Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17)

REGULATION (EU) No 468/2014 OF THE EUROPEAN CENTRAL BANK

of 16 April 2014

establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation)

(ECB/2014/17)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 34 thereof,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions[(1)], and in particular Article 4(3), Article 6 and Article 33(2) thereof,

Having regard to the Inter-institutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism[(2)],

Having regard to the public consultation and analysis carried out in accordance with Article 4(3) of Regulation (EU) No 1024/2013,

Having regard to the proposal from the Supervisory Board and in consultation with the national competent authorities,

Whereas:

(1) Regulation (EU) No 1024/2013 (hereinafter the ‘SSM Regulation’) establishes the Single Supervisory Mechanism (SSM) composed of the European Central Bank (ECB) and the national competent authorities (NCAs) of participating Member States.

(2) Within the framework of Article 6 of the SSM Regulation, the ECB is exclusively competent to carry out the micro-prudential tasks conferred on it by Article 4 thereof relating to credit institutions established in the participating Member States. The ECB is responsible for the effective and consistent functioning of the SSM and for

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exercising oversight over the functioning of the system, based on the responsibilities and procedures set out in Article 6 of the SSM Regulation.

(3) Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by the SSM Regulation, NCAs are responsible for assisting the ECB, under the conditions laid down in the SSM Regulation and in this Regulation, with the preparation and implementation of any acts concerning the tasks referred to in Article 4 of the SSM Regulation relating to all credit institutions, including assistance in verification activities. For this purpose, the NCAs should follow the instructions given by the ECB when performing the tasks mentioned in Article 4 of the SSM Regulation.

(4) The ECB, NCAs and national designated authorities (NDAs) have to perform the macro-prudential tasks referred to in Article 5 of the SSM Regulation and follow the coordination procedures provided for therein, in this Regulation and in relevant Union law, without prejudice to the role of the Eurosystem and of the European Systemic Risk Board.

(5) Within the SSM, the respective ECB and NCA supervisory responsibilities are allocated on the basis of the significance of the entities that fall under the scope of the SSM. This Regulation sets out, in particular, the specific methodology for the assessment of such significance, as required by Article 6(7) of the SSM Regulation. The ECB has direct supervisory competence in respect of credit institutions, financial holding companies, mixed financial holding companies established in participating Member States, and branches in participating Member States of credit institutions established in non-participating Member States that are significant. The NCAs are responsible for directly supervising the entities that are less significant, without prejudice to the ECB's power to decide in specific cases to directly supervise such entities where this is necessary for the consistent application of supervisory standards.

(6) To take into account recent developments in Union legislation in the field of sanctions and the European Court of Human Rights case-law regarding the principle of separation between an investigation and the decision-taking phase, an independent investigating unit will be established by the ECB which is to autonomously investigate breaches of supervisory rules and decisions.

(7) Article 6(7) of the SSM Regulation states that the ECB must, in consultation with the NCAs and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical arrangements for cooperation between the ECB and the NCAs within the SSM.

(8) Article 33(2) of the SSM Regulation states that the ECB must publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred upon it by that Regulation. This Regulation contains the provisions implementing Article 33(2) relating to cooperation between the ECB and the NCAs within the SSM.

(9) As a result, this Regulation further develops and specifies the cooperation procedures established in the SSM Regulation between the ECB and the NCAs within the SSM as

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well as, where appropriate, with the national designated authorities, and thereby ensures the effective and consistent functioning of the SSM.

(10) The ECB attaches great importance to the comprehensive assessment of credit institutions, including the balance sheet assessment that it must carry out before the assumption of its tasks. This extends to any Member States joining the euro area and therefore joining the SSM after the date for the commencement of supervision in accordance with Article 33(2) of the SSM Regulation.

(11) It is essential for the smooth functioning of the SSM that there is full cooperation between the ECB and NCAs and that they exchange all the information that may have an impact on their respective tasks, in particular, all information that the NCAs avail of regarding procedures that may have an impact on the safety and soundness of a supervised entity or that interact with the supervisory procedures in relation to such entities,

HAS ADOPTED THIS REGULATION:

PART I

GENERAL PROVISIONS

Article 1

Subject matter and purpose

1 This Regulation lays down rules on all of the following:

a the framework referred to in Article 6(7) of the SSM Regulation, namely a framework to organise the practical arrangements for implementing Article 6 of the SSM Regulation concerning cooperation within the SSM, to include:

(i) the specific methodology for the assessment and review of whether a supervised entity is classified as significant or less significant pursuant to the criteria laid down in Article 6(4) of the SSM Regulation, and the arrangements resulting from this assessment;

(ii) the definition of procedures, including time limits, also in relation to the possibility for NCAs to prepare draft decisions for the ECB's consideration, concerning the relation between the ECB and the NCAs regarding the supervision of significant supervised entities;

(iii) the definition of procedures, including time limits, concerning the relation between the ECB and the NCAs regarding the supervision of less significant supervised entities. In particular, such procedures shall require the NCAs, depending on the cases defined in this Regulation, to:

— notify the ECB of any material supervisory procedure,

— further assess, on the ECB's request, specific aspects of the procedure,

— transmit to the ECB material draft supervisory decisions, on which the ECB may express its views;

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b cooperation and exchange of information between the ECB and the NCAs within the SSM with regard to the procedures relating to significant supervised entities and less significant supervised entities, including common procedures applying to authorisations to take up the business of a credit institution, withdrawals of such authorisations and the assessment of acquisitions and disposals of qualifying holdings;

c the procedures relating to cooperation between the ECB, the NCAs and the NDAs regarding macro-prudential tasks and tools within the meaning of Article 5 of the SSM Regulation;

d the procedures relating to the operation of close cooperation within the meaning of Article 7 of the SSM Regulation and applicable between the ECB, the NCAs and the NDAs;

e the procedures relating to cooperation between the ECB and the NCAs with regard to Articles 10 to 13 of the SSM Regulation, including on certain aspects relating to supervisory reporting;

f the procedures relating to the adoption of supervisory decisions addressed to supervised entities and other persons;

g the linguistic arrangements between the ECB and the NCAs and between the ECB and supervised entities and other persons;

h the procedures applicable to the ECB's and the NCAs' sanctioning powers within the SSM in relation to the tasks conferred on the ECB by the SSM Regulation;

i transitional provisions.

2 This Regulation does not affect the supervisory tasks that have not been conferred on the ECB by the SSM Regulation and that therefore remain with national authorities.

3 This Regulation shall be read in particular in conjunction with Decision ECB/2004/2[(3)] and the Rules of Procedure of the Supervisory Board of the European Central Bank[(4)], in particular with regard to decision-making within the SSM, including the procedure applying between the Supervisory Board and the Governing Council as regards the non-objection by the Governing Council referred to in Article 26(8) of the SSM Regulation and other relevant ECB legal acts, including Decision ECB/2014/16[(5)].

Article 2

Definitions

For the purposes of this Regulation, the definitions contained in the SSM Regulation shall apply, unless otherwise provided for, together with the following definitions:

(1) 'authorisation' means an authorisation as defined in point (42) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(6)];

(2) 'branch' means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;

(3) 'common procedures' means the procedures provided for in Part V with respect to an authorisation to take up the business of a credit institution, withdrawal of an authorisation to pursue such business and decisions with regard to qualifying holdings;

(4) 'euro area Member State' means a Member State whose currency is the euro;

(5) 'group' means a group of undertakings of which at least one is a credit institution and which consists of a parent undertaking and its subsidiaries, or undertakings linked to

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each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council[(7)], including any sub-group thereof;

(6) 'joint supervisory team' means a team of supervisors in charge of the supervision of a significant supervised entity or a significant supervised group;

(7) 'less significant supervised entity' means both (a) a less significant supervised entity in a euro area Member State; and (b) a less significant supervised entity in a non-euro area Member State that is a participating Member State;

(8) 'less significant supervised entity in a euro area Member State' means a supervised entity established in a euro area Member State and which does not have the status of a significant supervised entity within the meaning of Article 6(4) of the SSM Regulation;

(9) 'national competent authority' (NCA) means a national competent authority as defined in point (2) of Article 2 of the SSM Regulation. This definition is without prejudice to arrangements under national law which assign certain supervisory tasks to a national central bank (NCB) not designated as an NCA. In this case, the NCB shall carry out these tasks within the framework set out in national law and this Regulation. A reference to an NCA in this Regulation shall in this case apply as appropriate to the NCB for the tasks assigned to it by national law;

(10) 'NCA in close cooperation' means an NCA designated by a participating Member State in close cooperation in accordance with Directive 2013/36/EU of the European Parliament and of the Council[(8)];

(11) 'national designated authority' (NDA) means a national designated authority as defined in point (7) of Article 2 of the SSM Regulation;

(12) 'NDA in close cooperation' means a non-euro area NDA designated by a participating Member State in close cooperation for the purposes of the tasks related to Article 5 of the SSM Regulation;

(13) 'non-euro area Member State' means a Member State whose currency is not the euro;

(14) 'parent undertaking' means a parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013;

(15) 'participating Member State in close cooperation' means a non-euro area Member State that has entered into close cooperation with the ECB in accordance with Article 7 of the SSM Regulation;

(16) 'significant supervised entity' means both (a) a significant supervised entity in a euro area Member State; and (b) a significant supervised entity in a participating non-euro area Member State;

(17) 'significant supervised entity in a euro area Member State' means a supervised entity established in a euro area Member State which has the status of a significant supervised entity pursuant to an ECB decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;

(18) 'significant supervised entity in a participating non-euro area Member State' means a supervised entity established in a participating non-euro area Member State which has the status of a significant supervised entity pursuant to an ECB decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;