

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
