

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1267

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 17/09/2014

CASE NUMBER: 2014-0888

INSTITUTION: EUROPEAN CENTRAL BANK

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Central Bank
Kaiserstrasse 29
60311 Frankfurt am Main
Germany

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Directorate General Micro-Prudential Supervision IV (further 'DGMS IV');
Authorisation Division.

3/ NAME OF THE PROCESSING

- 3.1. Assessment of the suitability of the proposed members of the management bodies and shareholders within the **authorisation to take up the business of a credit institution (licensing procedure)**;
- 3.2. Assessment of the reputation of the proposed acquirer of a qualifying holding in a credit institution and of the suitability of any member of the management body and any member of senior management who will direct the business of the target credit institution as a result of the proposed acquisition within the **qualifying holdings procedure**;
- 3.3. Assessment of the suitability of the members of the management bodies and key function holders of existing significant supervised entities within the **fit and proper procedure**;

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

3.4. Assessment of the suitability of the persons proposed to be responsible for the management or key functions of the branch of a significant supervised entity within **the right of establishment by a significant supervised entity in the territory of another participating Member State (within the single supervisory mechanism, further ‘SSM’) or in the territory of a non-participating Member State (outgoing) procedures**;

3.5. Processing of personal data regarding members of the management body or shareholders of a credit institution within a **withdrawal of an authorisation procedure** on the basis of false statements or if the conditions for authorisation are not fulfilled any longer (managers are not suitable anymore and cannot be replaced).

This scenario constitutes only one possibility among the several grounds for withdrawal, most of which do not involve processing of personal data referred to in Article 27 of Regulation (EC) No 45/2001. The withdrawal of an authorisation shall only be considered, however, if less intrusive supervisory measures are not deemed to be sufficient to overcome the specific circumstances that may warrant the withdrawal of an authorisation, in particular the request to the credit institution to replace or dismiss the member of the management body in question.

Please note that a full list of the terms and acronyms used in this notification, including their definitions, is attached as **Appendix I**.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

4.1. **Licensing procedure** – Prudential supervisory purpose: to ensure the sound and prudent management of the entities who are to be granted the authorisation to pursue the activity of a credit institution;

4.2. **Qualifying holdings procedure** – Prudential supervisory purpose: to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, having regard to the likely influence of the proposed acquirer on that credit institution;

4.3. **Fit and proper procedure** – Prudential supervisory purpose: to ensure the sound and prudent management of the significant supervised entities;

4.4. **Right of establishment by significant supervised entities (within SSM and outgoing) procedures** – Prudential supervisory purpose: to ensure the sound and prudent management of the branches of significant supervised entities within the territory of another participating Member State (within SSM) or in a non- participating Member State (outgoing);

4.5. **Withdrawal of an authorisation procedure** – Prudential supervisory purpose: to ensure the sound and prudent management of the entities who pursue the activity of a credit institution.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

5.1. **Licensing procedure**: proposed members of the management bodies and shareholders of the entities who are to be granted the authorisation to pursue the activity of a credit institution;

5.2. **Qualifying holdings procedure**: proposed acquirer of a qualifying holding in a credit institution and proposed members of the management body and senior management who will direct

the business of the credit institution as a result of the proposed acquisition;

Members of the household and close relatives of the proposed acquirer may be referred to if there are relationships between them and any other current shareholders of the target institution, any person entitled to exercise voting rights of the target institution, any member of the board or similar body, or of the senior management of the target institution, the target financial institution itself and its group, in order to assess the degree to which the proposed acquirer is to exert influence in the target institution. The personal data of the members of the household and close relatives of the appointed member is limited to its name and relationships with the subject data and other above mentioned persons.

5.3. Fit and proper procedure: members of the management bodies and key function holders of significant supervised entities (newly appointed or appointed in renewal of terms' office and on an on-going basis);

Members of the household and close relatives of the appointed member may be referred to if there are relationships between them and the members of the management body in the same credit institution, the parent institution and subsidiaries and controlling shareholders in order to assess possible conflicts of interest that may hinder the required independence of the data subject. The personal data of the members of the household and close relatives of the appointed member is limited to its name and relationships with the subject data and other members of the management body.

5.4. Right of establishment by significant supervised entities (within SSM and outgoing) procedures: persons proposed to be responsible for the management or key functions (e.g. persons responsible for dealing with complaints in relation to the investment services and activities of the branch and/or appointed to ensure compliance with the arrangements of the branch relating to investment services and activities) of the branch of a significant supervised entity;

5.5. Withdrawal of an authorisation procedure: members of the management bodies and shareholders of the entities who were granted a licence to pursue the activity of a credit institution.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

(including, if applicable, special categories of data (Article 10) and/or origin of data)

6.1. Licensing procedure:

Personal data required under national law by national competent authorities (further 'NCAs') for the purpose of assessing the suitability of the proposed members of the management bodies and shareholders of the entities who are to be granted the authorisation to pursue the activity of a credit institution.

It includes at least the data described in **Annex I of EBA Guidelines on the assessment of the suitability of the members of the management body and key function holders of 22 November 2012** (further 'EBA/GL/2012/06³');

- 1) Curriculum vitae, including full name, place and date of birth, address, nationality, detailed description of education and professional training, professional experience;
- 2) Statement as to whether criminal proceedings are pending or the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding;
- 3) Criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director, bankruptcy,

³ Please see **Appendix II**.

insolvency and similar procedures);

4) Information on investigations, enforcement proceedings, or sanctions by a supervisory authority which the person has been the subject of; refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence; or expulsion by a regulatory or government body; dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position; whether an assessment of reputation as a person who directs the business of a credit institution has already been conducted by another competent authority (including the identity of that authority and evidence of the outcome of this assessment); whether any previous assessment by an authority from another, non-financial, sector has already been conducted (including the identity of that authority and evidence of the outcome of this assessment);

5) Description of any financial (e.g. loans, shareholdings) and non-financial interests or relationships (e.g. close relations like a spouse, registered partner, cohabitee, child, parent or other relation with whom the person shares living accommodations) of the person and his/her close relatives to members of the management body and key function holders in the same credit institution, the parent institution and subsidiaries and controlling shareholders;

6) The position for which the person is/will be appointed.

It may also include:

7) National identification document number;

8) Tax identification document number;

9) Telephone number;

10) Fax;

11) E-mail.

6.2. Qualifying holdings procedure:

Personal data required under national law by the NCAs for the purpose of assessing the reputation (which includes integrity and professional experience) of the proposed acquirer of qualifying holdings in credit institutions and the suitability of the proposed members of the management body and senior management who will direct the business of the credit institution as a result of the proposed acquisition.

It includes at least the data described in **Appendix II – Part I of the CEBS, CEIOPS and CESR’s Joint Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC of 18 December 2008** (further ‘CEBS/2008/214’):

1) Curriculum vitae, including full name, place and date of birth, address, detailed description of relevant education and training, previous professional experience, and activities or additional functions currently performed;

2) Information on any:

(a) relevant criminal records, or criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures);

(b) investigations, enforcement proceedings, or sanctions by a supervisory authority which the person has been the subject of;

(c) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence; or expulsion by a regulatory or government body

(d) dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position;

3) Information as to whether an assessment of reputation as an acquirer or as a person who directs the business of a financial institution has already been conducted by another supervisory authority (the identity of that authority and evidence of the outcome of this assessment);

4) Information as to whether a previous assessment by another authority from another, non-financial, sector has already been conducted (the identity of that authority and evidence of the outcome of this assessment);

5) Information by the acquirer regarding his financial position and strength: details concerning his sources of revenues, assets and liabilities, pledges and guarantees, etc.;

⁴ Please see **Appendix III**.

- 6) Description of the professional activities of the acquirer;
- 7) Financial information including ratings and public reports on the companies controlled or directed by the acquirer and if available, ratings and public reports on the acquirer himself;
- 8) Description of the financial (e.g. credit operations, guarantees, pledges) and non-financial (e.g. familial relationships) interests or relationships of the acquirer with: (a) any other current shareholders of the target institution;
(b) any person entitled to exercise voting rights of the target institution;
(c) any member of the board or similar body, or of the senior management of the target institution; (d) the target financial institution itself and its group;
(e) any other interests or activities of the acquirer that may be in conflict with the target financial institution and possible solutions to those conflicts of interest.

It may also include:

- 9) Nationality;
- 10) National identification document number;
- 11) Tax identification document number;
- 12) Telephone number;
- 13) Fax;
- 14) E-mail.

6.3. Fit and proper procedure: Personal data required under national law by the NCAs for the purpose of assessing the suitability of the members of the management bodies and key function holders of significant supervised entities.

It includes at least the data described in **Annex I of EBA/GL/2012/06**⁵. It may also include:

- 1) National identification document number;
- 2) Tax identification document number;
- 3) Telephone number;
- 4) Fax;
- 5) E-mail.

6.4. Right of establishment by significant supervised entities (within SSM and outgoing) procedures: Personal data required under national law by the NCAs for the purpose of assessing the suitability of the persons proposed to be responsible for the management or key functions (e.g. persons responsible for dealing with complaints in relation to the investment services and activities of the branch and/or appointed to ensure compliance with the arrangements of the branch relating to investment services and activities) of the branch of a significant supervised entity.

It includes at least the full name and details on the professional experience of the data subject as described in points 2.2.3.4, 2.2.3.5 and 2.2.4 of **Annex I of Commission Implementing Regulation (EU) No 926/2014 of 27 August 2014 laying down implementing technical standards with regard to forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services according to Directive 2013/36/EU of the European Parliament and of the Council**.⁶

It may also include contact details, date and place of birth, nature of the functions performed, details of the responsibilities held in the last 10 years, language level, a “certificate of good repute” of the person who will be responsible for the management of the branch signed by one of the senior manager of the credit institution and details on professional, administrative or judicial penalties.

6.5. Withdrawal of an authorisation procedure:

Any personal data on members of the management bodies and shareholders of the entities who were granted a licence to pursue the activity of a credit institution (e.g. criminal offences, education or professional skills) that was falsely conveyed or omitted during the **licensing procedure** or personal data (as considered within the **fit and proper procedure**) that render the managers not to be suitable anymore and their dismissal or

⁵ Please see **Appendix II**.

⁶ OJ L 254, 28.8.2014. Please see **Appendix IV**.

replacement is not possible.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

In most of the mentioned procedures the personal data is submitted by the applicant (**licensing procedure**), proposed acquirer (**qualifying holdings procedure**) or significant supervised entity (**fit and proper and right of establishment by significant supervised entities (within SSM and outgoing) procedures**) directly to the NCA, according to the requirements set under national law. The personal data contained in those applications/notifications is notified by the NCAs to the ECB for the purpose of carrying out the suitability/reputation assessments.

The **fit and proper procedure** may also start on ECB's initiative (Joint Supervisory Teams, further 'JSTs') whenever it is aware of new facts that may affect an initial assessment of suitability or any other issue which could have impact on the suitability of a manager or key function holder. In this case the personal data is not provided by the significant supervised entity.

For the purpose of submitting **qualifying holdings, fit and proper and right of establishment by significant supervised entities (within SSM and outgoing)** applications/notifications, the NCAs usually use their own forms for data subjects to provide personal data ("questionnaires"), accessible in their websites. In order to comply with Article 11 of Regulation (EC) No 45/2001, the NCAs shall provide privacy statements⁷ linked to the relevant forms, translated into each national language.

The NCAs shall also provide the **licensing** applicants with a privacy statement,⁸ translated into each national language. The privacy statement shall be provided prior to the submission of the application. The acknowledgement of having read the privacy statement by the applicant shall be incorporated as a mandatory step of the submission of the licensing application itself (e.g. the applicant shall not be allowed to submit the application online without indicating that the privacy statement is read or the applicant shall provide, when submitting a hard copy application, a signed acknowledgement document of the privacy statement).

In order to comply with Article 12 of Regulation (EC) No 45/2001 the aforementioned privacy statements shall be made available by the NCAs on their websites.

The personal data that may constitute grounds for **withdrawal of an authorisation** is either part of the draft withdrawal decision to be submitted by the NCA to the ECB or part of the circumstances the ECB (JSTs or Directorate General Micro-Prudential Supervision III (further 'DGMS III'), as applicable) becomes aware of, while carrying out its supervisory tasks. In neither of these cases the personal data is provided by the supervised entity.

In the cases where personal data may constitute grounds for **withdrawal of an authorisation** (e.g. the licence was granted on the basis of false information regarding personal data on members of the management body or shareholders of a credit institution), the ECB will temporarily defer the provision of information to the data subject concerned in accordance with **Article 20 of Regulation (EC) No 45/2001**. Such deferral is necessary to ensure that the ECB carries on the assessment, which involves the processing of personal data, without compromising the findings. Those findings

⁷ Please see **Appendix V** - Qualifying holdings privacy statement, **Appendix VI** - Fit and proper privacy statement, **Appendix VII** - The right of establishment by significant supervised entities (within SSM) privacy statement and **Appendix VIII** - The right of establishment by significant supervised entities (outgoing) privacy statement.

⁸ Please see **Appendix IX** - Licensing privacy statement.

may constitute a criminal offence and, therefore, have to be reported to the competent authorities for investigation and prosecution. Moreover, the withdrawal of an authorisation procedure may have an important impact on the financial system and information on the processing of personal data at an early stage could compromise the stability of the financial system of the Union as well as of individual participating Member States, which the ECB is due to preserve.

Notwithstanding, the data subjects shall be informed of the processing of their personal data, as soon as it is deemed that there is no further risk jeopardising the relevant assessment⁹.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS (Rights of access, to rectify, to block, to erase, to object)

Article 9 of the ECB Decision of 17 April 2007¹⁰ adopting implementing rules concerning data protection at the ECB (ECB/2007/1) applies:

“1. Further to their right to be appropriately informed about any processing of their personal data, data subjects may approach the relevant controller to exercise their rights pursuant to Articles 13 to 19 of Regulation (EC) No 45/2001, as specified below.

(a) These rights may only be exercised by the data subject or their duly authorised representative. Such persons may exercise any of these rights free of charge.

(b) Requests to exercise these rights shall be addressed in writing to the relevant controller. The controller shall only grant the request if the requester’s identity and, if relevant, their entitlement to represent the data subject have been appropriately verified. The controller shall without delay inform the data subject in writing of whether or not the request has been accepted. If the request has been rejected, the controller shall include the grounds for the rejection.

(c) The controller shall, at any time within three calendar months of receipt of the request, grant access pursuant to Article 13 of Regulation (EC) No 45/2001 by enabling the data subject to consult these data on-site or to receive a copy thereof, according to the applicant’s preference.

(d) Data subjects may contact the DPO in the event that the controller does not respect either of the time limits in paragraphs (b) or (c). In the event of obvious abuse by a data subject in exercising their rights, the controller may refer the data subject to the DPO. If the case is referred to the DPO, the DPO will decide on the merits of the request and the appropriate follow-up. In the event of disagreement between the data subject and the controller, both parties shall have the right to consult the DPO”.

The data subjects may also exercise their rights to rectify, block or object to personal data concerning them whenever they are granted the **right to be heard** in the mentioned supervisory procedures pursuant to Article 22(1) of the 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 (further ‘**SSM Regulation**’¹¹) and Articles 31, 77, 82(3) and 87 of the 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 (further ‘**SSM Framework Regulation**’¹²), as applicable.

The members of the management bodies and key function holders of significant supervised entities

⁹ Please see **Appendix X** – Withdrawal of an authorisation privacy statement.

¹⁰ Please see **Appendix XI**.

¹¹ Please see **Appendix XII**.

¹² OJ L 141, 14.5.2014. Please see **Appendix XIII**.

who are to be interviewed in the **fit and proper procedure**, in accordance with national law (cf. 11.3. of **EBA/GL/2012/06**¹³), may at that time also exercise their right to rectify, block or object to personal data concerning them.

According to the Decision of the European Central Bank of 14 April 2014 concerning the establishment of an Administrative Board of Review and its operating rules (further '**Decision ECB/2014/16**'¹⁴) any natural person to whom a decision of the ECB under the SSM Regulation is addressed, or to whom such decision is of direct and individual concern, may request an **internal administrative review to the Administrative Board of Review**. The Administrative Board of Review may call for an oral hearing if it considers it necessary for the fair evaluation of the review (Article 14, Decision ECB/2014/16). The ECB is to attend the hearing and the data subjects may at that stage also exercise their right to rectify, block or object to personal data concerning them.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The personal data is entered manually by the NCAs into the relevant template which is then stored in the ECB's electronic documents and records management system (further '**DARWIN**'). The NCAs also upload to the template, as an attachment, the whole application/notification as received from the applicant (**licensing procedure**), proposed acquirer (**qualifying holdings procedure**) or significant supervised entity (**fit and proper and right of establishment by significant supervised entities (within SSM and outgoing) procedures**). If the **fit and proper procedure** starts on the ECB's initiative the personal data is entered manually by the JSTs (Directorate General Micro-Prudential Supervision I or II, further '**DGMS I or II**', as applicable) into DARWIN. The personal data is used by the ECB to carry out the suitability/reputation assessments required by the mentioned procedures.

The personal data used by the ECB as grounds for the **withdrawal of an authorisation** is entered manually either by the JSTs (DGMS I or II) or DGMS III, as applicable, or by the NCAs into the relevant template which is also stored in DARWIN.

In summary, the above referred processing operations are characterised by both automated and manual means of processing.

10/ STORAGE MEDIA OF DATA

The documents containing personal data to be processed within all the mentioned supervisory procedures (**licensing, qualifying holdings, fit and proper, right of establishment by significant supervised entities (within SSM and outgoing) and withdrawal of an authorisation**) will be stored in DARWIN.

For the future the use of a specific IT tool (IMAS) for the storage of personal data concerning the aforementioned supervisory procedures is envisaged.

The Authorisation Division is to hold a database, for its internal use only, on all the pending and carried out supervisory procedures. This tool is currently under development and should be operational by 4 November 2014.

¹³ Please see **Appendix II**.

¹⁴ OJ L 175, 14.6.2014. Please see **Appendix XIV**.

That database, to be called “Register”, is intended for the purpose of monitoring and keeping record of all supervisory procedures carried out by the Authorisation Division and contains information on the following fields: type of procedure (e.g. licensing, qualifying holdings, fit and proper), **DARWIN reference file, DARWIN link, supervised entity and its institutional details** (e.g. registered and trade name, address, share capital, status (active/inactive), licensing date, date of beginning of activity, lapsing or withdrawal date, SSM significance classification, regulators, activities pursued, territories where services are provided or have established branches, management bodies, including its members, and qualifying shareholders) and **status** (pending, completed).

The “Register” shall be fed manually with the relevant data from the supervisory procedures and shall be kept up to date by the Authorisation Division. Changes are to be made whenever a supervisory procedure begins and comes to an end (e.g. new member of management body, new qualifying holder, new licensed institution).

That database shall only contain the following personal data, as institutional facts on the supervised entity:

- i) on **members of management bodies and key function holders** (including managers of branches): name, position, effective from/to, status (active/inactive), DARWIN reference file;
- ii) on **qualifying shareholders**: name, percentage, effective from/to, status (active/inactive), DARWIN reference file.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

11.1. Licensing procedure: Articles 127(6) TFEU¹⁵, 4(1)(a), 14 SSM Regulation, 73 ss. SSM Framework Regulation and 13(1), 14(2), 16(3), 91 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC¹⁶ (further ‘**CRD IV**’);

11.2. Qualifying holdings procedure: Articles 127(6) TFEU, 4(1)(c), 15 SSM Regulation, 85 ss. SSM Framework Regulation and 23(1) CRD IV;

11.3. Fit and proper procedure: Articles 127(6) TFEU, 4(1)(e)(3), 16(2)(m) SSM Regulation, 93 and 94 SSM Framework Regulation and 91 CRD IV;

11.4. Right of establishment by significant supervised entities (within SSM and outgoing) procedures: Articles 127(6) TFEU, 4(1)(b), 17(1) SSM Regulation, 11(1)(3) and 17(1) SSM Framework Regulation and 35 CRD IV;

11.5. Withdrawal of an authorisation procedure: Articles 127(6) TFEU, 4(1)(a) and 14(5) SSM Regulation, 80 ss. SSM Framework Regulation, 18 and 20 CRD IV.

¹⁵ Please see **Appendix XV**.

¹⁶ OJ L 176, 27.06.2013. Please see **Appendix XVI**.

Lawfulness:

Article 5(a) of Regulation (EC) No 45/2001: the processing of personal data in every of the supervisory procedures above mentioned is necessary for the performance of the tasks carried out in the public interest on the basis of the Treaties establishing the European Communities (Articles 127(6) TFEU) and of other legal instruments adopted on the basis thereof (Article 4 SSM Regulation).

Please note that the aforementioned legislation is attached as **Appendixes XII** (SSM Regulation), **XIII** (SSM Framework Regulation), **XV** (Article 127 TFEU), and **XVI** (CRD IV).

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

In all the mentioned procedures the personal data may be disclosed, on a need-to-know basis, to the NCAs' staff, the JSTs' staff (DGMS I or II), DGMS III staff, DGMS IV staff (Authorisation Division), the Secretariat of the Supervisory Board and the members of the Supervisory Board and of the Governing Council of the ECB. In the case of a withdrawal of an authorisation procedure relevant personal data may also be disclosed to the staff members of the national resolution authorities (further 'NRAs'), the European Banking Authority (further 'EBA') in accordance with Article 88(5) of the SSM Framework Regulation¹⁷ and to other horizontal functions at DGMS IV (e.g. Crisis Management Division). Personal data may be also disclosed to the EBA in the context of the licensing procedure (in accordance with Article 88(5) of the SSM Framework Regulation¹⁸).

For a detailed description regarding who can access the personal data and at what stage of the respective procedure, please see **Appendix XVII**.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The purpose of the processing of personal data in the herein mentioned procedures is to **ensure the sound and prudent management of the supervised entities** (prudential supervisory purposes). The ECB is to assess the suitability of the members of management bodies and key function holders of significant supervised entities not only upon initial appointment or renewal of term of office but also on an on-going basis. In the latter case, the ECB is to initiate an assessment based on new facts that may affect the initial assessment carried out.

The ECB considers storing the personal data in question for **15 years following the date the data subjects cease to be the founding shareholders, qualifying shareholders and members of the management bodies or key function holders of the supervised entities**. In case of a negative outcome of such procedure, the same 15 years would apply **following such ECB decision**. The same retention period is applicable in case a credit institution **withdraws applications/notifications** in the context of the above- referred procedures. In case of initiated administrative or judicial proceedings, the retention period shall be **extended** and end **1 year** after these proceedings are sanctioned by a decision having acquired the authority of a final decision.

This initial retention policy is subject to review within the next five years in accordance with the experience made.

¹⁷ Please see **Appendix XIII**.

¹⁸ Please see **Appendix XIII**.

As an exception to the retention policy the **institutional facts of the supervised entities** are to be kept in the “Register” beyond the expiry of the 15 years’ retention period (See Field 14).

For a detailed description regarding the applicable retention policy, please see **Appendix XVIII**.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS
(Please, specify the time limits for every category, if applicable)

N/A

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

(If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification)

In order to monitor and keep track of the supervisory tasks carried out by the Authorisation Division, the name, position and term of office of members of the management bodies and key function holders and the name of the qualifying shareholders, percentage and period of the qualifying holdings are to be kept in the “Register” as **institutional facts of the supervised entities** concerned. Those are the sole personal data to be kept beyond the expiry of retention policy period.

Such information on the members of management bodies of credit institutions is also stored in national business registers and it is publicly accessible. Moreover, if the data subjects figure in the “Register” as having been members of management bodies or qualifying shareholders, it means they have been previously deemed to be suitable/of good repute, which represents no detriment to the data subjects.

All other personal data are kept in DARWIN, anonymised.

Further processing for historical, statistical or scientific purposes is not envisaged at this stage. Should the retention of data be decided at a later stage in order to gain statistical figures on the referred procedures, the data will be anonymised.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Pursuant to Article 8 of the SSM Regulation¹⁹ in relation to tasks conferred by it, the ECB may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, subject to appropriate coordination with the EBA. The EDPS shall be informed on those administrative arrangements before adoption, in accordance with Article 28(1) of Regulation (EC) No 45/2001.

Moreover, Article 152 of the SSM Framework Regulation provides for the continuity of existing cooperation arrangements with other authorities entered into by an NCA prior to 4 November 2014 that cover at least in part the tasks conferred to the ECB by the SSM Regulation.

Article 55 of CRD IV²⁰ regarding “cooperation agreements” provides that “*Member States and EBA, in accordance with Article 33 of Regulation (EU) No 1093/2010, may conclude cooperation*

¹⁹ Please see **Appendix XII**.

²⁰ Please see **Appendix XVI**.

agreements, providing exchange of information, with the supervisory authorities of third countries or with authorities or bodies of third countries in accordance with Article 56 and 57(1) of this Directive only if the information disclosed is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive are complied with. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.”

Please note that Article 55 of CRD IV corresponds to the repealed Article 46 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions,²¹ while the professional secrecy and rules on the use of confidential information provisions set in Articles 53 and 54 of CRD IV correspond to the repealed Articles 44 and 45 of Directive 2006/48/EC. Hence, although CRD IV is yet to be transposed, the aforementioned rules are already transposed into the relevant national legislations.

Therefore, any transfer of personal data by ECB to third countries shall only take place provided that (1) there are cooperation arrangements set with those countries, (2) the data disclosed is subject to a guarantee of applicable professional secrecy requirements at least equivalent to EU level and (3) shall be used solely for the purpose of performing the supervisory tasks by the recipient.

The ECB will ensure compliance with the provisions of Article 9 of the Regulation 45/2001, and will not transfer personal data to third countries or international organisations not subject to Directive 95/46/EC if an adequate level of protection of **personal data** is not ensured in the country of the recipient or within the recipient international organisation, without prejudice to the derogations as provided for in Article 9(6). Where required, a consultation or prior check with the EDPS will be launched as referred to in the EDPS position paper on the transfer of personal data to third countries and international organisations by EU institutions and bodies of 14 July 2014.

Please note that the aforementioned legislation is attached as **Appendixes XII** (SSM Regulation), **XIII** (SSM Framework Regulation), **XVI** (CRD IV), **XX** (Regulation (EU) No 1093/2010) and **XXI** (Directive 2006/48/EC).

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING (*Please describe*)

AS FORESEEN IN:

Article 27.2.(a)
(*Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,*)

The processing of data relating to suspected offences, offences, criminal convictions or security measures occurs within all the mentioned supervisory procedures:

16.1.A. **Licensing procedure:** regarding the proposed members of the management bodies and shareholders of the entity who applied for an authorisation to take up the business of a credit institution;

16.2.A. **Qualifying holdings procedure:** regarding the proposed acquirer and the proposed members of the management body and senior management who will direct the business of the credit institution as a result of the proposed acquisition;

²¹ OJ L 177, 30.06.2006. Please see **Appendix XXI**.

16.3.A. **Fit and proper procedure:** regarding the members of the management bodies and key function holders of a significant supervised entity;

16.4.A. **Right of establishment by significant supervised entities (within SSM and outgoing) procedures:** regarding the persons proposed to be responsible for the management or key function holders of the branch of a significant supervised entity;

16.5.A. **Withdrawal of an authorisation procedure:** regarding the members of the management bodies and shareholders of the entity who was granted the authorisation to pursue the activity of a credit institution.

Article 27.2.(b)

(Processing operations intended to evaluate personal aspects relating to the data subject,)

The below mentioned supervisory procedures intend to evaluate personal aspects relating to the data subject – either its suitability (includes reputation, sufficient knowledge, skills and experience to perform its duties and ability to act with honesty, integrity and independence of mind) or reputation:

16.1.B. **Licensing procedure:** intends to evaluate the suitability of the proposed members of the management bodies and shareholders of the entity who applied for an authorisation to take up the business of a credit institution;

16.2.B. **Qualifying holdings procedure:** intends to evaluate the reputation of the proposed acquirer and the suitability of the proposed members of the management body and senior management who will direct the business of the credit institution as a result of the proposed acquisition;

16.3.B. **Fit and proper procedure:** intends to evaluate the suitability of the members of the management bodies and key function holders of a significant supervised entity;

16.4.B. **Right of establishment by significant supervised entities (within SSM and outgoing) procedures:** intends to evaluate the suitability of the persons proposed to be responsible for the management or key function holders of the branch of a significant supervised entity;

Article 27.2.(c)

(Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,)

Article 27.2.(d)

(Processing operations for the purpose of excluding individuals from a right, benefit or contract)

The suitability or reputation of the data subject is assessed in the below mentioned supervisory procedures for the purpose of excluding the data subject from a right, benefit or contract:

16.1.D. **Licensing procedure:** if the proposed members of the management bodies and shareholders are not deemed to be suitable, the ECB is to reject or approve with restrictions or conditions the application to take up the business of a credit institution;

16.2.D. **Qualifying holdings procedure:** if the proposed acquirer and/or the proposed members of the management body and senior management, who will direct the business of the credit institution, as a result of the proposed acquisition are not deemed to be suitable and of sufficient good repute, respectively, the ECB is to oppose to the proposed acquisition;

16.3.D. **Fit and proper procedure:** if the members of the management bodies and key function holders of a significant supervised entity are not deemed to be suitable, the ECB is to reject the appointed member or request its dismissal from the management body/key function;

16.4.D. Right of establishment by significant supervised entities (within SSM and outgoing)

procedures: if the persons proposed to be responsible for the management or key function holders of the branch of a significant supervised entity are not deemed to be suitable the ECB may reject the appointed member and, if the applicant fails to appoint another (suitable) person it may ultimately oppose to the establishment of the branch.

Other (general concept in Article 27.1)

17/ COMMENTS

We herein attach the following documents:

Appendix I: List of definitions of terms and acronyms;

Appendix II: EBA-GL-2012-06;

Appendix III: CEBS-2008-214;

Appendix IV: Commission Implementing Regulation (EU) No 926/2014;

Appendix V: Qualifying holdings Privacy Statement;

Appendix VI: Fit and proper Privacy Statement;

Appendix VII: Right of establishment by significant supervised entities (within ssm) Privacy Statement;

Appendix VIII: Right of establishment by significant supervised entities (outgoing) Privacy Statement;

Appendix IX: Licensing Privacy Statement;

Appendix X: Withdrawal of an authorisation privacy statement;

Appendix XI: ECB Decision of 17 April 2007 adopting implementing rules concerning data protection at the ECB (ECB/2007/1);

Appendix XII: SSM Regulation;

Appendix XIII: SSM Framework Regulation;

Appendix XIV: ECB Decision on the Administrative Board of Review (ECB/2014/16);

Appendix XV: Article 127 of the TFEU;

Appendix XVI: CRD IV;

Appendix XVII: Recipients or categories of recipients of data;

Appendix XVIII: Applicable Retention Policy;

Appendix XIX: Council Regulation (EC) No 2532/98;

Appendix XX: Regulation (EC) No 1093/2010;

Appendix XXI: Directive 2006/48/EC;

Appendix XXII: Protocol No 4 of the TFEU;

Appendix XXIII: CRR.

PLACE AND DATE: FRANKFURT, 16 SEPTEMBER 2014

DATA PROTECTION OFFICER: FREDERIK MALFRÈRE

INSTITUTION OR BODY: EUROPEAN CENTRAL BANK (ECB)