



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from:	Presidency
to:	Delegations
Subject:	Proposal for a Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions - Presidency compromise

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Delegations will find below an updated Presidency compromise on the above Commission proposal, with a view to the Council (ECOFIN) meeting of 4 December.

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2012/0242 (CNS)

Proposal for a

**COUNCIL REGULATION**

**conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Central Bank<sup>2</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Over the past decades, the Union has made considerable progress in creating an internal market for banking services. Consequently, in many Member States, banking groups with their headquarters established in other Member States hold a significant market share, and credit institutions have geographically diversified their business, especially within the Euro area.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (2) Maintaining and deepening the internal market for banking services is essential in order to foster economic recovery in the Union. However this proves increasingly challenging. Evidence shows that the integration of banking markets in the Union is coming to a halt.
- (3) At the same time supervisors must step up their supervisory scrutiny to take account of the lessons of the financial crisis in recent years, and be able to oversee highly complex and inter-connected markets and institutions.
- (4) Competence for supervision of individual banks in the Union remains mostly at national level. This limits the effectiveness of supervision and the ability of supervisors to reach a common understanding of the soundness of the banking sector throughout the Union. In order to preserve financial stability in Europe and increase the positive effects of market integration on growth and welfare, integration of supervisory responsibilities should therefore be enhanced.
- (5) The solidity of credit institutions is in many instances still closely linked to the Member State in which they are established. Doubts about the sustainability of public debt, economic growth prospects, and the viability of credit institutions have been creating negative, mutually reinforcing market trends. This may lead to risks for the viability of some credit institutions as well as for the stability of the financial system, and may impose a heavy burden for already strained public finances of the Member States concerned. The problem poses specific risks within the euro area where the single currency increases the likelihood that negative developments in one Member State can create risks for economic development and the stability of the Euro area as a whole.

- (6) The European Banking Authority (EBA), established in 2011 by Regulation (EU) No. 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority),<sup>3</sup> and the European System of Financial Supervision established by Article 2 of that Regulation and of Regulation (EU) No 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (EIOPA),<sup>4</sup> and Regulation (EU) No 1095/2010 of 24 November 2010 establishing a European Supervisory Authority (ESMA)<sup>5</sup> have significantly improved cooperation between banking supervisors within the Union. EBA is making important contributions to the creation of a single rulebook for financial services in the Union, and has been crucial in implementing in a consistent way the recapitalisation of major Union credit institutions agreed by the European Council in October 2011.
- (7) The European Parliament called on various occasions for a European body to be directly responsible for certain supervisory tasks over financial institutions, starting with its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan,<sup>6</sup> and of 21 November 2002 on prudential supervision rules in the European Union.<sup>7</sup>
- (8) The European Council conclusions of 29 June 2012 invited the President of the European Council to develop a road map for the achievement of a genuine Economic and Monetary Union. On the same day, the Euro area Heads of State or Government Summit pointed out that when an effective single supervisory mechanism is established involving the ECB, for banks in the euro area the ESM could, following a regular decision, have the possibility to recapitalize banks directly which would rely on appropriate conditionality, including compliance with state aid rules.

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<sup>3</sup> OJ L 331, 15.12.2010, p. 12.

<sup>4</sup> OJ L 331, 15.12.2010, p. 37.

<sup>5</sup> OJ L 331, 15.12.2010, p. 84.

<sup>6</sup> OJ C 40, 7.2.2001, p. 453.

<sup>7</sup> OJ C 25 E, 29.1.2004, p. 394.

- (9) A European banking union should therefore be set up, underpinned by a true single rulebook for financial services for the Single Market as a whole. In view of the close links and interactions between Member States participating in the common currency, the banking union should apply at least to all Euro area Member States. With a view to maintaining and deepening the internal market, and to the extent that this is institutionally possible, the banking union should also be open to the participation of other Member States.
- (10) As a first step towards a banking union, a single supervisory mechanism should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective way, that the single rulebook for financial services is applied equally to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. A single supervisory mechanism is the basis for the next steps towards the banking union. This reflects the principle that any introduction of common intervention mechanisms in case of crises should be preceded by common controls to reduce the likelihood that intervention mechanisms will have to be used. The European Council noted in its conclusions of 19 October 2012 "the Commission's intention to propose a single resolution mechanism for Member States participating in the SSM once the proposals for a Recovery and Resolution Directive and for a Deposit Guarantee Scheme Directive have been adopted"<sup>8</sup>.
- (11) As the Euro area's central bank with extensive expertise in macroeconomic and financial stability issues, the ECB is well placed to carry out supervisory tasks with a focus on protecting the stability of Europe's financial system. Indeed in many Member States Central Banks are already responsible for banking supervision. The ECB should therefore be conferred specific tasks concerning policies relating to the supervision of credit institutions at least within the Euro area.

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<sup>8</sup> *To be updated, where relevant, following the December European Council conclusions.*

- (11a) The ECB and the national competent authorities of non-participating Member States should conclude a memorandum of understanding describing in general terms how they will cooperate closely with one another in the performance of their supervisory tasks under Union law in relation to the financial institutions defined in Article 2. The memorandum should - be reviewed on a regular basis.
- (12) The ECB should be conferred those specific supervisory tasks which are crucial to ensure a coherent and effective implementation of the Union's policy relating to the prudential supervision of credit institutions, while other tasks should remain with national authorities. The ECB's tasks should include measures taken in pursuance of macro-prudential stability, subject to specific arrangements reflecting the role of national authorities.
- (13) Safety and soundness of large banks is essential to ensure the stability of the financial system. However, recent experience shows that smaller banks can also pose a threat to financial stability. Therefore, the ECB should be able to exercise supervisory tasks in relation to all banks of participating Member States.
- (13a) When carrying out the tasks conferred on it, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB should have due regard to the diversity of credit institutions and their size and business models.
- (14) Prior authorisation for taking up the business of credit institutions is a key prudential technique to ensure that only operators with a sound economic basis, an organisation capable of dealing with the specific risks inherent to deposit taking and credit provision, and suitable directors carry out those activities. The ECB should therefore have the task to authorise credit institutions and should be responsible for the withdrawal of authorisations, subject to specific arrangements reflecting the role of national authorities.

- (15) In addition to the conditions set out in Union legislative acts for authorisation of credit institutions and the cases for withdrawal of such authorisations, Member States may currently provide for further conditions for authorisation and cases for withdrawal of authorisation. The ECB should therefore carry out its task to authorise credit institutions and to withdraw the authorisation in case of non-compliance with national law upon a proposal by the relevant national competent authority, which assesses compliance with the relevant conditions set out by national law.
- (16) An assessment of the suitability of any new owner prior to the purchase of a significant stake in a credit institution is an indispensable tool to ensure the continuous suitability and financial soundness of credit institutions' owners. The ECB as a Union institution is well-placed to carry out such an assessment without imposing undue restrictions to the internal market. The ECB should have the task to assess the acquisition and disposal of significant holdings in credit institutions, except in the context of bank resolution.
- (17) Compliance with Union rules requiring credit institutions to hold certain levels of capital against risks inherent to the business of credit institutions, to limit the size of exposures to individual counterparties, to publicly disclose information on a credit institutions' financial situation, to dispose of sufficient liquid assets to withstand situations of market stress, and to limit leverage is a prerequisite for credit institutions' prudential soundness. The ECB should have the task to ensure compliance with those rules.
- (18) Additional capital buffers, including a capital conservation buffer and a countercyclical capital buffer to ensure that credit institutions accumulate during periods of economic growth a sufficient capital base to absorb losses in stressed periods, and other macroprudential measures, are key prudential tools to ensure the availability of adequate loss absorbency. In order to ensure full coordination, where national authorities impose such measures, the ECB should be duly notified. Moreover, where necessary the ECB should be able to apply higher requirements and more stringent measures, subject to close coordination with national authorities.

- (19) The safety and soundness of a credit institution depend also on the allocation of adequate internal capital, having regard to the risks to which it may be exposed, and on the availability of appropriate internal organisation structures and corporate governance arrangements. The ECB should therefore have the task to apply requirements ensuring that credit institutions have in place robust governance arrangements, processes and mechanisms, including strategies and processes for assessing and maintaining the adequacy of their internal capital. In case of deficiencies it should also have the task to impose appropriate measures including specific additional own funds requirements, specific publication requirements, and specific liquidity requirements.
- (20) Risks for the safety and soundness of a credit institution can arise both at the level of an individual credit institution and at the level of a banking group or of a financial conglomerate. Specific supervisory arrangements to mitigate these risks are important to ensure the safety and soundness of credit institutions. In addition to supervision of individual credit institutions, the ECB's tasks should include supervision at the consolidated level, supplementary supervision, supervision of financial holding companies and supervision of mixed financial holding companies.
- (21) In order to preserve financial stability, the deterioration of an institution's financial and economic situation must be remedied before that institution reaches a point at which authorities have no other alternative than to resolve it. The ECB should have the task to carry out early intervention actions as defined in relevant Union law. It should however coordinate its early intervention action with the relevant resolution authorities. The ECB should moreover coordinate appropriately with the national authorities concerned to ensure a common understanding about respective responsibilities in case of crises, in particular in the context of the cross border crisis management groups and the future resolution colleges established for these purposes.



- (22) Supervisory tasks not conferred on the ECB should remain with national authorities. Those tasks should include the power to receive notifications from credit institutions in relation to the right of establishment and the free provision of services, to supervise bodies which are not covered by the definition of credit institutions under Union law but which are supervised as credit institutions under national law, to supervise credit institutions from third countries establishing a branch or providing cross-border services in the Union, to supervise payments services, to carry out day-to-day verifications of credit institutions, to carry out the function of competent authorities over credit institutions in relation to markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and consumer protection.
- (23) The ECB should carry out the tasks conferred on it with a view to ensuring the safety and soundness of credit institutions and the stability of the financial system of the Union as well as of individual participating Member States and the unity and integrity of the Internal Market, thereby ensuring also the protection of depositors and improving the functioning of the Internal Market, in accordance with the single rulebook for financial services in the Union.
- (24) The conferral of supervisory tasks on the ECB for some of the Member States should be consistent with the framework of the European System of Financial Supervision (ESFS) set up in 2010 and its underlying objective to develop the single rulebook and enhance convergence of supervisory practices across the whole Union. Cooperation between the banking supervisors and the supervisors of insurance and securities markets is important to deal with issues of joint interest and to ensure proper supervision of credit institutions operating also in the insurance and securities sectors. The ECB should therefore be required to cooperate closely with the EBA, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority, within the framework of the EFSF. It should also be required to cooperate with relevant resolution authorities and facilities financing direct or indirect public financial assistance.
- (25) *deleted*

- (26) The ECB should carry out its tasks subject to and in compliance with any relevant legislation including the whole of primary and secondary Union law, Commission decisions in the area of State aids, competition rules and merger control and the single rulebook applying to all Member States. The EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The ECB should not replace the exercise of these tasks by the EBA, and should therefore exercise powers to adopt regulations in accordance with Article 132 TFEU in compliance with Union acts adopted by the European Commission upon drafts developed by the EBA and subject to Article 16 of Regulation (EU) No. 1093/2010 on guidelines and recommendations issued by the EBA.
- (26a) For the carrying out of its tasks and the exercise of its supervisory powers, the ECB should apply the material rules relating to the prudential supervision of credit institutions. Those rules should be composed of the relevant Union law, in particular directly applicable Regulations or in Directives, such as those on capital requirements for banks and on financial conglomerates. Where the material rules relating to the prudential supervision of credit institutions are laid down in Directives, the ECB should apply the national legislation transposing those Directives. This is without prejudice to the principle of the primacy of EU law. It follows that the ECB should, when adopting guidelines or recommendations or when taking decisions, base itself on, and act in accordance with, the relevant binding Union law.
- (26b) Within the scope of the tasks conferred on the ECB, national law confers on national competent authorities certain powers which are currently not required by Union law, incl. certain early intervention and precautionary powers. The ECB should be able to require national authorities to make use of these powers, in order to ensure the performance of full and effective supervision within the Single Supervisory Mechanism.

- (27) In order to ensure that supervisory rules and decisions are applied by credit institutions, financial holding companies and mixed financial holding companies, effective, proportionate and dissuasive sanctions should be imposed in case of breaches. In accordance with Article 132(3) TFEU and Council Regulation (EC) No. 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions,<sup>9</sup> the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. Moreover, in order to enable the ECB to effectively carry out its tasks relating to the enforcement of supervisory rules set out in directly applicable Union law, the ECB should be empowered to impose pecuniary sanctions on credit institutions, financial holding companies and mixed financial holding companies for breaches of such rules. National authorities should remain able to apply sanctions in case of failure to comply with obligations stemming from national law transposing Union Directives. Where the ECB considers it appropriate for the fulfilment of its tasks that a sanction is applied for such breaches, it should be able to refer the matter to national authorities for those purposes.
- (28) National supervisors have important and long-established expertise in the supervision of credit institutions within their territory and their economic, organisational and cultural specificities. They have established a large body of dedicated and highly qualified staff for these purposes. Therefore, in order to ensure high quality European supervision national supervisors should be responsible for assisting the ECB in the preparation and implementation of any acts relating to the exercise of the ECB supervisory tasks. This should include in particular the ongoing day-to-day assessment of a bank's situation and related on site verifications.

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<sup>9</sup> OJ L 318, 27.11.98, p. 4.

- (28a) The criteria laid down in Article 5(4) to define the scope of institutions that are less significant on a consolidated basis should be specified by a methodology established by the ECB. For the purposes of applying the criterion relating to the cross-border activity of institution referred to in point iii) of Article 5(4), the ECB should take into account whether the credit institution provides services in more than one Member State. However, this criterion should not be considered in isolation, and the methodology should also take into account the specific location of institutions that are established at the border of other Member States and whether the institution is incorporated in a Member state with a small and open economy.
- (29) As regards the supervision of cross-border banks active both inside and outside the Euro area the ECB should cooperate closely with the competent authorities of non participating Member States. As a competent authority the ECB should be subject to the related obligations to cooperate and exchange information under Union law and should participate fully in the colleges of supervisors. In addition, since the exercise of supervisory tasks by a European institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States not participating in the common currency should therefore also have the possibility to participate in the new mechanism. However, it is a necessary pre-condition for an effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay. Member States wishing to participate in the new mechanism should therefore undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB. The ECB should be able to establish a close cooperation with the competent authorities of a Member State not participating in the common currency. It should be obliged to establish the cooperation where the conditions set out in this regulation are met.

- (30) In order to carry out its tasks, the ECB should have appropriate supervisory powers. Union law on the prudential supervision of credit institutions provides for certain powers to be conferred on competent authorities designated by the Member States for those purposes. To the extent that these powers fall within the scope of the supervisory tasks conferred on the ECB, for participating Member States the ECB should be considered the competent authority and should have the powers conferred on competent authorities by Union law. This includes powers conferred by those acts on the competent authorities of the home and the host Member States and the powers conferred on designated authorities.
- (31) In order to carry out its tasks effectively, the ECB should be able to require all necessary information, and to conduct investigations and on-site inspections.
- (31a) Legal profession privilege is a fundamental principle of Union law, protecting the confidentiality of communications between natural or legal persons and their advisors, in accordance with the conditions laid down in the case-law of the European Court of Justice.
- (32) Where credit institutions exercise their right of establishment or to provide services in another Member State, or where several entities in a group are established in different Member States, Union law provides for specific procedures and for attribution of competences between the Member States concerned. To the extent that the ECB takes over certain supervisory tasks for all participating Member States, those procedures and attributions should not apply to the exercise of the right of establishment or to provide services in another participating Member State.
- (32a) When carrying out its tasks under this Regulation and when requesting assistance from national competent authorities, the ECB should have due regard to a fair balance between the involvement of all national competent authorities involved, in line with the responsibilities for solo supervision set out in applicable Union legislation.
- (33) In its decision-making procedures, the ECB should be bound by Union rules and general principles on due process and transparency. The right of the addressees of the ECB's decisions to be heard should be fully respected.

- (34) The conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the Union, and to use its supervisory powers in the most effective and proportionate way. The ECB should therefore be accountable for the exercise of these tasks towards the European Parliament and the Council of Ministers as democratically legitimised institutions representing the European people and the Member States. That should include regular reporting and responding to questions. However, any reporting obligations should be without prejudice to the principle of professional secrecy.
- (34a) The ECB should also forward the reports, which it addresses to the European Parliament and the Council, to the national parliaments of the participating Member States. National parliaments should be able to address any observations or questions to the ECB on the performance of its supervisory tasks, to which the ECB may reply. In this context particular attention should be attached to observations or questions related to the withdrawal of authorisations of credit institutions in respect of which actions necessary for resolution or to maintain financial stability have been taken by national authorities in accordance with the procedure set out in Article 13(2a). The parliament of a participating Member State should also be able to invite the Chair or a representative of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority. Where national supervisors take action under this Regulation, accountability arrangements provided under national law should continue to apply.
- (34b) In its action, the ECB should comply with the principles of due process and transparency taking due account of the principles in Article 1.

- (34c) In accordance with Article 340 TFEU, the ECB shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties. This shall be without prejudice to the liability of national competent authorities to make good any damage caused by them or by their servants in the performance of their duties in accordance with national legislation.
- (34d) Council Regulation 1/58 determining the languages to be used by the European Economic Community should apply to the ECB by virtue of Article 342 TFEU.
- (34e) When determining whether the right of access to the file by persons concerned should be limited, the ECB should respect the fundamental rights and observe the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to an effective remedy and to a fair trial.
- (34f) The ECB should provide natural and legal persons with the possibility to request a review of decisions taken under the powers conferred upon it by the present regulation and addressed to them, or which are of direct and individual concern to them. For that purpose, the ECB should establish a panel of review to carry out such internal review. To compose the panel, the Governing Council of the ECB should appoint individuals of a high repute. In making its decision, the Governing Council should, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the participating Member States. The procedure laid down for the review should provide for the Supervisory Board to reconsider its former draft decision as appropriate, and should be without prejudice to the right to bring proceedings before the Court of Justice of the European Union.
- (35) The ECB is responsible for carrying out monetary policy functions with a view to maintaining price stability in accordance with Article 127(1) TFEU. The exercise of supervisory tasks has the objective to protect the safety and soundness of credit institutions and the stability of the financial system. In order to avoid conflicts of interests and to ensure that each function is exercised in accordance with the applicable objectives, the ECB should ensure they are carried out in full separation.

- (36) In particular, a Supervisory Board responsible for preparing decisions on supervisory matters should be set up with the ECB encompassing the specific expertise of national supervisors. The board should therefore be chaired by a Chair and a Vice Chair and include representatives from the ECB and from national authorities. The representatives of the ECB should play an important role in the overall functioning of the Supervisory Board. In this respect, they should have detailed knowledge of all the issues that the Supervisory Board is scheduled to discuss in each one of its meetings, and provide all appropriate information to the other members of the Supervisory Board during those meetings, so as to facilitate the effectiveness of the discussion and the draft decision making process.
- (36a) With full respect to the institutional and voting arrangements set by the Treaties, the Supervisory Board should be an essential body in the conduction of supervisory tasks by the ECB, tasks which until now have always been in the hands of national competent authorities. The adequacy of the person elected to chair the Supervisory Board should therefore be assessed by the Member States participating in the SSM and the power to adopt decisions to nominate the Chair of the Supervisory Board should be conferred on the Council.
- (36b) In order to allow for an appropriate rotation while ensuring the full independence of the Chair and the Vice-Chair, their term should not exceed five years and should not be renewable. In order to ensure full coordination with the activities of the EBA and with the prudential policies of the Union, the Supervisory Board should be able to invite EBA and the European Commission as observers. The Chair of the European Resolution Authority, once established, should participate as observer in the meetings of the Supervisory Board.
- (37) The supervisory board and staff of the ECB carrying out supervisory duties should be subject to appropriate professional secrecy requirements. Similar requirements should apply to the exchange of information with the staff of the ECB not involved in supervisory activities. This 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 European Commission for the purposes of its tasks under Articles 107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.



- (38) In order to carry out its supervisory tasks effectively, the ECB should exercise the supervisory tasks conferred on it in full independence, in particular from undue political influence and from industry interference which would affect its operational independence.
- (39) In order to carry out its supervisory tasks effectively, the ECB should dispose of adequate resources. Those resources should be obtained in a way that ensures the ECB's independence from undue influences by national competent authorities and market participants, and separation between monetary policy and supervisory tasks. The costs of supervision should be borne by the entities subject to it. Therefore, the exercise of supervisory tasks by the ECB should be financed by annual fees charged to credit institutions established in the participating Member States. It should also be able to levy fees on branches established in a participating Member State by a credit institution established in a non-participating Member State to cover the expenditure incurred by the ECB when carrying out its tasks as a host supervisor over these branches. The calculation of the fees should exclude any subsidiaries established in non-participating Member States. In view of the transfer of significant supervisory tasks from national authorities to the ECB it is expected that any supervisory fees due at national level can be reduced as appropriate.
- (40) Highly motivated, well-trained and impartial staff is indispensable to effective supervision. In order to create a truly integrated supervisory mechanism, appropriate exchange and secondment of staff with and among national supervisors and the ECB should be provided for. Where necessary to avoid conflicts of interest, particularly in the supervision of large banks, the ECB should be able to request that national supervisory teams involve also staff from competent authorities of other participating Member States.

- (41) Given the globalisation of banking services and the increased importance of international standards, the ECB should carry out its tasks in respect of international standards and in dialogue and close cooperation with supervisors outside the Union, without duplicating the international role of the EBA. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, subject to coordination with the EBA and while fully respecting the existing roles and respective competences of the Member States and the Union institutions
- (42) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>10</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>11</sup> are fully applicable to the processing of personal data by the ECB for the purposes of this Regulation.
- (43) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>12</sup> applies to the ECB. The ECB has adopted a decision concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank.
- (44) In order to ensure that credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations and that the negative mutually reinforcing impacts of market developments concerns banks and Member States is addressed in a timely and effective way, the ECB should start carrying out specific supervisory tasks as soon as possible. However, the transfer of supervisory tasks from national supervisors to the ECB requires a certain amount of preparation. Therefore, an appropriate phasing-in period should be provided for. The phasing-in process should be completed at the latest by [1 January 2014].

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<sup>10</sup> OJ L 281, 23.11.1995, p. 31.

<sup>11</sup> OJ L 8, 12.1.2001, p. 1.

<sup>12</sup> OJ L 136, 31.5.1999, p. 1.

(45) *deleted*

(46) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and has to be implemented in accordance with those rights and principles.

(47) Since the objectives of this Regulation, namely setting up an efficient and effective framework for the exercise of specific supervisory tasks over credit institutions by a Union institution, and ensuring the consistent application of the single rulebook to credit institutions, cannot be sufficiently achieved at the Member State level and can therefore, by reason of the pan-Union structure of the banking market and the impact of bank failures on other Member States, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAS ADOPTED THIS REGULATION:

# **Chapter I**

## **Subject matter and definitions**

### *Article 1*

#### **Subject matter and scope**

This Regulation confers on the 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 EU and each Member State, with due regard for the unity and integrity of the internal market.

The institutions referred to in Article 2 of the Directive 2006/48/EC are excluded from the supervisory tasks conferred to ECB in accordance with Article 4 of this Regulation. The scope of the ECB's supervisory tasks is limited to the prudential regulation of credit institutions pursuant to this Regulation. This Regulation shall not confer on the ECB any other supervisory tasks.

No action, proposal or policy of the ECB shall, directly or indirectly, discriminate against any Member State or group of Member States as a venue for the provision of banking or financial services.

This regulation is without prejudice to the responsibilities and related powers of the competent authorities of the participating Member States to carry out supervisory tasks not conferred on the ECB by this Regulation.

This Regulation is also without prejudice to the responsibilities and related powers of the competent or designated authorities of the participating Member States to apply macro-prudential tools not provided for in relevant acts of Union law.

*Article 2*  
*Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) "participating Member State" means a Member State whose currency is the euro or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 6;
- (2) "national competent authority" means any national competent authority designated by participating Member States in accordance with Directive 2006/48/EC of the European Parliament and the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)<sup>13</sup> and Directive 2006/49/EC of the European Parliament and the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)<sup>14</sup>;
- (3) "credit institutions" means credit institutions as defined in Article 4(1) of Directive 2006/48/EC;
- (4) "financial holding company" means a financial holding company as defined in Article 4(19) of Directive 2006/48/EC;
- (5) "mixed financial holding company" means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate<sup>15</sup>;

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<sup>13</sup> OJ L177, 30.6.2006, p. 1.

<sup>14</sup> OJ L177, 30.6.2006, p. 277.

<sup>15</sup> OJ L 35, 11.2.2003, p. 1–27.

- (6) "financial conglomerate" means a financial conglomerate as defined in Article 2(14) of Directive 2002/87/EC;
- (6a) "national designated authority" means a designated authority within the meaning of the relevant Union law.<sup>16</sup>
- (6b) "qualifying holding" means a qualifying holding as defined in Article 4(11) of Directive 2006/48/EC.
- (6c) "Single Supervisory Mechanism" (SSM) means the mechanism as defined in Article 5(1);

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<sup>16</sup> Note: once CRD IV is adopted, this should refer to Chapter IV of the CRD IV Directive.

## **Chapter II**

### **Cooperation and tasks**

#### *Article 3*

#### *Cooperation*

1. The ECB shall cooperate closely with the European Banking Authority, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board, and the other authorities which form part of the European System of Financial Supervision established by Article 2 of Regulations (EU) No. 1093/2010, (EU) No 1094/2010, and (EU) No 1095/2010.
2. For the purposes of this Regulation, the ECB shall participate in the Board of Supervisors of the European Banking Authority under the conditions set out in Article 40 of Regulation (EU) No. 1093/2010.
3. The ECB shall co-operate closely with the authorities empowered to resolve credit institutions, including in the preparation of resolution plans.
4. Subject to Articles 1, 4 and 5, the ECB shall co-operate closely with the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), in particular where the EFSF or the ESM have granted or are likely to grant, direct or indirect financial assistance to a credit institution established in a euro-area participating Member State.

*Article 4*  
*Tasks conferred on the ECB*

1. Within the framework of Article 5, the ECB shall, in accordance with paragraph 3 of this Article, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:
  - (a) To authorise credit institutions and to withdraw authorisations of credit institutions subject to the provisions of Article 13;
  - (aa) for credit institutions established in a participating Member State, which wish to establish a branch or provide cross-border services in a non participating Member State, to carry out the tasks which the competent authority of the home Member State shall have under the relevant Union law;
  - (b) To assess applications for the acquisition and disposal of qualifying holdings in credit institutions, except in the case of a bank resolution, and subject to the provisions of Article 13a;
  - (c) To ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters;
  - (d) *deleted*



- (e) *deleted*
- (f) To ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose requirements on credit institutions to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions, risk management processes, internal control mechanisms, remuneration policies and practices and effective internal capital adequacy assessment processes, including Internal Ratings Based models;
- (g) To carry out supervisory reviews, including stress tests and their possible publication, in order to determine whether the arrangements, strategies, processes and mechanisms put in place by credit institutions and the own funds held by these institutions ensure a sound management and coverage of their risks, and on the basis of that supervisory review to impose on credit institutions specific additional own funds requirements, specific publication requirements, specific liquidity requirements and other measures in the cases specifically made available to competent authorities by relevant Union law;
- (h) *deleted*
- (i) To carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies, and to participate in supervision on a consolidated basis, including in colleges of supervisors without prejudice to the participation of national competent authorities of participating Member States in these colleges as observers, in relation to parents not established in one of the participating Member State;

- (j) To participate in supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and assume the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the criteria set out in relevant Union law;
- (k) To carry out supervisory tasks in relation to recovery plans, and early intervention where a credit institution does not meet or is likely to breach the applicable prudential requirements and, only in the cases explicitly stipulated by relevant Union law for competent authorities, structural changes required from credit institutions to prevent financial stress or failure, excluding any resolution powers;
- (ka) *deleted*
- (l) *deleted*

- 2. For credit institutions established in a non-participating Member State, which establish a branch or provide cross-border services in a participating Member State, the ECB shall carry out, within the scope of paragraph 1, the tasks for which the competent authorities of the participating Member State are competent in accordance with relevant Union law.
- 3. For the purpose of carrying out the tasks conferred upon it by this Regulation, and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives.

To that effect, the ECB shall adopt guidelines and recommendations, and take decisions subject to and in compliance with the relevant Union law and in particular any legislative and non-legislative act, including those referred to in Articles 290 and 291 TFEU. It shall in particular be subject to Article 16 of Regulation 1093/2010 on Guidelines and Recommendations. The ECB may also adopt regulations only to the extent necessary to organise or specify the modalities for the carrying out of those tasks.

Before adopting a regulation with regard to matters having a substantial impact on credit institutions, the ECB shall conduct open public consultations and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulations concerned or in relation to the particular urgency of the matter, in which case the ECB shall justify the urgency.

4. *deleted*

*Article 4a*

Macroprudential tasks and tools

1. Whenever appropriate or deemed required, and without prejudice to paragraph 2 below, the competent or designated authorities of the participating Member States shall apply requirements for capital buffers to be held by credit institutions in addition to own funds requirements referred to in Article 4 (1c), including countercyclical buffer rates, and any other measures aimed at addressing systemic or macro-prudential risks provided for, and subject to the procedures set out, in the Directives 2006/48/EC and 2006/49/EC at the level of credit institutions in the cases specifically set out in relevant Union law. Ten working days prior to taking such a decision, the concerned authority shall duly notify its intention to the ECB. Where the ECB objects, it shall state its reasons in writing within five working days. The concerned authority shall duly consider the ECB's reasons prior to proceeding with the decision as appropriate.

2. The ECB may, if deemed necessary, instead of the competent or designated authorities of the participating Member State, apply higher requirements for capital buffers than applied by the competent or designated authorities of participating Member States to be held by credit institutions. in addition to own funds requirements referred to in Article 4(1c), including countercyclical buffer rates, subject to the conditions set out in paragraphs 3 and 4, and apply more stringent measures aimed at addressing systemic or macro-prudential risks at the level of credit institutions in the cases, and subject to the procedures, specifically set out in the Directives 2006/48 and 2006/49.
3. *Moved*
- 2a. Any national competent or designated authority may propose to the ECB to act under paragraph 2, in order to address the specific situation of the financial system and the economy in its Member State.
- 2b. Where the ECB intends to acts in accordance with paragraph 2, it shall cooperate closely with the designated authorities in the Member States concerned when considering to take any action. It shall in particular notify its intention to the concerned national competent or designated authorities ten working days prior to taking such a decision. Where any of the concerned authorities objects, it shall state its reasons in writing within five working days. The ECB shall duly consider those reasons prior to proceeding with the decision as appropriate.
3. When carrying out the tasks referred to in paragraph 2, the ECB shall take into account the specific situation of the financial system, economic situation and the economic cycle in individual Member States or parts thereof.

*Article 5*  
*Cooperation within the Single Supervisory Mechanism*

1. The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities. The ECB shall be responsible for the effective and consistent functioning of the single supervisory mechanism.

2. Both the ECB and national competent authorities shall be subject to a duty of cooperation in good faith, and an obligation to exchange information.

Without prejudice to the ECB's power to receive directly, or have direct access to information reported, on an ongoing basis, by credit institutions, the national competent authorities shall in particular provide the ECB with all information necessary for the purposes of carrying out the tasks conferred upon the ECB by this Regulation.

3. Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by this Regulation, national competent authorities shall be responsible for assisting the ECB, under the conditions set out in the framework mentioned in paragraph 7, with the preparation and implementation of any acts relating to the tasks referred to in Article 4 related to all credit institutions, including assistance in verification activities. They shall follow the instructions given by the ECB when performing the tasks mentioned in Article 4.

4. In relation to the tasks defined in Article 4 except for points (a) and (b) of paragraph 1 thereof, the ECB shall have the responsibilities set out in paragraph 5 and the national competent authorities shall have the responsibilities set out in paragraph 6, within the framework and subject to the procedures referred to in paragraph 7, for the supervision of the following credit institutions, financial holding companies or mixed financial holding companies, or branches, which are established in participating Member States, of credit institutions established in non-participating Member States:

- (a) Those that are less significant on a consolidated basis, with the highest level of consolidation being within the participating Member States, or individually in the specific case of branches, which are established in participating Member States, of credit institutions established in non-participating Member States. The significance shall be assessed based on the following criteria:

- (i) size;
- (ii) importance for the economy of the EU or any participating Member State;
- (iii) cross-border activities.

With respect to the first subparagraph above, a credit institution, or financial holding company or mixed financial holding company, shall not be considered less significant, unless justified by particular circumstances to be specified in the methodology, if any of the following conditions are met:

- (i) the total value of its assets exceeds [2.5 / 20 / 60 billion euro]; or,
- (ii) the ratio of its total assets over the GDP of the participating Member State of establishment exceeds [20% / 50% / 75%]; or

[(iii) following a notification by its national competent authority that it considers such an institution of significant relevance with regard to the domestic economy, the ECB takes a decision confirming such significance following a comprehensive assessment by the ECB, including a balance-sheet assessment, of that credit institution.]

In addition, the methodology shall also have regard as to whether the credit institution, or financial holding company or mixed financial holding company concerned is subject to consolidated supervision in more than one Member State, or is providing services in more than one participating Member State. For that latter consideration, the methodology shall inter alia take into account the specific location of institutions that are established at the border of other Member States and whether the institution is incorporated in a Member state with a small and open economy.

- (b) Those for which public financial assistance has not been requested or received directly or indirectly from the EFSF or the ESM.

5. With regard to the credit institutions referred to in paragraph 4, and within the framework defined in paragraph 7:

- (a) The ECB shall issue regulations, guidelines or instructions, [including in relation to a specific credit institution,] to national competent authorities, according to which the tasks defined in Article 4 excluding letters (a) and (b) therein are performed and supervisory decisions are adopted by national competent authorities;
- (b) The ECB may at any time, on its own initiative or upon request by a national competent authority, decide to exercise directly itself all the relevant powers for one or more credit institutions referred to in paragraph 4;
- (c) The ECB shall exercise oversight over the functioning of the system, based on the responsibilities and procedures set out in this Article, and in particular paragraph 7(b);
- (d) The ECB may at any time make use of the powers referred to in Articles 9 to 12;

(e) The ECB may also request, on an ad hoc or continuous basis, information from the national competent authorities on the performance of the tasks carried out by them under this Article.

6. Subject to paragraph 5, national competent authorities shall be responsible for adopting supervisory decisions with regard to the credit institutions referred to in paragraph 4, points (a) first subparagraph and (b), within the framework and subject to the procedures referred to in paragraph 7.

Without prejudice to Articles 9 to 12, the national competent and designated authorities shall maintain the powers, in accordance with national law, to obtain information from credit institutions, holding companies, mixed holding companies and undertakings included in the consolidated financial situation of a credit institution and to perform on site inspections at those credit institutions, holding companies, mixed holding companies and undertakings. The national competent authorities shall inform the ECB, in accordance with the framework set out in paragraph 7, of the measures taken pursuant to this paragraph and closely coordinate those measures with the ECB.

The national competent authorities shall report to the ECB on a regular basis on the performance of the activities performed under this Article.

7. The ECB shall, in consultation with national competent authorities of participating Member States, and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical modalities of implementation of this Article. The framework shall include, at least, the following:

- (a) the specific methodology for the assessment of the criteria referred to in paragraph 4(a) and the resulting arrangements for the purposes of implementing paragraphs 5 and 6. These arrangements shall be reviewed to reflect any relevant changes;



- (ab) the definition of the procedures, including time-limits, and the possibility to prepare draft decisions to be sent to the ECB for consideration, for the relation between the ECB and the national competent authorities regarding the supervision of credit institutions not considered as less significant in accordance with in paragraph 4;
- (b) the definition of the procedures, including time-limits, for the relation between the ECB and the national competent authorities regarding the supervision of credit institutions considered as less significant in accordance with in paragraph 4. Such procedures shall in particular require national competent authorities, depending on the cases defined in the framework, to:
  - i) notify the ECB of any supervisory procedure;
  - ii) further assess, on ECB request, specific aspects of the procedure;
  - iii) transmit to the ECB draft supervisory decision, on which the ECB may express its views or any objections to be duly considered.

8. *deleted*

9. Wherever the ECB has recourse to national competent authorities or designated authorities for the purpose of exercising the tasks conferred on it by this Regulation, it shall do so in compliance with the provisions set out in the relevant Union acts in relation to the allocation of responsibilities and cooperation between competent authorities from different Member States.

## *Article 6*

### *Close cooperation with the competent authorities of participating Member States whose currency is not the Euro*

1. Within the limits set out in this Article, the ECB shall carry out the tasks in the areas referred to in Article 4 (1) and (2) in relation to credit institutions established in a Member State whose currency is not the euro, where a close cooperation has been established between the ECB and the national competent authority of such Member State in accordance with this Article.

To that end, the ECB may address instructions to the national competent authority of the participating Member State whose currency is not the Euro.

2. The close cooperation between the ECB and the national competent authority of a participating Member State whose currency is not the Euro shall be established, by a decision adopted by the ECB, where the following conditions are met:
  - (a) The Member State concerned notifies the other Member States, the Commission, the ECB and the EBA the request to enter into a close cooperation with the ECB in relation to the exercise of the tasks referred to in Article 4 with regards to all credit institutions established in the Member State concerned, in accordance with Article 5;
  - (b) In the notification, the Member State concerned undertakes:
    - to ensure that its national competent authority will abide by any guidelines or requests issued by the ECB;
    - to provide all information on the credit institutions established in that Member State that the ECB may require for the purpose of carrying out a comprehensive assessment of those credit institutions.

- (c) The Member State concerned has adopted relevant national legislation to ensure that its national competent authority will be obliged to adopt any measure in relation to credit institutions requested by the ECB, in accordance with paragraph 5.

3. *deleted*

4. The decision referred to in paragraph 2 shall be published in the Official Journal of the European Union. The decision shall apply 14 days after such publication.

5. Where the ECB considers that a measure relating to the tasks referred to in paragraph 1 should be adopted by the competent authority of a concerned Member State in relation to a credit institution, financial holding company or mixed-financial holding company, it shall address instructions to that authority, specifying a relevant timeframe.

That timeframe shall be no less than 48 hours unless earlier adoption is indispensable to prevent irreparable damage. The competent authority of the concerned Member State shall take all the necessary measures in accordance with the obligation referred to in paragraph (2)(c).

6. The ECB may decide to issue a warning to the Member State concerned that the close cooperation will be suspended or terminated if no decisive corrective action is undertaken in the following cases:

- (a) where, in the opinion of the ECB, the conditions set out in paragraph 2(a) to (c) are no longer met by a Member State concerned;; or
- (b) where, in the opinion of the ECB, the competent authority of a Member State does not act in accordance with the obligation referred to in paragraph 2(c).

If no such action has been undertaken 15 days after notification of such a warning, the ECB may suspend or terminate the close cooperation with that Member State.

The decision shall be notified to the Member State concerned and shall be published in the Official Journal of the European Union. The decision shall indicate the date from which it applies, taking due consideration of supervisory effectiveness and legitimate interests of credit institutions.

- 6a. The Member State may request the ECB to terminate the close cooperation at any time after the lapse of three years of the publication in the Official Journal of the European Union of the decision adopted by the ECB for the establishment of the close cooperation. In this case, the ECB shall immediately proceed to adopt a decision terminating the close cooperation and indicate the date from which it applies within a maximum period of three months, taking due consideration of supervisory effectiveness and legitimate interests of credit institutions. The decision shall be published in the Official Journal of the European Union.
- 6ab. If a non-euro participating Member State notifies the ECB in accordance with Article 19(3) of its reasoned disagreement with an objection of the Governing Council to a draft decision of the Supervisory Board, the Governing Council shall, within a period of 30 days, give its opinion on the reasoned disagreement expressed by the Member State and, stating its reasons to do so, confirm or withdraw its objection.

In case the Governing Council confirms its objection, the non-euro participating Member State may notify the ECB that it will not be bound by that decision.

The ECB shall then consider the possible suspension or termination of the close cooperation with that Member State, taking due consideration of supervisory effectiveness, and take a decision in that respect.

The ECB shall take into account, in particular, the following considerations:

- whether such suspension or termination could jeopardize the integrity of the SSM or have significant adverse consequences as regards the fiscal responsibilities of the Member States, including the Member State which has notified the objection in accordance with Art. 19(3);
- whether or not it is satisfied that the national competent authority concerned has adopted measures which, in the ECB's opinion:
  - (a) ensure credit institutions in the Member State which notified its objection pursuant to the previous subparagraph are not subject to a more favourable treatment than credit institutions in the other participating Member States;
  - (b) are equally effective as the decision of the Governing Council under the previous subparagraph in achieving the objectives referred to in Article 1 of this Regulation and in ensuring compliance with relevant Union law.

The ECB shall include these considerations in its decision and communicate them to the Member State in question.

- 6b. A Member State who has terminated the close cooperation with the ECB may not enter into a new close cooperation before the lapse of three years from the date of the publication in the Official Journal of the European Union of the ECB decision terminating the close cooperation.

## *Article 7*

### *International relations*

Without prejudice to the respective competences of the Member States and the other Union institutions, in relation to the tasks conferred on the ECB by this Regulation, the ECB may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, subject to appropriate coordination with the EBA. Those arrangements shall not create legal obligations in respect of the Union or its Member States.

## **Chapter III**

### **Powers of the ECB**

#### *Article 8*

#### Powers of the ECB

1. For the exclusive purpose of carrying out the tasks conferred upon it by Article 4(1), (2) and 4a(2), the ECB shall be considered, as appropriate, the competent authority or the designated authority in the participating Member States as established by the relevant Union law.

For the same exclusive purpose, the ECB shall have all the powers and obligations set out in this Regulation. It shall also have all the powers and obligations, which competent and designated authorities shall have under the relevant Union law, unless otherwise provided for by this Regulation. In particular, the ECB shall have the powers listed in Sections 1 and 2 of this Chapter.

To the extent necessary to carry out the tasks conferred on it by this Regulation, the ECB may require, by way of instructions, national authorities to make use of their powers, under and in accordance with the conditions set out in national law, where this Regulation does not confer such powers on the ECB. National authorities shall fully inform the ECB about the exercise of these powers.

2. *Deleted*

- 2a. The ECB shall exercise the powers referred to in paragraph 1 in accordance with the acts referred to in the first subparagraph of Article 4(3). In the exercise of their respective supervisory and investigatory powers, the ECB and national competent authorities shall cooperate closely.
- 2b. By derogation from paragraph 1, with regard to credit institutions established in Member States which have entered into a close cooperation in accordance with Article 6, the ECB shall exercise its powers in accordance with Article 6.



# SECTION 1

## INVESTIGATORY POWERS

### *Article 9*

#### *Requests for information*

1. Without prejudice to the powers referred to in Article 8(1), and subject to the conditions set out in relevant Union law, the ECB may require the following legal or natural persons, subject to Article 4, to provide all information that is necessary in order to carry out the tasks conferred upon it by this Regulation, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:
  - (a) credit institutions established in the participating Member States;
  - (b) financial holding companies established in the participating Member States;
  - (c) mixed financial holding companies established in the participating Member States;
  - (d) mixed-activity holding companies established in the participating Member States;
  - (e) persons belonging to the entities referred to in (a) to (d);
  - (f) third parties to whom the entities referred to in (a) to (d) have outsourced operational functions or activities;
  - (g) *deleted*.
  - (h) *deleted*.

2. The persons referred to in paragraph 1 shall supply the information requested.
- 2a. Where the ECB obtains information directly from the legal or natural persons referred to in paragraph 1 it shall make that information available to the national competent authorities concerned.

### *Article 10*

#### *General investigations*

1. In order to carry out the tasks conferred upon it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may conduct all necessary investigations of any person referred to in Article 9 (1) (a) to (f) established or located in a participating Member State.

To that end, the ECB shall have the right to:

- (a) require the submission of documents;
- (b) examine the books and records of the persons referred to in Article 9 (1) (a) to (f) and take copies or extracts from such books and records;
- (c) obtain written or oral explanations from any person referred to in Article 9(1) (a) to (f) or their representatives or staff;
- (d) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

2. The persons referred to in Article 9 (1) (a) to (f) shall be subject to investigations launched on the basis of a decision of the ECB.

When a person obstructs the conduct of the investigation, the national competent authority of the participating Member State where the relevant premises are located shall afford, in compliance with national law, the necessary assistance including, in the cases referred to in Articles 11 and 12, facilitating the access by the ECB to the business premises of the legal persons referred to in Article 9(1) (a) to (f), so that the aforementioned rights can be exercised.

*Article 11*  
*On-site inspections*

1. In order to carry out the tasks conferred upon it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 9(1) (a) to (f) and any other undertaking included in consolidated supervision where the ECB is the consolidating supervisor in accordance with Article 4(1)(i), in accordance with Article 12, subject to prior notification to the national competent authority concerned. Where the proper conduct and efficiency of the inspection so require, the ECB may carry out the on-site inspection without prior announcement to the credit institution.
2. The officials of and other persons authorised by the ECB to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by the ECB and shall have all the powers stipulated in Article 10 (1).

3. The legal persons referred to in Article 9(1) (a) to (f~~g~~) shall be subject to on-site inspections on the basis of a decision of the ECB.
4. Officials and other accompanying persons authorised or appointed by the national competent authority of the Member State where the inspection is to be conducted shall actively assist the officials of and other persons authorised by the ECB. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the participating Member State concerned shall also have the right to participate in the on-site inspections
5. Where the officials of and other accompanying persons authorised or appointed by the ECB find that a person opposes an inspection ordered pursuant to this Article, the national competent authority of the participating Member State shall afford them the necessary assistance in accordance with national law.

## *Article 12*

### *Authorisation by a judicial authority*

1. If an on-site inspection provided for in Article 11(1) to (2) or the assistance provided for in Article 11(5) requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for.

2. Where authorisation as referred to in paragraph 1 is applied for, the national judicial authority shall control that the decision of the ECB is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the ECB for detailed explanations, in particular relating to the grounds the ECB has for suspecting that an infringement of the acts referred to in the first subparagraph of Article 4(3) has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the ECB's file. The lawfulness of the ECB's decision shall be subject to review only by the Court of Justice of the European Union.

*Article 12a (MOVED TO ART. 9(3))*

~~*Access to information by national competent authorities*~~

## SECTION 2

### SPECIFIC SUPERVISORY POWERS

#### *Article 13*

#### *Authorisation*

1. Any application for an authorisation to take up the business of a credit institution to be established in a participating Member State shall be submitted to the national competent authorities of the Member State where the credit institution is to be established in accordance with the requirements set out in relevant national legislation.
- 1a. If the applicant complies with all conditions of authorisation set out in the relevant national legislation of that Member State, the national competent authority shall take, within the period provided for by relevant national legislation, a draft decision to propose to the ECB to grant the authorisation. The draft decision shall be notified to the ECB and the applicant for authorisation. In other cases, the national competent authority shall reject the application for authorisation.
- 1b. The draft decision shall be deemed to be adopted by the ECB unless the ECB objects within a maximum period of 10 working days, extendable once for the same period in duly justified cases. The ECB shall object to the draft decision only where the conditions for authorisation set out in the relevant Union law are not met. It shall state the reasons for the rejection in writing.

- 1c. The decision taken in accordance with paragraphs 1a and 1b shall be notified by the national competent authority to the applicant for authorisation.
2. Subject to paragraph (2a), the ECB may withdraw the authorisation in the cases set out in relevant Union law on its own initiative, following consultations with the national competent authority of the participating Member State where the credit institution is established, or on a proposal from the national competent authority of the participating Member State where the credit institution is established. These consultations shall in particular ensure that before taking decisions regarding withdrawal, the ECB allows sufficient time for the national authorities to decide on the necessary remedial actions, including possible resolution measures, and takes these into account.

Where the national competent authority which has proposed the authorisation in accordance with paragraph 1 considers that the authorisation must be withdrawn in accordance with the relevant national legislation, it shall submit a proposal to the ECB to that end. In that case, the ECB shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national competent authority.

- 2a. As long as national authorities remain competent to resolve credit institutions, in cases where they consider that the withdrawal of the authorisation would prejudice the adequate implementation of or actions necessary for resolution or to maintain financial stability, they will duly notify their objection to the ECB explaining in detail the prejudice that a withdrawal would cause. In those cases, the ECB shall abstain from proceeding to the withdrawal for a period mutually agreed with the national authorities. The ECB can choose to extend that period if it is of the opinion that sufficient progress has been made. If, however, the ECB determines in a reasoned decisions that proper actions necessary to maintain financial stability have not been implemented by the national authorities, the withdrawal of the authorisations shall apply immediately.

### *Article 13a*

#### Assessment of acquisitions of qualifying holdings

1. Without prejudice to the exemptions provided for in Article 4(1)(b), any notification of an acquisition of a qualifying holding in a credit institution established in a participating Member State or any related information shall be introduced with the national competent authorities of the Member State where the credit institution is established in accordance with the requirements set out in relevant national legislation based on the acts referred to in the first subparagraph of Article 4(3).
2. The national competent authority shall assess the proposed acquisition, and shall forward the notification and a proposal for a decision to oppose or not to oppose the acquisition, based on the criteria set out in the acts referred to in the first subparagraph of Article 4(3), to the ECB, at least ten working days before the expiry of the relevant assessment period as defined by relevant Union law, and shall assist the ECB in accordance with Article 5.
3. The ECB shall decide whether to oppose the acquisition on the basis of the assessment criteria set out in relevant Union law and in accordance with the procedure and within the assessment periods set out therein.
4. The decision taken in accordance with this Article shall be notified by the national competent authority to the applicant.



### *Article 13b*

#### Supervisory powers

1. For the purpose of carrying out its tasks referred to in Article 4(1) and without prejudice to other powers conferred on the ECB, the ECB shall have the powers set out in paragraph 2 to require any credit institution, financial holding company or mixed financial holding company to take the necessary measures at an early stage to address relevant problems in any of the following circumstances:
  - (a) the credit institution does not meet the requirements of the acts referred to in the first subparagraph of Article 4(3);
  - (b) the ECB has evidence that the credit institution is likely to breach the requirements of the acts referred to in the first subparagraph of Article 4(3) within the next 12 months;
  - (c) based on a determination, in the framework of a supervisory review in accordance with Article 4(1)(g), that the arrangements, strategies, processes and mechanisms implemented by the credit institution and the own funds and liquidity held by it do not ensure a sound management and coverage of its risks.
2. Notwithstanding the provision set out in Article 8(1), the ECB shall have the following powers:
  - (a) to require institutions to hold own funds in excess of the capital requirements laid down in the acts referred to in the first subparagraph of Article 4(3) related to elements of risks and risks not covered by the relevant Union acts,
  - (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies;

- (c) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to the acts referred to in the first subparagraph of Article 4(3) and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- (e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- (f) to require the reduction of the risk inherent in the activities, products and systems of institutions;
- (g) to require institutions to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base;
- (h) to require institutions to use net profits to strengthen own funds;
- (i) to restrict or prohibit distributions by the institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;
- (j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- (l) to require additional disclosures;
- (m) to remove at any time members from the management body of credit institutions who do not fulfil the requirements set out in the acts referred to in the first subparagraph of Article 4(3).

#### *Article 14*

##### Powers of host authorities and cooperation on consolidated supervision

1. Between participating Member States the procedures set out in the relevant Union law for credit institutions wishing to establish a branch or to exercise the freedom to provide services by carrying on their activities within the territory of another Member State and the related competences of home and host Member States shall apply only for the purposes of the tasks not conferred upon the ECB by Article 4 of this Regulation.
2. The provisions set out in the relevant Union law in relation to the cooperation between competent authorities from different Member States for conducting supervision on a consolidated basis shall not apply to the extent that the ECB is the only competent authority involved.

#### *Article 15*

##### Administrative sanctions

1. For the purpose of carrying out the tasks conferred upon it by this Regulation, where credit institutions, financial holding companies, or mixed financial holding companies, intentionally or negligently, breach a requirement under relevant directly applicable acts of Union law in relation to which administrative pecuniary sanctions shall be made available to competent authorities under the relevant Union law, the ECB may impose administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10% of the total annual turnover, as defined in relevant Union law, of a legal person in the preceding business year.

2. Where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover referred to in the first subparagraph shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.
3. The sanctions applied shall be effective, proportionate and dissuasive. In determining whether to impose a sanction and in determining the appropriate sanction, the ECB shall act in accordance with Article 8(2a).
4. The ECB shall apply this Article in accordance with the acts referred to in the first subparagraph of Article 4(3), including the procedures contained in Council Regulation (EC) No 2532/98, as appropriate.
5. In the cases not covered by paragraph 1, where necessary for the purpose of carrying out the tasks conferred upon it by this Regulation, the ECB may require national competent authorities to open proceedings with a view to taking action in order to ensure that appropriate sanctions are imposed in accordance with the acts referred to in the first subparagraph of Article 4(3) and any relevant national legislation which confers specific powers which are currently not required by Union Law. The sanctions applied by national competent authorities will be effective, proportionate and dissuasive.

The first subparagraph shall be applicable in particular to any administrative sanctions or measures to be imposed on members of the management board of a credit institution, financial holding company or mixed financial holding company or any other individuals who under relevant national legislation are responsible for a breach by a credit institution, financial holding company or mixed financial holding company.

- 6<sup>17</sup>. The ECB shall publish any sanction referred to paragraph 1 without undue delay including information on the type and nature of the breach and the identity of the legal persons responsible for it, unless such publication would seriously jeopardise the stability of the financial markets.
7. Without prejudice to paragraphs 1 to 6, for the purposes of carrying out the tasks conferred on it by this Regulation, in case of breaches of ECB regulations or decisions the ECB may impose sanctions in accordance with Council Regulation (EC) No 2532/98.
- 7a. Notwithstanding Article 8(1), nothing in this Regulation shall confer on the ECB the power to impose sanctions on natural persons.

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<sup>17</sup> Note this paragraph will need to be aligned to the relevant CRD IV text once provisionally agreed in Trilogue.

## Chapter IV

### Organisational principles

#### *Article 16*

#### *Independence*

1. When carrying out the tasks conferred upon it by this Regulation, the ECB shall act independently.
2. Union institutions, bodies, offices and agencies and the governments of the Member States and any other bodies shall respect that independence.
3. The independence referred to in paragraphs 1 and 2 shall apply to all the members of the Supervisory Board when carrying out the tasks conferred on the ECB under this Regulation.

#### *Article 17*

#### *Accountability and reporting (merged with Article 21)*

1. The ECB shall be accountable to the European Parliament, and to the Council, for the implementation of this Regulation, in accordance with this Chapter.
2. The ECB shall submit each year to the European Parliament, the Council, the Commission and the Eurogroup, a report on the execution of the tasks conferred upon it by this Regulation, as well as a report on the envisaged evolution of the structure and amount of the supervisory fees mentioned in Article 24.

3. The Chair of the supervisory board of the ECB shall present those reports to the European Parliament and to the Eurogroup in the presence of representatives from any participating Member State whose currency is not the Euro.
4. The Chair of the supervisory board of the ECB may, at the request of the Eurogroup, be heard on the execution of its supervisory tasks by the Eurogroup in the presence of representatives from any participating Member States whose currency is not the Euro.
5. The Chair of the supervisory board may, at the request of the European Parliament, be heard on the execution of its supervisory tasks by the competent committees of the European Parliament.
6. *deleted*
7. The ECB shall reply orally or in writing to questions put to it by the European Parliament or by the Eurogroup in the presence of representatives from any participating Member States whose currency is not the Euro.
8. When the European Court of Auditors examines the operational efficiency of the management of the ECB under Article 27(2) of the Statute of the ECB, it shall also take into account the supervisory tasks conferred upon the ECB under this Regulation.

*Article 17aa*

National parliaments

1. The ECB shall have the obligations towards national parliaments of the participating Member States that are set out in this Article.
2. When submitting the reports provided for in Article 17(2), the ECB shall simultaneously forward those reports directly to the national parliaments of the participating Member States.

National parliaments may address to the ECB their reasoned observations on those reports.

- 2a. The ECB may reply in writing to any observations or questions received from the national parliaments of the participating Member States.
3. The parliament of a participating Member State may invite the Chair or a representative of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority.
4. This regulation is without prejudice to the accountability of national competent authorities to national parliaments in accordance with national legislation for the performance of tasks not conferred on the ECB by this Regulation and for the performance of activities carried out by them in accordance with Article 5.



*Article 17a*

Due process for adopting supervisory decisions

1. Before taking supervisory decisions in accordance with Article 4 and Section 2, the ECB shall give the persons who are the subject of the proceedings the opportunity of being heard on the matters to which the ECB has taken objection. The ECB shall base its decisions only on objections on which the parties concerned have been able to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant damage to the financial system. In such a case, the ECB may adopt a provisional decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of defence of the persons concerned shall be fully respected in the proceedings. They shall be entitled to have access to the ECB's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information.
3. The decisions of the ECB shall state the reasons on which they are based.

## *Article 17b*

### The Panel of Review

1. The Governing Council shall nominate, on a proposal of the Supervisory Board, a Panel of Review for carrying out internal review of the decisions taken under the powers conferred upon it by the present regulation after a request for review submitted in accordance with paragraph 6.
2. The Governing Council shall appoint, on a proposal of the Supervisory Board the members of the Panel of Review. The Panel of Review shall be independent and composed of five members and five alternates, who shall be individuals of a high repute, from participating Member States and with a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the ECB. The Panel of Review shall have sufficient legal expertise to provide expert legal advice on the legality of the ECB exercise of its powers. The Panel of review shall designate its Chair. The term of office of the members of the panel of review shall be 5 years. The term may be renewed once.
3. The decisions of the panel of review shall be adopted on the basis of a majority of at least three of its five members.
4. *deleted*
6. Any natural or legal person may in the cases referred to in paragraph 1 request a review of a decision addressed to that person, or which is of direct and individual concern to it. A request for a review against a decision of the Governing Council as referred to in paragraph 9 shall not be admissible.

7. The review, together with a statement of grounds, shall be filled in writing at the ECB within 1 month of the date of notification of the decision to the person requesting the review, or, in the absence thereof, of the day on which it came to the knowledge of the latter as the case may be.
8. A review requested pursuant to paragraph 6 shall not have suspensive effect. However, the Governing Council, upon proposal by the Panel, may, if it considers that circumstances so requires, suspend the application of the contested decision.
9. After ruling upon the admissibility of the review, the Panel of Review shall within [two months] from the receipt of the request, examine the case and remit it for preparation of a new draft decision to the Supervisory Board. The new draft decision shall either abrogate the initial decision, replace it with a decision of identical content, or replace it with an amended one. The Supervisory Board shall take into account the opinion by the Panel and shall submit a new draft decision to the Governing Council. The new draft decision shall be deemed adopted unless the Governing Council objects within a maximum period of ten working days.
10. The review by the Panel of Review, the new draft decision by the Supervisory Board and the decision adopted by the Governing Council pursuant to this article shall be reasoned and notified to the parties.
11. This article is without prejudice to the right to bring proceedings before the Court of Justice of the European Union in accordance with Article 263 TFEU.

*Article 18*  
*Separation from monetary policy function*

1. When carrying out the tasks conferred on it by this Regulation, the ECB shall pursue only the objectives set by this Regulation.
2. The ECB shall carry out the tasks conferred upon it by this Regulation without prejudice to and separately from its tasks relating to monetary policy and from any other tasks. The tasks conferred upon the ECB by this regulation shall not interfere with the ECB's tasks relating to monetary policy and any other tasks. The staff involved in carrying out the tasks conferred on the ECB by this Regulation shall be organisationally separated and subject to separate reporting lines.
3. For the purposes of paragraphs 1 and 2, the ECB shall adopt and make public any necessary internal rules, including rules regarding professional secrecy and information exchanges between the two functional areas.

*Article 19*  
*Supervisory board*

1. The planning and execution of the tasks conferred upon the ECB, shall be fully undertaken by an internal body composed of its chair, appointed in accordance with paragraph 2, its vice-chair and three representatives of the ECB, appointed in accordance with paragraph 2a, and one representative of the national authority competent for the supervision of credit institutions in each participating Member State (hereinafter "Supervisory Board").

Where the competent authority is not a central bank, the member of the Supervisory Board referred to in this paragraph may decide to bring a representative from the Member State's central bank. For the purposes of the voting procedure set out in paragraph 2ab, the representatives of the authorities of any one Member State shall together be considered as one member.

2. On the basis of a proposal made by the ECB after consulting the European Parliament and hearing the Supervisory Board, the Council shall adopt an implementing decision to appoint the Chair of the Supervisory Board from among individuals of recognised standing and experience in banking and financial matters and who are not members of the Governing Council. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

Once appointed, the Chair shall be a full-time professional and shall not hold any offices at national competent authorities. The term of office shall be five years and shall not be renewable.

- 2a. The Vice Chair of the Supervisory Board shall be appointed by the Governing Council from among the members of the Executive Board of the ECB. The three representatives of the ECB appointed by the Governing Council shall not perform duties related to the monetary function of the ECB. All the ECB representatives shall have voting rights.
- 2ab<sup>18</sup>. Decisions of the Supervisory Board shall be taken by a simple majority of its members. Each member shall have one vote. In case of a draw, the Chair shall have a casting vote.
- [2b.<sup>19</sup> By derogation from paragraph (2ab), the Supervisory Board shall take decisions on the adoption of regulations pursuant to Article 4(3) and other decisions of general scope, on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions for the members representing the participating Member State's authorities. Each of the four representatives of the ECB appointed by the Governing Council shall have a vote equal to the median vote of the other members.]
3. Without prejudice to the provisions of Article 5, the Supervisory Board will carry out preparatory works regarding the supervisory tasks conferred upon the ECB and propose to the Governing Council of the ECB complete draft decisions to be adopted by the latter, pursuant to a procedure to be established by the ECB. A draft decision will be deemed adopted unless the Governing Council objects within a period to be defined in the procedure mentioned above but not exceeding a maximum period of 10 working days. In emergency situations the aforementioned period shall not exceed 48 hours. If the Governing Council objects to a draft decision, it shall state the reasons for doing so in writing, in particular stating monetary policy concerns. If a decision is changed following an objection by the Governing Council, a non-euro participating Member State may notify the ECB of its reasoned disagreement with the objection and the procedure set out in Article 6(6ab) will apply.

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<sup>18</sup> As the first component of Option 1 comprising paragraphs (2ab) and (4a).

<sup>19</sup> As the second component of Option 2 comprising paragraphs (2ab) and (2b).

3a. *deleted*

4. A secretariat shall support the activities of the supervisory board, including preparing the meetings on a full time basis.

[4a. The Supervisory Board may appoint from among its members a steering committee with a more limited composition which supports its activities, including preparing the meetings.  
The steering committee of the Supervisory Board shall have no decision-making powers. The steering committee shall be chaired by the Chair and Vice-Chair of the Supervisory Board and shall be composed of six other members of the Supervisory Board representing national competent authorities. The composition of the steering committee shall ensure a fair balance between national competent authorities having regard to the different structures and dimensions of financial systems and thus reflect the SSM as a whole. The steering committee shall execute its preparatory tasks in the interest of the Union as a whole and shall work in full transparency with the Supervisory Board.]

5. *deleted*

6. [The Chair of the European Banking Authority and] a member of the European Commission may participate as observers in the meetings of the supervisory board upon invitation. Observers shall not have an access to confidential information relating to individual institutions.

7. The Governing Council shall adopt internal rules setting out in detail its relation with the supervisory board. It shall also adopt the rules of procedure of the supervisory board and shall make both sets of rules public. The rules of procedure of the supervisory board shall ensure equal treatment of all participating Member States and include rules on the term of office of the Chair and the Vice-Chair, which shall not exceed five years and shall not be renewable.

*Article 20*

*Professional secrecy and exchange of information*

1. Members of the Supervisory Board, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties, even after their duties are ceased, shall be subject to the professional secrecy requirements set out in Article 37 of the Statute of the ESCB and the ECB.
2. For the purpose of carrying out the tasks conferred upon it by this Regulation, 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 European authorities and bodies in the cases 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.



*Article 21 (MERGED WITH ARTICLE 17)*

*Reporting*

*Article 22*

*Resources*

## *Article 23*

### *Budget*

1. The ECB's expenditure for carrying out the tasks conferred upon it by this Regulation shall be separately identifiable within the budget of the ECB.
2. The ECB shall, as part of the report referred to in Article 17, report in detail on the budget for its supervisory tasks. The annual accounts of the ECB drawn up in accordance with Article 26.2 of the Statute of the ECB and of the ESCB shall include the income and expenses related to the supervisory tasks.

## *Article 24*

### *Supervisory fees*

1. The ECB shall levy an annual supervisory fee on credit institutions established in the participating Member States and branches established in a participating Member State by a credit institution established in a non-participating Member State. The fees shall cover expenditure incurred by the ECB in relation to the tasks conferred upon it under Articles 4 and 5 of this Regulation. These fees shall not exceed the expenditure relating to these tasks.
2. The amount of the fee levied on a credit institution or branch shall be set, in accordance with the modalities defined, and published in advance, by the ECB, at the highest level of consolidation within participating Member States, and shall be based on objective criteria relating to the importance and risk profile of the credit institution concerned, including its risk weighted assets.

Before defining these modalities, the ECB shall conduct open public consultations and analyse the potential related costs and benefits.

The basis for calculating the annual supervisory fee for a given calendar year shall be the expenditure relating to the supervision of credit institutions and branches in that year. The ECB may require advance payments in respect of the annual supervisory fee which shall be based on a reasonable estimate. The ECB shall communicate with the national competent authority before deciding on the final fee level so as to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned. The ECB shall communicate to credit institutions and branches the basis for the calculation of the annual supervisory fee.

3. The ECB shall report in accordance with Article 17.
- 3a. This Article is without prejudice to the right of national competent authorities to levy fees in accordance with national law and, to the extent supervisory tasks have not been conferred on the ECB, or in respect of costs of cooperating with and assisting the ECB and acting on its instructions, in accordance with relevant Union law.

#### *Article 25*

#### *Staff exchange*

1. The ECB shall establish, together with national competent authorities, arrangements to ensure an appropriate exchange and secondment of staff with and among national competent authorities.
2. The ECB may require as appropriate that supervisory teams of national competent authorities taking supervisory actions regarding a credit institution, financial holding company or mixed financial holding company located in one participating Member State in accordance with this regulation involve also staff from national competent authorities of other participating Member States.

## **Chapter V**

### **General and final provisions**

#### *Article 26*

#### *Review*

By 31 December 2015, and subsequently every three years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the Single Market. That report shall evaluate, inter alia:

- (a) the functioning of the SSM within the European System of Financial Supervision and within the internal market, including its possible impact on the structures of the national banking systems within the EU, and regarding the effectiveness of cooperation and information sharing arrangements between the SSM and national competent authorities of non-participating Member States;
- (aa) the role of national authorities within the Single Supervisory Mechanism, the effectiveness of the practical modalities of organisation adopted by the ECB, and the impact of the SSM on the functioning of the remaining supervisory colleges;
- (ab) the appropriateness of the arrangements set out respectively for macroprudential tasks and tools under Article 4a and for the granting and withdrawal of authorisations under Article 13;
- (b) the effectiveness of independence and accountability arrangements;
- (c) the interaction between the ECB and the European Banking Authority;
- (d) the appropriateness of governance arrangements, including the composition of, and voting modalities in, the Supervisory Board and its relation with the Governing Council.

(e) the effectiveness of the recourse mechanism against decisions of the ECB;

(f) the cost effectiveness of the SSM.

The report shall be forwarded to the European Parliament and to the Council. The Commission shall make accompanying proposals, as appropriate.

#### *Article 27*

##### *Transitional provisions*

1. Before [1 July 2013], the ECB shall publish the framework referred to in Article 5(7).
2. The ECB shall assume in full the tasks conferred on it by this regulation on the [1 January 2014] at latest.

By 30 September 2013, the ECB shall adopt a report to the European Parliament and the Council on the advancement of the operational implementation of this Regulation.

3. From *[date of entry into force of this Regulation]*, the ECB may start carrying out the tasks conferred on it by this Regulation in respect of any credit institution, financial holding company or mixed financial holding company and following a decision addressed to the entities concerned and to the national competent authorities of the participating Member States concerned.

Notwithstanding the first sub-paragraph, the ECB shall start carrying out the tasks conferred on it by this Regulation from *[date of entry into force of this Regulation]*, in respect of any credit institution, financial holding company or mixed financial holding company for which public financial assistance has been requested or received directly or indirectly from the EFSF or the ESM, and following a decision addressed to the entities concerned and to the national competent authorities of the participating Member States concerned.

- [3a. Notwithstanding paragraphs 2 and 3, the ECB shall carry out the tasks conferred upon it by this regulation from *[date of entry into force of this Regulation]*, in respect of any credit institution, which its national competent authority considers of significant relevance with regard to the domestic economy, subject to a decision of the ECB confirming such significance following a comprehensive assessment by the ECB, including a balance-sheet assessment, of that credit institution.]
4. From the entry into force of this Regulation, in view of the assumption of its tasks in accordance with paragraphs 2 to 3a, the ECB may require the competent authorities of the participating Member States and the persons referred to in Article 9 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 State. The ECB shall carry out such an assessment at least in relation to the credit institutions not covered by Article 5(4). The credit institution and the competent authority shall supply the information requested.
5. *deleted*

6. Credit institutions authorised by participating Member States on the date referred to in Article 28 or where relevant on the date referred to in paragraphs 2 and 3, shall be deemed to be authorised in accordance with Article 13 and may continue to carry on their business. National competent authorities shall communicate to the ECB before the date of application of this Regulation or where relevant before the dates referred to in paragraphs 2 and 3 the identity of these credit institutions together with a report indicating the supervisory history and the risk profile of the institutions concerned, and any further information requested by the ECB. The information shall be submitted in the format requested by the ECB."

## Article 28

### *Entry into force*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*

*The President*