

Official Journal of the European Union

L 141



English edition

Legislation

Volume 60

1 June 2017

Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Commission Regulation (EU) 2017/928 of 29 May 2017 establishing a temporary prohibition of fishing for saithe in area VI; Union and international waters of Vb, XII and XIV by vessels flying the flag of Spain** 1
- ★ **Commission Implementing Regulation (EU) 2017/929 of 31 May 2017 establishing a derogation from Council Regulation (EC) No 1967/2006 as regards the minimum distance from coast and the minimum sea depth for boat seine fishing in territorial waters of Greece** 3
- ★ **Commission Implementing Regulation (EU) 2017/930 of 31 May 2017 concerning the authorisation of a preparation of a microorganism strain DSM 11798 of the *Coriobacteriaceae* family as a feed additive for all avian species and amending Implementing Regulation (EU) No 1016/2013 ⁽¹⁾** 6
- Commission Implementing Regulation (EU) 2017/931 of 31 May 2017 laying down the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 19 May 2017 to 26 May 2017 under the tariff quotas opened by Implementing Regulation (EU) 2015/2081 for certain cereals originating in Ukraine 10

DECISIONS

- ★ **Council Decision (EU) 2017/932 of 23 May 2017 amending Decision 1999/70/EC concerning the external auditors of the national central banks, as regards the external auditors of the Nationale Bank van België/Banque Nationale de Belgique** 12
- ★ **Decision (EU) 2017/933 of the European Central Bank of 16 November 2016 on a general framework for delegating decision-making powers for legal instruments related to supervisory tasks (ECB/2016/40)** 14

⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

★ Decision (EU) 2017/934 of the European Central Bank of 16 November 2016 on the delegation of decisions on the significance of supervised entities (ECB/2016/41)	18
★ Decision (EU) 2017/935 of the European Central Bank of 16 November 2016 on delegation of the power to adopt fit and proper decisions and the assessment of fit and proper requirements (ECB/2016/42)	21
★ Decision (EU) 2017/936 of the European Central Bank of 23 May 2017 nominating heads of work units to adopt delegated fit and proper decisions (ECB/2017/16)	26
★ Decision (EU) 2017/937 of the European Central Bank of 23 May 2017 nominating heads of work units to adopt delegated decisions on the significance of supervised entities (ECB/2017/17)	28

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2017/928**of 29 May 2017****establishing a temporary prohibition of fishing for saithe in area VI; Union and international waters of Vb, XII and XIV by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2017/127 ⁽²⁾ lays down quotas for 2017.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2017.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2017 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 24, 28.1.2017, p. 1).

*Article 3***Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 May 2017.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General*

Directorate-General for Maritime Affairs and Fisheries

ANNEX

No	08/TQ127
Member State	Spain
Stock	POK/56-14
Species	Saithe (<i>Pollachius virens</i>)
Zone	VI; Union and international waters of Vb, XII and XIV
Closing date	8.5.2017

COMMISSION IMPLEMENTING REGULATION (EU) 2017/929**of 31 May 2017****establishing a derogation from Council Regulation (EC) No 1967/2006 as regards the minimum distance from coast and the minimum sea depth for boat seine fishing in territorial waters of Greece**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea ⁽¹⁾, and in particular Article 13(5) thereof,

Whereas:

- (1) Article 13(1) of Regulation (EC) No 1967/2006 prohibits the use of towed gears within 3 nautical miles of the coast or within the 50 m isobath where that depth is reached at a shorter distance from the coast.
- (2) At the request of a Member State, the Commission may allow a derogation from Article 13(1) of Regulation (EC) No 1967/2006, provided that a number of conditions set out in Article 13(5) and (9) are fulfilled.
- (3) On 2 June 2016 the Commission received a request for derogation from Greece from the first subparagraph of Article 13(1) of Regulation (EC) No 1967/2006, regarding the use of traditional boat seine fishing for picarel (*Spicara smaris*) and bogue (*Boops boops*) within territorial Greek waters.
- (4) The request concerns fishing activities already authorised by Greece and covers vessels which have a track record in the fishery of more than 5 years and operate under the management plan adopted by Greece.
- (5) The Scientific, Technical and Economic Committee for Fisheries (STECF) assessed the derogation requested by Greece and the related draft management plan in September 2016.
- (6) Greece adopted the management plan by Ministerial Decision (6719/146097/29-12-2016) in accordance with Article 19(2) of Regulation (EC) No 1967/2006 on 29 December 2016 (hereinafter referred to as the 'Greek management plan').
- (7) The derogation requested by Greece complies with the conditions set out in Article 13(5) and (9) of Regulation (EC) No 1967/2006.
- (8) In particular, there are specific geographical constraints given both the distinct morphological structure of Greece, comprising of numerous islands spread over various seas and the spatial distribution of the target species, which is exclusively limited in certain specific sites and zones in the coastal areas at depths of less than 50 meters. The fishing grounds are therefore limited.
- (9) The fishery cannot be undertaken with other gears, since only boat seines have the technical characteristic necessary to carry out this type of fishery.
- (10) Moreover, the fishery has no significant impact on the marine environment, as boat seines are very selective gears, they do not touch the seabed and cannot operate above the *Posidonia oceanica* seabed.
- (11) The request covers a list of 244 vessels listed in Annex 5 of the management plan regulating operation of traditional boat seine in Greek waters. The derogation requested by Greece therefore affects a limited number of vessels, compared with the large distribution area of the boat seine fleet, representing about 1,5 % of the entire Greek fishing fleet and 1 697,72 gross tonnage (GT).
- (12) Those vessels are included on a list communicated to the Commission in line with Article 13(9) of Regulation (EC) No 1967/2006.

⁽¹⁾ OJ L 409, 30.12.2006, p. 11.

- (13) The Greek Ministerial Decision and the management plan guarantee no further increase of the fishing effort in line with Article 13(9) of Regulation (EC) No 1967/2006.
- (14) The fishing activities concerned fulfil the requirements of the first subparagraph of Article 4(1) of Regulation (EC) No 1967/2006 which prohibits fishing above those habitats. Indeed, the seines are hauled in the water column and do not touch the seabed. Moreover, the completed mapping of the *Posidonia oceanica* beds in Greek territorial waters contributes to the protection of *Posidonia oceanica*.
- (15) The requirements of Article 8(1)(h) of Regulation (EC) No 1967/2006 are not applicable since they relate to trawlers.
- (16) As regards the requirement to comply with Article 9(3) establishing the minimum mesh size, the Commission notes that given the fishing activities concerned are highly selective, have a negligible effect on the marine environment and are not affected by the provisions in Article 4(5), in line with Article 9(7) of Regulation (EC) No 1967/2006 Greece authorised a derogation from these provisions in its management plan.
- (17) The fishing activities concerned take place at a very short distance from the coast and therefore do not interfere with the activities of other vessels.
- (18) The management plan ensures that catches of species mentioned in Annex III of Regulation (EC) No 1967/2006 are minimal since the targeted species are picarel (*Spicara smaris*) and bogue (*Boops boops*), which are not mentioned in Annex III of the Regulation (EC) No 1967/2006 and the fishing activities are highly selective.
- (19) Fishing activities are highly selective and do not target cephalopods.
- (20) The management plan includes measures for the monitoring of fishing activities, thus fulfilling the conditions set out in Article 14 of Council Regulation (EC) No 1224/2009 ⁽¹⁾.
- (21) The Greek management plan includes measures for the monitoring of fishing activities, as provided for in the third subparagraph of Article 13(9) of Regulation (EC) No 1967/2006.
- (22) Consequently, the requested derogation should be granted.
- (23) Greece should report to the Commission in regular intervals and in accordance with the monitoring plan provided for in the Greek management plan.
- (24) A limitation in duration of the derogation will allow ensuring prompt corrective management measures in case the report to the Commission shows a poor conservation status of the exploited stocks, while providing scope to enhance the scientific basis for an improved management plan.
- (25) The measures provided for in the Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Derogation

1. Article 13(1) of Regulation (EC) No 1967/2006, shall not apply in the territorial waters of Greece to fishing for picarel (*Spicara smaris*) and bogue (*Boops boops*) by boat seines.

⁽¹⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

2. The boat seines referred in paragraph 1 shall be used by vessels:
- (a) bearing a registration number set out in Annex 5 of the Greek management plan;
 - (b) having a track record in the fishery for more than 5 years; and
 - (c) holding a fishing authorisation and operating under the management plan adopted by Greece in accordance with Article 19 of Regulation (EC) No 1967/2006.

Article 2

Monitoring plan and report

Greece shall communicate to the Commission a report drawn up in accordance with the monitoring plan established in the management plan.

Article 3

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply for a period of three years following the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31 May 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/930**of 31 May 2017****concerning the authorisation of a preparation of a microorganism strain DSM 11798 of the *Coriobacteriaceae* family as a feed additive for all avian species and amending Implementing Regulation (EU) No 1016/2013****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) and Article 13(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for a new use of a preparation of a microorganism strain DSM 11798 of the *Coriobacteriaceae* family and for an amendment of the terms of the current authorisation for pigs granted by Commission Implementing Regulation (EU) No 1016/2013 ⁽²⁾. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003, and by the relevant data to support the amendment request.
- (3) The application concerns the authorisation of a new use of the preparation of a microorganism strain DSM 11798 of the *Coriobacteriaceae* family as a feed additive for all avian species, to be classified in the additive category 'technological additives' and the modification of the terms of the current authorisation for pigs to extend the use to all trichothecene mycotoxins.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 7 December 2016 ⁽³⁾ that, under the proposed conditions of use, the preparation of a microorganism strain DSM 11798 of the *Coriobacteriaceae* family does not have an adverse effect on animal health, human health or the environment. The Authority recognised that the preparation of a microorganism strain DSM 11798 of the *Coriobacteriaceae* family has the capacity to reduce deoxynivalenol (DON) from contaminated feed. It concluded that the preparation has the capacity to reduce the 12,13-epoxide group in a number of representative trichothecenes and in other mycotoxins of the same structural type regardless of the animal species or category receiving contaminated feed. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) In order to allow for the use of the additive with other trichothecenes, it is appropriate to amend Implementing Regulation (EU) No 1016/2013.
- (6) The assessment of the preparation of a microorganism strain DSM 11798 of the *Coriobacteriaceae* family shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Implementing Regulation (EU) No 1016/2013 of 23 October 2013 concerning the authorisation of a preparation of microorganism strain DSM 11798 of the *Coriobacteriaceae* family as a feed additive for pigs (OJ L 282, 24.10.2013, p. 36).

⁽³⁾ EFSA Journal 2017;15(1):4676.

HAS ADOPTED THIS REGULATION:

Article 1

Authorisation

The preparation specified in Annex I, belonging to the additive category 'technological additives' and to the functional group 'substances for the reduction of the contamination of feed by mycotoxins', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

Article 2

Amendments to Implementing Regulation (EU) No 1016/2013

The Annex to Implementing Regulation (EU) No 1016/2013 is replaced by Annex II to this Regulation.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31 May 2017.

For the Commission
The President
Jean-Claude JUNCKER

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			
Category of technological additives. Functional group: substances for the reduction of the contamination of feed by mycotoxins: trichothecenes									
1m01	—	Microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family	<i>Additive composition</i> Preparation of a microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family containing a minimum of 5 × 10 ⁹ CFU/g of additive. Solid form <i>Characterisation of the active substance</i> Viable cells of: microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family <i>Analytical method</i> ⁽¹⁾ Enumeration of microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family: pour plate method using VM agar supplemented with Oxyrase. Identification of microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family: Pulsed Field Gel Electrophoresis (PFGE).	All avian species	—	1,7 × 10 ⁸	—	1. In the directions for use of the additive and premixtures, the storage conditions and stability to heat treatment shall be indicated. 2. The use of the additive is allowed in feedingstuffs complying with the European Union legislation on undesirable substances in animal feed. 3. The use is permitted in feed containing the following authorised coccidiostats: narasin/nicarbazin, salinomycin sodium, monensin sodium, robenidine hydrochloride, diclazuril, narasin, or nicarbazin. 4. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from its use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment including breath protections.	21 June 2027

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			
Category of technological additives. Functional group: substances for the reduction of the contamination of feed by mycotoxins: trichothecenes									
1m01	—	Microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family	<i>Additive composition</i> Preparation of a microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family containing a minimum of 5 × 10 ⁹ CFU/g of additive. Solid form <i>Characterisation of the active substance</i> Viable cells of: microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family <i>Analytical method</i> ⁽¹⁾ Enumeration of microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family: pour plate method using VM agar supplemented with Oxyrase. Identification of microorganism strain DSM 11798 of the <i>Coriobacteriaceae</i> family: Pulsed Field Gel Electrophoresis (PFGE).	Pigs	—	1,7 × 10 ⁸	—	1. In the directions for use of the additive and premixtures, the storage conditions and stability to heat treatment shall be indicated. 2. The use of the additive is allowed in feedingstuffs complying with the European Union legislation on undesirable substances in animal feed. 3. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from its use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment including breath protections.	13 November 2023

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>

COMMISSION IMPLEMENTING REGULATION (EU) 2017/931**of 31 May 2017****laying down the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 19 May 2017 to 26 May 2017 under the tariff quotas opened by Implementing Regulation (EU) 2015/2081 for certain cereals originating in Ukraine**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(1) and (3) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2015/2081 ⁽²⁾ opened import tariff quotas for certain cereals originating in Ukraine.
- (2) Article 1(1) of Implementing Regulation (EU) 2015/2081 set, for the period from 1 January 2017 to 31 December 2017 the quantity of the quota with order number 09.4306 at 960 000 tonnes.
- (3) The quantities covered by the applications for import licences lodged from 19 May 2017 from 13.00 to 26 May 2017 at 13.00 (Brussels time) exceed those available for the quota with order number 09.4306. The extent to which import licences may be issued should therefore be determined by fixing the allocation coefficient to be applied to the quantities requested under the quota concerned, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽³⁾.
- (4) No further import licences should be issued for the tariff quota with order number 09.4306 referred to in Implementing Regulation (EU) 2015/2081 for the current quota period.
- (5) In order to ensure the efficiency of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities covered by the applications for import licences under the quota with order number 09.4306 and referred to in the Annex to Implementing Regulation (EU) 2015/2081, lodged from 19 May 2017 from 13.00 to 26 May 2017 at 13.00 (Brussels time), shall be multiplied by an allocation coefficient of 86,524176 % for applications lodged under the tariff quota with order number 09.4306.

2. The submission of new import licence applications under the quota with order number 09.4306 referred to in the Annex to Implementing Regulation (EU) 2015/2081 shall be suspended from 26 May 2017 at 13.00 (Brussels time) for the current quota period.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Implementing Regulation (EU) 2015/2081 of 18 November 2015 opening and providing for the administration of import tariff quotas for certain cereals originating in Ukraine (OJ L 302, 19.11.2015, p. 81).

⁽³⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31 May 2017.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General
Directorate-General for Agriculture and Rural Development*

DECISIONS

COUNCIL DECISION (EU) 2017/932

of 23 May 2017

amending Decision 1999/70/EC concerning the external auditors of the national central banks, as regards the external auditors of the Nationale Bank van België/Banque Nationale de Belgique

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and in particular Article 27.1 thereof,

Having regard to the Recommendation of the European Central Bank of 31 March 2017 to the Council of the European Union on the external auditors of the Nationale Bank van België/Banque Nationale de Belgique (ECB/2017/8) ⁽¹⁾,

Whereas:

- (1) The accounts of the European Central Bank (ECB) and of the national central banks of Member States whose currency is the euro are to be audited by independent external auditors recommended by the Governing Council of the ECB and approved by the Council.
- (2) The mandate of the external auditors of the Nationale Bank van België/Banque Nationale de Belgique, Ernst & Young Bedrijfsrevisoren/Réviseurs d'Entreprises, expired after the audit for the financial year 2016. It is therefore necessary to appoint external auditors as from the financial year 2017.
- (3) Nationale Bank van België/Banque Nationale de Belgique has selected Mazars Réviseurs d'entreprises/Mazars Bedrijfsrevisoren SCRL/CVBA as its external auditors for the financial years 2017 to 2022.
- (4) The Governing Council of the ECB has recommended that Mazars Réviseurs d'entreprises/Mazars Bedrijfsrevisoren SCRL/CVBA should be appointed as the external auditors of the Nationale Bank van België/Banque Nationale de Belgique for the financial years 2017 to 2022.
- (5) Following the recommendation of the Governing Council of the ECB, Council Decision 1999/70/EC ⁽²⁾ should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 1999/70/EC, paragraph 1 is replaced by the following:

‘1. Mazars Réviseurs d'entreprises/Mazars Bedrijfsrevisoren SCRL/CVBA are hereby approved as the external auditors of the Nationale Bank van België/Banque Nationale de Belgique for the financial years 2017 to 2022.’

Article 2

This Decision shall take effect on the date of its notification.

⁽¹⁾ OJ C 120, 13.4.2017, p. 1.

⁽²⁾ Council Decision 1999/70/EC of 25 January 1999 concerning the external auditors of the national central banks (OJ L 22, 29.1.1999, p. 69).

Article 3

This Decision is addressed to the ECB.

Done at Brussels, 23 May 2017.

For the Council
The President
E. SCICLUNA

DECISION (EU) 2017/933 OF THE EUROPEAN CENTRAL BANK**of 16 November 2016****on a general framework for delegating decision-making powers for legal instruments related to supervisory tasks (ECB/2016/40)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.3 thereof,

Whereas:

- (1) The conferral of supervisory tasks by Council Regulation (EU) No 1024/2013 ⁽¹⁾ on the European Central Bank (ECB) represents a challenge for the effectiveness and efficiency of the ECB's decision-making process, given the high number of decisions required in relation to the ECB's banking supervision tasks.
- (2) Pursuant to Article 13(2) of the Treaty on European Union, all Union institutions must act within the limits of the powers conferred on them by the Treaties and in conformity with the procedures, conditions and objectives set out therein. Article 9.3 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') provides that the ECB has two decision-making bodies, which are the Governing Council and the Executive Board.
- (3) Article 11.6 of the Statute of the ESCB establishes the responsibility of the Executive Board for the current business of the ECB. In this connection, Articles 10.1 and 10.2 of the Rules of Procedure of the European Central Bank (hereinafter the 'Rules of Procedure'), as adopted in Decision ECB/2004/2 ⁽²⁾, establish that all ECB work units fall under the managing direction of the Executive Board. Pursuant to Article 13m.1 of the Rules of Procedure, the Executive Board's competence in respect of the internal structure and the staff of the ECB encompasses supervisory tasks.
- (4) In accordance with Article 25 of Regulation (EU) No 1024/2013 the tasks conferred on the ECB must be carried out without prejudice to and separately from the ECB's tasks relating to monetary policy and any other tasks. Furthermore, Article 25 provides that the staff involved in carrying out these tasks must be organisationally separated from, and subject to, separate reporting lines from the staff involved in carrying out other tasks conferred on the ECB. This organisational separation, where the staff involved in carrying out the tasks conferred on the ECB by Regulation (EU) No 1024/2013 report to the Chair of the Supervisory Board, has been implemented in accordance with Decision ECB/2014/39 ⁽³⁾.
- (5) The Executive Board does not have decision-making competence with regard to supervisory decisions. Article 26(1) of Regulation (EU) No 1024/2013 established the Supervisory Board as an internal body that undertakes the planning and execution of the tasks conferred by Regulation (EU) No 1024/2013 on the ECB. Pursuant to Article 26(8) of Regulation (EU) No 1024/2013, the Supervisory Board carries out preparatory works regarding the supervisory tasks conferred on the ECB and proposes to the Governing Council complete draft decisions, which are adopted if the latter does not object to them. The Supervisory Board is not a decision-making body of the ECB in accordance with Article 129(1) of the Treaty on the Functioning of the European Union (TFEU) and Article 9.3 of the Statute of the ESCB.
- (6) The case-law of the Court of Justice of the European Union (CJEU) has established that a procedure for delegating decisions may be necessary, taking into account the considerable number of decisions that an institution may be required to adopt, in order to enable the institution to perform its duties. The CJEU has recognised that ensuring that a decision-making body is able to function corresponds to a principle inherent in all institutional systems ⁽⁴⁾.

⁽¹⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁽²⁾ Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

⁽³⁾ Decision ECB/2014/39 of 17 September 2014 on the implementation of separation between the monetary policy and supervision functions of the European Central Bank (OJ L 300, 18.10.2014, p. 57).

⁽⁴⁾ Judgments of the Court of Justice of 23 September 1986, *AKZO Chemie BV and AKZO Chemie UK Ltd v Commission*, 5/85, ECLI:EU:C:1986:328, paragraph 37, and of 26 May 2005, *Carmine Salvatore Tralli v ECB*, C-301/02 P, ECLI:EU:C:2005:306, paragraph 59.

Therefore, the powers conferred on an institution include the right to delegate, in compliance with the provisions of the TFEU, a certain number of those powers, subject to any conditions specified by the institution. A Union institution may therefore establish measures of an organisational nature, delegating powers to its own internal decision-making bodies, insofar as such measures are justified and respect the principle of proportionality.

- (7) A general framework decision on delegation is required as part of the internal organisation of the ECB and its decision-making bodies. The legal instruments whose adoption may be delegated include supervisory decisions as defined by Article 2(26) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽¹⁾ or instructions related to supervisory tasks as referred to in Article 17a.3 of the Rules of Procedure. This general framework decision should serve to clarify the procedure to be followed for adopting specific supervisory decisions and should establish the scope of responsibilities of the Executive Board and any head of a work unit of the ECB to whom decision-making powers are delegated. This general framework decision should neither affect the exercise of the supervisory tasks of the ECB nor prejudice the competence of the Supervisory Board to propose complete draft decisions to the Governing Council.
- (8) Within this framework, the Governing Council should adopt delegation decisions in accordance with this general framework decision and the non-objection procedure in Article 26(8) of Regulation (EU) No 1024/2013. This complies with the CJEU's case-law, which states that a delegation decision must be taken under the procedure that would apply if a final decision were to be adopted by the delegating authority. The Supervisory Board may at any time submit a proposal for a complete draft decision to the Governing Council, in accordance with Article 26(8) of Regulation (EU) No 1024/2013, proposing the abrogation or the amendment of a specific delegation decision. Such abrogation or amendment should be without prejudice to any delegated decision already taken. Decisions on issues that fall outside the scope of the delegation decision must be adopted in accordance with the non-objection procedure,

HAS ADOPTED THIS DECISION:

Article 1

Supplementary nature

This Decision shall supplement the Rules of Procedure.

Article 2

Subject matter and scope

This Decision lays down rules on the delegation of clearly defined decision-making powers of the Governing Council in relation to supervisory legal instruments.

Article 3

Definitions

The terms used in this Decision shall have the same meaning as the terms defined in the Rules of Procedure, together with the following definitions:

- (1) 'supervisory legal instrument' means a legal instrument regarding the supervisory tasks of the ECB;
- (2) 'delegation decision' means a decision of the Governing Council to delegate decision-making powers in relation to supervisory legal instruments to heads of work units of the ECB;

⁽¹⁾ 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) 'nomination decision' means a decision of the Executive Board to nominate one or more heads of work units of the ECB to take decisions on the basis of a delegation decision;
- (4) 'delegated decision' means a decision in relation to supervisory legal instruments taken on the basis of delegated decision-making powers.

Article 4

Delegation decisions

The Governing Council may delegate decision-making powers in relation to supervisory legal instruments to heads of work units of the ECB by adopting a delegation decision in accordance with the procedure laid down in Article 26(8) of Regulation (EU) No 1024/2013. A delegation decision shall set out in detail the scope of the matter to be delegated and the conditions on the basis of which such powers may be exercised, and shall be effective upon adoption of a nomination decision by the Executive Board in accordance with Article 5.

Article 5

Nomination decisions

1. The Executive Board may nominate one or more heads of work units of the ECB to take decisions on the basis of a delegation decision by adopting a nomination decision after having consulted the Chair of the Supervisory Board.
2. The heads of work units of the ECB referred to in paragraph 1 shall be chosen from among the heads of work units of the ECB involved in carrying out supervisory tasks that are organisationally separated from the tasks of staff involved in carrying out other tasks conferred on the ECB in accordance with Article 25 of Regulation (EU) No 1024/2013. The selection of the heads of work units of the ECB shall also take into account the importance of the delegation decision and the number of addressees to whom delegated decisions need to be sent.

Article 6

Delegated decisions

1. Delegated decisions shall be taken on behalf of and under the responsibility of the Governing Council.
2. Where one head of work unit of the ECB has been nominated to take decisions on the basis of a delegation decision in accordance with Article 5(1), delegated decisions shall be signed by that head of work unit of the ECB. Where more than one head of work unit of the ECB has been nominated to take decisions on the basis of a delegation decision in accordance with Article 5(1), delegated decisions shall be signed by the nominated heads of work units of the ECB who have approved the delegated decision.

Article 7

Recording of and reporting on delegated decisions

1. The Secretariat of the Supervisory Board shall keep a record of any delegated decisions taken in accordance with this Decision and shall inform the Secretariat of the Governing Council of such decisions on a monthly basis.
2. The Secretariat of the Governing Council shall submit a quarterly report on the exercise of delegated decision-making powers in relation to supervisory legal instruments to the Governing Council and the Supervisory Board.

*Article 8***Review of delegated decisions**

1. Delegated decisions may be subject to an internal administrative review in accordance with Article 24 of Regulation (EU) No 1024/2013 and as provided for by Decision ECB/2014/16 ⁽¹⁾.
2. In the event of such an administrative review, the Supervisory Board shall take into account the opinion of the Administrative Board of Review and submit a new draft decision to the Governing Council for adoption in accordance with the non-objection procedure in Article 26(8) of Regulation (EU) No 1024/2013.

*Article 9***Entry into force**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 16 November 2016.

The President of the ECB

Mario DRAGHI

⁽¹⁾ Decision ECB/2014/16 of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules (OJ L 175, 14.6.2014, p. 47).

DECISION (EU) 2017/934 OF THE EUROPEAN CENTRAL BANK
of 16 November 2016
on the delegation of decisions on the significance of supervised entities (ECB/2016/41)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

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

Having regard to Decision (EU) 2017/933 of the European Central Bank of 16 November 2016 on a general framework for delegating decision-making powers for legal instruments related to supervisory tasks (ECB/2016/40) ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) Article 6(4) of Regulation (EU) No 1024/2013 sets out the criteria for a credit institution, financial holding company or mixed financial holding company to be classified as a significant supervised entity. The criteria for determining significance are specified in further detail in Part IV of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽³⁾.
- (2) Pursuant to Article 39 of Regulation (EU) No 468/2014 (ECB/2014/17), a supervised entity is considered significant if the European Central Bank (ECB) so determines in a decision addressed to the relevant supervised entity. Pursuant to Article 40 of that Regulation, if one or more supervised entities are part of a supervised group, the criteria for determining significance are determined at the highest level of consolidation within participating Member States and each supervised entity is considered significant in accordance with those criteria.
- (3) Pursuant to Article 43(3) of Regulation (EU) No 468/2014 (ECB/2014/17), the ECB may review, at any time after it receives relevant information, whether the criteria for significance are fulfilled.
- (4) New decisions on significance should be excluded from the scope of this Decision. The adoption of an amendment to a decision on significance should be without prejudice to the application of Article 22 of Regulation (EU) No 1024/2013 and of Part III, Title 2 of Regulation (EU) No 468/2014 (ECB/2014/17).
- (5) An amendment to a decision on significance that ceases to classify a significant supervised entity or a significant supervised group as significant should not be taken by means of a delegated decision where it is based on Article 70 of Regulation (EU) No 468/2014 (ECB/2014/17).
- (6) Each year, the ECB, as the competent authority for all significant supervised entities in the Single Supervisory Mechanism, is required to adopt a substantial number of decisions that amend existing decisions on significance. In order to enable its decision-making bodies to function, a delegation decision is necessary in relation to the adoption of decisions amending decisions on significance. The Court of Justice of the European Union (CJEU) has recognised delegation of authority to be necessary to enable an institution required to adopt a considerable number of decisions to perform its duties. Similarly, the CJEU has recognised the need to ensure that decision-making bodies are able to function as a principle inherent in all institutional systems ⁽⁴⁾. In order to facilitate the decision-making process in relation to the adoption of an amendment of a decision on significance, a delegation decision is necessary.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ See page 14 of this Official Journal.

⁽³⁾ 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).

⁽⁴⁾ Judgments of the Court of Justice of 23 September 1986, *AKZO Chemie BV and AKZO Chemie UK Ltd v Commission*, 5/85, ECLI:EU:C:1986:328, paragraph 37, and of 26 May 2005, *Carmine Salvatore Tralli v ECB*, C-301/02 P, ECLI:EU:C:2005:306, paragraph 59.

- (7) Delegation of decision-making powers should be limited, proportionate and based on specified criteria. While decisions on the significance of a supervised group contain a list of the entities that are included within the scope of the significant supervised group, such specified criteria should refer to an amendment to the composition of a significant supervised group or a change in the name of a significant supervised entity that should be justified and respect the principle of proportionality.
- (8) Decision (EU) 2017/933 (ECB/2016/40) clarifies the procedure to be followed for adopting specific supervisory decisions and the persons who may be delegated decision-making powers. That Decision does not affect the ECB's exercise of its supervisory tasks and is without prejudice to the Supervisory Board's competence to propose complete draft decisions to the Governing Council.
- (9) Where the criteria for the adoption of a delegated decision, as laid down in this Decision, are not met, amendments to a decision on significance should be adopted in accordance with the non-objection procedure set out in Article 26(8) of Regulation (EU) No 1024/2013 and Article 13g of Decision ECB/2004/2 ⁽¹⁾. This Decision should not affect the exercise of the ECB's supervisory tasks and be without prejudice to the competence of the Supervisory Board to propose complete draft decisions to the Governing Council.
- (10) ECB supervisory decisions may be subject to administrative review pursuant to Article 24 of Regulation (EU) No 1024/2013 and as further specified in Decision ECB/2014/16 ⁽²⁾. In the event of such administrative review, the Supervisory Board should take into account the opinion of the Administrative Board of Review and submit a new draft decision to the Governing Council for adoption under the non-objection procedure,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (1) 'amendment to a decision on significance' means a decision adopted following a significance review in accordance with Article 43(3) or 52(1) of Regulation (EU) No 468/2014 (ECB/2014/17), which amends or repeals an ECB decision that classified a supervised entity or a supervised group as significant for the purposes of Article 6(4) of Regulation (EU) No 1024/2013;
- (2) 'participating Member State' means a participating Member State as defined in point (1) of Article 2 of Regulation (EU) No 1024/2013;
- (3) 'significant supervised entity' means a significant supervised entity as defined in point (16) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (4) 'supervised entity' means a supervised entity as defined in point (20) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (5) 'supervised group' means a supervised group as defined in point (21) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (6) 'significant supervised group' means a significant supervised group as defined in point (22) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (7) 'delegated decision' means a decision taken on the basis of a delegation of powers by the Governing Council pursuant to Decision (EU) 2017/933 (ECB/2016/40);
- (8) 'heads of work units' means the heads of work units of the ECB to whom the power to adopt amendments to decisions on significance is delegated.

⁽¹⁾ Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

⁽²⁾ Decision ECB/2014/16 of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules (OJ L 175, 14.6.2014, p. 47).

*Article 2***Delegation of amendments to decisions on significance**

1. In accordance with Article 4 of Decision (EU) 2017/933 (ECB/2016/40), the Governing Council hereby delegates the adoption of amendments to decisions on significance to the heads of work units nominated by the Executive Board in accordance with Article 5 of that Decision.
2. An amendment to a decision on significance shall only be adopted by means of a delegated decision if the criteria for the adoption of delegated decisions, as set out in Article 3, are fulfilled.

*Article 3***Criteria for the adoption of delegated decisions**

1. An amendment to a decision on significance that classifies a supervised entity as significant within a significant supervised group shall be taken by means of a delegated decision where the criteria for determining significance at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Part IV of Regulation (EU) No 468/2014 (ECB/2014/17) continue to be fulfilled for the significant supervised group.
2. An amendment to a decision on significance that ceases to classify a supervised entity as significant within a significant supervised group shall be taken by means of a delegated decision where the criteria for determining significance at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Part IV of Regulation (EU) No 468/2014 (ECB/2014/17) continue to be fulfilled for the significant supervised group, although the supervised entity has ceased to be part of such a group.
3. An amendment to a decision on significance that ceases to classify a significant supervised entity or a significant supervised group as significant shall be taken by means of a delegated decision only where the criteria for determining significance at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Part IV of Regulation (EU) No 468/2014 (ECB/2014/17) are no longer fulfilled.
4. An amendment to a decision on significance that alters the name of a significant supervised entity shall be taken by means of a delegated decision where no additional information relevant to the classification of the supervised entity has been communicated to the ECB.
5. An amendment to a decision on significance shall not be taken by means of a delegated decision where the relevant supervised entity or supervised group has been classified as significant in accordance with Article 59 of Regulation (EU) No 468/2014 (ECB/2014/17).
6. An amendment to a decision on significance shall not be taken by means of a delegated decision if the ECB receives a written submission that challenges the classification of a supervised entity as significant or less significant.

*Article 4***Entry into force**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 16 November 2016.

The President of the ECB
Mario DRAGHI

DECISION (EU) 2017/935 OF THE EUROPEAN CENTRAL BANK**of 16 November 2016****on delegation of the power to adopt fit and proper decisions and the assessment of fit and proper requirements (ECB/2016/42)**

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(1)(e) thereof,

Having regard to Decision (EU) 2017/933 of the European Central Bank of 16 November 2016 on a general framework for delegating decision-making powers for legal instruments related to supervisory tasks (ECB/2016/40) ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) The European Central Bank (ECB), as the competent authority for significant supervised entities, is responsible for ensuring, in accordance with Article 4(1)(e) of Regulation (EU) No 1024/2013 and Articles 93 and 94 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽³⁾, that members of the management bodies of those entities meet the fit and proper requirements.
- (2) Article 91 of Directive 2013/36/EU of the European Parliament and of the Council ⁽⁴⁾ requires that: (a) members of the management bodies of supervised entities must at all times be of sufficiently good repute and must possess sufficient knowledge, skills and experience to perform their duties, and that the management body as a whole must possess adequate collective knowledge, skills and experience to be able to understand the institution's activities; (b) all members of the management body must commit sufficient time to perform their functions in the institution and, taking into account individual circumstances and the nature, scale and complexity of the institution's activities, the number of directorships that each member holds must not exceed a certain number; (c) each member of the management body must act with honesty, integrity and independence of mind; and (d) supervised entities must put in place a policy promoting diversity in the management body.
- (3) In accordance with Article 4(3) of Regulation (EU) No 1024/2013, the ECB must apply all relevant Union law when carrying out its supervisory tasks, and where this law is composed of Directives, the national legislation transposing those Directives. The ECB is also subject to the regulatory and implementing technical standards developed by the European Banking Authority (EBA) and adopted by the European Commission in accordance with Articles 10 to 15 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁵⁾. The ECB must make every effort to comply with the guidelines and recommendations developed by the EBA under Article 16 of Regulation (EU) No 1093/2010 and with the European supervisory handbook developed by the EBA in accordance with that Regulation.
- (4) According to Guidelines EBA/GL/2012/06 of the European Banking Authority ⁽⁶⁾, when assessing the suitability of a member, in addition to criteria concerning the member's reputation and experience, criteria that are relevant to the functioning of the management body should also be considered. The assessment should include potential conflicts of interest of members, their ability to commit sufficient time, their ability to perform their

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ See page 14 of this Official Journal.

⁽³⁾ 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).

⁽⁴⁾ Directive 2013/36/EU of the European Parliament and 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).

⁽⁵⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽⁶⁾ Guidelines EBA/GL/2012/06 of the European Banking Authority of 22 November 2012 on the assessment of the suitability of members of the management body and key function holders.

duties independently without undue influence from other persons, the overall composition of the management body and the collective knowledge and expertise required of it. This is without prejudice to the assessment of the implementation of the institution's governance arrangements for the purposes of Article 88 of Directive 2013/36/EU.

- (5) In addition to the national law implementing Article 91 of Directive 2013/36/EU, an ECB fit and proper decision should also ensure compliance with the requirements set out in any other applicable national law. Therefore, an assessment of whether a decision may be adopted by means of delegation should be performed without prejudice to the assessment of the fulfilment of fit and proper requirements set out in applicable law.
- (6) The ECB, as the competent authority, is required to adopt a substantial number of fit and proper decisions each year. To facilitate the decision-making process, a delegation decision is necessary in relation to the adoption of such decisions. The Court of Justice of the European Union has recognised delegation of authority to be necessary to enable an institution required to adopt a considerable number of decisions to perform its duties. Similarly, it has recognised the need to ensure that decision-making bodies are able to function as a principle inherent to all institutional systems ⁽¹⁾.
- (7) Delegation of decision-making powers should be limited, proportionate and the scope of the delegation should be clearly defined.
- (8) Decision (EU) 2017/933 (ECB/2016/40) specifies the procedure to be followed for adopting delegation decisions concerning supervision and the persons who may be delegated decision-making powers. That Decision does not affect the ECB's exercise of its supervisory tasks and is without prejudice to the Supervisory Board's competence to propose complete draft decisions to the Governing Council.
- (9) Where the criteria for the adoption of a delegated decision, as laid down in this Decision, are not met, fit and proper decisions should be adopted in accordance with the non-objection procedure set out in Article 26(8) of Regulation (EU) No 1024/2013 and Article 13g of Decision ECB/2004/2 ⁽²⁾.
- (10) If a member is not deemed to fulfil the fit and proper requirements, the fit and proper decision should not be adopted by means of a delegated decision, but rather under the non-objection procedure. It is thus necessary to allow for sufficient time for a non-objection procedure in cases where it is not possible to determine in advance whether a delegated decision may be adopted. For this reason, if a national competent authority does not submit to the ECB a draft delegated decision 20 working days before the expiry of the deadline for the adoption of the fit and proper decision under applicable national law, the decision should be adopted under the non-objection procedure. Furthermore, if the heads of work units have concerns regarding the fit and proper requirements being fulfilled by the member due to insufficient information being provided by the national competent authority or the complexity of the assessment, the non-objection procedure should again be used,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (1) 'fit and proper requirements' means the requirements that the members of the management body of a significant supervised entity must fulfil at all times in accordance with Article 91 of Directive 2013/36/EU and any other applicable law;
- (2) 'fit and proper decision' means an ECB decision stating whether an individual fulfils the fit and proper requirements;
- (3) 'applicable law' means relevant Union law within the meaning of Article 4(3) of Regulation (EU) No 1024/2013, and any national law which is relevant for the assessment of the fit and proper requirements;

⁽¹⁾ Judgments of the Court of Justice of 23 September 1986, *AKZO Chemie BV and AKZO Chemie UK Ltd v Commission*, 5/85, ECLI:EU:C:1986:328, paragraph 37, and of 26 May 2005, *Carmine Salvatore Tralli v ECB*, C-301/02 P, ECLI:EU:C:2005:306, paragraph 59.

⁽²⁾ Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

- (4) 'participating Member State' means a participating Member State as defined in point (1) of Article 2 of Regulation (EU) No 1024/2013;
- (5) 'significant supervised entity' means a significant supervised entity as defined in point (16) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (6) 'supervised entity' means a supervised entity as defined in point (20) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (7) 'significant supervised group' means a significant supervised group as defined in point (22) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17);
- (8) 'delegated decision' means a decision adopted on the basis of a delegation of power by the Governing Council pursuant to Decision (EU) 2017/933 (ECB/2016/40);
- (9) 'management body' means a management body as defined in point (7) of Article 3(1) of Directive 2013/36/EU, subject to Article 3(2) thereof;
- (10) 'member' means a proposed or appointed member of a management body or, where applicable, a proposed or appointed key function holder as defined in accordance with applicable law;
- (11) 'heads of work units' means the heads of work units of the ECB to whom the power to jointly adopt fit and proper decisions is delegated;
- (12) 'national competent authority' means a national competent authority as defined in point (2) of Article 2 of Regulation (EU) No 1024/2013;
- (13) 'non-objection procedure' means the procedure set out in Article 26(8) of Regulation (EU) No 1024/2013 and further specified in Article 13g of Decision ECB/2004/2;
- (14) 'Guide to fit and proper assessments' means a document with this title, adopted and amended from time to time in accordance with the non-objection procedure and published on the ECB's website, which contains guidance on how fit and proper assessments should be conducted;
- (15) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾.

Article 2

Delegation of fit and proper decisions

1. In accordance with Article 4 of Decision (EU) 2017/933 (ECB/2016/40), the Governing Council hereby delegates the power to adopt fit and proper decisions to the heads of work units nominated by the Executive Board in accordance with Article 5 of that Decision.
2. The heads of work units shall adopt delegated decisions in accordance with this Decision and applicable law.

Article 3

Scope of delegation

1. A fit and proper decision shall not be adopted by means of a delegated decision if the relevant supervised entity is one of the following:
 - (a) the supervised entity at the highest level of consolidation within the participating Member States of a significant supervised group;
 - (b) the credit institution with the largest total value of assets in a significant supervised group, if this entity is different to that referred to in point (a);
 - (c) a significant supervised entity that is not part of a significant supervised group.

⁽¹⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

2. A fit and proper decision shall not be adopted by means of a delegated decision if the fit and proper decision:
 - (a) states that the member does not fulfil the fit and proper requirements; or
 - (b) contains conditions, unless such conditions are necessary to ensure that the member fulfils the fit and proper requirements and have been agreed in writing.
3. A fit and proper decision shall not be adopted by means of a delegated decision if, based on information submitted to the ECB:
 - (a) the member is currently subject to criminal proceedings before a court of law or has been convicted of a criminal offence at first or final instance; or
 - (b) an investigation has been or is currently being carried out in relation to, or an enforcement action or an administrative sanction is pending against or has been imposed upon, the member for non-compliance with any financial services legislation or regulatory provisions.
4. A fit and proper decision shall not be adopted by means of a delegated decision if:
 - (a) the national competent authority does not submit to the ECB a draft delegated decision 20 working days before the expiry of the deadline for the adoption of a fit and proper decision under applicable law; or
 - (b) insufficient information or the complexity of the assessment require that the fit and proper decision is adopted under the non-objection procedure.
5. Where, pursuant to paragraphs 1 to 4, a fit and proper decision cannot be adopted by means of a delegated decision, it shall be adopted in accordance with applicable law and the non-objection procedure.
6. For the purpose of paragraphs 2 to 4, if the assessment of the fit and proper requirements concerns more than one member of a management body and a decision cannot be adopted by means of a delegated decision with regard to one or more of them, the assessment shall result in two fit and proper decisions. One decision shall be adopted in accordance with applicable law and the non-objection procedure, and the other by means of a delegated decision.

Article 4

Fit and proper assessment

The assessment of the fit and proper requirements shall be carried out in accordance with applicable law taking into account the Guide to fit and proper assessments (chapter on assessment criteria) covering the following criteria:

- (a) Experience. The member shall have sufficient knowledge, skills and experience to fulfil their functions.
- (b) Reputation. The member shall at all times be of sufficiently good repute to ensure the sound and prudent management of the supervised entity. The principle of proportionality shall not apply to the assessment of good repute.
- (c) Potential conflicts of interest and independence of mind. The member shall have the ability to act independently. The assessment of any potential conflicts of interest and independence of mind shall include an assessment of the supervised entity's governance arrangements for disclosing, mitigating, managing or preventing conflicts of interest.
- (d) Time commitment. The member shall have the ability to dedicate sufficient time to the performance of their functions in the supervised entity. The assessment may be impacted by several factors, such as the number of directorships held by the member, the nature, scale and complexity of the supervised entity's activities, and other relevant commitments.
- (e) Collective suitability. The member shall be assessed with respect to the collective suitability requirement at the time of their initial fit and proper assessment, taking into account the ongoing supervision of the governance of the supervised entity, as well as the self-assessment of the management body, in particular with regard to its composition and collective suitability needs.

*Article 5***Transitional provision**

This Decision shall not apply to proposals for a fit and proper decision submitted by a national competent authority to the ECB prior to the entry into force of this Decision.

*Article 6***Entry into force**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 16 November 2016.

The President of the ECB
Mario DRAGHI

DECISION (EU) 2017/936 OF THE EUROPEAN CENTRAL BANK**of 23 May 2017****nominating heads of work units to adopt delegated fit and proper decisions (ECB/2017/16)**

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

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

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and in particular Article 11.6 thereof,

Having regard to Decision (EU) 2017/933 of the European Central Bank of 16 November 2016 on a general framework for delegating decision-making powers for legal instruments related to supervisory tasks (ECB/2016/40) ⁽¹⁾, and in particular Articles 4 and 5 thereof,

Having regard to Decision (EU) 2017/935 of the European Central Bank of 16 November 2016 on delegation of the power to adopt fit and proper decisions and the assessment of fit and proper requirements (ECB/2016/42) ⁽²⁾, and in particular Article 2 thereof,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank ⁽³⁾, and in particular Article 10 thereof,

Whereas:

- (1) To address the considerable number of decisions that the European Central Bank (ECB) is to adopt for the performance of its supervisory tasks, a procedure for the adoption of specific delegated decisions has been established.
- (2) A delegation decision is effective upon the adoption of a decision by the Executive Board nominating one or more heads of work units to take decisions on the basis of a delegation decision.
- (3) The importance of the delegation decision and the number of addressees to whom delegated decisions need to be sent should be taken into account by the Executive Board in nominating heads of work units.
- (4) The Chair of the Supervisory Board has been consulted on the heads of work units to whom the power to adopt fit and proper decisions should be delegated,

HAS ADOPTED THIS DECISION:

*Article 1***Delegated fit and proper decisions**

Delegated decisions pursuant to Article 2 of Decision (EU) 2017/935 (ECB/2016/42) shall be adopted by the Deputy Director General of Directorate General Microprudential Supervision IV responsible for fit and proper decisions, or if the Deputy Director General is unavailable the Head of the Authorisation Division, and one of the following heads of work units:

- (a) the Director General of Directorate General Microprudential Supervision I, if supervision of the relevant supervised entity or group is carried out by Directorate General Microprudential Supervision I;
- (b) the Director General of Directorate General Microprudential Supervision II, if supervision of the relevant supervised entity or group is carried out by Directorate General Microprudential Supervision II; or
- (c) if a Director General is unavailable, their Deputy Director General.

⁽¹⁾ See page 14 of this Official Journal.

⁽²⁾ See page 21 of this Official Journal.

⁽³⁾ OJ L 80, 18.3.2004, p. 33.

*Article 2***Entry into force**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 23 May 2017.

The President of the ECB
Mario DRAGHI

DECISION (EU) 2017/937 OF THE EUROPEAN CENTRAL BANK**of 23 May 2017****nominating heads of work units to adopt delegated decisions on the significance of supervised entities (ECB/2017/17)**

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

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

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 11.6 thereof,

Having regard to Decision (EU) 2017/933 of the European Central Bank of 16 November 2016 on a general framework for delegating decision-making powers for legal instruments related to supervisory tasks (ECB/2016/40) ⁽¹⁾, and in particular Articles 4 and 5 thereof,

Having regard to Decision (EU) 2017/934 of the European Central Bank of 16 November 2016 on the delegation of decisions on the significance of supervised entities (ECB/2016/41) ⁽²⁾, and in particular Article 2 thereof,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank ⁽³⁾, and in particular Article 10 thereof,

Whereas:

- (1) To address the considerable number of decisions that the European Central Bank (ECB) is to adopt for the performance of its supervisory tasks, a procedure for the adoption of specific delegated decisions has been established.
- (2) A delegation decision is effective upon the adoption of a decision by the Executive Board nominating one or more heads of work units to take decisions on the basis of a delegation decision.
- (3) The importance of the delegation decision and the number of addressees to whom delegated decisions need to be sent should be taken into account by the Executive Board in nominating heads of work units.
- (4) The Chair of the Supervisory Board has been consulted on the heads of work units to whom the power to adopt decisions on the significance of supervised entities should be delegated,

HAS ADOPTED THIS DECISION:

Article 1

Delegated decisions that classify or cease to classify a supervised entity as significant within a significant supervised group or alter the name of a significant supervised entity

Delegated decisions pursuant to Article 3(1), (2) or (4) of Decision (EU) 2017/934 (ECB/2016/41) shall be adopted by one of the following heads of work units:

- (a) the Director General of Directorate General Microprudential Supervision I, if supervision of the relevant supervised entity or group is carried out by Directorate General Microprudential Supervision I;
- (b) the Director General of Directorate General Microprudential Supervision II, if supervision of the relevant supervised entity or group is carried out by Directorate General Microprudential Supervision II; or
- (c) if a Director General is unavailable, their Deputy Director General.

⁽¹⁾ See page 14 of this Official Journal.

⁽²⁾ See page 18 of this Official Journal.

⁽³⁾ OJ L 80, 18.3.2004, p. 33.

*Article 2***Delegated decisions that cease to classify a significant supervised entity or a significant supervised group as significant**

Delegated decisions pursuant to Article 3(3) of Decision (EU) 2017/934 (ECB/2016/41) shall be adopted by the Director General of Directorate General Microprudential Supervision III, or if the Director General is unavailable, the Deputy Director General, and one of the following heads of work units:

- (a) the Director General of Directorate General Microprudential Supervision I, if supervision of the relevant supervised entity or group is carried out by Directorate General Microprudential Supervision I;
- (b) the Director General of Directorate General Microprudential Supervision II, if supervision of the relevant supervised entity or group is carried out by Directorate General Microprudential Supervision II; or
- (c) if a Director General is unavailable, their Deputy Director General.

*Article 3***Entry into force**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 23 May 2017.

The President of the ECB
Mario DRAGHI

