

DECISION OF THE EUROPEAN CENTRAL BANK

of 22 January 2014

amending Decision ECB/2004/2 adopting the Rules of Procedure of the European Central Bank

(ECB/2014/1)

(2014/179/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.3 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 institutions ⁽¹⁾, and in particular Articles 25(2) and 26(12) thereof,

Whereas:

- (1) It is necessary to adjust the internal organisation of the ECB and its decision-making bodies to the new requirements arising from Regulation (EU) No 1024/2013 to clarify the interaction of the bodies involved in the process of preparing and adopting supervisory decisions.
- (2) It is necessary to establish a Code of Conduct setting out the ethical standards for the guidance of the members of the Governing Council and their appointed alternates when exercising their functions.
- (3) It is necessary to establish a high-level audit committee to strengthen internal and external layers of control and to contribute to further enhancing the corporate governance of the ECB and the Eurosystem.
- (4) Article 21 of the Rules of Procedure specifies that the Conditions of Employment and the Staff Rules shall determine the employment relationship between the ECB and its staff. The Conditions of Employment and the Staff Rules have been amended to include the rules governing the selection and appointment of candidates. Article 20 of the Rules of Procedure on the selection, appointment and promotion of staff is now redundant and should therefore be repealed.
- (5) It is also necessary to reflect some minor technical and editorial changes such as the new numbering of articles of the Treaty and the Statute of the European System of Central Banks and of the European Central Bank.
- (6) The non-objection procedure pursuant to Article 26(8) of Regulation (EU) No 1024/2013 should not apply to decisions relating to the general framework under which supervisory decisions will be taken like the organisational framework referred to in Article 6(7) of Regulation (EU) No 1024/2013.

- (7) Decision ECB/2004/2 ⁽²⁾ should be amended to take these developments into account,

HAS ADOPTED THIS DECISION:

Article 1

Amendments to the Rules of Procedure of the European Central Bank

Decision ECB/2004/2 is amended as follows:

1. Article 1 is replaced by the following:

'Article 1

Definitions

1.1. These Rules of Procedure shall supplement the Treaty on the Functioning of the European Union and the Statute of the European System of Central Banks and of the European Central Bank. Without prejudice to the provisions in Article 1.2, the terms in these Rules of Procedure shall have the same meaning as in the Treaty and the Statute.

1.2. The terms "participating Member State", "national competent authority" and "national designated authority" shall have the same meaning as defined in Council Regulation (EU) No 1024/2013 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.'

2. The following new Article 5a is inserted:

'Article 5a

Code of Conduct for the members of the Governing Council

5a.1. The Governing Council shall adopt and update a Code of Conduct for the guidance of its members, which shall be published on the ECB's website.

5a.2. Each Governor shall ensure that his/her accompanying persons within the meaning of Article 3.2 and his/her alternates within the meaning of Article 3.3 sign a declaration of compliance with the Code of Conduct prior to any participation in the meetings of the Governing Council.'

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

3. Article 9 is replaced by the following:

'Article 9

Eurosystem/ESCB committees

9.1. The Governing Council shall establish and dissolve committees. They shall assist in the work of the decision-making bodies of the ECB and shall report to the Governing Council via the Executive Board.

9.2. In respect of policy issues relating to the prudential supervision of credit institutions, the committees assisting in the work of the ECB regarding the tasks conferred on the ECB by Regulation (EU) No 1024/2013 shall report to the Supervisory Board and, where appropriate, to the Governing Council. In accordance with its own procedures, the Supervisory Board shall mandate the Vice-Chair to report via the Executive Board to the Governing Council on all such activity.

9.3. Committees shall be composed of up to two members from each of the Eurosystem NCBs and the ECB, appointed by each Governor and the Executive Board respectively.

9.4. When assisting in the work of the ECB's decision-making bodies with the tasks conferred on the ECB by Regulation (EU) No 1024/2013, the committees shall include one member from the central bank and one member from the national competent authority in each participating Member State, appointed by each Governor following consultation with the respective national competent authority where the national competent authority is not a central bank.

9.5. The Governing Council shall lay down the mandates of the committees and appoint their chairpersons. As a rule, the chairperson shall be a staff member from the ECB. Both the Governing Council and the Executive Board shall have the right to request studies of specific topics by committees. The ECB shall provide secretarial assistance to the committees.

9.6. Each non-Eurosystem national central bank may also appoint up to two staff members to take part in the meetings of a committee whenever it deals with matters falling within the field of competence of the General Council and whenever the chairperson of a committee and the Executive Board deems this participation appropriate.

9.7. Representatives of other Union institutions and bodies and any other third party may also be invited to take part in the meetings of a committee whenever the chairperson of a committee and the Executive Board deem this appropriate.'

4. The following new Article 9b is inserted:

'Article 9b

Audit Committee

In order to strengthen the internal and external layers of control already in place and to further enhance the corporate governance of the ECB and the Eurosystem, the Governing Council shall establish an audit committee and lay down its mandate and composition.'

5. Article 11.3 is replaced by the following:

'11.3. The Executive Board shall adopt and up-date a Code of Conduct for the guidance of its members and of the members of staff of the ECB, which shall be published on the ECB's website.'

6. The following Articles are inserted:

'CHAPTER IVa

SUPERVISORY TASKS

Article 13a

Supervisory Board

Pursuant to Article 26(1) of Regulation (EU) (No) 1024/2013, a Supervisory Board established as an internal body of the ECB shall fully undertake the planning and execution of the tasks conferred on the ECB relating to the prudential supervision of credit institutions (hereinafter "supervisory tasks"). Any tasks of the Supervisory Board shall be without prejudice to the competences of the ECB decision-making bodies.

Article 13b

Composition of the Supervisory Board

13b.1. The Supervisory Board is composed of a Chair, a Vice-Chair, four representatives of the ECB and one representative of the national competent authority in each participating Member State. All members of the Supervisory Board act in the interest of the Union as a whole.

13b.2. Where the national competent authority of a participating Member State is not a central bank, the respective member of the Supervisory Board may bring a representative from the central bank of its Member State. For the purpose of voting, the representatives of one Member State shall be considered as one member.

13b.3. After hearing the Supervisory Board, the Governing Council shall adopt the proposal for the appointment of the Chair and the Vice-Chair of the Supervisory Board to be submitted to the European Parliament for approval.

13b.4. The terms and conditions of employment of the Chair of the Supervisory Board, in particular his/her salary, pension and other social security benefits, shall be the subject of a contract with the ECB and shall be fixed by the Governing Council.

13b.5. The term of office of the Vice-Chair of the Supervisory Board shall be five years and shall not be renewable. It shall not extend beyond the end of his/her mandate as member of the Executive Board.

13b.6. The Governing Council shall appoint the four representatives of the ECB to the Supervisory Board, who shall not perform duties directly related to the monetary policy function, on a proposal by the Executive Board.

Article 13c

Voting pursuant to Article 26(7) of Regulation (EU) No 1024/2013

For the purpose of adopting draft decisions pursuant to Article 26(7) of Regulation (EU) No 1024/2013 and on the basis of Article 16 of the Treaty on European Union, Article 238(3) of the Treaty on the Functioning of the European Union, and Protocol (No 36) on transitional provisions, the following rules shall apply:

- (i) Until 31 October 2014, decisions shall be deemed adopted when at least 50 % of Supervisory Board members representing at least 74 % of the total number of weighted votes and 62 % of the total population, cast a vote in favour.
- (ii) From 1 November 2014, decisions shall be deemed adopted when at least 55 % of the Supervisory Board members representing at least 65 % of the total population, cast a vote in favour. A blocking minority must include at least the minimum number of Supervisory Board members representing 35 % of the total population, plus one member, failing which the qualified majority shall be deemed attained.
- (iii) Between 1 November 2014 and 31 March 2017, upon request of a representative of a national competent authority or upon request of a representative of the ECB in the Supervisory Board, decisions shall be deemed adopted when at least 50 % of Supervisory Board members representing at least 74 % of the total number of weighted votes and 62 % of the total population, cast a vote in favour.
- (iv) Each of the four ECB representatives appointed by the Governing Council shall have a weighting equal to the median weighting of those of the representatives of the national competent authorities of participating Member States, as calculated on the basis of the method laid down in the Annex.
- (v) The votes of the Chair and the Vice-Chair shall be weighted zero and shall count only towards the definition of the majority as far as the number of the members of the Supervisory Board is concerned.

Article 13d

Rules of Procedure of the Supervisory Board

The Supervisory Board shall adopt its Rules of Procedure after having consulted the Governing Council. The Rules of Procedure shall ensure the equal treatment of all participating Member States.

Article 13e

Code of Conduct for the members of the Supervisory Board

13e.1. The Supervisory Board shall adopt and update a Code of Conduct for the guidance of its members, which shall be published on the ECB's website.

13e.2. Each member shall ensure that any accompanying persons, alternates and the representatives of its national central bank, if the national competent authority is not the central bank, sign a declaration of compliance with the Code of Conduct prior to any participation in the meetings of the Supervisory Board.

Article 13f

Supervisory Board meetings

The Supervisory Board shall normally hold its meetings on the premises of the ECB. The proceedings of the Supervisory Board meetings shall be provided to the Governing Council, as soon as adopted, for information.

Article 13g

Adoption of decisions for the purpose of carrying out the tasks referred to in Article 4 of Regulation (EU) No 1024/2013

13g.1. The Supervisory Board shall propose to the Governing Council complete draft decisions for the purpose of carrying out the tasks referred to in Article 4 of Regulation (EU) No 1024/2013 together with explanatory notes outlining the background to and the main reasons underlying the draft decision. Such draft decisions shall be simultaneously transmitted to the national competent authorities of the participating Member States concerned together with information on the deadline given to the Governing Council in line with Article 13g.2.

13g.2. A draft decision within the meaning of Article 13g.1 shall be deemed adopted unless the Governing Council objects to it within ten working days. In emergency situations a reasonable time period shall be defined by the Supervisory Board and shall not exceed 48 hours. The Governing Council shall state the reasons for any objections in writing. The decision shall be transmitted to the Supervisory Board and to the national competent authorities of the Member States concerned.

13g.3. A non-euro area participating Member State shall notify the ECB of any reasoned disagreement with a draft decision of the Supervisory Board within five working days of receiving the draft decision pursuant to Article 13g.1. The ECB President shall transmit the reasoned disagreement to the Governing Council and the Supervisory Board without delay. The Governing Council shall take fully into account the reasons contained in an assessment prepared by the Supervisory Board when deciding on the matter within five working days of the information of the reasoned disagreement. This decision, together with a written explanation, shall be transmitted to the Supervisory Board and to the national competent authority of the Member State concerned.

13g.4. A non-euro area participating Member State shall notify the ECB of any reasoned disagreement with a Governing Council objection to a draft decision of the Supervisory Board within five working days of receiving such objection pursuant to Article 13g.2. The ECB President shall transmit the reasoned disagreement to the Governing Council and the Supervisory Board without delay. The Governing Council shall give its opinion on the reasoned disagreement expressed by the Member State within 30 days, and, stating its reasons, shall confirm or withdraw its objection. This decision on the confirmation or withdrawal of its objection shall be transmitted to the national competent authority of the Member State concerned. If the Governing Council withdraws the objection, the draft decision of the Supervisory Board shall be deemed adopted on the date of withdrawal of the objection.

Article 13h

Adoption of decisions for the purpose of carrying out the tasks referred to in Article 5 of Regulation (EU) No 1024/2013

13h.1. If a national competent or designated authority notifies the ECB of its intention to apply requirements for capital buffers or any other measures aimed at addressing systemic or macro-prudential risks pursuant to Article 5(1) of Regulation (EU) No 1024/2013, the notification, upon receipt by the Secretary of the Supervisory Board, shall be transmitted to the Governing Council and the Supervisory Board without delay. Upon a proposal prepared by the Supervisory Board based on the initiative and taking into account the input of the relevant committee and of the relevant internal structure, the Governing Council shall decide about the matter within three working days. Where the Governing Council objects to the notified

measure, it shall explain its reasons in writing to the national competent or designated authority concerned within five working days of the notification to the ECB.

13h.2. If the Governing Council, upon a proposal prepared by the Supervisory Board based on the initiative and taking into account the input of the relevant committee and of the relevant internal structure, intends to apply higher requirements for capital buffers or to apply more stringent measures aimed at addressing systemic or macro-prudential risks pursuant to Article 5(2) of Regulation (EU) No 1024/2013, such intention shall be notified to the concerned national competent or designated authority at least ten working days prior to taking such a decision. If the concerned national competent or designated authority notifies the ECB in writing of its reasoned objection within five working days of the receipt of the notification, this objection, upon receipt by the Secretary of the Supervisory Board, shall be transmitted to the Governing Council and the Supervisory Board without delay. The Governing Council shall decide on the matter on the basis of a proposal prepared by the Supervisory Board based on the initiative and taking into account the input of the relevant committee and of the relevant internal structure. This decision shall be transmitted to the national competent or designated authority concerned.

13h.3. The Governing Council shall have the right to endorse, object to or amend proposals of the Supervisory Board within the meaning of Article 13h.1 and Article 13h.2. The Governing Council shall also have the right to request the Supervisory Board to submit a proposal within the meaning of Article 13h.1 and Article 13h.2 or to undertake specific analysis. If the Supervisory Board submits no proposals addressing such requests, the Governing Council, taking into account the input of the relevant committee and of the relevant internal structure, may take a decision in the absence of a proposal from the Supervisory Board.

Article 13i

Adoption of decisions pursuant to Article 14(2) to (4) of Regulation (EU) No 1024/2013

If a national competent authority notifies the ECB of its draft decision pursuant to Article 14(2) of Regulation (EU) No 1024/2013, the Supervisory Board shall transmit the draft decision, together with its assessment, within five working days to the Governing Council. The draft decision shall be deemed adopted unless the Governing Council objects within 10 working days of the notification to the ECB, extendable once for the same period in duly justified cases.

*Article 13j***General framework referred to in Article 6(7) of Regulation (EU) No 1024/2013**

The Governing Council shall adopt decisions establishing the general framework to organise the practical arrangements for the implementation of Article 6 of Regulation (EU) No 1024/2013, in consultation with national competent authorities and on the basis of a proposal from the Supervisory Board outside the scope of the non-objection procedure.

*Article 13k***Separation of monetary policy and supervisory tasks**

13k.1. The ECB shall carry out the tasks conferred on it by Regulation (EU) No 1024/2013 without prejudice to and separately from its tasks relating to monetary policy and from any other tasks.

13k.2. The ECB shall take all necessary measures to ensure separation between the monetary policy and the supervisory functions.

13k.3. The separation of monetary policy and the supervisory function shall not exclude the exchange between these two functional areas of the information necessary for the achievement of ECB and ESCB tasks.

*Article 13l***Organisation of Governing Council meetings regarding the supervisory tasks**

13l.1. The Governing Council meetings regarding the supervisory tasks shall take place separately from regular Governing Council meetings and shall have separate agendas.

13l.2. On a proposal from the Supervisory Board, the Executive Board shall draw up a provisional agenda and send it, together with the relevant documents prepared by the Supervisory Board, to the members of the Governing Council and other authorised participants at least eight days before the relevant meeting. This shall not apply to emergencies, in which the Executive Board shall act appropriately having regard to the circumstances.

13l. 3. The Governing Council of the ECB shall consult with the Governors of the non-Eurosystem NCBs of the participating Member States before objecting to any draft decision prepared by the Supervisory Board that is addressed to the national competent authorities in respect of credit institutions established in non-euro area participating Member States. The same shall apply where the concerned national competent authorities inform the Governing Council of their reasoned disagreement with such a draft decision of the Supervisory Board.

13l. 4. Unless otherwise provided for in this Chapter, the general provisions of Governing Council meetings laid down in Chapter I shall also apply to Governing Council meetings regarding the supervisory tasks.

*Article 13m***Internal structure regarding the supervisory tasks**

13m.1. The competence of the Executive Board in respect of the ECB's internal structure and the staff of the ECB shall encompass the supervisory tasks. The Executive Board shall consult the Chair and the Vice Chair of the Supervisory Board on such internal structure. Articles 10 and 11 shall apply accordingly.

13m.2. The Supervisory Board, in agreement with the Executive Board, may establish and dissolve substructures of a temporary nature, such as working groups or task forces. They shall assist in the work regarding the supervisory tasks and report to the Supervisory Board.

13m.3. The President of the ECB, after having consulted the Chair of the Supervisory Board, shall appoint a member of the staff of the ECB as Secretary of the Supervisory Board and the Steering Committee. The Secretary shall assist the Chair or, in his/her absence, the Vice-Chair in preparing the Supervisory Board meetings and shall be responsible for drafting the proceedings of these meetings.

13m.4. The Secretary shall liaise with the Secretary of the Governing Council for preparing the meetings of the Governing Council regarding supervisory tasks and shall be responsible for drafting the proceedings of these meetings.

*Article 13n***Report under Article 20(2) of Regulation (EU) No 1024/2013**

Upon a proposal from the Supervisory Board submitted by the Executive Board, the Governing Council shall adopt the annual reports addressed to the European Parliament, the Council, the Commission and the Eurogroup as required under Article 20(2) of Regulation (EU) No 1024/2013.

*Article 13o***Representatives of the ECB at the European Banking Authority**

13o.1. On a proposal by the Supervisory Board, the President of the ECB shall appoint or recall the ECB's representative to the Board of Supervisors of the European Banking Authority as provided for by Article 40(1)(d) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*).

13o.2. The President shall nominate the accompanying second representative with expertise on central banking tasks to the Board of Supervisors of the European Banking Authority.

(*) OJ L 331, 15.12.2010, p. 12.'

7. Article 15.1 is replaced by the following:

'15.1. Before the end of each financial year the Governing Council, acting upon a proposal from the Executive Board in accordance with any principles laid down by the former, shall adopt the budget of the ECB for the subsequent financial year. The expenditure for the supervisory tasks shall be separately identifiable within the budget and shall be consulted with the Chair and the Vice Chair of the Supervisory Board.'

8. Article 17.5 is replaced by the following:

'17.5. Without prejudice to the second paragraph of Article 43 and the first indent of Article 46.1 of the Statute, ECB Opinions shall be adopted by the Governing Council. However, in exceptional circumstances and unless not less than three Governors state their wish to retain the competence of the Governing Council for the adoption of specific opinions, ECB Opinions may be adopted by the Executive Board, in line with comments provided by the Governing Council and taking into account the

contribution of the General Council. The Executive Board shall be competent to finalise ECB Opinions on very technical matters and to incorporate factual changes or corrections. ECB Opinions shall be signed by the President. For ECB Opinions to be adopted in relation to the prudential supervision of credit institutions, the Governing Council may consult the Supervisory Board.'

9. Article 17.8 is replaced by the following:

'17.8. Regulation No 1 determining the languages to be used by the European Economic Community (*) shall apply to the legal acts specified in Article 34 of the Statute.

(*) OJ 17, 6.10.1958, p. 385/58.'

10. The following article is inserted:

*'Article 17a***Legal instruments of the ECB related to supervisory tasks**

17a.1. Unless otherwise provided for in regulations adopted by the ECB pursuant to Regulation (EU) No 1024/2013 and in this Article, Article 17 shall apply to the legal instruments of the ECB related to supervisory tasks.

17a.2. ECB guidelines related to supervisory tasks pursuant to Article 4(3) and Article 6(5)(a) of Regulation (EU) No 1024/2013 shall be adopted by the Governing Council, and thereafter notified and signed on behalf of the Governing Council by the President. Notification of the national competent authorities may take place by means of telefax, electronic mail or telex or in paper form.

17a.3. ECB instructions related to supervisory tasks pursuant to Article 6(3), Article 6(5)(a) and Articles 7(1), 7(4), 9(1) and 30(5) of Regulation (EU) No 1024/2013 shall be adopted by the Governing Council, and thereafter notified and signed on behalf of the Governing Council by the President. They shall state the reasons on which they are based. Notification of the national authorities competent for the supervision of credit institutions may take place by means of telefax, electronic mail or telex or in paper form.

17a.4. ECB decisions with regard to supervised entities and entities which have applied for authorisation to take up the business of a credit institution shall be adopted by the Governing Council and signed on its behalf by the President. They shall be thereafter notified to the persons to whom they are addressed.'

11. Article 18 is replaced by the following:

'Article 18

Procedure under Article 128(2) of the Treaty

The approval provided for in Article 128(2) of the Treaty shall be adopted for the following year by the Governing Council in a single decision for all Member States whose currency is the euro within the final quarter of every year.'

12. Article 20 is deleted.

13. Article 23.1 is replaced by the following:

'23.1. The proceedings of the decision-making bodies of the ECB, or any committee or group established by them, of the Supervisory Board, its Steering Committee and of any its substructures of a temporary nature shall be confidential unless the Governing Council authorises the President to make the outcome of their deliberations public. The President shall consult the Chair of the Supervisory Board prior to making any such decision in relation to the proceedings of the Supervisory Board, its Steering Committee and of any its substructures of a temporary nature.'

14. In Article 23.3, the first sentence is replaced by the following:

'Documents drawn up or held by the ECB shall be classified and handled in accordance with the organisational rules regarding professional secrecy and management and confidentiality of information.'

15. The following article is inserted:

'Article 23a

Confidentiality and professional secrecy regarding the supervisory tasks

23a.1. Members of the Supervisory Board, of the Steering Committee and of any substructures established by the Supervisory Board shall be subject to the professional secrecy requirements laid down in Article 37 of the Statute even after their duties have ceased.

23a.2. Observers shall not have access to confidential information relating to individual institutions.

23a.3. Documents drawn up by the Supervisory Board, the Steering Committee and any substructures of a temporary nature established by the Supervisory Board shall be ECB documents and shall therefore be classified and handled in accordance with Article 23.3.'

16. The text set out in the Annex is added as an annex.

Article 2

Entry into force

This Decision shall enter into force on 24 January 2014.

Done at Frankfurt am Main, 22 January 2014.

The President of the ECB

Mario DRAGHI

ANNEX

'ANNEX

(as referred to in Article 13c(iv))

1. For the purposes of the voting pursuant to Article 13c, the four ECB representatives must be assigned as defined in the following paragraphs, the median weighted votes of the participating Member States under the weighted votes criterion, the median population of the participating Member States under the population criterion and, by virtue of their membership in the Supervisory Board, a vote under the number of members criterion.
2. Ranking, in ascending order, the weighted votes assigned to the participating Member States by Article 3 of the Protocol (No 36) on transitional provisions for the members representing the participating Member States, the median weighted vote is defined as the middle weighted vote if there is an odd number of participating Member States, and as the average of the two middle numbers, rounded up to the nearest whole number, if their number is even. Four times the median weighted vote must be added to the overall number of weighted votes of the participating Member States. The resulting number of weighted votes shall constitute the "total number of weighted votes".
3. The median population is defined in accordance with the same principle. For this purpose, recourse will be made to the figures published by the Council of the European Union as per Annex III, Article 1 and 2 of Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (*). Four times the median population of the participating Member States must be added to the combined population in all participating Member States. The resulting population number shall constitute "the total population".

(*) OJ L 325, 11.12.2009, p. 35.