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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

DECISIONS

DECISION (EU) 2021/1437 OF THE EUROPEAN CENTRAL BANK

of 3 August 2021

amending Decision (EU) 2017/934 on the delegation of decisions on the significance of supervised entities (ECB/2021/33)

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) Decision (EU) 2017/934 of the European Central Bank (ECB/2016/41) ⁽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 on the significance of supervised entities. 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 amendments to decisions on significance 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) 2017/933 (ECB/2016/40).

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ OJ L 141, 1.6.2017, p. 14.

⁽³⁾ 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) (OJ L 141, 1.6.2017, p. 18).

⁽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).

- (4) Further, where heads of work units have concerns with regard to the complexity or the sensitivity – in terms of impact on the ECB's reputation and/or on the functioning of the Single Supervisory Mechanism – of an amendment to a decision on significance, such amendment to a decision on significance should be adopted under the non-objection procedure and not by means of a delegated decision. This amendment ensures alignment with the procedures set out in the delegation decisions adopted by the Governing Council pursuant to Article 4 of Decision (EU) 2017/933 (ECB/2016/40) in relation to other types of supervisory decisions.
- (5) Therefore, Decision (EU) 2017/934 (ECB/2016/41) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision (EU) 2017/934 (ECB/2016/41) is amended as follows:

1. in Article 1, the following point (9) is added:

'(9) "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. in Article 2, the following paragraphs 3 to 5 are added:

'3. An amendment to a decision on significance shall not be adopted by means of a delegated decision if the complexity of the assessment or sensitivity of the matter requires that it is 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 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.

5. Heads of work units shall submit an amendment to a decision on significance that fulfils the criteria for the adoption of delegated decisions set out in Article 3 to the Supervisory Board and the Governing Council for adoption under the non-objection procedure if the supervisory assessment of that amendment to a decision on significance has a direct impact on the supervisory assessment of another decision which is to be adopted under the non-objection procedure.'

Article 2

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

DECISION (EU) 2021/1438 OF THE EUROPEAN CENTRAL BANK**of 3 August 2021****amending Decision (EU) 2017/935 on delegation of the power to adopt fit and proper decisions and the assessment of fit and proper requirements (ECB/2021/34)**

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)(e) 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) 2017/935 of the European Central Bank (ECB/2016/42) ⁽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 fit and proper decisions and the assessment of fit and proper requirements. 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 relation to fit and proper 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. Nevertheless, this clarification of the procedure for delegating decision-making powers should not interfere with the possibility of splitting a decision on the appointment of several members of a management body where for one or more appointees the delegation criteria are not met.
- (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) 2017/935 (ECB/2016/42).
- (4) A fit and proper 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 fit and proper 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) 2017/935 of the European Central Bank of 16 November 2016 on delegation of the power to adopt fit and proper decisions and the assessment of fit and proper requirements (ECB/2016/42) (OJ L 141, 1.6.2017, p. 21).

⁽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 224 I, 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 224 I, 13.7.2020, p. 4).

- (5) The scope of fit and proper decisions that are delegated should be extended to include (a) decisions authorising additional non-executive directorships within the meaning of Article 91(6) of Directive 2013/36/EU of the European Parliament and of the Council ⁽⁶⁾; (b) decisions as to whether branch managers – as defined in accordance with applicable law – fulfil the fit and proper requirements; and (c) decisions as to whether persons to whom the management body delegates, partially or fully, the executive function – whether or not the persons have been proposed or appointed as formal members of the institution's governing body or bodies under national law – fulfil the fit and proper requirements. This extension of the scope of fit and proper decisions that are delegated is appropriate, as the underlying assessments of such decisions are similar in nature to assessments undertaken in connection with standard fit and proper decisions.
- (6) Further, the scope of fit and proper decisions that are delegated should be extended to include decisions concerning reappointments where the ECB has not objected to the previous appointment and no material new facts have occurred since the last assessment that affect one or more of the assessment criteria.
- (7) To simplify the criteria applied to determine whether a fit and proper decision is delegated and to bring the present delegation scheme in line with other delegation schemes, a definition of 'negative decision' should be added. For the same reason of alignment with other delegation schemes, the requirement – applicable in the case a fit and proper decision to be adopted by means of a delegated decision – that the relevant national competent authority submits to the ECB a draft delegated decision 20 working days prior to the expiry of the deadline for the adoption of the fit and proper decision under applicable law, should be removed.
- (8) In cases where a fact or facts related to criminal or administrative proceedings is or are submitted to the ECB in connection with a fit and proper decision, the criterion applied to determine whether that decision is adopted by means of a delegated decision should be clarified to focus on proceedings that have an impact on the suitability of the appointee.
- (9) Therefore, Decision (EU) 2017/935 (ECB/2016/42) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

1. Article 1 is amended as follows:

(a) point (2) is replaced by the following:

'(2) "fit and proper decision" means an ECB decision (i) stating whether an individual fulfils the fit and proper requirements, or (ii) authorising a member of a management body to hold one additional non-executive directorship pursuant to Article 91(6) of Directive 2013/36/EU;'

(b) point (10) is replaced by the following:

'(10) "member" means any one or more of the following: (i) a proposed or appointed member of a management body; (ii) where applicable, a proposed or appointed key function holder as defined in accordance with applicable law; (iii) a proposed or appointed branch manager as defined in accordance with applicable law; and (iv) a person to whom the management body delegates, partially or fully, the executive function, whether or not that person has been proposed or appointed as a formal member of the institution's governing body or bodies under national law;'

⁽⁶⁾ 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).

(c) point (14) is replaced by the following:

'(14) "Guide to fit and proper assessments" means a document with this title including future versions thereof and including any other document containing guiding principles for fit and proper assessments that may in future replace or complement it, adopted and amended from time to time in accordance with the non-objection procedure and published on the ECB's website;'

(d) the following point (16) is added:

'(16) "negative decision" means a decision that does not or does not fully grant the authorisation as requested by the significant supervised entity or the member. 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 supervised entity fulfils the requirements of relevant Union law referred to in Article 4 and have been agreed in writing or (b) merely restate one or more of the existing requirements that the institution has to comply with pursuant to provisions referred to in Article 4 or require information on the fulfilment of one or more of such requirements;'

(e) the following point (17) is added:

'(17) "ECB Guide on options and discretions available in Union law" means a document with this title including future versions thereof and including any other document containing guiding principles on options and discretions available in Union law that may in future replace or complement it, adopted and amended from time to time in accordance with the non-objection procedure and published on the ECB's website.'

(f) the following point (18) is added:

'(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) 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. in Article 2, the following paragraph 3 is added:

'3. 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 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. Article 3 is replaced by the following:

'Article 3

Scope of delegation

1. A fit and proper decision shall not be adopted by means of a delegated decision if any one of the following criteria is met:

(a) the relevant supervised entity is one of the following:

(i) the supervised entity at the highest level of consolidation within the participating Member States of a significant supervised group;

(ii) the credit institution with the largest total value of assets in a significant supervised group, if this entity is different to that referred to in point (i);

(iii) a significant supervised entity that is not part of a significant supervised group;

- (b) the decision is a negative decision;
- (c) any of the following facts is submitted to the ECB:
 - (i) the member is currently subject to criminal proceedings before a court of law or has been convicted of a criminal offence at first or final instance; or
 - (ii) an investigation has been or is currently being carried out in relation to, or an enforcement action or an administrative sanction is pending against or has been imposed upon, the member for non-compliance with any financial services legislation or regulatory provisions;

unless the relevant fact does not impact the reputation of the member based on an assessment in accordance with the criteria specified in the Guide to fit and proper assessments, in particular regarding the nature of the charge or accusation, the severity of the penalty and the time passed (at least five years since the imposition of a sanction or measure);

- (d) the complexity of the assessment or the sensitivity of the matter requires that the fit and proper decision is adopted under the non-objection procedure.

2. Notwithstanding paragraph 1, a fit and proper decision shall be adopted by means of a delegated decision if it concerns the reappointment of the same person for the same position in the same supervised entity, the ECB has not objected to the previous appointment, and no material new facts have occurred since the last assessment that affect one or more of the assessment criteria.

3. Where, pursuant to paragraphs 1 and 2, a fit and proper decision cannot be adopted by means of a delegated decision, it shall be adopted in accordance with applicable law and the non-objection procedure.

4. Heads of work units shall submit a fit and proper decision that fulfils the criteria for the adoption of delegated decisions set out in this Article to the Supervisory Board and the Governing Council for adoption under the non-objection procedure if the supervisory assessment of that fit and proper decision has a direct impact on the supervisory assessment of another decision which is to be adopted under the non-objection procedure.

5. Notwithstanding paragraph 4, if the assessment of the fit and proper requirements concerns more than one member of a management body and pursuant to paragraphs 1 and 2 a decision cannot be adopted by means of a delegated decision with regard to one or more of them, the assessment shall result in two fit and proper decisions. One decision shall be adopted by means of the non-objection procedure and the other by means of a delegated decision.;

4. Article 4 is amended as follows:

- (a) the introductory phrase is replaced by the following:

‘1. The assessment of the fit and proper requirements for members shall be carried out in accordance with applicable law taking into account the Guide to fit and proper assessments (chapters on assessment criteria and on fit and proper related authorisations) covering, where applicable, the following criteria:;

- (b) the following paragraph 2 is added:

‘2. The assessment of the authorisation to a member of the management body to hold one additional non-executive directorship shall be carried out in accordance with the applicable law implementing Article 91(6) of Directive 2013/36/EU and taking into account the Guide to fit and proper assessments (section on time commitment) and the criteria in the ECB Guide on options and discretions available in Union law.’.

Article 2

Transitional provision

The provisions of Decision (EU) 2017/935 (ECB/2016/42) shall continue to apply, as unamended, in cases where a proposal for a fit and proper decision was submitted by a 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

DECISION (EU) 2021/1439 OF THE EUROPEAN CENTRAL BANK**of 3 August 2021****amending Decision (EU) 2018/546 on delegation of the power to adopt own funds decisions
(ECB/2021/35)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to 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 ⁽¹⁾, and in particular Article 26(2), Article 26(3) and Articles 28, 29, 77, 78 and 78a 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 Article 4(1)(d) 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) ⁽³⁾, and in particular Article 4 thereof,

Whereas:

- (1) Decision (EU) 2018/546 of the European Central Bank (ECB/2018/10) ⁽⁴⁾ specifies the criteria for the delegation of decision-making powers to heads of work units of the European Central Bank (ECB) for the adoption of own funds decisions. 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 own funds 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 ⁽⁵⁾, and between the ECB and the Republic of Croatia ⁽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 Decision (EU) 2018/546 (ECB/2018/10).
- (4) An own funds 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 an own funds decision should be adopted under the non-objection procedure and not by means of a delegated decision

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

⁽²⁾ OJ L 287, 29.10.2013, p. 63.

⁽³⁾ OJ L 141, 1.6.2017, p. 14.

⁽⁴⁾ Decision (EU) 2018/546 of the European Central Bank of 15 March 2018 on delegation of the power to adopt own funds decisions (ECB/2018/10) (OJ L 90, 6.4.2018, p. 105).

⁽⁵⁾ 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).

⁽⁶⁾ 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) To facilitate the decision-making process a delegation of decision-making powers is necessary in relation to the adoption of permissions to include interim or year-end profits in Common Equity Tier 1 capital before the institution has taken a formal decision confirming the final profit or loss of the institution for the year, pursuant to Article 26(2) of Regulation (EU) No 575/2013. However, if the requirements in order for Decision (EU) 2015/656 of the European Central Bank (ECB/2015/4) ⁽⁷⁾ to apply are met, then that Decision should apply.
- (6) Furthermore, to facilitate the decision-making process a delegation of decision-making powers is necessary in relation to the ECB's response to a consultation request received from a resolution authority pursuant to Article 78a of Regulation (EU) No 575/2013, concerning the margin by which an institution should exceed the requirements for own funds and eligible liabilities laid down in Regulation (EU) No 575/2013, Directive 2013/36/EU of the European Parliament and of the Council ⁽⁸⁾ and Directive 2014/59/EU of the European Parliament and of the Council ⁽⁹⁾ following an action by the institution as referred to in Article 77(2) of Regulation (EU) No 575/2013.
- (7) Therefore, Decision (EU) 2018/546 (ECB/2018/10) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision (EU) 2018/546 (ECB/2018/10) is amended as follows:

1. Article 1 is amended as follows:

(a) point (1) is replaced by the following:

'(1) "own funds decision" means any of the following decisions: (a) a decision of the ECB on permission to classify an instrument as a Common Equity Tier 1; (b) a decision of the ECB on permission to classify an instrument as Additional Tier 1 or Tier 2 instrument; (c) a decision of the ECB on permission to include interim or year-end profits; and (d) a decision of the ECB on permission for an own funds reduction. For the purposes of this Decision, an own funds decision also includes the approval of the ECB's response to a consultation request from a resolution authority on the reduction of eligible liabilities instruments;'

(b) the following points (16), (17) and (18) are added:

'(16) "significant supervised group" means a significant supervised group as defined in point (22) of Article 2 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) *;'

(17) "general prior permission" means a general permission to take any of the actions set out in Article 77(1) of Regulation (EU) No 575/2013 to reduce own funds which is granted in accordance with the second subparagraph of Article 78(1) of that Regulation;'

⁽⁷⁾ Decision (EU) 2015/656 of the European Central Bank of 4 February 2015 on the conditions under which credit institutions are permitted to include interim or year-end profits in Common Equity Tier 1 capital in accordance with Article 26(2) of Regulation (EU) No 575/2013 (ECB/2015/4) (OJ L 107, 25.4.2015, p. 76).

⁽⁸⁾ 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).

⁽⁹⁾ 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).

- (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) 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.

* 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).;

2. Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘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 adoption of the following own funds decisions:

- (a) on permission for the classification of capital instruments as Common Equity Tier 1 instruments, as provided for in Article 26(3) of Regulation (EU) No 575/2013;
- (b) on permission for the classification of capital instruments as Additional Tier 1 or Tier 2 instruments, where required by national law;
- (c) on permission in relation to own funds reductions, as provided for in Article 77(1) of Regulation (EU) No 575/2013;
- (d) on permission for the inclusion by an institution of interim or year-end profits in Common Equity Tier 1 capital before the institution has taken a formal decision confirming the final profit or loss of the institution for the year, as provided for in Article 26(2) of Regulation (EU) No 575/2013;
- (e) on responses to consultation requests from a resolution authority under Article 78a of Regulation (EU) No 575/2013, including the agreement on the proposed margin by which, following the action referred to in Article 77(2) of Regulation (EU) No 575/2013, the resolution authority considers necessary that the own funds and eligible liabilities of the institution must exceed its requirements.’;

(b) paragraph 2 is replaced by the following:

‘2. The own funds decisions referred to in paragraph 1 shall be adopted by means of a delegated decision if the criteria for the adoption of delegated decisions, as set out in Articles 3, 4, 5, 5a and 5b, are fulfilled.’;

(c) paragraph 3 is replaced by the following:

‘3. Own funds decisions shall not be adopted by means of a delegated decision if the complexity of the assessment or sensitivity of the matter require that they are adopted under the non-objection procedure.’;

(d) the following paragraphs 4 and 5 are added:

‘4. Heads of work units shall submit an own funds decision that fulfils the criteria for the adoption of delegated decisions set out in Articles 3 to 5b to the Supervisory Board and the Governing Council for adoption under the non-objection procedure where the supervisory assessment of that own funds decision has a direct impact on the supervisory assessment of another decision which is to be adopted under the non-objection procedure.

5. 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 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 approval of the ECB's response to consultation requests from a resolution authority under Article 78a of Regulation (EU) No 575/2013, including the agreement on the proposed margin by which, following the action referred to in Article 77(2) of Regulation (EU) No 575/2013, the resolution authority considers necessary that the own funds and eligible liabilities of the institution must exceed its requirements.;

3. the title of Article 3 is replaced by the following:

'Criteria for the adoption of delegated decisions on permission to classify instruments as Common Equity Tier 1 instruments';

4. in Article 3, paragraph 1 is replaced by the following:

'1. Decisions on the classification of capital instruments as Common Equity Tier 1 instruments shall be taken by means of a delegated decision if the type of instruments in respect of which permission is sought has been included, at the time the application was received by the ECB, in the EBA list.;

5. the title of Article 4 is replaced by the following:

'Criteria for the adoption of delegated decisions on permission to classify instruments as Additional Tier 1 or Tier 2 instruments';

6. in Article 4, paragraph 1 is replaced by the following:

'1. Where permission is required under national law, decisions on permission to classify capital instruments as Additional Tier 1 or Tier 2 instruments shall be taken by means of a delegated decision.;

7. in Article 4, paragraph 2 is replaced by the following:

'2. Negative decisions shall not be adopted by means of a delegated decision.;

8. Article 5 is amended as follows:

(a) the title is replaced by the following:

'Criteria for the adoption of delegated decisions on permission for own funds reductions';

(b) paragraph 1 is replaced by the following:

'1. Decisions on permission for own funds reductions shall be taken by means of a delegated decision in accordance with the provisions of paragraphs 2, 3, 3a, 4 and 4a.;

(c) paragraph 2 is replaced by the following:

'2. For reductions with replacement, decisions shall be taken by means of a delegated decision if:

- (a) the replacing instrument is a Common Equity Tier 1 instrument with a nominal amount at least equal to the nominal amount of the replaced instrument; or
- (b) the replacing instrument is an Additional Tier 1 instrument with a nominal amount at least equal to the nominal amount of the replaced instrument, if the replaced instrument is an Additional Tier 1 instrument; or
- (c) the replacing instrument is an Additional Tier 1 or Tier 2 instrument with a nominal amount at least equal to the nominal amount of the replaced instrument, if the replaced instrument is a Tier 2 instrument.

Where a replacing instrument or a replaced instrument referred to in points (a) to (c) does not have a nominal amount, the amount referred to shall instead be the notional amount of that instrument.

Where the nominal amount (or, in the circumstance referred to in the previous subparagraph, the notional amount) of a replaced instrument is higher than the amount of that instrument that qualifies as own funds, the amount referred to shall instead be the amount that qualifies as own funds.;

(d) in paragraph 3, point (a) is replaced by the following:

'(a) following the reduction, the own funds exceed and are estimated to continue exceeding, for at least three financial years after the date of the application, the requirements laid down in Article 92(1)(a), (b) and (c) of Regulation (EU) No 575/2013, the own funds required to be held in accordance with Article 16(2)(a) of Regulation (EU) No 1024/2013, the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU and the Pillar 2 capital guidance as set out in the last available SREP decision; and';

(e) in paragraph 3, point (b) is replaced by the following:

'(b) the impact of the reduction on the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio and the total capital ratio is below 100 basis points on a consolidated level of a significant supervised group or on an individual level of a significant supervised entity, if such significant supervised entity is not part of a significant supervised group. If the purpose of the reduction is to cover existing losses or negative reserves and such reduction has no impact on the level of own funds this 100 basis point threshold criterion shall be deemed to be fulfilled.;

(f) the following paragraph 3a is inserted:

'3a. Decisions on general prior permission pursuant to the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013 and decisions on permission for a certain predetermined amount pursuant to Article 32(2) of Commission Delegated Regulation (EU) No 241/2014 * shall be taken by means of a delegated decision if the conditions set out in paragraph 3 are met or if the decision is a renewal of an existing decision and is granted for the same or a lower predetermined amount.

* Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).;

(g) the following paragraph 4a is inserted:

'4a. Decisions on permission for own funds reductions may be revoked by means of a delegated decision where the revocation is requested by the addressee of the decision.;

(h) paragraph 5 is replaced by the following:

'5. Where, pursuant to paragraphs 1 to 4a, a decision on an own funds reduction cannot be adopted by means of a delegated decision, it shall be adopted in accordance with the non-objection procedure.;

9. the following Article 5a is inserted:

'Article 5a

Criteria for the adoption of delegated decisions on permission to include interim and year-end profits in Common Equity Tier 1 capital

1. Decisions pursuant to Article 26(2) of Regulation (EU) No 575/2013 on permission to include interim or year-end profits in Common Equity Tier 1 capital before the institution has taken a formal decision confirming the final profit or loss of the institution for the year, including those which do not meet the requirement under Article 3(2) of Decision (EU) 2015/656 (ECB/2015/4), shall be taken by means of a delegated decision if the criteria set out below are fulfilled:

- (a) the verification requirement under Article 26(2)(a) of Regulation (EU) No 575/2013 has been complied with in accordance with Article 4 of Decision (EU) 2015/656 (ECB/2015/4);
 - (b) the institution has demonstrated that any foreseeable charges or dividends have been deducted from the amount of profits in accordance with paragraphs 1, 2, and 5 of Article 5 of Decision (EU) 2015/656 (ECB/2015/4) and point (c), as applicable;
 - (c) the amount of foreseeable dividends to be deducted by the institution from the interim or year-end profits is determined in accordance with paragraphs 2, 4, 5, and 6 of Article 2 of Delegated Regulation (EU) No 241/2014 or, in the circumstances specified in Article 5(3) of Decision (EU) 2015/656 (ECB/2015/4), a higher amount calculated in accordance with that Article is deducted.
2. Negative decisions shall not be adopted by means of a delegated decision.’;
10. the following Article 5b is inserted:

‘Article 5b

Criteria for the approval of responses to consultation requests from a resolution authority on the reduction of eligible liabilities instruments

1. Where the ECB is consulted or its agreement is sought by a resolution authority under Article 78a(1) of Regulation (EU) No 575/2013, the decision on the approval of the ECB’s response to such consultation request shall be taken by means of delegation, unless the conditions of paragraph 2 are met.
2. Where the ECB disagrees or partially disagrees with the resolution authority concerning the matter in respect of which the ECB has been consulted or its agreement has been sought under Article 78a(1) of Regulation (EU) No 575/2013, the decision on the approval of the ECB’s response shall not be taken by means of a delegated decision.’.

Article 2

Transitional provision

The provisions of Decision (EU) 2018/546 (ECB/2018/10) shall continue to apply, as unamended, in cases where the application requesting approval for any of the operations referred to in Article 2(1) of that Decision, as unamended, was submitted 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

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

DECISION (EU) 2021/1441 OF THE EUROPEAN CENTRAL BANK**of 3 August 2021****amending Decision (EU) 2019/322 on delegation of the power to adopt decisions regarding supervisory powers granted under national law (ECB/2021/37)**

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)(d) and (e), and Articles 4(3) and 9(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) 2019/322 of the European Central Bank (ECB/2019/4) ⁽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 national powers decisions. 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 national powers 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) 2019/322 (ECB/2019/4).
- (4) A national powers 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 national powers 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) 2019/322 of the European Central Bank of 31 January 2019 on delegation of the power to adopt decisions regarding supervisory powers granted under national law (ECB/2019/4) (OJ L 55, 25.2.2019, p. 7).

⁽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) Regulation (EU) 2019/876 of the European Parliament and of the Council ⁽⁶⁾ has introduced the possibility for credit institutions, subject to certain conditions, to classify as Common Equity Tier 1 instruments subsequent issuances of a form of Common Equity Tier 1 instruments for which they have already received permission, without specific supervisory approval. In that connection, it is appropriate to allow for delegation of decisions approving amendments to statutes of credit institutions in relation to the issuance of such instruments where the applicable conditions are deemed by the ECB to have been met.
- (6) A merger or a demerger of a significant supervised entity may require amendments to the entity's statutes to reflect the situation of that entity as a result of the merger or demerger. In such cases, the supervisory assessment of the merger or demerger also considers the resulting amendments to the entity's statutes, notwithstanding that the approval of those amendments is the subject of a separate supervisory procedure. It is therefore appropriate to allow for delegation of decisions approving amendments to statutes in cases where those amendments result from a merger or demerger.
- (7) Therefore, Decision (EU) 2019/322 (ECB/2019/4) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision (EU) 2019/322 (ECB/2019/4) is amended as follows:

1. Article 1 is amended as follows:

(a) point (2) is replaced by the following:

'(2) "acquisition of a holding" means: (a) the acquisition of a direct or indirect holding of capital or of voting rights in another entity, including as a result of the establishment of a new entity, other than the acquisition of a qualifying holding within the meaning of Article 22 of Directive 2013/36/EU of the European Parliament and of the Council (*); and (b) any transaction that is equivalent under the relevant national law to such an acquisition;

(*) 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).';

(b) point (17) is replaced by the following:

'(17) "non-core support services" means ancillary services supporting the principal business of a credit institution including administrative services, customer services, debt collection services, e-signatures or other similar services';

⁽⁶⁾ Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

(c) the following point (19) is added:

'(19) "regulated entity" means a regulated entity as defined in point (4) of Article 2 of Directive 2002/87/EC of the European Parliament and of the Council (*).

(*): Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).';

(d) the following point (20) is added:

'(20) "ECB Guide on the supervisory approach to consolidation in the banking sector" means a document with this title containing the principles underpinning the prudential supervisory approach followed by the ECB when determining whether the arrangements implemented by a credit institution resulting from a consolidation ensure the sound management and coverage of its risks, adopted and amended from time to time in accordance with the non-objection procedure and published on the ECB's website;'

(e) the following point (21) is added:

'(21) "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. National powers decisions shall not be adopted by means of a delegated decision if national law requires supervisory approval of credit institutions' strategic measures or if the complexity of the assessment or sensitivity of the matter requires that they are adopted under the non-objection procedure.'

(b) the following paragraph 3a is inserted:

'3a Heads of work units shall submit a national powers decision that fulfils the criteria for the adoption of delegated decisions set out in Articles 4 to 14 to the Supervisory Board and the Governing Council for adoption under the non-objection procedure if the supervisory assessment of that national powers decision has a direct impact on the supervisory assessment of another decision which is to be adopted under the non-objection procedure.'

(c) 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 under national law;

(c) the ECB's approval of replies or reports issued by the ECB at the request of authorities of participating Member States in respect of national powers;

(d) 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. in paragraph 1 of Article 4, the introductory phrase of point (a) is replaced by the following:
 - '(a) the impact on the own funds of the acquiring significant supervised entity, on both a consolidated and an individual basis, is limited, which means that:';
4. in paragraph 1 of Article 5, the introductory phrase of point (a) is replaced by the following:
 - '(a) the impact on the own funds of the acquiring significant supervised entity as a result of the acquisition, on both a consolidated and an individual basis, is limited, which means that:';
5. in paragraph 1 of Article 6, the introductory phrase of point (a) is replaced by the following:
 - '(a) the impact on the own funds of the selling significant supervised entity, on both a consolidated and an individual basis, is limited, which means that:';
6. in paragraph 1 of Article 7, the introductory phrase of point (a) is replaced by the following:
 - '(a) the impact on the own funds of the selling significant supervised entity as a result of the sale of assets or liabilities, on both a consolidated and an individual basis, is limited, which means that:';
7. Article 8 is amended as follows:
 - (a) in paragraph 1, the introductory phrase of point (a) is replaced by the following:
 - '(a) the impact on the own funds of the significant supervised entity resulting from the merger, on both a consolidated and an individual basis, is limited, which means that:';
 - (b) paragraph 3 is replaced by the following:
 - '3. The assessment of mergers shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides, including the ECB Guide on the supervisory approach to consolidation in the banking sector, as well as national competent authorities' policy stances, guidance or similar acts.';
8. in paragraph 1 of Article 9, the introductory phrase of point (a) is replaced by the following:
 - '(a) the impact on the own funds of the significant supervised entity or entities resulting from the demerger, on both a consolidated and an individual basis, is limited, which means that:';
9. in paragraph 1 of Article 11, point (b) is replaced by the following:
 - '(b) the service provider is a regulated entity that is established in the Union and authorised to perform the outsourced services; or';
10. paragraph 1 of Article 12 is amended as follows:
 - (a) point (d) is replaced by the following:
 - '(d) amendments concerning the share capital of a significant supervised entity where:
 - (i) the related own funds decision, e.g. on the classification of capital instruments as Common Equity Tier 1 instruments or the reduction of own funds, is also delegated; or
 - (ii) the significant supervised entity has classified an issuance in accordance with the provisions of the second subparagraph of Article 26(3) of Regulation (EU) No 575/2013 and the ECB deems that the notification made by the significant supervised entity in accordance with point (b) of that subparagraph complies with the notification requirements.';
 - (b) the following point (f) is added:
 - '(f) amendments that exclusively reflect changes resulting from a merger or a demerger previously approved by the ECB.';

*Article 2***Transitional provision**

The provisions of Decision (EU) 2019/322 (ECB/2019/4) shall continue to apply, as unamended, in cases where the application requesting approval for any of the operations referred to in Article 3(1) of that Decision, as unamended, was submitted 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

DECISION (EU) 2021/1442 OF THE EUROPEAN CENTRAL BANK**of 3 August 2021****on delegation of the power to adopt decisions on internal models and on extension of deadlines
(ECB/2021/38)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to 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 ⁽¹⁾, and in particular Articles 148, 149 and 150 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 Article 4(1)(e) 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) ⁽³⁾, 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 4(1)(e) of Regulation (EU) No 1024/2013, the ECB, as the competent authority for significant supervised entities, is responsible for granting prior permission to significant supervised entities for extension of the deadline for implementing sequentially the Internal Ratings Based Approach to calculate their own funds requirements for credit risk across different classes of exposures and business units pursuant to Article 148 of Regulation (EU) No 575/2013, to revert to the use of less sophisticated approaches pursuant to Article 149 of Regulation (EU) No 575/2013 and to permanently use the Standardised Approach pursuant to Article 150 of Regulation (EU) No 575/2013.
- (3) ECB supervisory decisions may contain obligations or requirements which the addressee must fulfil by a specific deadline, where this is necessary in order to ensure a proper implementation of the decision or other requirements. On the request of supervised entities, the ECB may extend the deadline for obligations or requirements by means of another supervisory decision, where this is considered reasonable. Moreover, on the request of proposed acquirers, the ECB may extend the maximum period for concluding the proposed acquisition of a qualifying holding in a credit institution.
- (4) The ECB, as the competent authority, is required to adopt a substantial number of internal models decisions and decisions on the extension of deadlines each year. To facilitate the decision-making process a delegation decision is necessary in relation to the adoption of such decisions. The Court of Justice of the European Union 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, it has recognised the need to ensure that decision-making bodies are able to function as a principle inherent to all institutional systems ⁽⁴⁾.
- (5) Delegation of decision-making powers should be limited and proportionate, and the scope of the delegation should be clearly defined.

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

⁽²⁾ OJ L 287, 29.10.2013, p. 63.

⁽³⁾ OJ L 141, 1.6.2017, p. 14.

⁽⁴⁾ 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) On 24 June 2020, the Governing Council decided to establish close cooperation between the ECB and the Republic of Bulgaria ⁽⁵⁾, and between the ECB and the Republic of Croatia ⁽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.
- (7) 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.
- (8) Where the criteria for the adoption of a delegated decision are not met, decisions should be adopted in accordance with the non-objection procedure pursuant to 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 for internal model decisions or extension of deadlines decisions due the complexity of the assessment or sensitivity of the matter and where the outcome of the relevant 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.
- (9) 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,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

- (1) 'internal models decision' means a decision of the ECB on prior permission for extension of the deadline to implement sequentially the Internal Ratings Based Approach to calculate their own funds requirements for credit risk across different exposure classes pursuant to Article 148 of Regulation (EU) No 575/2013, to revert to the use of less sophisticated approaches pursuant to Article 149 of Regulation (EU) No 575/2013 and to permanently use the Standardised Approach pursuant to Article 150 of Regulation (EU) No 575/2013;
- (2) 'Standardised Approach' means the approach for calculating the risk-weighted exposure amounts for the purposes of points (a) and (f) of Article 92(3) of Regulation (EU) No 575/2013 provided for in Part Three, Title II, Chapter 2 of that Regulation;

⁽⁵⁾ 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).

⁽⁶⁾ 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).

⁽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).

- (3) 'Internal Ratings Based Approach' (IRB Approach) means the approach for calculating the risk-weighted exposure amounts for the purposes of points (a) and (f) of Article 92(3) of Regulation (EU) No 575/2013 provided for in Part Three, Title II, Chapter 3 of that Regulation;
- (4) 'Common Equity Tier 1 capital ratio', 'Tier 1 capital ratio' and 'total capital ratio' mean Common Equity Tier 1 capital ratio, Tier 1 capital ratio and total capital ratio, respectively, as referred to in Article 92(2) of Regulation (EU) No 575/2013;
- (5) 'obligation' means an ancillary provision to a supervisory decision that requires the addressee or addressees to take action by a deadline in order to ensure the proper implementation of the supervisory decision;
- (6) 'limitation' means an ancillary provision to a supervisory decision that restricts or modifies the permitted use of an internal model, including by imposing higher multiplication factors or capital add-ons;
- (7) 'extension of deadlines decision' means a decision of the ECB extending the (a) deadline for compliance with obligations or requirements imposed by the ECB in a supervisory decision and (b) the maximum period for concluding the proposed acquisition set out in a qualifying holding decision as such decisions are defined in point (3) of Article 1 of Decision (EU) 2019/1376 of the European Central Bank (ECB/2019/23) ⁽⁹⁾;
- (8) 'delegated decision' means delegated decision as defined in point (4) of Article 3 of Decision (EU) 2017/933 (ECB/2016/40);
- (9) 'heads of work units' means the heads of work units of the ECB to whom the power to adopt internal models decisions or extensions of deadlines decisions is delegated;
- (10) '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;
- (11) 'negative decision' means a decision that does not or does not fully grant the permission or extension as requested by the supervised entity or proposed acquirer. 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 referred to in Article 4(2), 5(2) and 6(2) 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;
- (12) '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 decision to the ECB;
- (13) 'significant supervised entity' means a significant supervised entity as defined in point (16) of Article 2 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽¹⁰⁾;
- (14) '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);

⁽⁹⁾ 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).

⁽¹⁰⁾ 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).

- (15) 'SREP decision' means the decision adopted by the ECB on the basis of Article 16 of Regulation (EU) No 1024/2013 following the annual supervisory review and evaluation process within the meaning of Article 97 of Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾;
- (16) '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.
- (17) 'ECB Guide to internal models' means a document with this title and any other document which gives guidance on the ECB's understanding of legal requirements applicable to the assessment of internal models, adopted by the Governing Council upon a proposal from the Supervisory Board, which is published on the ECB's website.

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 internal models decisions and extension of deadlines decisions.
2. The delegation of decision-making powers is without prejudice to the supervisory assessment to be performed for the purposes of taking internal models decisions and extension of deadlines decisions.

Article 3

Delegation of internal models decisions and extension of deadlines 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 nominated by the Executive Board in accordance with Article 5 of that Decision the power to adopt decisions on:
 - (a) permission for the extension of the deadline for the sequential implementation of the IRB Approach pursuant to Article 148 of Regulation (EU) No 575/2013;
 - (b) permission to revert to the use of less sophisticated approaches pursuant to Article 149 of Regulation (EU) No 575/2013;
 - (c) permission for the permanent partial use of the Standardised Approach pursuant to Article 150 of Regulation (EU) No 575/2013;
 - (d) extension of deadlines.
2. 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 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. The internal models decisions referred to in paragraph 1 shall be adopted by means of a delegated decision if the criteria for the adoption of delegated decisions, as set out in Articles 4, 5, and 6, are fulfilled.
4. The extension of deadlines decisions referred to in paragraph 1 shall be adopted by means of a delegated decision if the criteria for the adoption of delegated decisions, as set out in Article 7 and 8, are fulfilled.

⁽¹⁾ 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. Internal models decisions and extension of deadlines decisions 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. Heads of work units shall submit an internal models decision or an extension of deadlines decision that fulfils the criteria for the adoption of delegated decisions set out in Articles 4 to 8 to the Supervisory Board and the Governing Council for adoption under the non-objection procedure if the supervisory assessment of that internal models decision or extension of deadline decision has a direct impact on the supervisory assessment of another decision which is to be adopted under the non-objection procedure.

6. Negative internal models decisions and negative extension of deadlines decisions shall not be adopted by means of a delegated decision.

Article 4

Criteria for the adoption of delegated decisions on prior permission for extension of the deadline for the sequential implementation of the IRB Approach

1. Decisions granting permission for extension of the deadline for the sequential implementation of the IRB Approach shall be taken by means of a delegated decision if all of the following criteria are met:

- (a) the extension is requested for a period not exceeding three years from the deadline set out in the last approved plan for the sequential implementation of the IRB Approach for the relevant exposure class or business unit or for the use of own estimates of loss given default or conversion factors as referred to in Article 148 of Regulation (EU) No 575/2013;
- (b) the exposure value and the risk-weighted exposure amount of the exposures to which the institution applies the IRB Approach, calculated taking into account the guidance for calculation of these amounts as set out in the ECB Guide to internal models, are and remain, following the decision, above 50% of the total exposure value and the total risk-weighted exposure amount on a consolidated level of a significant supervised group or on an individual level of a significant supervised entity, if such significant supervised entity is not part of a significant supervised group.

2. The assessment of the extension of the deadline for the sequential implementation of the IRB Approach shall be carried out in accordance with Article 148 of Regulation (EU) No 575/2013 and implementing and regulatory technical standards adopted by the European Commission, also taking into consideration any applicable ECB guides or similar documents issued by the ECB, as well as Guidelines and final draft regulatory technical standards of the European Supervisory Authorities.

Article 5

Criteria for the adoption of delegated decisions on prior permission to revert to the use of less sophisticated approaches

1. Decisions granting permission to revert to the use of less sophisticated approaches shall be taken by means of a delegated decision if all of the following criteria are met:

- (a) following the reversal to the use of less sophisticated approaches, the supervised entity's own funds are estimated to continue exceeding the sum of the requirements laid down in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013, the own funds required to be held in accordance with Article 16(2)(a) of Regulation (EU) No 1024/2013, the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU and the Pillar 2 capital guidance as set out in the last available SREP decision and the CET1 ratio does not decrease by more than 50 basis points and the resulting margin on overall capital requirements and Pillar 2 capital guidance as set out in the last available SREP decision is not smaller than 50 basis points in terms of CET1 ratio on a consolidated level of a significant supervised group or on an individual level of a significant supervised entity, if such significant supervised entity is not part of a significant supervised group;

(b) following the reversal to the use of less sophisticated approaches, the own funds requirements are not reduced on a consolidated level of a significant supervised group or on an individual level of a significant supervised entity, if such significant supervised entity is not part of a significant supervised group.

2. Where a request to revert to the use of the use of less sophisticated approaches concerns more than one rating system, the decision shall be taken by means of a delegated decision if all the criteria set out in paragraph 1 are met with regard to each rating system in the scope of the decision.

3. The assessment concerning the reversal to less sophisticated approaches shall be carried out in accordance with Article 149 of Regulation (EU) No 575/2013 and implementing and regulatory technical standards adopted by the Commission, also taking into consideration any applicable ECB guides or similar documents issued by the ECB, as well as Guidelines and final draft regulatory technical standards of the European Supervisory Authorities.

Article 6

Criteria for the adoption of delegated decisions on prior permission for permanent partial use of the Standardised Approach

1. Decisions granting permission for the permanent partial use of the Standardised Approach shall be taken by means of a delegated decision if all of the following criteria are met:

(a) following the decision on the permanent partial use of the Standardised Approach, the exposure value and the risk-weighted exposure amount of the exposures to which the institution applies the IRB Approach, calculated taking into account the guidance set out in the ECB Guide to internal models, are equal or higher than 50% of the total exposure value and the total risk-weighted exposure amount on a consolidated level of a significant supervised group or on an individual level of a significant supervised entity, if such significant supervised entity is not part of a significant supervised group;

(b) following the decision on the permanent partial use of the Standardised Approach, the increase in the exposure value and the risk-weighted exposure amounts covered by the Standardised Approach does not exceed 20% of the total exposure value and the total risk-weighted exposure amount on a consolidated level of a significant supervised group or on an individual level of a significant supervised entity, if such significant supervised entity is not part of a significant supervised group.

2. The assessment concerning the permanent partial use of the Standardised Approach shall be carried out in accordance with Article 150 of Regulation (EU) No 575/2013 and implementing and regulatory technical standards adopted by the Commission, also taking into consideration any applicable ECB guides or similar documents issued by the ECB, as well as Guidelines and final draft regulatory technical standards of the European Supervisory Authorities.

Article 7

Criteria for the adoption of delegated decisions on the extension of deadlines for obligations and for requirements imposed in a previous ECB supervisory decision

1. Decisions on the extension of deadlines for obligations and for requirements imposed in a previous ECB supervisory decision shall be taken by means of a delegated decision if all the following criteria are met:

(a) the supervised entity requests the extension to the deadline and the request is submitted to the ECB at least 30 days before the deadline expires;

(b) the extension does not exceed the duration of the period prior to the initial deadline and does not exceed 12 months;

(c) the extension does not adversely affect the rights of the supervised entity.

2. Notwithstanding paragraph 1, decisions on the extension of deadlines shall not be taken by means of a delegated decision if any of the following apply:

- (a) the extension entails a change in the original scope of the obligation or the requirement in a previous ECB supervisory decision, or in the underlying assessment on which that previous decision was based;
- (b) the extension concerns a deadline which has already been extended;
- (c) the extension is requested by a credit institution whose score for governance as set out in the last available SREP decision is 4;
- (d) the extension is requested by a credit institution whose margin of own funds above the Pillar 2 capital guidance as set out in the last available SREP decision is lower than 100 basis points in terms of CET1 ratio;
- (e) the extension is requested by a credit institution to which during the preceding three years early intervention measures as provided for in Article 27 of Directive 2014/59/EU of the European Parliament and of the Council ⁽¹²⁾ have been addressed;
- (f) the extension is not permitted under the applicable law.

3. The assessment of requests for the extension of deadlines shall be carried out having regard to (a) whether the extension is reasonable, taking into account the justification for the requested extension provided by the credit institution and (b) whether the extension jeopardises the effective implementation of the supervisory measure.

Article 8

Criteria for the adoption of delegated decisions on the extension of the maximum period for concluding a proposed acquisition

1. Decisions on the extension of the maximum period set out in qualifying holding decisions for concluding a proposed acquisition shall be taken by means of a delegated decision if the extension is granted for a maximum period of 12 months from the expiry date of the original period for concluding the proposed acquisition.

2. Notwithstanding paragraph 1, decisions on the extension of the maximum period referred to shall not be taken by means of a delegated decision if any of the following apply:

- (a) the extension entails a change in the original scope of the qualifying holding decision or the underlying assessment on which that decision was based;
- (b) the maximum period has already been extended;
- (c) the proposed acquirer or the target entity is a credit institution whose score for governance as set out in the last available SREP decision is 4;
- (d) the proposed acquirer or the target entity is a credit institution whose margin of own funds above the Pillar 2 capital guidance as set out in the last available SREP decision is lower than 100 basis points in terms of CET1 ratio;
- (e) the proposed acquirer or the target entity is a credit institution to which during the preceding three years early intervention measures as provided for in Article 27 of Directive 2014/59/EU have been addressed.

3. The assessment of requests for the extension of the maximum period referred to shall be carried out having regard to (a) whether the extension is reasonable, taking into account the justification for the requested extension provided by the proposed acquirer and (b) whether the extension jeopardises the effective implementation of the supervisory measure.

⁽¹²⁾ 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).

*Article 9***Transitional provision**

This Decision shall not apply in cases where the application for an internal models decision or for extension of a deadline was submitted to the ECB prior to the entry into force of this Decision.

*Article 10***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

DECISION (EU) 2021/1443 OF THE EUROPEAN CENTRAL BANK**of 26 August 2021****nominating heads of work units to adopt delegated internal models and extension of deadlines decisions (ECB/2021/40)**

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

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

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and in particular Article 11.6 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) ⁽¹⁾, and in particular Articles 4 and 5 thereof,

Having regard to Decision (EU) 2021/1442 of the European Central Bank of 3 August 2021 on delegation of the power to adopt decisions on internal models and on extension of deadlines (ECB/2021/38) ⁽²⁾, and in particular Article 3 thereof,

Having regard to Decision ECB/2004/2 of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank ⁽³⁾, and in particular Article 10 thereof,

Whereas:

- (1) To address the considerable number of decisions that the European Central Bank (ECB) is to adopt for the performance of its supervisory tasks, a procedure for the adoption of specific delegated decisions has been established.
- (2) A delegation decision is effective upon the adoption of a decision by the Executive Board nominating one or more heads of work units to take decisions on the basis of a delegation decision.
- (3) The importance of the delegation decision and the number of addressees to whom delegated decisions need to be sent should be taken into account by the Executive Board in nominating heads of work units.
- (4) Article 10(1) of Decision ECB/2004/2 of the European Central Bank provides that the Executive Board is to decide upon the number, name and respective competence of each of the work units of the ECB.
- (5) The Chair of the Supervisory Board has been consulted on the heads of work units to whom the power to adopt internal models and extension of deadlines decisions should be delegated,

HAS ADOPTED THIS DECISION:

*Article 1***Definitions**

For the purposes of this Decision, the definitions contained in Article 1 of Decision (EU) 2021/1442 (ECB/2021/38) shall apply.

⁽¹⁾ OJ L 141, 1.6.2017, p. 14.

⁽²⁾ See page 22 of this Official Journal.

⁽³⁾ OJ L 80, 18.3.2004, p. 33.

*Article 2***Delegated internal models and extension of deadline decisions**

1. Delegated decisions pursuant to Article 3 of Decision (EU) 2021/1442 (ECB/2021/38), with the exception of those on the extension of the maximum period for concluding a proposed acquisition set out in a qualifying holding decision as such decisions are defined in point (3) of Article 1 of Decision (EU) 2019/1376 of the European Central Bank (ECB/2019/23) ⁽⁴⁾, shall be adopted by one of the following heads of work units:

- (a) the Director General or a Deputy Director General of the Directorate General Systemic and International Banks, if supervision of the relevant supervised entity or group is carried out by the Directorate General Systemic and International Banks;
- (b) the Director General or a Deputy Director General of the Directorate General Universal and Diversified Institutions, if supervision of the relevant supervised entity or group is carried out by the Directorate General Universal and Diversified Institutions;
- (c) the Director General or a Deputy Director General of the Directorate General Specialised Institutions and Less Significant Institutions, if supervision of the relevant supervised entity or group is carried out by the Directorate General Specialised Institutions and Less Significant Institutions.

2. Delegated decisions pursuant to Article 3 of Decision (EU) 2021/1442 (ECB/2021/38) concerning the extension of the maximum period for concluding a proposed acquisition that involve significant supervised entities as defined in point (16) of Article 2 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽⁵⁾ shall be adopted by the Director General or the Deputy Director General of the Directorate General SSM Governance and Operations – or if they are unavailable, the Head of the Authorisation Division – and one of the following heads of work units:

- (a) the Director General or a Deputy Director General of the Directorate General Systemic and International Banks, if supervision of the relevant supervised entity or group is carried out by the Directorate General Systemic and International Banks;
- (b) the Director General or a Deputy Director General of the Directorate General Universal and Diversified Institutions, if supervision of the relevant supervised entity or group is carried out by the Directorate General Universal and Diversified Institutions;
- (c) the Director General or a Deputy Director General of the Directorate General Specialised Institutions and Less Significant Institutions, if supervision of the relevant supervised entity or group is carried out by the Directorate General Specialised Institutions and Less Significant Institutions.

If a delegated decision pursuant to Articles 3 and 4 of Decision (EU) 2019/1376 (ECB/2019/23) involves more than one significant supervised entity, the relevant supervised entity shall be the supervised entity or group in which the qualifying holding is acquired.

3. Delegated decisions pursuant to Article 3 of Decision (EU) 2021/1442 (ECB/2021/38) concerning the extension of the maximum period for concluding a proposed acquisition that do not involve significant supervised entities shall be adopted by the Director General or the Deputy Director General of the Directorate General SSM Governance and Operations – or if they are unavailable the Head of the Authorisation Division.

*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*.

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Done at Frankfurt am Main, 26 August 2021.

The President of the ECB
Christine LAGARDE

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