



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

# Legal Framework for Banking Supervision

Volume III

BANKENTOEZICHT

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BANKTILSYN BANKU UZRAUDŽĪBA

BANKŲ PRIEŽIŪRA NADZÓR BANKOWY

VIGILANZA BANCARIA

BANKFELÜGYELET

BANKING SUPERVISIO

SUPERVISION BANCAIRE BANČNI NADZOR

MAOIRSEACHT AR BHAINCÉIREACHT NADZOR BANAK

# BANKING SUPERVISION

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# **Legal Framework for Banking Supervision**

Volume III

December 2023



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**DISCLAIMER:** This text is meant purely as a documentation tool and has no legal effect. The authentic versions of the relevant acts, including their preambles, are those published in the Official Journal of the European Union and available in EUR-Lex. Since publication, the acts may have been amended, recast or repealed.

## 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

**DECISION 2004/257/EC OF THE EUROPEAN CENTRAL BANK**  
**of 19 February 2004**  
**adopting the Rules of Procedure of the European Central Bank (ECB/2004/2)**

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

Sole Article

The Rules of Procedure of the European Central Bank as amended on 22 April 1999, as further amended by Decision ECB/1999/6 of 7 October 1999 amending the Rules of Procedure of the European Central Bank <sup>(1)</sup>, shall be replaced by the following which shall enter into force on 1 March 2004.

***RULES OF PROCEDURE OF THE EUROPEAN  
CENTRAL BANK  
PRELIMINARY CHAPTER***

***Article 1  
Definitions***

1.1. These Rules of Procedure shall supplement the Treaty on the Functioning of the European Union and the Statute of the European System of Central Banks and of the European Central Bank. Without prejudice to the provisions in Article 1.2, the terms in these Rules of Procedure shall have the same meaning as in the Treaty and the Statute.

1.2. The terms ‘participating Member State’, ‘national competent authority’ and ‘national designated authority’ shall have the same meaning as defined in Council Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions <sup>(2)</sup>.

***CHAPTER I  
THE GOVERNING COUNCIL***

***Article 2***

**Date and place of Governing Council meetings**

2.1. The Governing Council shall decide on the dates of its meetings on a proposal from the President. The Governing Council shall, in principle, meet regularly following a schedule that it shall determine in good time before the start of each calendar year.

2.2. The President shall convene a meeting of the Governing Council if a request for a meeting is submitted by at least three members of the Governing Council.

2.3. The President may also convene meetings of the Governing Council whenever he/she deems it necessary.

2.4. The Governing Council shall normally hold its meetings on the premises of the ECB.

2.5. Meetings may also be held by means of teleconferencing, unless at least three Governors object.

***Article 3***

**Attendance at Governing Council meetings**

3.1. Except as provided herein, attendance at meetings of the Governing Council shall be restricted to its members, the President of the Council of the European Union and a member of the Commission of the European Communities.

3.2. Each Governor may normally be accompanied by one person.

3.3. If a Governor is unable to attend, he/she may appoint, in writing, an alternate without prejudice to Article 4. This written communication shall be sent to the President in due time before the meeting. Such an alternate may normally be accompanied by one person.

3.4. The President shall appoint a member of staff of the ECB as Secretary. The Secretary shall assist the Executive Board in preparing the meetings of the Governing Council and shall draft the minutes thereof.

3.5. The Governing Council may also invite other persons to attend its meetings if it deems it appropriate to do so.

***Article 3a***

**Rotation system**

1. Governors shall be allocated to groups as set out in the first and second indents of Article 10.2 of the Statute.

2. Governors shall be ordered in each group, following EU convention, in accordance with a list of their national central banks which follows the alphabetical order of the names of the Member States in the national languages. The rotation of voting rights within each group shall follow this order. The rotation shall start at a random point in the list.

3. The voting rights within each group shall rotate every month, starting on the first day of the first month of the implementation of the rotation system.

4. For the first group, the number of voting rights that rotate in each one month period shall be one; for the second and third groups, the number of voting rights that rotate in each one month period shall be equal to the difference between the number of governors allocated to the group and the number of voting rights assigned to it, minus two.

5. Whenever the composition of the groups is adjusted in accordance with the fifth indent of Article 10.2 of the Statute, the rotation of voting rights within each group shall continue to follow the list referred to in paragraph 2. From the date on which the number of governors reaches 22, the rotation within the third group shall start at a random point in the list. The Governing Council may decide to change the order of rotation for the second and third groups to avoid the situation that certain governors are always without a voting right at the same periods of the year.

6. The ECB shall publish in advance a list of the members of the Governing Council with a voting right on the ECB's website.

7. The share of each national central bank's Member State in the total aggregated balance sheet of the monetary financial institutions shall be calculated on the basis of the annual average of monthly average data over the most recent calendar year for which data are available. Whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29.3 of the Statute or whenever a country becomes a Member State and its national central bank becomes part of the European System of Central Banks, the total aggregated balance sheet of the monetary financial institutions of the Member States which have adopted the euro shall be recalculated on the basis of the data relating to the most recent calendar year for which data are available.

#### *Article 4* **Voting**

4.1. In order for the Governing Council to vote, there shall be a quorum of two-thirds of the members with 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.

4.2. The Governing Council shall proceed to vote at the request of the President. The President shall also initiate a voting procedure upon request from any member of the Governing Council.

4.3. Abstentions shall not prevent the adoption by the Governing Council of decisions under Article 41.2 of the Statute.

4.4. If a member of the Governing Council is prevented from voting for a prolonged period (i.e. more than one month), he/she may appoint an alternate as a member of the Governing Council.

4.5. In accordance with Article 10.3 of the Statute, if a Governor is unable to vote on a decision to be taken under Articles 28, 29, 30, 32, 33 and 51 of the Statute, his/her appointed alternate may cast his/her weighted vote.

4.6. The President may initiate a secret ballot if requested to do so by at least three members of the Governing Council. If members of the Governing Council are personally affected by a proposal for a decision under Articles 11.1, 11.3 or 11.4 of the Statute, a secret ballot shall be held. In such cases the members of the Governing Council concerned shall not participate in the vote.

4.7. Unless specifically provided for in Article 4.8, decisions may also be taken by written procedure, unless at least three members of the Governing Council object. A written procedure shall require: (i) normally not less than 5 working days for consideration by every member of the Governing Council; (ii) the express or tacit personal approval of each member of the Governing Council (or his/her alternate in accordance with Article 4.4); and (iii) a record of any such decision in the minutes of the subsequent meeting of the Governing Council. Decisions to be taken by written procedure shall be approved by the members of the Governing Council with a voting right at the time of approval.

4.8. Within the scope of Articles 13g to 13i, decisions may also be taken by written procedure, unless at least five members of the Governing Council object. A written procedure shall require a maximum of 5, or in the case of Article 13h, 2 working days for consideration by every member of the Governing Council.

4.9. For any written procedure, a member of the Governing Council (or their alternate in accordance with Article 4.4) may expressly authorise another person to sign their vote or comment on substance as approved by them in person.

#### *Article 5* **Organisation of Governing Council meetings**

5.1. The Governing Council shall adopt the agenda for each meeting. A provisional agenda shall be drawn up by the Executive Board and shall be sent, together with the related documents, to the members of the Governing Council and other authorised participants at least eight days before the relevant meeting, except in emergencies, in which

case the Executive Board shall act appropriately having regard to the circumstances. The Governing Council may decide to remove items from or add items to the provisional agenda on a proposal from the President or from any other member of the Governing Council. An item shall be removed from the agenda at the request of at least three of the members of the Governing Council with a voting right if the related documents were not submitted to the members of the Governing Council in due time.

The minutes of the proceedings of the Governing Council shall be approved at the subsequent meeting (or if necessary earlier by written procedure) by the members of the Governing Council who had a voting right at the meeting to which the minutes refer and shall be signed by the President.

5.3. The Governing Council may lay down internal rules on decision-making in emergency situations.

#### *Article 5a*

### **Code of Conduct for the members of the Governing Council**

5a.1. The Governing Council shall adopt and update a Code of Conduct for the guidance of its members, which shall be published on the ECB's website.

5a.2. Each Governor shall ensure that his/her accompanying persons within the meaning of Article 3.2 and his/her alternates within the meaning of Article 3.3 sign a declaration of compliance with the Code of Conduct prior to any participation in the meetings of the Governing Council.

## **CHAPTER II**

### **THE EXECUTIVE BOARD**

#### *Article 6*

### **Date and place of Executive Board meetings**

6.1. The date of the meetings shall be decided by the Executive Board on a proposal from the President.

6.2. The President may also convene meetings of the Executive Board whenever he/she deems it necessary.

#### *Article 7*

### **Voting**

7.1. In order for the Executive Board to vote, in accordance with Article 11.5 of the Statute, there shall be a quorum of two-thirds of the members. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

7.2. Decisions may also be taken by written procedure, unless at least two members of the Executive Board object.

7.3. Members of the Executive Board personally affected by a prospective decision under Articles 11.1, 11.3 or 11.4 of the Statute shall not participate in the vote.

#### *Article 8*

### **Organisation of Executive Board meetings**

The Executive Board shall decide on the organisation of its meetings.

## **CHAPTER III**

### **THE ORGANISATION OF THE EUROPEAN CENTRAL BANK**

#### *Article 9*

### **Eurosystem/ESCB committees**

9.1. The Governing Council shall establish and dissolve committees. They shall assist in the work of the decision-making bodies of the ECB and shall report to the Governing Council via the Executive Board.

9.2. In respect of policy issues relating to the prudential supervision of credit institutions, the committees assisting in the work of the ECB regarding the tasks conferred on the ECB by Regulation (EU) No 1024/2013 shall report to the Supervisory Board and, where appropriate, to the Governing Council. In accordance with its own procedures, the Supervisory Board shall mandate the Vice-Chair to report via the Executive Board to the Governing Council on all such activity.

9.3. Committees shall be composed of up to two members from each of the Eurosystem NCBs and the ECB, appointed by each Governor and the Executive Board respectively.

9.4. When assisting in the work of the ECB's decision-making bodies with the tasks conferred on the ECB by Regulation (EU) No 1024/2013, the committees shall include one member from the central bank and one member from the national competent authority in each participating Member State, appointed by each Governor following consultation with the respective national competent authority where the national competent authority is not a central bank.

9.5. The Governing Council shall lay down the mandates of the committees and appoint their chairpersons. As a rule, the chairperson shall be a staff member from the ECB. Both the Governing Council and the Executive Board shall have the right

to request studies of specific topics by committees. The ECB shall provide secretarial assistance to the committees.

9.6. Each non-Eurosystem national central bank may also appoint up to two staff members to take part in the meetings of a committee whenever it deals with matters falling within the field of competence of the General Council and whenever the chairperson of a committee and the Executive Board deems this participation appropriate.

9.7. Representatives of other Union institutions and bodies and any other third party may also be invited to take part in the meetings of a committee whenever the chairperson of a committee and the Executive Board deem this appropriate.

#### *Article 9a*

**The Governing Council may decide to establish ad hoc committees in charge of specific advisory tasks.**

#### *Article 9b*

##### **Audit Committee**

In order to strengthen the internal and external layers of control already in place and to further enhance the corporate governance of the ECB and the Eurosystem, the Governing Council shall establish an audit committee and lay down its mandate and composition.

#### *Article 10*

##### **Internal structure**

10.1. Having consulted the Governing Council, the Executive Board shall decide upon the number, name and respective competence of each of the work units of the ECB. This decision shall be made public.

10.2. All work units of the ECB shall be placed under the managing direction of the Executive Board. The Executive Board shall decide upon the individual responsibilities of its members with respect to the work units of the ECB, and shall inform the Governing Council, the General Council and the staff of the ECB thereof. Any such decision shall be taken only in the presence of all the members of the Executive Board, and may not be taken against the vote of the President.

#### *Article 11*

##### **Staff of the ECB**

11.1. Each member of the staff of the ECB shall be informed of his/her position within the structure of the ECB, his/her reporting line and his/her professional responsibilities.

11.2. Without prejudice to Articles 36 and 47 of the Statute, the Executive Board shall enact organisational rules (hereinafter referred to as Administrative Circulars) which are binding on the staff of the ECB.

11.3. The Executive Board shall adopt and up-date a Code of Conduct for the guidance of its members and of the members of staff of the ECB, which shall be published on the ECB's website.

### **CHAPTER IV**

#### **INVOLVEMENT OF THE GENERAL COUNCIL IN THE TASKS OF THE EUROPEAN SYSTEM OF CENTRAL BANKS**

#### *Article 12*

##### **Relationship between the Governing Council and the General Council**

12.1. The General Council of the ECB shall be given the opportunity to submit observations before the Governing Council adopts:

- opinions under Articles 4 and 25.1 of the Statute,
- recommendations in the statistical field, under Article 42 of the Statute,
- the annual report,
- the rules on the standardisation of accounting rules and reporting of operations,
- the measures for the application of Article 29 of the Statute,
- the conditions of employment of the staff of the ECB,
- in the context of the preparations for the irrevocable fixing of exchange rates, an ECB opinion either under Article 123(5) of the Treaty or concerning Community legal acts to be adopted when a derogation is abrogated.

12.2. Whenever the General Council is requested to submit observations under the first paragraph of this Article, it shall be given a reasonable period of time within which to do so, which may not be less than ten working days. In a case of urgency to be justified in the request, the period may be reduced to five working days. The President may decide to use the written procedure.

12.3. The President shall inform the General Council, in accordance with Article 47.4 of the Statute, of decisions adopted by the Governing Council.

### *Article 13*

#### **Relationship between the Executive Board and the General Council**

13.1. The General Council of the ECB shall be given the opportunity to submit observations before the Executive Board:

- implements legal acts of the Governing Council for which, in accordance with Article 12.1 above, the contribution of the General Council is required,
- adopts, by virtue of powers delegated by the Governing Council in accordance with Article 12.1 of the Statute, legal acts for which, in accordance with Article 12.1 of these Rules, the contribution of the General Council is required.

13.2. Whenever the General Council is requested to submit observations under the first paragraph of this Article, it shall be given a reasonable period of time within which to do so, which may not be less than ten working days. In a case of urgency to be justified in the request, the period may be reduced to five working days. The President may decide to use written procedure.

#### **CHAPTER IVa SUPERVISORY TASKS**

### *Article 13a*

#### **Supervisory Board**

Pursuant to Article 26(1) of Regulation (EU) (No) 1024/2013, a Supervisory Board established as an internal body of the ECB shall fully undertake the planning and execution of the tasks conferred on the ECB relating to the prudential supervision of credit institutions (hereinafter 'supervisory tasks'). Any tasks of the Supervisory Board shall be without prejudice to the competences of the ECB decision-making bodies.

### *Article 13b*

#### **Composition of the Supervisory Board**

13b.1. The Supervisory Board is composed of a Chair, a Vice-Chair, four representatives of the ECB and one representative of the national competent authority in each participating Member State. All members of the Supervisory Board act in the interest of the Union as a whole.

13b.2. Where the national competent authority of a participating Member State is not a central bank, the respective member of the Supervisory Board may bring a representative from the central bank of its Member State. For the purpose of voting, the representatives of one Member State shall be considered as one member.

13b.3. After hearing the Supervisory Board, the Governing Council shall adopt the proposal for the appointment of the Chair and the Vice-Chair of the Supervisory Board to be submitted to the European Parliament for approval.

13b.4. The terms and conditions of employment of the Chair of the Supervisory Board, in particular his/her salary, pension and other social security benefits, shall be the subject of a contract with the ECB and shall be fixed by the Governing Council.

13b.5. The term of office of the Vice-Chair of the Supervisory Board shall be five years and shall not be renewable. It shall not extend beyond the end of his/her mandate as member of the Executive Board.

13b.6. The Governing Council shall appoint the four representatives of the ECB to the Supervisory Board, who shall not perform duties directly related to the monetary policy function, on a proposal by the Executive Board.

### *Article 13c*

#### **Voting pursuant to Article 26(7) of Regulation (EU) No 1024/2013**

For the purpose of adopting draft decisions pursuant to Article 26(7) of Regulation (EU) No 1024/2013 and on the basis of Article 16 of the Treaty on European Union, Article 238(3) of the Treaty on the Functioning of the European Union, and Protocol (No 36) on transitional provisions, the following rules shall apply:

- (i) Until 31 October 2014, decisions shall be deemed adopted when at least 50 % of Supervisory Board members representing at least 74 % of the total number of weighted votes and 62 % of the total population, cast a vote in favour.
- (ii) From 1 November 2014, decisions shall be deemed adopted when at least 55 % of the Supervisory Board members representing at least 65 % of the total population, cast a vote in favour. A blocking minority must include at least the minimum number of Supervisory Board members representing 35 % of the total population, plus one member, failing which the qualified majority shall be deemed attained.
- (iii) Between 1 November 2014 and 31 March 2017, upon request of a representative of a national competent authority or upon request of a representative of the ECB in the Supervisory Board, decisions shall be deemed adopted when at least 50 % of Supervisory Board members representing at least 74 % of the total number of weighted votes and 62 % of the total population, cast a vote in favour.
- (iv) Each of the four ECB representatives appointed by the Governing Council shall have

a weighting equal to the median weighting of those of the representatives of the national competent authorities of participating Member States, as calculated on the basis of the method laid down in the Annex.

- (v) The votes of the Chair and the Vice-Chair shall be weighted zero and shall count only towards the definition of the majority as far as the number of the members of the Supervisory Board is concerned.

#### *Article 13d*

##### **Rules of Procedure of the Supervisory Board**

The Supervisory Board shall adopt its Rules of Procedure after having consulted the Governing Council. The Rules of Procedure shall ensure the equal treatment of all participating Member States.

#### *Article 13e*

##### **Code of Conduct for the members of the Supervisory Board**

13e.1. The Supervisory Board shall adopt and update a Code of Conduct for the guidance of its members, which shall be published on the ECB's website.

13e.2. Each member shall ensure that any accompanying persons, alternates and the representatives of its national central bank, if the national competent authority is not the central bank, sign a declaration of compliance with the Code of Conduct prior to any participation in the meetings of the Supervisory Board.

#### *Article 13f*

##### **Supervisory Board meetings**

The Supervisory Board shall normally hold its meetings on the premises of the ECB. The proceedings of the Supervisory Board meetings shall be provided to the Governing Council, as soon as adopted, for information.

#### *Article 13g*

##### **Adoption of decisions for the purpose of carrying out the tasks referred to in Article 4 of Regulation (EU) No 1024/2013**

13g.1. The Supervisory Board shall propose to the Governing Council complete draft decisions for the purpose of carrying out the tasks referred to in Article 4 of Regulation (EU) No 1024/2013 together with explanatory notes outlining the background to and the main reasons underlying the draft decision. Such draft decisions shall be simultaneously transmitted to the national competent authorities of the participating Member States concerned together with information on the deadline given to the Governing Council in line with Article 13g.2.

13g.2. A draft decision within the meaning of Article 13g.1 shall be deemed adopted unless the Governing Council objects to it within ten working days. In emergency situations a reasonable time period shall be defined by the Supervisory Board and shall not exceed 48 hours. The Governing Council shall state the reasons for any objections in writing. The decision shall be transmitted to the Supervisory Board and to the national competent authorities of the Member States concerned.

13g.3. A non-euro area participating Member State shall notify the ECB of any reasoned disagreement with a draft decision of the Supervisory Board within five working days of receiving the draft decision pursuant to Article 13g.1. The ECB President shall transmit the reasoned disagreement to the Governing Council and the Supervisory Board without delay. The Governing Council shall take fully into account the reasons contained in an assessment prepared by the Supervisory Board when deciding on the matter within five working days of the information of the reasoned disagreement. This decision, together with a written explanation, shall be transmitted to the Supervisory Board and to the national competent authority of the Member State concerned.

13g.4. A non-euro area participating Member State shall notify the ECB of any reasoned disagreement with a Governing Council objection to a draft decision of the Supervisory Board within five working days of receiving such objection pursuant to Article 13g.2. The ECB President shall transmit the reasoned disagreement to the Governing Council and the Supervisory Board without delay. The Governing Council shall give its opinion on the reasoned disagreement expressed by the Member State within 30 days, and, stating its reasons, shall confirm or withdraw its objection. This decision on the confirmation or withdrawal of its objection shall be transmitted to the national competent authority of the Member State concerned. If the Governing Council withdraws the objection, the draft decision of the Supervisory Board shall be deemed adopted on the date of withdrawal of the objection.

#### *Article 13h*

##### **Adoption of decisions for the purpose of carrying out the tasks referred to in Article 5 of Regulation (EU) No 1024/2013**

13h.1. If a national competent or designated authority notifies the ECB of its intention to apply requirements for capital buffers or any other measures aimed at addressing systemic or macro-prudential risks pursuant to Article 5(1) of Regulation (EU) No 1024/2013, the notification, upon receipt by the Secretary of the Supervisory Board, shall be transmitted to the Governing Council and the Supervisory Board without delay. Upon a proposal prepared by the Supervisory Board based on the initiative and taking into account the

input of the relevant committee and of the relevant internal structure, the Governing Council shall decide about the matter within three working days. Where the Governing Council objects to the notified measure, it shall explain its reasons in writing to the national competent or designated authority concerned within five working days of the notification to the ECB.

13h.2. If the Governing Council, upon a proposal prepared by the Supervisory Board based on the initiative and taking into account the input of the relevant committee and of the relevant internal structure, intends to apply higher requirements for capital buffers or to apply more stringent measures aimed at addressing systemic or macro-prudential risks pursuant to Article 5(2) of Regulation (EU) No 1024/2013, such intention shall be notified to the concerned national competent or designated authority at least ten working days prior to taking such a decision. If the concerned national competent or designated authority notifies the ECB in writing of its reasoned objection within five working days of the receipt of the notification, this objection, upon receipt by the Secretary of the Supervisory Board, shall be transmitted to the Governing Council and the Supervisory Board without delay. The Governing Council shall decide on the matter on the basis of a proposal prepared by the Supervisory Board based on the initiative and taking into account the input of the relevant committee and of the relevant internal structure. This decision shall be transmitted to the national competent or designated authority concerned.

13h.3. The Governing Council shall have the right to endorse, object to or amend proposals of the Supervisory Board within the meaning of Article 13h.1 and Article 13h.2. The Governing Council shall also have the right to request the Supervisory Board to submit a proposal within the meaning of Article 13h.1 and Article 13h.2 or to undertake specific analysis. If the Supervisory Board submits no proposals addressing such requests, the Governing Council, taking into account the input of the relevant committee and of the relevant internal structure, may take a decision in the absence of a proposal from the Supervisory Board.

#### *Article 13i*

#### **Adoption of decisions pursuant to Article 14(2) to (4) of Regulation (EU) No 1024/2013**

If a national competent authority notifies the ECB of its draft decision pursuant to Article 14(2) of Regulation (EU) No 1024/2013, the Supervisory Board shall transmit the draft decision, together with its assessment, within five working days to the Governing Council. The draft decision shall be deemed adopted unless the Governing Council

objects within 10 working days of the notification to the ECB, extendable once for the same period in duly justified cases.

#### *Article 13j*

#### **General framework referred to in Article 6(7) of Regulation (EU) No 1024/2013**

The Governing Council shall adopt decisions establishing the general framework to organise the practical arrangements for the implementation of Article 6 of Regulation (EU) No 1024/2013, in consultation with national competent authorities and on the basis of a proposal from the Supervisory Board outside the scope of the non-objection procedure.

#### *Article 13k*

#### **Separation of monetary policy and supervisory tasks**

13k.1. The ECB shall carry out the tasks conferred on it by Regulation (EU) No 1024/2013 without prejudice to and separately from its tasks relating to monetary policy and from any other tasks.

13k.2. The ECB shall take all necessary measures to ensure separation between the monetary policy and the supervisory functions.

13k.3. The separation of monetary policy and the supervisory function shall not exclude the exchange between these two functional areas of the information necessary for the achievement of ECB and ESCB tasks.

#### *Article 13l*

#### **Organisation of Governing Council meetings regarding the supervisory tasks**

13l.1. The Governing Council meetings regarding the supervisory tasks shall take place separately from regular Governing Council meetings and shall have separate agendas.

13l.2. On a proposal from the Supervisory Board, the Executive Board shall draw up a provisional agenda and send it, together with the relevant documents prepared by the Supervisory Board, to the members of the Governing Council and other authorised participants at least eight days before the relevant meeting. This shall not apply to emergencies, in which the Executive Board shall act appropriately having regard to the circumstances.

13l.3. The Governing Council of the ECB shall consult with the Governors of the non-Eurosystem NCBs of the participating Member States before objecting to any draft decision prepared by the Supervisory Board that is addressed to the national competent authorities in respect of credit institutions established in non-euro area participating Member

States. The same shall apply where the concerned national competent authorities inform the Governing Council of their reasoned disagreement with such a draft decision of the Supervisory Board.

13l.4. Unless otherwise provided for in this Chapter, the general provisions of Governing Council meetings laid down in Chapter I shall also apply to Governing Council meetings regarding the supervisory tasks.

#### *Article 13m*

##### **Internal structure regarding the supervisory tasks**

13m.1. The competence of the Executive Board in respect of the ECB's internal structure and the staff of the ECB shall encompass the supervisory tasks. The Executive Board shall consult the Chair and the Vice Chair of the Supervisory Board on such internal structure. Articles 10 and 11 shall apply accordingly.

13m.2. The Supervisory Board, in agreement with the Executive Board, may establish and dissolve substructures of a temporary nature, such as working groups or task forces. They shall assist in the work regarding the supervisory tasks and report to the Supervisory Board.

13m.3. The President of the ECB, after having consulted the Chair of the Supervisory Board, shall appoint a member of the staff of the ECB as Secretary of the Supervisory Board and the Steering Committee. The Secretary shall assist the Chair or, in his/her absence, the Vice-Chair in preparing the Supervisory Board meetings and shall be responsible for drafting the proceedings of these meetings.

13m.4. The Secretary shall liaise with the Secretary of the Governing Council for preparing the meetings of the Governing Council regarding supervisory tasks and shall be responsible for drafting the proceedings of these meetings.

#### *Article 13n*

##### **Report under Article 20(2) of Regulation (EU) No 1024/2013**

Upon a proposal from the Supervisory Board submitted by the Executive Board, the Governing Council shall adopt the annual reports addressed to the European Parliament, the Council, the Commission and the Eurogroup as required under Article 20(2) of Regulation (EU) No 1024/2013.

#### *Article 13o*

##### **Representatives of the ECB at the European Banking Authority**

13o.1. On a proposal by the Supervisory Board, the President of the ECB shall appoint or recall the ECB's representative to the Board of Supervisors of the European Banking Authority as provided for by Article 40(1)(d) of 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC<sup>(3)</sup>.

13o.2. The President shall nominate the accompanying second representative with expertise on central banking tasks to the Board of Supervisors of the European Banking Authority.

#### **CHAPTER V**

##### ***SPECIFIC PROCEDURAL PROVISIONS***

#### *Article 14*

##### **Delegation of powers**

14.1. The delegation of powers of the Governing Council to the Executive Board under the last sentence of the second paragraph of Article 12.1 of the Statute shall be notified to the parties concerned, or published if appropriate, where decisions taken by means of delegation have legal effects on third parties. The Governing Council shall be promptly informed of any act adopted by way of delegation.

14.2. The Book of Authorised Signatories of the ECB, established pursuant to decisions adopted under Article 39 of the Statute, shall be circulated to interested parties.

#### *Article 15*

##### **Budgetary procedure**

15.1. Before the end of each financial year the Governing Council, acting upon a proposal from the Executive Board in accordance with any principles laid down by the former, shall adopt the budget of the ECB for the subsequent financial year. The expenditure for the supervisory tasks shall be separately identifiable within the budget and shall be consulted with the Chair and the Vice Chair of the Supervisory Board.

15.2. For assistance in matters related to the budget of the ECB, the Governing Council shall establish a Budget Committee and lay down its mandate and composition.

#### *Article 16*

##### **Reporting and annual accounts**

16.1. The Governing Council shall adopt the annual report required under Article 15.3 of the Statute.

16.2. The competence to adopt and publish the quarterly reports under Article 15.1 of the Statute, the weekly consolidated financial statements under Article 15.2 of the Statute, the consolidated balance sheets under Article 26.3 of the Statute and other reports shall be delegated to the Executive Board.

16.3. The Executive Board shall, in accordance with the principles established by the Governing Council, prepare the annual accounts of the ECB within the first month of the subsequent financial year. These shall be submitted to the external auditor.

16.4. The Governing Council shall adopt the annual accounts of the ECB within the first quarter of the subsequent year. The external auditor's report shall be submitted to the Governing Council before their adoption.

#### *Article 17*

##### **Legal instruments of the ECB**

17.1. ECB Regulations shall be adopted by the Governing Council and signed on its behalf by the President.

17.2. ECB Guidelines shall be adopted by the Governing Council, and thereafter notified, in one of the official languages of the Union, and signed on the Governing Council's behalf by the President. They shall state the reasons on which they are based. Notification of the national central banks may take place electronically, by means of telefax or in paper form. Any ECB Guideline that is to be officially published shall be translated into the official languages of the Union.

17.3. The Governing Council may delegate its normative powers to the Executive Board for the purpose of implementing its regulations and guidelines. The regulation or guideline concerned shall specify the issues to be implemented as well as the limits and scope of the delegated powers.

17.4. ECB Decisions and Recommendations shall be adopted by the Governing Council or the Executive Board in their respective domains of competence, and shall be signed by the President. ECB Decisions imposing sanctions on third parties shall be signed by the Secretary of the Governing Council in order to certify them. ECB Decisions and Recommendations shall state the reasons on which they are based. Recommendations for secondary Union legislation under Article 41 of the Statute shall be adopted by the Governing Council.

17.5. Without prejudice to the second paragraph of Article 43 and the first indent of Article 46.1 of the Statute, ECB Opinions shall be adopted by the Governing Council. However, in exceptional circumstances and unless not less than three Governors state their wish to retain the competence of the Governing Council for the adoption of specific opinions, ECB Opinions may be adopted by the Executive Board, in line with comments provided by the Governing Council and taking into account the contribution of the General Council. The Executive Board shall be competent to finalise ECB Opinions on very technical matters and to incorporate factual changes or corrections. ECB Opinions shall be signed by the President. For ECB Opinions to be adopted in relation to the prudential supervision of credit institutions, the Governing Council may consult the Supervisory Board.

17.6. ECB Instructions shall be adopted by the Executive Board, and thereafter notified, in one of the official languages of the Union, and signed on the Executive Board's behalf by the President or any two Executive Board members. Notification of the national central banks may take place electronically, by means of telefax or in paper form. Any ECB Instruction that is to be officially published shall be translated into the official languages of the Union.

17.7. All ECB legal instruments shall be numbered sequentially for ease of identification. The Executive Board shall take steps to ensure the safe custody of the originals, the notification of the addressees or consulting authorities, and the publication in all the official languages of the European Union in the Official Journal of the European Union in the case of ECB Regulations, ECB opinions on draft Community legislation and those ECB legal instruments whose publication has been expressly decided.

17.8. Regulation No 1 determining the languages to be used by the European Economic Community <sup>(4)</sup> shall apply to the legal acts specified in Article 34 of the Statute.

#### *Article 17a*

##### **Legal instruments of the ECB related to supervisory tasks**

17a.1. Unless otherwise provided for in regulations adopted by the ECB pursuant to Regulation (EU) No 1024/2013 and in this Article, Article 17 shall apply to the legal instruments of the ECB related to supervisory tasks.

17a.2. ECB guidelines related to supervisory tasks pursuant to Article 4(3) and Article 6(5)(a) of Regulation (EU) No 1024/2013 shall be adopted by the Governing Council, and thereafter notified and signed on behalf of the Governing Council by the

President. Notification of the national competent authorities may take place electronically, by means of telefax or in paper form.

17a.3. ECB instructions related to supervisory tasks pursuant to Article 6(3), Article 6(5)(a) and Articles 7(1), 7(4), 9(1) and 30(5) of Regulation (EU) No 1024/2013 shall be adopted by the Governing Council, and thereafter notified and signed on behalf of the Governing Council by the President. They shall state the reasons on which they are based. Notification of the national authorities competent for the supervision of credit institutions may take place electronically, by means of telefax or in paper form.

17a.4. ECB decisions with regard to supervised entities and entities which have applied for authorisation to take up the business of a credit institution shall be adopted by the Governing Council and signed by the Secretary of the Governing Council in order to certify them. They shall be thereafter notified to the persons to whom they are addressed.

#### *Article 18*

#### **Procedure under Article 128(2) of the Treaty**

The approval provided for in Article 128(2) of the Treaty shall be adopted for the following year by the Governing Council in a single decision for all Member States whose currency is the euro within the final quarter of every year.

#### *Article 19*

#### **Procurement**

19.1. Procurement of goods and services for the ECB shall give due regard to the principles of publicity, transparency, equal access, non-discrimination and efficient administration.

19.2. Except for the principle of efficient administration, derogations may be made from the above principles in cases of urgency; for reasons of security or secrecy; where there is a sole supplier; for supplies from the national central banks to the ECB; to ensure the continuity of a supplier.

#### *Article 21*

#### **Conditions of Employment**

21.1. The Conditions of Employment and the Staff Rules shall determine the employment relationship between the ECB and its staff.

21.2. The Governing Council, upon a proposal from the Executive Board and following consultation of the General Council shall adopt the Conditions of Employment.

21.3. The Executive Board shall adopt the Staff Rules, that shall implement the Conditions of Employment.

21.4. The Staff Committee shall be consulted before the adoption of new Conditions of Employment or Staff Rules. Its opinion shall be submitted to the Governing Council or the Executive Board respectively.

#### *Article 22*

#### **Communications and announcements**

General communications and announcements of decisions taken by the decision-making bodies of the ECB may be published on the ECB website, in the Official Journal of the European Union, or by means of wire services common to financial markets or any other media.

#### *Article 23*

#### **Confidentiality of and access to ECB documents**

23.1. The proceedings of the decision-making bodies of the ECB, or any committee or group established by them, of the Supervisory Board, its Steering Committee and of any its substructures of a temporary nature shall be confidential unless the Governing Council authorises the President to make the outcome of their deliberations public. The President shall consult the Chair of the Supervisory Board prior to making any such decision in relation to the proceedings of the Supervisory Board, its Steering Committee and of any its substructures of a temporary nature.

23.2. Public access to documents drawn up or held by the ECB shall be governed by a decision of the Governing Council.

23.3. Documents drawn up or held by the ECB shall be classified and handled in accordance with the organisational rules regarding professional secrecy and management and confidentiality of information. They shall be freely accessible after a period of 30 years unless decided otherwise by the decision making bodies.

#### *Article 23a*

#### **Confidentiality and professional secrecy regarding the supervisory tasks**

23a.1. Members of the Supervisory Board, of the Steering Committee and of any substructures established by the Supervisory Board shall be subject to the professional secrecy requirements laid down in Article 37 of the Statute even after their duties have ceased.

23a.2. Observers shall not have access to confidential information relating to individual institutions.

23a.3. Documents drawn up by the Supervisory Board, the Steering Committee and any substructures of a temporary nature established by the Supervisory Board shall be ECB documents and shall therefore be classified and handled in accordance with Article 23.3.

## **CHAPTER VI** **FINAL PROVISION**

### *Article 24*

#### **Amendments to these Rules of Procedure**

The Governing Council may amend these Rules of Procedure. The General Council may propose amendments and the Executive Board may adopt supplementary rules within its field of competence.

#### ANNEX

(as referred to in Article 13c(iv))

1. For the purposes of the voting pursuant to Article 13c, the four ECB representatives must be assigned as defined in the following paragraphs, the median weighted votes of the participating Member States under the weighted votes criterion, the median population of the participating Member States under the population criterion and, by virtue of their membership in the Supervisory Board, a vote under the number of members criterion.

2. Ranking, in ascending order, the weighted votes assigned to the participating Member States by Article 3 of the Protocol (No 36) on transitional provisions for the members representing the participating Member States, the median weighted vote is defined as the middle weighted vote if there is an odd number of participating Member States, and as the average of the two middle numbers, rounded up to the nearest whole number, if their number is even. Four times the median weighted vote must be added to the overall number of weighted votes of the participating Member States. The resulting number of weighted votes shall constitute the ‘total number of weighted votes’.

3. The median population is defined in accordance with the same principle. For this purpose, recourse will be made to the figures published by the Council of the European Union as per Annex III, Article 1 and 2 of Council Decision 2009/937/EU of 1 December 2009 adopting the Council’s Rules of Procedure <sup>(1)</sup>. Four times the median population of the participating Member States must be added to the combined population in all participating Member States. The resulting population number shall constitute ‘the total population’.

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<sup>(1)</sup> OJ L 314, 8.12.1999, p. 32.

<sup>(2)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(3)</sup> OJ L 331, 15.12.2010, p. 12.

<sup>(4)</sup> OJ 17, 6.10.1958, p. 385/58.

<sup>(5)</sup> OJ L 325, 11.12.2009, p. 35.

**RULES OF PROCEDURE OF THE SUPERVISORY BOARD  
OF THE EUROPEAN CENTRAL BANK  
of 21 June 2014**

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

**PRELIMINARY CHAPTER**

*Article 1*  
**Supplementary nature**

These Rules of Procedure shall supplement the Rules of Procedure of the European Central Bank. The terms used in these Rules of Procedure shall have the same meaning as in the Rules of Procedure of the European Central Bank.

**CHAPTER I  
SUPERVISORY BOARD**

*Article 2*  
**Supervisory Board meetings**

2.1. The Supervisory Board shall decide on the dates of its meetings on a proposal from the Chair. The Supervisory Board shall, in principle, meet regularly following a schedule that it shall determine in good time before the start of each calendar year.

2.2. The Chair shall convene a meeting of the Supervisory Board if a request for a meeting is submitted by at least three of its members.

2.3. The Chair may also convene meetings of the Supervisory Board whenever he/she deems it necessary. In such cases, this shall be specified in a cover note.

2.4. At the request of the Chair, the deliberations of the Supervisory Board may also take place by means of teleconferencing, unless at least three members of the Supervisory Board object.

*Article 3*  
**Attendance at Supervisory Board meetings**

3.1. Except as provided herein, attendance at meetings of the Supervisory Board shall be restricted to its members and, where the national competent authority is not the national central bank, to the representative of the national central bank.

3.2. Each representative of the national competent authority may normally be accompanied by one person. If the national competent authority is not

the national central bank, this paragraph shall apply to the representative having the voting right. This paragraph shall also apply in the case of the attendance by an alternate, as provided in Article 3.3.

3.3. If a representative of a national competent authority or, where the national competent authority is not the national central bank, a representative of the national central bank, is unable to attend, he/she may appoint, in writing, an alternate to attend and to exercise their voting right as applicable, unless otherwise stipulated in the written communication. This written communication shall be sent to the Chair in due time before the meeting.

3.4. In the absence of both the Chair and the Vice-Chair, the Supervisory Board shall be chaired by the most senior member of the Supervisory Board in terms of the length of his/her membership in the first instance, and by age in the event of two or more members having equal standing in terms of the length of membership.

3.5. Upon invitation of the Chair, a representative of the European Commission and/or a representative of the European Banking Authority may participate in the meetings as observers. The Chair shall invite the representatives of the Commission and the European Banking Authority if a request for such an invitation is submitted by at least three members of the Supervisory Board. Applying the same rules, the Supervisory Board may also invite other persons to attend its meetings if it deems it appropriate to do so.

*Article 4*  
**Organisation of Supervisory Board meetings**

4.1. The Supervisory Board shall adopt the agenda for each meeting. A provisional agenda shall be drawn up by the Chair and shall be sent, together with the related documents, to the members of the Supervisory Board at least five working days before the relevant meeting, except in emergencies, in which case the Chair shall act appropriately having regard to the circumstances. The Supervisory Board may decide to remove items from or add items to the provisional agenda on a proposal from the Chair or from any other member of the Supervisory Board. Except in emergencies, an item shall be removed from the provisional agenda at the request of at

least three members of the Supervisory Board if the related documents were not submitted to the members of the Supervisory Board in due time.

4.2. The proceedings of Supervisory Board meetings shall be submitted to its members for approval at the subsequent meeting (or if necessary earlier by written procedure) and shall be signed by the Chair.

#### *Article 5* **Access to information**

All the members of the Supervisory Board shall have regular access to updated information on the institutions deemed significant under Regulation (EU) No 1024/2013. The information made available to the members of the Supervisory Board should include key items of information that enable a meaningful understanding of such institutions. The Supervisory Board may adopt internal templates for sharing information for this purpose.

#### *Article 6* **Voting**

6.1. For the purposes of this Article, the representatives of the authorities of any participating Member State shall together be considered as one member.

6.2. Unless explicitly indicated otherwise in writing by the national competent authority, the voting right shall be exercised by the representative of the national competent authority or their alternate in accordance with Article 3.3.

6.3. In order for the Supervisory Board to vote, there shall be a quorum of two-thirds of its members having a voting right at the time of the vote. If the quorum is not met, the Chair may convene an extraordinary meeting at which members of the Supervisory Board may vote without regard to the quorum.

6.4. The Supervisory Board shall proceed to vote at the request of the Chair. The Chair shall also initiate a voting procedure upon request from three members of the Supervisory Board.

6.5. Except where otherwise provided by Regulation (EU) No 1024/2013, the Supervisory Board shall act by a simple majority of its members having a voting right. Each member shall have one vote. In case of a draw, the Chair shall have the casting vote. In the cases set out in Article 26(7) of Regulation (EU) No 1024/2013, the voting rules as laid down in Article 13c of the Rules of Procedure of the European Central Bank apply.

6.6. The Chair may initiate a secret ballot if requested by at least three members of the Supervisory Board having a voting right.

6.7. Voting may also take place by written procedure, unless at least three members of the Supervisory Board having a voting right object. In such case, the item shall be put on the agenda of the subsequent Supervisory Board meeting. A written procedure shall require normally not less than five working days for consideration by each member of the Supervisory Board and a record of any such deliberations in the proceedings of the subsequent Supervisory Board meeting. The absence of an explicit vote by a member of the Supervisory Board in a written procedure shall be deemed as approval.

6.8. For any written procedure, a member of the Supervisory Board may expressly authorise another person to sign their vote or comment on substance as approved by them in person.

#### *Article 7* **Emergencies**

7.1. In case of emergencies, the Chair or, in his/her absence, the Vice-Chair shall convene a meeting of the Supervisory Board in time to take the necessary decisions, as appropriate also by means of teleconferencing by way of derogation from Article 2.4. When convening such a meeting, the Chair or, in his/her absence, the Vice-Chair shall make clear in the invitation letter that, by way of derogation from Article 6.3, if a quorum of 50 % for emergency decisions were not to be met, the meeting will be closed and immediately thereafter an extraordinary meeting, at which decisions may be taken without regard to the quorum, will be opened.

7.2. The Supervisory Board may lay down further internal rules on the adoption of decisions and other measures in situations of emergency.

#### *Article 8* **Delegation of power**

8.1. The Supervisory Board may authorise the Chair or the Vice-Chair to take, on its behalf and under its responsibility, clearly defined management or administrative measures, including the use of instruments in preparation for a decision to be taken collectively by the members of the Supervisory Board at a later point in time and instruments implementing final decisions taken by the Supervisory Board.

8.2. The Supervisory Board may also ask the Chair or the Vice-Chair to adopt (i) the definitive text of any instrument as defined in Article 8.1 on condition that the substance of such instrument has already been determined in discussion, and/or (ii) final decisions, where such delegation involves limited and clearly defined executive powers, the exercise of which is subject to strict review in the light of objective criteria established by the Supervisory Board.

8.3. The delegations and decisions adopted in accordance with Articles 8.1 and 8.2 shall be recorded in the proceedings of the Supervisory Board meetings.

## **CHAPTER II**

### **STEERING COMMITTEE**

#### *Article 9*

#### **The Steering Committee**

In accordance with Article 26(10) of Regulation (EU) No 1024/2013, the Steering Committee of the Supervisory Board is hereby established.

#### *Article 10*

#### **Mandate**

10.1. The Steering Committee shall support the activities of the Supervisory Board and shall be responsible for preparing the meetings of the Supervisory Board.

10.2. The Steering Committee shall execute its preparatory tasks in the interest of the European Union as a whole and shall work in full transparency with the Supervisory Board.

#### *Article 11*

#### **Composition and appointment of members**

11.1. The Steering Committee shall be composed of eight members of the Supervisory Board: the Chair and the Vice-Chair of the Supervisory Board, one representative of the European Central Bank (ECB) and five representatives of the national competent authorities.

11.2. The Steering Committee shall be chaired by the Chair of the Supervisory Board or, in the exceptional absence of the Chair, the Vice-Chair.

11.3. The Supervisory Board shall appoint the representatives of the national competent authorities, ensuring a fair balance and rotation between the national competent authorities. The Supervisory Board shall follow a rotation system in accordance with which the national competent authorities shall be allocated to four groups, according to a ranking based on the total consolidated banking assets in the relevant participating Member State. Each group shall have as a minimum one member on the Steering Committee. The Supervisory Board shall review the grouping on an annual basis or whenever a Member State adopts the euro or establishes a close cooperation with the ECB. The rotation of members within each group shall follow the alphabetical order of the names of the participating Member States in their national languages. The classification of the

national competent authorities into groups and the assignment of seats on the Steering Committee to the groups are laid down in the Annex.

11.4. The terms of office of the representatives of the national competent authorities as members of the Steering Committee shall be one year.

11.5. The President of the ECB shall appoint the representative of the ECB in the Steering Committee from among the four ECB representatives on the Supervisory Board and determine the respective term of office.

11.6. The list of members of the Steering Committee shall be published and updated regularly.

#### *Article 12*

#### **Steering Committee meetings**

12.1. The dates of the meetings shall be decided by the Steering Committee on a proposal from the Chair. The Chair may also convene meetings whenever he/she deems it necessary. At the request of the Chair, the Steering Committee may also convene by means of teleconferencing, unless at least two members of the Steering Committee object.

12.2. The agenda for each Steering Committee meeting shall be proposed by the Chair and adopted at the beginning of the meeting by the Steering Committee. All members of the Steering Committee may propose items and documents to the Chair for consideration by the Steering Committee.

12.3. The agenda and the related documents of any meeting of the Steering Committee shall be made available before such meeting to all members of the Supervisory Board. The proceedings of any meeting of the Steering Committee shall be made available to all members of the Supervisory Board prior to the subsequent meeting of the Supervisory Board.

12.4. On a proposal by the Chair, the Steering Committee may decide to invite one or more other members of the Supervisory Board to attend all or part of one of its meetings. When specific issues related to an individual credit institution are discussed, the representative of the national competent authority of the participating Member State in which that credit institution is located shall be invited.

## **CHAPTER III**

### **FINAL PROVISION**

#### *Article 13*

#### **Entry into force**

These Rules of Procedure shall enter into force on 1 April 2014.

## ANNEX

### Rotation system

For the purposes of Article 11.3, the following rotation system applies, on the basis of the data as at 31 December 2019:

Group	Participating Member State	Number of seats on the Steering Committee
1	DE	1
	FR	
2	ES	1
	IT	
	NL	
3	BE	2
	IE	
	EL	
	LU	
	AT	
	PT	
	FI	
4	BG	1
	EE	
	HR	
	CY	
	LV	
	LT	
	MT	
	SI	
	SK	

**DECISION (EU) 2014/427 OF THE EUROPEAN CENTRAL BANK**  
**of 6 February 2014**  
**on the appointment of representatives of the European Central Bank to the Supervisory Board (ECB/2014/4)**

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 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 <sup>(1)</sup>, and in particular Article 26(1), (2) and (5) thereof,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank <sup>(2)</sup>, and in particular Article 13b.6. thereof,

Whereas:

- (1) Pursuant to Article 26(5) of Regulation (EU) No 1024/2013, the Governing Council shall appoint four representatives of the European Central Bank (ECB) to the Supervisory Board, none of whom shall perform duties directly related to the monetary function of the ECB.
- (2) Pursuant to Article 26(2) of Regulation (EU) No 1024/2013, appointments of the ECB representatives to the Supervisory Board shall respect the principles of gender balance, experience and qualification.
- (3) It is necessary to complement Regulation (EU) No 1024/2013 in relation to the procedure for appointment of the four ECB representatives to the Supervisory Board, the conditions and procedure for their removal and the conditions applying to the persons appointed to such positions,

HAS ADOPTED THIS DECISION:

*Article 1*  
**Appointment of ECB representatives to the Supervisory Board**

1. The four ECB representatives shall be appointed to the Supervisory Board from among persons of recognised standing and experience in banking and financial matters.
2. Their term of office shall be five years and shall not be renewable. By way of derogation from this rule, the term of office of the first four ECB representatives shall be between three and five years for the initial appointment.

3. The terms and conditions of employment of the four ECB representatives, in particular their salary, pension and other social benefits, shall be the subject of a contract with the ECB, and shall be fixed by the Governing Council on a proposal from the Executive Board.

4. The ECB representatives shall perform their duties on either a full-time or a part-time basis, in accordance with the terms and conditions of their contracts with the ECB. They shall not be engaged in any occupation, whether gainful or not, unless authorised by the Governing Council. No authorisation can be given for activities which are liable to give rise, or may be perceived to give rise to, a conflict of interest with their positions as members of the Supervisory Board. In particular, they shall not perform any duty for a national competent authority as defined in Article 2 of Regulation (EU) No 1024/2013.

5. If an ECB representative on the Supervisory Board no longer fulfils the conditions required for the performance of his or her duties, or if he or she has been guilty of serious misconduct, the Governing Council may, on application of the Executive Board and after having heard him or her, decide to remove him or her from office.

6. Any vacancy for the position of an ECB representative on the Supervisory Board shall be filled by the appointment of a new representative in accordance with this Decision.

*Article 2*  
**Entry into force**

This Decision shall enter into force on 6 February 2014.

Done at Frankfurt am Main, 6 February 2014.

*The President of the ECB*

Mario DRAGHI

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<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(2)</sup> OJ L 80, 18.3.2004, p. 33.

**DECISION 2014/360/EU OF THE EUROPEAN CENTRAL BANK**  
**of 14 April 2014**  
**concerning the establishment of an Administrative Board of Review and its Operating**  
**Rules (ECB/2014/16)**

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

**PRELIMINARY CHAPTER**

*Article 1*

**Supplementary nature**

This Decision shall supplement the Rules of Procedure of the European Central Bank. The terms used in this Decision shall have the same meaning as the terms defined in the Rules of Procedure of the European Central Bank.

CHAPTER I

**THE ADMINISTRATIVE BOARD OF REVIEW**

*Article 2*

**Establishment**

The Administrative Board of Review (hereinafter the 'Administrative Board') is hereby established.

*Article 3*

**Composition**

1. The Administrative Board shall be composed of five members who shall be replaced by two alternates under the conditions laid down in paragraphs 3 and 4.

2. The members of the Administrative Board and the two alternates shall be individuals of high repute who are Member State nationals and have 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. They may not be current staff members of the ECB, of national competent authorities or other national or Union institutions, bodies, offices and agencies that are involved in the tasks carried out by the ECB under Regulation (EU) No 1024/2013.

3. An alternate shall temporarily replace a member of the Administrative Board in case of temporary incapacity. In the context of a particular request for review, an alternate shall temporarily replace a member of the Administrative Board in the following cases:

(a) in any situation which may raise conflict of interest concerns as defined in Article 11.1 of the Code of Conduct for high-level European Central Bank Officials (!);

(b) the member is unavailable for justified reasons.

4. An alternate shall permanently replace a member of the Administrative Board in case of permanent incapacity, death, resignation or removal from office. In this case, they shall cease to be an alternate and they shall be designated as members of the Administrative Board by the Governing Council. An alternate shall be appointed in their place, in accordance with the procedure laid down under Article 4.

5. The alternates shall fully participate in the review proceedings, either temporarily replacing the members of the Administrative Board or as observers.

*Article 4*

**Appointment**

1. The members of the Administrative Board and the two alternates shall be appointed by the Governing Council ensuring, to the extent possible, an appropriate geographical and gender balance across the Member States.

2. Following a public call for expressions of interest published in the Official Journal of the European Union, the Executive Board, after hearing the Supervisory Board, shall submit nominations for the members of the Administrative Board and the two alternates to the Governing Council no later than one month before the start of the Governing Council meeting at which the decision regarding the appointment shall be adopted.

3. The term of office of the members of the Administrative Board and of the two alternates shall be five years, renewable once. In the event that an alternate permanently replaces a member of the Administrative Board under the conditions laid down in Article 3(4), such replacement shall not be considered a new appointment or renewal, and their mandate shall be considered to have started at the date of their appointment as an alternate.

4. The members of the Administrative Board and the two alternates shall act independently and in the public interest. They shall not be subject to any

instructions and 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. The terms and conditions of appointment of the members of the Administrative Board and the two alternates shall be laid down by the Governing Council.

#### *Article 5* **Chair and Vice-Chair**

1. The Administrative Board shall designate its Chair and its Vice-Chair.

2. The Chair shall ensure the functioning of the Administrative Board, the efficient examination of reviews and adherence to the Operating Rules.

3. The Vice-Chair shall assist the Chair in the performance of their duties and shall take their place when the latter is prevented from acting or at the request of the Chair, to ensure the functioning of the Administrative Board.

#### *Article 6* **Secretary of the Administrative Board**

1. The Secretary of the Supervisory Board shall act as Secretary of the Administrative Board (hereinafter the 'Secretary').

2. The Secretary shall be responsible for preparing the efficient examination of reviews, organising the Administrative Board's pre-hearings and hearings, drafting the respective proceedings, maintaining a register of reviews and otherwise providing assistance in relation to the reviews.

3. The ECB shall provide the Administrative Board with appropriate support including legal expertise to assist in the assessment of the exercise of the powers of the ECB under Regulation (EU) No 1024/2013.

## CHAPTER II REQUEST FOR REVIEW

#### *Article 7* **Notice of review**

1. Any natural or legal person to whom a decision of the ECB under Regulation (EU) No 1024/2013 is addressed, or to whom such decision is of direct and individual concern, who wishes to request an internal administrative review (hereinafter the 'applicant') shall do so by filing a written notice of review with the Secretary, identifying the contested decision. The notice of review shall be submitted in one of the official languages of the Union.

2. The Secretary shall confirm receipt of the notice of review to the applicant without delay.

3. The notice of review shall be filed within one month of the notification of the decision to the applicant or, in the absence of such notification, of the day on which it came to the applicant's knowledge.

4. The contested decision shall be annexed to the notice of review, which shall: (a) state the grounds on which it is based; (b) if an application is made for the review to have suspensory effect, state the grounds of such application; (c) have attached to it copies of any documents on which the applicant intends to rely; and (d) if the notice of review exceeds 10 pages, include a summary of items (a) to (c).

5. The notice of review shall clearly indicate the applicant's full contact details so that the Secretary may send communications to the applicant or its representative as the case may be. The Secretary shall promptly send a confirmation of receipt to the applicant stating whether the notice of review is complete.

6. The applicant may at any time withdraw a notice of review by giving notice of withdrawal to the Secretary.

7. Once filed with the Secretary, the notice of review, together with the attached documents, shall be transmitted internally without delay to allow the ECB to be represented in the proceedings.

#### *Article 8* **Rapporteur**

On receipt of a notice of review, the Chair shall designate a rapporteur for the review from the members of the Administrative Board, including the Chair. In designating the rapporteur, the Chair shall take into account the specific expertise of each member of the Administrative Board.

#### *Article 9* **Suspensory effect**

1. Submission of the notice of review shall not have suspensory effect on the application of the contested decision, subject to paragraph 2.

2. Without prejudice to paragraph 1, the Governing Council, upon a proposal by the Administrative Board, may decide to suspend the application of the contested decision provided the request for review is admissible and not obviously unfounded and it considers that the immediate application of the contested decision may cause irreparable damage. The Governing Council shall take such decision to

suspend the application of the contested decision after having heard the opinion of the Supervisory Board as appropriate.

3. The procedures laid down in these Operating Rules, including those set out in Articles 12 and 14 in respect of directions and hearings, shall apply as necessary to the determination of any question of suspension.

### CHAPTER III REVIEW

#### *Article 10*

#### **Scope of the review of the Administrative Board**

1. In accordance with Article 24(1) of Regulation (EU) No 1024/2013, the scope of the internal administrative review shall cover the relevant decision's procedural and substantive conformity with Regulation (EU) No 1024/2013.

2. The Administrative Board's review shall be limited to examination of the grounds relied on by the applicant as set out in the notice of review.

#### *Article 11*

#### **Admissibility of the request for review**

1. The Administrative Board shall determine whether and to what extent the request for review is admissible before examining whether it is legally founded. If the Administrative Board deems the request for review inadmissible wholly or in part, this assessment shall be recorded in the Administrative Board's opinion pursuant to Article 17.

2. A notice of review filed in respect of a new decision of the Governing Council as referred to in Article 24(7) of Regulation (EU) No 1024/2013 shall not be admissible.

#### *Article 12*

#### **Directions**

The Chair, on behalf of the Administrative Board, may give directions for the efficient conduct of the review, including directions to produce documents or provide information. The Secretary shall send such directions to the relevant parties. The Chair may consult with the other members for such purposes.

#### *Article 13*

#### **Failure to comply**

1. Where the applicant has, without reasonable justification, failed to comply with a direction of the Administrative Board or a provision of these

Operating Rules, the Administrative Board may order it to pay any costs of the proceedings arising from the delay.

2. Before issuing an order in accordance with paragraph 1, the Administrative Board shall give notice to the applicant, to provide it with the opportunity to make representations against the issuance of such an order.

#### *Article 14*

#### **Hearing**

1. The Administrative Board may call for an oral hearing where it considers this necessary for the fair evaluation of the review. Both the applicant and the ECB shall be requested to make oral representations at such hearing.

2. The Chair shall give directions as to the order, form and date of the hearing.

3. The hearing shall take place at the ECB's premises. The Secretary shall be present. The hearing shall not be open to third parties.

4. In exceptional cases, the Chair may adjourn the hearing on the application of the applicant or of the ECB, or on its own initiative.

5. Where the party has been notified of an oral hearing and fails to appear, the Administrative Board may proceed in their absence.

#### *Article 15*

#### **Evidence**

1. The applicant may request the Administrative Board's permission to adduce, in the form of a written statement, witness or expert evidence.

2. The applicant may request the Administrative Board's permission to call a witness or expert who has given a written statement to give oral evidence at the hearing. Also the ECB may request the Administrative Board's permission to call a witness or expert to give oral evidence at the hearing.

3. Permission shall only be given if the Administrative Board considers it necessary for the just determination of the review.

4. Witnesses or experts shall be examined by the Administrative Board. Such evidence shall be served within the time permitted. The applicant shall have the right to cross-examine witnesses or experts called on by the ECB where this is necessary for the just determination of the review.

CHAPTER IV  
DECISION-MAKING PROCESS

*Article 16*  
**Opinion on the review**

1. The Administrative Board shall adopt an opinion on the review within a time period appropriate to the urgency of the matter and not later than two months from the date of receipt of the complete notice of review, containing all the documentation required to be submitted in accordance with Article 7(4), the receipt of which is confirmed in accordance with Article 7(5).
2. The opinion shall propose whether the initial decision should be either abrogated, replaced with a decision of identical content or replaced with an amended one. In the latter case, the opinion shall contain proposals for the necessary amendments.
3. The opinion shall be adopted by a majority of at least three members of the Administrative Board.
4. The opinion shall be in writing and contain reasons, and shall be sent to the Supervisory Board without delay.
5. The opinion shall not be binding on the Supervisory Board or the Governing Council.

*Article 17*  
**Preparation of a new draft decision**

1. The Supervisory Board shall assess the Administrative Board's opinion and propose a new draft decision to the Governing Council. The Supervisory Board's assessment shall not be limited to examination of the grounds relied upon by the applicant as set forth in the notice of review, but may also take other elements into account in its proposal for a new draft decision.
2. The Supervisory Board's new draft decision replacing the initial decision with a decision of identical content or abrogating or amending the initial decision shall be submitted to the Governing Council within 30 working days following receipt of the Administrative Board's opinion.

*Article 18*  
**Notification**

The Administrative Board's opinion, the new draft decision submitted by the Supervisory Board and the new decision adopted by the Governing Council shall be notified to the parties by the Secretary of the Governing Council including the relevant reasoning.

CHAPTER V  
RECOURSE TO THE COURT

*Article 19*  
**Recourse to the Court of Justice**

This Decision is without prejudice to the right to bring proceedings before the Court of Justice in accordance with the Treaties.

CHAPTER VI  
GENERAL PROVISIONS

*Article 20*  
**Access to files**

1. The rights of defence of the applicant shall be fully respected. For this purpose, and after the applicant has filed a written notice of review, the applicant shall be entitled to have access to the ECB's file, subject to the legitimate interest of legal and natural persons other than the applicant, in the protection of their business secrets.
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. The right of access to the file shall not extend to confidential information.
4. For the purposes of this Article, confidential information may include internal documents of the ECB or a national competent authority and correspondence between the ECB and a national competent authority or between national competent authorities.
5. Nothing in this Article shall prevent the ECB from disclosing and using information necessary to prove an infringement.
6. 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-ROM(s) 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.

*Article 21*  
**Costs orders**

1. The costs of the review shall comprise the reasonable costs incurred for the review.

2. After notification of the new decision by the Governing Council or after the applicant has withdrawn the notice of review, the Supervisory Board shall propose the proportion of costs to be borne by the applicant. The applicant shall be entitled to make representations in this regard.

5. The Governing Council shall decide on the apportionment of costs in accordance with the procedure laid down in Article 13g.2 of the Rules of Procedure of the European Central Bank, on the basis of the methodology for the apportionment of costs set out in the Annex to this Decision.

6. Costs, if ordered, must be paid within 20 working days.

#### *Article 22*

##### **Confidentiality and professional secrecy**

1. The members of the Administrative Board and the alternates shall be subject to the professional secrecy requirements laid down in Article 37 of the Statute of the European System of Central Banks and of the European Central Bank even after their duties have ceased.

2. The proceedings of the Administrative Board shall be confidential unless the Governing Council authorises the President of the ECB to make the outcome of such proceedings public.

3. Documents drawn up or held by the Administrative Board shall be ECB documents and shall therefore be classified and handled in accordance with Article 23.3 of the Rules of Procedure of the European Central Bank <sup>(1)</sup>.

#### *Article 23*

##### **Supplementary rules**

1. The Administrative Board may adopt supplementary rules to regulate its proceedings and activities.

2. The Administrative Board may issue forms and guides.

3. Supplementary rules, forms and guides adopted by the Administrative Board shall be reported to the Supervisory Board and published on the ECB's website.

#### *Article 24*

##### **Entry into force**

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

## *ANNEX*

### **Methodology for the apportionment of the costs of the review incurred by the applicant and by the European Central Bank in the context of a review by the Administrative Board**

In cases in which the Governing Council abrogates the initial decision or amends its operative part as a consequence of the notice of review, the ECB will reimburse the costs incurred by the applicant in the context of the review, with the exclusion of any disproportionate costs incurred by the applicant in submitting written or oral evidence and in respect of legal representation, which will be borne by the applicant. In any case, the reimbursement by the ECB of costs incurred by the applicant shall not exceed EUR 50 000 for each individual review by the Administrative Board.

In cases in which the Governing Council replaces the initial decision with a decision of identical content or amends only the non-operative part <sup>(2)</sup> of the initial decision as a consequence of the notice of review, the applicant will contribute to the costs incurred by ECB in the context of the review. Natural persons must pay a lump sum of EUR 500. Legal persons must pay a lump sum of EUR 5 000. The payment of this lump sum remains without prejudice to the application of Article 13 of this Decision.

In cases in which the applicant withdraws a notice of review pursuant to Article 7(6) of this Decision, the applicant and the ECB will bear their own costs, if any.

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<sup>(1)</sup> OJ C 89, 8.3.2019, p. 2.

<sup>(2)</sup> OJ L 80, 18.3.2004, p. 33.

<sup>(3)</sup> 'Non-operative part' refers to any part of the decision which provides grounds and reasoning of the ECB decision, irrespective of the wording used in the decision itself to indicate such part.

**REGULATION (EU) No 673/2014 OF THE EUROPEAN CENTRAL BANK**  
**of 2 June 2014**  
**concerning the establishment of a Mediation Panel and its Rules of Procedure**  
**(ECB/2014/26)**

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 Council Regulation No (EU) 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions <sup>(1)</sup>, and in particular Article 25(5) thereof,

Whereas:

- (1) Pursuant to Article 25(5) of Regulation (EU) No 1024/2013, the European Central Bank (ECB) will create a mediation panel responsible for resolving differences of views expressed by the competent authorities of concerned participating Member States regarding an objection by the Governing Council to a draft decision of the Supervisory Board set up under that Regulation.
- (2) Pursuant to Recital 73 of Regulation (EU) No 1024/2013, the setting up of the Mediation 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.
- (3) The Rules of Procedure of the Mediation Panel are without prejudice to the procedure in which a non-euro area participating Member State notifies the ECB of its reasoned disagreement with an objection of the Governing Council to a draft decision of the Supervisory Board pursuant to Article 7(7) of Regulation (EU) No 1024/2013.
- (4) Since the Vice-Chair of the Supervisory Board is both a Governing Council and a Supervisory Board member, he/she is best placed to chair the Mediation Panel,

HAS ADOPTED THIS REGULATION:

**PRELIMINARY CHAPTER**

*Article 1*

**Supplementary nature**

This Regulation shall supplement the Rules of Procedure of the European Central Bank <sup>(2)</sup>. The terms used in this Regulation shall have the same meaning as the terms defined in the Rules of Procedure of the European Central Bank.

**CHAPTER I**

**THE MEDIATION PANEL**

*Article 2*

**Establishment**

In accordance with Article 25(5) of Regulation (EU) No 1024/2013, a Mediation Panel is hereby established.

*Article 3*

**Composition**

1. The Mediation Panel shall be composed of one member per participating Member State.
2. The Vice-Chair of the Supervisory Board, who is not a member of the Mediation Panel, shall act as Chair of the Mediation Panel.

*Article 4*

**Appointment of members**

1. Each participating Member State shall appoint one member of the Mediation Panel from among the members of the Governing Council and the Supervisory Board. The Chair shall facilitate the achievement of a balance between Governing Council and Supervisory Board members.
2. The mandate of the Mediation Panel members shall expire if they cease to be members of the body from which they were appointed.
3. When acting as a member of the Mediation Panel, each member shall act in the interest of the Union as a whole.

*Article 5*

**Attendance at Mediation Panel meetings**

1. Except as provided in paragraph 2, attendance at Mediation Panel meetings shall be restricted to its members, its Chair and its Secretary.
2. Upon invitation of the Mediation Panel, experts may attend specific Mediation Panel meetings if their expertise is required.

*Article 6*

**Mediation Panel meetings**

1. Whenever the Chair deems it necessary, he/she may convene a Mediation Panel meeting.
2. The Mediation Panel shall hold its meetings at the premises of the ECB.
3. At the request of the Chair, Mediation Panel meetings may also be held by means of teleconferencing, unless at least three members object.
4. The proceedings of Mediation Panel meetings shall be submitted to the members for approval at their next meeting or before that by written procedure, and once approved shall be signed by the Chair. They shall be made available to the Governing Council and the Supervisory Board.
5. The Secretary of the Supervisory Board shall act as Secretary of the Mediation Panel. In the latter function, he/she shall assist the Chair of the Mediation Panel in preparing for Mediation Panel and Case Committee meetings and shall be responsible for drafting the proceedings of these meetings. He/she shall also assist the Secretary of the Governing Council in preparing for Governing Council meetings regarding any issues in which the Mediation Panel has been involved and shall be responsible for drafting the respective part of the minutes of the proceedings.

*Article 7*

**Voting**

1. In order for the Mediation Panel to vote, there shall be a quorum of two-thirds of its members. If the quorum is not met, the Chair may convene an extraordinary meeting at which members may vote without regard to the quorum.
2. Each member shall have one vote. The Mediation Panel shall decide by a simple majority of its members. In the event of a tie, the most senior member of the Mediation Panel in terms of office in the first instance, and by age in the event of two or more members having equal standing in terms of office, shall have the casting vote.

3. The Mediation Panel shall proceed to vote at the request of the Chair. The Chair shall also initiate a voting procedure upon request from three Mediation Panel members.

4. At the request of the Chair, decisions may also be taken by written procedure.

**CHAPTER II  
MEDIATION**

*Article 8*

**Request for mediation**

1. Competent authorities of participating Member States which are concerned by and have different views regarding an objection by the Governing Council to a draft decision of the Supervisory Board may ask the Supervisory Board, within five working days from receipt of the objection, including the reasons for the objection, to request mediation in order to resolve such differences, with a view to ensuring separation between monetary policy and supervisory tasks. Each competent authority concerned shall do so by submitting a notice requesting mediation to the Supervisory Board, identifying the objection by the Governing Council, and including a statement on the reasons for requesting mediation. The Secretariat will notify such requests for mediation to the Supervisory Board members.

2. Any other competent authority of a participating Member State concerned by and having different views regarding the same objection may submit a separate notice requesting mediation or join an existing request for mediation within five working days of the notification of the first request for mediation and express its difference of view.

3. An objection by the Governing Council to a draft decision of the Supervisory Board may be subject to mediation only once.

4. A competent authority of a non-euro area participating Member State that notifies the ECB of its reasoned disagreement with an objection of the Governing Council to a draft decision of the Supervisory Board pursuant to Article 7(7) of Regulation (EU) No 1024/2013 and Article 13g.4 of the Rules of Procedure of the European Central Bank, may not request mediation pursuant to paragraph 1 regarding the same objection of the Governing Council.

5. If a competent authority of a participating Member State asks the Supervisory Board to request mediation within five working days from receipt of the objection, the Supervisory Board shall file a notice requesting mediation with the Secretariat of the Governing Council within ten

working days from receipt of the objection by the Governing Council. The relevant draft decision of the Supervisory Board and the relevant objection by the Governing Council shall be annexed to the notice requesting mediation. The notice requesting mediation shall be communicated to the Governing Council and Supervisory Board members.

6. If a competent authority of a non-euro area participating Member State which has requested a mediation regarding an objection by the Governing Council to a draft decision of the Supervisory Board pursuant to paragraph 1 notifies the ECB of its reasoned disagreement with the same Governing Council objection pursuant to Article 7(7) of Regulation (EU) No 1024/2013, the request for mediation shall be deemed withdrawn.

#### *Article 9* **Case Committee**

1. When a notice requesting mediation is filed in accordance with Article 8(5), the Chair of the Mediation Panel shall immediately forward it to the Mediation Panel members.

2. For each notice requesting mediation which has been filed in accordance with Article 8(5), the Mediation Panel shall set up within five working days of the filing of the notice requesting mediation a Case Committee and inform the Mediation Panel members of its composition.

3. A Case Committee shall be composed of the Chair of the Mediation Panel acting as its Chair and four other members appointed by the Mediation Panel from among the Mediation Panel members. The Mediation Panel shall aim to achieve a balance between Governing Council and Supervisory Board members. The Case Committee shall not include the member appointed by the participating Member State whose competent authority has expressed different views pursuant to Article 8(1) or the member appointed by the participating Member State whose competent authority has joined an existing request for mediation pursuant to Article 8(2).

4. Within 15 working days from receipt by the Mediation Panel of the notice requesting mediation, the Case Committee shall submit to the Chair of the Mediation Panel a draft opinion, which shall include an analysis of whether the request for mediation is admissible and legally founded. In urgent cases the Case Committee shall deliver the draft opinion within a shorter period to be set by the Chair.

5. The Chair shall immediately submit the draft opinion to the Mediation Panel and shall convene a meeting.

### **CHAPTER III** **DECISION-MAKING PROCESS**

#### *Article 10* **Mediation**

1. The Mediation Panel shall consider the draft opinion prepared by the Case Committee and shall submit an opinion to the Supervisory Board and the Governing Council within 20 working days from receipt of the notice requesting mediation. In urgent cases, the Mediation Panel shall deliver its opinion within a shorter period to be set by the Chair.

2. The opinion shall be in writing and shall include the reasons on which it is based.

3. The opinion of the Mediation Panel shall not be binding on the Supervisory Board and the Governing Council.

#### *Article 11* **Preparation of a new draft decision**

1. When an opinion has been delivered by the Mediation Panel, the Supervisory Board, having taken into consideration the opinion, may submit a new draft decision to the Governing Council within 10 working days from the submission of the Mediation Panel's opinion.

2. In urgent cases the Supervisory Board may submit a new draft decision within a shorter period to be set by the Chair of the Supervisory Board.

3. A request for mediation concerning an objection by the Governing Council to a new draft decision submitted pursuant to paragraph 2 shall not be possible.

### **CHAPTER IV** **GENERAL PROVISIONS**

#### *Article 12* **Confidentiality and professional secrecy**

1. The proceedings of the Mediation Panel shall be confidential. However, the Governing Council may authorise the President of the ECB to make the outcome of such proceedings public.

2. Documents drawn up or held by the Mediation Panel shall be ECB documents and therefore shall be classified and handled in accordance with Article 23.3. of the Rules of Procedure of the European Central Bank.

*Article 13*  
**Final provisions**

This Regulation shall enter into force on the day following 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, 2 June 2014.

*For the Governing Council of the ECB*

*The President of the ECB*

Mario DRAGHI

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(<sup>1</sup>) OJ L 287, 29.10.2013, p. 63.

(<sup>2</sup>) Decision 2004/257/EC of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (ECB/2004/2) (OJ L 80, 18.3.2004, p. 33).

**GUIDELINE (EU) 2015/856 OF THE EUROPEAN CENTRAL BANK  
of 12 March 2015  
laying down the principles of an Ethics Framework for the Single Supervisory  
Mechanism (ECB/2015/12)**

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 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 <sup>(1)</sup> (hereinafter the ‘SSM Regulation’), and in particular Article 6(1) in conjunction with Article 6(7) thereof,

Whereas:

- (1) The European Central Bank (ECB) attaches the utmost importance to a corporate governance approach that places accountability, transparency and the highest ethics standards at the centre of the Single Supervisory Mechanism (SSM). Adherence to these principles is a key element of the SSM’s credibility and essential to securing the trust of European citizens.
- (2) Against this background, it is considered necessary to establish an ethics framework for the SSM laying down ethics standards the compliance with which safeguards its credibility and reputation as well as public confidence in the integrity and impartiality of the members of the bodies and staff members of the ECB and the national competent authorities (NCAs) of the Member States participating in the SSM (hereinafter the ‘SSM Ethics Framework’). The SSM Ethics Framework should be composed of this Guideline laying down the principles, a set of best practices on how to implement these principles, and the internal rules and practices adopted by the ECB and each NCA.
- (3) Minimum standards concerning the prevention of misuse of inside information should reinforce the prevention of such misuse by members of the ECB’s or NCAs’ bodies or their staff members and exclude potential conflicts of interest arising from private financial transactions. For this purpose, the SSM Ethics Framework should clearly define the main concepts as well as the roles and responsibilities of the different bodies involved. Moreover, it should specify, beyond the general prohibition on misusing inside information, additional restrictions for persons having access to inside information. The SSM Ethics Framework should also lay down the

requirements for compliance monitoring and the reporting of cases of non-compliance.

- (4) The SSM Ethics Framework should also include minimum standards concerning the avoidance of conflicts of interest and the acceptance of gifts and hospitality.
- (5) The SSM Ethics Framework should apply in the performance of the supervisory tasks. It is desirable that the ECB and the NCAs apply equivalent standards to staff members or external agents engaged in the performance of other tasks.
- (6) The provisions of this Guideline are without prejudice to the applicable national legislation. Where an NCA is prevented by reason of the applicable national legislation from implementing a provision of this Guideline, it should inform the ECB thereof. In addition, the NCA concerned should consider taking reasonable measures at its disposal to overcome the obstacle under national law.
- (7) The provisions of this Guideline are without prejudice to the Code of Conduct for the members of the Governing Council <sup>(2)</sup> and the Code of Conduct for the Members of the Supervisory Board <sup>(3)</sup>.
- (8) While the SSM Ethics Framework is limited to the performance of supervisory tasks, the Governing Council has adopted an equivalent ethics framework for the performance of Eurosystem tasks by the ECB and national central banks <sup>(4)</sup>,

HAS ADOPTED THIS GUIDELINE:

**CHAPTER I  
GENERAL PROVISIONS**

*Article 1*  
**Definitions**

For the purposes of this Guideline:

- (1) ‘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. A reference to an NCA in this Guideline shall in this case apply as appropriate to the NCB for the tasks assigned to it by national law;

- (2) 'inside information' means any market sensitive information pertaining to the performance of supervisory tasks conferred on the ECB which has not been made public or is not accessible to the public;
- (3) 'market sensitive information' means information of a precise nature the publication of which is likely to have a significant effect on the prices of assets or prices in the financial markets;
- (4) 'insider' means any member of a body or staff member who has access to inside information other than on a one-off basis;
- (5) 'staff member' means any person who has an employment relationship with the ECB or an NCA with the exception of those that are solely entrusted with tasks not related to the performance of supervisory tasks under the SSM Regulation;
- (6) 'member of bodies' means the members of decision-making and other internal bodies of the ECB or the NCAs other than staff members;
- (7) 'financial corporations' has the same meaning as defined in Chapter 2, paragraph 2.55 of Regulation (EU) No 549/2013 of the European Parliament and of the Council (6);
- (8) 'conflict of interest' means a situation where members of bodies or staff members have personal interests which may influence or appear to influence the impartial and objective performance of their duties.
- (9) 'personal interest' means any benefit or potential benefit, of a financial or non-financial nature, for the members of bodies or staff members, their family members and other relatives or for their circle of friends and close acquaintances;
- (10) 'advantage' means any gift, hospitality or other benefit of a financial or non-financial nature which objectively improves the financial, legal or personal situation of the recipient and to which the recipient is not otherwise entitled.

## *Article 2*

### **Scope of application**

1. This Guideline shall apply to the ECB and the NCAs in the performance of the supervisory tasks conferred on the ECB. In this regard, internal rules adopted by the ECB and the NCAs in the fulfilment of the provisions of this Guideline shall apply to the members of their bodies and to their staff members.
2. The ECB and the NCAs shall aim, to the extent legally feasible, to extend the obligations defined in implementation of the provisions of this Guideline to persons involved in the performance of supervisory tasks who are not staff members.
3. The provisions of this Guideline are without prejudice to the application by the ECB or the NCAs of more stringent ethics rules to the members of their bodies and staff members.

## *Article 3*

### **Roles and responsibilities**

1. The Governing Council lays down the principles of the SSM Ethics Framework in this Guideline and establishes best practices on how to implement these principles in view of its responsibility for determining the corporate and ethics culture at SSM level.
2. The Audit Committee, the Internal Auditors Committee and the Organisational Development Committee shall be involved in the application and monitoring of the Ethics Framework for the SSM in accordance with their respective mandates.
3. The ECB and the NCAs shall specify the roles and responsibilities of the bodies, units and staff members involved at local level in the implementation, application and monitoring of the Ethics Framework for the SSM.

## *Article 4*

### **Communication and raising awareness**

1. The ECB and the NCAs shall formulate their internal rules implementing this Guideline in a clear and transparent manner, communicate them to the members of their bodies and their staff members and ensure that they are easily accessible.
2. The ECB and the NCAs shall take appropriate measures to raise the awareness of the members of their bodies and their staff members so that they understand their obligations under the Ethics Framework for the SSM.

*Article 5*  
**Compliance monitoring**

1. The ECB and the NCAs shall monitor compliance with the rules implementing this Guideline. The monitoring shall include, as appropriate, the conduct of regular and/or ad hoc compliance checks. The ECB and the NCAs shall establish adequate procedures to promptly respond to and address cases of non-compliance.

2. The monitoring of compliance shall be without prejudice to internal rules allowing for internal investigations where a member of a body or a staff member is suspected of having breached the rules implementing this Guideline.

*Article 6*  
**Reporting of cases of non-compliance and follow-up**

1. The ECB and the NCAs shall adopt internal procedures for the reporting of cases of non-compliance with the rules implementing this Guideline including rules on whistleblowing in accordance with the applicable laws and regulations.

2. The ECB and the NCAs shall adopt measures to ensure the appropriate protection of persons reporting cases of non-compliance.

3. The ECB and the NCAs shall ensure that cases of non-compliance are followed-up, including as appropriate the imposition of proportionate disciplinary measures in accordance with the applicable disciplinary rules and procedures.

4. The ECB and the NCAs shall report any major incident related to non-compliance with the rules implementing this Guideline without undue delay via the Organisational Development Committee and the Supervisory Board to the Governing Council in accordance with the applicable internal procedures. In urgent cases, the ECB or an NCA may report a major incident related to non-compliance directly to the Governing Council. In any event, the ECB and NCAs shall inform the Audit Committee in parallel.

**CHAPTER II**  
**RULES ON THE PREVENTION OF MISUSE OF**  
**INSIDE INFORMATION**

*Article 7*  
**General prohibition on misusing inside information**

1. The ECB and the NCAs shall ensure that the members of their bodies and their staff members are prohibited from misusing inside information.

2. The prohibition on misusing inside information shall cover, as a minimum: (a) the use of inside information for private transactions for one's own account or for the account of third parties; (b) the disclosure of inside information to any other person unless such disclosure is made in the course of carrying out professional duties on a need-to-know basis; and (c) the use of inside information in order to recommend or induce other persons to enter into private financial transactions.

*Article 8*  
**Specific restrictions for insiders**

1. The ECB and the NCAs shall ensure that access to inside information is restricted to those members of bodies and staff members who need access to this information for the performance of their duties.

2. The ECB and the NCAs shall ensure that all insiders are subject to specific restrictions with regard to critical private financial transactions. A private financial transaction shall be deemed critical when it is or may be perceived to be closely related to the performance of supervisory tasks. The ECB and the NCAs shall establish in their internal rules a list of such critical transactions which shall include in particular:

- (a) transactions in shares and bonds issued by financial corporations established in the Union;
- (b) short-term trading, i.e. the purchase and subsequent sale or the sale and subsequent purchase of the same financial instrument within a specified reference period;
- (c) transactions in derivatives related to the financial instruments listed under (a) and collective investment schemes the main purpose of which is to invest in such financial instruments.

3. The ECB and the NCAs shall adopt internal rules laying down the specific restrictions for insiders taking into account effectiveness, efficiency and proportionality considerations. Such specific restrictions may comprise any or a combination of the following:

- (a) the prohibition of specific financial transactions;
- (b) a prior authorisation requirement for specific financial transactions;
- (c) an *ex-ante* or *ex-post* reporting requirement for specific financial transactions; and/or
- (d) embargo periods for specific financial transactions.

4. The ECB and the NCAs may choose to apply these specific restrictions to staff members other than insiders.

5. The ECB and the NCAs shall ensure that their lists of critical private financial transactions may be adjusted at short notice to reflect the decisions of the Governing Council.

6. The ECB and the NCAs shall specify in their internal rules the conditions and safeguards under which members of bodies and staff members who entrust the management of their private financial transactions to an independent third party under a written asset management agreement are exempt from the specific restrictions laid down in this Article.

### **CHAPTER III RULES ON THE AVOIDANCE OF CONFLICTS OF INTEREST**

#### *Article 9* **Conflicts of interest**

1. The ECB and the NCAs shall have a mechanism in place to avoid a situation in which a candidate being considered for an appointment as a staff member has a conflict of interest resulting from previous occupational activities or from personal relationships.

2. The ECB and the NCAs shall adopt internal rules requiring the members of their bodies and their staff members to avoid during their employment any situation liable to give rise to a conflict of interest and to report such situations. The ECB and the NCAs shall ensure that, when a conflict of interest is reported, appropriate measures are available to avoid such conflict, including the relief from duties for the relevant matter.

3. The ECB and the NCAs shall have a mechanism in place to assess and avoid possible conflicts of interest arising from post-employment occupational activities undertaken by the members of their bodies and of their senior staff members reporting directly to the executive level.

4. The ECB and the NCAs shall, where relevant, have a mechanism in place to assess and avoid potential conflicts of interest arising from occupational activities undertaken by their staff members during unpaid leave.

### **CHAPTER IV RULES ON THE ACCEPTANCE OF GIFTS AND HOSPITALITY**

#### *Article 10* **Prohibition on receiving advantages**

1. The ECB and the NCAs shall adopt internal rules prohibiting the members of their bodies and their staff members from soliciting, receiving or accepting a promise related to receiving for themselves or any other person any advantage connected in any way with the performance of their official duties.

2. The ECB and the NCAs may specify in their internal rules exemptions from the prohibition laid down in paragraph 1 as regards advantages offered by central banks, Union institutions bodies or agencies, international organisations and government agencies, or as regards advantages of a customary or negligible value offered by the private sector provided in the latter case that these advantages are neither frequent nor from the same source. The ECB and the NCAs shall ensure that these exemptions do not influence or may not be perceived as influencing the independence and impartiality of the members of their bodies and of their staff members.

3. By way of derogation from paragraph 2, no exemptions shall be made for advantages offered by credit institutions to ECB or NCA staff members during on-site inspections or audit missions except hospitality of a negligible value offered during work-related meetings.

### **CHAPTER V FINAL PROVISIONS**

#### *Article 11* **Taking effect and implementation**

1. This Guideline shall take effect on the day of its notification to the NCAs.

2. The ECB and the NCAs shall take the necessary measures to implement and comply with this Guideline and apply them from 18 March 2016. NCAs shall inform the ECB of any obstacles for the implementation of this Guideline and shall notify the ECB of the texts and means relating to those measures by 18 January 2016 at the latest.

*Article 12*

**Reporting and review**

1. The NCAs shall report annually to the ECB on the implementation of this Guideline.
2. The Governing Council shall review this Guideline at least every three years.

*Article 13*

**Addressees**

This Guideline is addressed to the ECB and the NCAs.

Done at Frankfurt am Main, 12 March 2015.

*For the Governing Council of the ECB*

*The President of the ECB*

Mario DRAGHI

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(<sup>1</sup>) OJ L 287, 29.10.2013, p. 63.

(<sup>2</sup>) European Central Bank Code of Conduct for the members of the Governing Council (OJ C 123, 24.5.2002, p. 9).

(<sup>3</sup>) Code of Conduct for the Members of the Supervisory Board of the European Central Bank (OJ C 93, 20.3.2015, p. 2).

(<sup>4</sup>) Guideline (EU) 2015/855 of the European Central Bank of 12 March 2015 laying down the principles of a Eurosystem Ethics Framework and repealing Guideline ECB/2002/6 on minimum standards for the European Central Bank and national central banks when conducting monetary policy operations, foreign exchange operations with the ECB's foreign reserves and managing the ECB's foreign reserve assets (ECB/2015/11) (see page 23 of this Official Journal).

(<sup>5</sup>) 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).

# CODE OF CONDUCT FOR HIGH-LEVEL EUROPEAN CENTRAL BANK OFFICIALS of 5 December 2018 (2019/C 89/03)

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,

Whereas:

- (1) As an institution of the European Union (EU), the European Central Bank (ECB) is required to serve the public interest and ensure the highest standards of integrity. Therefore the ECB places accountability, transparency and the highest standards of ethics at the centre of its approach to corporate governance. Adherence to these principles is a key element of the ECB's credibility and vital to securing the trust of European citizens.
- (2) Professional ethics and the high standard of conduct that third parties are entitled to expect from the ECB and its high-level officials have been recognised since its establishment as key prerequisites for safeguarding the reputation of the ECB.
- (3) Further to the adoption of an initial Code of Conduct of the ECB in 2001 <sup>(1)</sup>, a specific Code of Conduct for the members of the Governing Council was adopted in 2002 <sup>(2)</sup> and revised in 2006 <sup>(3)</sup>; this was followed by a Supplementary Code of Ethics Criteria for the members of the Executive Board which was adopted in 2006 <sup>(4)</sup> and revised in 2010 <sup>(5)</sup>.
- (4) In the light of the establishment of the Single Supervisory Mechanism (SSM) pursuant to Council Regulation (EU) No 1024/2013 <sup>(6)</sup> whereby the ECB was entrusted with specific tasks concerning the prudential supervision of credit institutions, a Code of Conduct for the members of the Supervisory Board was also adopted in 2014 <sup>(7)</sup>.
- (5) Furthermore, with effect from January 2015, the ECB implemented an enhanced Ethics Framework applicable to staff members <sup>(8)</sup> and established the Compliance and Governance Office and the high-level Ethics Committee <sup>(9)</sup> which is mandated to advise the members of high-level ECB bodies on the different Codes of Conduct applicable to them in a coherent manner.
- (6) With regard to the Eurosystem and the SSM, common minimum ethics standards have been laid down in Guideline (EU) 2015/855 of the

European Central Bank (ECB/2015/11) <sup>(10)</sup> and Guideline (EU) 2015/856 of the European Central Bank (ECB/2015/12) <sup>(11)</sup>.

- (7) The ECB has a genuine interest in the principle that to the extent possible, and when justified by proportionality considerations, the members of each of its high-level bodies should adhere and be subject to the same professional conduct rules. To this end, the Ethics Committee was mandated by the Governing Council to reflect on the feasibility of establishing a single code of conduct, following which the Ethics Committee produced the code of conduct for high-level ECB officials that the Governing Council now seeks to endorse (this Code).
- (8) In addition to drawing inspiration from the provisions of and the rationale underlying the enhanced ethics framework applicable to ECB staff members, this Code reflects best practices within the central banking and supervisory communities and of fellow EU institutions, while, at the same time, acknowledging the ECB's specific institutional characteristics and its independence.
- (9) In endorsing this Code, the Governing Council aims to implement the highest standards of professional ethics, thereby ensuring that the members of its high-level bodies lead by example and inspire employees across the Eurosystem, the ESCB and the SSM also to uphold such standards in their discharge of duty.

HAS ENDORSED THIS SINGLE CODE OF CONDUCT FOR HIGH-LEVEL ECB OFFICIALS:

## **PART I SCOPE**

### *Article 1* **Scope of application**

- 1.1. This Code shall apply to the members of the Governing Council and the members of the Supervisory Board when exercising their functions as members of a high-level ECB body, as well as to the members of the Executive Board. It also covers members of the Governing

Council and members of the Supervisory Board when acting as members of the Steering Committee and the Mediation Panel where applicable, as well as representatives of national central banks, where the national competent authority (hereinafter the 'NCA') is not the national central bank (hereinafter the 'NCB'), participating in meetings of the Supervisory Board (hereinafter the 'members').

- 1.2. It shall also apply to persons replacing the members in meetings of the Governing Council or the Supervisory Board (hereinafter the 'alternates') in the performance of their duties and responsibilities relating to these high-level bodies where explicitly provided for in this Code. For the purposes of this Code, 'high-level ECB bodies' shall mean the Governing Council of the ECB, the Executive Board of the ECB and the Supervisory Board of the ECB.
- 1.3. This Code shall not apply to accompanying persons attending meetings of the Governing Council or the Supervisory Board. However, accompanying persons shall sign a declaration of ethical conduct covering the general principle of avoidance of conflicts of interest, the prohibition from using confidential information, and the rules on professional secrecy, prior to their first participation in any meetings (hereinafter 'Declaration of Ethical Conduct')<sup>(12)</sup>.
- 1.4. The members of the General Council shall be invited to sign the Declaration of Ethical Conduct. Moreover, the members of the Audit Committee, the Ethics Committee, the Administrative Board of Review (ABoR), and their alternates, where applicable, shall be required to sign the Declaration of Ethical Conduct.
- 1.5. ECB staff members attending meetings of high-level ECB bodies are adequately covered by the Ethics Framework and therefore shall not be required to sign the Declaration of Ethical Conduct.
- 1.6. In the event of any doubt relating to the provisions laid down in this Code or their practical application, the opinion of the Ethics Committee established by Decision (EU) 2015/433 of the European Central Bank (ECB/2014/59)<sup>(13)</sup> shall be sought.

#### *Article 2*

##### **Conflicting national provisions and applicability of different ethics frameworks**

- 2.1. Members and alternates shall inform the Ethics Committee without undue delay of any impediment to comply with this Code,

including any impediment arising from conflicting provisions of national law.

- 2.2. This Code shall be without prejudice to stricter ethical rules applicable to members and alternates by virtue of national law.

## **PART II STANDARDS OF ETHICAL CONDUCT**

### *Article 3*

#### **Basic principles**

- 3.1. Members and alternates shall carry out their duties and responsibilities in strict compliance with the Treaty on European Union and the Treaty on the Functioning of the European Union, the Statute of the European System of Central Banks and of the European Central Bank (hereinafter 'the Statute of the ESCB'), Council Regulation (EU) No 1024/2013, the Rules of Procedure of the European Central Bank<sup>(14)</sup> and the Rules of Procedure of the Supervisory Board of the European Central Bank<sup>(15)</sup>, as applicable.
- 3.2. In carrying out their duties and responsibilities, members and alternates shall observe the highest standards of ethical conduct and integrity. They are expected to act honestly, independently, impartially, with discretion and without regard to self-interest. They shall be mindful of the importance of their duties and responsibilities, shall take into account the public character of their functions and shall conduct themselves in a way that inspires ethical conduct within the Eurosystem, the European System of Central Banks (ESCB) and the SSM, and maintains and promotes public trust in the ECB.

### *Article 4*

#### **Professional secrecy**

- 4.1. Bearing in mind the professional secrecy requirements deriving from Article 37 of the Statute of the ESCB and Article 27(1) of Council Regulation (EU) No 1024/2013, members and alternates shall not disclose any information covered by the obligation of professional secrecy obtained in the exercise of their duties and responsibilities that has not been made public and is not accessible to the public (hereinafter 'confidential information') except deliberately as part of the agreed communication strategy of the ECB. In particular, they shall not disclose confidential information in public speeches or statements, or to the media, and shall treat

such information in accordance with agreed internal rules on the treatment of sensitive ESCB and SSM information. Members and alternates shall continue to be subject to these professional secrecy requirements in accordance with Union law even after their duties and responsibilities carried out for the ECB have ceased.

- 4.2. Members and alternates shall take all necessary measures to ensure that the staff members of their respective NCB and/or NCA are given access to confidential information only for the performance of the duties of the staff members and in accordance with applicable confidentiality policies, and are made aware of and strictly observe the professional secrecy requirements set out in Article 4.1.

### *Article 5*

#### **Separation of the supervisory function from the monetary policy function**

- 5.1. Members and alternates shall respect the separation of the ECB's specific tasks concerning policies relating to prudential supervision from its tasks relating to monetary policy, as well as other tasks. Where applicable, they shall comply with Decision ECB/2014/39 of the European Central Bank <sup>(16)</sup> and any rules adopted by the ECB pursuant to Article 25(3) of Council Regulation (EU) No 1024/2013.
- 5.2. In carrying out their duties and responsibilities, members of the Supervisory Board and their alternates shall take into account the objectives of Council Regulation (EU) No 1024/2013 and shall not interfere with non-supervisory tasks of the ECB, while duly respecting the specific duties and responsibilities of the Vice-Chair of the Supervisory Board.

## *Independence*

### *Article 6*

#### **Principle of independence**

Bearing in mind Article 130 of the Treaty on the Functioning of the European Union, Article 7 of the Statute of the ESCB and Article 19(1) of Council Regulation (EU) No 1024/2013, members and alternates, when exercising the powers and carrying out the duties and responsibilities conferred upon them, shall act independently and objectively in the interest of the Union as a whole, regardless of national or personal interest, and shall not seek or take instructions from EU institutions, bodies, offices or agencies, from any government of a Member State or from any other body.

### *Article 7*

#### **Private activities and official mandates**

- 7.1. Members and alternates shall ensure that any private activities, whether remunerated or not, do not have a negative impact on their obligations and will not damage the reputation of the ECB. For the purposes of this Code, 'private activities' shall mean any other activity undertaken by a member or alternate not in an official capacity.
- 7.2. Members and alternates may undertake private activities in public or international organisations or non-profit organisations as well as teaching and scholarly activities, provided that these are not activities that raise conflict of interest concerns, for example, activities related to supervised entities or counterparts to the Eurosystem in monetary policy or foreign exchange operations. In the event of private activities as specified in Article 11.1 of the ESCB Statute, the members of the Executive Board require the explicit approval of the Governing Council.
- 7.3. Members and alternates may accept remuneration and the reimbursement of expenses for private activities, provided that such remuneration and expenses are commensurate with the work performed and remain within customary limits.
- 7.4. Members and alternates shall abstain from official mandates which may hinder their independence and shall resign from any such official mandate that they hold. For the purposes of this Code, 'official mandates' mean any external activities performed by a member or alternate in an official capacity, i.e. as part of their duties and responsibilities.
- 7.5. Members and alternates shall notify the Ethics Committee in writing of any private activities which they intend to perform. They shall also provide it with an annual update of their ongoing private activities and official mandates.

### *Article 8*

#### **Relations with interest groups**

While maintaining the open, transparent and regular dialogue with representative associations and civil society required by the Treaty on European Union, members and alternates shall at all times, and in particular in their interactions with interest groups, be mindful of their independence, their professional secrecy obligations, and the basic principles established in this Code. Members and alternates shall also be mindful of the Guiding principles for external communication for high-level officials of the ECB <sup>(17)</sup>, as well as any other applicable

rules and guidelines, and shall exercise particular prudence and apply appropriate safeguards when participating in closed events or when accepting individual invitations.

#### *Article 9*

##### **Public appearances and public statements**

- 9.1. Members and alternates shall carry out their duties and responsibilities as, and consider themselves in public appearances to be, representatives of a high-level ECB body.
- 9.2. When making public statements on matters relating to the Eurosystem, the ESCB or the SSM, members and alternates shall have due regard to their role as representatives of a high-level ECB body.
- 9.3. In scientific or academic contributions, members and alternates shall make clear that such contributions are made in a personal capacity and do not represent the views of the ECB.

#### *Article 10*

##### **Declaration of Interests**

- 10.1. Each member shall on an annual basis submit to the Ethics Committee, for assessment and onward submission to the President, a signed Declaration of Interests which shall include information about the member's previous occupational activity, private activities, official mandates and financial interests, as well as about the gainful occupational activity of their spouse or partner, that may raise conflict of interest concerns (hereinafter the 'Declaration of Interests'). The Declaration of Interests <sup>(18)</sup> submitted by each member shall be published on the ECB's website and shall be without prejudice to any requirement to submit a wealth declaration under applicable national rules or contractual obligations.
- 10.2. The ECB shall process and retain any personal data collected in the Declarations of Interests in accordance with data protection legislation applicable to the ECB.

#### ***Conflicts of interest***

#### *Article 11*

##### **General principle of conflicts of interest**

- 11.1. Members and alternates shall avoid any situation which may raise conflict of interest concerns. A conflict of interest concern arises where a member or alternate has personal interests that may influence, or may be

perceived as influencing, the impartial and objective carrying out of their duties and responsibilities and also extends to, but is not limited to, their direct family members (any parent, child, brother or sister), spouses or partners of the member or the alternate. In particular, members and alternates may not use their involvement in a decision-making process, or the professional information they possess, to gain personal advantage of any kind. A conflict of interest does not exist where a member or alternate is only concerned as part of the general public or a broad class of persons.

- 11.2. Members and alternates shall disclose in writing, without undue delay, to the President or Chair of the relevant high-level ECB body and to the Ethics Committee any situation that may raise conflict of interest concerns. In particular, they shall recuse themselves from taking part in any discussions, deliberations or votes in relation to any such situation and shall not be provided with any related documentation.

#### *Article 12*

##### **Gainful occupational activity of a spouse or partner**

Members and alternates shall report, without delay, to the President or Chair of the relevant high-level ECB body and to the Ethics Committee any gainful occupational or other remunerated activities of their spouses or partners that may raise conflict of interest concerns.

#### *Article 13*

##### **Advantages (gifts and hospitality)**

- 13.1. Members and alternates shall not solicit, and shall exercise caution when offered, any advantages which are connected in any way with the duties and responsibilities conferred on them. For the purpose of this provision, 'advantages' shall mean any gift, hospitality, or other benefit, whether financial or in kind, which is not the agreed compensation for services delivered and to which the recipient is not otherwise entitled.
- 13.2. An advantage, offered or given to a member or an alternate or to any direct family member, spouse or partner, which is connected in any way with the carrying out of the duties and responsibilities of that member or alternate, may be accepted by them in the following circumstances:

- (a) it is offered by a public sector organisation, including another central bank, a national public body, an international organisation or academia, and is of a value which is considered customary and appropriate;
- (b) it is offered by one or more private entities or individuals and has a value not higher than EUR 100, or if higher, (i) is handed over to the respective institution of which the relevant member or alternate is a representative or (ii) the excess above EUR 100 is paid by the member or alternate to that institution;
- (c) it takes the form of hospitality and is commensurate with the duties and responsibilities of the member or alternate and is in line with customary limits;
- (d) it is not offered by a supervised entity;
- (e) its acceptance does not otherwise raise conflict of interest concerns.

13.3. The acceptance of an advantage shall not, in any event, impair or influence the objectivity and freedom of action of a member or alternate and shall not create an inappropriate obligation or expectation on the part of the recipient or the provider.

13.4. The members of the Executive Board, the Chair of the Supervisory Board and the ECB's representatives on the Supervisory Board shall without undue delay register with the Secretary of the Ethics Committee any gift or offer of a gift received, whatever its value. Other members and alternates shall be subject to the applicable national procedural rules on the registration of gifts.

#### *Article 14*

##### **Awards, honours and decorations**

- 14.1. Members and alternates shall be confident that any award, honour or decoration is compatible with their public status and does not compromise their independence or raise conflict of interest concerns.
- 14.2. Members and alternates shall hand over to the respective institution of which they are a representative, or donate to charity, any sum of money or valuables that a prize is endowed with, which they receive in connection with their duties and responsibilities as a member or alternate of a high-level ECB body.

#### *Article 15*

##### **Invitations to events**

- 15.1. Members and alternates, bearing in mind their obligations to respect the principle of independence and to avoid conflicts of interest, may accept invitations to widely attended events such as conferences, receptions or cultural events, if their participation is not adverse to the ECB's interest, and shall observe particular prudence with regard to individual invitations. Members and alternates shall not accept any invitations or payments that are not in compliance with these rules and shall inform their counterparts accordingly.
- 15.2. Members and alternates may not accept payment of travel and/or accommodation costs by the organisers of any event referred to in Article 15.1. Any fees which may be accepted by members and alternates for lectures and speeches undertaken in their official capacity shall be used by the ECB or the relevant NCB or NCA for charitable purposes.
- 15.3. If consistent with internationally accepted custom, Articles 15.1 and 15.2 shall apply equally to the accompanying spouses or partners of members and alternates in relation to invitations extended to them.

#### *Article 16*

##### **Rules on private financial transactions**

- 16.1. Members and alternates shall not use confidential information for their own benefit or for the benefit of a third party, including when carrying out private financial transactions and irrespective of whether such transactions are carried out directly or via a third party, at their own risk and on their own account, or at the risk and on the account of a third party.
- 16.2. It is recommended that members and alternates place their investments under the control of one or more recognised portfolio managers who have full discretion for assets which go beyond those required for ordinary, personal and family use.
- 16.3. Members and alternates shall comply with the material rules on private financial transactions laid down in the Ethics Framework of the ECB <sup>(19)</sup> as applicable at any point in time.
- 16.4. The members of the Executive Board, the Chair of the Supervisory Board and the ECB's Representatives on the Supervisory Board shall also be subject to the reporting and compliance monitoring procedures in relation to their private financial transactions as laid down in the Ethics Framework of the ECB.

16.5. Members and alternates to whom Article 16.4 does not apply shall be subject to reporting and compliance monitoring in relation to their private financial transactions as laid down in the applicable national procedural rules and shall submit to the Ethics Committee on an annual basis signed confirmation that they have complied with the applicable national procedural rules on private financial transactions and that the reporting and compliance monitoring in relation to their private financial transactions has been conducted in line with the applicable national procedural rules <sup>(20)</sup>.

#### *Article 17*

#### **Post-employment rules**

17.1. Members shall inform the President or Chair of the respective high-level ECB body and the Ethics Committee in writing of their intention to engage in any gainful occupational activity in the two-year period from the end of their term of office or from the date of cessation of their function as a member of a high-level ECB body.

Moreover, they may only engage in a gainful occupational activity with:

- (a) a significant or less significant credit institution after the expiry of a period of one year from the end of their term of office or from the date of cessation of their function as a member of a high-level ECB body;
- (b) any other financial institution not identified in paragraph (a) above after the expiry of a period of six months from the end of their term of office or from the date of cessation of their function as a member of a high-level ECB body;
- (c) any entity engaged in lobbying in relation to the ECB, or consultancy and/or advocacy for the ECB or for any institution identified in paragraphs (a) or (b) above after the expiry of a period of six months from the end of their term of office or from the date of cessation of their function as a member of a high-level ECB body.

Moreover, members of the Executive Board and of the Governing Council may only engage in a gainful occupational activity with:

- (d) a counterparty to the Eurosystem in monetary policy or foreign exchange operations after the expiry of a period of one year from the end of their term of

office or from the date of cessation of their membership of the Executive Board or of the Governing Council, as applicable;

- (e) a payment or settlement system operator, a central counterparty or a provider of payment instruments subject to ECB oversight after the expiry of six months from the end of their term of office or from the date of cessation of their membership of the Executive Board or of the Governing Council, as applicable.

17.2. Alternates shall inform the President or Chair of the respective high-level ECB body and the Ethics Committee in writing of their intention to engage in any gainful occupational activity in the one-year period from the date of their ceasing to act in that capacity.

Moreover, they may only engage in a gainful occupational activity with:

- (a) a significant or less significant credit institution after the expiry of a period of six months from the date on which the involvement in related duties and responsibilities has ceased;
- (b) any other financial institution not identified in paragraph (a) above after the expiry of a period of three months from the date on which the involvement in related duties and responsibilities has ceased;
- (c) any entity engaged in lobbying in relation to the ECB, or consultancy and/or advocacy for the ECB or for any institution identified in paragraphs (a) or (b) above after the expiry of a period of three months from the date on which the involvement in related duties and responsibilities has ceased.

Moreover, alternates to meetings of the Governing Council may only engage in a gainful occupational activity with:

- (d) a counterparty to the Eurosystem in monetary policy or foreign exchange operations after the expiry of a period of six months from the date on which the involvement in related duties and responsibilities has ceased;
- (e) a payment or settlement system operator, a central counterparty or a provider of payment instruments subject to ECB oversight after the expiry of three months from the date on which the involvement in related duties and responsibilities has ceased.

17.3. Members and alternates shall request the Ethics Committee to issue an opinion on the cooling-off periods applicable to them under this Article prior to taking up a specific prospective gainful occupational activity. The Ethics Committee may recommend in its opinion:

- (a) a waiver or reduction of the cooling-off periods laid down in this Article in circumstances where the possibility of conflicts of interest resulting from subsequent gainful occupational activities so permits; or
- (b) an extension of the cooling-off periods under Articles 17.1(a) and 17.2(a) for subsequent relevant gainful occupational activities with significant or less significant credit institutions in the supervision of which the member or alternate was directly involved, up to a maximum of two years for members and one year for alternates where the possibility of conflicts of interest resulting from such gainful occupational activities so requires.

17.4. Without prejudice to applicable national rules, for the duration of their cooling-off period members and alternates should be paid appropriate compensation by their respective employer institutions from the end of their term with their institution until the end of the applicable cooling-off period. This compensation should be paid irrespective of the receipt of an offer to engage in a gainful occupational activity. Accordingly, members and alternates may request an opinion from the Ethics Committee on the appropriate level of compensation in respect of cooling-off periods.

17.5. Where during a cooling-off period a member or alternate takes up a gainful occupational activity not covered by Articles 17.1 and 17.2 above and the amount of the net monthly remuneration received from the gainful occupational activity together with the compensation provided for the cooling-off period exceeds the net monthly remuneration which the member or alternate received during their last year of office, the excess shall be deducted from the compensation paid. This provision shall not be applicable to remuneration for activities that have been previously carried out and previously declared by a member or alternate.

17.6. Opinions issued by the Ethics Committee under Articles 17.3 and 17.4 above shall be addressed to the Governing Council. The Governing Council shall then make a recommendation to the respective national competent authority

or the respective national central bank which shall inform the Governing Council of any impediment to the implementation of this recommendation.

17.7. Members and alternates shall submit to the Ethics Committee a signed Declaration of Honour <sup>(2)</sup> on an annual basis during the two-year or one-year notification period from the end of their term of office in which they confirm their gainful occupational activities and the respective remuneration, a report on which shall be submitted to the President.

#### *Article 18*

#### **Non-compliance**

Without prejudice to applicable national rules, in the event of non-compliance by a member or alternate with the provisions of this Code, the Ethics Committee shall first address the matter with the individual concerned. If adherence cannot be achieved through moral suasion, the Ethics Committee shall raise the matter with the Governing Council. Upon advice from the Ethics Committee and after having heard the individual concerned, the Governing Council may decide to issue a reprimand and, where appropriate, make it public.

### **PART III FINAL PROVISIONS**

#### *Article 19*

#### **Publication**

This Code shall be published in the *Official Journal of the European Union*. High-level ECB officials to whom this Code applies will sign individual Declarations of Compliance as appropriate.

#### *Article 20*

#### **Entry into force**

This Code shall enter into force on 1 January 2019.

Done at Frankfurt am Main, 5 December 2018.

*The President of the ECB*

Mario DRAGHI

(1) Code of Conduct of the European Central Bank (OJ C 76, 8.3.2001, p. 12).

(2) Code of Conduct for the members of the Governing Council (OJ C 123, 24.5.2002, p. 9).

(3) Memorandum of Understanding amending the Memorandum of Understanding on a Code of Conduct for the members of the Governing Council (OJ C 10, 16.1.2007, p. 6).

- (4) Supplementary Code of Ethical Criteria for the members of the Executive Board of the European Central Bank (OJ C 230, 23.9.2006, p. 46).
- (5) Supplementary Code of Ethics Criteria for the members of the Executive Board of the European Central Bank (OJ C 104, 23.4.2010, p. 8).
- (6) 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).
- (7) Code of Conduct for the members of the Supervisory Board of the European Central Bank (OJ C 93, 20.3.2015, p. 2).
- (8) The Ethics Framework of the ECB (OJ C 204, 20.6.2015, p. 3).
- (9) Decision (EU) 2015/433 of the European Central Bank of 17 December 2014 concerning the establishment of an Ethics Committee and its Rules of Procedure (ECB/2014/59) (OJ L 70, 14.3.2015, p. 58).
- (10) Guideline (EU) 2015/855 of the European Central Bank of 12 March 2015 laying down the principles of a Eurosystem Ethics Framework and repealing Guideline ECB/2002/6 on minimum standards for the European Central Bank and national central banks when conducting monetary policy operations, foreign exchange operations with the ECB's foreign reserves and managing the ECB's foreign reserve assets (ECB/2015/11) (OJ L 135, 2.6.2015, p. 23).
- (11) Guideline (EU) 2015/856 of the European Central Bank of 12 March 2015 laying down the principles of an Ethics Framework for the Single Supervisory Mechanism (ECB/2015/12) (OJ L 135, 2.6.2015, p. 29).
- (12) See template Declaration of Ethical Conduct.
- (13) See footnote 9.
- (14) See Decision ECB/2004/2 of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).
- (15) Rules of Procedure of the Supervisory Board of the European Central Bank (OJ L 182, 21.6.2014, p. 56).
- (16) Decision ECB/2014/39 of the European Central Bank 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).
- (17) See Guiding principles for external communication for high-level officials of the ECB.
- (18) See template Declaration of Interests.
- (19) See the Ethics Framework of the ECB.
- (20) See template Declaration of Compliance for private financial transactions.
- (21) See template Declaration of Honour.

**CODE OF CONDUCT FOR THE MEMBERS OF THE SUPERVISORY BOARD OF  
THE EUROPEAN CENTRAL BANK**  
**of 12 November 2014**  
**(2015/C 93/02)**

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 SUPERVISORY BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank <sup>(1)</sup>, and in particular Article 13e(1) thereof,

Whereas:

- (1) Article 19(1) of Council Regulation (EU) No 1024/2013 <sup>(2)</sup> requires members of the Supervisory Board of the European Central Bank (hereinafter the ‘members of the Supervisory Board’) to act independently and objectively in the interest of the Union as a whole and to neither seek nor take instructions from the institutions and bodies of the Union, from any government of a Member State or from any other public or private body.
- (2) Article 25 of Regulation (EU) No 1024/2013 establishes the principle of separation between the specific tasks of the European Central Bank (ECB) concerning policies relating to prudential supervision and its tasks relating to monetary policy, as well as other tasks, in order to avoid conflicts of interest, and ensures that these functions are exercised in accordance with the applicable objectives.
- (3) Article 31(3) of Regulation (EU) No 1024/2013 requires the ECB to 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 to provide for appropriate disclosures subject to applicable data protection rules. These procedures are to be without prejudice to the application of stricter national rules. As regards members of the Supervisory Board who are representatives of national competent authorities, such procedures are to be established and implemented in cooperation with national competent authorities. Furthermore, these procedures are without prejudice to the application of the ECB terms and conditions of employment of the Chair, the Vice-Chair and the four ECB representatives

in the Supervisory Board, which also include provisions on the cooling-off periods.

- (4) Article 13e(2) of the Rules of Procedure of the European Central Bank requires each member of the Supervisory Board to ensure that any accompanying persons, alternates and the representatives of its national central bank, if the national competent authority is not the central bank, sign a declaration of compliance with the Code of Conduct prior to any participation in the meetings of the Supervisory Board,

HAS ADOPTED THIS CODE OF CONDUCT:

*Article 1*

**Scope of application**

- 1.1. This Code of Conduct shall apply to the members of the Supervisory Board in the performance of their duties as members of the Supervisory Board and as members of the Steering Committee of the Supervisory Board. It shall also apply to accompanying persons, alternates and representatives of national central banks, where the national competent authority is not the national central bank (hereinafter the ‘other participants in Supervisory Board meetings’), in the performance of their duties relating to the Supervisory Board and the Steering Committee of the Supervisory Board, in cases where this is explicitly provided for.
- 1.2. This Code of Conduct shall be without prejudice to the application of stricter national rules, as well as the ECB terms and conditions of employment, including rules on private financial transactions, applicable to those coming within the scope of this Code of Conduct in their capacity as representatives of national competent authorities or representatives of national central banks of participating Member States or members of the ECB.

*Article 2*

**Basic principles**

- 2.1. Members of the Supervisory Board and other participants in Supervisory Board meetings shall observe the highest standards of ethical conduct. In the performance of their duties,

they are expected to act with honesty, independence, impartiality, discretion and regardless of self-interest. They shall be mindful of the importance of their duties and responsibilities, shall take into account the public character of their functions and shall conduct themselves in a way that maintains and promotes public trust in the ECB.

- 2.2. Members of the Supervisory Board and other participants in Supervisory Board meetings shall perform their duties in strict compliance with the Treaty on European Union and the Treaty on the Functioning of the European Union, the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’), Regulation (EU) No 1024/2013, the Rules of Procedure of the European Central Bank and the Rules of Procedure of the Supervisory Board of the European Central Bank <sup>(3)</sup>.
- 2.3. When making public statements on matters relating to the Single Supervisory Mechanism, members of the Supervisory Board shall have due regard to their role in and duties to the Supervisory Board and shall in particular make clear whether they are speaking as representatives of national competent authorities, in a personal capacity or as members of the Supervisory Board.
- 2.4. Members of the Supervisory Board and other participants in Supervisory Board meetings shall perform their duties as, and consider themselves in public appearances to be, representatives of the Supervisory Board, as an internal collective body of the ECB. Within the Supervisory Board, they shall coordinate messages to be conveyed via public speeches, oral and/or written, and any other form of public communication. They shall also coordinate within the Supervisory Board any appearances at hearings of and reports to the European Parliament and the Eurogroup in accordance with Article 20 of Regulation (EU) No 1024/2013 as well as any exchanges of views with national parliaments in accordance with Article 21(3) of Regulation (EU) No 1024/2013.

#### *Article 3*

##### **Separation from the monetary policy function**

- 3.1. Members of the Supervisory Board and other participants in Supervisory Board meetings shall respect the separation of the ECB’s specific tasks concerning policies relating to prudential supervision from its tasks relating to monetary policy, as well as other tasks, and shall comply with internal ECB rules on the separation of prudential supervision from

monetary policy to be adopted pursuant to Article 25(3) of Regulation (EU) No 1024/2013.

- 3.2. In the performance of their tasks, members of the Supervisory Board and other participants in Supervisory Board meetings shall take into account the objectives set by Regulation (EU) No 1024/2013 and shall not interfere with other tasks of the ECB.

#### *Article 4*

##### **Independence**

- 4.1. In accordance with Article 19(1) of Regulation (EU) No 1024/2013, members of the Supervisory Board and other participants in Supervisory Board meetings, when carrying out the tasks conferred upon them, shall act independently and objectively in the interest of the Union as a whole, regardless of national or personal interest, and shall not seek or 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.
- 4.2. Members of the Supervisory Board and other participants in Supervisory Board meetings shall, in particular, carry out the tasks conferred upon them free from undue political influence and from commercial interference that would affect their personal independence.
- 4.3. Members of the Supervisory Board and other participants in Supervisory Board meetings shall abstain from professional activities and shall resign from any position that could hinder their independence or present them with the possibility of using privileged information.

#### *Article 5*

##### **Rules on private financial transactions**

- 5.1. Members of the Supervisory Board and other participants in Supervisory Board meetings shall not use confidential information, to which they have access, for the purpose of carrying out private financial transactions, whether directly or indirectly via third parties, at their own risk and on their own account or at the risk and on the account of a third party.
- 5.2. Members of the Supervisory Board and other participants in Supervisory Board meetings shall organise or adhere to adequate procedures for the management of their personal assets, being assets beyond those required for ordinary personal and family use, in a manner that ensures the independence of the member of the Supervisory Board, the absence of conflicts of interest and an impediment to the use of privileged information by the member.

5.3. Members of the Supervisory Board and other participants in Supervisory Board meetings shall comply with the rules on private financial transactions adopted by the ECB for ECB members of staff. With regard to members of the Supervisory Board who are representatives of national competent authorities, compliance with and monitoring of such rules on private financial transactions is subject to any applicable national procedural rules.

#### *Article 6* **Wealth declaration**

In the absence of a requirement to provide a wealth declaration under applicable national rules, members of the Supervisory Board shall submit to the President of the ECB, either during their first three months of office or during the period of three months following the entry into force of this Code of Conduct, a written statement setting out their patrimony, any direct or indirect involvement in any company, and the prospective organisation for the management of their assets during their term of office as a member of the Supervisory Board. These written statements, including wealth declarations required under applicable national rules, shall be updated on an annual basis.

#### *Article 7* **Opinion of the ECB Ethics Committee**

7.1. Members of the Supervisory Board and other participants in Supervisory Board meetings shall seek the opinion of the ECB Ethics Committee in the event of doubt relating to the practical application of the rules laid down in this Code of Conduct.

7.2. Members of the Supervisory Board and other participants in Supervisory Board meetings, as well as the ECB and the national competent authority or national central bank of which the requesting member of the Supervisory Board or other participant in Supervisory Board meetings is a representative, shall be informed of the principles and rationale of the opinions issued by the ECB Ethics Committee without identifying any individual member of the Supervisory Board or other participant.

#### *Article 8* **Cooling-off periods**

8.1. Members of the Supervisory Board shall inform the President of the ECB of their intention to engage in any occupational activity, whether gainful or not, in the two-year period from the date of their ceasing to hold office. They may only engage in an occupational activity with:

- (a) a credit institution that is directly supervised by the ECB after the expiry of a period of one year from the date of cessation of their membership of the Supervisory Board;
- (b) a credit institution that is not directly supervised by the ECB, but where a conflict of interest exists or could be perceived as existing, after the expiry of a period of one year from the date of cessation of their membership of the Supervisory Board;
- (c) an institution other than a credit institution, save where a conflict of interest exists or could be perceived to exist, in which case the relevant activity may commence only after the expiry of a period of six months from the date of cessation of their membership of the Supervisory Board.

8.2. Other participants in Supervisory Board meetings shall inform the President of the ECB of their intention to engage in any occupational activity, whether gainful or not, in the one-year period from the date of their ceasing to act in that capacity. They may only engage in an occupational activity with:

- (a) a credit institution that is directly supervised by the ECB after the expiry of a period of six months from the date of cessation of their participation in the Supervisory Board;
- (b) a credit institution that is not directly supervised by the ECB, but where a conflict of interest exists or could be perceived as existing, after the expiry of a period of six months from the date of cessation of their participation in the Supervisory Board;
- (c) an institution other than a credit institution, save where a conflict of interest exists or could be perceived to exist, in which case the relevant activity may commence only after the expiry of a period of three months from the date of cessation of their participation in the Supervisory Board.

8.3. Members of the Supervisory Board and other participants in Supervisory Board meetings shall request the ECB Ethics Committee to issue an opinion on the cooling-off periods applicable to them under this Article. The ECB Ethics Committee may recommend in its opinion the waiver or reduction of the cooling-off periods laid down in this Article in circumstances where the possibility of conflicts of interest resulting from subsequent occupational activities can be excluded.

- 8.4. In relation to Articles 8.1(a) and 8.2(a) the ECB Ethics Committee may also recommend in its opinion extending the cooling-off periods up to a maximum of two years for Supervisory Board Members and one year for other participants in Supervisory Board meetings in appropriate circumstances where the possibility of conflicts of interest resulting from subsequent occupational activities cannot be excluded for longer periods.
- 8.5. Members of the Supervisory Board and other participants in Supervisory Board meetings should be paid appropriate compensation in respect of cooling-off periods by their respective employer institutions. This compensation should be paid irrespective of the receipt of an offer to engage in an occupational activity. Accordingly, Members of the Supervisory Board and other participants in Supervisory Board meetings may request an opinion from the ECB Ethics Committee on the appropriate level of compensation in respect of cooling-off periods.
- 8.6. Opinions issued by the ECB Ethics Committee under Paragraphs 3, 4 and 5 shall be addressed to the Supervisory Board for its consideration. The Supervisory Board shall then make a recommendation to the respective national competent authority or the respective national central bank who shall inform the Supervisory Board of any impediment to the implementation of this recommendation.

*Article 9*  
**Conflicts of interest**

- 9.1. Members of the Supervisory Board and other participants in Supervisory Board meetings shall avoid any situation which could give rise or may be perceived as giving rise to a conflict of interest. A conflict of interest arises where the members of the Supervisory Board and other participants in Supervisory Board meetings have private or personal interests that may influence the impartial and objective performance of their tasks including any potential benefit or advantage to themselves, their family members or their recognised partners.
- 9.2. Any situation that could cause or could be perceived as causing a conflict of interest shall be disclosed in writing by members of the Supervisory Board and other participants in Supervisory Board meetings to the Supervisory Board and these members shall not participate in any deliberation or vote in relation to that situation.

*Article 10*  
**Gifts or other benefits**

- 10.1. A 'gift' means any benefit or advantage, whether financial or in kind, which is connected with the duties conferred on members of the Supervisory Board or other participants in Supervisory Board meetings but is not the agreed compensation for the services delivered, whether given by or offered to the members of the Supervisory Board or other participants in Supervisory Board meetings, or to any member of their families or their recognised partners.
- 10.2. Acceptance of a gift shall not, in any event, impair or influence the objectivity and freedom of action of a member of the Supervisory Board and shall not create an inappropriate obligation or expectation on the part of the recipient or the provider. Gifts that are connected to supervised entities of a value exceeding EUR 50 and public sector gifts of a value exceeding that which is customary and considered appropriate shall be rejected. If a particular situation does not allow any such gifts to be rejected, the gift must be handed over to the ECB, the national competent authority or the national central bank of which the relevant member of the Supervisory Board or other participant in Supervisory Board meetings is a representative unless any excess above EUR 50 is paid to the ECB, the national competent authority or the national central bank. Members of the Supervisory Board and other participants in Supervisory Board meetings shall not accept frequent gifts from the same source.

*Article 11*  
**Acceptance of invitations and related payments**

- 11.1. Members of the Supervisory Board and other participants in Supervisory Board meetings, bearing in mind their obligations to respect the principle of independence and avoid conflicts of interest, may accept invitations to conferences, receptions or cultural events and connected entertainment, including appropriate hospitality, if their participation in the event is compatible with the fulfilment of their duties or is in the ECB's interest. They should observe particular prudence with regard to individual invitations.
- 11.2. Any invitations and payments that are not in compliance with these rules shall be rejected by the members of the Supervisory Board and other participants in Supervisory Board meetings and they shall inform their counterparts of the applicable rules.

### *Article 12*

#### **Activities undertaken in a personal capacity**

- 12.1. Members of the Supervisory Board and other participants in Supervisory Board meetings shall ensure that activities undertaken by them in a personal capacity, if any, whether remunerated or not, do not have a negative impact on their obligations and will not damage the reputation of the ECB.
- 12.2. Teaching and scholarly activities, for example, as well as other activities, may be undertaken by members of the Supervisory Board and other participants in Supervisory Board meetings, provided that these activities are not related to supervised entities. They may accept remuneration and the reimbursement of expenses for such activities when undertaken in a personal capacity and without the involvement of the ECB, provided that such remuneration and expenses are commensurate with the work performed and remain within customary limits.
- 12.3. On an annual basis, members of the Supervisory Board and other participants in Supervisory Board meetings shall notify the Ethics Committee in writing of any activities in which they have participated in a personal capacity and of any remuneration resulting from their external mandates, whether public or private, which were performed during their terms of office.
- 12.4. In scientific or academic contributions, members of the Supervisory Board and other participants in Supervisory Board meetings shall make clear that such contributions are made in a personal capacity and do not represent the views of the ECB.

### *Article 13*

#### **Gainful employment or other duties of a spouse or recognised partner**

The members of the Supervisory Board and other participants in Supervisory Board meetings shall immediately report to the Ethics Committee any gainful employment or other remunerated activities of their spouse or recognised partner that could cause or could be perceived as causing a conflict of interest, even in the event of doubt.

### *Article 14*

#### **Professional secrecy**

- 14.1. Members of the Supervisory Board and other participants in Supervisory Board meetings shall take into account the requirements of professional secrecy in Article 37 of the Statute of the ESCB, Article 27(1) of Regulation (EU) No 1024/2013 and Article 23a of the Rules of Procedure of the European Central Bank,

pursuant to which members are required not to disclose confidential information, whether in public speeches or statements or to the media, with regard to supervisory decisions that have not yet been officially published.

- 14.2. Members of the Supervisory Board and other participants in Supervisory Board meetings shall take all necessary measures to ensure that the professional secrecy obligations in Article 37 of the Statute of the ESCB are respected by persons having access to the members' information.

### *Article 15*

#### **Information on conflicting national legal provisions**

Members of the Supervisory Board and other participants in Supervisory Board meetings shall inform the ECB Ethics Committee of any impediment to compliance with this Code of Conduct to the fullest extent, including any impediment arising from conflicting national legal provisions.

### *Article 16*

#### **Entry into force**

This Code of Conduct shall enter into force on the day following its adoption.

Done at Frankfurt am Main, 12 November 2014.

*The Chair of the Supervisory Board*

Danièle NOUY

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(<sup>1</sup>) OJ L 80, 18.3.2004, p. 33.

(<sup>2</sup>) 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).

(<sup>3</sup>) OJ L 182, 21.6.2014, p. 56.

**DECISION 2004/258/EC OF THE EUROPEAN CENTRAL BANK**  
**of 4 March 2004**  
**on public access to European Central Bank documents (ECB/2004/3)**

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

Having regard to the Rules of Procedure of the European Central Bank <sup>(1)</sup>, and in particular to Article 23 thereof,

Whereas:

- (1) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. Openness enhances the administration's legitimacy, effectiveness and accountability, thus strengthening the principles of democracy.
- (2) In the Joint Declaration <sup>(2)</sup> relating to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(3)</sup>, the European Parliament, the Council and the Commission call on the other institutions and bodies of the Union to adopt internal rules on public access to documents which take account of the principles and limits set out in the Regulation. The regime on public access to ECB documents as laid down in Decision ECB/1998/12 of 3 November 1998 concerning public access to documentation and the archives of the European Central Bank <sup>(4)</sup> should be revised accordingly.
- (3) Wider access should be granted to ECB documents, while at the same time protecting the independence of the ECB and of the national central banks (NCBs) foreseen by Article 108 of the Treaty and Article 7 of the Statute, and the confidentiality of certain matters specific to the performance of the ECB's tasks. In order to safeguard the effectiveness of its decision-making process, including its internal consultations and preparations, the proceedings of the meetings of the ECB's decision-making bodies are confidential, unless the relevant body decides to make the outcome of its deliberations public.

- (4) However, certain public and private interests should be protected by way of exceptions. Furthermore, the ECB needs to protect the integrity of euro banknotes as a means of payment including, without limitation, the security features against counterfeiting, the technical production specifications, the physical security of stocks and the transportation of euro banknotes.
- (5) When NCBs handle requests for ECB documents that are in their possession, they should consult the ECB in order to ensure the full application of this Decision unless it is clear whether or not the document may be disclosed.
- (6) In order to bring about greater openness, the ECB should grant access not only to documents drawn up by it, but also to documents received by it while at the same time preserving the right for the third parties concerned to express their positions with regard to access to documents originating from those parties.
- (7) In order to ensure that good administrative practice is respected, the ECB should apply a two-stage procedure,

HAS DECIDED AS FOLLOWS:

*Article 1*  
**Purpose**

The purpose of this Decision is to define the conditions and limits according to which the ECB shall give public access to ECB documents and to promote good administrative practice on public access to such documents.

*Article 2*  
**Beneficiaries and scope**

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ECB documents, subject to the conditions and limits defined in this Decision.
2. The ECB may, subject to the same conditions and limits, grant access to ECB documents to any natural or legal person not residing or not having its registered office in a Member State.

3. This Decision shall be without prejudice to rights of public access to ECB documents which might follow from instruments of international law or acts which implement them.

### *Article 3* **Definitions**

For the purpose of this Decision:

- (a) ‘document’ and ‘ECB document’ shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) drawn up or held by the ECB and relating to its policies, activities or decisions, as well as documents originating from the European Monetary Institute (EMI) and from the Committee of Governors of the central banks of the Member States of the European Economic Community (Committee of Governors);
- (b) ‘third party’ shall mean any natural or legal person, or any entity outside the ECB;
- (c) ‘national competent authority’ (NCA) and ‘national designated authority’ (NDA) have the meaning given to them by Council Regulation (EU) No 1024/2013 <sup>(5)</sup>;
- (d) ‘other relevant authorities and bodies’ means relevant national authorities and bodies, Union institutions, bodies, offices and agencies, relevant international organisations, supervisory authorities and administrations of third countries.

### *Article 4* **Exceptions**

1. The ECB shall refuse access to a document where disclosure would undermine the protection of:

- (a) the public interest as regards:
  - the confidentiality of the proceedings of the ECB’s decision-making bodies, the Supervisory Board or other bodies established pursuant to Regulation (EU) No 1024/2013,
  - the financial, monetary or economic policy of the Union or a Member State,
  - the internal finances of the ECB or of the NCBs,
  - protecting the integrity of euro banknotes,
  - public security,
  - international financial, monetary or economic relations,

- the stability of the financial system in the Union or in a Member State,
  - the Union’s or a Member State’s policy relating to the prudential supervision of credit institutions and other financial institutions,
  - the purpose of supervisory inspections,
  - the soundness and security of financial market infrastructures, payment schemes or payment service providers;
- (b) the privacy and the integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data;
  - (c) the confidentiality of information that is protected as such under Union law.

2. The ECB shall refuse access to a document where disclosure would undermine the protection of:

- the commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

3. Access to a document drafted or received by the ECB for internal use as part of deliberations and preliminary consultations within the ECB, or for exchanges of views between the ECB and NCBs, NCAs or NDAs, shall be refused even after the decision has been taken, unless there is an overriding public interest in disclosure.

Access to documents reflecting exchanges of views between the ECB and other relevant authorities and bodies shall be refused even after the decision has been taken, if disclosure of the document would seriously undermine the ECB’s effectiveness in carrying out its tasks, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, the ECB shall consult the third party concerned with a view to assessing whether an exception in this Article is applicable, unless it is clear that the document shall or shall not be disclosed.

As regards requests for access to European Systemic Risk Board documents, Decision ESRB/2011/5 of the European Systemic Risk Board of 3 June 2011 on public access to European Systemic Risk Board documents <sup>(6)</sup>, adopted on the basis of Article 7 of Council Regulation (EU) No 1096/2010 of 17

November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board <sup>(7)</sup>, shall apply.

5. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

6. The exceptions as laid down in this Article shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years unless specifically provided otherwise by the ECB's Governing Council. In the case of documents covered by the exceptions relating to privacy or commercial interests, the exceptions may continue to apply after this period.

#### *Article 5* **Documents at the NCBs**

Documents that are in the possession of an NCB and have been drawn up by the ECB as well as documents originating from the EMI or the Committee of Governors may be disclosed by the NCB only subject to prior consultation of the ECB concerning the scope of access, unless it is clear that the document shall or shall not be disclosed.

Alternatively the NCB may refer the request to the ECB.

#### *Article 6* **Applications**

1. An application for access to a document shall be made to the ECB <sup>(8)</sup> in any written form, including electronic form, in one of the official languages of the Union and in a sufficiently precise manner to enable the ECB to identify the document. The applicant is not obliged to state the reasons for the application.

2. If an application is not sufficiently precise, the ECB shall ask the applicant to clarify the application and shall assist the applicant in doing so.

3. In the event of an application relating to a very long document or to a very large number of documents, the ECB may confer with the applicant informally, with a view to finding a fair solution.

#### *Article 7* **Processing of initial applications**

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 20 working days from the receipt of the application, or on receipt of the clarifications requested in accordance with Article 6(2), the Director-General Secretariat

of the ECB shall either grant access to the document requested and provide access in accordance with Article 9 or, in a written reply, state the reasons for total or partial refusal and inform the applicant of their right to make a confirmatory application in accordance with paragraph 2.

2. In the event of total or partial refusal, the applicant may, within 20 working days of receiving the ECB's reply, make a confirmatory application asking the ECB's Executive Board to reconsider its position. Furthermore, failure by the ECB to reply within the prescribed 20 working days' time limit for handling the initial application shall entitle the applicant to make a confirmatory application.

3. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, or if the consultation of a third party is required, the ECB may extend the time limit provided for in paragraph 1 by 20 working days, provided that the applicant is notified in advance and that detailed reasons are given.

4. Paragraph 1 shall not apply in case of excessive or unreasonable applications, in particular when they are of a repetitive nature.

#### *Article 8* **Processing of confirmatory applications**

1. A confirmatory application shall be handled promptly. Within 20 working days from the receipt of such application, the Executive Board shall either grant access to the document requested and provide access in accordance with Article 9 or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the ECB shall inform the applicant of the remedies open to them in accordance with Articles 263 and 228 of the Treaty.

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the ECB may extend the time limit provided for in paragraph 1 by 20 working days, provided that the applicant is notified in advance and that detailed reasons are given.

3. Failure by the ECB to reply within the prescribed time limit shall be considered to be a negative reply and shall entitle the applicant to institute court proceedings and/or submit a complaint to the European Ombudsman, under Articles 263 and 228 of the Treaty, respectively.

*Article 9*  
**Access following an application**

1. Applicants may consult documents to which the ECB has granted access either at its premises or by receiving a copy, including, where available, an electronic copy. The costs of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form shall be free of charge.
2. If a document has already been released by the ECB and is easily accessible, the ECB may fulfil its obligation of granting access to it by informing the applicant how to obtain the requested document.
3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format) as requested by the applicant.

*Article 10*  
**Reproduction of documents**

1. Documents released in accordance with this Decision shall not be reproduced or exploited for commercial purposes without the ECB's prior specific authorisation. The ECB may withhold such authorisation without stating reasons.
2. This Decision shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

*Article 11*  
**Final provisions**

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

Decision ECB/1998/12 shall be repealed.

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(<sup>1</sup>) Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank. See page 33 of this Official Journal.

(<sup>2</sup>) OJ L 173, 27.6.2001, p. 5.

(<sup>3</sup>) OJ L 145, 31.5.2001, p. 43.

(<sup>4</sup>) OJ L 110, 28.4.1999, p. 30.

(<sup>5</sup>) 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).

(<sup>6</sup>) OJ C 176, 16.6.2011, p. 3.

(<sup>7</sup>) OJ L 331, 15.12.2010, p. 162.

(<sup>8</sup>) Addressed to the European Central Bank, Secretariat Division, Kaiserstrasse 29, D-60311 Frankfurt am Main. Fax: + 49 (69) 1344 6170. E-mail: [ecb.secretariat@ecb.int](mailto:ecb.secretariat@ecb.int)

**DECISION (EU) 2015/811 OF THE EUROPEAN CENTRAL BANK**  
**of 27 March 2015**  
**on public access to European Central Bank documents in the possession of the national**  
**competent authorities (ECB/2015/16)**

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 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 <sup>(1)</sup>, and in particular Article 6(1) in conjunction with Article 6(7) thereof,

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

Whereas:

- (1) The regime on public access to European Central Bank (ECB) documents is laid down in Decision ECB/2004/3 <sup>(2)</sup>.
- (2) ECB documents may be in the possession of the national competent authorities as a result of their duty to assist the ECB, to cooperate in good faith and to exchange information with the ECB pursuant to Regulation (EU) No 1024/2013. The performance of supervisory tasks conferred on the ECB and the effective functioning of the single supervisory mechanism may be hampered if the ECB is not consulted on the scope of access to be granted in respect of ECB documents in the possession of the national competent authorities or, if alternatively, requests for access to such documents are not referred to the ECB. Therefore, requests for access to such documents should either be referred to the ECB or the ECB should be consulted prior to any decision on disclosure,

HAS ADOPTED THIS DECISION:

*Article 1*  
**Definitions**

For the purposes of this Decision:

- (1) ‘document’ and ‘ECB document’ shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound,

visual or audiovisual recording) drawn up or held by the ECB and relating to its policies, activities or decisions under Regulation (EU) No 1024/2013;

- (2) ‘national competent authority’ (NCA) shall have the meaning assigned to it in point (2) of Article 2 of Regulation (EU) No 1024/2013. This meaning is without prejudice to arrangements under national law that assign certain supervisory tasks to a national central bank (NCB) that is not designated as an NCA. With regard to such arrangements, a reference to an NCA in this Decision shall also refer to the NCB in respect of the supervisory tasks assigned to it by national law.

*Article 2*  
**Documents at the NCAs**

Where an NCA receives a request for an ECB document in its possession, the NCA shall consult the ECB on the scope of access to be granted, prior to taking a decision on disclosure, unless it is clear that the document shall or shall not be disclosed.

Alternatively, the NCA may refer the request to the ECB.

*Article 3*  
**Taking effect**

This Decision shall take effect on the day of its notification to the addressees.

*Article 4*  
**Addressees**

This Decision is addressed to the NCAs.

Done at Frankfurt am Main, 27 March 2015.

*The President of the ECB*

Mario DRAGHI

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<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(2)</sup> Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents (OJ L 80, 18.3.2004, p. 42).

**Decision (EU) 2022/134 of the European Central Bank  
of 19 January 2022  
laying down common rules on the transmission by the European Central Bank of  
supervisory information to authorities and bodies for the purpose of carrying out the  
tasks conferred on it by Council Regulation (EU) No 1024/2013 (ECB/2022/2)**

ES EN GA LV LT NL PL

*Article 1*  
**Subject matter**

1. This Decision lays down common rules on the transmission of supervisory information held by the ECB to authorities and bodies as defined in Article 2(2).

2. This Decision shall be without prejudice to rules on the transmission of supervisory information held by the ECB to other authorities and bodies or held by the national competent authorities within the meaning of Article 2(2) of Regulation (EU) No 1024/2013.

*Article 2*  
**Definitions**

For the purpose of this Decision, the following definitions apply:

(1) ‘supervisory information’ means any confidential information held by the ECB, the transmission of which to authorities and bodies presupposes an assessment, connected with the carrying out of the tasks conferred on the ECB by Regulation (EU) No 1024/2013, as to the appropriateness of such transmission;

(2) ‘authorities and bodies’ means national, Union and international authorities and bodies, except national competent authorities as defined in Article 2(2) of Regulation (EU) No 1024/2013, as identified in the Annex to this Decision;

(3) ‘decision to allocate tasks’ means a decision by which the Executive Board allocates to a transmission clearance officer the task of applying the rules laid down in this Decision and/or, as appropriate, the specific rules laid down in instruments applicable to particular categories of transmission of supervisory information;

(4) ‘transmission clearance’ means the approval to transmit supervisory information to authorities and bodies given by a transmission clearance officer in applying this Decision and/or, as appropriate, instruments that lay down specific rules applicable

to particular categories of transmission of supervisory information, pursuant to a decision to allocate tasks.

*Article 3*  
**Common rules on the transmission of  
supervisory information**

1. The ECB shall transmit supervisory information to authorities and bodies if:

(a) the applicable law authorises the transmission of such supervisory information to those authorities and bodies and the conditions laid down for that authorisation are satisfied;

(b) the supervisory information is adequate, relevant and not excessive in scope in relation to the tasks of those relevant authorities or bodies; and

(c) there are no overriding reasons for refusing to disclose such supervisory information relating to the need to avoid any interference with the functioning and independence of the Single Supervisory Mechanism, in particular by jeopardising the accomplishment of its tasks.

2. If it appears that overriding reasons for refusing to disclose the supervisory information referred to in paragraph (1)(c) exist, the Governing Council shall decide on the transmission of supervisory information, following the procedure laid down in Article 26(8) of Regulation (EU) No 1024/2013.

3. The common rules laid down in paragraph 1 shall be without prejudice to any specific rules as referred to in Article 4.

*Article 4*  
**Instruments laying down specific rules**

This decision is without prejudice to other instruments laying down specific or complementing rules on particular categories of transmission of supervisory information to authorities and bodies.

*Article 5*  
**Transmission clearance**

Transmission clearance officers shall have responsibility for approving the transmission of supervisory information by the ECB and shall apply in this regard the rules laid down in this Decision and/or, as appropriate, any specific rules laid down in the instruments referred to in Article 4, pursuant to a decision to allocate tasks.

*Article 6*  
**Entry into force**

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

*ANNEX*

Recipient authority or body	Description and legal basis
<b>European Commission</b>	Article 32 of the SSMR <sup>(1)</sup>
<b>The European Banking Authority (EBA), European Securities and Markets Authority, European Insurance and Occupational Pensions Authority, European Systemic Risk Board</b>	Article 53(2) of the CRD <sup>(2)</sup> in conjunction with Article 35(1) of the EBA Regulation <sup>(3)</sup> or Article 80 of the CRR <sup>(4)</sup> , Article 15 of the ESRB Regulation <sup>(5)</sup>  Article 9a of the EBA Regulation
<b>National prudential supervisory authorities in the European Union and European Economic Area (EEA) regarding qualifying holding and licensing procedures or other procedures referred to in the relevant legislation</b>	Article 56 and Articles 16(3), 24(2), 50(4) of the CRD and equivalent provisions in Union law, in particular Articles 26 and 60 in Solvency II <sup>(6)</sup> and Articles 11 and 84 of MiFID <sup>(7)</sup>

Recipient authority or body	Description and legal basis
<b>National competent and resolution authorities that participate in a prudential college under the CRD, or in arrangements under FICOD or crisis management groups</b>	Article 116 of the CRD for written coordination and cooperation arrangements;  Article 11 of FICOD <sup>(8)</sup> for financial conglomerate arrangements;  Articles 90, 97 and 98 of the BRRD <sup>(9)</sup> for cooperation arrangements related to crisis management groups;  Articles 88 and 90 of the BRRD for resolution college written arrangements.  This category covers the exchange of information within prudential colleges under the CRD and the FICOD and crisis management groups as well as the non-discretionary annual updates and termination of written coordination and cooperation arrangements, coordination arrangements under FICOD and cooperation arrangements for crisis management groups

<b>Recipient authority or body</b>	<b>Description and legal basis</b>
<b>Authorities that are part of an AML/Countering the Financing of Terrorism (CFT) college</b>	Article 117(5) of the CRD (for AML/CFT supervisory authorities and financial intelligence units and terms of participation concluded for the specific AML/CFT college). For exchange of information with other types of authorities participating in the college, the legal basis may differ (note: the AML/CFT colleges are regulated by joint guidelines on cooperation and information exchange for the purpose of Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(10)</sup> between competent authorities supervising credit and financial institutions and other parties; those guidelines are not addressed to the ECB)
<b>AML/CFT supervisory authorities that signed the Multilateral Agreement on the practical modalities for exchange of information pursuant to Article 57a(2) of Directive (EU) 2015/849 (hereinafter the ‘AML Agreement’)</b>	Article 117(5) of the CRD, Article 3(4) and (5) of the AML Agreement
<b>AML/CFT supervisory authorities and financial intelligence units of Member States</b>	Article 117(5) of the CRD and EBA Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units under Directive 2013/36/EU (EBA/GL/2021/15) <sup>(11)</sup>
<b>National market authorities in the Union and EEA</b>	Article 56 of the CRD

<b>Recipient authority or body</b>	<b>Description and legal basis</b>
<b>National insurance supervisors in the Union and EEA</b>	Article 56 of the CRD
<b>Deposit guarantee schemes, contractual or institutional protection schemes, competition authorities</b>	Article 56 of the CRD, or national law requiring an opinion from the prudential supervisor
<b>National resolution authorities in the Union and EEA</b>	Article 56 of the CRD
<b>National macroprudential supervisors for tasks outside the scope of Article 5 of the SSMR</b>	Article 56 of the CRD
<b>Statutory auditors of significant institutions</b>	Article 56(f) of the CRD  EBA Guidelines on communication between competent authorities supervising credit institutions and the statutory auditor(s) and the audit firm(s) carrying out the statutory audit of credit institutions (EBA/GL/2016/05) <sup>(12)</sup>
<b>National authorities responsible for the supervision of financial markets if designated under Article 24(1) in connection with Article 24(4) (h) of Directive 2004/109/EC of the European Parliament and of the Council <sup>(13)</sup> (accounting enforcers)</b>	Article 56 of the CRD

<b>Recipient authority or body</b>	<b>Description and legal basis</b>
<b>National authorities responsible for oversight of persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions (audit enforcers)</b>	Article 57 of the CRD
<b>National authorities responsible for oversight of the bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures</b>	Article 57 of the CRD
<b>National authorities responsible for oversight of contractual or institutional protection schemes as referred to in Article 113(7) of the CRR</b>	Article 57 of the CRD
<b>National authorities or bodies legally responsible for the detection and investigation of breaches of company law</b>	Article 57 of the CRD
<b>National authorities responsible for overseeing payment systems</b>	Article 58 of the CRD

<b>Recipient authority or body</b>	<b>Description and legal basis</b>
<b>International bodies (the International Monetary Fund, the World Bank, the Bank of International Settlements, the Financial Stability Board)</b>	Article 58a of the CRD, with the exception of data sharing (e.g. Implementing Technical Standards modules) for stress tests
<b>Prudential supervisory authorities in third countries</b>	Article 55 of the CRD Exchange of information in accordance with arrangements (memoranda of understanding (MoUs), written coordination and cooperation arrangements (WCCAs), institution-specific cross-border cooperation agreements (CoAgs) developed by crisis management groups (CMGs), resolution written arrangements (WAs) etc.) or ad hoc agreements
<b>National market, insurance, or similar authorities in third countries</b>	Article 55 of the CRD and applicable arrangements (MoUs, WCCAs, CoAgs, resolution WAs etc.) or ad hoc agreements
<b>AML/CFT supervisory authorities and financial intelligence units in third countries</b>	Article 55 of the CRD and, where relevant, MoUs or other cooperation arrangements
<b>Resolution authorities in third countries</b>	Article 55 of the CRD, Articles 97 and 98 of the BRRD, in connection with applicable arrangements

(<sup>1</sup>) 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).

(<sup>2</sup>) 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338) in conjunction with EU implementing regulations.

- (<sup>3</sup>) 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).
- (<sup>4</sup>) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
- (<sup>5</sup>) Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).
- (<sup>6</sup>) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).
- (<sup>7</sup>) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).
- (<sup>8</sup>) 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).
- (<sup>9</sup>) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).
- (<sup>10</sup>) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).
- (<sup>11</sup>) Available on the EBA's website at [www.eba.europa.eu](http://www.eba.europa.eu).
- (<sup>12</sup>) Available on the EBA's [website](#).
- (<sup>13</sup>) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

**DECISION (EU) 2019/976 OF THE EUROPEAN CENTRAL BANK**  
**of 29 May 2019**  
**laying down the principles for defining objectives and sharing feedback in joint**  
**supervisory teams and repealing Decision (EU) 2017/274 (ECB/2019/14)**

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,

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 <sup>(1)</sup>, and in particular Article 6(1) and (7) thereof,

Whereas:

- (1) Article 6(1) of Regulation (EU) No 1024/2013 stipulates that the European Central Bank (ECB) is responsible for the effective and consistent functioning of the Single Supervisory Mechanism (SSM). Recital 79 of that Regulation states that highly motivated, well-trained and impartial staff is indispensable to effective supervision.
- (2) In accordance with Articles 3 to 6 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) <sup>(2)</sup>, the ECB is in charge of the establishment and composition of joint supervisory teams composed of staff members from the ECB and the national competent authorities. A joint supervisory team (JST) coordinator, assisted by one or more national competent authority (NCA) sub-coordinators, ensures the coordination of the work within the JST.
- (3) In view of the JST coordinators' and NCA sub-coordinators' important roles in coordinating the work of JST members from the NCA, it is necessary and proportionate to introduce a uniform process for defining objectives and sharing feedback within the JSTs.
- (4) Feedback on the performance of the NCA sub-coordinators was previously provided during an initial trial period based on Decision (EU) 2016/3 of the European Central Bank (ECB/2015/36) <sup>(3)</sup>, and then during a subsequent trial period in accordance with the principles laid down in Decision (EU) 2017/274 of the European Central Bank (ECB/2017/6) <sup>(4)</sup>. As that subsequent trial period has concluded, Decision (EU) 2017/274 (ECB/2017/6) should be repealed in the interests of legal certainty.

(5) Experience gained during that subsequent trial period indicated that a feedback mechanism within JSTs may be useful to ensure their effective functioning, better collaboration and dialogue, and to further build trust and openness in these teams. The feedback mechanism should therefore be continued and used on a regular basis. However, in order to accommodate revisions that need to be made to the feedback mechanism, it is necessary to adopt a new Decision. Therefore, Decision (EU) 2017/274 (ECB/2017/6) should be repealed and replaced by this Decision.

(6) The NCAs are solely responsible for the appraisal of their staff, and the ECB is solely responsible for the appraisal of its staff. In the management of staff, NCAs may use the feedback provided by the JST coordinators to the NCA sub-coordinators, if permitted under the relevant national law, and the ECB may use the feedback provided to the JST coordinator, in all cases in accordance with this Decision.

(7) The European Data Protection Supervisor was consulted in accordance with Article 27 of Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(5)</sup> and delivered an opinion on 7 April 2015 recognising that feedback is necessary for the management of JSTs, and endorsing the feedback mechanism, while advising that its precise operation is defined in an appropriate legal instrument,

HAS ADOPTED THIS DECISION:

*Article 1*  
**Definitions**

For the purposes of this Decision, the definitions contained in Article 2 of Regulation (EU) No 1024/2013 and Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17) shall apply.

*Article 2*  
**Setting objectives and sharing feedback**

1. Without prejudice to the sole responsibility of NCAs as the employer of NCA sub-coordinators, JST coordinators shall, after consultation with each NCA sub-coordinator, set out that NCA sub-coordinator's main tasks and objectives.

2. The objectives and competencies of the role of JST coordinator are defined within the context of the ECB's performance management and development process. For the purpose of feedback within the JST, NCA sub-coordinators shall be informed of those competencies set out and defined in the ECB capability framework <sup>(6)</sup> that are applicable to the role of JST coordinator.

3. The feedback shall be reciprocal: the JST coordinators shall provide feedback to the NCA sub-coordinators and the NCA sub-coordinators shall provide feedback to the JST coordinators, in accordance with the principles set out in Annex I.

4. The relevant JST coordinator and the relevant NCA sub-coordinators shall jointly provide feedback to their JST as a whole on how that team met its objectives in accordance with the principles set out in Annex I.

5. The JST coordinators and the NCA sub-coordinators shall aim to provide feedback in the context of a face-to-face meeting.

6. The reference period for which objectives are defined and feedback is provided shall be the period from 1 January until 31 December in each year.

7. Feedback recorded in the system tool used to manage the feedback process shall be accessed only by persons meeting the need to know criteria laid down in Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(7)</sup>. Specific categories of stakeholders having a need to know the feedback shall be set out in the relevant record of the processing operation and the privacy notice provided to data subjects.

### *Article 3* **Repeal**

Decision (EU) 2017/274 (ECB/2017/6) is hereby repealed.

### *Article 4* **Final provisions**

1. This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.
2. By derogation from Article 2(6), the first reference period for which objectives are defined and feedback is provided shall start on the date of entry into force of this Decision and shall end on 31 December of the same year.

Done at Frankfurt am Main, 29 May 2019.

*For the Governing Council of the ECB*

*The President of the ECB*

Mario DRAGHI

<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(2)</sup> 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).

<sup>(3)</sup> Decision (EU) 2016/3 of the European Central Bank of 18 November 2015 laying down the principles for providing feedback on the performance of national competent authorities' sub-coordinators in the joint supervisory teams of the Single Supervisory Mechanism (ECB/2015/36) (OJ L 1, 5.1.2016, p. 4).

<sup>(4)</sup> Decision (EU) 2017/274 of the European Central Bank of 10 February 2017 laying down the principles for providing performance feedback to national competent authority sub-coordinators and repealing Decision (EU) 2016/3 (ECB/2017/6) (OJ L 40, 17.2.2017, p. 72).

<sup>(5)</sup> 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 (OJ L 8, 12.1.2001, p. 1).

<sup>(6)</sup> See the document entitled 'The ECB capability framework: the competencies', available at [https://www.ecb.europa.eu/careers/pdf/leadership\\_competencies.en.pdf](https://www.ecb.europa.eu/careers/pdf/leadership_competencies.en.pdf)

<sup>(7)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

## *ANNEX I*

### **Principles for defining objectives and sharing feedback in joint supervisory teams of the Single Supervisory Mechanism**

#### **Principle 1** **Setting objectives**

1. Without prejudice to the sole responsibility of NCAs as the employer of NCA sub-coordinators, at the beginning of each reference period or when a NCA sub-coordinator has joined a JST, the JST coordinator, after consultation with the NCA sub-coordinator, sets out the main tasks and objectives for each NCA sub-coordinator.
2. The JST coordinator and the NCA sub-coordinator jointly define the team objectives and communicate these objectives to the JST annually during a JST meeting which shall take place at the beginning of each reference period or when a new JST has been set up.
3. The agreed tasks and objectives for the NCA sub-coordinator may be recorded in the system tool used to manage the feedback process.

## **Principle 2**

### **Sharing feedback**

1. The JST coordinator provides at least once a year, in any case, following the end of a reference period, face-to-face feedback to the NCA sub-coordinator on how they and their teams met their respective objectives. This feedback takes into account the competencies set out in Annex II.
2. The NCA sub-coordinator provides at least once a year, in any case, following the end of a reference period, face-to-face feedback to the JST coordinator on their coordination of the JST. This feedback takes into account the competencies set out in the ECB capability framework.
3. Feedback shared between the JST coordinator and the NCA sub-coordinator as described in Principle 2.1 and 2.2 is recorded, upon request from the feedback receiver via the system tool, in the system tool, which is used to manage the feedback process.
4. The JST coordinator and the NCA sub-coordinator jointly provide feedback to their JST on how the team met its objectives. This feedback is provided to the JST at least once a year, in any case, following the end of a reference period, during a JST meeting.
5. In order to ensure continuous dialogue, the JST coordinator provides each NCA sub-coordinator with guidance and continuous feedback throughout the year.
6. The JST coordinator and the NCA sub-coordinator provide guidance and continuous feedback to their team throughout the year.

## **Principle 3**

### **Access to the feedback recorded in the system tool**

1. Access to the feedback recorded in the system tool used to manage the feedback process is given to the JST coordinator and to NCA sub-coordinator.
2. Access by ECB staff, other than the JST coordinator and the process administrator to the feedback recorded in the system tool used to manage the feedback process may be provided on a need-to-know basis in accordance with Regulation (EU) 2018/1725.
3. Upon the request of the relevant NCA, feedback on the NCA sub-coordinator recorded in the system tool used to manage the feedback

process, if available, is made accessible to, and may be used by, the relevant NCA:

- (a) for the purpose of facilitating its staff management, if permitted by applicable national law;
  - (b) as an input to identify professional development needs, including training needs, of the JST sub-coordinators, in line with the NCA's internal rules;
  - (c) for the creation/preparation of appraisals, if permitted under the relevant national law.
4. Access to the feedback, including its transfer, is granted to NCAs in accordance with Article 9(1)(a) of Regulation (EU) 2018/1725. If requests for feedback are received and a transfer takes place, the NCA sub-coordinator concerned is informed accordingly.

## **Principle 4**

### **Protection of personal data processed in the context of sharing feedback**

1. All personal data related to setting objectives and sharing feedback on how these objectives are met is processed by the ECB in accordance with Regulation (EU) 2018/1725.
2. Personal data related to setting the objectives and sharing feedback on how those objectives are met is used only for the purposes described in Principle 3, and may be stored for a maximum period of five years.

## *ANNEX II*

### **List of competencies particularly relevant for staff working in the SSM (SSM competencies)**

**Professional knowledge:** Knowledge of supervisory policies, methodologies and regulations, especially in the SSM context, as well as of financial institutions functioning. Keeps abreast of developments in those fields and applies the knowledge to the relevant areas of work.

**Communication:** Conveying information clearly and concisely to groups or individuals, either verbally or in writing, to ensure that they understand the information and the message. Listening and responding appropriately to others.

**Cooperation and collaboration:** Building and maintaining on-going, collaborative, working relationships with co-workers to accomplish the SSM tasks of the team with their European dimension. Developing and maintaining effective

relationships with others in order to encourage and support teamwork. Proactively sharing data, information and knowledge within the team.

**Determination in achieving objectives:** Performing tasks with tenacity and perseverance, pursuing successful solutions while adapting own behaviour to find a suitable approach to reach a successful outcome.

**Judgement and intrusiveness:** Analysing and assessing situations, data and information in order to develop appropriate strategies, plans and policies. Understanding and formulating different and opposing perspectives on an issue, if needed, adapting approaches as the requirements of a situation change, considering problems from new perspectives and expanding on the thinking or solutions proposed by others. Attempting to fully understand issues prior to making a recommendation or reaching a conclusion, while gathering full and exact information as necessary; arriving at a sound judgement by respectfully asking a series of intrusive questions; and continuously scanning for potential issues and various information.

**Breadth of awareness and being forward-looking:** Looking beyond the own role to establish the wider context in which one operates, by having a full understanding of the different functions/ areas, by showing awareness of diverse cultural contexts and points of view, and by assessing the implications of own decisions on others. Looking ahead and anticipating opportunities and threats in the future, taking action to create opportunities or to avert a future issue.

**Acting objectively with integrity and independence:** Acting independently and objectively, in the interest of the Union as a whole, on the basis of the professional standards of the SSM, verifying circumstances to get a complete and realistic picture of a situation. Striving to reduce or eliminate biases, prejudices, or subjective evaluations by relying on verifiable data and facts.

**Managing SSM teams (applicable to managers only):** Directing (virtual/remote) teams and guiding them to the team objectives. Coordinating team activities across boundaries, by providing direction and by using their competencies and diversity in the most effective and efficient way. Working to reduce and cope with ambiguity and finding ways to direct and deliver under uncertainty.

**DECISION (EU) 2015/2218 OF THE EUROPEAN CENTRAL BANK**  
**of 20 November 2015**  
**on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile (ECB/2015/38)**

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

*Article 1*  
**Scope**

This Decision lays down the procedural requirements for the request for prior approval that supervised credit institutions shall submit to the ECB in order to exclude staff members or categories of staff from the presumption of being identified staff based on the quantitative criteria established in Article 6 of Commission Delegated Regulation (EU) 2021/923 (1).

*Article 2*  
**Definitions**

For the purposes of this Decision:

- (1) 'supervised credit institution' means a significant supervised entity as defined in Article 2(16) of Regulation (EU) No 468/2014 (ECB/2014/17) or significant supervised group as defined in Article 2(22) of Regulation (EU) No 468/2014 (ECB/2014/17);
- (2) 'ECB supervisory decision' has the same meaning as defined in Article 2(26) of Regulation (EU) No 468/2014 (ECB/2014/17);
- (3) 'identified staff' means: (a) all staff members and categories of staff of a supervised credit institution whose professional activities have a material impact on the credit institution's risk profile and who are specified in points (a) to (c) of Article 92(3) of Directive 2013/36/EU; and (b) all other staff members and categories of staff who are not expressly specified in points (a) to (c) of Article 92(3) of Directive 2013/36/EU and whose professional activities have an impact on a supervised credit institution's risk profile that is comparably as material as that of the staff members or categories of staff identified in accordance with Article 4 of Delegated Regulation (EU) 2021/923.

*Article 3*  
**General information to be provided to the ECB**

1. A request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 shall contain the following information for the end of the preceding financial year and for the current financial year:

- (a) the reference date;
  - (b) the legal entity identifier (LEI) of the supervised credit institution;
  - (c) the number of full-time equivalent employees;
  - (d) the number of identified staff;
  - (e) the number of identified staff based on the qualitative criteria established in points (a) and (b) of Article 92(3) of Directive 2013/36/EU and in Article 5 of Delegated Regulation (EU) 2021/923;
  - (f) the number of identified staff based exclusively on the quantitative criteria established in Article 92(3)(c) of Directive 2013/36/EU and in Article 6 of Delegated Regulation (EU) 2021/923, together with an indication of which of the categories specified in Article 92(3)(c) of Directive 2013/36/EU or in Article 6(1)(a) or (b) of Delegated Regulation (EU) 2021/923 each identified staff member belongs to;
  - (g) the number of identified staff exclusively based on additional criteria set forth by the supervised credit institution.
2. A request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 shall contain the following information for each staff member for whom the application of Article 6(2) of Delegated Regulation (EU) 2021/923 is requested:
- (a) the staff member's name, entity, business unit, department, job title and reporting line together with the number of full-time equivalent employees under the staff member's management;
  - (b) whether the staff member belongs to any risk taking or risk control function and if so, what is the threshold in millions of euro of risk positions that the function is allowed to take;
  - (c) whether the staff member is a member of any committee and if so, the name of the committee, its reporting level and its degree of authority to take risk decisions expressed as a percentage of Common Equity Tier 1 capital;
  - (d) the total amount of remuneration in euro and the variable to fixed remuneration ratio

awarded to the staff member in the reference year;

- (e) the key performance indicators for the staff member's variable remuneration;
- (f) the quantitative criteria on the basis of which the staff member was assessed as being identified staff (Article 6(1)(a) or (b) of Delegated Regulation (EU) 2021/923);
- (g) the criteria on the basis of which the prior approval under Article 6(3) of Delegated Regulation (EU) 2021/923 is requested with respect to the staff member (Article 6(2)(a) or (b) of Delegated Regulation (EU) 2021/923).

3. A request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 shall contain the annual internal or external audit assessment report on the identification process of identified staff and its results in respect of each staff member for whom a prior approval under Article 6(3) of Delegated Regulation (EU) 2021/923 is requested.

#### *Article 4*

##### **Documentation required to substantiate that the staff member or category of staff only carries out professional activities in and only has authorities in a business unit that is not a material business unit**

1. When requesting prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923, supervised credit institutions shall submit to the ECB the following documentation in order to substantiate that a staff member, or the category of staff to which the staff member belongs, only carries out professional activities and has authorities in a business unit which is not a material business unit, as referred to in Article 6(2)(a) of Delegated Regulation (EU) 2021/923:

- (a) a detailed and comprehensive description of the duties and responsibilities of the relevant staff member or the category of staff to which the staff member belongs;
- (b) an organisational chart of the relevant business unit that shows the hierarchical structure and reporting lines, including the relevant staff member or category of staff to which the staff member belongs;
- (c) a detailed description of the internal capital allocation to the relevant business unit according to Article 73 of Directive 2013/36/EU for the current and the 2 preceding financial years;
- (d) an overview of the internal capital allocation to all business units in accordance with Article

73 of Directive 2013/36/EU for the current and the 2 preceding financial years;

- (da) a statement justifying why the business unit is not otherwise considered to have a material impact on the supervised credit institution's internal capital;
- (e) a statement explaining why the supervised credit institution awarded the staff member, or category of staff to which the staff member belongs, a remuneration that meets the criteria established in Article 6(1) of Delegated Regulation (EU) 2021/923 even though the staff member, or the category of staff to which the staff member belongs, carries out professional activities in a non-material business unit;
- (f) a reasoned statement explaining why the staff member, or category of staff to which the staff member belongs, does not meet the qualitative criteria established in points (a) and (b) of Article 92(3) of Directive 2013/36/EU and in Article 5 of Delegated Regulation (EU) 2021/923;
- (g) a detailed and comprehensive statement explaining why the business unit is not a core business line as defined in point (36) of Article 2(1) of Directive 2014/59/EU of the European Parliament and of the Council <sup>(2)</sup> or as defined in any delegated act which the Commission is empowered to adopt pursuant to Article 2(2) of that Directive.

2. If the definition of business units within the supervised credit institution has changed within the current and the 2 preceding financial years, the supervised credit institution shall provide the reasons for this change.

3. The ECB may require the supervised credit institution to submit further information to substantiate the application.

#### *Article 5*

##### **Documentation required to substantiate that the professional activities of the staff member or category of staff have no significant impact on the risk profile of a material business unit**

1. When requesting prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923, supervised credit institutions shall submit the following documentation to the ECB in order to substantiate that the professional activities of a staff member, or the category of staff to which the staff member belongs, have no significant impact on the risk profile of a material business unit, as referred to in Article 6(2)(b) of Delegated Regulation (EU) 2021/923:

- (a) a detailed and comprehensive description of the duties and responsibilities of the relevant

staff member or category of staff to which the staff member belongs;

- (b) an organisational chart of the relevant business unit that shows the hierarchical structure and reporting lines, including the relevant staff member or category of staff to which the staff member belongs;
- (c) a detailed description of the criteria established in Article 3 of Delegated Regulation (EU) 2021/923 that have been used to assess that the professional activities of the relevant staff member, or the category of staff to which the staff member belongs, have no significant impact on the risk profile of a material business unit, specifying how these criteria have been applied and how all relevant risk and performance indicators used for internal risk measurement purposes have been taken into account;
- (d) a statement explaining why the supervised credit institution awarded the staff member, or category of staff to which the staff member belongs, a remuneration that meets the criteria established in Article 6(1) of Delegated Regulation (EU) 2021/923 even though the staff member has no significant impact on the risk profile of a material business unit;
- (e) a reasoned statement explaining why the relevant staff member, or category of staff to which the staff member belongs, does not meet the qualitative criteria established in points (a) and (b) of Article 92(3) of Directive 2013/36/EU and in Article 5 of Delegated Regulation (EU) 2021/923.

2. The ECB may require the supervised credit institution to submit further information to substantiate the application.

#### *Article 6*

##### **Supplementary documentation to substantiate applications for staff members awarded a total remuneration of EUR 1 000 000 or more**

1. When requesting prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 in respect of a staff member who was awarded a total remuneration of EUR 1 000 000 or more in or for the preceding financial year, supervised credit institutions shall submit the following documentation to the ECB in order to substantiate the exceptional circumstances referred to in Article 6(4) of Delegated Regulation (EU) 2021/923:

- (a) a detailed description of the exceptional circumstances linked to the professional activity of the relevant staff member and their impact on the risk profile of the supervised

credit institution. A highly competitive situation shall not be considered an exceptional circumstance;

- (b) a detailed description of any exceptional circumstances linked to the relevant staff member that explains why the supervised credit institution awarded the staff member remuneration of EUR 1 000 000 or more, even though the staff member reportedly does not have a material impact on the risk profile of the supervised credit institution.

2. The ECB may require the supervised credit institution to submit further information to substantiate the application.

#### *Article 8*

##### **Period for submitting requests for prior approval**

Requests for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 shall be submitted without delay, and at the latest within 6 months from the end of the preceding financial year.

#### *Article 9*

##### **Assessment by the ECB**

1. Based on the information contained in a request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923, the ECB shall assess:

- (a) the completeness of the documentation;
- (b) the basis on which the supervised credit institution has determined that the staff member concerned, or the category of staff to which the staff member belongs, meets one of the conditions laid down in Article 6(2) of Delegated Regulation (EU) 2021/923;
- (c) whether the staff member, or the category of staff to which the staff member belongs, has no material impact on the risk profile of a material business unit through the professional activities carried out by verifying:
  - (i) whether the supervised credit institution has duly taken into account the condition set out in Article 6(2)(a) of Delegated Regulation (EU) 2021/923 or set out in Article 6(2)(b) of Delegated Regulation (EU) 2021/923, as applicable; and
  - (ii) whether the supervised credit institution has demonstrated that the staff member concerned, or the category of staff to which the staff member belongs, for whom the request for prior approval as referred to in Article 6(3) of Delegated

Regulation (EU) 2021/923 is submitted, does not have an impact on the supervised credit institution's risk profile comparably as material as that of those categories of staff specified in points (a), (b) or (c) of Article 92(3) of Directive 2013/36/EU;

(d) with regard to the requests for prior approval for staff members awarded a total remuneration of EUR 1 000 000 or more, whether exceptional circumstances apply. In such cases the ECB shall inform the European Banking Authority of the results of the initial assessment prior to taking any decision.

2. The ECB shall issue a decision within 3 months of receipt of the complete documentation.

#### *Article 10*

##### **Duration of prior approval granted**

1. A prior approval granted by the ECB, as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923, shall be limited to the performance of the staff member during the financial year following the year in which the ECB supervisory decision containing the approval was notified to the supervised credit institution.

2. In the case of a first application for a relevant staff member, the approval shall be granted for the performance of the staff member during the financial year in which the ECB supervisory decision containing the approval was notified to the supervised credit institution and also for the performance of the staff member during the following financial year. This provision shall only be applicable in reference to the applications submitted after the entry into force of this Decision.

#### *Article 11*

##### **Transitional provisions**

1. This Decision shall apply to the filing of notifications pursuant to Article 4(4) or applications for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 submitted after the entry into force of this Decision.

2. Exceptionally, filing of notifications pursuant to Article 4(4) or applications for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 based on 2014 information shall be made by 31 December 2015.

3. The approvals granted by the ECB pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 under these transitional provisions shall apply to the performance of the staff member during the financial years 2015 and 2016.

#### *Article 12*

##### **Entry into force**

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

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- (<sup>1</sup>) Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive (OJ L 203, 9.6.2021, p. 1).
- (<sup>2</sup>) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

**GUIDELINE (EU) 2016/1994 OF THE EUROPEAN CENTRAL BANK  
of 4 November 2016**

**on the approach for the recognition of institutional protection schemes for prudential purposes by national competent authorities pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council (ECB/2016/38)**

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,

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 <sup>(1)</sup>, and in particular Article 6(1) and Article 6(5)(a) thereof,

Having regard to 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 <sup>(2)</sup>, and in particular Article 113(7) thereof,

Whereas:

- (1) An institutional protection scheme (IPS) is referred to in Article 113(7) of Regulation (EU) No 575/2013 as a contractual or statutory liability arrangement which protects its member institutions and ensures that they have the liquidity and solvency needed to avoid bankruptcy where necessary. According to that provision, competent authorities may, subject to certain conditions laid down in Regulation (EU) No 575/2013, waive selected prudential requirements or allow certain exemptions for IPS members.
- (2) The European Central Bank (ECB), as the competent authority for prudential supervision within the single supervisory mechanism (SSM) of credit institutions that are classified as significant, is responsible for the assessment of applications submitted by such institutions.
- (3) The conditions for the assessment of IPSs for prudential purposes are stipulated in Article 113(7) of Regulation (EU) No 575/2013. This Regulation gives some discretion to competent authorities when developing the supervisory assessment required to determine if the conditions are met. To ensure coherence, effectiveness and transparency, the ECB added a new chapter to the ‘ECB Guide on options and discretions available in Union law’ concerning the approach for the recognition

of institutional protection schemes (IPS) for prudential purposes <sup>(3)</sup>, which specifies how the ECB will assess the compliance of IPSs and their members with the abovementioned conditions.

- (4) The ECB is responsible for the effective and consistent functioning of the SSM and, as part of its oversight tasks, has to ensure the consistency of supervisory outcomes. In this context, the ECB adopts guidelines addressed to national competent authorities (NCAs), in accordance with which supervisory tasks are to be performed and supervisory decisions adopted in relation to less significant institutions.
- (5) As IPSs may consist of both significant and less significant institutions, it is important to ensure the consistent treatment of their members across the SSM, to foster consistency in decisions adopted by the ECB and the NCAs. For IPSs whose members include both significant and less significant credit institutions, it is particularly important that both the ECB, which is responsible for the prudential supervision of significant institutions, and the NCAs, which are responsible for the supervision of less significant institutions, use the same specifications for the eligibility assessment. The use of the same specifications by NCAs is also warranted in the assessment of IPSs consisting solely of less significant institutions, since the composition of the IPSs, as well as the classification of their members as significant or less significant, may change over time,

HAS ADOPTED THIS GUIDELINE:

**CHAPTER I  
GENERAL PROVISIONS**

*Article 1*  
**Scope**

This Guideline lays down the specifications for assessing the compliance of IPSs and their members with the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013 in order to determine

whether permission within the meaning of that Article can be granted to individual institutions. NCAs shall apply the specifications in relation to less significant institutions.

*Article 2*  
**Definitions**

For the purposes of this Guideline, the definitions contained in Regulation (EU) No 575/2013, Directive 2013/36/EU of the European Parliament and of the Council <sup>(4)</sup>, Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) <sup>(5)</sup> shall apply.

**CHAPTER II**  
**SPECIFICATIONS FOR THE ASSESSMENT**  
**PURSUANT TO ARTICLE 113(7) OF**  
**REGULATION (EU) No 575/2013**

*Article 3*  
**Article 113(7)(a) in conjunction with Article 113(6)(a) and (d) of Regulation (EU) No 575/2013: assessment of prudential status and legal domicile**

In accordance with Article 113(7)(a) in conjunction with Article 113(6)(a) and (d) of Regulation (EU) No 575/2013, when assessing the prudential status and legal domicile of the counterparty the NCAs shall take into account whether:

- (a) the counterparty is an institution, financial institution or ancillary services undertaking subject to appropriate prudential requirements;
- (b) the counterparty requesting the permission is established in the same Member State.

*Article 4*  
**Article 113(7)(a) taken in conjunction with Article 113(6)(e) of Regulation (EU) No 575/2013: prompt transfer of own funds or repayment of liabilities from the counterparty to the members**

When assessing whether there is a current or foreseeable material, practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the members under Article 113(7)(a) in conjunction with Article 113(6)(e) of Regulation (EU) No 575/2013, the NCAs shall take into account whether:

- (a) the shareholding or legal structure of the members could hamper the transferability of own funds or repayment of liabilities;

- (b) the formal decision-making process regarding the transfer of own funds between members ensures prompt transfers;
- (c) the by-laws of the members, any shareholder's agreement, or any other known agreements contain any provisions that could obstruct the transfer of own funds or repayment of liabilities by the counterparty;
- (d) there have been any serious management difficulties or corporate governance issues related to the members, which could have a negative impact on the prompt transfer of own funds or the repayment of liabilities;
- (e) any third parties <sup>(6)</sup> are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;
- (f) there are any indications from the past regarding flows of funds between members which demonstrate the ability to promptly transfer funds or repay liabilities.

The crisis management intermediation role and responsibility of the IPS to provide funds to support troubled members is considered key.

*Article 5*  
**Article 113(7)(b) of Regulation (EU) No 575/2013: an IPS's ability to grant the support necessary under its commitment**

When assessing whether arrangements are in place which ensure that an IPS is able to grant the support it has committed to provide from funds readily available to it under Article 113(7)(b) of Regulation (EU) No 575/2013, the NCAs shall take into account whether:

- (a) the arrangements include a broad range of measures, processes and mechanisms, making up the framework under which the IPS operates. This framework should comprise a series of possible actions, ranging from less intrusive to more substantial measures that are proportionate to the riskiness of the beneficiary institution and the severity of its financial constraints, including direct capital and liquidity support. The support may be conditional, for example on the implementation of certain recovery and restructuring measures by the institution;
- (b) the IPS's governance structure and the process for making decisions on support measures allow support to be provided in a timely manner;
- (c) a clear commitment exists to provide support when, despite previous monitoring of risks and early intervention measures, a member is or is likely to become insolvent or illiquid

and to ensure that its members abide by the relevant regulatory own funds and liquidity requirements;

- (d) the IPS conducts stress tests at regular intervals to quantify potential capital and liquidity support measures;
- (e) the IPS's risk-absorbing capacity (consisting of paid-up funds, potential *ex post* contributions and comparable commitments) is sufficient to cover potential support measures taken in respect of its members;
- (f) an *ex ante* fund has been created to ensure that the IPS has funds for support measures readily available, and
  - (i) contributions to that fund follow a clearly defined framework;
  - (ii) the funds are invested only in liquid and secure assets that may be liquidated at any time and whose value does not depend on the solvency and liquidity position of the members and their subsidiaries;
  - (iii) the IPS's stress test results are considered for the determination of the minimum target amount of the *ex ante* fund;
  - (iv) there is an adequate floor/minimum amount for the *ex ante* fund to ensure the prompt availability of the funds.

IPSs may be recognised as deposit guarantee schemes pursuant to Directive 2014/49/EU of the European Parliament and of the Council (7) and may be allowed under the conditions set out in the relevant national law to use the available financial means for alternative measures to prevent the failure of a credit institution. In this case the NCAs shall consider the available financial means when assessing the availability of funds to grant support, taking into account the different purposes of IPSs, which aim to protect their members, and deposit guarantee schemes, whose key task is to protect depositors against the consequences of the insolvency of a credit institution.

#### Article 6

##### **Article 113(7)(c) of Regulation (EU) No 575/2013: IPS systems for the monitoring and classification of risk**

Article 113(7)(c) of Regulation (EU) No 575/2013 provides that an IPS must have at its disposal suitable and uniformly stipulated systems for the monitoring and classification of risk, which give a complete overview of the risk situations of all the individual members and the IPS as a whole, with corresponding possibilities to intervene; and that those systems must suitably monitor defaulted

exposures in accordance with Article 178(1) of the same Regulation. In assessing compliance with this condition the NCAs shall take into account whether:

- (a) the IPS members are obliged to provide the IPS's main management body with up-to-date data on their risk situations at regular intervals, including information on their own funds and own funds requirements;
- (b) corresponding appropriate data flows and IT systems are in place;
- (c) the IPS main management body lays down uniform standards and methodologies for the risk management framework to be applied by the members;
- (d) for the purposes of the monitoring and classification of risk by the IPS there is a common definition of risks, the same risk categories are monitored for all members, and the same confidence level and time horizon is used for the quantification of risks;
- (e) the IPS systems for the monitoring and classification of risks classify the members in accordance with their risk situation, i.e. the IPS has defined different categories to which to assign its members to allow early intervention;
- (f) the IPS is able to influence the risk situation of its members by issuing instructions and recommendations, etc., to them, for example to restrict certain activities or to require a reduction of certain risks.

#### Article 7

##### **Article 113(7)(d) of Regulation (EU) No 575/2013: IPS own risk review**

When assessing whether the IPS conducts its own risk review, which is communicated to the individual members in accordance with Article 113(7)(d) of Regulation (EU) No 575/2013, the NCAs shall take into account whether:

- (a) the IPS assesses at regular intervals the risks and vulnerabilities of the sector to which its members belong;
- (b) the results of the risk review are summarised in a report or other document and are distributed to the relevant decision-making bodies of the IPS and/or the members shortly after they have been finalised;
- (c) members are informed of their risk classification by the IPS as required by Article 113(7)(c).

*Article 8*

**Article 113(7)(e) of the Regulation (EU) No 575/2013: IPS consolidated or aggregated report**

Article 113(7)(e) of Regulation (EU) No 575/2013 provides that the IPS must draw up and publish on an annual basis a consolidated report comprising the balance sheet, the profit and loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole, or a report comprising the aggregated balance sheet, the aggregated profit and loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole. When assessing compliance with this condition the NCAs shall take into account whether:

- (a) the consolidated or aggregated report is audited by an independent external auditor on the basis of the relevant accounting framework or, if applicable, the aggregation method;
- (b) the external auditor is required to provide an audit opinion;
- (c) all of the IPS members and any subsidiaries, any intermediary structures such as holding companies and the entity managing the IPS itself (if it is a legal entity) are included in the scope of consolidation/aggregation;
- (d) in cases where the IPS draws up a report comprising an aggregated balance sheet and an aggregated profit and loss account, the aggregation method can ensure that all intragroup exposures are eliminated.

*Article 9*

**Article 113(7)(f) of Regulation (EU) No 575/2013: advance notice of member termination**

The NCAs shall verify whether the contract or statutory arrangements include a provision obliging members of the IPS to give advance notice of at least 24 months if they wish to end the scheme.

*Article 10*

**Article 113(7)(g) of Regulation (EU) No 575/2013: elimination of multiple use of elements eligible for the calculation of own funds**

Article 113(7)(g) of Regulation (EU) No 575/2013 provides that the multiple use of elements eligible for the calculation of own funds ('multiple gearing') and any inappropriate creation of own funds between IPS members must be eliminated. For the purposes of assessing compliance with this requirement the NCAs shall take into account whether:

- (a) the external auditor who is responsible for the audit of the consolidated or aggregated financial report can confirm that these practices have been eliminated;

- (b) any transactions by the members have led to the inappropriate creation of own funds at the individual, sub-consolidated or consolidated level.

*Article 11*

**Article 113(7)(h) of Regulation (EU) No 575/2013: broad membership**

When assessing compliance with the condition laid down in Article 113(7)(h) of the Regulation (EU) No 575/2013, namely that the IPS must be based on a broad membership of credit institutions of a predominantly homogeneous business profile, the NCAs shall take into account:

- (a) whether the IPS has sufficient members (among the institutions that are potentially eligible for membership) to cover any support measures it may have to implement;
- (b) the members' business models, business strategies, sizes, customers, regional focus, products, funding structures, material risk categories, sales cooperation and service agreements with other IPS members, etc.;
- (c) whether the various business profiles of the members allow the monitoring and classification of their risk situations using the uniformly stipulated systems that the IPS has in place pursuant to Article 113(7)(c) of Regulation (EU) No 575/2013;
- (d) that IPS sectors are often based on collaboration, meaning that central institutions and other specialised institutions in the IPS network offer products and services to other IPS members. When assessing the homogeneity of business profiles the NCA should consider the extent to which the members' business activities are related to the network (products and services provided to local banks, services to shared customers, capital market activities, etc.).

**CHAPTER III  
FINAL PROVISIONS**

*Article 12*

**Taking effect and implementation**

1. This Guideline shall take effect on the day of its notification to the NCAs.
2. The NCAs shall comply with this Guideline from 2 December 2016.

*Article 13*

**Addressees**

This Guideline is addressed to the NCAs.

Done at Frankfurt am Main, 4 November 2016.

*For the Governing Council of the ECB*

*The President of the ECB*

Mario DRAGHI

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(<sup>1</sup>) OJ L 287, 29.10.2013, p. 63.

(<sup>2</sup>) OJ L 176, 27.6.2013, p. 1.

(<sup>3</sup>) This chapter of the Guide was adopted in July 2016. The consolidated version of the ‘ECB Guide on options and discretions available in Union law’ is available on the ECB’s banking supervision website at [www.bankingsupervision.europa.eu](http://www.bankingsupervision.europa.eu)

(<sup>4</sup>) 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 (OJ L 176, 27.6.2013, p. 338).

(<sup>5</sup>) 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).

(<sup>6</sup>) A third party is any party that is not the parent, a subsidiary, a member of a decision-making body or a shareholder of a member.

(<sup>7</sup>) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

**DECISION (EU) 2015/656 OF THE EUROPEAN CENTRAL BANK**  
**of 4 February 2015**  
**on the conditions under which credit institutions are permitted to include interim or**  
**year-end profits in Common Equity Tier 1 capital in accordance with Article 26(2) of**  
**Regulation (EU) No 575/2013 (ECB/2015/4)**

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 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 <sup>(1)</sup>, and in particular Article 4(1)(d) and the second subparagraph of Article 4(3) thereof,

Whereas:

- (1) Article 26(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(2)</sup> has introduced a new procedure whereby the permission of the competent authority is required for the inclusion of interim profits or year-end profits in Common Equity Tier 1 (CET1) capital before an institution has taken a formal decision confirming the final profit or loss of the institution for the year. Such permission is granted where the following two conditions are met: profits have been verified by persons independent of the institution that are responsible for the auditing of the accounts of that institution; and the institution has demonstrated that any foreseeable charge or dividend has been deducted from the amount of those profits.
- (2) Articles 2 and 3 of Commission Delegated Regulation (EU) No 241/2014 <sup>(3)</sup> specify the meaning of ‘foreseeable’ for the purposes of Article 26(2)(b) of Regulation (EU) No 575/2013.
- (3) Commission Implementing Regulation (EU) No 680/2014 <sup>(4)</sup> lays down uniform requirements in relation to supervisory reporting.
- (4) In accordance with Article 4(1)(d) of Regulation (EU) No 1024/2013, the European Central Bank (ECB) is the competent authority responsible for granting permission to credit institutions under its direct supervision to include interim or year-end profits in CET1 capital, where the abovementioned conditions are met.
- (5) Taking into account the fact that Delegated Regulation (EU) No 241/2014 has harmonised

the approach to the deduction of foreseeable dividends from interim or year-end profits for the purposes of granting the permission referred to in Article 26(2) of Regulation (EU) No 575/2013, permission to include interim or year-end profits in CET1 capital should be granted when certain conditions are met.

- (6) In cases where the conditions to apply this Decision are not met the ECB will individually assess requests for permission to include interim or year-end profits in CET1 capital,

HAS ADOPTED THIS DECISION:

*Article 1*

**Subject matter and scope**

1. This Decision lays down the conditions under which the ECB has determined to grant permission to credit institutions to include interim or year-end profits in CET1 capital pursuant to Article 26(2)(a) and (b) of Regulation (EU) No 575/2013.
2. This Decision is without prejudice to the right of credit institutions to request permission from the ECB to include interim or year-end profits in CET1 capital in cases not covered by this Decision.
3. This Decision applies to credit institutions for which the ECB carries out direct supervision in accordance with Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) <sup>(5)</sup>.

*Article 2*

**Definitions**

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

- (1) ‘credit institution’ means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013 and which is supervised by the ECB.
- (2) ‘consolidated basis’ has the same meaning as defined in point 48 of Article 4(1) of Regulation (EU) No 575/2013.
- (3) ‘sub-consolidated basis’ has the same meaning as defined in point 49 of Article 4(1) of Regulation (EU) No 575/2013.

- (4) ‘consolidating entity’ means the credit institution which shall comply with the requirements laid down in Regulation (EU) No 575/2013 on consolidated basis or sub-consolidated basis, as applicable, in accordance with Articles 11 and 18 of Regulation (EU) No 575/2013.
- (5) ‘interim profits’ means profits as laid down in the applicable accounting framework, computed for a reference period shorter than a full financial year, and before the credit institution has taken a formal decision confirming such a profit or loss of the institution.
- (6) ‘year-end profits’ means profits as defined in the applicable accounting framework, computed for a reference period equal to a full financial year, and before the credit institution has taken a formal decision confirming such a profit or loss of the institution.
- (7) ‘pay-out ratio at consolidated level’ means the ratio between: (a) dividends, other than those paid in a form that does not reduce CET1 capital (e.g. scrip-dividends), distributed to owners of the consolidating entity; and (b) profit after tax attributable to owners of the consolidating entity. If for a given year the ratio between (a) and (b) is negative or above 100 %, the pay-out ratio shall be deemed to be 100 %. If for a given year (b) is zero, the pay-out ratio shall be deemed to be 0 % if (a) is zero, and 100 % if (a) is above zero.
- (8) ‘pay-out ratio at solo level’ means the ratio between: (a) dividends, other than those paid in a form that does not reduce CET1 capital (e.g. scrip-dividends), distributed to owners of the entity; and (b) profit after tax. If for a given year the ratio between (a) and (b) is negative or above 100 %, the pay-out ratio shall be deemed to be 100 %. If for a given year (b) is zero, the pay-out ratio shall be deemed to be 0 % if (a) is zero and 100 % if (a) is above zero.

#### *Article 3*

##### **Permission to include interim or year-end profits in CET1 capital**

1. For the purposes of Article 26(2) of Regulation (EU) No 575/2013, credit institutions shall be permitted to include interim or year-end profits in CET1 capital before a formal decision confirming the final profit or loss of the institution for the year has been taken, provided that the credit institution has met the conditions set out in Articles 4 and 5 of this Decision.
2. The conditions set out in Articles 4 and 5 shall be met prior to submission of the applicable reporting on own funds and own funds requirements in

accordance with the reporting remittance dates laid down in Article 3 of Implementing Regulation (EU) No 680/2014.

3. Credit institutions that intend to include interim or year-end profits in CET1 capital shall send a letter addressed to the ECB that includes the documentation required in Articles 4 and 5 of this Decision. Within three working days from receipt of the relevant documentation, the ECB shall notify credit institutions whether such documentation contains the information required in this Decision.

#### *Article 4*

##### **Verification of the profits**

1. The ECB shall consider that the verification requirement under Article 26(2)(a) of Regulation (EU) No 575/2013 has been met if the notifying credit institution provides the ECB with a document signed by its external auditor that complies with the requirements set out in paragraphs 3 and 4.
2. Credit institutions notifying their intention to include interim or year-end profits as CET1 capital, at various levels of consolidation or on an individual basis, may provide the document referred to in paragraph 1 at the highest level of consolidation.
3. For year-end profits, the verification shall consist either of an audit report or of a comfort letter stating that the audit has not been completed and nothing has come to the attention of the auditors that causes them to believe that the final report will include a qualified opinion.
4. For interim profits, the verification shall consist either of an audit report or of a review report (as defined by the International Standard on Review Engagements 2410 issued by the International Auditing and Assurance Standards Board or a comparable standard applicable at national level) or, provided that the verification carried out by the credit institution consists of an audit report, a comfort letter along the lines set out in paragraph 3.

#### *Article 5*

##### **Deduction from profits of any foreseeable charge or dividend**

1. In order to demonstrate that any foreseeable charges or dividends have been deducted from the amount of profits, the credit institution shall:
  - (a) provide a declaration that those profits have been recorded in accordance with the principles set out in the applicable accounting framework and that the scope of prudential consolidation is not materially wider than the scope of verification referred to in the external auditor’s document referred to in Article 4; and

(b) submit to the ECB a document signed by a qualified person detailing the main components of those interim or year-end profits, including deductions for any foreseeable charges or dividends.

2. In those cases where interim or year-end profits are to be included on a consolidated or sub-consolidated basis, the requirements referred to in paragraph 1 shall be satisfied by the consolidating entity.

3. The dividends to be deducted shall be the amount formally proposed or decided by the management body. If such formal proposal or decision has not yet been taken, the dividend to be deducted shall be the highest of the following:

- (a) the maximum dividend calculated in accordance with internal dividend policy;
- (b) the dividend calculated on the basis of the average pay-out ratio over the last three years;
- (c) the dividend calculated on the basis of the previous year's pay-out ratio.

4. Any deduction of dividends based on an approach not listed in paragraph 3 shall not be covered by this Decision.

5. For the purposes of paragraph 1(b), a qualified person means a person who has been duly authorised by the institution's management body to sign on its behalf.

6. For the purposes of paragraph 1, institutions shall use the model letter in the Annex to this Decision.

#### *Article 6* **Entry into force**

1. This Decision shall enter into force on 6 February 2015.

2. This Decision shall apply from the reporting reference date of 31 December 2014 in accordance with Article 2 of Implementing Regulation (EU) No 680/2014.

Done at Frankfurt am Main, 4 February 2015.

*The President of the ECB*

Mario DRAGHI

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(<sup>1</sup>) OJ L 287, 29.10.2013, p. 63.

(<sup>2</sup>) 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).

(<sup>3</sup>) Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).

(<sup>4</sup>) Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

(<sup>5</sup>) 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).

#### *ANNEX*

[Name and details of the institution]

[Name and details of the JST Coordinator]

[Place, date]

[Institution's reference]

#### *Inclusion of profits in Common Equity Tier 1 (CET1) capital*

Dear [Sir/Madam],

For the purpose of the submission of supervisory reporting referred to [regulatory reporting reference date], pursuant to Article 26(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council and to Decision (EU) 2015/656 of the European Central Bank (ECB/2015/4), I hereby notify the intention of [name of the institution/banking group/banking sub-group] to include in its [individual/consolidated] CET1 capital the net profits resulting from its [interim/annual] financial statements as of [balance sheet date].

The net profits to be included in CET1 capital have been calculated as follows:

(a)	undistributed pre-tax profit	[EUR 0]
(b)	taxes	[EUR 0]
(c)	other charges imposed by the supervisor <sup>(1)</sup>	[EUR 0]
(d)	other foreseeable charges not included in profit and loss statement <sup>(2)</sup>	[EUR 0]
(e)	total charges (b + c + d)	[EUR 0]
(f)	decided or proposed dividend <sup>(3)</sup>	[EUR 0/ blank]
(g)	maximum dividend under internal policy <sup>(4)</sup>	[EUR 0]
(h)	dividend according to average pay-out ratio (last three years) <sup>(5)</sup>	[EUR 0]
(i)	dividend according to last year's pay-out ratio	[EUR 0]
(j)	dividend to be deducted (max (g, h, i) if (f) is blank; (f) otherwise)	[EUR 0]
(k)	impact of regulatory restrictions <sup>(6)</sup>	[EUR 0]
(l)	profit that can be included in CET1 (a – e – j + k)	[EUR 0]

For the purposes of the above, I hereby declare that:

- the figures above are accurate to the best of my knowledge;
- the profits have been verified by persons who are independent of this institution and who are responsible for the auditing of this institution's accounts, as required by Article 26(2) of Regulation (EU) No 575/2013 and by Decision (EU) 2015/656 (ECB/2015/4). In this regard, I enclose the [audit report/review report/comfort letter] from [auditor's name];
- the profits have been evaluated in accordance with the principles set out in the applicable accounting framework;

- any foreseeable charge or dividend has been deducted from the amount of the profits, as shown above;
- the amount of dividends to be deducted has been estimated in accordance with Decision (EU) 2015/656 (ECB/2015/4). In particular, deductible dividends are based on a formal decision/proposal or, if such formal decision/proposal is not available, on the highest of: (i) maximum dividend according to dividend policy; (ii) dividend based on the average pay-out ratio over the last three years; (iii) dividend based on last year's pay-out ratio. If the expected dividend pay-out has been calculated by using a pay-out range instead of a fixed value, the upper end of that range has been used;
- the management body of [name of the institution/banking group/banking sub-group] commits to make a proposal for distributing dividends that is fully consistent with the above calculation of the net profits.

Yours sincerely,

[Name and position of authorised signatory]

<sup>(1)</sup> Article 3(1)(b) of Delegated Regulation (EU) No 241/2014.

<sup>(2)</sup> Article 3(2) of Delegated Regulation (EU) No 241/2014.

<sup>(3)</sup> Article 2(2) and (10) of Delegated Regulation (EU) No 241/2014. This should only be zero if there is a formal decision or proposal not to distribute any dividend. If there is no formal proposal or decision the field is left blank.

<sup>(4)</sup> Article 2(4) to (6) of Delegated Regulation (EU) No 241/2014.

<sup>(5)</sup> Article 2(7) of Delegated Regulation (EU) No 241/2014.

<sup>(6)</sup> Article 2(9) of Delegated Regulation (EU) No 241/2014.

**DECISION (EU) 2023/1680 OF THE EUROPEAN CENTRAL BANK**  
**of 17 August 2023**  
**on the reporting of funding plans of supervised entities by national competent**  
**authorities to the European Central Bank (ECB/2023/19)**  
**(recast)**

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,

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 <sup>(1)</sup>, and in particular Article 6(2) thereof,

Having regard to 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) <sup>(2)</sup>, and in particular Article 21 thereof,

Having regard to the proposal of the Supervisory Board,

Whereas:

- (1) The European Banking Authority (EBA) Guidelines on harmonised definitions and templates for funding plans of credit institutions under Recommendation of the European Systemic Risk Board of 20 December 2012 (ESRB/2012/2) (EBA/GL/2019/05) <sup>(3)</sup> (hereinafter the ‘EBA 2019 Guidelines’) harmonise the templates and definitions to facilitate the reporting of funding plans by credit institutions.
- (2) The EBA 2019 Guidelines are addressed to competent authorities, as defined in Article 4, point (2), of Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(4)</sup>, and to financial institutions that report funding plans to their competent authorities in accordance with the national implementation framework of Recommendation ESRB/2012/2 of the European Systemic Risk Board <sup>(5)</sup>.
- (3) For the exclusive purpose of carrying out the tasks conferred on it by Article 4(1) and 4(2) and Article 5(2) of Regulation (EU) No 1024/2013, the ECB is considered, as appropriate, the competent authority or the designated authority

in the participating Member States as established by Union law. Therefore, the ECB is amongst the addressees of the EBA 2019 Guidelines.

- (4) In accordance with Article 6(2) of Regulation (EU) No 1024/2013, and Article 21 of Regulation (EU) No 468/2014 (ECB/2014/17), both the ECB and national competent authorities (NCAs) are subject to an obligation to exchange information. Without prejudice to the ECB’s power to directly receive reported information from supervised entities, or to have direct access to that information on an ongoing basis, the NCAs are required to specifically provide the ECB with all information necessary for the purposes of carrying out the tasks conferred on the ECB by Regulation (EU) No 1024/2013.
- (5) In order to comply with the EBA 2019 Guidelines, the ECB should ensure that supervised entities report their funding plans in accordance with the harmonised templates and definitions referred to in the funding plan template attached to the EBA 2019 Guidelines. To this end, Decision (EU) 2017/1198 of the European Central Bank (ECB/2017/21) <sup>(6)</sup> establishes harmonised procedures for the submission of those funding plans to the ECB as well as details on the timing of the submission of information and the quality checks performed by NCAs before submitting information to the ECB.
- (6) For the exercise of the ECB’s tasks in respect of supervisory reporting, Decision ECB/2014/29 of the European Central Bank <sup>(7)</sup> specifies the manner in which NCAs submit to the ECB certain information that they receive from supervised entities and the timing of such submission.
- (7) Decision ECB/2014/29 is repealed and replaced by Decision (EU) 2023/1681 of the European Central Bank (ECB/2023/18) <sup>(8)</sup>. It is therefore necessary to align submission to the ECB by NCAs of credit institutions’ funding plans with the provisions of Decision (EU) 2023/1681 (ECB/2023/18).
- (8) Decision (EU) 2017/1198 (ECB/2017/21) has been substantially amended <sup>(9)</sup>. Since further amendments are necessary, that decision should be recast in the interests of clarity,

HAS ADOPTED THIS DECISION:

*Article 1*

**Subject matter and scope**

This Decision lays down the requirements for national competent authorities (NCAs) to provide the funding plans of certain significant and less significant supervised entities to the European Central Bank (ECB), and establishes procedures concerning the submission of such funding plans to the ECB.

*Article 2*

**Definitions**

For the purposes of this Decision, the definitions in Regulation (EU) No 468/2014 (ECB/2014/17) apply.

*Article 3*

**Requirements for reporting funding plans**

1. NCAs shall provide the ECB with the funding plans that are in line with the European Banking Authority (EBA) Guidelines on harmonised definitions and templates for funding plans of credit institutions under Recommendation of the European Systemic Risk Board of 20 December 2012 (ESRB/2012/2) (EBA/GL/2019/05) <sup>(10)</sup> (hereinafter the ‘EBA 2019 Guidelines’) of the following supervised entities established in their respective participating Member States:

- (a) significant supervised entities at the highest level of consolidation in the participating Member States on a consolidated basis;
- (b) significant supervised entities that are not part of a supervised group on an individual basis;
- (c) less significant supervised entities in respect of which the relevant NCA collects funding plans in accordance with the EBA 2019 Guidelines.

2. NCAs that collect the funding plans of significant supervised entities that are not referred to in paragraph 1, points (a) and (b), shall provide these funding plans to the ECB if they comply with the EBA 2019 Guidelines.

3. The funding plans shall be submitted to the ECB in accordance with the harmonised instructions and templates referred to in the EBA 2019 Guidelines. The funding plans shall have a reporting reference date of 31 December of the previous year.

Where supervised entities are permitted by national law to report their financial information based on their accounting year-end, which deviates from the calendar year-end, the latest available accounting year-end shall be considered the reporting reference date.

*Article 4*

**Remittance dates**

1. The relevant NCAs shall, upon receipt of the funding plans of the supervised entities referred to in Article 3(1), points (a) and (b), and Article 3(2), in accordance with the 15 March remittance date specified in the EBA 2019 Guidelines and after performing the initial data checks referred to in Article 7, provide the ECB with such plans without undue delay.

2. The funding plans of supervised entities referred to in Article 3(1), point (c), that are included in the list of the Largest Institutions in the Member State as published by the EBA pursuant to Article 2(6) of EBA Decision of 27 July 2021 concerning supervisory reporting by competent authorities to the EBA (EBA/DC/404) <sup>(11)</sup> shall be provided by the relevant NCAs to the ECB at the latest by 12:00 Central European Time (CET) on the 10th working day following 15 March.

3. Funding plans of supervised entities not referred to in paragraph 1 or 2 shall be provided by the relevant NCAs to the ECB at the latest by 12:00 CET on the 25th working day following 15 March.

*Article 5*

**Data quality**

1. NCAs shall:

- (a) monitor and assess the quality and reliability of the information made available to the ECB pursuant to this Decision;
- (b) apply the relevant validation rules developed, maintained and published by the EBA; and
- (c) apply additional data quality checks defined by the ECB in cooperation with the NCAs.

2. NCAs shall perform their quality assessment of funding plans data submitted to them in accordance with the following:

- (a) by the 10th working day following the 15 March remittance date referred to in the EBA 2019 Guidelines with respect to the following:
  - (i) significant supervised entities reporting at the highest level of consolidation within the participating Member States;
  - (ii) significant supervised entities that are not part of a supervised group;
  - (iii) supervised entities that are classified as significant in accordance with the three most significant credit institutions criterion in their Member State and which report on a consolidated basis or on an individual basis, if they are not required to

report on a consolidated basis, and where NCAs provide such funding plans to the ECB in accordance with Article 3(2);

(iv) supervised entities referred to in Article 3(1), point (c), that are included in the list of the Largest Institutions in the Member State as published by the EBA pursuant to Article 2(6) of EBA Decision of 27 July 2021 concerning supervisory reporting by competent authorities to the EBA (EBA/DC/404) <sup>(12)</sup>;

(b) for the significant supervised entities that are not covered by point (a), by the 25th working day following the 15 March remittance date referred to in the EBA 2019 Guidelines.

3. Further to the compliance with the validation rules and data quality checks referred to in paragraph 1, the information shall be submitted in accordance with the following minimum standards for accuracy:

(a) NCAs shall provide information, if applicable, on the developments implied by the information submitted; and

(b) the information shall be complete, existing gaps shall be acknowledged and explained to the ECB and, if applicable, those gaps shall be filled without undue delay.

#### *Article 6*

##### **Qualitative information**

1. NCAs shall submit to the ECB without undue delay the corresponding explanations where the data quality for a given table in the taxonomy cannot be warranted.

2. NCAs shall communicate the following to the ECB:

(a) reasons for any resubmissions by significant supervised entities; and

(b) reasons for any significant revisions submitted by significant supervised entities.

For the purposes of point (b), ‘significant revision’ means any revision of one or more data points, both in terms of absolute figures reported and percentage of variations, which significantly impacts the prudential or financial analysis made using these data points at entity level.

#### *Article 7*

##### **Transmission format**

1. NCAs shall submit the information specified in this Decision in accordance with the relevant Data Point Model and applicable eXtensible Business Reporting Language (XBRL) taxonomy developed, maintained and published by the EBA.

2. In accordance with Article 140(3) of Regulation (EU) No 468/2014 (ECB/2014/17), upon receipt of the information referred in the EBA 2019 Guidelines, NCAs shall perform initial data checks to ensure that the submissions constitute a valid XBRL report in accordance with paragraph 1.

3. The supervised entities shall be identified in the corresponding transmission by the use of the Legal Entity Identifier.

#### *Article 8*

##### **Repeal**

1. Decision (EU) 2017/1198 (ECB/2017/21) is repealed.

2. References to the repealed Decision shall be construed as references to this Decision and read in accordance with the correlation table in Annex II.

#### *Article 9*

##### **Taking effect**

The Decision shall take effect on the day of its notification to the addressees.

#### *Article 10*

##### **Addressees**

This Decision is addressed to the national competent authorities of the participating Member States.

Done at Frankfurt am Main, 17 August 2023.

*The President of the ECB*

Christine LAGARDE

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(1) OJ L 287, 29.10.2013, p. 63.

(2) OJ L 141, 14.5.2014, p. 1.

(3) Available on the EBA website at [www.eba.europa.eu](http://www.eba.europa.eu)

(4) 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

(5) Recommendation ESRB/2012/2 of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions (OJ C 119, 25.4.2013, p. 1).

(6) Decision (EU) 2017/1198 of the European Central Bank of 27 June 2017 on the reporting of funding plans of credit institutions by national competent authorities to the European Central Bank (ECB/2017/21) (OJ L 172, 5.7.2017, p. 32).

(7) Decision ECB/2014/29 of the European Central Bank of 2 July 2014 on the provision to the European Central Bank of supervisory data reported to the national competent authorities by the supervised entities (OJ L 214, 19.7.2014, p. 34).

- (8) Decision (EU) 2023/1681 of the European Central Bank of 17 August 2023 on the provision to the European Central Bank of supervisory data reported to the national competent authorities by the supervised entities (ECB/2023/18) (see page 105 of this Official Journal).
- (9) See Annex I.
- (10) Available on the EBA website at [www.eba.europa.eu](http://www.eba.europa.eu)
- (11) Available on the EBA website at [www.eba.europa.eu](http://www.eba.europa.eu)
- (12) Available on the EBA website at [www.eba.europa.eu](http://www.eba.europa.eu)

## *ANNEX I*

### **Repealed Decision with the amendment thereto**

Decision (EU) 2017/1198 of the European Central Bank of 27 June 2017 on the reporting of funding plans of credit institutions by national competent authorities to the European Central Bank (ECB/2017/21) (OJ L 172, 5.7.2017, p. 32).
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Decision (EU) 2021/432 of the European Central Bank of 1 March 2021 amending Decision (EU) 2017/1198 on the reporting of funding plans of credit institutions by national competent authorities to the European Central Bank (ECB/2021/7) (OJ L 86, 12.3.2021, p. 14).
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## *ANNEX II*

### **Correlation table**

Decision (EU) 2017/1198	This Decision
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5(1)	Article 5(1)
—	Article 5(2)
Article 5(2)	Article 5(3)
Article 6(1)	Article 6(1)
Article 6(2)	Article 6(2), first subparagraph, point (b)
—	Article 6(2), first subparagraph, point (a) and 6(2), second subparagraph
Article 7(1)	Article 7(1)
—	Article 7(2)
Article 7(2)	Article 7(3)
Article 8	—
—	Article 8
Article 8a	—
Article 9	Article 9
Article 10	Article 10

**GUIDELINE (EU) 2016/1993 OF THE EUROPEAN CENTRAL BANK  
of 4 November 2016**

**laying down the principles for the coordination of the assessment pursuant to Regulation  
(EU) No 575/2013 of the European Parliament and of the Council and the monitoring  
of institutional protection schemes including significant and less significant institutions  
(ECB/2016/37)**

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,

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 <sup>(1)</sup>, and in particular Article 4(3)  
and Article 6(1) and (7) thereof,

Having regard to 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 <sup>(2)</sup>, and in particular  
Articles 8(4), 49(3), 113(7), 422(8) and 425(4)  
thereof,

Having regard to Commission Delegated Regulation  
(EU) 2015/61 of 10 October 2014 to supplement  
Regulation (EU) No 575/2013 of the European  
Parliament and the Council with regard to liquidity  
coverage requirement for Credit Institutions <sup>(3)</sup>,  
and in particular Article 29(1), Article 33(2)(b) and  
Article 34(1) thereof,

Whereas:

(1) An institutional protection scheme (IPS) is  
referred to in Regulation (EU) No 575/2013 as  
a contractual or statutory liability arrangement  
which protects its member institutions and in  
particular ensures that they have the liquidity  
and solvency needed to avoid bankruptcy  
where necessary. Competent authorities may,  
in accordance with the conditions laid down  
in Articles 8(4), 49(3), 113(7), 422(8) and  
425(4) of Regulation (EU) No 575/2013 and  
Article 29(1), Article 33(2)(b) and Article  
34(1) of Delegated Regulation (EU) 2015/61,  
waive certain prudential requirements or  
allow certain derogations for IPS members.  
In addition, Article 113(7)(i) of Regulation  
(EU) No 575/2013 provides that the relevant  
competent authority must approve and monitor  
at regular intervals the adequacy of the IPS's  
systems for the monitoring and classification

of risk and Article 113(7)(d) requires the IPS to  
conduct its own risk review.

- (2) Decisions by competent authorities to grant  
permissions and waivers within the meaning of  
Articles 8(4), 49(3), 113(7), 422(8) and 425(4) of  
Regulation (EU) No 575/2013 and Article 33(2)  
(b) of Delegated Regulation (EU) 2015/61 and  
any decisions resulting from the monitoring  
of IPSs are directed at individual credit  
institutions. As such, the European Central  
Bank (ECB), as the competent authority for  
the prudential supervision within the Single  
Supervisory Mechanism (SSM) of credit  
institutions that are classified as significant  
in accordance with Article 6(4) of Regulation  
(EU) No 1024/2013 and Part IV and Article  
147(1) of Regulation (EU) No 468/2014 of the  
European Central Bank (ECB/2014/17) <sup>(4)</sup>, is  
responsible for the assessment of applications  
submitted by significant credit institutions and  
the monitoring of IPSs that include them, while  
the national competent authorities (NCAs) are  
responsible for the assessment of applications  
submitted by less significant credit institutions  
and the monitoring of IPSs that include them.
- (3) To ensure consistent treatment of significant  
and less significant credit institutions which  
are members of IPSs across the SSM and foster  
consistency in decisions adopted by the ECB  
and the NCAs, the ECB adopted Guideline  
(EU) 2016/1994 of the European Central Bank  
(ECB/2016/38) <sup>(5)</sup>. However, it is necessary to  
establish a coordinated process for decisions  
relating to members of the same IPS that consist  
of both significant and less significant credit  
institutions, and for the ECB and the NCAs to  
take a coordinated approach to the monitoring  
of that IPS, to ensure consistency between  
decisions taken in relation to significant and  
less significant credit institutions that are  
members of the same IPS,

HAS ADOPTED THIS GUIDELINE:

## CHAPTER I GENERAL PROVISIONS

### *Article 1* **Scope**

1. This Guideline lays down the principles for coordination between the ECB and the NCAs with regard to the assessment of IPSs for the purpose of granting prudential permissions and waivers to IPS members, pursuant to Articles 8(4), 49(3), 113(7), 422(8) and 425(4) of Regulation (EU) No 575/2013 and Article 33(2)(b) of Delegated Regulation (EU) 2015/61, and to the monitoring of IPSs that have been recognised for prudential purposes.

2. The coordination process is without prejudice to the ECB's responsibility for adopting all relevant prudential supervisory decisions for significant credit institutions, and the NCA's responsibility for adopting such decisions for less significant credit institutions.

### *Article 2* **Definitions**

For the purposes of this Guideline, the definitions set out in Regulation (EU) No 575/2013, Directive 2013/36/EU of the European Parliament and of the Council <sup>(6)</sup>, Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 (ECB/2014/17) shall apply together with the following definitions:

- (a) 'review team' means a team composed of representatives of the ECB and of the NCA that is the direct supervisor of the relevant IPS members. This team is set up for the purpose of coordinating the review carried out under Article 113(7) of Regulation (EU) No 575/2013;
- (b) 'review team coordinator' means an ECB staff member and an NCA staff member appointed in accordance with Article 6 and performing the tasks set out in Article 8;
- (c) 'applicant' means an IPS member or a group of IPS members represented by a single entity that submits to the ECB or the relevant NCA an application seeking permission or a waiver pursuant to the provisions referred to in Article 1(1);
- (d) 'hybrid IPS' means an IPS composed of significant and less significant credit institutions;
- (e) 'SSM competent authorities' means the ECB and the NCAs of the participating Member States.

## *Article 3* **Level of application**

Where both significant and less significant credit institutions that are members of the same hybrid IPS simultaneously submit applications for prudential permissions and waivers to the ECB, in the case of significant credit institutions, and to the relevant NCA, in the case of less significant credit institutions, the ECB and the relevant NCA shall apply the coordination process and the provisions on monitoring set out in this Guideline, including any standard monitoring activities related to that IPS.

## CHAPTER II COORDINATION OF THE IPS ASSESSMENT

### *Article 4* **Coordinated assessment**

Without prejudice to the ECB and the NCAs' responsibility to grant the permissions and waivers referred to in Article 1(1), the assessment of simultaneously submitted applications from significant and less significant credit institutions, which are members of the same hybrid IPS, shall be conducted jointly by the ECB and the relevant NCA.

### *Article 5* **Review team**

1. For the purpose of coordinating the assessment of simultaneously submitted applications from significant and less significant credit institutions, which are members of the same hybrid IPS, a review team shall be established when the ECB and the relevant NCA receive applications for a permission or a waiver pursuant to the applicable provisions of Regulation (EU) No 575/2013.

2. The ECB and the relevant NCA shall appoint supervisors responsible for the day to day supervision of the credit institutions submitting the applications under paragraph 1 and staff members performing the general oversight of the functioning of the system as members of the review team. The composition of the review team and the number of its members shall depend on the number of IPS members and the importance of the relevant significant institutions.

3. The review team shall remain in place until the decisions related to applications for a permission or a waiver are adopted by the competent authorities.

#### *Article 6*

##### **Review team coordinators**

1. The ECB and the NCA that is responsible for the direct supervision of the relevant IPS members shall each designate one coordinator to manage the assessment process in respect of the applications.
2. If significant institutions that are supervised by different joint supervisory teams (JSTs) have applied for the same permission or waiver among those listed in Article 1(1), those JSTs may decide to appoint a common coordinator.
3. The coordinators shall be responsible for agreeing on a timetable and the necessary actions to develop a common view within the review team.

#### *Article 7*

##### **Notification of application and setting up of the review team**

1. The ECB and the relevant NCA shall notify each other on the receipt of any applications from significant and less significant credit institutions, which are members of a hybrid IPS.
2. On the receipt of simultaneously submitted applications the ECB and the NCA shall nominate their members of the review team.

#### *Article 8*

##### **Assessment of the applications**

1. The completeness and appropriateness of the applications shall be independently assessed by the ECB and the relevant NCA. If more information is required for the assessment of specific applications, the competent authorities may request the applicant to provide such information.
2. The ECB and the NCA shall carry out a preliminary assessment of the respective applications separately.
3. The review team shall discuss the preliminary outcome of the assessment of the applications and agree on the final outcome, taking into account any deadlines contained in national administrative law if appropriate.
4. If the review team agrees that the applications and the organisational framework of the IPS comply with the requirements of the provisions listed in Article 1(1), it shall prepare a note describing the outcome of the assessment and confirming that the requirements are met. The assessment of the review team shall be taken into consideration by the ECB and the NCAs when adopting their respective decisions on whether to grant permissions or waivers.

5. If no common view can be reached within the review team on the assessment of the applications, the issue may be submitted to the Supervisory Board for discussion. The result of the Supervisory Board discussion is without prejudice to the responsibilities of the ECB and the NCA to decide whether to grant a permission or a waiver.

#### *Article 9*

##### **Decisions**

1. The draft decisions prepared by the ECB and the relevant NCA based on the agreed outcomes of the joint assessment shall be submitted for approval to the relevant decision-making bodies, i.e. the ECB's Governing Council for applications submitted by significant credit institutions and the relevant NCA's decision-making bodies for applications submitted by less significant credit institutions.
2. These decisions shall specify the reporting requirements for the purpose of the ongoing monitoring of the members of the IPS without prejudice to any additional requirements that the ECB and the relevant NCA may impose on credit institutions during the monitoring.

### **CHAPTER III**

#### **IPS MONITORING**

#### *Article 10*

##### **Coordination of monitoring**

1. The ECB and the NCA responsible for the supervision of an IPS member shall monitor at regular intervals the adequacy of the IPS's systems for monitoring and classification of risk pursuant to Article 113(7)(c) of Regulation (EU) No 575/2013 and that the IPS conducts its own risk review pursuant to Article 113(7)(d) thereof.
2. To ensure a consistent approach to the monitoring and the application of high supervisory standards the ECB and the relevant NCA shall coordinate their monitoring activities. For this purpose, up-to-date lists of staff members from the ECB and the NCA shall be produced.
3. The ECB and the NCA shall agree on any deadlines and actions for the purpose of the monitoring. The monitoring shall be carried out at least annually, after the consolidated or aggregated financial reports for the previous financial year, prepared pursuant to Article 113(7)(e) of Regulation (EU) No 575/2013, have become available.

*Article 11*  
**Monitoring**

1. The ECB and the relevant NCA shall, within their respective competences, generally carry out the monitoring through off-site activities. Where necessary, the ECB and the relevant NCA may, within their respective competences, decide to carry out targeted on-site inspections at credit institutions, which are members of IPSs, to assess their continuing compliance with the conditions for permissions and waivers referred to in Article 1(1).

2. For the purposes of the IPS monitoring the ECB and the NCA shall take into account the available supervisory information on the IPS members, such as the supervisory review and evaluation process results and regular supervisory reporting.

3. The ECB and the NCA shall review annually the consolidated/aggregated report required pursuant to Article 113(7)(e) of Regulation (EU) No 575/2013, paying particular attention to the IPS's available funds.

*Article 12*  
**Monitoring outcomes**

1. The ECB and the relevant NCA shall agree on the results and conclusions of the monitoring and, where relevant, on any necessary follow-up measures, including an intensification of the monitoring.

2. If no common view can be reached between the ECB and the relevant NCA, the issue may be submitted to the Supervisory Board for discussion. The result of the Supervisory Board discussion is without prejudice to the responsibilities of the ECB and the NCA for the prudential supervision of the respective IPS members.

3. If there are elements indicating that the requirements of the provisions listed in Article 1(1) are no longer met and that the eligibility of the IPS or some of its members and/or the permission or waivers granted may need to be reconsidered, the ECB and the NCA shall coordinate their action which may include, as appropriate, the revocation or non-application of the permissions and/or waivers.

**CHAPTER IV**  
**FINAL PROVISIONS**

*Article 13*  
**Addressees**

This Guideline is addressed to the SSM competent authorities.

*Article 14*  
**Taking effect and implementation**

1. This Guideline shall take effect on the day of its notification to the SSM competent authorities.
2. The SSM competent authorities shall comply with this Guideline from 2 December 2016.

Done at Frankfurt am Main, 4 November 2016.

*For the Governing Council of the ECB*

*The President of the ECB*

Mario DRAGHI

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(<sup>1</sup>) OJ L 287, 29.10.2013, p. 63.

(<sup>2</sup>) OJ L 176, 27.6.2013, p. 1.

(<sup>3</sup>) OJ L 11, 17.1.2015, p. 1.

(<sup>4</sup>) 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).

(<sup>5</sup>) Guideline (EU) 2016/1994 of the European Central Bank of 4 November 2016 on the approach for the recognition of institutional protection schemes for prudential purposes by national competent authorities pursuant to Regulation (EU) No 575/2013 (ECB/2016/38) (see page 37 of this Official Journal).

(<sup>6</sup>) 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 (OJ L 176, 27.6.2013, p. 338).

**DECISION (EU) 2021/1486 OF THE EUROPEAN CENTRAL BANK**  
**of 7 September 2021**  
**adopting internal rules concerning restrictions of rights of data subjects in connection**  
**with the European Central Bank's tasks relating to the prudential supervision of credit**  
**institutions (ECB/2021/42)**

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 EXECUTIVE BOARD 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 11.6 thereof,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC <sup>(1)</sup>, and in particular Article 25 thereof,

Whereas:

- (1) The European Central Bank (ECB) carries out its tasks in accordance with the Treaties and Council Regulation (EU) No 1024/2013 <sup>(2)</sup>.
- (2) In accordance with Article 45(3) of Regulation (EU) 2018/1725, Decision (EU) 2020/655 of the European Central Bank (ECB/2020/28) <sup>(3)</sup> sets out the general rules implementing Regulation (EU) 2018/1725 as regards the ECB. In particular, it specifies the rules relating to the appointment and role of the data protection officer of the ECB (DPO), including the DPO's tasks, duties and powers.
- (3) In exercising the tasks conferred on the ECB, the ECB and in particular the organisational unit concerned acts as data controller in so far as it determines, alone or jointly with others, the purposes and means of the processing of personal data.
- (4) Pursuant to Article 4(1) of Regulation (EU) No 1024/2013, the ECB is exclusively competent to carry out, for supervisory purposes, and with a view to ensuring the safety and soundness of credit institutions and the stability of the financial system, specific tasks in relation to all credit institutions established in the Member States participating in the Single Supervisory Mechanism (SSM).

- (5) In carrying out these specific tasks, the ECB processes several categories of information that may be related to an identified or identifiable natural person such as identification data, contact data, professional data, financial or administrative details, data received from specific sources, data on electronic communication and electronic traffic data, criminal records, a description of financial and non-financial interests, details of relationships of an individual or their close relatives to supervised entities or to members of the management body of supervised entities, and data relating to the position for which an individual has been or may be appointed. Personal data could also form part of an assessment including an assessment conducted: for the purposes of the authorisation of a credit institution, the withdrawal of the authorisation of a credit institution and a qualifying holding procedure; in relation to the right of establishment for a significant supervised entity; to determine whether fit and proper requirements are met; in relation to a significant supervised entity's remuneration policies and regarding credits by such an entity to its own senior officials and persons related to these officials; and in relation to allegations related to potential breaches of the legal acts referred to in Article 4(3) of Regulation (EU) No 1024/2013.
- (6) The aim of the ECB in performing these specific tasks is to pursue important objectives of general public interest of the Union. For this reason, the performance of such tasks should be safeguarded as contemplated by Regulation (EU) 2018/1725, in particular by Article 25(1) (c) and (g) thereof. In particular in performing such tasks, the ECB acts in the general public interest of the Union as a public authority entrusted with carrying out, for supervisory purposes, specific tasks in relation to all credit institutions established in the Member States participating in the SSM. Such tasks include monitoring, inspection or regulatory functions connected with the exercise of official authority related to the prudential supervision of credit institutions.

- (7) In this context, it is appropriate to specify the grounds on which the ECB may restrict the rights of data subjects in relation to data obtained in the performance of its supervisory tasks pursuant to Regulation (EU) No 1024/2013.
- (8) In accordance with Article 25(1) of Regulation (EU) 2018/1725, restrictions of the application of Articles 14 to 22, 35 and 36 and, in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22, Article 4 of that Regulation should be set out in internal rules or legal acts adopted on the basis of the Treaties. Accordingly, the ECB should set out the rules under which it may restrict the rights of data subjects in the performance of its supervisory tasks.
- (9) Whilst this Decision sets out the rules under which the ECB may restrict the rights of data subjects in the performance of its supervisory tasks, the Executive Board intends to adopt a separate decision adopting internal rules concerning the restriction of those rights when the ECB processes personal data in connection with its internal functioning.
- (10) The ECB may be able to apply an exception in accordance with Regulation (EU) 2018/1725 which makes the need to consider a restriction unnecessary including in particular those set out in Articles 15(4), 16(5), 19(3) and 35(3) of that Regulation. For processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, the ECB may be able to apply an exception set out in point (b) of Article 16(5) or point (d) of Article 19(3) of Regulation (EU) 2018/1725.
- (11) The exercise of the rights of data subjects referred to in Articles 17, 18, 20, 21, 22 and 23 of Regulation (EU) 2018/1725 may render impossible or seriously impair the achievement of certain purposes including, as applicable, archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. Therefore this Decision should provide for a derogation from those rights in accordance with Article 25(3) or (4) of Regulation (EU) 2018/1725, subject to appropriate safeguards.
- (12) The ECB should justify why such restrictions of data subjects' rights are strictly necessary and proportionate in a democratic society to safeguard the objectives pursued in the exercise of its official authority and the functions connected to it, and how the ECB respects the essence of fundamental rights and freedoms whilst imposing any such restriction.
- (13) Within this framework the ECB is bound to respect, to the maximum extent possible, the fundamental rights of data subjects, in particular those relating to the right of provision of information, access and rectification, right to erasure, restriction of processing, right of communication of a personal data breach to the data subject or confidentiality of communication as provided for in Regulation (EU) 2018/1725.
- (14) However, the ECB may be obliged to restrict the information provided to data subjects and the rights of data subjects to protect the performance of its supervisory tasks, in particular its own investigations and procedures, the investigations and procedures of other public authorities and the fundamental rights and freedoms of other persons related to its investigations or other procedures.
- (15) The ECB should lift a restriction which has already been applied to the extent it is no longer needed.
- (16) The ECB's DPO should review the application of restrictions with a view to ensuring compliance with this Decision and with Regulation (EU) 2018/1725.
- (17) The European Data Protection Supervisor was consulted in accordance with Article 41(2) of Regulation (EU) 2018/1725 and delivered an opinion on 12 March 2021,

HAS ADOPTED THIS DECISION:

*Article 1*

**Subject matter and scope**

1. This Decision sets out rules relating to the restriction of the rights of data subjects by the ECB when conducting personal data processing activities as recorded in the central register in the performance of its supervisory tasks pursuant to Regulation (EU) No 1024/2013.
2. The rights of data subjects which may be restricted are specified in the following Articles of Regulation (EU) 2018/1725:
  - (a) Article 14 (transparent information, communication and modalities for the exercise of the rights of the data subject);
  - (b) Article 15 (information to be provided where personal data are collected from the data subject);
  - (c) Article 16 (information to be provided where personal data have not been obtained from the data subject);
  - (d) Article 17 (right of access by the data subject);

- (e) Article 18 (right to rectification);
- (f) Article 19 (right to erasure ('right to be forgotten'));
- (g) Article 20 (right to restriction of processing);
- (h) Article 21 (notification obligation regarding rectification or erasure of personal data or restriction of processing);
- (i) Article 22 (right to data portability);
- (j) Article 35 (communication of a personal data breach to the data subject);
- (k) Article 36 (confidentiality of electronic communications);
- (l) Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22 of Regulation (EU) 2018/1725.

### *Article 2* **Definitions**

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

- (1) 'processing' means processing as defined in point (3) of Article 3 of Regulation (EU) 2018/1725;
- (2) 'personal data' means personal data as defined in point (1) of Article 3 of Regulation (EU) 2018/1725;
- (3) 'data subject' means an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (4) 'central register' means the publicly available repository of all personal data processing activities conducted at the ECB which is kept by the ECB's DPO and referred to in Article 9 of Decision (EU) 2020/655 (ECB/2020/28);
- (5) 'controller' means the ECB, and in particular the competent organisational unit within the ECB which, alone or jointly with others, determines the purposes and means of the processing of personal data and which is responsible for the processing operation.
- (6) 'Union institutions and bodies' means Union institutions and bodies as defined in point (10) of Article 3 of Regulation (EU) 2018/1725.

### *Article 3* **Application of restrictions**

1. The controller may restrict the rights referred to in Article 1(2) to safeguard the interests and objectives referred to in Article 25(1) of Regulation (EU) 2018/1725, in particular where the exercise of those rights would jeopardise or otherwise adversely affect:

- (a) the performance of the ECB's supervisory tasks under Regulation (EU) No 1024/2013, including the proper functioning of the supervisory system;
- (b) the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State;
- (c) the effectiveness of the reporting of breaches in accordance with Article 23 of Regulation (EU) No 1024/2013.

2. To safeguard the interests and objectives referred to in Article 25(1) of Regulation (EU) 2018/1725, the controller may restrict the rights referred to in Article 1(2) in relation to personal data obtained from other Union institutions and bodies and competent authorities of Member States or third countries or international organisations, in any of the following circumstances:

- (a) where the exercise of those rights could be restricted by other Union institutions and bodies, from which the personal data was obtained, on the basis of other acts provided for in Article 25 of Regulation (EU) 2018/1725 or in accordance with Chapter IX of that Regulation or with the founding acts of other Union institutions and bodies;
- (b) where the exercise of those rights could be restricted by the competent authorities of Member States, from which the personal data was obtained, on the basis of acts referred to in Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(4)</sup>, or under national measures transposing Articles 13(3), 15(3) or 16(3) of Directive (EU) 2016/680 of the European Parliament and of the Council <sup>(5)</sup>;
- (c) where the exercise of those rights could jeopardise or otherwise adversely affect the ECB's cooperation with third countries or international organisations, from which the information was obtained, in the conduct of its tasks, unless the ECB's interest in cooperation is overridden by the interests or fundamental rights and freedoms of the data subjects.

3. Before applying a restriction in the circumstances referred to in paragraphs 2(a) and (b), the controller shall:

- (a) take note of arrangements concluded with the relevant Union institutions and bodies or the competent authorities of Member States; and
- (b) consult with the relevant Union institutions and bodies or the competent authorities of Member States unless it is clear to the controller that the application of that restriction is provided for by one of the acts or measures referred to in paragraphs 2(a) and (b).

4. The controller may only apply a restriction where on a case-by-case assessment it concludes that the restriction:

- (a) is necessary and proportionate taking into account the risks to the rights and freedoms of the data subject; and
- (b) respects the essence of the fundamental rights and freedoms in a democratic society.

5. The controller shall document its assessment in an internal assessment note which shall include the legal basis, the reasons for the restriction, the rights of the data subjects that are restricted, the data subjects affected, the necessity and proportionality of the restriction and the likely duration of the restriction.

6. A decision to restrict the rights of a data subject pursuant to this Decision to be taken by the controller shall be made at the level of the relevant business area head or deputy head in whose business area the main processing operation involving the personal data is carried out.

#### *Article 4* **Derogations**

1. For processing for scientific or historical research purposes or statistical purposes, the controller may apply derogations in accordance with Article 25(3) of Regulation (EU) 2018/1725. To that end, the controller may derogate from the rights referred to in Articles 17, 18, 20 and 23 of Regulation (EU) 2018/1725 in accordance with the conditions provided for in Article 25(3) of that Regulation.

2. For processing for archiving purposes in the public interest, the controller may apply derogations in accordance with Article 25(4) of Regulation (EU) 2018/1725. To that end, the controller may derogate from the rights referred to in Articles 17, 18, 20, 21, 22 and 23 of Regulation (EU) 2018/1725 in accordance with the conditions provided for in Article 25(4) of that Regulation.

3. Such derogations shall be subject to appropriate safeguards in accordance with Article 13 of Regulation (EU) 2018/1725 and Article 8 of this Decision.

#### *Article 5*

#### **Provision of general information on restrictions**

The controller shall provide general information on the potential restriction of data subject rights as follows:

- (a) the controller shall specify the rights which may be restricted, the reasons for restriction and the potential duration;
- (b) the controller shall include the information referred to in point (a) in its data protection notices, privacy statements and records of processing activities as referred to in Article 31 of Regulation (EU) 2018/1725.

#### *Article 6*

#### **Restriction of right of access by data subjects, right to rectification, right of erasure or restriction of processing**

1. Where the controller restricts, wholly or partially, the right of access, the right to rectification, the right of erasure or the right to restriction of processing, respectively referred to in Articles 17, 18, 19(1) and 20(1) of Regulation (EU) 2018/1725, it shall, within the period referred to in Article 11(5) of Decision (EU) 2020/655 (ECB/2020/28), inform the data subject concerned, in its written reply to the request, of the restriction applied, the principal reasons for the restriction and the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy in the Court of Justice of the European Union.

2. The controller shall keep the internal assessment note referred to in Article 3(5) and, where applicable, the documents containing underlying factual and legal elements and make these available to the European Data Protection Supervisor on request.

3. The controller may defer, omit or deny the provision of information concerning the reasons for the restriction referred to in paragraph 1 for as long as that provision of information would undermine the purpose of the restriction. As soon as the controller determines that providing the information no longer undermines the purpose of the restriction, the controller shall provide that information to the data subject.

#### *Article 7*

#### **Duration of restrictions**

1. The controller shall lift a restriction as soon as the circumstances that justified that restriction no longer apply.

2. Where the controller lifts a restriction pursuant to paragraph 1, the controller shall promptly:

- (a) to the extent it has not already done so, inform the data subject of the principal reasons on which the application of a restriction was based;
- (b) inform the data subject of his or her right to lodge a complaint with the European Data Protection Supervisor or to seek a judicial remedy before the Court of Justice of the European Union;
- (c) grant the data subject the right that was subject to the restriction that has been lifted.

3. The controller shall reassess every six months the need to maintain a restriction applied pursuant to this Decision and shall document its reassessment in an internal assessment note.

#### *Article 8* **Safeguards**

The ECB shall apply organisational and technical safeguards as set out in the Annex to prevent abuse or unlawful access or transfer.

#### *Article 9* **Review by the data protection officer**

1. Where the controller restricts the application of a data subject's rights, it must continuously involve the DPO. In particular, the following shall apply:

- (a) the controller shall, without undue delay, consult the DPO;
- (b) on the DPO's request, the controller shall provide the DPO with access to any documents containing underlying factual and legal elements, including the internal assessment note referred to in Article 3(5);
- (c) the controller shall document how the DPO was involved including relevant information that was shared, in particular the date of its first consultation as referred to in point (a);
- (d) the DPO may request the controller to review the restriction;
- (e) the controller shall inform the DPO in writing of the outcome of the review requested without undue delay and in any case before any restriction is applied.

2. The controller shall inform the DPO when the restriction has been lifted.

#### *Article 10* **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, 7 September 2021.

*The President of the ECB*

Christine LAGARDE

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- (<sup>1</sup>) OJ L 295, 21.11.2018, p. 39.
  - (<sup>2</sup>) 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).
  - (<sup>3</sup>) Decision (EU) 2020/655 of the European Central Bank of 5 May 2020 adopting implementing rules concerning data protection at the European Central Bank and repealing Decision ECB/2007/1 (ECB/2020/28) (OJ L 152, 15.5.2020, p. 13).
  - (<sup>4</sup>) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).
  - (<sup>5</sup>) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

#### *ANNEX*

Organisational and technical safeguards at the ECB to prevent abuse or unlawful access or transfer include:

- (a) as regard persons:
  - (i) all persons who have access to non-public ECB information being responsible for knowing and applying the ECB's policy and rules on the management and confidentiality of information;
  - (ii) a security clearance process which ensures that only vetted and authorised persons have access to the ECB premises and its non-public information;
  - (iii) IT, information and physical security awareness measures;

- (iv) trainings which are regularly held for members of staff and external service providers;
  - (v) members of staff of the ECB being subject to strict rules of professional secrecy set out in the ECB Conditions of Employment and Staff Rules, the breach of which gives rise to disciplinary sanctions;
  - (vi) rules and obligations governing external service providers' or contractors' access to non-public ECB information which are set out in contractual arrangements;
  - (vii) access controls including security zoning which are enforced ensuring that access of persons to ECB non-public information is authorised and restricted based on business needs and security requirements;
- (b) as regard processes:
- (i) processes being in place to ensure the controlled implementation, operation and maintenance of IT applications supporting the ECB's business;
  - (ii) using IT applications for the ECB's business which comply with the ECB's security standards;
  - (iii) having a comprehensive physical security programme in operation which continuously assesses security threats and encompasses physical security measures to ensure an adequate level of protection;
- (c) as regard technology:
- (i) all electronic data being stored in IT applications complying with the ECB's security standards and thus being protected against unauthorised access or alteration;
  - (ii) IT applications being implemented, operated and maintained at a level of security commensurate to the IT applications' confidentiality, integrity and availability needs, which are based on business impact analyses;
  - (iii) the level of security of IT applications being regularly validated through technical and non-technical security assessments;
- (iv) access to ECB non-public information being granted in accordance with the need-to-know principle, and privileged access being strictly limited and tightly controlled;
  - (v) controls being implemented to detect and follow up on actual and potential security breaches.

**DECISION (EU) 2022/1982 OF THE EUROPEAN CENTRAL BANK  
of 10 October 2022**

**on the use of services of the European System of Central Banks by competent authorities  
and by cooperating authorities, and amending Decision ECB/2013/1 (ECB/2022/34)**

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 and Article 132(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.1 in conjunction with Articles 3.1 and 12.3, and Article 34 thereof,

Whereas:

- (1) Services of the European System of Central Banks (ESCB) are provided to central banks within the ESCB to indirectly support the performance of their tasks. The ESCB services are developed, run and maintained by one or more central banks (hereinafter the ‘providing central banks’) and steered by an ESCB Committee (hereinafter the ‘System Owner Committee’). The ESCB services are financed by ESCB participating central banks (hereinafter the ‘participating central banks’), whose respective contributions are defined in financial envelopes approved by the Governing Council. The rights and obligations of the participating central banks are set out in European Central Bank (ECB) legal acts, as is the case for the ESCB public key infrastructure (ESCB-PKI), and/or in agreements between the participating central banks.
- (2) The legal frameworks for the provision of certain ESCB services currently do not provide for their use by parties that are not central banks within the ESCB.
- (3) The Governing Council considers it appropriate to allow competent authorities to use these services for the purpose of cooperating with the ESCB and with each other, in order to carry out their tasks within the Single Supervisory Mechanism (SSM), established pursuant to Council Regulation (EU) No 1024/2013<sup>(1)</sup> on the basis of Article 127(6) of the Treaty.
- (4) Competent authorities that use the ESCB services for these purposes should comply with the legal framework governing each ESCB service, taking into account that competent authorities are not part of the governance

framework of the ESCB. In particular, such competent authorities should contribute to the costs of developing and operating the services according to a defined reimbursement framework, which should be based on a cost allocation key.

- (5) The Governing Council also considers it appropriate to allow cooperating authorities to use these services for the purpose of cooperating with the ESCB or the SSM in carrying out their tasks, including the tasks of the ECB under Regulation (EU) No 1024/2013.
- (6) Cooperating authorities that decide to use these services should comply with the legal framework governing each ESCB service, taking into account that cooperating authorities are not part of the governance framework of the ESCB. Where relevant, cooperating authorities should contribute to the costs of developing and operating the services according to a defined reimbursement framework, which should be based on a cost allocation key.
- (7) Therefore, the ESCB services that should be made available to competent authorities and cooperating authorities should be defined by reference to an exhaustive list including ESCB services that the competent authorities are required to use, as well as those that they may use.
- (8) In addition, Decision ECB/2013/1 of the European Central Bank<sup>(2)</sup> should be amended to allow cooperating authorities to use ESCB-PKI services in order to access and use ESCB services,

HAS ADOPTED THIS DECISION:

*Article 1*  
**Definitions**

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

- (1) ‘competent authority’ means either a national competent authority or the European Central Bank (ECB);
- (2) ‘national competent authority’ (NCA) means a national competent authority as defined

in point (2) of Article 2 of Regulation (EU) No 1024/2013 and, for the purposes of this Decision, also includes, in respect of the supervisory tasks assigned to them, national central banks that have been assigned certain supervisory tasks under national law and are not designated as NCAs;

- (3) ‘participating competent authority’ means a competent authority that uses the ESCB services for the purpose of cooperating with the ESCB and with other competent authorities, in order to carry out its tasks within the Single Supervisory Mechanism (SSM), established pursuant to Regulation (EU) No 1024/2013;
- (4) ‘cooperating authority’ means a public authority, other than a central bank within the ESCB or a competent authority, with which the ESCB or the SSM cooperates in carrying out the tasks of the ESCB or of the ECB under Regulation (EU) No 1024/2013;
- (5) ‘ESCB services’ means any one or more of the electronic applications, systems, platforms, databases and services listed in Annex I;
- (6) ‘providing central bank’ means a central bank developing, running and maintaining an ESCB service;
- (7) ‘System Owner Committee’ means an ESCB Committee steering an ESCB service.

#### *Article 2*

##### **Use of ESCB services by competent authorities**

1. Competent authorities may use ESCB services for the purpose of cooperating with the ESCB or with each other in carrying out their tasks under Regulation (EU) No 1024/2013.
2. Competent authorities that use ESCB services shall comply with the requirements set out in Annex II. They shall submit a declaration to the Governing Council by which they confirm their participation and accept compliance with the related obligations, including the obligation to pay their contributions directly to the providing central bank in accordance with Article 4. No such declaration shall be required if the competent authorities are subject to the requirements set out in Annex II by way of a decision of the Governing Council that competent authorities shall use ESCB services.
3. Competent authorities that use ESCB services shall comply with the legal framework governing each ESCB service, including the agreements between the participating and providing central banks. The agreements between the parties may establish direct contractual relationships between the providing central banks and the competent authorities.

4. NCAs that use ESCB services may participate in the proceedings of the respective System Owner Committee as observers in a consulting capacity. The System Owner Committee shall ensure that NCAs’ views are sufficiently reflected in the decision-making processes.

#### *Article 3*

##### **Use of ESCB services by cooperating authorities**

1. Subject to the approval of the Governing Council, a cooperating authority may use ESCB services for the purpose of cooperating with the ESCB or the SSM in carrying out the tasks of the ESCB and the tasks of the ECB under Regulation (EU) No 1024/2013.
2. Cooperating authorities that decide to use ESCB services shall submit a declaration to the Governing Council by which they confirm their participation and accept compliance with the related obligations, set out in Annex II, including the obligation to pay their contributions directly to the providing central bank in accordance with Article 4.
3. Cooperating authorities that decide to use ESCB services shall comply with the legal framework governing each ESCB service, including the agreements between the participating and providing central banks. The agreements between the parties may establish a direct contractual relationship between the providing central banks and the cooperating authorities. Cooperating authorities shall not participate in the proceedings of the respective System Owner Committee.

#### *Article 4*

##### **Financial arrangements**

Participating central banks and participating competent authorities shall bear the costs of developing and operating the respective ESCB service in accordance with a defined reimbursement framework, which is based on a cost allocation key, as further specified in the respective financial envelopes following the applicable reimbursement rules. Where relevant, cooperating authorities shall contribute to the costs of the respective ESCB service in accordance with a specific reimbursement framework.

#### *Article 5*

##### **Amendment of Decision ECB/2013/1**

Decision ECB/2013/1 is amended as follows:

- (1) in Article 1, the following definitions are added:
  - ‘19. “competent authority” means either a national competent authority or the ECB;

20. “national competent authority” (NCA) means a national competent authority as defined in point (2) of Article 2 of Council Regulation (EU) No 1024/2013 <sup>(\*)</sup> and, for the purposes of this Decision, also includes, in respect of the supervisory tasks assigned to them, national central banks that have been assigned certain supervisory tasks under national law and are not designated as NCAs;
21. “cooperating authority” means a public authority, other than a central bank within the ESCB or a competent authority, with which the ESCB or the Single Supervisory Mechanism (SSM) cooperates in carrying out the tasks of the ESCB or of the ECB under Regulation (EU) No 1024/2013;
22. “participating competent authority” means a competent authority that uses the ESCB services for the purpose of cooperating with the ESCB and with other competent authorities, in order to carry out its tasks within the Single Supervisory Mechanism (SSM), established pursuant to Regulation (EU) No 1024/2013.

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(\*) 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).<sup>2</sup>;

- (2) the following Article 9a is inserted:

*‘Article 9a*

**Use of the ESCB-PKI services by cooperating authorities**

1. Subject to the approval of the Governing Council, a cooperating authority may use the ESCB-PKI services in order to access and use ESCB and Eurosystem electronic applications, systems, platforms, databases and services for the purpose of cooperating with the ESCB or with the SSM and may act for that purpose as a registration authority for its internal users.
2. Cooperating authorities that decide to use the ESCB-PKI services shall submit a declaration to the Governing Council by which they confirm their use of the services and accept compliance with the related obligations.
3. Cooperating authorities that decide to use the ESCB-PKI services shall comply with the applicable legal framework, including the Level 2 – Level 3 Agreement.<sup>3</sup>;

- (3) Article 14 is replaced by the following:

*‘Article 14*

**Financial arrangements**

Participating central banks and participating competent authorities shall bear the costs of developing and operating the ESCB-PKI services according to a defined reimbursement framework, which is based on a cost allocation key, as further specified in the ESCB-PKI financial envelopes following the applicable reimbursement rules. Cooperating authorities shall contribute to the costs in accordance with a specific reimbursement framework.<sup>4</sup>

*Article 6*

**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, 10 October 2022.

*The President of the ECB*

Christine LAGARDE

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(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/2013/1 of the European Central Bank of 11 January 2013 laying down the framework for a public key infrastructure for the European System of Central Banks (OJ L 74, 16.3.2013, p. 30).

*ANNEX I*

ESCB services to be made available to competent authorities and cooperating authorities

- CoreNet3
- Enterprise Service Bus (ESB)
- ESCB Public Key Infrastructure (ESCB PKI)
- Identity and Access Management Service (IAM)
- Secure ESCB Email (SEE)
- ESCB Teleconference System
- ESCB Performing Survey Initiative LimeSurvey-based Solution (EPSILON)
- ENTM modelling tool and repository (ENTM)

## ANNEX II

### Requirements for competent authorities' use of ESCB services

- (1) Competent authorities must carry out the tasks and assume the responsibilities corresponding to their role in the relevant ESCB service.
- (2) Competent authorities must adjust their internal systems and interfaces to operate seamlessly with the ESCB service.
- (3) Competent authorities will be liable for any loss or damage incurred as a result of any deliberate or negligent action and/or omission in performing their obligations. The limitations of liability laid down in the Level 2 – Level 3 Agreement will apply accordingly.
- (4) Competent authorities will bear the burden of proof of demonstrating that they have not breached their duty of reasonable care in performing their obligations, including in operating the technical facilities.
- (5) Outsourcing, delegation or subcontracting by a competent authority to third parties will be without prejudice to the liability of that competent authority.

Competent authorities may only outsource, delegate or subcontract to a third party tasks that have or may have a material impact on compliance with the requirements set forth in this Annex to the extent that they have obtained the express, prior and written consent (or deemed consent as provided for in paragraph (6)) of the Eurosystem central banks, or the ESCB central banks, as the case may be. No such consent is needed if the third party is a joint affiliate of the relevant competent authority and if that competent authority's rights and obligations remain materially unchanged.

- (6) Competent authorities must give reasonable prior notice of any planned outsourcing, delegation or subcontracting as referred to in paragraph 5 and must provide details of the requirements that are proposed to apply to such outsourcing, delegation or subcontracting.

The competent ESCB Committee must respond to any request for consent under paragraph 5 within two months of it being notified of the planned outsourcing, delegation or subcontracting. Any refusal to grant consent must be accompanied by the reasons for such refusal. If the competent authority receives no response within the two-month deadline, it may notify the competent ESCB Committee of its request once again. The Eurosystem central banks, or ESCB central banks, as the case

may be, will have one further month within which to respond to the second notification. If there is no response within that time period, the competent authority will be deemed to have received consent to proceed with the outsourcing, delegation or subcontracting.

- (7) Competent authorities must keep confidential all sensitive, secret or confidential information and know-how (whether such information is of a commercial, financial, regulatory, technical or other nature) that is marked as such and belongs to the providing central bank and/or to other ESCB/Eurosystem central banks, and may not disclose such information to any third party without the express, prior and written consent of the central bank(s) concerned.
- (8) Competent authorities must restrict access to the information or know-how referred to in paragraph 7 to their relevant technical staff, and such access may only be exercised in cases of clear operational need.
- (9) Competent authorities must establish appropriate measures to prevent access to such confidential information or know-how by persons other than the relevant technical staff.
- (10) In the exceptional case that the usage of the ESCB service involves the processing of personal data by the competent authority, the competent authority must comply with the applicable data protection legislation. The Eurosystem central banks, or ESCB central banks, as the case may be, must determine the purposes for which and the means by which personal data may be processed. In relation to the processing of personal data the competent authority and the Eurosystem central banks, or ESCB central banks, as the case may be, should seek to conclude a contract that clarifies the necessary aspects of the controller–processor relationship.

The competent authority must declare to the competent data protection authorities, if so required under the data protection legislation applicable to its processing of personal data, the processing of personal data in the context of the relevant ESCB service.

- (11) Access to personal data may be granted only to those with a need to know in order to perform their tasks and fulfil their responsibilities in relation to the relevant ESCB service.

**DECISION (EU) 2022/1981 OF THE EUROPEAN CENTRAL BANK**  
**of 10 October 2022**  
**on the use of services of the European System of Central Banks by competent authorities**  
**(ECB/2022/33)**

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 <sup>(1)</sup>, and in particular Article 6(1) in conjunction with Article 6(7) thereof,

Whereas:

- (1) Services of the European System of Central Banks (ESCB) are provided to central banks within the ESCB to indirectly support the performance of their tasks. The ESCB services are developed, run and maintained by one or more central banks (hereinafter the ‘providing central banks’) and steered by an ESCB Committee. The ESCB services are financed by participating central banks (hereinafter the ‘participating central banks’), whose respective contributions are defined in financial envelopes approved by the Governing Council. The rights and obligations of the participating central banks are set out in European Central Bank (ECB) legal acts, as is the case for the ESCB public key infrastructure (ESCB-PKI), and/or in agreements between the participating central banks.
- (2) It is necessary for the smooth, effective and consistent functioning of the Single Supervisory Mechanism (SSM) that practical arrangements for the cooperation between the ECB and the national competent authorities (NCAs) within the SSM include arrangements for the use by NCAs of ESCB services for carrying out their tasks under Regulation (EU) No 1024/2013.
- (3) Pursuant to Decision (EU) 2022/1982 of the European Central Bank (ECB/2022/34) <sup>(2)</sup>, competent authorities may use the ESCB services for the purpose of cooperating with

the ESCB and with each other in order to carry out their tasks under Regulation (EU) No 1024/2013.

- (4) The ESCB services that should be made available to competent authorities should be defined by reference to exhaustive lists of (a) ESCB services that all competent authorities should be required to use in carrying out their SSM tasks to ensure efficiency and consistency in the functioning of the SSM and (b) ESCB services that competent authorities may decide to use on a voluntary basis for the purpose of carrying out their SSM tasks.
- (5) Competent authorities that use the ESCB services when carrying out their tasks under Regulation (EU) No 1024/2013 should comply with the legal framework governing each ESCB service, taking into account that competent authorities are not part of the governance framework of the ESCB. In particular, such competent authorities should contribute to the costs of developing and operating the ESCB services concerned according to a defined reimbursement framework, which should be based on a cost allocation key. Competent authorities should not have to submit a declaration of participation in respect of ESCB services that they are required to use, but should comply with the requirements regarding such services as set out in this Decision,

HAS ADOPTED THIS DECISION:

*Article 1*  
**Definitions**

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

- (1) ‘competent authority’ means either a national competent authority or the European Central Bank (ECB);
- (2) ‘national competent authority’ (NCA) means a national competent authority as defined in point (2) of Article 2 of Regulation (EU) No 1024/2013 and, for the purposes of this Decision, also includes, in respect of the supervisory tasks assigned to them, national

central banks that have been assigned certain supervisory tasks under national law and are not designated as NCAs;

- (3) 'ESCB services' means any one or more of the electronic applications, systems, platforms, databases and services listed in Annexes I and II;
- (4) 'providing central bank' means a central bank developing, running and maintaining an ESCB service.

#### *Article 2*

##### **Use of ESCB services by competent authorities**

1. Competent authorities shall use the ESCB services listed in Annex I for the purpose of carrying out their tasks under Regulation (EU) No 1024/2013.
2. Competent authorities may use the ESCB services listed in Annex II for the purpose of carrying out their tasks under Regulation (EU) No 1024/2013.
3. Competent authorities that decide to use ESCB services set out in Annex II shall submit a declaration to the Governing Council by which they confirm their participation and accept compliance with the related obligations, including the obligation to pay their contributions directly to the providing central bank in accordance with Article 3.
4. Competent authorities that use ESCB services shall comply with the legal framework governing each ESCB service, including the agreements between the participating and providing central banks. The agreements between the parties may establish direct contractual relationships between the providing central banks and the competent authorities.
5. When using the services listed in Annex I the competent authorities shall comply with the requirements set out in Annex III.

#### *Article 3*

##### **Financial arrangements**

Competent authorities that use ESCB services shall contribute to the costs of developing and operating the respective ESCB service in accordance with a defined reimbursement framework, which is based on a cost allocation key, as further specified in the respective financial envelopes following the applicable reimbursement rules.

#### *Article 4*

##### **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, 10 October 2022.

*The President of the ECB*

Christine LAGARDE

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<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(2)</sup> Decision (EU) 2022/1982 of the European Central Bank of 10 October 2022 on the use of services of the European System of Central Banks by competent authorities and by cooperating authorities, and amending Decision ECB/2013/1 (ECB/2022/34) (OJ L 272, 20.10.2022, p. 29).

#### *ANNEX I*

##### **ESCB services that competent authorities are required to use**

- CoreNet3
- Enterprise Service Bus (ESB)
- Identity and Access Management Service (IAM)

#### *ANNEX II*

##### **ESCB services that competent authorities may use**

- ESCB Teleconference System
- Secure ESCB Email (SEE)
- ESCB public key infrastructure (ESCB PKI)
- ESCB Performing Survey Initiative LimeSurvey-based Solution (EPSILON)
- ENTM Modelling tool and repository (ENTM)

#### *ANNEX III*

##### **Requirements for ESCB services that competent authorities are required to use**

- (1) Competent authorities must carry out the tasks and assume the responsibilities corresponding to their role in the relevant ESCB service.
- (2) Competent authorities must adjust their internal systems and interfaces to operate seamlessly with the ESCB service.

- (3) Competent authorities will be liable for any loss or damage incurred as a result of any deliberate or negligent action and/or omission in performing their obligations. The limitations of liability laid down in the Level 2 – Level 3 Agreement will apply accordingly.
- (4) Competent authorities will bear the burden of proof of demonstrating that they have not breached their duty of reasonable care in performing their obligations, including in operating the technical facilities.
- (5) Outsourcing, delegation or subcontracting by a competent authority to third parties will be without prejudice to the liability of that competent authority.

Competent authorities may only outsource, delegate or subcontract to a third party tasks that have or may have a material impact on compliance with the requirements set forth in this Annex to the extent that they have obtained the express, prior and written consent (or deemed consent as provided for in paragraph (6)) of the Eurosystem central banks, or the ESCB central banks, as the case may be. No such consent is needed if the third party is a joint affiliate of the relevant competent authority and if that competent authority's rights and obligations remain materially unchanged.

- (6) Competent authorities must give reasonable prior notice of any planned outsourcing, delegation or subcontracting as referred to in paragraph 5 and must provide details of the requirements that are proposed to apply to such outsourcing, delegation or subcontracting.

The competent ESCB Committee must respond to any request for consent under paragraph 5 within two months of it being notified of the planned outsourcing, delegation or subcontracting. Any refusal to grant consent must be accompanied by the reasons for such refusal. If the competent authority receives no response within the two-month deadline, it may notify the competent ESCB Committee of its request once again. The Eurosystem central banks, or ESCB central banks, as the case may be, will have one further month within which to respond to the second notification. If there is no response within that time period, the competent authority will be deemed to have received consent to proceed with the outsourcing, delegation or subcontracting.

- (7) Competent authorities must keep confidential all sensitive, secret or confidential information and know-how (whether such information is of a commercial, financial, regulatory, technical or other nature) that is marked as such and belongs to the providing central bank and/or

to other ESCB/Eurosystem central banks, and may not disclose such information to any third party without the express, prior and written consent of the central bank(s) concerned.

- (8) Competent authorities must restrict access to the information or know-how referred to in paragraph 7 to their relevant technical staff, and such access may only be exercised in cases of clear operational need.
- (9) Competent authorities must establish appropriate measures to prevent access to such confidential information or know-how by persons other than the relevant technical staff.
- (10) In the exceptional case that the usage of the ESCB service involves the processing of personal data by the competent authority, the competent authority must comply with the applicable data protection legislation. The Eurosystem central banks, or ESCB central banks, as the case may be, must determine the purposes for which and the means by which personal data may be processed. In relation to the processing of personal data the competent authority and the Eurosystem central banks, or ESCB central banks, as the case may be, should seek to conclude a contract that clarifies the necessary aspects of the controller–processor relationship.

The competent authority must declare to the competent data protection authorities, if so required under the data protection legislation applicable to its processing of personal data, the processing of personal data in the context of the relevant ESCB service.

- (11) Access to personal data may be granted only to those with an need to know in order to perform their tasks and fulfil their responsibilities in relation to the relevant ESCB service.

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