



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Petra Senkovic
Secretariat to the Supervisory Board

[Bank Name
Address]

ECB-PUBLIC

SSM/2017/0140

31 March 2017

Additional clarification regarding the ECB's competence to exercise supervisory powers granted under national law

Dear Sirs,

In summer 2016, you were informed that the ECB is competent to exercise specific supervisory powers granted under national law which are not explicitly mentioned in Union law (communication attached as Annex 1). These powers relate to (i) activities of significant institutions in countries outside the European Union, (ii) outsourcing of activities, (iii) powers vis-à-vis shareholders; (iv) requests for information to auditors, (v) Licencing - Ancillary conditions to licences and (vi) credits to related parties.

As a follow-up to this communication, I would like to inform you that the Supervisory Board of the ECB, in cooperation with the European Commission, has further clarified the delineation of competences between the ECB and the National Competent Authorities (NCAs) as regards the exercise of certain supervisory powers granted under national law. The Supervisory Board concluded that the ECB is – in addition to the powers mentioned in the previous communication – directly competent to exercise the following supervisory powers granted under national law:

- approval of acquisitions by significant institutions of holdings in a non-credit institution or a credit institution outside the EU;
- approval of mergers/de-mergers involving significant institutions;
- approval of asset transfers/divestments involving significant institutions;
- approval of a significant institution's statutes;
- approval of the appointment of key function holders in significant institutions;
- approval / objection to the appointment of external auditors (to the extent such powers are linked to ensuring compliance with prudential requirements) of significant institutions;
- approval of specific banking activities relating to licensing¹;
- approval of strategic decisions of significant institutions.

¹ With the exception of the authorisation for the issuance of covered bonds. The clarification on the delineation of the competence to decide on such authorisations is still under consideration.

Annex 2 to this letter includes a brief description of the above supervisory powers and an indicative list of relevant national law provisions.

For the sake of clarity, I would like to emphasise that the above list of supervisory powers is **only** relevant for your institution² to the extent that the national law of the Member State, where your institution is established, lays down an approval or notification requirement. To facilitate your reading, we have indicated at the beginning of the Annex the parts that may be relevant for your institution. Please note though that subsidiaries of significant institutions established in another participating Member State are subject to the approval or notification requirements laid down in the national law of that participating Member State. Please ensure that these subsidiaries are made aware of this clarification, which will not be notified to them by the ECB directly.

For further details please refer to the following:

i) Competence of the ECB

Article 9(1) of SSM Regulation³ provides that, for the exclusive purpose of carrying out the tasks conferred on it by Article 4(1) of the same Regulation, the ECB is considered the competent authority in the participating Member States as established by the relevant Union law. The ECB is also granted all the powers and obligations which competent authorities have under the relevant Union Law, unless otherwise provided for by the SSM Regulation.

Pursuant to Article 4(3) of the SSM Regulation the ECB shall apply, for the purpose of carrying out the tasks conferred on it by the SSM Regulation, all relevant Union law. Where this Union law is composed of Directives, the ECB shall apply the national legislation transposing those Directives.

The ECB may also exercise supervisory powers granted under national law, even if they are not explicitly mentioned in Union law as they (i) fall within the scope of the ECB's tasks under Articles 4 and 5 of the SSM Regulation and (ii) underpin a supervisory function under Union law⁴.

The ECB is therefore the authority competent to exercise the above-mentioned supervisory powers granted under national law under the conditions and within the limits defined in national law.

ii) Entry point for requests, applications or notifications

In accordance with Article 95 of the SSM Framework Regulation (SSM FR)⁵, significant institutions shall submit directly to the ECB all requests, applications or notifications relating to the exercise of the tasks conferred on the ECB. This includes also the above-mentioned supervisory powers. The requests, applications and notifications shall be prepared and submitted in accordance with the applicable national

2 Whenever relevant under national law, the term 'institution' includes also financial holdings and mixed financial holdings.

3 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

4 Conversely, national authorities remain exclusively competent to exercise powers which do not fall within the scope of the ECB's tasks or which do not underpin the ECB's supervisory function. This applies in particular to (i) macroprudential supervisory tasks, (ii) the approval of mergers from a competition law, (iii) the "supervision" of external auditors, (iv) the imposition or enforcement of conditions attached by regulation to banking activities such as product rules; and (v) the imposition of penalties to absorb the economic advantage gained from the breach of prudential requirements (which primarily serve competition law purposes).

5 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

law. Furthermore, Article 95(2) of the SSM FR provides that the ECB makes such notifications available to the relevant NCA.

Therefore, your institution is kindly requested to submit from now on any application, request or notification concerning one of the supervisory powers listed above directly to the ECB functional email address of the JST [email address xx]. Nevertheless, significant institutions are invited to copy the relevant NCA when submitting a request, application or notification to the ECB.

Please note though that the procedure under Article 95 of the SSM FR does not apply to fit & proper assessments (Article 93 SSM FR) and common procedures, namely procedures related to licensing (Article 73 SSM FR) or qualifying holdings (Article 85 SSM FR), as well as passporting (Article 11 SSM FR), for which the NCAs remain the entry point. Accordingly, requests for the extension of an authorisation as credit institution to cover additional banking activities, requests for the approval of key function holders and requests for the approval of managers of third country branches should continue to be submitted to the relevant NCA as the entry point.

iii) Criteria for the assessment of requests and deadlines

The ECB will decide on requests, applications and notifications submitted by institutions on the basis of the criteria set out in the applicable national law. The ECB will also comply with national law requirements, including also on procedural aspects, connected specifically to this type of supervisory powers. This applies in particular to specific publication requirements or specific time-limits for the adoption and notification of the decisions, if relevant. If these specific provisions provide that an approval is deemed to be granted after the expiry of the specified deadline, significant institutions may rely on such “tacit approval” rules.

iv) Data protection

Please note that the ECB will process all personal data received in line with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁶. Further information regarding processing of personal data in the context of banking supervision by the ECB can be found in the Privacy Statement on the Banking Supervision website⁷.

In order to comply with data protection requirements, and more specifically with the obligation to provide information to the data subjects, your institution should notify the individuals that their personal data will be transferred to the ECB as part of your institution’s application or notification to the ECB. This is of particular relevance for the assessment of applications to grant credits to senior officials or other related parties. Without prejudice to other information requirements under EU and national law, the institution should also inform the data subject about their right to lodge a complaint to the European Data Protection Supervisor at any time.

⁶ OJ L 8, 12.1.2001, p. 1–22.

⁷ The ECB General Data Protection Statement is [available here](#).

Thank you in advance for your cooperation, which will help the ECB enhance the efficiency of supervision and enable the JSTs to follow-up to your requests in the most effective manner.

We remain at disposal for further clarifications.

With kind regards,

A handwritten signature in blue ink, appearing to read 'Petra Senkovic', with a long horizontal flourish extending to the right.

Petra Senkovic

Secretary to the Supervisory Board

OBJECT: REQUEST TO SIGNIFICANT INSTITUTIONS TO SUBMIT DIRECTLY TO THE ECB APPLICATIONS / NOTIFICATIONS IN SPECIFIC CASES

Dear Sirs,

May I please inform you that the Supervisory Board of the ECB has considered recently the respective competences of the ECB and the national competent authorities (NCAs) as regards the exercise of supervisory powers granted under national law. It has been clarified in particular that the ECB is, as regards significant institutions, exclusively and directly competent to exercise the supervisory powers regarding the operations listed below, and no longer the NCAs. As a consequence, the institutions directly supervised by the ECB shall submit to the ECB directly their requests, applications or notifications, according to the national law and common practice applicable in their Member States.

Based on the above, with this email I kindly request your credit institution, and its subsidiaries, if so foreseen by your national law, to submit any request, application or notification relating to the below list of operations, to the functional email address of the JST [XXX]

List of operations for which the ECB is directly competent to exercise supervisory powers, as granted by national law:

- 1) Operations of SSM credit institutions in third countries;
- 2) Outsourcing of activities;
- 3) Supervisory powers vis-à-vis a credit institution's shareholders;
- 4) Provisions imposing the compliance with specific requirements as an ancillary condition to the authorisation as a credit institution;
- 5) Limitations of credits to related parties.

Thank you in advance for your cooperation, which will help the ECB enhance the efficiency of supervision and enable the JSTs to follow-up to your requests in a more effective manner.

We remain at disposal for further clarifications regarding this new practice.

With kind regards,

JST Coordinator

List of supervisory powers granted under national law that the ECB is competent to exercise directly

This annex includes for each of the supervisory powers listed below one fiche which describes the object of the supervisory power and includes a list of relevant national law provisions. Please note that this list is indicative.

The most relevant fiches for your institution may be [Indicate the fiches that are relevant for the institution]

However, please note that subsidiaries established in other participating Member States, if any, may be subject to different approval or notification requirements.

List of fiches describing a set of supervisory powers of the ECB

- Fiche I: Approval of acquisitions in a non-credit institution or a credit institution outside the EU;
- Fiche II: Approval of mergers/de-mergers involving significant institutions;
- Fiche III: Approval of asset transfers/divestments involving significant institutions;
- Fiche IV: Approval of a significant institution's statutes;
- Fiche V: Approval of the appointment of key function holders in significant institutions;
- Fiche VI: Approval / objection to the appointment of external auditors of significant institutions (to the extent such powers are linked to ensuring compliance with prudential requirements);
- Fiche VII: Approval of specific banking activities relating to licensing;
- Fiche VIII: Approval of strategic decisions of significant institutions.

Approval of acquisitions in a non-credit institution or a credit institution outside the EU

1. According to the SSM Regulation, CRDIV and national laws of some Member States, the ECB is competent to exercise supervisory powers related to the acquisition of holdings in a non-credit institution or a credit institution (also outside the EU) with the main purpose to ensure the sound and prudent management of the acquiring credit institution. Such operational power is instrumental for supervisory authorities to ensure compliance with prudential requirements in the area of own funds, liquidity and leverage.
2. The main national provisions are the following ones:
 - Austria: Article 21(1) No 2 of the Austrian Banking Act;
 - Belgium: Article 77, al. 1, 2 of the Belgian Banking Act;
 - Finland: Chapter 5 Section 13 of the Act on Credit Institutions (610/2014);
 - Greece: Article 15 paragraph 2 (g) of Law 4261/2014 and Bank of Greece Governor's Act 2604 of 4 February 2008;
 - Italy: Article 53(1)(c) of the Italian Banking Law and Circular 285/2013, Part III, Chapter 1;
 - Luxembourg: Article 57(1) of the Luxembourg law of 5 April 1993;
 - Malta: Articles 9(3) and 15(1) of the Banking Act Chapter 371;
 - Netherlands: Article 3:96(1) (a) and (b) of the Dutch Financial Supervision Act;
 - Portugal: Articles 42-A, 43-A and 103 of the Legal Framework of Credit Institutions and Financial Companies;
 - Slovenia: Article 200 of the Slovenian Banking Act (ZBan-2);
 - Spain: Article 4.2(b) of law 10/2014.

Approval of mergers/de-mergers involving significant institutions

1. According to the SSM Regulation, CRDIV and national laws of some Member States, the ECB is competent to exercise supervisory powers related to mergers and de-mergers involving at least one significant institution. Such powers aim at ensuring the sound and prudent management of the absorbing credit institution (merger) or the newly created credit institution(s) (de-merger).
2. The exercise of the supervisory powers involves a prudential assessment of the impact on credit institutions' profitability, solvency and liquidity and on their organisational structure and technical capacity to comply with governance requirements (as laid down in the CRR and in the CRD IV). In particular, this type of power underpins a supervisory assessment of compliance with own funds rules in change of control (under Article 93(4) of the CRR), the calculation of own funds requirements under the Basic Indicator Approach or Standardised Approach for operational risk (under Article 315(3) and 317(4) respectively of the CRR).
3. The main national provisions are the following ones:
 - Austria: Article 21(1) No. 1, 6 and 7 of the Austrian Banking Act;
 - Belgium: Article 77, al. 1, 3° of the Belgian Banking Act;
 - Cyprus: Article 16 of the Business of Credit Institutions Law;
 - Estonia: Chapter 6 of the Credit Institution Act;
 - Finland: Chapter 2 Section 5 and Chapter 3 Section 9 of the Act on Commercial Banks and other Credit Institutions in the Form of a Limited Company (1501/2001) and Chapter 3 Section 6 and Chapter 4 Section 12 of the Act on Co-operative Banks and Other Credit Institutions in the Form of a Co-operative Credit Institutions (423/2013);
 - Germany: Section 24 (2) of German Banking Law;
 - Greece: Article 16 of Law 2515/1997
 - Italy: Article 57 of the Italian Consolidated Banking Act;
 - Latvia: Article 57 of the Law on Credit Institutions;
 - Lithuania: Article 78-81 of the Lithuanian Law on Banks;
 - Malta: Article 13C of the Banking Act Chapter 371;
 - Netherlands: Article 3:96(1) (d) and (e) of the Dutch Financial Supervision Act;
 - Portugal: Article 35 of the Legal Framework of Credit Institutions and Financial Companies;
 - Slovakia: Article 28 (1) b) of the Act on Banks;
 - Slovenia: Article 105 of Slovenian Banking Act (ZBan-2).

Approval of asset transfers/divestments involving significant institutions

1. According to the SSM Regulation, CRDIV and national laws of some Member States, the ECB is competent to exercise supervisory powers concerning the transfer of assets to an institution or the divestments of activities by institutions, with the main aim of ensuring compliance with acts imposing prudential requirements on credit institutions in the area of own funds and liquidity. This is especially the case when existing national powers refer to approval or non-objection to amalgamation or asset transfers/divestments and require a supervisory assessment of the impact of the transaction on the capital and liquidity situation. The approval of asset transfers or divestments involves an assessment of compliance with prudential and governance requirements under the CRR and CRD IV.
2. The main national provisions are the following ones:
 - Austria: Article 21(1) No. 1 and Section 92 of the Austrian Banking Act;
 - Belgium: Article 77 of the Belgian Banking Act;
 - Cyprus: Section 16 of Business of Credit Institutions Law;
 - France: Article R. 612-32 of the Code Monétaire et Financier;
 - Greece: Articles 16 paragraph 18 of Law 2515/1997;
 - Italy: Article 58 of the Italian Consolidated Banking Act;
 - Latvia: Article 59(2) of the Law on Credit Institutions;
 - Malta: Article 15(1)(d) and 15(1)(e) of the Banking Act Chapter 371;
 - Netherlands: Article 3:96(1)(c) and (e) of the Dutch Financial Supervision Act;
 - Portugal: Article 114 of the Legal Framework of Credit Institutions and Financial Companies;
 - Slovakia: Article 28 (1) d) of the Act on Banks.

Approval of a significant institution's statutes

1. According to the SSM Regulation, CRDIV and national laws of some Member States, the ECB is competent to exercise supervisory powers concerning the adoption of institutions' new statutes and the amendments to current statutes, with the main aim of ensuring compliance with requirements on credit institutions to have in place robust governance structure arrangements, including risk management processes, internal control mechanisms and remuneration policies. Moreover, such power is instrumental for ensuring compliance with the authorisation to take up the business of a credit institution's requirements, which is an exclusive task of the ECB under Article 4(1)(a) of the SSM Regulation.
2. The documents forming part of the Statutes are essential for the assessment of compliance with authorisation and governance requirements, as shown by Articles 8(2), 10 and 19 of the CRD IV.
3. The main national provisions are the following ones:
 - Austria: Article 21 paragraph 1 No 3 of the Austrian Banking Act;
 - Cyprus: Section 10 of the Business of Credit Institutions Law;
 - Estonia: Section 27 of the Credit Institution Act;
 - France: Articles L.511-58, L.511-12-1 II, L.532-3-1, L.511-13-1 and Article L.511-3-2 of the Code monétaire et financier and Position 2014-P-04 of the ACPR;
 - Germany: Section 24(1) No 3, 5, 7, 8 of the German Banking Act
 - Greece: Article 148 of Law 4261/2014;
 - Italy: Article 56 of the Italian Consolidated Banking Act;
 - Latvia: Article 57(2) of the Law on Credit Institutions;
 - Lithuania: Article 5(2) of the Lithuanian Law on Banks;
 - Luxembourg: Article 3(5) of the Luxembourg law of 5 April 1993 on the financial sector;
 - Portugal: Article 34 of the Legal Framework of Credit Institutions and Financial Companies;
 - Slovakia: Article 9(4) of the Act on Banks;
 - Spain: Article 4.2 c) of Law 10/2014, Article 10 Royal Decree 84/2015 and Article 1.4 Royal Decree 84/1993

Approval of the appointment of key function holders in significant institutions (KFH)

1. According to the SSM Regulation, CRDIV and national laws of some Member States, the ECB is competent to exercise supervisory powers related to the appointment in credit institutions and (mixed) financial holdings of KFHs (in accordance of the definition of this concept implemented by the applicable national law) that are not part of the management bodies. It falls within the ECB's tasks under Article 4(1)(e) of the SSM Regulation to ensure that credit institutions have in place robust governance arrangements and the supervised entities comply with the fit and proper requirements for the "persons responsible for the management of credit institutions". The suitability of KFHs has then the purpose of ensuring that credit institutions have in place robust internal governance arrangements at all times, in line with Article 74 of the CRD IV.
2. The reasoning that supervisory assessments of KFHs underpin the general governance supervision for a credit institution is also reflected in EBA Guidelines EBA/GL/2012/06, which include the possibility for this type of assessment.
4. The main national provisions are the following ones:
 - Austria: Article 42(1) and (2) of the Austrian Banking Act;
 - Belgium: Article 60 §2, al. 1 of Belgian Banking Law of 25 April 2014;
 - Cyprus: Article 18 of the Business of Credit Institutions Laws of 1997 to 2016 and Directive on the Assessment of the Fitness and Probity of the Members of the Management Body and Managers of Authorised Credit Institutions of 2014;
 - Estonia: Subsection 60(1) of the Credit Institution Act;
 - Greece: Article 10 paragraph 3 and to Article 16 paragraph 1.a and Article 27(2) of Law 4261/2014 of Greek Banking Law and Executive Committee Act No 22/2013;
 - Ireland: Sec. 23, Part 3, Central Bank Reform Act 2010;
 - Italy: Article 26 of Italian Banking Law (to be implemented)⁸;
 - Latvia: Law on Credit Institutions, Articles 24, 25 and 57;
 - Lithuania: Article 34(6) of the Law on Banks;
 - Luxembourg: CSSF Circular 522/2013
 - Malta: Article 14(10) of the Banking Act Chapter 371;
 - The Netherlands: Article 3:8 and 3:9 of the Dutch Act on Financial Supervision;
 - Slovakia: Article 9(4) of the Act on Banks;
 - Spain: Articles 24 to 27 of Law 10/2014 and Articles 29 to 34 Royal Decree 84/2015;

⁸ In Italy, no power of approval of the appointment of Key Function Holders (KFH) is available until Article 26 of Italian Banking Law is implemented by mean of Ministerial Decree.

Powers related to concerning the appointment/replacement of external auditors of significant institutions

(to the extent such powers are linked to ensuring compliance with prudential requirements)

1. According to the SSM Regulation, CRDIV and national laws of some Member States, the ECB is competent to exercise supervisory powers concerning the appointment/replacement of an external auditor, as part of the ECB's tasks under Article 4(1)(d) of the SSM Regulation, namely to ensure compliance with prudential requirements in the areas of own funds, large exposures, liquidity, leverage and reporting.
2. The main national provisions are the following ones:
 - Austria: Article 63(1) of the Austrian Banking Act;
 - Belgium: Articles 223, al. 1, 224, al. 1 and 326, §1, al. 2 the Belgian Banking Act;
 - Cyprus: Section 27H of the Business of Credit Institutions Law;
 - Estonia: Subsection 94(3) and Clause 104 (1) 11) of the Credit Institution Act;
 - Finland: Chapter 12 Section 15 of the Act on Credit Institutions (610/2014);
 - France: Articles L.511-38, L.612-43, L.612-45 and D. 612-53 to R.612-59 of the Code Monétaire et Financier;
 - Germany: Section 28 of the German Banking Act;
 - Italy: Banca d'Italia Circular no. 285, Part III, Chapter 2, Section II;
 - Ireland: Section 46(2), Central Bank Act 1989;
 - Latvia: Law on Credit Institutions, Article 86(2);
 - Lithuania: Article 67(1)(4) of the Law on Banks;
 - Luxembourg: Article 10(2), 12(7) of the Luxembourg law of 5 April 1993 on the financial sector;
 - Malta: Article 31 of the Banking Act Chapter 371;
 - Netherlands: Article 1:78 of the Dutch Act on Financial Supervision;
 - Slovakia: Article 40(3) of the Act on Banks.

Approval of specific banking activities relating to licensing

1. According to the SSM Regulation, CRDIV and national laws of some Member States, the ECB is competent to authorise specific banking activities of supervised entities such as for investment services, portfolio management, depository, safe keeping and custodian services. These powers are linked to the ECB's exclusive competence to grant authorisations to credit institutions in accordance with Articles 4(1)(a) and 14 of the SSM Regulation. In particular, Article 14 of the SSM Regulation confers to the ECB the power to adopt decisions concerning the authorisation to take up the business of a credit institution, which applies to the activities subject to mutual recognition within the meaning of Annex 1 to the CRD IV (e.g. investment services) as well as to other regulated activities, which require an authorisation under national law. This is confirmed by Article 78(5) of the SSM FR, according to which "the decision granting authorisation shall cover the applicant's activities as a credit institution as provided for in the relevant national law (...)".
2. The main national provisions are the following ones:
 - Austria: Article 1 paragraph 1 No 1 Austrian Banking Act (with regard to those provisions not transposing Annex I to the CRD IV);
 - Estonia: Subsection 13(1) of the Credit Institution Act;
 - France: Articles L.532-1 to L. 532-4 and R. 532-1 to R. 532-7 of the Code Monétaire et Financier;
 - Germany: Section 32(1) KWG;
 - Greece: Article 11(2) of Law 4261/2014;
 - Italy: Article 1(5) and 47 TUF, Article 49 TUB;
 - Slovakia: Article 7(2) or Article 8(2) of the Act on Banks;
 - Slovenia: Articles 97(2) and 103 of Slovenian Banking Act (ZBan-2).

Approval of strategic decisions of significant institutions

1. According to the SSM Regulation, CRDIV and the national laws of some Member States, the ECB is competent to approve strategic decisions of institutions. Such powers fall within the ECB's tasks under Article 4(1)(d) of the SSM Regulation, which confers on the ECB the task of ensuring compliance with acts imposing prudential requirements on credit institutions in the area of own funds and liquidity. The same reasoning developed for the approval of acquisitions or mergers (Fiche I and Fiche II) applies: this power aims at ensuring the continued compliance with CRDIV-CRR requirements
2. The main national provisions are the following ones:
Belgium: Article 77, al. 1, 1° of Belgian Banking Law.