

GUIDELINES

GUIDELINE (EU) 2016/1993 OF THE EUROPEAN CENTRAL BANK

of 4 November 2016

laying down the principles for the coordination of the assessment pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council and the monitoring of institutional protection schemes including significant and less significant institutions (ECB/2016/37)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ⁽¹⁾, and in particular Article 4(3) and Article 6(1) and (7) thereof,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ⁽²⁾, and in particular Articles 8(4), 49(3), 113(7), 422(8) and 425(4) thereof,

Having regard to Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions ⁽³⁾, and in particular Article 29(1), Article 33(2)(b) and Article 34(1) thereof,

Whereas:

- (1) An institutional protection scheme (IPS) is referred to in Regulation (EU) No 575/2013 as a contractual or statutory liability arrangement which protects its member institutions and in particular ensures that they have the liquidity and solvency needed to avoid bankruptcy where necessary. Competent authorities may, in accordance with the conditions laid down in Articles 8(4), 49(3), 113(7), 422(8) and 425(4) of Regulation (EU) No 575/2013 and Article 29(1), Article 33(2)(b) and Article 34(1) of Delegated Regulation (EU) 2015/61, waive certain prudential requirements or allow certain derogations for IPS members. In addition, Article 113(7)(i) of Regulation (EU) No 575/2013 provides that the relevant competent authority must approve and monitor at regular intervals the adequacy of the IPS's systems for the monitoring and classification of risk and Article 113(7)(d) requires the IPS to conduct its own risk review.
- (2) Decisions by competent authorities to grant permissions and waivers within the meaning of Articles 8(4), 49(3), 113(7), 422(8) and 425(4) of Regulation (EU) No 575/2013 and Article 33(2)(b) of Delegated Regulation (EU) 2015/61 and any decisions resulting from the monitoring of IPSs are directed at individual credit institutions. As such, the European Central Bank (ECB), as the competent authority for the prudential supervision within the Single Supervisory Mechanism (SSM) of credit institutions that are classified as significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013 and Part IV and Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽⁴⁾, is responsible for the assessment of applications submitted by significant credit institutions and the monitoring of IPSs that include them, while the national competent authorities (NCAs) are responsible for the assessment of applications submitted by less significant credit institutions and the monitoring of IPSs that include them.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ OJ L 176, 27.6.2013, p. 1.

⁽³⁾ OJ L 11, 17.1.2015, p. 1.

⁽⁴⁾ 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).

- (3) To ensure consistent treatment of significant and less significant credit institutions which are members of IPSs across the SSM and foster consistency in decisions adopted by the ECB and the NCAs, the ECB adopted Guideline (EU) 2016/1994 of the European Central Bank (ECB/2016/38) ⁽¹⁾. However, it is necessary to establish a coordinated process for decisions relating to members of the same IPS that consist of both significant and less significant credit institutions, and for the ECB and the NCAs to take a coordinated approach to the monitoring of that IPS, to ensure consistency between decisions taken in relation to significant and less significant credit institutions that are members of the same IPS,

HAS ADOPTED THIS GUIDELINE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Guideline lays down the principles for coordination between the ECB and the NCAs with regard to the assessment of IPSs for the purpose of granting prudential permissions and waivers to IPS members, pursuant to Articles 8(4), 49(3), 113(7), 422(8) and 425(4) of Regulation (EU) No 575/2013 and Article 33(2)(b) of Delegated Regulation (EU) 2015/61, and to the monitoring of IPSs that have been recognised for prudential purposes.
2. The coordination process is without prejudice to the ECB's responsibility for adopting all relevant prudential supervisory decisions for significant credit institutions, and the NCA's responsibility for adopting such decisions for less significant credit institutions.

Article 2

Definitions

For the purposes of this Guideline, the definitions set out in Regulation (EU) No 575/2013, Directive 2013/36/EU of the European Parliament and of the Council ⁽²⁾, Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 (ECB/2014/17) shall apply together with the following definitions:

- (a) 'review team' means a team composed of representatives of the ECB and of the NCA that is the direct supervisor of the relevant IPS members. This team is set up for the purpose of coordinating the review carried out under Article 113(7) of Regulation (EU) No 575/2013;
- (b) 'review team coordinator' means an ECB staff member and an NCA staff member appointed in accordance with Article 6 and performing the tasks set out in Article 8;
- (c) 'applicant' means an IPS member or a group of IPS members represented by a single entity that submits to the ECB or the relevant NCA an application seeking permission or a waiver pursuant to the provisions referred to in Article 1(1);
- (d) 'hybrid IPS' means an IPS composed of significant and less significant credit institutions;
- (e) 'SSM competent authorities' means the ECB and the NCAs of the participating Member States.

Article 3

Level of application

Where both significant and less significant credit institutions that are members of the same hybrid IPS simultaneously submit applications for prudential permissions and waivers to the ECB, in the case of significant credit institutions, and to the relevant NCA, in the case of less significant credit institutions, the ECB and the relevant NCA shall apply the coordination process and the provisions on monitoring set out in this Guideline, including any standard monitoring activities related to that IPS.

⁽¹⁾ Guideline (EU) 2016/1994 of the European Central Bank of 4 November 2016 on the approach for the recognition of institutional protection schemes for prudential purposes by national competent authorities pursuant to Regulation (EU) No 575/2013 (ECB/2016/38) (see page 37 of this Official Journal).

⁽²⁾ 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).

CHAPTER II

COORDINATION OF THE IPS ASSESSMENT*Article 4***Coordinated assessment**

Without prejudice to the ECB and the NCAs' responsibility to grant the permissions and waivers referred to in Article 1(1), the assessment of simultaneously submitted applications from significant and less significant credit institutions, which are members of the same hybrid IPS, shall be conducted jointly by the ECB and the relevant NCA.

*Article 5***Review team**

1. For the purpose of coordinating the assessment of simultaneously submitted applications from significant and less significant credit institutions, which are members of the same hybrid IPS, a review team shall be established when the ECB and the relevant NCA receive applications for a permission or a waiver pursuant to the applicable provisions of Regulation (EU) No 575/2013.
2. The ECB and the relevant NCA shall appoint supervisors responsible for the day to day supervision of the credit institutions submitting the applications under paragraph 1 and staff members performing the general oversight of the functioning of the system as members of the review team. The composition of the review team and the number of its members shall depend on the number of IPS members and the importance of the relevant significant institutions.
3. The review team shall remain in place until the decisions related to applications for a permission or a waiver are adopted by the competent authorities.

*Article 6***Review team coordinators**

1. The ECB and the NCA that is responsible for the direct supervision of the relevant IPS members shall each designate one coordinator to manage the assessment process in respect of the applications.
2. If significant institutions that are supervised by different joint supervisory teams (JSTs) have applied for the same permission or waiver among those listed in Article 1(1), those JSTs may decide to appoint a common coordinator.
3. The coordinators shall be responsible for agreeing on a timetable and the necessary actions to develop a common view within the review team.

*Article 7***Notification of application and setting up of the review team**

1. The ECB and the relevant NCA shall notify each other on the receipt of any applications from significant and less significant credit institutions, which are members of a hybrid IPS.
2. On the receipt of simultaneously submitted applications the ECB and the NCA shall nominate their members of the review team.

*Article 8***Assessment of the applications**

1. The completeness and appropriateness of the applications shall be independently assessed by the ECB and the relevant NCA. If more information is required for the assessment of specific applications, the competent authorities may request the applicant to provide such information.

2. The ECB and the NCA shall carry out a preliminary assessment of the respective applications separately.
3. The review team shall discuss the preliminary outcome of the assessment of the applications and agree on the final outcome, taking into account any deadlines contained in national administrative law if appropriate.
4. If the review team agrees that the applications and the organisational framework of the IPS comply with the requirements of the provisions listed in Article 1(1), it shall prepare a note describing the outcome of the assessment and confirming that the requirements are met. The assessment of the review team shall be taken into consideration by the ECB and the NCAs when adopting their respective decisions on whether to grant permissions or waivers.
5. If no common view can be reached within the review team on the assessment of the applications, the issue may be submitted to the Supervisory Board for discussion. The result of the Supervisory Board discussion is without prejudice to the responsibilities of the ECB and the NCA to decide whether to grant a permission or a waiver.

Article 9

Decisions

1. The draft decisions prepared by the ECB and the relevant NCA based on the agreed outcomes of the joint assessment shall be submitted for approval to the relevant decision-making bodies, i.e. the ECB's Governing Council for applications submitted by significant credit institutions and the relevant NCA's decision-making bodies for applications submitted by less significant credit institutions.
2. These decisions shall specify the reporting requirements for the purpose of the ongoing monitoring of the members of the IPS without prejudice to any additional requirements that the ECB and the relevant NCA may impose on credit institutions during the monitoring.

CHAPTER III

IPS MONITORING

Article 10

Coordination of monitoring

1. The ECB and the NCA responsible for the supervision of an IPS member shall monitor at regular intervals the adequacy of the IPS's systems for monitoring and classification of risk pursuant to Article 113(7)(c) of Regulation (EU) No 575/2013 and that the IPS conducts its own risk review pursuant to Article 113(7)(d) thereof.
2. To ensure a consistent approach to the monitoring and the application of high supervisory standards the ECB and the relevant NCA shall coordinate their monitoring activities. For this purpose, up-to-date lists of staff members from the ECB and the NCA shall be produced.
3. The ECB and the NCA shall agree on any deadlines and actions for the purpose of the monitoring. The monitoring shall be carried out at least annually, after the consolidated or aggregated financial reports for the previous financial year, prepared pursuant to Article 113(7)(e) of Regulation (EU) No 575/2013, have become available.

Article 11

Monitoring

1. The ECB and the relevant NCA shall, within their respective competences, generally carry out the monitoring through off-site activities. Where necessary, the ECB and the relevant NCA may, within their respective competences, decide to carry out targeted on-site inspections at credit institutions, which are members of IPSs, to assess their continuing compliance with the conditions for permissions and waivers referred to in Article 1(1).

2. For the purposes of the IPS monitoring the ECB and the NCA shall take into account the available supervisory information on the IPS members, such as the supervisory review and evaluation process results and regular supervisory reporting.

3. The ECB and the NCA shall review annually the consolidated/aggregated report required pursuant to Article 113(7)(e) of Regulation (EU) No 575/2013, paying particular attention to the IPS's available funds.

Article 12

Monitoring outcomes

1. The ECB and the relevant NCA shall agree on the results and conclusions of the monitoring and, where relevant, on any necessary follow-up measures, including an intensification of the monitoring.

2. If no common view can be reached between the ECB and the relevant NCA, the issue may be submitted to the Supervisory Board for discussion. The result of the Supervisory Board discussion is without prejudice to the responsibilities of the ECB and the NCA for the prudential supervision of the respective IPS members.

3. If there are elements indicating that the requirements of the provisions listed in Article 1(1) are no longer met and that the eligibility of the IPS or some of its members and/or the permission or waivers granted may need to be reconsidered, the ECB and the NCA shall coordinate their action which may include, as appropriate, the revocation or non-application of the permissions and/or waivers.

CHAPTER IV

FINAL PROVISIONS

Article 13

Addressees

This Guideline is addressed to the SSM competent authorities.

Article 14

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the SSM competent authorities.

2. The SSM competent authorities shall comply with this Guideline from 2 December 2016.

Done at Frankfurt am Main, 4 November 2016.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI