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European Central Bank Publishes Final List of 'Significant Supervised Entities' in Preparation for Banking Union

On 4 September 2014, the EU's European Central Bank (ECB) published its final list of significant supervised entities and less significant institutions for the purposes of the Eurozone's single supervisory mechanism (SSM), which will come into effect on 4 November 2014. The list, which can be found here, identifies credit institutions,[1] financial holding companies and mixed financial holding companies, as well as branches of credit institutions whose head offices are established in a non-participating Member State. In all, the entities specified in the list account for almost 85 percent of total Eurozone banking assets.

The SSM Regulation[2] sets out a single banking supervisory framework, headed by the ECB, for banking institutions and bank holding companies established in the Eurozone (the EU's single currency area) and non-Eurozone EU Member States that have chosen to participate (participating Member States). The SSM will implement a substantial shift in banking supervisory powers from EU national regulators (NCAs) to the ECB, even allowing for the fact that the U.K., Sweden and the Czech Republic have decided to remain outside. Most of the basic infrastructure that will support the SSM, the ECB and the NCAs is in place. However, the list of banking groups subject to direct ECB supervision is another important step in the new EU bank regulatory framework.

The SSM Regulation maintains an important distinction between significant and non-significant entities, which will be subject to differing supervisory regimes. The ECB will carry out the prudential supervision of significant entities identified in the list. As a result, the ECB will:

- set and supervise significant credit institutions' compliance with prudential requirements as well as associated regulatory reporting and public disclosure obligations. This will include power to conduct supervisory reviews and stress tests and to assess corporate governance arrangements;
- have power to authorise (*i.e.*, license), and withdraw authorisation, from significant credit institutions;
- oppose applications made by entities that wish to acquire a qualifying holding in a significant supervised entity;
- after considering NCA recommendations, approve passporting applications made by significant credit institutions that wish to operate cross-border in participating and non-participating Member States; and
- assess significant credit institutions' recovery plans, and trigger early intervention where a credit institution appears unlikely to be able to comply with relevant prudential requirements.

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1 Credit institutions include banks, building societies and other deposit-takers licensed under the Capital Requirements Directive.

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.

Less significant banking entities identified in the list will continue to be supervised directly by their local NCAs. Nevertheless, the ECB will have power to object to applications made by those who wish to acquire a qualifying holding in a less significant entity and to oppose applications for authorisation made by new entities.[3] The ECB also will have a reserve power to exercise direct supervision of less significant entities when necessary to ensure consistent application of high supervisory standards.[4]

Therefore, despite the shift in supervisory power to the ECB, the NCAs will remain an important factor in EU banking supervision. The ECB will work closely with NCAs in supervising significant institutions operating in the Eurozone, as set out in the SSM Framework Regulation's[5] cooperation, information exchange and resourcing provisions.

As mentioned above, the U.K., Sweden and the Czech Republic will not be participating in the SSM. This means that the NCAs in these countries still will be responsible for the bulk of prudential supervision of their banking sectors. Nevertheless, NCAs in those countries will need to cooperate with the ECB in respect to a number of regulatory matters, including bank branches that have been established in their respective jurisdictions. ECB-U.K. relations will be especially important because of the U.K. Prudential Regulation Authority's responsibility for regulating a large number of internationally active banks with London operations.

The next eagerly awaited step is the results of the ECB's Asset Quality Review (the AQR), which are due to be formally announced next month. The AQR will be used as a gauge of the health of the European banking sector and will likely lead to more EU banking groups seeking more capital and reducing risk-weighted assets through asset and business unit sales.

3 Articles 14 and 15 of the SSM Regulation respectively.

4 Article 6(5)(b) of the SSM Regulation.

5 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014, establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities.