

**DECISION (EU) 2015/2218 OF THE EUROPEAN CENTRAL BANK****of 20 November 2015****on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile (ECB/2015/38)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) and Article 132 thereof,

Having regard to 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>(1)</sup>, and in particular Article 4(3) thereof,

Whereas:

- (1) Within the framework established pursuant to Article 6 of Regulation (EU) No 1024/2013, the European Central Bank (ECB) is exclusively competent to carry out the tasks conferred on it by Article 4 of that Regulation relating to credit institutions established in participating Member States or branches established in participating Member States by credit institutions established in non-participating Member States.
- (2) In order to pursue the objectives of the banking union following the European Council's conclusion of 19 October 2012 that the process towards a deeper economic and monetary union should build on the Union's institutional and legal framework, a harmonised legal framework within the Single Supervisory Mechanism should be established.
- (3) Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) <sup>(2)</sup> establishes the framework for cooperation within the Single Supervisory Mechanism between the ECB and national competent authorities and with national designated authorities. In particular Part III, Title 2 sets out general provisions relating to due process for adopting ECB supervisory decisions.
- (4) The framework for prudential supervision established by Directive 2013/36/EU of the European Parliament and of the Council <sup>(3)</sup> requires that institutions identify all members of staff whose professional activities have a material impact on the institution's risk profile. Any criteria used for this purpose must ensure that the identification of staff whose professional activities have a material impact on the institution's risk profile reflects the level of risk of different activities within the institution.
- (5) The ECB is responsible for ensuring, within the framework of Commission Delegated Regulation (EU) No 604/2014 <sup>(4)</sup>, that the entities under its direct supervision apply the rules on the identification of staff having a material impact on an institution's risk profile in a coherent manner that safeguards the soundness of any such identification. This Decision therefore provides for a procedure in relation to the application of the quantitative criteria set out in Article 4 of Delegated Regulation (EU) No 604/2014,

<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(2)</sup> 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).

<sup>(3)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>(4)</sup> Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile (OJ L 167, 6.6.2014, p. 30).

HAS ADOPTED THIS DECISION:

### Article 1

#### Scope

This Decision lays down the procedural requirements for both the notification and the application for the prior approval that supervised credit institutions shall submit to the ECB in order to exclude staff members or categories of staff members from the presumption of being identified staff based on the quantitative criteria laid down in Article 4 of Delegated Regulation (EU) No 604/2014.

### Article 2

#### Definitions

For the purposes of this Decision:

- (1) 'supervised credit institution' means a significant supervised entity as defined in Article 2(16) of Regulation (EU) No 468/2014 (ECB/2014/17) or significant supervised group as defined in Article 2(22) of Regulation (EU) No 468/2014 (ECB/2014/17);
- (2) 'ECB supervisory decision' has the same meaning as defined in Article 2(26) of Regulation (EU) No 468/2014 (ECB/2014/17);
- (3) 'identified staff' means all members of staff of a supervised credit institution whose professional activities have a material impact on the credit institution's risk profile in accordance with Delegated Regulation (EU) No 604/2014, on an individual, sub-consolidated or consolidated basis, as defined in paragraphs (48) and (49) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(1)</sup>.

### Article 3

#### General information to be provided to the ECB

1. The notification pursuant to Article 4(4) and the application for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 shall contain the following information for the end of the preceding financial year and for the current financial year:

- (a) the reference date;
- (b) the legal entity identifier (LEI) of the supervised credit institution;
- (c) the number of full-time equivalent employees;
- (d) the number of identified staff;
- (e) the number of identified staff based on the qualitative criteria pursuant to Article 3 of Delegated Regulation (EU) No 604/2014;
- (f) the number of identified staff based exclusively on the quantitative criteria established in Article 4 of Delegated Regulation (EU) No 604/2014, together with an indication of which of the categories specified in Article 4(1)(a), (b) or (c) of Delegated Regulation (EU) No 604/2014 each identified staff member belongs to;
- (g) the number of identified staff exclusively based on additional criteria set forth by the supervised credit institution.

<sup>(1)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

2. The notification pursuant to Article 4(4) and the application for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 shall contain the following information for each staff member for whom an exclusion is requested:

- (a) the staff member's name, entity, business unit, department, job title and reporting line together with the number of full-time equivalent employees under the staff member's management;
- (b) whether the staff member belongs to any risk taking or risk control function and if so, what is the threshold in millions of euro of risk positions that the function is allowed to take;
- (c) whether the staff member is a member of any committee and if so, the name of the committee, its reporting level and its degree of authority to take risk decisions expressed as a percentage of Common Equity Tier 1 capital;
- (d) the total amount of remuneration in euros and the variable to fixed remuneration ratio awarded to the staff member in the preceding financial year;
- (e) the key performance indicators for the staff member's variable remuneration;
- (f) the quantitative criteria on the basis of which the staff member was assessed as being identified staff (Article 4(1)(a), (b) or (c) of Delegated Regulation (EU) No 604/2014);
- (g) the criteria on the basis of which the exclusion of the staff member is requested (Article 4(2)(a) or (b) of Delegated Regulation (EU) No 604/2014).

3. The notification pursuant to Article 4(4) and the application for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 shall contain the annual internal or external audit assessment report on the identification process of identified staff and its results, also covering the requested exclusions.

#### Article 4

##### **Documentation required to substantiate that a business unit is not material**

1. When filing a notification pursuant to Article 4(4) or applying for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014, supervised credit institutions shall submit to the ECB the following documentation in order to substantiate that a staff member, or the category of staff to which the staff member belongs, only carries out professional activities in a business unit which is not a material business unit as referred to in Article 4(2)(a) of Delegated Regulation (EU) No 604/2014:

- (a) a detailed and comprehensive description of the duties and responsibilities of the relevant staff member or the category of staff to which the staff member belongs;
- (b) an organisational chart of the relevant business unit that shows the hierarchical structure and reporting lines, including the relevant staff member or category of staff to which the staff member belongs;
- (c) a detailed description of the internal capital allocation to the relevant business unit according to Article 73 of Directive 2013/36/EU for the current and the 2 preceding financial years;
- (d) an overview of the internal capital allocation to all business units in accordance with Article 73 of Directive 2013/36/EU for the current and the 2 preceding financial years;
- (e) a statement explaining why the supervised credit institution awarded the staff member, or category of staff to which the staff member belongs, a remuneration that meets the criteria stipulated in Article 4(1) of Delegated Regulation (EU) No 604/2014 even though the staff member carries out professional activities in a non-material business unit;
- (f) a reasoned statement explaining why the staff member, or category of staff to which the staff member belongs, does not meet the qualitative criteria referred to in Article 3 of Delegated Regulation (EU) No 604/2014.

2. If the definition of business units within the supervised credit institution has changed within the current and the 2 preceding financial years, the supervised credit institution shall provide the reasons for this change.

3. The ECB may require the supervised credit institution to submit further information to substantiate the application.

*Article 5***Documentation to substantiate that a staff member's professional activities have no material impact on the risk profile of a material business unit**

1. When filing a notification pursuant to Article 4(4) or applying for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014, supervised credit institutions shall submit the following documentation to the ECB in order to substantiate that a staff member's or category of staff's professional activities have no material impact on the risk profile of a material business unit as referred to in Article 4(2)(b) of Delegated Regulation (EU) No 604/2014:

- (a) a detailed and comprehensive description of the duties and responsibilities of the relevant staff member or category of staff to which the staff member belongs;
- (b) an organisational chart of the relevant business unit that shows the hierarchical structure and reporting lines, including the relevant staff member or category of staff to which the staff member belongs;
- (c) a detailed description of the objective criteria stipulated in Article 4(3) of Delegated Regulation (EU) No 604/2014 that have been used to assess that the professional activities of the relevant staff member, or the category of staff to which the staff member belongs have no material impact on the risk profile of a material business unit, specifying how these criteria have been applied and how all relevant risk and performance indicators used for internal risk measurement purposes have been taken into account;
- (d) a statement explaining why the supervised credit institution awarded the staff member, or category of staff to which the staff member belongs, a remuneration that meets the criteria stipulated in Article 4(1) of Delegated Regulation (EU) No 604/2014 even though the staff member has no material impact on the risk profile of a material business unit;
- (e) a reasoned statement explaining why the relevant staff member, or category of staff to which the staff member belongs, does not meet the qualitative criteria referred to in Article 3 of Delegated Regulation (EU) No 604/2014.

2. The ECB may require the supervised credit institution to submit further information to substantiate the application.

*Article 6***Supplementary documentation to substantiate applications for staff members awarded a total remuneration of EUR 1 000 000 or more**

1. When applying for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 for a staff member who was awarded a total remuneration of EUR 1 000 000 or more in the preceding financial year, supervised credit institutions shall submit the following documentation to the ECB in order to substantiate the exceptional circumstances referred to in Article 4(5) of Delegated Regulation (EU) No 604/2014:

- (a) a detailed description of the exceptional circumstances linked to the professional activity of the relevant staff member and their impact on the risk profile of the supervised credit institution. A highly competitive situation shall not be considered an exceptional circumstance;
- (b) a detailed description of any exceptional circumstances linked to the remuneration of the relevant staff member that explains why the supervised credit institution awarded the staff member a remuneration of EUR 1 000 000 or more, even though the staff member reportedly does not have a material impact on the risk profile of the supervised credit institution.

2. The ECB may require the supervised credit institution to submit further information to substantiate the application.

*Article 7***Period for filing notifications**

1. Notifications pursuant to Article 4(4) of Delegated Regulation (EU) No 604/2014 shall be filed without delay, but at the latest within 6 months from the end of the preceding financial year. A determination by a supervised credit institution used as the basis for a notification shall be limited to the performance of the staff member during the financial year following the year in which the notification was made.
2. For staff members who were covered by a notification in the previous filing period, a new notification is not needed as long as the criterion used for the determination is still applicable.
3. In the case of a staff member who is the subject of a notification for the first time, the determination shall apply to both the performance of the staff member during the financial year in which the notification is made and to the performance of the staff member during the following financial year. This provision shall only be applicable in respect of notifications submitted after the entry into force of this Decision.

*Article 8***Period for submitting applications for prior approval**

Applications for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 shall be submitted without delay, but at the latest within 6 months from the end of the preceding financial year.

*Article 9***Assessment by the ECB**

1. On the basis of notifications filed pursuant to Article 4(4) and applications submitted for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014, the ECB shall assess:
  - (a) the completeness of the documentation;
  - (b) the basis on which the supervised credit institution has determined that the staff member concerned, or the category of staff to which the staff member belongs, meets one of the conditions laid down in Article 4(2) of Delegated Regulation (EU) No 604/2014;
  - (c) whether the staff member, or the category of staff to which the staff member belongs, has no material impact on the risk profile of a material business unit through the professional activities carried out by verifying:
    - (i) whether the supervised credit institution has applied objective criteria, which take into account all relevant risk and performance indicators that it otherwise uses to identify, manage and monitor risks in accordance with Article 74 of Directive 2013/36/EU;
    - (ii) whether the supervised credit institution has compared the duties and authorities of the staff member, or category of staff to which the staff member belongs, and their impact on the supervised credit institution's risk profile with the impact of the professional activities of staff members identified by the qualitative criteria set out in Article 3 of Delegated Regulation (EU) No 604/2014;
  - (d) with regard to the applications for prior approval for staff members awarded a total remuneration of EUR 1 000 000 or more, whether exceptional circumstances apply. In such cases the ECB shall inform the European Banking Authority of the results of the initial assessment prior to taking any decision.

2. In the event of an application submitted for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014, the ECB shall issue a decision within 3 months of receipt of the complete documentation.
3. In the event of a notification pursuant to Article 4(4) of Delegated Regulation (EU) No 604/2014, where the assessment indicates that the requirements laid down in this Decision and in Article 4(2) of Delegated Regulation (EU) No 604/2014 are not met, the ECB shall notify the supervised credit institution thereof within 3 months of receipt of the complete documentation. The supervised credit institution shall not apply Article 4(2) of Delegated Regulation (EU) No 604/2014. In the absence of a notification by the ECB according to the first sentence of this paragraph, the supervised credit institution shall be considered to be compliant with Article 4(2) of Delegated Regulation (EU) No 604/2014 and the requirements referred to therein.

#### Article 10

##### **Duration of prior approval granted**

1. A prior approval granted by the ECB pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 shall be limited to the performance of the staff member during the financial year following the year in which the ECB supervisory decision containing the approval was notified to the supervised credit institution.
2. In the case of a first application for a relevant staff member, the approval shall be granted for the performance of the staff member during the financial year in which the ECB supervisory decision containing the approval was notified to the supervised credit institution and also for the performance of the staff member during the following financial year. This provision shall only be applicable in reference to the applications submitted after the entry into force of this Decision.

#### Article 11

##### **Transitional provisions**

1. This Decision shall apply to the filing of notifications pursuant to Article 4(4) or applications for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 submitted after the entry into force of this Decision.
2. Exceptionally, filing of notifications pursuant to Article 4(4) or applications for prior approval pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 based on 2014 information shall be made by 31 December 2015.
3. The approvals granted by the ECB pursuant to Article 4(5) of Delegated Regulation (EU) No 604/2014 under these transitional provisions shall apply to the performance of the staff member during the financial years 2015 and 2016.

#### Article 12

##### **Entry into force**

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 20 November 2015.

*The President of the ECB*  
Mario DRAGHI

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