



2023/2530

24.11.2023

DECISION (EU) 2023/2530 OF THE EUROPEAN CENTRAL BANK

of 28 September 2023

on the delegation of the power to adopt decisions not to object to intended macroprudential measures of national competent authorities or national designated authorities (ECB/2023/24)

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 Articles 5(1) and 6(1) thereof,

Having regard to Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) ⁽²⁾, and in particular Article 101 thereof,

Whereas:

- (1) The European Central Bank (ECB) is responsible for the effective and consistent functioning of the Single Supervisory Mechanism and has been entrusted with both micro and macroprudential tasks. The conferral of macroprudential tasks reinforces the contributory role of the ECB to financial stability already enshrined in the Treaty on the Functioning of the European Union (TFEU).
- (2) The national competent authorities (NCAs) and national designated authorities (NDAs) are responsible for setting buffer rates for global systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs).
- (3) Pursuant to Article 5(1) of Regulation (EU) No 1024/2013, the NCAs or NDAs of the participating Member States, whenever appropriate or deemed required, apply requirements for capital buffers to be held by credit institutions at the relevant level with the aim of addressing systemic or macroprudential risks.
- (4) In accordance with Article 5(1) of Regulation (EU) No 1024/2013 and Article 104 of Regulation (EU) No 468/2014, NCAs or NDAs notify the ECB of their intention to apply macroprudential measures ten working days prior to taking such a decision (notification of 'intended macroprudential measures'). Upon receipt of the notification, the Secretary of the Supervisory Board transmits the intended macroprudential measures, to the Governing Council and the Supervisory Board without delay. Upon a proposal prepared by the Supervisory Board, based on the intended initiative and taking into account the input of the relevant committee and ECB internal structure, the Governing Council decides within three working days whether or not to raise objections. Where the Governing Council objects to the intended macroprudential measures, it explains its reasons in writing to the NCAs or NDAs within five working days of the notification to the ECB. The NCAs or NDAs consider the ECB's reasons prior to proceeding with the final decision, as appropriate.
- (5) The ECB is required to assess a substantial number of intended macroprudential measures submitted by NCAs or NDAs, including those that set O-SII and G-SII buffers. Those assessments often need to be conducted within a very tight timeframe. In order to facilitate the decision-making process, it is appropriate to provide for the delegation of the power to adopt certain decisions within the ECB. In particular, the power to adopt decisions not to object to macroprudential measures submitted by NCAs or NDAs should be delegated to heads of work units of the ECB. Global systemically important banks or institutions (G-SIBs-G-SIIs) are banks or institutions that are perceived as not being allowed to fail due to their size, interconnectedness, complexity, lack of substitutability or global scope.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ OJ L 141, 14.5.2014, p. 1.

Given the potential cross-jurisdictional repercussions of a problem in any of the G-SIBs-G-SIIs on other financial institutions in many countries and on the global economy at large, this is not uniquely a problem for NCAs or NDAs, and therefore requires harmonisation at the global level which is reflected in a global agreement reached by the members of the Basel Committee on Banking Supervision and the Financial Stability Board the outcome of which is published by the Financial Stability Board. The global community is addressing these issues through a multipronged approach.

- (6) The Court of Justice of the European Union has recognised delegation of authority to be necessary and appropriate to enable an institution required to adopt a considerable number of decisions to perform its duties. The powers conferred on an institution include the right to delegate, in compliance with the provisions of the TFEU, a certain number of those powers, subject to any conditions specified by the institution. A Union institution may therefore establish measures of an organisational nature, delegating its decision-making powers to its own internal bodies or persons, insofar as such measures are justified and respect the principle of proportionality. In order to ensure legal certainty, the delegation of decision-making powers should be both limited and proportionate, and the scope of the delegation should be clearly defined and subject to conditions specified by the institution.
- (7) On 24 June 2020, the Governing Council decided to establish close cooperation between the ECB and Българска народна банка (Bulgarian National Bank) ⁽³⁾. For the purposes of close cooperation, the decision not to object to intended macroprudential measures concerning the Republic of Bulgaria will be also adopted pursuant to the relevant provisions of this Decision.
- (8) Where the criteria for the adoption of a delegated decision are not met, decisions should be adopted in accordance with the procedure set out in Article 5(1) of Regulation (EU) No 1024/2013 and Article 13h of Decision ECB/2004/2 of the European Central Bank ⁽⁴⁾,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

- (1) 'intended macroprudential measures' means the measures that national competent authorities (NCAs) and national designated authorities (NDAs) intend to apply to require banks to maintain O-SII or G-SII buffers, in accordance with Article 131 of Directive 2013/36/EU of the European Parliament and of the Council ⁽⁵⁾, as formally notified to the ECB for decision whether or not to object;
- (2) 'O-SII buffer' means the own funds that are required to be maintained in accordance with Article 131(5) of Directive 2013/36/EU;
- (3) 'G-SII buffer' means the own funds that are required to be maintained in accordance with Article 131(4) of Directive 2013/36/EU;
- (4) 'ECB's technical assessment' means the independent technical assessment conducted by the ECB exercising judgement as to the appropriate buffer rates;

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ 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) 'ECB floor' means the latest applicable version of the ECB floor methodology for assessing O-SII buffers as adopted by the Governing Council and based on banks' systemic importance score, which allocates each bank to one of several categories of systemic importance ('buckets') whereby each bucket is associated with a specific O-SII buffer that should be considered as a floor;
- (6) 'sensitivity' or 'sensitive' 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) substantial concerns expressed in the relevant committee and the relevant internal structure in their deliberations not included in the ECB's technical assessment; (b) intended macroprudential measures that may attract negative media or public attention.

Article 2

Subject matter and scope

1. This Decision specifies the criteria for the delegation of decision-making powers to the heads of work units of the ECB for the adoption of decisions not to object to intended macroprudential measures.
2. The delegation of decision-making powers is without prejudice to the ECB's technical assessment performed for the purposes of adopting decisions not to object to the intended macroprudential measures referred to in paragraph 1.

Article 3

Delegation of the power to adopt decisions not to object to intended macroprudential measures

1. The Governing Council hereby delegates the power to adopt decisions not to object to intended macroprudential measures to the heads of work units nominated by the Executive Board.
2. Decisions not to object to the intended macroprudential measures referred to in paragraph 1 shall be adopted by means of a delegated decision where the criteria for the adoption of delegated decisions set out in Articles 4 and 5, as relevant, are met.
3. The decision not to object to the intended macroprudential measures referred to in paragraph 1 shall not be adopted by means of a delegated decision where the complexity of the ECB's technical assessment or the sensitivity of the measures requires the decision to be adopted in accordance with Article 5(1) of Regulation (EU) No 1024/2013 and Article 13h of Decision ECB/2004/2.
4. Where any member of the relevant committee or ECB internal structure expresses concerns as to the substance of the intended macroprudential measures referred to in paragraph 1 while being consulted on a draft delegated decision, the criteria of Articles 4 and 5, as relevant, shall be deemed to have not been met and/or the measures shall be deemed to be sensitive within the meaning of Article 1, point 6, of this Decision.

Article 4

Criteria for the adoption of delegated decisions not to object to intended macroprudential measures for setting an O-SII buffer

Decisions not to object to intended macroprudential measures for setting an O-SII buffer shall be adopted in accordance with Article 3, paragraphs 1 and 2, where all of the following criteria are met:

- (a) those intended macroprudential measures apply the latest methodology for determining the ECB floor;

- (b) the ECB's technical assessment of those measures does not give rise to any concerns as regards the following:
- (i) the methodology employed by the NCA or NDA;
 - (ii) the economic considerations driving the setting of O-SII buffers;
 - (iii) the identification of O-SIIs;
- (c) the ECB's technical assessment does not conclude that the ECB should object to those intended macroprudential measures.

Article 5

Criteria for the adoption of delegated decisions not to object to intended macroprudential measures for setting a G-SII buffer

Decisions not to object to intended macroprudential measures for setting a G-SII buffer shall be adopted in accordance with Article 3, paragraphs 1 and 2, where those intended macroprudential measures by NCAs or NDAs concerning the G-SII buffer rates are in line with the ECB's annual Assessment of SSM Area G-SIBs-G-SIIs and with the global agreement reached by the members of the Basel Committee for Banking Supervision and the Financial Stability Board.

Article 6

Recording of and reporting on delegated decisions not to object to intended macroprudential measures

1. The Secretariat of the Supervisory Board shall keep a record of any delegated decisions taken in accordance with this Decision and shall inform the Secretariat of the Governing Council of such decisions on a monthly basis.
2. The Secretariat of the Governing Council shall submit a quarterly report on the exercise of delegated decision-making powers in relation to the intended macroprudential measures to the Governing Council and the Supervisory Board.

Article 7

Transitional provision

This Decision shall not apply where intended macroprudential measures have been notified to the ECB prior to the entry into force of this Decision.

Article 8

Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 28 September 2023.

The President of the ECB
Christine LAGARDE