

19 January 2024

MEMORANDUM OF COOPERATION
between competent authorities for the performance of their supervisory tasks in relation to the supervision
of Third-Country Groups and Third-Country Branches

This Memorandum of Cooperation is made

BETWEEN

European Central Bank, with its headquarters at Sonnemannstrasse 22, 60314 Frankfurt am Main, Germany

Österreichische Finanzmarktaufsicht, with its headquarters at Otto Wagner Platz 5, 1090 Vienna, Austria,

Oesterreichische Nationalbank, with its headquarters at Otto Wagner Platz 3, 1090 Vienna, Austria,

Nationale Bank van België/Banque Nationale de Belgique, with its headquarters at 3 Boulevard de Berlaimont, 1000 Brussels, Belgium

Central Bank of Cyprus, with its headquarters at 80, Kennedy avenue, CY-1076 Nicosia, Cyprus

Bundesanstalt für Finanzdienstleistungsaufsicht, with its headquarters at Graurheindorfer Str. 108, 53117 Bonn, Germany

Deutsche Bundesbank, with its headquarters at Wilhelm-Epstein-Straße 14, 60431 Frankfurt am Main, Germany

Bank of Greece, with its headquarters at El. Venizelos Str., GR 102 50 Athens, Greece

Banco de España, with its headquarters at Calle Alcalá, 48 - 28014 Madrid, Spain

Autorité de Contrôle Prudentiel et de Résolution, with its headquarters at 4 Place de Budapest - 75436 Paris, France

Hrvatska narodna banka, with its headquarters at Trg hrvatskih velikana 3, 10000 Zagreb, Croatia

Central Bank of Ireland/Banc Ceannais na hÉireann, with its headquarters at New Wapping Street, North Wall Quay, Dublin 1, Ireland

Banca d'Italia, with its headquarters at via Nazionale 91, 00184 Roma, Italy

Commission de Surveillance du Secteur Financier, with its headquarters at 283, route d'Arlon, L-1150 Luxembourg, Luxembourg

Banque centrale du Luxembourg, with its headquarters at 2, boulevard Royal, L-2983 Luxembourg, Luxembourg

Malta Financial Services Authority, with its headquarters at Triq l-Imdina, Zone 1, Central Business District, Birkirkara CBD 1010, Malta

De Nederlandsche Bank, with its headquarters at Spaklerweg 4, 1096 BA Amsterdam, The Netherlands

Banco de Portugal, with its headquarters at Rua do Comércio, 148, 1100-150 Lisboa, Portugal

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

WHEREAS:

- (1) In accordance with Article 47(2a) of Directive 2013/36/EU of the European Parliament and of the Council¹ (hereinafter the 'CRD'), competent authorities supervising branches of credit institutions having their head office in a third country and competent authorities of institutions that are part of the same third-country group are to cooperate closely to ensure that all activities of that third-country group in the Union are subject to comprehensive supervision, to prevent the requirements applicable to Third-Country Groups pursuant to the CRD and Regulation (EU) No 575/2013 of the European Parliament and of the Council² (hereinafter the 'CRR') from being circumvented and to prevent any detrimental impact on the financial stability of the Union.
- (2) This Memorandum of Cooperation should be consistent and coordinated with cooperation agreements resulting from Union law and its national implementation. In addition, this Memorandum of Cooperation should be consistent with all relevant Union law, and with the applicable national laws and regulations, as well as with the European Banking Authority guidelines and recommendations.
- (3) The Authorities comply with Commission Delegated Regulation (EU) 2016/98³ specifying the general conditions for the functioning of colleges of supervisors, and Commission Implementing Regulation (EU) 2016/99⁴ laying down implementing technical standards with regard to determining the operational functioning of the colleges of supervisors. This Memorandum of Cooperation does not affect specific agreements reached between any Authorities within supervisory colleges.

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, 26.6.2013, p. 338).

² 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 (OJ L 176, 27.6. 2013, p.1).

³ Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (OJ L 21, 28.1.2016, p. 2).

⁴ Commission Implementing Regulation (EU) 2016/99 of 16 October 2015 laying down implementing technical standards with regard to determining the operational functioning of colleges of supervisors according to Directive 2013/36/EU of the European Parliament and of the Council (OJ L 21, 28.1.2016, p. 21).

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

Section I – General

Article 1

Purposes

The purposes of this Memorandum of Cooperation are:

- to ensure cooperation by the Authorities with the aim that all activities of third-country groups in the Union are subject to comprehensive supervision in order to: (a) strengthen the supervisory framework established by the CRD and the CRR that applies to Third-Country Groups in the Union; (b) prevent the circumvention of the requirements applicable to Third-Country Groups pursuant to the CRD and the CRR; and (c) prevent any detrimental impact on the financial stability of the Union;
- to foster the supervisory framework within which the Authorities cooperate and coordinate actions on credit institutions with their head office in a third country that establish one or more Third-Country Branches in the Union;
- to facilitate the exchange of information between the Authorities on Third-Country Groups and Third-Country Branches, and specify the timing and means of such exchange;
- to establish Supervisory Fora and facilitate their organisation and functioning;
- to facilitate the building of consensus on supervisory approaches taken by the Authorities, to the extent possible;
- to ensure the highest level of information exchange, including of confidential information, among the Authorities in the case of emergency situations, insofar as necessary.

Article 2

Definitions

For the purpose of this Memorandum of Cooperation, definitions stated in relevant Union law apply, unless expressly stated otherwise within this Memorandum of Cooperation.

In addition, the following definitions apply for the purpose of this Memorandum of Cooperation only:

- (a) 'Supervisory Forum' means a standing but flexible structure established pursuant to Article 8(1) for collaboration, coordination and information sharing among the Authorities responsible for and involved in the supervision of Third-Country Branches and Third-Country Groups;
- (b) 'Participating Authority' means an Authority participating in a Supervisory Forum, and includes the Coordinating Authority;
- (c) 'Relevant Authority' means the competent authority of the Member State in which a Third-Country Branch is established (or will be established);
- (d) 'Coordinating Authority' means the Authority responsible for establishing a Supervisory Forum under Article 8 of this Memorandum of Cooperation, which is: (a) in the case of an Intermediate EU Parent Undertaking established in an participating Member State, the consolidating supervisor of the Intermediate EU Parent Undertaking; (b) in

the case where no Intermediate EU Parent Undertaking is established, or where a second Intermediate EU Parent Undertaking has been authorised, the authority determined by application by analogy of Article 111 of the CRD (taking into account only participating Member States and considering Third-Country Branches as credit institutions for this purpose); and (c) where the Third-Country Group has only Third-Country Branch(es), the authority of the Member State with the largest Third-Country Branch in terms of total value of booked assets in participating Member States;

- (e) 'Intermediate EU Parent Undertaking' (IPU) has the meaning set forth in Article 21b CRD V.
- (f) 'Jurisdiction' means, for the purpose of the exercise of the European Central Bank tasks as set out in Article 4 of the SSM Regulation, the territory of any participating Member States and, for the purpose of the exercise by the national competent authorities of the relevant tasks conferred by their national law over Third-Country Branches, the territory of their respective Member State;
- (g) 'National Competent Authority' (NCA) has the meaning set forth in Article 2 of the SSM Regulation in conjunction with Article 2(9) of Regulation (EU) No 468/2014 of the European Central Bank⁵;
- (h) 'Request' means an application submitted by one Authority to another Authority for the purpose of cooperating under the terms of this Memorandum of Cooperation;
- (i) 'Requesting Authority' means an Authority that has submitted a Request;
- (j) 'Requested Authority' means an Authority that has received a Request;
- (k) 'Third-Country Branch' means a branch established in a participating Member State by an undertaking having its head office in a country outside the Union, in the case that undertaking would qualify as a credit institution or it would fulfil the criteria laid down in points (i) to (iii) of Article 4(1), point (b) of CRR, if it were established in the Union;
- (l) 'Head Undertaking' means the undertaking with its head office in a country outside the Union that has established the Third-Country Branches, and the undertaking's intermediate and ultimate parent undertakings, as the case may be;
- (m) 'Third-Country Group' means a parent undertaking, and its subsidiaries and branches, of which the ultimate parent undertaking is established outside the Union;
- (n) 'Third party' means any natural or legal person, regardless of where they are incorporated or located, excluding an Authority.

Article 3

General commitment to cooperate and exchange of information

1. The Authorities will endeavour to collaborate closely to achieve the purposes set out in Article 1.
2. The Authorities acknowledge that the principle of proportionality is applicable in all activities undertaken under this Memorandum of Cooperation. The extent of cooperation and exchange of information will be determined by the

⁵ 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).

Authorities on a case-by-case basis using a risk-based analysis, taking into account the systemic impact of the relevant Third-Country Branch in the participating Member State in which it operates and/or in the euro area [or Union or European Economic Area, as appropriate], as a whole.

3. Each Authority will use its best endeavours to provide each other with assistance in the performance of their respective supervisory tasks. 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 covered by this Memorandum of Cooperation.
4. A Request will include the following:
 - a) the purpose of the Request, and a description of the facts underlying it;
 - b) any information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in fulfilling the Request;
 - c) the supervisory competences that are relevant to the subject matter of the Request.

To the extent that personal data is involved, the Request should comply with the requirements of Article 5.3, including justifications of the necessity for any disclosure of information.

5. Exchange of information is intended to be conducted in writing, regardless of its format (paper, electronic communication or other). In case of urgency, the information may be exchanged or requested by telephone, video conference or if necessary in a physical meeting between the Authorities. Communications are made preferably through the persons included in the contact list (Annex 1).
6. Where the exchange of information includes information received from third parties, the Authorities will obtain the prior agreement of such third parties if required by national or Union law or by other cooperation arrangements.
7. The Authorities recognise that the provision of, or Requests for, information, as well as cooperation, under this Memorandum of Cooperation may be denied on the grounds of laws, regulations, requirements and contractual obligations or public interest, including where it would interfere with an ongoing investigation or jeopardise the proper performance of the tasks of the Requested Authority. Where a Request is denied or the information is not available, the Requested Authority will provide the reasons for not sharing the information.
8. Coordination and cooperation under this Memorandum of Cooperation should not delay the adoption of decisions by an Authority and do not affect the allocation of responsibilities for adopting such decisions, which will be taken only by an Authority.
9. The Authorities will endeavour to share information on credit institutions which are part of a Third-Country Group as provided for in the relevant provisions of the CRD and in the SSM Regulation, in particular Article 6(2) thereof. Information regarding the authorisation and withdrawal of authorisations for subsidiaries of Third-Country Groups will be shared in accordance with the common procedures defined in Article 14 of the SSM Regulation.

Article 4

Confidentiality of the information

1. The Authorities acknowledge their obligations concerning disclosure of confidential information under Union law, and that all information exchanged on the basis of this Memorandum of Cooperation will be treated as confidential

unless specified otherwise. Any confidential information requested or received by an Authority under this Memorandum of Cooperation will be (a) exchanged in accordance with applicable laws and regulations, (b) used exclusively for lawful purposes, and (c) used only in relation to the performance of the Authorities' duties and tasks and for the purposes stated in the Request.

2. The Authorities will preserve the confidentiality of the information received to the extent permitted by the applicable legal framework.
3. The Authorities may be requested by a Third party to disclose confidential information received under this Memorandum of Cooperation, 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 consent of the Authority from which the confidential information originates will be sought and obtained in writing by the Authority that holds the information before any disclosure to a Third party of confidential information exchanged under this Memorandum of Cooperation. The Authority from which the information originates may deny disclosure or impose conditions on the disclosure, including that the Third party will hold the information confidentially.
4. Where required under a legal obligation to disclose confidential information received pursuant to this Memorandum of Cooperation, the Authority which holds the information will, to the extent permitted by Union and national law, inform the Authority from which the information originates 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 Authority from which the information originates does not consent to the disclosure to a Third party, and where possible and appropriate, the Authority that holds the information 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.
5. The Authorities will ensure that all persons (including members of the Authority, employees, and any external providers) dealing with, or having access to confidential information provided by another Authority, are bound by the obligations of professional secrecy in accordance with the applicable legal frameworks, including after their duties have ceased.

Article 5

Data Protection

1. The Authorities will process any personal data, as defined in Article 4(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council⁶ (hereinafter the 'GDPR'), and in Article 3(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁷ (hereinafter the 'EUDPR'), contained in the information exchanged under this Memorandum of Cooperation in accordance with the following respective legal frameworks:

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- a) in the case of the ECB, in accordance with the EUDPR;
 - b) in the case of the Authorities, in accordance with the GDPR.
2. To the extent that under paragraph 1 there is any transfer of personal data outside the European Economic Area (EEA), this may only take place in accordance with Chapter V of the EUDPR and Chapter V of the GDPR, as relevant.
 3. Each Authority will ensure that any processing of personal data by it complies with the data protection regulation applicable on it, in particular the principles of data protection set out in Article 5 of the GDPR and Article 4 of the EUDPR, as relevant, including that the rights of the data subjects are adhered to.

Section II – Third-Country Branches and Third-country Groups

Article 6

Authorisations of Third-Country Branches

1. Where a Third-Country Group applies for an authorisation of a Third-Country Branch which belongs to a Third-Country Group, or where the Relevant Authority plans to withdraw the authorisation of a Third-Country Branch that belongs to a Third-Country Group, the Relevant Authority will endeavour to notify the Coordinating Authority without undue delay. The Coordinating Authority will immediately forward this notification to the other Participating Authorities in the case where a Supervisory Forum has been already established.
2. Subject to information available under Union or national law, the Relevant Authority may provide the following information: (a) the name of the Third-Country Branch; (b) the name of the Third-Country Groups to which it belongs; (c) the activities that the Third-Country Branch had been conducting or plans to conduct in that Member State; (d) the expected total assets booked or originated by the Third-Country Branch; (e) the date on which the decision to authorise or withdraw authorisation has taken effect or is expected to take effect; and (f) whether the Third-Country Group to which the Third-Country Branch belongs is subject to the IPU requirement. The Participating Authorities will have the possibility to express, without undue delay, views and possible concerns related to the application to authorise or intention to withdraw the authorisation. In the case where no Supervisory Forum for the Third-Country Group has been established but the authorisation of the Third-Country Branch may lead to the establishment of a Supervisory Forum, the Coordinating Authority may express, without undue delay, views and possible concerns related to the application. If, in a case of urgency, the Relevant Authority was not in a position to ensure this interaction with the Participating Authorities before taking the decision to withdraw the authorisation of a Third-Country Branch, the Participating Authorities will be informed without undue delay of the withdrawal decision by the Relevant Authority, accompanied by an explanation of the reasons for such urgency procedure.
3. The Relevant Authority will endeavour to adopt its decision taking into account views and possible concerns expressed under paragraph 2. The Relevant Authority will notify the outcome of the authorisation procedure or the withdrawal procedure to the Coordinating Authority.

Article 7

Sharing of information on Third-Country Branches and Third-Country Groups

1. The Authorities will endeavour to share with other Authorities that also supervise branches and subsidiaries of the same Third-Country Group, the following information on the Third-Country Group's entities that they supervise, in a timely manner and at least annually, insofar as relevant to the performance of their respective supervisory tasks:
 - a) the name of any Third-Country Branch, and the scope of its authorisation and a notification of subsequent changes to such authorisation, as well as the Third-Country Group to which it belongs;
 - b) where national or Union law prescribes a specific authorisation process for a Third-Country Branch, the information prescribed by the relevant national or Union law for this authorisation process, where not already covered under Article 6;
 - c) if not already provided by the European Banking Authority under Article 21b of the CRD, the names of supervised institutions belonging to Third-Country Groups operating in their Jurisdiction;
 - d) if relevant, the entity which constitutes their IPU in the Union, as well as the type of activities that the IPU carries out;
 - e) if not already provided by the European Banking Authority under Article 21b of the CRD, the total assets and liabilities of the entities in points a), b) and c), as periodically reported to the NCAs in accordance with applicable legal framework.
2. The Authorities will endeavour to share with other Authorities that also supervise branches and subsidiaries of the same Third-Country Group, information on the Third-Country Branches authorised in their Jurisdiction, insofar as relevant to the performance of their respective supervisory tasks covered by this Memorandum of Cooperation, including but not limited to, the following:
 - a) information on the balance sheet of any Third-Country Branch, as well as off-balance-sheet commitments and profit-and-loss statements;
 - b) where applicable, information on the key components of solvency and liquidity prudential ratios of the Third-Country Branch;
 - c) general information on the deposit protection arrangements available to depositors in the Third-Country Branch;
 - d) the risk management arrangements of the Third-Country Branch;
 - e) the governance arrangements of the Third-Country Branch, including – if necessary – key function holders for its activities;
 - f) the recovery plans covering the Third-Country Branch, where applicable;
 - g) any other information pertaining to the Third-Country Branch which is necessary to enable comprehensive monitoring of its activities.
3. The Authorities will also endeavour to share the above information on credit institutions which are part of a Third-Country Group.

Section III - Cooperation among Authorities

Article 8

Organisation and functioning of Supervisory Fora for the comprehensive supervision of Third-Country Groups

1. The Coordinating Authority will establish a Supervisory Forum whenever one of the following conditions is fulfilled:
 - a) one or more Third-Country Branches exist in participating Member States for a Third-Country Group that is subject to the IPU requirement;
 - b) one or more Third-Country Branches and one or more subsidiaries of the same Third-Country Group are established in at least two different participating Member States, and at least one Third-Country Branch and at least one subsidiary each have total assets that exceed EUR 5 billion;
 - c) one or more Third-Country Branches where the total assets of at least one Third-Country Branch exceed EUR 5 billion and one or more subsidiaries of the same Third-Country Group are established in the same participating Member State, if at least one subsidiary is a Significant Institution.

In addition, when Third-Country Branches of the same Third-Country Group are established in at least two SSM participating Member States, or when Third-Country Branches and subsidiaries of the same Third-Country Group are established in at least two participating Member States but the threshold mentioned under point b) above are not met, the Coordinating Authority, in agreement with the other Authorities supervising these Third-Country Branches and subsidiaries, may also decide, on a case-by-case basis, to establish a Supervisory Forum, taking into account the principle of proportionality.

2. The Coordinating Authority will invite the following authorities to participate in a Supervisory Forum: a) the supervisor of each subsidiary established in the Union; b) the IPU supervisor; c) the supervisor of each Third-Country Branch; and d) in the case of subsidiaries that are less significant institutions under Article 6(4) of the SSM Regulation, the ECB as observer.

The Coordinating Authority may also invite other relevant Union supervisory authorities – which need not be signatories to this Memorandum of Cooperation – including those that supervise investment firms belonging to the same Third-Country Group, to participate in the Supervisory Forum, subject to the terms of this Memorandum of Cooperation including those on confidentiality and data protection.

3. The establishment and functioning of a Supervisory Forum as well as the terms of the participation of each of the Authorities will be based on multilateral written arrangements prepared by the Coordinating Authority in agreement with the other Participating Authorities.
4. The activities of individual Supervisory Fora will be without prejudice to the tasks of supervisory colleges established in accordance with the CRD. Where a supervisory college covering the same Third-Country Group has been established in accordance with the CRD, the Participating Authorities will give due consideration to the decisions already adopted by the college, and will coordinate the activities of the forum in order to avoid the duplication of tasks, reduce the operational burden, agree to common positions for the college, and endeavour to ensure the consistency of the decisions and policy stances respectively adopted.

5. The principle of proportionality will be applied to the establishment and functioning of the Supervisory Fora. The Authorities may decide on a case-by-case basis to opt out of participation in a Supervisory Forum using a risk-based analysis, taking into account inter alia in relation to the relevant branch and/or subsidiary which they supervise, as appropriate: (a) its size and the total value of the assets booked or originated by it; (b) the interconnectedness of the relevant branch and/or subsidiary with other branches and/or subsidiaries of the Third-Country Groups established in the Union; (c) its systemic impact in the country in which it operates; (d) whether or not it is authorised to take deposits and other repayable funds from retail customers; (e) whether or not the Head Undertaking is established in a country that applies prudential and supervisory standards at least equivalent to the CRD and the CRR as recognised in a Commission implementing act; and (f) whether or not the relevant third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing in accordance with Article 9 of Directive (EU) 2015/849. Where an Authority decides to opt out of participation in a Supervisory Forum under this paragraph, it will inform the other members of the Supervisory Forum of that decision and provide reasoning to support it. The Supervisory Forum may also ask an Authority to reconfirm its decision to opt out where justified by a change in the size of the relevant branch and/or subsidiary, its interconnectedness with other branches and/or subsidiaries of the Third-Country Groups established in the Union, or any other assessment factor listed in points (a) to (f) of this paragraph. Where the Authority opting out is also the Coordinating Authority as defined in Article 2, the other Participating Authorities will designate among themselves an alternate Participating Authority to fulfil the role of the Coordinating Authority. If all Participating Authorities decide to opt out, no Supervisory Forum will be established.

Article 9

Cooperation and coordination within the Supervisory Forum

1. The Participating Authorities intend to cooperate and coordinate their supervisory actions in at least the following areas:
 - a) Granting of authorisation: where a Third-Country Group applies for authorisation of a Third-Country Branch, the Participating Authorities will follow the process described in Article 6 of this Memorandum of Cooperation. The Participating Authorities receiving the invitation under Article 6 to provide their views will endeavour to raise the topic for discussion in the Supervisory Forum, insofar as feasible in terms of the time available. This does not preclude of the possibility for Participating Authorities to provide their views in line with the interaction described in Article 6.
 - b) Withdrawal of authorisation: where a Participating Authority intends to withdraw the licence of a Third-Country Branch, Article 6 will apply. The Participating Authorities receiving the invitation under Article 6 to provide their views will endeavour to raise the topic for discussion in the Supervisory Forum, insofar as feasible in terms of the time available. This does not preclude of the possibility for Participating Authorities to provide their views in line with the interaction described in Article 6.
 - c) Fit and proper assessment: the Participating Authorities intend to share in the Supervisory Forum, on an annual basis, the outcome of fit and proper assessments of board members of subsidiaries, Key Function

Holders of subsidiaries (as defined in applicable Union law and guidelines of the European Banking Authority) and Third-Country Branch managers and Key Function Holders in cases where the Participating Authorities are required to conduct a fit and proper assessment of such persons under the applicable Union or national law. In addition, and at any point in time, any Participating Authority may also, based on the information available in the ESAs Information System⁸ on persons who are subject to a fitness and propriety assessment, reach out to the relevant Participating Authority that has assessed the suitability of a given person in the past. Any Participating Authority may also require a discussion in the supervisory forum provided that there is a need-to-know for the supervisory forum as a whole.

- d) Supervisory Examination Programme (SEP): to facilitate the ongoing supervision of the Third-Country Branches and subsidiaries, the Participating Authorities will, as part of the Supervisory Forum and following the processes specified in written arrangements, establish SEPs. Such SEPs may, where agreed, cover relevant tasks and activities such as pre-planned meetings and other activities between the Authorities. Such SEPs will not cover subsidiaries belonging to a Third-Country Group in cases where a SEP has been agreed by a supervisory college established in accordance with the CRD.
- e) Supervisory Review and Evaluation Process (SREP): during the supervisory cycle, the Participating Authorities intend to share information and discuss in the Supervisory Forum their respective risk assessment as part of the review and evaluation process provided for in Articles 97 and 98 of the CRD, or in the applicable national legal framework, with a view to avoiding inconsistencies. At the end of the supervisory cycle, the Participating Authorities intend to share information and discuss in the Supervisory Forum the content of each final SREP decision. This point (e) should not be interpreted as meaning that Participating Authorities will conduct a SREP on a Third-Country Branch when they are not required to do so under the applicable legal framework.
- f) Sanctions: the Participating Authorities intend to inform each other of anonymised administrative pecuniary penalties, and enforcement or sanction decisions in accordance with Article 13 of Commission Delegated Regulation (EU) 2016/98 and with provisions of national law applicable to sanctions, administrative penalties and enforcement or sanctions decisions.
- g) Structure and activities of Third-Country Group: the Participating Authorities intend to discuss the structure and activities of the Third-Country Group in participating Member States, including its booking models and arrangements.
- h) Exercise of supervisory measures and powers: the Participating Authorities intend to discuss and cooperate regarding the application of supervisory measures and powers prescribed by Union and national law to Third-Country Branches and subsidiaries, with the ultimate intention of aligning the actions of the Participating Authorities insofar as feasible.

⁸ The ESA's Information System is a cross-sectorial database as described in the joint EBA, EIOPA and ESMA Consultation paper on Draft joint Guidelines on the system established by the European Supervisory Authorities for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities, JC 2002 76, 31 January 2023.

2. If a Supervisory Forum discussion cannot take place before the competent authority has adopted a decision in a case set out in points a) or b) in paragraph 1, and at least one other Participating Authority wishes to discuss the decision, the discussion will take place after the competent authority has adopted its decision.
3. Where a supervisory college covering a Third-Country Groups has been established in accordance with the CRD, the Supervisory Forum will not carry out the tasks that fall within the remit of the supervisory college, including the ongoing cooperation and information sharing related to the subsidiaries belonging to the respective Third-Country Group.

Article 10

Cooperation regarding on-site inspections and investigations related to internal models

1. The Participating Authorities will endeavour to assist each other, as far as practicable, with the conduct of on-site inspections and investigations related to internal models for Third-Country Branches which are part of a Third-Country Group under the responsibility of one or more other Authorities.
2. The Participating Authorities will inform both the Coordinating Authority, and the other Participating Authorities that supervise branches and subsidiaries that are part of the same Third-Country Group, with sufficient advance notice, of plans to perform inspections of branches of a Third-Country Group established in their Jurisdiction, or to appoint a Third party to conduct an inspection on its behalf. The notification of a plan to perform an inspection will detail the purposes, scope, expected starting and ending dates, the Third-Country Branch to be inspected, and the names of the persons leading the inspection (e.g. the Head of Mission or his/her mandated person(s), or the Project Manager).
3. At the end of the inspection, the Participating Authority performing the inspection will present the relevant findings to the Authorities referred to in paragraph 1 within a reasonable time.
4. The information referred to in this Article will be provided insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Cooperation. When assistance cannot be provided, the relevant Participating Authority will notify the other Participating Authority as soon as deemed practical. Any assistance and consultation given under this Article will not affect the allocation of responsibilities for decisions, which will be taken only by the competent authority of the Member State where the relevant branch is established.
5. Authorities that have opted out of the Supervisory Forum under Article 8 may nevertheless assist each other, as far as practicable, with the conduct of on-site inspections and investigations related to internal models for Third-Country Branches which are part of a Third-Country Group under the responsibility of one or more other Authorities.
6. In the absence of a Supervisory Forum in accordance with Article 8, Authorities may nevertheless assist each other, as far as practicable, with the conduct of on-site inspections and investigations related to internal models for Third-Country Branches which are part of a Third-Country Group within the responsibility of one or more other Authorities.

Article 11

Cooperation in emergency situations

1. The Participating Authorities agree to cooperate closely with each other to the extent possible in cases of emergency situations. To facilitate cooperation in emergency situations, each Supervisory Forum will draw up a list of contact persons in each Participating Authority, using the template in Annex 1. Such lists of contact persons will be shared among all Authorities to facilitate contact in emergency situations.
2. An Authority that has opted out of the Supervisory Forum under Article 8 will nevertheless endeavour to assist one or more of the Participating Authorities if it receives a specific request from the Coordinating Authority to do so in a situation where the Third-Country Branch or a subsidiary of the same Third-Country Group might be impacted by the emergency situation. For this purpose, Authorities that have opted out of the Supervisory Forum will include the names of their contact persons in the list of contact persons referred to in paragraph 1.
3. The Supervisory Forum may also coordinate communications in emergency situations with the Third-Country home supervisor of the Third-Country Group and other relevant Third-Country supervisors. These communications will be subject to the confidentiality arrangements, and to the data protection safeguards applicable to transfer of personal data outside the EEA, as set out in Articles 4 and 5 respectively.

Section IV – Ongoing supervision: cooperation and coordination

Article 12

On-going coordination and cooperation

1. In addition to the cooperation as specified in Article 9, the Authorities may conduct regular meetings, as appropriate, to discuss general supervisory and coordination matters and issues concerning the branches and subsidiaries of Third-Country Groups in their respective Jurisdictions.
2. Authorities that do not participate in a Supervisory Forum may decide not to participate in the regular meetings referred to in paragraph 1.
3. The Authorities may also convene ad hoc meetings to aim at addressing supervisory issues concerning Third-Country Branches and Third-Country Groups, without prejudice to the activity of existing supervisory colleges.

Article 13

Information sharing and exchange of views on material decisions

1. The Authorities – or where a Supervisory Forum has been established, the Participating Authorities – will endeavour to inform, within a reasonable time, other Authorities that also supervise branches and subsidiaries of the same Third-Country Group of their intention to adopt material decisions within their prerogatives and with regard to the branches and/or subsidiaries of the Third-Country Group that they supervise and which are not already covered under Article 3, and where a Supervisory Forum has been established, under Article 9. Where a Supervisory Forum has been established, the sharing of such information should allow the possibility of providing views on the appropriate course of action, taking into account resource implications.

2. In cases of urgency or possible prejudice to the effective and prompt performance of the supervisory tasks of each of the Authorities, the Authorities – or where a Supervisory Forum has been established, the Participating Authorities – will inform each other without delay after adopting a decision.
3. Authorities that have opted out of the Supervisory Forum under Article 8 may inform the Participating Authorities of a material decision that has a potential impact on other Third-Country Branches or subsidiaries of the same Third-Country Group.

Article 14

Status of this Memorandum of Cooperation, publication and effective date

1. This Memorandum of Cooperation sets forth a statement of intent and does not modify nor supersede any laws, regulations and requirements in force in, or applying to, any participating Member State or the European Union. Nor does this Memorandum of Cooperation create any directly or indirectly enforceable rights for the Authorities or any Third party.
2. The Authorities will use their best endeavours in the performance of this Memorandum of Cooperation. However, neither the Authorities nor any Third party can bear or seek any liability regarding the performance of this Memorandum of Cooperation.
3. This Memorandum of Cooperation is without prejudice to other cooperation arrangements that each Authority might conclude. It may, therefore, be supplemented with other more detailed and operational arrangements, including but not limited to written coordination and cooperation arrangements, and other memoranda of cooperation between the same Authorities agreed upon for the purpose of cooperating for the supervision of a specific set of cross border establishments, in accordance with the applicable legal framework
4. Any disagreement arising from the interpretation or the performance of this Memorandum of Cooperation will be amicably settled by means of consultations between the Authorities.
5. Any amendment to this Memorandum of Cooperation, including this Article, will be made in English and have effect only if executed by the Authorities in writing.
6. An Authority may withdraw from this Memorandum of Cooperation at any time by giving at least 30 days prior written notice to the other Authorities.
7. In the event of withdrawal by an Authority from this Memorandum of Cooperation, the information obtained hereunder will continue to be treated in accordance with the confidentiality regime.
8. Once this Memorandum of Cooperation has come into effect, the Authorities agree that it may be made publicly available in full or in part – excluding the lists of contact persons drawn up by each supervisory forum using the template in Annex 1 – by any of the Authorities through posting on their websites. This Memorandum of Cooperation will come into effect on the day following the date on which each of the respective representatives of the Authorities has signed it.
9. Any authority of a Participating Member State that is competent for supervision of Third-Country Branches may participate as an authority in this Memorandum of Cooperation Arrangement by executing a declaration of

participation in the form set out in Annex 2. This Memorandum of Cooperation will come into effect with respect to such an authority on the day following the date on which it is signed by the representative(s) of that authority.

10. This Memorandum of Cooperation will be reviewed in the following circumstances: (a) with agreement of the Authorities, three years after the date of its signature; and (b) following any substantial change to the EU regulatory framework applicable to Third-Country Branches.

For the European Central Bank

[signed]

Name: Andrea Enria, Chair of the Supervisory Board

[signed]

Name: Frank Elderson, Vice-Chair of the Supervisory Board

For Österreichische Finanzmarktaufsicht

[signed]

Name: Helmut Ettl, Executive Director

[signed]

Name: Eduard Müller, Executive Director

For Oesterreichische Nationalbank

[signed]

Name: Robert Holzmann, Governor

[signed]

Name: Gottfried Haber, Vice-Governor

For the Austrian Federal Ministry of Finance⁹

[signed]

Name: Alfred Lejsek, Director

For Nationale Bank van België/Banque Nationale de Belgique

[signed]

Name: Pierre Wunsch, Governor

⁹ According to the Austrian Banking Act, the Financial Market Supervision Act and the SSM legal framework, the FMA is the competent authority in the Republic of Austria for the supervision of credit institutions. The OeNB fulfils particular supervisory tasks under Austrian Law. This Memorandum of Cooperation is signed by the Austrian Federal Ministry of Finance following Art 77a of the Austrian Banking Act. None of the provisions of this Memorandum of Cooperation are intended to create commitments or to confer benefits in favour of the Federal Ministry of Finance.

For Central Bank of Cyprus

[signed]

Name: Constantinos Herodotou, Governor

For Bundesanstalt für Finanzdienstleistungsaufsicht

[signed]

Name: Raimund Röseler, Chief Executive Director of Banking Supervision

For Deutsche Bundesbank

[signed]

Name: Karlheinz Walch, Director General Banking and Financial Supervision

[signed]

Name: Alexander Schulz, Head of Division Policy and Standards

For Bank of Greece

[signed]

Name: Yannis Stournaras, Governor

[signed]

Name: Christina Papaconstantinou, Deputy Governor

For Banco de España (Reino de España)

[signed]

Name: Mercedes Olano, Director General Banking Supervision

For Autorité de Contrôle Prudentiel et de Résolution

[signed]

Name: Nathalie Aufauvre, Secretary-General

For Hrvatska narodna banka

[signed]

Name: Boris Vujčić, Governor

For Central Bank of Ireland/Banc Ceannais na hÉireann

[signed]

Name: Sharon Donnery, Deputy Governor – Financial Regulation

[signed]

Name: Mary-Elizabeth McMunn, Director of Credit Institution Supervision

For Banca d'Italia

[signed]

Name: Fabio Panetta, Governor

For Commission de Surveillance du Secteur Financier

[signed]

Name: Claude Wampach, Director

For Banque centrale du Luxembourg

[signed]

Name: Roland Weyland, Director

[signed]

Name: Nicolas Weber, Director

For Malta Financial Services Authority

[signed]

Name: Kenneth Farrugia, Chief Executive Officer

For De Nederlandsche Bank

[signed]

Name: Else Bos, Chair of Prudential Supervision

For Banco de Portugal

[signed]

Name: Mário Centeno, Governor

Annex 1 – template for lists of contact persons

Authority XXX – contact person

- Name
- Function
- Phone number(s)
- Email address

Authority YYY – contact person

- Name
- Function
- Phone number(s)
- Email address

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Annex 2 – Declaration of Participation

[Name of Authority],

Having given notice to the Authorities of its intent to participate in this Memorandum of Cooperation between competent authorities for the performance of their supervisory tasks in relation to the supervision of Third-Country Groups and Third-Country Branches;

Having received no objection to the participation from any Authority that is currently a party to the Memorandum of Cooperation within 60 calendar days from the date of the notice;

Hereby agrees to participate in the Memorandum of Cooperation on equal terms as the other Authorities.

This declaration of participation will be effective on and from *[insert date]* [.

(...)