible for markets in financial instruments. Such memoranda shall be made available to the European Parliament, to the Council and to competent authorities of all Member States.

2. For the purposes of this Regulation, the ECB shall participate in the Board of Supervisors of EBA under the conditions set out in Article 40 of Regulation (EU) No 1093/2010.

3. The ECB shall carry out its tasks in accordance with this Regulation and without prejudice to the competence and the tasks of EBA, ESMA, EIOPA and the ESRB.

4. The ECB shall cooperate closely with the authorities empowered to resolve credit institutions, including in the preparation of resolution plans.

5. Subject to Articles 1, 4 and 6, the ECB shall cooperate closely with any public financial assistance facility including the European Financial Stability Facility (EFSF) and the ESM, in particular where such a facility has granted or is likely to grant, direct or indirect financial assistance to a credit institution which is subject to Article 4.

6. The ECB and the competent authorities of non-participating Member States shall conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to the financial institutions referred to in Article 2. The memorandum shall be reviewed on a regular basis.

Without prejudice to the first subparagraph the ECB shall conclude a memorandum of understanding with the competent authority of each non-participating Member State that is home to at least one global systemically important institution, as defined in Union law.

Each memorandum shall be reviewed on a regular basis and shall be published subject to appropriate treatment of confidential information.

Article 4
Tasks conferred on the ECB

1. Within the framework of Article 6, the ECB shall, in accordance with paragraph 3 of this Article, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:

- (a) to authorise credit institutions and to withdraw authorisations of credit institutions subject to Article 14;
- (b) for credit institutions established in a participating Member State, which wish to establish a branch or provide cross-border services in a non participating Member State, to carry out the tasks which the competent authority of the home Member State shall have under the relevant Union law;
- (c) to assess notifications of the acquisition and disposal of qualifying holdings in credit institutions, except in the case of a bank resolution, and subject to Article 15;
- (d) to ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters;
- (e) to ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose requirements on credit institutions to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions, risk management processes, internal control mechanisms, remuneration policies and practices and effective internal capital adequacy assessment processes, including Internal Ratings Based models;
- (f) to carry out supervisory reviews, including where appropriate in coordination with EBA, stress tests and their possible publication, in order to determine whether the arrangements, strategies, processes and mechanisms put in place by credit institutions and the own funds held by these institutions ensure a sound management and coverage of their risks, and on the basis of that supervisory review to impose on credit institutions specific additional own funds requirements, specific publication requirements, specific liquidity requirements and other measures, where specifically made available to competent authorities by relevant Union law;

- (g) to carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies, and to participate in supervision on a consolidated basis, including in colleges of supervisors without prejudice to the participation of national competent authorities in those colleges as observers, in relation to parents not established in one of the participating Member State;
- (h) to participate in supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and to assume the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the criteria set out in relevant Union law;
- (i) to carry out supervisory tasks in relation to recovery plans, and early intervention where a credit institution or group in relation to which the ECB is the consolidating supervisor, does not meet or is likely to breach the applicable prudential requirements, and, only in the cases explicitly stipulated by relevant Union law for competent authorities, structural changes required from credit institutions to prevent financial stress or failure, excluding any resolution powers.

2. For credit institutions established in a non-participating Member State, which establish a branch or provide cross-border services in a participating Member State, the ECB shall carry out, within the scope of paragraph 1, the tasks for which the national competent authorities are competent in accordance with relevant Union law.

3. For the purpose of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the ECB shall apply also the national legislation exercising those options.

To that effect, the ECB shall adopt guidelines and recommendations, and take decisions subject to and in compliance with the relevant Union law and in particular any legislative and non-legislative act, including those referred to in Articles 290 and 291 TFEU. It shall in particular be subject to binding regulatory and implementing technical standards developed by EBA and adopted by the Commission in accordance with Article 10 to 15 of Regulation (EU) No 1093/2010, to Article 16 of that Regulation, and to the provisions of that Regulation on the European supervisory handbook developed by EBA

in accordance with that Regulation. The ECB may also adopt regulations only to the extent necessary to organise or specify the arrangements for the carrying out of the tasks conferred on it by this Regulation.

Before adopting a regulation, the ECB shall conduct open public consultations and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulations concerned or in relation to the particular urgency of the matter, in which case the ECB shall justify that urgency.

Where necessary the ECB shall contribute in any participating role to the development of draft regulatory technical standards or implementing technical standards by EBA in accordance with Regulation (EU) No 1093/2010 or shall draw the attention of EBA to a potential need to submit to the Commission draft standards amending existing regulatory or implementing technical standards.

Article 5

Macroprudential tasks and tools

1. Whenever appropriate or deemed required, and without prejudice to paragraph 2 of this Article, the national competent authorities or national designated authorities of the participating Member States shall apply requirements for capital buffers to be held by credit institutions at the relevant level in accordance with relevant Union law in addition to own funds requirements referred to in point (d) of Article 4(1) of this Regulation, including countercyclical buffer rates, and any other measures aimed at addressing systemic or macro-prudential risks provided for, and subject to the procedures set out, in the Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in relevant Union law. Ten working days prior to taking such a decision, the concerned authority shall duly notify its intention to the ECB. Where the ECB objects, it shall state its reasons in writing within five working days. The concerned authority shall duly consider the ECB's reasons prior to proceeding with the decision as appropriate.

2. The ECB may, if deemed necessary, instead of the national competent authorities or national designated authorities of the participating Member State, apply higher requirements for capital buffers than applied by the national competent authorities or national designated authorities of participating Member States to be held by credit institutions at the relevant level in accordance with relevant Union law in addition to own funds requirements referred to in point (d) of Article 4(1) of this Regulation, including countercyclical buffer rates, subject to the conditions set out in paragraphs 4 and 5 of this Article, and apply more stringent measures aimed at addressing systemic or macroprudential risks at the level of credit institutions subject to the procedures

set out in the Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in relevant Union law.

3. Any national competent authority or a national designated authority may propose to the ECB to act under paragraph 2, in order to address the specific situation of the financial system and the economy in its Member State.

4. Where the ECB intends to act in accordance with paragraph 2, it shall cooperate closely with the national designated authorities in the Member States concerned. It shall in particular notify its intention to the concerned national competent authorities or national designated authorities ten working days prior to taking such a decision. Where any of the concerned authorities objects, it shall state its reasons in writing within five working days. The ECB shall duly consider those reasons prior to proceeding with the decision as appropriate.

5. When carrying out the tasks referred to in paragraph 2, the ECB shall take into account the specific situation of the financial system, economic situation and the economic cycle in individual Member States or parts thereof.

Article 6

Cooperation within the SSM

1. The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities. The ECB shall be responsible for the effective and consistent functioning of the SSM.

2. Both the ECB and national competent authorities shall be subject to a duty of cooperation in good faith, and an obligation to exchange information.

Without prejudice to the ECB's power to receive directly, or have direct access to information reported, on an ongoing basis, by credit institutions, the national competent authorities shall in particular provide the ECB with all information necessary for the purposes of carrying out the tasks conferred on the ECB by this Regulation.

3. Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by this Regulation, national competent authorities shall be responsible for assisting the ECB, under the conditions set out in the framework mentioned in paragraph 7 of this Article, with the preparation and implementation of any acts relating to the tasks referred to in Article 4 related to all credit institutions, including assistance in verification activities. They shall follow the instructions given by the ECB when performing the tasks mentioned in Article 4.

4. In relation to the tasks defined in Article 4 except for points (a) and (c) of paragraph 1 thereof, the ECB shall have the responsibilities set out in paragraph 5 of this Article and the national competent authorities shall have the responsibilities set out in paragraph 6 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article, for the supervision of the following credit institutions, financial holding companies or mixed financial holding companies, or branches, which are established in participating Member States, of credit institutions established in non-participating Member States:

- those that are less significant on a consolidated basis, at the highest level of consolidation within the participating Member States, or individually in the specific case of branches, which are established in participating Member States, of credit institutions established in non-participating Member States. The significance shall be assessed based on the following criteria:
 - (i) size;
 - (ii) importance for the economy of the Union or any participating Member State;
 - (iii) significance of cross-border activities. With respect to the first subparagraph above, a credit institution or financial holding company or mixed financial holding company shall not be considered less significant, unless justified by particular circumstances to be specified in the methodology, if any of the following conditions is met:
 - (i) the total value of its assets exceeds EUR 30 billion;
 - (ii) the ratio of its total assets over the GDP of the participating Member State of establishment exceeds 20 %, unless the total value of its assets is below EUR 5 billion;
 - (iii) following a notification by its national competent authority that it considers such an institution of significant relevance with regard to the domestic economy, the ECB takes a decision confirming such significance following a comprehensive assessment by the ECB, including a balance-sheet assessment, of that credit institution.

The ECB may also, on its own initiative, consider an institution to be of significant relevance where it has established banking subsidiaries in more than one participating Member States and its cross-border assets or liabilities represent a significant part of its total assets or liabilities subject to the conditions laid down in the methodology.

Those for which public financial assistance has been requested or received directly from the EFSF or the ESM shall not be considered less significant.

Notwithstanding the previous subparagraphs, the ECB shall carry out the tasks conferred on it by this Regulation in respect of the three most significant credit institutions in each of the participating Member States, unless justified by particular circumstances.

5. With regard to the credit institutions referred to in paragraph 4, and within the framework defined in paragraph 7:

- (a) the ECB shall issue regulations, guidelines or general instructions to national competent authorities, according to which the tasks defined in Article 4 excluding points (a) and (c) of paragraph 1 thereof are performed and supervisory decisions are adopted by national competent authorities.

Such instructions may refer to the specific powers in Article 16(2) for groups or categories of credit institutions for the purposes of ensuring the consistency of supervisory outcomes within the SSM;

- (b) when necessary to ensure consistent application of high supervisory standards, the ECB may at any time, on its own initiative after consulting with national competent authorities or upon request by a national competent authority, decide to exercise directly itself all the relevant powers for one or more credit institutions referred to in paragraph 4, including in the case where financial assistance has been requested or received indirectly from the EFSF or the ESM;
- (c) the ECB shall exercise oversight over the functioning of the system, based on the responsibilities and procedures set out in this Article, and in particular point (c) of paragraph 7;
- (d) the ECB may at any time make use of the powers referred to in Articles 10 to 13;
- (e) the ECB may also request, on an ad hoc or continuous basis, information from the national competent authorities on the performance of the tasks carried out by them under this Article.

6. Without prejudice to paragraph 5 of this Article, national competent authorities shall carry out and be responsible for the tasks referred to in points (b), (d) to (g) and (i) of Article 4(1) and adopting all relevant supervisory decisions with regard to the credit institutions referred to in the first subparagraph of paragraph 4 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article.

Without prejudice to Articles 10 to 13, the national competent authorities and national designated authorities shall maintain the powers, in accordance with national law, to obtain information from credit institutions, holding companies, mixed holding companies and undertakings included in the consolidated financial situation of a credit institution and to perform on site inspections at those credit institutions, holding companies, mixed holding companies and undertakings. The national competent authorities shall inform the ECB, in accordance with the framework set out in paragraph 7 of this Article, of the measures taken pursuant to this paragraph and closely coordinate those measures with the ECB.

The national competent authorities shall report to the ECB on a regular basis on the performance of the activities performed under this Article.

7. The ECB shall, in consultation with national competent authorities, and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical arrangements for the implementation of this Article. The framework shall include, at least, the following:

- (a) the specific methodology for the assessment of the criteria referred to in the first, second and third subparagraph of paragraph 4 and the criteria under which the fourth subparagraph of paragraph 4 ceases to apply to a specific credit institution and the resulting arrangements for the purposes of implementing paragraphs 5 and 6. Those arrangements and the methodology for the assessment of the criteria referred to in the first, second and third subparagraph of paragraph 4 shall be reviewed to reflect any relevant changes, and shall ensure that where a credit institution has been considered significant or less significant that assessment shall only be modified in case of substantial and non-transitory changes of circumstances, in particular those circumstances relating to the situation of the credit institution which are relevant for that assessment.
- (b) the definition of the procedures, including time-limits, and the possibility to prepare draft decisions to be sent to the ECB for consideration, for the relation between the ECB and the national competent authorities regarding the supervision of credit institutions not considered as less significant in accordance with paragraph 4;
- (c) the definition of the procedures, including time-limits, for the relation between the ECB and the national competent authorities regarding the supervision of credit institutions considered as less significant in accordance with paragraph 4. Such procedures shall in particular require

national competent authorities, depending on the cases defined in the framework, to:

- (i) notify the ECB of any material supervisory procedure;
- (ii) further assess, on the request of the ECB, specific aspects of the procedure;
- (iii) transmit to the ECB material draft supervisory decisions on which the ECB may express its views.

8. Wherever the ECB is assisted by national competent authorities or national designated authorities for the purpose of exercising the tasks conferred on it by this Regulation, the ECB and the national competent authorities shall comply with the provisions set out in the relevant Union acts in relation to the allocation of responsibilities and cooperation between competent authorities from different Member States.

Article 7

Close cooperation with the competent authorities of participating Member States whose currency is not the euro

1. Within the limits set out in this Article, the ECB shall carry out the tasks in the areas referred to in Articles 4(1), 4(2) and 5 in relation to credit institutions established in a Member State whose currency is not the euro, where close cooperation has been established between the ECB and the national competent authority of such Member State in accordance with this Article.

To that end, the ECB may address instructions to the national competent authority or to the national designated authority of the participating Member State whose currency is not the euro.

2. Close cooperation between the ECB and the national competent authority of a participating Member State whose currency is not the euro shall be established, by a decision adopted by the ECB, where the following conditions are met:

- (a) the Member State concerned notifies the other Member States, the Commission, the ECB and EBA the request to enter into a close cooperation with the ECB in relation to the exercise of the tasks referred to in Articles 4 and 5 with regard to all credit institutions established in the Member State concerned, in accordance with Article 6;
- (b) in the notification, the Member State concerned undertakes:
 - to ensure that its national competent authority or national designated authority will abide by any guidelines or requests issued by the ECB, and

- to provide all information on the credit institutions established in that Member State that the ECB may require for the purpose of carrying out a comprehensive assessment of those credit institutions;
- (c) the Member State concerned has adopted relevant national legislation to ensure that its national competent authority will be obliged to adopt any measure in relation to credit institutions requested by the ECB, in accordance with paragraph 4.

3. The decision referred to in paragraph 2 shall be published in the *Official Journal of the European Union*. The decision shall apply 14 days after its publication.

4. Where the ECB considers that a measure relating to the tasks referred to in paragraph 1 should be adopted by the national competent authority of a concerned Member State in relation to a credit institution, financial holding company or mixed-financial holding company, it shall address instructions to that authority, specifying a relevant timeframe.

That timeframe shall be no less than 48 hours unless earlier adoption is indispensable to prevent irreparable damage. The national competent authority of the concerned Member State shall take all the necessary measures in accordance with the obligation referred to in point (c) of paragraph 2.

5. The ECB may decide to issue a warning to the Member State concerned that the close cooperation will be suspended or terminated if no decisive corrective action is undertaken in the following cases:

- (a) where, in the opinion of the ECB, the conditions set out in points (a) to (c) of paragraph 2 are no longer met by the Member State concerned; or
- (b) where, in the opinion of the ECB, the national competent authority of the Member State concerned does not act in accordance with the obligation referred to in point (c) of paragraph 2.

If no such action has been undertaken within 15 days of notification of such a warning, the ECB may suspend or terminate the close cooperation with that Member State.

The decision to suspend or terminate the close cooperation shall be notified to the Member State concerned and shall be published in the *Official Journal of the European Union*. The decision shall indicate the date from which it applies, taking due consideration of supervisory effectiveness and legitimate interests of credit institutions.

6. The Member State may request the ECB to terminate the close cooperation at any time after a lapse of three years from the date of the publication in the *Official Journal of the European Union* of the decision adopted by the ECB for the establishment of the close cooperation. The request shall explain the reasons for the termination, including, when relevant, potential significant adverse consequences as regards the fiscal responsibilities of the Member State. In this case, the ECB shall immediately proceed to adopt a decision terminating the close cooperation and indicate the date from which it applies within a maximum period of three months, taking due consideration of supervisory effectiveness and legitimate interests of credit institutions. The decision shall be published in the *Official Journal of the European Union*.

7. If a participating Member State whose currency is not the euro notifies the ECB in accordance with Article 26(8) of its reasoned disagreement with an objection of the Governing Council to a draft decision of the Supervisory Board, the Governing Council shall, within a period of 30 days, give its opinion on the reasoned disagreement expressed by the Member State and, stating its reasons to do so, confirm or withdraw its objection.

Where the Governing Council confirms its objection, the participating Member State whose currency is not the euro may notify the ECB that it will not be bound by the potential decision related to a possible amended draft decision by the Supervisory Board.

The ECB shall then consider the possible suspension or termination of the close cooperation with that Member State, taking due consideration of supervisory effectiveness, and take a decision in that respect.

The ECB shall take into account, in particular, the following considerations:

- (a) whether the absence of such suspension or termination could jeopardize the integrity of the SSM or have significant adverse consequences as regards the fiscal responsibilities of the Member States;
- (b) whether such suspension or termination could have significant adverse consequences as regards the fiscal responsibilities in the Member State which has notified a reasoned disagreement in accordance with Article 26(8);
- (c) whether or not it is satisfied that the national competent authority concerned has adopted measures which, in the ECB's opinion:
 - ensure that credit institutions in the Member State which notified its reasoned disagreement pursuant to the previous subparagraph are not subject to

a more favourable treatment than credit institutions in the other participating Member States, and

- are equally effective as the decision of the Governing Council under the second subparagraph of this paragraph in achieving the objectives referred to in Article 1 and in ensuring compliance with relevant Union law.

The ECB shall include these considerations in its decision and communicate them to the Member State in question.

8. If a participating Member State whose currency is not the euro disagrees with a draft decision of the Supervisory Board, it shall inform the Governing Council of its reasoned disagreement within five working days of receiving the draft decision. The Governing Council shall then decide about the matter within five working days, taking fully into account those reasons, and explain in writing its decision to the Member State concerned. The Member State concerned may request the ECB to terminate the close cooperation with immediate effect and will not be bound by the ensuing decision.

9. A Member State which has terminated the close cooperation with the ECB may not enter into a new close cooperation before a lapse of three years from the date of the publication in the *Official Journal of the European Union* of the ECB decision terminating the close cooperation.

Article 8 **International relations**

Without prejudice to the respective competences of the Member States and institutions and bodies of the Union, other than the ECB, including EBA, in relation to the tasks conferred on the ECB by this Regulation, the ECB may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, subject to appropriate coordination with EBA. Those arrangements shall not create legal obligations in respect of the Union and its Member States.

CHAPTER III **Powers of the ECB**

Article 9 **Supervisory and investigatory powers**

1. For the exclusive purpose of carrying out the tasks conferred on it by Articles 4(1), 4(2) and 5(2), the ECB shall be considered, as appropriate, the

competent authority or the designated authority in the participating Member States as established by the relevant Union law.

For the same exclusive purpose, the ECB shall have all the powers and obligations set out in this Regulation. It shall also have all the powers and obligations, which competent and designated authorities shall have under the relevant Union law, unless otherwise provided for by this Regulation. In particular, the ECB shall have the powers listed in Sections 1 and 2 of this Chapter.

To the extent necessary to carry out the tasks conferred on it by this Regulation, the ECB may require, by way of instructions, those national authorities to make use of their powers, under and in accordance with the conditions set out in national law, where this Regulation does not confer such powers on the ECB. Those national authorities shall fully inform the ECB about the exercise of those powers.

2. The ECB shall exercise the powers referred to in paragraph 1 of this Article in accordance with the acts referred to in the first subparagraph of Article 4(3). In the exercise of their respective supervisory and investigatory powers, the ECB and national competent authorities shall cooperate closely.

3. By derogation from paragraph 1 of this Article, with regard to credit institutions established in participating Member States whose currency is not the euro, the ECB shall exercise its powers in accordance with Article 7.

Section 1 **Investigatory powers**

Article 10 **Request for information**

1. Without prejudice to the powers referred to in Article 9(1), and subject to the conditions set out in relevant Union law, the ECB may require the following legal or natural persons, subject to Article 4, to provide all information that is necessary in order to carry out the tasks conferred on it by this Regulation, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

- (a) credit institutions established in the participating Member States;
- (b) financial holding companies established in the participating Member States;
- (c) mixed financial holding companies established in the participating Member States;

- (d) mixed-activity holding companies established in the participating Member States;
- (e) persons belonging to the entities referred to in points (a) to (d);
- (f) third parties to whom the entities referred to in points (a) to (d) have outsourced functions or activities.

2. The persons referred to in paragraph 1 shall supply the information requested. Professional secrecy provisions do not exempt those persons from the duty to supply that information. Supplying that information shall not be deemed to be in breach of professional secrecy.

3. Where the ECB obtains information directly from the legal or natural persons referred to in paragraph 1 it shall make that information available to the national competent authorities concerned.

Article 11

General investigations

1. In order to carry out the tasks conferred on it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may conduct all necessary investigations of any person referred to in Article 10(1) established or located in a participating Member State.

To that end, the ECB shall have the right to:

- (a) require the submission of documents;
- (b) examine the books and records of the persons referred to in Article 10(1) and take copies or extracts from such books and records;
- (c) obtain written or oral explanations from any person referred to in Article 10(1) or their representatives or staff;
- (d) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

2. The persons referred to in Article 10(1) shall be subject to investigations launched on the basis of a decision of the ECB.

When a person obstructs the conduct of the investigation, the national competent authority of the participating Member State where the relevant premises are located shall afford, in compliance with national law, the necessary assistance including, in the cases referred to in Articles 12 and 13, facilitating the access by the ECB to the business premises of the legal persons referred to in Article 10(1), so that the aforementioned rights can be exercised.

Article 12

On-site inspections

1. In order to carry out the tasks conferred on it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may in accordance with Article 13 and subject to prior notification to the national competent authority concerned conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 10(1) and any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with point (g) of Article 4(1). Where the proper conduct and efficiency of the inspection so require, the ECB may carry out the on-site inspection without prior announcement to those legal persons.

2. The officials of and other persons authorised by the ECB to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by the ECB and shall have all the powers stipulated in Article 11(1).

3. The legal persons referred to in Article 10(1) shall be subject to on-site inspections on the basis of a decision of the ECB.

4. Officials and other accompanying persons authorised or appointed by the national competent authority of the Member State where the inspection is to be conducted shall, under the supervision and coordination of the ECB, actively assist the officials of and other persons authorised by the ECB. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the national competent authority of the participating Member State concerned shall also have the right to participate in the on-site inspections.

5. Where the officials of and other accompanying persons authorised or appointed by the ECB find that a person opposes an inspection ordered pursuant to this Article, the national competent authority of the participating Member State concerned shall afford them the necessary assistance in accordance with national law. To the extent necessary for the inspection, this assistance shall include the sealing of any business premises and books or records. Where that power is not available to the national competent authority concerned, it shall use its powers to request the necessary assistance of other national authorities.

Article 13

Authorisation by a judicial authority

1. If an on-site inspection provided for in Article 12(1) and (2) or the assistance provided for in Article 12(5) requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for.

2. Where authorisation as referred to in paragraph 1 of this Article is applied for, the national judicial authority shall control that the decision of the ECB is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the ECB for detailed explanations, in particular relating to the grounds the ECB has for suspecting that an infringement of the acts referred to in the first subparagraph of Article 4(3) has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the ECB's file. The lawfulness of the ECB's decision shall be subject to review only by the CJEU.

Section 2

Specific supervisory powers

Article 14 **Authorisation**

1. Any application for an authorisation to take up the business of a credit institution to be established in a participating Member State shall be submitted to the national competent authorities of the Member State where the credit institution is to be established in accordance with the requirements set out in relevant national law.

2. If the applicant complies with all conditions of authorisation set out in the relevant national law of that Member State, the national competent authority shall take, within the period provided for by relevant national law, a draft decision to propose to the ECB to grant the authorisation. The draft decision shall be notified to the ECB and the applicant for authorisation. In other cases, the national competent authority shall reject the application for authorisation.

3. The draft decision shall be deemed to be adopted by the ECB unless the ECB objects within a maximum period of ten working days, extendable once for the same period in duly justified cases. The ECB shall object to the draft decision only where the conditions for authorisation set out in relevant Union law are not met. It shall state the reasons for the rejection in writing.

4. The decision taken in accordance with paragraphs 2 and 3 shall be notified by the national competent authority to the applicant for authorisation.

5. Subject to paragraph 6, the ECB may withdraw the authorisation in the cases set out in relevant Union law on its own initiative, following consultations with the national competent authority of the participating Member State where the credit institution is established, or on a proposal from such national competent authority. These consultations shall in particular ensure that before taking decisions regarding withdrawal, the ECB allows sufficient time for the national authorities to decide on the necessary remedial actions, including possible resolution measures, and takes these into account.

Where the national competent authority which has proposed the authorisation in accordance with paragraph 1 considers that the authorisation must be withdrawn in accordance with the relevant national law, it shall submit a proposal to the ECB to that end. In that case, the ECB shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national competent authority.

6. As long as national authorities remain competent to resolve credit institutions, in cases where they consider that the withdrawal of the authorisation would prejudice the adequate implementation of or actions necessary for resolution or to maintain financial stability, they shall duly notify their objection to the ECB explaining in detail the prejudice that a withdrawal would cause. In those cases, the ECB shall abstain from proceeding to the withdrawal for a period mutually agreed with the national authorities. The ECB may extend that period if it is of the opinion that sufficient progress has been made. If, however, the ECB determines in a reasoned decision that proper actions necessary to maintain financial stability have not been implemented by the national authorities, the withdrawal of the authorisations shall apply immediately.

Article 15 **Assessment of acquisitions of qualifying holdings**

1. Without prejudice to the exemptions provided for in point (c) of Article 4(1), any notification of an acquisition of a qualifying holding in a credit institution established in a participating Member State or any related information shall be introduced with the national competent authorities of the Member State where the credit institution is established in accordance with the requirements set out in relevant national law based on the acts referred to in the first subparagraph of Article 4(3).

2. The national competent authority shall assess the proposed acquisition, and shall forward the notification and a proposal for a decision to oppose or not to oppose the acquisition, based on the criteria set out in the acts referred to in the first subparagraph of Article 4(3), to the ECB, at least ten working days

before the expiry of the relevant assessment period as defined by relevant Union law, and shall assist the ECB in accordance with Article 6.

3. The ECB shall decide whether to oppose the acquisition on the basis of the assessment criteria set out in relevant Union law and in accordance with the procedure and within the assessment periods set out therein.

Article 16 **Supervisory powers**

1. For the purpose of carrying out its tasks referred to in Article 4(1) and without prejudice to other powers conferred on the ECB, the ECB shall have the powers set out in paragraph 2 of this Article to require any credit institution, financial holding company or mixed financial holding company in participating Member States to take the necessary measures at an early stage to address relevant problems in any of the following circumstances:

- (a) the credit institution does not meet the requirements of the acts referred to in the first subparagraph of Article 4(3);
- (b) the ECB has evidence that the credit institution is likely to breach the requirements of the acts referred to in the first subparagraph of Article 4(3) within the next 12 months;
- (c) based on a determination, in the framework of a supervisory review in accordance with point (f) of Article 4(1), that the arrangements, strategies, processes and mechanisms implemented by the credit institution and the own funds and liquidity held by it do not ensure a sound management and coverage of its risks.

2. For the purposes of Article 9(1), the ECB shall have, in particular, the following powers:

- (a) to require institutions to hold own funds in excess of the capital requirements laid down in the acts referred to in the first subparagraph of Article 4(3) related to elements of risks and risks not covered by the relevant Union acts;
- (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies;
- (c) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to the acts referred to in the first subparagraph of Article 4(3) and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

- (e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- (f) to require the reduction of the risk inherent in the activities, products and systems of institutions;
- (g) to require institutions to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base;
- (h) to require institutions to use net profits to strengthen own funds;
- (i) to restrict or prohibit distributions by the institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;
- (j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- (l) to require additional disclosures;
- (m) to remove at any time members from the management body of credit institutions who do not fulfil the requirements set out in the acts referred to in the first subparagraph of Article 4(3).

Article 17 **Powers of host authorities and cooperation on supervision on a consolidated basis**

1. Between participating Member States the procedures set out in the relevant Union law for credit institutions wishing to establish a branch or to exercise the freedom to provide services by carrying on their activities within the territory of another Member State and the related competences of home and host Member States shall apply only for the purposes of the tasks not conferred on the ECB by Article 4.

2. The provisions set out in the relevant Union law in relation to the cooperation between competent authorities from different Member States for conducting supervision on a consolidated basis shall not apply to the extent that the ECB is the only competent authority involved.

3. In fulfilling its tasks as defined in Articles 4 and 5 the ECB shall respect a fair balance between all participating Member States in accordance with Article 6(8) and shall, in its relationship with non-

participating Member States, respect the balance between home and host Member States established in relevant Union law.

Article 18

Administrative penalties

1. For the purpose of carrying out the tasks conferred on it by this Regulation, where credit institutions, financial holding companies, or mixed financial holding companies, intentionally or negligently, breach a requirement under relevant directly applicable acts of Union law in relation to which administrative pecuniary penalties shall be made available to competent authorities under the relevant Union law, the ECB may impose administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10 % of the total annual turnover, as defined in relevant Union law, of a legal person in the preceding business year or such other pecuniary penalties as may be provided for in relevant Union law.

2. Where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover referred to in paragraph 1 shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

3. The penalties applied shall be effective, proportionate and dissuasive. In determining whether to impose a penalty and in determining the appropriate penalty, the ECB shall act in accordance with Article 9(2).

4. The ECB shall apply this Article in accordance with the acts referred to in the first subparagraph of Article 4(3) of this Regulation, including the procedures contained in Regulation (EC) No 2532/98, as appropriate.

5. In the cases not covered by paragraph 1 of this Article, where necessary for the purpose of carrying out the tasks conferred on it by this Regulation, the ECB may require national competent authorities to open proceedings with a view to taking action in order to ensure that appropriate penalties are imposed in accordance with the acts referred to in the first subparagraph of Article 4(3) and any relevant national legislation which confers specific powers which are currently not required by Union law. The penalties applied by national competent authorities shall be effective, proportionate and dissuasive.

The first subparagraph of this paragraph shall be applicable in particular to pecuniary penalties to be imposed on credit institutions, financial holding companies or mixed financial holding companies for breaches of national law transposing relevant Directives, and to any administrative penalties or measures to be imposed on members of the

management board of a credit institution, financial holding company or mixed financial holding company or any other individuals who under national law are responsible for a breach by a credit institution, financial holding company or mixed financial holding company.

6. The ECB shall publish any penalty referred to paragraph 1, whether it has been appealed or not, in the cases and in accordance with the conditions set out in relevant Union law.

7. Without prejudice to paragraphs 1 to 6, for the purposes of carrying out the tasks conferred on it by this Regulation, in case of a breach of ECB regulations or decisions, the ECB may impose sanctions in accordance with Regulation (EC) No 2532/98.

CHAPTER IV

Organisational principles

Article 19

Independence

1. When carrying out the tasks conferred on it by this Regulation, the ECB and the national competent authorities acting within the SSM shall act independently. The members of the Supervisory Board and the steering committee shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body.

2. The institutions, bodies, offices and agencies of the Union and the governments of the Member States and any other bodies shall respect that independence.

3. Following an examination of the need for a Code of Conduct by the Supervisory Board, the Governing Council shall establish and publish a Code of Conduct for the ECB staff and management involved in banking supervision concerning in particular conflicts of interest.

Article 20

Accountability and reporting

1. The ECB shall be accountable to the European Parliament and to the Council for the implementation of this Regulation, in accordance with this Chapter.

2. The ECB shall submit on an annual basis to the European Parliament, to the Council, to the Commission and to the euro Group a report on the execution of the tasks conferred on it by this

Regulation, including information on the envisaged evolution of the structure and amount of the supervisory fees mentioned in Article 30.

3. The Chair of the Supervisory Board of the ECB shall present that report in public to the European Parliament, and to the euro Group in the presence of representatives from any participating Member State whose currency is not the euro.

4. The Chair of the Supervisory Board of the ECB may, at the request of the euro Group, be heard on the execution of its supervisory tasks by the euro Group in the presence of representatives from any participating Member States whose currency is not the euro.

5. At the request of the European Parliament, the Chair of the Supervisory Board of the ECB shall participate in a hearing on the execution of its supervisory tasks by the competent committees of the European Parliament.

6. The ECB shall reply orally or in writing to questions put to it by the European Parliament, or by the euro Group in accordance with its own procedures and in the presence of representatives from any participating Member States whose currency is not the euro.

7. When the European Court of Auditors examines the operational efficiency of the management of the ECB under Article 27.2 of the Statute of the ESCB and of the ECB, it shall also take into account the supervisory tasks conferred on the ECB by this Regulation.

8. Upon request the Chair of the Supervisory Board of the ECB shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee of the European Parliament concerning its supervisory tasks where such discussions are required for the exercise of the European Parliament's powers under the TFEU. An agreement shall be concluded between the European Parliament and the ECB on the detailed arrangements for organising such discussions, with a view to ensuring full confidentiality in accordance with the confidentiality obligations imposed on the ECB as a competent authority under relevant Union law.

9. The ECB shall cooperate sincerely with any investigations by the European Parliament, subject to the TFEU. The ECB and the European Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB by this Regulation. Those arrangements shall cover, inter alia, access to information, cooperation in investigations and information on the selection procedure of the Chair of the Supervisory Board.

Article 21

National parliaments

1. When submitting the report provided for in Article 20(2), the ECB shall simultaneously forward that report directly to the national parliaments of the participating Member States.

National parliaments may address to the ECB their reasoned observations on that report.

2. National parliaments of the participating Member States, through their own procedures, may request the ECB to reply in writing to any observations or questions submitted by them to the ECB in respect of the tasks of the ECB under this Regulation.

3. The national parliament of a participating Member State may invite the Chair or a member of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority.

4. This Regulation is without prejudice to the accountability of national competent authorities to national parliaments in accordance with national law for the performance of tasks not conferred on the ECB by this Regulation and for the performance of activities carried out by them in accordance with Article 6.

Article 22

Due process for adopting supervisory decisions

1. Before taking supervisory decisions in accordance with Article 4 and Section 2 of Chapter III, the ECB shall give the persons who are the subject of the proceedings the opportunity of being heard. The ECB shall base its decisions only on objections on which the parties concerned have been able to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant damage to the financial system. In such a case, the ECB may adopt a provisional decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of defence of the persons concerned shall be fully respected in the proceedings. They shall be entitled to have access to the ECB's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information.

The decisions of the ECB shall state the reasons on which they are based.

Article 23
Reporting of violations

The ECB shall ensure that effective mechanisms are put in place for reporting of breaches by credit institutions, financial holding companies or mixed financial holding companies or competent authorities in the participating Member States of the legal acts referred to in Article 4(3), including specific procedures for the receipt of reports of breaches and their follow-up. Such procedures shall be consistent with relevant Union legislation and shall ensure that the following principles are applied: appropriate protection for persons who report breaches, protection of personal data, and appropriate protection for the accused person.

Article 24
Administrative Board of Review

1. The ECB shall establish an Administrative Board of Review for the purposes of carrying out an internal administrative review of the decisions taken by the ECB in the exercise of the powers conferred on it by this Regulation after a request for review submitted in accordance with paragraph 5. The scope of the internal administrative review shall pertain to the procedural and substantive conformity with this Regulation of such decisions.

2. The Administrative Board of Review shall be composed of five individuals of high repute, from Member States and having a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking or other financial services, excluding current staff of the ECB, as well as current staff of competent authorities or other national or Union institutions, bodies, offices and agencies who are involved in the carrying out of the tasks conferred on the ECB by this Regulation. The Administrative Board of Review shall have sufficient resources and expertise to assess the exercise of the powers of the ECB under this Regulation. Members of the Administrative Board of Review and two alternates shall be appointed by the ECB for a term of five years, which may be extended once, following a public call for expressions of interest published in the *Official Journal of the European Union*. They shall not be bound by any instructions.

3. The Administrative Board of Review shall decide on the basis of a majority of at least three of its five members.

4. The members of the Administrative Board of Review shall act independently and in the public interest. For that purpose, they shall make a public declaration of commitments and a public declaration of interests indicating any direct or indirect interest which might be considered prejudicial to their independence or the absence of any such interest.

5. Any natural or legal person may in the cases referred to in paragraph 1 request a review of a decision of the ECB under this Regulation which is addressed to that person, or is of a direct and individual concern to that person. A request for a review against a decision of the Governing Council as referred to in paragraph 7 shall not be admissible.

6. Any request for review shall be made in writing, including a statement of grounds, and shall be lodged at the ECB within one month of the date of notification of the decision to the person requesting the review, or, in the absence thereof, of the day on which it came to the knowledge of the latter as the case may be.

7. After ruling on the admissibility of the review, the Administrative Board of Review shall express an opinion within a period appropriate to the urgency of the matter and no later than two months from the receipt of the request and remit the case for preparation of a new draft decision to the Supervisory Board. The Supervisory Board shall take into account the opinion of the Administrative Board of Review and shall promptly submit a new draft decision to the Governing Council. The new draft decision shall abrogate the initial decision, replace it with a decision of identical content, or replace it with an amended decision. The new draft decision shall be deemed adopted unless the Governing Council objects within a maximum period of ten working days.

8. A request for review pursuant to paragraph 5 shall not have suspensory effect. However, the Governing Council, on a proposal by the Administrative Board of Review may, if it considers that circumstances so require, suspend the application of the contested decision.

9. The opinion expressed by the Administrative Board of Review, the new draft decision submitted by the Supervisory Board and the decision adopted by the Governing Council pursuant to this Article shall be reasoned and notified to the parties.

10. The ECB shall adopt a decision establishing the Administrative Board of Review's operating rules.

11. This Article is without prejudice to the right to bring proceedings before the CJEU in accordance with the Treaties.

Article 25
Separation from monetary policy function

1. When carrying out the tasks conferred on it by this Regulation, the ECB shall pursue only the objectives set by this Regulation.

2. The ECB shall carry out the tasks conferred on it by this Regulation without prejudice to and separately from its tasks relating to monetary policy and any other tasks. The tasks conferred on the ECB

by this Regulation shall neither interfere with, nor be determined by, its tasks relating to monetary policy. The tasks conferred on the ECB by this Regulation shall moreover not interfere with its tasks in relation to the ESRB or any other tasks. The ECB shall report to the European Parliament and to the Council as to how it has complied with this provision. The tasks conferred by this Regulation on the ECB shall not alter the ongoing monitoring of the solvency of its monetary policy counterparties.

The staff involved in carrying out the tasks conferred on the ECB by this Regulation shall be organisationally separated from, and subject to, separate reporting lines from the staff involved in carrying out other tasks conferred on the ECB.

3. For the purposes of paragraphs 1 and 2, the ECB shall adopt and make public any necessary internal rules, including rules regarding professional secrecy and information exchanges between the two functional areas.

4. The ECB shall ensure that the operation of the Governing Council is completely differentiated as regards monetary and supervisory functions. Such differentiation shall include strictly separated meetings and agendas.

5. With a view to ensuring separation between monetary policy and supervisory tasks, the ECB shall create a mediation panel. This panel shall resolve differences of views expressed by the competent authorities of participating Member States concerned regarding an objection of the Governing Council to a draft decision by the Supervisory Board. This panel shall include one member per participating Member State, chosen by each Member State among the members of the Governing Council and the Supervisory Board, and shall decide by simple majority, with each member having one vote. The ECB shall adopt and make public a regulation setting up such mediation panel and its rules of procedure.

Article 26 **Supervisory board**

1. The planning and execution of the tasks conferred on the ECB shall be fully undertaken by an internal body composed of its Chair and Vice Chair, appointed in accordance with paragraph 3, and four representatives of the ECB, appointed in accordance with paragraph 5, and one representative of the national competent authority in each participating Member State ('Supervisory Board'). All members of the Supervisory Board shall act in the interest of the Union as a whole.

Where the competent authority is not a central bank, the member of the Supervisory Board referred to in this paragraph may decide to bring a representative from the Member State's central bank. For the

purposes of the voting procedure set out in paragraph 6, the representatives of the authorities of any one Member State shall together be considered as one member.

2. The appointments for the Supervisory Board in accordance with this Regulation shall respect the principles of gender balance, experience and qualification.

3. After hearing the Supervisory Board, the ECB shall submit a proposal for the appointment of the Chair and the Vice-Chair to the European Parliament for approval. Following the approval of this proposal, the Council shall adopt an implementing decision to appoint the Chair and the Vice-Chair of the Supervisory Board. The Chair shall be chosen on the basis of an open selection procedure, on which the European Parliament and the Council shall be kept duly informed, from among individuals of recognised standing and experience in banking and financial matters and who are not members of the Governing Council. The Vice Chair of the Supervisory Board shall be chosen from among the members of the Executive Board of the ECB. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

Once appointed, the Chair shall be a full-time professional and shall not hold any offices at national competent authorities. The term of office shall be five years and shall not be renewable.

4. If the Chair of the Supervisory Board no longer fulfils the conditions required for the performance of his duties or has been guilty of serious misconduct, the Council may, following a proposal by the ECB, which has been approved by the European Parliament, adopt an implementing decision to remove the Chair from office. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

Following a compulsory retirement of the Vice-Chair of the Supervisory Board as a member of the Executive Board, pronounced in accordance with the Statute of the ESCB and of the ECB, the Council may, following a proposal by the ECB, which has been approved by the European Parliament, adopt an implementing decision to remove the Vice-Chair from office. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

For those purposes the European Parliament or the Council may inform the ECB that they consider that the conditions for the removal of the Chair or the Vice Chair of the Supervisory Board from office are fulfilled, to which the ECB shall respond.

5. The four representatives of the ECB appointed by the Governing Council shall not perform duties directly related to the monetary function of the ECB. All the ECB representatives shall have voting rights.

6. Decisions of the Supervisory Board shall be taken by a simple majority of its members. Each member shall have one vote. In case of a draw, the Chair shall have a casting vote.

7. By derogation from paragraph 6 of this Article, the Supervisory Board shall take decisions on the adoption of regulations pursuant to Article 4(3), on the basis of a qualified majority of its members, as defined in Article 16(4) TEU and in Article 3 of Protocol No 36 on transitional provisions attached to the TEU and to the TFEU, for the members representing the participating Member State's authorities. Each of the four representatives of the ECB appointed by the Governing Council shall have a vote equal to the median vote of the other members.

8. Without prejudice to Article 6, the Supervisory Board shall carry out preparatory works regarding the supervisory tasks conferred on the ECB and propose to the Governing Council of the ECB complete draft decisions to be adopted by the latter, pursuant to a procedure to be established by the ECB. The draft decisions shall be transmitted at the same time to the national competent authorities of the Member States concerned. A draft decision shall be deemed adopted unless the Governing Council objects within a period to be defined in the procedure mentioned above but not exceeding a maximum period of ten working days. However, if a participating Member State whose currency is not the euro disagrees with a draft decision of the Supervisory Board, the procedure set out in Article 7(8) shall apply. In emergency situations the aforementioned period shall not exceed 48 hours. If the Governing Council objects to a draft decision, it shall state the reasons for doing so in writing, in particular stating monetary policy concerns. If a decision is changed following an objection by the Governing Council, a participating Member State whose currency is not the euro may notify the ECB of its reasoned disagreement with the objection and the procedure set out in Article 7(7) shall apply.

9. A secretariat shall support the activities of the Supervisory Board, including preparing the meetings on a full time basis.

10. The Supervisory Board, voting in accordance with the rule set out in paragraph 6, shall establish a steering committee from among its members with a more limited composition to support its activities, including preparing the meetings.

The steering committee of the Supervisory Board shall have no decision-making powers. The steering committee shall be chaired by the Chair or, in the exceptional absence of the Chair, the Vice-Chair of the Supervisory Board. The composition of the

steering committee shall ensure a fair balance and rotation between national competent authorities. It shall consist of no more than ten members including the Chair, the Vice-Chair and one additional representative from the ECB. The steering committee shall execute its preparatory tasks in the interest of the Union as a whole and shall work in full transparency with the Supervisory Board.

11. A representative of the Commission may participate as an observer in the meetings of the Supervisory Board upon invitation. Observers shall not have access to confidential information relating to individual institutions.

12. The Governing Council shall adopt internal rules setting out in detail its relation with the Supervisory Board. The Supervisory Board shall also adopt its rules of procedure, voting in accordance with the rule set out in paragraph 6. Both sets of rules shall be made public. The rules of procedure of the Supervisory Board shall ensure equal treatment of all participating Member States.

Article 27

Professional secrecy and exchange of information

1. Members of the Supervisory Board, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties, even after their duties are ceased, shall be subject to the professional secrecy requirements set out in Article 37 of the Statute of the ESCB and of the ECB and in the relevant acts of Union law.

The ECB shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, related to the discharge of supervisory duties are subject to equivalent professional secrecy requirements.

2. For the purpose of carrying out the tasks conferred on it by this Regulation, the ECB shall be authorised, within the limits and under the conditions set out in the relevant Union law, to exchange information with national or Union authorities and bodies in the cases where the relevant Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under the relevant Union law.

Article 28

Resources

The ECB shall be responsible for devoting the necessary financial and human resources to the exercise of the tasks conferred on it by this Regulation.

Article 29

Budget and annual accounts

1. The ECB's expenditure for carrying out the tasks conferred on it by this Regulation shall be separately identifiable within the budget of the ECB.
2. The ECB shall, as part of the report referred to in Article 20, report in detail on the budget for its supervisory tasks. The annual accounts of the ECB drawn up and published in accordance with Article 26.2 of the Statute of the ESCB and of the ECB shall include the income and expenses related to the supervisory tasks.
3. In line with Article 27.1 of the Statute of the ESCB and of the ECB the supervisory section of the annual accounts shall be audited.

Article 30

Supervisory fees

1. The ECB shall levy an annual supervisory fee on credit institutions established in the participating Member States and branches established in a participating Member State by a credit institution established in a non-participating Member State. The fees shall cover expenditure incurred by the ECB in relation to the tasks conferred on it under Articles 4 to 6 of this Regulation. These fees shall not exceed the expenditure relating to these tasks.
2. The amount of the fee levied on a credit institution or branch shall be calculated in accordance with the arrangements established, and published in advance, by the ECB.

Before establishing those arrangements, the ECB shall conduct open public consultations and analyse the potential related costs and benefits, and publish the results of both.
3. The fees shall be calculated at the highest level of consolidation within participating Member States, and shall be based on objective criteria relating to the importance and risk profile of the credit institution concerned, including its risk weighted assets.

The basis for calculating the annual supervisory fee for a given calendar year shall be the expenditure relating to the supervision of credit institutions and branches in that year. The ECB may require advance payments in respect of the annual supervisory fee which shall be based on a reasonable estimate. The ECB shall communicate with the national competent authority before deciding on the final fee level so as to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned. The ECB shall communicate to credit institutions and branches the basis for the calculation of the annual supervisory fee.

4. The ECB shall report in accordance with Article 20.

5. This Article is without prejudice to the right of national competent authorities to levy fees in accordance with national law and, to the extent supervisory tasks have not been conferred on the ECB, or in respect of costs of cooperating with and assisting the ECB and acting on its instructions, in accordance with relevant Union law and subject to the arrangements made for the implementation of this Regulation, including Articles 6 and 12.

Article 31

Staff and staff exchange

1. The ECB shall establish, together with all national competent authorities, arrangements to ensure an appropriate exchange and secondment of staff with and among national competent authorities.
2. The ECB may require as appropriate that supervisory teams of national competent authorities taking supervisory actions regarding a credit institution, financial holding company or mixed financial holding company located in one participating Member State in accordance with this Regulation also involve staff from national competent authorities of other participating Member States.
3. The ECB shall establish and maintain comprehensive and formal procedures including ethics procedures and proportionate periods to assess in advance and prevent possible conflicts of interest resulting from subsequent employment within two years of members of the Supervisory Board and ECB staff members engaged in supervisory activities, and shall provide for appropriate disclosures subject to applicable data protection rules.

Those procedures shall be without prejudice to the application of stricter national rules. For members of the Supervisory Board who are representatives of national competent authorities, those procedures shall be established and implemented in cooperation with national competent authorities, without prejudice to applicable national law.

For the ECB staff members engaged in supervisory activities, those procedures shall determine categories of positions to which such assessment applies, as well as periods that are proportionate to the functions of those staff members in the supervisory activities during their employment at the ECB.

4. The procedures referred to in paragraph 3 shall provide that the ECB shall assess whether there are objections that members of the Supervisory Board take paid work in private sector institutions for which the ECB has supervisory responsibility after they have ceased to hold office.

The procedures referred to in paragraph 3 shall apply as a rule for two years after the members of the Supervisory Board have ceased to hold office and may be adjusted, on the basis of due justification, proportionate to the functions performed during that term of office and the length of time that office was held.

5. The Annual Report of the ECB in accordance with Article 20 shall include detailed information, including statistical data on the application of the procedures referred to in paragraphs 3 and 4 of this Article.

CHAPTER V

General and final provisions

Article 32

Review

By 31 December 2015, and subsequently every three years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market. That report shall evaluate, inter alia:

- (a) the functioning of the SSM within the ESFS and the impact of the supervisory activities of the ECB on the interests of the Union as a whole and on the coherence and integrity of the internal market in financial services, including its possible impact on the structures of the national banking systems within the Union, and regarding the effectiveness of cooperation and information sharing arrangements between the SSM and competent authorities of non-participating Member States;
- (b) the division of tasks between the ECB and the national competent authorities within the SSM, the effectiveness of the practical arrangements of organisation adopted by the ECB, and the impact of the SSM on the functioning of the remaining supervisory colleges;
- (c) the effectiveness of the ECB's supervisory and sanctioning powers and the appropriateness of conferring on the ECB additional sanctioning powers, including in relation to persons other than credit institutions, financial holding companies or mixed financial holding companies;
- (d) the appropriateness of the arrangements set out respectively for macroprudential tasks and tools under Article 5 and for the granting and withdrawal of authorisations under Article 14;
- (e) the effectiveness of independence and accountability arrangements;

- (f) the interaction between the ECB and the EBA;
- (g) the appropriateness of governance arrangements, including the composition of, and voting arrangements in, the Supervisory Board and its relation with the Governing Council, as well as the collaboration in the Supervisory Board between Member States whose currency is the euro and the other participating Member States in the SSM;
- (h) the interaction between the ECB and the competent authorities of non-participating Member States and the effects of the SSM on these Member States;
- (i) the effectiveness of the recourse mechanism against decisions of the ECB;
- (j) the cost effectiveness of the SSM;
- (k) the possible impact of the application of Article 7(6), 7(7) and 7(8) on the functioning and integrity of the SSM;
- (l) the effectiveness of the separation between supervisory and monetary policy functions within the ECB and of the separation of financial resources devoted to supervisory tasks from the budget of the ECB, taking into account any modifications of the relevant legal provisions including at the level of primary law;
- (m) the fiscal effects that supervisory decisions taken by the SSM have on participating Member States and the impact of any developments in relation to resolution financing arrangements;
- (n) the possibilities of developing further the SSM, taking into account any modifications of the relevant provisions, including at the level of primary law, and taking into account whether the rationale of the institutional provisions in this Regulation is no longer present, including the possibility to fully align rights and obligations of Member States whose currency is the euro and other participating Member States.

The report shall be forwarded to the European Parliament and to the Council. The Commission shall make accompanying proposals, as appropriate.

Article 33

Transitional provisions

1. The ECB shall publish the framework referred to in Article 6(7) by 4 May 2014.
2. The ECB shall assume the tasks conferred on it by this Regulation on 4 November 2014 subject to the implementation arrangements and measures set out in this paragraph.

After 3 November 2013, the ECB shall publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred on it by this Regulation.

From 3 November 2013, the ECB shall send a quarterly report to the European Parliament, to the Council and to the Commission on progress in the operational implementation of this Regulation.

If on the basis of the reports referred to in the third subparagraph of this paragraph and following discussions of the reports in the European Parliament and in the Council, it is shown that the ECB will not be ready for exercising in full its tasks on 4 November 2014, the ECB may adopt a decision to set a date later than the one referred to in the first subparagraph of this paragraph to ensure continuity during the transition from national supervision to the SSM, and based on the availability of staff, the setting up of appropriate reporting procedures and arrangements for cooperation with national competent authorities pursuant to Article 6.

3. Notwithstanding paragraph 2, and without prejudice to the exercise of investigatory powers conferred on it under this Regulation, from 3 November 2013, the ECB may start carrying out the tasks conferred on it by this Regulation other than adopting supervisory decisions in respect of any credit institution, financial holding company or mixed financial holding company and following a decision addressed to the entities concerned and to the national competent authorities concerned.

Notwithstanding paragraph 2, if the ESM unanimously requests the ECB to take over direct supervision of a credit institution, financial holding company or mixed financial holding company as a precondition for its direct recapitalisation, the ECB may immediately start carrying out the tasks conferred on it by this Regulation in respect of that credit institution, financial holding company or mixed financial holding company, and following a decision addressed to the entities concerned and to the national competent authorities concerned.

4. From 3 November 2013, in view of the assumption of its tasks, the ECB may require the national competent authorities and the persons referred to in Article 10(1) to provide all relevant information for the ECB to carry out a comprehensive assessment, including a balance-sheet assessment, of the credit institutions of the participating Member State. The ECB shall carry out such an assessment at least in relation to the credit institutions not covered by Article 6(4). The credit institution and the competent authority shall supply the information requested.

5. Credit institutions authorised by participating Member States on 3 November 2013 or, where relevant, on the dates referred to in paragraphs 2 and 3 of this Article shall be deemed to be authorised in accordance with Article 14 and may continue

to carry out their business. National competent authorities shall communicate to the ECB before the date of application of this Regulation or, where relevant, before the dates referred to in paragraphs 2 and 3 of this Article, the identity of those credit institutions together with a report indicating the supervisory history and the risk profile of the institutions concerned, and any further information requested by the ECB. The information shall be submitted in the format requested by the ECB.

6. Notwithstanding Article 26(7), until 31 December 2015, qualified majority voting and simple majority voting shall be applied together for the adoption of the regulations referred to in Article 4(3).

Article 34 **Entry into force**

This Regulation shall enter into force on the fifth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 15 October 2013.

For the Council
The President
R. ŠADŽIUS

(¹) OJ L 331, 15.12.2010, p. 12.

(²) OJ L 331, 15.12.2010, p. 48.

(³) OJ L 331, 15.12.2010, p. 84.

(⁴) OJ C 40, 7.2.2001, p. 453.

(⁵) OJ C 25 E, 29.1.2004, p. 394.

(⁶) OJ L 318, 27.11.1998, p. 4.

(⁷) OJ 17, 6.10.1958, p. 385.

(⁸) OJ L 281, 23.11.1995, p. 31.

(⁹) OJ L 8, 12.1.2001, p. 1.

(¹⁰) OJ L 136, 31.5.1999, p. 1.

(¹¹) Decision ECB/2004/11 of the European Central Bank of 3 June 2004 concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank, in relation to the prevention of fraud, corruption and any other illegal activities detrimental to the European Communities' financial interests (OJ L 230, 30.6.2004, p. 56).

(¹²) OJ L 176, 27.6.2013, p. 338.

(¹³) OJ L 176, 27.6.2013, p. 1.

(¹⁴) OJ L 35, 11.2.2003, p. 1.

REGULATION (EU) No 468/2014 OF THE EUROPEAN CENTRAL BANK
of 16 April 2014
establishing the framework for cooperation within the Single Supervisory Mechanism
between the European Central Bank and national competent authorities and with
national designated authorities (SSM Framework Regulation)
(ECB/2014/17)

BG ES CS DA DE ET EL EN FR GA HR IT LV LT HU MT NL PL PT RO SK SL FI SV

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) and Article 132 thereof,

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

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ⁽¹⁾, and in particular Article 4(3), Article 6 and Article 33(2) thereof,

Having regard to the Inter-institutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism ⁽²⁾,

Having regard to the public consultation and analysis carried out in accordance with Article 4(3) of Regulation (EU) No 1024/2013,

Having regard to the proposal from the Supervisory Board and in consultation with the national competent authorities,

Whereas:

- (1) Regulation (EU) No 1024/2013 (hereinafter the ‘SSM Regulation’) establishes the Single Supervisory Mechanism (SSM) composed of the European Central Bank (ECB) and the national competent authorities (NCAs) of participating Member States.
- (2) Within the framework of Article 6 of the SSM Regulation, the ECB is exclusively competent to carry out the micro-prudential tasks conferred on it by Article 4 thereof relating to credit institutions established in the participating Member States. The ECB is responsible for the effective and consistent functioning of the SSM and for exercising

oversight over the functioning of the system, based on the responsibilities and procedures set out in Article 6 of the SSM Regulation.

- (3) Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by the SSM Regulation, NCAs are responsible for assisting the ECB, under the conditions laid down in the SSM Regulation and in this Regulation, with the preparation and implementation of any acts concerning the tasks referred to in Article 4 of the SSM Regulation relating to all credit institutions, including assistance in verification activities. For this purpose, the NCAs should follow the instructions given by the ECB when performing the tasks mentioned in Article 4 of the SSM Regulation.
- (4) The ECB, NCAs and national designated authorities (NDAs) have to perform the macro-prudential tasks referred to in Article 5 of the SSM Regulation and follow the coordination procedures provided for therein, in this Regulation and in relevant Union law, without prejudice to the role of the Eurosystem and of the European Systemic Risk Board.
- (5) Within the SSM, the respective ECB and NCA supervisory responsibilities are allocated on the basis of the significance of the entities that fall under the scope of the SSM. This Regulation sets out, in particular, the specific methodology for the assessment of such significance, as required by Article 6(7) of the SSM Regulation. The ECB has direct supervisory competence in respect of credit institutions, financial holding companies, mixed financial holding companies established in participating Member States, and branches in participating Member States of credit institutions established in non-participating Member States that are significant. The NCAs are responsible for directly supervising the entities that are less significant, without prejudice to the ECB’s power to decide in specific cases to directly supervise such entities where this is necessary for the consistent application of supervisory standards.

- (6) To take into account recent developments in Union legislation in the field of sanctions and the European Court of Human Rights case-law regarding the principle of separation between an investigation and the decision-taking phase, an independent investigating unit will be established by the ECB which is to autonomously investigate breaches of supervisory rules and decisions.
- (7) Article 6(7) of the SSM Regulation states that the ECB must, in consultation with the NCAs and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical arrangements for cooperation between the ECB and the NCAs within the SSM.
- (8) Article 33(2) of the SSM Regulation states that the ECB must publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred upon it by that Regulation. This Regulation contains the provisions implementing Article 33(2) relating to cooperation between the ECB and the NCAs within the SSM.
- (9) As a result, this Regulation further develops and specifies the cooperation procedures established in the SSM Regulation between the ECB and the NCAs within the SSM as well as, where appropriate, with the national designated authorities, and thereby ensures the effective and consistent functioning of the SSM.
- (10) The ECB attaches great importance to the comprehensive assessment of credit institutions, including the balance sheet assessment that it must carry out before the assumption of its tasks. This extends to any Member States joining the euro area and therefore joining the SSM after the date for the commencement of supervision in accordance with Article 33(2) of the SSM Regulation.
- (11) It is essential for the smooth functioning of the SSM that there is full cooperation between the ECB and NCAs and that they exchange all the information that may have an impact on their respective tasks, in particular, all information that the NCAs avail of regarding procedures that may have an impact on the safety and soundness of a supervised entity or that interact with the supervisory procedures in relation to such entities,

HAS ADOPTED THIS REGULATION:

PART I GENERAL PROVISIONS

Article 1

Subject matter and purpose

1. This Regulation lays down rules on all of the following:
 - (a) the framework referred to in Article 6(7) of the SSM Regulation, namely a framework to organise the practical arrangements for implementing Article 6 of the SSM Regulation concerning cooperation within the SSM, to include:
 - (i) the specific methodology for the assessment and review of whether a supervised entity is classified as significant or less significant pursuant to the criteria laid down in Article 6(4) of the SSM Regulation, and the arrangements resulting from this assessment;
 - (ii) the definition of procedures, including time limits, also in relation to the possibility for NCAs to prepare draft decisions for the ECB's consideration, concerning the relation between the ECB and the NCAs regarding the supervision of significant supervised entities;
 - (iii) the definition of procedures, including time limits, concerning the relation between the ECB and the NCAs regarding the supervision of less significant supervised entities. In particular, such procedures shall require the NCAs, depending on the cases defined in this Regulation, to:
 - notify the ECB of any material supervisory procedure,
 - further assess, on the ECB's request, specific aspects of the procedure,
 - transmit to the ECB material draft supervisory decisions, on which the ECB may express its views;
 - (b) cooperation and exchange of information between the ECB and the NCAs within the SSM with regard to the procedures relating to significant supervised entities and less significant supervised entities, including common procedures applying to authorisations to take up the business of a credit institution, withdrawals of such authorisations and the assessment of acquisitions and disposals of qualifying holdings;
 - (c) the procedures relating to cooperation between the ECB, the NCAs and the NDAs regarding

macro-prudential tasks and tools within the meaning of Article 5 of the SSM Regulation;

- (d) the procedures relating to the operation of close cooperation within the meaning of Article 7 of the SSM Regulation and applicable between the ECB, the NCAs and the NDAs;
- (e) the procedures relating to cooperation between the ECB and the NCAs with regard to Articles 10 to 13 of the SSM Regulation, including on certain aspects relating to supervisory reporting;
- (f) the procedures relating to the adoption of supervisory decisions addressed to supervised entities and other persons;
- (g) the linguistic arrangements between the ECB and the NCAs and between the ECB and supervised entities and other persons;
- (h) the procedures applicable to the ECB's and the NCAs' sanctioning powers within the SSM in relation to the tasks conferred on the ECB by the SSM Regulation;
- (i) transitional provisions.

2. This Regulation does not affect the supervisory tasks that have not been conferred on the ECB by the SSM Regulation and that therefore remain with national authorities.

3. This Regulation shall be read in particular in conjunction with Decision ECB/2004/2 ⁽³⁾ and the Rules of Procedure of the Supervisory Board of the European Central Bank ⁽⁴⁾, in particular with regard to decision-making within the SSM, including the procedure applying between the Supervisory Board and the Governing Council as regards the non-objection by the Governing Council referred to in Article 26(8) of the SSM Regulation and other relevant ECB legal acts, including Decision ECB/2014/16 ⁽⁵⁾.

Article 2 **Definitions**

For the purposes of this Regulation, the definitions contained in the SSM Regulation shall apply, unless otherwise provided for, together with the following definitions:

- (1) 'authorisation' means an authorisation as defined in point (42) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁶⁾;
- (2) 'branch' means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;
- (3) 'common procedures' means the procedures provided for in Part V with respect to an

authorisation to take up the business of a credit institution, withdrawal of an authorisation to pursue such business and decisions with regard to qualifying holdings;

- (4) 'euro area Member State' means a Member State whose currency is the euro;
- (5) 'group' means a group of undertakings of which at least one is a credit institution and which consists of a parent undertaking and its subsidiaries, or undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ⁽⁷⁾, including any sub-group thereof;
- (6) 'joint supervisory team' means a team of supervisors in charge of the supervision of a significant supervised entity or a significant supervised group;
- (7) 'less significant supervised entity' means both (a) a less significant supervised entity in a euro area Member State; and (b) a less significant supervised entity in a non-euro area Member State that is a participating Member State;
- (8) 'less significant supervised entity in a euro area Member State' means a supervised entity established in a euro area Member State and which does not have the status of a significant supervised entity within the meaning of Article 6(4) of the SSM Regulation;
- (9) 'national competent authority' (NCA) means a national competent authority as defined in point (2) of Article 2 of the SSM Regulation. This definition is without prejudice to arrangements under national law which assign certain supervisory tasks to a national central bank (NCB) not designated as an NCA. In this case, the NCB shall carry out these tasks within the framework set out in national law and this Regulation. A reference to an NCA in this Regulation shall in this case apply as appropriate to the NCB for the tasks assigned to it by national law;
- (10) 'NCA in close cooperation' means an NCA designated by a participating Member State in close cooperation in accordance with Directive 2013/36/EU of the European Parliament and of the Council ⁽⁸⁾;
- (11) 'national designated authority' (NDA) means a national designated authority as defined in point (7) of Article 2 of the SSM Regulation;
- (12) 'NDA in close cooperation' means a non-euro area NDA designated by a participating Member State in close cooperation for the purposes of the tasks related to Article 5 of the SSM Regulation;

- (13) 'non-euro area Member State' means a Member State whose currency is not the euro;
 - (14) 'parent undertaking' means a parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013;
 - (15) 'participating Member State in close cooperation' means a non-euro area Member State that has entered into close cooperation with the ECB in accordance with Article 7 of the SSM Regulation;
 - (16) 'significant supervised entity' means both (a) a significant supervised entity in a euro area Member State; and (b) a significant supervised entity in a participating non-euro area Member State;
 - (17) 'significant supervised entity in a euro area Member State' means a supervised entity established in a euro area Member State which has the status of a significant supervised entity pursuant to an ECB decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;
 - (18) 'significant supervised entity in a participating non-euro area Member State' means a supervised entity established in a participating non-euro area Member State which has the status of a significant supervised entity pursuant to an ECB decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;
 - (19) 'subsidiary' means a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;
 - (20) 'supervised entity' means any of the following: (a) a credit institution established in a participating Member State; (b) a financial holding company established in a participating Member State; (c) a mixed financial holding company established in a participating Member State, provided that it fulfils the conditions laid down in point (21)(b); (d) a branch established in a participating Member State by a credit institution which is established in a non-participating Member State.
- A central counterparty (CCP), as defined in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽⁹⁾, which qualifies as a credit institution within the meaning of Directive 2013/36/EU, shall be considered a supervised entity in accordance with the SSM Regulation, this Regulation and relevant Union law without prejudice to the supervision of CCPs by relevant NCAs as laid down under Regulation (EU) No 648/2012;
- (21) 'supervised group' means any of the following:

- (a) a group whose parent undertaking is a credit institution or financial holding company that has its head office in a participating Member State;
 - (b) a group whose parent undertaking is a mixed financial holding company that has its head office in a participating Member State, provided that the coordinator of the financial conglomerate, within the meaning of Directive 2002/87/EC of the European Parliament and of the Council ⁽¹⁰⁾, is an authority competent for the supervision of credit institutions and is also the coordinator in its function as supervisor of credit institutions;
 - (c) supervised entities each having their head office in the same participating Member State provided that they are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation (EU) No 575/2013 and which is established in the same participating Member State;
- (22) 'significant supervised group' means a supervised group which has the status of significant supervised group pursuant to an ECB decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;
 - (23) 'less significant supervised group' means a supervised group which does not have the status of a significant supervised group within the meaning of Article 6(4) of the SSM Regulation;
 - (24) 'ECB supervisory procedure' means any ECB activity directed towards preparing the issue of an ECB supervisory decision, including common procedures and the imposition of administrative pecuniary penalties. All ECB supervisory procedures are subject to Part III. Part III also applies to the imposition of administrative pecuniary penalties, unless Part X provides otherwise;
 - (25) 'NCA supervisory procedure' means any NCA activity directed towards preparing the issue of a supervisory decision by the NCA, which is addressed to one or more supervised entities or supervised groups or one or more other persons, including the imposition of administrative penalties;
 - (26) 'ECB supervisory decision' means a legal act adopted by the ECB in the exercise of the tasks and powers conferred on it by the SSM Regulation, which takes the form of an ECB decision, is addressed to one

or more supervised entities or supervised groups or one or more other persons and is not a legal act of general application;

(27) ‘third country’ means a country which is neither a Member State nor a European Economic Area Member State;

(28) ‘working day’ means a day which is not a Saturday, Sunday or an ECB public holiday in accordance with the calendar applicable to the ECB ⁽¹⁾.

PART II ORGANISATION OF THE SSM

TITLE 1 STRUCTURES FOR THE SUPERVISION OF SIGNIFICANT AND LESS SIGNIFICANT SUPERVISED ENTITIES

CHAPTER 1 *Supervision of significant supervised entities*

Article 3 Joint supervisory teams

1. A joint supervisory team shall be established for the supervision of each significant supervised entity or significant supervised group in participating Member States. Each joint supervisory team shall be composed of staff members from the ECB and from the NCAs appointed in accordance with Article 4 and working under the coordination of a designated ECB staff member (hereinafter the ‘JST coordinator’) and one or more NCA sub-coordinators, as further laid down in Article 6.

2. Without prejudice to other provisions of this Regulation, the tasks of a joint supervisory team shall include, but are not limited to, the following:

- (a) performing the supervisory review and evaluation process (SREP) referred to in Article 97 of Directive 2013/36/EU for the significant supervised entity or significant supervised group that it supervises;
- (b) taking into account the SREP, participating in the preparation of a supervisory examination programme to be proposed to the Supervisory Board, including an on-site inspection plan, as laid down in Article 99 of Directive 2013/36/EC, for such a significant supervised entity or significant supervised group;

(c) implementing the supervisory examination programme approved by the ECB and any ECB supervisory decisions with respect to the significant supervised entity or significant supervised group that it supervises;

(d) ensuring coordination with the on-site inspection team referred to in Part XI as regards the implementation of the on-site inspection plan;

(e) liaising with NCAs where relevant.

Article 4 Establishment and composition of joint supervisory teams

1. The ECB shall be in charge of the establishment and the composition of joint supervisory teams. The appointment of staff members from the NCAs to joint supervisory teams shall be made by the respective NCAs in accordance with paragraph 2.

2. In accordance with the principles laid down in Article 6(8) of the SSM Regulation and without prejudice to Article 31 thereof, the NCAs shall appoint one or more persons from their staff as a member or members of a joint supervisory team. An NCA staff member may be appointed as a member of more than one joint supervisory team.

3. Notwithstanding paragraph 2, the ECB may require the NCAs to modify the appointments they have made if appropriate for the purpose of the composition of a joint supervisory team.

4. Where more than one NCA exercises supervisory tasks in a participating Member State, or where in a participating Member State national law confers on an NCB specific supervisory tasks and the NCB is not an NCA, the relevant authorities shall coordinate their participation within the joint supervisory teams.

5. The ECB and NCAs shall consult with each other and agree on the use of NCA resources with regard to the joint supervisory teams.

Article 5 Involvement of staff members from NCBs of participating Member States

1. NCBs of participating Member States that are involved in the prudential supervision of a significant supervised entity or a significant supervised group under their national law but which are not NCAs may also appoint one or several members of their staff to a joint supervisory team.

2. The ECB shall be informed of such appointments and Article 4 shall apply accordingly.

3. Where staff members of NCBs of participating Member States are appointed to a joint supervisory team, references to NCAs in relation to joint supervisory teams shall be read as including a reference to those NCBs.

Article 6

JST coordinator and sub-coordinators

1. The JST coordinator, assisted by NCA sub-coordinators as defined in paragraph 2, shall ensure the coordination of the work within the joint supervisory team. For this purpose, joint supervisory team members shall follow the JST coordinator's instructions as regards their tasks in the joint supervisory team. This shall be without prejudice to their tasks and duties with their respective NCA.

2. Each NCA that appoints more than one staff member to the joint supervisory team shall designate one of them as sub-coordinator (hereinafter an 'NCA sub-coordinator'). NCA sub-coordinators shall assist the JST coordinator as regards the organisation and coordination of the tasks in the joint supervisory team, in particular as regards the staff members that were appointed by the same NCA as the relevant NCA sub-coordinator. The NCA sub-coordinator may give instructions to the members of the joint supervisory team appointed by the same NCA, provided that these do not conflict with the instructions given by the JST coordinator.

CHAPTER 2

Supervision of less significant supervised entities

Article 7

Involvement of staff members from other NCAs in an NCA's supervisory team

Without prejudice to Article 31(1) of the SSM Regulation, when, in relation to the supervision of less significant supervised entities, the ECB determines that it is appropriate to involve staff members from one or more other NCAs in the supervisory team of an NCA, the ECB may require the latter to involve staff members of such other NCAs.

TITLE 2

SUPERVISION ON A CONSOLIDATED BASIS AND PARTICIPATION OF THE ECB AND NCAS IN COLLEGES OF SUPERVISORS

Article 8

Supervision on a consolidated basis

1. The ECB shall conduct supervision on a consolidated basis as provided for by Article 111 of Directive 2013/36/EU in respect of credit institutions, financial holding companies or mixed financial holding companies that are significant on a consolidated basis, where the parent undertaking is either a parent institution in a participating Member State or an EU parent institution established in a participating Member State.

2. The relevant NCA shall perform the task of the supervisor on a consolidated basis in respect of credit institutions, financial holding companies or mixed financial holding companies that are less significant on a consolidated basis.

Article 9

The ECB as chair of a college of supervisors

1. When the ECB is the consolidating supervisor, it shall chair the college established pursuant to Article 116 of Directive 2013/36/EU. The NCAs of the participating Member States where the parent, subsidiaries and significant branches within the meaning of Article 51 of Directive 2013/36/EU, if any, are established, shall have the right to participate in the college as observers.

2. If there is no college established pursuant to Article 116 of Directive 2013/36/EU, and a significant supervised entity has branches in non-participating Member States that are considered as significant in accordance with Article 51(1) of Directive 2013/36/EU, the ECB shall establish a college of supervisors with the competent authorities of the host Member States.

Article 10

The ECB and NCAs as members of a college of supervisors

If the consolidating supervisor is not in a participating Member State, the ECB and NCAs shall participate in the college of supervisors in accordance with the following rules and with the relevant Union law:

- (a) if the supervised entities in participating Member States are all significant supervised entities, the ECB shall participate in the college of supervisors as a member, while the NCAs shall be entitled to participate in the same college as observers;

- (b) if the supervised entities in participating Member States are all less significant supervised entities, the NCAs shall participate in the college of supervisors as members;
- (c) if the supervised entities in participating Member States are both less significant supervised entities and significant supervised entities, the ECB and the NCAs shall participate in the college of supervisors as members. The NCAs of the participating Member States where the significant supervised entities are established shall be entitled to participate in the college of supervisors as observers.

TITLE 3

PROCEDURES FOR THE RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

CHAPTER 1

Procedures for the right of establishment and freedom to provide services within the SSM

Article 11

Right of establishment of credit institutions within the SSM

1. Any significant supervised entity wishing to establish a branch within the territory of another participating Member State shall notify the NCA of the participating Member State where the significant supervised entity has its head office, of its intention. Information shall be provided in accordance with the requirements laid down in Article 35(2) of Directive 2013/36/EU. The NCA shall immediately inform the ECB on the receipt of this notification.
2. Any less significant supervised entity wishing to establish a branch within the territory of another participating Member State shall notify its NCA of its intention in accordance with the requirements laid down in Article 35(2) of Directive 2013/36/EU.
3. Where no decision to the contrary is taken by the ECB within two months of receipt of the notification, the branch referred to in paragraph 1 may be established and commence its activities. The ECB shall communicate this information to the NCA of the participating Member State where the branch will be established.
4. Where no decision to the contrary is taken by the NCA of the home Member State within two months of receipt of the notification, the branch referred to in paragraph 2 may be established and commence its activities. The NCA shall communicate this

information to the ECB and to the NCA of the participating Member State where the branch will be established.

5. In the event of a change to any of the information communicated pursuant to paragraphs 1 and 2, the supervised entity shall give written notice of this change to the NCA that received the initial information at least one month before implementing the change. This NCA shall inform the NCA of the Member State where the branch is established.

Article 12

Exercise of the freedom to provide services by credit institutions within the SSM

1. Any significant supervised entity wishing to exercise the freedom to provide services by carrying on its activities within the territory of another participating Member State for the first time shall notify the NCA of the participating Member State where the significant supervised entity has its head office of its intention. Information shall be provided in accordance with the requirements laid down in Article 39(1) of Directive 2013/36/EU. The NCA shall immediately inform the ECB on the receipt of this notification. The NCA shall also communicate the notification to the NCA of the participating Member State where the services will be provided.
2. Any less significant supervised entity wishing to exercise the freedom to provide services by carrying on its activities within the territory of another participating Member State for the first time shall notify its NCA in accordance with the requirements laid down in Article 39(1) of Directive 2013/36/EU. The notification shall be communicated to the ECB and to the NCA of the participating Member State where the services will be provided.

CHAPTER 2

Procedures for the right of establishment and freedom of credit institutions established in non-participating Member States to provide services within the SSM

Article 13

Notification of the exercise of the right of establishment within the SSM by credit institutions established in non-participating Member States

1. Where the competent authority of a non-participating Member State communicates the information referred to in Article 35(2) of Directive 2013/36/EU in accordance with the procedure laid down in Article 35(3) thereof to the NCA of the participating Member State where the branch is to be established, such NCA shall immediately notify the ECB on the receipt of this communication.

2. Within two months of receipt of the communication from the competent authority of a non-participating Member State, the ECB, in the case of a branch that is significant pursuant to the criteria laid down in Article 6 of the SSM Regulation and in Part IV of this Regulation, or the relevant NCA in the case of a branch which is less significant on the basis of the criteria laid down in Article 6 of the SSM Regulation and in Part IV of this Regulation, shall prepare to supervise the branch in accordance with Articles 40 to 46 of Directive 2013/36/EU, and if necessary, indicate the conditions under which, in the interests of the general good, the branch may carry on its activity in the host Member State.

3. NCAs shall inform the ECB about the conditions under which, under national law and in the interests of the general good, activities can be carried out by a branch in their Member State.

4. A change to any information provided by the credit institution wishing to establish a branch pursuant to points (b), (c) or (d) of Article 35(2) of Directive 2013/36/EU shall be notified to the NCA referred to in paragraph 1.

Article 14

Competent authority of the host Member State for branches

1. In accordance with Article 4(2) of the SSM Regulation, the ECB shall exercise the powers of the competent authority of the host Member State where a branch is significant within the meaning of Article 6(4) thereof.

2. Where a branch is less significant within the meaning of Article 6(4) of the SSM Regulation, the NCA of the participating Member State where the branch is established shall exercise the powers of the competent authority of the host Member State.

Article 15

Notification of the exercise of the freedom to provide services within the SSM by credit institutions established in non-participating Member States

Where the competent authority of a non-participating Member State provides a notification within the meaning of Article 39(2) of Directive 2013/36/EU, the NCA of the participating Member State where the freedom to provide services shall be exercised shall be the addressee of the notification. The NCA shall immediately inform the ECB on the receipt of this notification.

Article 16

Competent authority of the host Member State for freedom to provide services

1. In accordance with Article 4(2) and within the scope of Article 4(1) of the SSM Regulation, the ECB shall carry out the tasks of the competent authority of the host Member State in respect of credit institutions established in non-participating Member States which exercise the freedom to provide services in participating Member States.

2. If the freedom to provide services is in the interest of the general good, subject to certain conditions under the national law of participating Member States, NCAs shall inform the ECB of these conditions.

CHAPTER 3

Procedures for the right of establishment and freedom to provide services in relation to non-participating Member States

Article 17

Right of establishment and exercise of the freedom to provide services in relation to non-participating Member States

1. A significant supervised entity wishing to establish a branch or to exercise the freedom to provide services within the territory of a non-participating Member State shall notify the relevant NCA of its intention in accordance with the applicable Union law. The NCA shall immediately inform the ECB on the receipt of this notification. The ECB shall exercise the powers of the competent authority of the home Member State.

2. A less significant supervised entity wishing to establish a branch or to exercise the freedom to provide services within the territory of a non-participating Member State shall notify the relevant NCA of its intention in accordance with the applicable Union law. The relevant NCA shall exercise the powers of the competent authority of the home Member State.

TITLE 4

SUPPLEMENTARY SUPERVISION OF FINANCIAL CONGLOMERATES

Article 18

Coordinator

1. The ECB shall assume the task of coordinator of a financial conglomerate in accordance with the criteria set out in relevant Union law in relation to a significant supervised entity.

2. The NCA shall assume the task of coordinator of a financial conglomerate in accordance with the criteria set out in relevant Union law in relation to a less significant supervised entity.

PART III

GENERAL PROVISIONS APPLYING TO THE OPERATION OF THE SSM

TITLE 1

PRINCIPLES AND OBLIGATIONS

Article 19

Overview

This Part lays down (a) general rules for the operation of the SSM by the ECB and NCAs, and (b) the provisions to be applied by the ECB when carrying out an ECB supervisory procedure.

The general principles and provisions applying between the ECB and NCAs in close cooperation are set out in Part IX.

Article 20

Duty to cooperate in good faith

The ECB and NCAs shall be subject to a duty to cooperate in good faith, and an obligation to exchange information.

Article 21

General obligation to exchange information

1. Without prejudice to the ECB's power to receive directly, or have direct access to information reported by supervised entities, on an on-going basis, NCAs shall, in particular, provide the ECB in a timely and accurate manner with all the information necessary for the ECB to carry out the tasks conferred on it by the SSM Regulation. Such information shall include information stemming from the NCAs' verification and on-site activities.

2. In circumstances where the ECB obtains information directly from the legal or natural persons referred to in Article 10(1) of the SSM Regulation, it shall provide the NCAs concerned with such information in a timely and accurate manner. Such information shall include, in particular, information necessary for the NCAs to carry out their role in assisting the ECB.

3. Without prejudice to paragraph 2, the ECB shall provide NCAs with regular access to updated information necessary for NCAs to carry out their tasks related to prudential supervision.

Article 22

Right of the ECB to instruct NCAs or NDAs to make use of their powers and to take action if the ECB has a supervisory task but no related power

1. To the extent necessary to carry out the tasks conferred on it by the SSM Regulation, the ECB may require, by way of instructions, the NCAs or the NDAs or both to make use of their powers, under and in accordance with the conditions set out in national law and as provided for in Article 9 of the SSM Regulation, where the SSM Regulation does not confer such powers on the ECB.

2. The NCAs and/or, in respect of Article 5 of the SSM Regulation, the NDAs, shall inform the ECB about the exercise of these powers without undue delay.

Article 23

Language regime between the ECB and NCAs

The ECB and NCAs shall adopt arrangements for their communications within the SSM, including the language(s) to be used.

Article 24

Language regime between the ECB and legal or natural persons, including supervised entities

1. Any document which a supervised entity or any other legal or natural person individually subject to ECB supervisory procedures sends to the ECB may be drafted in any one of the official languages of the Union, chosen by the supervised entity or person.

2. The ECB, supervised entities and any other legal or natural person individually subject to ECB supervisory procedures may agree to exclusively use one Union official language in their written communication, including with regard to ECB supervisory decisions.

The revocation of such agreement on the use of one language shall only affect the aspects of the ECB supervisory procedure which have not yet been carried out.

Where participants in an oral hearing request to be heard in a Union official language other than the language of the ECB supervisory procedure, sufficient advance notice of this requirement shall be given to the ECB so that it can make the necessary arrangements.

TITLE 2
GENERAL PROVISIONS RELATING TO
DUE PROCESS FOR ADOPTING ECB
SUPERVISORY DECISIONS

CHAPTER 1
ECB supervisory procedures

Article 25
General principles

1. Any ECB supervisory procedures initiated in accordance with Article 4 and Section 2 of Chapter III of the SSM Regulation shall be carried out in accordance with Article 22 of the SSM Regulation and the provisions of this Title.
2. The provisions of this Title shall not apply to procedures carried out by the Administrative Board of Review.

Article 26
Parties

1. Parties to an ECB supervisory procedure shall be:
 - (a) those making an application;
 - (b) those to which the ECB intends to address or has addressed an ECB supervisory decision.
2. NCAs are deemed not to be parties.

Article 27
Representation of a party

1. A party may be represented by its legal or statutory representatives or by any other representative empowered by written mandate to take any and all actions relating to the ECB supervisory procedure.
2. Any revocation of the mandate shall only be effective on the ECB's receipt of a written revocation. The ECB shall acknowledge receipt of such revocation.
3. Where a party has appointed a representative in an ECB supervisory procedure, the ECB shall contact only the appointed representative in that supervisory procedure unless the particular circumstances require that the ECB contact the party directly. In the latter case, the representative shall be informed.

Article 28
General obligations of the ECB and parties to an ECB supervisory procedure

1. An ECB supervisory procedure may be initiated *ex officio* or at the request of a party. Subject to paragraph 3, the ECB shall determine the facts which will be relevant for adopting its final decision in each ECB supervisory procedure *ex officio*.
2. In its assessment, the ECB shall take account of all relevant circumstances.
3. Subject to Union law, a party shall be required to participate in an ECB supervisory procedure and to provide assistance to clarify the facts. In ECB supervisory procedures initiated on the request of a party, the ECB may limit its determination of the facts to requesting the party to provide the relevant factual information.

Article 29
Evidence in ECB supervisory procedures

1. In order to ascertain the facts of a case, the ECB shall make use of such evidence as, after due consideration, it deems appropriate.
2. The parties shall, subject to Union law, assist the ECB in ascertaining the facts of the case. In particular, subject to the limits relating to sanctioning procedures under Union law, the parties shall state truthfully the facts known to them.
3. The ECB may set a time limit by which evidence may be provided by the parties.

Article 30
Witnesses and experts in ECB supervisory procedures

1. The ECB may hear witnesses and experts if it deems it necessary.
2. When the ECB appoints an expert it shall define that expert's task in an agreement and set a time limit within which the expert shall submit his report.
3. When the ECB hears witnesses or experts, they shall be entitled on application to reimbursement of their travel and subsistence expenses. Witnesses shall be entitled to compensation for loss of earnings and experts to the agreed fees for their service after they have provided their statements. The compensation shall be provided in accordance with the appropriate provisions applying to the compensation of witnesses and remuneration of experts respectively by the Court of Justice of the European Union.
4. The ECB may require that the persons mentioned in Article 11(1)(c) of the SSM Regulation, attend as witnesses in the offices of the ECB or any other

place in a participating Member State determined by the ECB. Where a person mentioned in Article 11(1)(c) of the SSM Regulation is a legal person, the natural persons representing such legal person shall be obliged to attend pursuant to the preceding sentence.

Article 31 **Right to be heard**

1. Before the ECB may adopt an ECB supervisory decision addressed to a party which would adversely affect the rights of such party, the party must be given the opportunity of commenting in writing to the ECB on the facts, objections and legal grounds relevant to the ECB supervisory decision. If the ECB deems it appropriate it may give the parties the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory decision in a meeting. The notification by which the ECB gives the party the opportunity to provide its comments shall mention the material content of the intended ECB supervisory decision and the material facts, objections and legal grounds on which the ECB intends to base its decision. Section 1 of Chapter III of the SSM Regulation shall not be subject to the provisions of this Article.

2. If the ECB gives a party the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory decision in a meeting, unless duly excused, the absence of the party is not a reason to postpone the meeting. If the party is duly excused, the ECB may postpone the meeting or give the party the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory decision in writing. The ECB shall prepare written minutes of the meeting that shall be signed by the parties and shall provide a copy of the minutes to the parties.

3. The party shall, in principle, be given the opportunity to provide its comments in writing within a time limit of two weeks following receipt of a statement setting out the facts, objections and legal grounds on which the ECB intends to base the ECB supervisory decision.

On application of the party, the ECB may extend the time limit as appropriate.

In particular circumstances, the ECB may shorten the time limit to three working days. The time limit shall also be shortened to three working days in the situations covered by Articles 14 and 15 of the SSM Regulation.

4. Notwithstanding paragraph 3, and subject to paragraph 5, the ECB may adopt an ECB supervisory decision addressed to a party which would adversely affect the rights of such party without giving the party the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory

decision prior to its adoption if an urgent decision appears necessary in order to prevent significant damage to the financial system.

5. If an urgent ECB supervisory decision is adopted in accordance with paragraph 4, the party shall be given the opportunity to comment in writing on the facts, objections and legal grounds relevant to the ECB supervisory decision without undue delay after its adoption. The party shall, in principle, be given the opportunity to provide its comments in writing within a time limit of two weeks from receipt of the ECB supervisory decision. On application of the party, the ECB may extend the time limit; however, the time limit may not exceed six months. The ECB shall review the ECB supervisory decision in the light of the party's comments and may either confirm it, revoke it, amend it or revoke it and replace it by a new ECB supervisory decision.

6. For ECB supervisory procedures relating to penalties pursuant to Article 18 of the SSM Regulation and Part X of this Regulation, paragraphs 4 and 5 shall not apply.

Article 32 **Access to files in an ECB supervisory procedure**

1. The rights of defence of the parties concerned shall be fully respected in ECB supervisory procedures. For this purpose, and after the opening of the ECB supervisory procedure, the parties shall be entitled to have access to the ECB's file, subject to the legitimate interest of legal and natural persons other than the relevant party, in the protection of their business secrets. The right of access to the file shall not extend to confidential information. The NCAs shall forward to the ECB, without undue delay, any request received by them related to the access to files connected with ECB supervisory procedures.

2. The files consist of all documents obtained, produced or assembled by the ECB during the ECB supervisory procedure, irrespective of the storage medium.

3. Nothing in this Article shall prevent the ECB or NCAs from disclosing and using information necessary to prove an infringement.

4. The ECB may determine that access to a file shall be granted in one or more of the following ways, taking due account of the technical capabilities of the parties:

- (a) by means of CD-ROMs or any other electronic data storage device including any that may become available in future;
- (b) through copies of the accessible file in paper form sent to them by mail;
- (c) by inviting them to examine the accessible file in the offices of the ECB.

5. For the purpose of this article, confidential information may include internal documents of the ECB and NCAs and correspondence between the ECB and an NCA or between NCAs.

CHAPTER 2

ECB supervisory decisions

Article 33

Motivation of ECB supervisory decisions

1. Subject to paragraph 2, an ECB supervisory decision shall be accompanied by a statement of the reasons for that decision.
2. The statement of reasons shall contain the material facts and legal reasons on which the ECB supervisory decision is based.
3. Subject to Article 31(4), the ECB shall base an ECB supervisory decision only on facts and objections on which a party has been able to comment.

Article 34

Suspensory effect

Without prejudice to Article 278 TFEU and Article 24(8) of the SSM Regulation, the ECB may decide that the application of an ECB supervisory decision is suspended either (a) by stating it in the ECB supervisory decision, or (b) in cases other than a request for review by the Administrative Board of Review, on request of the addressee of an ECB supervisory decision.

Article 35

Notification of ECB supervisory decisions

1. The ECB may notify an ECB supervisory decision to a party (a) orally, (b) by serving or delivering by hand a copy of the supervisory decision, (c) by registered mail with a form for acknowledgment, (d) by express courier service, (e) by telefax, or (f) electronically, in accordance with paragraph 10.
2. If a representative is empowered by a written mandate, the ECB may notify the ECB supervisory decision to the representative. In such cases the ECB is not obliged to also notify the ECB supervisory decision to the supervised entity represented by such representative.
3. In the case of an oral notification of an ECB supervisory decision, notification of the decision shall be deemed to be served on the addressee if a member of the staff of the ECB has informed (a) the relevant natural person, in the case of a natural person or (b) an authorised receiving agent of the legal person, in the case of a legal person, of the ECB supervisory decision. In such case without undue

delay after such oral notification a written copy of the ECB supervisory decision shall be provided to the addressee.

4. In the case of a notification of an ECB supervisory decision by registered mail with a form for acknowledgment, notification of the ECB supervisory decision shall be deemed to be served on the addressee on the tenth day after the letter has been handed over to the mail provider, unless the acknowledgement of receipt indicates that the letter was received on a different date.

5. In the case of a notification of an ECB supervisory decision by express courier service, notification of the ECB supervisory decision shall be deemed to be served on the addressee on the tenth day after the letter has been handed over to the courier service, unless the delivery document of the courier service indicates that the letter was received on a different date.

6. For the purposes of paragraphs 4 and 5, the ECB supervisory decision must be addressed to an address suitable for service (valid address). A valid address is:

- (a) in the case of an ECB supervisory procedure initiated on a request or application of the addressee of an ECB supervisory decision, the address provided by the addressee in its request or application;
- (b) in the case of a supervised entity, the last business address of the head office provided to the ECB by the supervised entity;
- (c) in the case of a natural person, the last address provided to the ECB and if no address is provided to the ECB and the natural person is an employee, a manager or a shareholder of a supervised entity, the business address of the supervised entity in accordance with (b).

7. Each person that is party to an ECB supervisory procedure shall provide to the ECB on request a valid address.

8. If a person is established or domiciled in a State that is not a Member State, the ECB may require the party to name, within a reasonable period of time, an authorised recipient who is resident in a Member State or who has business premises in a Member State. Should no authorised recipient be named upon such request and until such authorised recipient is named respectively, any communication may be served in accordance with paragraphs 3 to 5 and 9 to the address of the party available to the ECB.

9. Where the person who is the addressee of an ECB supervisory decision has provided a fax number to the ECB, the ECB may notify an ECB supervisory decision by transmitting a copy of the ECB supervisory decision by telefax. The ECB

supervisory decision is deemed to be notified to the addressee if the ECB has received a completion report on the successful delivery of the telefax.

10. The ECB may determine the criteria under which an ECB supervisory decision may be served by electronic or other comparable means of communication.

TITLE 3 REPORTING OF BREACHES

Article 36

Reporting of breaches

Any person, in good faith, may submit a report directly to the ECB if that person has reasonable grounds for believing that the report will show breaches of the legal acts referred to in Article 4(3) of the SSM Regulation by credit institutions, financial holding companies, mixed financial holding companies or competent authorities (including the ECB itself).

Article 37

Appropriate protection for reports of breaches

1. Where a person makes a report in good faith about alleged breaches of the legal acts referred to in Article 4(3) of the SSM Regulation by supervised entities or competent authorities, the report shall be treated as a protected report.

2. All personal data concerning both the person who makes a protected report and the person who is allegedly responsible for a breach shall be protected in compliance with the applicable Union data protection framework.

3. The ECB shall not reveal the identity of a person who has made a protected report without first obtaining that person's explicit consent, unless such disclosure is required by a court order in the context of further investigations or subsequent judicial proceedings.

Article 38

Procedures for the follow-up of reports

1. The ECB shall assess all reports relating to significant supervised entities. It shall assess reports relating to less significant supervised entities in respect of breaches of ECB regulations or decisions. In the latter case, when NCAs receive these reports, they shall forward the reports to the ECB, without communicating the identity of the person who made the report, unless such person provides their explicit consent.

2. Without prejudice to paragraph 1, the ECB shall forward reports concerning a less significant supervised entity to the relevant NCA, without communicating the identity of the person who made the report, unless such person provides their explicit consent.

3. The ECB shall exchange information with NCAs: (a) in order to assess if the reports were sent to both the ECB and the relevant NCA and to coordinate efforts; and (b) to know the outcome of the follow-up of the reports forwarded to the NCAs.

4. The ECB shall use reasonable discretion when determining how to assess the reports received and the actions to be taken.

5. In the case of alleged breaches by supervised entities, the relevant supervised entity shall provide to the ECB any information and documents requested by it in order to assess the reports received.

6. In the case of alleged breaches by competent authorities (other than the ECB), the ECB shall request the relevant competent authority to provide their comments on the facts reported.

7. In its annual report, as described in Article 20(2) of the SSM Regulation, the ECB shall provide information on the reports received in abridged or aggregated form, such that individual supervised entities or persons cannot be identified.

PART IV DETERMINING THE STATUS OF A SUPERVISED ENTITY AS SIGNIFICANT OR LESS SIGNIFICANT

TITLE 1 GENERAL PROVISIONS RELATING TO THE CLASSIFICATION AS SIGNIFICANT OR LESS SIGNIFICANT

Article 39

Classifying a supervised entity on an individual basis as significant

1. A supervised entity shall be considered a significant supervised entity if the ECB so determines in an ECB decision addressed to the relevant supervised entity pursuant to Articles 43 to 49, explaining the underlying reasons for such decision.

2. A supervised entity shall cease to be classified as a significant supervised entity if the ECB determines, in an ECB decision addressed to the supervised

entity explaining the underlying reasons for such decision, that it is a less significant supervised entity or is no longer a supervised entity.

3. A supervised entity can be classified as a significant supervised entity on the basis of any of the following:

- (a) its size, as determined in accordance with Articles 50 to 55 (hereinafter the ‘size criterion’);
- (b) its importance for the economy of the Union or any participating Member State, as determined in accordance with Articles 56 to 58 (hereinafter the ‘economic importance criterion’);
- (c) its significance with regard to cross-border activities, as determined in accordance with Articles 59 and 60 (hereinafter the ‘cross-border activities criterion’);
- (d) a request for or the receipt of direct public financial assistance from the European Stability Mechanism (ESM), as determined in accordance with Articles 61 to 64 (hereinafter the ‘direct public financial assistance criterion’);
- (e) the fact that the supervised entity is one of the three most significant credit institutions in a participating Member State, as determined in accordance with Articles 65 and 66.

4. Significant supervised entities shall be directly supervised by the ECB unless particular circumstances justify supervision by the relevant NCA in accordance with Title 9 of this Part.

5. The ECB shall also directly supervise a less significant supervised entity or a less significant supervised group under an ECB decision adopted pursuant to Article 6(5)(b) of the SSM Regulation to the effect that the ECB will exercise directly all relevant powers referred to in Article 6(4) of the SSM Regulation. For the purposes of the SSM, such a less significant supervised entity or less significant supervised group shall be classified as significant.

6. Prior to taking the ECB decisions referred to in this Article, the ECB shall consult with the relevant NCAs. Each ECB decision referred to in this Article shall also be notified to the relevant NCAs.

Article 40

Classifying supervised entities which are part of a group as significant

1. If one or more supervised entities are part of a supervised group, the criteria for determining significance shall be determined at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Titles 3 to 7 of Part IV.

2. Each of the supervised entities forming part of a supervised group shall be deemed to be a significant supervised entity in any of the following circumstances:

- (a) if the supervised group at its highest level of consolidation within the participating Member States fulfils the size criterion, the economic importance criterion, or the cross-border activities criterion;
- (b) if one of the supervised entities forming part of the supervised group fulfils the direct public financial assistance criterion;
- (c) if one of the supervised entities forming part of the supervised group is one of the three most significant credit institutions in a participating Member State.

3. Where a supervised group is determined to be significant or is determined to be no longer significant, the ECB shall adopt an ECB decision on the classification as a significant supervised entity, or on the lifting of the classification as a significant supervised entity, and shall provide the beginning and end dates of direct supervision by the ECB to each supervised entity forming part of the supervised group in question in accordance with the criteria and procedures provided for in Article 39.

Article 41

Specific provisions in respect of branches of credit institutions established in non-participating Member States

1. All branches opened in the same participating Member State by a credit institution which is established in a non-participating Member State shall be deemed to be a single supervised entity for the purposes of this Regulation.

2. Branches opened in different participating Member States by a credit institution which is established in a non-participating Member State shall be treated individually as separate supervised entities for the purposes of this Regulation.

3. Without prejudice to paragraph 1, branches of a credit institution which is established in a non-participating Member State shall be assessed individually as separate supervised entities, and separately from subsidiaries of the same credit institution, when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation is fulfilled.

Article 42

Specific provisions in respect of subsidiaries of credit institutions established in non-participating Member States and third countries

1. Subsidiaries established in one or more participating Member States by a credit institution that has its head office in a non-participating Member State or third country shall be assessed separately from the branches of that credit institution when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation is fulfilled.

2. The following subsidiaries shall be assessed separately when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation are fulfilled:

- (a) those that are established in a participating Member State;
- (b) those that belong to a group whose parent undertaking has its head office in a non-participating Member State or a third country; and
- (c) those that do not belong to a supervised group within participating Member States.

TITLE 2

PROCEDURE FOR CLASSIFYING SUPERVISED ENTITIES AS SIGNIFICANT SUPERVISED ENTITIES

CHAPTER 1

Classifying a supervised entity as significant

Article 43

Review of the status of a supervised entity

1. Unless otherwise provided for in this Regulation, the ECB shall review, on at least an annual basis, whether a significant supervised entity or a significant supervised group continues to fulfil any of the criteria provided for in Article 6(4) of the SSM Regulation.

2. Unless otherwise provided for in this Regulation, each NCA shall review, on at least an annual basis, whether a less significant supervised entity or a less significant supervised group fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation. In the case of a less significant supervised group, the relevant NCA of the participating Member State in which the parent undertaking, determined at the highest level of consolidation within the participating Member States, is established shall carry out this review.

3. The ECB may review, at any time after it receives relevant information, in particular in the cases specified in Article 52, (a) whether a supervised entity fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation and (b) whether a significant supervised entity no longer fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation.

4. If an NCA assesses that a less significant supervised entity or a less significant supervised group fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation, the relevant NCA shall, without undue delay, inform the ECB.

5. At the request of the ECB or an NCA, the ECB and the relevant NCA shall cooperate in determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation are fulfilled in respect of a supervised entity or a supervised group.

6. If the ECB (a) decides to assume the direct supervision of a supervised entity or supervised group or (b) decides that the direct supervision of a supervised entity or supervised group by the ECB shall end, the ECB and the relevant NCA shall cooperate in order to ensure the smooth transition of supervisory competences. In particular, a report setting out the supervisory history and risk profile of the supervised entity shall be prepared by the relevant NCA when the ECB assumes the direct supervision of a supervised entity, and by the ECB when the relevant NCA becomes competent to supervise the entity concerned.

7. The ECB shall determine whether a supervised entity or a supervised group is significant using the criteria provided for in Article 6(4) of the SSM Regulation in the order set out therein, namely: (a) size; (b) importance for the economy of the Union or any participating Member State; (c) significance of cross-border activities; (d) request for or receipt of public financial assistance directly from the ESM; (e) the fact that it is one of the three most significant credit institutions in a participating Member State.

Article 44

Procedure to be applied in determining the significance of a supervised entity

1. When taking decisions on the classification of a supervised entity or a supervised group as significant under this Title, and unless otherwise provided, the ECB shall apply the procedural rules of Title 2 of Part III of this Regulation.

2. The ECB shall notify in writing, within the timeframe laid down in Article 45, an ECB decision on the classification as significant of a supervised entity or a supervised group to each supervised entity concerned and shall also communicate that decision to the relevant NCA. For supervised entities that are part of a significant supervised group, the

ECB shall notify the ECB decision to the supervised entity at the highest level of consolidation within the participating Member States and shall ensure that all supervised entities within the significant supervised group are duly informed.

3. For supervised entities that are not notified by the ECB pursuant to paragraph 1, the list referred to in Article 49(2) shall serve as notification of their classification as less significant.

4. The ECB shall give each relevant supervised entity the opportunity to make submissions in writing prior to the adoption of an ECB decision pursuant to paragraph 1.

5. The ECB shall, in addition, give the relevant NCAs, in accordance with Article 39(6), the opportunity to provide observations and comments in writing, and these shall be duly considered by the ECB.

6. A supervised entity or a supervised group shall be classified as a significant supervised entity or a significant supervised group from the date of notification of the ECB decision determining that it is a significant supervised entity or a significant supervised group.

CHAPTER 2

Beginning and end of direct supervision by the ECB

Article 45

Beginning of direct supervision by the ECB

1. The ECB shall specify in an ECB decision the date on which it is to assume direct supervision of a supervised entity or a supervised group that has been classified as a significant supervised entity or significant supervised group. That ECB decision may be the same decision as the one referred to in Article 44(2). Subject to paragraph 2 the ECB shall notify that ECB decision to each supervised entity concerned, at least one month prior to the date on which it will assume direct supervision.

2. If the ECB assumes direct supervision of a supervised entity or a supervised group either on the basis of a request for or receipt of direct public financial assistance from the ESM, the ECB shall notify the ECB decision referred to in paragraph 1 to each supervised entity concerned in due time, at least one week prior to the date on which it will assume direct supervision.

3. The ECB shall provide copies of the ECB decisions referred to in paragraph 1 to the relevant NCAs.

4. The ECB shall assume direct supervision of a supervised entity or supervised group at the latest 12 months after the date on which the ECB notifies to that supervised entity or supervised group an ECB decision pursuant to Article 44(2).

5. For the purposes of this Article, in the case of a supervised group, the ECB shall notify the ECB decision to the supervised entity at the highest level of consolidation within the participating Member States and shall ensure that all supervised entities within that group are duly informed by the relevant deadline.

Article 46

End of direct supervision by the ECB

1. When the ECB determines that direct supervision by the ECB of a supervised entity or a supervised group will end, the ECB shall issue an ECB decision to each supervised entity concerned specifying the date and reasons why the direct supervision will end. The ECB shall adopt such decision at least one month prior to the date on which direct supervision by the ECB will end. The ECB shall also provide a copy of this ECB decision to the relevant NCAs. Article 45(5) shall apply accordingly.

2. The ECB shall give each relevant supervised entity the opportunity to make submissions in writing prior to the adoption of an ECB decision pursuant to paragraph 1.

3. Any ECB decision specifying the date on which direct supervision of a supervised entity by the ECB is to end may be issued together with the decision classifying that supervised entity as less significant.

Article 47

Reasons for ending direct supervision by the ECB

1. In the case of a significant supervised entity that is classified as such on the basis of its (a) size, (b) importance for the economy of the Union or any participating Member State, or (c) significance of cross border activities, or because it is part of a supervised group that fulfils at least one of these criteria, the ECB shall adopt an ECB decision ending its classification as a significant supervised entity and direct supervision if, for three consecutive calendar years, none of the above criteria provided for in Article 6(4) of the SSM Regulation has been met either on an individual basis or by the supervised group to which the supervised entity belongs.

2. In the case of a supervised entity that is classified as significant on the basis that direct public financial assistance from the ESM has been requested in respect of (a) itself, (b) the supervised group to which the supervised entity belongs, or (c) any supervised entity belonging to that group and which is not significant on other grounds, the ECB shall adopt an

ECB decision ending its classification as a significant supervised entity and direct supervision, if the direct public financial assistance has been denied, fully returned or is terminated. Such decision may, in the case of the return or termination of direct public financial assistance, only be taken three calendar years after the complete return or termination of direct public financial assistance.

3. In the case of a supervised entity that is classified as significant on the basis that it is one of the three most significant credit institutions in a participating Member State, as determined in accordance with Articles 65 to 66, or belongs to the supervised group of such a credit institution, and which is not significant on other grounds, the ECB shall adopt an ECB decision ending its classification as a significant supervised entity and direct supervision if, for three consecutive calendar years, the relevant supervised entity has not been one of the three most significant credit institutions in a participating Member State.

4. In the case of a supervised entity that is directly supervised by the ECB under an ECB decision adopted pursuant to Article 6(5)(b) of the SSM Regulation and which is not significant on other grounds, the ECB shall adopt an ECB decision ending direct supervision by the ECB if in its reasonable discretion direct supervision is no longer necessary to ensure consistent application of high supervisory standards.

Article 48 **Pending procedures**

1. If a change in competence between the ECB and an NCA is to take place, the authority whose competence is to end (hereinafter the ‘authority whose competence ends’) shall inform the authority which is to become competent (hereinafter the ‘the authority assuming supervision’) of any supervisory procedure formally initiated, which requires a decision. The authority whose competence ends shall provide this information immediately after becoming aware of the imminent change in competence. The authority whose competence ends shall update this information on a continual basis, and as a general rule on a monthly basis, when there is new information on a supervisory procedure to report. The authority assuming supervision may, in duly justified cases, allow reporting on a less frequent basis. For the purpose of Articles 48 and 49, a supervisory procedure shall mean an ECB or NCA supervisory procedure.

Prior to the change in competence, the authority whose competence ends shall liaise with the authority assuming supervision without undue delay after the formal initiation of any new supervisory procedure which requires a decision.

2. If the supervisory competence changes, the authority whose competence ends shall undertake efforts to complete any pending supervisory

procedure which requires a decision prior to the date on which the change in the supervisory competence is to occur.

3. If a formally initiated supervisory procedure, which requires a decision, cannot be completed prior to the date on which a change in the supervisory competence occurs, the authority whose competence ends shall remain competent to complete such pending supervisory procedure. For this purpose, the authority whose competence ends shall also retain all relevant powers until the supervisory procedure has been completed. The authority whose competence ends shall complete the pending supervisory procedure in question in accordance with the applicable law under its retained powers. The authority whose competence ends shall inform the authority assuming supervision prior to taking any decision in a supervisory procedure which was pending prior to the change in competence. It shall provide to the authority assuming supervision a copy of the decision taken and any relevant documents relating to that decision.

4. By way of derogation from paragraph 3, the ECB may decide within one month of receiving the information necessary to complete its assessment of the relevant formally initiated supervisory procedure, and in consultation with the relevant NCA, to take over the supervisory procedure concerned. If, due to reasons of national law, an ECB decision is required prior to the end of the assessment period referred to in the preceding sentence, the NCA shall provide the ECB with the necessary information and specify in particular the timeframe within which the ECB has to decide whether or not it intends to take over the procedure. Where the ECB takes over a supervisory procedure, it shall notify the relevant NCA and the parties of its decision to take over the supervisory procedure concerned. The ECB shall specify in its ECB decision the consequences of taking over such supervisory procedure.

5. The ECB and the relevant NCA shall cooperate with regard to the completion of any pending procedure and may exchange any relevant information for this purpose.

6. This Article shall not apply to common procedures.

CHAPTER 3 **List of supervised entities**

Article 49 **Publication**

1. The ECB shall publish a list containing the name of each supervised entity and supervised group which is directly supervised by the ECB, indicating where relevant for the supervised entity the supervised group to which it belongs, and the specific legal basis

for such direct supervision. The list shall include, in the case of a classification as significant on the basis of the size criterion, the total value of the supervised entity's or the supervised group's assets. The ECB shall also publish the name of supervised entities which, although they meet one of the criteria referred to in Article 6(4) of the SSM Regulation and would therefore qualify as significant, are nevertheless considered less significant by the ECB because of particular circumstances in accordance with Title 9 of Part IV, and therefore are not directly supervised by the ECB.

2. The ECB shall publish a list containing the name of each supervised entity which is supervised by an NCA and the name of the relevant NCA.

3. The lists referred to in paragraphs 1 and 2 shall be published electronically and shall be accessible on the ECB's website.

4. The lists referred to in paragraphs 1 and 2 shall be updated on a regular basis.

TITLE 3

DETERMINING SIGNIFICANCE ON THE BASIS OF SIZE

Article 50

Determining significance on the basis of size

1. Whether or not a supervised entity or a supervised group is significant on the basis of the size criterion shall be determined by reference to the total value of its assets.

2. A supervised entity or a supervised group shall be classified as significant if the total value of its assets exceeds EUR 30 billion (hereinafter the 'size threshold').

Article 51

Basis for determining whether or not a supervised entity is significant on the basis of size

1. If the supervised entity is part of a supervised group, the total value of its assets shall be determined on the basis of the year-end prudential consolidated reporting for the supervised group in accordance with applicable law.

2. If total assets cannot be determined on the basis of the data referred to in paragraph 1, the total value of assets shall be determined on the basis of the most recent audited consolidated annual accounts prepared in accordance with International Financial Reporting Standards (IFRS) as applicable within the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council ⁽¹²⁾ and, if those annual accounts are not

available, the consolidated annual accounts prepared in accordance with applicable national accounting laws.

3. If the supervised entity is not part of a supervised group, the total value of assets shall be determined on the basis of the year-end prudential individual reporting in accordance with applicable law.

4. If total assets cannot be determined using the data referred to in paragraph 3, the total value of assets shall be determined on the basis of the most recent audited annual accounts prepared in accordance with IFRS, as applicable within the Union in accordance with Regulation (EC) No 1606/2002 and, if those annual accounts are not available, the annual accounts prepared in accordance with applicable national accounting laws.

5. If the supervised entity is a branch of a credit institution which is established in a non-participating Member State, the total value of its assets shall be determined on the basis of the statistical data reported pursuant to Regulation (EC) No 25/2009 (ECB/2008/32) of the European Central Bank ⁽¹³⁾.

Article 52

Basis for determining significance on the basis of size in specific or exceptional circumstances

1. If, in respect of a less significant supervised entity, there is an exceptional substantial change in circumstances relevant for determining significance on the basis of the size criterion, the relevant NCA shall review whether or not the size threshold continues to be met.

If such a change occurs in respect of a significant supervised entity, the ECB shall review whether or not the size threshold continues to be met.

An exceptional substantial change in circumstances relevant for determining significance on the basis of the size criterion shall include any of the following: (a) the merger of two or more credit institutions, (b) the sale or transfer of a substantial business division, (c) the transfer of shares in a credit institution such that it no longer belongs to a supervised group to which it belonged prior to the sale, (d) the final decision to carry out an orderly winding up of the supervised entity (or group), (e) comparable factual situations.

2. A less significant supervised entity, and, in the case of a less significant supervised group, the less significant supervised entity at the highest level of consolidation within the participating Member States shall inform the relevant NCA of any change as referred to in paragraph 1.

A significant supervised entity and, in the case of a significant supervised group, the supervised entity at the highest level of consolidation within the participating Member States shall inform the ECB of any change as referred to in paragraph 1.

3. By way of derogation from the three-year rule provided for in Article 47(1) to (3), and in the case of exceptional circumstances, including those referred to in paragraph 1, the ECB shall decide, in consultation with NCAs, whether the affected supervised entities are significant or less significant and the date from which supervision shall be carried out by the ECB or NCAs.

Article 53

Groups of consolidated undertakings

1. For the purpose of determining significance on the basis of the size criterion, the supervised group of consolidated undertakings shall consist of the undertakings which have to be consolidated for prudential purposes in accordance with Union law.

2. For the purpose of determining significance on the basis of the size criterion, the supervised group of consolidated undertakings shall include subsidiaries and branches in non-participating Member States and third countries.

Article 54

Method of consolidation

The method of consolidation shall be the method of consolidation applicable in accordance with Union law for prudential purposes.

Article 55

Method for calculating total assets

For the purpose of determining the significance of a credit institution on the basis of the size criterion, the 'total value of assets' shall be derived from the line 'total assets' on a balance sheet prepared in accordance with Union law for prudential purposes.

TITLE 4

DETERMINING SIGNIFICANCE ON THE BASIS OF IMPORTANCE FOR THE ECONOMY OF THE UNION OR ANY PARTICIPATING MEMBER STATE

Article 56

National economic importance threshold

A supervised entity established in a participating Member State or a supervised group whose parent undertaking is established in a participating Member State shall be classified as significant on the basis of its importance for the economy of the relevant participating Member State if:

A : B $\geq$ 0,2 (national economic importance threshold)
and

A $\geq$ EUR 5 billion

whereby

- A is the total value of assets determined in accordance with Articles 51 to 55 for a given calendar year, and
- B is the gross domestic product at market prices as defined in point 8.89 of Annex A to Regulation (EU) No 549/2013 of the European Parliament and of the Council⁽¹⁴⁾ (ESA 2010) and published by Eurostat for the given calendar year.

Article 57

Criteria for determining significance on the basis of importance for the economy of the Union or any participating Member State

1. The ECB shall take into account the following criteria, in particular, when assessing whether or not a supervised entity or a supervised group is significant for the economy of the Union or a participating Member State for reasons other than those set out in Article 56:

- (a) the significance of the supervised entity or supervised group for specific economic sectors in the Union or a participating Member State;
- (b) the interconnectedness of the supervised entity or supervised group with the economy of the Union or a participating Member State;
- (c) the substitutability of the supervised entity or supervised group as both a market participant and client service provider;
- (d) the business, structural and operational complexity of the supervised entity or supervised group.

2. Article 52(3) shall apply accordingly.

Article 58

Determining significance on the basis of importance for the economy of any participating Member State at the request of an NCA

- 1. An NCA may notify the ECB that it considers a supervised entity to be significant with regard to its domestic economy.
- 2. The ECB shall assess the NCA's notification on the basis of the criteria set out in Article 57(1).
- 3. Article 57 shall apply accordingly.

TITLE 5
DETERMINING SIGNIFICANCE ON THE
BASIS OF THE SIGNIFICANCE OF CROSS-
BORDER ACTIVITIES

Article 59

**Criteria for determining significance on
the basis of the significance of cross-border
activities of a supervised group**

1. A supervised group may be considered significant by the ECB on the basis of its cross-border activities only when the parent undertaking of a supervised group has established subsidiaries, which are themselves credit institutions, in more than one other participating Member State.
2. A supervised group may be considered significant by the ECB on the basis of its cross-border activities only if the total value of its assets exceeds EUR 5 billion and:
 - (a) the ratio of its cross-border assets to its total assets is above 20 %; or
 - (b) the ratio of its cross-border liabilities to its total liabilities is above 20 %.
3. Article 52(3) shall apply accordingly.

Article 60

Cross-border assets and liabilities

1. 'Cross-border assets', in the context of a supervised group, means the part of the total assets in respect of which the counterparty is a credit institution or other legal or natural person located in a participating Member State other than the Member State in which the parent undertaking of the relevant supervised group has its head office.
2. 'Cross-border liabilities', in the context of a supervised group, means the part of the total liabilities in respect of which the counterparty is a credit institution or other legal or natural person located in a participating Member State other than the Member State in which the parent undertaking of the relevant supervised group has its head office.

TITLE 6
DETERMINING SIGNIFICANCE ON
THE BASIS OF A REQUEST FOR OR
THE RECEIPT OF PUBLIC FINANCIAL
ASSISTANCE FROM THE ESM

Article 61

**Request for or receipt of direct public financial
assistance from the ESM**

1. Direct public financial assistance to a supervised entity is requested when a request is made by an ESM member for financial assistance to be granted by the ESM to that entity in accordance with a decision taken by the Board of Governors of the ESM under Article 19 of the Treaty establishing the European Stability Mechanism regarding the direct recapitalisation of a credit institution and with the instruments adopted under that decision.
2. Direct public financial assistance is received by a credit institution when the financial assistance has been received by the credit institution pursuant to the decision and instruments referred to in paragraph 1.

Article 62

**Obligation of NCAs to inform the ECB of
a possible request for or receipt of public
financial assistance by a less significant
supervised entity**

1. Without prejudice to the obligation set out in Article 96 to inform the ECB of the deterioration of the financial situation of a less significant supervised entity, the NCA shall inform the ECB as soon as it becomes aware of the possible need for public financial assistance for a less significant supervised entity to be granted at national level indirectly from the ESM and/or by the ESM.
2. The NCA shall submit its assessment of the financial situation of the less significant supervised entity to the ECB, for its consideration, before submitting it to the ESM, except in duly justified cases of urgency.

Article 63

Beginning and end of direct supervision

1. A supervised entity in respect of which direct public financial assistance is requested from the ESM or which has received direct public financial assistance from the ESM shall be classified as a significant supervised entity from the date on which direct public financial assistance was requested on its behalf.
2. The date on which the ECB shall assume the direct supervision shall be specified in an ECB decision in accordance with Title 2.
3. Article 52(3) shall apply accordingly.

Article 64

Scope

If direct public financial assistance is requested in respect of a supervised entity which is part of a supervised group, all supervised entities which are part of that supervised group shall be classified as significant.

TITLE 7

DETERMINING SIGNIFICANCE ON THE BASIS THAT THE SUPERVISED ENTITY IS ONE OF THE THREE MOST SIGNIFICANT CREDIT INSTITUTIONS IN A PARTICIPATING MEMBER STATE

Article 65

Criteria for determining the three most significant credit institutions in a participating Member State

1. A credit institution or a supervised group shall be classified as significant if it is one of the three most significant credit institutions or supervised groups in a participating Member State.
2. For the purposes of identifying the three most significant credit institutions or supervised groups in a participating Member State, the ECB and the relevant NCA shall take into account the size of the supervised entity and supervised group respectively, as determined in accordance with Articles 50 to 55.

Article 66

Review process

1. With regard to each participating Member State, the ECB shall establish by 1 October of each calendar year whether or not three credit institutions or supervised groups with a parent undertaking established in such participating Member State should be classified as significant supervised entities.
2. At the request of the ECB, the NCAs shall inform the ECB of the three most significant credit institutions or supervised groups established in their respective participating Member States by 1 October of the calendar year in question. The three most significant credit institutions or supervised groups shall be determined by the NCAs on the basis of the criteria laid down in Articles 50 to 55.
3. For each of the three most significant credit institutions or supervised groups in the participating Member States, the relevant NCA shall provide the ECB with a report setting out the supervisory history and risk profile in each case, unless the credit institution or supervised group is already classified as significant.

On receipt of the information referred to in paragraph 2, the ECB shall carry out its own assessment. The ECB may, for this purpose, request the relevant NCA to provide any relevant information.

4. If, on 1 October of a given year, one or more of the three most significant credit institutions or supervised groups in a participating Member State are not classified as significant supervised entities, the ECB shall adopt a decision in accordance with Title 2 in respect of any of the three most significant credit institutions or supervised groups which are not classified as significant.

5. Article 52(3) shall apply accordingly.

TITLE 8

ECB DECISION TO DIRECTLY SUPERVISE LESS SIGNIFICANT SUPERVISED ENTITIES PURSUANT TO ARTICLE 6(5)(B) OF THE SSM REGULATION

Article 67

Criteria for an ECB decision pursuant to Article 6(5)(b) of the SSM Regulation

1. The ECB may, pursuant to Article 6(5)(b) of the SSM Regulation, decide at any time, by means of an ECB decision, to exercise directly the supervision of a less significant supervised entity or less significant supervised group where this is necessary to ensure consistent application of high supervisory standards.
2. Before taking the ECB decision referred to in paragraph 1, the ECB shall take into account, inter alia, any of the following factors:
 - (a) whether or not the less significant supervised entity or less significant supervised group is close to meeting one of the criteria contained in Article 6(4) of the SSM Regulation;
 - (b) the interconnectedness of the less significant supervised entity or less significant supervised group with other credit institutions;
 - (c) whether or not the less significant supervised entity concerned is a subsidiary of a supervised entity which has its head office in a non-participating Member State or a third country and has established one or more subsidiaries, which are also credit institutions, or one or more branches in participating Member States, of which one or more is significant;
 - (d) the fact that the ECB's instructions have not been followed by the NCA;
 - (e) the fact that the NCA has not complied with the acts referred to in the first subparagraph of Article 4(3) of the SSM Regulation;

- (f) the fact that the less significant supervised entity has requested or received indirectly financial assistance from the EFSF or the ESM.

Article 68

Procedure for preparing an ECB decision pursuant to Article 6(5)(b) of the SSM Regulation at the request of an NCA

1. The ECB shall, at the request of an NCA, assess whether or not it is necessary to exercise direct supervision in accordance with the SSM Regulation in respect of a less significant supervised entity or less significant supervised group in order to ensure the consistent application of high supervisory standards.

2. The NCA's request shall: (a) identify the less significant supervised entity or less significant supervised group in respect of which the NCA is of the view that the ECB should assume direct supervision, and (b) state why supervision of the less significant supervised entity or less significant supervised group by the ECB is necessary in order to ensure the consistent application of high supervisory standards.

3. The NCA's request shall be accompanied by a report indicating the supervisory history and risk profile of the relevant less significant supervised entity or less significant supervised group.

4. If the ECB does not agree with the NCA's request, it shall consult with the NCA concerned prior to its final assessment as to whether supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards.

5. If the ECB decides that direct supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards, it shall adopt an ECB decision in accordance with Title 2.

Article 69

Procedure for preparing ECB decisions pursuant to Article 6(5)(b) of the SSM Regulation on the ECB's own initiative

1. The ECB may request an NCA to provide a report setting out the supervisory history and risk profile of a less significant supervised entity or less significant supervised group. The ECB shall specify the date by which such report should be submitted to it.

2. The ECB shall consult with the NCA prior to its final assessment as to whether supervision of the less significant supervised entity or the less significant

supervised group by the ECB is necessary in order to ensure the consistent application of high supervisory standards.

3. If the ECB concludes that direct supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards, it shall adopt an ECB decision in accordance with Title 2.

TITLE 9

PARTICULAR CIRCUMSTANCES THAT MAY JUSTIFY THE CLASSIFICATION OF A SUPERVISED ENTITY AS LESS SIGNIFICANT ALTHOUGH THE CRITERIA FOR CLASSIFICATION AS SIGNIFICANT ARE FULFILLED

Article 70

Particular circumstances leading to the classification of a significant supervised entity as less significant

1. Particular circumstances, as referred to in the second and fifth subparagraphs of Article 6(4) of the SSM Regulation (hereinafter the 'particular circumstances') exist where there are specific and factual circumstances that make the classification of a supervised entity as significant inappropriate, taking into account the objectives and principles of the SSM Regulation and, in particular, the need to ensure the consistent application of high supervisory standards.

2. The term 'particular circumstances' shall be strictly interpreted.

Article 71

Assessment of the existence of particular circumstances

1. Whether particular circumstances exist that justify classifying what would otherwise be a significant supervised entity as less significant shall be determined on a case-by-case basis and specifically for the supervised entity or supervised group concerned, but not for categories of supervised entities.

2. Article 40 shall apply accordingly.

3. Articles 44 to 46 and Articles 48 and 49 shall apply accordingly. The ECB shall state in an ECB decision the reasons leading to its conclusion that particular circumstances exist.

Article 72
Review

1. The ECB shall, with the support of the relevant NCAs, review at least once a year whether particular circumstances continue to exist with respect to a supervised entity or a supervised group that is classified as less significant because of particular circumstances.
2. The supervised entity concerned shall provide any information and documents requested by the ECB in order to carry out a review as referred to in paragraph 1.
3. If the ECB considers that particular circumstances no longer exist it shall adopt an ECB decision addressed to the relevant supervised entity determining that it is classified as significant and that particular circumstances no longer exist.
4. Title 2 of Part IV shall apply accordingly.

PART V
COMMON PROCEDURES

TITLE 1
COOPERATION WITH REGARD TO AN
APPLICATION FOR AN AUTHORISATION
TO TAKE UP THE BUSINESS OF A CREDIT
INSTITUTION

Article 73
Notification of the ECB of an application for an
authorisation to take up the business of a credit
institution

1. An NCA that receives an application for an authorisation to take up the business of a credit institution to be established in a participating Member State shall notify the ECB of the receipt of such application within 15 working days.
2. The NCA shall also inform the ECB of the time limit within which a decision on the application has to be taken and notified to the applicant in accordance with the relevant national law.
3. If the application is not complete, the NCA, either at its own initiative or at the ECB's request, shall ask the applicant to provide the required additional information. The NCA shall send any such additional information that it receives to the ECB within 15 working days following receipt thereof by the NCA.

Article 74
NCAs' assessment of applications

The NCA to which an application is submitted shall assess whether the applicant complies with all conditions for authorisation laid down in the relevant national law of the NCA's Member State.

Article 75
NCAs' decisions rejecting an application

NCAs shall reject applications that do not comply with the conditions for authorisation laid down in the relevant national law and send a copy of their decision to the ECB.

Article 76
NCAs' draft decisions on the authorisation to
take up the business of a credit institution

1. If the NCA is satisfied that the application complies with all conditions for authorisation laid down in the relevant national law, it shall prepare a draft decision proposing that the ECB grant the applicant authorisation to take up the business of a credit institution (hereinafter a 'draft authorisation decision').
2. The NCA shall ensure that the draft authorisation decision is notified to the ECB and the applicant at least 20 working days before the end of the maximum assessment period provided for by the relevant national law.
3. The NCA may propose attaching recommendations, conditions and/or restrictions to a draft authorisation decision in accordance with national and Union law. In such cases, the NCA shall be responsible for assessing compliance with the conditions and/or restrictions.

Article 77
ECB's assessment of applications and hearing of
applicants

1. The ECB shall assess the application on the basis of the conditions for authorisation laid down in the relevant Union law. If, in its view, these conditions are not met, the ECB shall give the applicant the opportunity to comment in writing on the facts and objections relevant to the assessment, in accordance with Article 31.
2. If a meeting is considered necessary and in any other cases that are duly justified, the ECB may extend the maximum period for deciding on an application in accordance with Article 14(3) of the SSM Regulation. The extension shall be notified to the applicant in accordance with Article 35 of this Regulation.

Article 78

ECB decisions on applications

1. The ECB shall take a decision on a draft authorisation decision it receives from the NCA within 10 working days, unless a decision on the extension of the maximum period has been taken in accordance with Article 77(2). It may support the draft authorisation decision and thereby agree to the authorisation or object to the draft authorisation decision.
2. The ECB shall base its decision on its assessment of the application, the draft authorisation decision and any comments provided by the applicant pursuant to Article 77.
3. If the ECB does not take a decision within the period referred to in paragraph 1, the draft authorisation decision prepared by the NCA shall be deemed to be adopted.
4. The ECB shall adopt a decision granting authorisation if the applicant complies with all the conditions for the authorisation in accordance with the relevant Union law and national law of the Member State in which the applicant is established.
5. The decision granting authorisation shall cover the applicant's activities as a credit institution as provided for in the relevant national law, without prejudice to any additional requirements for authorisation under the relevant national law for activities other than the business of taking deposits or other repayable funds from the public and granting credits for its own account.

Article 79

Procedure for the lapsing of the authorisation

The authorisation lapses in the situations referred to in Article 18(a) of Directive 2013/36/EU where the relevant national law so provides. NCAs shall inform the ECB of the individual cases where an authorisation lapses. The ECB shall then make public the lapsing of the authorisation in accordance with the relevant national law, after having informed the relevant NCA and the supervised entity concerned.

TITLE 2

COOPERATION WITH REGARD TO THE WITHDRAWAL OF AN AUTHORISATION

Article 80

NCAs' proposal to withdraw an authorisation

1. If the relevant NCA considers that a credit institution's authorisation should be withdrawn in whole or in part in accordance with relevant Union or national law, including a withdrawal at the credit institution's request, it shall submit to the

ECB a draft decision proposing the withdrawal of the authorisation (hereinafter a 'draft withdrawal decision'), together with any relevant supporting documents.

2. The NCA shall coordinate with the national authority competent for the resolution of credit institutions (hereinafter the 'national resolution authority') with regard to any draft withdrawal decision that is relevant to the national resolution authority.

Article 81

ECB's assessment of a draft withdrawal decision

1. The ECB shall assess the draft withdrawal decision without undue delay. In particular, it shall take into account reasons for urgency put forward by the NCA.
2. The right to be heard, as provided for in Article 31, shall apply.

Article 82

Assessment on the ECB's own initiative and consultation of NCAs

1. If the ECB becomes aware of circumstances that may warrant the withdrawal of an authorisation, it shall assess, on its own initiative, whether the authorisation should be withdrawn in accordance with the relevant Union law.
2. The ECB may consult at any time with the relevant NCAs. If the ECB intends to withdraw an authorisation, it shall consult with the NCA of the Member State where the credit institution is established at least 25 working days before the date on which it plans to make its decision. In duly justified urgent cases, the time limit for the consultation may be reduced to five working days.
3. If the ECB intends to withdraw an authorisation, it shall inform the relevant NCAs of any comments provided by the credit institution. The credit institution's right to be heard, as provided for in Article 31, shall apply.
4. The ECB shall coordinate with the national resolution authority with regard to a proposal to withdraw an authorisation in accordance with Article 14(5) of the SSM Regulation. The ECB shall inform the NCA immediately after initiating contact with the national resolution authority.

Article 83
**ECB decision on the withdrawal of an
authorisation**

1. The ECB shall take a decision on the withdrawal of an authorisation without undue delay. In doing so it may accept or reject the relevant draft withdrawal decision.
2. In taking its decision, the ECB shall take into account all of the following: (a) its assessment of the circumstances justifying withdrawal; (b) where applicable, the NCA's draft withdrawal decision; (c) consultation with the relevant NCA and, where the NCA is not the national resolution authority, the national resolution authority (together with the NCA, the 'national authorities'); (d) any comments provided by the credit institution pursuant to Articles 81(2) and 82(3).
3. The ECB shall also take a decision in the cases described in Article 84 if the relevant national resolution authority does not object to the withdrawal of the authorisation, or the ECB determines that proper actions necessary to maintain financial stability have not been implemented by the national authorities.

Article 84
**Procedure in case of potential resolution
measures to be taken by national authorities**

1. If the national resolution authority notifies its objection to the ECB's intention to withdraw an authorisation, the ECB and the national resolution authority shall agree on a time period during which the ECB shall abstain from proceeding with the withdrawal of the authorisation. The ECB shall inform the NCA immediately after initiating contact with the national resolution authority in order to reach this agreement.
2. After the expiry of the agreed time period, the ECB shall assess whether it intends to proceed to withdraw the authorisation or to extend the agreed time period in accordance with Article 14(6) of the SSM Regulation, taking into account any progress made. The ECB shall consult with both the relevant NCA and the national resolution authority, if different from the NCA. The NCA shall inform the ECB of the measures taken by these authorities and its assessment of the consequences of a withdrawal.
3. If the national resolution authority does not object to the withdrawal of an authorisation, or the ECB determines that proper actions necessary to maintain financial stability have not been implemented by national authorities, then Article 83 shall apply.

TITLE 3
**COOPERATION WITH REGARD TO THE
ACQUISITION OF QUALIFYING HOLDINGS**

Article 85
**Notification to NCAs of the acquisition of
a qualifying holding**

1. An NCA that receives a notification of an intention to acquire a qualifying holding in a credit institution established in that participating Member State shall notify the ECB of such notification no later than five working days following the acknowledgement of receipt in accordance with Article 22(2) of Directive 2013/36/EU.
2. The NCA shall notify the ECB if it has to suspend the assessment period due to a request for additional information. The NCA shall send any such additional information to the ECB within 5 working days following receipt thereof by the NCA.
3. The NCA shall also inform the ECB of the date by which the decision to oppose or not to oppose the acquisition of a qualifying holding has to be notified to the applicant pursuant to the relevant national law.

Article 86
Assessment of potential acquisitions

1. The NCA to which an intention to acquire a qualifying holding in a credit institution is notified shall assess whether the potential acquisition complies with all the conditions laid down in the relevant Union and national law. Following this assessment, the NCA shall prepare a draft decision for the ECB to oppose or not to oppose the acquisition.
2. The NCA shall submit the draft decision to oppose or not to oppose the acquisition to the ECB at least 15 working days before the expiry of the assessment period as defined by the relevant Union law.

Article 87
ECB decision on acquisition

The ECB shall decide whether or not to oppose the acquisition on the basis of its assessment of the proposed acquisition and the NCA's draft decision. The right to be heard, as provided for in Article 31, shall apply.

TITLE 4
NOTIFICATION OF DECISIONS ON
COMMON PROCEDURES

Article 88

Procedures for notification of decisions

1. The ECB shall notify the parties of the following decisions without undue delay in accordance with Article 35:

- (a) an ECB decision on the withdrawal of an authorisation as a credit institution;
- (b) an ECB decision on the acquisition of a qualifying holding in a credit institution.

2. The ECB shall notify the relevant NCA without undue delay of any of the following decisions:

- (a) an ECB decision on an application for authorisation as a credit institution;
- (b) an ECB decision on the withdrawal of an authorisation as a credit institution;
- (c) an ECB decision on the acquisition of a qualifying holding in a credit institution.

3. The NCA shall notify the applicant for authorisation of the following decisions:

- (a) a draft authorisation decision;
- (b) an NCA decision to reject the application for authorisation where the applicant does not comply with the conditions for authorisation set out in the relevant national law;
- (c) an ECB decision to object to the draft authorisation decision referred to in (a);
- (d) an ECB decision of authorisation.

4. The NCA shall notify the relevant national resolution authority of the ECB decision on the withdrawal of an authorisation as a credit institution.

5. The ECB shall notify the European Banking Authority (EBA) of every ECB decision to grant or to withdraw an authorisation as a credit institution as well as of each lapsing of an authorisation. In doing so, the ECB shall specify the reasons for the decisions on the withdrawal of an authorisation or for the lapsing of an authorisation.

PART VI
PROCEDURES FOR THE
SUPERVISION OF SIGNIFICANT
SUPERVISED ENTITIES

TITLE 1
SUPERVISION OF SIGNIFICANT
SUPERVISED ENTITIES AND ASSISTANCE
BY NCAS

Article 89

Supervision of significant supervised entities

The ECB shall perform the direct supervision of significant supervised entities in accordance with the procedures set out in Part II, in particular in respect of the tasks and the composition of joint supervisory teams.

Article 90

Role of the NCAs in assisting the ECB

1. An NCA shall assist the ECB in the performance of its tasks under the conditions set out in the SSM Regulation and this Regulation, and shall, in particular, perform all the following activities:

- (a) submit draft decisions to the ECB in respect of significant supervised entities established in its participating Member State, in accordance with Article 91;
- (b) assist the ECB in preparing and implementing any acts relating to the exercise of the tasks conferred on the ECB by the SSM Regulation, including assisting in verification activities and the day-to-day assessment of the situation of a significant supervised entity;
- (c) assist the ECB in enforcing its decisions, using when necessary the powers referred to in the third subparagraph of Article 9(1) and Article 11(2) of the SSM Regulation.

2. When assisting the ECB, an NCA shall follow the ECB's instructions in relation to significant supervised entities.

Article 91

Draft decisions to be prepared by NCAs for the ECB's consideration

1. In accordance with Article 6(3) and Article 6(7) (b) of the SSM Regulation, the ECB may request an NCA to prepare a draft decision regarding the exercise of the tasks referred to in Article 4 of the SSM Regulation for its consideration.

The request shall specify the time limit for sending the draft decision to the ECB.

2. An NCA may also, on its own initiative, submit a draft decision in respect of a significant supervised entity to the ECB for its consideration through the joint supervisory team.

Article 92

Exchange of information

The ECB and the NCAs shall, without undue delay, exchange information relating to significant supervised entities where there is a serious indication that those significant supervised entities can no longer be relied on to fulfil their obligations towards their creditors and, in particular, can no longer provide security for the assets entrusted to them by their depositors, or where there is a serious indication of circumstances that could lead to a determination that the credit institution concerned is unable to repay the deposits as referred to in Article 1(3)(i) of Directive 94/19/EC of the European Parliament and of the Council ⁽¹⁵⁾. The ECB and the NCAs shall do so prior to a decision relating to such a determination.

TITLE 2

COMPLIANCE WITH FIT AND PROPER REQUIREMENTS FOR PERSONS RESPONSIBLE FOR MANAGING CREDIT INSTITUTIONS

Article 93

Assessment of the suitability of members of the management bodies of significant supervised entities

1. To ensure that institutions have in place robust governance arrangements, and without prejudice to relevant Union and national law and Part V, a significant supervised entity shall notify the relevant NCA of any change to the members of its management bodies in their managerial and supervisory functions (hereinafter the ‘managers’) within the meaning of Articles 3(1)(7) and 3(2) of Directive 2013/36/EU, including the renewal of the managers’ term of office. The relevant NCA shall notify the ECB of any such change without undue delay informing it of the time limit within which a decision has to be taken and notified in accordance with the relevant national law.

2. To assess the suitability of managers of significant supervised entities, the ECB shall have the supervisory powers that competent authorities have under the relevant Union and national law.

Article 94

On-going review of managers’ suitability

1. A significant supervised entity shall inform the relevant NCA of any new facts that may affect an initial assessment of suitability or any other issue which could impact on the suitability of a manager without undue delay once these facts or issues are known to the supervised entity or the relevant manager. The relevant NCA shall notify the ECB of such new facts or issues without undue delay.

2. The ECB may initiate a new assessment based on the new facts or issues referred in paragraph 1 or if the ECB becomes aware of any new facts that may have an impact on the initial assessment of the relevant manager or any other issue which could impact on the suitability of a manager. The ECB shall then decide on the appropriate action in accordance with the relevant Union and national law and shall inform the relevant NCA of such action without undue delay.

TITLE 3

OTHER PROCEDURES TO BE APPLIED BY SIGNIFICANT SUPERVISED ENTITIES

Article 95

Requests, notifications or applications by significant supervised entities

1. Without prejudice to the specific procedures provided for in particular in Part V and to its ordinary interaction with its NCA, a significant supervised entity shall address to the ECB all its requests, notifications or applications relating to the exercise of the tasks conferred on the ECB.

2. The ECB shall make any such request, notification or application available to the relevant NCA and may request the NCA to prepare a draft decision in accordance with Article 91.

3. In case of substantial changes compared to the authorisation given for the initial request, notification or application, the significant supervised entity shall address a new request, notification or application to the ECB in accordance with the procedure referred to in paragraph 1.

PART VII PROCEDURES FOR THE SUPERVISION OF LESS SIGNIFICANT SUPERVISED ENTITIES

TITLE 1 NCAS' NOTIFICATION TO THE ECB OF MATERIAL NCA SUPERVISORY PROCEDURES AND MATERIAL DRAFT SUPERVISORY DECISIONS

Article 96

Deterioration of the financial situation of a less significant supervised entity

NCAs shall inform the ECB where the situation of any less significant supervised entity deteriorates rapidly and significantly, especially if such deterioration could lead to a request for direct or indirect financial assistance from the ESM, without prejudice to the application of Article 62.

Article 97

NCAs' notification to the ECB of material NCA supervisory procedures

1. To enable the ECB to exercise oversight over the functioning of the system, as laid down in Article 6(5)(c) of the SSM Regulation, NCAs shall provide the ECB with information relating to material NCA supervisory procedures concerning less significant supervised entities. The ECB shall define general criteria, in particular taking into account the risk situation and potential impact on the domestic financial system of the less significant supervised entity concerned, to determine for which less significant supervised entities which information shall be notified. The information shall be provided by the NCAs *ex ante* or in duly justified cases of urgency simultaneously to opening a procedure.

2. The material NCA supervisory procedures referred to in paragraph 1 shall consist of:

- (a) the removal of members of the management boards of the less significant supervised entities and the appointment of special managers to take over the management of the less significant supervised entities; and
- (b) the procedures which have a significant impact on the less significant supervised entity.

3. In addition to the information requirements set out by the ECB in accordance with this Article, the ECB may, at any time, request from NCAs

information on the performance of the tasks carried out by them in respect of less significant supervised entities.

4. In addition to the information requirements set out by the ECB in accordance with this Article, NCAs shall, on their own initiative, notify the ECB of any other NCA supervisory procedure which:

- (a) they consider material; or
- (b) may negatively affect the reputation of the SSM.

5. If the ECB requests an NCA to further assess specific aspects of a material NCA supervisory procedure, this request shall specify which aspects are concerned. The ECB and the NCA shall respectively ensure that the other party has sufficient time to enable the procedure and the SSM as a whole to function efficiently.

Article 98

Notification by NCAs to the ECB of material draft supervisory decisions

1. To enable the ECB to exercise oversight over the functioning of the system, as laid down in Article 6(5)(c) of the SSM Regulation, NCAs shall send to the ECB draft supervisory decisions that fulfil the criteria laid down in paragraphs 2 and 3 where the draft decision concerns the less significant supervised entities for which the ECB considers that, based on the general criteria defined by the ECB regarding their risk situation and potential impact on the domestic financial system, the information shall be notified to it.

2. Subject to paragraph 1, draft supervisory decisions shall be sent to the ECB prior to being addressed to less significant supervised entities if such decisions:

- (a) relate to the removal of members of the management boards of the less significant supervised entities and the appointment of special managers; or
- (b) have a significant impact on the less significant supervised entity.

3. In addition to the information requirements laid down in paragraphs 1 and 2, NCAs shall transmit to the ECB any other draft supervisory decisions:

- (a) on which the ECB's views are sought; or
- (b) which may negatively affect the reputation of the SSM.

4. NCAs shall send draft decisions meeting the criteria laid down in paragraphs 1, 2 and 3, and that therefore are deemed material draft supervisory decisions, to the ECB at least 10 days in advance

of the planned date of adoption of the decision. The ECB shall express its views on the draft decision within a reasonable time before the planned adoption of the decision. In cases of urgency, a reasonable time period for sending a draft decision which meets the criteria laid down in paragraphs 1, 2 and 3 to the ECB shall be defined by the relevant NCA.

TITLE 2

EX-POST REPORTING BY NCAs TO THE ECB REGARDING LESS SIGNIFICANT SUPERVISED ENTITIES

Article 99

General obligation of NCAs to report to the ECB

1. To enable the ECB to exercise oversight over the functioning of the SSM pursuant to Article 6(5) (c) of the SSM Regulation, and without prejudice to Chapter 1, the ECB may require NCAs to report to the ECB on a regular basis on the measures they have taken and on the performance of the tasks they are to carry out in accordance with Article 6(6) of the SSM Regulation. The ECB shall inform the NCAs annually of the categories of less significant supervised entities and the nature of the information required.

2. The requirements laid down in accordance with paragraph 1 shall be without prejudice to the ECB's right to make use of the powers referred to in Articles 10 to 13 of the SSM Regulation in respect of less significant supervised entities.

Article 100

Frequency and scope of reports to be submitted by NCAs to the ECB

NCAs shall submit to the ECB an annual report on less significant supervised entities, less significant supervised groups or categories of less significant supervised entities in accordance with the ECB's requirements.

PART VIII

COOPERATION BETWEEN THE ECB, NCAs AND NDAs WITH REGARD TO MACRO-PRUDENTIAL TASKS AND TOOLS

TITLE 1

DEFINITION OF MACRO-PRUDENTIAL TOOLS

Article 101

General provisions

1. For the purpose of this Part, macro-prudential tools means any of the following instruments:

- (a) the capital buffers within the meaning of Articles 130 to 142 of Directive 2013/36/EU;
- (b) the measures for domestically authorised credit institutions, or a subset of those credit institutions pursuant to Article 458 of Regulation (EU) No 575/2013;
- (c) any other measures to be adopted by NDAs or NCAs aimed at addressing systemic or macro-prudential risks provided for, and subject to the procedures set out, in Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in relevant Union law.

2. The macro-prudential procedures referred to in Articles 5(1) and (2) of the SSM Regulation shall not constitute ECB or NCA supervisory procedures within the meaning of this Regulation, without prejudice to Article 22 of the SSM Regulation in relation to decisions addressed to individual supervised entities.

Article 102

Application of macro-prudential tools by the ECB

The ECB shall apply the macro-prudential tools referred to in Article 101 in accordance with this Regulation and with Articles 5(2) and 9(2) of the SSM Regulation, and where the macro-prudential tools are provided for in a directive, subject to implementation of that directive into national law. If an NDA does not set a buffer rate, this does not prevent the ECB from setting a buffer requirement in accordance with this Regulation and Article 5(2) of the SSM Regulation.

TITLE 2

PROCEDURAL PROVISIONS FOR THE USE OF MACRO-PRUDENTIAL TOOLS

Article 103

List of NCAs and NDAs responsible for macro-prudential tools

The ECB shall collect from NCAs and NDAs of participating Member States information regarding the identity of the authorities designated for the respective macro-prudential tools referred to in Article 101 and the macro-prudential tools that these authorities can use.

Article 104

Exchange of information and cooperation in respect of the use of macro-prudential tools by an NCA or an NDA

1. In accordance with Article 5(1) of the SSM Regulation, the relevant NCA or NDA, when it intends to apply such tools, shall notify its intention to the ECB ten working days prior to taking such a decision. This notwithstanding, if an NCA or NDA intends to make use of a macro-prudential tool, it shall inform the ECB as early as possible of its identification of a macro-prudential or systemic risk for the financial system and, where possible, of the details of the intended tool. Such information shall as far as possible include specificities of the intended measure, including the intended date of application.

2. The notification of intent shall be provided by the NCA or NDA to the ECB.

3. If the ECB objects to the intended measure of an NCA or NDA, the ECB shall state its reasons for doing so within five working days after the day of receipt of the notification of intent. Such objection shall be in writing and state the reasons for the objection. The NCA or NDA shall duly consider the ECB's reasons prior to proceeding with the decision as appropriate.

Article 105

Exchange of information and cooperation in respect of the ECB's use of macro-prudential tools

1. In accordance with Article 5(2) of the SSM Regulation, when the ECB intends on its own initiative, or on the proposal of an NCA or NDA, to apply higher requirements for capital buffers or to apply more stringent measures aimed at addressing systemic or macro-prudential risks it shall cooperate closely with the NDAs in the Member States concerned and, in particular, notify its intention to the NDA or NCA 10 working days prior to taking such a decision. This notwithstanding, if the ECB intends to apply higher requirements for capital

buffers or to apply more stringent measures aimed at addressing systemic or macro-prudential risks at the level of credit institutions subject to the procedures set out in Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in Union law, it shall inform the relevant NCA or NDA as early as possible of its identification of a macro-prudential or systemic risk to the financial system and, where possible, of the details of the intended tool. Such information shall, as far as possible, include the specificities of the intended measure, including the intended date of application.

2. If any of the concerned NCAs or NDAs objects to the intended measure of the ECB, it shall state its reasons to the ECB within five working days after the day of receipt of the ECB's notification of intent. Such objection shall be in writing and state the reasons for the objection. The ECB shall duly consider those reasons prior to proceeding with the decision as appropriate.

PART IX

PROCEDURES FOR CLOSE COOPERATION

TITLE 1

GENERAL PRINCIPLES AND COMMON PROVISIONS

Article 106

Procedure for the establishment of a close cooperation

The ECB shall assess requests from non-euro area Member States for the establishment of a close cooperation in accordance with the procedure set out in Decision ECB/2014/5 ⁽¹⁶⁾.

Article 107

Principles to be applied when a close cooperation has been established

1. From the date on which an ECB decision pursuant to Article 7(2) of the SSM Regulation establishing close cooperation between the ECB and an NCA of a non-euro area Member State applies, and until the termination or suspension of such close cooperation, the ECB shall carry out the tasks referred to in Article 4(1) and (2) and Article 5 of the SSM Regulation in relation to supervised entities and groups established in the relevant participating Member State in close cooperation, in accordance with Article 6 of the SSM Regulation.

2. If a close cooperation has been established pursuant to Article 7(2) of the SSM Regulation the ECB and the NCA in close cooperation shall, in

respect of significant supervised entities and groups and less significant supervised entities and groups established in the participating Member State in close cooperation, be in a position comparable to significant supervised entities and groups and less significant supervised entities and groups established in euro area Member States, taking into account that the ECB does not have directly applicable powers over significant supervised entities and groups and less significant supervised entities and groups established in the participating Member State in close cooperation.

3. In accordance with Article 6 of the SSM Regulation, the ECB may issue to an NCA in close cooperation instructions in respect of significant supervised entities and groups and only general instructions in respect of less significant supervised entities and groups.

4. Close cooperation shall end on the date on which the derogation pursuant to Article 139 TFEU is abrogated in respect of a participating Member State in close cooperation in accordance with Article 140(2) TFEU, and the provisions of this Part shall then cease to apply.

Article 108

Legal instruments related to supervision in connection with close cooperation

1. With respect to the tasks referred to in Article 4(1) and (2) and Article 5 of the SSM Regulation, the ECB may give instructions, make requests or issue guidelines.

2. If the ECB considers that a measure relating to the tasks referred to in Article 4(1) and (2) of the SSM Regulation should be adopted by the NCA in close cooperation in relation to a supervised entity or group, it shall address to that NCA:

- (a) in respect of a significant supervised entity or significant supervised group, a general or specific instruction, a request or a guideline requiring the issuance of a supervisory decision in relation to that significant supervised entity or significant supervised group in the participating Member State in close cooperation, or
- (b) in respect of a less significant supervised entity or less significant supervised group, a general instruction or a guideline.

3. If the ECB considers that a measure relating to the tasks referred to in Article 5 of the SSM Regulation should be adopted by the NCA or NDA in close cooperation, it may address to that NCA or NDA a general or specific instruction, a request or a guideline requiring the application of higher requirements for capital buffers or the application of more stringent measures aimed at addressing systemic or macro-prudential risks.

4. The ECB shall specify in the instruction, request or guideline a relevant time limit for the adoption of the measure by the NCA in close cooperation, which shall be no less than 48 hours, unless earlier adoption is necessary to prevent irreparable damage. When determining the time limit, the ECB shall take into account the administrative and procedural law with which the relevant NCA in close cooperation has to comply.

5. An NCA in close cooperation shall take all necessary measures to comply with the ECB's instructions, requests or guidelines and it shall inform the ECB without undue delay of the measures it has taken.

TITLE 2

CLOSE COOPERATION IN RELATION TO PARTS III, IV, V, VIII, X AND XI

Article 109

Language regime under the regime of close cooperation

The arrangements referred to in Article 23 shall apply *mutatis mutandis* in respect of NCAs in close cooperation.

Article 110

Assessment of significance of credit institutions under the regime of close cooperation

1. The provisions of Part IV on the determination of the status of supervised entities or supervised groups as significant or less significant shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation in accordance with the provisions of this Article.

2. An NCA in close cooperation shall ensure that the procedures laid down in Part IV can be applied in respect of supervised entities and supervised groups established in its Member State.

3. In circumstances where Part IV provides for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.

Article 111

Common procedures under the regime of close cooperation

1. The provisions of Part V on common procedures shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in the participating Member States in close cooperation, subject to the provisions of this Article.
2. An NCA in close cooperation shall ensure that the procedures laid down in Part V can be applied in respect of supervised entities established in its Member State. In particular, the NCA in close cooperation shall ensure that the ECB receives any information and documentation needed to carry out the tasks conferred on it by the SSM Regulation.
3. In circumstances where Part V provides for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.
4. In circumstances where Part V provides for the relevant NCA to prepare a draft decision, an NCA in close cooperation shall submit a draft decision to the ECB and request instructions.

Article 112

Macro-prudential tools under the regime of close cooperation

The provisions of Part VIII on cooperation between the ECB, NCAs and NDAs with regard to macro-prudential tasks and tools shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.

Article 113

Administrative penalties under the regime of close cooperation

1. The provisions of Part X on administrative penalties shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.
2. In circumstances where Article 18 of the SSM Regulation in connection with Part X of this Regulation provide for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.

3. In cases where Article 18 of the SSM Regulation or Part X of this Regulation provides for the relevant NCA to address a decision to a significant supervised entity or significant supervised group, an NCA in close cooperation shall initiate proceedings with a view to taking action to ensure that appropriate administrative penalties are imposed only on the ECB's instructions. The NCA in close cooperation shall inform the ECB once a decision has been adopted.

Article 114

Investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation under the regime of close cooperation

1. The provisions of Part XI which relate to cooperation with regard to Articles 10 to 13 of the SSM Regulation shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.
2. An NCA in close cooperation shall make use of the investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation in accordance with the ECB's instructions.
3. An NCA in close cooperation shall provide the ECB with findings resulting from the use of the investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation.
4. An NCA in close cooperation shall ensure that designated ECB staff members can participate as observers in any investigation pursuant to Articles 10 to 13 of the SSM Regulation.

TITLE 3

CLOSE COOPERATION IN RESPECT OF SIGNIFICANT SUPERVISED ENTITIES

Article 115

Supervision of significant supervised entities in a participating Member State in close cooperation

1. Parts II and VI shall apply *mutatis mutandis* to significant supervised entities and significant supervised groups established in a participating Member State in close cooperation in accordance with the provisions of this Article.
2. An NCA in close cooperation shall ensure that the ECB receives all the information and reporting from and in respect of significant supervised entities and significant supervised groups which the NCA in close cooperation itself receives and which are necessary to carry out the tasks conferred on the ECB by the SSM Regulation.

3. A joint supervisory team shall be established to supervise each significant supervised entity or significant supervised group established in a participating Member State in close cooperation. The members of the joint supervisory team shall be appointed in accordance with Article 4. The NCA in close cooperation shall appoint the NCA sub-coordinator to act directly in relation to the significant supervised entity or significant supervised group, in accordance with the instructions of the JST coordinator.

4. An NCA in close cooperation shall ensure that designated ECB staff members are invited to participate in any on-site inspection carried out in respect of a significant supervised entity or significant supervised group. The ECB may determine the number of ECB staff members who will participate as observers.

5. In the context of consolidated supervision and colleges of supervisors, in circumstances where a parent undertaking is established in a euro area Member State or in a non-euro area participating Member State, the ECB, as competent authority, shall be the consolidating supervisor and shall chair the college of supervisors. The ECB shall invite the relevant NCA in close cooperation to appoint an NCA staff member as observer. The ECB may act by giving instructions to the relevant NCA in close cooperation.

Article 116

Decisions in respect of significant supervised entities and significant supervised groups

1. Without prejudice to the powers of NCAs in respect of tasks not conferred on the ECB pursuant to the SSM Regulation, an NCA in close cooperation shall adopt decisions in respect of significant supervised entities and significant supervised groups in its Member State only on the ECB's instructions. The NCA in close cooperation may also request instructions from the ECB.

2. An NCA in close cooperation shall make any decision in respect of a significant supervised entity or significant supervised group available to the ECB immediately.

3. An NCA in close cooperation shall inform the ECB in relation to both: (a) decisions it adopts under its powers in respect of tasks not conferred on the ECB pursuant to the SSM Regulation; and (b) decisions it adopts pursuant to the ECB's instructions, or as provided for in this Part.

TITLE 4

CLOSE COOPERATION IN RESPECT OF LESS SIGNIFICANT SUPERVISED ENTITIES AND LESS SIGNIFICANT SUPERVISED GROUPS

Article 117

Supervision of less significant supervised entities and less significant supervised groups

1. Part VII shall apply *mutatis mutandis* to less significant supervised entities and less significant supervised groups in participating Member States in close cooperation in accordance with the following provisions.

2. For the purposes of ensuring the consistency of supervisory outcomes within the SSM, the ECB may issue general instructions and guidelines and make requests to an NCA in close cooperation requiring it to adopt a supervisory decision in respect of less significant supervised entities or less significant supervised groups established in the participating Member State in close cooperation. Such general instructions, guidelines or requests may refer to groups or categories of credit institutions.

3. The ECB may also address to an NCA in close cooperation a request to further assess aspects of a material NCA procedure as provided for in Article 6(7)(c)(ii) of the SSM Regulation.

TITLE 5

PROCEDURE IN CASE OF DISAGREEMENT OF A PARTICIPATING MEMBER STATE IN CLOSE COOPERATION

Article 118

Procedure in case of disagreement with the Supervisory Board's draft decision pursuant to Article 7(8) of the SSM Regulation

1. The ECB shall inform the NCA in close cooperation of the Supervisory Board's complete draft decision in relation to a supervised entity or supervised group located in a participating Member State in close cooperation, subject to confidentiality requirements under Union law.

2. If the NCA in close cooperation disagrees with the Supervisory Board's complete draft decision, it shall, within five working days of receipt of the complete draft decision, notify the Governing Council in writing of the reasons for its disagreement.

3. The Governing Council shall decide on the matter within five working days of receipt of such notification, taking the reasons stated for the

disagreement fully into account, and it shall provide the NCA in close cooperation with written reasons for its decision.

4. A participating Member State in close cooperation may request the ECB to terminate its close cooperation with immediate effect and shall then not be bound by any ensuing decision of the Governing Council.

Article 119

Procedure in case of disagreement with an objection of the Governing Council to a Supervisory Board's draft decision pursuant to Article 7(7) of the SSM Regulation

1. The ECB shall inform an NCA in close cooperation of any objection of the Governing Council to a complete draft decision of the Supervisory Board.

2. If the NCA in close cooperation disagrees with the Governing Council's objection to the Supervisory Board's complete draft decision it shall, within five working days of receiving the Governing Council's objection, notify the ECB of its reasons for its disagreement.

3. The Governing Council shall give its written opinion on the reasoned disagreement expressed by the NCA in close cooperation within 30 days of receipt of the reasoned disagreement and, stating its reasons for doing so, shall either confirm or withdraw its objection. The ECB shall inform the NCA in close cooperation thereof.

4. If the Governing Council confirms its objection, the NCA in close cooperation may, within five days of being informed that the Governing Council has confirmed its objection, notify the ECB that it will not be bound by any decision taken following amendment of the initial complete draft decision to which the Governing Council objects.

The ECB shall then consider suspending or terminating the close cooperation with the NCA in close cooperation, taking due account of supervisory effectiveness, and shall take a decision in that respect. The ECB shall take into account, in particular, the factors referred to in Article 7(7) of the SSM Regulation.

**PART X
ADMINISTRATIVE PENALTIES**

**TITLE 1
DEFINITIONS AND RELATIONSHIP
TO COUNCIL REGULATION (EC) NO
2532/98 ⁽¹⁷⁾**

Article 120

Definition of administrative penalties

For the purposes of this Part, 'administrative penalties' means either of the following:

- (a) administrative pecuniary penalties provided for and imposed under Article 18(1) of the SSM Regulation;
- (b) fines and periodic penalty payments provided for in Article 2 of Regulation (EC) No 2532/98 and imposed under Article 18(7) of the SSM Regulation.

Article 121

Relationship to Regulation (EC) No 2532/98

1. For the purposes of the procedures provided for in Article 18(1) of the SSM Regulation, the procedural rules contained in this Regulation shall apply, in accordance with Article 18(4) of the SSM Regulation.

2. For the purposes of the procedures provided for in Article 18(7) of the SSM Regulation, the procedural rules contained in this Regulation shall complement those laid down in Regulation (EC) No 2532/98 and shall be applied in accordance with Articles 25 and 26 of the SSM Regulation.

Article 122

ECB powers to impose administrative penalties under Article 18(7) of the SSM Regulation

The ECB shall impose administrative penalties, as defined in Article 120(b), if there is a failure to comply with obligations under ECB regulations or decisions on:

- (a) significant supervised entities, or
- (b) less significant supervised entities where the relevant ECB regulations or decisions impose obligations on less significant supervised entities vis-à-vis the ECB.

TITLE 2
PROCEDURAL RULES FOR THE
IMPOSITION OF ADMINISTRATIVE
PENALTIES, OTHER THAN PERIODIC
PENALTY PAYMENTS, ON SUPERVISED
ENTITIES IN EURO AREA MEMBER
STATES

Article 123

Establishment of an independent investigating unit

1. The ECB shall establish an internal independent investigating unit (hereinafter the ‘investigating unit’) which shall be composed of investigating officers designated by the ECB.
2. The investigating officers shall not be involved, and shall not for the two years before taking up the position of investigating officer, have been involved in the direct or indirect supervision or authorisation of the relevant supervised entity.
3. The investigating officers shall perform their investigative functions independently of the Supervisory Board and Governing Council and shall not take part in the deliberations of the Supervisory Board and Governing Council.

Article 124

Referral of alleged breaches to the investigating unit

Where the ECB, in carrying out its tasks under the SSM Regulation, considers that there is reason to suspect that one or more breaches

- (a) under relevant directly applicable Union law, as referred to in Article 18(1) of the SSM Regulation, are being, or have been, committed by a significant supervised entity having its head office in a euro area Member State, or
- (b) of an ECB regulation or decision as referred to in Article 18(7) of the SSM Regulation are being or have been, committed by a supervised entity having its head office in an euro area Member State,

the ECB shall refer the matter to the investigating unit.

Article 125

Powers of the investigating unit

1. For the purpose of investigating alleged breaches as referred to in Article 124, the investigating unit may exercise the powers granted to the ECB under the SSM Regulation.

2. Where a request is made to the supervised entity concerned under the powers granted to the ECB pursuant to the SSM Regulation in the context of an investigation, the investigating unit shall specify the subject matter and the purpose of the investigation.

3. When carrying out its tasks, the investigating unit shall have access to all documents and information gathered by the ECB and, where appropriate, by the relevant NCAs in the course of their supervisory activities.

Article 126

Procedural rights

1. On completion of an investigation and before a proposal for a complete draft decision is prepared and submitted to the Supervisory Board, the investigating unit shall notify the supervised entity concerned in writing of the findings under the investigation carried out and of any objections raised thereto.

2. In the notification referred to in paragraph 1, the investigating unit shall inform the supervised entity concerned of its right to make submissions in writing to the investigating unit on the factual results and the objections raised against the entity as set out therein, including the individual provisions which have been allegedly infringed, and it shall set a reasonable time limit for receipt of such submissions. The ECB shall not be obliged to take into account written submissions received after the time limit set by the investigating unit has expired.

3. The investigating unit may also, following notification in accordance with paragraph 1, invite the supervised entity concerned to attend an oral hearing. The parties subject to investigation may be represented and/or assisted by lawyers or other qualified persons at the hearing. Oral hearings shall not be held in public.

4. The right of access to the file of the investigating unit by the supervised entity under investigation shall be determined in accordance with Article 32.

Article 127

Examination of the file by the Supervisory Board

1. If an investigating unit considers that an administrative penalty should be imposed on a supervised entity, the investigating unit shall submit a proposal for a complete draft decision to the Supervisory Board, determining that the supervised entity concerned has committed a breach and specifying the administrative penalty to be imposed. The investigating unit shall also submit its file on the investigation to the Supervisory Board.

2. The investigating unit shall base its proposal for a complete draft decision only on facts and objections on which the supervised entity has had the opportunity to comment.

3. If the Supervisory Board considers that the file submitted by the investigating unit is incomplete, it may return the file to the investigating unit together with a reasoned request for additional information. Article 125 shall apply accordingly.

4. If the Supervisory Board, on the basis of a complete file, agrees with the proposal for a complete draft decision of the investigating unit in respect of one or more breaches and the factual basis for such decision, it shall adopt the complete draft decision proposed by the investigating unit regarding the breach or breaches it agrees have taken place. To the extent that the Supervisory Board does not agree with the proposal, a decision shall be taken pursuant to the relevant paragraphs of this Article.

5. If the Supervisory Board, on the basis of a complete file, considers that the facts described in the proposal for a complete draft decision as referred to in paragraph 1 do not appear to reveal sufficient evidence of a breach as referred to in Article 124, it may adopt a complete draft decision closing the case.

6. If the Supervisory Board, on the basis of a complete file, agrees with the determination in the proposal for a complete draft decision of the investigating unit that the supervised entity concerned has committed a breach, but disagrees with the proposed recommendation concerning administrative penalties, it shall adopt the complete draft decision, specifying the administrative penalty it considers appropriate.

7. If the Supervisory Board, on the basis of a complete file, does not agree with the proposal of the investigating unit, but concludes that a different breach has been committed by a supervised entity, or that there is a different factual basis for the proposal of the investigating unit, it shall inform the supervised entity concerned in writing of its findings and of the objections raised against the supervised entity concerned. Article 126(2) to (4) shall apply accordingly with regard to the Supervisory Board.

8. The Supervisory Board shall prepare a complete draft decision determining whether or not the supervised entity concerned has committed a breach and specifying the administrative penalties to be imposed, if any.

9. Complete draft decisions adopted by the Supervisory Board and to be proposed to the Governing Council shall be based only on facts and objections on which the supervised entity has had the opportunity to comment.

Article 128

Definition of total annual turnover for the purpose of determining the upper limit for administrative pecuniary penalties

The total annual turnover as referred to in Article 18(1) of the SSM Regulation shall mean the annual turnover, as defined in Article 67 of Directive 2013/36/EU, of a supervised entity according to the most recent available annual financial accounts of such supervised entity. Where the supervised entity that has committed the breach belongs to a supervised group, the relevant total annual turnover shall be the total annual turnover resulting from the most recent available consolidated annual financial accounts of the supervised group.

TITLE 3

PERIODIC PENALTY PAYMENTS

Article 129

Procedural rules applicable to periodic penalty payments

1. In the event of a continuing breach of a regulation or supervisory decision of the ECB, the ECB may impose a periodic penalty payment with a view to compelling the persons concerned to comply with the regulation or supervisory decision. The ECB shall apply the procedural rules of Article 22 of the SSM Regulation and Title 2 of Part III of this Regulation.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be calculated for each day of infringement until the person concerned complies with the ECB regulation or supervisory decision concerned.

3. The upper limits for periodic penalty payments shall be as specified in Regulation (EC) No 2532/98. The relevant period shall begin to run on the date stipulated in the decision imposing the periodic penalty payment. The earliest date stipulated in the decision shall be the date on which the person concerned is notified in writing of the ECB's reasons for imposing a periodic penalty payment.

4. Periodic penalty payments may be imposed for periods of no longer than six months following the date specified in the decision referred to in paragraph 3.

TITLE 4 TIME LIMITS

Article 130

Limitation periods for imposing administrative penalties

1. The ECB's power to impose administrative penalties on supervised entities shall be subject to a limitation period of five years, which shall begin to run on the day on which the breach is committed. In the case of on-going or repeated breaches, the limitation period shall begin to run on the day on which the breach ceases.
2. Any action taken by the ECB for the purposes of the investigation or proceedings in respect of a breach under Article 124 shall cause the limitation period for imposing administrative pecuniary penalties to be interrupted. The limitation period shall be interrupted with effect from the date on which the action is notified to the supervised entity concerned.
3. Each interruption shall cause the limitation period to begin to run afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the duration of the limitation period has elapsed without the ECB having imposed an administrative penalty. That period shall be extended by any period of time for which the limitation period is suspended pursuant to paragraph 5.
4. The limitation period for imposing administrative penalties shall be suspended for any period during which the decision of the ECB's Governing Council is subject to review proceedings before the Administrative Board of Review or appeal proceedings before the Court of Justice.
5. The limitation period shall also be suspended for such period as criminal proceedings are pending against the supervised entity in connection with the same facts.

Article 131

Limitation periods for the enforcement of administrative penalties

1. The ECB's power to enforce a decision taken pursuant to Article 18(1) and (7) of the SSM Regulation shall be subject to a limitation period of five years, which shall begin to run on the date of adoption of the decision in question.
2. Any action of the ECB designed to enforce payment or payment terms and conditions under the administrative penalty concerned shall cause the limitation period for the enforcement of administrative penalties to be interrupted.

3. Each interruption shall cause the limitation period to begin to run afresh.

4. The limitation period for the enforcement of administrative penalties shall be suspended for such period as:

- (a) time to pay is allowed;
- (b) enforcement of payment is suspended pursuant to a decision of either the ECB's Governing Council or the Court of Justice.

TITLE 5

PUBLICATION OF DECISIONS AND EXCHANGE OF INFORMATION

Article 132

Publication of decisions regarding administrative penalties

1. The ECB shall publish on its website without undue delay, and after the decision has been notified to the supervised entity concerned, any decision imposing an administrative penalty, as defined in Article 120, on a supervised entity in a participating Member State, including information on the type and nature of the breach and the identity of the supervised entity concerned, unless publication in this manner would either:
 - (a) jeopardise the stability of the financial markets or an on-going criminal investigation; or
 - (b) cause, insofar as it can be determined, disproportionate damage to the supervised entity concerned.

In these circumstances, decisions regarding administrative penalties shall be published on an anonymised basis. Alternatively, where such circumstances are likely to cease within a reasonable period of time, publication under this paragraph may be postponed for such period of time.

2. If an appeal to the Court of Justice in respect of a decision under paragraph 1 is pending, the ECB shall, without undue delay, also publish on its official website information on the status of the appeal in question and the outcome thereof.

3. The ECB shall ensure that information published under paragraphs 1 and 2 remains on its official website for at least five years.

Article 133

Informing the EBA

Subject to the professional secrecy requirements referred to in Article 27 of the SSM Regulation, the ECB shall inform the EBA of all administrative

penalties, as defined in Article 120, which are imposed on a supervised entity in a euro area Member State, including any appeal in relation to such penalties and the outcome thereof.

TITLE 6 COOPERATION BETWEEN THE ECB AND NCAs IN EURO AREA MEMBER STATES UNDER ARTICLE 18(5) OF THE SSM REGULATION

Article 134 **Significant supervised entities**

1. In respect of significant supervised entities, an NCA shall open proceedings only at the request of the ECB where necessary for the purpose of carrying out the tasks conferred on the ECB under the SSM Regulation, with a view to taking action to ensure that appropriate penalties are imposed in cases not covered by Article 18(1) of the SSM Regulation. Such cases include the application of:

- (a) non-pecuniary penalties in the event of a breach of directly applicable Union law by legal or natural persons, as well as any pecuniary penalties in the event of a breach of directly applicable Union law by natural persons;
- (b) any pecuniary or non-pecuniary penalties in the event of a breach by legal or natural persons of any national law transposing relevant Union directives;
- (c) any pecuniary or non-pecuniary penalties to be imposed in accordance with relevant national legislation which confers specific powers on the NCAs in euro area Member States which are currently not required by the relevant Union law.

The provisions of this paragraph shall be without prejudice to the possibility for an NCA to open proceedings on its own initiative regarding the application of national law for tasks not conferred on the ECB.

2. An NCA may ask the ECB to request it to open proceedings in the cases referred to in paragraph 1.

3. An NCA of a participating Member State shall notify the ECB of the completion of a penalty procedure initiated at the request of the ECB pursuant to paragraph 1. In particular, the ECB shall be informed of the penalties imposed, if any.

Article 135 **Reporting in respect of less significant supervised entities**

The relevant NCA shall notify the ECB on a regular basis of all administrative penalties imposed on less significant supervised entities in connection with the exercise of its supervisory tasks.

TITLE 7 CRIMINAL OFFENCES

Article 136 **Evidence of facts potentially giving rise to a criminal offence**

Where, in carrying out its tasks under the SSM Regulation, the ECB has reason to suspect that a criminal offence may have been committed, it shall request the relevant NCA to refer the matter to the appropriate authorities for investigation and possible criminal prosecution, in accordance with national law.

TITLE 8 PROCEEDS FROM PENALTIES

Article 137 **Proceeds from penalties**

The proceeds from administrative penalties imposed by the ECB under Article 18(1) and (7) of the SSM Regulation shall be the ECB's property.

PART XI ACCESS TO INFORMATION, REPORTING, INVESTIGATIONS AND ON-SITE INSPECTIONS

TITLE 1 GENERAL PRINCIPLES

Article 138 **Cooperation between the ECB and NCAs as regards the powers referred to in Articles 10 to 13 of the SSM Regulation**

The provisions laid down in this Part shall apply to significant supervised entities. They shall also apply to less significant supervised entities if the ECB decides, pursuant to Article 6(5)(d) of the SSM Regulation, to make use of the powers referred to in Articles 10 to 13 of the SSM Regulation with

respect to a less significant supervised entity. This shall however be without prejudice to the NCAs' competence to supervise less significant supervised entities directly pursuant to Article 6(6) of the SSM Regulation.

TITLE 2

COOPERATION IN RESPECT OF REQUESTS FOR INFORMATION

Article 139

Ad-hoc requests for information under Article 10 of the SSM Regulation

1. In accordance with Article 10 of the SSM Regulation and subject to and in compliance with relevant Union law, the ECB may require a legal or natural person referred to in Article 10(1) thereof to provide all information that is necessary to exercise the tasks conferred on it by the SSM Regulation. The ECB shall specify the information concerned and a reasonable time limit within which it is to be provided to the ECB.

2. Before requiring information to be provided in accordance with Article 10(1) of the SSM Regulation, the ECB shall first take account of information already available to NCAs.

3. The ECB shall make available to the relevant NCA a copy of any information received from the legal or natural person to whom the request for information has been addressed.

TITLE 3

REPORTING

Article 140

Tasks related to supervisory reporting to competent authorities

1. The ECB shall be responsible for ensuring compliance with relevant Union law which imposes requirements on credit institutions in the field of reporting to competent authorities.

2. For this purpose, the ECB shall have the tasks and powers with regard to significant supervised entities as laid down in relevant Union law on supervisory reporting. NCAs shall have the tasks and powers with regard to less significant supervised entities as laid down in relevant Union law on reporting to competent authorities.

3. Notwithstanding paragraph 2 and unless provided otherwise, each supervised entity shall communicate to its relevant NCA the information to be reported on a regular basis in accordance with

relevant Union law. Unless specifically otherwise provided for, all information reported by supervised entities shall be submitted to the NCAs. They shall perform the initial data checks and make the information available to the ECB.

4. The ECB shall organise the processes relating to collection and quality review of data reported by supervised entities subject to, and in compliance with, relevant Union law and EBA implementing technical standards.

Article 141

Requests for information at recurring intervals under Article 10 of the SSM Regulation

1. In accordance with Article 10 of the SSM Regulation, in particular the power of the ECB to require information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes, and subject to and in compliance with relevant Union law, the ECB may require supervised entities to report additional supervisory information whenever such information is necessary for the ECB to carry out the tasks conferred on it by the SSM Regulation. Subject to the conditions set out in relevant Union law, the ECB may specify in particular the categories of information that should be reported as well as the processes, formats, frequencies and time limits for provision of the information concerned.

2. If the ECB requires legal or natural persons as specified in Article 10(1) of the SSM Regulation to provide information at recurring intervals, Article 140(3) and (4) of this Regulation shall apply accordingly.

TITLE 4

COOPERATION WITH REGARD TO GENERAL INVESTIGATIONS

Article 142

Launch of a general investigation under Article 11 of the SSM Regulation

The ECB shall conduct an investigation of any legal or natural person referred to in Article 10(1) of the SSM Regulation on the basis of an ECB decision. Such decision shall specify all of the following:

- (a) the legal basis for the decision and its purpose;
- (b) the intention to exercise the powers laid down in Article 11(1) of the SSM Regulation;
- (c) the fact that any obstruction of the investigation by the person being investigated constitutes a breach of an ECB decision within the meaning of Article 18(7) of the SSM Regulation, without

prejudice to national law as laid down in Article 11(2) of the SSM Regulation.

TITLE 5 ON-SITE INSPECTIONS

Article 143

ECB decision to conduct an on-site inspection under Article 12 of the SSM Regulation

1. Pursuant to Article 12 of the SSM Regulation, in order to carry out the tasks assigned to it by the SSM Regulation, the ECB shall appoint on-site inspection teams as laid down in Article 144 to conduct all necessary on-site inspections on the premises of a legal person as referred to in Article 10(1) of the SSM Regulation.
2. Without prejudice to Article 142 and pursuant to Article 12(3) of the SSM Regulation, on-site inspections shall be conducted on the basis of an ECB decision, which shall at a minimum specify the following:
 - (a) the subject matter and the purpose of the on-site inspection; and
 - (b) the fact that any obstruction to the on-site inspection by the legal person subject thereto shall constitute a breach of an ECB decision within the meaning of Article 18(7) of the SSM Regulation, without prejudice to national law as laid down in Article 11(2) of the SSM Regulation.
3. If the on-site inspection follows an investigation conducted on the basis of an ECB decision, as referred to in Article 142, and provided that the on-site inspection has the same purpose and scope as the investigation, the officials and other persons authorised by the ECB and by an NCA shall be granted access to the business premises and land of the legal person subject to the investigation on the basis of the same decision, in accordance with Article 12(2) and (4) of the SSM Regulation and without prejudice to Article 13 thereof.

Article 144

Establishment and composition of on-site inspection teams

1. The ECB shall be in charge of the establishment and the composition of on-site inspection teams with the involvement of NCAs, in accordance with Article 12 of the SSM Regulation.
2. The ECB shall designate the head of the on-site inspection team from among ECB and NCA staff members.

3. The ECB and NCAs shall consult with each other and agree on the use of NCA resources with regard to the on-site inspection teams.

Article 145

Procedure and notification of an on-site inspection

1. The ECB shall notify the legal person subject to an on-site inspection of the ECB decision referred to in Article 143(2), and of the identity of the members of the on-site inspection team, at least five working days before the start of the on-site inspection. It shall notify the NCA of the Member State where the on-site inspection is to be conducted at least one week before notifying the legal person subject to the on-site inspection of such inspection.
2. If the proper conduct and efficiency of the inspection so require, the ECB may carry out an on-site inspection without notifying the supervised entity concerned beforehand. The NCA shall be notified as soon as possible before the start of such on-site inspection.

Article 146

Conduct of the on-site inspections

1. Those carrying out the on-site inspection shall follow the instructions of the head of the on-site inspection team.
2. Where the entity subject to the on-site inspection is a significant supervised entity, the head of the on-site inspection team shall be responsible for the coordination between the on-site inspection team and the joint supervisory team in charge of the supervision of that significant supervised entity.

PART XII TRANSITIONAL AND FINAL PROVISIONS

Article 147

Start of direct supervision by the ECB when the ECB assumes its tasks for the first time

1. At least two months before 4 November 2014, the ECB shall address a decision to each supervised entity in respect of which it assumes the tasks conferred on it by the SSM Regulation confirming that it is a significant supervised entity. For entities that are members of a significant supervised group, the ECB shall notify the ECB decision to the supervised entity at the highest level of consolidation within the participating Member States and shall ensure that all supervised entities within the significant supervised group are duly informed. These decisions shall take effect from 4 November 2014.

2. Notwithstanding paragraph 1, if the ECB starts carrying out the tasks conferred on it before 4 November 2014, it shall address a decision to the entity concerned and to the relevant NCAs. Unless otherwise provided for therein, such decision shall take effect on notification. The relevant NCAs shall be informed in advance of the intention to issue such a decision as soon as possible.

3. Prior to adopting a decision pursuant to paragraph 1, the ECB shall provide the relevant supervised entity with an opportunity to make submissions in writing.

Article 148

Defining the format of the report on supervisory history and risk profile to be provided by NCAs to the ECB

1. The NCAs shall, by 4 August 2014 at the latest, communicate to the ECB the identity of the credit institutions they have authorised as well as a report on these credit institutions in a format specified by the ECB.

2. Notwithstanding paragraph 1, if the ECB starts carrying out the tasks conferred on it before 4 November 2014, it may request NCAs to communicate to the ECB the identity of the relevant credit institutions as well as a report in a format specified by the ECB within a reasonable time limit, which shall be stated in the request.

Article 149

Continuity of existing procedures

1. Unless the ECB decides otherwise, if an NCA has initiated supervisory procedures for which the ECB becomes competent on the basis of the SSM Regulation, and this occurs before 4 November 2014, then the procedures laid down in Article 48 shall apply.

2. By derogation from Article 48, this Article shall apply to common procedures.

Article 150

Supervisory decisions taken by NCAs

Without prejudice to the exercise by the ECB of the powers conferred on it by the SSM Regulation, supervisory decisions taken by NCAs before 4 November 2014 shall remain unaffected.

Article 151

Member States whose currency becomes the euro

1. Subject to paragraph 2, in circumstances where a derogation pursuant to Article 139 TFEU is abrogated for a Member State in accordance with Article 140(2) TFEU, Articles 148 to 150 shall apply

accordingly in respect of supervisory procedures or decisions initiated or taken by the NCA of such Member State.

2. The reference to 4 November 2014 in Articles 149 and 150 shall be construed as a reference to the date on which the euro is adopted in the relevant Member State.

Article 152

Continuity of existing arrangements

All existing cooperation arrangements with other authorities entered into by an NCA prior to 4 November 2014 that cover at least in part tasks transferred to the ECB by the SSM Regulation shall continue to apply. The ECB may decide to participate in such existing cooperation arrangements in accordance with the procedure applicable to the arrangements in question or establish new cooperation arrangements with third parties for the tasks transferred to it by the SSM Regulation. An NCA shall continue to apply existing cooperation arrangements only to the extent they are not replaced by ECB cooperation arrangements. Where necessary for the execution of the existing cooperation arrangements, the NCA shall be responsible for assisting the ECB, in particular by exercising its rights and performing its responsibilities under the arrangements in coordination with the ECB.

Article 153

Final provisions

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 16 April 2014.

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

(¹) OJ L 287, 29.10.2013, p. 63.

(²) OJ L 320, 30.11.2013, p. 1.

(³) Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

(⁴) Adopted on 31 March 2014 and available on the ECB's website at www.ecb.europa.eu. Not yet published in the Official Journal.

(⁵) Decision ECB/2014/16 of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules. Not yet published in the Official Journal.

- (⁶) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([OJ L 176, 27.6.2013, p. 1](#)).
- (⁷) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ([OJ L 182, 29.6.2013, p. 19](#)).
- (⁸) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ([OJ L 176, 27.6.2013, p. 338](#)).
- (⁹) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([OJ L 201, 27.7.2012, p. 1](#)).
- (¹⁰) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council ([OJ L 35, 11.2.2003, p. 1](#)).
- (¹¹) As published on the ECB's website.
- (¹²) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ([OJ L 243, 11.9.2002, p. 1](#)).
- (¹³) Regulation (EC) No 25/2009 of the European Central Bank of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32) ([OJ L 15, 20.1.2009, p. 14](#)).
- (¹⁴) Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union ([OJ L 174, 26.6.2013, p. 1](#)).
- (¹⁵) Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes ([OJ L 135, 31.5.1994, p. 5](#)).
- (¹⁶) Decision ECB/2014/5 of 31 January 2014 on the close cooperation with the national competent authorities of participating Member States whose currency is not the euro (not yet published in the Official Journal).
- (¹⁷) 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](#)).

PROTOCOL (No 4)
on the Statute of the European System of Central Banks and of the
European Central Bank

BG ES CS DA DE ET EL EN FR GA HR IT LV LT HU MT NL PL PT RO SK SL FI SV

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European System of Central Banks and of the European Central Bank provided for in the second paragraph of Article 129 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

CHAPTER I
THE EUROPEAN SYSTEM OF CENTRAL BANKS

Article 1
The European System of Central Banks

In accordance with Article 282(1) of the Treaty on the Functioning of the European Union, the European Central Bank (ECB) and the national central banks shall constitute the European System of Central Banks (ESCB). The ECB and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem.

The ESCB and the ECB shall perform their tasks and carry on their activities in accordance with the provisions of the Treaties and of this Statute.

CHAPTER II
OBJECTIVES AND TASKS OF THE ESCB

Article 2
Objectives

In accordance with Article 127(1) and Article 282(2) of the Treaty on the Functioning of the European Union, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of

resources, and in compliance with the principles set out in Article 119 of the Treaty on the Functioning of the European Union.

Article 3
Tasks

3.1. In accordance with Article 127(2) of the Treaty on the Functioning of the European Union, the basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Union;
- to conduct foreign-exchange operations consistent with the provisions of Article 219 of that Treaty;
- to hold and manage the official foreign reserves of the Member States;
- to promote the smooth operation of payment systems.

3.2. In accordance with Article 127(3) of the Treaty on the Functioning of the European Union, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3.3. In accordance with Article 127(5) of the Treaty on the Functioning of the European Union, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

Article 4
Advisory functions

In accordance with Article 127(4) of the Treaty on the Functioning of the European Union:

- (a) the ECB shall be consulted:
- on any proposed Union act in its fields of competence;
 - by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41;

- (b) the ECB may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.

Article 5

Collection of statistical information

5.1. In order to undertake the tasks of the ESCB, the ECB, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes it shall cooperate with the Union institutions, bodies, offices or agencies and with the competent authorities of the Member States or third countries and with international organisations.

5.2. The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.

5.3. The ECB shall contribute to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence.

5.4. The Council, in accordance with the procedure laid down in Article 41, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6

International cooperation

6.1. In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented.

6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

6.3. Articles 6.1 and 6.2 shall be without prejudice to Article 138 of the Treaty on the Functioning of the European Union.

CHAPTER III

ORGANISATION OF THE ESCB

Article 7

Independence

In accordance with Article 130 of the Treaty on the Functioning of the European Union, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and this Statute, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union

institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

Article 8

General principle

The ESCB shall be governed by the decision-making bodies of the ECB.

Article 9

The European Central Bank

9.1. The ECB which, in accordance with Article 282(3) of the Treaty on the Functioning of the European Union, shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.2. The ECB shall ensure that the tasks conferred upon the ESCB under Article 127(2), (3) and (5) of the Treaty on the Functioning of the European Union are implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Articles 12.1 and 14.

9.3. In accordance with Article 129(1) of the Treaty on the Functioning of the European Union, the decision making bodies of the ECB shall be the Governing Council and the Executive Board.

Article 10

The Governing Council

10.1. In accordance with Article 283(1) of the Treaty on the Functioning of the European Union, the Governing Council shall comprise the members of the Executive Board of the ECB and the governors of the national central banks of the Member States whose currency is the euro.

10.2. Each member of the Governing Council shall have one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors with a voting right shall be 15. The latter voting rights shall be assigned and shall rotate as follows:

- as from the date on which the number of governors exceeds 15, until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank's Member State in

the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights,

- as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the above criteria. The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights,
- within each group, the governors shall have their voting rights for equal amounts of time,
- for the calculation of the shares in the aggregate gross domestic product at market prices Article 29.2 shall apply. The total aggregated balance sheet of the monetary financial institutions shall be calculated in accordance with the statistical framework applying in the Union at the time of the calculation,
- whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29.3, or whenever the number of governors increases, the size and/or composition of the groups shall be adjusted in accordance with the above principles,
- the Governing Council, acting by a two-thirds majority of all its members, with and without a voting right, shall take all measures necessary for the implementation of the above principles and may decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.

The right to vote shall be exercised in person. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules shall also provide that a member of the Governing

Council who is prevented from attending meetings of the Governing Council for a prolonged period may appoint an alternate as a member of the Governing Council.

The provisions of the previous paragraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under Articles 10.3, 40.2 and 40.3.

Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority of the members having a voting right. In the event of a tie, the President shall have the casting vote.

In order for the Governing Council to vote, there shall be a quorum of two-thirds of the members having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

10.3. For any decisions to be taken under Articles 28, 29, 30, 32 and 33, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. The weights of the votes of the members of the Executive Board shall be zero. A decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two thirds of the subscribed capital of the ECB and represent at least half of the shareholders. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

10.4. The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public.

10.5. The Governing Council shall meet at least 10 times a year.

Article 11

The Executive Board

11.1. In accordance with the first subparagraph of Article 283(2) of the Treaty on the Functioning of the European Union, the Executive Board shall comprise the President, the Vice-President and four other members.

The members shall perform their duties on a full-time basis. No member shall engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Governing Council.

11.2. In accordance with the second subparagraph of Article 283(2) of the Treaty on the Functioning of the European Union, the President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in

monetary or banking matters, on a recommendation from the Council after it has consulted the European Parliament and the Governing Council.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

11.3. The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be the subject of contracts with the ECB and shall be fixed by the Governing Council on a proposal from a Committee comprising three members appointed by the Governing Council and three members appointed by the Council. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.

11.4. If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Governing Council or the Executive Board, compulsorily retire him.

11.5. Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements shall be specified in the Rules of Procedure referred to in Article 12.3.

11.6. The Executive Board shall be responsible for the current business of the ECB.

11.7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with Article 11.2.

Article 12

Responsibilities of the decision-making bodies

12.1. The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the ESCB under these Treaties and this Statute. The Governing Council shall formulate the monetary policy of the Union including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and shall establish the necessary guidelines for their implementation.

The Executive Board shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council. In doing so the Executive Board shall give the necessary instructions to national central banks.

In addition the Executive Board may have certain powers delegated to it where the Governing Council so decides.

To the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB.

12.2. The Executive Board shall have responsibility for the preparation of meetings of the Governing Council.

12.3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

12.4. The Governing Council shall exercise the advisory functions referred to in Article 4.

12.5. The Governing Council shall take the decisions referred to in Article 6.

Article 13

The President

13.1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the ECB.

13.2. Without prejudice to Article 38, the President or his nominee shall represent the ECB externally.

Article 14

National central banks

14.1. In accordance with Article 131 of the Treaty on the Functioning of the European Union, each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with these Treaties and this Statute.

14.2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than five years.

A Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council on grounds of infringement of these Treaties or of any rule of law relating to their application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

14.3. The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4. National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB.

Article 15 **Reporting commitments**

15.1. The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.

15.2. A consolidated financial statement of the ESCB shall be published each week.

15.3. In accordance with Article 284(3) of the Treaty on the Functioning of the European Union, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.

15.4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

Article 16 **Banknotes**

In accordance with Article 128(1) of the Treaty on the Functioning of the European Union, the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Union.

The ECB shall respect as far as possible existing practices regarding the issue and design of banknotes.

CHAPTER IV **MONETARY FUNCTIONS AND OPERATIONS OF** **THE ESCB**

Article 17 **Accounts with the ECB and the national central banks**

In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets, including book entry securities, as collateral.

Article 18 **Open market and credit operations**

18.1. In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the national central banks may:

- operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in euro or other currencies, as well as precious metals;
- conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

18.2. The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks, including for the announcement of conditions under which they stand ready to enter into such transactions.

Article 19 **Minimum reserves**

19.1. Subject to Article 2, the ECB may require credit institutions established in Member States to hold minimum reserve on accounts with the ECB and national central banks in pursuance of monetary policy objectives. Regulations concerning the calculation and determination of the required minimum reserves may be established by the Governing Council. In cases of non-compliance the ECB shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

19.2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 41, define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of non-compliance.

Article 20

Other instruments of monetary control

The Governing Council may, by a majority of two thirds of the votes cast, decide upon the use of such other operational methods of monetary control as it sees fit, respecting Article 2.

The Council shall, in accordance with the procedure laid down in Article 41, define the scope of such methods if they impose obligations on third parties.

Article 21

Operations with public entities

21.1. In accordance with Article 123 of the Treaty on the Functioning of the European Union, overdrafts or any other type of credit facility with the ECB or with the national central banks in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

21.2. The ECB and national central banks may act as fiscal agents for the entities referred to in Article 21.1.

21.3. The provisions of this Article shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

Article 22

Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries.

Article 23

External operations

The ECB and national central banks may:

- establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;
- acquire and sell spot and forward all types of foreign exchange assets and precious metals; the term “foreign exchange asset” shall include securities and all other assets in the currency of any country or units of account and in whatever form held;

— hold and manage the assets referred to in this Article;

— conduct all types of banking transactions in relations with third countries and international organisations, including borrowing and lending operations.

Article 24

Other operations

In addition to operations arising from their tasks, the ECB and national central banks may enter into operations for their administrative purposes or for their staff.

CHAPTER V

PRUDENTIAL SUPERVISION

Article 25

Prudential supervision

25.1. The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

25.2. In accordance with any regulation of the Council under Article 127(6) of the Treaty on the Functioning of the European Union, the ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

CHAPTER VI

FINANCIAL PROVISIONS OF THE ESCB

Article 26

Financial accounts

26.1. The financial year of the ECB and national central banks shall begin on the first day of January and end on the last day of December.

26.2. The annual accounts of the ECB shall be drawn up by the Executive Board, in accordance with the principles established by the Governing Council. The accounts shall be approved by the Governing Council and shall thereafter be published.

26.3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the ESCB, comprising those assets and liabilities of the national central banks that fall within the ESCB.

26.4. For the application of this Article, the Governing Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

Article 27 **Auditing**

27.1. The accounts of the ECB and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council. The auditors shall have full power to examine all books and accounts of the ECB and national central banks and obtain full information about their transactions.

27.2. The provisions of Article 287 of the Treaty on the Functioning of the European Union shall only apply to an examination of the operational efficiency of the management of the ECB.

Article 28 **Capital of the ECB**

28.1. The capital of the ECB shall be euro 5 000 million. The capital may be increased by such amounts as may be decided by the Governing Council acting by the qualified majority provided for in Article 10.3, within the limits and under the conditions set by the Council under the procedure laid down in Article 41.

28.2. The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key established in accordance with Article 29.

28.3. The Governing Council, acting by the qualified majority provided for in Article 10.3, shall determine the extent to which and the form in which the capital shall be paid up.

28.4. Subject to Article 28.5, the shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached.

28.5. If the key referred to in Article 29 is adjusted, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the adjusted key. The Governing Council shall determine the terms and conditions of such transfers.

Article 29 **Key for capital subscription**

29.1. The key for subscription of the ECB's capital, fixed for the first time in 1998 when the ESCB was established, shall be determined by assigning to each national central bank a weighting in this key equal to the sum of:

- 50 % of the share of its respective Member State in the population of the Union in the penultimate year preceding the establishment of the ESCB;
- 50 % of the share of its respective Member State in the gross domestic product at market prices of the Union as recorded in the last five years preceding the penultimate year before the establishment of the ESCB.

The percentages shall be rounded up or down to the nearest multiple of 0,0001 percentage points.

29.2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules adopted by the Council under the procedure provided for in Article 41.

29.3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the ESCB by analogy with the provisions laid down in Article 29.1. The adjusted key shall apply with effect from the first day of the following year.

29.4. The Governing Council shall take all other measures necessary for the application of this Article.

Article 30 **Transfer of foreign reserve assets to the ECB**

30.1. Without prejudice to Article 28, the ECB shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, euro, IMF reserve positions and SDRs, up to an amount equivalent to euro 50 000 million. The Governing Council shall decide upon the proportion to be called up by the ECB following its establishment and the amounts called up at later dates. The ECB shall have the full right to hold and manage the foreign reserves that are transferred to it and to use them for the purposes set out in this Statute.

30.2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the ECB.

30.3. Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Governing Council shall determine the denomination and remuneration of such claims.

30.4. Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB, in accordance with Article 30.2, within the limits and under the conditions set by the Council in accordance with the procedure laid down in Article 41.

30.5. The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets.

30.6. The Governing Council shall take all other measures necessary for the application of this Article.

Article 31

Foreign reserve assets held by national central banks

31.1. The national central banks shall be allowed to perform transactions in fulfilment of their obligations towards international organisations in accordance with Article 23.

31.2. All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30, and Member States' transactions with their foreign exchange working balances shall, above a certain limit to be established within the framework of Article 31.3, be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Union.

31.3. The Governing Council shall issue guidelines with a view to facilitating such operations.

Article 32

Allocation of monetary income of national central banks

32.1. The income accruing to the national central banks in the performance of the ESCB's monetary policy function (hereinafter referred to as "monetary income") shall be allocated at the end of each financial year in accordance with the provisions of this Article.

32.2. The amount of each national central bank's monetary income shall be equal to its annual income derived from its assets held against notes in circulation and deposit liabilities to credit institutions. These assets shall be earmarked by national central banks in accordance with guidelines to be established by the Governing Council.

32.3. If, after the introduction of the euro, the balance sheet structures of the national central banks do not, in the judgment of the Governing Council, permit the application of Article 32.2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from Article

32.2, monetary income shall be measured according to an alternative method for a period of not more than five years.

32.4. The amount of each national central bank's monetary income shall be reduced by an amount equivalent to any interest paid by that central bank on its deposit liabilities to credit institutions in accordance with Article 19.

The Governing Council may decide that national central banks shall be indemnified against costs incurred in connection with the issue of banknotes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the ESCB. Indemnification shall be in a form deemed appropriate in the judgment of the Governing Council; these amounts may be offset against the national central banks' monetary income.

32.5. The sum of the national central banks' monetary income shall be allocated to the national central banks in proportion to their paid up shares in the capital of the ECB, subject to any decision taken by the Governing Council pursuant to Article 33.2.

32.6. The clearing and settlement of the balances arising from the allocation of monetary income shall be carried out by the ECB in accordance with guidelines established by the Governing Council.

32.7. The Governing Council shall take all other measures necessary for the application of this Article.

Article 33

Allocation of net profits and losses of the ECB

33.1. The net profit of the ECB shall be transferred in the following order:

- (a) an amount to be determined by the Governing Council, which may not exceed 20 % of the net profit, shall be transferred to the general reserve fund subject to a limit equal to 100 % of the capital;
- (b) the remaining net profit shall be distributed to the shareholders of the ECB in proportion to their paid-up shares.

33.2. In the event of a loss incurred by the ECB, the shortfall may be offset against the general reserve fund of the ECB and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32.5.

CHAPTER VII GENERAL PROVISIONS

Article 34 **Legal acts**

34.1. In accordance with Article 132 of the Treaty on the Functioning of the European Union, the ECB shall:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 or 25.2 and in cases which shall be laid down in the acts of the Council referred to in Article 41;
- take decisions necessary for carrying out the tasks entrusted to the ESCB under these Treaties and this Statute;
- make recommendations and deliver opinions.

34.2. The ECB may decide to publish its decisions, recommendations and opinions.

34.3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 41, the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 35 **Judicial control and related matters**

35.1. The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice of the European Union in the cases and under the conditions laid down in the Treaty on the Functioning of the European Union. The ECB may institute proceedings in the cases and under the conditions laid down in the Treaties.

35.2. Disputes between the ECB, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred upon the Court of Justice of the European Union.

35.3. The ECB shall be subject to the liability regime provided for in Article 340 of the Treaty on the Functioning of the European Union. The national central banks shall be liable according to their respective national laws.

35.4. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law.

35.5. A decision of the ECB to bring an action before the Court of Justice of the European Union shall be taken by the Governing Council.

35.6. The Court of Justice of the European Union shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under the Treaties and this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under the Treaties and this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the ECB, the latter may bring the matter before the Court of Justice of the European Union.

Article 36 **Staff**

36.1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.

36.2. The Court of Justice of the European Union shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.

Article 37 (ex Article 38) **Professional secrecy**

37.1. Members of the governing bodies and the staff of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

37.2. Persons having access to data covered by Union legislation imposing an obligation of secrecy shall be subject to such legislation.

Article 38 (ex Article 39) **Signatories**

The ECB shall be legally committed to third parties by the President or by two members of the Executive Board or by the signatures of two members of the staff of the ECB who have been duly authorised by the President to sign on behalf of the ECB.

Article 39 (ex Article 40) **Privileges and immunities**

The ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Union.

CHAPTER VIII
AMENDMENT OF THE STATUTE AND
COMPLEMENTARY LEGISLATION

Article 40 (ex Article 41)

Simplified amendment procedure

40.1. In accordance with Article 129(3) of the Treaty on the Functioning of the European Union, Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of this Statute may be amended by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure either on a recommendation from the ECB and after consulting the Commission, or on a proposal from the Commission and after consulting the ECB.

40.2. Article 10.2 may be amended by a decision of the European Council, acting unanimously, either on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the European Central Bank. These amendments shall not enter into force until they are approved by the Member States in accordance with their respective constitutional requirements.

40.3. A recommendation made by the ECB under this Article shall require a unanimous decision by the Governing Council.

Article 41 (ex Article 42)

Complementary legislation

In accordance with Article 129(4) of the Treaty on the Functioning of the European Union, the Council, either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this Statute.

CHAPTER IX
TRANSITIONAL AND OTHER PROVISIONS FOR
THE ESCB

Article 42 (ex Article 43)

General provisions

42.1. A derogation as referred to in Article 139 of the Treaty on the Functioning of the European Union shall entail that the following Articles of this Statute shall not confer any rights or impose any obligations on the Member State concerned: 3, 6, 9.2, 12.1, 14.3, 16, 18, 19, 20, 22, 23, 26.2, 27, 30, 31, 32, 33, 34, and 49.

42.2. The central banks of Member States with a derogation as specified in Article 139(1) of the Treaty on the Functioning of the European Union shall retain their powers in the field of monetary policy according to national law.

42.3. In accordance with Article 139 of the Treaty on the Functioning of the European Union, “Member States” shall be read as “Member States whose currency is the euro” in the following Articles of this Statute: 3, 11.2 and 19.

42.4. “National central banks” shall be read as “central banks of Member States whose currency is the euro” in the following Articles of this Statute: 9.2, 10.2, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and 49.

42.5. “Shareholders” shall be read as “central banks of Member States whose currency is the euro” in Articles 10.3 and 33.1.

42.6. “Subscribed capital of the ECB” shall be read as “capital of the ECB subscribed by the central banks of Member States whose currency is the euro” in Articles 10.3 and 30.2.

Article 43 (ex Article 44)

Transitional tasks of the ECB

The ECB shall take over the former tasks of the EMI referred to in Article 141(2) of the Treaty on the Functioning of the European Union which, because of the derogations of one or more Member States, still have to be performed after the introduction of the euro.

The ECB shall give advice in the preparations for the abrogation of the derogations specified in Article 140 of the Treaty on the Functioning of the European Union.

Article 44 (ex Article 45)

The General Council of the ECB

44.1. Without prejudice to Article 129(1) of the Treaty on the Functioning of the European Union, the General Council shall be constituted as a third decision-making body of the ECB.

44.2. The General Council shall comprise the President and Vice-President of the ECB and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.

44.3. The responsibilities of the General Council are listed in full in Article 46 of this Statute.

Article 45 (ex Article 46)

Rules of Procedure of the General Council

45.1. The President or, in his absence, the Vice-President of the ECB shall chair the General Council of the ECB.

45.2. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the General Council.

45.3. The President shall prepare the meetings of the General Council.

45.4. By way of derogation from Article 12.3, the General Council shall adopt its Rules of Procedure.

45.5. The Secretariat of the General Council shall be provided by the ECB.

Article 46 (ex Article 47)

Responsibilities of the General Council

46.1. The General Council shall:

- perform the tasks referred to in Article 43;
- contribute to the advisory functions referred to in Articles 4 and 25.1.

46.2. The General Council shall contribute to:

- the collection of statistical information as referred to in Article 5;
- the reporting activities of the ECB as referred to in Article 15;
- the establishment of the necessary rules for the application of Article 26 as referred to in Article 26.4;
- the taking of all other measures necessary for the application of Article 29 as referred to in Article 29.4;
- the laying down of the conditions of employment of the staff of the ECB as referred to in Article 36.

46.3. The General Council shall contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the euro as referred to in Article 140(3) of the Treaty on the Functioning of the European Union.

46.4. The General Council shall be informed by the President of the ECB of decisions of the Governing Council.

Article 47 (ex Article 48)

Transitional provisions for the capital of the ECB

In accordance with Article 29.1, each national central bank shall be assigned a weighting in the key for subscription of the ECB's capital. By way of derogation from Article 28.3, central banks of Member States with a derogation shall not pay up their subscribed capital unless the General Council, acting by a majority representing at least two thirds of the subscribed capital of the ECB and at least half of the shareholders, decides that a minimal percentage has to be paid up as a contribution to the operational costs of the ECB.

Article 48 (ex Article 49)

Deferred payment of capital, reserves and provisions of the ECB

48.1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the ECB to the same extent as the central banks of other Member States whose currency is the euro, and shall transfer to the ECB foreign reserve assets in accordance with Article 30.1. The sum to be transferred shall be determined by multiplying the euro value at current exchange rates of the foreign reserve assets which have already been transferred to the ECB in accordance with Article 30.1, by the ratio between the number of shares subscribed by the national central bank concerned and the number of shares already paid up by the other national central banks.

48.2. In addition to the payment to be made in accordance with Article 48.1, the central bank concerned shall contribute to the reserves of the ECB, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December of the year prior to the abrogation of the derogation. The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the ECB, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already paid up by the other central banks.

48.3. Upon one or more countries becoming Member States and their respective national central banks becoming part of the ESCB, the subscribed capital of the ECB and the limit on the amount of foreign reserve assets that may be transferred to the ECB shall be automatically increased. The increase shall be determined by multiplying the respective amounts then prevailing by the ratio, within the expanded capital key, between the weighting of the entering national central banks concerned and the weighting of the national central banks already members of the ESCB. Each national central bank's weighting in the capital key shall be calculated by

analogy with Article 29.1 and in compliance with Article 29.2. The reference periods to be used for the statistical data shall be identical to those applied for the latest quinquennial adjustment of the weightings under Article 29.3.

Article 49 (ex Article 52)

Exchange of banknotes in the currencies of the Member States

Following the irrevocable fixing of exchange rates in accordance with Article 140 of the Treaty on the Functioning of the European Union, the Governing Council shall take the necessary measures to ensure that banknotes denominated in currencies with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

Article 50 (ex Article 53)

Applicability of the transitional provisions

If and as long as there are Member States with a derogation, Articles 42 to 47 shall be applicable.

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