

Memorandum of Understanding on cooperation
between
the European Central Bank
and Commissione Nazionale per le Società e la Borsa

This Memorandum of Understanding (MoU) is made BETWEEN

The European Central Bank (ECB), with its headquarters at Sonnemannstrasse 22, 60640 Frankfurt am Main, Germany,

AND

Commissione Nazionale per le Società e la Borsa (CONSOB), with its headquarters at Via Giovanni Battista Martini, 3, 00198 Rome, Italy,

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

WHEREAS:

- (1) Pursuant to Article 3(1) of Council Regulation (EU) No 1024/2013¹ (hereinafter referred to as the SSMR), the ECB shall enter into memoranda of understanding with competent authorities of Member States responsible for markets in financial instruments. The CONSOB is the authority responsible for markets in financial instruments in Italy;
- (2) Pursuant to Article 3(1) of the SSMR and Article 6(a) of Directive 2013/36/EU of the European Parliament and of the Council² (hereinafter referred to as the CRD), the ECB shall cooperate with the other parties of the European System of Financial Supervision (ESFS), in particular when ensuring the flow of appropriate and reliable information, in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union;
- (3) Pursuant to Article 56 of the CRD, the requirements regarding professional secrecy and use of confidential information set out in Articles 53 and 54 of the CRD do not preclude the exchange of information between, on the one hand, competent authorities in the discharge of their supervisory functions and, on the other hand, authorities entrusted with the public duty of supervising other financial sector entities and authorities responsible for the supervision of financial markets;
- (4) Pursuant to Article 4 of the Italian Legislative Decree No. 58 of 24 February 1998 'Consolidated Law on Finance' (hereinafter the 'Legislative Decree No. 58/1998'), the CONSOB and the Banca d'Italia cooperate, including through the exchange of information, with the competent authorities of the European Union Member States and with the ECB in order to facilitate the performance of the respective tasks and, for this purpose, they can stipulate cooperation agreements with such authorities, which may include reciprocal delegation of supervisory tasks;

¹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring special tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 207, 29.10.2013, p. 63).

² 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).

- (5) Considering the respective supervisory tasks and responsibilities of the ECB and of the CONSOB;
- (6) Recognising the benefits of mutual cooperation in issues of joint interest and to ensure proper supervision of financial institutions referred to in the SSMR that also operate in the securities sector;
- (7) Recognising that this MoU is without prejudice to existing arrangements between the ECB and the Banca d'Italia under which the latter has agreed to transmit on behalf of the ECB to the CONSOB prudential data concerning significant supervised entities. Those existing arrangements aim to ensure the continuity of the flow of supervisory data that was transmitted by the Banca d'Italia to the CONSOB before the entry into force of the SSMR, and they will continue to apply under the umbrella of this MoU;
- (8) Desiring to use their best efforts possible to assist one another with the fullest mutual assistance possible to facilitate the performance of the tasks they are entrusted with by Applicable legislation as defined in this MoU.

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

Article 1

Scope and purpose

- (1) This MoU has been agreed bilaterally on a voluntary basis between the ECB and the CONSOB as a competent authority responsible for markets in financial instruments in order to have appropriate cooperation arrangements in place as provided for under Article 3(1) and thirty-third recital of the SSMR.
- (2) This MoU describes in general terms how the Authorities will cooperate with one another in the performance of their supervisory tasks under Union law in relation to financial institutions referred to in the SSMR with regard to supervisory tasks conferred on the ECB and the tasks of competent authorities responsible for markets in financial instruments. This MoU is without prejudice to cooperation arrangements between the CONSOB and national competent authorities responsible for prudential supervision, and any other cooperation arrangements that the ECB and these NCAs might enter into, also having regard to national legislation.
- (3) This MoU may be supplemented by national specific elements.
- (4) Article 4 and Article 5(1) of the SSMR confer on the ECB certain exclusive competences to be carried out in relation to the credit institutions established in the participating Member States.
- (5) Article 3(1) of the SSMR requires the ECB to cooperate closely with the European Authorities and the other Authorities which form part of the European System of Financial Supervision. Article 3(1) of the SSMR establishes that, where necessary, the ECB will enter into memoranda of understanding with national competent authorities responsible for markets in financial instruments. The thirty-first and thirty-third recitals of the SSMR recognise that it would be beneficial to establish channels for collaboration and exchange of information between authorities vested, for different purposes, with responsibilities with respect to the same financial institutions.
- (6) The purpose of this MoU is to facilitate the cooperation arrangements in relation to the respective supervisory tasks between the ECB and the CONSOB. Within this purpose, and subject to such restrictions and arrangements as may be considered necessary by either Authority to preserve the confidential nature of certain information, the Authorities will cooperate and exchange information.
- (7) With this MoU, the Authorities will use their best efforts to provide to each other to the fullest extent possible mutual assistance in the performance of their respective tasks.

- (8) This MoU is without prejudice to other cooperation arrangements that either or both of the Authorities have agreed upon or may conclude for the purpose of cooperation in specific areas.

Article 2

Definitions

For the purposes of this MoU:

- (1) 'Authority' means a signatory to this MoU, being the ECB or the CONSOB, or any successor;
- (2) 'Requested Authority' means the Authority to whom a Request is made under this MoU;
- (3) 'Requesting Authority' means the Authority making a Request under this MoU;
- (4) 'Financial Markets legislation' means the provisions of Union law to be applied by the CONSOB in carrying out its responsibilities as a financial market supervisory authority, including but not limited to:
 - a) the following Regulations and Directives of the European Parliament and of the Council: Directive 2014/65/EU³; Regulation (EU) No 600/2014⁴; Directive 2014/95/EU⁵; Regulation (EU) 2017/1129⁶; Regulation (EU) No 648/2012⁷; Regulation (EU) 2015/2365⁸; Directive 2004/109/EC⁹; Directive 2004/25/EC¹⁰ and Directive 2007/36/EC¹¹; and b) where such Union law is composed of Directives, the national legislation transposing those Directives, in particular Legislative Decree no. 58/1998 insofar it refers to the CONSOB's jurisdiction and powers;
- (5) 'Prudential legislation' means the provisions of Union law to be applied by the ECB in carrying out its responsibilities as prudential supervisory authority, including but not limited to: a) the SSMR; the CRD; Regulation (EU) No 575/2013 of the European Parliament and of the Council¹²; Directive (EU)

³ 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).

⁴ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

⁵ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p.1).

⁶ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p.12).

⁷ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p.1).

⁸ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p.1).

⁹ 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).

¹⁰ Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p.12).

¹¹ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).

¹² 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).

2019/2034 of the European Parliament and of the Council¹³; Regulation (EU) 2019/2033 of the European Parliament and of the Council¹⁴; and b) where such Union law is composed of Directives, the national legislation transposing those Directives that confers specific tasks on the ECB concerning the prudential supervision of financial institutions;

- (6) 'Request for Assistance' means a request made by one of the Authorities to the other Authority pursuant to this MoU;
- (7) 'Supervised entity' means a financial institution referred to in Article 2 of the SSMR that operates in the financial securities sector;
- (8) 'Applicable legislation' means, the Financial Markets legislation and the Prudential legislation as applicable to Supervised entities.

Article 3

General provisions

- (1) Pursuant to the applicable legislation and in accordance with the scope of their respective tasks and obligations, the Authorities will, within the framework of this MoU, use their best effort to assist each other with the fullest cooperation and assistance possible in any matters within their competence as regards:
 - (a) general supervisory and regulatory issues;
 - (b) issues relating to the operations and activities of Supervised entities - including provision of investment services, corporate finance transactions (whether or not involving related parties), financial and non-financial corporate reporting, and compliance or otherwise with disclosure obligations – as well as issues relating to their corporate governance;
 - (c) investigation and enforcement of the provisions of the Applicable legislation falling within the remits of their respective tasks; and
 - (d) any other areas of mutual supervisory interest.
- (2) The Authorities agree to timely provide each other information upon request and to the extent permitted by laws and rules, when they are in possession of information that is needed for the other authority's performance of duties under the Applicable legislation.
- (3) As appropriate in the particular circumstances, each Authority will endeavour on its own initiative to provide information, or arrange for such information to be provided, to the other Authority to the extent

¹³ Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p.64).

¹⁴ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

permitted by laws and rules, when it believes it is in possession of information that is needed for the other authority's performance of duties under the Applicable legislation. This may include, but is not limited to, information on relevant findings of on-site inspections.

- (4) This MoU neither establishes any legally binding obligations nor supersedes any provisions of national, international or supranational legislation in force either in Italy or any Union law applicable to the ECB or the CONSOB.
- (5) Without prejudice to paragraph 2, the Authorities agree to respect the resource and timing constraints of each of the Authorities. In particular, the Authorities agree that cooperation under this MoU is on a best effort basis and will not constrain the other Authority from the proper fulfilment of its tasks.
- (6) In order to allow for smooth communication and cooperation under this MoU, including in a case of urgency, the Authorities hereby designate the contact persons as set out in the list contained in Annex 1. An Authority may amend its list of such contact persons from time to time by transmitting revised contact information in writing to the other Authority.

Article 4

Exchange of information

Pursuant to the Applicable legislation and in accordance with the scope of their respective tasks and obligations, each Authority will use its best efforts to provide the other Authority, upon written request, with assistance and information, also in the form of sharing documents prepared by the Authority or otherwise in its possession to enable the Requesting Authority to fulfil its tasks under applicable legislation.

Article 5

Investigations and on-site inspections

- (1) The Authorities will take reasonable steps to cooperate in respect of investigations and on-site inspections of Supervised entities to the extent consistent and within the remits of their respective supervisory tasks when the investigation relates to supervisory tasks of both Authorities.
- (2) Without prejudice to exchanges of information on individual on-site inspections and relevant findings pursuant to Article 3 paragraphs 2 and 3, the Authorities will exchange, on an annual basis, information in connection with their respective on-site inspection programmes, and where relevant, in connection with on-site inspections that were not originally included in their respective on-site inspection programmes, as appropriate and purely for coordination purposes, insofar as the planned inspection refers to a Supervised entity either individually or at the group level and exchange is relevant for their respective supervisory tasks.

- (3) Upon request, each Authority will notify the other Authority of any non-public administrative pecuniary penalty, enforcement or sanction decision against a Supervised entity which is also supervised by that other Authority.

Article 6

Execution of requests for exchange of information or assistance ("requests")

- (1) Requests and replies for exchange of information or assistance submitted in accordance with Article 3 will be made in a written letter of request to be transmitted through a secured electronic platform and addressed to the contact persons identified in Annex 1. A request should specify the following:
- (a) the information or assistance sought by the Requesting Authority with a concise description of the facts underlying the request and the purpose for which the information or the assistance is sought, including references to the relevant applicable legislation and provisions on which basis the request for information is made;
 - (b) any information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in processing the request, including specific information made available by the Supervised entity in respect of which a confirmation or complementary information from the other Authority is sought;
 - (c) an indication of any special precautions that should be taken into account, including but not limited to the sensitivity of the information or its confidentiality;
 - (d) where appropriate, the urgency of the request.
- (2) If a request is urgent, it may be made and answered orally, then it shall subsequently be confirmed in writing. A Requesting Authority shall ensure that a request for urgent processing is confined to cases of necessity.
- (3) The Requested Authority will:
- (a) acknowledge receipt of a request without delay;
 - (b) request further clarifications in whatever form as soon as possible if it has any doubt in relation to the precise information requested;
 - (c) take all reasonable steps within the scope of its powers to provide the assistance and information requested in line with the provisions of Article 3 of this MoU;
 - (d) execute requests in a timely manner, taking into account the complexity and the nature of the assistance and information sought by the Requesting Authority and any special urgency indicated by the Requesting Authority in its request;
 - (e) provide the information in a written response that is transmitted through a secured electronic

platform.

- (4) Following consultation, cooperation may be denied:
- (a) where the cooperation would require an Authority to act in a manner that would violate the applicable legislation or be detrimental to the effective performance of its tasks;
 - (b) where the request does not fall within the supervisory tasks of the requested authority;
 - (c) where a request is not made in accordance with the terms of the MoU; or
 - (d) where complying with the Request is likely to adversely affect the Authority own investigations, enforcement activities or, where applicable, a criminal investigation.
- (5) If a Requested Authority denies all or part of the execution of a Request, such denial will include explanations and will be provided to the Requesting Authority as soon as decided upon.

Article 7

Permissible uses of information

- (1) The Authorities may use confidential information and confidential documents received under this MoU solely for the exercise of their respective tasks and duties resulting from the Applicable legislation, as set forth in the Request for assistance. The Authorities may use confidential information and documents received under this MoU also for the performance of their enforcement and sanctioning duties under the Applicable legislation.
- (2) In order to use information and documents received under the terms of this MoU for a purpose different from that stated under paragraph 1 above, the Requesting Authority will obtain the prior written consent of the Requested Authority.

Article 8

Confidentiality and onward sharing of information

- (1) Each Authority will hold information shared under this MoU as confidential to the extent permitted by the applicable legislation. This requirement will not preclude the permissible uses of information under Article 7.
- (2) Except as provided in paragraph 3, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing information received under this MoU to a third party i.e. a party that is not a signatory of this MoU.

- (3) In the event of a legally enforceable demand to disclose information that an Authority has received, the Authority subject to the demand will notify the other Authority prior to complying with the demand and will indicate all appropriate legal exemptions or privileges with respect to such information as may be available. The Authority will take reasonable efforts to uphold the non-disclosure if requested by the other Authority.
- (4) The Authorities will endeavour to ensure that for the purposes of the information-sharing provisions of this MoU all persons dealing with, or having access to confidential information (including members of the Authority, staff members and employees¹⁵, and external providers having access to confidential information) are bound by the obligations of professional secrecy set out in the relevant laws, regulations and requirements.

Article 9

Consultation

- (1) The Authorities will periodically consult each other on issues related to the matters covered by this MoU and exchange views and share experiences and knowledge gained in the discharge of their respective duties to the extent consistent with the applicable legislation and with the aim of enhancing the effectiveness of this MoU. In addition, the Authorities expect that informal contacts between the staff of the Authorities will continue, including holding meetings where useful to discuss issues concerning specific Supervised entities.
- (2) The Authorities will consult each other in matters relating to specific Requests made pursuant to this MoU (e.g. where a Request may be denied, or if it appears that further clarifications may be needed on the content of a Request).

Article 10

Status and review and termination of this MoU

- (1) This MoU is concluded for an unlimited period of time
- (2) This MoU will come into effect on the day following the date when each of the respective representatives of the Authorities has signed it.

¹⁵ For the purposes of the information-sharing provisions of this MoU, the Authorities acknowledge that: (a) staff from national competent authorities performing activities related to the application and execution of ECB supervisory tasks within the Single Supervisory Mechanism; and (b) staff from the national central banks and national competent authorities acting in an official capacity as a member of the ECB Governing Council or the Supervisory Board on matters relating to prudential banking supervision will in both cases be treated as staff members of the ECB and will be subject to the confidentiality provisions of this MoU.

- (3) Based on the experience in cooperation under this MoU, the Authorities may periodically review the scope and nature of their cooperation. In particular, the Authorities may review whether an extension of the scope of Applicable legislation is appropriate and in the joint interest of both Authorities.
- (4) An Authority seeking to withdraw from this MoU will provide at least 30 calendar days prior written notice to the other Authority before doing so.
- (5) Any requests for information communicated before the effective date of its withdrawal will be processed under this MoU unless the withdrawing Authority requests otherwise.
- (6) Following an Authority's withdrawal from this MoU, that Authority will continue to apply the protections set out in Articles 7 and 8 of this MoU and the withdrawal will not have any impact on that Authority's obligation of cooperation and information exchange under the applicable legislation.
- (7) This MoU replaces and supersedes the MoU on cooperation made between the Authorities and signed by their respective representatives on 10 and 21 June 2016. Transmissions of information made on the basis of that MoU before the date that this MoU comes into effect are without prejudice to anything contained in this MoU.

Article 11

Publication

Once this MoU has come into effect, the Authorities agree that it may be made publicly available in full or in part, excluding the list of contact persons contained in the Annex, by either of the Authorities through posting on their websites.

For the Commissione Nazionale per le Società e la Borsa

Name: Paolo Savona

Paolo Savona

Rome, day/month/year

Rome, 27/10/2022

For the European Central Bank

Name: Andrea Enria

Andrea Enria

Frankfurt am Main, day/month/year

Frankfurt am Main, 31/10/2022

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Frankfurt am Main, 31/10/2022