

DRAFT [PROVISIONAL VERSION]

Inter-Institutional Agreement (IIA) between European Parliament and ECB
on the cooperation on procedures related to the Single Supervisory Mechanism (SSM)

THE EUROPEAN PARLIAMENT AND THE EUROPEAN CENTRAL BANK,

- having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU), in particular Article 127(6) thereof,
 - having regard to Parliament's Rules of Procedure, in particular Rule 127 thereof,
 - having regard to Regulation (EU) No .../2013 of the Council of ... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions¹, and in particular to its Articles 20(8) and 20(9)
 - *[reference to declarations in plenary to be made by the President of the European Parliament and the President of the European Central Bank],*
- A. whereas Regulation (EU) No .../2013 confers on the European Central Bank (ECB) specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the European Union and each Member State participating in the Single Supervisory Mechanism (SSM);
- B. whereas Article 8 of Regulation (EU) No .../2013 establishes that the ECB is the competent authority for the purpose of the supervisory tasks conferred upon the ECB;
- C. whereas the conferral of supervisory tasks implies a significant responsibility for the ECB to contribute to financial stability in the Union, using its supervisory powers in the most effective and proportionate way;
- D. whereas any conferral of supervisory powers to the Union level should be balanced by appropriate accountability requirements; under Article 20 of Regulation (EU) No .../2013 the ECB is therefore accountable for the implementation of the Regulation towards the European Parliament and the Council as democratically legitimised institutions representing the citizens of the Union and the Member States;
- E. whereas Article 20 (9) of Regulation (EU) No .../2013 provides that the ECB shall cooperate sincerely with any investigations by the EP, subject to the TFEU;
- F. whereas Article 20(8) of Regulation (EU) No .../2013 provides that, upon request, the Chair of the Supervisory Board shall hold confidential oral discussions behind closed doors with the Chair and the Vice-Chairs of the competent committee of the European Parliament concerning the ECB's supervisory tasks where such discussions are required for the exercise of the European Parliament's powers under the TFEU; whereas that Article requires that the modalities for the organisation of these discussions ensure full confidentiality in accordance with the confidentiality obligations imposed on the ECB as competent authority under relevant Union law;
- G. whereas Article 15(1) TFEU provides that the Union's institutions shall conduct their work as openly as possible; whereas the conditions under which a document of the ECB is confidential are laid down in Decision 2004/258/EC²; whereas in that decision the European Central Bank

¹ OJ L ...

² OJ L 80, 18.3.2004, p. 42.

is established that any citizen and any natural and legal person residing in the Union has a right of access to ECB documents, subject to the conditions and limits defined in that decision; whereas in accordance with that decision the ECB shall refuse disclosure where certain specified public interests would be undermined by the disclosure;

- H. whereas the disclosure of information related to the prudential supervision of credit institutions is not at the free disposal of the ECB but subject to limits and conditions as established by relevant Union law to which both the Parliament and the ECB are subject; whereas pursuant to Article 37.2 of the ESCB Statute, persons having access to data covered by Union legislation imposing an obligation of secrecy shall be subject to such Union legislation;
- I. whereas Recital 55 of Regulation (EU) No .../2013 specifies that any reporting obligations vis-à-vis the European Parliament should be subject to the relevant professional secrecy requirements; whereas Recital 37 and Article 20(1) of that Regulation provide that the members of the Supervisory Board, the steering committee, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties shall be subject to the professional secrecy requirements set out in Article 37 of the Statute of the ESCB and the ECB (hereinafter referred to as "ESCB Statute") and in relevant acts of Union law; whereas Article 339 TFEU and Article 37 of the ESCB Statute establish that the members of the governing bodies and the staff of the ECB and the national central banks are bound by the duty of professional secrecy;
- J. whereas in accordance with Article 10.4 of the ESCB Statute the proceedings of the meetings of the Governing Council shall be confidential;
- K. whereas Article 4(3) of Regulation (EU) No .../2013 provides that for the purpose of carrying out the tasks conferred on it in that regulation, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those directives;
- L. whereas subject to future amendments or any future relevant legislation, the provisions of Union law relevant in respect of the treatment of information, which has been found to be confidential, in particular Articles 53 to 62 of Directive 2013/36/EU³ impose strict obligations of professional secrecy on the competent authorities and their staff for the supervision of credit institutions; whereas all persons working for or who have worked for the competent authorities are bound by the obligation of professional secrecy; whereas confidential information which they receive in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law;
- M. whereas Article 27(2) of Regulation (EU) No .../2013 provides that for the purpose of carrying out the tasks conferred upon it, the ECB shall be authorised, within the limits and under the conditions set out in the relevant Union law, to exchange information with national or Union authorities and bodies in the cases where the relevant Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under the relevant Union law;
- N. whereas the breach of professional secrecy requirements in relation to supervisory information should lead to adequate sanctions; whereas the European Parliament should provide for an adequate framework to follow-up on any case of breach of confidentiality by its members or staff;
- O. whereas organisational separation of the ECB's staff involved in the execution of the ECB's supervisory tasks from staff involved in the execution of monetary policy tasks must be such that the Regulation (EU) No .../2013 is fully respected
- P. whereas this Agreement does not cover the exchange of confidential information regarding monetary policy or other ECB tasks which are not part of the tasks conferred upon the ECB under Regulation (EU) No .../2013;

³ OJ L 176, 27.6.2013, p. 338.

- Q. whereas this Agreement is without prejudice to the accountability of national competent authorities to national parliaments in accordance with national law;
- R. whereas this Agreement does not cover or affect the accountability and reporting obligation of the SSM towards the Council, the Commission or national Parliaments;

AGREE AS FOLLOWS:

I. ACCOUNTABILITY, ACCESS TO INFORMATION, CONFIDENTIALITY

1. Reports

- The ECB shall submit every year a Report to the EP (“Annual Report”) on the execution of the tasks conferred by Regulation (EU) No.../2013. The Chair of the Supervisory Board shall present the Annual Report to the EP in a public hearing. The draft of the Report shall be made available to Parliament in one of the EU official languages four working days in advance of the hearing on a confidential basis. Translations in all EU official languages shall be made available subsequently. The Annual report shall cover, *inter alia*:
 - i. execution of supervisory tasks
 - ii. sharing of tasks with the national supervisory authorities
 - iii. cooperation with other national/Union relevant authorities
 - iv. separation between monetary policy and supervisory tasks
 - v. evolution of supervisory structure and staffing, including the number and the national composition of Seconded National Experts
 - vi. implementation of the Code of Conduct
 - vii. method of calculation and amount of supervisory fees.
 - viii. budget for supervisory tasks.
 - ix. Experience with reporting on the basis of Article 23 of Regulation (EU) No .../2013 (reporting of violations).
- During the start-up phase referred to in Article 33(2) of Regulation (EU) No.../2013, the ECB shall transmit to the EP quarterly reports on progress in the operational implementation of the Regulation, covering *inter alia*:
 - i. internal preparation, organisation and planning of work
 - ii. concrete arrangements made to comply with the requirement to separate monetary policy and supervisory functions
 - iii. cooperation with other national/Union competent authorities
 - iv. any obstacles encountered by the ECB in the preparation of its supervisory tasks
 - v. any events of concern or changes to the code of conduct
- The ECB shall publish the SSM Annual Report on the SSM website. The ECB’s “information e-mail hotline” will be extended to deal specifically with SSM-related questions, and the ECB shall convert the feedback received via e-mails into a FAQ section on the SSM website.

2. Hearings and confidential oral discussions

- The Chair of the Supervisory Board shall participate in **ordinary** public hearings on the execution of the supervisory tasks on request of the competent Committee of the EP. The Parliament's competent Committee and the ECB shall agree on a calendar for two such hearings to be held in the course of the following year. Requests for changes to the agreed calendar shall be made in writing.
- In addition, the Chair of the Supervisory Board may be invited to additional **ad-hoc** exchanges of views on supervisory issues with the EP’s competent Committee.

- Where necessary for the exercise of EP's function under the Treaty and EU law, the Chair of its competent committee may request special **confidential** meetings with the Chair of the Supervisory Board in writing, giving reasons. Such meetings shall be held on a mutually agreed date.
- All participants in the special **confidential** meetings shall be subject to confidentiality requirements equivalent to those applying to the members of the Supervisory Board and to the ECB supervisory staff.
- On reasoned request by the Chair of the Supervisory Board or the Chair of the competent EP Committee, and with mutual agreement, the **ordinary** hearings, the **ad-hoc** exchanges of views and the **confidential** meetings can be attended by the ECB representatives in the Supervisory Board or senior members of the supervisory staff (Director Generals or their Deputies).
- The principle of openness of European institutions in accordance with the Treaty shall apply also to the SSM. The discussion in special **confidential** meetings shall follow the principle of openness and elaboration around the relevant circumstances. It involves the exchange of confidential information regarding the execution of the supervisory tasks, within the limit set by Union law. The disclosure might be restricted by confidentiality limits legally foreseen.
- Persons employed by the EP and the ECB may not disclose information acquired in the course of their activities, even after such activities have ended or they have left such employment.
- The **ordinary** hearings, **ad-hoc** exchanges of views and the **confidential** meetings can cover all aspects of the activity and functioning of the SSM covered by the SSM Regulation.
- No minutes or any other recording of the **confidential** meetings shall be taken. No statement shall be made for the press or any other media. Each participant to the confidential discussions shall sign every time a solemn declaration not to divulge the content of those discussions to any third person.
- Only the Chair of the Supervisory Board and the Chair and the Vice-Chairs of Parliament's competent committee may attend the **confidential** meetings. Both the Chair of the Supervisory Board and the Chair and the Vice-Chairs of Parliament's competent committee may be accompanied by two members of respectively ECB staff and of the Secretariat of Parliament.

3. Responding to questions

- The ECB shall reply in writing to written questions put to it by the European Parliament. These questions should be channelled to the Chair of the Supervisory Board via the Chair of the competent Committee. Questions shall be replied as promptly as possible, and in any event within 5 weeks of their transmission to the ECB.
- Both the ECB and Parliament shall dedicate a specific section of the websites for the questions and answers referred to above.

4. Access to information

- The ECB shall provide Parliament's competent committee at least with a comprehensive and meaningful record of the proceedings of the Supervisory Board that enables an understanding of the discussions, including an annotated list of decisions. In case of an objection of the Governing Council against a draft decision of the Supervisory Board in accordance with Article 26(8) of Regulation (EU) No .../2013, the President of the ECB shall inform the Chair of Parliament's competent committee of the reasons for such an objection, in line with the confidentiality requirements referred to in this Agreement.

- In the event of the winding-up of a credit institution, non-confidential information relating to that credit institution shall be disclosed ex-post, once any restrictions on the provision of relevant information resulting from confidentiality requirements have ceased to apply.
- The supervisory fees and an explanation of how they are calculated shall be published on ECB website.
- The ECB shall publish on its website a guide to its supervisory practices.

5. Safeguarding ECB classified information and documents

- The Parliament shall implement safeguards and measures corresponding to the level of sensitivity of the ECB information or ECB documents and shall inform the ECB about it. In any event information or documents disclosed will be used only for the purpose for which they have been provided.
- EP shall seek the ECB's consent to any disclosure to additional persons or institutions and the parties will cooperate in any judicial, administrative or other proceedings in which access to such information or documents are sought. The ECB may request the EP, with respect to all or certain categories of information disclosed, that it maintains a list of persons having access to these information and documents.

II. SELECTION PROCEDURES

- The ECB shall specify and make public the criteria for the selection of the Chair, including the balance of skills, knowledge of financial institutions and markets, and experience in financial supervision and macro-prudential oversight. In specifying the criteria, the ECB shall aim at the highest professional standards and take into account the need to safeguard the interest of the European Union as a whole and diversity in the composition of the Supervisory Board.
- The Parliament's competent committee is informed 2 weeks before the Governing Council publishes the vacancy notice of the details, including the selection criteria and the specific job profile, of the "open selection procedure" that it intends to apply for the selection of the Chair.
- The Parliament's competent committee is informed by the Governing Council of the composition of the pool of applicants for the position of Chair (number of applications, mix of professional skills, gender and nationality balance, etc.) as well as of the method through which the pool of applicants is screened in order to draw up a shortlist of at least two candidates and eventually determine the proposal by the ECB.
- The ECB shall provide to Parliament's competent committee the shortlist of candidates for the position of the Chair of the Supervisory Board. The ECB shall provide that shortlist at least 3 weeks before submitting its proposal for the appointment of the Chair.
- Parliament may submit questions to the ECB relating to the selection criteria and the short list of candidates within a week from receiving it. The ECB shall respond to such questions in writing within 2 weeks.
- Approval process:
 - The proposals for the Chair and/or the Vice-Chair shall be conveyed by the ECB to the Parliament together with written explanations of the underlying reasons.
 - A public hearing of the proposed Chair and Vice-Chair of the Supervisory Board shall be held in Parliament's competent committee.
 - The Parliament shall decide on the approval of the candidate proposed by the ECB for Chair and Vice-Chair through a vote in the competent Committee and in plenary. The Parliament will normally, and taking into account Parliament's calendar, aim at taking that decision within 6 weeks of the proposal.

- If the proposal for the Chair is not approved, the ECB may decide either to draw on the list of candidates that applied originally for the position or to re-initiate the selection process, including elaborating and publishing a new public vacancy notice.
- The ECB shall submit any proposal to remove the Chair or Vice-Chair to Parliament and provide explanations.
- Approval process:
 - vote in committee on a draft resolution
 - vote on resolution in plenary for approval or objection
- Where the Parliament or the Council has informed the ECB that it considers the conditions for the removal of the Chair or the Vice-Chair of the Supervisory Board to be fulfilled for the purposes of Article 26(4) [19(2aa)] of Regulation (EU) No .../2013, the ECB shall provide its considerations in writing within 4 weeks.

III. INVESTIGATIONS

- Where, pursuant to Article 226 TFEU and to Decision 95/167/EC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry, Parliament sets up a Committee of Inquiry, the ECB acting in conformity with provisions of Union law, shall assist the committee of inquiry in carrying out its tasks in accordance with the principle of sincere cooperation.
- Any activities of a committee of inquiry to which the ECB will assist shall take place within the scope Decision 95/167/EC.
- The ECB shall cooperate sincerely with any investigation by the Parliament referred to in Article 20(9) of Regulation (EU) No .../2013 within the same framework that applies to Committees of Inquiry and under the same confidentiality protection as foreseen in this Agreement for the oral confidential meetings (I.2.).
- All recipients of information provided to the Parliament in the context of investigations shall be subject to confidentiality requirements equivalent to those applying to the members of the Supervisory Board and to the ECB supervisory staff and the Parliament and the ECB shall agree on the measures to be applied to ensure the protection of information.
- Where the protection of a public interest recognised in Decision 2004/258/EC on public access to European Central Bank documents requires that confidentiality is maintained, Parliament shall ensure that this protection is maintained and shall not divulge the content of any such information.
- The rights and obligations of the institutions and bodies of the Union as laid down in Decision 95/167/EC shall apply mutatis mutandis to the ECB.
- Any replacement of Decision 95/167/EC by another legal act or its amendment will require a re-negotiation of this part of the Inter-institutional Agreement. Until a new Agreement on the respective parts has been found, this Agreement shall stay valid including Decision 95/167/EC in its version of [date of the IIA].

IV. CODE OF CONDUCT

- Before the adoption of the Code of Conduct referred to in Article 19(3) of Regulation (EU) No .../2013, the ECB shall inform Parliament's competent committee on the main elements of the envisaged Code of Conduct.

- Upon written request of Parliament's competent committee, the ECB shall inform Parliament in writing on the implementation of the Code of Conduct. The ECB shall also inform Parliament about the need for updates to the Code of Conduct.
- The Code of Conduct shall address matters of conflict of interest and ensure the respect of the rules on separation between supervisory and monetary policy functions.

V. ADOPTION OF ACTS BY THE ECB

- The ECB shall duly inform Parliament's competent committee of the procedures (including timing) it has set up for adoption of ECB regulations, decisions, guidelines and recommendations (hereinafter referred to as "acts"), which are subject to public consultation in line with the SSM Regulation.
- The ECB shall in particular inform Parliament of the principles and kinds of indicators or information it is generally using in developing acts and policy recommendations, with a view to enhancing transparency and policy consistency.
- The ECB shall transmit to the Parliament's competent committee the draft acts before the beginning of the public consultation procedure. In case the Parliament submits comments to the acts, there may be exchanges of views with the ECB on such comments. Such informal exchanges of views shall take place in parallel with the open public consultations which the ECB shall conduct in accordance with Article 4(3) of Regulation (EU) No .../2013.
- Once the ECB has adopted an act, it shall send it to Parliament's competent committee. The ECB shall also regularly inform Parliament in writing about the need to update the adopted acts.

VI. FINAL PROVISIONS

1. The practical implementation of this Agreement shall be assessed by the two Institutions every three years.
2. This Agreement shall enter into force on the date of entry into force of Regulation (EU) No .../2013 or on the day after the signature of this Agreement, whichever is later.
3. The obligations concerning confidentiality of information shall continue to be binding on both Parties even after the termination of this Agreement.
4. This Agreement shall be published in the *Official Journal of the European Union*.

Done at Brussels, [date]

For the European Parliament
The President
M. Schulz

For the European Central Bank
The President
M. Draghi