



**MEMORANDUM OF COOPERATION BETWEEN THE EUROPEAN CENTRAL BANK
AND THE FINANCIAL SERVICES AGENCY OF JAPAN**

This Memorandum of Cooperation (MoC) is made BETWEEN

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

hereinafter the 'ECB',

AND

the Financial Services Agency of Japan, with its headquarters at 3-2-1 Kasumigaseki Chiyoda-
ku Tokyo, 100-8967 Japan,

hereinafter the 'FSA',

(hereinafter referred to jointly as 'the Authorities' and each of them individually as 'the
Authority')

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, as defined in Article 4(1), point 1, of Regulation (EU) No 575/2013 of the European Parliament and of the Council². This MoC covers the banking supervisory tasks conferred on the ECB by Article 4, read in conjunction with Article 6(4), of the SSM Regulation. Cooperation under this MoC is without prejudice to the tasks and responsibilities of national competent authorities under European Union and national laws, as well as other MoCs 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 the identification of supervised entities. The methodology for the assessment of the criteria is laid down in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)³ (hereinafter the 'SSM Framework Regulation'), especially its Articles 39 to 72. An up-to-date list of significant supervised entities is published on the ECB's Banking Supervision website⁴.
- (3) The ECB takes part in this MoC having regard to Article 55 of Directive 2013/36/EU of the European Parliament and of the Council⁵ (hereinafter the 'CRD') and Article 8 of the SSM Regulation.
- (4) Pursuant to the Act for Establishment of the Financial Services Agency (Act No. 130 of 1998), the FSA is the national competent authority for the supervision of banking, securities and insurance sectors in Japan. For the purpose of this MoC, the FSA is the national competent authority for prudential banking supervision in Japan.
- (5) The FSA takes part in this MoC on the basis of Article 4(24) of the Act for Establishment of the Financial Services Agency (Act No. 130 of 1998).
- (6) Through this MoC, the ECB and the FSA 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 credit institutions that fall within their supervisory responsibilities under the SSM Regulation and the Act for Establishment of the Financial Services Agency (Act No. 130 of 1998).

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 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).

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

4 <https://www.bankingsupervision.europa.eu>

5 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.).

- (7) The Authorities acknowledge that the scope of their cooperation under this MoC remains limited solely to their supervisory tasks in accordance with the applicable laws and regulations and that cooperation between the European Union and Japan regarding criminal proceedings is subject to the applicable procedures under the Agreement between the European Union and Japan on mutual legal assistance in criminal matters⁶ and the tasks assigned under it to the relevant central authorities.
- (8) In order to allow for smooth communication between them, the Authorities will nominate contact persons who represent them in the activities covered by this MoC (see the list in the Annex providing the contact details of the contact persons),

⁶ Agreement between the European Union and Japan on mutual legal assistance in criminal matters (OJ L 39, 12.2.2010, p. 20–35).

THE AUTHORITIES ACKNOWLEDGE THE FOLLOWING:

DEFINITIONS⁷

For the purpose of this MoC:

- 'supervised entities' means entities that fall within the supervisory remit of the Authorities, as identified by their respective legislation, including their cross-border establishments⁸;
- 'Authority' means any of the signatories of this MoC, together also referred to as 'Authorities';
- 'cross-border establishment' means a branch, a subsidiary or any other entity of a supervised entity operating or located within one jurisdiction, and over which the Authority in the other jurisdiction exercises supervisory responsibilities;
- 'participating Member State' means a member state of the European Union whose currency is the euro, or a member state of the European Union whose currency is not the euro which has established a close cooperation in accordance with Article 7 of the SSM Regulation;
- 'laws, regulations and requirements' means the provisions of the laws, or the regulations and requirements promulgated thereunder, of the European Union and of Japan, in conjunction with national laws transposing directives or exercising options granted to Member States of the European Union as the case may be⁹, in relation to the prudential supervision of the supervised entities;
- 'authorisation process' means the process pursuant to which a supervised entity is permitted to perform its activities¹⁰;
- 'qualifying holding assessment': the assessment that the Authorities are required to perform, in applying their respective legislations, in respect of purchases of, or variations in, holdings in a supervised entity, whether intended or accomplished and in whatever form¹¹;

⁷ 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.

⁸ For the ECB, the term can refer to credit institutions, financial holding companies and mixed financial holding companies as defined in Regulation (EU) No 575/2013. For the FSA, the term can refer to banking organisations and bank holding companies licensed by the Prime Minister pursuant to the Banking Act (Act No. 59 of June 1, 1981).

⁹ Cf. Article 4(3), first subparagraph, of the SSM Regulation.

¹⁰ For the ECB, the legal reference is Article 4(1)(a) of the SSM Regulation, read together with Article 8 et seq. of the CRD. For the FSA, the legal reference is Articles 4, 27, 28, 52-17, 52-18 and 52-34 of the Banking Act (Act No. 59 of 1981), and Articles 29 and 29-4 of the Financial Instruments and Exchange Act (Act No.25 of 1948).

¹¹ For the ECB, the legal reference is Article 4(1)(c) of the SSM Regulation, read together with Article 22 et seq. of the CRD. For the FSA, the legal reference is Articles 52-9 and 52-10 of the Banking Act (Act No. 59 of 1981), and Articles 32, 32-2 and 32-3 of the Financial Instruments and Exchange Act (Act No.25 of 1948).

- '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 entity¹²;
- 'requested Authority' means the Authority to whom a request is addressed under this MoC;
- 'requesting Authority' means the Authority making a request under this MoC;
- 'jurisdiction' means the territory of the country concerned under this MoC. For the purposes of this MoC, each of the territories of the participating Member States is considered to be an ECB jurisdiction;
- '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 will apply, as appropriate, to the NCB for the supervisory tasks assigned to it by national law.

Section 1

Purpose and general principles

1. The purpose of this MoC is to facilitate cooperation and information-sharing mechanisms between the ECB and the FSA. Such cooperation is essential in order to promote the integrity, stability and efficiency of the supervised entities.
2. This MoC 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 Supervision¹³.
3. The Authorities recognise that cooperation under this MoC may be denied on the grounds of laws, regulations and requirements, or public interest, as well as where it would interfere with an ongoing investigation or jeopardise the proper performance of the tasks of the Authorities, including due to resource constraints.

Section 2

¹² For the ECB, the legal reference is Article 4(1)(e) of the SSM Regulation, read together with Articles 91 and 121 of the CRD. For the FSA, the legal reference is Articles 7-2 and 52-18 of the Banking Act (Act No. 59 of 1981), and Article 29-4 of the Financial Instruments and Exchange Act (Act No.25 of 1948).

¹³ Available on the Bank for International Settlements' website at www.bis.org.

Principles regarding 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 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 by other means (e.g. telephone whenever possible), provided that they are subsequently confirmed in writing without undue delay. Information will not be shared until the written request is received, save for in urgent circumstances.
5. Sharing of information in line with this MoC will be conducted to the extent reasonable and subject to any relevant laws, including those restricting disclosure. Following consultations between the Authorities, a request for assistance under this MoC may be denied:
 - (a) where the cooperation would require an Authority to act in a manner that would violate its applicable legal framework;
 - (b) where a request for assistance does not fall within the scope of this MoC or is not made in line with this MoC;
 - (c) on the grounds of public interest; or
 - (d) where it would interfere with an ongoing investigation or jeopardise the proper performance of the tasks of the Authorities.

Where a request for assistance is denied, or where assistance is not available under domestic laws and regulations applicable in the jurisdiction of the requested Authority, the requested Authority will provide the reasons for not granting the assistance.

Where the requested Authority presents objective grounds for not addressing the request in whole or in part, the Authorities intend to consult each other with a view to reaching a recognition on the assistance to be provided.

Section 3

Confidentiality

1. The Authorities will preserve the confidentiality of the information received to the extent permitted by their respective laws, regulations and requirements. In this regard, each Authority will keep 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. The Authorities will ensure that all persons¹⁴ dealing with, or having access to confidential information (including members of the Authority, employees and external providers having access to confidential information), are bound by the obligations of professional secrecy in compliance with relevant laws, regulations and requirements.
3. Either Authority may be requested by a third party¹⁵ to disclose confidential information received under this MoC, 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 MoC will 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 to a third-party confidential information received in line with this MoC, the requesting Authority will, to the extent permitted by law, inform the requested Authority prior to such disclosure about the purposes for which the information 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. Where the requested Authority does not consent to the disclosure to a third party, the Authorities will consult with each other with a view to reaching a mutually acceptable

14 For the purposes of this MoC, with regard to matters concerning information sharing, 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 required to respect the confidentiality provisions of this MoC; and (b) staff from FSA in Japan performing activities in connection to the application of this MoC.

15 For the purposes of this MoC 'a third party' is any party other than the JFSA, the ECB and the staff from NCAs/NCBs which are an integral part of the SSM as mentioned on footnote 14. For clarification, a third party includes any staff of NCAs/NCBs that are not executing ECB supervisory tasks within the SSM or acting as members of the ECB Governing Council or the SSM Supervisory Board.

arrangement. Prior to complying with such legal obligation, where possible and appropriate, the requesting Authority will take reasonable steps to avoid disclosure, including by employing legal means to challenge the 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.

5. Information received under this MoC will not be used for criminal proceedings carried out by a court or a judge. In the case that such use is needed, a request for mutual legal assistance in criminal matters should be made by the competent authority in accordance with the relevant laws.

Section 4

Protection of personal data

Without prejudice to the situations/cases of legally required disclosures covered under this MoC, the Authorities will treat personal data in accordance with the data protection laws and regulations applicable to them respectively.

In particular, the ECB will process any personal data contained in the information received from the other Authority under this MoC in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁶ and Decision (EU) 2020/655 of the European Central Bank (ECB/2020/28)¹⁷.

The FSA will process any personal data contained in the information received from the ECB under this MoC in accordance with the Act on the Protection of Personal Information (Act No. 57 of 2003) and associated Guidelines for Protection of Personal Information in the Finance Sector.

Section 5

Cooperation in relation to the ongoing supervision

¹⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

¹⁷ Decision (EU) 2020/655 of the European Central Bank of 5 May 2020 adopting implementing rules concerning data protection at the European Central Bank and repealing Decision ECB/2007/1 (ECB/2020/28) (OJ L 152, 15.5.2020, p. 13).

1. Each Authority will use its best endeavours 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.
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 cross-border supervised entity in the other Authority's jurisdiction.
3. The above-mentioned information will be given insofar as legally and practically feasible and subject to applicable laws and regulations, and in line with the principles set out in this MoC.

Section 6

Ongoing coordination/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 MoC. 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 revised by written notice from either Authority without the need to revise this MoC.
3. The above-mentioned information will be given insofar as legally and practically feasible and subject to applicable laws and regulations, and in line with the principles set out in this MoC.

Section 7

Cooperation in relation to the authorisation process, qualifying holding assessments and the assessment of directors

1. The Authorities will endeavour to notify each other, without delay, of applications for approval by supervised entities from their respective jurisdictions to establish cross-border establishments or make cross-border acquisitions in their respective jurisdictions.
2. Upon request, the Authorities will inform each other whether the applicant is in substantial compliance with applicable laws and regulations and whether it may be expected, in 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 the applicant.

3. Upon request, the Authorities will inform each other about the nature of its supervisory framework and the extent to which it will conduct supervision, including consolidated or group-wide, over the applicant.
4. Upon request, and where available, the Authorities will supply each other with information on proposed acquirers.

The above mentioned information will be given insofar as legally and practically feasible and subject to applicable laws and regulations, and in line with the principles set out in this MoC.

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. The communication of such personal data is subject to their respective laws and regulations on personal data.

Section 8

Cooperation in relation to pecuniary penalties and sanctions

1. Upon request, each Authority will endeavour to inform the other of administrative pecuniary penalties, or sanction decisions in respect of cross-border establishments or in respect of supervised entities, insofar as it relates to the operation of cross-border establishments in that jurisdiction¹⁸.
2. The above-mentioned information will be given as far as practicable and subject to applicable laws and regulations, and in line with the principles set out in this MoC.

Section 9

Cooperation in relation to on-site visits

1. Upon request, the Authorities will assist each other, as far as practicable, with the conduct of on-site visits of cross border establishments situated in the other Authority's jurisdiction.

¹⁸ 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.

Where assistance cannot be provided, the Authority requested to provide assistance will notify the other Authority with reasons as soon as deemed practical.

2. The Authorities will duly notify each other in advance of plans to visit a cross-border establishment, or to appoint a third party to conduct an on-site visit on its behalf, and will endeavour to do so at least one month in advance for non-urgent missions. This notification will detail the purposes, scope, expected starting and ending dates of the visit, the cross-border establishment to be visited, and the names of the persons leading the visit. Before conducting an on-site visit, the Authorities will communicate those plans with each other and reach a common recognition of the terms regarding the on-site visit with full respect to each other's sovereignty and laws. With mutual consent, the Authorities may accompany each other on such a visit. On conclusion of the visit of the cross-border establishment, the Authority performing the visit will inform the other Authority and share any relevant reports, or information contained therein, and discuss, as necessary, any material issues having emerged from the visit.
3. The above-mentioned information will be given insofar as possible and subject to applicable laws and regulations, and in line with the principles set out in this MoC.

Section 10

Cooperation in relation to emergency situations

1. The Authorities will inform each other immediately if they become aware of an incipient crisis such as, but not limited to, serious financial difficulties which might have an adverse impact on operations relating to any supervised entity in the respective jurisdictions of the Authorities.
2. To the extent possible, and without prejudice to their involvement in the relevant cross-border cooperation fora, 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 their respective applicable legislations.

Section 11

Status of this MoC

1. This MoC sets forth a statement of intent and does not modify or supersede any laws, regulations or requirements in force in, or applying to, the European Union or Japan. This

MoC does not create any directly or indirectly enforceable rights for the Authorities or any third party.

2. This MoC is without prejudice to other cooperation frameworks that each Authority might conclude, and can be supplemented with specific memoranda of understanding between the same Authorities 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 MoC. However, neither an Authority nor any third party can hold or be held liable regarding the performance of this MoC.
4. Any dispute arising from the interpretation or the performance of this MoC will be amicably settled by means of consultations between the Authorities.
5. Any revision to this MoC will be made in English and in writing. The FSA will be responsible for any translation into Japanese required by the national law of Japan.
6. Cooperation under this MoC will take effect once signed by both Authorities and will continue indefinitely, subject to revision with mutual consent of the Authorities or termination by either Authority with 30 days prior notice to the other Authority.
7. In the event of the termination of this MoC, the information obtained hereunder will continue to be treated in line with the confidentiality regime as stated under this MoC.

Section 12

Publication

Following prior consent of the Authorities, this MoC, excluding the contact list in the Annex, may be made publicly available in full or in part by either of the Authorities, at any time and in any manner including publication electronically on the websites of the Authorities.

For the European Central Bank

Date: 5 January 2023

[signed]

Andrea Enria

Chair of the Supervisory Board of the
ECB

Date: 5 January 2023

[signed]

Frank Elderson

Vice-Chair of the Supervisory Board of the ECB

For the Financial Services Agency of Japan

Date: 5 January 2023

[signed]

Junichi Nakajima

Commissioner
Financial Services Agency of Japan

Annex redacted