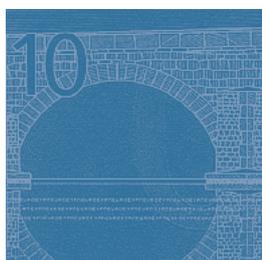




EUROPEAN CENTRAL BANK

EUROSYSTEM



PUBLIC CONSULTATION

on a draft Regulation of the European Central Bank

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)

In 2014 all ECB
publications
feature a motif
taken from
the €20 banknote.

February 2014

This document is intended to assist interested stakeholders in understanding and assessing the draft SSM Framework Regulation (to be found in Part III). As such, this document has no interpretative value and cannot be legally binding. In particular, in the version of the SSM Framework Regulation which is finally adopted, the European Central Bank is entitled to take a position different to that set out in this document. Moreover, only the Court of Justice of the European Union can give a legally binding interpretation of provisions of EU law. Comments are only expected on Part III of this document.

This document consists of three parts:

- I. Scope and rationale for a Framework Regulation (in English only)
- II. Content of the draft Framework Regulation (in English only)
 - A. Methodology for assessing significance
 - B. The SSM and the respective role of the ECB and NCAs in the supervision of significant and less significant supervised entities
 - C. Supervisory procedures within the SSM: general principles
 - D. Procedures relating to micro-prudential tasks
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I. SCOPE AND RATIONALE FOR A FRAMEWORK REGULATION

Council Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions¹ (hereinafter the ‘SSM Regulation’) establishes the Single Supervisory Mechanism (SSM)². The SSM Regulation entered into force on 3 November 2013. The ECB will assume its SSM-related tasks from 4 November 2014.

The SSM Regulation confers on the ECB both (a) micro-prudential supervisory tasks (Article 4 of the SSM Regulation); and (b) macro-prudential supervisory tasks (Article 5 of the SSM Regulation).

1. The Single Supervisory Mechanism

The SSM is the system of financial supervision composed of the ECB and the national competent authorities (NCAs) of participating Member States³. Within the SSM, the ECB will be responsible for the direct supervision of significant credit institutions, while NCAs will be responsible for the direct supervision of less significant credit institutions⁴. The ECB will also be responsible for the effective and consistent functioning of the SSM. In this context, it will be exclusively competent to grant and withdraw authorisations for credit institutions and to assess acquisitions of qualifying holdings in all credit institutions. Furthermore, the ECB will be able to address general instructions to NCAs regarding the supervision of less significant supervised entities and will retain investigatory powers over all supervised entities. Such powers include the authority to request information, conduct investigations, carry out on-site inspections, as well as the power to take up direct supervision over less significant supervised entities when necessary to ensure a consistent application of high supervisory standards.

NCAs will assist the ECB in the preparation and implementation of any acts relating to the exercise of the ECB’s supervisory tasks, including the on-going day-to-day supervision of significant supervised entities and related on-site inspections.

Non-euro area Member States also have the possibility to participate in the SSM through the establishment of a close cooperation between the NCA of the non-euro area Member State and the ECB.

2. The draft Framework Regulation

2.1 Legal basis and format of the framework

¹ OJ L 287, 29.10.2013, p. 63.

² The legal basis for the SSM Regulation is Article 127(6) of the Treaty on the Functioning of the European Union (TFEU) which gives to the Council the power, by means of regulations, to confer specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

³ See Article 2(9) of the SSM Regulation.

⁴ For the distinction between significant and less significant credit institutions, please refer to Part II.A of this document.

Article 6(7) of the SSM Regulation provides that ‘the ECB shall, in consultation with national competent authorities, and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical arrangements for the implementation of [Article 6 of the SSM Regulation]’. Pursuant to Article 33(1) of the SSM Regulation, the ECB shall publish such framework by 4 May 2014. Before adopting the framework, the ECB must carry out open public consultations⁵. In accordance with the Inter-institutional Agreement between the European Parliament and the ECB⁶, the framework has been sent to the relevant committee of the European Parliament before the launch of the public consultation.

In addition, Article 33(2) of the SSM Regulation provides that after 3 November 2013, the ECB shall ‘publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred on it by this Regulation’.

It has been decided that the framework referred to in Articles 6(7) and 33(1) of the SSM Regulation should take the form of an ECB regulation (hereinafter the ‘Framework Regulation’)⁷. Article 4(3) of the SSM Regulation provides that the ECB may adopt regulations only to the extent necessary to organise or specify the arrangements for the carrying out of the tasks conferred upon it under the SSM Regulation.

An ECB regulation has general application. It is binding in its entirety and directly applicable in all Member States whose currency is the euro. It is thus the appropriate legal instrument to ‘organise the practical arrangements for the implementation of [Article 6 of the SSM Regulation]’. The SSM Regulation and the Framework Regulation (once adopted by the ECB’s Governing Council) will both form part of Union law and will prevail over national law for the aspects that they regulate.

Article 33(2) of the SSM Regulation is further assessed in section 2.2 below.

⁵ Article 4(3) of the SSM Regulation

⁶ Inter-institutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism (OJ L 320, 30.11.2013, p. 1).

⁷ The competence of the ECB to issue regulations is based on the first indent of Article 132(1) TFEU and Article 34.1 of the Statute of the European System of Central Banks and the European Central Bank (hereinafter the ‘Statute of the ESCB’). Pursuant to these two provisions, the ECB may make regulations to the extent necessary to implement the tasks defined in Article 25.2 of the Statute of the ESCB. That article provides that, in accordance with any regulation of the Council under Article 127(6) TFEU, i.e. in this case, the SSM Regulation, the ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

2.2 Scope of the framework

The purpose of the Framework Regulation (in its current draft form hereinafter referred to as the ‘draft Framework Regulation’) is to lay down all the rules and procedures governing the cooperation between the ECB and NCAs to ensure a good functioning of the SSM. In particular, the draft Framework Regulation sets out rules that are relevant for defining the rights and obligations of supervised entities and third parties. Another important objective is to provide greater legal certainty, for example, as regards pending procedures.

Pursuant to Article 6(7) of the SSM Regulation, ‘the framework shall include, at least,’ the following aspects:

- (a) the methodology for assessing and reviewing the criteria laid down in the SSM Regulation for determining whether a credit institution is significant or not;
- (b) the procedures governing the cooperation between the ECB and NCAs as regards the supervision of significant credit institutions; and
- (c) the procedures governing the cooperation between the ECB and NCAs as regards the supervision of less significant credit institutions.

These aspects are set out mainly in Part IV (Determining the status of a supervised entity as significant or less significant), Part VI (Procedures for the supervision of significant supervised entities) and Part VII (Procedures for the supervision of less significant supervised entities) of the draft Framework Regulation.

To pursue the above mentioned objectives, the draft Framework Regulation also addresses certain additional issues. These are necessary as the organisation of the SSM tasks, involving an allocation of tasks and cooperation between the ECB and NCAs, requires the Framework Regulation to include aspects going beyond those expressly mentioned in Article 6(7) of the SSM Regulation. Such aspects include, for example, issues relating to macro-prudential decisions (Part VIII), close cooperation (Part IX), investigatory powers (Parts II and XI), authorisations and qualifying holdings (Part V) and the sanctions regime (Part X). Moreover, Part III of the draft Framework Regulation lays down the main due process rules for the adoption of the ECB’s supervisory decisions, for example the right to be heard, access to files and language regime. For clarity and transparency reasons, the procedures governing the cooperation between the ECB and the NCAs and how credit institutions under the scope of the SSM are supervised are laid down in a single legal act rather than in several different legal acts.

2.3 Objectives, benefits and costs of the framework

The draft Framework Regulation covers the aspects relating to the cooperation between the ECB and the NCAs under the SSM and addresses the organisational and procedural issues that need to be clarified for the benefit of supervised entities.

The draft Framework Regulation has been drafted with the aim of achieving legal certainty, cost efficiency and proportionality, in accordance with transparency standards. The objectives and benefits of each Part of the draft Framework Regulation can be summarised as shown in the table below.

Part	Objectives	Benefits
Part I	Lay down subject matter, purpose and definitions.	Specify the scope of the Framework Regulation and define terms not already defined in the SSM Regulation.
Part II	Lay down the principles governing the role and functioning of the Joint Supervisory Teams (JSTs), which are established by the ECB for the supervision of significant credit institutions. Clarify how the SSM impacts on the allocation of tasks between the ECB and NCAs as regards the right of establishment and the freedom to provide services within the participating Member States.	Acknowledge the existence and the role of JSTs. Inform credit institutions about which authority they must notify when they exercise their right of establishment and/or freedom to provide services, and the procedure applied by the ECB and NCAs in this respect.
Part III	Clarify the procedural rights granted to credit institutions in relation to any supervisory decisions taken by the ECB, building on the principle of due process laid down in Article 22 of the SSM Regulation.	Improve transparency as regards the decision-making procedure within the SSM. Clarify procedural rights granted to supervised entities.
Part IV	Implement Article 6(7)(a) of the SSM Regulation, which requires that the methodology for the assessment of the criteria referred to in Article 6(4) is further specified by the ECB.	Explicitly required by the SSM Regulation.
Part V	Clarify the role of the ECB and of NCAs in each step of the decision-making process regarding authorisation, withdrawal of authorisation and assessment of the acquisition	Inform credit institutions about which authority they must notify regarding an application for an authorisation or the acquisition of

	of qualifying holdings in a credit institution.	qualifying holdings, and the procedure applied by the ECB and NCAs in this respect.
Part VI	Implement Article 6(7)(b) of the SSM Regulation by defining the procedures applying to the cooperation between the ECB and NCAs as regards the supervision of significant credit institutions.	Explicitly required by the SSM Regulation.
Part VII	Implement Article 6(7)(c) of the SSM Regulation by defining the procedures governing the relationship between the ECB and NCAs as regards the supervision of less significant credit institutions.	Explicitly required by the SSM Regulation.
Part VIII	Specify the procedures governing the coordination between the ECB and NCAs and national designated authorities (NDAs) regarding macro-prudential measures.	Clarify the role of the ECB and the cases where it can adopt macro-prudential measures.
Part IX	Lay down the modifications subject to which the provisions of each Part of the Framework Regulation apply to credit institutions and NCAs of Member States in close cooperation.	Clarify how the Framework Regulation applies to credit institutions in Member States in close cooperation, based on the general principles laid down in Article 7 of the SSM Regulation.
Part X	Clarify the allocation of tasks between the ECB and NCAs as regards the imposition of penalties under Article 18 of the SSM Regulation. Lay down the procedure applying to the investigation of an infringement, including the role of an independent investigating unit.	Further specify Article 18 of the SSM Regulation. Ensure the separation between the investigation phase and the decision-taking phase.
Part XI	Specify the procedure for cooperation between the ECB and NCAs as regards the exercise of investigatory powers by the ECB.	Avoid duplication of tasks and ensure the exchange of all necessary information between the ECB and NCAs.
Part XII	Lay down transitional provisions for the period from the entry into force of the Framework Regulation until the ECB assumes its	Clarify the status of pending procedures. Ensure the continuity of international arrangements

	supervisory tasks on 4 November 2014.	(memoranda of understanding (MoUs)) entered into by NCAs.
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The costs incurred by the ECB in relation to the tasks conferred on it under Articles 4 to 6 of the SSM Regulation will be covered by the fees that the ECB will levy on supervised entities, in accordance with Article 30 of the SSM Regulation. The way fees are to be calculated and levied will be laid down in a separate ECB regulation. This ECB regulation on fees will be subject to a separate public consultation.

As already stated, the purpose of the draft Framework Regulation is to implement Article 6(7) of the SSM Regulation and further specify the arrangements governing the cooperation between the ECB and NCAs. Article 33(2) of the SSM Regulation provides that the ECB shall, after 3 November 2013, publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred on it by the SSM Regulation. The European legislative bodies are keen for this implementation to be carried out swiftly, i.e. that the necessary framework is published six months after the entry into force of the SSM Regulation so that effective supervision by the ECB can start as early as 4 November 2014. The Framework Regulation only implements policy choices regarding the supervisory architecture in participating Member States that have already been taken by the Union legislature in the SSM Regulation. In drafting the Framework Regulation, the ECB's overall aim is to implement these policy choices in a cost-effective way.

2.4 Rules not covered by the framework

The draft Framework Regulation has been prepared taking full account of the SSM supervisory model that the ECB, in consultation with NCAs, has developed with the purpose of ensuring the effectiveness and consistency of the SSM. A guide to the SSM supervisory practices will be published by the ECB in due course. As for the draft Framework Regulation, it focuses on the organisational and procedural aspects that require legal implementation.

Other rules such as the rules⁸ regarding decision-making in the Supervisory Board and the relationship with the Governing Council, for instance, the non-objection procedure provided for under Article 26(8) of the SSM Regulation, the legal instruments establishing the Administrative Board of Review and the Mediation Panel as well as the rules regarding separation of the ECB's supervisory tasks from the ECB's monetary policy function⁹ will complement the institutional and legal framework

⁸ Article 26(12) of the SSM Regulation provides that the Governing Council shall adopt internal rules setting out in detail its relation with the Supervisory Board. The second sentence of Article 26(12) lays down the obligation on the Supervisory Board to adopt its rules of procedure.

⁹ Article 25(3) of the SSM Regulation provides that, for the purposes of separating tasks conferred on the ECB by the SSM Regulation from monetary policy, the ECB shall adopt and make public any necessary internal rules.

applicable to the SSM and will be published on the ECB's website. In addition, the levy of supervisory fees will be subject to a separate ECB legal act¹⁰ as mentioned in section 2.3 above.

In relation to close cooperation, the procedure for the establishment of such arrangements will be laid down in a specific ECB decision based on Article 7 of the SSM Regulation. For that reason, the draft Framework Regulation simply specifies the operational arrangements between the ECB and NCAs in close cooperation that will apply once a regime of close cooperation has been established.

¹⁰ Article 30 of the SSM Regulation.

II. CONTENT OF THE DRAFT FRAMEWORK REGULATION

A. Methodology for assessing significance

Article 6 of the SSM Regulation changes the current supervisory architecture for credit institutions established in participating Member States. In principle, the ECB will now be responsible for the supervision of significant supervised entities and NCAs will be responsible for the supervision of less significant supervised entities.

The SSM Regulation sets out the basic criteria for determining significance¹ and lays down that a specific methodology for assessing these criteria shall be established. This is done in Part IV of the draft Framework Regulation.

Whether a supervised entity or a supervised group² is regarded as significant is determined at the highest level of consolidation in a participating Member State: all credit institutions that are part of a significant group will be subject to direct supervision by the ECB on a consolidated and on an individual basis.

1. The methodology

Since the status of a credit institution as significant or less significant can change over time, Part IV establishes a procedure for reviewing and determining this status on an on-going basis and for determining the date on which a change of supervisory authority becomes effective³.

With regard to the *size criterion*, the Framework Regulation specifies how the ‘total value of assets’ criterion is determined. The mixed/end-state approach is proposed: as a general rule, effective from the start, where such data are available, total assets according to the prudential perimeter of consolidation will be used for all credit institutions to determine the total value of assets. Figures according to the accounting perimeter, as reported in public financial statements, are considered a fall-back option to be used for credit institutions that are not required to report figures reflecting the prudential perimeter.

If a credit institution forming part of a group is included in ‘the three most significant credit institutions in [a] participating Member State’, another criterion under Article 6(4) of the SSM Regulation, then the entire group is regarded as significant. This is also the rule that applies when one of the credit institutions forming part of a group has requested or receives direct public financial

¹ Article 6(4) of the SSM Regulation. The criteria laid down are: (i) size, (ii) importance for the economy of the European Union or a participating Member State, (iii) significance of cross-border activities, (iv) request for or receipt of public financial assistance directly from the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM), and (v) qualifying as one of the three most significant credit institutions in a participating Member State.

² Supervised entity and supervised group are defined in Part I of the draft Framework Regulation.

³ Articles 43 to 47 of the draft Framework Regulation.

assistance from the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM).

The change in status of a supervised entity from significant to less significant and vice versa will be determined in an ECB decision. When a supervised entity fulfils any of the criteria laid down in Article 6(4) of the SSM Regulation, subject to the relevant ECB decision, the ECB will assume direct supervision within one year of the date of notification of the decision. Following the change from significant to less significant, as a general rule, the corresponding change in supervisor will only be implemented if the supervised entity has not fulfilled any of the relevant criteria for significance for at least three consecutive calendar years⁴. As regards pending procedures, the Framework Regulation provides that, as a rule, when an authority has started a procedure, it remains competent to finish that procedure, even after the effective change of competence.

Particular circumstances may justify the view that, although one or more of the criteria of significance are fulfilled, the classification of a supervised entity as significant is inappropriate, taking into account the objectives and principles of the SSM Regulation.

2. List of significant and less significant credit institutions

The ECB will publish a list on its website naming those credit institutions identified as significant supervised entities or forming part of a significant supervised group. Each significant supervised entity will also be the addressee of an ECB decision before the date on which the ECB is to assume direct supervision. Furthermore, the ECB will publish on its website a list including each entity that is supervised by an NCA together with the name of the supervising NCA. These lists will be updated on a regular basis and will provide legal certainty to credit institutions that remain under direct NCA supervision.

B. The SSM and the respective roles of the ECB and NCAs in the supervision of significant and less significant supervised entities

1. Organisation of the SSM

The SSM is composed of the ECB and of NCAs of participating Member States. NCAs are designated by participating Member States in accordance with Regulation (EU) No 575/2013⁵. The draft Framework Regulation takes account of the fact that, in some participating Member States, national central banks (NCBs) have been assigned certain supervisory tasks under national law although they

⁴ Article 47 of the draft Framework Regulation.

⁵ 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).

are not NCAs. In this case, the provisions of the Framework Regulation apply to NCBs, where appropriate, with respect to those tasks assigned to them by national law⁶.

2. Supervision of significant supervised entities

2.1 Joint Supervisory Teams⁷

JSTs are the operational units within the SSM that will be in charge of the day-to-day supervision of significant supervised entities or supervised groups⁸. They are the main tool within which NCAs assist the ECB in the supervision of significant supervised entities⁹. One JST will be established for each significant supervised entity or groups. Each JST will be composed of staff from the ECB and from NCAs, and coordinated by an ECB staff member (the ‘JST coordinator’). The JST coordinator will be assisted by a sub-coordinator from each NCA that has appointed more than one staff member to the JST (the ‘NCA sub-coordinator’).

The draft Framework Regulation explicitly provides that the references to NCAs in relation to JSTs should be read as including a reference to the NCBs, where appropriate.

2.2. NCA assistance in the supervision of significant supervised entities¹⁰

NCAs are involved in the preparation of ECB decisions in relation to the supervision of significant supervised entities. The ECB may request the NCA to prepare such draft decisions. At their own initiative, NCAs may also propose draft decisions, where appropriate.

NCAs will be required to follow the instructions given by the ECB and assist the ECB with the implementation of any act relating to the ECB’s supervisory tasks. In specific circumstances defined in the SSM Regulation and in the draft Framework Regulation, NCAs will also be required to assist the ECB in executing its decisions.

The single point of entry for all requests coming from significant supervised entities is, as a rule, the ECB, except as otherwise provided for in the SSM Regulation or in the draft Framework Regulation.

⁶ Part I clarifies in respect of the definition of NCA laid down in Article 2(2) of the SSM Regulation that 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. In this case, the NCB shall carry out these tasks within the framework set out in national law and this Regulation. A reference to an NCA in this Regulation shall in this case apply as appropriate to the NCB for the tasks assigned to it by national law.’

⁷ Articles 3 to 6 of the draft Framework Regulation.

⁸ In this section of the consultation document, a reference to supervised entities includes a reference to supervised groups.

⁹ Article 6(3) of the SSM Regulation: ‘Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by this Regulation, national competent authorities shall be responsible for assisting the ECB, under the conditions set out in the framework mentioned in paragraph 7 of this Article, with the preparation and implementation of any acts relating to the tasks referred to in Article 4 related to all credit institutions, including assistance in verification activities. They shall follow the instructions given by the ECB when performing the tasks mentioned in Article 4.’

¹⁰ Articles 89 to 95 of the draft Framework Regulation.

3. Supervision of less significant supervised entities

3.1 National supervisory teams

Less significant supervised entities remain under the direct supervision of NCAs. In accordance with Article 31(2) of the SSM Regulation, if the ECB considers that the participation of staff members from an NCA in another NCA's supervisory team is appropriate, it may require the latter NCA to involve staff members of the former NCA in its supervisory team¹¹. This is to ensure the creation of 'a truly integrated supervisory mechanism' as well as 'peer control on an on-going basis'¹², particularly as regards the supervision of large credit institutions. Staff exchange will also be an important tool to establish a common supervisory culture.

3.2 Relationship between the ECB and NCAs in the supervision of less significant supervised entities

Part VII of the Framework Regulation describes the main principles governing the relationship between the ECB and the NCAs, as direct supervisors of less significant supervised entities¹³, with the aim of allowing the ECB to exercise oversight over the SSM.

As a general rule, NCAs must always inform the ECB of any rapid and significant deterioration in the financial situation of a less significant supervised entity¹⁴.

As regards *ex ante* oversight by the ECB regarding the supervision of less significant supervised entities by NCAs, this will be limited to draft decisions and procedures that concern certain less significant supervised entities identified by the ECB on the basis of general criteria taking account of the risk situation of the entity and its impact on the domestic financial system. Such draft decisions and procedures will need to be notified *ex ante* by NCAs to the ECB only if they are considered material¹⁵, in which case the ECB may provide comments on the draft decision or procedure.

As regards *ex post* reporting by NCAs on their supervisory activities¹⁶, NCAs will prepare regular reports for the ECB, on the basis of which the ECB will assess, inter alia, the consistency of supervisory outcomes within the SSM.

C. Supervisory procedures within the SSM: general principles

¹¹ Article 7 of the draft Framework Regulation.

¹² Recital 79 of the SSM Regulation.

¹³ Article 6(5)(c) of the SSM Regulation provides that the ECB shall exercise oversight over the functioning of the system based in particular on the procedures governing the relationship between the ECB and NCAs with respect to the supervision of less significant supervised entities established in accordance with Article 6(7)(c) of the SSM Regulation.

¹⁴ Article 96 of the draft Framework Regulation.

¹⁵ Articles 97 and 98 of the draft Framework Regulation.

¹⁶ Articles 99 and 100 of the draft Framework Regulation.

Part III of the draft Framework Regulation lays down the rules governing the conduct of supervisory procedures¹⁷ carried out by the ECB and NCAs.

1. Principles and obligations

The draft Framework Regulation elaborates on the general principles and obligations laid down in the SSM Regulation, for example, the duty to cooperate in good faith and the obligation to exchange information. It specifies that the obligation to exchange information also covers information not directly related to the ECB's supervisory tasks (including consumer protection and the fight against money laundering) but that may still have an impact on the respective tasks of the ECB and NCAs and, in particular, information that the NCAs have on procedures that may affect the safety and soundness of a supervised entity.

2. Due process for adopting ECB supervisory decisions

The right of due process¹⁸ includes: (a) the right to be heard before the adoption of a supervisory decision¹⁹ that would directly and adversely affect the rights of the party²⁰; (b) the right to have access to the ECB's file in a supervisory procedure; and (c) an obligation on the ECB to give reasons for its decisions.

The right to be heard may be exercised in writing or, where appropriate, in a meeting with the ECB. It can be deferred and granted after a legal act has been adopted if an urgent decision appears necessary in order to prevent significant damage to the financial system.

The right to have access to the ECB's file in an ECB supervisory procedure is subject to the legitimate interest of legal and natural persons other than the relevant party in the protection of their business secrets. The right of access to the file does not extend to confidential information such as internal documents of the ECB and the NCAs, including, for example, legal advice and correspondence between the ECB and the NCA or between the NCAs. The regime governing the right to have access to the ECB's file is similar to the regime laid down in Council Regulation (EC) No 1/2003²¹ which provides for access to the Commission's file in competition cases.

3. Language regime

For communications between the ECB and supervised entities, the supervised entities may generally address the ECB in any of the EU official languages and the ECB will respond in that language.

¹⁷ 'ECB supervisory procedure' and 'NCA supervisory procedure' are defined in Part I of the draft Framework Regulation.

¹⁸ Article 22 of the SSM Regulation.

¹⁹ 'ECB supervisory decision' means a legal act adopted by the ECB in the exercise of the tasks and powers conferred on it by the SSM Regulation which takes the form of an ECB decision, is addressed to one or more supervised entities or supervised groups or one or more other persons and is not a legal act of general application.

²⁰ Pursuant to Article 22(1) of the SSM Regulation, this right does not extend to Section 1 of Chapter III of the SSM Regulation concerning investigatory powers (Articles 10 to 13 of the SSM Regulation), which relates to requests for information, general investigations and on-site inspections.

²¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

Decisions addressed to supervised entities or other persons²² will be adopted by the ECB in the English language and an official language of the Member State in which each addressee has its head office or is domiciled. If a decision is taken upon application of a supervised entity, the decision will be adopted in the English language and in the language used in the application. None the less, the ECB will seek to reach an explicit agreement on the use of the English language between each significant supervised entity and the ECB. The supervised entity may revoke this agreement at any time.

For communications between the ECB and the NCAs, as a rule, the English language will be used.

4. Reporting of breaches

Article 23 of the SSM Regulation establishes a regime for reporting breaches, that is to say, breaches of relevant Union law²³ both by supervised entities and by competent authorities (including the ECB). Where reports are received alleging breaches by supervised entities, the ECB will assess these using reasonable discretion. Where reports are received alleging breaches by competent authorities (other than the ECB), the ECB will request the relevant competent authority to comment on the facts reported. In particular, the inclusion of the competent authorities in this whistleblowing regime should be read in connection with the general responsibility of the ECB ‘for the effective and consistent functioning of the SSM’ and to ‘exercise oversight over the functioning of the system’²⁴.

D. Procedures relating to micro-prudential tasks

To ensure the smooth and effective functioning of the SSM on a daily basis, the draft Framework Regulation specifies the respective roles of the ECB and NCAs in carrying out certain micro-prudential supervisory tasks, in particular, in respect of consolidated supervision and passport issues²⁵.

1. Consolidated supervision and colleges of supervisors

Within the SSM²⁶, the home/host distinction within the meaning of Directive 2013/36²⁷ is not applicable to the extent that the supervised group is significant and all entities belonging to such group are established in participating Member States.

²² These persons are typically (prospective) shareholders or board members of the supervised entity, who may be subject to an ECB supervisory procedure, such as an assessment of the acquisition of a qualifying holding or an assessment in relation to the fit and proper requirements.

²³ Relevant Union law means directly applicable EU regulations, e.g., Regulation (EU) No 575/2013, and national legislation transposing EU directives related to the tasks referred to in Articles 4(1) and 5(1) of the SSM Regulation.

²⁴ Article 6(1) and Article 6(5)(c) of the SSM Regulation.

²⁵ Part II of the draft Framework Regulation.

²⁶ This is without prejudice to the tasks not covered by the SSM Regulation, e.g., consumer protection.

²⁷ 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).

The ECB will chair colleges of supervisors in two cases: (a) as consolidating supervisor within the meaning of Regulation (EU) No 2013/575, except where all subsidiaries and branches of a supervised group are established in participating Member States; (b) as supervisor of a significant credit institution with significant branches in non-participating Member States²⁸. In the first case, the NCAs of the participating Member States where the parent, subsidiaries or significant branches are established may participate in the college as observers.

Where the parent credit institution is not established in a participating Member State but has significant and/or less significant subsidiaries in participating Member States, the ECB and/or NCAs will participate in colleges of supervisors chaired by the competent authority of the non-participating Member State. Where both the ECB and one or more NCAs are members of the same college, coordination between the ECB and NCAs should be sought. In the case of diverging opinions, NCAs remain free however to take their own decisions in the college.

2. Passport issues

Part II of the draft Framework Regulation lays down the procedural rules governing the right of establishment (of branches) and the exercise of the freedom to provide services by supervised entities²⁹, without amending the rules specified in Directive 2013/36/EU. In line with the SSM Regulation, NCAs remain competent to receive notifications from credit institutions in relation to the right of establishment and the freedom to provide services.

Internal passport (supervised entities established in a participating Member State wishing to establish a branch or provide services in another participating Member State): pursuant to Article 17(1) of the SSM Regulation, the procedures set out in Directive 2013/36/EU do not apply in this case. The draft Framework Regulation lays down rules similar to those set out in Directive 2013/36/EU to facilitate the notification procedures applying to supervised entities. The relevant NCA remains the addressee of the notification, subject to an obligation to immediately inform the ECB of receipt of such from a significant supervised entity. As regards the exercise of the right of establishment, the ECB (for significant supervised entities) or the home NCA (for less significant supervised entities) has two months to take a decision. If no decision is taken within this period, the branch may commence its activities. The notification must also be communicated to the NCA of the participating Member State where the services will be provided or branch established.

Outbound passport (supervised entities established in a participating Member State wishing to establish a branch or provide services in a non-participating Member State): the procedures established under relevant Union law apply; the ECB will be the home authority for significant supervised entities and the NCA for less significant supervised entities.

²⁸ Article 52(3) of Directive 2013/36/EU.

²⁹ The supervision of credit institutions from third countries establishing a branch or providing cross-border services in the Union does not fall within the scope of the SSM Regulation and, hence, it also falls outside the draft Framework Regulation.

Inbound passport (supervised entities established in a non-participating Member State wishing to establish a branch or provide services in a participating Member State): (a) as regards the right of establishment, the ECB will exercise the powers of the host authority for significant branches, while the NCA will do so for less significant branches; (b) as regards the exercise of the freedom to provide services, the ECB will be the host authority, in accordance with the SSM Regulation. NCAs, however, will be the addressees of the notification received from the home authority in all cases, subject to a duty to inform the ECB immediately upon receipt of such notification. As determination of the significance of the branch to be established in a participating Member State is an intra-SSM matter³⁰, and as the right of establishment and/or the exercise of the freedom to provide services may cover services that do not fall under ECB supervision, the NCA will serve as the point of entry.

3. Supplementary supervision of a financial conglomerate

Where the banking supervisor is appointed coordinator for the supervision of a financial conglomerate in accordance with relevant Union law, the ECB will exercise the role of coordinator if the credit institution forming part of the conglomerate is a significant supervised entity, whereas the NCA will exercise the role in relation to a less significant supervised entity.

E. Procedures relating to macro-prudential tasks

1. The procedure provided for in Article 5 of the SSM Regulation

Article 5 of the SSM Regulation lays down the procedure for the application by NCAs, national designated authorities (NDAs) and the ECB of macro-prudential tools provided for under Union law. In order to ensure full coordination, where NCAs or NDAs impose such measures, the ECB must be duly notified prior to the adoption of those measures. Moreover, where necessary and subject to close coordination with national authorities, the ECB may, in fact, apply higher requirements and more stringent measures.

2. The rules laid down in the draft Framework Regulation

Part VIII of the draft Framework Regulation specifies procedures for the cooperation between NCAs, NDAs and the ECB. It defines macro-prudential tools and further specifies that macro-prudential measures are not typically addressed to individual institutions and therefore do not constitute supervisory procedures³¹. It provides that the ECB may set a buffer rate in accordance with Article 5(2) of the SSM Regulation if the NDA has not set such buffer rate³². It requires NCAs and NDAs to

³⁰ As regards the assessment of the significance of branches and in relation to the freedom to provide services and the right of establishment, EEA branches are treated in the same way as branches of non-participating Member States. Since this directly results from the application of Directive 2013/36/EU, which is of EEA relevance, these principles have not been further specified in the draft Framework Regulation.

³¹ Article 101 of the draft Framework Regulation.

³² Article 102 of the draft Framework Regulation.

notify the ECB of the macro-prudential tools referred to in Article 101 of the draft Framework Regulation that fall within their competence³³. Finally, it provides for procedures for the exchange of information and cooperation in respect of macro-prudential tools³⁴.

F. The ECB's supervisory powers

1. Investigatory powers

Part XI of the draft Framework Regulation specifies how investigatory powers are to be exercised by the ECB, in cooperation with NCAs. Pursuant to Article 6(5)(d) of the SSM Regulation³⁵, investigatory powers can be exercised by the ECB with respect to significant and less significant supervised entities, without prejudice to the NCA's capacity to also make use of these powers with respect to less significant supervised entities. In this regard, the ECB and NCAs will also rely on the general obligation to exchange information³⁶ and on the obligations on NCAs to report to the ECB with respect to less significant supervised entities³⁷.

1.1 Request for information and reporting³⁸

Before requiring information that the ECB considers necessary from any person referred to in Article 10(1) of the SSM Regulation, it will first take account of information available to NCAs.

As regards reporting, within the scope of the Single Rulebook³⁹ the ECB has the tasks and powers laid down under relevant Union law with regard to significant supervised entities. NCAs have those tasks and powers with regard to less significant supervised entities.

NCAs are the point of entry for information reported on a regular basis by any supervised entity, and are required to check the integrity and quality of the data and make it available to the ECB. The ECB is responsible for organising the specific processes for the collection and quality review of the data to be reported.

³³ Article 103 of the draft Framework Regulation.

³⁴ Articles 104 and 105 of the draft Framework Regulation.

³⁵ The ECB 'may at any time make use of the powers referred to in Articles 10 to 13 [with regard to credit institutions that are less significant]'

³⁶ Part III of the draft Framework Regulation.

³⁷ Part VII of the draft Framework Regulation.

³⁸ Articles 139 to 141 of the draft Framework Regulation.

³⁹ Regulation (EU) No 575/2013, Directive 2013/36 and European Banking Authority (EBA) implementing technical standards.

1.2 General investigations⁴⁰ and on-site inspections⁴¹

A general investigation initiated by the ECB is launched on the basis of an ECB decision, as is a decision to conduct an on-site inspection at the business premises of a supervised entity upon the initiative of the ECB. It may be the same ECB decision as the one launching a general investigation if the on-site inspection has the same scope and purpose as the general investigation.

Without prejudice to these ECB powers, NCAs remain competent to initiate their own investigations and on-site inspections in relation to less significant supervised entities.

As regards the establishment and the composition of on-site inspection teams at the ECB's initiative, the draft Framework Regulation largely refers back to Article 12 of the SSM Regulation. The ECB will appoint the head of the on-site inspection team from ECB and NCA staff members. The on-site inspection will be led by the head of the on-site inspection team, whose instructions must be followed by the members of the team.

The draft Framework Regulation also addresses issues of coordination between JST and on-site inspection teams.

2. **Specific supervisory powers (common procedures)⁴²**

The ECB has an overall and exclusive competence as regards the granting and withdrawal of authorisations and the assessment of the acquisition of qualifying holdings in relation to all supervised entities. These powers are referred to as common procedures.

Procedure for authorisation⁴³: the NCA of the Member State where the applicant seeks authorisation to take up the business of a credit institution is the point of entry for an application. It carries out a first assessment of the application on the basis of the conditions laid down under national law. If it considers that the application complies with those conditions, it prepares a draft decision and sends it to the ECB. On the basis of relevant Union law, the ECB performs an independent assessment of the application based on the NCA's draft decision. The ECB may agree or object to the (positive) draft decision of the NCA: it takes a final decision to adopt or to reject the draft decision, i.e. whether to grant the authorisation or not. The ECB decision is notified to the applicant by the NCA.

If the NCA considers that the application does not comply with national law, it must reject the application and inform the ECB.

Procedure for withdrawal of authorisation⁴⁴: there are two options provided for in the SSM Regulation: (a) withdrawal upon request of the ECB, and (b) withdrawal upon request of the NCA.

⁴⁰ Article 142 of the draft Framework Regulation.

⁴¹ Articles 143 to 146 of the draft Framework Regulation.

⁴² Part V of the draft Framework Regulation.

⁴³ Articles 73 to 79 of the draft Framework Regulation.

⁴⁴ Articles 80 to 84 of the draft Framework Regulation.

The second category includes a withdrawal at the request of a supervised entity. The relevant NCA may propose the withdrawal not only on the basis of relevant Union law but also on the basis of national law.

*Procedure for assessment of the acquisition of a qualifying holding*⁴⁵: the procedure is similar to the procedure for authorisation with the difference that the NCA may propose positive and negative decisions to the ECB. The ECB's assessment is based on a draft decision proposed by the NCA to accept or oppose the notified acquisition of a qualifying holding in a credit institution.

G. Administrative penalties

1. Article 18 of the SSM Regulation on administrative penalties

Part X of the draft Framework Regulation has been drafted based on the following allocation of competences between the ECB and NCAs:

- Article 18(1) of the SSM Regulation (breach of directly applicable Union law): within the scope of the tasks conferred on the ECB, the ECB has the exclusive competence to open infringement proceedings against and impose administrative penalties on significant supervised entities. NCAs have the exclusive competence to open infringement proceedings against and impose administrative penalties on less significant supervised entities.
- Article 18(5) of the SSM Regulation (breach of national law): the ECB cannot impose administrative pecuniary penalties, but is exclusively competent to require NCAs to open proceedings against significant supervised entities that may lead to the imposition of sanctions. NCAs are also competent to impose administrative penalties on natural persons and to impose administrative penalties where there is a breach of national law, including a national law transposing a directive, e.g., Directive 2013/36/EU.
- Article 18(7) of the SSM Regulation (breach of ECB regulations and decisions): this provision applies in the cases where an ECB regulation or decision is breached in relation to the tasks conferred upon the ECB. Consequently, it basically addresses significant supervised entities. However, to the extent that an ECB regulation or decision imposes obligations upon less significant supervised entities in relation to the ECB, the ECB remains exclusively competent to apply the relevant sanctions on those entities for breach of such regulation or decision.

⁴⁵ Articles 85 to 87 of the draft Framework Regulation.

2. Rules applying to the imposition of administrative penalties

2.1 Applicable procedural rules

Since Article 18(4) of the SSM Regulation entitles the ECB to apply the procedural rules contained in Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions⁴⁶ ‘as appropriate’, Part X clarifies that the procedural rules contained in the Framework Regulation will be applied in relation to administrative penalties imposed under Article 18(1) of the SSM Regulation. For sanctions under Article 18(7) of the SSM Regulation, the common procedural rules contained in Part X of the Framework Regulation will be applied in accordance with Article 25 (Separation from the monetary policy function) and Article 26 (Supervisory Board) of the SSM Regulation. The draft Framework Regulation thereby clarifies that the Supervisory Board shall be responsible for preparing draft complete decisions in relation to all sanctions imposed by the ECB in the exercise of its supervisory tasks.

2.2 Proposal to amend Regulation (EC) No 2532/98

The ECB intends to recommend amendments to Council Regulation (EC) No 2532/98 in order to clarify the rules applying to: (a) the sanctions that may be imposed by the ECB when exercising central banking tasks other than supervisory tasks and (b) the administrative penalties and sanctions that may be imposed by the ECB when exercising its supervisory tasks. This is to ensure that Regulation (EC) No 2532/98 and the SSM Regulation may operate effectively and consistently in the context of the SSM.

2.3 Separation between investigation and decision-taking

Part X aims at reflecting the principle of separation between the investigation phase and the decision-taking phase⁴⁷ and therefore gives investigatory powers to an independent investigating unit which will be set up by the ECB. The independence of this investigating unit will be ensured by the fact that it may not be given any instructions for the exercise of its investigations.

2.4 Other procedural rules

Right to be heard: This right is always granted to the supervised entity prior to the matter being referred to the Supervisory Board. Moreover, where the Supervisory Board disagrees with the proposal of the investigating unit and concludes that a different infringement has been committed or that there is a different factual basis for the proposal of the investigating unit⁴⁸, the Supervisory Board must invite the supervised entity to make submissions (in writing or in an oral hearing).

⁴⁶ OJ L 318, 27.11.1998, p. 4.

⁴⁷ Pursuant to recital 86 of the SSM Regulation, the SSM Regulation observes the principles recognised in the Charter of Fundamental Rights of the European Union. See, for example, the judgment of the European Court of Human Rights of 11 June 2009 in *Dubus v France* (Application No 5242/04).

⁴⁸ If the complete draft decision of the Supervisory Board is based on facts and objections on which the supervised entity has already been given an opportunity to comment during the investigating phase, no additional hearing is foreseen.

Limitation periods for the imposition and enforcement of sanctions: to ensure compliance with both the principle of good administration and the effective exercise of the rights of defence, the imposition and enforcement of administrative pecuniary penalties are subject to limitation periods. Their computation is similar to that provided for under Union competition law⁴⁹ as well as under the rules applying to the supervision of credit rating agencies by the European Securities and Markets Authority (ESMA)⁵⁰.

Publication of decisions regarding administrative pecuniary penalties: the regime for the publication of decisions regarding administrative pecuniary penalties reflects the provisions of Directive 2013/36/EU on this issue.

H. Arrangements for the conduct of close cooperation

Member States whose currency is not the euro may wish to participate in the SSM. Article 7 of the SSM Regulation provides that a regime of close cooperation may be established allowing such Member States to participate.

Part IX of the Framework Regulation sets out the way in which close cooperation operates and supervision is conducted once a close cooperation has been established. Part IX also specifies that various parts of the Framework Regulation apply *mutatis mutandis* in respect of supervised entities in close cooperation Member States. The same provisions apply as are applicable to supervised entities in euro area Member States, with only the necessary changes being made, as set out in Part IX.

1. General principles

Under the regime of close cooperation, the ECB will carry out the tasks referred to in Article 4(1) and (2) and Article 5 of the SSM Regulation in relation to supervised entities established in the Member State under close cooperation.

This means that, with respect to significant supervised entities and groups and less significant supervised entities and groups established in a Member State under close cooperation, the ECB and the NCAs will be put in a position comparable to the situation under the SSM Regulation with respect to supervised entities established in euro area Member States, subject to the proviso that the ECB may not act directly in relation to the entities established in a Member State under close cooperation.

Where the ECB considers that a measure relating to the tasks referred to in Article 4(1) and (2) of the SSM Regulation should be adopted by the NCA in relation to a supervised entity or group, it will address to the NCA:

⁴⁹ See Articles 25 and 26 of Regulation (EC) No 1/2003.

⁵⁰ Article 5 of Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and the Council with regard to rules of procedures on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions, OJ L 282, 16.10.2012, p. 23.

- (a) in the case of a significant supervised entity or group, a general or specific instruction, request or guideline requiring the issuance of a supervisory decision in relation to that significant supervised entity or group; or
- (b) in the case of a less significant supervised entity or group, a general instruction, request or guideline.

In the case of macro-prudential tasks, if the ECB considers that a measure relating to the tasks referred to in Article 5 of the SSM Regulation should be adopted, it will address to the NCA or NDA in close cooperation a general or specific instruction, request or guideline requiring the application of higher requirements for capital buffers or the application of more stringent measures aimed at addressing systemic or macro-prudential risks.

2. Conduct of supervision under the close cooperation regime

Supervision of significant supervised entities or groups: the NCA must ensure that the ECB receives all the information and reporting from and in respect of significant supervised entities and groups which the NCA receives and which are necessary for the purposes of carrying out the tasks conferred upon the ECB by the SSM Regulation.

A JST will be established for the supervision of each significant supervised entity or group. The NCA will appoint a local coordinator to act directly in relation to the significant supervised entity or group. The JST coordinator and staff members of the ECB and other NCAs will participate as members of the JST.

Consolidated supervision and colleges of supervisors: in the case of consolidated supervision and colleges of supervisors, in circumstances where the parent undertaking is established in a Member State under close cooperation, the ECB, as competent authority, will be the consolidating supervisor and will chair a college of supervisors. The ECB will invite the relevant NCA to act as an observer. In these cases, the ECB may only act via instructions to the relevant NCA.

Decisions in respect of significant supervised entities: without prejudice to the powers of the NCAs in respect of tasks not conferred upon the ECB by the SSM Regulation, NCAs may adopt decisions in respect of significant supervised entities only upon ECB instructions and, in addition, NCAs may request ECB instructions.

Supervision of less significant supervised entities: the ECB may issue general instructions, guidelines or requests to the NCA of a Member State under close cooperation requiring the adoption of supervisory decisions in respect of the less significant supervised entities in the Member State under close cooperation. Such general instructions, guidelines or requests may refer to groups or categories of credit institutions for the purposes of ensuring the consistency of supervisory outcomes within the SSM.

I. Transitional provisions⁵¹

Start of ECB direct supervision when it first assumes its SSM tasks⁵²: as a general rule, the ECB will notify each significant credit institution falling under its supervision by means of a decision [two months] prior to assuming the supervisory tasks with respect to that credit institution. Decisions will only take effect from the date of effective supervision.

Continuity of existing procedures⁵³: Unless the ECB decides otherwise, the start of effective supervision by the ECB on 4 November 2014 will not, as a general rule, interfere with existing supervisory procedures (including common procedures) initiated by NCAs.

Member States whose currency becomes the euro after the effective start of the SSM⁵⁴: it is intended that the transitional provisions should also apply in the cases where, after the start of effective supervision, Member States whose currency becomes the euro enter the SSM. For this reason, recital 10 of the draft Framework Regulation underlines the importance of a comprehensive assessment of credit institutions also as regards those established in Member States joining the euro area and therefore joining the SSM.

Continuity of existing cooperation arrangements⁵⁵: NCAs are usually parties to memoranda of understanding and other cooperation arrangements for prudential supervision of credit institutions (MoUs). In relation to the MoUs that partly cover the tasks conferred on the ECB by the SSM Regulation, there will be no interruption to the functioning of the on-going information exchange with third parties once the ECB assumes its supervisory function as the ECB will operate within a common supervisory framework involving the NCAs. Hence, as a general principle, the existing arrangements will continue to apply.

⁵¹ Part XII of the draft Framework Regulation.

⁵² Article 147 of the draft Framework Regulation.

⁵³ Article 149 of the draft Framework Regulation.

⁵⁴ Article 151 of the draft Framework Regulation.

⁵⁵ Article 152 of the draft Framework Regulation.

III. THE DRAFT FRAMEWORK REGULATION

This draft Regulation is a working document for consultation purposes only. It does not purport to represent or prejudge the final proposal for an SSM Framework Regulation to be presented by the Supervisory Board to the Governing Council in accordance with Article 6(7) of the SSM Regulation.

REGULATION OF THE EUROPEAN CENTRAL BANK

of [date Month YYYY]

**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/YYYY/XX])

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 institutions¹, and in particular Article 4(3), Article 6 and Article 33(2) thereof,

Having regard to the Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism²,

Having regard to the public consultation and analysis carried out in accordance with Article 4(3) of Regulation (EU) No 1024/2013,

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

Whereas:

- (1) Regulation (EU) No 1024/2013 (hereinafter the ‘SSM Regulation’) establishes the Single Supervisory Mechanism (SSM) composed of the European Central Bank (ECB) and the national competent authorities (NCAs) of participating Member States.

¹ OJ L 287, 29.10.2013, p. 63.

² OJ L 320, 30.11.2013, p. 1.

- (2) Within the framework of Article 6 of the SSM Regulation, the ECB is exclusively competent to carry out the micro-prudential tasks conferred on it by Article 4 thereof relating to credit institutions established in the participating Member States. The ECB is responsible for the effective and consistent functioning of the SSM and for exercising oversight over the functioning of the system, based on the responsibilities and procedures set out in Article 6 of the SSM Regulation.
- (3) Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by the SSM Regulation, NCAs are responsible for assisting the ECB, under the conditions laid down in the SSM Regulation and in this Regulation, with the preparation and implementation of any acts concerning the tasks referred to in Article 4 of the SSM Regulation relating to all credit institutions, including assistance in verification activities. For this purpose, the NCAs should follow the instructions given by the ECB when performing the tasks mentioned in Article 4 of the SSM Regulation.
- (4) The ECB, NCAs and national designated authorities (NDAs) have to perform the macro-prudential tasks referred to in Article 5 of the SSM Regulation and follow the coordination procedures provided for therein, in this Regulation and in relevant Union law, without prejudice to the role of the Eurosystem and of the European Systemic Risk Board.
- (5) Within the SSM, the respective ECB and NCA supervisory responsibilities are allocated on the basis of the significance of the entities that fall under the scope of the SSM. This Regulation sets out, in particular, the specific methodology for the assessment of such significance, as required by Article 6(7) of the SSM Regulation. The ECB has direct supervisory competence in respect of credit institutions, financial holding companies, mixed financial holding companies established in participating Member States, and branches in participating Member States of credit institutions established in non-participating Member States that are significant. The NCAs are responsible for directly supervising the entities that are less significant, without prejudice to the ECB's power to decide in specific cases to directly supervise such entities where this is necessary for the consistent application of supervisory standards.
- (6) To take into account recent developments in Union legislation in the field of sanctions and the European Court of Human Rights case-law regarding the principle of separation between an investigation and the decision-taking phase, an independent investigating unit will be established by the ECB which is to autonomously investigate breaches of supervisory rules and decisions.
- (7) Article 6(7) of the SSM Regulation states that the ECB must, in consultation with the NCAs and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical arrangements for cooperation between the ECB and the NCAs within the SSM.

- (8) Article 33(2) of the SSM Regulation states that the ECB must publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred upon it by that Regulation. This Regulation contains the provisions implementing Article 33(2) relating to cooperation between the ECB and the NCAs within the SSM.
- (9) As a result, this Regulation further develops and specifies the cooperation procedures established in the SSM Regulation between the ECB and the NCAs within the SSM as well as, where appropriate, with the national designated authorities, and thereby ensures the effective and consistent functioning of the SSM.
- (10) The ECB attaches great importance to the comprehensive assessment of credit institutions, including the balance sheet assessment that it must carry out before the assumption of its tasks. This extends to any Member States joining the euro area and therefore joining the SSM after the date for the commencement of supervision in accordance with Article 33(2) of the SSM Regulation.
- (11) It is essential for the smooth functioning of the SSM that there is full cooperation between the ECB and NCAs and that they exchange all the information that may have an impact on their respective tasks, in particular, all information that the NCAs avail of regarding procedures that may have an impact on the safety and soundness of a supervised entity or that interact with the supervisory procedures in relation to such entities,

HAS ADOPTED THIS REGULATION:

PART I

GENERAL PROVISIONS

Article 1

Subject matter and purpose of the Regulation

1. This Regulation lays down rules on all of the following:
 - (a) the framework referred to in Article 6(7) of the SSM Regulation, namely a framework to organise the practical arrangements for implementing Article 6 of the SSM Regulation concerning cooperation within the SSM, to include:
 - (i) the specific methodology for the assessment and review of whether a supervised entity is classified as significant or less significant pursuant to the criteria laid down in Article 6(4) of the SSM Regulation, and the arrangements resulting from this assessment;
 - (ii) the definition of procedures, including time limits, also in relation to the possibility for NCAs to prepare draft decisions for the ECB's consideration, concerning the relation between the ECB and the NCAs regarding the supervision of significant supervised entities;
 - (iii) the definition of procedures, including time limits, concerning the relation between the ECB and the NCAs regarding the supervision of less significant supervised entities. In particular, such procedures shall require the NCAs, depending on the cases defined in this Regulation to:
 - notify the ECB of any material supervisory procedure;
 - further assess, on the ECB's request, specific aspects of the procedure;
 - transmit to the ECB material draft supervisory decisions, on which the ECB may express its views;
 - (b) cooperation and exchange of information between the ECB and the NCAs within the SSM with regard to the procedures relating to (i) significant supervised entities; and (ii) less significant supervised entities, including common procedures applying to authorisations to take up the business of a credit institution, withdrawals of such authorisations and the assessment of acquisitions and disposals of qualifying holdings;
 - (c) the procedures relating to cooperation between the ECB, the NCAs and the NDAs regarding macro-prudential tasks and tools within the meaning of Article 5 of the SSM Regulation;

- (d) the procedures relating to the operation of close cooperation within the meaning of Article 7 of the SSM Regulation and applicable between the ECB, the NCAs and the NDAs;
 - (e) defining the procedures relating to cooperation between the ECB and the NCAs with regard to Articles 10 to 13 of the SSM Regulation, including on certain aspects relating to supervisory reporting;
 - (f) the procedures relating to the adoption of supervisory decisions addressed to supervised entities and other persons;
 - (g) the linguistic arrangements between the ECB and the NCAs and between the ECB and supervised entities and other persons;
 - (h) the procedures applicable to the ECB's and the NCAs' sanctioning powers within the SSM in relation to the tasks conferred on the ECB by the SSM Regulation;
 - (i) transitional provisions.
2. This Regulation does not affect the supervisory tasks that have not been conferred on the ECB by the SSM Regulation and that therefore remain with national authorities.
 3. This Regulation shall be read in particular in conjunction with Decision ECB/2004/2 of the European Central Bank³ and [Decision ECB/2013/XX of the European Central Bank of [date] adopting the Rules of Procedure of the Supervisory Board of the European Central Bank⁴], in particular with regard to decision-making within the SSM, including the procedure applying between the Supervisory Board and the Governing Council as regards the non-objection by the Governing Council referred to in Article 26(8) of the SSM Regulation and other relevant ECB legal acts, [including [Regulation ECB/2013/XX of the European Central Bank of [date] concerning the establishment of a Mediation Panel and its Rules of Procedure⁵] and Decision ECB/2013/xx concerning the establishment of an Administrative Board of Review and its Operating Rules⁶].

Article 2

Definitions

For the purpose of this Regulation, the definitions contained in the SSM Regulation shall apply, unless otherwise provided for, together with the following definitions:

- 3 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.)
- 4 [include OJ reference].
- 5 [include OJ reference].
- 6 [include OJ reference].

1. 'authorisation' means an authorisation as defined in point (42) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁷;
2. 'branch' means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;
3. 'common procedures' means the procedures provided for in Part V with respect to an authorisation to take up the business of a credit institution, withdrawal of an authorisation to pursue such business and decisions with regard to qualifying holdings;
4. 'euro area Member State' means a Member State whose currency is the euro;
5. 'group' means a group of undertakings of which at least one is a credit institution and which consists of a parent undertaking and its subsidiaries, or undertakings linked to each other by a relationship within the meaning of Article 12(1) of the Seventh Council Directive 83/349/EEC⁸, including any sub-group thereof;
6. 'joint supervisory team' means a team of supervisors in charge of the supervision of a significant supervised entity or a significant supervised group;
7. 'less significant supervised entity' means both (a) a less significant supervised entity in a euro area Member State; and (b) a less significant supervised entity in a non-euro area Member State that is a participating Member State;
8. 'less significant supervised entity in a euro area Member State' means a supervised entity established in a euro area Member State and which does not have the status of a significant supervised entity within the meaning of Article 6(4) of the SSM Regulation;
9. 'national competent authority' (NCA) means a national competent authority as defined in Article 2(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. In this case, the NCB shall carry out these tasks within the framework set out in national law and this Regulation. A reference to an NCA in this Regulation shall in this case apply as appropriate to the NCB for the tasks assigned to it by national law;

⁷ 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 amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1.)

⁸ Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1).

10. 'NCA in close cooperation' means any NCA designated by a participating Member State in close cooperation in accordance with Directive 2013/36/EU of the European Parliament and of the Council⁹;
11. 'national designated authority' (NDA) means a national designated authority as defined in Article 2(7) of the SSM Regulation;
12. 'NDA in close cooperation' means any non-euro area NDA designated by a participating Member State in close cooperation for the purposes of the tasks related to Article 5 of the SSM Regulation.
13. 'non-euro area Member State' means a Member State whose currency is not the euro;
14. 'parent undertaking' means a parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013;
15. 'participating Member State in close cooperation' means any non-euro area Member State that has entered into close cooperation with the ECB in accordance with Article 7 of the SSM Regulation ;
16. 'significant supervised entity' means both (a) a significant supervised entity in a euro area Member State; and (b) a significant supervised entity in a participating non-euro area Member State;
17. 'significant supervised entity in a euro area Member State' means a supervised entity established in a euro area Member State which has the status of a significant supervised entity pursuant to an ECB supervisory decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;
18. 'significant supervised entity in a participating non-euro area Member State' means a supervised entity established in a participating non-euro area Member State which has the status of a significant supervised entity pursuant to an ECB supervisory decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;
19. 'subsidiary' means a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;
20. 'supervised entity' means any of the following: (a) a credit institution established in a participating Member State; (b) a financial holding company established in a participating Member State; (c) a mixed financial holding company established in a participating Member State, provided that it fulfils the conditions laid down in point (22)(b); (d) a

⁹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the 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).

branch established in a participating Member State by a credit institution which is established in a non-participating Member State.

A central counterparty (CCP), as defined in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council¹⁰, which qualifies as a credit institution within the meaning of Directive 2013/36/EU, shall be considered a supervised entity in accordance with the SSM Regulation, this Regulation and relevant Union law without prejudice to the supervision of CCPs by relevant NCAs as laid down under Regulation (EU) No 648/2012;

21. 'supervised group' means any of the following:
 - (a) a group whose parent undertaking is a credit institution or financial holding company that has its head office in a participating Member State;
 - (b) a group whose parent undertaking is a mixed financial holding company that has its head office in a participating Member State, provided that the coordinator of the financial conglomerate, within the meaning of Directive 2002/87/EC of the European Parliament and of the Council¹¹, is an authority competent for the supervision of credit institutions and is also the coordinator in its function as supervisor of credit institutions;
 - (c) supervised entities each having their head office in the same participating Member State provided that they are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation (EU) No 575/2013 and which is established in the same participating Member State;
22. 'significant supervised group' means a supervised group which has the status of significant supervised group pursuant to an ECB supervisory decision based on Article 6(4) and Article 6(5)(b) of the SSM Regulation;
23. 'less significant supervised group' means a supervised group which does not have the status of a significant supervised group within the meaning of Article 6(4) of the SSM Regulation;
24. 'ECB supervisory procedure' means any ECB activity directed towards preparing the issue of an ECB supervisory decision, including common procedures and the imposition of administrative pecuniary penalties. All ECB supervisory procedures are subject to Part

¹⁰ 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).

¹¹ 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).

III. Part III also applies to the imposition of administrative pecuniary penalties, unless Part X provides otherwise;

25. 'NCA supervisory procedure' means any NCA activity directed towards preparing the issue of an NCA supervisory decision, which is addressed to one or more supervised entities or supervised groups or one or more other persons, including the imposition of administrative penalties;
26. 'ECB supervisory decision' means a legal act adopted by the ECB in the exercise of the tasks and powers conferred on it by the SSM Regulation which takes the form of an ECB decision, is addressed to one or more supervised entities or supervised groups or one or more other persons and is not a legal act of general application;
27. 'third country' means a country which is neither a Member State nor a European Economic Area Member State;
28. 'working day' means a day which is not a Saturday, Sunday or an ECB public holiday in accordance with the calendar applicable to the ECB¹².

12 As published on the ECB's website.

PART II
ORGANISATION OF THE SSM

Title 1

Structures for the supervision of significant and less significant supervised entities

Chapter 1

Supervision of significant supervised entities

Article 3

Joint supervisory teams

1. A joint supervisory team shall be established for the supervision of each significant supervised entity or significant supervised group in participating Member States. Each joint supervisory team shall be composed of staff members from the ECB and from the NCAs appointed in accordance with Article 4 and working under the coordination of a designated ECB staff member (hereinafter the ‘JST coordinator’) and one or several NCA sub-coordinators, as further laid down in Article 6.
2. Without prejudice to other provisions of this Regulation, the tasks of a joint supervisory team shall include, but are not limited to, the following:
 - (a) performing the supervisory review and evaluation process (SREP) referred to in Article 97 of Directive 2013/36/EU for the significant supervised entity or significant supervised group that it supervises;
 - (b) taking into account the SREP, proposing to the Supervisory Board a supervisory examination programme, including an on-site inspection plan, as laid down in Article 99 of Directive 2013/36/EC, for such a significant supervised entity or significant supervised group;
 - (c) implementing the supervisory examination programme approved by the ECB and any ECB supervisory decisions with respect to the significant supervised entity or significant supervised group that it supervises;
 - (d) ensuring coordination with the on-site inspection team referred to in Part XI as regards the implementation of the on-site inspection plan;
 - (e) liaising with NCAs where relevant.

Article 4

Establishment and composition of joint supervisory teams

1. The ECB shall be in charge of the establishment and the composition of joint supervisory teams. The appointment of staff members from the NCAs to joint supervisory teams shall be made by the respective NCAs in accordance with paragraph 2.
2. In accordance with the principles laid down in Article 6(8) of the SSM Regulation and without prejudice to Article 31 thereof, the NCAs shall appoint one or more persons from their staff as a member or members of a joint supervisory team. An NCA staff member may be appointed as a member of more than one joint supervisory team.
3. Notwithstanding paragraph 2, the ECB may require the NCAs to modify the appointments they have made if appropriate for the purpose of the composition of a joint supervisory team.
4. Where more than one NCA exercises supervisory tasks in a participating Member State, or where in a participating Member State national law confers on an NCB specific supervisory tasks and the NCB is not an NCA, the relevant authorities shall coordinate their participation within the joint supervisory teams.

Article 5

Involvement of staff members from NCBs of participating Member States

1. NCBs of participating Member States that are involved in the prudential supervision of a significant supervised entity or a significant supervised group under their national law but which are not NCAs may also appoint one or several members of their staff to a joint supervisory team.
2. The ECB shall be informed of such appointments and Article 4 shall apply accordingly.
3. Where staff members of NCBs of participating Member States are appointed to a joint supervisory team, references to NCAs in relation to joint supervisory teams shall be read as including a reference to those NCBs.

Article 6

JST coordinator and sub-coordinators

1. The JST coordinator, assisted by NCA sub-coordinators as defined in paragraph 2, shall ensure the coordination of the work within the joint supervisory team. For this purpose, joint supervisory team members shall follow the JST coordinator's instructions as regards their tasks in the joint supervisory team. This shall be without prejudice to their tasks and duties with their respective NCA.

2. Each NCA that appoints more than one staff member to the joint supervisory team shall designate one of them as sub-coordinator (hereinafter an ‘NCA sub-coordinator’). NCA sub-coordinators shall assist the JST coordinator as regards the organisation and coordination of the tasks in the joint supervisory team, in particular as regards the staff members that were appointed by the same NCA as the relevant NCA sub-coordinator. The NCA sub-coordinator may give instructions to the members of the joint supervisory team appointed by the same NCA, provided that these do not conflict with the instructions given by the JST coordinator.

Chapter 2

Supervision of less significant supervised entities

Article 7

Involvement of staff members from other NCAs in an NCA’s supervisory team

Without prejudice to Article 31(1) of the SSM Regulation, when, in relation to the supervision of less significant supervised entities, the ECB determines that it is appropriate to involve staff members from one or more other NCAs in the supervisory team of an NCA, the ECB may require the latter to involve staff members of such other NCAs.

Title 2

Supervision on a consolidated basis and participation of the ECB and NCAs in colleges of supervisors

Article 8

Supervision on a consolidated basis

The ECB shall conduct supervision on a consolidated basis as provided for by Article 111 of Directive 2013/36/EU in respect of credit institutions, financial holding companies or mixed financial holding companies that are significant on a consolidated basis. The relevant NCA shall perform the task of the supervisor on a consolidated basis in respect of credit institutions, financial holding companies or mixed financial holding companies that are less significant on a consolidated basis.

Article 9

The ECB as chair of a college of supervisors

1. When the ECB is the consolidating supervisor, it shall chair the college established pursuant to Article 116 of Directive 2013/36/EU. The NCAs of the participating Member States where the parent, subsidiaries and significant branches within the meaning of Article 51 of Directive 2013/36/EU, if any, are established, shall have the right to participate in the college as observers.
2. If there is no college established pursuant to Article 116 of Directive 2013/36/EU, and a significant supervised entity has branches in non-participating Member States that are considered as significant in accordance with Article 51(1) of Directive 2013/36/EU, the ECB shall establish a college of supervisors with the competent authorities of the host Member States.

Article 10

The ECB and NCAs as members of a college of supervisors

If the consolidating supervisor is not in a participating Member State, the ECB and NCAs shall participate in the college of supervisors in accordance with the following rules and with the provisions contained in relevant Union law:

- (a) if the supervised entities in participating Member States are all significant supervised entities, the ECB shall participate in the college of supervisors as a member, while the NCAs shall be entitled to participate in the same college as observers;
- (b) if the supervised entities in participating Member States are all less significant supervised entities, the NCAs shall participate in the college of supervisors as members;
- (c) if the supervised entities in participating Member States are both less significant supervised entities and significant supervised entities, the ECB and the NCAs shall participate in the college of supervisors as members. The NCAs of the participating Member States where the significant supervised entities are established shall be entitled to participate in the college of supervisors as observers.

Title 3

Procedures for the right of establishment and freedom to provide services

Chapter 1

Procedures for the right of establishment and freedom to provide services within the SSM

Article 11

Right of establishment of credit institutions within the SSM

1. Any significant supervised entity wishing to establish a branch within the territory of another participating Member State shall notify the NCA of the participating Member State where the significant supervised entity has its head office of its intention. Information shall be provided in accordance with the requirements laid down in Article 35(2) of Directive 2013/36/EU. The NCA shall immediately inform the ECB on the receipt of this notification.
2. Any less significant supervised entity wishing to establish a branch within the territory of another participating Member State shall notify its NCA of its intention in accordance with the requirements laid down in Article 35(2) of Directive 2013/36/EU.
3. Where no decision to the contrary is taken by the ECB within two months of receipt of the notification, the branch referred to in paragraph 1 may be established and commence its activities. The ECB shall communicate this information to the NCA of the participating Member State where the branch is established.
4. Where no decision to the contrary is taken by the NCA of the home Member State within two months of receipt of the notification, the branch referred to in paragraph 2 may be established and commence its activities. The NCA shall communicate this information to the ECB.
5. In the event of a change to any of the information communicated pursuant to paragraphs 1 and 2, the supervised entity shall give written notice of this change to the NCA that received the initial information at least one month before implementing the change. This NCA shall inform the NCA of the Member State where the branch is established.

Article 12

Exercise of freedom to provide services by credit institutions within the SSM

1. Any significant supervised entity wishing to exercise the freedom to provide services by carrying on its activities within the territory of another participating Member State for the first time shall notify the ECB in accordance with the requirements laid down in Directive 2013/36/EU. The notification shall be communicated to the NCA of the participating Member State where the services will be provided.
2. Any less significant supervised entity wishing to exercise the freedom to provide services by carrying on its activities within the territory of another participating Member State for the first time shall notify its NCA in accordance with the requirements laid down in Directive 2013/36/EU. The notification shall be communicated to the ECB.

Chapter 2

Procedures for the right of establishment and freedom of credit institutions established in non-participating Member States to provide services within the SSM

Article 13

Notification of the exercise of the right of establishment within the SSM by credit institutions established in non-participating Member States

1. Where the competent authority of a non-participating Member State communicates the information referred to in Article 35(2) of Directive 2013/36/EU in accordance with the procedure laid down in Article 35(3) thereof to the NCA of the participating Member State where the branch is to be established, such NCA shall immediately notify the ECB on the receipt of this communication.
2. Within two months of receipt of the communication from the competent authority of a non-participating Member State, the ECB, in case of a branch that is significant pursuant to the criteria laid down in Article 6 of the SSM Regulation and in Part IV of this Regulation, or the relevant NCA in the case of a branch which is less significant on the basis of the criteria laid down in Article 6 of the SSM Regulation and in Part IV of this Regulation, shall prepare to supervise the branch in accordance with Articles 40 to 46 of Directive 2013/36/EU, and if necessary, indicate the conditions under which, in the interests of the general good, the branch may carry on its activity in the host Member State.
3. NCAs shall inform the ECB about the conditions under which, under national law and in the interest of the general good, activities can be carried out by a branch in their Member State.
4. A change to any information provided by the credit institution wishing to establish a branch pursuant to points (b), (c) or (d) of Article 35(2) of Directive 2013/36/EU shall be notified to the NCA referred to in paragraph 1.

Article 14

Competent authority of the host Member State for branches

1. In accordance with Article 4(2) of the SSM Regulation, the ECB shall exercise the powers of the competent authority of the host Member State where a branch is significant within the meaning of Article 6(4) thereof.
2. Where a branch is less significant within the meaning of Article 6(4) of the SSM Regulation, the NCA of the participating Member State where the branch is established shall exercise the powers of the competent authority of the host Member State.

Article 15

Notification of the exercise of the freedom to provide services within the SSM by credit institutions established in non-participating Member States

Where the competent authority of a non-participating Member State provides a notification within the meaning of Article 39(2) of Directive 2013/36/EU, the NCA of the participating Member State where the freedom to provide services shall be exercised shall be the addressee of the notification. The NCA shall immediately inform the ECB on the receipt of this notification.

Article 16

Competent authority of the host Member State for freedom to provide services

1. In accordance with Article 4(2) and within the scope of Article 4(1) of the SSM Regulation, the ECB shall carry out the tasks of the competent authority of the host Member State in respect of credit institutions established in non-participating Member States which exercise the freedom to provide services in participating Member States.
2. If the freedom to provide services is in the interest of the general good, subject to certain conditions under the national law of participating Member States, NCAs shall inform the ECB of these conditions.

Chapter 3

Procedures for the right of establishment and freedom to provide services in relation to non-participating Member States

Article 17

Right of establishment and exercise of the freedom to provide services in relation to non-participating Member States

1. A significant supervised entity wishing to establish a branch or to exercise the freedom to provide services within the territory of a non-participating Member State shall notify the ECB of its intention in accordance with the applicable Union law provisions. The ECB shall exercise the powers of the competent authority of the home Member State.
2. A less significant supervised entity wishing to establish a branch or to exercise the freedom to provide services within the territory of a non-participating Member State shall notify the relevant NCA of its intention in accordance with the applicable Union law provisions. The relevant NCA shall exercise the powers of the competent authority of the home Member State.

Title 4

Supplementary supervision of financial conglomerates

Article 18

Coordinator

1. The ECB shall assume the task of coordinator of a financial conglomerate in accordance with the criteria set out in relevant Union law in relation to a significant supervised entity.
2. The NCA shall assume the task of coordinator of a financial conglomerate in accordance with the criteria set out in relevant Union law in relation to a less significant supervised entity.

PART III

GENERAL PROVISIONS APPLYING TO THE OPERATION OF THE SSM

Title 1

Principles and obligations

Article 19

Overview

This Part lays down (a) general rules for the operation of the SSM by the ECB and NCAs, and (b) the provisions to be applied by the ECB when carrying out an ECB supervisory procedure with a view to issuing a legal act addressed to one or more supervised entities or other persons.

The general principles and provisions applying between the ECB and NCAs in close cooperation are set out in Part IX.

Article 20

Duty to cooperate in good faith

The ECB and NCAs shall be subject to a duty to cooperate in good faith, and an obligation to exchange information.

Article 21

General obligation to exchange information

1. Without prejudice to the ECB's power to receive directly, or have direct access to information reported by supervised entities, on an on-going basis, NCAs shall, in particular, provide the ECB in a timely and accurate manner with all the information necessary for the ECB to carry out the tasks conferred on it by the SSM Regulation. Such information shall include information stemming from the NCAs' verification and on-site activities.
2. In circumstances where the ECB obtains information directly from the legal or natural persons referred to in Article 10(1) of the SSM Regulation, it shall provide the NCAs concerned with such information in a timely and accurate manner. Such information shall include, in particular, information necessary for the NCAs to carry out their role in assisting the ECB.

Article 22

Right of the ECB to instruct NCAs or NDAs to make use of their powers and to take action if the ECB has a supervisory task but no related power

1. To the extent necessary to carry out the tasks conferred on it by the SSM Regulation, the ECB may require, by way of instructions, the NCAs or the NDAs or both to make use of their powers, under and in accordance with the conditions set out in national law and as provided for in Article 9 of the SSM Regulation, where the SSM Regulation does not confer such powers on the ECB.
2. The NCAs and/or, in respect of Article 5 of the SSM Regulation, the NDAs, shall inform the ECB about the exercise of these powers without undue delay.

Article 23

Language regime between the ECB and NCAs

1. Unless otherwise provided for in paragraphs 2 to 5 of this Article,
 - (a) communication between the ECB and NCAs shall be carried out in the English language only; and
 - (b) ECB legal acts addressed to one or more NCAs shall be adopted in the English language only.
2. In the cases provided in Article 24(2), an NCA shall provide to the ECB a draft decision or any other document which is intended to be finally addressed to a supervised entity or other person (hereinafter an ‘NCA document’) in the English language only.
3. By way of derogation from paragraph 1(a), an NCA shall provide to the ECB an NCA document in an official language of the Member State of the NCA:
 - (a) if the NCA has to prepare a draft decision addressed to a supervised entity or other person that may be ultimately adopted by the ECB in accordance with Articles 14 or 15 of the SSM Regulation;
 - (b) if, on request of the ECB, an NCA has to prepare a draft decision addressed to a significant supervised entity or significant supervised group for the ECB;
 - (c) if, on its own initiative, an NCA prepares a draft decision addressed to a significant supervised entity or significant supervised group for consideration by the ECB;
 - (d) if an NCA provides to the ECB a material draft supervisory decision addressed to a less significant supervised entity or group so that the ECB can express its views; or
 - (e) if an NCA provides to the ECB a draft of any other document which is intended to be finally addressed to a supervised entity so that the ECB can express its views.

In addition, the NCA shall provide the ECB with:

- (i) in the cases of (a) to (e) above, an explanatory memorandum in English, explaining the background and substance of the case and summarising the deliberations underlying the draft decision or document;
 - (ii) in the cases of (a) to (c) above, a translation of the draft decision into the English language unless such NCA document is in the English language.
4. If an NCA has received a document from a supervised entity or legal or natural person (hereinafter a ‘non-NCA document’) and is obliged to forward it to the ECB, it shall forward such non-NCA document to the ECB in its original language.
5. On request of the ECB, an NCA that has forwarded a non-NCA document to the ECB in connection with the ECB’s tasks under the SSM Regulation, shall prepare an English summary of the non-NCA document.

Article 24

Language regime between the ECB and legal or natural persons, including supervised entities

1. Any document which a supervised entity or any other legal or natural person individually subject to ECB supervisory procedures sends to the ECB may be drafted in any one of the official languages of the Union, chosen by the supervised entity or person.
2. The ECB, supervised entities and any other legal or natural person individually subject to ECB supervisory procedures may exclusively use the English language in their written communication, including with regard to legal acts, if they expressly agree to do so.

The ECB shall seek an explicit agreement on the use of the English language with significant supervised entities.

The revocation of such agreement on the use of the English language shall only affect the aspects of the ECB supervisory procedure which have not yet been carried out.

Participants in an oral hearing may request to be heard in a Union official language other than the language of the ECB supervisory procedure. In that case, interpretation will be provided during the oral hearing, as long as sufficient advance notice of this requirement is given to the ECB.

3. ECB supervisory decisions addressed to one or more supervised entities, supervised groups or other persons, except in the cases set out in paragraph 2 shall be adopted by the ECB in the English language and the official language of the Member State in which each addressee has its head office or is domiciled. Where the relevant Member State has more than one official language, decisions shall be adopted in one of these languages. If the addressee has its head office or is domicile outside the Union, the ECB supervisory decision shall be adopted in the English language and in the language chosen pursuant to paragraph 1. If a decision is taken on

an application of a supervised entity, the decision shall be adopted in the English language and in the language used in the application.

4. When an ECB legal act is adopted in the English language and in any other official language of the Union, all language versions shall be equally authentic.

Title 2

General provisions relating to due process for adopting ECB supervisory decisions

Chapter 1

ECB supervisory procedures

Article 25

General principles

1. Any ECB supervisory procedures initiated in accordance with Article 4 and Section 2 of Chapter III of the SSM Regulation and with Part IV of this Regulation shall be carried out in accordance with Article 22 of the SSM Regulation and the provisions of this Title.
2. The provisions of this Title shall not apply to procedures carried out by the Administrative Board of Review.

Article 26

Parties

1. Parties to an ECB supervisory procedure shall be:
 - (a) those making an application;
 - (b) those to which the ECB intends to address or has addressed an ECB supervisory decision.
2. NCAs are deemed not to be parties.

Article 27

Representation of a party

1. A party may be represented by its legal or statutory representatives or by any other representative empowered by written mandate to take any and all actions relating to the ECB supervisory procedure.
2. Any revocation of the mandate shall only be effective on the ECB's receipt of a written revocation. The ECB shall acknowledge receipt of such revocation.
3. Where a party has appointed a representative in an ECB supervisory procedure, the ECB shall contact only the appointed representative in that supervisory procedure unless the particular circumstances require that the ECB contact the party directly. In the latter case, the representative shall be informed.

Article 28

General obligations of the ECB and parties to an ECB supervisory procedure

1. An ECB supervisory procedure may be initiated *ex officio* or at the request of a party. Subject to paragraph 3, the ECB shall determine the facts which will be relevant when adopting its final decision in each ECB supervisory procedure *ex officio*.
2. In its assessment, the ECB shall take account of all relevant circumstances.
3. Subject to Union law, a party shall be required to participate in an ECB supervisory procedure and to provide assistance to clarify the facts. In ECB supervisory procedures initiated on the request of a party, the ECB may limit its determination of the facts to requesting the party to provide the relevant factual information.

Article 29

Evidence in ECB supervisory procedures

1. In order to ascertain the facts of a case, the ECB shall make use of such evidence as, after due consideration, it deems appropriate.
2. The parties shall, subject to Union law, assist the ECB in ascertaining the facts of the case. In particular, subject to the limits relating to sanctioning procedures under Union law, the parties shall state truthfully the facts known to them.
3. The ECB may set a time limit by which evidence may be provided by the parties.

Article 30

Witnesses and experts in ECB supervisory procedures

1. The ECB may hear witnesses and experts if it deems it necessary.
2. When the ECB appoints an expert it shall define that expert's task in an agreement and set a time limit within which the expert shall submit his report.
3. When the ECB hears witnesses or experts, they shall be entitled on application to reimbursement of their travel and subsistence expenses. Witnesses shall be entitled to compensation for loss of earnings and experts to the agreed fees for their service after they have provided their statements. The compensation shall be provided in accordance with the appropriate provisions applying to the compensation of witnesses and remuneration of experts respectively by the Court of Justice of the European Union.
4. The ECB may require that the persons mentioned in Article 11(1)(c) of the SSM Regulation, attend as witnesses in the offices of the ECB or any other place in a participating Member State determined by the ECB. Where a person mentioned in Article 11(1)(c) of the SSM Regulation is a legal person, the natural persons representing such legal person shall be obliged to attend pursuant to the preceding sentence.

Article 31

Right to be heard

1. Before the ECB may adopt an ECB supervisory decision addressed to a party which would adversely affect the rights of such party, the party must be given the opportunity of commenting in writing to the ECB on the facts and objections relevant to the ECB supervisory decision. If the ECB deems it appropriate it may give the parties the opportunity to comment on the facts and objections relevant to the ECB supervisory decision in a meeting. The notification by which the ECB gives the party the opportunity to provide its comments shall mention the material content of the intended ECB supervisory decision and the material facts and objections on which the ECB intends to base its decision. Section 1 of Chapter III of the SSM Regulation shall not be subject to the provisions of this Article.
2. If the ECB gives a party the opportunity to comment on the facts and objections relevant to the ECB supervisory decision in a meeting, unless duly excused, the absence of the party is not a reason to postpone the meeting. If the party is duly excused, the ECB may postpone the meeting or give the party the opportunity to comment on the facts and objections relevant to the supervisory decision in writing. The ECB shall prepare written minutes of the meeting that shall be signed by the parties; it shall provide a copy of the minutes to the parties.

3. The party shall, in principle, be given the opportunity to provide its comments in writing within a time limit of two weeks following receipt of a statement mentioning the facts and objections on which the ECB intends to base the adoption of the ECB supervisory decision.

On application of the party, the ECB may extend the time limit as appropriate.

In particular circumstances, the ECB may shorten the time limit to three working days. The time limit shall also be shortened to three working days in the situations covered by Articles 14 and 15 of the SSM Regulation.

4. Notwithstanding paragraph 3, and subject to paragraph 5, the ECB may adopt an ECB supervisory decision addressed to a party which would directly and adversely affect the rights of such party without giving the party the opportunity to comment on the facts and objections relevant to the ECB supervisory decision prior to its adoption if an urgent decision appears necessary in order to prevent significant damage to the financial system.
5. If an urgent ECB supervisory decision is adopted in accordance with paragraph 4, the party shall be given the opportunity to comment in writing on the facts and objections relevant to the ECB supervisory decision without undue delay after its adoption. The party shall, in principle, be given the opportunity to provide its comments in writing within a time limit of two weeks after receipt of the ECB supervisory decision. On application of the party the ECB may extend the time limit; the time limit may not exceed six months. The ECB shall review the ECB supervisory decision in the light of the party's comments and may either confirm it, revoke it, amend it or revoke it and replace it by a new ECB supervisory decision.
6. For ECB supervisory procedures relating to penalties pursuant to Article 18 of the SSM Regulation, paragraphs 4 and 5 shall not apply.

Article 32

Access to files in an ECB supervisory procedure

1. The rights of defence of the parties concerned shall be fully respected in ECB supervisory procedures. For this purpose, and after the opening of the ECB supervisory procedure, the parties shall be entitled to have access to the ECB's file, subject to the legitimate interest of legal and natural persons other than the relevant party, in the protection of their business secrets. The right of access to the file shall not extend to confidential information. The NCAs shall forward to the ECB, without undue delay, any request received related to the access to files connected with ECB supervisory procedures.
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. For the purposes of this Article, confidential information shall include in particular:

- (a) internal documents of the ECB or an NCA; and
 - (b) correspondence between the ECB and an NCA or between NCAs.
4. Nothing in this Article shall prevent the ECB or NCAs from disclosing and using information necessary to prove an infringement.
 5. 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 a 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.

Chapter 2

ECB supervisory decisions

Article 33

Motivation of ECB supervisory decisions

1. Subject to paragraph 2, an ECB supervisory decision shall be accompanied by a statement of the reasons for that decision.
2. The statement of reasons shall contain the material facts and legal reasons on which the ECB has based its decision.
3. Subject to Article 31(4), the ECB shall base a decision only on facts and objections on which a party has been able to comment.

Article 34

Suspensory effect

Without prejudice to Article 278 TFEU and Article 24(8) of the SSM Regulation, the ECB may decide that the application of an ECB supervisory decision is suspended either (a) by stating it in the supervisory decision, or (b) in cases other than a request for review by the Administrative Board of Review, on request of the addressee of a supervisory decision.

Article 35

Notification of ECB supervisory decisions

1. The ECB may notify a supervisory decision to a party (a) orally, (b) by serving or delivering by hand a copy of the supervisory decision, (c) by registered mail with a form for acknowledgment, (d) by express courier service, (e) by fax, or (f) electronically, in accordance with paragraph 10.
2. If a representative is appointed, the ECB may notify the ECB supervisory decision to the representative. In such cases the ECB is not obliged to also notify the ECB supervisory decision to the supervised entity represented by such representative.
3. In the case of an oral notification of an ECB supervisory decision, notification of the decision shall be deemed to be served on the addressee if a member of the staff of the ECB has informed (a) the relevant natural person, in the case of a natural person and (b) an authorised receiving agent of the legal person of the ECB supervisory decision, in the case of a legal person. In such case without undue delay after such oral notification a written copy of the ECB supervisory decision shall be provided to the addressee.
4. In the case of a notification of an ECB supervisory decision by registered mail with a form for acknowledgment, notification of the ECB supervisory decision shall be deemed to be served on the addressee on the 10th day after the letter has been handed over to the mail provider, unless it is shown by the acknowledgement of receipt that the letter was received on a different date.
5. In the case of service of an ECB supervisory decision by express courier service, notification of the ECB supervisory decision shall be deemed to be served on the addressee on the 10th day after the letter has been handed over to the courier service, unless it is shown by the delivery document of the courier service that the letter was received on a different date.
6. Paragraphs 4 and 5 require the ECB supervisory decision to be addressed to an address suitable for service (valid address). A valid address is:
 - (a) in the case of an ECB supervisory procedure initiated on a request or application of the addressee of an ECB supervisory decision, the address provided by the addressee in its request or application;
 - (b) in the case of a supervised entity, the last business address of the head office provided to the ECB by the supervised entity;
 - (c) in the case of a natural person, the last address provided to the ECB and if no address is provided to the ECB and the natural person is an employee, a manager or a shareholder of a supervised entity, the business address of the supervised entity in accordance with (b).
7. Each person that is party to an ECB supervisory procedure shall provide to the ECB on request a valid address.
8. If a person is established or domiciled in a State that is not a Member State, the ECB may require the party to name, within a reasonable period of time, an authorised recipient who is resident in a Member State or who has business premises in a Member State. Should no authorised recipient be named upon such request and until such authorised recipient is named

respectively, any communication may be served in accordance with paragraphs 3 to 5 and 9 to the address of the party available to the ECB.

9. Where the person who is the addressee of an ECB supervisory decision has provided a fax number to the ECB, the ECB may notify an ECB supervisory decision by transmitting a copy of the ECB supervisory decision by telefax. The ECB supervisory decision is deemed to be notified to the addressee if the ECB has received a completion report on the successful delivery of the telefax.
10. The ECB may, by way of a decision without addressees, determine the criteria under which an ECB supervisory decision may be served by electronic means of communication. That decision shall be published.

Title 3

Reporting of breaches

Article 36

Reporting of breaches

Any person, in good faith, may submit a report directly to the ECB if that person has reasonable grounds for believing that the report will show breaches of the legal acts referred to in Article 4(3) of the SSM Regulation by credit institutions, financial holding companies, mixed financial holding companies or competent authorities (including the ECB itself).

Article 37

Appropriate protection for reports of breaches

1. Where a person makes a report in good faith about alleged breaches of the legal acts referred to in Article 4(3) of the SSM Regulation by supervised entities or competent authorities, the report shall be treated as a protected report.
2. All personal data concerning both the person who makes a protected report and the person who is allegedly responsible for a breach shall be protected in compliance with the applicable Union data protection framework.
3. The ECB shall not reveal the identity of a person who has made a protected report without first obtaining that person's explicit consent, unless such disclosure is required by a court order in the context of further investigations or subsequent judicial proceedings.

Article 38

Procedures for the follow-up of reports

1. The ECB shall assess all reports relating to significant supervised entities and reports relating to less significant supervised entities in respect of breaches of ECB regulations or decisions. In such cases, when NCAs receive these reports, they shall forward the reports to the ECB, without communicating the identity of the person who made the report, unless such person provides their explicit consent.
2. Without prejudice to paragraph 1, the ECB shall forward reports concerning a less significant supervised entity to the relevant NCA, without communicating the identity of the person who made the report, unless such person provides their explicit consent.
3. The ECB shall exchange information with NCAs: (a) in order to assess if the reports were sent to both the ECB and the relevant NCA and to coordinate efforts; and (b) to know the outcome of the follow-up of the reports forwarded to the NCAs.
4. The ECB shall use reasonable discretion when determining how to assess the reports received and the actions to be taken.
5. In case of alleged breaches by supervised entities, the relevant supervised entity shall provide to the ECB on request any information and documents requested by the ECB in order to assess the reports received.
6. Concerning alleged breaches by competent authorities (other than the ECB), the ECB shall request the relevant competent authority to provide their comments on the facts reported.
7. In its annual report, as described in Article 20(2) of the SSM Regulation, the ECB shall provide information on the reports received in abridged or aggregated form, such that individual supervised entities or persons cannot be identified.

PART IV

DETERMINING THE STATUS OF A SUPERVISED ENTITY AS SIGNIFICANT OR LESS SIGNIFICANT

Title 1

General provisions relating to the classification as significant or less significant

Article 39

Classifying a supervised entity on an individual basis as significant

1. A supervised entity shall be considered a significant supervised entity if the ECB so determines in an ECB supervisory decision addressed to the relevant supervised entity pursuant to Articles 43 to 49, explaining the underlying reasons for such decision.
2. A supervised entity shall cease to be classified as a significant supervised entity if the ECB determines, in an ECB supervisory decision addressed to the entity explaining the underlying reasons for such decision, that it is a less significant supervised entity or is no longer a supervised entity.
3. A supervised entity can be classified a significant supervised entity on the basis of any of the following:
 - (a) its size, as determined in accordance with Articles 50 to 55 (hereinafter the ‘size criterion’);
 - (b) its importance for the economy of the Union or any participating Member State, as determined in accordance with Articles 56 to 58 (hereinafter the ‘economic importance criterion’);
 - (c) its significance with regard to cross-border activities, as determined in accordance with Articles 59 and 60 (hereinafter the ‘cross-border activities criterion’);
 - (d) a request for or the receipt of direct public financial assistance from the European Stability Mechanism (ESM), as determined in accordance with Articles 61 to 64 (hereinafter the ‘direct public financial assistance criterion’);
 - (e) the fact that the supervised entity is one of the three most significant credit institutions in a participating Member State, as determined in accordance with Article 65 and 66 (hereinafter the ‘three most significant credit institutions criterion’).
4. Significant supervised entities shall be directly supervised by the ECB unless particular circumstances justify supervision by the relevant NCA in accordance with Title 9 of this Part.

5. The ECB shall also directly supervise a less significant supervised entity or a less significant supervised group under an ECB supervisory decision adopted pursuant to Article 6(5)(b) of the SSM Regulation to the effect that the ECB will exercise directly all relevant powers referred to in Article 6(4) of the SSM Regulation. For the purposes of the SSM, such a less significant supervised entity or less significant supervised group shall be classified as significant.
6. Prior to taking the decisions referred to in this Article, the ECB shall consult with the relevant NCAs. Each ECB supervisory decision referred to in this Article shall also be notified to the relevant NCAs.

Article 40

Classifying supervised entities which are part of a group as significant

1. If one or more supervised entities are part of a supervised group, the criteria for determining significance shall be determined at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Titles 3 to 7 of Part IV.
2. Each of the supervised entities forming part of a supervised group shall be deemed to be a significant supervised entity in any of the following circumstances:
 - (a) if the supervised group at its highest level of consolidation within the participating Member States fulfils the size criterion, the economic importance criterion, or the cross border activities criterion;
 - (b) if one of the supervised entities forming part of the supervised group fulfils the direct public financial assistance criterion;
 - (c) if one of the supervised entities forming part of the supervised group is one of the three most significant credit institutions in a participating Member State.
3. Where a supervised group is determined to be significant or is determined to be no longer significant, the ECB shall adopt an ECB supervisory decision on the classification as a significant supervised entity, or on the lifting of the classification as a significant supervised entity, and shall provide the beginning and end dates of direct supervision by the ECB to each supervised entity forming part of the supervised group in question in accordance with the criteria and procedures provided for in Article 39.

Article 41

Specific provisions in respect of branches of credit institutions established in non-participating Member States

1. All branches opened in the same participating Member State by a credit institution which is established in a non-participating Member State shall be deemed to be a single supervised entity for the purposes of this Regulation.
2. Branches opened in different participating Member States by a credit institution which is established in a non-participating Member State shall be treated individually as separate supervised entities for the purposes of this Regulation.
3. Branches of a credit institution which is established in a non-participating Member State shall be assessed individually as separate supervised entities, and separately from subsidiaries of the same credit institution, when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation is fulfilled. Paragraph 1 remains unaffected.

Article 42

Specific provisions in respect of subsidiaries of credit institutions established in non-participating Member States and third countries

1. Subsidiaries established in one or more participating Member States by a credit institution that has its head office in a non-participating Member State or third country shall be assessed separately from the branches of that credit institution when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation is fulfilled.
2. Subsidiaries that: (a) are established in a participating Member State, (b) belong to a group whose parent undertaking has its head office in a non-participating Member State or a third country, and (c) do not belong to a supervised group within participating Member States shall be assessed separately when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation are fulfilled.

Title 2

Procedure for classifying supervised entities as significant supervised entities

Chapter 1

Classifying a supervised entity as significant

Article 43

Review of the status of a supervised entity

1. Unless otherwise provided for in this Regulation, the ECB shall review, on at least an annual basis, whether a significant supervised entity or a significant supervised group continues to fulfil any of the criteria provided for in Article 6(4) of the SSM Regulation.
2. Unless otherwise provided for in this Regulation, each NCA shall review, on at least an annual basis, whether a less significant supervised entity or a less significant supervised group continues to fulfil any of the criteria provided for in Article 6(4) of the SSM Regulation. In the case of a less significant supervised group, the relevant NCA of the participating Member State in which the parent undertaking, determined at the highest level of consolidation within the participating Member States, is established shall carry out this review.
3. The ECB may review, at any time after it receives relevant information, (a) whether a supervised entity fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation and (b) whether a significant supervised entity no longer fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation.
4. If an NCA assesses that a less significant supervised entity or a less significant supervised group fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation, the relevant NCA shall, without undue delay, inform the ECB.
5. At the request of the ECB or an NCA, the ECB and the relevant NCA shall cooperate in determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation are fulfilled in respect of a supervised entity or a supervised group.
6. If the ECB (a) decides to assume the direct supervision of a supervised entity or supervised group or (b) decides that the direct supervision of a supervised entity or supervised group by the ECB shall end, the ECB and the relevant NCA shall cooperate in order to ensure the smooth transition of supervisory competences. In particular, a report setting out the supervisory history and risk profile of the supervised entity shall be prepared by the relevant NCA when the ECB assumes the direct supervision of a supervised entity, and by the ECB when the relevant NCA becomes competent to supervise the entity concerned.
7. The ECB shall determine whether a supervised entity or a supervised group is significant using the criteria provided for in Article 6(4) of the SSM Regulation in the order set out therein namely: (a) size; (b) importance for the economy of the Union or any participating Member State; (c) significance of cross-border activities; (d) request for or receipt of public financial assistance directly from the ESM; (e) the fact that it is one of the three most significant credit institutions in a participating Member State.

Article 44

Procedure to be applied in determining the significance of a supervised entity

1. The ECB shall notify in writing, within the timeframe laid down in Article 45, an ECB supervisory decision on the classification as significant of a supervised entity or a supervised group to each supervised entity concerned and shall also communicate that decision to the relevant NCA.
2. For supervised entities that are not notified by the ECB pursuant to paragraph 1, the list referred to in Article 49(2) shall serve as notification of their classification as less significant.
3. The ECB shall give each relevant supervised entity the opportunity to make submissions in writing prior to the adoption of an ECB supervisory decision pursuant to paragraph 1.
4. The ECB shall, in addition, give the relevant NCAs, in accordance with Article 39(6), the opportunity to provide observations and comments in writing, and these shall be duly considered by the ECB.
5. A supervised entity or a supervised group shall be classified as a significant supervised entity or a significant supervised group from the date of notification of the ECB supervisory decision determining that it is a significant supervised entity or a significant supervised group.

Chapter 2

Beginning and end of direct supervision by the ECB

Article 45

Beginning of direct supervision by the ECB

1. The ECB shall specify in an ECB supervisory decision the date on which it is to assume direct supervision of a supervised entity that has been classified as a significant supervised entity. That decision may be the same decision as the one referred to in Article 44(1). Subject to paragraph 2 the ECB shall notify that decision to each supervised entity concerned at least one month prior to the date on which it will assume direct supervision.
2. If the ECB assumes direct supervision of a supervised entity or a supervised group either on the basis of a request for or receipt of direct public financial assistance from the ESM, the ECB shall notify the decision referred to in paragraph 1 to each supervised entity concerned in due time, at least one week prior to the date on which it will assume direct supervision.
3. The ECB shall provide copies of the decisions referred to in paragraph 1 to the relevant NCAs.
4. The ECB shall assume direct supervision of a supervised entity at the latest 12 months after the date on which the ECB notifies to that supervised entity an ECB supervisory decision pursuant to Article 44(1).

Article 46

End of direct supervision by the ECB

1. When the ECB determines that direct supervision by the ECB of a supervised entity or a supervised group will end, the ECB shall issue an ECB supervisory decision to each supervised entity concerned specifying the date and reasons why the direct supervision will end. The ECB shall adopt such decision at least one month prior to the date on which direct supervision by the ECB will end. The ECB shall also provide a copy of this decision to the relevant NCAs.
2. Before a decision pursuant to paragraph 1 is issued, the supervised entities concerned may make submissions in writing.
3. Any ECB supervisory decision specifying the date on which direct supervision of a supervised entity by the ECB is to end may be issued together with the decision classifying that supervised entity as less significant.

Article 47

Reasons for ending direct supervision by the ECB

1. In the case of a significant supervised entity that is classified as such on the basis of its (a) size, (b) importance for the economy of the Union or any participating Member State, or (c) significance of cross border activities, or because it is part of a supervised group that fulfils at least one of these criteria, the ECB shall adopt an ECB supervisory decision ending its classification as a significant supervised entity and direct supervision if, for three consecutive calendar years, none of the above criteria provided for in Article 6(4) of the SSM Regulation has been met either on an individual basis or by the supervised group to which the supervised entity belongs.
2. In the case of a supervised entity that is classified as significant on the basis that direct public financial assistance from the ESM has been requested in respect of (a) itself, (b) the supervised group to which the supervised entity belongs, or (c) any supervised entity belonging to that group and which is not significant on other grounds, the ECB shall adopt an ECB supervisory decision ending its classification as a significant supervised entity and direct supervision, if the direct public financial assistance has been denied, fully returned or is terminated. Such decision may, in the case of the return or termination of direct public financial assistance, only be taken three calendar years after the complete return or termination of direct public financial assistance.
3. In the case of a supervised entity that is classified as significant on the basis that it is one of the three most significant credit institutions in a participating Member State, as determined in accordance with Articles 65 to 66, or belongs to the supervised group of such a credit institution, and which is not significant on other grounds, the ECB shall adopt an ECB supervisory decision ending its classification as a significant supervised entity and direct

supervision if, for three consecutive calendar years, the relevant supervised entity has not been one of the three most significant credit institutions in a participating Member State.

4. In the case of a supervised entity that is directly supervised by the ECB under an ECB supervisory decision adopted pursuant to Article 6(5)(b) of the SSM Regulation and which is not significant on other grounds, the ECB shall adopt an ECB supervisory decision ending direct supervision by the ECB if direct supervision in its reasonable discretion is no longer necessary to ensure consistent application of high supervisory standards.

Article 48

Pending procedures

1. If a change in competence between the ECB and an NCA is to take place, the authority whose competence is to end (hereinafter the ‘authority whose competence ends’) shall inform the authority which is to become competent (hereinafter the ‘the authority assuming supervision’) of any supervisory procedure formally initiated, which requires a decision. The authority whose competence ends shall provide this information immediately after becoming aware of the imminent change in competence. The authority whose competence ends shall update this information on a continual basis, and as a general rule on a monthly basis, when there is new information on a supervisory procedure to report. The authority assuming supervision may, in duly justified cases, allow reporting on a less frequent basis. For the purpose of Articles 48 and 49, a supervisory procedure shall mean an ECB or NCA supervisory procedure.

Prior to the change in competence, the authority whose competence ends shall liaise with the authority assuming supervision without undue delay after the formal initiation of any new supervisory procedure which requires a decision.

2. If the supervisory competence changes, the authority whose competence ends shall undertake efforts to complete any pending supervisory procedure which requires a decision prior to the date on which the change in the supervisory competence is to occur.
3. If a formally initiated supervisory procedure, which requires a decision, cannot be completed prior to the date on which a change in the supervisory competence occurs, the authority whose competence ends shall remain competent to complete such pending supervisory procedure. For this purpose, the authority whose competence ends shall also retain all relevant powers until the supervisory procedure has been completed. The authority whose competence ends shall complete the pending supervisory procedure in question in accordance with the applicable law under its retained powers. The authority whose competence ends shall inform the authority assuming supervision prior to taking any decision in a supervisory procedure which was pending prior to the change in competence. It shall provide to the authority assuming supervision a copy of the decision taken and any relevant documents relating to that decision.

4. By way of derogation from paragraph 3, the ECB may decide within one month of receiving the information necessary to complete its assessment on the relevant formally initiated supervisory procedure, and in consultation with the relevant NCA, to take over the supervisory procedure concerned. If, due to reasons of national law, an ECB supervisory decision is required prior to the end of the assessment period referred to in the preceding sentence, the NCA shall provide the ECB with the necessary information and specify in particular the timeframe within which the ECB has to decide whether or not it intends to take over the procedure. Where the ECB takes over a supervisory procedure, it shall notify the relevant NCA and the parties of its decision to take over the supervisory procedure concerned.
5. The ECB and the relevant NCA shall cooperate with regard to the completion of any pending procedure and may exchange any relevant information for this purpose.
6. This Article shall not apply to common procedures.

Chapter 3

List of supervised entities

Article 49

Publication

1. The ECB shall publish a list containing the name of each supervised entity or supervised group which is directly supervised by the ECB and the specific legal basis for such direct supervision. The list shall include, in the case of a classification as significant on the basis of the size criterion, the total value of the supervised entity's or the supervised group's assets. The ECB shall also publish the name of supervised entities which, although they meet one of the criteria referred to in Article 6(4) of the SSM Regulation and would therefore qualify as significant, are nevertheless considered less significant by the ECB because of particular circumstances in accordance with Title 9 of Part IV, and therefore are not directly supervised by the ECB.
2. The ECB shall publish a list containing the name of each supervised entity which is supervised by an NCA and the name of the relevant NCA.
3. The lists referred to in paragraphs 1 and 2 shall be published electronically and shall be accessible on the ECB's website.
4. The lists referred to in paragraphs 1 and 2 shall be updated on a regular basis, and at least every quarter.

Title 3

Determining significance on the basis of size

Article 50

Determining significance on the basis of size

1. Whether or not a supervised entity or a supervised group is significant on the basis of the size criterion shall be determined by reference to the total value of its assets.
2. A supervised entity or a supervised group shall be classified as significant if the total value of its assets exceeds EUR 30 billion (hereinafter ‘size threshold’).

Article 51

Basis for determining whether or not a supervised entity is significant on the basis of size

1. If the supervised entity is part of a supervised group, the total value of its assets shall be determined on the basis of the year-end prudential consolidated reporting for the supervised group in accordance with applicable law.
2. If total assets cannot be determined on the basis of the data referred to in paragraph 1, the total value of assets shall be determined on the basis of the most recent audited consolidated annual accounts prepared in accordance with IFRS and, if those annual accounts are not available, the consolidated annual accounts prepared in accordance with applicable national accounting laws.
3. If the supervised entity is not part of a supervised group, the total value of assets shall be determined on the basis of the year-end prudential individual reporting in accordance with applicable law.
4. If total assets cannot be determined using the data referred to in paragraph 3, the total value of assets shall be determined on the basis of the most recent audited annual accounts prepared in accordance with IFRS, as applicable within the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council¹³ and, if those annual accounts are not available, the annual accounts prepared in accordance with applicable national accounting laws.

¹³ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p.1).

5. If the supervised entity is a branch of a credit institution which is established in a non-participating Member State, the total value of its assets shall be determined on the basis of the statistical data reported pursuant to Regulation (EC) No 25/2009 (ECB/2008/32).

Article 52

Basis for determining significance on the basis of size in specific or exceptional situations

1. If, in respect of a less significant supervised entity, there is an exceptional substantial change in circumstances relevant for determining significance on the basis of the size criterion, the relevant NCA shall review whether or not the size threshold continues to be met.

If such a change occurs in respect of a significant supervised entity, the ECB shall review whether or not the size threshold continues to be met.

An exceptional substantial change in circumstances relevant for determining significance on the basis of the size criterion shall include any of the following: (a) the merger of two or more credit institutions, (b) the sale or transfer of a substantial business division, (c) the transfer of shares in a credit institution such that it no longer belongs to a supervised group to which it belonged prior to the sale, (d) the final decision to carry out an orderly winding up of the supervised entity (or group), (e) comparable factual situations.

2. A less significant supervised entity, and, in the case of a less significant supervised group, the less significant supervised entity at the highest level of consolidation within the participating Member States shall inform the relevant NCA of any change as referred to in paragraph 1.

A significant supervised entity and, in the case of a significant supervised group, the supervised entity at the highest level of consolidation within the participating Member States shall inform the ECB of any change as referred to in paragraph 1.

3. By way of derogation from the three-year rule provided for in Article 47(1), and in the case of exceptional changes in circumstances as referred to in paragraph 1, the ECB shall decide, in consultation with NCAs, whether the affected supervised entities are significant or less significant and the date from which supervision shall be carried out by the ECB or NCAs.

Article 53

Groups of consolidated undertakings

1. For the purpose of determining significance on the basis of the size criterion, the supervised group of consolidated undertakings shall consist of the undertakings which have to be consolidated for prudential purposes in accordance with Union law.
2. For the purpose of determining significance on the basis of the size criterion, the supervised group of consolidated undertakings shall include subsidiaries and branches in (a) non-participating Member States, and (b) third countries.

Article 54

Method of consolidation

The method of consolidation shall be the method of consolidation applicable in accordance with Union law for prudential purposes.

Article 55

Method for calculating total assets

For the purpose of determining the significance of a credit institution on the basis of the size criterion, the ‘total value of assets’ shall be derived from the line ‘total assets’ on a balance sheet prepared in accordance with Union law for prudential purposes.

Title 4

Determining significance on the basis of importance for the economy of the Union or any participating Member State

Article 56

National economic importance threshold

A supervised entity established in a participating Member State or a supervised group whose parent undertaking is established in a participating Member State shall be classified as significant on the basis of its importance for the economy of the relevant participating Member State if:

A : B \geq 0,2 (national economic importance threshold) and

A \geq EUR 5 billion

whereby

A is the total value of assets determined in accordance with Articles 51 to 55 for a given calendar year, and

B is the gross domestic product at market prices as defined in point 8.89 of Annex A to 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 Union¹⁴ (ESA 2010) and published by Eurostat for the given calendar year.

Article 57

Criteria for determining significance on the basis of importance for the economy of the Union or any participating Member State

1. The ECB shall take into account the following criteria, in particular, when assessing whether or not a supervised entity or a supervised group is significant for the economy of the Union or a participating Member State for reasons other than those set out in Article 56:
 - (a) the significance of the supervised entity or supervised group for specific economic sectors in the Union or a participating Member State;
 - (b) the interconnectedness of the supervised entity or supervised group with the economy of the Union or a participating Member State;
 - (c) the substitutability of the supervised entity or supervised group as both a market participant and client service provider;
 - (d) the business, structural and operational complexity of the supervised entity or supervised group.
2. Article 52(3) shall apply accordingly.

Article 58

Determining significance on the basis of importance for the economy of any participating Member State at the request of an NCA

1. An NCA may notify the ECB that it considers a supervised entity to be significant with regard to its domestic economy.
2. The ECB shall assess the NCA's notification on the basis of the criteria set out in Article 57(1).
3. Article 57 shall apply accordingly.

¹⁴ OJ L 174, 26.6.2013, p. 1

Title 5

Determining significance on the basis of the significance of cross-border activities

Article 59

Criteria for determining significance on the basis of the significance of cross-border activities of a supervised group

1. A supervised group may be considered significant by the ECB on the basis of its cross-border activities only when the parent undertaking of a supervised group has established subsidiaries, which are themselves credit institutions, in more than one other participating Member State.
2. A supervised group may be considered significant by the ECB on the basis of its cross-border activities only if:
 - (a) the ratio of its cross-border assets to its total assets is above 10 %; or
 - (b) the ratio of its cross-border liabilities to its total liabilities is above 10 %.
3. Article 52(3) shall apply accordingly.

Article 60

Cross-border assets and liabilities

1. 'Cross border assets', in the context of a supervised group, means the part of the total assets in respect of which the counterparty is a credit institution or other legal or natural person located in a participating Member State other than the Member State in which the parent undertaking of the relevant supervised group has its head office.
2. 'Cross border liabilities', in the context of a supervised group, means the part of the total liabilities in respect of which the counterparty is a credit institution or other legal or natural person located in a participating Member State other than the Member State in which the parent undertaking of the relevant supervised group has its head office.

Title 6

Determining significance on the basis of a request for or the receipt of public financial assistance from the ESM

Article 61

Request for or receipt of direct public financial assistance from the ESM

1. Direct public financial assistance to a supervised entity is requested when a request is made by an ESM member for financial assistance to be granted by the ESM to that entity in accordance with a decision taken by the Board of Governors of the ESM under Article 19 of the Treaty establishing the European Stability Mechanism regarding the direct recapitalisation of a credit institution and with the instruments adopted under that decision.
2. Direct public financial assistance is received by a credit institution when the financial assistance has been received by the credit institution pursuant to the decision and instruments referred to in paragraph 1.

Article 62

Obligation of NCAs to inform the ECB of a possible request for or receipt of public financial assistance by a less significant supervised entity

1. Without prejudice to the obligation set out in Article 96 to inform the ECB of the deterioration of the financial situation of a less significant supervised entity, the NCA shall inform the ECB as soon as it becomes aware of the possible need for public financial assistance for a less significant supervised entity to be granted at national level indirectly from the ESM and/or by the ESM.
2. The NCA shall submit its assessment on the financial situation of the less significant supervised entity to the ECB, for its consideration, before submitting it to the ESM, except in duly justified cases of urgency.

Article 63

Beginning and end of direct supervision

1. A supervised entity in respect of which direct public financial assistance is requested from the ESM or which has received direct public financial assistance from the ESM shall be classified as a significant supervised entity from the date on which direct public financial assistance was requested on its behalf.
2. The date on which the ECB shall assume the direct supervision shall be specified in an ECB supervisory decision in accordance with Title 2.
3. Article 52(3) shall apply accordingly.

Article 64

Scope

If direct public financial assistance is requested in respect of a supervised entity which is part of a supervised group, all supervised entities which are part of that supervised group shall be classified as significant.

Title 7

Determining significance on the basis that the supervised entity is one of the three most significant credit institutions in a participating Member State

Article 65

Criteria for determining the three most significant credit institutions in a participating Member State

1. A credit institution or a supervised group shall be classified as significant if it is one of the three most significant credit institutions or supervised groups in a participating Member State.
2. For the purposes of identifying the three most significant credit institutions or supervised groups in a participating Member State, the ECB and the relevant NCA shall take into account the size of the supervised entity and supervised group respectively, as determined in accordance with Articles 50 to 55.

Article 66

Review process

1. With regard to each participating Member State, the ECB shall establish by 1 October of each calendar year whether or not three credit institutions or supervised groups with a parent undertaking established in each participating Member State should be classified as significant supervised entities.
2. At the request of the ECB, the NCAs shall inform the ECB of the three most significant credit institutions or supervised groups established in their respective participating Member States by 1 October of the calendar year in question. The three most significant credit institutions or supervised groups shall be determined by the NCAs on the basis of the criteria laid down in Articles 50 to 55.
3. For each of the three most significant credit institutions or supervised groups in the participating Member States, the relevant NCA shall provide the ECB with a report setting out the

supervisory history and risk profile in each case, unless the credit institution or supervised group is already classified as significant.

On receipt of the information referred to in paragraph 2, the ECB shall carry out its own assessment. The ECB may, for this purpose, request the relevant NCA to provide any relevant information.

4. If, on 1 October of a given year, one or more of the three most significant credit institutions or supervised groups in a participating Member State are not classified as significant supervised entities, the ECB shall adopt a decision in accordance with Title 2 in respect of any of the three most significant credit institutions or supervised groups which are not classified as significant.
5. Article 52(3) shall apply accordingly.

Title 8

ECB decision to directly supervise less significant supervised entities pursuant to Article 6(5)(b) of the SSM Regulation

Article 67

Criteria for a decision pursuant to Article 6(5)(b) of the SSM Regulation

1. The ECB may, pursuant to Article 6(5)(b) of the SSM Regulation, decide at any time, by means of an ECB supervisory decision, to exercise directly the supervision of a less significant supervised entity or less significant supervised group where this is necessary to ensure consistent application of high supervisory standards.
2. Before taking the decision referred to in paragraph 1, the ECB shall take into account, inter alia, any of the following factors:
 - (a) whether or not the less significant supervised entity or less significant supervised group is close to meeting one of the criteria contained in Article 6(4) of the SSM Regulation;
 - (b) the interconnectedness of the less significant supervised entity or less significant supervised group with other credit institutions;
 - (c) whether or not the less significant supervised entity concerned is a subsidiary of a supervised entity which has its head office in a non-participating Member State or a third country and has established one or more subsidiaries, which are also credit institutions, or one or more branches in participating Member States, of which one or more is significant;
 - (d) the fact that instructions of the ECB have not been followed by the NCA;
 - (e) the fact that the NCA has not complied with the acts referred to in the first subparagraph of Article 4(3) of the SSM Regulation;

- (f) the fact that the less significant supervised entity has requested or received indirectly financial assistance from the EFSF or the ESM.

Article 68

Procedure for preparing a decision pursuant to Article 6(5)(b) of the SSM Regulation at the request of an NCA

1. The ECB shall, at the request of an NCA, assess whether or not it is necessary to exercise direct supervision in accordance with the SSM Regulation in respect of a less significant supervised entity or less significant supervised group in order to ensure the consistent application of high supervisory standards.
2. The NCA's request shall: (a) identify the less significant supervised entity or less significant supervised group in respect of which the NCA is of the view that the ECB should assume direct supervision, and (b) state why supervision of the less significant supervised entity or less significant supervised group by the ECB is necessary in order to ensure the consistent application of high supervisory standards.
3. The NCA's request shall be accompanied by a report indicating the supervisory history and risk profile of the relevant less significant supervised entity or less significant supervised group.
4. The ECB shall, if it does not fulfil the NCA's request, consult with the NCA concerned prior to its final assessment as to whether supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards.
5. If the ECB decides that direct supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards, it shall adopt an ECB supervisory decision in accordance with Title 2.

Article 69

Procedure for preparing decisions pursuant to Article 6(5)(b) of the SSM Regulation at the ECB's own initiative

1. The ECB may request an NCA to provide a report setting out the supervisory history and risk profile of a less significant supervised entity or less significant supervised group. The ECB shall specify the date by which it expects to receive such report.
2. The ECB shall consult with the NCA prior to its final assessment as to whether supervision of the less significant supervised entity or the less significant supervised group by the ECB is necessary in order to ensure the consistent application of high supervisory standards.

3. If the ECB concludes that direct supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards, it shall adopt an ECB supervisory decision in accordance with Title 2.

Title 9

Particular circumstances that may justify the classification of a supervised entity as less significant although the criteria for significance are fulfilled

Article 70

Particular circumstances leading to the classification of significant supervised entity as less significant

1. Particular circumstances, as referred to in the second and fifth subparagraphs of Article 6(4), of the SSM Regulation (hereinafter the ‘particular circumstances’) exist where there are specific and factual circumstances that make the classification of a supervised entity as significant inappropriate, taking into account the objectives and principles of the SSM Regulation and, in particular, the need to ensure the consistent application of high supervisory standards.
2. The term ‘particular circumstances’ shall be strictly interpreted.

Article 71

Assessment of the existence of particular circumstances

1. Whether particular circumstances exist that justify classifying what would otherwise be a significant supervised entity as less significant shall be determined on a case-by-case basis and specifically for the supervised entity or supervised group concerned, but not for categories of supervised entities.
2. Article 40 shall apply accordingly.
3. Articles 44 to 46 and Articles 48 and 49 shall apply accordingly. The ECB shall state in an ECB supervisory decision the reasons leading to its conclusion that particular circumstances exist.

Article 72

Review

1. The ECB shall, with the support of the relevant NCAs, review at least once a year whether particular circumstances continue to exist with respect to a supervised entity or a supervised group that is classified as less significant because of particular circumstances.
2. The supervised entity concerned shall provide any information and documents requested by the ECB in order to carry out a review as referred to in paragraph 1.
3. If the ECB considers that particular circumstances no longer exist it shall adopt an ECB supervisory decision addressed to the relevant supervised entity determining that it is significant and that no particular circumstances exist.
4. Title 2 of Part IV shall apply accordingly.

PART V
COMMON PROCEDURES

Title 1

Cooperation with regard to an application for an authorisation to take up the business of a credit institution

Article 73

Notification of the ECB of an application for an authorisation to take up the business of a credit institution

1. An NCA that receives an application for an authorisation to take up the business of a credit institution to be established in a participating Member State shall notify the ECB of the receipt of such application within 15 working days.
2. The NCA shall also inform the ECB of the time limit within which a decision on the application has to be taken and notified to the applicant in accordance with the relevant national law.
3. If the application is not complete, the NCA, either at its own initiative or at the ECB's request, shall ask the applicant to provide the required additional information. The NCA shall send any such additional information that it receives to the ECB within 15 working days following receipt thereof by the NCA.

Article 74

NCAs' assessment of applications

The NCA to which an application is submitted shall assess whether the applicant complies with all conditions for authorisation laid down in the relevant national law of the NCA's Member State.

Article 75

NCAs' decisions rejecting an application

NCAs shall reject applications that do not comply with the conditions for authorisation laid down in the relevant national law and send a copy of their decision to the ECB.

Article 76

NCAs' draft decisions on the authorisation to take up the business of a credit institution

1. If the NCA is satisfied that the application complies with all conditions for authorisation laid down in the relevant national law, it shall prepare a draft decision proposing that the ECB grant the applicant authorisation to take up the business of a credit institution (hereinafter a 'draft authorisation decision').
2. The NCA shall ensure that the draft authorisation decision is notified to the ECB and the applicant at least 20 working days before the end of the maximum assessment period provided for by the relevant national law.
3. The NCA may propose to attach recommendations, conditions and/or restrictions to a draft authorisation decision in accordance with national and Union law. In such cases, the NCA shall be responsible for assessing compliance with the conditions and/or restrictions.

Article 77

ECB's assessment of applications and hearing of applicants

1. The ECB shall assess the application on the basis of the conditions for authorisation laid down in the relevant Union law. If in its view these conditions are not met, the ECB shall give the applicant the opportunity to comment in writing on the facts and objections relevant to the assessment, in accordance with Article 31.
2. If a meeting is considered necessary and in any other cases that are duly justified, the ECB may extend the maximum period for deciding on an application in accordance with Article 14(3) of the SSM Regulation. The extension shall be notified to the applicant in accordance with Article 35 of this Regulation.

Article 78

ECB decisions on applications

1. The ECB shall take a decision on a draft authorisation decision it receives from the NCA within 10 working days, unless a decision on the extension of the maximum period has been taken in accordance with Article 77(2). It may support the draft authorisation decision and thereby agree to the authorisation or object to the draft authorisation decision.
2. The ECB shall base its decision on its assessment of the application, the draft authorisation decision and any comments provided by the applicant pursuant to Article 77.

3. The ECB shall adopt a decision granting authorisation if the applicant complies with all the conditions for the authorisation in accordance with the relevant Union law and national law of the Member State in which the applicant is established.
4. The decision granting authorisation shall cover the applicant's activities as a credit institution as provided for in the relevant national law , without prejudice to any additional requirements for authorisation under the relevant national law for activities other than the business of taking deposits or other repayable funds from the public and granting credits for its own account.

Article 79

Lapsing of the authorisation

The authorisation lapses in the situations referred to in Article 18(a) of Directive 2013/36/EU where the relevant national law so provides.

Title 2

Cooperation with regard to the withdrawal of an authorisation

Article 80

NCA's proposal to withdraw an authorisation

1. If the relevant NCA considers that a credit institution's authorisation should be withdrawn in whole or in part in accordance with relevant Union or national law, including a withdrawal at the credit institution's request, it shall submit to the ECB a draft decision proposing the withdrawal of the authorisation (hereinafter a 'draft withdrawal decision'), together with any relevant supporting documents.
2. The NCA shall coordinate with the national authority competent for the resolution of credit institutions (hereinafter the 'national resolution authority') with regard to any draft withdrawal decision that is relevant to the national resolution authority.

Article 81

ECB's assessment of a draft withdrawal decision

1. The ECB shall assess the draft withdrawal decision without undue delay. In particular, it shall take into account reasons for urgency put forward by the NCA.
2. The right to be heard as provided for in Article 31 shall apply.

Article 82

Assessment on the ECB's own initiative and consultation of NCAs

1. If the ECB becomes aware of circumstances that may warrant the withdrawal of an authorisation, it shall assess on its own initiative whether the authorisation should be withdrawn in accordance with the relevant Union law.
2. The ECB may consult at any time with the relevant NCAs. If the ECB intends to withdraw an authorisation, it shall consult with the NCA of the Member State where the credit institution is established at least 25 working days before the date on which it plans to make its decision. In duly justified urgent cases, the time limit for the consultation may be reduced to five working days.
3. If the ECB intends to withdraw an authorisation, it shall inform the relevant NCAs of any comments provided by the credit institution. The credit institution's right to be heard as provided for in Article 31 shall apply.
4. The ECB shall coordinate with the national resolution authority with regard to a proposal to withdraw an authorisation in accordance with Article 14(5) of the SSM Regulation. The ECB shall inform the NCA immediately after initiating contact with the national resolution authority.

Article 83

ECB decision on the withdrawal of an authorisation

1. The ECB shall take a decision on the withdrawal of an authorisation without undue delay. In doing so it may accept or reject the relevant draft withdrawal decision.
2. In taking its decision, the ECB shall take into account all of the following: (a) its assessment of the circumstances justifying withdrawal; (b) where applicable, the NCA's draft withdrawal decision; (c) consultation with the relevant NCA and, where the NCA is not the national resolution authority, the national resolution authority (together with the NCA the 'national authorities'); (d) any comments provided by the credit institution pursuant to Articles 81(2) and 82(3).
3. The ECB shall also prepare a complete draft decision in the cases described in Article 85 if the relevant national resolution authority does not object to the withdrawal of the authorisation, or the ECB determines that proper actions necessary to maintain financial stability have not been implemented by the national authorities.

Article 84

Procedure in case of potential resolution measures to be taken by national authorities

1. If the national resolution authority notifies its objection to the ECB's intention to withdraw an authorisation, the ECB and the national resolution authority shall agree on a time period during which the ECB shall abstain from proceeding with the withdrawal of the authorisation. The ECB shall inform the NCA immediately after initiating contacts with the national resolution authority in order to reach this agreement.
2. After the expiry of the agreed time period, the ECB shall assess whether it intends to proceed to withdraw the authorisation or to extend the agreed time period in accordance with Article 14(6) of the SSM Regulation, taking into account any progress made. The ECB shall consult with both the relevant NCA, and the national resolution authority, if different from the NCA. The NCA shall inform the ECB of the measures taken by these authorities and its assessment of the consequences of a withdrawal.
3. If the national resolution authority does not object to the withdrawal of an authorisation, or the ECB determines that proper actions necessary to maintain financial stability have not been implemented by national authorities, then Article 83 shall apply.

Title 3

Cooperation with regard to the acquisition of qualifying holdings

Article 85

Notification to NCAs of the acquisition of a qualifying holding

1. An NCA that receives a complete notification of an intention to acquire a qualifying holding in a credit institution established in the-that participating Member State shall notify the ECB of such complete notification no later than five working days following receipt thereof.
2. The NCA shall also inform the ECB of the date by which the decision to oppose or not to oppose the acquisition of a qualifying holding has to be notified to the applicant pursuant to the relevant national law. The NCA shall notify the ECB if it has to interrupt the assessment period due to a request for additional information.

Article 86

Assessment of potential acquisitions

1. The NCA to which an intention to acquire a qualifying holding in a credit institution is notified shall assess whether the potential acquisition complies with all the conditions laid down in the

relevant Union and national law. Following this assessment, the NCA shall prepare a draft decision for the ECB to oppose or not to oppose the acquisition.

2. The NCA shall submit the draft decision to oppose or not to oppose the acquisition to the ECB at least 15 working days before the expiry of the relevant assessment period as defined by relevant Union law.

Article 87

ECB decision on acquisition

The ECB shall decide whether or not to oppose the acquisition on the basis of its assessment of the proposed acquisition and the NCA's draft decision. The right to be heard as provided for in Article 31 shall apply.

Title 4

Notification of decisions on common procedures

Article 88

Procedures for notification of decisions

1. The ECB shall notify the parties of the following decisions without undue delay in accordance with Article 35:
 - (a) an ECB decision on the withdrawal of an authorisation as a credit institution;
 - (b) an ECB decision on the acquisition of a qualifying holding in a credit institution.
2. The ECB shall notify the relevant NCA without undue delay of any of the following decisions:
 - (a) an ECB decision on an application for authorisation as a credit institution;
 - (b) an ECB decision on the withdrawal of an authorisation as a credit institution;
 - (c) an ECB decision on the acquisition of a qualifying holding in a credit institution.
3. The NCA shall notify the applicant for authorisation of the following decisions:
 - (a) a draft authorisation decision;
 - (b) an NCA decision to reject the application for authorisation where the applicant does not comply with the conditions for authorisation set out in the relevant national law;
 - (c) an ECB decision to object to the draft authorisation decision referred to in (a);
 - (d) an ECB decision of authorisation.

4. The NCA shall notify the relevant national resolution authority of the ECB decision on the withdrawal of an authorisation as a credit institution.

PART VI
PROCEDURES FOR THE SUPERVISION OF SIGNIFICANT SUPERVISED ENTITIES

Title 1

Supervision of significant supervised entities and assistance by NCAs

Article 89

Supervision of significant supervised entities

The ECB shall perform the direct supervision of significant supervised entities in accordance with the procedures set out in Part II, in particular in respect of the tasks and the composition of joint supervisory teams.

Article 90

Role of the NCAs in assisting the ECB

1. An NCA shall assist the ECB in the performance of its tasks under the conditions set out in the SSM Regulation and this Regulation, and shall, in particular, perform all the following activities:
 - (a) Submit draft decisions to the ECB in respect of significant supervised entities established in its participating Member State, in accordance with Article 91;
 - (b) Assist the ECB in preparing and implementing any acts relating to the exercise of the tasks conferred on the ECB by the SSM Regulation, including assisting in verification activities and the day-to-day assessment of the situation of a significant supervised entity;
 - (c) Assist the ECB in enforcing its decisions, using when necessary the powers referred to in the third subparagraph of Article 9(1) and Article 11(2) of the SSM Regulation.
2. When assisting the ECB, an NCA shall follow the ECB's instructions in relation to significant supervised entities.

Article 91

Draft decisions to be prepared by NCAs for the ECB's consideration

1. In accordance with Article 6(3) and Article 6(7)(b) of the SSM Regulation, the ECB may request an NCA to prepare a draft decision regarding the exercise of the tasks referred to in Article 4 of the SSM Regulation for its consideration.

The request shall specify the time limit for sending the draft decision to the ECB.

2. An NCA may also on its own initiative submit a draft decision in respect of a significant supervised entity to the ECB for its consideration through the joint supervisory team.

Article 92

Exchange of information

The ECB and the NCAs shall, without undue delay, exchange information relating to significant supervised entities where there is a serious indication that those significant supervised entities can no longer be relied on to fulfil their obligations towards their creditors and, in particular, can no longer provide security for the assets entrusted to them by their depositors, or where there is a serious indication of circumstances that could lead to a determination that the credit institution concerned is unable to repay the deposits as referred to in Article 1(3)(i) of Directive 94/19/EC of the European Parliament and of the Council¹⁵. They shall do so prior to a decision relating to such a determination.

Title 2

Compliance with fit and proper requirements for persons responsible for managing credit institutions

Article 93

Assessment of the suitability of members of the management bodies of significant supervised entities

1. To ensure that institutions have in place robust governance arrangements, and without prejudice to relevant Union and national law and Part V, a significant supervised entity shall notify the relevant NCA of any change to the members of its management bodies in their managerial and supervisory functions (hereinafter the 'managers') within the meaning of Articles 3(1)(7) and 3(2) of Directive 2013/36/EU, including the renewal of the managers' term of office. The relevant

¹⁵ Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.94, p. 5).

NCA shall notify the ECB of any such change without undue delay informing it of the time limit within which a decision has to be taken and notified in accordance with the relevant national law.

2. To assess the suitability of managers of significant supervised entities, the ECB shall have the supervisory powers that competent authorities have under the relevant Union and national law.

Article 94

On-going review of managers' suitability

1. A significant supervised entity shall inform the relevant NCA of any new facts that may affect an initial assessment of suitability or any other issue which could impact on the suitability of a manager without undue delay once these facts or issues are known to the supervised entity or the relevant manager. The relevant NCA shall notify the ECB of such new facts or issues without undue delay.
2. The ECB may initiate a new assessment based on the new facts or issues referred in paragraph 1 or if the ECB becomes aware of any new facts that may have an impact on the initial assessment of the relevant manager or any other issue which could impact on the suitability of a manager. The ECB shall then decide on the appropriate action in accordance with the relevant Union and national law and shall inform the relevant NCA of such action without undue delay.

Title 3

Other procedures to be applied by significant supervised entities

Article 95

Requests, notifications or applications by significant supervised entities

1. Without prejudice to the specific procedures provided for in particular in Part V and to its ordinary interaction with its NCA, a significant supervised entity shall address to the ECB all its requests, notifications or applications relating to the exercise of the tasks conferred on the ECB.
2. The ECB shall make any such request, notification or application available to the relevant NCA and may request the NCA to prepare a draft decision in accordance with Article 91.
3. In case of substantial changes compared to the authorisation given for the initial request, notification or application, the significant supervised entity shall address a new request, notification or application to the ECB in accordance with the procedure referred to in paragraph 1.

PART VII
PROCEDURES FOR THE SUPERVISION OF LESS SIGNIFICANT SUPERVISED ENTITIES

Title 1

NCAs' notification to the ECB of material NCA supervisory procedures and material draft supervisory decisions

Article 96

Deterioration of the financial situation of a less significant supervised entity

NCAs shall inform the ECB where the situation of any less significant supervised entity deteriorates rapidly and significantly, especially if such deterioration could lead to a request for direct or indirect financial assistance or the ESM, without prejudice to the application of Article 62.

Article 97

NCAs' notification to the ECB of material NCA supervisory procedures

1. To enable the ECB to exercise oversight over the functioning of the system, as laid down in Article 6(5)(c) of the SSM Regulation, NCAs shall provide the ECB with information relating to material NCA supervisory procedures concerning less significant supervised entities. The ECB shall define general criteria, in particular taking into account the risk situation and potential impact on the domestic financial system of the less significant supervised entity concerned, to determine for which less significant supervised entities which information shall be notified. The information shall be provided by the NCAs ex ante or in duly justified cases of urgency simultaneously to opening a procedure.
2. The material NCA supervisory procedures referred to in paragraph 1 shall consist of:
 - (a) the removal of members of the management boards of the less significant supervised entities and the appointment of special managers to take over the management of the less significant supervised entities; and
 - (b) the procedures which have a significant impact on the less significant supervised entity.
3. In addition to the information requirements set out by the ECB in accordance with this Article, the ECB may at any time request from NCAs information on the performance of the tasks carried out by them in respect of less significant supervised entities.

4. In addition to the information requirements set out by the ECB in accordance with this Article, NCAs shall on their own initiative notify the ECB of any other NCA supervisory procedure:
 - (a) they consider material and on which the ECB's views are sought; or
 - (b) which may negatively affect the reputation of the SSM.
5. If the ECB requests an NCA to further assess specific aspects of a material NCA supervisory procedure, this request shall specify which aspects are concerned. The ECB and the NCA shall respectively ensure that the other party has sufficient time to enable the procedure and the SSM as a whole to function efficiently.

Article 98

Notification by NCAs to the ECB of material draft supervisory decisions

1. To enable the ECB to exercise oversight over the functioning of the system, as laid down in Article 6(5)(c) of the SSM Regulation, NCAs shall send to the ECB draft supervisory decisions that fulfil the criteria laid down in paragraphs 2 and 3 where the draft decision concerns the less significant supervised entities for which the ECB considers that, based on the general criteria defined by the ECB regarding their risk situation and potential impact on the domestic financial system, the information shall be notified to it.
2. Subject to paragraph 1, draft supervisory decisions shall be sent to the ECB prior to being addressed to less significant supervised entities if such decisions:
 - (a) relate to the removal of members of the management boards of the less significant supervised entities and the appointment of special managers; or
 - (b) have a significant impact on the less significant supervised entity.
3. In addition to the information requirements laid down in paragraphs 1 and 2, NCAs shall transmit to the ECB any other draft supervisory decisions:
 - (a) on which the ECB's views are sought; or
 - (b) which may negatively affect the reputation of the SSM.
4. NCAs shall send draft decisions meeting the criteria laid down in paragraphs 1, 2 and 3, and that therefore are deemed material draft supervisory decisions, to the ECB at least 10 days in advance of the planned date of adoption of the decision. The ECB shall express its views on the draft decision within a reasonable time before the planned adoption of the decision. In cases of urgency, a reasonable time period for sending a draft decision which meets the criteria laid down in paragraphs 1, 2 and 3 to the ECB shall be defined by the relevant NCA.

Title 2

Ex-post reporting by NCAs to the ECB regarding less significant supervised entities

Article 99

General obligation of NCAs to report to the ECB

1. To enable the ECB to exercise oversight over the functioning of the SSM pursuant to Article 6(5)(c) of the SSM Regulation, and without prejudice to Chapter 1, the ECB may require NCAs to report to the ECB on a regular basis on the measures they have taken and on the performance of the tasks they are to carry out in accordance with Article 6(6) of the SSM Regulation. The ECB shall inform the NCAs annually of the categories of less significant supervised entities and the nature of the information required.
2. The requirements laid down in accordance with paragraph 1 shall be without prejudice to the ECB's right to make use of the powers referred to in Articles 10 to 13 of the SSM Regulation in respect of less significant supervised entities.

Article 100

Frequency and scope of reports to be submitted by NCAs to the ECB

NCAs shall submit to the ECB an annual report on less significant supervised entities, less significant supervised groups or categories of less significant supervised entities in accordance with the ECB's requirements.

PART VIII

COOPERATION BETWEEN THE ECB, NCAs AND NDAs WITH REGARD TO MACRO-PRUDENTIAL TASKS AND TOOLS

Title 1

Definition of macro-prudential tools

Article 101

General provisions

1. For the purpose of this Part, macro-prudential tools means any of the following instruments:
 - (a) the capital buffers within the meaning of Articles 130 to 142 of Directive 2013/36/EU;
 - (b) the measures for domestically authorised credit institutions, or a subset of those credit institutions pursuant to Article 458 of Regulation (EU) No 575/2013;
 - (c) any other measures to be adopted by NDAs or NCAs aimed at addressing systemic or macro-prudential risks provided for, and subject to the procedures set out, in Regulation (EU) No 575/2013 and Directive 2013/36/ EU in the cases specifically set out in relevant Union law.
2. The macro-prudential procedures referred to in Articles 5(1) and (2) of the SSM Regulation shall not constitute ECB or NCA supervisory procedures within the meaning of this Regulation, without prejudice to Article 22 of the SSM Regulation in relation to decisions addressed to individual supervised entities.

Article 102

Application of macro-prudential tools by the ECB

The ECB shall apply the macro-prudential tools referred to in Article 101 in accordance with this Regulation and with Articles 5(2) and 9(2) of the SSM Regulation, and where the macro-prudential tools are provided for in a directive, subject to implementation of that directive into national law. If an NDA does not set a buffer rate, this does not prevent the ECB from setting a buffer requirement in accordance with this Regulation and Article 5(2) of the SSM Regulation.

Title 2

Procedural provisions for the use of macro-prudential tools

Article 103

List of NCAs and NDAs responsible for macro-prudential tools

The ECB shall collect from NCAs and NDAs of participating Member States information regarding the identity of the authorities designated for the respective macro-prudential tools referred to in Article 101 and the macro-prudential tools that these authorities can use.

Article 104

Exchange of information and cooperation in respect of the use of macro-prudential tools by an NCA or an NDA

1. In accordance with Article 5(1) of the SSM Regulation, the relevant NCA or NDA, when it intends to apply such tools, shall notify its intention to the ECB ten working days prior to taking such a decision. This notwithstanding, if an NCA or NDA intends to make use of a macro-prudential tool, it shall inform the ECB as early as possible of its identification of a macro-prudential or systemic risk for the financial system and where possible of the details of the intended tool. Such information shall as much as possible include specificities of the intended measure, including the intended date of application.
2. The notification of intent shall be provided by the NCA or NDA to the ECB.
3. If the ECB objects to the intended measure of an NCA or NDA, the ECB shall state its reasons for doing so within five working days after the day of receipt of the notification of intent. Such objection shall be in writing and state the reasons for the objection. The NCA or NDA shall duly consider the ECB's reasons prior to proceeding with the decision as appropriate.

Article 105

Exchange of information and cooperation in respect of the ECB's use of macro-prudential tools

1. In accordance with Article 5(2) of the SSM Regulation, the ECB, when it intends on its own initiative or on the proposal of an NCA or NDA to apply higher requirements for capital buffers or to apply more stringent measures aimed at addressing systemic or macro-prudential risks shall cooperate closely with the NDAs in the Member States concerned and in particular notify its intention to the NDA or NCA 10 working days prior to taking such a decision. This notwithstanding, if the ECB intends to apply higher requirements for capital buffers or to apply more stringent measures aimed at addressing systemic or macro-prudential risks at the level of

credit institutions subject to the procedures set out in Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in Union law, it shall inform the relevant NCA or NDA as early as possible of its identification of a macro-prudential or systemic risk to the financial system and where possible of the details of the intended tool. Such information shall as far as possible include the specificities of the intended measure, including the intended date of application.

2. If any of the concerned NCAs or NDAs objects to the intended measure of the ECB, it shall state its reasons to the ECB within five working days after the day of receipt of the ECB notification of intent. Such objection shall be in writing and state the reasons for the objection. The ECB shall duly consider those reasons prior to proceeding with the decision as appropriate.

PART IX
PROCEDURES FOR CLOSE COOPERATION

Title 1

General principles and common provisions

Article 106

Procedure for the establishment of a close cooperation

The ECB shall assess requests from non-euro area Member States for the establishment of a close cooperation in accordance with the procedure set out in Decision [insert reference to ECB decision on the procedure for establishing a close cooperation].

Article 107

Principles to be applied when a close cooperation has been established

1. From the date on which an ECB decision pursuant to Article 7(2) of the SSM Regulation establishing close cooperation between the ECB and an NCA of a non-euro area Member State applies, and until the termination or suspension of such close cooperation, the ECB shall carry out the tasks referred to in Article 4(1) and (2) and Article 5 of the SSM Regulation in relation to supervised entities and groups established in the relevant participating Member State in close cooperation, in accordance with Article 6 of the SSM Regulation.
2. If a close cooperation has been established pursuant to Article 7(2) of the SSM Regulation the ECB and the NCA in close cooperation shall, in respect of significant supervised entities and groups and less significant supervised entities and groups established in the participating Member State in close cooperation, be in a position comparable to significant supervised entities and groups and less significant supervised entities and groups established in euro area Member States, taking into account that the ECB does not have directly applicable powers over significant supervised entities and groups and less significant supervised entities and groups established in the participating Member State in close cooperation.
3. In accordance with Article 6 of the SSM Regulation, the ECB may issue to an NCA in close cooperation instructions in respect of significant supervised entities and groups and only general instructions in respect of less significant supervised entities and groups.
4. Close cooperation shall end on the date on which the derogation pursuant to Article 139 TFEU is abrogated in respect of a participating Member State in close cooperation in accordance with Article 140(2) TFEU, and the provisions of this Part shall then cease to apply.

Article 108

Legal instruments related to supervision in connection with close cooperation

1. With respect to the tasks referred to in Article 4(1) and (2) and Article 5 of the SSM Regulation, the ECB may give instructions, make requests or issue guidelines.
2. If the ECB considers that a measure relating to the tasks referred to in Article 4(1) and (2) of the SSM Regulation should be adopted by the NCA in close cooperation in relation to a supervised entity or group, it shall address to that NCA:
 - (a) in respect of a significant supervised entity or significant supervised group, a general or specific instruction, a request or a guideline requiring the issuance of a supervisory decision in relation to that significant supervised entity or significant supervised group in the participating Member State in close cooperation, or
 - (b) in respect of a less significant supervised entity or less significant supervised group, a general instruction or a guideline.
3. If the ECB considers that a measure relating to the tasks referred to in Article 5 of the SSM Regulation should be adopted by the NCA or NDA in close cooperation, it may address to that NCA or NDA a general or specific instruction, a request or a guideline requiring the application of higher requirements for capital buffers or the application of more stringent measures aimed at addressing systemic or macro-prudential risks.
4. The ECB shall specify in the instruction, request or guideline a relevant time limit for the adoption of the measure by the NCA in close cooperation, which shall be no less than 48 hours, unless earlier adoption is necessary to prevent irreparable damage. When determining the time limit, the ECB shall take into account the administrative and procedural law with which the relevant NCA in close cooperation has to comply.
5. An NCA in close cooperation shall take all necessary measures to comply with the ECB's instructions, requests or guidelines and it shall inform the ECB without undue delay of the measures it has taken.
6. 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.

Title 2

Close cooperation in relation to Parts III, IV, V, X and XI

Article 109

Language regime under the regime of close cooperation

1. Article 23 on the language regime between the ECB and NCAs shall apply *mutatis mutandis* in respect of NCAs in close cooperation in accordance with the provisions of this Article.
2. The language regime provided for in Article 23(2) in respect of draft decisions addressed or intended to be addressed to a person, supervised entity or supervised group, shall apply in the case of draft instructions sent by the ECB to an NCA in close cooperation.

Article 110

Assessment of significance of credit institutions under the regime of close cooperation

1. The provisions of Part IV on the determination of the status of supervised entities or supervised groups as significant or less significant shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation in accordance with the provisions of this Article.
2. An NCA in close cooperation shall ensure that the procedures laid down in Part IV can be applied in respect of supervised entities and supervised groups established in its Member State.
3. In circumstances where Part IV provides for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.

Article 111

Common procedures under the regime of close cooperation

1. The provisions of Part V on common procedures shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in the participating Member States in close cooperation, subject to the provisions of this Article.
2. An NCA in close cooperation shall ensure that the procedures laid down in Part V can be applied in respect of supervised entities established in its Member State. In particular, the NCA in close cooperation shall ensure that the ECB receives any information and documentation needed to carry out the tasks conferred on it by the SSM Regulation.
3. In circumstances where Part V provides for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.

4. In circumstances where Part V provides for the relevant NCA to prepare a draft decision, an NCA in close cooperation shall submit a draft decision to the ECB and request instructions.

Article 112

Macro-prudential tools under the regime of close cooperation

The provisions of Part VIII on cooperation between the ECB, NCAs and NDAs with regard to macro-prudential tasks and tools shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.

Article 113

Administrative penalties under the regime of close cooperation

1. The provisions of Part X on administrative penalties shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.
2. In circumstances where Article 18 of the SSM Regulation in connection with Part X of this Regulation provide for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.
3. In cases where Article 18 of the SSM Regulation or Part X of this Regulation provides for the relevant NCA to address a decision to a significant supervised entity or significant supervised group, an NCA in close cooperation shall initiate proceedings with a view to taking action to ensure that appropriate administrative penalties are imposed only on the ECB's instructions. The NCA in close cooperation shall inform the ECB once a decision has been adopted.

Article 114

Investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation under the regime of close cooperation

1. The provisions of Part XI which relate to cooperation with regard to Articles 10 to 13 of the SSM Regulation shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.
2. An NCA in close cooperation shall make use of the investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation in accordance with the ECB's instructions.
3. An NCA in close cooperation shall provide the ECB with findings resulting from the use of the investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation.

4. An NCA in close cooperation shall ensure that designated ECB staff members can participate as observers in any investigation pursuant to Articles 10 to 13 of the SSM Regulation.

Title 3

Close cooperation in respect of significant supervised entities

Article 115

Supervision of significant supervised entities in a participating Member State in close cooperation

1. Parts II and VI shall apply *mutatis mutandis* to significant supervised entities and significant supervised groups established in a participating Member State in close cooperation in accordance with the provisions of this Article.
2. An NCA in close cooperation shall ensure that the ECB receives all the information and reporting from and in respect of significant supervised entities and significant supervised groups which the NCA in close cooperation itself receives and which are necessary to carry out the tasks conferred on the ECB by the SSM Regulation.
3. A joint supervisory team shall be established to supervise each significant supervised entity or significant supervised group established in a participating Member State in close cooperation. The members of the joint supervisory team shall be appointed in accordance with Article 4. The NCA in close cooperation shall appoint the NCA sub-coordinator to act directly in relation to the significant supervised entity or significant supervised group, in accordance with the instructions of the JST coordinator.
4. An NCA in close cooperation shall ensure that designated ECB staff members are invited to participate in any on-site inspection carried out in respect of a significant supervised entity or significant supervised group. The ECB may determine the number of ECB staff members who will participate as observers.
5. In the context of consolidated supervision and colleges of supervisors, in circumstances where a parent undertaking is established in a euro area Member State or in a non-euro area participating Member State, the ECB, as competent authority, shall be the consolidating supervisor and shall chair the college of supervisors. The ECB shall invite the relevant NCA in close cooperation to appoint an NCA staff member as observer. The ECB may act by giving instructions to the relevant NCA in close cooperation.

Article 116

Decisions in respect of significant supervised entities and significant supervised groups

1. Without prejudice to the powers of NCAs in respect of tasks not conferred on the ECB pursuant to the SSM Regulation, an NCA in close cooperation shall adopt decisions in respect of significant supervised entities and significant supervised groups in its Member State only on the ECB's instructions. The NCA in close cooperation may also request instructions from the ECB.
2. An NCA in close cooperation shall make any decision in respect of a significant supervised entity or significant supervised group available to the ECB immediately. It shall make an English translation of the decision available within three working days of its adoption.
3. An NCA in close cooperation shall inform the ECB in relation to both: (a) decisions it adopts under its powers in respect of tasks not conferred on the ECB pursuant to the SSM Regulation; and (b) decisions it adopts pursuant to the ECB's instructions, or as provided for in this Part.

Title 4

Close cooperation in respect of less significant supervised entities and less significant supervised groups

Article 117

Supervision of less significant supervised entities and less significant supervised groups

1. Part VII shall apply *mutatis mutandis* to less significant supervised entities and less significant supervised groups in participating Member States in close cooperation in accordance with the following provisions.
2. For the purposes of ensuring the consistency of supervisory outcomes within the SSM, the ECB may issue general instructions and guidelines and make requests to an NCA in close cooperation requiring it to adopt a supervisory decision in respect of less significant supervised entities or less significant supervised groups established in the participating Member State in close cooperation. Such general instructions, guidelines or requests may refer to groups or categories of credit institutions.
3. The ECB may also address to an NCA in close cooperation a request to further assess aspects of a material NCA procedure as provided for in Article 6(7)(c)(ii) of the SSM Regulation.

Title 5

Procedure in case of disagreement of a participating Member State in close cooperation

Article 118

Procedure in case of disagreement with the Supervisory Board's draft decision pursuant to Article 7(8) of the SSM Regulation

1. The ECB shall inform the NCA in close cooperation of the Supervisory Board's complete draft decision in relation to a supervised entity or supervised group located in a participating Member State in close cooperation, subject to confidentiality requirements under Union law.
2. If the NCA in close cooperation disagrees with the Supervisory Board's complete draft decision, it shall, within five working days of receipt of the complete draft decision, notify the Governing Council in writing of the reasons for its disagreement.
3. The Governing Council shall decide on the matter within five working days of receipt of such notification, taking the reasons stated for the disagreement fully into account, and it shall provide the NCA in close cooperation with written reasons for its decision.
4. A participating Member State in close cooperation may request the ECB to terminate its close cooperation with immediate effect and shall then not be bound by any ensuing decision of the Governing Council.

Article 119

Procedure in case of disagreement with an objection of the Governing Council to a Supervisory Board's draft decision pursuant to Article 7(7) of the SSM Regulation

1. The ECB shall inform an NCA in close cooperation of any objection of the Governing Council to a complete draft decision of the Supervisory Board.
2. If the NCA in close cooperation disagrees with the Governing Council's objection to the Supervisory Board's complete draft decision it shall, within five working days of receiving the Governing Council's objection, notify the ECB of its reasons for its disagreement.
3. The Governing Council shall give its written opinion on the reasoned disagreement expressed by the NCA in close cooperation within 30 days of receipt of the reasoned disagreement and, stating its reasons for doing so, shall either confirm or withdraw its objection. The ECB shall inform the NCA in close cooperation thereof.
4. If the Governing Council confirms its objection, the NCA in close cooperation may, within five days of being informed that the Governing Council has confirmed its objection, notify the ECB that it will not be bound by any decision taken following amendment of the initial complete draft decision to which the Governing Council objects.

The ECB shall then consider suspending or terminating the close cooperation with NCA in close cooperation, taking due account of supervisory effectiveness, and shall take a decision in

that respect. The ECB shall take into account, in particular, the factors referred to in Article 7(7) of the SSM Regulation.

PART X
ADMINISTRATIVE PENALTIES

Title 1

Definitions and relationship to Council Regulation (EC) No 2532/98¹⁶

Article 120

Definition of administrative pecuniary penalties

For the purposes of this Part, ‘administrative pecuniary penalties’ means either of the following:

- (a) administrative pecuniary penalties provided for and imposed under Article 18(1) of the SSM Regulation;
- (b) fines and periodic penalty payments provided for in Article 2 of Regulation (EC) No 2532/98 and imposed under Article 18(7) of the SSM Regulation.

Article 121

Relationship to Regulation (EC) No 2532/98

1. For the purposes of the procedures provided for in Article 18(1) of the SSM Regulation, the procedural rules contained in this Regulation shall apply, in accordance with Article 18(4) of the SSM Regulation.
2. For the purposes of the procedures provided for in Article 18(7) of the SSM Regulation, the procedural rules contained in this Regulation shall complement those laid down in Regulation (EC) No 2532/98 and shall be applied in accordance with Articles 25 and 26 of the SSM Regulation.

Article 122

ECB powers to impose penalties under Article 18(7) of the SSM Regulation

The ECB shall impose administrative pecuniary penalties, as defined in Article 120(b), if there is a failure to comply with obligations under ECB regulations or decisions on:

- (a) significant supervised entities, or

¹⁶ Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4).

- (b) less significant supervised entities where the relevant ECB regulations or decisions impose obligations on less significant supervised entities vis-à-vis the ECB.

Title 2

Procedural rules for the imposition of administrative pecuniary penalties, other than periodic penalty payments, on supervised entities in euro area Member States

Article 123

Establishment of an independent investigating unit

1. The ECB shall establish an internal independent investigating unit (hereinafter the ‘investigating unit’) which shall be composed of investigating officers designated by the ECB.
2. The investigating officers shall not be involved, and shall not for the two years before taking up the position of investigating officer, have been involved in the direct or indirect supervision or authorisation of the relevant supervised entity.
3. The investigating officers shall perform their investigative functions independently of the Supervisory Board and Governing Council and shall not take part in the deliberations of the Supervisory Board and Governing Council.

Article 124

Referral of the penalty procedure to the investigating unit

Where the ECB, in carrying out its tasks under the SSM Regulation, considers that there is reason to suspect that one or more breaches

- (a) under relevant directly applicable Union law, as referred to in Article 18(1) of the SSM Regulation, are being, or have been, committed by a significant supervised entity having its head office in a euro area Member State, or
- (b) of an ECB regulation or decision as referred to in Article 18(7) of the SSM Regulation are being or have been, committed by a supervised entity having its head office in an euro area Member State,

the ECB shall refer the matter to the investigating unit.

Article 125

Powers of the investigating unit

1. For the purpose of investigating alleged breaches as referred to in Article 124, the investigating unit may exercise the powers granted to the ECB under the SSM Regulation.
2. Where a request is made to the supervised entity concerned under the powers granted to the ECB pursuant to the SSM Regulation in the context of an investigation, the investigating unit shall specify the subject matter and the purpose of the investigation.
3. When carrying out its tasks, the investigating unit shall have access to all documents and information gathered by the ECB and, where appropriate, by the relevant NCAs in the course of their supervisory activities.

Article 126

Procedural rights

1. On completion of an investigation and before a proposal for a complete draft decision is prepared and submitted to the Supervisory Board, the investigating unit shall notify the supervised entity concerned in writing of the findings under the investigation carried out and of any objections raised thereto.
2. In the notification referred to in paragraph 1, the investigating unit shall inform the supervised entity concerned of its right to make submissions in writing to the investigating unit on the factual results and the objections raised against the entity as set out therein, and it shall set a reasonable time limit for receipt of such submissions. The ECB shall not be obliged to take into account written submissions received after the time limit set by the investigating unit has expired.
3. The investigating unit may also, following notification in accordance with paragraph 1, invite the supervised entity concerned to attend an oral hearing. The parties subject to investigation may be represented and/or assisted by lawyers or other qualified persons at the hearing. Oral hearings shall not be held in public.
4. The right of access to the file of the investigating unit by the supervised entity under investigation shall be determined in accordance with Article 32.

Article 127

Examination of the file by the Supervisory Board

1. If an investigating unit considers that an administrative pecuniary penalty should be imposed on a supervised entity, the investigating unit shall submit a proposal for a complete draft decision

to the Supervisory Board, determining that the supervised entity concerned has committed an infringement and specifying the administrative pecuniary penalty to be imposed. The investigating unit shall also submit its file on the investigation to the Supervisory Board.

2. The investigating unit shall base its proposal for a complete draft decision only on facts and objections on which the supervised entity has had the opportunity to comment.
3. If the Supervisory Board considers that the file submitted by the investigating unit is incomplete, it may return the file to the investigating unit together with a reasoned request for additional information. Article 125 shall apply accordingly.
4. If the Supervisory Board, on the basis of a complete file, agrees with the proposal for a complete draft decision of the investigating unit in respect of one or more infringements and the factual basis for such decision, it shall adopt the complete draft decision proposed by the investigating unit regarding the infringement or infringements it agrees have taken place. To the extent that the Supervisory Board does not agree with the proposal, a decision shall be taken pursuant to the relevant paragraphs of this Article.
5. If the Supervisory Board, on the basis of a complete file, considers that the facts described in the proposal for a complete draft decision as referred to in paragraph 1 do not appear to reveal sufficient evidence of an infringement as referred to in Article 124, the Supervisory Board may adopt a complete draft decision closing the case.
6. If the Supervisory Board, on the basis of a complete file, agrees with the determination in the proposal for a complete draft decision of the investigating unit that the supervised entity concerned has committed an infringement, but disagrees with the proposed recommendation concerning administrative pecuniary penalties, it shall adopt the complete draft decision, specifying the administrative pecuniary penalty it considers appropriate.
7. If the Supervisory Board, on the basis of a complete file, does not agree with the proposal of the investigating unit, but concludes that a different infringement has been committed by a supervised entity, or that there is a different factual basis for the proposal of the investigating unit, it shall inform the supervised entity concerned in writing of its findings and of the objections raised against the supervised entity concerned. Article 126(2) to (4) shall apply accordingly with regard to the Supervisory Board.
8. The Supervisory Board shall prepare a complete draft decision determining whether or not the supervised entity concerned has committed an infringement and specifying the administrative pecuniary penalties to be imposed, if any.
9. Complete draft decisions adopted by the Supervisory Board and to be proposed to the Governing Council shall be based only on facts and objections on which the supervised entity has had the opportunity to comment.

Article 128

Definition of total annual turnover for the purpose of determining the upper limit for administrative pecuniary penalties

The total annual turnover as referred to in Article 18(1) of the SSM Regulation shall mean the annual turnover, as defined in Article 67 of Directive 2013/36/EU, of a supervised entity according to the most recent available annual financial accounts of such supervised entity. Where the supervised entity that has committed the infringement belongs to a supervised group, the relevant total annual turnover shall be the total annual turnover resulting from the most recent available consolidated annual financial accounts of the supervised group.

Title 3

Periodic penalty payments

Article 129

Procedural rules applicable to periodic penalty payments

1. In the event of a continuing breach of a supervisory decision or regulation of the ECB, the ECB may impose a periodic penalty payment with a view to compelling the persons concerned to comply with the supervisory decision or regulation. The ECB shall apply the procedural rules of Article 22 of the SSM Regulation and Title 2 of Part III of this Regulation.
2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be calculated for each day of infringement until the person concerned complies with the ECB supervisory decision or regulation concerned.
3. The upper limits for periodic penalty payments shall be as specified in Regulation (EC) No 2532/98. The relevant period shall begin to run on the date stipulated in the decision imposing the periodic penalty payment. The earliest date stipulated in the decision shall be the date on which the person concerned is notified in writing of the ECB's reasons for imposing a periodic penalty payment. Such written notification may be combined with giving the person concerned an opportunity to be heard pursuant to Article 22 of the SSM Regulation.
4. Periodic penalty payments may be imposed for periods of no longer than six months following the date specified in the decision referred to in paragraph 3.

Title 4

Time limits

Article 130

Limitation periods for imposing administrative pecuniary penalties

1. The ECB's power to impose administrative pecuniary penalties on supervised entities shall be subject to a limitation period of five years, which shall begin to run on the day on which the infringement is committed. In the case of on-going or repeated infringements, the limitation period shall begin to run on the day on which the infringement ceases.
2. Any action taken by the ECB for the purposes of the investigation or proceedings in respect of a breach under Article 124 shall cause the limitation period for imposing administrative pecuniary penalties to be interrupted. The limitation period shall be interrupted with effect from the date on which the action is notified to the supervised entity concerned.
3. Each interruption shall cause the limitation period to begin to run afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the duration of the limitation period has elapsed without the ECB having imposed an administrative pecuniary penalty. That period shall be extended by any period of time for which the limitation period is suspended pursuant to paragraph 5.
4. The limitation period for imposing administrative pecuniary penalties shall be suspended for any period during which the decision of the ECB's Governing Council is subject to review proceedings before the Administrative Board of Review or appeal proceedings before the Court of Justice.
5. The limitation period shall also be suspended for such period as criminal proceedings are pending against the supervised entity in connection with the same facts.

Article 131

Limitation periods for the enforcement of administrative pecuniary penalties

1. The ECB's power to enforce a decision taken pursuant to Article 18(1) and (7) of the SSM Regulation shall be subject to a limitation period of five years, which shall begin to run on the date of adoption of the decision in question.
2. Any action of the ECB designed to enforce payment or payment terms and conditions under the administrative pecuniary penalty concerned shall cause the limitation period for the enforcement of administrative pecuniary penalties to be interrupted.
3. Each interruption shall cause the limitation period to begin to run afresh.
4. The limitation period for the enforcement of administrative pecuniary penalties shall be suspended for such period as:
 - (a) time to pay is allowed;

- (b) enforcement of payment is suspended pursuant to a decision of either the ECB's Governing Council or the Court of Justice.

Title 5

Publication of decisions and exchange of information

Article 132

Publication of decisions regarding administrative pecuniary penalties

1. The ECB shall publish on its official website without undue delay any decision imposing an administrative pecuniary penalty, as defined in Article 120, on a supervised entity in a participating Member State, including information on the type and nature of the breach and the identity of the supervised entity concerned, unless publication in this manner would either:
 - (a) jeopardise the stability of the financial markets or an ongoing criminal investigation; or
 - (b) cause, insofar as it can be determined, disproportionate damage to the supervised entity concerned.

In these circumstances, administrative pecuniary penalties shall be published on an anonymised basis. Alternatively, where such circumstances are likely to cease within a reasonable period of time, publication under this paragraph may be postponed for such period of time.

2. If an appeal to the Court of Justice in respect of a decision under paragraph 1 is pending, the ECB shall, without undue delay, also publish on its official website information on the status of the appeal in question and the outcome thereof.
3. The ECB shall ensure that information published under paragraphs 1 and 2 remains on its official website for at least five years.

Article 133

Informing the European Banking Authority (EBA)

Subject to the professional secrecy requirements referred to in Article 27 of the SSM Regulation, the ECB shall inform the EBA of all administrative pecuniary penalties, as defined in Article 120, which are imposed on a supervised entity in a euro area Member State, including any appeal in relation to such penalties and the outcome thereof.

Title 6

Cooperation between the ECB and NCAs in euro area Member States under Article 18(5) of the SSM Regulation

Article 134

Significant supervised entities

1. In respect of significant supervised entities, an NCA shall, without prejudice to the possibility to open proceedings on its own initiative regarding the application of national law for tasks not conferred on the ECB, open proceedings only where necessary for the purpose of carrying out the tasks conferred on the ECB under the SSM Regulation at the request of the ECB, with a view to taking action to ensure that appropriate penalties are imposed in cases not covered by Article 18(1) of the SSM Regulation. Such cases include the application of:
 - (a) non-pecuniary penalties in the event of a breach of directly applicable Union law by legal or natural persons, as well as any pecuniary penalties in the event of a breach of directly applicable Union law by natural persons;
 - (b) any pecuniary or non-pecuniary penalties in the event of a breach by legal or natural persons of any national law transposing Union directives;
 - (c) any pecuniary or non-pecuniary penalties to be imposed in accordance with relevant national legislation which confers specific powers on the NCAs in euro area Member States which are currently not required by the relevant Union law.
2. An NCA may ask the ECB to request it to open proceedings in the cases referred to in paragraph 1.
3. An NCA of a participating Member State shall notify the ECB of the completion of a penalty procedure initiated at the request of the ECB pursuant to paragraph 1. In particular, the ECB shall be informed of the penalties imposed, if any.

Article 135

Reporting in respect of less significant supervised entities

The relevant NCA shall notify the ECB on a regular basis of all administrative penalties imposed on less significant supervised entities in connection with the exercise of its supervisory tasks.

Title 7

Criminal offences

Article 136

Evidence of facts potentially giving rise to a criminal offence

Where, in carrying out its tasks under the SSM Regulation, the ECB has reason to suspect that a criminal offence may have been committed, it shall request the relevant NCA to refer the matter to the appropriate authorities for investigation and possible criminal prosecution, in accordance with national law.

Title 8

Proceeds from penalties

Article 137

Proceeds from penalties

The proceeds from administrative pecuniary penalties imposed by the ECB under Article 18(1) and (7) of the SSM Regulation shall be the ECB's property.

PART XI

Access to information, reporting, investigations and on-site inspections

Title 1

General principles

Article 138

Cooperation between the ECB and NCAs as regards the powers referred to in Articles 10 to 13 of the SSM Regulation

The provisions laid down in this Part shall apply to significant supervised entities. They shall also apply to less significant supervised entities if the ECB decides, pursuant to Article 6(5)(d) of the SSM Regulation, to make use of the powers referred to in Articles 10 to 13 of the SSM Regulation with respect to a less significant supervised entity. This shall however be without prejudice to the NCAs' competence to supervise less significant supervised entities directly pursuant to Article 6(6) of the SSM Regulation.

Title 2

Cooperation in respect of requests for information

Article 139

Ad-hoc requests for information under Article 10 of the SSM Regulation

1. In accordance with Article 10 of the SSM Regulation and subject to and in compliance with relevant Union law, the ECB may require a legal or natural person referred to in Article 10(1) thereof to provide all information that is necessary to exercise the tasks conferred on it by the SSM Regulation. The ECB shall specify the information concerned and the time limit within which it is to be provided to the ECB.
2. Before requiring information to be provided in accordance with Article 10(1) of the SSM Regulation, the ECB shall first take account of information already available to NCAs.
3. The ECB shall make available to the relevant NCA a copy of any information received from the legal or natural person to whom the request for information has been addressed.

Title 3

Reporting

Article 140

Tasks related to supervisory reporting to competent authorities

1. The ECB shall be responsible for ensuring compliance with relevant Union law which imposes requirements on credit institutions in the field of reporting to competent authorities.
2. For this purpose, the ECB shall have the tasks and powers with regard to significant supervised entities as laid down in relevant Union law on supervisory reporting. NCAs shall have the tasks and powers with regard to less significant supervised entities as laid down in relevant Union law on reporting to competent authorities.
3. Notwithstanding paragraph 2 and unless provided otherwise, each supervised entity shall communicate to its relevant NCA the information to be reported on a regular basis in accordance with relevant Union law. Unless specifically provided otherwise, all information reported by supervised entities shall be submitted to the NCAs. They shall perform the initial data checks and make the information available to the ECB.
4. The ECB shall organise the processes relating to collection and quality review of data reported by supervised entities subject to, and in compliance with, relevant Union law and EBA implementing technical standards.

Article 141

Requests for information at recurring intervals under Article 10 of the SSM Regulation

1. In accordance with Article 10 of the SSM Regulation, in particular the power of the ECB to require information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes, and subject to and in compliance with relevant Union law, the ECB may require supervised entities to report additional supervisory information whenever such information is necessary for the ECB to carry out the tasks conferred on it by the SSM Regulation. Subject to the conditions set out in relevant Union law, the ECB may specify in particular the categories of information that should be reported as well as the processes, formats, frequencies and time limits for provision of the information concerned.
2. If the ECB requires legal or natural persons as specified in Article 10(1) of the SSM Regulation to provide information at recurring intervals, Article 140(3) and (4) of this Regulation shall apply accordingly.

Title 4

Cooperation with regard to general investigations

Article 142

Launch of a general investigation under Article 11 of the SSM Regulation

The ECB shall conduct an investigation of any legal or natural person referred to in Article 10(1) of the SSM Regulation on the basis of an ECB decision. Such decision shall specify all of the following:

- (a) the legal basis for the decision and its purpose;
- (b) the intention to exercise the powers laid down in Article 11(1) of the SSM Regulation;
- (c) the fact that any obstruction of the investigation by the person being investigated constitutes a breach of an ECB decision within the meaning of Article 18(7) of the SSM Regulation, without prejudice to national law.

Title 5

On-site inspections

Article 143

ECB decision to conduct an on-site inspection under Article 12 of the SSM Regulation

1. Pursuant to Article 12 of the SSM Regulation, in order to carry out the tasks assigned to it by the SSM Regulation, the ECB shall appoint on-site inspection teams as laid down in Article 144 to conduct all necessary on-site inspections on the premises of a legal person as referred to in Article 10(1) of the SSM Regulation.
2. Without prejudice to Article 142 and pursuant to Article 12(3) of the SSM Regulation, on-site inspections shall be conducted on the basis of an ECB decision, which shall at a minimum specify the following:
 - a) the subject matter and the purpose of the on-site inspection; and
 - b) the fact that any obstruction to the on-site inspection by the legal person subject thereto shall constitute a breach of an ECB decision within the meaning of Article 18(7) of the SSM Regulation, without prejudice to national law.
3. If the on-site inspection follows an investigation conducted on the basis of an ECB decision, as referred to in Article 142, and provided that the on-site inspection has the same purpose and scope as the investigation, the officials and other persons authorised by the ECB and by an NCA shall be granted access to the business premises and land of the legal person subject to the

investigation on the basis of the same decision, in accordance with Article 12(2) and (4) of the SSM Regulation and without prejudice to Article 13 thereof.

Article 144

Establishment and composition of on-site inspection teams

1. The ECB shall be in charge of the establishment and the composition of on-site inspection teams with the involvement of NCAs, in accordance with Article 12 of the SSM Regulation.
2. The ECB shall designate the head of the on-site inspection team from among ECB and NCA staff members.

Article 145

Procedure and notification of an on-site inspection

1. The ECB shall notify the legal person subject to an on-site inspection of the ECB decision referred to in Article 143(2), and of the identity of the members of the on-site inspection team, at least five working days before the start of the on-site inspection. It shall notify the NCA of the Member State where the on-site inspection is to be conducted at least one week before notifying the legal person subject to the on-site inspection of such inspection.
2. If the proper conduct and efficiency of the inspection so require, the ECB may carry out an on-site inspection without notifying the supervised entity concerned beforehand. The NCA shall be notified as soon as possible before the start of such on-site inspection.

Article 146

Conduct of the on-site inspections

1. Those carrying out the on-site inspection shall follow the instructions of the head of the on-site inspection team.
2. Where the entity subject to the on-site inspection is a significant supervised entity, the head of the on-site inspection team shall be responsible for the coordination between the on-site inspection team and the joint supervisory team in charge of the supervision of that significant supervised entity.

PART XII
TRANSITIONAL AND FINAL PROVISIONS

Article 147

Start of direct supervision by the ECB when the ECB assumes its tasks for the first time

1. At least two months before 4 November 2014, the ECB shall address a decision to each supervised entity in respect of which it assumes the tasks conferred on it by the SSM Regulation confirming that it is a significant supervised entity. For entities that are members of a significant supervised group, the decision shall be notified to the supervised entity at the highest level of consolidation. These decisions shall take effect from 4 November 2014.
2. Notwithstanding paragraph 1, if the ECB starts carrying out the tasks conferred on it before 4 November 2014, it shall address a decision to the entity concerned and to the relevant NCAs. Unless otherwise provided for therein, such decision shall take effect on receipt. The relevant NCAs shall be informed in advance of the intention to issue such a decision as soon as possible.
3. Prior to adopting a decision pursuant to paragraph 1, the ECB shall provide the relevant supervised entity or, with respect to a supervised group, the supervised entity at the highest level of consolidation, with an opportunity to make submissions in writing.

Article 148

**Defining the format of the report on supervisory history and risk profile to be provided by
NCAs to the ECB**

1. The NCAs shall, by 4 August 2014 at the latest, communicate to the ECB the identity of the credit institutions they have authorised as well as a report on these credit institutions in a format specified by the ECB.
2. Notwithstanding paragraph 1, if the ECB starts carrying out the tasks conferred on it before 4 November 2014, it may request NCAs to communicate to the ECB the identity of the relevant credit institutions as well as a report in a format specified by the ECB within a reasonable time limit, which shall be stated in the request.

Article 149

Continuity of existing procedures

1. Unless the ECB decides otherwise, if an NCA has initiated supervisory procedures for which the ECB becomes competent on the basis of the SSM Regulation, and this occurs before 4 November 2014, then the procedures laid down in Article 48 shall apply.
2. By derogation from Article 48, this Article shall apply to common procedures.

Article 150

Supervisory decisions taken by NCAs

Without prejudice to the exercise by the ECB of the powers conferred on it by the SSM Regulation, supervisory decisions taken by NCAs before 4 November 2014 shall remain unaffected.

Article 151

Member States whose currency becomes the euro

1. Subject to paragraph 2, in circumstances where a derogation pursuant to Article 139 TFEU is abrogated for a Member State in accordance with Article 140(2) TFEU, Articles 148 to 150 shall apply accordingly in respect of supervisory procedures or decisions initiated or taken by the NCA of such Member State.
2. The reference to 4 November 2014 in Articles 149 and 150 shall be construed as a reference to the date on which the euro is adopted in the relevant Member State.

Article 152

Continuity of existing arrangements

All existing cooperation arrangements with other authorities entered into by an NCA prior to 4 November 2014 that cover at least in part tasks transferred to the ECB by the SSM Regulation shall continue to apply. The ECB may decide to participate in such existing cooperation arrangements in accordance with the procedure applicable to the arrangements in question or establish new cooperation arrangements with third parties for the tasks transferred to it by the SSM Regulation. An NCA shall continue to apply existing cooperation arrangements only to the extent they are not replaced by ECB cooperation arrangements. Where necessary for the execution of the existing cooperation arrangements, the NCA shall be responsible for assisting the ECB, in particular by exercising its rights and performing its responsibilities under the arrangements in coordination with the ECB.

Article 153

Final provisions

This Regulation shall enter into force on 4 May 2014.

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, [date Month YYYY].

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI