

**MEMORANDUM OF UNDERSTANDING BETWEEN THE EUROPEAN CENTRAL BANK
AND THE BANKING REGULATION AND SUPERVISION AGENCY OF TÜRKİYE**

This Memorandum of Understanding is made

BETWEEN

the European Central Bank, with its headquarters at Sonnemannstrasse 20, 60314 Frankfurt am Main, Germany,

hereinafter the 'ECB',

AND

the Banking Regulation and Supervision Agency, with its headquarters at Esentepe Mahallesi Büyükdere Caddesi No:106 Şişli/İstanbul, Türkiye,

hereinafter the 'BRSA',

WHEREAS:

- (1) Council Regulation (EU) No 1024/2013¹ (hereinafter the 'SSM Regulation') confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions. This Memorandum of Understanding covers the supervisory tasks conferred on the ECB by Article 4, read in conjunction with Article 6(4), of the SSM Regulation. Cooperation under this Memorandum of Understanding is without prejudice to the tasks and responsibilities of the national competent authorities (NCAs) under European Union and national laws, as well as Memoranda of Understanding they are party to (or will become party to) for the performance of their tasks.
- (2) Article 6 of the SSM Regulation lays down the criteria for identifying the entities supervised by the ECB². The methodology for assessing these criteria is laid down in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)³ (hereinafter the 'SSM Framework Regulation'), in particular Articles 39 to 72 thereof.
- (3) The ECB enters into this Memorandum of Understanding having regard to Article 55 of Directive 2013/36/EU of the European Parliament and of the Council (hereinafter the 'CRD')⁴ and Article 8 of the SSM Regulation.
- (4) Pursuant to Articles 82 and 93 of Banking Law No. 5411, the BRSA is the national competent authority for the supervision of financial institutions⁵ in Türkiye.
- (5) The BRSA enters into this Memorandum of Understanding on the basis of Articles 73, 93 and 98 of Banking Law No. 5411.
- (6) Through this Memorandum of Understanding, the ECB and the BRSA express their willingness to cooperate with each other on the basis of mutual trust and understanding for the purpose of performing their supervisory tasks in respect of cross-border establishments that fall within their prudential supervisory responsibilities under the SSM Regulation and Banking Law No. 5411.
- (7) In order to allow for smooth communication between them, the Authorities will

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

2 An up-to-date list of significant credit institutions and less significant credit institutions is published on the ECB's website at <https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>

3 Regulation (EU) No 468/2014 of the European Central Bank of 16 April establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

4 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338). Pursuant to Article 55 of the CRD, a condition for the ECB to enter into agreements with third country authorities is that their confidentiality regime is equivalent to that in place in the European Union.

5 Banking Law No. 5411, published in the Official Gazette edition 25983 on 01.11.2005. In accordance with Article 3 of the Banking Law No. 5411, the term 'financial institution' covers banks and other financial institutions.

nominate contact persons to represent them in the activities covered by this Memorandum of Understanding (see the list of contact persons in the Annex),

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

Article 1

DEFINITIONS⁶

For the purpose of this Memorandum of Understanding:

- 'assessment of directors' means the assessment that the Authorities are required to perform, when applying their respective legislation, in respect of those who direct the business of a supervised entity⁷;
- 'authorisation process' means the process pursuant to which a supervised entity is permitted to perform its activities⁸;
- 'Authority' means any of the signatories of this Memorandum of Understanding, together also referred to as 'Authorities';
- 'cross-border establishment' means a branch, a subsidiary, or any other entity of a supervised entity operating or localised within one jurisdiction which are included in consolidated supervision, and over which the Authority in the other jurisdiction exercises supervisory responsibilities;
- 'jurisdiction' means, in the case of the BRSA, the territory of Türkiye, and, in the case of the ECB, each of the territories of the participating Member States;
- 'laws and regulations' means the provisions of the laws, or the regulations promulgated thereunder, of the BRSA and of the European Union in relation to the prudential supervision of the supervised entities;
- 'national competent authority' (NCA) means a national competent authority as defined in Article 2, point (2) of the SSM Regulation. In accordance with Article 2, point (9), of the SSM Framework Regulation, this definition is without prejudice to arrangements under national law which assign certain supervisory tasks to a national central bank (NCB) not designated as an NCA. In this case, the NCB will carry out these supervisory tasks within the framework set out in national law and the SSM Framework Regulation. A reference to an NCA shall apply, as appropriate,

⁶ The Authorities recognise that, while they may define terms differently in their laws, regulations and requirements, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

⁷ For the ECB, the legal reference is Article 4(1), point (e) of the SSM Regulation, read together with Articles 91 and 121 of the CRD.

⁸ For the ECB, the legal reference is Article 4(1), point (a) of the SSM Regulation, read together with Article 8 et seq. of the CRD.

to the NCB for the supervisory tasks assigned to it by national law.

- 'participating Member State' means a Member State of the European Union whose currency is the euro, or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7 of the SSM Regulation;
- 'qualifying holding assessment' means the assessment that the Authorities are required to perform, in applying their respective legislation, in respect of purchases of, or variations in, holdings in a supervised entity, whether intended or accomplished and in whatever form⁹;
- 'requested Authority' means the Authority to which a request is addressed under this Memorandum of Understanding;
- 'requesting Authority' means the Authority making a request under this Memorandum of Understanding;
- 'supervised entities' means entities that fall within the supervisory remit of the Authorities, as identified by their respective legislation, including the cross-border establishments of those entities¹⁰;

Article 2

Purpose and general principles

1. The purpose of this Memorandum of Understanding is to formalise cooperation and information-sharing mechanisms between the ECB and the BRSA in relation to supervised entities. Such cooperation is essential in order to promote the safety and soundness of supervised entities and the stability of the financial system.
2. This Memorandum of Understanding is aimed at ensuring the effective exchange of supervisory information for the performance of the Authorities' respective supervisory powers over supervised entities, to the extent permitted by law, and in accordance with the Core Principles for Effective Banking Supervision developed by the Basel Committee on Banking Supervision¹¹.
3. The Authorities recognise that cooperation under this Memorandum of Understanding may be denied on the grounds of laws, regulations and public interest, as well as where it would interfere with an ongoing investigation or

⁹ For the ECB, the legal reference is Article 4(1), point (c) of the SSM Regulation, read together with Article 22 et seq. of the CRD.

¹⁰ For the ECB, the term may refer to credit institutions, financial holding companies and mixed financial holding companies as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

¹¹ Available on the Bank for International Settlements' website at www.bis.org.

jeopardise the proper performance of the tasks of the Authorities.

Article 3

Principles regarding the exchange of information

1. Each Authority will endeavour to provide the other Authority, on a timely basis upon request or on its own initiative, where appropriate and insofar as feasible, with any information that is necessary for the exercise of the other Authority's supervisory tasks.
2. A request for information will include the following:
 - (a) a description of the facts underlying the request, and its purpose;
 - (b) the reasons why the information is likely to be relevant for the proper performance of the requesting Authority's tasks, and in the light of the requesting Authority's legislation, including a specification of the supervisory tasks that are connected with the subject matter of the request;
 - (c) any information known to, or in the possession of, the requesting Authority that might assist the requested Authority in fulfilling the request.
3. Where a request for information is denied or the information requested is not available, the requested Authority will provide the reasons for not sharing the information.
4. The exchange of information will be conducted in writing, regardless of its format (paper, electronic communication or other). Both the request for information and the communication of the requested information will be addressed between the Authorities primarily through the designated contact persons (see the list of contact persons in the Annex). In urgent circumstances, requests may be made in any form, provided that they are subsequently confirmed in writing within 10 working days.
5. The information mentioned in this Article will be provided insofar as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 4

Confidentiality

1. The Authorities will endeavour to preserve the confidentiality of the information received to the extent permitted by laws and regulations. In this regard, each Authority will hold confidential all information received from the other Authority. Any confidential information received by the requesting Authority from the requested

Authority will be used exclusively for lawful supervisory purposes and will not be disclosed, except as set out below.

2. Each Authority will endeavour to ensure that all persons¹² that deal with or have access to confidential information (including any of its staff and external providers that have access to confidential information) are bound by the obligations of professional secrecy in compliance with the relevant laws and regulations.
3. Either Authority may be requested by a third party to disclose confidential information received under this Memorandum of Understanding, or alternatively, may consider it appropriate to disclose confidential information to a third party, including a supervisory authority that might have a legitimate interest in such information. The prior consent of the requested Authority will be sought and obtained in writing by the requesting Authority before any disclosure to a third party of confidential information exchanged under this Memorandum of Understanding may occur. The requested Authority may deny disclosure or impose conditions on the disclosure, including that the third party will keep the information confidential.
4. Where required under a legal obligation to disclose confidential information received pursuant to this Memorandum of Understanding, the requesting Authority will, to the extent permitted by law, inform the requested Authority about the purposes for which the information it provided is proposed to be shared, the uses that the third party could make of the information and the safeguards that the third party would apply to ensure confidentiality.
5. Where the requested Authority does not consent to the disclosure to a third party, and where possible and appropriate, the requesting Authority will take reasonable steps to resist disclosure, including by employing legal means to challenge the request for disclosure or by advising the third party of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.

Article 5

Cooperation in relation to the ongoing supervision

1. Each Authority will endeavour to provide, upon prior request, or on its own initiative where appropriate, the other Authority with any information that is likely to be of assistance to it in order to promote the safe and sound functioning of supervised entities. Such information may include, but is not limited to, capital and liquidity

¹² The Authorities acknowledge that: (a) staff from the NCAs performing activities related to the application and execution of ECB supervisory tasks within the Single Supervisory Mechanism (SSM); or (b) staff from the NCBs and NCAs acting in an official capacity as a member of the ECB Governing Council or the SSM Supervisory Board on matters relating to prudential banking supervision will be treated as staff members of the ECB and will be subject to the confidentiality provisions of this Memorandum of Understanding.

positions as well as supervisory risk assessments of supervised entities and their cross-border establishments.

2. Each Authority will provide relevant information to the other in a timely manner, in particular following the occurrence of any event that has the potential to have a material adverse impact on the operations of a supervised entity in the other Authority's jurisdiction.
3. The information mentioned in this Article will be provided insofar as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 6

Ongoing cooperation

1. The Authorities will conduct meetings, as appropriate, to discuss issues concerning supervised entities that maintain cross-border establishments in their respective jurisdictions, and to review the effectiveness of this Memorandum of Understanding. The Authorities also intend, where practicable, to promote their cooperation by means of visits for informational purposes.
2. To the extent possible, the Authorities will conduct their communication via the designated contact persons listed in the Annex. The Annex may be amended by written notice from either Authority without the need to amend this Memorandum of Understanding.

Article 7

Cooperation in relation to authorisation procedures, qualifying holdings assessments and the assessment of directors

1. The Authorities will endeavour to notify each other, in a timely manner, of applications for approval to establish cross-border establishments or make acquisitions.
2. Upon request, the Authorities will inform each other whether an applicant is in substantial compliance with the applicable laws and regulations and whether it may be expected, in the light of its administrative structure and internal controls where relevant, to manage the supervised entity or the cross-border establishment in an orderly manner. The Authorities will also, upon request, assist each other with verifying or supplementing any information submitted by an applicant.
3. Upon request, the Authorities will inform each other about the nature of its

supervisory system and the extent to which it will conduct supervision, including whether on a consolidated or group-wide basis, of an applicant.

4. Upon request, and where available, the Authorities will endeavour to supply each other with information on proposed acquirers.
5. To the extent permitted by their respective laws and regulations, the Authorities will share information on the fitness and propriety of prospective directors and managers of a cross-border establishment.

Article 8

Cooperation in relation to enforcement and sanctions

1. Upon request, each Authority will inform the other of non-public administrative pecuniary penalties, enforcement or sanction decisions in respect of a cross-border establishment or in respect of supervised entities insofar as it relates to the operation of cross-border establishments in that jurisdiction¹³.
2. The information referred to in paragraph 1 will be given as far as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 9

Cooperation in relation to on-site inspections

1. The Authorities will assist each other as far as practicable with the conduct of on-site inspections of cross-border establishments situated in the other Authority's jurisdiction. Where assistance cannot be provided, the Authority requested to provide assistance will notify the other Authority of this as soon as deemed practical.
2. The Authorities will duly notify each other in writing in a timely manner of plans to inspect a cross-border establishment or to appoint a third party to conduct an inspection on its behalf, and will do so at least one month in advance for a non-urgent inspection. This notification will detail the purposes, scope, expected starting and ending dates of the inspection, the cross-border establishment to be inspected, and the names of the persons leading the inspection. Before conducting the on-site inspection, the Authorities will discuss the terms of notification and will reserve the right to accompany each other's inspections team on such an

¹³ For the requests addressed to the ECB, this means that the ECB may only share information related to administrative pecuniary penalties imposed pursuant to Article 18(1) of the SSM Regulation, and sanctions imposed pursuant to Article 18(7) of the SSM Regulation.

inspection. On conclusion of the inspection of the cross-border establishment, the Authority performing the inspection will present the other Authority with the relevant findings, and/or provide it with the relevant sections of the on-site inspection report within a reasonable timeframe.

3. The information mentioned under this Article will be provided insofar as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 10

Cooperation in relation to emergency situations

1. Each Authority will inform the other promptly if it becomes aware of an emerging crisis such as, but not limited to, serious financial difficulties which might have an adverse impact on operations relating to any supervised entity in that Authority's jurisdiction(s).
2. To the extent possible, the Authorities will endeavour to seek coordinated responses to any crisis emerging in a cross-border establishment operating in their respective jurisdictions, in accordance with the applicable legislation and without prejudice to their respective involvement in the relevant cross-border cooperation fora.

Article 11

Status of this Memorandum of Understanding

1. This Memorandum of Understanding sets forth a statement of intent and does not modify or supersede any laws and regulations in force in, or applying to Türkiye or the European Union, or any of the Member States of the European Union. Nor does this Memorandum of Understanding create any directly or indirectly enforceable rights or legally binding obligations for the Authorities or any third party.
2. This Memorandum of Understanding is without prejudice to other cooperation arrangements that each Authority might conclude and can be supplemented with other more specific memoranda of understanding between the same Authorities agreed upon for the purpose of cooperating for the supervision of a specific cross-border establishment.
3. The Authorities will use their best endeavours in the performance of this Memorandum of Understanding. However, neither the Authorities nor any third party can bear or seek any liability regarding the performance of this Memorandum of Understanding.

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4. Any disagreement arising from the interpretation or the performance of this Memorandum of Understanding will be amicably settled by means of consultations between the Authorities.
 5. Any amendment to this Memorandum of Understanding, including this Article, will be made by the Authorities' mutual consent and formulated in English and have effect only if executed by the Authorities in writing.
 6. This Memorandum of Understanding will come into effect once signed by both Authorities and will continue indefinitely, subject to modification by the mutual consent of the Authorities or termination by either Authority with 30 days' prior written notice to the other Authority.
 7. This Memorandum of Understanding is produced in duplicate in English, each copy being equally authentic and each of the Authorities obtaining a copy.
 8. In the event of termination of this Memorandum of Understanding, the information obtained hereunder will continue to be treated in accordance with the confidentiality regime in Article 4.

Article 12

Publication

Once this Memorandum of Understanding has come into effect, the Authorities agree that it may be made publicly available in full or in part, excluding the list of contact persons in the Annex, by either of the Authorities on their websites.

Signed at Istanbul and Frankfurt am Main in two original copies signed by the duly authorised representatives.

For the Banking Regulation and
Supervision Agency

Date:
16.09.2024

[signed]

Prof. Dr. Şahap Kavcıoğlu
Chairman

For the European Central Bank

Date:
19/09/2024

[signed]

Claudia Buch
Chair of the Supervisory Board of the ECB

For the European Central Bank

Date:
19/09/2024

[signed]

Frank Elderson
Vice-Chair of the Supervisory Board of the
ECB

Annex redacted