

DECISION OF THE EUROPEAN CENTRAL BANK**of 17 September 2014****on the implementation of separation between the monetary policy and supervision functions of the European Central Bank****(ECB/2014/39)**

(2014/723/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ⁽¹⁾, and in particular Article 25(1), (2) and (3) thereof,

Whereas:

- (1) Regulation (EU) No 1024/2013 (hereinafter the 'SSM Regulation') establishes the Single Supervisory Mechanism (SSM) composed of the European Central Bank (ECB) and the national competent authorities (NCAs) of participating Member States.
- (2) Article 25(2) of the SSM Regulation requires the ECB to carry out its supervisory tasks without prejudice to and separately from its tasks relating to monetary policy and any other tasks. The ECB's supervisory tasks should neither interfere with, nor be determined by, its tasks relating to monetary policy. Moreover, these supervisory tasks should not interfere with the ECB's tasks in relation to the European Systemic Risk Board (ESRB) or any other tasks. The ECB is required to report to the European Parliament and to the Council as to how it has complied with this provision. The ECB's supervisory tasks may not alter the ongoing monitoring of the solvency of its monetary policy counterparties. Furthermore, the staff involved in carrying out supervisory tasks should be organisationally separate from the staff involved in carrying out other tasks conferred on the ECB and subject to separate reporting lines.
- (3) Article 25(3) of the SSM Regulation requires the ECB, for the purposes of Article 25(1) and (2), to adopt and make public any necessary internal rules, including rules regarding professional secrecy and information exchange between the two functional areas.
- (4) Article 25(4) of the SSM Regulation requires the ECB to ensure that the operation of the Governing Council is completely differentiated as regards monetary and supervisory functions. Such differentiation shall include strict separation of meetings and agendas.
- (5) In order to ensure separation between monetary policy and supervisory tasks, Article 25(5) of the SSM Regulation requires the ECB to set up a mediation panel to resolve differences of views expressed by the competent authorities of participating Member States concerned regarding an objection of the Governing Council to a draft decision by the Supervisory Board. It will include one member per participating Member State, chosen by each Member State among the members of the Governing Council and the Supervisory Board. Its decisions are to be made by a simple majority, with each member having one vote. The ECB is obliged to adopt and make public a regulation setting up the mediation panel and its rules of procedure; in that context, the ECB adopted Regulation (EU) No 673/2014 of the European Central Bank (ECB/2014/26) ⁽²⁾.
- (6) The ECB's Rules of Procedure have been amended ⁽³⁾ in order to adjust the internal organisation of the ECB and its decision-making bodies to the new requirements arising from the SSM Regulation and clarify the interaction of the bodies involved in the process of preparing and adopting supervisory decisions.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

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

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

- (7) Articles 13g to 13j of the ECB's Rules of Procedure provide details on the adoption of decisions by the Governing Council regarding matters related to the SSM Regulation. In particular, Article 13g concerns the adoption of decisions for the purpose of carrying out the tasks referred to in Article 4 of the SSM Regulation, and Article 13h concerns the adoption of decisions for the purpose of carrying out the tasks referred to in Article 5 of the SSM Regulation, implementing the requirements laid down in Article 26(8) of the SSM Regulation.
- (8) Article 13k of the ECB's Rules of Procedure provides that the ECB must carry out supervisory tasks without prejudice to and separately from its tasks relating to monetary policy and from any other tasks. In this respect, the ECB is required to take all necessary measures to ensure separation between its monetary policy and supervisory functions. At the same time, the separation of the monetary policy and the supervisory functions should not preclude the exchange between these two functional areas of information necessary for the achievement of ECB and European System of Central Banks (ESCB) tasks.
- (9) Article 13l of the ECB's Rules of Procedure provides that Governing Council meetings regarding supervisory tasks must take place separately from regular Governing Council meetings and have separate agendas.
- (10) According to Article 13m of the ECB's Rules of Procedure on the ECB's internal structure in relation to supervisory tasks, the competence of the Executive Board in respect of the ECB's internal structure and staff encompasses supervisory tasks. The Executive Board is to consult the Chair and the Vice Chair of the Supervisory Board on this internal structure. The Supervisory Board, in agreement with the Executive Board, may establish and dissolve substructures of a temporary nature, such as working groups or task forces. These are to assist in work regarding supervisory tasks and report to the Supervisory Board. Article 13m also provides for the appointment of the Secretary of the Supervisory Board and the Steering Committee by the President of the ECB, after having consulted the Chair of the Supervisory Board. The Secretary is to liaise with the Secretary of the Governing Council when preparing the meetings of the Governing Council regarding supervisory tasks and be responsible for drafting the proceedings of these meetings.
- (11) Recital 66 of the SSM Regulation states that organisational separation of staff should concern all services needed for independent monetary policy purposes and should ensure that the exercise of the supervisory tasks is fully subject to democratic accountability and oversight as provided for by the SSM Regulation. The staff involved in carrying out supervisory tasks should report to the Chair of the Supervisory Board. Within this framework, in order to fulfil the requirements contained in Article 25(2) of the SSM Regulation ⁽¹⁾, the ECB has established a structure of four Directorates-General for the performance of supervisory tasks and a Secretariat to the Supervisory Board, functionally reporting to the Chair and Vice Chair of the Supervisory Board. The ECB has further identified several business areas to provide support to both the monetary policy and supervisory functions of the ECB as shared services, where such support will not lead to conflicts of interest between the ECB's supervisory and monetary policy objectives. Divisions dedicated to supervisory tasks have been established within several 'shared service' business areas.
- (12) Article 37 of the Statute of the European System of Central Banks and of the European Central Bank lays down the obligation of professional secrecy for members of the governing bodies and the staff of the ECB and the national central banks. Recital 74 of the SSM Regulation states that the Supervisory Board, the steering committee and staff of the ECB carrying out supervisory duties should be subject to appropriate professional secrecy requirements. Article 27 of the SSM Regulation extends the obligation of professional secrecy to members of the Supervisory Board, and staff seconded by participating Member States carrying out supervisory duties.
- (13) The exchange of information between the ECB's monetary policy and supervisory functions should be organised in strict compliance with the limits established by Union law ⁽²⁾, taking into account the principle of separation. Obligations protecting confidential information, as provided for in applicable laws and regulations, such as

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

⁽²⁾ See recital H of the Interinstitutional Agreement. According to Recital 74 of the SSM Regulation, the requirements for the exchange of information with the staff not involved in supervisory activities should not prevent the ECB from exchanging information within the limits and under the conditions set out in the relevant Union legislation, including with the Commission for the purposes of its tasks under Articles 107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.

Council Regulation (EC) No 2533/98 ⁽¹⁾ on the collection of confidential statistical data and the provisions of Directive 2013/36/EU of the European Parliament and of the Council ⁽²⁾ relating to the sharing of supervisory information, will apply. Subject to the conditions set forth in this Decision, the principle of separation applies to the exchange of confidential information from both the monetary policy to the supervisory function as well as from the supervisory to the monetary policy function of the ECB.

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

HAS ADOPTED THIS DECISION:

Article 1

Scope and objectives

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

Article 2

Definitions

For the purposes of this Decision:

- (1) 'confidential information' means information classified as 'ECB-CONFIDENTIAL' or 'ECB-SECRET' under the ECB's confidentiality regime; other confidential information, including information covered by data protection rules or by the obligation of professional secrecy, created within the ECB or forwarded to it by other bodies or individuals; any confidential information falling under the professional secrecy rules of Directive 2013/36/EU; as well as confidential statistical information in accordance with Regulation (EC) No 2533/98;
- (2) 'need to know' means the need to have access to confidential information necessary for the fulfilment of a statutory function or task of the ECB, which in case of information labelled as 'ECB-CONFIDENTIAL' shall be broad enough to enable staff to access information relevant to their tasks and take over tasks from colleagues with minimal delays;

⁽¹⁾ Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

⁽²⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (3) 'raw data' means data transmitted by reporting agents, after statistical processing and validation, or data generated by the ECB through the execution of its functions;
- (4) 'ECB Confidentiality Regime' means the regime of the ECB which defines how to classify, handle and protect confidential ECB information.

Article 3

Organisational separation

1. The ECB shall maintain autonomous decision-making procedures for its supervisory and monetary policy functions.
2. All work units of the ECB shall be placed under the managing direction of the Executive Board. The competence of the Executive Board in respect of the ECB's internal structure and the staff of the ECB shall encompass the supervisory tasks. The Executive Board shall consult the Chair and the Vice Chair of the Supervisory Board on such internal structure.
3. ECB staff involved in carrying out supervisory tasks shall be organisationally separated from the staff involved in carrying out other tasks conferred on the ECB. Staff involved in carrying out supervisory tasks shall report to the Executive Board in respect of organisational, human resources and administrative issues, but shall be subject to functional reporting to the Chair and the Vice Chair of the Supervisory Board, subject to the exception in paragraph 4.
4. The ECB may establish shared services providing support to both the monetary policy and the supervisory function in order to ensure that these support functions are not duplicated, thus helping to guarantee the efficient and effective delivery of services. Such services shall not be subject to Article 6 as regards any information exchanges by them with the relevant policy functions.

Article 4

Professional secrecy

1. Members of the Supervisory Board, of the Steering Committee and of any substructures established by the Supervisory Board, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.
2. Persons having access to data covered by Union legislation imposing an obligation of secrecy shall be subject to such legislation.
3. The ECB shall subject individuals who provide any service, directly or indirectly, permanently or occasionally, related to the discharge of supervisory duties to equivalent professional secrecy requirements by means of contractual arrangements.
4. The rules on professional secrecy contained in Directive 2013/36/EU shall apply to the persons specified in paragraphs 1 to 3. In particular, confidential information that such persons receive in the course of their duties may be disclosed only in summary or aggregate form in such a way that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law.
5. Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be disclosed in civil or commercial proceedings.
6. This Article shall not prevent the ECB's supervisory function from exchanging information with other Union or national authorities in line with applicable Union law. Information so exchanged shall be subject to paragraphs 1 to 5.
7. The ECB's confidentiality regime shall apply to the ECB's members of the Supervisory Board, ECB staff and staff seconded by participating Member States carrying out supervisory duties, even after their duties are ceased.

*Article 5***General principles for the access to information between policy functions and classification**

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

*Article 6***Exchange of confidential information between policy functions**

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

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

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

*Article 7***Exchange of confidential information involving personal data**

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

*Article 8***Exchange of confidential information in emergency situations**

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

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

*Article 9***Final provision**

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

Done at Frankfurt am Main, 17 September 2014.

The President of the ECB
Mario DRAGHI

ANNEX**EXCERPT FROM THE ECB CONFIDENTIALITY REGIME**

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

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

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

- ECB-SECRET: Access within the ECB limited to those with a strict 'need to know', approved by an ECB senior manager of the originating business area, or above.
- ECB-CONFIDENTIAL: Access within the ECB limited to those with a 'need to know' broad enough to enable staff to access information relevant to their tasks and take over tasks from colleagues with minimal delay.
- ECB-RESTRICTED: Can be made accessible to ECB staff and, if appropriate, ESCB staff with a legitimate interest.
- ECB-UNRESTRICTED: Can be made accessible to all ECB staff and, if appropriate, ESCB staff.
- ECB-PUBLIC: Authorised to be made available to the general public.
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