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► **B** **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)

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**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)**

Article 1

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (1) ‘passporting decision’ means a decision of the ECB on the establishment of a branch by a significant supervised entity in a participating Member State or in another Member State based on national law transposing Article 35(3) of Directive 2013/36/EU, in conjunction with Article 17(1) of Regulation (EU) No 1024/2013 and Articles 11 and 17 of Regulation (EU) No 468/2014 (ECB/2014/17).

For the purposes of this Decision, a passporting decision also includes a decision of the ECB, in accordance with national law transposing Article 34(1)(d) of Directive 2013/36/EU, which grants consent to the declaration of a parent undertaking or undertakings to jointly and severally guarantee the commitments entered into by their subsidiary financial institution that intends to carry out activities listed in Annex I of Directive 2013/36/EU in a participating Member State or in another Member State, either by establishing a branch or by providing services;

- (2) ‘branch’ means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾;
- (3) ‘qualifying holding decision’ means a decision of the ECB on the acquisition of qualifying holdings in a supervised entity (target entity) pursuant to national law transposing Article 22 of Directive 2013/36/EU in conjunction with Article 15 of Regulation (EU) No 1024/2013;
- (4) ‘credit institution’ means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013;
- (5) ‘withdrawal decision’ means a decision of the ECB on the withdrawal of the authorisation as credit institution based on national law transposing Article 18 of Directive 2013/36/EU in conjunction with Article 14(5) of Regulation (EU) No 1024/2013;

⁽¹⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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- (6) ‘delegation decision’ and ‘delegated decision’ have the same meaning as in points (2) and (4) of Article 3 of Decision (EU) 2017/933 (ECB/2016/40), respectively;
- (7) ‘heads of work units’ means the heads of work units of the ECB to whom the power to adopt passporting, qualifying holding and withdrawal decisions is delegated;
- (8) ‘non-objection procedure’ means the procedure set out in Article 26(8) of Regulation (EU) No 1024/2013, and further specified in Article 13g of Decision ECB/2004/2;
- (9) ‘negative decision’ means a decision that does not or does not fully grant the authorisation as requested by the applicant, including negative decisions pursuant to Article 34(1)(d) and Article 35(3) of Directive 2013/36/EU. A decision with ancillary provisions such as conditions or obligations shall be considered as a negative decision unless such ancillary provisions: (a) ensure that the applicant fulfils the relevant legal requirements referred to in Articles 4(2) and 5(2) and Article 6(3) and (4) and have been agreed in writing; or (b) merely restate one or more of the existing requirements that the applicant has to comply with pursuant to provisions referred to in Articles 4(2) and 5(2) and Article 6(3) and (4) or require information on the fulfilment of one or more of such requirements;
- (10) ‘significant supervised entity’ means a significant supervised entity as defined in point (16) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (11) ‘supervised entity’ means a supervised entity as defined in point (20) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (12) ‘group’ means a group of undertakings which consists of a parent undertaking and its subsidiaries, or undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ⁽²⁾, including any sub-group thereof;
- (13) ‘national competent authority’ means a national competent authority as defined in point (2) of Article 2 of Regulation (EU) No 1024/2013;
- (14) ‘ECB guide’ means a document, adopted by the Governing Council upon a proposal from the Supervisory Board, which is published on the ECB's website and which gives guidance on the ECB's understanding of legal requirements;

⁽²⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

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- (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.

▼ B*Article 2***Subject matter and scope**

1. This Decision specifies the criteria for the delegation of decision-making powers to the heads of work units of the ECB for the adoption of passporting, qualifying holding and withdrawal decisions.
2. The delegation of decision-making powers is without prejudice to the supervisory assessment to be performed for the purposes of taking passporting, qualifying holding and withdrawal decisions.

*Article 3***Delegation of passporting, qualifying holding and withdrawal decisions**

1. In accordance with Article 4 of Decision (EU) 2017/933 (ECB/2016/40), the Governing Council hereby delegates to the heads of work units of the ECB, nominated by the Executive Board in accordance with Article 5 of that Decision, the power to adopt passporting, qualifying holding and withdrawal decisions.
2. Passporting, qualifying holding and withdrawal decisions shall be adopted by means of a delegated decision if the relevant criteria for the adoption of delegated decisions, set out in Articles 4, 5 and 6, are fulfilled.

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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.
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.

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5. Negative passporting, qualifying holding and withdrawal decisions shall not be adopted by means of a delegated decision.

6. Where a passporting, qualifying holding or withdrawal decision may not be adopted by means of a delegated decision, it shall be adopted in accordance with the non-objection procedure.

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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.

▼ B*Article 4***Criteria for the adoption of delegated qualifying holding decisions**

1. Qualifying holding decisions shall be taken by means of a delegated decision if any of the following criteria is met:

(a) the acquisition of a qualifying holding is the result of the addition or removal of an intermediate layer in the acquirer's group structure;

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(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;

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(c) the acquisition of a qualifying holding is the result of the increase of an existing qualifying holding, unless there have been material changes since the last assessment that affect at least one of the assessment criteria or the acquirer acquires control over the target entity;

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(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.

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2. The assessment of acquisitions of qualifying holdings shall be carried out in accordance with Article 23 of Directive 2013/36/EU as transposed into national law, also taking into consideration any applicable ECB guides or similar acts as may be issued by the ECB, as well as Guidelines of the European Supervisory Authorities⁽³⁾.

⁽³⁾ European Banking Authority, European Insurance and Occupational Pensions Authority, and European Securities and Markets Authority. Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, JC/GL/2016/01.

▼B*Article 5***Criteria for the adoption of delegated withdrawal decisions**

1. Withdrawal decisions may be taken by means of a delegated decision if all of the following criteria are met:

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(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;

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(b) no deposits from the public remain with the supervised entity after the withdrawal has become effective;

(c) the withdrawal is linked to a reorganisation within a group.

2. The assessment of withdrawal of authorisations shall be carried out in accordance with Article 18 of Directive 2013/36/EU as transposed into national law, also taking into consideration any applicable ECB guides or similar acts as may be issued by the ECB.

*Article 6***Criteria for the adoption of delegated passporting decisions**

1. Passporting decisions pursuant to Article 11 and Article 17(1) of Regulation (EU) No 468/2014 (ECB/2014/17) on the establishment of a branch by a significant supervised entity may be taken by means of a delegated decision if the total assets of the branch as estimated in the programme of operations do not exceed 10 % of the total assets of the significant supervised entity.

2. Passporting decisions pursuant to national law transposing Article 34(1)(d) of Directive 2013/36/EU which grant consent to the declaration of a parent undertaking or undertakings to jointly and severally guarantee the commitments entered into by their subsidiary financial institution may be taken by means of a delegated decision if the projected liability of the parent undertaking under the guarantee, pursuant to the business plan of activities conducted under the passporting decision, does not exceed 10 % of the total assets of the parent undertaking at individual level.

3. The assessment of requests for passporting decisions pursuant to Article 11 and Article 17(1) of Regulation (EU) No 468/2014 (ECB/2014/17) shall be carried out in accordance with the relevant provisions of the national law transposing Article 35(3) of Directive 2013/36/EU, also taking into consideration any applicable ECB guides or similar acts as may be issued by the ECB.

4. The assessment of requests for passporting decisions pursuant to national law transposing Article 34(1)(d) of Directive 2013/36/EU shall be carried out in accordance with the relevant provisions of the national law transposing Articles 34, 35 and 39 of Directive 2013/36/EU, also taking into consideration any applicable ECB guides or similar acts as may be issued by the ECB.

▼B*Article 7***Transitional provision**

This Decision shall not apply in cases where a draft proposal for a qualifying holding or withdrawal decision was submitted by the national competent authority to the ECB, 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 8***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*.