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CZECH REPUBLIC

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### **Comments of the Czech National Bank to the ECB SSM Regulation Framework**

The Czech National Bank welcomes the opportunity to send its comments to the ECB's consultation material on a draft Regulation establishing the framework for the Single Supervisory Mechanism. According to the Czech National Bank, the consultation material reflects the text of the SSM Regulation and further elaborates, or amends some important aspects of the SSM framework which are described in general terms only in the SSM Regulation. Nevertheless, there are also some areas of the Draft which must be put into line with the SSM Regulation (see the detailed position below).

Despite the foregoing, the Czech National Bank is submitting comments to the Draft as follows:

- While the ECB applies relevant legal regulations<sup>2</sup> to the performance of tasks under the SSM Regulation, the Draft does not regulate which procedural law the ECB shall apply. We consider it necessary to make clear what the relation will be between the rules contained in the ECB's SSM Regulation, or other ECB's regulations, and national laws regulating administrative proceedings.
- Some provisions of the Draft and the SSM Regulation differ to some extent mainly in the specification of required minimum time limits for announcing and submitting draft decisions to the ECB by the national competent authority. There is a mismatch in respect of the mentioned required time limits between the Draft and the SSM Regulation for time limits for draft decisions and an assessment of the acquisition of qualifying holdings. We consider it crucial and necessary to harmonise this Draft and the SSM Regulation.
- Procedures within close cooperation stipulate that the NCA in close cooperation shall be liable for any damage resulting from its failure to apply any ECB measure, instruction, request or guideline in a timely manner (Article 108(6)). The CNB disagrees with the unilateral regulation of liability for damage. If the Regulation does not regulate the ECB's liability, it should not regulate liability of national supervisory authorities (the content of liability is governed by national legislation).
- The Czech National Bank is of the view that it is not acceptable that the ECB had the power to order the national competent authority to change its representation in Joint

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<sup>2</sup> For the directive, in a manner in which it is implemented in national law, and for discretion in the regulation, in a variant implemented by the respective national law.

Supervisory Teams. Nominations of staff members into these teams must remain fully within the competence of the national competent authority. The CNB does not support such interference in national competent authorities' activities as these authorities nominate their staff members and are responsible for exercising supervision.

- The Czech National Bank believes that the national competent authority should be informed by the ECB without any delay about the ECB's decision to carry out an on-site inspection without notifying the supervised entity concerned beforehand since it is necessary to nominate members of the on-site inspection team. This Article should also specify in more detail the manner of appointing members of the team. (Article 145/2).
- As regards the ECB's power to require that supervisory teams of national competent authorities, which will take supervisory measures relating to supervised entities in a participating Member State, should also involve staff members from national competent authorities of other participating states, it must be safeguarded that the composition of such a foreign team could be determined only in suitable cases and based on an agreement between competent supervisory authorities (see Chapter 2, Article 7 Supervision of less significant supervised entities).
- Criteria for determining significance on the basis of the significance of cross-border activities of a supervised group (Article 59) stipulate that the supervised group may be considered significant by the ECB only when the parent undertaking has established subsidiaries in more than one other participating Member States and if compliant with some of the criteria of the relative size of its assets and liabilities. The above-mentioned criterion should cover not only a situation where the supervised entity establishes subsidiaries in other participating Member States but also a situation where credit institutions establish their branches in other participating Member States.

Finally, the Czech National Bank also gives consideration to whether it is appropriate that the proceeds of administrative pecuniary sanctions become the property of the ECB (Article 137) and that if it is not desirable to consider an alternative solution.