



EUROPEAN  
COURT  
OF AUDITORS



EUROPEAN CENTRAL BANK  
EUROSYSTEM

## Memorandum of Understanding

between

# the ECA and the ECB

regarding audits on the ECB's supervisory tasks

Whereas:

- a) *The ECB, the ECA and other Union institutions are each independent in the exercise of their powers. The independence of the ECB is enshrined in Articles 130 and 282(3) of the TFEU, as well as in Article 7 of Protocol No 4 on the Statute of the European system of central banks and of the European Central Bank (hereinafter the 'Statute'). In addition, Article 19 of Council Regulation (EU) No 1024/2013<sup>1</sup> (hereinafter the 'SSM Regulation') states that when carrying out the tasks conferred on it by the SSM Regulation, the ECB (and the national competent authorities acting within the SSM) shall act independently.*
  
- b) *The ECB is, under the conditions laid down by the TFEU and the Statute, subject to various kinds of Union controls, notably review by the Court of Justice and control by the Court of Auditors<sup>2</sup>.*

<sup>1</sup> 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).

<sup>2</sup> See judgment of the Court of Justice of 10 July 2003, *Commission v ECB*, Case C-11/00, ECLI:EU:C:2003:395, paragraphs 133 to 135.

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- c) *In line with the above provisions, Article 27.2 of the Statute establishes the mandate of the ECA towards the ECB.<sup>3</sup> Article 20.7 of the SSM Regulation clarifies the mandate of the ECA with regard to the supervisory tasks conferred on the ECB by the SSM Regulation. In relation to these supervisory tasks, it should be noted that in accordance with Recital 55 of the SSM Regulation “[a]ny shift of supervisory powers from the Member State to the Union level should be balanced by appropriate transparency and accountability requirements.”*
- d) *Article 287 (3) TFEU states that “The other institutions of the Union.... shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.”*
- e) *The ECB and the ECA acknowledge that the concept of “operational efficiency of the management”<sup>4</sup> as referred to in Article 27.2 of the Statute and Article 20(7) of the SSM Regulation is not defined in Union Law. To the extent applicable, the principle of efficiency underlying Article 33 of the Financial Regulation Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>5</sup> (hereinafter the ‘Financial Regulation’) may figure as a source of interpretation in the examination of the ECB’s supervisory activities by the ECA in line with its mandate.*
- f) *In order for the ECA and the ECB to cooperate closely and sincerely within the procedures, conditions and objectives set out in the TFEU, the Statute and the SSM Regulation, this Memorandum of Understanding (MoU) aims to establish practical arrangements between the two institutions. In particular, the ECB and the ECA wish to specify the modalities of document and information exchange between the two institutions with a view to ensuring the ECA’s access to all information necessary for it to perform its mandate of auditing the supervisory tasks conferred on the ECB, in line with Union law.*

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<sup>3</sup> Under Article 27.1 of the Statute, the accounts of the ECB must be audited by independent external auditors recommended by the Governing Council and approved by the Council.

<sup>4</sup> Both parties recall that all language versions of the relevant legislation are equally authentic.

<sup>5</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

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# Memorandum of Understanding

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between

## the ECA and the ECB

1. This MoU shall cover solely the ECA's audit of the ECB's supervisory tasks as conferred on it by Article 20(7) of the SSM Regulation.
2. The parties consider that this MoU must be implemented diligently and in good faith, with due regard for each party's legitimate concerns and the current statutory obligations.

### I The ECA's right to access information relevant for its audits

3. The ECA is entitled to seek and obtain all documents and information necessary for its audits of the operational efficiency of the management of the ECB, in full respect of the importance of a fully informed audit and of sincere cooperation in line with its mandate as attributed to it by Union law.
4. The ECA will draw up its audit questions and request documents and information in line with its mandate. The ECB works from the general assumption that the ECA's requests for information are within this mandate. Before a decision in relation to a particular request for information, the ECB may seek an explanation from the ECA as to the relevance to the ECA's mandate of the information request concerned. However, this type of request for explanation should not be systematic in nature.
5. The ECB will make all requested documents and information necessary for the audit available to the ECA without undue delay.
6. Annex I to this MoU specifies some types of documents and information that will be made available to the ECA in accordance with sections I and II of this MoU.

### II Special treatment of highly confidential documents and information

7. The parties share the understanding that much of the supervisory data held by the ECB is particularly sensitive, requires confidentiality protection, and as such it cannot be released or given to any third party without the prior written consent of the ECB. The ECA and the ECB together will ensure that the legal obligations and the public interest in protecting such data is also fully met in the ECA's audits, including by:
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- a. Ensuring that highly confidential documentation, including bank-specific information, is dealt with on-site at the ECB's premises. Access to such information may be granted in a controlled environment;
  - b. Restricting access to ECB documents and information to a strictly necessary number of nominated ECA staff while respecting the quality assurance processes of the ECA;
  - c. Ensuring that the ECA's IT systems are highly secure and at least equivalent to the standards applied by the ECB;
  - d. Ensuring that relevant ECA staff receive appropriate information and training in relation to data protection and applicable legal constraints;
  - e. Designing specific auditor profiles, where feasible, within the relevant ECB IT systems to ensure that audit related documents can be examined and stored securely;
  - f. Ensuring that the ECB is fully informed and consulted about any use and retention of its documents, information and data within the ECA, which must in any case be temporary and subject to the requirements of Union law;
  - g. If in the course of the audit or the adversarial procedure the ECB raises issues related to the protection of confidential data in line with Article 27 of the SSM Regulation in conjunction with Articles 53 to 62 of Directive 2013/36/EU of the European Parliament and of the Council<sup>6</sup> (hereinafter the 'CRD IV'), the ECA will take these concerns into account.
8. The ECA and the ECB will both make sure to observe the principle of proportionality. In particular the ECA will consider proportionality when requesting confidential information, e.g. audit samplings, and will seek to limit the scope of requests to what is necessary in line with the scope of the audit and the TFEU, the Statute and the SSM Regulation.
9. A nominated ECB Supervisory Board member will be responsible throughout an ECA audit for fulfilling the duties under this MoU – in line with relevant legal duties. Through regular dialogue between this ECB representative and the ECA reporting member, each side will strive to find smooth information sharing arrangements. In the event of a disagreement concerning the application of the MoU, such matters will be handled in a cooperative spirit. If necessary, disagreements can be escalated to the level of a dialogue between the ECA President and the ECB President or Vice-President.

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<sup>6</sup> 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).



### III Public access to documents in the ECA

10. If the ECA receives an application for public access to documents received by ECA during the audit, the ECA will, in accordance with Article 5 of Decision No 12/2005 of the Court of Auditors<sup>7</sup> of 10 March 2005 regarding public access to Court documents (2009/C 67/01), confirm receipt of the application and answer that the application should be addressed to the ECB.

### IV Review and amendment

11. The parties shall review the functioning and effectiveness of the cooperation and information exchange under this MoU every three years, or earlier if deemed necessary by both parties. In the event of a change in legislation, e.g. the TFEU, the Statute or the SSM Regulation, regarding the audit remit of the ECA, this MoU shall be amended or terminated, under the conditions foreseen in Paragraph 15.
12. Any amendment to this MoU requires the mutual consent of both parties in writing.

### V Publication of the Agreement

13. This MoU will be published on the websites of the ECA and the ECB within one week of its entry into effect in line with section VI.

### VI Effect and termination

14. This MoU will enter into effect on the date it is signed by both parties and will remain in effect until terminated in writing by either of the parties.
15. Each party may terminate this MoU by giving six months' prior written notice to the other party at any time. If the MoU is terminated by either party, steps will be taken to ensure that the termination does not affect any prior obligation already in progress. Termination of this MoU does not affect the obligations under this MoU relating to the confidentiality of the information, which will continue to have effect, nor does it affect obligations regarding cooperation and exchange of information between the parties under the applicable laws.

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<sup>7</sup> Decision No 12/2005 of the Court of Auditors of the European Communities of 10 March 2005 regarding public access to Court documents (OJ C 67, 20.3.2009, p. 1).

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Signed in Luxembourg on 9 October 2019 in two original copies each in the English language and signed by the parties' duly authorised representatives.



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## ANNEX

### Categories of documents or information

Below is a non-exhaustive list of documents or information that will be made available to the ECA if requested, in accordance with sections I and II of this MoU. They include relevant underlying documentation as well as related internal and external communication.

Bank-specific information may be requested by the ECA to support its audit work. In such cases clarification of the relevance of the information to the ECA's mandate will occasionally be requested by the ECB.

#### Process-related information

- Information regarding ECB/SSM organisational arrangements (e.g. organisational charts, headcount organisation and functioning of Joint Supervisory Teams (JSTs) or horizontal functions, working modalities with colleges of supervisors etc.).
- MoUs with authorities from non-SSM Union member states, third countries and other authorities and institutions.
- MoUs with national competent authorities (NCAs), other competent authorities, international organisations and others.
- Interinstitutional agreement and MoU with the European Parliament and European Council.
- ECB annual report on supervisory activities.
- Information/manuals regarding ECB/SSM procedures and management processes.
- Information regarding tools and systems supporting ECB supervisory activities.
- Information regarding ECB costs/expenses of supervisory activities and the calculation of the supervisory fee.
- Fee notice to each fee debtor and the underlying calculations.
- Information regarding contracts with external parties / procurement of services etc.
- Reports on time spent on task by business area and information on key performance indicators or performance metrics.
- Training material.

#### Policy-related information

- Information on the planning of supervisory activities.
- Reports from internal audit or ECB SSM Directorates or working groups or evaluation reports.
- ECB decisions on micro-prudential policies and regulations.
- Opinions and publications on micro-prudential and regulatory strategies.
- ECB regulations, guidelines, instructions on common methodological standards.
- ECB internal methodologies, including the SSM Supervisory Manual.
- Impact analyses.



- Asset Quality Review manual and templates.
- Supervisory review and evaluation process (SREP) decision templates.
- SREP supervisory benchmarks.
- Reports/horizontal analyses of internal models of significant institutions' (SIs).
- Templates on SIs' recovery plans.
- Benchmark reports on recovery plans.
- ECB recommendations, regulations, guidelines and general instructions on NCA supervisory practices for less significant institutions (LSIs).
- Reports on LSI supervision.
- SREP methodologies for LSIs.
- List of LSIs and information regarding the classification in three priority classes.
- Thematic reviews of LSIs.
- Risk analysis tools.
- Yearly assessment of SIs' significance.
- Stress test methodology.
- Stress test templates.
- Reports on the stress test exercises.
- Relevant reporting of information derived from Supervisory Dashboards.
- Aggregated capital reporting (COREP), financial reporting (FINREP) and short-term exercise (STE) reporting (if applicable) data

### Bank specific information

- ECB decisions/notification letters, and any relevant underlying information, under the SSM regulation, Regulation (EU) No 468/2014 of the European Central Bank<sup>8</sup> (hereinafter the 'SSM framework regulation'), Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>9</sup> (hereinafter the 'CRR'), national legislation and related delegated acts on matters such as:
  - authorisation (approval and rejection);
  - the significance of institutions;
  - passporting of branches and services;
  - the assessment of acquisitions of qualifying holdings;
  - fit and proper (re)assessment of SIs' management members;

<sup>8</sup> 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).

<sup>9</sup> 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).

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- model approvals, including joint decisions with colleges of supervisors, where applicable;
  - enforcement measures/sanctions/early intervention measures and assessments;
  - own funds requirements;
  - recovery planning;
  - specific reviews;
  - banks' governance;
  - financial conglomerates;
  - investigations;
  - requirement to limit business activities, divestment or risk reduction;
  - Imposition of reporting or disclosure requirements;
  - the SIs 'failing or likely to fail';
  - solvency assessment of SIs;
- opinions on resolution plans;
  - interaction with other relevant authorities (e.g. the Commission, the Single Resolution Board (SRB), the European Systemic Risk Board (ESRB));
  - statistical data used in banking supervision;
  - ECB measures, actions, decisions and operational acts (measures) on: (i) capital; (ii) liquidity; (iii) business models; (iv) internal models; (v) internal governance; and risks; (vi) reporting and requiring additional disclosure; (vii) enhanced supervision; and (viii) recovery plans;
  - ECB measures as defined in Article 5(2) of the SSM Regulation;
  - SREP reports;
  - SIs' recovery plans;
  - group risk assessment and group liquidity risk assessments reports;
  - other reports regarding risks to capital (e.g. internal capital adequacy assessment process (ICAAP) and internal liquidity adequacy assessment process (ILAAP));
  - on-site inspections (OSI): mission files including requests for information, pre-inspection notes, letters of recommendations;
  - OSI reports and their findings;
  - resolution planning and assessment of the resolvability of an SI;
  - opinions on minimum requirements for own funds and eligible liabilities (MREL);
  - institutional reports for (high priority) LSI

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