

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE SINGLE RESOLUTION BOARD  
AND THE EUROPEAN CENTRAL BANK  
IN RESPECT OF  
COOPERATION AND INFORMATION EXCHANGE**

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**Memorandum of Understanding on  
Cooperation and information exchange**

This Memorandum of Understanding (MoU) is made

BETWEEN

the Single Resolution Board (SRB), with its headquarters at Rue de la Science 27, 1049 Brussels, Belgium

AND

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

(hereinafter jointly the 'Participants' and individually, the 'Participant')

WHEREAS:

- (1) The SRB fulfils the tasks of a resolution authority as part of the Single Resolution Mechanism (SRM) in accordance with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010<sup>1</sup> (hereinafter the 'SRM Regulation'). The main aims of the SRM are to ensure effective and uniform resolution rules and equal conditions of resolution financing across participating Member States under a centralised power of resolution.
- (2) The ECB fulfils the tasks of a banking supervisory authority in the context of the Single Supervisory Mechanism (SSM) in accordance with Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions<sup>2</sup> (hereinafter the 'SSM Regulation').
- (3) The ECB is competent to authorise and withdraw authorisations of all credit institutions within the SSM as well as to assess notifications of acquisition of qualifying holdings in those credit institutions subject to Articles 14 and 15 and Article 4(1)(c) of the SSM Regulation.
- (4) Supervision and resolution are two complementary aspects of the establishment of the internal market for financial services whose application at the same level is regarded as mutually

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<sup>1</sup> OJ L 225, 30.7.2014, p. 1.

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

dependent. In order to ensure parallelism with the SSM, the SRM applies to Member States participating in the SSM. The scope of application of the SRM Regulation is linked to the scope of the application of the SSM Regulation. The scope of entities falling under the direct responsibility of the SRB is influenced by the ECB decisions classifying supervised entities in participating Member States as significant or less significant as well as by the ECB decisions granting or withdrawing authorisations to take up the business of a credit institution.

- (5) In the exercise of their respective responsibilities, the SRB and the ECB will cooperate closely in resolution planning, early intervention and resolution phases in accordance with the SRM Regulation. The SRB will be responsible for resolution planning, including the assessment of resolvability and the determination of the minimum requirement for own funds and eligible liabilities (hereinafter the 'MREL'). At the same time, the ECB will be responsible for requesting recovery plans from institutions and for their assessment. In early intervention, the leading role lies with the ECB to use its supervisory powers to remedy the deterioration of an institution's financial and economic situation before that institution reaches a point at which the SRB has no other alternative than to resolve it by applying the resolution tools, unless normal insolvency proceedings are credible and feasible.
- (6) In accordance with Article 30(7) of the SRM Regulation, where necessary the SRB will conclude an MoU with the ECB describing in general terms how they will cooperate under Article 30(2) and (4) of the SRM Regulation in the performance of their respective tasks under Union law.
- (7) Article 34(5) of the SRM Regulation provides that the SRB may conclude an MoU with the ECB on a procedure concerning the exchange of information. In order to ensure the smooth functioning of the SRM, it is essential that the SRB and the ECB cooperate closely and exchange all information necessary for the performance of their respective tasks.
- (8) The ECB and the SRB should collaborate to avoid an unnecessary increase in the reporting burden of the institutions. Any duplication in the collection of data should be avoided. Therefore, the SRB may require institutions to provide all information necessary for the performance of its tasks after making full use of all the information available to the ECB or to National Competent Authorities. For example, the SRB should be able to obtain, including on a continuous basis, any information necessary for the exercise of its functions, in particular information on capital, liquidity, assets and liabilities.
- (9) This MoU covers the cooperation and the exchange of information between the Participants with respect to all institutions directly supervised by the ECB. In addition, it covers all other cross-border groups or entities under direct responsibility of the SRB insofar as the ECB is exclusively competent to carry out tasks in accordance with Article 4(1)(a) and (c) of the SSM Regulation for prudential purposes. The MoU allows for further cooperation and information exchange, provided that this is commonly agreed by both Participants.
- (10) This MoU does not prevent the exchange of information within the SSM and SRM. Information received from the SRB by the ECB can be shared with the national competent authorities involved in the respective joint supervisory team and information received from the ECB by the SRB can be shared with the national resolution authorities involved in the respective internal resolution team.

THE PARTICIPANTS HAVE REACHED THE FOLLOWING UNDERSTANDING:

*Paragraph 1*

**Purpose and key principles**

- 1.1 The purpose of this MoU is to establish the general terms for cooperation, including the exchange of information, between the Participants in order to ensure and enhance efficient, effective and timely cooperation between them in the performance of their respective resolution tasks and supervisory tasks under Union law.
- 1.2 In the exercise of their respective responsibilities under the SRM Regulation<sup>3</sup> and the SSM Regulation<sup>4</sup>, the Participants cooperate closely in all relevant phases relating to the recovery and resolution of Entities, in particular in the recovery planning and resolution planning activities, early intervention and resolution phases.
- 1.3 The Participants provide each other with all information necessary for the performance of their respective tasks. They undertake to ensure that they provide each other access to information needed and available to them in their functions as supervisory and resolution authority respectively. In particular, the Participants therefore cooperate closely in order to verify whether some or all of the information required by the SRB is already available at the ECB because of its supervisory function. Where such information is available, the ECB provides that information to the SRB.

*Paragraph 2*

**Scope of cooperation**

- 2.1 This MoU covers the cooperation and the exchange of information between the Participants as laid down in the following paragraphs in the areas where:
  - (a) both Participants have direct responsibilities with regard to Entities in accordance with Article 4(1) of the SSM Regulation and Article 7(2)(a) of the SRM Regulation respectively;
  - (b) the ECB is exclusively competent to carry out, for prudential supervisory purposes, the tasks in accordance with Article 4(1)(a) and (c) of the SSM Regulation in relation to the entities and groups under the direct responsibility of the SRB in accordance with Article 7(2)(b) of the SRM Regulation, and Article 7(4)(b) and (5) where the conditions for the application of those provisions are met;
- 2.2 Notwithstanding the paragraphs of this MoU, both Participants may commonly agree on further cooperation and exchange of information on a regular or case-by-case basis, including in other areas, where deemed necessary by both Participants.

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<sup>3</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, OJ L 225, p. 1.

<sup>4</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013, OJ L 287, p. 63.

*Paragraph 3***Definitions**

- 3.1 For the purpose of this MoU, the definitions set out in Article 3 of the SRM Regulation and Article 2 of the SSM Framework Regulation<sup>5</sup> apply.
- 3.2 In addition, the following definitions apply:
- (a) "Participant" means the SRB or the ECB, or together the "Participants";
  - (b) "Entity" means any entity or group under the direct supervision by the ECB as well as under the direct responsibility of the SRB in accordance with Article 7(2)(a) of the SRM Regulation, or together the "Entities";
  - (c) "Other Institution" means any entity or group under the direct responsibility of a national resolution authority in accordance with Article 7(3) of the SRM Regulation or under the direct responsibility of the SRB in accordance with Article 7(2)(b), 7(4)(b) or 7(5) of the SRM Regulation, or together "Other Institutions";
  - (d) "Resolvability Measure" means any measure listed in Article 10(11) of the SRM Regulation;
  - (e) "Viability Assessment" means the assessment of the condition referred to in point (b) of Article 21(1) of the SRM Regulation;
  - (f) "Business Reorganisation Plan Assessment" means the assessment carried out by the SRB referred to in the second subparagraph of Article 27(16) of the SRM Regulation.

*Paragraph 4***Legal nature**

- 4.1 This MoU is a statement of intent and does not create any directly or indirectly enforceable rights. The Participants will fulfil their responsibilities under this MoU on a best-effort basis.
- 4.2 This MoU does not modify or supersede any Union law or any national laws nor does it affect any provisions under other multilateral or bilateral agreements in force and applicable to the Participants.
- 4.3 This MoU does not authorise or prohibit a Participant from taking measures other than those identified in this MoU to obtain information necessary to ensure compliance with relevant Union law.
- 4.4 There will be no third party beneficiaries to this MoU.

*Paragraph 5***Institutional representation**

- 5.1 Based on Article 3.5 of the Rules of Procedure of the Supervisory Board and Article 30(4) of the SRM Regulation, the Supervisory Board will invite the Chair of the SRB to participate as an

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<sup>5</sup> Regulation (EU) No. 468/2014 of the ECB of 16 April 2014, OJ L 141, p.1.

observer in its meetings for items relating to the tasks and responsibilities of the SRB. Such items shall be as follows: deliberations on recovery plans, group financial support, a rapidly deteriorating financial condition of an institution as defined in Article 27(1) of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council<sup>6</sup> (hereinafter the 'BRRD'), and any deliberations regarding measures provided in Article 13 of the SRM Regulation and a failing or likely to fail determination. The Supervisory Board may also invite the Chair of the SRB if the ECB has been informed of the SRB's intention to make an assessment of the condition referred to in Article 18(1)(a) of the SRM Regulation. Where deemed appropriate, the SRB may appoint another representative to attend a meeting in the place of the Chair of the SRB.

- 5.2 The ECB will send the meeting documentation for the items which the Chair of the SRB has been invited to attend to the SRB at the same time as the documentation is sent to the Members of the Supervisory Board. The relevant excerpts from the minutes of the meeting will be provided to the SRB for information after the meeting at the same time as the minutes are sent to the Members of the Supervisory Board.
- 5.3 The ECB may invite a representative of the SRB to participate as an observer in substructures established by the ECB in accordance with Article 13m.2 of the Rules of Procedure of the ECB<sup>7</sup> whenever the mandate of any such substructures is relevant for the tasks and responsibilities of the SRB.
- 5.4 In accordance with Article 14(3) of the Rules of Procedure of the SRB in its Plenary Session, a representative of the ECB may be invited upon the ECB's request or upon direct invitation of the Chair of the SRB to participate as observer in a relevant committee or working group established in accordance with Article 14(1) of the Rules of Procedure of the SRB in its Plenary Session. The Chair of the SRB may invite a representative of the ECB whenever the mandate of any such substructure is relevant for the tasks and responsibilities of the ECB.

#### *Paragraph 6*

### **Communication**

#### **6.1. Communication between the Participants, contacts and language**

- 6.1.1 Communication between the Participants takes place directly between the relevant units and responsible persons. In case no relevant unit can be identified, requests are directed to a general contact point (reception, mail centre, general fax number, or general e-mail account).
- 6.1.2 Both Participants will provide a list of relevant units and responsible persons as well as general contact points to which requests under this MoU may be directed.

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<sup>6</sup> OJ L 173, 12.6.2014, p. 190.

<sup>7</sup> Decision of the ECB of 19 February 2004 adopting the Rules of Procedure of the ECB (ECB/2004/2).

- 6.1.3 Where highly sensitive information and information on Entities or Other Institutions or personal data is involved, information is exchanged via secure communication channels in accordance with the applicable confidentiality rules.
- 6.1.4 The working language between ECB and SRB is the English language. Both Participants will use the English language when sending documents to each other, unless this is impossible for reasons of urgency or the document to be forwarded is not in English and a translation is not available at that point in time. In that case, documents are transmitted in their original language, and if possible and available, accompanied by a provisional English summary of the key aspects of the document. This rule applies unless otherwise specifically agreed between the Participants for one or more individual cases.

## **6.2 External communication**

- 6.2.1 The Participants strive to cooperate, if appropriate, in external communication with interest groups and the media on matters related to recovery and resolution within their respective responsibilities. The Communication Services of the SRB and the ECB will be responsible for coordinating external communication. Both Participants will provide a list of relevant units and responsible persons as well as general contact points responsible for external communication.
- 6.2.2 The Participants will inform each other, as early and fully as possible, before issuing any public statements relating to the recovery or resolution of Entities.

### *Paragraph 7*

#### **Arrangements for cooperation and the exchange of information in the different phases**

##### **7.1. Cooperation for resolution related activities**

For an efficient functioning of both the supervisory and resolution functions it is essential that the annual work cycle of both Participants on recovery planning and resolution planning is aligned to the maximum extent possible.

- 7.1.1 In the recovery planning and resolution planning phase, cooperation between the Participants includes, but may be not limited to, the following:
- (a) the ECB informs the SRB of any change in its supervisory competence pursuant to Article 6(4) and 6(5)(b) of the SSM Regulation at least one month prior to the date on which it will assume direct supervision over an Entity or Other Institution;
  - (b) the ECB provides the SRB timely and duly with a recovery plan in order to examine the recovery plan pursuant to Article 10(2) SRM Regulation. The SRB, if applicable, provides recommendations to the ECB with regard to any actions in a recovery plan which may adversely impact the resolvability of an Entity. The SRB provides its examination, and if applicable recommendations, in a timely manner in the assessment period as foreseen by Article 6(2) of the BRRD;
  - (c) the ECB provides the SRB with any group financial support agreements entered into by the Entities, as well as any changes thereto. The Participants cooperate closely in determining

the impact of the group financial support on the resolvability of the providing Entity prior to the ECB decision granting the authorisation as consolidated supervisor;

- (d) the SRB consults and cooperates with the ECB in the process of drawing up resolution plans, in particular as regards:
  - (i) the determination of the minimum requirement for own funds and eligible liabilities of an Entity;
  - (ii) the assessment of the resolvability of the Entity carried out in accordance with Article 10 of the SRM Regulation;
  - (iii) the determination that there are substantive impediments to the resolvability of an Entity and the preparation of a report, addressed to the Entity or the parent undertaking analysing those impediments to the effective application of resolution tools and the exercise of resolution powers. The SRB communicates any measures proposed by the Entity or parent undertaking to address or remove substantive impediments to resolvability to the ECB and consults the ECB before assessing whether the proposed measures effectively address or remove the substantive impediments in question. If the proposed measures do not effectively address or remove the substantive impediments in question, the SRB consults the ECB before instructing the relevant national resolution authority to require the Entity or parent undertaking or any subsidiary of the group concerned to take any Resolvability Measures;
- (f) the SRB provides the ECB with the resolution plans and group resolution plans of the Entities, as well as any changes thereto;
- (g) the ECB communicates promptly to the SRB any change relating to an Entity that necessitates the revision or update of the resolution plan for that Entity;
- (h) the SRB and the ECB cooperate closely and coordinate with each other when applying simplified obligations and waivers in recovery and resolution planning. The ECB and the SRB should cooperate and analyse the possible use of the same basis for determining whether an institution should be subject of simplified obligations or waivers. Where the ECB and the SRB use the same basis they cooperate to submit the report required by the European Banking Authority on a joint basis. Where the ECB and the SRB do not use the same basis they anyway cooperate with each other with the purpose of submitting the report required by the European Banking Authority exchanging relevant information.

**7.1.2 In the early intervention phase**, cooperation between the Participants includes, but may not be limited to, the following:

- (a) the ECB informs the SRB of any measures it intends to take in accordance with Article 13 of the SRM Regulation, in order to avoid further deterioration of the financial and economic situation of an Entity;
- (b) the ECB closely monitors, in cooperation with the SRB, the conditions of the Entity and its compliance with any measures mentioned in Article 13(1) of the SRM Regulation in early intervention; the ECB informs the SRB about the implementation of the measures;

- (c) the ECB informs the SRB prior to imposing any additional measures mentioned in Article 13(4) of the SRM Regulation in early intervention on the Entity concerned;
  - (d) the ECB provides the SRB on a best-effort basis with all the information necessary to update the resolution plan of an Entity needed if the SRB decides to prepare for the resolution of an Entity and for the valuation of the assets and liabilities of the Entity in accordance with Article 20(1) to (15) of the SRM Regulation. For this purpose the ECB provides the SRB with all available information which the SRB has specified as necessary. Moreover for this purpose, the ECB provides the SRB with any available valuation or assessments of assets and liabilities of an Entity to support the SRB's or an independent valuer's valuation in accordance with Article 20(1) to (15) of the SRM Regulation;
  - (e) the SRB informs the ECB of any requirement it intends to impose on an Entity as a part of its preparation for resolution, in particular to contact potential purchasers. The SRB informs the ECB when it starts drafting a preliminary resolution scheme or imposes any requirement on the relevant national resolution authority to draft such scheme;
  - (f) during the SRB's preparatory work for resolution and when the SRB intends to impose requirements upon an Entity in the context of Article 13(2) and (3) of the SRM Regulation, the SRB will have due regard to the ECB's need to ensure the effectiveness of any early intervention measures taken by the ECB as referred to in Article 13(1) of the SRM Regulation;
  - (g) the Participants ensure that any additional supervisory measure mentioned in Article 13(4) of the SRM Regulation and any action of the SRB aimed at preparing for resolution in accordance with Article 13(2) and Article 13(3) of the SRM Regulation are consistent.
- 7.1.3 In the resolution phase, cooperation between the Participants includes, but may be not limited to, the following:
- (a) the ECB consults the SRB before making a 'failing or likely to fail' assessment with regard to an Entity in accordance with Article 18(1) of the SRM Regulation;
  - (b) the ECB communicates a 'failing or likely to fail' assessment with regard to an Entity to the SRB without delay; The ECB provides the SRB without delay with any relevant information that the SRB requests in order to make a 'failing or likely to fail' assessment;
  - (c) the SRB informs and if requested, provides the necessary information to the ECB before launching a 'failing or likely to fail' assessment of an Entity in accordance with Article 18(1)(a) of the SRM Regulation and only makes such an assessment if the ECB, within three calendar days of receipt of that information, does not make it; The ECB provides the SRB – without delay – with any relevant information to be used for the SRB assessment, when requested;
  - (d) the SRB assesses, in close cooperation with the ECB, whether there is no reasonable prospect that any alternative private sector measures or supervisory action taken in respect of an Entity would prevent its failure within a reasonable timeframe;
  - (e) the ECB may inform the SRB that it considers the circumstances mentioned under point (d) are present;

- (f) the SRB communicates an assessment that the conditions for resolution mentioned in Article 18(1) of the SRM Regulation are met in relation to any Other Institution to the ECB;
- (g) the SRB informs the ECB about a resolution scheme that it intends to adopt on the basis of Article 18(1) of the SRM Regulation;
- (h) the ECB consults the SRB before making an assessment of the conditions mentioned in Article 21(1)(a), (c) and (d) of the SRM Regulation concerning the power to write down or convert capital instruments in relation to an Entity. In accordance with Article 21(1) of the SRM Regulation, if the SRB decides to make its own assessment concerning those conditions in relation to an Entity, it will communicate the results of this assessment to the ECB;
- (i) the SRB informs and if requested, provides the necessary information to the ECB of its intention of making a Viability Assessment as provided in Article 21(1)(b) with regard to an Entity and only makes such an assessment if the ECB, within three calendar days of receipt of that information, does not make it; The ECB provides the SRB – without delay – with any relevant information used for the SRB assessment, when requested;
- (j) the SRB, in agreement with the ECB, conducts the Business Reorganisation Plan Assessment of an Entity, in particular the likelihood that the plan, if implemented, will restore the long term viability of that Entity concerned;
- (k) the SRB and the ECB should reach an agreement on the assessment of a business reorganisation plan, which the SRB will communicate to the national resolution authority concerned.

## **7.2. Provision of information**

7.2.1 The Participants provide each other duly and timely with all the information necessary for the performance of their respective tasks, either upon request or on a voluntary basis in the absence of an explicit request.

7.2.2 Concerning information that is provided on request, the request will:

- (a) contain a general description of the required information;
- (b) specify the purpose for which the information is sought;
- (c) state why the information is necessary in order to perform the requesting Participant's tasks; and
- (d) describe the urgency of the request and the desired time limit for the reply.

Requests for information may be made in writing or orally and will be documented by each Participant in accordance with its internal procedures. The format of the request will take the applicable confidentiality rules into account.

7.2.3 The Participant responds to the request within the requested timeframe taking into account the urgency of the request.

7.2.4 Paragraph 7.2.2 does not detract a Participant from the duty to inform the other Participant proactively of any information that it deems necessary for the performance of that other Participant's responsibilities.

*Paragraph 8***Cooperation relating to other activities****8.1 Cooperation in on-site inspections in accordance with Article 36 of the SRM Regulation**

8.1.1 The Participants will cooperate with regard to on-site inspections carried out by them to the extent necessary for the performance of their respective tasks under the SSM Regulation and SRM Regulation.

8.1.2 The SRB will inform the ECB of an intended on-site inspection with respect to an Entity at least one week before notifying the Entity subject to the on-site inspection or, if the SRB will carry out the on-site inspection without notifying the Entity concerned, as soon as possible before the start of the inspection. Prior to launching the on-site inspection, the SRB will verify with the ECB whether there is any ongoing supervisory on-site inspection or on-site inspection under launching phase.

8.1.3 The ECB and the SRB may agree to participate in each other's on-site inspections to the extent necessary for performing their respective tasks.

8.1.4 Where appropriate, the Participants keep each other informed on the results of on-site inspections carried out by them in a timely manner, where the findings are relevant for the performance of their respective tasks, particularly with regard to the fields covered by this MoU and to the extent reasonable and permitted by Union law.

**8.2 Annual SRB work program**

In accordance with Article 50(1)(a) of the SRM Regulation, the SRB transmits its annual work program for the following year to the ECB for information within five business days after its adoption by the Plenary Session.

**8.3 Calculation of contributions**

In accordance with Article 70(2) of the SRM Regulation and Article 4 of Council Implementing Regulation (EU) 2015/81<sup>8</sup>, the SRB consults the ECB regarding the calculation of the ex-ante contributions to the Fund. The ECB may express its views regarding the proposed individual contributions of Entities in due time, and in any case within 10 business days after the start of the consultation at the latest. Within 10 business days from the notification of the final annual contributions to the Entities, the SRB submits an overview or copy of the contributions to the ECB.

**8.4 Order of priority of claims**

The SRB will inform the ECB of the ranking of claims against entities referred to in Article 2 of the SRM Regulation in national insolvency proceedings within five business days after receiving the notification by Member States in accordance with Article 17(2) of the SRM Regulation.

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<sup>8</sup> Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund, OJ L 15, 22.1.2015, p. 1.

## 8.5 Cooperation related to ECB common procedures

- 8.5.1 In relation to supervised entities subject to the direct responsibility of the SRB, for matters related to granting and withdrawing authorisations for credit institutions as well as assessing proposed acquisitions of qualifying holdings, the ECB will inform the SRB without delay of its decisions.
- 8.5.2 The SRB will inform the ECB as soon as possible of any authorisation needed to take up the business of a credit institution, required due to the application of a resolution tool as provided for in the SRB decision on a resolution scheme. The ECB will have due regard of the urgency of the matter when taking a decision on a draft authorisation decision it receives accordingly from the national competent authority in accordance with Article 14 of the SSM Regulation.
- 8.5.3 The ECB will cooperate with the SRB whenever, either on its own initiative or on a proposal from an NCA, it intends to take a decision on the withdrawal of the authorisation of an institution subject to the direct responsibility of the SRB in case of failure or a likely failure situation.
- Following consultation with the SRB, the ECB will take its views into account when taking its decision.
- 8.5.4 The ECB will inform the SRB of its intention to classify supervised entities or supervised groups as significant in accordance with Article 44 SSM Framework Regulation and concerning the beginning and end of direct supervision by the ECB in accordance with Articles 45 and 46, as well as Article 67 SSM Framework Regulation in order to allow the SRB to prepare for its assumption of direct responsibility.

### *Paragraph 9*

#### **Exchange of information related to the establishment, suspension and termination of close cooperation between the ECB and national competent authorities of Member States whose currency is not the euro**

The ECB will notify and send its decisions about the establishment, suspension or termination of close cooperation to the SRB without delay:

- (a) When the ECB has concluded, according to Article 5(1) of the Decision ECB/2014/5, that a non-participating Member State which has requested to enter into close cooperation fulfils the criteria set out in Article 7(2)(a) to (c) of the SSM Regulation;
- (b) When the ECB adopts a decision establishing close cooperation with the national competent authority of a Member State whose currency is not the euro or rejecting such request;
- (c) When the ECB adopts a decision to suspend close cooperation pursuant to Article 7(5) or (7) of the SSM Regulation, indicating the dates from which the suspension takes effect as well as the period during which the suspension applies. The ECB will also notify the SRB where the suspension will be extended;
- (d) When the ECB adopts a decision to terminate close cooperation pursuant to Article 7(5) or (7) or, at the request of a Member State in close cooperation, pursuant to Article 7(6) or (8) of the SSM Regulation.

*Paragraph 10***Cooperation with regard to non-participating Member States**

The Participants will cooperate closely in the context of their participation in Colleges of Supervisors and (European) Resolution Colleges, as well as any joint decision-making process in accordance with Article 87 of the BRRD.

*Paragraph 11***Cooperation with third-country authorities**

- 11.1 This Paragraph applies in respect of cooperation with regard to relevant authorities of third countries unless and until any international agreement as referred to in Article 93(1) of the BRRD enters into force. It will also apply following the entry into force of such an international agreement with one or more third countries to the extent that the subject matter of this paragraph is not governed by that agreement.
- 11.2 The Participants will keep each other duly informed of any non-binding cooperation agreements with third-country authorities, where possible.
- 11.3 If a Crisis Management Group (CMG) has been established for an Entity, the Participants will cooperate closely on the distribution of tasks in accordance with their respective responsibilities within the CMG, in order to ensure its effective functioning. The SRB will chair the CMG and will be in charge of preparing the CMG meetings and will coordinate with the ECB on its involvement. The ECB will be chairing topics related to recovery planning.
- 11.4 For CMGs not covered by sub-paragraph 3 the Participants cooperate closely to the extent they participate as members in such fora.

*Paragraph 12***Permissible use of information and confidentiality**

- 12.1 The Participants recognise that mutual trust can only be preserved if information can flow with confidence in both directions.
- 12.2 Any confidential information requested or received by the Participants will be exchanged in compliance with relevant Union law, and will be used exclusively for lawful purposes and only in relation to the exercise by the Participants of their respective duties and tasks.
- 12.3 The Participants will exchange confidential information and will preserve the confidentiality of the information exchanged. In this regard, the Participants will keep confidential all information obtained in accordance with Union law or under this MoU from the other Participant, directly or indirectly, if the information communicated has been qualified as confidential by the sending Participant or is related to an issue of a confidential nature. The Participants will ensure that all persons under their responsibility dealing with or having access to confidential information are bound by the obligation of professional secrecy in accordance with the general principle of professional secrecy stated in Article 339 of the Treaty on the Functioning of the European Union and in compliance with relevant Union law.

12.4 Prior to any disclosure of confidential information received from the other Participant to a third party, the Participant considering disclosure will seek to (a) obtain the express agreement in writing of the originating Participant to disclose the confidential information, (b) ensure that the disclosed confidential information, including personal data, will be used by the third party solely for the purposes for which the originating Participant gave its agreement, and (c) ensure that the third party is subject to professional secrecy requirements, including data protection requirements, equivalent to those applicable to them by the relevant Union law.

For the purposes of this Paragraph 12 the Commission, National Resolution Authorities as well as National Competent Authorities are not considered to be third parties.

12.5 If a Participant is legally compelled to disclose confidential information received from the other Participant, the requested Participant will immediately notify the originating Participant, indicating what information it is compelled to release, to whom the information will be released, the circumstances surrounding the information release, and the legal basis of the obligation to release the information. If so required by the originating Participant, the requested Participant will preserve the confidentiality of the information to the extent permitted by the relevant Union law.

#### *Paragraph 13*

##### **Data Protection**

This MoU does not modify or supersede the applicable Union data protection framework. The Participants process any personal data contained in the information exchanged under this MoU in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with the regard of processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>9</sup>, and, as far as they transfer personal data to third-country authorities, in particular in accordance with Article 9 of Regulation (EC) No 45/2001.

#### *Paragraph 14*

##### **Knowledge exchange**

The Participants recognise that it is of mutual interest to exchange general information relating to their respective fields of competence, including in the context of trainings, conferences and workshops. Either Participant may invite staff members of the other Participant on a case-by-case basis to join such a knowledge exchange session. Each Participant will cover its own expenses incurred in relation to such sessions. Any confidential information that may be exchanged in this context falls under the scope and be governed by the principles mentioned in Paragraph 12.

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<sup>9</sup> OJ L 8, 12.1.2001, p. 1.

*Paragraph 15***Settlement of disputes**

- 15.1 Any disagreement between the Participants concerning the interpretation or application of this MoU or its performance will be settled, if possible, in an amicable and equitable manner through direct negotiations between the relevant units and responsible persons. Therefore, the representatives appointed by the SRB and the ECB respectively will endeavour to resolve the outstanding disagreement.
- 15.2 If the negotiation stage mentioned in Paragraph 14.1 does not reach a satisfactory resolution, the Participants strive to solve the disagreement by mutual agreement by entertaining good faith negotiations between senior management, or directly the permanent Board Members of the SRB and members of the Executive Board of the ECB, who have authority to fully and finally resolve the disagreement.
- 15.3 The existence of a disagreement, its resolution as well as any information including documentation related to or disclosed in connection with it, will be treated as confidential information.

*Paragraph 16***Review and amendment**

- 16.1 The Participants may review the functioning and effectiveness of cooperation and information exchange under this MoU every two years or earlier when deemed necessary by both Participants.
- 16.2 Any amendment to this MoU requires the mutual consent of Participants and will be done in writing unless otherwise agreed upon.

*Paragraph 17***Publication of this MoU**

This MoU will be published subject to the requirements of professional secrecy on the websites of the SRB and the ECB within one week after it comes into effect.

*Paragraph 18***Effect and termination**

- 18.1 This MoU will come into effect on the date it has been signed by both Participants and will continue to have effect until terminated by either of them.
- 18.2 Each Participant may terminate this MoU by giving six months' prior written notice to the other Participant at any time. If the MoU is terminated by either Participant, steps will be taken to ensure that the termination does not affect any prior obligation, project or activity already in progress.
- 18.3 Termination of this MoU does not affect obligations under this MoU relating to confidentiality of information, which will continue to have effect, nor does it affect obligations regarding cooperation and exchange of information between the Participants under Applicable Laws.

Signed at Brussels and Frankfurt on 22 December 2015 in two original copies each in the English language and signed by the Participants' duly authorised representatives.

*For the Single Resolution Board*

[signed]

Name: Elke König

*For the European Central Bank*

[signed]

Name: Sabine Alice Lautenschläger-Peiter

*For the European Central Bank*

[signed]

Name: Yves Mersch