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Banking Supervision Within the Eurozone: The Single Supervisory Mechanism

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On 4 November 2014, the European Central Bank became the prudential regulator for all Eurozone banks under the Single Supervisory Mechanism. The SSM does not introduce another layer of substantive regulation but significantly changes the way in which prudential supervision is applied in practice within the Eurozone. The intent is to provide for more consistent and harmonized supervisory practices and standards within the Eurozone, which is an inherently difficult goal to achieve given local country complexities and the continuing need to rely on on-the-ground national regulators. The ECB will nonetheless have a powerful role in the supervisory landscape and will doubtless try to shape and steer supervisory culture going forward.

Introduction

On 30 September 2014, the European Central Bank (“**ECB**”) published its Guide to Banking Supervision,¹ which sets out practical guidance for banks falling within its new supervisory remit. The Guide builds on the ECB regulation published on 25 April 2014, which established a framework for cooperation within the Single Supervisory Mechanism (“**SSM**”) between the ECB and national regulators (the “**Framework Regulation**”).² This note sets out key changes affecting Eurozone banks, including subsidiaries of international banking groups within the Eurozone.

Prior to assuming its role, the ECB undertook a financial health check of Eurozone banks (the “**Comprehensive Assessment**”), a year-long project in preparation for the new structure. The findings of the ECB’s Comprehensive Assessment were announced on

¹ ECB, Guide to Banking Supervision, September 2014, available at: <https://www.ecb.europa.eu/pub/pdf/other/ssmguidebankingsupervision201409en.pdf?85e39f5cf761e11147f6e828cd4088b1>.

² 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).

26 October 2014.³ The Comprehensive Assessment included not only an asset quality review but also a forward-looking stress test of the banks, covering 130 of the largest banks in the Eurozone as of 31 December 2013.

The Single Supervisory Mechanism

The banking and sovereign debt crises in the Eurozone highlighted the flaws of a unified monetary and currency Union without fiscal union and consistency of banking supervision. In response, in 2012 the European Commission called for the creation of a Banking Union. One of the key pillars of the Banking Union⁴ is the SSM, which was established to restore confidence in the financial stability of Eurozone banks and to temper the link between bank solvency and government debt. The SSM underpins the European Stability Mechanism (“**ESM**”) and is a precondition for the ESM being able to recapitalise banks directly. The ESM was originally set up to provide only for the indirect recapitalisation of banks by means of a loan being granted to the relevant Member State.

Under the SSM, certain key tasks of banking supervision fall to the ECB. The ECB will apply the substantive rules of prudential supervision affecting Eurozone banks – termed “credit institutions.” These rules include directly applicable EU Regulations (e.g., CRR), including options that Eurozone and other participating Member States are able to exercise under such Regulations, national laws of the Member States transposing the relevant EU Directives (e.g., CRD IV) and technical standards required to be produced by the EBA under the CRD IV package. In effect, the ECB supplants the role of national Eurozone and opt-in banking supervisors who have ceded the vast bulk of their oversight responsibility to the ECB. The ECB is now of equal status within the EU supervisory context to other non-Eurozone national banking supervisors, such as the Prudential Regulation Authority in the UK.

All 18 Member States⁵ whose currency is the Euro automatically participate in the SSM, so it covers at least the approximately 4,900 banks⁶ established in the Eurozone. Other EU Member States may choose to participate in the SSM by opting in through the regime of “close cooperation.” Several other Member States have indicated that they are likely to become “participating Member States.”⁷ The UK, Sweden and the Czech Republic will remain outside.

Significant and Less Significant Credit Institutions

The ECB now exercises direct supervision over all “significant” Eurozone credit institutions. Whether a credit institution is significant or not is generally determined on the basis of:

- the total value of its assets;⁸
- the importance of the credit institution to the economy of the country in which it is located or to the EU as a whole;
- the significance of the credit institution’s cross-border activities; and
- whether the credit institution has requested or received public financial assistance from the ESM or its predecessor, the European Financial Stability Facility (“**EFSSF**”).

³ See the ECB press release available at: <http://www.ecb.europa.eu/press/pr/date/2014/html/pr141026.en.html>. The ECB has also launched a new website, available at: <https://www.bankingsupervision.europa.eu/home/html/index.en.html>.

⁴ The other components of the Banking Union, i.e. the Single Rulebook, the Single Resolution Mechanism (“SRM”) and a common deposit protection regime, are not addressed in this memorandum.

⁵ As Latvia adopted the Euro on 1 January 2014, it is also part of the SSM.

⁶ Only credit institutions within the meaning of CRR are subject to the SSM.

⁷ In particular, Romania, Denmark and Bulgaria. Other Member States have taken a “wait and see” approach and will stay out of the SSM for the time being. Lithuania will join the Eurozone and, consequently, the SSM on 1 January 2015.

⁸ If the total value of the credit institution’s assets exceeds EUR30 billion or the ratio of its total assets over the GDP of the participating Member State exceeds 20% (unless the total value of its assets is below EUR5 billion).

The three largest credit institutions of each participating Member State are considered “significant” regardless of their absolute size. All other – “non-significant” – credit institutions are supervised by national regulators, albeit under the ECB’s oversight, unless the ECB elects to assume the direct supervision of a particular credit institution. According to the lists published by the ECB on 4 September 2014,⁹ 120 banking groups (representing approximately 1,200 supervised entities) were intended to be regarded as “significant” at inception of the SSM. These credit institutions account for almost 85 per cent of total banking assets in the Eurozone.

The ECB will receive all information and reporting for significant entities through the national regulators, who are responsible for passing that information to the ECB. For less significant credit institutions, the ECB may issue general instructions and guidelines to national regulators to ensure consistent outcomes, but may also require a national regulator to adopt a supervisory decision for a specific institution, groups or categories of credit institutions.

The ECB is expected to take concrete steps to harmonise standards and practices across the banks within the SSM. An early indication of the ECB’s efforts on this front was set out in proposals to ensure financial reporting is carried out by all banks on both a solo and consolidated basis.¹⁰

Role of the EU Supervisory Authorities

The SSM is intended to fit within the still new European System of Financial Supervision (“**ESFS**”)¹¹, which comprises the European Systemic Risk Board (“**ESRB**”), three European Supervisory Authorities (“**ESAs**”)¹² and the national regulators. There may, as a result, be some degree of overlapping supervisory responsibilities and duplicative requirements imposed on banks.

The ESRB

The ESRB has no direct powers over institutions and is tasked with macro-prudential oversight of the EU system, including identifying systemic risk concerns. This overlaps slightly with the ECB’s remit, save that the ECB only covers participating Member States whereas the ESRB is responsible for the entire EU; and the ECB only covers credit institutions, whilst the ESRB’s remit covers the EU financial system as a whole, including non-bank sectors and cross-sectoral concerns. The ESRB can only issue warnings and recommendations (on an “act or explain” basis) to the Union as a whole, or one or more of the Member States, or to the ESAs or national regulators. Warnings and recommendations can be issued to the ECB in the same way as to any other supervisory authority.

The European Banking Authority (“EBA”)

The main decision-making body of the EBA is the Board of Supervisors¹³, which comprises, essentially, the 28 EU national regulators. There have been concerns that the EBA might become dominated by supervisors from

⁹ ECB, The list of significant supervised entities and the list of less significant institutions, latest update of the list: 04/09/2014 (<https://www.ecb.europa.eu/pub/pdf/other/ssm-listofsupervisedentities1409en.pdf?59d76de0c5663687f594250ebf228c6b>).

¹⁰ The current supervisory financial reporting requirement, as set out on the technical standards on supervisory reporting under the Capital Requirements Regulation, only applies to banks applying International Financial Reporting Standards at a consolidated level.

¹¹ For further information about the ESFS you may refer to Client Publication dated 18 October 2010 “The New EU Financial Supervisory Architecture” (http://www.shearman.com/-/media/Files/NewsInsights/Publications/2010/10/The-New-EU-Financial-Supervisory-Architecture/Files/View-full-memo-The-New-EU-Financial-Supervisory-_/FileAttachment/FIA101810TheNewEUFinancialSupervisoryArchitecture.pdf).

¹² The ESAs are the European Banking Authority (“EBA”) with responsibility for the banking sector, the European Securities and Markets Authority (“ESMA”) with responsibility for the securities sector and financial markets and the European Insurance and Occupational Pensions Authority (“EIOPA”) with responsibility for the insurance and occupational pensions sectors. The Joint Committee of the ESAs is designed to foster coordination amongst the three ESAs.

¹³ Not to be confused with the newly established Supervisory Board of the ECB which is responsible for preparing ECB’s decisions on supervisory matters.

SSM-participating Member States under the leadership of the ECB. To address this, voting provisions have been amended so that they generally require a “double majority” from authorities of both participating and non-participating Member States.¹⁴ The ECB will likely seek to coordinate among the bank regulators of participating Member States.

- The main task of the EBA is to develop a single set of harmonised prudential supervisory rules throughout the EU in certain regulatory areas subject to harmonization (“**Single Rulebook**”), in particular through the issue of technical standards and guidance. Such Level 2 and 3 measures bind the ECB in the same way as for any other national non-Eurozone regulator.
- The EBA issues a European supervisory handbook covering the EU as a whole in order to promote a common supervisory culture and best supervisory practices. The ECB will have its own more detailed supervision manual covering the supervisory approach within the SSM, which will take the form of an internal document addressed to SSM staff. Both the EBA and the ECB will seek to ensure that these two documents are consistent.
- The ECB has also prepared a Guide to Banking Supervision, a publicly available tool which will be regularly updated to reflect developments in supervisory practice. The Guide addresses: (i) supervisory principles of the SSM, which comprise the use of best practices, the principles of integrity and decentralisation, homogeneity within the SSM, consistency with the Single Market, independence and accountability, a risk-based approach, proportionality, adequate levels of supervisory activity for all credit institutions and effective and timely corrective measures, (ii) the functioning of the SSM, including the apportionment of tasks between the ECB and the national regulators, decision-making processes, and the operating structure and supervisory cycle of the SSM, and (iii) the supervisory processes of the SSM. The Guide to Banking Supervision is not a legally binding document and is not a substitute for the EU Regulation establishing the SSM (“**SSM Regulation**”),¹⁵ the Framework Regulation or any other EU acts which provide for the legal basis of the SSM.
- The EBA will continue to carry out EU-wide stress tests. Stress tests are also part of the ECB’s toolbox within the SSM. Following the asset quality review and initial stress tests conducted in connection with the launch of the SSM,¹⁶ the ECB is expected to carry out its own stress tests on a regular basis. Key ECB officials have announced that these stress tests will be conducted in close cooperation with the EBA, in particular with regard to design and timing.

There will be much less interaction between the ECB and the European Securities and Markets Authority (“**ESMA**”) or the European Insurance and Occupational Pensions Authority (“**EIOPA**”) as their respective areas of responsibilities will generally remain outside the scope of the SSM. Important exceptions are bank-led financial conglomerates (containing both banking and insurance businesses) for which supplementary supervision might be carried out by the ECB. The required cooperation will be addressed in a memorandum of understanding between the ECB and EIOPA.

National Regulators

National banking regulators in participating Member States remain in charge of all supervisory tasks falling outside the scope of the SSM. Areas such as consumer protection, money laundering prevention, payment services, conduct of business regulation and the special regimes for covered bond banks and building societies will remain with national regulators. This position will also apply for national legislation that goes beyond minimum European standards.

¹⁴ Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013.

¹⁵ 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.

¹⁶ See the ECB press release available at: <http://www.ecb.europa.eu/press/pr/date/2014/html/pr141026.en.html>.

A Joint Supervisory Team (“**JST**”) consisting of an ECB representative and relevant national regulators will be established for each significant credit institution. Although each JST will be led by a designated ECB staff member (who, as a rule, will be of a different nationality than that of the supervised institution) and includes staff members of national regulators of other participating Member States, the effectiveness of day-to-day supervision will largely depend on the support of the home state regulator. The JST set-up does not apply to less significant credit institutions.

The allocation of responsibilities between the ECB and the national regulators is based on the Framework Regulation and is summarized in the table below. While the ECB will be at the forefront, it will undoubtedly have to make use of the local knowledge and expertise of national regulators. It will be challenging for the ECB to understand, construe and apply national law concepts across multiple jurisdictions. Where regulatory requirements derive from EU directives or as the result of the exercise of a national option available to participating Member States under EU regulations, the ECB will have to determine how these requirements have been transposed into the relevant national laws. Even if regulatory requirements are expressly spelt out in EU regulations or technical standards, they are embedded in the framework of national legislation of the Member States. Additional difficulties arise from the multiple European languages in which the approximately 6,000 credit institutions subject to the SSM conduct their businesses. National regulators will therefore continue to play a significant role. In jurisdictions where the national regulators have a long-standing administrative tradition and the regulatory process is generally established by precedent, the SSM is likely to take quite a while to become fully operational.¹⁷

Credit Institutions Established Outside the SSM

Credit institutions established in a non-participating Member State seeking to establish a branch or provide cross-border services in a Eurozone Member State or a state which has signed up to ECB oversight of banking regulations will continue to benefit from the EU passport regime (inbound passport). The ability of such banks to continue to operate in this way will not be greatly affected by the SSM. Going forward, the ECB must be notified of any requests for a passport to do business in a participating Member State. In relation to branch supervision, the powers of the host supervisor will be exercised by (i) the ECB for significant branches; and (ii) the relevant national regulator for less significant branches. For the provision of cross-border services, the powers of the host supervisor will be exercised by the ECB regardless of the significance of the relevant entity.

For a credit institution established in a country outside the EEA¹⁸ (a “**Third Country**”) seeking to establish a branch or provide cross-border services in a Member State, neither the EU passport regime nor the SSM will apply, regardless of whether the Member State participates in the SSM or not. Instead, the national laws of the Member State will govern the ability of such banks to branch into that Member State. A banking subsidiary of a Third Country institution established in a Eurozone or other participating Member State will be subject to the SSM. Under the SSM, the ECB will join cross-border supervisory colleges and co-ordinate the supervision of cross-border groups with supervisory authorities outside the SSM on the basis of memoranda of understanding.

¹⁷ In contrast to EBA’s conflict resolution mechanism, the Framework Regulation provides no solution for resolving potential disputes within the JSTs or potential conflicts on competence between ECB and national regulators in connection with the SSM.

¹⁸ It is expected that credit institutions established outside the EU, but within the EEA wishing to establish a branch or provide cross-border services in a Member State participating in the SSM will be treated in the same way as credit institutions established in a Member State not participating in the SSM.

Allocation of Responsibilities

REGULATORY TASK	SIGNIFICANT CREDIT INSTITUTIONS	LESS SIGNIFICANT CREDIT INSTITUTIONS				
<p>Authorisation and Change of Control</p>	<p>The procedures for granting and withdrawing authorisations and the assessment of changes of control do not differentiate between significant and less significant credit institutions.</p> <p>For the authorisation of a credit institution in a participating Member State, the point of entry is the national regulator of such participating Member State, which also remains responsible for notifying the applicant of any final decision:</p> <ul style="list-style-type: none"> ▪ If the application meets all conditions under national law, the national regulator will prepare a draft decision and notify it to the applicant and the ECB at least 20 working days before the end of the maximum assessment period provided for by national law. The ECB will then perform an independent review on the basis of EU law and take a final decision within 10 working days by either supporting or rejecting the draft decision. In duly justified cases, the ECB's review period may be extended for another 10 working days. ▪ If the national regulator concludes that the application does not meet all conditions under national law it will reject the application based on its own decision. <p>The ECB will be responsible for the withdrawal of an authorisation granted to a credit institution in a participating Member State. An authorisation may be revoked either in the initiative of the ECB or the relevant national regulator. The latter case includes, for example, withdrawals based on national law and withdrawals requested by the credit institution itself. In any event, the ECB will consult with both the relevant national regulator and the national resolution authority (if different from the national regulator) before taking a final decision.</p> <p>The ECB will also be responsible for the assessment of changes of control for a credit institution in a participating Member State. Similar to the procedure regarding authorisations, the relevant national regulator will serve as point of entry and perform a first assessment of any notification received by it. However, the procedure differs in that the national regulator may not oppose the acquisition based on its own decision and the final decision will be taken and notified to the parties by the ECB.</p>					
<p>EU Passport Regime</p>	<p>For both significant and less significant credit institutions established in a participating Member State seeking to establish a branch or provide cross-border services in a non-participating Member State (outbound passport), any branch passport notification or services passport notification will be addressed to the home national regulator.</p> <table border="1" data-bbox="475 1236 1393 1440"> <tr> <td data-bbox="475 1236 937 1440"> <p>The home national regulator will immediately inform the ECB upon the receipt of any branch passport notification or any services passport notification.</p> <p>The powers of the home supervisor will be exercised by the ECB.</p> </td> <td data-bbox="937 1236 1393 1440"> <p>The powers of the home supervisor will remain with the home national regulator and will not be part of the ECB's powers.</p> </td> </tr> </table> <p>For both significant and less significant credit institutions established in a participating Member State wishing to establish a branch or provide services in another participating Member State (internal passport), any branch passport notification or services passport notification will be addressed to the home national regulator.</p> <table border="1" data-bbox="475 1539 1393 1913"> <tr> <td data-bbox="475 1539 937 1913"> <p>The national regulator will immediately inform the ECB on the receipt of any branch passport notification or any services passport notification. The national regulator will also communicate any services passport notification to the national regulator of the host Member State.</p> <p>Where no decision to the contrary is taken by the ECB within two months of receipt of a branch passport notification, the branch may be established and commence its activities. The ECB will communicate this information to the national regulator of the host Member State.</p> </td> <td data-bbox="937 1539 1393 1913"> <p>The national regulator will communicate any services passport notification to the ECB and the national regulator of the host Member State.</p> <p>Where no decision to the contrary is taken by the home national regulator within two months of receipt of the branch passport notification, the branch may be established and commence its activities. The home national regulator will communicate this information to the ECB and the national regulator of the host Member State.</p> </td> </tr> </table>		<p>The home national regulator will immediately inform the ECB upon the receipt of any branch passport notification or any services passport notification.</p> <p>The powers of the home supervisor will be exercised by the ECB.</p>	<p>The powers of the home supervisor will remain with the home national regulator and will not be part of the ECB's powers.</p>	<p>The national regulator will immediately inform the ECB on the receipt of any branch passport notification or any services passport notification. The national regulator will also communicate any services passport notification to the national regulator of the host Member State.</p> <p>Where no decision to the contrary is taken by the ECB within two months of receipt of a branch passport notification, the branch may be established and commence its activities. The ECB will communicate this information to the national regulator of the host Member State.</p>	<p>The national regulator will communicate any services passport notification to the ECB and the national regulator of the host Member State.</p> <p>Where no decision to the contrary is taken by the home national regulator within two months of receipt of the branch passport notification, the branch may be established and commence its activities. The home national regulator will communicate this information to the ECB and the national regulator of the host Member State.</p>
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REGULATORY TASK	SIGNIFICANT CREDIT INSTITUTIONS	LESS SIGNIFICANT CREDIT INSTITUTIONS
<p>Consolidated Supervision and Colleges of Supervisors</p>	<p>Consolidated supervision will be carried out by the ECB where the parent undertaking is a parent institution in a participating Member State.</p>	<p>Consolidated supervision will be carried out by the relevant national regulator.</p>
	<p>If the ECB is the consolidating supervisor, it will chair any cross-border college of supervisors. The national regulator of each participating Member State where the parent, any subsidiary or any significant branch is established will have the right to participate in the college as observer. If the ECB is the only responsible authority involved, the home/host distinction does not apply. In this scenario, no colleges would be required and disputes between home/host supervisors would not arise.</p> <p>If the consolidating supervisor is not in a participating Member State and the supervised entities in participating Member States are all significant, the ECB will participate in the college of supervisors as a member, while each relevant national regulator will be entitled to participate in the same college as observer.</p>	<p>If the consolidating supervisor is not in a participating Member State and the supervised entities in participating Member States are all less significant, each relevant national regulator will participate in the college of supervisors as members.</p>
	<p>If the consolidating supervisor is not in a participating Member State and the supervised banks in participating Member States are both significant and less significant, the ECB and each relevant national regulator will participate in the college of supervisors as members. The national regulators of participating Member States where the significant supervised entities are established will be entitled to participate in the college of supervisors as observers.</p>	
<p>Supplementary Supervision of Financial Conglomerates</p>	<p>If a significant credit institution established in a participating Member State forms part of a financial conglomerate, the ECB will participate in the supplementary supervision of the financial conglomerate and exercise the role of coordinator where the banking supervisor is appointed as the coordinator for the financial conglomerate.</p>	<p>If a less significant credit institution established in a participating Member State forms part of a financial conglomerate, the relevant national regulator will participate in the supplementary supervision of the financial conglomerate and exercise the role of coordinator where it is appointed as the coordinator for the financial conglomerate.</p>
<p>Other Micro-Prudential Tasks</p>	<p>The ECB will be responsible for:</p> <ul style="list-style-type: none"> ▪ ensuring compliance with prudential requirements in the areas of capital, liquidity, leverage, securitisation, large exposure limits, reporting and public disclosure of information on those matters; ▪ ensuring compliance with requirements to have robust governance arrangements, including fit and proper requirements for members of management, risk management processes, internal control mechanisms, remuneration policies and practices, and effective internal capital adequacy assessment processes, including Internal Ratings Based models; ▪ carrying out supervisory reviews and stress tests and their possible publication and, based thereon, to impose on credit institutions specific additional capital requirements, specific liquidity requirements, specific publication requirements and other measures (to the extent they are available to competent authorities under relevant EU laws); and 	<p>The relevant national regulator will remain responsible for the tasks listed in the left column of this row. However, the ECB will steer the performance of such tasks by issuing regulations, guidelines and general instructions to the national regulators. Further, the ECB will exercise oversight over the functioning of the system by requiring the national regulators to:</p> <ul style="list-style-type: none"> ▪ notify the ECB of any material supervisory procedure; ▪ further assess, on the request of the ECB, specific aspects of the procedure; and ▪ transmit to the ECB material draft supervisory decisions on which the ECB may express its views.

REGULATORY TASK	SIGNIFICANT CREDIT INSTITUTIONS	LESS SIGNIFICANT CREDIT INSTITUTIONS
	<ul style="list-style-type: none"> ▪ carrying out supervisory tasks in relation to recovery plans, and early intervention where a credit institution or group in relation to which the ECB is the consolidating supervisor, does not meet or is likely to breach applicable prudential requirements, and, only in the cases explicitly stipulated by relevant EU laws for competent authorities, structural changes required from credit institutions to prevent financial stress or failure, excluding any resolution powers. 	
	<p>Direct supervision will be carried out by the ECB with the assistance of relevant national regulators. A Joint Supervisory Team headed by ECB staff and supported by experts from the relevant national regulators will be in charge of the preparation of the draft decisions that are to be taken by the ECB's Supervisory Board and then the ECB's Governing Council.</p>	<p>Direct supervision will remain with the relevant national regulator.</p>
<p>Macro-Prudential Tasks</p>	<p>The macro-prudential tasks conferred on the ECB do not distinguish between significant and less significant credit institutions and may therefore affect any credit institution in a participating Member State. Generally, the national regulators with responsibility for systemic risk oversight remain responsible for macro-prudential tasks. However, if a national regulator does not set a countercyclical buffer rate (under Articles 130 – 142 of CRD IV), this will not prevent the ECB from doing so. Further, the ECB may, instead of the relevant national regulator, apply higher requirements for capital buffers or apply more stringent measures aimed at addressing systemic or macro-prudential risks.</p>	
<p>Reporting</p>	<p>The relevant national regulator will remain the point of entry for receiving information required to be reported on a regular basis but the ECB will have the related tasks and powers under the Single Rulebook.</p>	<p>The relevant national regulator will remain the point of entry for receiving information required to be reported on a regular basis and also have the related tasks and powers under the Single Rulebook.</p>
<p>Supervisory Toolbox</p>	<p>The ECB will be considered, as appropriate, the competent or designated authority in participating Member States. Therefore, it will generally have all the powers, which competent and designated authorities have under relevant EU laws. Further, to the extent required to carry out its tasks, the ECB instruct national authorities to make use of their powers, which are not conferred on the ECB, under and in accordance with the conditions set out in national laws.</p> <p>The ECB may, in particular, address relevant problems at an early stage by using the following specific powers:</p> <ul style="list-style-type: none"> ▪ requiring an institution to hold capital in excess of the requirements laid down in the relevant EU laws related to risks not covered under relevant EU laws; ▪ requiring an institution to apply a specific provisioning policy or treatment of assets; ▪ restricting or limiting the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution; ▪ requiring the reduction of the risk inherent in the 	

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	<p>activities, products and systems of institutions;</p> <ul style="list-style-type: none"> ▪ requiring an institution to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base; ▪ requiring an institution to use net profits to strengthen capital; ▪ restricting or prohibiting distributions by the institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution; ▪ requiring the reinforcement of the arrangements, processes, mechanisms and strategies; ▪ requiring an institution to present a plan to restore compliance with supervisory requirements under relevant EU laws and set a deadline for its implementation, including improvements to that plan regarding scope and deadline; ▪ imposing specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities; ▪ imposing additional or more frequent reporting requirements, including reporting on capital and liquidity positions; ▪ requiring additional disclosures; ▪ removing at any time members from the management body of credit institutions who do not fulfill the requirements set out in the relevant EU laws. 	
	<p>The ECB may exercise the following supervisory powers regarding information requests, investigations and on-site inspections for both significant and less significant credit institutions (including any natural persons belonging to such entity and any third parties to whom such entity has outsourced functions and activities). The ECB may request all information that is necessary to carry out its tasks (including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes) subject to taking account of information already available to national regulators. In connection with these information requests, the ECB may specify categories of information that should be reported as well as the processes, formats, frequencies and time limits for provision of the information concerned. In relation to any request to provide information at recurring intervals, the relevant national regulator will serve as the point of entry.</p> <p>In addition, the ECB may conduct all necessary investigations and conduct all necessary on-site inspections at the business premises of the relevant legal persons.</p> <p>Notwithstanding these ECB powers, national regulators will maintain their powers under national laws to obtain information and to perform on-site inspections in relation to less significant credit institutions.</p>	
<p>Administrative Penalties</p>	<p>If a significant credit institution fails to comply with obligations under ECB regulations or decisions, the ECB may impose administrative fines</p>	<p>If a less significant credit institution fails to comply with obligations under ECB regulations or decisions, the ECB will be responsible for imposing administrative fines only where the relevant ECB regulations or decisions impose obligations directly owed to the ECB.</p>

REGULATORY TASK	SIGNIFICANT CREDIT INSTITUTIONS	LESS SIGNIFICANT CREDIT INSTITUTIONS
	<p>If a significant credit institution breaches a requirement under directly applicable EU laws in relation to which administrative fines could be imposed by national supervisors under the relevant EU laws, the ECB may, within the scope of its tasks, impose administrative fines of up to twice the amount of the profits gained or losses avoided as a result of the breach where those can be determined, or up to 10 per cent of the total annual turnover in the preceding business year or such other fines as may be provided for in relevant EU laws.</p> <p>With respect to:</p> <ul style="list-style-type: none"> ▪ non-pecuniary penalties in the event of a breach of directly applicable EU laws by legal or natural persons, as well as any fines in the event of a breach of directly applicable EU laws by natural persons; ▪ any pecuniary or non-pecuniary penalties in the event of a breach by legal or natural persons of any national laws transposing EU Directives; or ▪ any pecuniary or non-pecuniary penalties to be imposed in accordance with relevant national laws which confers specific powers on the national regulators in Eurozone Member States which are currently not required under the relevant EU laws; <p>the ECB may, where necessary for the purpose of carrying out its tasks in respect of a significant credit institution, request the relevant national regulator to open proceedings with a view to taking action to ensure that appropriate penalties are imposed. With regard to such penalties, the relevant national regulator may ask the ECB to request it to open proceedings.</p> <p>The relevant national regulator, however, will remain responsible for the purpose of opening proceedings on its own initiative regarding the application of national laws for tasks not conferred on the ECB.</p>	<p>In all other cases, national regulators alone may open enforcement proceedings and impose administrative fines on less significant entities. Each national regulator will notify the ECB on a regular basis of all administrative penalties imposed on less significant entities in connection with the exercise of its supervisory tasks.</p>

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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