

DECISION (EU) 2017/934 OF THE EUROPEAN CENTRAL BANK
of 16 November 2016
on the delegation of decisions on the significance of supervised entities (ECB/2016/41)

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 6 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) Article 6(4) of Regulation (EU) No 1024/2013 sets out the criteria for a credit institution, financial holding company or mixed financial holding company to be classified as a significant supervised entity. The criteria for determining significance are specified in further detail in Part IV of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽³⁾.
- (2) Pursuant to Article 39 of Regulation (EU) No 468/2014 (ECB/2014/17), a supervised entity is considered significant if the European Central Bank (ECB) so determines in a decision addressed to the relevant supervised entity. Pursuant to Article 40 of that Regulation, if one or more supervised entities are part of a supervised group, the criteria for determining significance are determined at the highest level of consolidation within participating Member States and each supervised entity is considered significant in accordance with those criteria.
- (3) Pursuant to Article 43(3) of Regulation (EU) No 468/2014 (ECB/2014/17), the ECB may review, at any time after it receives relevant information, whether the criteria for significance are fulfilled.
- (4) New decisions on significance should be excluded from the scope of this Decision. The adoption of an amendment to a decision on significance should be without prejudice to the application of Article 22 of Regulation (EU) No 1024/2013 and of Part III, Title 2 of Regulation (EU) No 468/2014 (ECB/2014/17).
- (5) An amendment to a decision on significance that ceases to classify a significant supervised entity or a significant supervised group as significant should not be taken by means of a delegated decision where it is based on Article 70 of Regulation (EU) No 468/2014 (ECB/2014/17).
- (6) Each year, the ECB, as the competent authority for all significant supervised entities in the Single Supervisory Mechanism, is required to adopt a substantial number of decisions that amend existing decisions on significance. In order to enable its decision-making bodies to function, a delegation decision is necessary in relation to the adoption of decisions amending decisions on significance. The Court of Justice of the European Union (CJEU) has recognised delegation of authority to be necessary to enable an institution required to adopt a considerable number of decisions to perform its duties. Similarly, the CJEU has recognised the need to ensure that decision-making bodies are able to function as a principle inherent in all institutional systems ⁽⁴⁾. In order to facilitate the decision-making process in relation to the adoption of an amendment of a decision on significance, a delegation decision is necessary.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ See page 14 of this Official Journal.

⁽³⁾ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

⁽⁴⁾ Judgments of the Court of Justice of 23 September 1986, *AKZO Chemie BV and AKZO Chemie UK Ltd v Commission*, 5/85, ECLI:EU:C:1986:328, paragraph 37, and of 26 May 2005, *Carminio Salvatore Tralli v ECB*, C-301/02 P, ECLI:EU:C:2005:306, paragraph 59.

- (7) Delegation of decision-making powers should be limited, proportionate and based on specified criteria. While decisions on the significance of a supervised group contain a list of the entities that are included within the scope of the significant supervised group, such specified criteria should refer to an amendment to the composition of a significant supervised group or a change in the name of a significant supervised entity that should be justified and respect the principle of proportionality.
- (8) Decision (EU) 2017/933 (ECB/2016/40) clarifies the procedure to be followed for adopting specific supervisory decisions and the persons who may be delegated decision-making powers. That Decision does not affect the ECB's exercise of its supervisory tasks and is without prejudice to the Supervisory Board's competence to propose complete draft decisions to the Governing Council.
- (9) Where the criteria for the adoption of a delegated decision, as laid down in this Decision, are not met, amendments to a decision on significance should be adopted in accordance with the non-objection procedure set out in Article 26(8) of Regulation (EU) No 1024/2013 and Article 13g of Decision ECB/2004/2 ⁽¹⁾. This Decision should not affect the exercise of the ECB's supervisory tasks and be without prejudice to the competence of the Supervisory Board to propose complete draft decisions to the Governing Council.
- (10) ECB supervisory decisions may be subject to administrative review pursuant to Article 24 of Regulation (EU) No 1024/2013 and as further specified in Decision ECB/2014/16 ⁽²⁾. In the event of such administrative review, the Supervisory Board should take into account the opinion of the Administrative Board of Review and submit a new draft decision to the Governing Council for adoption under the non-objection procedure,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

- (1) 'amendment to a decision on significance' means a decision adopted following a significance review in accordance with Article 43(3) or 52(1) of Regulation (EU) No 468/2014 (ECB/2014/17), which amends or repeals an ECB decision that classified a supervised entity or a supervised group as significant for the purposes of Article 6(4) of Regulation (EU) No 1024/2013;
- (2) 'participating Member State' means a participating Member State as defined in point (1) of Article 2 of Regulation (EU) No 1024/2013;
- (3) '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);
- (4) 'supervised entity' means a supervised entity as defined in point (20) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (5) 'supervised group' means a supervised group as defined in point (21) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (6) 'significant supervised group' means a significant supervised group as defined in point (22) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (7) 'delegated decision' means a decision taken on the basis of a delegation of powers by the Governing Council pursuant to Decision (EU) 2017/933 (ECB/2016/40);
- (8) 'heads of work units' means the heads of work units of the ECB to whom the power to adopt amendments to decisions on significance is delegated.

⁽¹⁾ Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

⁽²⁾ Decision ECB/2014/16 of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules (OJ L 175, 14.6.2014, p. 47).

*Article 2***Delegation of amendments to decisions on significance**

1. In accordance with Article 4 of Decision (EU) 2017/933 (ECB/2016/40), the Governing Council hereby delegates the adoption of amendments to decisions on significance to the heads of work units nominated by the Executive Board in accordance with Article 5 of that Decision.
2. An amendment to a decision on significance shall only be adopted by means of a delegated decision if the criteria for the adoption of delegated decisions, as set out in Article 3, are fulfilled.

*Article 3***Criteria for the adoption of delegated decisions**

1. An amendment to a decision on significance that classifies a supervised entity as significant within a significant supervised group shall be taken by means of a delegated decision where the criteria for determining significance at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Part IV of Regulation (EU) No 468/2014 (ECB/2014/17) continue to be fulfilled for the significant supervised group.
2. An amendment to a decision on significance that ceases to classify a supervised entity as significant within a significant supervised group shall be taken by means of a delegated decision where the criteria for determining significance at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Part IV of Regulation (EU) No 468/2014 (ECB/2014/17) continue to be fulfilled for the significant supervised group, although the supervised entity has ceased to be part of such a group.
3. An amendment to a decision on significance that ceases to classify a significant supervised entity or a significant supervised group as significant shall be taken by means of a delegated decision only where the criteria for determining significance at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Part IV of Regulation (EU) No 468/2014 (ECB/2014/17) are no longer fulfilled.
4. An amendment to a decision on significance that alters the name of a significant supervised entity shall be taken by means of a delegated decision where no additional information relevant to the classification of the supervised entity has been communicated to the ECB.
5. An amendment to a decision on significance shall not be taken by means of a delegated decision where the relevant supervised entity or supervised group has been classified as significant in accordance with Article 59 of Regulation (EU) No 468/2014 (ECB/2014/17).
6. An amendment to a decision on significance shall not be taken by means of a delegated decision if the ECB receives a written submission that challenges the classification of a supervised entity as significant or less significant.

*Article 4***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, 16 November 2016.

The President of the ECB
Mario DRAGHI
