



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 19 November 2013
(OR. en)**

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NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Memorandum of Understanding between the Council of the European Union and the European central Bank on the cooperation on procedures related to the Single Supervisory Mechanism (SSM)

Please find enclosed the text of the Memorandum of Understanding between the Council and the European Central Bank on the cooperation on procedures related to the Single Supervisory Mechanism (SSM), which is to be signed by the President of the Council (ECOFIN) on the Council's side.

Encl.:

Memorandum of Understanding
between the Council of the European Union and the European Central Bank
on the cooperation on procedures related to the Single Supervisory Mechanism (SSM)

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

- having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU), in particular Article 127(6) thereof,
 - having regard to Regulation (EU) No 1024/2013 of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions¹, and in particular to its Recitals (55) and (69), and its Articles 20(1), (2), (3), (4) and (6), 25(2), 26(3) and (4), 29(2), 32 and 33(2),
- A. whereas Regulation (EU) No 1024/2013 confers on the European Central Bank (ECB) specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the European Union and each Member State participating in the Single Supervisory Mechanism (SSM);
- B. whereas Article 9 of Regulation (EU) No 1024/2013 establishes that the ECB shall be considered, as appropriate, the competent authority or the designated authority for the exclusive purpose of carrying out the supervisory tasks conferred upon the ECB;
- C. whereas the conferral of supervisory tasks implies a significant responsibility for the ECB to contribute to financial stability in the Union, using its supervisory powers in the most effective and proportionate way;
- D. whereas any conferral of supervisory powers to the Union level should be balanced by appropriate accountability requirements; under Article 20 of Regulation (EU) No 1024/2013 the ECB is therefore accountable for the implementation of the Regulation towards the European Parliament (EP) and the Council as democratically legitimised institutions representing the citizens of the Union and the Member States;
- E. whereas Recital 55 of Regulation (EU) No 1024/2013 specifies that any reporting obligations vis-à-vis the Council or the Euro Group should be subject to the relevant professional secrecy requirements; whereas Recital 37 and Article 20(1) of that Regulation provide that the members of the Supervisory Board, the steering committee, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties shall be subject to the professional secrecy requirements set out in Article 37 of the Statute of the ESCB and the ECB (hereinafter referred to as "ESCB Statute") and in relevant acts of Union law; whereas Article 339 TFEU and Article 37 of the ESCB Statute establish that the members of the governing bodies and the staff of the ECB and the national central banks are bound by the duty of professional secrecy;

¹ OJ L 287/63 of 29.10.2013.

- F. whereas Article 27(2) of Regulation (EU) No 1024/2013 provides that for the purpose of carrying out the tasks conferred upon it, the ECB shall be authorised, within the limits and under the conditions set out in the relevant Union law, to exchange information with national or Union authorities and bodies 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;
- G. whereas organisational separation of the ECB's staff involved in the execution of the ECB's supervisory tasks from staff involved in the execution of monetary policy tasks must be such that the Regulation (EU) No 1024/2013 is fully respected;
- H. whereas for the performance of its tasks under Regulation (EU) No 1024/2013 with regard to the appointment of the Chair of the Supervisory Board, the Council receives personal data and is subject to Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data²;
- I. whereas this Memorandum only covers the accountability and reporting obligation of the ECB towards the Council and the Euro Group under Regulation (EU) No 1024/2013;

AGREE AS FOLLOWS:

I. ACCOUNTABILITY

1. Reports

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

² OJ L 8, 12.1.2001, p. 1.

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

2. Hearings and exchanges of views

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

3. Responding to questions

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

II. SELECTION AND APPOINTMENT PROCEDURES

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

III. FINAL PROVISIONS

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

Done at, [date]
