

DECISION (EU) 2017/933 OF THE EUROPEAN CENTRAL BANK**of 16 November 2016****on a general framework for delegating decision-making powers for legal instruments related to supervisory tasks (ECB/2016/40)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.3 thereof,

Whereas:

- (1) The conferral of supervisory tasks by Council Regulation (EU) No 1024/2013 ⁽¹⁾ on the European Central Bank (ECB) represents a challenge for the effectiveness and efficiency of the ECB's decision-making process, given the high number of decisions required in relation to the ECB's banking supervision tasks.
- (2) Pursuant to Article 13(2) of the Treaty on European Union, all Union institutions must act within the limits of the powers conferred on them by the Treaties and in conformity with the procedures, conditions and objectives set out therein. Article 9.3 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') provides that the ECB has two decision-making bodies, which are the Governing Council and the Executive Board.
- (3) Article 11.6 of the Statute of the ESCB establishes the responsibility of the Executive Board for the current business of the ECB. In this connection, Articles 10.1 and 10.2 of the Rules of Procedure of the European Central Bank (hereinafter the 'Rules of Procedure'), as adopted in Decision ECB/2004/2 ⁽²⁾, establish that all ECB work units fall under the managing direction of the Executive Board. Pursuant to Article 13m.1 of the Rules of Procedure, the Executive Board's competence in respect of the internal structure and the staff of the ECB encompasses supervisory tasks.
- (4) In accordance with Article 25 of Regulation (EU) No 1024/2013 the tasks conferred on the ECB must be carried out without prejudice to and separately from the ECB's tasks relating to monetary policy and any other tasks. Furthermore, Article 25 provides that the staff involved in carrying out these tasks must be organisationally separated from, and subject to, separate reporting lines from the staff involved in carrying out other tasks conferred on the ECB. This organisational separation, where the staff involved in carrying out the tasks conferred on the ECB by Regulation (EU) No 1024/2013 report to the Chair of the Supervisory Board, has been implemented in accordance with Decision ECB/2014/39 ⁽³⁾.
- (5) The Executive Board does not have decision-making competence with regard to supervisory decisions. Article 26(1) of Regulation (EU) No 1024/2013 established the Supervisory Board as an internal body that undertakes the planning and execution of the tasks conferred by Regulation (EU) No 1024/2013 on the ECB. Pursuant to Article 26(8) of Regulation (EU) No 1024/2013, the Supervisory Board carries out preparatory works regarding the supervisory tasks conferred on the ECB and proposes to the Governing Council complete draft decisions, which are adopted if the latter does not object to them. The Supervisory Board is not a decision-making body of the ECB in accordance with Article 129(1) of the Treaty on the Functioning of the European Union (TFEU) and Article 9.3 of the Statute of the ESCB.
- (6) The case-law of the Court of Justice of the European Union (CJEU) has established that a procedure for delegating decisions may be necessary, taking into account the considerable number of decisions that an institution may be required to adopt, in order to enable the institution to perform its duties. The CJEU has recognised that ensuring that a decision-making body is able to function corresponds to a principle inherent in all institutional systems ⁽⁴⁾.

⁽¹⁾ 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 (OJ L 287, 29.10.2013, p. 63).

⁽²⁾ 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).

⁽³⁾ Decision ECB/2014/39 of 17 September 2014 on the implementation of separation between the monetary policy and supervision functions of the European Central Bank (OJ L 300, 18.10.2014, p. 57).

⁽⁴⁾ Judgments of the Court of Justice of 23 September 1986, *AKZO Chemie BV and AKZO Chemie UK Ltd v Commission*, 5/85, ECLI:EU:C:1986:328, paragraph 37, and of 26 May 2005, *Carmine Salvatore Tralli v ECB*, C-301/02 P, ECLI:EU:C:2005:306, paragraph 59.

Therefore, the powers conferred on an institution include the right to delegate, in compliance with the provisions of the TFEU, a certain number of those powers, subject to any conditions specified by the institution. A Union institution may therefore establish measures of an organisational nature, delegating powers to its own internal decision-making bodies, insofar as such measures are justified and respect the principle of proportionality.

- (7) A general framework decision on delegation is required as part of the internal organisation of the ECB and its decision-making bodies. The legal instruments whose adoption may be delegated include supervisory decisions as defined by Article 2(26) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽¹⁾ or instructions related to supervisory tasks as referred to in Article 17a.3 of the Rules of Procedure. This general framework decision should serve to clarify the procedure to be followed for adopting specific supervisory decisions and should establish the scope of responsibilities of the Executive Board and any head of a work unit of the ECB to whom decision-making powers are delegated. This general framework decision should neither affect the exercise of the supervisory tasks of the ECB nor prejudice the competence of the Supervisory Board to propose complete draft decisions to the Governing Council.
- (8) Within this framework, the Governing Council should adopt delegation decisions in accordance with this general framework decision and the non-objection procedure in Article 26(8) of Regulation (EU) No 1024/2013. This complies with the CJEU's case-law, which states that a delegation decision must be taken under the procedure that would apply if a final decision were to be adopted by the delegating authority. The Supervisory Board may at any time submit a proposal for a complete draft decision to the Governing Council, in accordance with Article 26(8) of Regulation (EU) No 1024/2013, proposing the abrogation or the amendment of a specific delegation decision. Such abrogation or amendment should be without prejudice to any delegated decision already taken. Decisions on issues that fall outside the scope of the delegation decision must be adopted in accordance with the non-objection procedure,

HAS ADOPTED THIS DECISION:

Article 1

Supplementary nature

This Decision shall supplement the Rules of Procedure.

Article 2

Subject matter and scope

This Decision lays down rules on the delegation of clearly defined decision-making powers of the Governing Council in relation to supervisory legal instruments.

Article 3

Definitions

The terms used in this Decision shall have the same meaning as the terms defined in the Rules of Procedure, together with the following definitions:

- (1) 'supervisory legal instrument' means a legal instrument regarding the supervisory tasks of the ECB;
- (2) 'delegation decision' means a decision of the Governing Council to delegate decision-making powers in relation to supervisory legal instruments to heads of work units of the ECB;

⁽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) (OJ L 141, 14.5.2014, p. 1).

- (3) 'nomination decision' means a decision of the Executive Board to nominate one or more heads of work units of the ECB to take decisions on the basis of a delegation decision;
- (4) 'delegated decision' means a decision in relation to supervisory legal instruments taken on the basis of delegated decision-making powers.

Article 4

Delegation decisions

The Governing Council may delegate decision-making powers in relation to supervisory legal instruments to heads of work units of the ECB by adopting a delegation decision in accordance with the procedure laid down in Article 26(8) of Regulation (EU) No 1024/2013. A delegation decision shall set out in detail the scope of the matter to be delegated and the conditions on the basis of which such powers may be exercised, and shall be effective upon adoption of a nomination decision by the Executive Board in accordance with Article 5.

Article 5

Nomination decisions

1. The Executive Board may nominate one or more heads of work units of the ECB to take decisions on the basis of a delegation decision by adopting a nomination decision after having consulted the Chair of the Supervisory Board.
2. The heads of work units of the ECB referred to in paragraph 1 shall be chosen from among the heads of work units of the ECB involved in carrying out supervisory tasks that are organisationally separated from the tasks of staff involved in carrying out other tasks conferred on the ECB in accordance with Article 25 of Regulation (EU) No 1024/2013. The selection of the heads of work units of the ECB shall also take into account the importance of the delegation decision and the number of addressees to whom delegated decisions need to be sent.

Article 6

Delegated decisions

1. Delegated decisions shall be taken on behalf of and under the responsibility of the Governing Council.
2. Where one head of work unit of the ECB has been nominated to take decisions on the basis of a delegation decision in accordance with Article 5(1), delegated decisions shall be signed by that head of work unit of the ECB. Where more than one head of work unit of the ECB has been nominated to take decisions on the basis of a delegation decision in accordance with Article 5(1), delegated decisions shall be signed by the nominated heads of work units of the ECB who have approved the delegated decision.

Article 7

Recording of and reporting on delegated decisions

1. The Secretariat of the Supervisory Board shall keep a record of any delegated decisions taken in accordance with this Decision and shall inform the Secretariat of the Governing Council of such decisions on a monthly basis.
2. The Secretariat of the Governing Council shall submit a quarterly report on the exercise of delegated decision-making powers in relation to supervisory legal instruments to the Governing Council and the Supervisory Board.

*Article 8***Review of delegated decisions**

1. Delegated decisions may be subject to an internal administrative review in accordance with Article 24 of Regulation (EU) No 1024/2013 and as provided for by Decision ECB/2014/16 ⁽¹⁾.
2. In the event of such an administrative review, the Supervisory Board shall take into account the opinion of the Administrative Board of Review and submit a new draft decision to the Governing Council for adoption in accordance with the non-objection procedure in Article 26(8) of Regulation (EU) No 1024/2013.

*Article 9***Entry into force**

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

Done at Frankfurt am Main, 16 November 2016.

The President of the ECB

Mario DRAGHI

⁽¹⁾ Decision ECB/2014/16 of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules (OJ L 175, 14.6.2014, p. 47).