

DECISION (EU) 2023/672 OF THE EUROPEAN CENTRAL BANK**of 10 March 2023****on delegation of the power to adopt decisions relating to on-site inspections and internal model investigations (ECB/2023/5)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to 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 ⁽¹⁾, and in particular Article 99 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 ⁽²⁾, and in particular Articles 11 and 12 thereof,

Having regard to 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) ⁽³⁾, and in particular Articles 143, 144, 145 and 146 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) ⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

- (1) Within the framework of Article 6 of Regulation (EU) No 1024/2013, the European Central Bank (ECB) carries out the exclusive task to supervise credit institutions with the aim of ensuring a consistent application of supervisory standards, fostering financial stability and ensuring a level playing field.
- (2) Pursuant to Article 12 of Regulation (EU) No 1024/2013, the ECB, in order to carry out the tasks conferred on it by that Regulation, may conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 10(1) of that Regulation and any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with point (g) of Article 4(1) of that Regulation.
- (3) Pursuant to Article 99(1) of Directive 2013/36/EU, the ECB, as competent authority, adopts annually an ECB decision on a supervisory examination programme (SEP) (hereinafter a 'SEP decision') which contains, inter alia, the plan for inspections at the premises used by an institution, including its branches and subsidiaries established in other Member States in accordance with Articles 52, 119 and 122 of Directive 2013/36/EU. In particular, the SEP relates to on-site inspections of an institution's risk, risk controls and governance, and on-site inspections concerning in-depth assessments of internal models used by an institution for the calculation of own fund requirements, in particular with regard to methodologies, economic appropriateness, risks, risk controls and governance.

⁽¹⁾ OJ L 176, 27.6.2013, p. 338.

⁽²⁾ OJ L 287, 29.10.2013, p. 63.

⁽³⁾ OJ L 141, 14.5.2014, p. 1.

⁽⁴⁾ OJ L 141, 1.6.2017, p. 14.

- (4) A SEP decision may be amended in the course of the year in order to address the ECB's operational business needs, changes in the situation of supervised entities or requests of supervised entities, and to ensure the effective conduct of planned inspections. Amendments to a SEP decision must be made via a decision adopted by the ECB. Such amending decision may provide for the cancellation of approved inspections, an amendment of the scope of planned inspections or the inclusion of additional inspections in the SEP for the given year. Pursuant to Article 12(3) of Regulation (EU) No 1024/2013, the inspected legal entity is notified of the ECB decision to conduct an on-site inspection or internal model investigation prior to the start of the inspection.
- (5) In order to facilitate the decision-making process and enable the ECB to efficiently respond to changes in the situation of supervised entities which affect the conduct and scope of planned inspections, a delegation decision is necessary in relation to the adoption of such decisions amending SEP decisions. Such a delegation decision should allow for cases where a single delegated decision includes amendments to more than one planned inspection. The Court of Justice of the European Union has recognised that delegation of powers may be necessary to enable an institution required to adopt a considerable number of decisions to perform its duties. Similarly, it has recognised the need to ensure that decision-making bodies are able to function as a principle inherent to all institutional systems ⁽⁵⁾.
- (6) Delegation of decision-making powers should be limited and proportionate, and the scope of the delegation should be clearly defined.
- (7) On 24 June 2020, the Governing Council decided to establish close cooperation between the ECB and the Republic of Bulgaria ⁽⁶⁾. 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 this Decision.
- (8) Decision (EU) 2017/933 (ECB/2016/40) specifies the procedure to be followed for adopting delegation decisions concerning supervision 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, decisions 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 of the European Central Bank ⁽⁷⁾. Furthermore, the non-objection procedure should also be used where heads of work units have concerns regarding the fulfilment of assessment criteria due the complexity of the assessment or sensitivity of the matter and where the outcome of the relevant assessment directly impacts another decision and therefore the decisions should be considered simultaneously by the same decision-maker in order to prevent conflicting outcomes.
- (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 of the European Central Bank ⁽⁸⁾. 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,

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

⁽⁶⁾ 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).

⁽⁷⁾ Decision ECB/2004/2 of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

⁽⁸⁾ Decision ECB/2014/16 of the European Central Bank 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).

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

- (1) 'supervisory examination programme' or 'SEP' has the same meaning as in Article 99(1) of Directive 2013/36/EU;
- (2) 'SEP decision' means an ECB decision on a supervisory examination programme;
- (3) 'on-site inspection' means an inspection conducted at the business premises of any of the legal persons referred to in Article 10(1) of Regulation (EU) No 1024/2013 and any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with point (g) of Article 4(1) of Regulation (EU) No 1024/2013;
- (4) 'internal model investigation' means an on-site inspection in relation to the use of internal models for the calculation of the own funds requirements set out in Regulation (EU) No 575/2013 of the European Parliament and of the Council (*) for the purpose of adopting an internal models decision;
- (5) 'inspection' means an on-site inspection or an internal model investigation;
- (6) 'ECB supervisory decision' means an ECB supervisory decision as defined in point (26) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (7) '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);
- (8) 'less significant supervised entity' means a less significant supervised entity as defined in point (7) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (9) 'inspected legal entity' means any of the following:
 - (a) a significant institution;
 - (b) a less significant institution in respect of which the ECB has adopted a decision pursuant to point (b) of Article 6(5) of Regulation (EU) No 1024/2013 to the effect that the ECB will exercise directly all relevant powers referred to in Article 6(4) of that Regulation;
 - (c) any other legal entity as referred to in Article 10(1) of Regulation (EU) No 1024/2013 and any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with point (g) of Article 4(1) of Regulation (EU) No 1024/2013;
- (10) 'SSM resources' means the staff members of the ECB and national competent authorities which compose the on-site inspection team in accordance with Article 144 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (11) 'decision on on-site inspections' means any ECB decision amending the approved SEP decision in relation to one or more planned on-site inspections;
- (12) 'decision on internal model investigations' means any ECB decision amending the approved SEP decision in relation to one or more planned internal model investigations;
- (13) 'delegation decision' means a delegation decision as defined in point (2) of Article 3 of Decision (EU) 2017/933 (ECB/2016/40);
- (14) 'delegated decision' means a delegated decision as defined in point (4) of Article 3 of Decision (EU) 2017/933 (ECB/2016/40);
- (15) 'heads of work units' means the heads of work units of the ECB to whom the power to adopt decisions on on-site inspections and decisions on internal model investigations is delegated;

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

- (16) '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;
- (17) 'negative decision' means a decision that extends the scope of a planned on-site inspection or a planned internal model investigation, unless that decision is taken pursuant to a request by the supervised entity. A decision with ancillary provisions such as conditions, obligations or limitations shall be considered a negative decision unless such ancillary provisions (a) ensure that the supervised entity fulfils the requirements of relevant Union law and have been agreed in writing or (b) merely restate one or more of the existing requirements that the supervised entity has to comply with pursuant to Union law or require information on the fulfilment of one or more of such requirements;
- (18) '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) where 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 instructions to the ECB.

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 decisions on on-site inspections and decisions on internal model investigations.
2. The delegation of decision-making powers is without prejudice to the supervisory assessment to be performed for the purposes of taking ECB supervisory decisions following the on-site inspection and the internal model investigation.

Article 3

Delegation of decisions on on-site inspections and decisions on internal model investigations

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 nominated by the Executive Board in accordance with Article 5 of that Decision the power to adopt decisions on:
 - (a) on-site inspections pursuant to Article 12 of Regulation (EU) No 1024/2013;
 - (b) internal model investigations pursuant to Article 12 of Regulation (EU) No 1024/2013.
2. The delegation of decision-making powers pursuant to paragraph 1 shall apply to:
 - (a) the ECB's adoption of decisions;
 - (b) 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.
3. Decisions on on-site inspections as referred to in paragraph 1 shall be adopted by means of a delegated decision if one or more of the criteria for the adoption of delegated decisions, as set out in Article 4, are fulfilled.
4. Decisions on internal model investigations as referred to in paragraph 1 shall be adopted by means of a delegated decision if one or more of the criteria for the adoption of delegated decisions, as set out in Article 5, are fulfilled.

5. Decisions on on-site inspections and decisions on internal model investigations shall not be adopted by means of a delegated decision if the complexity of the assessment or the sensitivity of the matter require that they are adopted under the non-objection procedure or if the supervisory assessment of those decisions has a direct impact on the supervisory assessment of another decision which is to be adopted under the non-objection procedure.

6. Negative decisions on on-site inspections and negative decisions on internal model investigations shall not be adopted by means of a delegated decision.

Article 4

Criteria for the adoption of delegated decisions relating to on-site inspections

1. Decisions on on-site inspections shall be taken by means of a delegated decision only if they belong to one or more of the following categories and one or more of the relevant criteria specified for that category are met.

- (a) Decisions cancelling planned on-site inspections: such decisions shall be taken by means of a delegated decision if the planned on-site inspection cannot be conducted or has become devoid of purpose due to one or more of the following: (i) a change in the internal organisation or ownership of the inspected legal entity which makes it impossible to conduct the on-site inspection, (ii) the inspected legal entity's lack of readiness for the on-site inspection in the planned time period, according to the inspected legal entity's own statements;
- (b) Decisions changing the name of legal entities included in the scope of on-site inspections: such decisions shall be taken by means of a delegated decision if the specific decision is to be taken following the communication to the ECB of (i) a change in the ownership of an inspected legal entity, or (ii) a change of name of an inspected legal entity;
- (c) Decisions reducing the scope of planned on-site inspections: such decisions shall be taken by means of a delegated decision if the planned on-site inspection cannot be conducted within the scope originally planned due to one or more of the following: (i) the lack of availability of SSM resources to conduct the on-site inspection, (ii) a change in the internal organisation or ownership of the inspected legal entity which makes it impossible to conduct the on-site inspection, (iii) the inspected legal entity's lack of readiness for the on-site inspection in the planned time period according to the inspected legal entity's own statements;
- (d) Decisions rectifying clerical mistakes and other obvious inaccuracies in the SEP decision: such decisions shall be taken by means of a delegated decision if the rectifications do not affect the scope of the planned on-site inspection.

2. Heads of work units shall assess the appropriateness of amendments to the SEP decision for on-site inspections having regard to the supervisory purpose of the on-site inspection, the need for an effective and efficient conduct of on-site inspections, the availability of SSM resources and any relevant development affecting the inspected legal entity.

Article 5

Criteria for the adoption of delegated decisions relating to internal model investigations

1. Decisions on internal model investigations shall be taken by means of a delegated decision only if they belong to one or more of the following categories and one or more of the relevant criteria specified for that category are met.

- (a) Decisions cancelling planned internal model investigations: such decisions shall be taken by means of a delegated decision if the specific decision is to be taken in accordance with an inspected legal entity's (i) revocation of an application for the initial use or for material change or extension of internal models (hereinafter referred to as an 'application'), (ii) amendment of an application, (iii) request for a postponement of the decision on an application; or if the planned internal model investigation cannot be conducted due to the lack of availability of SSM resources to conduct the investigation;

- (b) Decisions changing the name of legal entities included in the scope of internal model investigations: such decisions shall be taken by means of a delegated decision if the specific decision is to be taken following the communication to the ECB of (i) a change in the ownership of an inspected legal entity, or (ii) a change of name of an inspected legal entity;
 - (c) Decisions amending the scope of planned internal model investigations: such decisions shall be taken by means of a delegated decision if the specific decision is taken in accordance with an inspected legal entity's revocation or amendment of an application;
 - (d) Decisions rectifying clerical mistakes and other obvious inaccuracies in the SEP decision: such decisions shall be taken by means of a delegated decision if the rectifications do not affect the scope of the planned internal model investigation.
2. Heads of work units shall assess the appropriateness of amendments to the SEP decision for internal model investigations having regard to the application submitted by the inspected legal entity triggering the investigations, the need for an effective and efficient conduct of investigations, the availability of SSM resources and any relevant development affecting the inspected legal entity.

Article 6

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, 10 March 2023.

The President of the ECB
Christine LAGARDE
