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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.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2019/320

of 12 December 2018

supplementing of Directive 2014/53/EU of the European Parliament and of the Council with regard to the application of the essential requirements referred to in Article 3(3)(g) of that Directive in order to ensure caller location in emergency communications from mobile devices

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC ⁽¹⁾ and in particular Article 3(3) thereof,

Whereas:

- (1) As stated in recital 14 of Directive 2014/53/EU, radio equipment can be instrumental in providing access to emergency services and should therefore in appropriate cases be designed to support the features required for access to those services.
- (2) The system established under the Galileo programme on the basis of Regulation (EU) No 1285/2013 of the European Parliament and of the Council ⁽²⁾ is a global navigation satellite system ('GNSS') fully owned and controlled by the Union which provides a highly accurate positioning service under civilian control. The Galileo system can be used in combination with other GNSS.
- (3) The Space Strategy for Europe ⁽³⁾, adopted in 2016 announces measures introducing the use of Galileo positioning and navigation services in mobile phones.
- (4) In its conclusions of 5 December 2017 ⁽⁴⁾, the Council supports the development of a strong downstream market for space-based applications and services, and underlines that adequate measures, including regulatory ones, where appropriate, should be taken to achieve the full compatibility of devices sold in the Union with the Galileo system and to encourage the uptake of Galileo-ready devices on the global market.
- (5) Directive 2002/22/EC of the European Parliament and of the Council ⁽⁵⁾ provides for the deployment of the single European emergency call number ('112') throughout the Union and obliges Member States to ensure that undertakings providing end-users with an electronic communication service for originating calls to a number or numbers in the national numbering plan make caller location information available to authorities handling emergency calls to at least the single European emergency call number '112'.

⁽¹⁾ OJ L 153, 22.5.2014, p. 62.

⁽²⁾ Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p. 1).

⁽³⁾ Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions — Space Strategy for Europe (COM(2016) 705 final).

⁽⁴⁾ Council Conclusions of 5 December 2017 on 'The Mid-term Evaluation of the Galileo and EGNOS programmes and of the performance of the European GNSS Agency', 15435/17.

⁽⁵⁾ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51).

- (6) Hand-held mobile telephones with advanced computing capabilities ('mobile devices') is the category of telecommunication radio equipment that is most used in the Union to make calls to the single European emergency call number '112'.
- (7) The level of accuracy regarding the location of the radio equipment accessing the emergency services plays a key role in ensuring that the required access to those services is effective. Currently, caller location in emergency communications from mobile devices is established using a cell-ID based on the coverage area of the serving cell-tower of the mobile device. The area of coverage of a cell tower varies from 100 metres to several kilometres. In certain cases, notably in mountains, cities and large buildings, this can lead to significant errors in positioning emergency callers.
- (8) A caller location identification based on a cell-ID complemented with the Wi-Fi and GNSS information allows for much more accurate caller location and permits faster and more efficient rescue efforts, as well as an optimisation of resources.
- (9) Caller-location solutions based on GNSS positioning have already been deployed in eight Member States and certain third countries.
- (10) With respect to 112-based eCall in-vehicle systems, Regulation (EU) 2015/758 of the European Parliament and of the Council ⁽⁶⁾ already requires that receivers in those systems be compatible with the positioning services provided by the Galileo and the EGNOS systems.
- (11) For the reasons set out, mobile devices should also fall within the category of radio equipment which supports certain features ensuring access to emergency services referred to in Article 3(3)(g) of Directive 2014/53/EU. New mobile devices should be capable of providing access to Wi-Fi and GNSS location information in emergency communications and the location positioning feature should be compatible with and interwork with the services provided by the Galileo programme.
- (12) Directive 2014/53/EU is limited to the expression of essential requirements. In order to facilitate conformity assessment with those requirements, it provides for a presumption of conformity for radio equipment which complies with voluntary harmonised standards that are adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council ⁽⁷⁾ for the purpose of expressing detailed technical specifications of those requirements.
- (13) The European Committee for Electrotechnical Standardisation (Cenelec) and the European Telecommunications Standards Institute (ETSI) were requested to draft, in support of the implementation of Article 3 of Directive 2014/53/EU, harmonised standards for radio equipment (M/536) ⁽⁸⁾.
- (14) Economic operators should be provided with a sufficient time period to proceed with the necessary adaptations to mobile devices they intend to put on the market. Nothing in this Regulation should be interpreted as preventing economic operators from complying with it from the date of its entry into force.
- (15) The Commission has carried out appropriate consultations, including at expert level, during the preparatory work of the measures set out in this Regulation and has consulted the Space Policy Expert Group at its meetings of 14 November 2017 and 14 March 2018,

HAS ADOPTED THIS REGULATION:

Article 1

1. The essential requirements set out in Article 3(3)(g) of Directive 2014/53/EU shall apply to hand-held mobile telephones with features similar to those of a computer in terms of capability to treat and store data.

⁽⁶⁾ Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type approval requirements for the deployment of the eCall in vehicle system based on the 112 service and amending Directive 2007/46/EC (OJ L 123, 19.5.2015, p. 77).

⁽⁷⁾ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

⁽⁸⁾ Commission Implementing Decision C(2015) 5376 final of 4 August 2015 on a standardisation request to the European Committee for Electrotechnical Standardisation and to the European Telecommunications Standards Institute as regards radio equipment in support of Directive 2014/53/EU of the European Parliament and of the Council.

2. Compliance with paragraph 1 shall be ensured through technical solutions for the reception and processing of Wi-Fi data, data from Global Navigation Satellite Systems compatible and interoperable with at least the Galileo system referred to in Regulation (EU) No 1285/2013, and for the making available of that data for transmission in emergency communications.

Article 2

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

It shall apply from 17 March 2022.

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

Done at Brussels, 12 December 2018.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2019/321**of 18 February 2019****concerning the classification of certain goods in the Combined Nomenclature and repealing
Implementing Regulation (EU) 2017/1232**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽¹⁾, and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature ('CN') annexed to Council Regulation (EEC) No 2658/87 ⁽²⁾, it is necessary to adopt measures concerning the classification of certain goods.
- (2) By Commission Implementing Regulation (EU) 2017/1232 ⁽³⁾, an article made of spheroidal graphite cast iron (ductile iron, EN-GJS-500-7) was classified under CN code 7325 99 10 as other cast articles of malleable cast iron.
- (3) The classification in Implementing Regulation (EU) 2017/1232 was based on the Explanatory notes to the Combined Nomenclature to CN code 7307 19 10 which defined malleable cast iron and according to those notes, the expression 'malleable' included spheroidal graphite cast iron.
- (4) In Joined Cases C-397/17 and C-398/17, *Profit Europe* ⁽⁴⁾, the Court of Justice ruled that cast tube or pipe fittings of spheroidal graphite cast iron must be classified under subheading 7307 19 90.
- (5) The Court of Justice based its decision on the finding that spheroidal graphite cast iron and malleable cast iron differ in terms of their composition and method of production and that even if spheroidal graphite cast iron has characteristics similar to those of malleable cast iron (EN-GJM), none the less it constitutes a separate category in the classification of cast iron (EN-GJS).
- (6) The Court of Justice concluded that in that regard those Explanatory Notes, in so far as they state that 'the expression 'malleable' includes spheroidal graphite cast iron', have the effect of extending the concept of 'malleable cast iron' to another category of cast iron and must therefore be disregarded.
- (7) The judgment of the Court of Justice is applicable by analogy to the product covered by Implementing Regulation (EU) 2017/1232 since that product corresponds to standard EN-GJS-500-7 and its classification as an article of malleable iron was based on the text of Explanatory notes to the Combined Nomenclature to CN code 7307 19 10 which were found by the Court of Justice to be altering the scope of CN subheading 7307 19 10.
- (8) Classification of the article covered by Implementing Regulation (EU) 2017/1232 is therefore not in line with the findings of the Court of Justice in its judgment in Joined Cases C-397/17 and C-398/17.
- (9) Implementing Regulation (EU) 2017/1232 should therefore be repealed and replaced.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2017/1232 of 3 July 2017 concerning the classification of certain goods in the Combined Nomenclature (OJ L 177, 8.7.2017, p. 23).

⁽⁴⁾ Judgement of 12 July 2018, *Profit Europe*, C-397/17 and C 398/17, EU:C:2018:564.

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Implementing Regulation (EU) 2017/1232 is repealed.

Article 3

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, 18 February 2019.

*For the Commission,
On behalf of the President,*

Stephen QUEST

Director-General

Directorate-General for Taxation and Customs Union

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A circular article with a diameter of approximately 500 mm and a weight of approximately 23 kg. It is made of spheroidal graphite cast iron (ductile iron, EN-GJS-500-7). The article is painted with black bitumen for protection against corrosion. The article is certified according to EN 124 standard (gully tops and manhole tops for vehicular and pedestrian areas) and it is used as a sewer cover (for example, for rainwater sewers). See image ⁽¹⁾.	7325 99 90	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 7325, 7325 99 and 7325 99 90. Classification of the article under CN code 7325 10 00 as other cast articles of non-malleable cast iron is excluded as non-malleable cast iron is not deformable under compressive stress, while spheroidal cast iron is deformable under tensile stress and also under compressive stress to a certain degree. Therefore spheroidal graphite cast iron as such cannot be considered non-malleable iron (see, by analogy, judgment of 12 July 2018, <i>Profit Europe</i>, Joined Cases C-397/17 and C-398/17, EU:C:2018:564). Classification of the article under CN code 7325 99 10 as other cast articles of malleable iron is also excluded as spheroidal graphite cast iron and malleable cast iron differ in terms of their composition and method of their production. Even if spheroidal graphite cast iron has characteristics similar to those of malleable cast iron (EN-GJM), none the less it constitutes a separate category (EN-GJS) (see, by analogy, judgment of 12 July 2018, <i>Profit Europe</i>, Joined Cases C-397/17 and C-398/17). The article is therefore to be classified under CN code 7325 99 90 as ‘other cast articles of other iron’.

⁽¹⁾ The image is purely for information.



DECISIONS

DECISION (EU) 2019/322 OF THE EUROPEAN CENTRAL BANK

of 31 January 2019

on delegation of the power to adopt decisions regarding supervisory powers granted under national law (ECB/2019/4)

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)(d) and (e), and Articles 4(3) and 9(1) 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) Within the framework of Article 6 of Regulation (EU) No 1024/2013, the European Central Bank (ECB) carries out the exclusive task to supervise credit institutions with the aim to ensure a consistent application of supervisory standards, to foster financial stability and to ensure a level playing field.
- (2) Article 4(3) of Regulation (EU) No 1024/2013 provides that the ECB must apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives.
- (3) Pursuant to the second subparagraph of Article 9(1) of Regulation (EU) No 1024/2013, for the purpose of carrying out the tasks conferred on it, the ECB has all the powers and obligations set out in Regulation (EU) No 1024/2013 and all the powers and obligations which competent authorities have under the relevant Union law. The ECB's competence extends to the exercise of supervisory powers granted under national law that are not explicitly provided for in Union law as long as such powers fall within the ECB's tasks under Article 4 of Regulation (EU) No 1024/2013 and underpin a supervisory function. The ECB, as the competent authority, is required to adopt a substantial number of decisions regarding supervisory powers granted under national law each year.
- (4) To facilitate the decision-making process a delegation decision is necessary regarding 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 ⁽³⁾.
- (5) Delegation of decision-making powers should be limited and proportionate, and the scope of the delegation should be clearly defined.
- (6) 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.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ OJ L 141, 1.6.2017, p. 14.

⁽³⁾ See, for example, judgment of the Court of Justice of 23 September 1986, *AKZO Chemie v Commission*, 5/85, ECLI:EU:C:1986:328, paragraph 37; and judgment of the Court of Justice of 26 May 2005, *Carmine Salvatore Tralli v ECB*, C-301/02 P, ECLI:EU:C:2005:306, paragraph 59.

- (7) Where the criteria for the adoption of a delegated decision, as laid down in this Decision, are not met, decisions should be adopted in accordance with the non-objection procedure set out in Article 26(8) of Regulation (EU) No 1024/2013 and further specified in Article 13g of Decision ECB/2004/2 ⁽⁴⁾. Furthermore, the non-objection procedure should also be used if the heads of work units have concerns regarding the fulfilment of assessment criteria for the national powers decisions due to the complexity of the assessment.
- (8) 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 ⁽⁵⁾. 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) 'national powers decisions' mean decisions taken by the ECB in exercise of its supervisory powers granted under national law that are not explicitly provided for in Union law;
- (2) 'acquisition of a holding' means the acquisition of a direct or indirect holding of capital or of voting rights in another entity, including as a result of the establishment of a new entity, other than the acquisition of a qualifying holding within the meaning of Article 22 of Directive 2013/36/EU of the European Parliament and of the Council ⁽⁶⁾;
- (3) 'merger' means (a) an operation whereby one or more companies, on being dissolved with or without going into liquidation, transfer all of their assets and liabilities to an existing company or a new company, in exchange for the issue to their shareholders of securities or shares representing the capital of that existing company or new company, or (b) any transaction that is a merger under the relevant national law;
- (4) 'demerger' means (a) an operation whereby one or more companies split part of their assets and liabilities and form a new company that holds these assets and liabilities, or (b) any transaction that is a demerger under the relevant national law;
- (5) 'third country or territory' means a country or territory outside the European Economic Area;
- (6) 'related party' means a natural person that is related to a credit institution or a close member of that person's family, or a legal person that is related to a credit institution, in accordance with the relevant national law;
- (7) 'SREP decision' means the decision adopted by the ECB on the basis of Article 16 of Regulation (EU) No 1024/2013 following the annual supervisory review and evaluation process within the meaning of Article 97 of Directive 2013/36/EU;
- (8) 'liquidity coverage ratio' (LCR) means the ratio as defined in Article 4 of the Commission Delegated Regulation (EU) 2015/61 ⁽⁷⁾;
- (9) 'equivalent supervisory and regulatory standards' are supervisory and regulatory requirements or arrangements applied by a third country or territory that are recognised by the European Commission as equivalent to those applied in the Union in accordance with Articles 107(4) and 114(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁸⁾. The relevant third countries and territories are listed in Annexes I and IV to Commission Implementing Decision 2014/908/EU ⁽⁹⁾;

⁽⁴⁾ 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).

⁽⁵⁾ 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).

⁽⁶⁾ 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).

⁽⁷⁾ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

⁽⁸⁾ 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).

⁽⁹⁾ Commission Implementing Decision 2014/908/EU of 12 December 2014 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 359, 16.12.2014, p. 155).

- (10) 'delegation decision' and 'delegated decision' have the same meaning as in points (2) and (4) of Article 3 of Decision (EU) 2017/933 (ECB/2016/40), respectively;
- (11) 'heads of work units' means the heads of work units of the ECB to whom the power to adopt national powers decisions is delegated;
- (12) '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;
- (13) 'negative decision' means a decision that does not or does not fully grant the permission as requested by the significant supervised entity. A decision with ancillary provisions such as conditions or obligations shall be considered as a negative decision unless such ancillary provisions (a) ensure that the supervised entity fulfils the requirements of relevant national law and have been agreed in writing, or (b) merely restate one or more of the existing requirements that the institution has to comply with pursuant to a relevant provision of national law or require information on the fulfilment of one or more of such requirements;
- (14) 'significant supervised entity' means a significant supervised entity as defined in point (16) of Article 2 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽¹⁰⁾;
- (15) 'branch' means a branch as defined in Article 4(1)(17) of Regulation (EU) No 575/2013;
- (16) 'representative office' means an office that promotes or assists the activities of a supervised entity but which does not carry out the business of a credit institution;
- (17) 'non-core support services' means administrative services, customer services, debt collection, e-signatures or other similar services in connection with the business of a credit institution;
- (18) 'ECB guide' means any document, adopted by the Governing Council upon a proposal from the Supervisory Board and published on the ECB's website and which gives guidance on the ECB's interpretation of legal requirements.

Article 2

Subject matter and scope

1. This Decision specifies the criteria for the delegation of decision-making powers to the heads of work units of the ECB for the adoption of national powers decisions.
2. The delegation of decision-making powers is without prejudice to the supervisory assessment to be performed for the purposes of taking national powers decisions.

Article 3

Delegation of national powers decisions

1. In accordance with Article 4 of Decision (EU) 2017/933 (ECB/2016/40), the Governing Council hereby delegates to the heads of work units of the ECB, nominated by the Executive Board in accordance with Article 5 of that Decision, the power to adopt national powers decisions in relation to the following: (a) acquisitions of holdings; (b) acquisitions of assets or liabilities; (c) sales of holdings; (d) sales of assets or liabilities; (e) mergers; (f) demergers; (g) operations in third countries or territories; (h) outsourcing; (i) amendments to statutes; (j) appointments of external auditors; (k) credit to related parties.
2. The national powers decisions referred to in paragraph 1 shall be adopted by means of a delegated decision if the relevant criteria for the adoption of delegated decisions set out in Articles 4 to 14 are fulfilled.
3. National powers decisions shall not be adopted by means of a delegated decision if national law requires supervisory approval of credit institutions' strategic measures or if the complexity of the assessment requires that they are adopted under the non-objection procedure.
4. Any delegation of decision-making powers applies both to the adoption of supervisory decisions and to the approval of positive assessments by the ECB where a supervisory decision is not required under national law.
5. Negative decisions shall not be adopted by means of a delegated decision.
6. Where a decision may not be adopted by means of a delegated decision, it shall be adopted in accordance with the non-objection procedure.

⁽¹⁰⁾ 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).

*Article 4***Criteria for the adoption of delegated decisions on acquisitions of holdings**

1. Decisions on the approval of acquisitions of holdings in credit institutions or non-credit institutions by a significant supervised entity shall be taken by means of a delegated decision if all of the following criteria are met:
 - (a) the impact on the own funds of the acquiring significant supervised entity is limited, which means that:
 - (i) following the acquisition, the own funds exceed and are estimated to continue exceeding the sum of the requirements laid down in Article 92(1) of Regulation (EU) No 575/2013, the own funds required to be held in accordance with Article 16(2)(a) of Regulation (EU) No 1024/2013, the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU and the Pillar 2 capital guidance as set out in the last available SREP decision; and
 - (ii) the impact of the reduction on the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio and the total capital ratio is below 100 basis points.
 - (b) the impact on the liquidity situation of the acquiring significant supervised entity is limited, which means that:
 - (i) the LCR remains above 110 % and is above the liquidity requirements set out in the last available SREP decision, if these are higher than the required minimum LCR;
 - (ii) at consolidated level, the LCR is not reduced by more than 50 %;
 - (c) the target entity is located in a Member State of the Union or of the European Economic Area, or in a third country or territory with equivalent supervisory and regulatory standards.
2. The assessment of acquisitions of holdings shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

*Article 5***Criteria for the adoption of delegated decisions on acquisitions of assets or liabilities**

1. Decisions on the approval of acquisitions of assets or liabilities in credit institutions or non-credit institutions by a significant supervised entity shall be taken by means of a delegated decision if all of the following criteria are met:
 - (a) the impact on the own funds of the acquiring significant supervised entity, as a result of the acquisition, is limited, which means that:
 - (i) following the acquisition, the own funds exceed and are estimated to continue exceeding the sum of the requirements laid down in Article 92(1) of Regulation (EU) No 575/2013, the own funds required to be held in accordance with Article 16(2)(a) of Regulation (EU) No 1024/2013, the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU and the Pillar 2 capital guidance as set out in the last available SREP decision; and
 - (ii) the impact of the reduction on the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio and the total capital ratio is below 100 basis points;
 - (b) the impact on the liquidity situation of the acquiring significant supervised entity, as a result of the acquisition, is limited, which means that:
 - (i) the LCR remains above 110 % and is above the liquidity requirements set out in the last available SREP decision, if these are higher than the required minimum LCR, and
 - (ii) at consolidated level, the LCR is not reduced by more than 50 %;
 - (c) the value of the assets and liabilities that are acquired does not exceed 25 % of the total assets of the acquiring significant supervised entity at individual level.
2. The assessment of acquisitions of assets or liabilities shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

*Article 6***Criteria for the adoption of delegated decisions on sales of holdings**

1. Decisions on the approval of sales of holdings by a significant supervised entity shall be taken by means of a delegated decision if all of the following criteria are met:

- (a) the impact on the own funds of the selling significant supervised entity is limited, which means that:
 - (i) following the sale, the own funds exceed and are estimated to continue exceeding the sum of the requirements laid down in Article 92(1) of Regulation (EU) No 575/2013, the own funds required to be held in accordance with Article 16(2)(a) of Regulation (EU) No 1024/2013, the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU and the Pillar 2 capital guidance as set out in the last available SREP decision; and
 - (ii) the impact of the reduction on the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio and the total capital ratio is below 100 basis points;
- (b) the impact on the liquidity situation of the selling significant supervised entity is limited, which means that:
 - (i) the LCR remains above 110 % and is above the liquidity requirements set out in the last available SREP decision, if these are higher than the required minimum LCR; and
 - (ii) at consolidated level, the LCR is not reduced by more than 50 %.

2. The assessment of sales of holdings shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

*Article 7***Criteria for the adoption of delegated decisions on sales of assets or liabilities**

1. Decisions on the approval of sales of assets or liabilities by a significant supervised entity shall be taken by means of a delegated decision if all of the following criteria are met:

- (a) the impact on the own funds of the selling significant supervised entity, as a result of the sale of assets or liabilities, is limited, which means that:
 - (i) following the sale, the own funds exceed and are estimated to continue exceeding the sum of the requirements laid down in Article 92(1) of Regulation (EU) No 575/2013, the own funds required to be held in accordance with Article 16(2)(a) of Regulation (EU) No 1024/2013, the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU and the Pillar 2 capital guidance as set out in the last available SREP decision; and
 - (ii) the impact of the reduction on the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio and the total capital ratio is below 100 basis points;
- (b) the impact on the liquidity situation of the selling significant supervised entity, as a result of the sale of assets or liabilities, is limited, which means that:
 - (i) the LCR remains above 110 % and is above the liquidity requirements set out in the last available SREP decision, if these are higher than the required minimum LCR; and
 - (ii) at consolidated level, the LCR is not reduced by more than 50 %;
- (c) the value of the assets or liabilities that are sold does not exceed 25 % of the total assets of the selling significant supervised entity at individual level.

2. The assessment of sales of assets or liabilities shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

*Article 8***Criteria for the adoption of delegated decisions on mergers**

1. Decisions on the approval of mergers involving at least one significant supervised entity shall be taken by means of a delegated decision if all of the following criteria are met:
 - (a) the impact on the own funds of the significant supervised entity resulting from the merger is limited, which means that:
 - (i) following the merger, the own funds exceed and are estimated to continue exceeding the sum of the requirements laid down in Article 92(1) of Regulation (EU) No 575/2013, the own funds required to be held in accordance with Article 16(2)(a) of Regulation (EU) No 1024/2013, the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU and, where applicable, the Pillar 2 capital guidance as set out in the last available SREP decision; and
 - (ii) the impact of the reduction on the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio and the total capital ratio is below 100 basis points;
 - (b) the impact on the liquidity situation of the significant supervised entity resulting from the merger is limited, which means that:
 - (i) the LCR remains above 110 % and is above the liquidity requirements set out in the last available SREP decision, if these are higher than the required minimum LCR; and
 - (ii) at consolidated level, the LCR is not reduced by more than 50 %;
 - (c) the governance structure of the significant supervised entity resulting from the merger does not raise supervisory concerns.
2. Decision-making powers shall in no circumstances be delegated to the heads of the work units in respect of the following:
 - (a) mergers between one significant supervised entity and another entity that does not belong to the same group of the significant supervised entity; or
 - (b) cross-border mergers between significant supervised entities that belong to the same group.
3. The assessment of mergers shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

*Article 9***Criteria for the adoption of delegated decisions on demergers**

1. Decisions on the approval of demergers involving at least one significant supervised entity shall be taken by means of a delegated decision if all of the following criteria are met:
 - (a) the impact on the own funds of the significant supervised entity or entities resulting from the demerger is limited, which means that:
 - (i) following the demerger, the own funds exceed and are estimated to continue exceeding the sum of the requirements laid down in Article 92(1) of Regulation (EU) No 575/2013, the own funds required to be held in accordance with Article 16(2)(a) of Regulation (EU) No 1024/2013, the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU and, where applicable, the Pillar 2 capital guidance as set out in the last available SREP decision; and
 - (ii) the impact of the reduction on the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio and the total capital ratio is below 100 basis points.
 - (b) the impact on the liquidity situation of the significant supervised entity or entities resulting from the demerger is limited, which means that:
 - (i) the LCR remains above 110 % and is above the liquidity requirements set out in the last available SREP decision, if these are higher than the required minimum LCR, and
 - (ii) at consolidated level, the LCR is not reduced by more than 50 %;
 - (c) the governance structure of the significant supervised entity or entities resulting from the demerger does not raise supervisory concerns.

2. Decision-making powers shall in no circumstances be delegated to the heads of the work units in respect of the following:
 - (a) demergers that result in the establishment of another entity that does not belong to the same group of the significant supervised entity; or
 - (b) demergers that result in the establishment of an entity in a different country or territory from that in which the significant supervised entity is established.
3. The assessment of a demerger shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

Article 10

Criteria for the adoption of delegated decisions on operations in third countries or territories

1. Decisions approving the establishment of a branch by a significant supervised entity in a third country or territory shall be taken by means of a delegated decision if all of the following criteria are met:
 - (a) the branch is established in a third country or territory with equivalent supervisory and regulatory standards;
 - (b) the total assets of the branch as estimated in the programme of operations do not exceed 10 % of the total assets of the significant supervised entity; and
 - (c) the branch carries out transactions that are primarily executed in the third country or territory where the branch is established.
2. Decisions on the following operations by a significant supervised entity shall be taken by means of a delegated decision:
 - (a) the closure of a branch;
 - (b) changes in branch structures;
 - (c) the establishment or closure of a representative office; and
 - (d) the provision of banking services in a third country or territory without the establishment of a physical presence there in the form of a branch or a subsidiary,unless the relevant operations are undertaken in a country included in the list in the Annex to Commission Delegated Regulation (EU) 2016/1675 ⁽¹⁾.
3. The assessment of operations in third countries or territories shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

Article 11

Criteria for the adoption of delegated decisions on outsourcing

1. Decisions on the approval of outsourcing of activities by a significant supervised entity shall be taken by means of a delegated decision if one or more of the following criteria is met:
 - (a) the service provider is part of the same group as the significant supervised entity (intragroup outsourcing) and is established in the Union; or
 - (b) the service provider is a supervised entity that is established in the Union and authorised to perform the outsourced services; or
 - (c) the outsourcing concerns non-core support services and the service provider is established in the Union or the European Economic Area.
2. The assessment of outsourcing projects shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

⁽¹⁾ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

*Article 12***Criteria for the adoption of delegated decisions on amendments to statutes**

1. Decisions on the approval of amendments to the statutes of a significant supervised entity shall be taken by means of a delegated decision in the following cases:
 - (a) amendments that are purely formal including changes of name and address;
 - (b) amendments that simply transpose statutory requirements of a legislative or regulatory nature;
 - (c) amendments that implement a judicial or administrative decision or which are made at the request of the ECB;
 - (d) amendments concerning the share capital of the significant supervised entity if the related own funds decision (e.g. on the classification of capital instruments as Common Equity Tier 1 instruments or the reduction of own funds) is also delegated;
 - (e) amendments to the statutes of a subsidiary to align them with the statutes of its parent undertaking if the amendments to the latter have already been approved by the ECB.
2. The assessment of amendments to statutes shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

*Article 13***Criteria for the adoption of delegated decisions on appointments of or changes to external auditors**

1. Decisions on appointments of or changes to external auditors of a significant supervised entity shall be taken by means of a delegated decision where such decisions constitute, under the relevant national law, the exercise of prudential supervision pursuant to Article 4 of Regulation (EU) No 1024/2013.
2. Decision-making powers shall in no circumstances be delegated to the heads of the work units in respect of (a) decisions concerning the replacement of an external auditor by another one appointed by the competent supervisory authority, or (b) decisions concerning the appointment of an external auditor at the direction of the competent supervisory authority.
3. The assessment of the suitability of external auditors shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

*Article 14***Criteria for the adoption of delegated decisions on credit to related parties**

1. Decisions on the approval of the provision of credit by a significant supervised entity to a related party shall be taken by means of a delegated decision if all the following criteria are met:
 - (a) the total exposure of the significant supervised entity towards the related party does not exceed EUR 5 million; and
 - (b) the terms and conditions applicable to the provision of credit are not more favourable than those pursuant to which credit is provided to clients that are not related parties, or are at least similar to those applicable to the same type of operations entered into with employees who are not related parties of the significant supervised entity.
2. The assessment of the provision of credit to a related party shall be carried out in accordance with the relevant provisions of national law, also taking into consideration any applicable ECB guides and/or national competent authorities' policy stances, guidance or similar acts.

*Article 15***Transitional provision**

This Decision shall not apply in cases where the application requesting approval for any of the operations referred to in Article 3(1) was submitted to the ECB prior to the entry into force of this Decision.

*Article 16***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, 31 January 2019.

The President of the ECB
Mario DRAGHI

DECISION (EU) 2019/323 OF THE EUROPEAN CENTRAL BANK**of 12 February 2019****nominating heads of work units to adopt delegated decisions regarding supervisory powers granted under national law (ECB/2019/5)**

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) 2019/322 of the European Central Bank of 31 January 2019 on the delegation of the power to adopt decisions regarding supervisory powers granted under national law (ECB/2019/4) ⁽²⁾, and in particular Article 3 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 regarding supervisory powers granted under national law should be delegated,

HAS ADOPTED THIS DECISION:

*Article 1***Delegated decisions regarding supervisory powers granted under national law**

Delegated decisions pursuant to Decision (EU) 2019/322 (ECB/2019/4) 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⁾ OJ L 141, 1.6.2017, p. 14.

⁽²⁾ See page 7 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, 12 February 2019.

The President of the ECB
Mario DRAGHI

