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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1347

of 8 August 2019

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications ('Roquefort' (PDO))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) By virtue of the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined France's application for the approval of amendments to the specification for the protected designation of origin 'Roquefort', registered under Commission Regulation (EC) No 1107/96 ⁽²⁾, as amended by Commission Regulations (EC) No 828/2003 ⁽³⁾ and (EC) No 938/2008 ⁽⁴⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽⁵⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Roquefort' (PDO) are hereby approved.

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*.

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ L 148, 21.6.1996, p. 1).

⁽³⁾ Commission Regulation (EC) No 828/2003 of 14 May 2003 amending the specification of 16 names appearing in the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (Danablu, Monti Iblei, Lesbos, Beaufort, Salers, Reblochon or Reblochon de Savoie, Laguiole, Mont d'Or or Vacherin du Haut-Doubs, Comté, Roquefort, Epoisses de Bourgogne, Brocciu corse or Brocciu, Sainte-Maure de Touraine, Ossau-Iraty, Dinde de Bresse, Huile essentielle de lavande de Haute-Provence) (OJ L 120, 15.5.2003, p. 3).

⁽⁴⁾ Commission Regulation (EC) No 938/2008 of 24 September 2008 approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Roquefort (PDO)) (OJ L 257, 25.9.2008, p. 10).

⁽⁵⁾ OJ C 133, 10.4.2019, p. 2.

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

Done at Brussels, 8 August 2019.

*For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission*

DECISIONS

DECISION (EU) 2019/1348 OF THE EUROPEAN CENTRAL BANK

of 18 July 2019

on the procedure for recognising non-euro area Member States as reporting Member States under Regulation (EU) 2016/867 on the collection of granular credit and credit risk data (ECB/2019/20)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular, Article 127(2) and (5) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 5 and the second indent of Article 34.1,

Having regard to Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13) ⁽¹⁾, and in particular point (1) of Article 1 thereof,

Having regard to the contribution of the General Council of the European Central Bank,

Whereas:

- (1) Regulation (EU) 2016/867 (ECB/2016/13) sets out the general framework for the collection of granular credit and credit risk data (hereinafter 'credit data'). It is mentioned in that Regulation that Member States whose currency is not the euro (hereinafter 'non-euro area Member States') may decide to become a reporting Member State by incorporating the provisions of the Regulation into their national law or otherwise imposing relevant reporting requirements in accordance with their national law. This may include, in particular, Member States that participate in the Single Supervisory Mechanism (SSM) via close cooperation in accordance with Article 7 of Council Regulation (EU) No 1024/2013 ⁽²⁾.
- (2) Article 5 of the Statute of the European System of Central Banks and of the European Central Bank, together with Article 4(3) of the Treaty on European Union, implies an obligation to design and implement at national level all the measures that the non-euro area Member States consider appropriate to collect the statistical information needed to fulfil the statistical reporting requirements of the European Central Bank (ECB) and to make timely preparations in the field of statistics in order to become Member States whose currency is the euro (hereinafter 'euro area Member States').
- (3) As recognised in recital 7 of Regulation (EU) 2016/867 (ECB/2016/13), the common granular analytical credit data base (hereinafter 'AnaCredit') shared between the Eurosystem central banks should be open, on a voluntary basis, to non-euro area Member States, in particular those participating in the SSM, in order to broaden its geographical and data scope, and increase harmonisation across the Union. Several national central banks (NCBs) of non-euro area Member States (hereinafter 'non-euro area NCBs') are already cooperating with the ECB and NCBs of euro area Member States (hereinafter 'euro area NCBs') on the basis of Recommendation ECB/2014/7 ⁽³⁾, applying the preparatory measures for the collection of granular credit data in accordance with Decision ECB/2014/6 ⁽⁴⁾.

⁽¹⁾ OJ L 144, 1.6.2016, p. 44.

⁽²⁾ 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).

⁽³⁾ Recommendation ECB/2014/7 of 24 February 2014 on the organisation of preparatory measures for the collection of granular credit data by the European System of Central Banks (OJ C 103, 8.4.2014, p. 1).

⁽⁴⁾ Decision ECB/2014/6 of 24 February 2014 on the organisation of preparatory measures for the collection of granular credit data by the European System of Central Banks (OJ L 104, 8.4.2014, p. 72).

- (4) Non-euro area Member States that decide to become a reporting Member State under Regulation (EU) 2016/867 (ECB/2016/13) should notify their intention to do so to the ECB. The ECB should verify that they have incorporated the provisions of that Regulation into their national law or that they have imposed relevant reporting requirements in accordance with their national law and without prejudice to the constitutional order of the Member State concerned.
- (5) As mentioned in recital 4 of Guideline (EU) 2017/2335 of the European Central Bank (ECB/2017/38) ⁽⁵⁾, non-euro area Member States may also incorporate the provisions of that Guideline into national law or otherwise implement measures pursuant to their national law to ensure they fulfil equivalent obligations to transmit data to the ECB in a harmonised manner, including the requirements for registering counterparties in the Register of Institutions and Affiliates Data (RIAD) in accordance with Guideline (EU) 2018/876 of the European Central Bank (ECB/2018/16) ⁽⁶⁾. In this way, in line with recital 9 of Guideline (EU) 2018/876 (ECB/2018/16), the non-euro area Member States may contribute to the data reporting and validation in RIAD and, on a reciprocal basis, share data on their domestic entities and have access to the euro area dataset on the basis of Recommendation ECB/2018/36 ⁽⁷⁾.
- (6) It is therefore necessary to specify the procedures to be followed by the ECB relating to (a) expressions of interest by non-euro area Member States to become reporting Member States under Regulation (EU) 2016/867 (ECB/2016/13), (b) its assessment of these expressions of interest, and (c) its recognition of a non-euro area Member State as a reporting Member State. It is also necessary to provide for procedures relating to the potential suspension and termination of such a recognition of a non-euro area Member State as a reporting Member State.
- (7) The conditions for the access to and use of credit data collected by the ECB, euro area NCBs and non-euro area reporting Member States by non-euro area NCBs, and the access to and use by the ECB, euro area NCBs and NCBs of non-euro area reporting Member States of the data collected by non-euro area reporting Member States on the basis of their respective national laws, need to be established in a separate legally binding agreement. These conditions should be established taking into account the applicable provisions of Council Regulation (EC) No 2533/98 ⁽⁸⁾.
- (8) The decision to recognise a non-euro area Member State as a reporting Member State will therefore be dependent on the existence of a legally binding agreement governing the interaction between the non-euro area NCBs, the ECB and the euro area NCBs on the sharing of credit data and other relevant issues, including the protection of the confidentiality of the information and restrictions on the use or transmission of the credit data, such as in the context of any feedback loops established under Article 11 of Regulation (EU) 2016/867 (ECB/2016/13),

HAS ADOPTED THIS DECISION:

Article 1

Scope and objectives

This Decision establishes the procedures to be followed by the ECB to recognise non-euro area Member States as reporting Member States under Regulation (EU) 2016/867 (ECB/2016/13).

Article 2

Definitions

The terms used in this Decision have the same meaning as in Regulation (EU) 2016/867 (ECB/2016/13), unless otherwise provided.

⁽⁵⁾ Guideline (EU) 2017/2335 of the European Central Bank of 23 November 2017 on the procedures for the collection of granular credit and credit risk data (ECB/2017/38) (OJ L 333, 15.12.2017, p. 66).

⁽⁶⁾ Guideline (EU) 2018/876 of the European Central Bank of 1 June 2018 on the Register of Institutions and Affiliates Data (ECB/2018/16) (OJ L 154, 18.6.2018, p. 3).

⁽⁷⁾ Recommendation ECB/2018/36 of 7 December 2018 on the Register of Institutions and Affiliates Data (OJ C 21, 17.1.2019, p. 1).

⁽⁸⁾ Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

For the purposes of this Decision, ‘reporting agent’ means either a legal entity or a foreign branch that is resident in the relevant non-euro area Member State and that is subject to reporting requirements which are the same as or relevant to the reporting requirements of Regulation (EU) 2016/867 (ECB/2016/13).

Article 3

Criteria to qualify as a reporting Member State

1. The ECB may only recognise a non-euro area Member State as a reporting Member State under Regulation (EU) 2016/867 (ECB/2016/13) if it is satisfied that the non-euro area Member State has incorporated the provisions of Regulation (EU) 2016/867 (ECB/2016/13) and Guideline (EU) 2017/2335 (ECB/2017/38) into its national law or otherwise imposed relevant reporting requirements in accordance with its national law.

2. For the purposes of paragraph 1, the ECB shall consider if the NCB of the non-euro area Member State, in cooperation with other relevant national authorities where necessary under applicable national law, has been empowered, at a minimum:

- (a) to identify and review the actual reporting population as defined in Article 3(1) of Regulation (EU) 2016/867 (ECB/2016/13);
- (b) to collect credit data sourced from the actual reporting population as defined in Article 3(1) of Regulation (EU) 2016/867 (ECB/2016/13), without prejudice to the application of the provisions of Article 8(4) and (5) of that Regulation or of equivalent provisions in its national law;
- (c) to identify counterparties in the manner described in Article 9 of Regulation (EU) 2016/867 (ECB/2016/13);
- (d) to impose on the reporting agents identified in point (a) the same or equivalent statistical reporting requirements to those set out in Articles 4 to 8, and 13 to 15 of Regulation (EU) 2016/867 (ECB/2016/13);
- (e) to grant derogations to small reporting agents as set out in Article 16 of Regulation (EU) 2016/867 (ECB/2016/13);
- (f) to verify and carry out the compulsory collection of the information when a reporting agent does not fulfil the minimum standards for transmission, accuracy, compliance with concepts and revisions pursuant to Article 17 of Regulation (EU) 2016/867 (ECB/2016/13); and
- (g) to impose sanctions on reporting agents as prescribed in Article 18 of Regulation (EU) 2016/867 (ECB/2016/13).

For the avoidance of doubt, the requirements with respect to the implementation stages and first reporting as specified in Article 2 of Regulation (EU) 2016/867 (ECB/2016/13) do not need to be incorporated into national law.

3. For the purposes of paragraph 1, the ECB shall also consider whether, without prejudice to paragraph 2, national laws contain provisions incorporating Articles 7 and 8 of Regulation (EC) No 2533/98.

Article 4

Expression of interest

1. A non-euro area Member State wishing to become a reporting Member State pursuant to Regulation (EU) 2016/867 (ECB/2016/13) may submit to the ECB an official expression of interest to become a reporting Member State (hereinafter ‘interested Member State’), using the template provided in Annex I.

2. In order for the ECB to consider the expression of interest referred to in paragraph 1, it must be accompanied by the implementing documentation for the purposes of the verification referred to in Article 5(3), including, but not limited to the following:

- (a) a completed correlation table, using the template provided in the Appendix to Annex I;
- (b) a copy of the relevant national legislation together with an English translation thereof;
- (c) a legal opinion, issued by an external independent third party or the legal services of the relevant national authority, satisfactory to the ECB confirming that:
 - (i) the national legislation will be binding and enforceable in the interested Member State, and
 - (ii) the NCB of the interested Member State is obliged to follow the ECB’s specific guidelines, requests and measures issued in relation to Regulation (EU) 2016/867 (ECB/2016/13), within the timeframe laid down by the ECB, where specified.

3. Such expression of interest must be received by the ECB at least nine months before the date of the first transmission of credit data, as set out in Article 6, as indicated by the interested Member State in its expression of interest, and must specify the reporting reference dates and reference periods which shall be covered from the first transmission.

Article 5

Verification procedure

1. The ECB shall acknowledge in writing receipt of an expression of interest by an interested Member State to that Member State within 20 days.

2. The ECB may request additional information or documentation to that specified in Article 4(2) that it considers appropriate for the purposes of assessing the interested Member State's expression of interest. The ECB shall promptly acknowledge in writing receipt of any such additional information or documentation to the interested Member State.

3. The ECB shall verify that the interested Member State has incorporated the provisions of Regulation (EU) 2016/867 (ECB/2016/13) and Guideline (EU) 2017/2335 (ECB/2017/38) into its national law, or otherwise imposed relevant reporting requirements in accordance with its national law.

4. For the purpose of the verification referred to in paragraph 3, the ECB shall mandate the European System of Central Banks Statistics Committee (STC) to coordinate the process and to mandate the Legal Committee (LEGCO) to prepare a verification report. The verification report shall assess:

- (a) the extent to which those provisions of Regulation (EU) 2016/867 (ECB/2016/13) specified in Article 3(2) have been implemented in national law and,
- (b) where the provisions referred to in point (a) have not been implemented, the reason for such non-implementation.

5. Where, on the basis of the complete documentation submitted by the interested Member State the ECB is satisfied that the criteria set out in Article 3 have been fulfilled, it shall decide to recognise that the interested Member State qualifies as a reporting Member State under Regulation (EU) 2016/867 (ECB/2016/13). The decision shall specify the date from which the recognition applies, the reporting reference dates and reference periods which shall be covered from the first transmission, and the relevant date for the first reporting, which shall be no earlier than the date indicated by the interested Member State in its expression of interest.

6. The decision referred to in paragraph 5 shall be subject to the NCB of the interested Member State entering into an agreement in the form set out in Annex II, governing its interaction with the ECB, the euro area NCBs and NCBs of non-euro area Member States that have been recognised as reporting Member States on the credit data sharing and related issues.

Taking into account the provisions of Regulation (EC) No 2533/98, this agreement shall establish the conditions for: (a) the access to and use of credit data collected by the ECB, euro area NCBs and non-euro area reporting Member States by non-euro area NCBs, and (b) the access to and use by the ECB, euro area NCBs and NCBs of non-euro area reporting Member States of the data collected by non-euro area reporting Member States on the basis of their respective national laws.

Any such agreement entered into by the NCB of an interested Member State may not be amended in a manner which is inconsistent with the form set out in Annex II.

7. The ECB shall decide that the interested Member State does not qualify as a reporting Member State under Regulation (EU) 2016/867 (ECB/2016/13) in any of the following cases:

- (a) where, on the basis of the complete documentation submitted by the interested Member State, the ECB concludes that it does not meet the criteria to qualify as a reporting Member State pursuant to Article 3;
- (b) where the ECB does not receive the information necessary to perform its assessment within one year from the receipt of an expression of interest by the interested Member State;
- (c) where the agreement referred to in paragraph 6 has not been entered into.

8. At the latest six months following the ECB's date of acknowledgement of receipt of the documentation in accordance with paragraph 1, or, where applicable, paragraph 2, the ECB shall notify the interested Member State of its decision as referred to in paragraphs 5 and 7. Such notification shall include the reasons on which the decision is based. However, the ECB and the interested Member State may agree to extend the period during which the ECB shall notify the interested Member State of its decision.

9. The ECB shall consider a request for review of the decision referred to in paragraph 7 by the interested Member State provided that it:

- (a) is received within 30 days from the date of the notification of the decision;
- (b) specifies the grounds for the request for review; and
- (c) includes all supporting information.

Upon receipt of a request for review, the ECB shall review its decision and may provide the interested Member State with the opportunity to put in place the necessary arrangements that would enable it to be recognised as a reporting Member State. The ECB reserves the right to request the submission of a new legal opinion, issued by an external independent third party or the legal services of the relevant national authority, confirming the validity and applicability of these arrangements.

Article 6

First transmission of credit data

1. Following the notification of the ECB's decision recognising that an interested Member State qualifies as a reporting Member State under Regulation (EU) 2016/867 (ECB/2016/13), and subject to the entry into force of the agreement referred to in Article 5(6), the ECB shall request the NCB of the interested Member State to identify and review the actual reporting population in accordance with Article 5 of Guideline (EU) 2017/2335 (ECB/2017/38).

2. If the interested Member State has been recognised as a reporting Member State under Regulation (EU) 2016/867 (ECB/2016/13) and such recognition applies from a date which prevents the NCB of that Member State from identifying and reviewing the actual reporting population in the first quarter of the first year in which it shall start reporting, then the actual reporting population shall be identified by the other reporting Member States, in line with Article 5 of Guideline (EU) 2017/2335 (ECB/2017/38) in that year.

3. The first transmission of credit data may only take place after the ECB has established that the NCB of the interested Member State has developed an IT system interoperable with the ECB technical infrastructure.

4. The first monthly and quarterly transmission shall start on the date indicated by the ECB in its decision as referred to in Article 5(5).

Article 7

Suspension or termination

1. The ECB may decide to suspend or terminate its recognition of a non-euro area Member State as a reporting Member State if it has grounds to believe that the relevant Member State no longer meets the criteria to qualify as a reporting Member State pursuant to Article 3. In the event of a termination of the recognition of a non-euro area Member State as a reporting Member State, the agreement entered into pursuant to Article 5(6) shall be automatically terminated.

2. In any decision under paragraph 1, the ECB shall state the reasons for the suspension or termination, specify the effect of the decision and indicate the date from which the suspension or termination shall apply and the duration of the period of suspension. A suspension shall be for a maximum period of six months. The ECB may extend the period of the suspension in exceptional circumstances, but only once. Where the reasons for the suspension are not remedied within the prescribed period, the ECB shall terminate the recognition of the relevant non-euro area Member State as a reporting Member State.

3. The ECB and the NCB of a non-euro area reporting Member State may terminate the agreement referred to in Article 5(6) in accordance with the provisions thereof. In such a case, the recognition of the non-euro area Member State as a reporting Member State shall be automatically terminated and cease to have effect.

*Article 8***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, 18 July 2019.

The President of the ECB
Mario DRAGHI

ANNEX I

TEMPLATE

EXPRESSION OF INTEREST PURSUANT TO ARTICLE 4 OF DECISION (EU) 2019/1348 (ECB/2019/20)

By

[National central bank or relevant national authority of requesting Member State]

Notification to the European Central Bank of an expression of interest pursuant to Article 4 of Decision (EU) 2019/1348 (ECB/2019/20)

1. The [requesting Member State] hereby expresses its interest in becoming a reporting Member State pursuant to Regulation (EU) 2016/867 of the European Central Bank (ECB/2016/13) ⁽¹⁾.
2. The [requesting Member State] hereby confirms that it complies with the provisions of Decision (EU) 2019/1348 of the European Central Bank (ECB/2019/20) ⁽²⁾. In particular, the [requesting Member State] confirms that it has incorporated the provisions of Regulation (EU) 2016/867 (ECB/2016/13) and Guideline (EU) 2017/2335 of the European Central Bank (ECB/2017/38) ⁽³⁾ into its national law or that it has imposed relevant reporting requirements in accordance with its national law, and that it has developed an IT system interoperable with the ECB technical infrastructure.
3. The [requesting Member State] hereby submits to the ECB the documentation evidencing the abovementioned undertaking, including the following:
 - (a) a copy of the implementing national legislation, together with an English translation thereof;
 - (b) a legal opinion[, issued by an external independent third party or the legal services of the relevant national authority,] satisfactory to the ECB confirming that the national legislation will be binding and enforceable in [the requesting Member State] and that the national central bank of [the requesting Member State] is obliged to follow the ECB's specific guidelines, requests and measures for the purposes of Regulation (EU) 2016/867 (ECB/2016/13), within the timeframe laid down by the ECB, where specified; and
 - (c) a copy of the correlation table contained in the Appendix.
4. The [requesting Member State] hereby states that it will be able to transmit the first set of credit data, as defined in Regulation (EU) 2016/867 (ECB/2016/13), from [insert date].

[National central bank or relevant national authority]

For [the Member State]

[Signature]

[Date]

⁽¹⁾ Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13) (OJ L 144, 1.6.2016, p. 44).

⁽²⁾ Decision (EU) 2019/1348 of the European Central Bank of 18 July 2019 on the procedure for recognising non-euro area Member States as reporting Member States under Regulation (EU) 2016/867 on the collection of granular credit and credit risk data (ECB/2019/20) (OJ L 214, 16.8.2019, p. 3).

⁽³⁾ Guideline (EU) 2017/2335 of the European Central Bank of 23 November 2017 on the procedures for the collection of granular credit and credit risk data (ECB/2017/38) (OJ L 333, 15.12.2017, p. 66).

*Appendix***Verification of the implementation of Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13)****CORRELATION TABLE****[name of the national central bank or relevant national authority]**

Regulation (EU) 2016/867 (ECB/2016/13)	Manner of implementation	If not implemented, reasons for non-implementation
Article 3		
Article 4		
Article 5		
Article 6		
Article 7		
Article 8		
Article 9		
Article 10		
Article 12		
Article 13		
Article 14		
Article 15		
Article 16		
Article 17		
Article 18		

ANNEX II

TEMPLATE

AGREEMENT

OF [DAY MONTH YEAR]

**BETWEEN THE [INSERT NAME OF NON-EUROSISTEM NCB] AND THE EUROPEAN CENTRAL BANK ON
THE TRANSMISSION OF GRANULAR CREDIT AND CREDIT RISK DATA**

[Insert ECB and address],

(hereinafter referred to as the 'ECB')

and

[Insert name and address of non-Eurosistem NCB]

(hereinafter referred to as the 'non-Eurosistem NCB')

The parties to this Agreement are referred to collectively as the 'Parties' or individually as a 'Party'.

Whereas:

- (1) Regulation (EU) 2016/867 of the European Central Bank (ECB/2016/13) ⁽¹⁾ sets out the general framework for the collection of granular credit and credit risk data (hereinafter 'credit data'). Regulation (EU) 2016/867 (ECB/2016/13) specifies that Member States whose currency is not the euro (hereinafter 'non-euro area Member States') may decide to become reporting Member States by incorporating the provisions of Regulation (EU) 2016/867 (ECB/2016/13) into their national law or otherwise imposing relevant reporting requirements in accordance with their national law. This may include, in particular, Member States that participate in the Single Supervisory Mechanism (SSM) via close cooperation in accordance with Article 7 of Council Regulation (EU) No 1024/2013 ⁽²⁾.
- (2) Article 5 of the Statute of the European System of Central Banks and of the European Central Bank, together with Article 4(3) of the Treaty on European Union, implies an obligation to design and implement at national level all the measures that the non-euro area Member States consider appropriate to collect the statistical information needed to fulfil the ECB's statistical reporting requirements and to make timely preparations in the field of statistics in order to become Member States whose currency is the euro (hereinafter 'euro area Member States').
- (3) Article 8(3) of Council Regulation (EC) No 2533/98 ⁽³⁾ requires the European System of Central Banks (ESCB) members to take all the necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential statistical information and requires the ECB to define common rules and implement minimum standards to prevent unlawful disclosure and unauthorised use of confidential statistical information.
- (4) Guideline ECB/1998/NP28 ⁽⁴⁾ (hereinafter the 'Confidentiality Guideline') establishes the common rules and minimum standards required to ensure a basic level of protection of confidential statistical information collected by the ECB assisted by the Eurosistem NCBs.

⁽¹⁾ Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13) (OJ L 144, 1.6.2016, p. 44).

⁽²⁾ 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).

⁽³⁾ Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

⁽⁴⁾ Guideline ECB/1998/NP28 of 22 December 1998 concerning common rules and minimum standards to protect the confidentiality of the individual statistical information collected by the ECB assisted by NCBs, as published in Annex III to Decision ECB/2000/12 of the European Central Bank on the publication of certain legal acts and instruments of the European Central Bank (OJ L 55, 24.2.2001, p. 72).

- (5) The Governing Council recommended ⁽⁵⁾ to the national central banks of the Member States whose currency is not the euro (hereinafter the 'non-Eurosystem NCBs') to apply the provisions of the Confidentiality Guideline in relation to confidential statistical information received from the ECB assisted by the NCBs and to confirm this by way of an agreement entered into with the ECB and the NCBs. As a result, the non-Eurosystem NCBs have confirmed by way of agreement that they abide by the Confidentiality Guideline in relation to confidential statistical information received from the ECB assisted by the NCBs.
- (6) Decision ECB/2014/6 ⁽⁶⁾ sets out the procedure for developing a long-term framework for the collection of granular credit data based on harmonised ECB statistical reporting requirements. Recommendation ECB/2014/7 ⁽⁷⁾ encourages non-Eurosystem NCBs that are preparing to join the long-term framework to apply the provisions of Decision ECB/2014/6. Several non-Eurosystem NCBs cooperate with the Eurosystem NCBs in line with Recommendation ECB/2014/7.
- (7) Non-euro area Member States may wish to become reporting Member States under Regulation (EU) 2016/867 (ECB/2016/13). For this purpose, Decision (EU) 2019/1348 of the European Central Bank (ECB/2019/20) ⁽⁸⁾ (hereinafter the 'Decision') lays down the procedures relating to (a) expressions of interest by non-euro area Member States to become reporting Member States under Regulation (EU) 2016/867 (ECB/2016/13), (b) the assessment of these expressions of interest by the ECB and (c) the ECB's recognition of a non-euro area Member State as a reporting Member State.
- (8) This Agreement establishes the conditions for the access to and use of credit data collected by the ECB, Eurosystem NCBs and non-euro area reporting Member States by non-Eurosystem NCBs, and the access to and use by the ECB, Eurosystem NCBs and NCBs of non-euro area reporting Member States of the data collected by non-euro area reporting Member States on the basis of their respective national laws.
- (9) This Agreement should therefore be read in conjunction with the Decision,

HAVE AGREED AS FOLLOWS:

Article 1

Access to and use of the AnaCredit dataset

1. Upon the execution of this Agreement, the ECB shall grant the non-Eurosystem NCB access to the credit data and counterparty reference data (together referred to as the 'AnaCredit dataset') collected pursuant to Regulation (EU) 2016/867 (ECB/2016/13), in accordance with the provisions of Guideline (EU) 2017/2335 of the European Central Bank (ECB/2017/38) ⁽⁹⁾ and of this Agreement.
2. Credit data collected by the non-Eurosystem NCB shall be accessed via the shared IT platform and may be accessed by the ECB, Eurosystem NCBs and NCBs of non-euro area reporting Member States in accordance with the provisions of Regulation (EU) 2016/867 (ECB/2016/13) and of this Agreement. The non-Eurosystem NCB hereby confirms that the sharing of credit data collected by it with the ECB, Eurosystem NCBs and the NCBs of non-euro area reporting Member States is permitted by the applicable national regime.
3. The Parties agree that the AnaCredit dataset, including credit data collected by non-Eurosystem NCBs, shall only be used to the extent and for the purposes defined in Regulation (EC) No 2533/98. Credit data may not be used for the purposes of the monetary policy tasks of the non-Eurosystem NCBs. This is without prejudice to the use by a non-Eurosystem NCB of credit data it has collected under national law for the purposes of its monetary policy tasks.

⁽⁵⁾ Recommendation ECB/2014/14 of 27 March 2014 concerning the common rules and minimum standards to protect the confidentiality of the statistical information collected by the European Central Bank assisted by the national central banks (OJ C 186, 18.6.2014, p. 1).

⁽⁶⁾ Decision ECB/2014/6 of 24 February 2014 on the organisation of preparatory measures for the collection of granular credit data by the European System of Central Banks (OJ L 104, 8.4.2014, p. 72).

⁽⁷⁾ Recommendation ECB/2014/7 of 24 February 2014 on the organisation of preparatory measures for the collection of granular credit data by the European System of Central Banks (OJ C 103, 8.4.2014, p. 1).

⁽⁸⁾ Decision (EU) 2019/1348 of the European Central Bank of 18 July 2019 on the procedure for recognising non-euro area Member States as reporting Member States under Regulation (EU) 2016/867 on the collection of granular credit and credit risk data (ECB/2019/20) (OJ L 214, 16.8.2019, p. 3).

⁽⁹⁾ Guideline (EU) 2017/2335 of the European Central Bank of 23 November 2017 on the procedures for the collection of granular credit and credit risk data (ECB/2017/38) (OJ L 333, 15.12.2017, p. 66).

4. The Parties further agree that access to the AnaCredit dataset by the non-Eurosystem NCB's individual users or organisational units for non-statistical purposes shall only be permitted following prior approval by the Governing Council, or by the Executive Board by delegation from the Governing Council. For this purpose, the non-Eurosystem NCB agrees to submit a request, which must clearly specify:

- (a) the requested data;
- (b) the reasons why access to such data is necessary for the individual users or organisational units for the performance of their specific tasks; and
- (c) the measures that will be implemented to ensure the protection of the confidentiality of the data as described in Article 2(1).

The request should be addressed to the European System of Central Banks Statistics Committee (STC) for its preliminary assessment and further transmission for approval to the Governing Council, or where applicable, the Executive Board.

5. Following the STC's assessment of the request for access and subject to the Governing Council's, or, where applicable, the Executive Board's, approval thereof, the non-Eurosystem NCB shall implement an authorisation procedure prior to granting access to an individual user or organisational unit of the non-Eurosystem NCB. This must ensure that:

- (a) individual users and organisational units of the non-Eurosystem NCB must submit a request via their line manager to the ECB which must check the compliance of such requests with the Decision; and
- (b) the access requests must also be approved by the respective 'system owner', i.e. the managers of the non-Eurosystem NCB whose unit operates or manages the system containing the AnaCredit dataset.

6. The non-Eurosystem NCB shall ensure that the overall process for granting access is set up in line with the procedure set out in this Article and that its STC member shall inform the STC, at least on a yearly basis, of the access granted to the AnaCredit dataset, as well as of any failure to comply with the confidentiality protection measures set out in the report referred to in Article 2(2). The non-Eurosystem NCB further agrees that detailed information on access granted and any other access issues shall be made available on request to the ECB.

7. Any further transmission of the AnaCredit dataset must be explicitly authorised in advance by the ESCB member that collected the relevant data, and comply with applicable Union and national law.

8. The non-Eurosystem NCB hereby authorises the further transmission of data that it has collected to other non-Eurosystem NCBs of the Member States recognised as reporting Member States, provided that access is granted in accordance with the terms set out in this Agreement and applicable Union and national law.

9. The Parties further agree that the AnaCredit dataset is not required and may not be used by any non-Eurosystem NCB for the purposes of establishing and maintaining a feedback loop pursuant to Regulation (EU) 2016/867 (ECB/2016/13) unless such use has been regulated in a binding legal framework established by the ECB.

10. The non-Eurosystem NCB undertakes that, in the event that the ECB amends the framework governing AnaCredit, it shall either implement the amendments in its national law or initiate the withdrawal from the project in accordance with Article 6(4).

Article 2

Confidentiality protection

1. The non-Eurosystem NCB undertakes to comply with the provisions of the Confidentiality Guideline in relation to the AnaCredit dataset received from the ECB. In particular, it shall put in place all necessary regulatory, administrative, technical and organisational measures to ensure the logical and physical protection of the confidential statistical information.

2. In accordance with Article 7 of the Confidentiality Guideline, the non-Eurosystem NCB shall inform the ECB at least once a year of any problems experienced in the last period, the actions taken in response to these and the planned improvements with regard to the protection of the confidentiality of credit data. The STC shall draw up the corresponding report. The non-Eurosystem NCB shall notify the ECB in the event of an amendment of its national laws which may affect the confidentiality protection afforded to the AnaCredit dataset in this Article.

3. The ECB may require the non-Eurosystem NCB to take additional measures, or impose further conditions after duly notifying the non-Eurosystem NCB, with regard to its access to and use of the AnaCredit dataset.

Article 3

Reporting of breaches and suspension of access

1. If the AnaCredit dataset including credit data collected by non-Eurosystem NCBs is handled in breach of confidentiality, data protection or other requirements imposed by Union law, in the case of any of the Parties, and/or by national law, in the case of the non-Eurosystem NCB, the Parties shall take appropriate measures in order to remedy this breach and prevent its re-occurrence. The Parties shall comply with any obligations imposed by applicable law, including notification requirements where applicable.

2. The ECB may suspend the non-Eurosystem NCB's access to the AnaCredit dataset and request the non-Eurosystem NCB to erase any internally stored sets of such data with immediate effect if the ECB determines that this is necessary in order to prevent a material breach of this Agreement or to ensure compliance with any provision of law applicable to the Parties, or in the event of suspension of recognition of the non-euro area Member State as a reporting Member State in accordance with Article 7 of the Decision. The erasure of data shall take place in accordance with applicable requirements of national law.

Article 4

Dispute resolution

Without prejudice to the Governing Council's rights and prerogatives, any operational or technical disputes arising between the Parties in connection with this Agreement that cannot be settled by agreement shall be settled in accordance with the Memorandum of Understanding on an Intra-ESCB Dispute Settlement Procedure of 26 April 2007, or any subsequent revision or replacement thereof.

Article 5

Non-assignability

Neither this Agreement, nor any interest or obligation in or under it, may be transferred without the prior written consent of the ECB.

Article 6

Effective date, amendment and termination

1. The ECB and the non-Eurosystem NCB only become Parties to this Agreement by duly signing and executing the Agreement. The Agreement shall become effective from the date specified by the Governing Council, and after prior communication to the non-Eurosystem NCB. Unless otherwise agreed by the Parties and without prejudice to the Governing Council's rights and prerogatives, this Agreement shall remain effective for as long as the non-Eurosystem NCB is a Party to this Agreement.

2. This Agreement may only be amended in writing in a manner which is consistent with the form of the template agreement set out in Annex II to the Decision.

3. This Agreement shall be automatically terminated if the ECB decides to terminate its recognition of the non-euro area Member State as a reporting Member State under Article 7 of the Decision.

4. The non-Eurosystem NCB and the ECB may terminate this Agreement upon no less than [thirty/sixty] days prior written notice to each other. Any termination of this Agreement shall not prejudice the continuation and survival of any of the rights and obligations of each of the Parties existing at or prior to the date that such termination takes effect. The rules set out in Article 1(3), (4) and (5) and Article 2(1) and (3) concerning the conditions for use and transmission of credit data and confidentiality protection shall continue to apply after the termination of this Agreement in relation to any credit data, including credit data collected by the non-Eurosystem NCB, which were made available before the date of termination.

*Article 7***Counterparts**

This Agreement may be executed in counterparts in the English language, but the original instrument shall be considered the one deposited at the ECB. Each Party will receive a certified copy thereof.

[This Agreement is signed and executed by the Parties' duly authorised representatives.]

[Done at [Frankfurt am Main] on [date Month YYYY]]

[Insert signature pages for the ECB and the non-Eurosystem NCB]

DECISION (EU) 2019/1349 OF THE EUROPEAN CENTRAL BANK**of 26 July 2019****on the procedure and conditions for exercise by a competent authority of certain powers in relation to oversight of systemically important payment systems (ECB/2019/25)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 3.1, Article 22 and the first indent of Article 34.1 thereof,

Having regard to Regulation of the European Central Bank (EU) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28) ⁽¹⁾, and in particular Article 21(2) thereof,

Whereas:

- (1) The fourth indent of Article 127(2) of the Treaty and the fourth indent of Article 3.1 of the Statute of the European System of Central Banks and of the European Central Bank empower the Eurosystem to promote the smooth operation of payment systems.
- (2) The Eurosystem promotes the smooth operation of payment systems, inter alia, by conducting oversight.
- (3) In April 2012, the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions (IOSCO) jointly published the Principles for financial market infrastructures (hereinafter the 'CPSS-IOSCO principles') ⁽²⁾. The Committee on Payments and Market Infrastructures, the successor of the CPSS, and IOSCO subsequently jointly published guidance on these principles.
- (4) According to the CPSS-IOSCO principles, a systemically important payment system (SIPS) should be subject to effective oversight on the basis of clearly defined and publicly disclosed criteria because of its potential to trigger systemic risks if insufficiently protected against the risks to which it is exposed. Moreover, the CPSS-IOSCO principles set out specific oversight expectations for critical service providers on which the continuous and adequate functioning of the market infrastructure depends. In addition, the CPSS-IOSCO principles state that competent authorities should have sufficient powers and resources to fulfil their respective tasks, including the power to take corrective action.
- (5) The European Central Bank (ECB) implemented the CPSS-IOSCO principles and subsequent guidance insofar as they relate to a SIPS under Regulation (EU) No 795/2014 (ECB/2014/28).
- (6) To ensure the application of the highest oversight standards, pursuant to Article 24 of Regulation (EU) No 795/2014 (ECB/2014/28), the Governing Council reviewed that Regulation to assess whether it needed to be amended and subsequently adopted Regulation (EU) 2017/2094 of the European Central Bank (ECB/2017/32) ⁽³⁾, which complemented the power of a competent authority to obtain information and documents from a SIPS operator under Article 21 of Regulation (EU) No 795/2014 (ECB/2014/28) with additional tools.
- (7) Accordingly, Article 21(1) of Regulation (EU) No 795/2014 (ECB/2014/28) empowers the competent authority to obtain information and documents from a SIPS operator, require a SIPS operator to appoint an independent expert to perform an investigation or independent review on the operation of the SIPS and conduct on-site inspections or delegate the carrying out thereof.
- (8) In addition, Article 21(2) of Regulation (EU) No 795/2014 (ECB/2014/28) requires the ECB to adopt a decision on the procedure and conditions for exercising the powers set out in Article 21(1).

⁽¹⁾ OJ L 217, 23.7.2014, p. 16.

⁽²⁾ Available on the Bank for International Settlements' website at www.bis.org

⁽³⁾ Regulation (EU) 2017/2094 of the European Central Bank of 3 November 2017 amending Regulation (EU) No 795/2014 on oversight requirements for systemically important payment systems (ECB/2017/32) (OJ L 299, 16.11.2017, p. 11).

- (9) To ensure that the rights of third parties are respected, a competent authority should exercise the powers set out in Article 21 of Regulation (EU) No 795/2014 (ECB/2014/28) in accordance with, and subject to, the general principles of proportionality, equal treatment, effectiveness, efficiency, transparency and procedural due process. In addition, in order to comply with these principles, a decision to exercise the oversight powers set out in Article 21 of Regulation (EU) No 795/2014 (ECB/2014/28) should have a minimum predefined content and be notified to the SIPS operator before any oversight power is exercised.
- (10) A formal decision is not required for exercising the power to obtain information or documents, which can be exercised by the competent authority according to its oversight needs, namely to check compliance with Regulation (EU) No 795/2014 (ECB/2014/28) and to facilitate the broader objective of promoting the smooth operation of payment systems at systemic level.
- (11) For the purposes of effective oversight, it is important that the competent authority is enabled to impose requirements concerning the type of independent expert to be appointed, the content and scope of the report to be produced, the treatment of the report, including disclosure and publication, and the timing for the production of the report.
- (12) The appointment of an independent expert to perform an investigation or independent review of the SIPS should avoid any conflict of interest and respect certain requirements to ensure the independent expert has the requisite qualifications, ability and knowledge to carry out its tasks.
- (13) The SIPS operator may outsource core functions related to the clearing and settlement of transactions to critical service providers. When these functions are not performed by the SIPS operator itself but by a critical service provider then it is important that the competent authority should be able to exercise its powers under Article 21 of Regulation (EU) No 795/2014 (ECB/2014/28) in the same manner and to the same extent with respect to the critical service providers as to the SIPS operator. In order to enable this, it is essential that the SIPS operator includes clauses in its contractual arrangements with its critical service providers which allow for the sharing of information, documents and written or oral explanations between the representatives or members of staff of the critical service provider and the competent authority, the independent expert and the on-site inspection team, as the case may be, and for the conducting of on-site inspections at the location of the critical service provider.
- (14) In order to deal in an efficient manner with emergency situations, it is important that competent authorities have the possibility to waive certain requirements relating to the exercise of their powers on a case-by-case basis in the limited cases and subject to the conditions specified in this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

The terms used in this Decision shall have the same meaning as the terms defined in Regulation (EU) No 795/2014 (ECB/2014/28) and the following definitions shall also apply:

- (1) 'independent expert' means a natural or a legal person which has no relationship that raises a conflict of interest regarding the SIPS or the SIPS operator or its controlling shareholders and has specific expertise in conducting investigations and reviews of financial market infrastructures with a focus on financial regulation, information systems and communication technology, risk management, financial reporting or auditing;
- (2) 'independent review' means an evaluation of the operation of a SIPS the purpose of which is to provide: insight into any risks and vulnerabilities; assurance on the progress made by a SIPS operator to mitigate any risks and vulnerabilities; and validation of the effectiveness of a SIPS operator's policies, procedures and controls to mitigate any risks and vulnerabilities;
- (3) 'investigation' means an examination and analysis of facts, documents, information and events, and an interpretation of the findings thereof, using known and commonly used investigative methods;
- (4) 'on-site inspection' means an examination taking place at the location of the SIPS operator or at a relevant location related to the activities of a SIPS operator, including at the location of a critical service provider insofar as the contractual arrangements between the SIPS operator and that critical service provider allow for such an inspection, the purpose of which is to provide an in-depth analysis of, amongst other things, business models or governance, different risks and internal control systems;

- (5) 'on-site inspection team' means a group of experts from the competent authority or its delegate or, as the case may be, another Eurosystem central bank, led by a head of team, the purpose of which is to conduct an on-site inspection;
- (6) 'critical service provider' means a service provider that has a direct contractual arrangement with a SIPS operator to provide, on a continuous basis, services to that SIPS operator, and potentially to the participants in the SIPS, which are essential for ensuring information confidentiality and integrity and service availability, as well as the smooth functioning of the core operations of the SIPS;
- (7) 'another authority' means an authority responsible for oversight of a SIPS, other than the competent authority or the central banks overseeing or supervising the critical service providers of a SIPS, to which the power of conducting on-site inspections may be delegated.

Article 2

General principles

1. This Decision sets out the procedure a competent authority shall follow and the conditions it shall comply with in exercising its powers under Article 21(1) of Regulation (EU) No 795/2014 (ECB/2014/28).
2. When exercising its powers under Article 21(1) of Regulation (EU) No 795/2014 (ECB/2014/28), a competent authority shall:
 - (a) have regard to the objectives of Regulation (EU) No 795/2014 (ECB/2014/28) and their applicability to the circumstances of the case and only exercise such powers as are proportional to those objectives and the circumstance of the case in order to avoid any unnecessary burden on a SIPS operator;
 - (b) either apply the same requirements consistently to similar SIPS operators or justify the different treatment of SIPS operators.
3. Without prejudice to Article 11, the competent authority shall notify a SIPS operator in writing of its decision to exercise either of the powers set out in points (b) or (c) of Article 21(1) of Regulation (EU) No 795/2014 (ECB/2014/28).
4. The decision referred to in paragraph 3 shall set out the following:
 - (a) its legal basis and a statement of reasons;
 - (b) the power to be exercised;
 - (c) any additional requirement set out in Articles 4 to 7 according to the power to be exercised;
 - (d) if the power to be exercised is the power to conduct on-site inspections and the written notification to the SIPS operator concerned is omitted in accordance with Article 11, the reasons for proceeding without informing the SIPS operator in advance;
 - (e) the grounds on which the SIPS operator may challenge the decision.
5. The independent expert or on-site inspection team, as applicable, shall have the following powers:
 - (a) the right to require the submission of information and documents in accordance with Article 3;
 - (b) the right to examine the books and records of the SIPS operator and take copies or extracts from such books and records, including those related to services performed by critical service providers of the SIPS insofar as the respective contractual arrangements between the SIPS operator and a critical service provider allow;
 - (c) the right to obtain written or oral explanations from any representative or member of staff of the SIPS operator or its critical service providers (in the latter case only insofar as the respective contractual arrangements between the SIPS operator and a critical service provider allow and in relation to the services provided by that critical services provider to the SIPS);
 - (d) interview any other person that is legally or contractually obliged to provide information for the purpose of collecting information relating to the subject matter of the investigation, independent review or on-site inspection.

6. On conclusion of an investigation or independent review, the independent expert shall provide its draft report to the SIPS operator and the competent authority and subsequently its final report to the competent authority in the format and structure specified by the latter. The independent expert shall ensure that all findings within the report are evidence-based and, to the best of its knowledge and belief, accurate.
7. On conclusion of an on-site inspection, the competent authority shall provide its draft report to the SIPS operator.
8. The SIPS operator shall have the opportunity to comment in writing on a draft report provided by an independent expert or the competent authority. The SIPS operator's management board shall approve and sign the final report prior to submitting it or returning it to the competent authority or the independent expert, as applicable.
9. The obligation of professional secrecy shall apply to all persons with respect to their work in connection with investigations, independent reviews or on-site inspections. All the information exchanged under this Decision shall be treated as confidential, except where its disclosure is required by Union law or national law.
10. Findings resulting from investigations, independent reviews or on-site inspections under Article 21 of Regulation (EU) No 795/2014 (ECB/2014/28) may be published by the competent authority either at a level of detail which does not identify an individual system or operator, or, otherwise, with the consent of the SIPS operator.

Article 3

Exercise of a competent authority's power to obtain information and documents

1. The competent authority may require a SIPS operator to provide all information and documents necessary for the efficient and effective conduct of the oversight functions conferred on it by Regulation (EU) No 795/2014 (ECB/2014/28), including information and documents to be provided at recurring intervals and in specified formats for oversight purposes.
2. When requiring a SIPS operator to provide information and documents in accordance with point (a) of Article 21(1) of Regulation (EU) No 795/2014 (ECB/2014/28), the competent authority shall specify the following:
 - (a) the information or document to be provided;
 - (b) the format of, and the process for the provision of, the information or document;
 - (c) the time limit for provision of the information or document and, if applicable, the intervals at which it is to be provided, without prejudice to the general obligation of a SIPS operator to respond without undue delay.
3. The SIPS operator shall provide the information or document within the time limit and, if applicable, at the intervals requested unless it can provide evidence to the competent authority that one of the following circumstances applies:
 - (a) the information or document is not immediately available;
 - (b) the information or document is not solely owned by the SIPS operator, or does not solely relate to its activity, and consent must therefore be obtained from a third party for providing that information or document to the competent authority.

If the competent authority is satisfied with the evidence that one of the circumstances applies, it may grant to the SIPS operator additional time to provide the relevant information or document.

4. The SIPS operator and its staff shall not be exempted from complying with their obligations under this Decision to provide information or documents on the grounds of professional secrecy.
5. The SIPS operator shall include clauses in its contractual arrangements with third parties, including with critical service providers, allowing for the sharing of information and documents with the competent authority, the independent expert and the on-site inspection team in relation to the service provided by these third parties to the SIPS.

Article 4

Exercise of a competent authority's power to require the appointment of an independent expert

1. The competent authority may require the SIPS operator to appoint an independent expert to conduct either an investigation in accordance with Article 5 or an independent review in accordance with Article 6. The competent authority shall notify a SIPS operator of its decision that the SIPS operator shall appoint an independent expert in accordance with Article 2(4). The SIPS operator shall bear all costs related to the appointment of an independent expert.

2. When appointing an independent expert, the SIPS operator shall consult with its critical service provider where relevant.

3. The competent authority shall ensure that the decision by which it requires the SIPS operator to appoint an independent expert shall include at least the following requirements and information:

- (a) that the independent expert to be appointed by the SIPS operator has not been directly or indirectly involved in the past two years in the operation or oversight of the relevant SIPS, and has the specific expertise needed for the purposes of the investigations and independent reviews, including, for example, expertise in financial market infrastructures, financial regulation, information systems and communication technology, risk management, financial reporting or auditing;
- (b) details of the role, duties, powers and required field of expertise, ability and knowledge of the independent expert;
- (c) that the SIPS operator ensure that the independent expert has the requisite qualifications, ability and knowledge and carries out its functions free of any conflict of interest and in accordance with the requirements set out in paragraphs 5 to 7 of this Article;
- (d) the time limit by which the independent expert shall be appointed;
- (e) that the SIPS operator inform the competent authority how the requirements imposed by the competent authority have been satisfied and provide any relevant guidance in this respect;
- (f) that the SIPS operator provide the contact details of the independent expert for the purposes of paragraph 13 of this Article.

4. The decision by which the competent authority requires the SIPS operator to appoint an independent expert may contain requirements in addition to those set out in paragraph 3 above. The SIPS operator shall annex the decision by which the competent authority requires it to appoint an independent expert to its contractual arrangement with the independent expert.

5. In the performance of its functions, an independent expert shall have all the powers referred to in Article 6(3).

6. The SIPS operator shall ensure that the independent expert appointed to carry out an investigation or independent review has the following minimum qualifications:

- (a) a completed university degree or an equivalent level of qualification; or
- (b) a certificate or diploma granted or recognised by an EU Member State of professional competence in one of the fields in which the independent expert is required to have expertise for the purposes of the investigation or independent review.

7. Where necessary to ensure practical experience in addition to the qualifications required under paragraph 6, the competent authority may also require the SIPS operator to ensure that the independent expert has experience (preferably of 3 years or more) of performing similar investigations or independent reviews or equivalent examinations for firms within the financial sector. However, before imposing any additional requirement for practical experience the competent authority shall take into account the potential novelty of the investigation or independent review and the restrictions to potential future experts such additional requirements may impose. The SIPS operator shall ensure that the independent expert is subject to principles of professional ethics, covering at least its public-interest function, its integrity and objectivity and its professional competence and due care.

8. When recruiting the independent expert, the SIPS operator shall require sufficient proof of the qualifications and experience referred to in paragraphs 6 and 7. It shall inform the competent authority of the identity of the independent expert selected and, if the competent authority so requests, of how the appointment of the independent expert complies with the requirements in paragraphs 6 and 7. The competent authority shall retain the right to require the SIPS operator to appoint a different independent expert, if it deems that the requirements set out in this Decision or in the decision requiring the appointment of the independent expert are not met by the independent expert chosen by the SIPS operator.

9. Unless specified by the competent authority, the SIPS operator may agree with the independent expert the exact timing for the start and the duration of the investigation or independent review, depending on the scope provided by the competent authority, including in those cases where the competent authority requests the independent review to be made periodically.

10. The SIPS operator shall ensure that the independent expert has access to all the documents and information necessary for the purposes of the investigation or independent review in accordance with Articles 5 and 6 throughout the whole duration of the investigation or independent review. With regard to point (c) of Article 2(5), the SIPS operator shall include clauses in its contractual arrangements with its critical service providers which allow for the independent expert to have access to the explanations of representatives or members of staff of the critical service providers and for transmitting information to the central bank overseeing or supervising the critical service provider in accordance with Article 9(4).

11. The SIPS operator shall allow the independent expert to conduct investigations or independent reviews at the SIPS operator's premises, whenever the competent authority assesses that this will achieve the efficient and effective conduct of the investigations or independent reviews.

12. The SIPS operator shall ensure that the contractual arrangements for the provision of the independent expert's services in respect to conducting investigations or independent reviews provides for the obligation of the independent expert to answer the questions of the competent authority on the findings after the end date to perform the independent review or the investigation has expired.

13. The competent authority may communicate with the independent expert directly giving prior notice to the SIPS operator.

Article 5

Exercise of a competent authority's power to require the conduct of an investigation

The competent authority may require the SIPS operator to appoint an independent expert in accordance with Article 4 to conduct an investigation, if it considers that it is necessary to achieve the objectives set out in Regulation (EU) No 795/2014 (ECB/2014/28).

Article 6

Exercise of a competent authority's power to require the conduct of an independent review

1. The competent authority may require the SIPS operator to appoint an independent expert in accordance with Article 4 to conduct an independent review, if it considers that it is necessary to achieve the objectives set out in Regulation (EU) No 795/2014 (ECB/2014/28).

2. The competent authority may require an independent review to take place on a one off basis or, in exceptional cases, at periodic intervals within a pre-defined scope, linked to operational, security, risk management, business or legal grounds. If the competent authority requires an independent review at periodic intervals, then it shall specify and justify the frequency of those intervals and the scope of such independent review as well as its end date.

3. The scope of the independent review may cover one or more matters, chosen by the competent authority upon due justification. The independent expert shall have the power to collect any information from the SIPS that it deems necessary to provide a comprehensive understanding of the matter or matters within the scope of the independent review.

Article 7

Exercise of a competent authority's power to conduct on-site inspections

1. The competent authority may conduct an on-site inspection, or delegate the carrying out of on-site inspections to another authority in accordance with Article 8, if it considers that it is necessary to achieve the objectives set out in Regulation (EU) No 795/2014 (ECB/2014/28).

2. Without prejudice to Article 2(4) of this Decision, when the competent authority exercises the power to conduct on-site inspections, the inspection decision shall at a minimum specify:

- (a) the subject matter and the purpose of the on-site inspection;
- (b) the fact that any obstruction to the on-site inspection by the legal person subject thereto shall constitute a breach of Regulation (EU) No 795/2014 (ECB/2014/28), without prejudice to national law.

3. The competent authority shall notify the entity subject to an on-site inspection of the decision, and of the identity of the members of the on-site inspection team, at least 10 working days before the start of the on-site inspection.

4. The competent authority shall ensure that the on-site inspection is conducted within a predefined scope and timeframe which it determines in cooperation with the entity subject to an on-site inspection. However, if it deems necessary, the competent authority may extend the scope and timeframe of the on-site inspection during the inspection by a revised decision, which shall be notified to the entity subject to an on-site inspection.

5. The SIPS operator shall include clauses in its contractual arrangements with critical service providers, which allow for the on-site inspection to also take place at the location of the critical service provider. Such clauses shall allow the competent authority to involve the central bank overseeing or supervising the critical service provider in the on-site inspection process, including for the exchange of relevant information. The SIPS operator shall ensure that those contractual arrangements also allow for the competent authority to have access to written or oral explanations of representatives or members of staff of the critical service providers in relation to the service these provide to the SIPS. The SIPS operator shall also include clauses in the contractual arrangements with its critical service providers which give the competent authority access to information and findings from previous on-site inspections of the critical service provider of the same scope and nature which have already been performed by the central bank overseeing or supervising the critical service provider.

Article 8

Delegation of power to conduct on-site inspections

1. Subject to the conditions set out in the relevant applicable national law and the internal procedural rules of the competent authority, the competent authority may delegate the power to conduct on-site inspections to another authority provided that that authority and its inspection team both keep the information and documents obtained from the SIPS operator confidential and abide by the relevant principles of Article 7 as well as further internal organisational rules for an on-site inspection, and that the delegating competent authority shall retain full power over, and liability in respect of, the inspection.

2. The competent authority, another authority and the SIPS operator shall respect the confidentiality of the on-site inspection proceedings.

Article 9

Cooperation with authorities

1. The competent authority for a SIPS shall exercise the powers referred to in points (b) and (c) of Article 21(1) of Regulation (EU) No 795/2014 (ECB/2014/28) on the basis of a decision taken by it. If the competent authority is a national central bank, it shall inform the Eurosystem of such decision upon its adoption.

2. If a SIPS operator's staff obstruct an on-site inspection required by a competent authority in accordance with this Decision, the national central bank of the participating Member State concerned shall afford the members of the inspection team the necessary assistance in accordance with national law. To the extent necessary for the on-site inspection, this assistance shall include the sealing of any business premises and books or records. Where that power is not available to the national central bank concerned, it shall use its powers to request the necessary assistance of other national authorities.

3. If an on-site inspection or the assistance to be provided in accordance with paragraph 2 of this Article require authorisation by a judicial authority according to applicable national law, then the authority performing the on-site inspection shall apply for such authorisation.

4. When, as part of the investigation or independent review of the SIPS operator, the independent expert is required to exercise the rights set out in Article 2(5) with respect to the critical service providers of a SIPS, the competent authority shall inform the central bank overseeing or supervising the critical service provider of the intention to exercise those rights and may inform that central bank of the findings of the investigation or independent review after it is performed.

5. When an on-site inspection is deemed necessary to take place also at the location of a critical service provider of a SIPS, the competent authority shall inform the central bank overseeing or supervising the critical service provider of the intended on-site inspection prior to notifying the SIPS operator.

6. To the extent an on-site inspection of the same scope and nature was already performed by the central bank overseeing or supervising the critical service provider of a SIPS, the competent authority for the SIPS may choose to rely on the findings of such on-site inspection or perform an on-site inspection of its own. In this regard, the competent authority may ask the critical service provider to give access to the respective information and the findings which are available to it or to consent to the competent authority having access to these findings at the central bank. If there has been no on-site inspection performed yet or not one of the same scope and nature, the SIPS competent authority may, at its discretion, also perform the on-site inspection at the location of the critical service provider. In doing so, the competent authority, having regard to the powers and responsibilities of central banks, may involve the central bank overseeing or supervising the critical service provider in the process of the on-site inspection and may inform that central bank of the findings of the on-site inspection after it has been performed.

7. If the on-site inspection is deemed necessary to take place also at the location of a critical service provider of a SIPS, the competent authority shall also notify the critical service provider of the inspection at the same time as the SIPS operator in accordance with Article 2(4).

Article 10

Right to be heard and access to information

1. The independent expert or the on-site inspection team, as the case may be, shall take into account comments submitted by the SIPS operator during an independent review, an investigation or an on-site inspection and shall base their findings on facts on which the SIPS operator concerned has had the opportunity to comment.

2. When submitting the findings report to the competent authority, the independent expert or the on-site inspection team shall notify the SIPS operator. The SIPS operator shall be entitled to have access to the report, subject to the legitimate interest of other persons and legal entities in the protection of their business secrets. The right of access to the report shall not extend to confidential information affecting third parties.

Article 11

Unannounced on-site inspections

Notwithstanding Article 7(3), a competent authority is not obliged to inform an entity subject to an on-site inspection of such inspection in advance if there are indications that there exist facts of a serious nature that threaten the smooth functioning of the SIPS or that informing that entity of the need to proceed with an on-site inspection may undermine its results. In this case, the decision to proceed with an on-site inspection shall indicate the reasons to proceed without informing that entity in advance and shall be provided to that entity only once the inspection has started.

Article 12

Language regime between the competent authority and the SIPS operator

1. Any document which a SIPS operator subject to oversight pursuant to Regulation (EU) No 795/2014 (ECB/2014/28) sends to the competent authority according to Article 3 of this Decision may be drafted in any one of the official languages of the Union, chosen by the SIPS operator.

2. The SIPS operator subject to oversight may agree to exclusively use one Union official language in their written communication with the competent authority. The SIPS operator may revoke such agreement on the use of one language or may choose to waive this right occasionally and for certain written communications in order to accelerate the process, with no effect on future procedures. The revocation shall only affect the aspects of the oversight procedure which have not yet been carried out.

3. The SIPS operator may request the investigation, independent review or on-site inspection to be carried out in a Union official language other than the language agreed for the oversight process. If it intends to do so, the SIPS operator shall give sufficient advance notice of this intention to the competent authority or independent expert prior to the commencement of the investigation, independent review or on-site inspection so that necessary arrangements can be made.

*Article 13***Final provisions**

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, 26 July 2019.

The President of the ECB
Mario DRAGHI

