

MEMORANDUM OF UNDERSTANDING BETWEEN THE EUROPEAN CENTRAL BANK AND THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

This Memorandum of Understanding (hereinafter this 'Memorandum of Understanding' or this 'MoU') is made BETWEEN

The New York State Department of Financial Services, with its headquarters at One State Street, New York, New York 10004, United States of America,

hereinafter the 'NYDFS',

AND

The European Central Bank, with its headquarters at Sonnemannstrasse 20, 60314 Frankfurt am Main, Germany,

hereinafter the 'ECB',

(hereinafter jointly 'the Authorities' and each of them, individually, 'the Authority')

WHEREAS:

- (1) Council Regulation (EU) No 1024/2013¹ (hereinafter the 'SSM Regulation') confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions. This Memorandum of Understanding covers the supervisory tasks conferred on the ECB by Article 4, read in conjunction with Article 6(4), of the SSM Regulation. Cooperation under this Memorandum of Understanding is without prejudice to the

¹ 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 (OJ L 287, 29.10.2013, p. 63).

NCA's² tasks and responsibilities under European Union and national laws, as well as Memoranda of Understanding they are party to (or will become party to) for the performance of their tasks.

- (2) Article 6 of the SSM Regulation lays down the criteria for the identification of supervised entities. The methodology for the assessment of the criteria is laid down in Regulation (EU) No 468/2014 of the European Central Bank³ (hereinafter the 'SSM Framework Regulation'), especially its Articles 39 to 72. An up-to-date list of significant credit institutions and less significant credit institutions is published on the ECB's website⁴:
- (3) The ECB enters into this Memorandum of Understanding in its capacity as a banking supervisory authority, having regard to Article 55 of Directive 2013/36/EU of the European Parliament and of the Council⁵ (hereinafter the 'CRD') and Article 8 of the SSM Regulation.
- (4) Pursuant to the New York Banking Law, the NYDFS is the competent authority in the State of New York for the supervision of credit institutions and other entities and individuals in the financial services industry, including licensed mortgage loan originators, budget planners and student loan servicers.
- (5) The NYDFS enters into this Memorandum of Understanding on the basis of the New York Banking Law.
- (6) Through this Memorandum of Understanding, the ECB and the NYDFS express their willingness to cooperate with each other on the basis of mutual trust and understanding for the purpose of performing their supervisory tasks in respect of cross-border credit institutions that fall within their supervisory responsibilities under the SSM Regulation and the New York Banking Law.
- (7) In order to allow for smooth communication between them, the Authorities will nominate contact persons who represent them in the activities covered by the present Memorandum of Understanding (see list in Annex 1 providing the contact details of the contact persons).

² National competent authorities of the participating Member States of the European Union (NCAs).

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

⁴ Available at: <https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>

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). Pursuant to Article 55 of the CRD, a condition for the ECB to enter into agreements with third country Authorities is that their confidentiality regime is equivalent to the one in the EU.

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

DEFINITIONS⁶

For the purpose of this Memorandum of Understanding:

- 'supervised entities' means entities that fall within the supervisory remit of the Authorities, as identified by their respective legislation, including their cross-border establishments⁷;
- 'Authority' means either of the signatories of this Memorandum of Understanding, together also referred to as 'Authorities';
- 'cross-border establishment' means a branch, a subsidiary or any other entity of a supervised entity operating or localised within one jurisdiction, and over which the Authority in the other jurisdiction exercises overall supervisory responsibilities;
- 'host Authority' means an Authority responsible for the supervision of the cross-border establishment of a supervised entity;
- 'home Authority' means an Authority responsible for the supervision of the supervised entity on a consolidated basis operating a cross-border establishment in the jurisdiction of the host Authority;
- 'Member State' means a Member State of the European Union;
- 'participating Member State' means a Member State whose currency is the euro, or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7 of the SSM Regulation;
- 'authorisation process' means the process pursuant to which a supervised entity is permitted to perform its activities⁸;
- 'qualifying holding assessments' means the assessment that the Authorities are required to perform, in applying their respective legislations, in respect of purchases of, or variations in, holdings in a supervised entity – intended or accomplished and in whatever form⁹;

⁶ The Authorities recognise that while they may define terms differently in their respective laws, regulations and requirements, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

⁷ For the ECB the term can refer to credit institutions, financial holding companies and mixed financial holding companies as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁸ For the ECB, the legal reference is Article 4(1)(a) of the SSM Regulation, read together with Article 8 et seq. of the CRD.

⁹ For the ECB, the legal reference is Article 4(1)(c) of the SSM Regulation, read together with Article 22 et seq. of the CRD.

- 'laws, regulations and requirements' means the provisions of the laws, or the regulations and requirements promulgated thereunder, of the State of New York (and as applicable, the United States of America) and of the European Union in relation to the prudential supervision of the supervised entities;
- 'jurisdiction' means, in the case of NYDFS, the State of New York and, in the case of the ECB, each of the territories of the participating Member States.

Article 1

Purpose and general principles

The purpose of this Memorandum of Understanding is to formalise cooperation and information-sharing mechanisms between the ECB and the NYDFS. Such cooperation is essential in order to promote the integrity, stability and efficiency of the supervised entities.

This Memorandum of Understanding is aimed at ensuring the effective exchange of supervisory information for the performance of the Authorities' respective supervisory powers over supervised entities, to the extent permitted by law and the Core Principles for Effective Banking Supervision developed by the Basel Committee on Banking Supervision as implemented into the applicable law.

The Authorities recognise that cooperation under this Memorandum of Understanding may be denied on the grounds of laws, regulations and requirements, or public interest, as well as where it would interfere with an on-going investigation or jeopardise the proper performance of the tasks of the Authorities, including due to resources constraints. Cooperation under this Memorandum of Understanding would be provided insofar as reasonable, appropriate, and permissible and without prejudice to the proper performance of the Authority's tasks.

Article 2

Principles regarding exchange of information

Each Authority will endeavour to provide the other Authority, on a timely basis upon request or on its own initiative, where appropriate and insofar as feasible, with any information that is necessary for the exercise of the other Authority's supervisory tasks.

A request for information will include the following:

- i. a description of the facts underlying the request, and its purpose;
- ii. the reasons why the information is likely to be relevant for the proper performance of the requesting Authority's tasks, and in light of the requesting Authority's legislation, including a specification of the supervisory tasks that are connected with the subject matter of the request;
- iii. any information known to, or in the possession of, the requesting Authority that might assist the requested Authority in fulfilling the request.

When a request for information is denied or the information requested is not available, the requested Authority will to the extent practicable provide the reasons for not sharing the information.

The exchange of information will be conducted in writing, regardless of its format (paper, electronic communication or other). Both the request for information and the communication of the requested information will be addressed between the Authorities primarily through the designated contact persons (see list in Annex 1). In urgent circumstances, requests may be made by telephone, provided that they are subsequently confirmed in writing within five working days.

Article 3 **Confidentiality**

The Authorities will preserve the confidentiality of the information received to the extent permitted by laws, regulations and requirements. In this regard, each Authority will hold confidential all information received from the other Authority. Any confidential information received by the requesting Authority from the requested Authority will be used exclusively for lawful supervisory purposes and will not be disclosed except as set out below.

The Authorities will ensure that all persons dealing with, or having access to, confidential information (including members of the Authority, employees, external providers having access to confidential information) are bound by the obligations of professional secrecy in compliance with relevant laws, regulations and requirements.

Either Authority may be requested by a third party to disclose confidential information received under this Memorandum of Understanding, or alternatively, may consider it appropriate to disclose confidential information to a third party, including a supervisory authority that might have a legitimate interest in such information. The prior consent of the requested Authority will be sought and obtained in writing by the requesting Authority before any disclosure to a third party of confidential information exchanged under this Memorandum of Understanding will occur. The requested Authority may deny disclosure or impose conditions to the disclosure, including that the third party will hold the information confidentially.

Where required under a legal obligation to disclose confidential information received pursuant to this Memorandum of Understanding, the requesting Authority will, to the extent permitted by law, inform the requested Authority about the purposes for which the information is proposed to be shared, the uses that the third party could make of the information and the safeguards that the third party would apply to ensure confidentiality. Where the requested Authority does not consent to the disclosure to a third party, and where possible and appropriate, the requesting Authority will take reasonable steps to resist disclosure, including by employing legal means to challenge the request for disclosure or by advising the third party of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.

Article 6(2) of the SSM Regulation requires the ECB to disclose on an ongoing basis, confidential information to the SSM NCAs, which are listed in Annex 2 of this MoU ('Onward Sharing Recipient NCAs'). Therefore, the NYDFS consents to the ECB disclosing confidential

information provided by the NYDFS under this Memorandum of Understanding to an Onward Sharing Recipient NCA when (i) the ECB has a lawful prudential supervisory purpose for such disclosure and (ii) the Onward Sharing Recipient NCA's purpose for receiving the information relates to that Onward Sharing Recipient NCA's prudential supervision of the supervised entity or cross-border establishment to which the information pertains, subject to the Onward Sharing Recipient NCA's complying with the relevant confidentiality requirements established under EU law. In addition, before disclosing confidential information to the Onward Sharing Recipient NCA, the ECB will obtain assurances from each Onward Sharing Recipient NCA receiving such confidential information, that, in addition to complying with such professional secrecy and/or confidentiality requirements as may be required by the applicable law, the confidential information will not be further disclosed by the Onward Sharing Recipient NCA, except (i) as authorised by the ECB after the ECB has received the NYDFS's prior consent and (ii) where required under a legal obligation to disclose the confidential information onward shared by the ECB under the conditions described in Article 3, subparagraph 4. For the purposes of the information sharing provisions of this MoU, the Authorities acknowledge that (i) staff from the NCAs and where appropriate the national central banks (NCBs) acting in an official capacity as members of an SSM Joint Supervisory Team or as members of an SSM on-site inspection team, (ii) staff from the NCAs and where appropriate the NCBs performing activities related to the application and execution of ECB supervisory tasks within the SSM; or (iii) staff from the National Central Banks NCBs and NCAs acting in an official capacity as a member of the ECB Governing Council or the SSM Supervisory Board on matters relating to prudential banking supervision will be treated as staff members of the ECB to the extent they are involved in the prudential supervisory tasks of the ECB under the SSM Regulation. The same applies to staff of NCBs and NCAs fulfilling tasks related to their institution's acting in their official capacities as members of the ECB Governing Council or the ECB Supervisory Board on matters relating to prudential banking supervision. NCAs and NCBs will otherwise be treated as third parties under the MoU. Where the ECB transmits confidential information to an Onward Sharing Recipient NCA, or to other NCA or NCBs, pursuant to this paragraph, the ECB will provide ex-post monthly notice to the NYDFS regarding any disclosures made pursuant to this sub-paragraph.

The NYDFS has information sharing arrangements with the United States regulators set forth on Annex 3 (the 'U.S. Onward Sharing Recipient Authorities'). Therefore, the ECB consents to the NYDFS's disclosing confidential information provided by the ECB under this Memorandum of Understanding to a U.S. Onward Sharing Recipient Authority when (i) the NYDFS has a lawful prudential supervisory purpose for such disclosure and (ii) the U.S. Onward Sharing Recipient Authority's purpose for receiving the information relates to that Onward Sharing Recipient Authority's prudential supervision of the supervised entity or cross-border establishment to which the information pertains, subject to the U.S. Onward Sharing Recipient Authority's complying with the relevant confidentiality requirements established under United States law. In addition, before disclosing confidential information to the U.S. Onward Sharing Recipient Authority, the NYDFS will obtain assurances from each U.S. Onward Sharing Recipient Authority receiving such confidential information, that, in addition to complying with such professional secrecy and/ or confidentiality requirements as may be required by the applicable law, the confidential information will not be further disclosed by the U.S. Onward Sharing Recipient Authority, except (i) as authorised by the NYDFS after the NYDFS has received the ECB's prior consent and (ii) where required under a legal obligation to disclose the confidential information onward shared by the NYDFS under the conditions

described in Article 3, subparagraph 4. For the purposes of the information sharing provisions of this MoU, the Authorities acknowledge that staff from the U.S. Onward Sharing Recipient Authorities acting in an official capacity as members of an on-site inspection team with the NYDFS will be treated as staff members of the NYDFS. Unless otherwise specified in this MoU, U.S. Onward Sharing Recipient Authorities will be treated as third parties under the MoU. Where the NYDFS transmits confidential information to a U.S. Onward Sharing Recipient Authority pursuant to this paragraph, the NYDFS will provide ex-post monthly notice to the ECB regarding any disclosures made pursuant to this sub-paragraph.

Article 4

Cooperation in relation to the on-going supervision

Each Authority will use its best endeavours to provide, upon prior request, or on its own initiative where appropriate, the other Authority with any information that is likely to be of assistance to it in order to promote the safe and sound functioning of supervised entities.

Each Authority will provide relevant information to the other in a timely manner, following the occurrence of any event that has the potential to have a material adverse impact on the operations of a cross-border credit institution in the other jurisdiction.

The information mentioned under this Article will be given insofar as possible and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 5

On-going coordination

The Authorities will conduct meetings, as appropriate, to discuss issues concerning supervised entities that maintain cross-border establishments in their respective jurisdictions. The Authorities also intend, where practicable, to promote their cooperation by means of visits for informational purposes.

To the extent possible, the Authorities will conduct their communication via the designated contact persons set out in Annex 1. This Annex may be amended by written notice from either Authority without the need to amend this Memorandum of Understanding.

The information mentioned under this Article will be given insofar as possible and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 6
Cooperation in relation to the authorisation process / qualifying holdings assessments

The Authorities will notify each other, as soon as feasible, of applications for approval to establish cross-border establishments or make acquisitions, as well as in cases of the withdrawal of a license of a cross-border establishment operating in either jurisdiction.

Upon request, the Authorities will inform each other as to whether the applicant is in substantial compliance with the applicable laws and regulations and whether it may be expected, in light of its administrative structure and internal controls where relevant, that the management of the supervised entity or the cross-border establishment can be performed in an orderly manner. The Authorities will also, upon request, assist each other in verifying or supplementing any information submitted by the applicant.

Upon request, the Authorities will inform each other about the nature of their relevant supervisory system and the extent to which it may conduct supervision, including consolidated or group-wide, over the applicant.

Upon request, and where available, the Authorities will supply each other with information on proposed acquirers.

To the extent reasonable and consistent with the applicable laws, regulations, and requirements the Authorities will also share information on the capability, integrity, or experience of the prospective managers of the cross-border establishment.

Article 7
Breach reporting mechanism

The Authorities may share the information at their disposal received from informants/whistle-blowers in relation to supervised entities, if such exchange of information is necessary and proportionate. An exchange of information in this regard shall be subject to any relevant statutory provisions, including those restricting disclosure, and the terms of this MoU.

Article 8
Cooperation in relation to enforcement and sanctions

Upon request, each Authority will inform the other of non-public administrative pecuniary penalties, enforcement or sanction decisions in respect of cross-border establishments or in respect of supervised entities insofar as they relate to the operation of cross-border establishments in that jurisdiction¹⁰.

¹⁰ For the requests addressed to the ECB, this means that the ECB may only share information related to administrative pecuniary penalties imposed pursuant to Article 18(1) of the SSM Regulation, and sanctions imposed pursuant to Article 18(7) of the SSM Regulation.

The abovementioned information will be given as far as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 9

Cooperation in relation to on-site inspections

A home Authority may request that the host Authority assist the home Authority with the conduct of an on-site inspection in the host Authority's jurisdiction. The host Authority will assist the home Authority, as far as practicable, with the conduct of an on-site inspection of cross-border establishments situated in the host Authority's jurisdiction. Where the host Authority is not able to provide the assistance requested, the host Authority will notify the home Authority as soon as practical. On-site inspections pursuant to this Article will be subject to the applicable laws, including the laws in the participating jurisdictions.

The home Authority will duly notify the host Authority in advance of plans to inspect a cross-border establishment in the host Authority's jurisdiction, or to appoint a third party acceptable to the host Authority to conduct an inspection on its behalf, and will do so at least one month in advance for non-urgent missions. This notification will detail the purposes, scope, expected start and end dates of the inspection, the cross-border establishment to be inspected, and the names of the persons leading the inspection. At the discretion of the host Authority, inspections may be carried out independently by the home Authority, or in cooperation with the host Authority. On conclusion of the inspection of the cross-border establishment, the home Authority will, if requested by the host Authority, provide the host Authority with either the relevant findings or the relevant sections of the on-site inspection report within a reasonable time.

The provision of information under this Article will be subject to the applicable laws and regulations and in accordance with the principles set out in this Memorandum of Understanding.

Article 10

Cooperation in relation to emergency situations

The Authorities will endeavour to inform each other immediately if they become aware of an incipient crisis such as, but not limited to, serious financial difficulties which might have an adverse impact on operations relating to any supervised entity in the respective jurisdictions of the Authorities.

To the extent possible, and without prejudice to their involvement in the relevant cross-border cooperation fora, the Authorities will endeavour to seek coordinated responses to any crisis emerging in a cross-border establishment operating in their respective jurisdictions, in accordance with their respective applicable legislations.

Article 11

Status of this Memorandum of Understanding

This Memorandum of Understanding sets forth a statement of intent and does not modify or supersede any laws, regulations and requirements in force in, or applying to, the State of New York or the European Union or any of the Member States of the European Union. Nor does this Memorandum of Understanding create any directly or indirectly enforceable rights for the Authorities or any third party.

This Memorandum of Understanding is without prejudice to other cooperation arrangements that each Authority might conclude and may be supplemented with specific memoranda of understanding between the same Authorities agreed upon for the purpose of cooperating in the supervision of a specific cross-border establishment.

The Authorities will use their best endeavours in the performance of this Memorandum of Understanding. However, neither the Authorities nor any third party can bear or seek any liability regarding the performance of this Memorandum of Understanding.

Any disagreement arising from the interpretation or the performance of this Memorandum of Understanding will be amicably settled by means of consultations between the Authorities.

Based on the experience in cooperation under this Memorandum of Understanding, the Authorities will review the effectiveness of this Memorandum of Understanding.

Any amendment to this Memorandum of Understanding, including this Article, will be made in English and have effect only if executed by the Authorities in writing.

This Memorandum of Understanding will take effect on the later of the two dates written below and will remain in force indefinitely, subject to modification by mutual consent of the Authorities or termination by either Authority with 30 days prior notice to the other Authority.

In the event of the termination of this Memorandum of Understanding, the information obtained hereunder will continue to be treated in accordance with the confidentiality regime.

Article 12

Publication

Once this MoU has taken effect, the Authorities agree that it may be made publicly available in full or in part, excluding the contact list in Annex 1, by either of the Authorities through posting on their websites.

Signed by the duly authorised representatives.

For the New York State Department of
Financial Services

Date:
New York, 5th August 2021

Signature

Linda A. Lacewell
Superintendent of Financial Services

For the European Central Bank

Date:
Frankfurt am Main, 2nd August 2021

Signature

Andrea Enria
Chair of the Supervisory Board of the ECB

For the European Central Bank

Date:
Frankfurt am Main, 2nd August 2021

Signature

Frank Elderson
Vice-Chair of the Supervisory Board of the
ECB

Annex 2
List of SSM NCAs

The Nationale Bank van België/Banque Nationale de Belgique

The Bundesanstalt für Finanzdienstleistungsaufsicht (the German Federal Financial Supervisory Authority - BaFin)

Finantsinspeksioon (the Estonian Financial Supervisory Authority - FSA)

The Central Bank of Ireland

The Bank of Greece

The Banco de España

The Bulgarian National Bank

Hrvatska Narodna Banka (the National Bank of Croatia -

The Autorité de contrôle prudentiel et de résolution (the French Prudential Supervision and Resolution Authority - ACPR)

The Banca d'Italia

The Central Bank of Cyprus

Finanšu un kapitāla tirgus komisija (the Latvian Financial and Capital Market Commission - FKTK)

Lietuvos bankas

The Commission de Surveillance du Secteur Financier (the Luxembourg Financial Sector Supervisory Commission - CSSF)

The Malta Financial Services Authority (MFSA)

De Nederlandsche Bank

The Finanzmarktaufsicht (the Austrian Financial Market Authority - FMA)

The Banco de Portugal

Banka Slovenije

Národná banka Slovenska

Finanssivalvonta (the Finnish Financial Supervisory Authority – FIN-FSA)

Annex 3
List of U.S. Onward Sharing Recipient Authorities

Board of Governors of the Federal Reserve System

Federal Reserve Bank of New York

Federal Deposit Insurance Corporation