DECISION (EU) 2021/1440 OF THE EUROPEAN CENTRAL BANK

of 3 August 2021

amending Decision (EU) 2019/1376 on delegation of the power to adopt decisions on passporting, acquisition of qualifying holdings and withdrawal of authorisations of credit institutions (ECB/2021/36)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

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(1)(a), (b), (c) and (d), and Articles 4(3), 6(4), 14(3), 14(5), 15(3), and 17(1) thereof,

Having regard to Decision (EU) 2017/933 of the European Central Bank of 16 November 2016 on a general framework for delegating decision-making powers for legal instruments related to supervisory tasks (ECB/2016/40) ([2]), and in particular Article 4 thereof,

Whereas:

(1) Decision (EU) 2019/1376 of the European Central Bank (ECB/2019/23) ([3]) specifies the criteria for the delegation of decision-making powers to the heads of work units of the European Central Bank (ECB) for the adoption of decisions concerning passporting, acquisition of qualifying holdings and withdrawal of authorisations of credit institutions. The experience gained in the application of that Decision has shown that certain clarifications and technical amendments are necessary, in particular for reasons of consistency and certainty in the application of those criteria.

(2) The procedure for delegating decision-making powers should be clarified in respect of passporting decisions, qualifying holding decisions and withdrawal decisions where heads of work units have concerns with regard to the interconnectedness of such a decision with one or more other decisions requiring supervisory approval. This may be the case where the outcome of the relevant supervisory assessment directly impacts one or more of those other decisions and therefore the decisions should be considered simultaneously by the same decision-maker in order to prevent conflicting outcomes.

(3) On 24 June 2020, the Governing Council decided to establish close cooperation between the ECB and the Republic of Bulgaria ([4]), and between the ECB and the Republic of Croatia ([5]). Article 7(1) of Regulation (EU) No 1024/2013 provides that to carry out certain tasks in relation to credit institutions established in a Member State whose currency is not the euro where close cooperation has been established in accordance with that Article, the ECB may address instructions to the national competent authority of the relevant Member State. It is therefore appropriate to include such instructions among the acts that the ECB may adopt by means of delegation to heads of work units pursuant to the relevant provisions of Decision (EU) 2019/1376 (ECB/2019/23).

(4) A passporting decision, qualifying holding decision or withdrawal decision in a case where the complexity of the assessment so requires is not adopted by means of a delegated decision, but is adopted instead under the non-objection procedure. It should be clarified that, in addition, there may be cases in which the sensitivity of the matter – in terms of impact on the ECB's reputation and/or on the functioning of the Single Supervisory Mechanism – may require that a passporting decision, qualifying holding decision or withdrawal decision should be adopted under the non-objection procedure and not by means of a delegated decision.

([1]) OJ L 287, 29.10.2013, p. 63.
([2]) OJ L 141, 1.6.2017, p. 14.
([3]) Decision (EU) 2019/1376 of the European Central Bank of 23 July 2019 on delegation of the power to adopt decisions on passporting, acquisition of qualifying holdings and withdrawal of authorisations of credit institutions (ECB/2019/23) (OJ L 224, 28.8.2019, p. 1).
([4]) Decision (EU) 2020/1015 of the European Central Bank of 24 June 2020 on the establishment of close cooperation between the European Central Bank and Българска народна банка (Bulgarian National Bank) (ECB/2020/30) (OJ L 224I, 13.7.2020, p. 1).
([5]) Decision (EU) 2020/1016 of the European Central Bank of 24 June 2020 on the establishment of close cooperation between the European Central Bank and Hrvatska Narodna Banka (ECB/2020/31) (OJ L 224I, 13.7.2020, p. 4).

(5) The scope of qualifying holding decisions that are delegated should be extended to include cases where the group to which the proposed acquirer belongs already holds a qualifying holding in the target entity, no relevant threshold is crossed at group level, and the seller is outside the group. The underlying assessment in such cases would usually be straightforward as the relevant circumstances do not entail a substantial change in the ownership structure of the target entity and the assessment is therefore similar to the underlying assessment in cases of qualifying holdings resulting from intragroup reorganisations, decisions in respect of which are currently delegated.

(6) Therefore, Decision (EU) 2019/1376 (ECB/2019/23) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision (EU) 2019/1376 (ECB/2019/23) is amended as follows:

1. in Article 1, the following point (15) is added:

 ‘(15) “sensitivity” means a characteristic or factor that may have a negative impact on the ECB’s reputation and/or on the effective and consistent functioning of the Single Supervisory Mechanism, including but not limited to any of the following: (a) the relevant supervised entity has previously been, or is currently, subject to severe supervisory measures such as early intervention measures; (b) the draft decision once adopted will set a new precedent that could bind the ECB in the future; (c) the draft decision once adopted may attract negative media or public attention; or (d) a national competent authority that has entered into close cooperation with the ECB communicates its disagreement with the proposed draft decision to the ECB.’;

2. Article 3 is amended as follows:

 (a) paragraph 3 is replaced by the following:

 ‘3. Passporting, qualifying holding and withdrawal decisions shall not be adopted by means of a delegated decision if the complexity of the assessment or the sensitivity of the matter requires that they are adopted under the non-objection procedure.’;

 (b) paragraph 4 is replaced by the following:

 ‘4. The delegation of decision-making powers pursuant to paragraph 1 shall apply to:

 (a) the ECB’s adoption of supervisory decisions;

 (b) the ECB’s approval of positive assessments where a supervisory decision is not required;

 (c) the ECB’s adoption of instructions addressed, pursuant to Article 7 of Regulation (EU) No 1024/2013, to the national competent authorities with which the ECB has established close cooperation.’;

 (c) the following paragraph 7 is added:

 ‘7. Heads of work units shall submit a passporting, qualifying holding or withdrawal decision that fulfils the criteria for the adoption of delegated decisions set out in Articles 4 to 6 to the Supervisory Board and the Governing Council for adoption under the non-objection procedure if the supervisory assessment of that decision has a direct impact on the supervisory assessment of another decision which is to be adopted under the non-objection procedure.’;

3. paragraph 1 of Article 4 is amended as follows:

 (a) point (b) is replaced by the following:

 ‘(b) the acquisition of a qualifying holding is the result of a shift of ownership in the target entity from one holding entity to another holding entity within the same group structure;’;

(b) the following point (d) is added:

‘(d) the acquisition of a qualifying holding is carried out by a legal entity belonging to a group of undertakings that already cumulatively hold a qualifying holding in the target entity, and no relevant threshold provided for in Article 22(1) of Directive 2013/36/EU as transposed into national law is crossed at group consolidated level.’;

4. in paragraph 1 of Article 5, point (a) is replaced by the following:

‘(a) the decision is made on request of the supervised entity or due to a merger that results in the supervised entity ceasing to exist;’.

Article 2

Transitional provision

The provisions of Decision (EU) 2019/1376 (ECB/2019/23) shall continue to apply, as unamended, in cases where a draft proposal for a qualifying holding or withdrawal decision was submitted by the national competent authority to the ECB prior to the entry into force of this Decision, or where the notification regarding the significant supervised entity’s intention to establish a branch or to guarantee the commitments entered into by their subsidiary financial institution was submitted by the national competent authority to the ECB prior to the entry into force of this Decision.

Article 3

Entry into force

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

Done at Frankfurt am Main, 3 August 2021.

The President of the ECB

Christine LAGARDE