

MEMORANDUM OF UNDERSTANDING BETWEEN THE SSM-ECB AND THE CENTRAL BANK OF MONTENEGRO

This Memorandum of Understanding is made BETWEEN

The Central Bank of Montenegro, with its headquarters at Bulevar Svetog Petra Cetinjskog 6, 81000 Podgorica, Montenegro,

hereinafter the 'CBCG',

AND

The European Central Bank, with its headquarters at Sonnemannstrasse 20, 60314 Frankfurt am Main, Germany,

hereinafter the 'ECB',

(hereinafter jointly 'the Authorities' and each of them, individually, 'the Authority')

WHEREAS:

- (1) Council Regulation (EU) No 1024/2013¹ (hereinafter the 'SSM Regulation') confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions. This Memorandum of Understanding will cover the supervisory tasks conferred on the ECB by Article 4, read in conjunction with Article 6(4), of the SSM Regulation. Cooperation under this Memorandum of Understanding is without

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).

prejudice to the NCAs² tasks and responsibilities under European Union and national laws, as well as Memoranda of Understanding they are part to (or will become part to) for the performance of their tasks.

- (2) Article 6 of the SSM Regulation lays down the criteria for the identification of supervised entities. The methodology for the assessment of the criteria is laid down in Regulation (EU) No 468/2014 of the European Central Bank³ (hereinafter the 'SSM Framework Regulation'), especially its Articles 39 to 72. An up-to-date list of significant credit institutions and less significant credit institutions is published on the ECB's website⁴.
- (3) The ECB enters into this Memorandum of Understanding having regard to Article 55 of Directive 2013/36/EU⁵, Article 8 of the SSM Regulation, and Article 152 of the SSM Framework Regulation.
- (4) Pursuant to the Central Bank of Montenegro Law, the CBCG is the national competent authority for the supervision of credit institutions in Montenegro.
- (5) The CBCG enters into this Memorandum of Understanding on the basis of the Banking Law.
- (6) Through this Memorandum of Understanding, the ECB and the CBCG express their willingness to cooperate with each other on the basis of mutual trust and understanding for the purpose of performing their supervisory tasks in respect of cross border credit institutions that fall within their supervisory responsibilities under the SSM Regulation and the Banking Law.
- (7) In order to allow for smooth communication between them, the Authorities will nominate contact persons who represent them in the activities covered by the present Memorandum of Understanding (see list in Annex 1 providing the contact details of the contact persons).
- (8) The Authorities commit to the protection of personal data contained in the information that they exchange under the terms of this Memorandum of Understanding.

² National Competent Authorities of the participating Member States of the European Union (NCAs).

³ Regulation (EU) No 468/2014 of the European Central Bank of 16 April establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (OJ L 141, 14.5.2014, p. 1).

⁴ <https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>

⁵ 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance (Official Journal of the European Union, L 176, 27.6.2013, p. 338). Pursuant to Article 55 of Directive 2013/36/EU, a condition for the ECB to enter into agreements with third country Authorities is that their confidentiality regime is equivalent to the one in the EU.

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

DEFINITIONS⁶

For the purpose of this Memorandum of Understanding:

'supervised entities' means entities that fall within the supervisory remit of the Authorities, as identified by their respective legislation, including their cross-border establishments⁷;

'Authority' means any of the signatories of this Memorandum of Understanding, together also referred to as 'Authorities';

'cross-border establishment' means a branch, a subsidiary or any other entity of a supervised entity operating or localised within one jurisdiction, and over which the Authority in the other jurisdiction exercises supervisory responsibilities;

'participating Member States' 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 of the SSM Regulation;

'authorisation process' means the process pursuant to which a supervised entity is permitted to perform its activities⁸;

'qualifying holding assessments': the assessment that the Authorities are required to perform, in applying their respective legislations, in respect of purchases of, or variations in, holdings in a supervised entity – intended or accomplished and in whatever form⁹;

'assessment of directors' means the assessment that the Authorities are required to perform, when applying their respective legislations, in respect of those who direct the business of a supervised entity¹⁰;

'requested Authority' means the Authority to whom a request is addressed to under this Memorandum of Understanding;

⁶ The Authorities recognise that while they may define terms differently in their laws, regulations and requirements, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

⁷ For the ECB the term can refer to credit institutions, financial holding companies and mixed financial holding companies as defined in 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).

⁸ For the ECB, the legal reference is Article 4(1)(a) of the SSM Regulation, read together with Article 8 et seq. of Directive 2013/36/EU.

⁹ For the ECB, the legal reference is Article 4(1)(c) of the SSM Regulation, read together with Article 22 et seq. of Directive 2013/36/EU.

¹⁰ For the ECB, the legal reference is Article 4(1)(e) of the SSM Regulation, read together with Articles 91 and 121 of Directive 2013/36/EU.

- 'requesting Authority' means the Authority making a request under this Memorandum of Understanding;
- 'laws, regulations and requirements' means the provisions of the laws, or the regulations and requirements promulgated thereunder, of Montenegro and of the European Union in relation to the prudential supervision of the supervised entities;
- 'jurisdiction' means the territory of the country concerned under this Memorandum of Understanding. For the purposes of this Memorandum of Understanding, each of the territories of the participating Member States is considered to be an ECB's jurisdiction.

Article 1

Purpose and general principles

The purpose of this Memorandum of Understanding is to formalise cooperation and information-sharing mechanisms between the ECB and the CBCG, the competent supervisory Authority of Montenegro. Such cooperation is essential in order to promote the integrity, stability and efficiency of the supervised entities.

This Memorandum of Understanding is aimed at ensuring the effective exchange of supervisory information for the performance of the Authorities' respective supervisory powers over supervised entities, to the extent permitted by law, and in accordance with the Core Principles for Effective Banking Supervision developed by the Basel Committee on Banking Supervision.

The Authorities recognise that cooperation under this Memorandum of Understanding may be denied on the grounds of laws, regulations and requirements, or public interest, as well as where it would interfere with an on-going investigation or jeopardise the proper performance of the tasks of the Authorities, including due to resources constraints.

Article 2

Principles regarding exchange of information

Each Authority will endeavour to provide the other Authority, on a timely basis upon request or on its own initiative, where appropriate and insofar as feasible, with any information that is necessary for the exercise of the other Authority's supervisory tasks.

A request for information will include the following:

- i. a description of the facts underlying the request, and its purpose;
- ii. the reasons why the information is likely to be relevant for the proper performance of the requesting Authority's tasks, and in light of the requesting Authority's legislation, including a specification of the supervisory tasks that are connected with the subject matter of the request;

- iii. any information known to, or in the possession of, the requesting Authority that might assist the requested Authority in fulfilling the request.

Where a request for information is denied or the information requested is not available, the requested Authority will provide the reasons for not sharing the information.

The exchange of information will be conducted in writing, regardless of its format (paper, electronic communication or other). Both the request for information and the communication of the requested information will be addressed between the Authorities primarily through the designated contact persons (see list in Annex 1). In urgent circumstances, requests may be made by telephone, provided that they are subsequently confirmed in writing within 5 working days.

Article 3 **Confidentiality**

The Authorities will endeavour to preserve the confidentiality of the information received to the extent permitted by laws, regulations and requirements. In this regard, each Authority will hold confidential all information received from the other Authority. Any confidential information received by the requesting Authority from the requested Authority will be used exclusively for lawful supervisory purposes, and will not be disclosed except as set out below.

The Authorities will endeavour that all persons dealing with, or having access to confidential information (including members of the Authority, employees, external providers having access to confidential information) are bound by the obligations of professional secrecy in compliance with relevant laws, regulations and requirements.

Either Authority may be requested by a third party to disclose confidential information received under this Memorandum of Understanding, or alternatively, may consider it appropriate to disclose confidential information to a third party, including a supervisory authority that might have a legitimate interest in such information. The prior consent of the requested Authority will be sought and obtained in writing by the requesting Authority before any disclosure to a third party of confidential information exchanged under this Memorandum of Understanding will occur. The requested Authority may deny disclosure or impose conditions to the disclosure, including that the third party will hold the information confidentially.

Where required under a legal obligation to disclose confidential information received pursuant to this Memorandum of Understanding, the requesting Authority will, to the extent permitted by law, inform the requested Authority about the purposes for which the information is proposed to be shared, the uses that the third party could make of the information and the safeguards that the third party would apply to ensure confidentiality. Where the requested Authority does not consent to the disclosure to a third party, and where possible and appropriate, the requesting Authority will take reasonable steps to resist disclosure, including by employing legal means to challenge the request for disclosure or by advising the third party of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.

Article 4
Protection of personal data

The ECB will process any personal data contained in the information received from the other Authority under this Memorandum of Understanding in accordance with 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 data¹¹ and Decision ECB/2007/1 of the European Central Bank of 17 April 2007 adopting implementing rules concerning data protection at the ECB¹².

The other Authority will process any personal data contained in the information received from the ECB under this Memorandum of Understanding in accordance with the provisions of the data transfer agreement set out in Annex 2.

Article 5
Cooperation in relation to the on-going supervision

Each Authority will use its best endeavours to provide, upon prior request, or on its own initiative where appropriate, the other Authority with any information that is likely to be of assistance to it in order to promote the safe and sound functioning of supervised entities.

Each Authority will provide relevant information to the other in a timely manner, and up to a maximum of 15 working days, following the occurrence of any event that has the potential to have a material adverse impact on the operations of a cross-border credit institution in the other jurisdiction.

The information mentioned under this Article will be given insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 6
On-going coordination/cooperation

The Authorities will conduct meetings, as appropriate, to discuss issues concerning supervised entities that maintain cross-border establishments in their respective jurisdictions, and to review the effectiveness of this Memorandum of Understanding. The Authorities also intend, where practicable, to promote their cooperation by means of visits for informational purposes.

To the extent possible, the Authorities will conduct their communication via the designated contact persons set out in Annex 1. This Annex may be amended by written notice from either Authority without the need to amend this Memorandum of Understanding.

¹¹ OJ L 8, 12.1.2001, p. 1.

¹² OJ L 116, 4.5.2007, p. 64.

The information mentioned under this Article will be given insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 7

Cooperation in relation to the authorisation process / qualifying holdings assessments / assessment of directors

The Authorities will notify each other, without delay, of applications for approval to establish cross-border establishments or make acquisitions.

Upon request, the Authorities will inform each other whether the applicant is in substantial compliance with applicable laws and regulations and whether it may be expected, in light of its administrative structure and internal controls where relevant, to manage the supervised entity or the cross-border establishment in an orderly manner. The Authorities will also, upon request, assist each other with verifying or supplementing any information submitted by the applicant.

Upon request, the Authorities will inform each other about the nature of its supervisory system and the extent to which it will conduct supervision, including consolidated or group-wide, over the applicant.

Upon request, and where available, the Authorities will supply each other with information on proposed acquirers.

To the extent permitted by their respective laws and regulations, the Authorities will share information on the fitness and propriety of prospective directors and managers of a cross-border establishment. The communication of such personal data is subjected to the EU data protection law and in particular to its rules on transfers of personal data. Therefore, the communication of such personal data can only be pursued upon signature of the clauses attached to this MoU and under the terms of the said framework.

Article 8

Breach reporting mechanism (BRM)

The Authorities will share the information at their disposal through a breach reporting mechanism/whistleblowing scheme, if such exchange of information is necessary and proportionate. An exchange of information in this regard shall be subject to any relevant statutory provisions, including those restricting disclosure. Furthermore, any exchange of personal data has to be in line with the applicable data protection legal framework as stated in Article 4 of this Memorandum of Understanding.

Article 9
Cooperation in relation to enforcement and sanctions

Upon request, each Authority will inform the other of non-public administrative pecuniary penalties, enforcement or sanction decisions in respect of a cross border establishments or in respect of supervised entities insofar as it relates to the operation of cross-border establishments in that jurisdiction¹³.

The above mentioned information will be given as far as practicable and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 10
Cooperation in relation to on-site inspections

The Authorities will assist each other as far as practicable, with the conduct of on-site inspections of cross border establishments situated in the other Authority's jurisdiction. Where assistance cannot be provided, the Authority requested to provide assistance will notify it to the other Authority as soon as deemed practical.

The Authorities will duly notify each other of plans to inspect a cross-border establishment, or to appoint a third party to conduct an inspection on its behalf in advance, and will do so at least one month in advance for non-urgent missions. This notification will detail the purposes, scope, expected starting and ending dates of the inspection, the cross-border establishment to be inspected, and the names of the persons leading the inspection. The Authorities reserve the right to accompany each other on such an inspection. On conclusion of the inspection of the cross-border establishment, the Authority performing the examination will present the Authority with the relevant findings, and/or will provide it with the relevant sections of the on-site inspection report within a reasonable timeframe.

The information mentioned under this Article will be given insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 11
Cooperation in relation to internal models or advanced approaches (internal models)

The Authorities agree that cooperation is useful in achieving a deep understanding of the implementation of the internal models in the credit institutions that fall under their supervision. In this regards, the Authorities will in particular endeavour to exchange views and information: (a) on the role that these tools have in the supervised entity's decision making process; (b) on the data and IT framework set up to ensure that all relevant information is properly reflected into the internal models; and (c) on the internal controls and internal governance that apply at individual and consolidated level.

¹³ For the requests addressed to the ECB, this means that the ECB may only share information related to administrative pecuniary penalties imposed pursuant to Article 18(1) of the SSM Regulation, and sanctions imposed pursuant to Article 18(7) of the SSM Regulation.

The Authorities agree that a common decision with respect to the authorisation request is needed for guaranteeing a calculation of the minimum capital requirements at the consolidated level that is consistent with those obtained at the individual level. In order to reach such a common decision, the Authorities will provide each other, in due time, with all the relevant information, including the supervised entities' plans for implementing the internal models for regulatory purposes.

The Authorities agree that initial identification of the tasks to be performed during the assessment and judicious division of the work involved in carrying out these tasks guarantee an effective and efficient way to reach a common decision on the request for authorisation. During the assessment, both Authorities will keep each other informed, in a timely manner, of the results of the investigation and the main deficiencies identified.

Where an on-site inspection is needed to perform the internal-models-related assessment, the Authorities will apply Article 10.

The final common decision will be agreed upon by the Authorities and communicated to the concerned supervised entity at the same time by each Authority.

The Authorities agree that close cooperation is needed to guarantee proper implementation of the recommendations provided in the final common decision. The Authorities will use their best endeavours to share the work involved in reviewing the actions taken by the supervised entity in order to address these recommendations.

The information mentioned under this Article will be given insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 12

Cooperation in relation to emergency situations

The Authorities will inform each other immediately if they become aware of an incipient crisis such as, but not limited to, serious financial difficulties which might have an adverse impact on operations relating to any supervised entity in the respective jurisdictions of the Authorities.

To the extent possible, and without prejudice to their involvement in the relevant cross-border cooperation fora, the Authorities will endeavour to seek coordinated responses to any crisis emerging in a cross-border establishment operating in their respective jurisdictions, in accordance with their respective applicable legislations.

Article 13

Status of this Memorandum of Understanding

This Memorandum of Understanding sets forth a statement of intent and does not modify nor supersede any laws, regulations and requirements in force in, or applying to, Montenegro or the European Union or any of the Member States of the European Union. Nor does this

Memorandum of Understanding create any directly or indirectly enforceable rights for the Authorities or any third party.

This Memorandum of Understanding is without prejudice to other cooperation arrangements that each Authority might conclude, and can be supplemented with specific memoranda of understanding between the same Authorities agreed upon for the purpose of cooperating for the supervision of a specific cross-border establishment.

The Authorities will use their best endeavours in the performance of this Memorandum of Understanding. However, neither Authorities nor any third party can bear or seek any liability regarding the performance of this Memorandum of Understanding.

Any disagreement arising from the interpretation or the performance of this Memorandum of Understanding will be amicably settled by means of consultations between the Authorities.

Any amendment to this Memorandum of Understanding, including this Article, will be made in English and have effect only if executed by the Authorities in writing. The CBCG will be responsible for any translation to the Montenegrin language required by the national law of Montenegro.

This Memorandum of Understanding will take effect as of the later of the two dates written below and will continue indefinitely, subject to modification by mutual consent of the Authorities or termination by either Authority with 30 days prior notice to the other Authority.

In the event of termination of this Memorandum of Understanding, the information obtained hereunder will continue to be treated in accordance with the confidentiality regime.

Signed in two original copies by the duly authorised representatives.

For the Central Bank of Montenegro

Date:

.....

Radoje Žugić
Governor of the CBCG

For the European Central Bank

Date:

.....

[signature]

Danièle Nouy
Chair of the Supervisory Board of the ECB

For the European Central Bank

Date:

.....

[signature]

Sabine Alice Lautenschläge
Vice-Chair of the Supervisory Board of the
ECB

Annex 2
Data Protection contractual clauses related to the Memorandum of Understanding
between the ECB and the CBCG

The European Central Bank (ECB), hereinafter: the “data exporter”

and

the Central Bank of Montenegro (CBCG), hereinafter “data importer”

each a “party”; together “the parties”,

acting in good faith, warrant and undertake that they will meet all obligations specified in the clauses that follow, and that they have the legal authority to do so.

1. DEFINITIONS

For the purposes of these clauses:

1.1. “personal data”, “special categories of data”, “processing of personal data”, “controller”, “processor”, “data subject”, and “adequate protection” shall have the same meaning as in Regulation (EC) 45/2014.

1.2. “ECB personal data” shall mean personal data which are transferred by the ECB to the CBCG in the context of this Memorandum of Understanding.

1.3. “CBCG personal data” shall mean personal data which are transferred by the CBCG to the ECB in the context of this Memorandum of Understanding.

1.4. “data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;

1.5. “data exporter” shall mean the controller who transfers the personal data;

1.6. “clauses” shall mean these contractual clauses.

2. JOINT OBLIGATIONS

2.1. The data importer shall process personal data of the data exporter only for purposes described in Article 1 of the Memorandum of Understanding.

2.2. The data importer has in place appropriate technical and organisational measures to protect the data exporter's personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected. The data importer shall process all data received from the data exporter on its own premises, and will not process the data by means of services provided by external service providers.

2.3. The data importer has in place procedures to ensure that any third party which it has authorised to have access to the data exporter's personal data, including processors, shall respect and maintain the confidentiality and security of such data. Any person acting under the authority of the data importer, including a data processor will be required to process the personal data only on instructions from the data importer and only on the premises of the data importer.

2.4. The data importer will disclose personal data provided by the data exporter to government authorities, including non-EU government authorities, only with the express agreement of the data exporter. Such agreement must be obtained from the data exporter on each occasion of a proposed disclosure, before the disclosure is made.

(i) Such government authorities shall be obliged by the express terms of disclosure to:

(1) use the personal data only for the purpose of prudential supervision,

(2) ensure the orderly disposal of any personal data received, consistent with such authority's record retention procedures, and

(3) obtain the data exporter's express permission for any further dissemination.

(ii) Failure to respect the conditions for transfer will make such government authority ineligible to receive subsequent transfers from the data importer of the data exporter's personal data.

2.5. Upon request, each of the parties shall provide either the other party, or an independent/impartial inspection agent or auditor, which the inspecting party selects and which is not reasonably objected to by the inspected party, or the competent court, as the case may be, with sufficient evidence of compliance, and shall demonstrate the effectiveness of measures taken.

3. OBLIGATIONS OF THE ECB. The ECB warrants and undertakes that:

3.1. CBCG personal data shall be processed and further transferred by the ECB in accordance with the law applicable to the ECB, in particular Articles 7 and 8 EU Charter of Fundamental Rights and Regulation (EC) No. 45/2001.

3.2. ECB personal data have been collected, processed and transferred in accordance with the law applicable to the ECB, and in particular in accordance with Article 9 of Regulation (EC) 45/2001.

3.3. The ECB has used reasonable efforts to determine that the CBCG is able to satisfy its legal obligations under these clauses.

3.4. The ECB has provided the CBCG with a copy of Regulation (EC) 45/2001 and will provide it, when so requested, with copies of any other relevant data protection laws or references to them of the EU, and will keep it informed of any changes to such laws relevant to the ECB's obligations concerning this Memorandum of Understanding.

3.5 The ECB shall implement appropriate and effective measures to ensure that the principles and obligations set out in Regulation 45/2001 are satisfied, and shall demonstrate compliance to the EDPS on its request.

3.6. The ECB shall respond to enquiries from data subjects and the European Data Protection Supervisor (EDPS) concerning the processing of ECB personal data by the CBCG, unless both parties have agreed in a particular case that the CBCG will send the response. In that event the ECB will respond to the extent reasonably possible and with the information reasonably available to it if the CBCG is unwilling or unable to respond. Responses will be made within three months.

3.7. The ECB shall make available to data subjects, upon request, a copy of this Memorandum of Understanding and its Annex.

3.8. The ECB shall record each transfer or series of transfers of ECB personal data, and each of the ECB's' onward transfers of CBCG personal data to a third party. It will also record each request from the CBCG for an onward transfer of ECB personal data, and the ECB's reply. The records will specify the data subjects and categories of data subjects, the purpose of the transfer, and categories of data transferred the recipient, whether special categories of data are concerned, and any other relevant and necessary information.

4. OBLIGATIONS OF THE CBCG

4.1. To enable the ECB to meet its obligation to adduce adequate safeguards for the protection of the personal data which it exports to a recipient not subject to the EU data protection regime, the CBCG warrants and undertakes that it will process ECB personal data in accordance with the Data Protection Principles set forth in the Appendix to these clauses.

4.2. The CBCG warrants and undertakes that is has no reason to believe, at the time of entering into these clauses, in the existence of any laws to which it is subject that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the ECB if it becomes aware of any such laws.

5. INTERPRETATION OF THE CLAUSES

These clauses shall be construed in accordance with the ECB's obligations under applicable EU law, as interpreted by the courts of the EU.

6. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE EDPS

6.1. In the event of a dispute or claim brought by a data subject or the European Data Protection Supervisor (EDPS) concerning the processing of the personal data against either or both of the parties, the parties will inform each other, and will cooperate with a view to an amicable settlement in a timely fashion.

6.2. The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the EDPS. If they participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other non-binding arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

6.3. In the event that all efforts on dispute resolution as set out under points 6.1 and 6.2 fail, the ECB must bear responsibility in accordance with Article 32 of Regulation (EC) 45/2001 for any damage suffered by the data subject as a result of a violation of these clauses. Such responsibility covers damages resulting from violations committed by the CBCG in cases where the data subject was not able reasonably to obtain redress from the CBCG.

7. SUSPENSION AND TERMINATION

7.1. In the event that either party fails to respect its undertakings under these clauses, the other party may temporarily suspend the transfer of its personal data until the breach is repaired or the Memorandum of Understanding is terminated.

7.2. In the event that the transfer of personal data is suspended by either party, or that the Memorandum of Understanding is terminated, the EDPS shall be so informed. Such suspension or termination does not exempt the parties from the obligations and/or conditions under the clauses as regards the processing of the personal data already transferred.

Signed in two original copies by the duly authorised representatives.

ECB-RESTRICTED

For the Central Bank of Montenegro

For the European Central Bank

Date:

Date:

.....

.....

[signature]

Radoje Žugić

Danièle Nouy

Governor of the CBCG

Chair of the Supervisory Board of the ECB

For the European Central Bank

Date:

.....

[signature]

Sabine Alice Lautenschläge

Vice-Chair of the Supervisory Board of the
ECB

APPENDIX

DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Article 1 of the Memorandum of Understanding or subsequently authorised by the data subject.

2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed. The data should be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or further processed.

3. Transparency: The controller must provide data subjects with specified information in accordance with Articles 11 and 12 of Regulation 45/2001. The provision of such information may be deferred in accordance with Article 20.

4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.

5. Rights of access, rectification, deletion and objection: Data subjects must have access to their personal data and must be able to have the personal data about them rectified, blocked or erased in accordance with Articles 13-16 of the Regulation. Notification of any rectification, blocking or erasure to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. Data subjects must also be able to object to the processing of the personal data relating to them if there are compelling legitimate grounds relating to their particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the EDPS.

6. Special categories of data: The controller shall take such additional measures (e.g. relating to security) as are necessary to protect such special categories of data in accordance with its obligations under clause 2.2.

Annex 2
Data Protection contractual clauses related to the Memorandum of Understanding
between the ECB and the CBCG

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and

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each a “party”; together “the parties”,

acting in good faith, warrant and undertake that they will meet all obligations specified in the clauses that follow, and that they have the legal authority to do so.

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2.2. The data importer has in place appropriate technical and organisational measures to protect the data exporter's personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected. The data importer shall process all data received from the data exporter on its own premises, and will not process the data by means of services provided by external service providers.

2.3. The data importer has in place procedures to ensure that any third party which it has authorised to have access to the data exporter's personal data, including processors, shall respect and maintain the confidentiality and security of such data. Any person acting under the authority of the data importer, including a data processor will be required to process the personal data only on instructions from the data importer and only on the premises of the data importer.

2.4. The data importer will disclose personal data provided by the data exporter to government authorities, including non-EU government authorities, only with the express agreement of the data exporter. Such agreement must be obtained from the data exporter on each occasion of a proposed disclosure, before the disclosure is made.

(i) Such government authorities shall be obliged by the express terms of disclosure to:

- (1) use the personal data only for the purpose of prudential supervision,
- (2) ensure the orderly disposal of any personal data received, consistent with such authority's record retention procedures, and
- (3) obtain the data exporter's express permission for any further dissemination.

(ii) Failure to respect the conditions for transfer will make such government authority ineligible to receive subsequent transfers from the data importer of the data exporter's personal data.

2.5. Upon request, each of the parties shall provide either the other party, or an independent/impartial inspection agent or auditor, which the inspecting party selects and which is not reasonably objected to by the inspected party, or the competent court, as the case may be, with sufficient evidence of compliance, and shall demonstrate the effectiveness of measures taken.

3. OBLIGATIONS OF THE ECB. The ECB warrants and undertakes that:

3.1. CBCG personal data shall be processed and further transferred by the ECB in accordance with the law applicable to the ECB, in particular Articles 7 and 8 EU Charter of Fundamental Rights and Regulation (EC) No. 45/2001.

3.2. ECB personal data have been collected, processed and transferred in accordance with the law applicable to the ECB, and in particular in accordance with Article 9 of Regulation (EC) 45/2001.

3.3. The ECB has used reasonable efforts to determine that the CBCG is able to satisfy its legal obligations under these clauses.

3.4. The ECB has provided the CBCG with a copy of Regulation (EC) 45/2001 and will provide it, when so requested, with copies of any other relevant data protection laws or references to them of the EU, and will keep it informed of any changes to such laws relevant to the ECB's obligations concerning this Memorandum of Understanding.

3.5 The ECB shall implement appropriate and effective measures to ensure that the principles and obligations set out in Regulation 45/2001 are satisfied, and shall demonstrate compliance to the EDPS on its request.

3.6. The ECB shall respond to enquiries from data subjects and the European Data Protection Supervisor (EDPS) concerning the processing of ECB personal data by the CBCG, unless both parties have agreed in a particular case that the CBCG will send the response. In that event the ECB will respond to the extent reasonably possible and with the information reasonably available to it if the CBCG is unwilling or unable to respond. Responses will be made within three months.

3.7. The ECB shall make available to data subjects, upon request, a copy of this Memorandum of Understanding and its Annex.

3.8. The ECB shall record each transfer or series of transfers of ECB personal data, and each of the ECB's' onward transfers of CBCG personal data to a third party. It will also record each request from the CBCG for an onward transfer of ECB personal data, and the ECB's reply. The records will specify the data subjects and categories of data subjects, the purpose of the transfer, and categories of data transferred the recipient, whether special categories of data are concerned, and any other relevant and necessary information.

4. OBLIGATIONS OF THE CBCG

4.1. To enable the ECB to meet its obligation to adduce adequate safeguards for the protection of the personal data which it exports to a recipient not subject to the EU data protection regime, the CBCG warrants and undertakes that it will process ECB personal data in accordance with the Data Protection Principles set forth in the Appendix to these clauses.

4.2. The CBCG warrants and undertakes that it has no reason to believe, at the time of entering into these clauses, in the existence of any laws to which it is subject that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the ECB if it becomes aware of any such laws.

5. INTERPRETATION OF THE CLAUSES

These clauses shall be construed in accordance with the ECB's obligations under applicable EU law, as interpreted by the courts of the EU.

6. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE EDPS

6.1. In the event of a dispute or claim brought by a data subject or the European Data Protection Supervisor (EDPS) concerning the processing of the personal data against either or both of the parties, the parties will inform each other, and will cooperate with a view to an amicable settlement in a timely fashion.

6.2. The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the EDPS. If they participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other non-binding arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

6.3. In the event that all efforts on dispute resolution as set out under points 6.1 and 6.2 fail, the ECB must bear responsibility in accordance with Article 32 of Regulation (EC) 45/2001 for any damage suffered by the data subject as a result of a violation of these clauses. Such responsibility covers damages resulting from violations committed by the CBCG in cases where the data subject was not able reasonably to obtain redress from the CBCG.

7. SUSPENSION AND TERMINATION

7.1. In the event that either party fails to respect its undertakings under these clauses, the other party may temporarily suspend the transfer of its personal data until the breach is repaired or the Memorandum of Understanding is terminated.

7.2. In the event that the transfer of personal data is suspended by either party, or that the Memorandum of Understanding is terminated, the EDPS shall be so informed. Such suspension or termination does not exempt the parties from the obligations and/or conditions under the clauses as regards the processing of the personal data already transferred.

Signed in two original copies by the duly authorised representatives.

ECB-RESTRICTED

For the Central Bank of Montenegro

Date:

[signature and stamp] _____

Governor of the CBCG

For the European Central Bank

Date:

[signature]

Danièle Nouy

Chair of the Supervisory Board of the ECB

For the European Central Bank

Date:

[signature]

Sabine Alice Lautenschläge

Vice-Chair of the Supervisory Board of the
ECB

APPENDIX

DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Article 1 of the Memorandum of Understanding or subsequently authorised by the data subject.

2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed. The data should be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or further processed.

3. Transparency: The controller must provide data subjects with specified information in accordance with Articles 11 and 12 of Regulation 45/2001. The provision of such information may be deferred in accordance with Article 20.

4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.

5. Rights of access, rectification, deletion and objection: Data subjects must have access to their personal data and must be able to have the personal data about them rectified, blocked or erased in accordance with Articles 13-16 of the Regulation. Notification of any rectification, blocking or erasure to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. Data subjects must also be able to object to the processing of the personal data relating to them if there are compelling legitimate grounds relating to their particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the EDPS.

6. Special categories of data: The controller shall take such additional measures (e.g. relating to security) as are necessary to protect such special categories of data in accordance with its obligations under clause 2.2.