

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
