

DECISION (EU) 2022/368 OF THE EUROPEAN CENTRAL BANK**of 18 February 2022****amending Decision (EU) 2015/2218 on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile (ECB/2022/6)**

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 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) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 604/2014 ⁽²⁾ established qualitative and quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. It also established a procedure whereby an institution may determine that although a staff member meets the quantitative criteria, their professional activities are not considered to have a material impact on the institution's risk profile, and based on such determination may notify, or request authorisation from, the competent authority to exclude the relevant staff member from the presumption that their professional activities have a material impact on the institution's risk profile. The ECB, responsible for ensuring that the entities under its direct supervision apply the rules on the identification of staff in a coherent manner that safeguards the soundness of any such identification, adopted Decision (EU) 2015/2218 of the European Central Bank (ECB/2015/38) ⁽³⁾ in order to provide clarity on the procedure for the exclusion of staff members as set out in Article 4 of Delegated Regulation (EU) No 604/2014.
- (2) Following amendments to Directive 2013/36/EU of the European Parliament and of the Council ⁽⁴⁾, Delegated Regulation (EU) No 604/2014 has been repealed for credit institutions and replaced on 14 June 2021 by Commission Delegated Regulation (EU) 2021/923 ⁽⁵⁾, which reflects new draft regulatory technical standards to define the concepts of managerial responsibility, control functions, material business units and significant impact on a material business unit's risk profile, and to identify the staff members or categories of staff referred to under point (c) of paragraph 2 of Article 94 of Directive 2013/36/EU. Delegated Regulation (EU) 2021/923 also eliminates the notification procedure and sets out criteria for the assessment of the exceptional circumstances pursuant to Article 6(4) of Delegated Regulation (EU) 2021/923.
- (3) To ensure legal certainty for credit institutions which submitted notifications and applications pursuant to Delegated Regulation (EU) No 604/2014 or requests for prior approval pursuant to Delegated Regulation (EU) 2021/923 before this Decision enters into force, it is necessary to establish transitional measures.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile (OJ L 167, 6.6.2014, p. 30).

⁽³⁾ Decision (EU) 2015/2218 of the European Central Bank of 20 November 2015 on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile (ECB/2015/38) (OJ L 314, 1.12.2015, p. 66).

⁽⁴⁾ 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁽⁵⁾ Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive (OJ L 203, 9.6.2021, p. 1).

- (4) Therefore, Decision (EU) 2015/2218 (ECB/2015/38) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision (EU) 2015/2218 (ECB/2015/38) is amended as follows:

- (1) Article 1 is replaced by the following:

Article 1

Scope

This Decision lays down the procedural requirements for the request for prior approval that supervised credit institutions shall submit to the ECB in order to exclude staff members or categories of staff from the presumption of being identified staff based on the quantitative criteria established in Article 6 of Commission Delegated Regulation (EU) 2021/923 (*).

(*) Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive (OJ L 203, 9.6.2021, p. 1).;

- (2) in Article 2, point (3) is replaced by the following:

(3) "identified staff" means: (a) all staff members and categories of staff of a supervised credit institution whose professional activities have a material impact on the credit institution's risk profile and who are specified in points (a) to (c) of Article 92(3) of Directive 2013/36/EU; and (b) all other staff members and categories of staff who are not expressly specified in points (a) to (c) of Article 92(3) of Directive 2013/36/EU and whose professional activities have an impact on a supervised credit institution's risk profile that is comparably as material as that of the staff members or categories of staff identified in accordance with Article 4 of Delegated Regulation (EU) 2021/923.;

- (3) Article 3 is amended as follows:

- (a) in paragraph 1, the introductory wording is replaced by the following:

1. A request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 shall contain the following information for the end of the preceding financial year and for the current financial year.;

- (b) points (e) and (f) of paragraph 1 are replaced by the following:

(e) the number of identified staff based on the qualitative criteria established in points (a) and (b) of Article 92(3) of Directive 2013/36/EU and in Article 5 of Delegated Regulation (EU) 2021/923.;

(f) the number of identified staff based exclusively on the quantitative criteria established in Article 92(3)(c) of Directive 2013/36/EU and in Article 6 of Delegated Regulation (EU) 2021/923, together with an indication of which of the categories specified in Article 92(3)(c) of Directive 2013/36/EU or in Article 6(1)(a) or (b) of Delegated Regulation (EU) 2021/923 each identified staff member belongs to.;

- (c) in paragraph 2, the introductory wording is replaced by the following:

2. A request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 shall contain the following information for each staff member for whom the application of Article 6(2) of Delegated Regulation (EU) 2021/923 is requested.;

(d) point (d) of paragraph 2 is replaced by the following:

‘(d) the total amount of remuneration in euro and the variable to fixed remuneration ratio awarded to the staff member in the reference year;’;

(e) point (f) of paragraph 2 is replaced by the following:

‘(f) the quantitative criteria on the basis of which the staff member was assessed as being identified staff (Article 6(1)(a) or (b) of Delegated Regulation (EU) 2021/923);’;

(f) point (g) of paragraph 2 is replaced by the following:

‘(g) the criteria on the basis of which the prior approval under Article 6(3) of Delegated Regulation (EU) 2021/923 is requested with respect to the staff member (Article 6(2)(a) or (b) of Delegated Regulation (EU) 2021/923).’;

(g) paragraph 3 is replaced by the following:

‘3. A request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 shall contain the annual internal or external audit assessment report on the identification process of identified staff and its results in respect of each staff member for whom a prior approval under Article 6(3) of Delegated Regulation (EU) 2021/923 is requested.’;

(4) Article 4 is amended as follows:

(a) the heading is replaced by the following:

‘Documentation required to substantiate that the staff member or category of staff only carries out professional activities in and only has authorities in a business unit that is not a material business unit’;

(b) in paragraph 1, the introductory wording is replaced by the following:

‘1. When requesting prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923, supervised credit institutions shall submit to the ECB the following documentation in order to substantiate that a staff member, or the category of staff to which the staff member belongs, only carries out professional activities and has authorities in a business unit which is not a material business unit, as referred to in Article 6(2)(a) of Delegated Regulation (EU) 2021/923.’;

(c) in paragraph 1, the following point (da) is inserted:

‘(da) a statement justifying why the business unit is not otherwise considered to have a material impact on the supervised credit institution’s internal capital.’;

(d) point (e) of paragraph 1 is replaced by the following:

‘(e) a statement explaining why the supervised credit institution awarded the staff member, or category of staff to which the staff member belongs, a remuneration that meets the criteria established in Article 6(1) of Delegated Regulation (EU) 2021/923 even though the staff member, or the category of staff to which the staff member belongs, carries out professional activities in a non-material business unit.’;

(e) point (f) of paragraph 1 is replaced by the following:

‘(f) a reasoned statement explaining why the staff member, or category of staff to which the staff member belongs, does not meet the qualitative criteria established in points (a) and (b) of Article 92(3) of Directive 2013/36/EU and in Article 5 of Delegated Regulation (EU) 2021/923.’;

(f) in paragraph 1, the following point (g) is added:

‘(g) a detailed and comprehensive statement explaining why the business unit is not a core business line as defined in point (36) of Article 2(1) of Directive 2014/59/EU of the European Parliament and of the Council (*) or as defined in any delegated act which the Commission is empowered to adopt pursuant to Article 2(2) of that Directive.

(*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).’;

(5) Article 5 is amended as follows:

(a) the heading is replaced by the following:

‘Documentation required to substantiate that the professional activities of the staff member or category of staff have no significant impact on the risk profile of a material business unit’;

(b) in paragraph 1, the introductory wording is replaced by the following:

‘1. When requesting prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923, supervised credit institutions shall submit the following documentation to the ECB in order to substantiate that the professional activities of a staff member, or the category of staff to which the staff member belongs, have no significant impact on the risk profile of a material business unit, as referred to in Article 6(2)(b) of Delegated Regulation (EU) 2021/923.’;

(c) point (c) of paragraph 1 is replaced by the following:

‘(c) a detailed description of the criteria established in Article 3 of Delegated Regulation (EU) 2021/923 that have been used to assess that the professional activities of the relevant staff member, or the category of staff to which the staff member belongs, have no significant impact on the risk profile of a material business unit, specifying how these criteria have been applied and how all relevant risk and performance indicators used for internal risk measurement purposes have been taken into account.’;

(d) point (d) of paragraph 1 is replaced by the following:

‘(d) a statement explaining why the supervised credit institution awarded the staff member, or category of staff to which the staff member belongs, a remuneration that meets the criteria established in Article 6(1) of Delegated Regulation (EU) 2021/923 even though the staff member has no significant impact on the risk profile of a material business unit.’;

(e) point (e) of paragraph 1 is replaced by the following:

‘(e) a reasoned statement explaining why the relevant staff member, or category of staff to which the staff member belongs, does not meet the qualitative criteria established in points (a) and (b) of Article 92(3) of Directive 2013/36/EU and in Article 5 of Delegated Regulation (EU) 2021/923.’;

(6) Article 6 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

‘1. When requesting prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 in respect of a staff member who was awarded a total remuneration of EUR 1 000 000 or more in or for the preceding financial year, supervised credit institutions shall submit the following documentation to the ECB in order to substantiate the exceptional circumstances referred to in Article 6(4) of Delegated Regulation (EU) 2021/923.’;

(b) point (b) of paragraph 1 is replaced by the following:

‘(b) a detailed description of any exceptional circumstances linked to the relevant staff member that explains why the supervised credit institution awarded the staff member remuneration of EUR 1 000 000 or more, even though the staff member reportedly does not have a material impact on the risk profile of the supervised credit institution.’;

(7) Article 7 is deleted;

(8) Article 8 is replaced by the following:

‘Article 8

Period for submitting requests for prior approval

Requests for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 shall be submitted without delay, and at the latest within 6 months from the end of the preceding financial year.’;

(9) Article 9 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

‘1. Based on the information contained in a request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923, the ECB shall assess;’

(b) point (b) of paragraph 1 is replaced by the following:

‘(b) the basis on which the supervised credit institution has determined that the staff member concerned, or the category of staff to which the staff member belongs, meets one of the conditions laid down in Article 6(2) of Delegated Regulation (EU) 2021/923;’

(c) points (i) and (ii) of paragraph 1(c) are replaced by the following:

‘(i) whether the supervised credit institution has duly taken into account the condition set out in Article 6(2)(a) of Delegated Regulation (EU) 2021/923 or set out in Article 6(2)(b) of Delegated Regulation (EU) 2021/923, as applicable; and

(ii) whether the supervised credit institution has demonstrated that the staff member concerned, or the category of staff to which the staff member belongs, for whom the request for prior approval as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923 is submitted, does not have an impact on the supervised credit institution’s risk profile comparably as material as that of those categories of staff specified in points (a), (b) or (c) of Article 92(3) of Directive 2013/36/EU;’

(d) point (d) of paragraph 1 is replaced by the following:

‘(d) with regard to the requests for prior approval for staff members awarded a total remuneration of EUR 1 000 000 or more, whether exceptional circumstances apply. In such cases the ECB shall inform the European Banking Authority of the results of the initial assessment prior to taking any decision.’

(e) paragraph 2 is replaced by the following:

‘2. The ECB shall issue a decision within 3 months of receipt of the complete documentation.’

(f) paragraph 3 is deleted;

(10) in Article 10, paragraph 1 is replaced by the following:

‘1. A prior approval granted by the ECB, as referred to in Article 6(3) of Delegated Regulation (EU) 2021/923, shall be limited to the performance of the staff member during the financial year following the year in which the ECB supervisory decision containing the approval was notified to the supervised credit institution.’

Article 2

Transitional provisions

1. Notifications filed pursuant to Article 4(4) of Delegated Regulation (EU) No 604/2014 and applications for prior approval filed pursuant to Article 4(5) of that Delegated Regulation submitted before 14 June 2021 shall continue to be subject to the procedures and requirements laid down in Decision (EU) 2015/2218 (ECB/2015/38) as they apply prior to the date on which this Decision enters into force.

2. Requests for prior approval filed pursuant to Article 6(3) of Delegated Regulation (EU) 2021/923 submitted prior to the entry into force of this Decision shall be subject to the procedures and requirements laid down in Decision (EU) 2015/2218 (ECB/2015/38) as they apply prior to the date on which this Decision enters into force.

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, 18 February 2022.

The President of the ECB
Christine LAGARDE
