

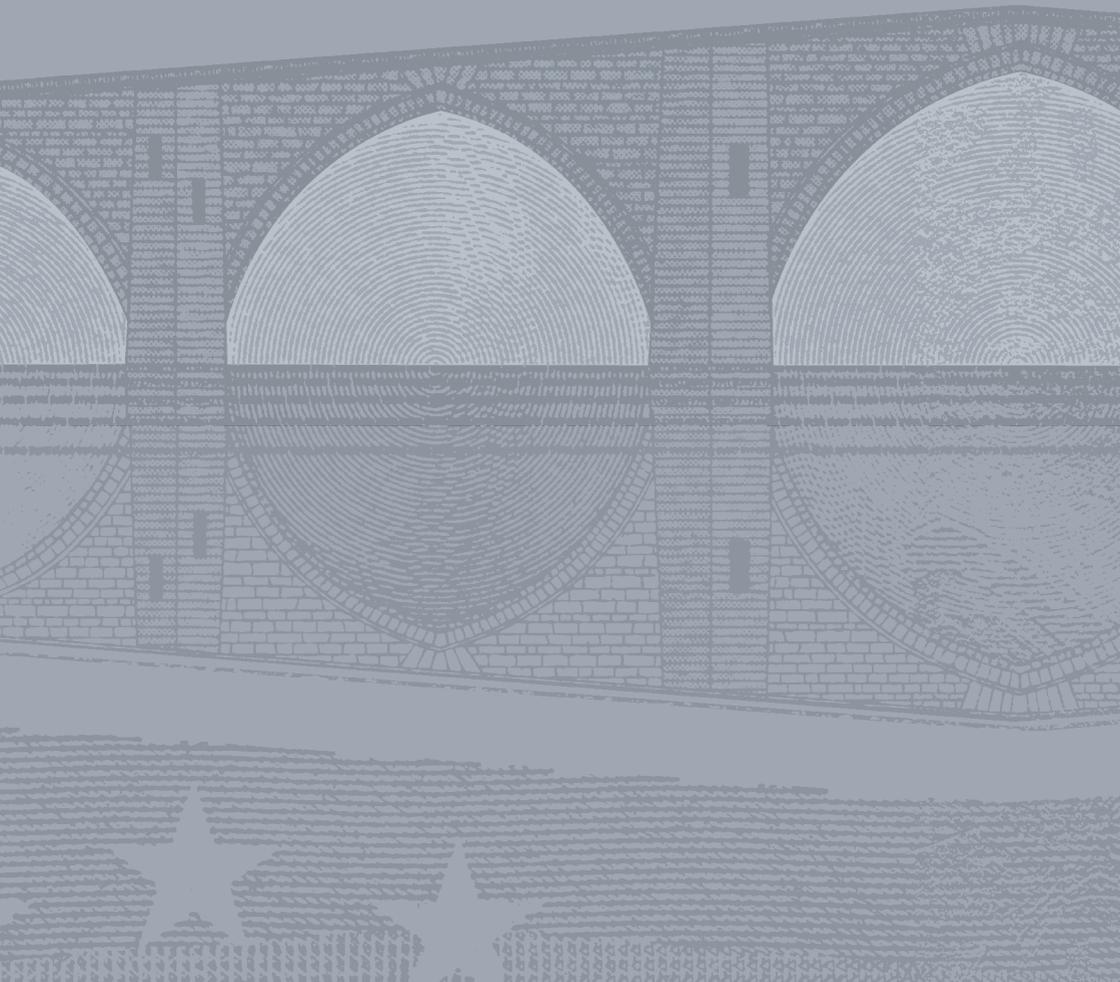


EUROPEAN CENTRAL BANK

BANKING SUPERVISION

# LEGAL FRAMEWORK FOR BANKING SUPERVISION VOLUME II

JULY 2015



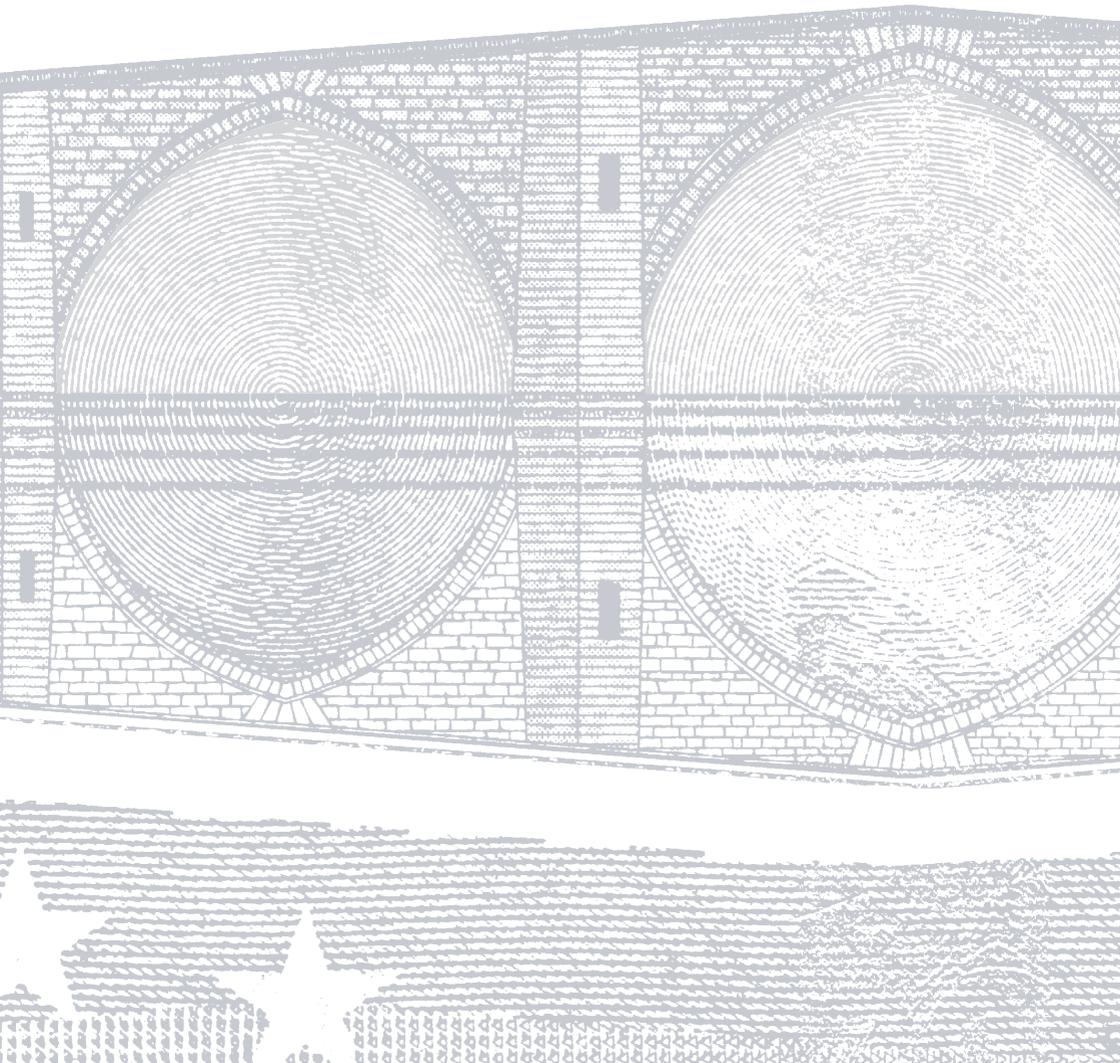


EUROPEAN CENTRAL BANK

BANKING SUPERVISION

# LEGAL FRAMEWORK FOR BANKING SUPERVISION VOLUME II

JULY 2015



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**Postal address**

European Central Bank  
60640 Frankfurt am Main  
Germany

**Tel.:** +49 69 1344 0

**E-mail:** [info@ecb.europa.eu](mailto:info@ecb.europa.eu)

**Website:** [www.bankingsupervision.europa.eu](http://www.bankingsupervision.europa.eu)

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## FOREWORD

The establishment of the Single Supervisory Mechanism (SSM) at the European Central Bank (ECB) and the start of SSM operations on 4 November 2014 represent a momentous step in the establishment of Banking Union. In addition to intensive organisational and technical preparations, including the recruitment of new staff and the completion of a comprehensive assessment of the largest banks, the task of setting up the new system of banking supervision at the EU level also encompassed the preparation and adoption of a complete set of legal acts establishing the SSM within a very short time frame. We are very happy to see that this goal was achieved successfully, with a significant contribution from the ECB's Legal Services, and are proud to present the new series of Legal Booklets on the legal framework for banking supervision.

This series of Legal Booklets contains the most important banking supervision legal acts adopted by the ECB, as well as legal acts on banking supervision adopted by other EU institutions, for example the Council regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (the 'SSM Regulation'). The SSM Regulation establishes the SSM and lays down a number of general rules and principles. The regulation clarifies the ECB's responsibilities and involvement in the supervision of significant and less significant supervised entities. From the start of SSM operations, the ECB directly supervises 120 significant banking groups, which represent more than 80% of the euro area banking sector by assets. For all the other banks in the Banking Union, the ECB will set and monitor the supervisory standards and work closely with the national competent authorities (NCAs) in the supervision of these banks. The SSM Regulation also sets out the basic criteria for determining significance and, in this context, the SSM Regulation refers to a framework regulation to be adopted by the ECB (the 'Framework Regulation'). This Framework Regulation lays down more detailed rules with regard to the actual functioning of the SSM.

The Framework Regulation includes the methodology for assessing and reviewing the criteria for determining whether a credit institution is significant laid down in the SSM Regulation. It also contains the procedures governing the cooperation between the ECB and NCAs with regard to the supervision of significant and less significant credit institutions. Furthermore, the Framework Regulation addresses issues relating to macro-prudential decisions, close cooperation, investigatory powers, authorisations and qualifying holdings, as well as sanctions. In addition, the levy of supervisory fees is subject to a separate ECB regulation.

In line with the SSM Regulation, the planning and execution of the tasks conferred on the ECB will be undertaken by the Supervisory Board as an internal body of the ECB. The SSM Regulation requires the Governing Council to adopt rules setting out its relationship with the Supervisory Board. The Governing Council has amended the ECB's Rules of Procedure accordingly, and the revised rules establish the interaction between the Governing Council and the Supervisory Board under the so-called 'non-objection procedure'. Under this procedure, draft decisions by the Supervisory Board will be deemed adopted unless the Governing Council objects within a defined period of time. The SSM Regulation also requires the Supervisory Board to adopt its own Rules of Procedure, including rules for the selection of members of the Steering Committee which will support the Supervisory Board. The Rules of Procedure of the ECB and the Rules of Procedure of the Supervisory Board are presented in a separate legal booklet on 'Institutional Provisions', published in June 2015 and available on the ECB's website.

The SSM Regulation provides that the ECB should establish an Administrative Board of Review charged with carrying out internal administrative reviews of the decisions taken by the ECB when conducting its supervisory tasks. This body will review supervisory decisions at the request of the bank concerned and will be composed of five individuals with sufficient experience in the fields of banking and other financial services. With a view to ensuring the separation between monetary policy and supervisory tasks, the SSM Regulation provides for a further internal body, namely the Mediation Panel. If requested by an NCA, this panel will deal with an objection of the Governing Council expressed with respect to a draft decision prepared by the Supervisory Board. These rules regarding decision-making in the Supervisory Board and the relationship with the Governing Council are underpinned further by the legal instruments establishing the Administrative Board of Review and the Mediation Panel, as well as rules regarding separation of the ECB's supervisory tasks from the ECB's monetary policy function.

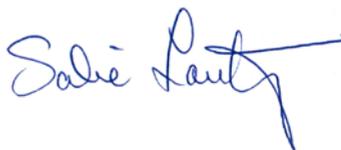
The procedure for the establishment of 'close cooperation' is laid down in a specific ECB decision, according to which Member States whose currency is not the euro may participate in Banking Union. This decision also includes the procedural aspects relating to requests to enter into a close cooperation with the ECB, the assessment of those requests by the ECB and the potential suspension and termination of close cooperation. The Framework Regulation sets out the way in which close cooperation operates and how supervision is conducted once a close cooperation has been established.

These legal acts are all part of the legal framework for banking supervision, and it is with great pleasure that we present this series of ECB Legal Booklets on banking supervision. Our hope is that these booklets will provide a useful reference tool for ECB staff, as well as the NCAs within the SSM. In addition, we trust that these publications will also prove useful to legal practitioners and other interested members of the public seeking easy, portable access to the various acts constituting the legal framework for banking supervision.

Frankfurt am Main, November 2014



Yves Mersch  
Member of the  
ECB Executive Board



Sabine Lautenschläger  
Member of the  
ECB Executive Board  
and Vice-Chair of the Supervisory Board

# DECISION OF THE EUROPEAN CENTRAL BANK

OF 6 FEBRUARY 2014

## ON THE APPOINTMENT OF REPRESENTATIVES OF THE EUROPEAN CENTRAL BANK TO THE SUPERVISORY BOARD

(ECB/2014/4)

(2014/427/EU)\*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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 26(1), (2) and (5) thereof,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank<sup>2</sup>, and in particular Article 13b.6. thereof,

Whereas:

- (1) Pursuant to Article 26(5) of Regulation (EU) No 1024/2013, the Governing Council shall appoint four representatives of the European Central Bank (ECB) to the Supervisory Board, none of whom shall perform duties directly related to the monetary function of the ECB.
- (2) Pursuant to Article 26(2) of Regulation (EU) No 1024/2013, appointments of the ECB representatives to the Supervisory Board shall respect the principles of gender balance, experience and qualification.
- (3) It is necessary to complement Regulation (EU) No 1024/2013 in relation to the procedure for appointment of the four ECB representatives to the Supervisory Board, the conditions and procedure for their removal and the conditions applying to the persons appointed to such positions,

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\* OJ L 196, 3.7.2014, p. 38.

1 OJ L 287, 29.10.2013, p. 63.

2 OJ L 80, 18.3.2004, p. 33.

HAS ADOPTED THIS DECISION:

*Article 1*  
***Appointment of ECB representatives to the  
Supervisory Board***

1. The four ECB representatives shall be appointed to the Supervisory Board from among persons of recognised standing and experience in banking and financial matters.
2. Their term of office shall be five years and shall not be renewable. By way of derogation from this rule, the term of office of the first four ECB representatives shall be between three and five years for the initial appointment.
3. The terms and conditions of employment of the four ECB representatives, in particular their salary, pension and other social benefits, shall be the subject of a contract with the ECB, and shall be fixed by the Governing Council on a proposal from the Executive Board.
4. The ECB representatives shall perform their duties on either a full-time or a part-time basis, in accordance with the terms and conditions of their contracts with the ECB. They shall not be engaged in any occupation, whether gainful or not, unless authorised by the Governing Council. No authorisation can be given for activities which are liable to give rise, or may be perceived to give rise to, a conflict of interest with their positions as members of the Supervisory Board. In particular, they shall not perform any duty for a national competent authority as defined in Article 2 of Regulation (EU) No 1024/2013.
5. If an ECB representative on the Supervisory Board no longer fulfils the conditions required for the performance of his or her duties, or if he or she has been guilty of serious misconduct, the Governing Council may, on application of the Executive Board and after having heard him or her, decide to remove him or her from office.
6. Any vacancy for the position of an ECB representative on the Supervisory Board shall be filled by the appointment of a new representative in accordance with this Decision.

*Article 2*  
*Entry into force*

This Decision shall enter into force on 6 February 2014.

Done at Frankfurt am Main, 6 February 2014.

*The President of the ECB*

Mario DRAGHI

# DECISION OF THE EUROPEAN CENTRAL BANK

OF 14 APRIL 2014

## CONCERNING THE ESTABLISHMENT OF AN ADMINISTRATIVE BOARD OF REVIEW AND ITS OPERATING RULES

(ECB/2014/16)

(2014/360/EU)\*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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 24 thereof,

Whereas:

- (1) Pursuant to Article 24(1) of Regulation (EU) No 1024/2013, the Administrative Board of Review carries out an internal administrative review of the decisions taken by the European Central Bank (ECB) in the exercise of the powers conferred upon it under Regulation (EU) No 1024/2013 after a request for review submitted in accordance with Article 24(5).
- (2) Pursuant to Article 24(10) of Regulation (EU) No 1024/2013, the ECB will adopt the Operating Rules of the Administrative Board of Review, which will be made public.
- (3) Pursuant to Article 24(11) of Regulation (EU) No 1024/2013, the establishment of the Administrative Board of Review is without prejudice to the right to bring proceedings before the Court of Justice of the European Union in accordance with the Treaties.
- (4) A review by the Administrative Board of Review is an optional review for persons to whom a decision of the ECB under Regulation (EU) No 1024/2013

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\* OJ L 175, 14.6.2014, p. 47.

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

is addressed, or to whom such decision is of direct and individual concern, before bringing proceedings before the Court of Justice,

HAS ADOPTED THIS DECISION:

## **PRELIMINARY CHAPTER**

### *Article 1*

#### *Supplementary nature*

This Decision shall supplement the Rules of Procedure of the European Central Bank. The terms used in this Decision shall have the same meaning as the terms defined in the Rules of Procedure of the European Central Bank.

## **CHAPTER I**

### **THE ADMINISTRATIVE BOARD OF REVIEW**

#### *Article 2*

#### *Establishment*

The Administrative Board of Review (hereinafter the ‘Administrative Board’) is hereby established.

#### *Article 3*

#### *Composition*

1. The Administrative Board shall be composed of five members who shall be replaced by two alternates under the conditions laid down in paragraph 3.
2. The members of the Administrative Board and the two alternates shall be individuals of high repute who are Member State nationals and have a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking or other financial services. They may not be current staff members of the ECB, of national competent authorities or other national or Union institutions, bodies, offices and agencies that are involved in the tasks carried out by the ECB under Regulation (EU) No 1024/2013.

3. The two alternates shall temporarily replace the members of the Administrative Board in case of temporary incapacity, death, resignation or removal from office or if, in the context of a particular request for review, there are justified reasons for serious concern as to the existence of a conflict of interest. A conflict of interest arises where a member of the Administrative Board has a private or personal interest which may influence, or appear to influence, the impartial and objective performance of their duties.

*Article 4*  
***Appointment***

1. The members of the Administrative Board and the two alternates shall be appointed by the Governing Council ensuring, to the extent possible, an appropriate geographical and gender balance across the Member States.
2. Following a public call for expressions of interest published in the *Official Journal of the European Union*, the Executive Board, after hearing the Supervisory Board, shall submit nominations for the members of the Administrative Board and the two alternates to the Governing Council no later than one month before the start of the Governing Council meeting at which the decision regarding the appointment shall be adopted.
3. The term of office of the members of the Administrative Board and of the two alternates shall be five years, renewable once.
4. The members of the Administrative Board and the two alternates shall act independently and in the public interest. They shall not be subject to any instructions and shall make a public declaration of commitments and a public declaration of interests indicating any direct or indirect interest which might be considered prejudicial to their independence or the absence of any such interest.
5. The terms and conditions of appointment of the members of the Administrative Board and the two alternates shall be laid down by the Governing Council.

*Article 5*  
***Chair and Vice-Chair***

1. The Administrative Board shall designate its Chair and its Vice-Chair.

2. The Chair shall ensure the functioning of the Administrative Board, the efficient examination of reviews and adherence to the Operating Rules.
3. The Vice-Chair shall assist the Chair in the performance of their duties and shall take their place when the latter is prevented from acting or at the request of the Chair, to ensure the functioning of the Administrative Board.

*Article 6*

***Secretary of the Administrative Board***

1. The Secretary of the Supervisory Board shall act as Secretary of the Administrative Board (hereinafter the ‘Secretary’).
2. The Secretary shall be responsible for preparing the efficient examination of reviews, organising the Administrative Board’s pre-hearings and hearings, drafting the respective proceedings, maintaining a register of reviews and otherwise providing assistance in relation to the reviews.
3. The ECB shall provide the Administrative Board with appropriate support including legal expertise to assist in the assessment of the exercise of the powers of the ECB under Regulation (EU) No 1024/2013.

**CHAPTER II**

**REQUEST FOR REVIEW**

*Article 7*

***Notice of review***

1. Any natural or legal person to whom a decision of the ECB under Regulation (EU) No 1024/2013 is addressed, or to whom such decision is of direct and individual concern, who wishes to request an internal administrative review (hereinafter the ‘applicant’) shall do so by filing a written notice of review with the Secretary, identifying the contested decision. The notice of review shall be submitted in one of the official languages of the Union.
2. The Secretary shall confirm receipt of the notice of review to the applicant without delay.

3. The notice of review shall be filed within one month of the notification of the decision to the applicant or, in the absence of such notification, of the day on which it came to the applicant's knowledge.
4. The contested decision shall be annexed to the notice of review, which shall:  
(a) state the grounds on which it is based; (b) if an application is made for the review to have suspensory effect, state the grounds of such application; (c) have attached to it copies of any documents on which the applicant intends to rely; and (d) if the notice of review exceeds 10 pages, include a summary of items (a) to (c).
5. The notice of review shall clearly indicate the applicant's full contact details so that the Secretary may send communications to the applicant or its representative as the case may be. The Secretary shall send a confirmation of receipt to the applicant stating whether the notice of review is complete.
6. The applicant may at any time withdraw a notice of review by giving notice of withdrawal to the Secretary.
7. Once filed with the Secretary, the notice of review, together with the attached documents, shall be transmitted internally without delay to allow the ECB to be represented in the proceedings.

*Article 8*  
***Rapporteur***

On receipt of a notice of review, the Chair shall designate a rapporteur for the review from the members of the Administrative Board, including the Chair. In designating the rapporteur, the Chair shall take into account the specific expertise of each member of the Administrative Board.

*Article 9*  
***Suspensory effect***

1. Submission of the notice of review shall not have suspensory effect on the application of the contested decision, subject to paragraph 2.
2. Without prejudice to paragraph 1, the Governing Council, upon a proposal by the Administrative Board, may decide to suspend the application of the contested decision provided the request for review is admissible and not

obviously unfounded and it considers that the immediate application of the contested decision may cause irreparable damage. The Governing Council shall take such decision to suspend the application of the contested decision after having heard the opinion of the Supervisory Board as appropriate.

3. The procedures laid down in these Operating Rules, including those set out in Articles 12 and 14 in respect of directions and hearings, shall apply as necessary to the determination of any question of suspension.

### **CHAPTER III**

#### **REVIEW**

##### *Article 10*

##### ***Scope of the review of the Administrative Board***

1. In accordance with Article 24(1) of Regulation (EU) No 1024/2013, the scope of the internal administrative review shall cover the relevant decision's procedural and substantive conformity with Regulation (EU) No 1024/2013.
2. The Administrative Board's review shall be limited to examination of the grounds relied on by the applicant as set out in the notice of review.

##### *Article 11*

##### ***Admissibility of the request for review***

1. The Administrative Board shall determine whether and to what extent the request for review is admissible before examining whether it is legally founded. If the Administrative Board deems the request for review inadmissible wholly or in part, this assessment shall be recorded in the Administrative Board's opinion pursuant to Article 17.
2. A notice of review filed in respect of a new decision of the Governing Council as referred to in Article 24(7) of Regulation (EU) No 1024/2013 shall not be admissible.

*Article 12*  
***Directions***

The Chair, on behalf of the Administrative Board, may give directions for the efficient conduct of the review, including directions to produce documents or provide information. The Secretary shall send such directions to the relevant parties. The Chair may consult with the other members for such purposes.

*Article 13*  
***Failure to comply***

1. Where the applicant has, without reasonable justification, failed to comply with a direction of the Administrative Board or a provision of these Operating Rules, the Administrative Board may order it to pay any costs of the proceedings arising from the delay.
2. Before issuing an order in accordance with paragraph 1, the Administrative Board shall give notice to the applicant, to provide it with the opportunity to make representations against the issuance of such an order.

*Article 14*  
***Hearing***

1. The Administrative Board may call for an oral hearing where it considers this necessary for the fair evaluation of the review. Both the applicant and the ECB shall be requested to make oral representations at such hearing.
2. The Chair shall give directions as to the order, form and date of the hearing.
3. The hearing shall take place at the ECB's premises. The Secretary shall be present. The hearing shall not be open to third parties.
4. In exceptional cases, the Chair may adjourn the hearing on the application of the applicant or of the ECB, or on its own initiative.
5. Where the party has been notified of an oral hearing and fails to appear, the Administrative Board may proceed in their absence.

*Article 15*  
***Evidence***

1. The applicant may request the Administrative Board’s permission to adduce, in the form of a written statement, witness or expert evidence.
2. The applicant may request the Administrative Board’s permission to call a witness or expert who has given a written statement to give oral evidence at the hearing. Also the ECB may request the Administrative Board’s permission to call a witness or expert to give oral evidence at the hearing.
3. Permission shall only be given if the Administrative Board considers it necessary for the just determination of the review.
4. Witnesses or experts shall be examined by the Administrative Board. Such evidence shall be served within the time permitted. The applicant shall have the right to cross-examine witnesses or experts called on by the ECB where this is necessary for the just determination of the review.

**CHAPTER IV**  
**DECISION-MAKING PROCESS**

*Article 16*  
***Opinion on the review***

1. The Administrative Board shall, within a time period appropriate to the urgency of the matter and not later than two months from the date of receipt of the notice of review, adopt an opinion on the review.
2. The opinion shall propose whether the initial decision should be either abrogated, replaced with a decision of identical content or replaced with an amended one. In the latter case, the opinion shall contain proposals for the necessary amendments.
3. The opinion shall be adopted by a majority of at least three members of the Administrative Board.

4. The opinion shall be in writing and contain reasons, and shall be sent to the Supervisory Board without delay.
5. The opinion shall not be binding on the Supervisory Board or the Governing Council.

*Article 17*

***Preparation of a new draft decision***

1. The Supervisory Board shall assess the Administrative Board's opinion and propose a new draft decision to the Governing Council. The Supervisory Board's assessment shall not be limited to examination of the grounds relied upon by the applicant as set forth in the notice of review, but may also take other elements into account in its proposal for a new draft decision.
2. The Supervisory Board's new draft decision replacing the initial decision with a decision of identical content shall be submitted to the Governing Council within 10 working days of receipt of the Administrative Board's opinion. A new draft decision by the Supervisory Board abrogating or amending the initial decision shall be submitted to the Governing Council within 20 working days of receipt of the Administrative Board's opinion.

*Article 18*

***Notification***

The Administrative Board's opinion, the new draft decision submitted by the Supervisory Board and the new decision adopted by the Governing Council shall be notified to the parties by the Secretary of the Governing Council including the relevant reasoning.

**CHAPTER V**

**RECOURSE TO THE COURT**

*Article 19*

***Recourse to the Court of Justice***

This Decision is without prejudice to the right to bring proceedings before the Court of Justice in accordance with the Treaties.

## **CHAPTER VI**

### **GENERAL PROVISIONS**

#### *Article 20* *Access to files*

1. The rights of defence of the applicant shall be fully respected. For this purpose, and after the applicant has filed a written notice of review, the applicant shall be entitled to have access to the ECB's file, subject to the legitimate interest of legal and natural persons other than the applicant, in the protection of their business secrets.
2. The files consist of all documents obtained, produced or assembled by the ECB during the ECB supervisory procedure, irrespective of the storage medium.
3. The right of access to the file shall not extend to confidential information.
4. For the purposes of this Article, confidential information may include internal documents of the ECB or a national competent authority and correspondence between the ECB and a national competent authority or between national competent authorities.
5. Nothing in this Article shall prevent the ECB from disclosing and using information necessary to prove an infringement.
6. The ECB may determine that access to a file shall be granted in one or more of the following ways, taking due account of the technical capabilities of the parties: (a) by means of CD-ROM(s) or any other electronic data storage device including any that may become available in future; (b) through copies of the accessible file in paper form sent to them by mail; (c) by inviting them to examine the accessible file in the offices of the ECB.

#### *Article 21* *Costs orders*

1. The costs of the review shall comprise the reasonable costs incurred for the review.

2. After notification of the new decision by the Governing Council or after the applicant has withdrawn the notice of review, the Supervisory Board shall propose the proportion of costs to be borne by the applicant. The applicant shall be entitled to make representations in this regard.
3. Any disproportionate costs incurred by the applicant in submitting written or oral evidence and in respect of legal representation shall be borne by the applicant.
4. No cost shall be borne by the applicant in cases in which the Governing Council abrogates or amends the initial decision as a consequence of the notice of review. This shall not apply to any disproportionate costs incurred by the applicant in submitting written or oral evidence and in respect of legal representation, which shall be borne by the applicant.
5. The Governing Council shall decide on the apportionment of costs in accordance with the procedure laid down in Article 13g.2 of the Rules of Procedure of the European Central Bank.
6. Costs, if ordered, must be paid within 20 working days.

#### *Article 22*

#### ***Confidentiality and professional secrecy***

1. The members of the Administrative Board and the alternates shall be subject to the professional secrecy requirements laid down in Article 37 of the Statute of the European System of Central Banks and of the European Central Bank even after their duties have ceased.
2. The proceedings of the Administrative Board shall be confidential unless the Governing Council authorises the President of the ECB to make the outcome of such proceedings public.
3. Documents drawn up or held by the Administrative Board shall be ECB documents and shall therefore be classified and handled in accordance with Article 23.3 of the Rules of Procedure of the European Central Bank<sup>2</sup>.

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2 OJ L 80, 18.3.2004, p. 33.

*Article 23*  
***Supplementary rules***

1. The Administrative Board may adopt supplementary rules to regulate its proceedings and activities.
2. The Administrative Board may issue forms and guides.
3. Supplementary rules, forms and guides adopted by the Administrative Board shall be reported to the Supervisory Board and published on the ECB's website.

*Article 24*  
***Entry into force***

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

Done at Frankfurt am Main, 14 April 2014.

*The President of the ECB*  
Mario DRAGHI

# REGULATION (EU) NO 673/2014 OF THE EUROPEAN CENTRAL BANK

OF 2 JUNE 2014

## CONCERNING THE ESTABLISHMENT OF A MEDIATION PANEL AND ITS RULES OF PROCEDURE

(ECB/2014/26)\*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Council Regulation No (EU) 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 25(5) thereof,

Whereas:

- (1) Pursuant to Article 25(5) of Regulation (EU) No 1024/2013, the European Central Bank (ECB) will create a mediation panel responsible for resolving differences of views expressed by the competent authorities of concerned participating Member States regarding an objection by the Governing Council to a draft decision of the Supervisory Board set up under that Regulation.
- (2) Pursuant to Recital 73 of Regulation (EU) No 1024/2013, the setting up of the Mediation Panel, and in particular its composition, should ensure that it resolves differences of views in a balanced way, in the interest of the Union as a whole.
- (3) The Rules of Procedure of the Mediation Panel are without prejudice to the procedure in which a non-euro area participating Member State notifies the ECB of its reasoned disagreement with an objection of the Governing Council to a draft decision of the Supervisory Board pursuant to Article 7(7) of Regulation (EU) No 1024/2013.
- (4) Since the Vice-Chair of the Supervisory Board is both a Governing Council and a Supervisory Board member, he/she is best placed to chair the Mediation Panel,

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\* OJ L 179, 19.6.2014, p. 72.

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

HAS ADOPTED THIS REGULATION:

## **PRELIMINARY CHAPTER**

### *Article 1*

#### ***Supplementary nature***

This Regulation shall supplement the Rules of Procedure of the European Central Bank<sup>2</sup>. The terms used in this Regulation shall have the same meaning as the terms defined in the Rules of Procedure of the European Central Bank.

## **CHAPTER I**

### **THE MEDIATION PANEL**

#### *Article 2*

#### ***Establishment***

In accordance with Article 25(5) of Regulation (EU) No 1024/2013, a Mediation Panel is hereby established.

#### *Article 3*

#### ***Composition***

1. The Mediation Panel shall be composed of one member per participating Member State.
2. The Vice-Chair of the Supervisory Board, who is not a member of the Mediation Panel, shall act as Chair of the Mediation Panel.

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<sup>2</sup> Decision 2004/257/EC of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (ECB/2004/2) (OJ L 80, 18.3.2004, p. 33).

*Article 4*  
***Appointment of members***

1. Each participating Member State shall appoint one member of the Mediation Panel from among the members of the Governing Council and the Supervisory Board. The Chair shall facilitate the achievement of a balance between Governing Council and Supervisory Board members.
2. The mandate of the Mediation Panel members shall expire if they cease to be members of the body from which they were appointed.
3. When acting as a member of the Mediation Panel, each member shall act in the interest of the Union as a whole.

*Article 5*  
***Attendance at Mediation Panel meetings***

1. Except as provided in paragraph 2, attendance at Mediation Panel meetings shall be restricted to its members, its Chair and its Secretary.
2. Upon invitation of the Mediation Panel, experts may attend specific Mediation Panel meetings if their expertise is required.

*Article 6*  
***Mediation Panel meetings***

1. Whenever the Chair deems it necessary, he/she may convene a Mediation Panel meeting.
2. The Mediation Panel shall hold its meetings at the premises of the ECB.
3. At the request of the Chair, Mediation Panel meetings may also be held by means of teleconferencing, unless at least three members object.
4. The proceedings of Mediation Panel meetings shall be submitted to the members for approval at their next meeting or before that by written procedure, and once approved shall be signed by the Chair. They shall be made available to the Governing Council and the Supervisory Board.

5. The Secretary of the Supervisory Board shall act as Secretary of the Mediation Panel. In the latter function, he/she shall assist the Chair of the Mediation Panel in preparing for Mediation Panel and Case Committee meetings and shall be responsible for drafting the proceedings of these meetings. He/she shall also assist the Secretary of the Governing Council in preparing for Governing Council meetings regarding any issues in which the Mediation Panel has been involved and shall be responsible for drafting the respective part of the minutes of the proceedings.

*Article 7*  
***Voting***

1. In order for the Mediation Panel to vote, there shall be a quorum of two-thirds of its members. If the quorum is not met, the Chair may convene an extraordinary meeting at which members may vote without regard to the quorum.
2. Each member shall have one vote. The Mediation Panel shall decide by a simple majority of its members. In the event of a tie, the most senior member of the Mediation Panel in terms of office in the first instance, and by age in the event of two or more members having equal standing in terms of office, shall have the casting vote.
3. The Mediation Panel shall proceed to vote at the request of the Chair. The Chair shall also initiate a voting procedure upon request from three Mediation Panel members.
4. At the request of the Chair, decisions may also be taken by written procedure.

## CHAPTER II

### MEDIATION

#### *Article 8* *Request for mediation*

1. Competent authorities of participating Member States which are concerned by and have different views regarding an objection by the Governing Council to a draft decision of the Supervisory Board may ask the Supervisory Board, within five working days from receipt of the objection, including the reasons for the objection, to request mediation in order to resolve such differences, with a view to ensuring separation between monetary policy and supervisory tasks. Each competent authority concerned shall do so by submitting a notice requesting mediation to the Supervisory Board, identifying the objection by the Governing Council, and including a statement on the reasons for requesting mediation. The Secretariat will notify such requests for mediation to the Supervisory Board members.
2. Any other competent authority of a participating Member State concerned by and having different views regarding the same objection may submit a separate notice requesting mediation or join an existing request for mediation within five working days of the notification of the first request for mediation and express its difference of view.
3. An objection by the Governing Council to a draft decision of the Supervisory Board may be subject to mediation only once.
4. A competent authority of a non-euro area participating Member State that notifies the ECB of its reasoned disagreement with an objection of the Governing Council to a draft decision of the Supervisory Board pursuant to Article 7(7) of Regulation (EU) No 1024/2013 and Article 13g.4 of the Rules of Procedure of the European Central Bank, may not request mediation pursuant to paragraph 1 regarding the same objection of the Governing Council.
5. If a competent authority of a participating Member State asks the Supervisory Board to request mediation within five working days from receipt of the objection, the Supervisory Board shall file a notice requesting mediation with the Secretariat of the Governing Council within ten working days from receipt of the objection by the Governing Council. The relevant draft decision of the

Supervisory Board and the relevant objection by the Governing Council shall be annexed to the notice requesting mediation. The notice requesting mediation shall be communicated to the Governing Council and Supervisory Board members.

6. If a competent authority of a non-euro area participating Member State which has requested a mediation regarding an objection by the Governing Council to a draft decision of the Supervisory Board pursuant to paragraph 1 notifies the ECB of its reasoned disagreement with the same Governing Council objection pursuant to Article 7(7) of Regulation (EU) No 1024/2013, the request for mediation shall be deemed withdrawn.

*Article 9*  
***Case Committee***

1. When a notice requesting mediation is filed in accordance with Article 8(5), the Chair of the Mediation Panel shall immediately forward it to the Mediation Panel members.
2. For each notice requesting mediation which has been filed in accordance with Article 8(5), the Mediation Panel shall set up within five working days of the filing of the notice requesting mediation a Case Committee and inform the Mediation Panel members of its composition.
3. A Case Committee shall be composed of the Chair of the Mediation Panel acting as its Chair and four other members appointed by the Mediation Panel from among the Mediation Panel members. The Mediation Panel shall aim to achieve a balance between Governing Council and Supervisory Board members. The Case Committee shall not include the member appointed by the participating Member State whose competent authority has expressed different views pursuant to Article 8(1) or the member appointed by the participating Member State whose competent authority has joined an existing request for mediation pursuant to Article 8(2).
4. Within 15 working days from receipt by the Mediation Panel of the notice requesting mediation, the Case Committee shall submit to the Chair of the Mediation Panel a draft opinion, which shall include an analysis of whether the request for mediation is admissible and legally founded. In urgent cases the Case Committee shall deliver the draft opinion within a shorter period to be set by the Chair.

5. The Chair shall immediately submit the draft opinion to the Mediation Panel and shall convene a meeting.

### **CHAPTER III**

#### **DECISION-MAKING PROCESS**

##### *Article 10* **Mediation**

1. The Mediation Panel shall consider the draft opinion prepared by the Case Committee and shall submit an opinion to the Supervisory Board and the Governing Council within 20 working days from receipt of the notice requesting mediation. In urgent cases, the Mediation Panel shall deliver its opinion within a shorter period to be set by the Chair.
2. The opinion shall be in writing and shall include the reasons on which it is based.
3. The opinion of the Mediation Panel shall not be binding on the Supervisory Board and the Governing Council.

##### *Article 11* **Preparation of a new draft decision**

1. When an opinion has been delivered by the Mediation Panel, the Supervisory Board, having taken into consideration the opinion, may submit a new draft decision to the Governing Council within 10 working days from the submission of the Mediation Panel's opinion.
2. In urgent cases the Supervisory Board may submit a new draft decision within a shorter period to be set by the Chair of the Supervisory Board.
3. A request for mediation concerning an objection by the Governing Council to a new draft decision submitted pursuant to paragraph 2 shall not be possible.

## **CHAPTER IV**

### **GENERAL PROVISIONS**

#### *Article 12*

#### ***Confidentiality and professional secrecy***

1. The proceedings of the Mediation Panel shall be confidential. However, the Governing Council may authorise the President of the ECB to make the outcome of such proceedings public.
2. Documents drawn up or held by the Mediation Panel shall be ECB documents and therefore shall be classified and handled in accordance with Article 23.3. of the Rules of Procedure of the European Central Bank.

#### *Article 13*

#### ***Final provisions***

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 2 June 2014.

*For the Governing Council of the ECB*

*The President of the ECB*

Mario DRAGHI

# DECISION OF THE EUROPEAN CENTRAL BANK

OF 4 FEBRUARY 2014

## IDENTIFYING THE CREDIT INSTITUTIONS THAT ARE SUBJECT TO THE COMPREHENSIVE ASSESSMENT

(ECB/2014/3)

(2014/123/EU)\*

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) 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) and Article 33(3) and (4) thereof,

Having regard to the proposal from the Supervisory Board,

Whereas:

- (1) From 3 November 2013, in view of the assumption of its supervisory tasks, the European Central Bank (ECB) may require the national competent authorities and the persons referred to in Article 10(1) of Regulation (EU) No 1024/2013 to provide all relevant information for the ECB to carry out a comprehensive assessment, including a balance-sheet assessment, of the credit institutions of the participating Member States. The ECB is required to carry out such an assessment at least in relation to the credit institutions not covered by Article 6(4) of Regulation (EU) No 1024/2013.
- (2) On 23 October 2013, the ECB published the names of institutions included in the comprehensive assessment as well as an initial overview of the key features of the comprehensive assessment.

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\* OJ L 69, 8.3.2014, p. 107.

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

- (3) Based on the criteria referred to in Article 6(4) of Regulation (EU) No 1024/2013, the ECB has identified credit institutions in respect of which it intends to carry out a comprehensive assessment, including a balance-sheet assessment, in accordance with Article 33(4) of Regulation (EU) No 1024/2013. In applying the above criteria, the ECB has taken into account possible changes that may occur at any time owing to the dynamics of the activities of credit institutions and the resulting consequences for the total value of their assets. As a result, it has included credit institutions that currently do not meet the criteria for significance but may do so in the near future and should be subject therefore to the comprehensive assessment. The ECB will therefore undertake a comprehensive assessment with respect to credit institutions, financial holding companies or mixed financial holding companies the total value of whose assets exceeds EUR 27 billion. Notwithstanding the above criteria, the ECB will also undertake the comprehensive assessment with respect to the three most significant institutions in each of the euro area Member States. The identification of credit institutions on which the ECB intends to carry out comprehensive assessments is without prejudice to the final assessment of the criteria that is based on the specific methodology included in the framework referred to in Article 6 of Regulation (EU) No 1024/2013.
- (4) The credit institutions and the national competent authorities are required to supply all relevant information for the ECB to carry out the comprehensive assessment in accordance with Article 33(4) of Regulation (EU) No 1024/2013.
- (5) The ECB may require the national competent authorities and the persons referred to in Article 10(1) of Regulation (EU) No 1024/2013 to provide all relevant information for the ECB to carry out such a comprehensive assessment.
- (6) Members of the Supervisory Board, staff of the ECB and staff seconded by participating Member States are subject to professional secrecy requirements set out in Article 37 of the Statute of the European System of Central Banks and of the European Central Bank and relevant Union law. In particular, the ECB and national competent authorities are subject to the provisions regarding the exchange of information and professional secrecy set out in Directive 2013/36/EU of the European Parliament and of the Council,<sup>2</sup>

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2 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).

HAS ADOPTED THIS DECISION:

*Article 1*

***Entities subject to the comprehensive assessment***

1. The entities listed in the Annex shall be subject to the comprehensive assessment to be carried out by the ECB by 3 November 2014.
2. In accordance with Article 33(4) of Regulation (EU) No 1024/2013, the national competent authority responsible for the supervision of a credit institution listed in the Annex shall submit all information of relevance to the comprehensive assessment that the ECB requests in relation to that credit institution. The national competent authority shall verify the information as it deems appropriate for the exercise, including, when necessary, on-site inspections and, if appropriate, with the involvement of third parties.
3. The national competent authority responsible for supervision of subsidiaries in a group that is subject to consolidated supervision within the Single Supervisory Mechanism shall be in charge of this verification for the subsidiaries authorised in its Member State.

*Article 2*

***Investigatory powers***

In accordance with Article 33(3) and (4) of Regulation (EU) No 1024/2013, the ECB may exercise its investigatory powers in respect of the credit institutions identified in the Annex.

*Article 3*

***Entry into force***

This Decision shall enter into force on 6 February 2014.

Done at Frankfurt am Main, 4 February 2014.

*The President of the ECB*  
Mario DRAGHI

## ANNEX

### INSTITUTIONS INCLUDED IN THE COMPREHENSIVE ASSESSMENT

#### Belgium

AXA Bank Europe SA

Belfius Banque SA

Dexia NV<sup>1</sup>

Investar (Holding of Argenta Bank- en Verzekerings groep)

KBC Group NV

The Bank of New York Mellon SA

#### Germany

Aareal Bank AG

Bayerische Landesbank

Commerzbank AG

DekaBank Deutsche Girozentrale

Deutsche Apotheker- und Ärztebank eG

Deutsche Bank AG

DZ Bank AG Deutsche Zentral-Genossenschaftsbank

HASPA Finanzholding

HSN Nordbank AG

Hypo Real Estate Holding AG

IKB Deutsche Industriebank AG

KfW IPEX-Bank GmbH

Landesbank Baden-Württemberg

Landesbank Berlin Holding AG

Landesbank Hessen-Thüringen Girozentrale

Landeskreditbank Baden-Württemberg-Förderbank

Landwirtschaftliche Rentenbank

Münchener Hypothekbank eG

Norddeutsche Landesbank-Girozentrale

NRW.Bank

SEB AG

Volkswagen Financial Services AG

WGZ Bank AG Westdeutsche Genossenschafts-Zentralbank

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1 The assessment methodology for this group will take due account of its specific situation and in particular the fact that an extensive assessment of its financial position and risk profile was already carried out within the framework of the plan initiated in October 2011 and approved by the European Commission on 28 December 2012.

Wüstenrot & Württembergische AG with regard to Wüstenrot Bank AG Pfandbriefbank and Wüstenrot Bausparkasse AG

### **Estonia**

AS DNB Bank  
AS SEB Pank  
Swedbank AS

### **Ireland**

Allied Irish Banks plc  
Merrill Lynch International Bank Limited  
Permanent tsb plc  
The Governor and Company of the Bank of Ireland  
Ulster Bank Ireland Limited

### **Greece**

Alpha Bank, S.A.  
Eurobank Ergasias, S.A.  
National Bank of Greece, S.A.  
Piraeus Bank, S.A.

### **Spain**

Banco Bilbao Vizcaya Argentaria, S.A.  
Banco de Sabadell, S.A.  
Banco Financiero y de Ahorros, S.A.  
Banco Mare Nostrum, S.A.  
Banco Popular Español, S.A.  
Banco Santander, S.A.  
Bankinter, S.A.  
Caja de Ahorros y M.P. de Zaragoza, Aragón y Rioja  
Caja de Ahorros y Pensiones de Barcelona  
Caja España de Inversiones, Salamanca y Soria, CAMP  
Cajas Rurales Unidas, Sociedad Cooperativa de Crédito  
Catalunya Banc, S.A.  
Kutxabank, S.A.  
Liberbank, S.A.  
MPCA Ronda, Cádiz, Almería, Málaga, Antequera y Jaén  
NCG Banco, S.A.

## France

Banque Centrale de Compensation (LCH Clearnet)  
Banque PSA Finance  
BNP Paribas  
C.R.H. — Caisse de Refinancement de l’Habitat  
Groupe BPCE  
Groupe Crédit Agricole  
Groupe Crédit Mutuel  
HSBC France  
La Banque Postale  
BPI France (Banque Publique d’Investissement)  
RCI Banque  
Société de Financement Local  
Société Générale

## Italy

Banca Carige S.P.A. — Cassa di Risparmio di Genova e Imperia  
Banca Monte dei Paschi di Siena S.p.A.  
Banca Piccolo Credito Valtellinese, Società Cooperativa  
Banca Popolare Dell’Emilia Romagna — Società  
Cooperativa  
Banca Popolare Di Milano — Società Cooperativa A Responsabilità Limitata  
Banca Popolare di Sondrio, Società Cooperativa per  
Azioni  
Banca Popolare di Vicenza — Società Cooperativa per  
Azioni  
Banco Popolare — Società Cooperativa  
Credito Emiliano S.p.A.  
Iccrea Holding S.p.A.  
Intesa Sanpaolo S.p.A.  
Mediobanca — Banca di Credito Finanziario S.p.A.  
UniCredit S.p.A.  
Unione Di Banche Italiane Società Cooperativa Per Azioni  
Veneto Banca S.C.P.A.

## Cyprus

Bank of Cyprus Public Company Ltd  
Cooperative Central Bank Ltd  
Hellenic Bank Public Company Ltd  
Russian Commercial Bank (Cyprus) Ltd

## **Latvia**

ABLV Bank, AS  
AS SEB banka  
Swedbank

## **Luxembourg**

Banque et Caisse d'Epargne de l'Etat, Luxembourg  
Clearstream Banking S.A.  
Precision Capital S.A. (Holding of Banque Internationale à Luxembourg and KBL European Private Bankers S.A.)  
RBC Investor Services Bank S.A.  
State Street Bank Luxembourg S.A.  
UBS (Luxembourg) S.A.

## **Malta**

Bank of Valletta plc  
HSBC Bank Malta plc

## **Netherlands**

ABN AMRO Bank N.V.  
Bank Nederlandse Gemeenten N.V.  
Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.  
ING Bank N.V.  
Nederlandse Waterschapsbank N.V.  
The Royal Bank of Scotland N.V.  
SNS Bank N.V.

## **Austria**

BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG  
Erste Group Bank AG  
Raiffeisenlandesbank Oberösterreich AG  
Raiffeisenlandesbank Niederösterreich-Wien AG  
Raiffeisen Zentralbank Österreich AG  
Österreichische Volksbanken-AG together with credit institutions affiliated in accordance with Article 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>2</sup>

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2 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).

### **Portugal**

Banco BPI, SA  
Banco Comercial Português, SA  
Caixa Geral de Depósitos, SA  
Espírito Santo Financial Group, SA

### **Slovenia**

Nova Kreditna Banka Maribor d.d.  
Nova Ljubljanska banka d.d., Ljubljana  
SID – Slovenska izvozna in razvojna banka, d.d., Ljubljana

### **Finland**

Danske Bank Oyj  
Nordea Bank Finland Abp  
OP-Pohjola Group

*Cases in which one or more of the three most significant credit institutions in a participating Member State are subsidiaries of banking groups already included in the list above:*

### **Malta**

Deutsche Bank (Malta) Ltd

### **Slovakia**

Slovenská sporiteľňa, a.s.  
Všeobecná úverová banka, a.s.  
Tatra banka, a.s.

# DECISION OF THE EUROPEAN CENTRAL BANK

OF 17 SEPTEMBER 2014

## ON THE IMPLEMENTATION OF SEPARATION BETWEEN THE MONETARY POLICY AND SUPERVISION FUNCTIONS OF THE EUROPEAN CENTRAL BANK

(ECB/2014/39)

(2014/723/EU)\*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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 25(1), (2) and (3) thereof,

Whereas:

- (1) Regulation (EU) No 1024/2013 (hereinafter the ‘SSM Regulation’) establishes the Single Supervisory Mechanism (SSM) composed of the European Central Bank (ECB) and the national competent authorities (NCAs) of participating Member States.
- (2) Article 25(2) of the SSM Regulation requires the ECB to carry out its supervisory tasks without prejudice to and separately from its tasks relating to monetary policy and any other tasks. The ECB’s supervisory tasks should neither interfere with, nor be determined by, its tasks relating to monetary policy. Moreover, these supervisory tasks should not interfere with the ECB’s tasks in relation to the European Systemic Risk Board (ESRB) or any other tasks. The ECB is required to report to the European Parliament and to the Council as to how it has complied with this provision. The ECB’s supervisory tasks may not alter the ongoing monitoring of the solvency of its monetary policy counterparties. Furthermore, the staff involved in carrying out supervisory tasks should be organisationally separate from the staff involved in carrying out other tasks conferred on the ECB and subject to separate reporting lines.

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\* OJ L 300, 18.10.2014, p. 57.

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

- (3) Article 25(3) of the SSM Regulation requires the ECB, for the purposes of Article 25(1) and (2), to adopt and make public any necessary internal rules, including rules regarding professional secrecy and information exchange between the two functional areas.
- (4) Article 25(4) of the SSM Regulation requires the ECB to ensure that the operation of the Governing Council is completely differentiated as regards monetary and supervisory functions. Such differentiation shall include strict separation of meetings and agendas.
- (5) In order to ensure separation between monetary policy and supervisory tasks, Article 25(5) of the SSM Regulation requires the ECB to set up a mediation panel to resolve differences of views expressed by the competent authorities of participating Member States concerned regarding an objection of the Governing Council to a draft decision by the Supervisory Board. It will include one member per participating Member State, chosen by each Member State among the members of the Governing Council and the Supervisory Board. Its decisions are to be made by a simple majority, with each member having one vote. The ECB is obliged to adopt and make public a regulation setting up the mediation panel and its rules of procedure; in that context, the ECB adopted Regulation (EU) No 673/2014 of the European Central Bank (ECB/2014/26)<sup>2</sup>.
- (6) The ECB's Rules of Procedure have been amended<sup>3</sup> in order to adjust the internal organisation of the ECB and its decision-making bodies to the new requirements arising from the SSM Regulation and clarify the interaction of the bodies involved in the process of preparing and adopting supervisory decisions.
- (7) Articles 13g to 13j of the ECB's Rules of Procedure provide details on the adoption of decisions by the Governing Council regarding matters related to the SSM Regulation. In particular, Article 13g concerns the adoption of decisions for the purpose of carrying out the tasks referred to in Article 4 of the SSM Regulation, and Article 13h concerns the adoption of decisions for the purpose of carrying out the tasks referred to in Article 5 of the SSM Regulation, implementing the requirements laid down in Article 26(8) of the SSM Regulation.

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2 Regulation (EU) No 673/2014 of the European Central Bank of 2 June 2014 concerning the establishment of a Mediation Panel and its Rules of Procedure (ECB/2014/26) (OJ L 179, 19.6.2014, p. 72).

3 Decision ECB/2014/1 of 22 January 2014 amending Decision ECB/2004/2 adopting the Rules of Procedure of the European Central Bank (OJ L 95, 29.3.2014, p. 56).

- (8) Article 13k of the ECB's Rules of Procedure provides that the ECB must carry out supervisory tasks without prejudice to and separately from its tasks relating to monetary policy and from any other tasks. In this respect, the ECB is required to take all necessary measures to ensure separation between its monetary policy and supervisory functions. At the same time, the separation of the monetary policy and the supervisory functions should not preclude the exchange between these two functional areas of information necessary for the achievement of ECB and European System of Central Banks (ESCB) tasks.
- (9) Article 13l of the ECB's Rules of Procedure provides that Governing Council meetings regarding supervisory tasks must take place separately from regular Governing Council meetings and have separate agendas.
- (10) According to Article 13m of the ECB's Rules of Procedure on the ECB's internal structure in relation to supervisory tasks, the competence of the Executive Board in respect of the ECB's internal structure and staff encompasses supervisory tasks. The Executive Board is to consult the Chair and the Vice Chair of the Supervisory Board on this internal structure. 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. These are to assist in work regarding supervisory tasks and report to the Supervisory Board. Article 13m also provides for the appointment of the Secretary of the Supervisory Board and the Steering Committee by the President of the ECB, after having consulted the Chair of the Supervisory Board. The Secretary is to liaise with the Secretary of the Governing Council when preparing the meetings of the Governing Council regarding supervisory tasks and be responsible for drafting the proceedings of these meetings.
- (11) Recital 66 of the SSM Regulation states that organisational separation of staff should concern all services needed for independent monetary policy purposes and should ensure that the exercise of the supervisory tasks is fully subject to democratic accountability and oversight as provided for by the SSM Regulation. The staff involved in carrying out supervisory tasks should report to the Chair of the Supervisory Board. Within this framework, in order to fulfil the requirements contained in Article 25(2) of the SSM Regulation<sup>4</sup>, the ECB

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4 See also recital O of the Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism (2013/694/EU) (OJ L 320, 30.11.2013, p. 1); and recital G of the Memorandum of Understanding between the Council of the European Union and the European Central Bank on the cooperation on procedures related to the Single Supervisory Mechanism (SSM).

has established a structure of four Directorates-General for the performance of supervisory tasks and a Secretariat to the Supervisory Board, functionally reporting to the Chair and Vice Chair of the Supervisory Board. The ECB has further identified several business areas to provide support to both the monetary policy and supervisory functions of the ECB as shared services, where such support will not lead to conflicts of interest between the ECB's supervisory and monetary policy objectives. Divisions dedicated to supervisory tasks have been established within several 'shared service' business areas.

- (12) Article 37 of the Statute of the European System of Central Banks and of the European Central Bank lays down the obligation of professional secrecy for members of the governing bodies and the staff of the ECB and the national central banks. Recital 74 of the SSM Regulation states that the Supervisory Board, the steering committee and staff of the ECB carrying out supervisory duties should be subject to appropriate professional secrecy requirements. Article 27 of the SSM Regulation extends the obligation of professional secrecy to members of the Supervisory Board, and staff seconded by participating Member States carrying out supervisory duties.
- (13) The exchange of information between the ECB's monetary policy and supervisory functions should be organised in strict compliance with the limits established by Union law<sup>5</sup>, taking into account the principle of separation. Obligations protecting confidential information, as provided for in applicable laws and regulations, such as Council Regulation (EC) No 2533/98<sup>6</sup> on the collection of confidential statistical data and the provisions of Directive 2013/36/EU of the European Parliament and of the Council<sup>7</sup> relating to the sharing of supervisory information, will apply. Subject to the conditions set forth in this Decision, the principle of separation applies to the exchange of

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5 See recital H of the Interinstitutional Agreement. According to Recital 74 of the SSM Regulation, the requirements for the exchange of information with the staff not involved in supervisory activities should not prevent the ECB from exchanging information within the limits and under the conditions set out in the relevant Union legislation, including with the Commission for the purposes of its tasks under Articles 107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.

6 Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

7 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).

confidential information from both the monetary policy to the supervisory function as well as from the supervisory to the monetary policy function of the ECB.

- (14) According to recital 65 of the SSM Regulation, the ECB is responsible for carrying out monetary policy functions with a view to maintaining price stability in accordance with Article 127(1) of the Treaty on the Functioning of the European Union (TFEU). The objective of its supervisory tasks is to protect the safety and soundness of credit institutions and the stability of the financial system. They should therefore be carried out in full separation from the monetary policy function in order to avoid conflicts of interest and to ensure that each of these policy functions is exercised in accordance with its particular objectives. At the same time, effective separation between the monetary policy and supervisory functions should not prevent the reaping, wherever possible and desirable, of all the benefits to be expected as a result of combining these two policy functions in the same institution, including drawing on the ECB's extensive expertise in macroeconomic and financial stability issues and reducing double work when gathering information. It is therefore necessary to put in place mechanisms that allow an adequate flow of data and other confidential information between the two policy functions,

HAS ADOPTED THIS DECISION:

*Article 1*  
***Scope and objectives***

1. This Decision sets out the arrangements complying with the requirement to separate the ECB's monetary policy function from its supervisory function (together referred to as 'the policy functions'), in particular with respect to professional secrecy and the exchange of information between the two policy functions.
2. The ECB shall carry out its supervisory tasks without prejudice to and separately from its tasks relating to monetary policy and any other tasks. The ECB's supervisory tasks shall neither interfere with, nor be determined by, its tasks relating to monetary policy. The ECB's supervisory tasks shall moreover not interfere with its tasks in relation to the ESRB or any other tasks. The ECB's supervisory tasks and the ongoing monitoring of the financial soundness and solvency of the Eurosystem's monetary policy counterparties shall be articulated in a way which does not lead to distorting the finality of either of these functions.

3. The ECB shall ensure that the operation of the Governing Council is completely differentiated as regards monetary and supervisory functions. Such differentiation shall include strict separation of meetings and agendas.

*Article 2*  
***Definitions***

For the purposes of this Decision:

- (1) ‘confidential information’ means information classified as ‘ECB-CONFIDENTIAL’ or ‘ECB-SECRET’ under the ECB’s confidentiality regime; other confidential information, including information covered by data protection rules or by the obligation of professional secrecy, created within the ECB or forwarded to it by other bodies or individuals; any confidential information falling under the professional secrecy rules of Directive 2013/36/EU; as well as confidential statistical information in accordance with Regulation (EC) No 2533/98;
- (2) ‘need to know’ means the need to have access to confidential information necessary for the fulfilment of a statutory function or task of the ECB, which in case of information labelled as ‘ECB-CONFIDENTIAL’ shall be broad enough to enable staff to access information relevant to their tasks and take over tasks from colleagues with minimal delays;
- (3) ‘raw data’ means data transmitted by reporting agents, after statistical processing and validation, or data generated by the ECB through the execution of its functions;
- (4) ‘ECB Confidentiality Regime’ means the regime of the ECB which defines how to classify, handle and protect confidential ECB information.

*Article 3*  
***Organisational separation***

1. The ECB shall maintain autonomous decision-making procedures for its supervisory and monetary policy functions.
2. All work units of the ECB shall be placed under the managing direction of the Executive Board. 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.

3. ECB staff involved in carrying out supervisory tasks shall be organisationally separated from the staff involved in carrying out other tasks conferred on the ECB. Staff involved in carrying out supervisory tasks shall report to the Executive Board in respect of organisational, human resources and administrative issues, but shall be subject to functional reporting to the Chair and the Vice Chair of the Supervisory Board, subject to the exception in paragraph 4.
4. The ECB may establish shared services providing support to both the monetary policy and the supervisory function in order to ensure that these support functions are not duplicated, thus helping to guarantee the efficient and effective delivery of services. Such services shall not be subject to Article 6 as regards any information exchanges by them with the relevant policy functions.

*Article 4*  
***Professional secrecy***

1. Members of the Supervisory Board, of the Steering Committee and of any substructures established by the Supervisory Board, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.
2. Persons having access to data covered by Union legislation imposing an obligation of secrecy shall be subject to such legislation.
3. The ECB shall subject individuals who provide any service, directly or indirectly, permanently or occasionally, related to the discharge of supervisory duties to equivalent professional secrecy requirements by means of contractual arrangements.
4. The rules on professional secrecy contained in Directive 2013/36/EU shall apply to the persons specified in paragraphs 1 to 3. In particular, confidential information that such persons receive in the course of their duties may be disclosed only in summary or aggregate form in such a way that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law.

5. Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be disclosed in civil or commercial proceedings.
6. This Article shall not prevent the ECB's supervisory function from exchanging information with other Union or national authorities in line with applicable Union law. Information so exchanged shall be subject to paragraphs 1 to 5.
7. The ECB's confidentiality regime shall apply to the ECB's members of the Supervisory Board, ECB staff and staff seconded by participating Member States carrying out supervisory duties, even after their duties are ceased.

*Article 5*

***General principles for the access to information between policy functions and classification***

1. Notwithstanding Article 4, information may be exchanged between the policy functions provided that this is permitted under relevant Union law.
2. Information except raw data shall be classified in accordance with the ECB's confidentiality regime by the ECB policy function owning the information. Raw data shall be classified separately. The exchange of confidential information between the two policy functions shall be subject to the governance and procedural rules set out for this purpose, and to a need to know requirement, which shall be demonstrated by the requesting ECB policy function.
3. Access to confidential information by the supervisory or monetary policy function from the respective other policy function shall be determined by the ECB policy function that owns the information in accordance with the ECB's confidentiality regime, unless stated otherwise in this Decision. In the event of conflict between the two policy functions of the ECB regarding access to confidential information, the access to confidential information shall be determined by the Executive Board in compliance with the principle of separation. Consistency of decisions on access rights and adequate recording of such decisions shall be ensured.

## *Article 6*

### *Exchange of confidential information between policy functions*

1. The ECB's policy functions shall disclose confidential information in the form of non-anonymised common reporting (COREP) and financial reporting (FINREP)<sup>8</sup> data as well as other raw data to the respective other policy function of the ECB upon request on a need to know basis, subject to Executive Board approval, except where Union law provides otherwise. The ECB's supervisory function shall disclose confidential information in the form of anonymised COREP and FINREP data to the monetary policy function of the ECB upon request on a need to know basis, except where Union law provides otherwise.
2. The ECB's policy functions shall not disclose confidential information containing assessments or policy recommendations to the respective other policy function, except upon request on a need to know basis, and ensuring that each policy function is exercised in accordance with the applicable objectives, and where such disclosure has been expressly authorised by the Executive Board.

The ECB's policy functions may disclose confidential aggregated information containing neither individual banking information nor policy-sensitive information related to the preparation of decisions to the respective other policy function upon request on a need to know basis, and ensuring that each policy function is exercised in accordance with the applicable objectives.

3. Analysis of the confidential information received under this Article shall be conducted autonomously by the receiving policy function in accordance with its objective. Any subsequent decision shall be taken solely on this basis.

## *Article 7*

### *Exchange of confidential information involving personal data*

The exchange of information involving personal data shall be subject to applicable Union law on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

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<sup>8</sup> See Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council, (OJ L 191, 28.6.2014, p. 1).

*Article 8*

***Exchange of confidential information in emergency situations***

Notwithstanding Article 6, in an emergency situation as defined in Article 114 of Directive 2013/36/EU, the ECB's policy functions shall communicate, without delay, confidential information to the respective other policy function of the ECB, where that information is relevant for the exercise of its tasks in respect of the particular emergency at hand.

*Article 9*

***Final provision***

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

Done at Frankfurt am Main, 17 September 2014.

*The President of the ECB*  
Mario DRAGHI

## ANNEX

### EXCERPT FROM THE ECB CONFIDENTIALITY REGIME

All documents created by the ECB must be assigned one of the five security classifications below.

Documents received from parties outside the ECB are to be handled in accordance with the classification label on the document. If that document does not have a classification label, or the classification is assessed by the recipient as being too low, the document must be relabelled, with an appropriate ECB classification level clearly indicated at least on the first page. The classification should only be downgraded with the written permission of the originating organisation.

The ECB's five security classifications with their access rights are listed below.

**ECB-SECRET:** Access within the ECB limited to those with a strict 'need to know', approved by an ECB senior manager of the originating business area, or above.

**ECB-CONFIDENTIAL:** Access within the ECB limited to those with a 'need to know' broad enough to enable staff to access information relevant to their tasks and take over tasks from colleagues with minimal delay.

**ECB-RESTRICTED:** Can be made accessible to ECB staff and, if appropriate, ESCB staff with a legitimate interest.

**ECB-UNRESTRICTED:** Can be made accessible to all ECB staff and, if appropriate, ESCB staff.

**ECB-PUBLIC:** Authorised to be made available to the general public.

# DECISION OF THE EUROPEAN CENTRAL BANK

OF 31 JANUARY 2014

## ON THE CLOSE COOPERATION WITH THE NATIONAL COMPETENT AUTHORITIES OF PARTICIPATING MEMBER STATES WHOSE CURRENCY IS NOT THE EURO

(ECB/2014/5)

(2014/434/EU)\*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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 7 thereof,

Whereas:

- (1) Member States whose currency is not the euro may wish to participate in the Single Supervisory Mechanism (SSM). For this purpose, they may request the European Central Bank (ECB) to enter into a close cooperation in relation to the tasks referred to in Articles 4 and 5 of Regulation (EU) No 1024/2013 with regard to all credit institutions established in that Member State.
- (2) The close cooperation will be established by a decision of the ECB, provided that the conditions laid down in Article 7 of Regulation (EU) No 1024/2013 are met.
- (3) It is necessary to specify the procedural aspects relating to (a) requests by Member States whose currency is not the euro (hereinafter “non-euro area Member States”) to enter into a close cooperation, (b) the assessment of these requests by the ECB, and (c) the ECB decision establishing close cooperation with the specific Member State.
- (4) Regulation (EU) No 1024/2013 also sets out the cases in which a close cooperation may be suspended or terminated by the ECB. It is necessary to specify the procedural aspects relating to potential suspension and termination of a close cooperation,

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\* OJ L 198, 5.7.2014, p. 7.

1 OJ L 287, 29.10.2013, p. 63.

HAS ADOPTED THIS DECISION:

## TITLE I

### PROCEDURE FOR THE ESTABLISHMENT OF A CLOSE COOPERATION

#### *Article 1* *Definitions*

For the purposes of this Decision:

1. ‘less significant supervised entity’ means a supervised entity (a) established in a non-euro area Member State which is a participating Member State in accordance with Article 2(1) of Regulation (EU) No 1024/2013, and (b) which does not have the status of a significant supervised entity pursuant to a decision of the ECB based on Article 6(4) or Article 6(5)(b) of Regulation (EU) No 1024/2013;
2. ‘national competent authority’ means any national competent authority as defined in Article 2(2) of Regulation (EU) No 1024/2013;
3. ‘national designated authority’ means a national designated authority as defined in Article 2(7) of Regulation (EU) No 1024/013;
4. ‘non-participating Member State’ means any Member State which is not a participating Member State as defined in Article 2(1) of Regulation (EU) No 1024/2013;
5. ‘requesting Member State’ means a non-participating Member State that has notified the ECB in accordance with Article 2 of this Decision of its request to enter into a close cooperation pursuant to Article 7 of Regulation (EU) No 1024/2013;
6. ‘significant supervised entity’ means a supervised entity (a) established in a non-euro area Member State which is a participating Member State, and (b) which has the status of a significant supervised entity pursuant to a decision of the ECB based on Article 6(4) or Article 6(5)(b) of Regulation (EU) No 1024/2013;

7. 'supervised entity' means a credit institution, financial holding company, or mixed-financial holding company as defined in Regulation (EU) No 1024/2013 and established in the requesting Member State, as well as a branch established in a requesting Member State by a credit institution which is established in a non-participating Member State.

#### *Article 2*

#### ***Request to enter into a close cooperation***

1. A non-participating Member State wishing to participate in the SSM shall request the ECB to enter into a close cooperation, using the template provided in Annex I.
2. Such request shall be made at least five months before the date from which the non-participating Member State intends to participate in the SSM.

#### *Article 3*

#### ***Content of the request to enter into a close cooperation***

1. The request to enter into a close cooperation shall include all of the following:
  - (a) an undertaking of the requesting Member State to ensure that its national competent authority and its national designated authority will adhere to any instructions, guidelines or requests issued by the ECB from the date of the establishment of the close cooperation;
  - (b) an undertaking of the requesting Member State to provide all information on the supervised entities established in such Member State that the ECB may require for the purpose of carrying out a comprehensive assessment of those supervised entities. The requesting Member State shall ensure that the information necessary to assess the significance and to carry out a comprehensive assessment pursuant to Article 7(2)(b) of Regulation (EU) No 1024/2013 of the credit institutions established in such Member State can be provided to the ECB as soon as the request to enter into a close cooperation is notified to the ECB;
  - (c) a commitment that all confidential data requested by the ECB for the finalisation of its preparatory activities will be provided to the ECB.

2. The request to enter into a close cooperation shall be accompanied by all of the following:
  - (a) an undertaking of the requesting Member State that it will adopt the relevant national legislation to ensure that legal acts adopted by the ECB pursuant to Regulation (EU) No 1024/2013 are binding and enforceable in the requesting Member State and that its national competent authority and its national designated authority are obliged to adopt any measure requested by the ECB in relation to the supervised entities, in accordance with Article 7(4) of Regulation (EU) No 1024/2013;
  - (b) a copy of the draft relevant national legislation as well as an English translation thereof, and a request for an ECB opinion on such draft legislation;
  - (c) an undertaking to notify to the ECB immediately after the date upon which the relevant national legislation has entered into force and an undertaking to provide a confirmation pursuant to Article 7(2)(c) of Regulation (EU) No 1024/2013 using the template provided in Annex II of this Decision. The confirmation shall include a legal opinion satisfactory to the ECB confirming that legal acts adopted by the ECB pursuant to Regulation (EU) No 1024/2013 will be binding and enforceable in the requesting Member State and that the relevant national legislation obliges the national competent authority and the national designated authority to follow the ECB's specific instructions, guidelines, requests and measures in relation to significant supervised entities as well as the ECB's general instructions, guidelines, requests and measures in relation to less significant supervised entities, within the timeframe laid down by the ECB, where specified.
3. The requesting Member State shall provide the ECB with all relevant documentation which the ECB deems appropriate for the purpose of assessing its request. The requesting Member State shall also ensure that the ECB is provided with all information which the ECB deems appropriate for the purpose of assessing the significance of credit institutions and for carrying out the comprehensive assessment required by Regulation (EU) No 1024/2013.

#### *Article 4*

#### ***Assessment by the ECB of the request to enter into a close cooperation***

1. The ECB shall acknowledge receipt in writing of a request by a Member State to enter into a close cooperation.
2. The ECB may request all additional information that it considers appropriate for the purposes of the assessment of the Member State's request, including information for the assessment of the significance of credit institutions and for carrying out the comprehensive assessment.

Where the requesting Member State has already made a comprehensive assessment of the credit institutions established in its jurisdiction, it shall provide detailed information on the results. The ECB may decide that no further assessment is required provided that (a) the quality and the methodology of the assessment made by national authorities correspond to the ECB's standards, and (b) the ECB considers that the assessment made by national authorities is still up to date and that no material change to the situation of the credit institutions established in the requesting Member State would require a further assessment.

3. When assessing the relevant national legislation, the ECB's assessment shall also take into account the practical implementation of such legislation.
4. At the latest 3 months following receipt by the ECB of the confirmation referred to in Article 3(2)(c) or, where applicable, the additional information requested by the ECB under paragraph 2, the ECB shall inform the requesting Member State of its preliminary assessment. The requesting Member State shall have the opportunity to provide its views within 20 days from the receipt of the preliminary assessment. Such correspondence between the ECB and the requesting Member State shall be confidential.

#### *Article 5*

#### ***Decision establishing a close cooperation***

1. Where the ECB concludes, on the basis of the information submitted by the requesting Member State, that the latter fulfils the criteria set out in Article 7(2) (a) to (c) of Regulation (EU) No 1024/2013 for entering into a close cooperation, and once the comprehensive assessment is concluded and the confirmation is provided in accordance with Annex II to this Decision, the ECB shall adopt a decision on the basis of Article 7(2) of Regulation (EU) No 1024/2013, addressed to the requesting Member State and establishing a close cooperation.

2. The decision referred to in paragraph 1 shall indicate the modalities for the transfer of the supervisory tasks to the ECB and the date of the start of the close cooperation, which shall be conditional, if applicable, on the progress by the requesting Member State in implementing the measures required in relation to the results of the comprehensive assessment.
3. Where, on the basis of the information submitted by the requesting Member State, the ECB concludes that the latter does not fulfil the criteria set out in Article 7(2) of Regulation (EU) No 1024/2013, or where the ECB does not receive the information necessary to perform its assessment within one year from the notification of the request by the Member State, it may adopt a decision addressed to the requesting Member State rejecting the request to establish a close cooperation.
4. The decisions referred to in paragraphs 1 and 3 shall include the reasons on which they are based.
5. In accordance with Article 7(3) of Regulation (EU) No 1024/2013, any decision establishing a close cooperation shall be published in the *Official Journal of the European Union* and shall apply from the date 14 days after its publication.

## TITLE 2

### SUSPENSION OR TERMINATION OF A CLOSE COOPERATION

#### *Article 6*

#### *Suspension or termination*

1. Where the ECB decides to suspend a close cooperation pursuant to Article 7(5) or 7(7) of Regulation (EU) No 1024/2013, it shall state the reasons for doing so, clarify the effects of such suspension decision and shall indicate the date from which the suspension takes effect as well as the period during which the suspension applies. The latter period shall not be longer than six months. The ECB may extend the period in exceptional circumstances, but only once.
2. Where the reasons for the suspension under Article 7(5) of Regulation (EU) No 1024/2013 are not remedied or where the ECB decides to terminate a close

cooperation, the ECB shall terminate the close cooperation by adopting a new decision for this purpose.

3. Where the ECB decides to terminate a close cooperation pursuant to Article 7(5) or 7(7) of Regulation (EU) No 1024/2013, it shall state the reasons for doing so and shall clarify the effects of such termination decision, as well as indicating the date from which the termination takes effect.
4. Any ECB decision on suspension or termination of a close cooperation may also regulate the modalities for the payment of fees due by the supervised entities located in the Member State concerned.
5. Where the Member State with which a close cooperation has been established pursuant to Article 7 of Regulation (EU) No 1024/2013 requests the ECB to terminate the close cooperation subject to the conditions provided in Article 7(6) and 7(8) of Regulation (EU) No 1024/2013, the ECB shall adopt a decision clarifying the effects of such termination decision, as well as indicating the date from which the termination takes effect.
6. Any ECB decisions adopted in connection with supervised entities in the Member State with which a close cooperation has been established, and which were in force prior to the termination of such close cooperation, shall remain valid despite the termination of the close cooperation.
7. Decisions to suspend or terminate a close cooperation shall be published in the *Official Journal of the European Union*.

*Article 7*  
***Entry into force***

This Decision shall enter into force on 27 February 2014.

Done at Frankfurt am Main, 31 January 2014.

*The President of the ECB*  
Mario DRAGHI

## ANNEX I

### TEMPLATE REQUEST TO ENTER INTO A CLOSE COOPERATION PURSUANT TO ARTICLE 7 OF REGULATION (EU) NO 1024/2013

By

[Requesting Member State]

### NOTIFICATION TO THE ECB OF A REQUEST TO ENTER INTO A CLOSE COOPERATION PURSUANT TO ARTICLE 7 OF REGULATION (EU) NO 1024/2013

1. The [requesting Member State] hereby requests to enter into a close cooperation with the European Central Bank (ECB) pursuant to Article 7 of Regulation (EU) No 1024/2013 and in accordance with the provisions of Decision ECB/2014/5 of 31 January 2014 on the close cooperation with the national competent authorities of participating Member States whose currency is not the euro.
2. The [requesting Member State] hereby undertakes:
  - (a) to ensure that its national competent authority and national designated authority will adhere to any instructions, guidelines, measures or requests issued by the European Central Bank in respect of supervised entities (as defined in Decision ECB/2014/5);

In particular, the relevant national legislation will also ensure that the national competent authority and national designated authority will be obliged to follow the ECB's specific instructions, guidelines, requests and measures in relation to significant supervised entities and the ECB's general instructions, guidelines, requests and measures in relation to less significant supervised entities. In this respect the requesting Member State hereby undertakes

- to adopt the relevant national legislation to ensure that legal acts adopted by the ECB pursuant to Regulation (EU) No 1024/2013 are binding and enforceable in [the Member State concerned] and that its national competent authority and national designated authority will be obliged to adopt any measure in relation to supervised entities requested by the ECB, in accordance with Article 7(4) of Regulation (EU) No 1024/2013,

- to notify the ECB of the date on which the relevant national legislation has entered into force.
- (b) to provide at any time after the request to enter into a close cooperation is notified to the ECB and before the establishment of a close cooperation and upon request by the ECB, and at any time thereafter, also all information on the supervised entities established in that Member State that the European Central Bank may require for the purpose of carrying out a comprehensive assessment of those supervised entities, including confidential information.

The information to be provided to the ECB shall include:

- (i) a copy of the draft relevant national legislation;
- (ii) up to date information on institutions established in the requesting Member State including as a minimum a complete list of the following entities located in the Member State:
  - credit institutions,
  - financial holding companies or mixed financial holding companies at the top of supervised groups, and
  - cross-border branches of credit institutions from other countries,

including total assets figures for each entity.

For credit institutions which are subsidiaries, and in the case of branches, identification of their direct and ultimate parent institutions shall be provided.

For supervised groups headquartered and supervised in the Member State, information on their foreign group components shall be provided.

- (iii) contact persons at the national competent authority and national designated authority to whom to address ECB requests for further information

For the Member State

[Signature]

cc:

- (i) the European Commission
- (ii) the European Banking Authority
- (iii) the other Member States

## ANNEX II

### TEMPLATE STATEMENT PURSUANT TO ARTICLE 7(2)(C) OF REGULATION (EU) NO 1024/2013

By  
[Requesting Member State]

To  
European Central Bank (ECB)

#### STATEMENT PURSUANT TO ARTICLE 7(2)(C) OF REGULATION (EU) NO 1024/2013 RELATING TO THE REQUEST TO ENTER INTO A CLOSE COOPERATION PURSUANT TO ARTICLE 7 OF REGULATION (EU) NO 1024/2013

[The Member State concerned] hereby confirms that it has adopted relevant national legislation to ensure that legal acts adopted by the ECB pursuant to Regulation (EU) No 1024/2013 are binding and enforceable in [the Member State concerned] and that its national competent authority and national designated authority will be obliged to adopt any measure in relation to the supervised entities requested by the ECB, in accordance with Article 7(4) of Regulation (EU) No 1024/2013, and that this relevant national legislation entered into force on [INSERT DATE].

In addition, we enclose a legal opinion confirming that the relevant national legislation also ensures that the national competent authority and national designated authority will be obliged to follow the ECB's specific instructions, guidelines, requests and measures in relation to significant supervised entities and the ECB's general instructions, guidelines, requests and measures in relation to less significant supervised entities.

For the Member State

[Signature]

Appendix : Copy of the relevant national legislation adopted by the requesting Member State to ensure that legal acts adopted by the ECB pursuant to Regulation (EU) No 1024/2013 are binding and enforceable in [the Member State concerned] and that its national competent authority and national designated authority will be obliged to adopt any measure in relation to supervised entities requested by the ECB.

# INTERINSTITUTIONAL AGREEMENT BETWEEN THE EUROPEAN PARLIAMENT AND THE EUROPEAN CENTRAL BANK

## ON THE PRACTICAL MODALITIES OF THE EXERCISE OF DEMOCRATIC ACCOUNTABILITY AND OVERSIGHT OVER THE EXERCISE OF THE TASKS CONFERRED ON THE ECB WITHIN THE FRAMEWORK OF THE SINGLE SUPERVISORY MECHANISM

(2013/694/EU)\*

THE EUROPEAN PARLIAMENT AND THE EUROPEAN CENTRAL BANK,

- having regard to the Treaty on European Union,
  - having regard to the Treaty on the Functioning of the European Union, in particular Article 127(6) thereof,
  - having regard to Parliament’s Rules of Procedure, in particular Rule 127(1) 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>, in particular Article 20(8) and (9) thereof,
  - having regard to the joint statement by the President of the European Parliament and by the President of the European Central Bank, on the occasion of Parliament’s vote for the adoption of Regulation (EU) No 1024/2013,
- A. whereas Regulation (EU) No 1024/2013 confers on the European Central Bank (ECB) specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the European Union and each Member State participating in the Single Supervisory Mechanism (SSM);

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\* OJ L 320, 30.11.2013, p. 1.

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

- B. whereas Article 9 of Regulation (EU) No 1024/2013 establishes that the ECB is the competent authority for the purpose of carrying out the supervisory tasks conferred on it by that Regulation;
- C. whereas the conferral of supervisory tasks implies a significant responsibility for the ECB to contribute to financial stability in the Union, using its supervisory powers in the most effective and proportionate way;
- D. whereas any conferral of supervisory powers to the Union level should be balanced by appropriate accountability requirements; under Article 20 of Regulation (EU) No 1024/2013 the ECB is therefore accountable for the implementation of that Regulation to Parliament and the Council as democratically legitimised institutions representing the citizens of the Union and the Member States;
- E. whereas Article 20(9) of Regulation (EU) No 1024/2013 provides that the ECB is to cooperate sincerely with any investigations by Parliament, subject to the Treaty on the Functioning of the European Union (TFEU);
- F. whereas Article 20(8) of Regulation (EU) No 1024/2013 provides that, upon request, the Chair of the Supervisory Board of the ECB is to hold confidential oral discussions behind closed doors with the Chair and the Vice-Chairs of Parliament's competent committee concerning the ECB's supervisory tasks where such discussions are required for the exercise of Parliament's powers under the TFEU; whereas that Article requires that the arrangements for the organisation of those discussions ensure full confidentiality in accordance with the confidentiality obligations imposed on the ECB as a competent authority under relevant Union law;
- G. whereas Article 15(1) TFEU provides that the Union's institutions conduct their work as openly as possible; whereas the conditions under which a document of the ECB is confidential are laid down in Decision 2004/258/EC of the ECB (ECB/2004/3)<sup>2</sup>; whereas that Decision provides that any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ECB documents, subject to the conditions and limits defined in that Decision; whereas in accordance with that Decision the ECB is to refuse disclosure where certain specified public or private interests would be undermined thereby;

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2 Decision 2004/258/EC of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ L 80, 18.3.2004, p. 42).

- H. whereas the disclosure of information related to the prudential supervision of credit institutions is not at the free disposal of the ECB but subject to limits and conditions as established by relevant Union law to which both Parliament and the ECB are subject; whereas pursuant to Article 37.2 of the Statute of the European System of Central Banks and of the ECB (the ‘Statute of the ESCB’), persons having access to data covered by Union legislation imposing an obligation of secrecy are subject to such Union legislation;
- I. whereas Recital 55 of Regulation (EU) No 1024/2013 specifies that any reporting obligations *vis-à-vis* Parliament should be subject to the relevant professional secrecy requirements; whereas Recital 74 and Article 27(1) of that Regulation provide that the members of the Supervisory Board, the steering committee, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties shall be subject to the professional secrecy requirements set out in Article 37 of the Statute of the ESCB and in relevant acts of Union law; whereas Article 339 TFEU and Article 37 of the Statute of the ESCB establish that the members of the governing bodies and the staff of the ECB and the national central banks are bound by the obligation of professional secrecy;
- J. whereas in accordance with Article 10.4 of the Statute of the ESCB the proceedings of the meetings of the ECB’s Governing Council are confidential;
- K. whereas Article 4(3) of Regulation (EU) No 1024/2013 provides that, for the purpose of carrying out the tasks conferred on it in that Regulation, the ECB is to apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those directives;
- L. whereas subject to future amendments or any future relevant legal acts, the provisions of Union law relevant in respect of the treatment of information, which has been found to be confidential, in particular Articles 53 to 62 of Directive 2013/36/EU of the European Parliament and of the Council<sup>3</sup> impose strict obligations of professional secrecy on the competent authorities and their staff for the supervision of credit institutions; whereas all persons working for or who have worked for the competent authorities are bound by the obligation of professional secrecy; whereas confidential information which they receive

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3 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).

in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law;

- M. whereas Article 27(2) of Regulation (EU) No 1024/2013 provides that for the purpose of carrying out the tasks conferred on it by that Regulation, the ECB is authorised, within the limits and under the conditions set out in the relevant Union law, to exchange information with national or Union authorities and bodies where the relevant Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under the relevant Union law;
- N. whereas the breach of professional secrecy requirements in relation to supervisory information should lead to adequate sanctions; whereas Parliament should provide for an adequate framework to follow-up on any case of breach of confidentiality by its Members or staff;
- O. whereas organisational separation of the ECB's staff involved in the execution of the ECB's supervisory tasks from staff involved in the execution of monetary policy tasks must be such that Regulation (EU) No 1024/2013 is fully complied with;
- P. whereas this Agreement does not cover the exchange of confidential information regarding monetary policy or other ECB tasks which are not part of the tasks conferred on the ECB by Regulation (EU) No 1024/2013;
- Q. whereas this Agreement is without prejudice to the accountability of national competent authorities to national parliaments in accordance with national law;
- R. whereas this Agreement does not cover or affect the accountability and reporting obligation of the SSM towards the Council, the Commission or national parliaments;

AGREE AS FOLLOWS:

## **I. ACCOUNTABILITY, ACCESS TO INFORMATION, CONFIDENTIALITY**

### **I. Reports**

- the ECB shall submit every year a report to Parliament (‘Annual Report’) on the execution of the tasks conferred on it by Regulation (EU) No 1024/2013. The Chair of the Supervisory Board shall present the Annual Report to Parliament at a public hearing. The draft Annual Report shall be made available to Parliament on a confidential basis in one of the Union official languages four working days in advance of the hearing. Translations in all Union official languages shall be made available subsequently. The Annual Report shall cover, inter alia:
  - i. execution of supervisory tasks,
  - ii. sharing of tasks with the national supervisory authorities,
  - iii. cooperation with other national or Union relevant authorities,
  - iv. separation between monetary policy and supervisory tasks,
  - v. evolution of supervisory structure and staffing, including the number and the national composition of Seconded National Experts,
  - vi. implementation of the Code of Conduct,
  - vii. method of calculation and amount of supervisory fees,
  - viii. budget for supervisory tasks,
  - ix. experience with reporting on the basis of Article 23 of Regulation (EU) No 1024/2013 (Reporting of violations).
- During the start-up phase referred to in Article 33(2) of Regulation (EU) No 1024/2013, the ECB shall transmit to Parliament quarterly reports on progress in the operational implementation of the Regulation covering, inter alia:
  - i. internal preparation, organisation and planning of work,

- ii. concrete arrangements made to comply with the requirement to separate monetary policy and supervisory functions,
  - iii. cooperation with other national or Union competent authorities,
  - iv. any obstacles encountered by the ECB in the preparation of its supervisory tasks,
  - v. any events of concern or changes to the Code of Conduct.
- The ECB shall publish the Annual Report on the SSM website. The ECB’s ‘information e-mail hotline’ will be extended to deal specifically with SSM-related questions, and the ECB shall convert the feedback received via e-mails into a FAQ section on the SSM website.

## 2. Hearings and confidential oral discussions

- The Chair of the Supervisory Board shall participate in **ordinary** public hearings on the execution of the supervisory tasks on request of Parliament’s competent committee. Parliament’s competent committee and the ECB shall agree on a calendar for two such hearings to be held in the course of the following year. Requests for changes to the agreed calendar shall be made in writing.
- In addition, the Chair of the Supervisory Board may be invited to additional **ad hoc** exchanges of views on supervisory issues with Parliament’s competent committee.
- Where necessary for the exercise of Parliament’s powers under the TFEU and Union law, the Chair of its competent committee may request special **confidential** meetings with the Chair of the Supervisory Board in writing, giving reasons. Such meetings shall be held on a mutually agreed date.
- All participants in the special **confidential** meetings shall be subject to confidentiality requirements equivalent to those applying to the members of the Supervisory Board and to the ECB’s supervisory staff.
- On a reasoned request by the Chair of the Supervisory Board or the Chair of Parliament’s competent committee, and with mutual agreement,

the **ordinary** hearings, the **ad hoc** exchanges of views and the **confidential** meetings can be attended by the ECB representatives in the Supervisory Board or senior members of the supervisory staff (Director Generals or their Deputies).

- The principle of openness of Union institutions in accordance with the TFEU shall apply to the SSM. The discussion in special **confidential** meetings shall follow the principle of openness and elaboration around the relevant circumstances. It involves the exchange of confidential information regarding the execution of the supervisory tasks, within the limit set by Union law. The disclosure might be restricted by confidentiality limits legally foreseen.
- Persons employed by Parliament and by the ECB may not disclose information acquired in the course of their activities related to the tasks conferred on the ECB under Regulation (EU) No 1024/2013, even after such activities have ended or they have left such employment.
- The **ordinary** hearings, **ad hoc** exchanges of views and the **confidential** meetings can cover all aspects of the activity and functioning of the SSM covered by Regulation (EU) No 1024/2013.
- No minutes or any other recording of the **confidential** meetings shall be taken. No statement shall be made for the press or any other media. Each participant to the confidential discussions shall sign every time a solemn declaration not to divulge the content of those discussions to any third person.
- Only the Chair of the Supervisory Board and the Chair and the Vice-Chairs of Parliament’s competent committee may attend the **confidential** meetings. Both the Chair of the Supervisory Board and the Chair and the Vice-Chairs of Parliament’s competent committee may be accompanied by two members of respectively ECB staff and of Parliament’s Secretariat.

### 3. Responding to questions

- The ECB shall reply in writing to written questions put to it by Parliament. Those questions shall be channelled to the Chair of the Supervisory Board via the Chair of Parliament’s competent committee. Questions shall be replied as promptly as possible, and in any event within five weeks of their transmission to the ECB.

- Both the ECB and Parliament shall dedicate a specific section of the websites for the questions and answers referred to above.

#### **4. Access to information**

- The ECB shall provide Parliament's competent committee at least with a comprehensive and meaningful record of the proceedings of the Supervisory Board that enables an understanding of the discussions, including an annotated list of decisions. In the case of an objection of the Governing Council against a draft decision of the Supervisory Board in accordance with Article 26(8) of Regulation (EU) No 1024/2013, the President of the ECB shall inform the Chair of Parliament's competent committee of the reasons for such an objection, in line with the confidentiality requirements referred to in this Agreement.
- In the event of the winding-up of a credit institution, non-confidential information relating to that credit institution shall be disclosed ex post, once any restrictions on the provision of relevant information resulting from confidentiality requirements have ceased to apply.
- The supervisory fees and an explanation of how they are calculated shall be published on ECB website.
- The ECB shall publish on its website a guide to its supervisory practices.

#### **5. Safeguarding ECB classified information and documents**

- Parliament shall implement safeguards and measures corresponding to the level of sensitivity of the ECB information or ECB documents and shall inform the ECB about it. In any event information or documents disclosed will be used only for the purpose for which they have been provided.
- Parliament shall seek the ECB's consent to any disclosure to additional persons or institutions and the two institutions will cooperate in any judicial, administrative or other proceedings in which access to such information or documents is sought. The ECB may request Parliament, with respect to all or certain categories of information or documents disclosed, that it maintains a list of persons having access to these information and documents.

## II. SELECTION PROCEDURES

- The ECB shall specify and make public the criteria for the selection of the Chair of the Supervisory Board, including the balance of skills, knowledge of financial institutions and markets, and experience in financial supervision and macro-prudential oversight. In specifying the criteria, the ECB shall aim at the highest professional standards and take into account the need to safeguard the interest of the Union as a whole and diversity in the composition of the Supervisory Board.
- Parliament’s competent committee shall be informed two weeks before the ECB’s Governing Council publishes the vacancy notice of the details, including the selection criteria and the specific job profile, of the ‘open selection procedure’ that it intends to apply for the selection of the Chair.
- Parliament’s competent committee shall be informed by the ECB’s Governing Council of the composition of the pool of applicants for the position of Chair (number of applications, mix of professional skills, gender and nationality balance, etc.) as well as of the method through which the pool of applicants is screened in order to draw up a shortlist of at least two candidates and eventually to determine the proposal by the ECB.
- The ECB shall provide Parliament’s competent committee with the shortlist of candidates for the position of the Chair of the Supervisory Board. The ECB shall provide that shortlist at least three weeks before submitting its proposal for the appointment of the Chair.
- Parliament’s competent committee may submit questions to the ECB relating to the selection criteria and the shortlist of candidates within a week from receiving it. The ECB shall respond to such questions in writing within two weeks.
- The approval process shall comprise the following steps:
  - The ECB shall convey its proposals for the Chair and the Vice-Chair to Parliament together with written explanations of the underlying reasons.
  - A public hearing of the proposed Chair and Vice-Chair of the Supervisory Board shall be held in Parliament’s competent committee.

- Parliament shall decide on the approval of the candidate proposed by the ECB for Chair and Vice-Chair through a vote in the competent committee and in plenary. Parliament will normally, taking into account its calendar, aim at taking that decision within six weeks of the proposal.
- If the proposal for the Chair is not approved, the ECB may decide either to draw on the pool of candidates that applied originally for the position or to re-initiate the selection process, including elaborating and publishing a new vacancy notice.
- The ECB shall submit any proposal to remove the Chair or the Vice-Chair from office to Parliament and provide explanations.
- The approval process shall comprise:
  - a vote in Parliament’s competent committee on a draft resolution; and
  - a vote in plenary, for approval or objection, on that resolution.
- Where Parliament or the Council has informed the ECB that it considers the conditions for the removal of the Chair or the Vice-Chair of the Supervisory Board to be fulfilled for the purposes of Article 26(4) of Regulation (EU) No 1024/2013, the ECB shall provide its considerations in writing within four weeks.

### III. INVESTIGATIONS

- Where Parliament sets up a Committee of Inquiry, pursuant to Article 226 TFEU and to Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission<sup>4</sup>, the ECB, in accordance with Union law, shall assist a Committee of Inquiry in carrying out its tasks in accordance with the principle of sincere cooperation.
- Any activities of a Committee of Inquiry which the ECB will assist shall take place within the scope of Decision 95/167/EC, Euratom, ECSC.

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4 Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament’s right of inquiry (OJ L 78, 6.4.1995, p. 1).

- The ECB shall cooperate sincerely with any investigation by Parliament referred to in Article 20(9) of Regulation (EU) No 1024/2013 within the same framework that applies to Committees of Inquiry and under the same confidentiality protection as foreseen in this Agreement for the oral confidential meetings (I.2.).
- All recipients of information provided to Parliament in the context of investigations shall be subject to confidentiality requirements equivalent to those applying to the members of the Supervisory Board and to the ECB supervisory staff and Parliament and the ECB shall agree on the measures to be applied to ensure the protection of such information.
- Where the protection of a public or private interest recognised in Decision 2004/258/EC requires that confidentiality is maintained, Parliament shall ensure that this protection is maintained and shall not divulge the content of any such information.
- The rights and obligations of the institutions and bodies of the Union as laid down in Decision 95/167/EC, Euratom, ECSC shall apply *mutatis mutandis* to the ECB.
- Any replacement of Decision 95/167/EC, Euratom, ECSC by another legal act or its amendment will lead to a re-negotiation of part III of this Agreement. Until a new Agreement on the respective parts has been found, this Agreement shall stay valid including Decision 95/167/EC, Euratom, ECSC in its version at the date of signature of this Agreement.

#### **IV. CODE OF CONDUCT**

- Before the adoption of the Code of Conduct referred to in Article 19(3) of Regulation (EU) No 1024/2013, the ECB shall inform Parliament’s competent committee on the main elements of the envisaged Code of Conduct.
- Upon written request of Parliament’s competent committee, the ECB shall inform Parliament in writing on the implementation of the Code of Conduct. The ECB shall also inform Parliament about the need for updates to the Code of Conduct.

- The Code of Conduct shall address matters of conflict of interest and ensure the respect of the rules on separation between supervisory and monetary policy functions.

## **V. ADOPTION OF ACTS BY THE ECB**

- The ECB shall duly inform Parliament’s competent committee of the procedures (including timing) it has set up for adoption of ECB regulations, decisions, guidelines and recommendations (‘acts’), which are subject to public consultation in accordance with Regulation (EU) No 1024/2013.
- The ECB shall, in particular, inform Parliament’s competent committee of the principles and kinds of indicators or information it is generally using in developing acts and policy recommendations, with a view to enhancing transparency and policy consistency.
- The ECB shall transmit to Parliament’s competent committee the draft acts before the beginning of the public consultation procedure. Where Parliament submits comments on the acts, there may be informal exchanges of views with the ECB on such comments. Such informal exchanges of views shall take place in parallel with the open public consultations which the ECB shall conduct in accordance with Article 4(3) of Regulation (EU) No 1024/2013.
- Once the ECB has adopted an act, it shall send it to Parliament’s competent committee. The ECB shall also regularly inform Parliament in writing about the need to update adopted acts.

## **VI. FINAL PROVISIONS**

1. The practical implementation of this Agreement shall be assessed by the two institutions every three years.
2. This Agreement shall enter into force on the date of entry into force of Regulation (EU) No 1024/2013 or on the day after the signature of this Agreement, whichever is later.
3. The obligations concerning confidentiality of information shall continue to be binding on the two institutions even after the termination of this Agreement.

4. This Agreement shall be published in the *Official Journal of the European Union*.

Done at Frankfurt am Main and Brussels, 6 November 2013.

*For the European Parliament*

*The President*  
M. SCHULZ

*For the European Central Bank*

*The President*  
M. DRAGHI

# MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNCIL OF THE EUROPEAN UNION AND THE EUROPEAN CENTRAL BANK

## ON THE COOPERATION ON PROCEDURES RELATED TO THE SINGLE SUPERVISORY MECHANISM (SSM)

THE COUNCIL OF THE EUROPEAN UNION AND THE EUROPEAN CENTRAL BANK,

- having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU), in particular Article 127(6) thereof,
- having regard to Regulation (EU) No 1024/2013 of the Council 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 to its Recitals (55) and (69), and its Articles 20(1) to (4) and (6), 25(2), 26(3) and (4), 29(2), Article 32 and Article 33(2),
  - A. whereas Regulation (EU) No 1024/2013 confers on the European Central Bank (ECB) specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the European Union and each Member State participating in the Single Supervisory Mechanism (SSM);
  - B. whereas Articles 4 and 9 of Regulation (EU) No 1024/2013 establish that the ECB shall be considered, as appropriate, the competent authority or the designated authority for the exclusive purpose of carrying out the supervisory tasks conferred upon the ECB;
  - C. whereas the conferral of supervisory tasks implies a significant responsibility for the ECB to contribute to financial stability in the Union, using its supervisory powers in the most effective and proportionate way;
  - D. whereas any conferral of supervisory powers to the Union level should be balanced by appropriate accountability requirements; under Article 20 of Regulation (EU) No 1024/2013 the ECB is therefore accountable for the

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1 OJ L 287, 29.10.2013, p. 63.

implementation of that Regulation to the European Parliament and the Council as democratically legitimised institutions representing the citizens of the Union and the Member States;

- E. whereas Recital 55 of Regulation (EU) No 1024/2013 specifies that any reporting obligations vis-à-vis the Council or the Euro Group should be subject to the relevant professional secrecy requirements; whereas Recital 74 and Article 27(1) of that Regulation provide that the members of the Supervisory Board, the steering committee, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties shall be subject to the professional secrecy requirements set out in Article 37 of the Statute of the ESCB and the ECB (hereinafter referred to as ‘ESCB Statute’) and in relevant acts of Union law; whereas Article 339 TFEU and Article 37 of the ESCB Statute establish that the members of the governing bodies and the staff of the ECB and the national central banks are bound by the obligation of professional secrecy;
- F. whereas Article 27(2) of Regulation (EU) No 1024/2013 provides that for the purpose of carrying out the tasks conferred upon it, the ECB shall be authorised, within the limits and under the conditions set out in the relevant Union law, to exchange information with national or Union authorities and bodies where the relevant Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under the relevant Union law;
- G. whereas organisational separation of the ECB’s staff involved in the execution of the ECB’s supervisory tasks from staff involved in the execution of monetary policy tasks must be such that the Regulation (EU) No 1024/2013 is fully complied with;
- H. whereas for the performance of its tasks under Regulation (EU) No 1024/2013 with regard to the appointment of the Chair of the Supervisory Board, the Council receives personal data and is subject to Regulation (EC) 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 data<sup>2</sup>;
- I. whereas this Memorandum only covers the accountability and reporting obligation of the ECB to the Council and the Euro Group under Regulation (EU) No 1024/2013;

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2 OJ L 8, 12.1.2001, p. 1.

AGREE AS FOLLOWS:

## **I. ACCOUNTABILITY**

### **I. Reports**

- (1) The ECB shall submit the draft of its annual report under Article 20(2) of Regulation (EU) No 1024/2013 (Annual Report) to the Council and the Euro Group on a confidential basis in one of the official languages of the EU Institutions at the same time it submits it to the EP. Translations in all official languages of the EU Institutions shall be made available subsequently. The Chair of the Supervisory Board shall present the Annual Report to the Euro Group in the presence of representatives from any participating Member State whose currency is not the euro. The Annual report shall cover, inter alia:
  - (a) execution of supervisory tasks
  - (b) sharing of tasks with the national supervisory authorities
  - (c) cooperation with other national/Union relevant authorities
  - (d) separation between monetary policy and supervisory tasks
  - (e) evolution of supervisory structure and staffing, including the number and the national composition of Seconded National Experts
  - (f) implementation of the Code of Conduct
  - (g) method of calculation and amount of supervisory fees
  - (h) budget for supervisory tasks
  - (i) experience with reporting on the basis of Article 23 of Regulation (EU) No 1024/2013 (Reporting of violations)
  - (j) an annex listing the legal instruments adopted by the ECB pursuant to Article 4(3) of Regulation (EU) No 1024/2013 and published on its website

- (2) During the start-up phase referred to in Article 33(2) of Regulation (EU) No 1024/2013, the ECB shall transmit to the Council quarterly reports on progress in the operational implementation of the Regulation covering, inter alia:
  - (a) internal preparation, organisation and planning of work
  - (b) concrete arrangements made to comply with the requirement to separate monetary policy and supervisory functions
  - (c) cooperation with other national/Union competent authorities
  - (d) any obstacles encountered by the ECB in the preparation of its supervisory tasks
  - (e) any events of concern or changes to the Code of Conduct
  - (f) any other information deemed relevant in the start-up phase by the ECB

## **2. Hearings and exchanges of views**

- (1) The Chair of the Supervisory Board shall participate in two exchanges of views per year on the execution of the supervisory tasks conferred on the ECB by Regulation (EU) No 1024/2013 with the Euro Group in the presence of representatives from any participating Member State whose currency is not the euro.
- (2) At the invitation of the Euro Group, the Chair of the Supervisory Board shall participate in additional exchanges of views on the execution of the supervisory tasks conferred on the ECB by Regulation (EU) No 1024/2013 with the Euro Group in the presence of representatives from any participating Member State whose currency is not the euro.
- (3) The information exchanged during such hearings and exchanges of views shall be confidential.
- (4) The hearings and exchanges of views can cover all aspects of the activity and functioning of the SSM provided for in Regulation (EU) No 1024/2013.

### 3. Responding to questions

The ECB shall reply orally or in writing to questions put to it by the Euro Group in accordance with its own procedures and in the presence of representatives from any participating Member State whose currency is not the euro. The ECB shall reply in writing to written questions put to it by the Euro Group, which shall also be communicated to the representatives from any participating Member State whose currency is not the euro. These questions should be channelled to the Chair of the Supervisory Board by the President of the Euro Group. Questions shall be replied to as promptly as possible, and in any event within five weeks of their transmission to the ECB.

## II. SELECTION AND APPOINTMENT PROCEDURES

- (1) The ECB shall specify and make public the criteria for the selection of the Chair of the Supervisory Board (Chair), including the balance of skills, knowledge of financial institutions and markets, and experience in financial supervision and macro-prudential oversight. In specifying the criteria, the ECB shall aim at the highest professional standards and take into account the need to safeguard the interest of the European Union as a whole.
- (2) The ECB shall inform the Council two weeks before the Governing Council publishes the vacancy notice of the details, including the selection criteria and the specific job profile, of the “open selection procedure” that it intends to apply for the selection of the Chair.
- (3) The Governing Council shall inform the Council of the composition of the pool of applicants for the position of Chair (number of applications, mix of professional skills, gender and nationality balance, etc.) as well as of the method through which the pool of applicants is screened in order to draw up a shortlist of at least two candidates and eventually determine the proposal by the ECB.
- (4) The ECB shall provide to the Council the shortlist of candidates for the position of the Chair at least three weeks before submitting its formal proposal for the appointment of the Chair to Parliament for its approval.
- (5) Following the proposal for the appointment of the chair by the ECB and the approval by Parliament, the Council appoints the Chair by adopting an implementing decision in accordance with Article 26(3) of Regulation (EU) No 1024/2013.

- (6) Where Parliament or the Council has informed the ECB that it considers the conditions for the removal of the Chair or the Vice-Chair to be fulfilled for the purposes of Article 26(4) of Regulation (EU) No 1024/2013, the ECB shall provide its considerations in writing within four weeks.

### III. FINAL PROVISIONS

- (1) The information exchanged under this Memorandum shall be subject to applicable confidentiality rules as well as the security rules for protecting EU classified information, which shall continue to apply after the termination of this Memorandum. The information shall only be used for the purpose for which it has been exchanged.
- (2) The practical implementation of this Memorandum shall be assessed by the ECB and the Council every three years.
- (3) This Memorandum shall enter into force on the day after the date on which this Memorandum has been signed by both the ECB and the Council.

*For the Council*

*For the European Central Bank*

*The President*  
R. ŠADŽIUS

*The President*  
M. DRAGHI

[signed 11th December 2013]

[signed 4th December 2013]

## **INDEX OF LEGAL ACTS PLANNED FOR PUBLICATION IN THE LEGAL BOOKLET SERIES ON THE LEGAL FRAMEWORK FOR BANKING SUPERVISION**

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- Regulation (EU) No 468/2014 of the European Central Bank establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17)

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