

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN FINANSINSPEKTIONEN (SWEDEN), FINANSTILSYNET  
(NORWAY), FINANSTILSYNET (DENMARK), FINANSSIVALVONTA  
(FINLAND) and the EUROPEAN CENTRAL BANK**

**on prudential supervision of significant branches in Sweden, Norway,  
Denmark and Finland**

**2 December 2016**

## I. OBJECTIVE AND SCOPE

1. Article 49(1) of Directive 2013/36/EU of the European Parliament and of the Council<sup>1</sup> recognises that the prudential supervision of a credit institution is the responsibility of the competent authority of the home Member State, without prejudice to those provisions of Directive 2013/36/EU that give responsibility to the competent authority of the host Member State.

2. Article 6(4) of Council Regulation EU No 1024/2013<sup>2</sup> recognises that, in accordance with Article 4(2) of that Regulation, the European Central Bank (ECB) exercises the powers of the competent authority of the host Member State where a branch of a credit institution is significant within the meaning of Article 6(4) of Regulation (EU) No 1024/2013.

3. In accordance with Article 51 of Directive 2013/36/EU, the competent authority of a host Member State where a branch of a credit institution is located may make a request to the consolidated supervisor for that branch to be considered as significant. The competent authorities of the home and host Member States should strive to reach a joint decision on whether the branch is significant, and seek to avoid the need for the competent authority of the host Member State to make a unilateral decision on this issue.

3a. Several large Nordic banking groups have branches in Denmark, Finland, Norway and Sweden, some of which fulfil the criteria set out in the second paragraph of Article 51(1) of Directive 2013/36/EU , and are designated as significant branches under Article 51.

3b. Significant branches vary in size and importance. For large branches considered as systemically important in the country in which they operate, there is a need to intensify the collaboration between the supervisors of the host and home Member States and establish mutual understanding on reciprocity in order to mitigate systemic risk and regulatory arbitrage. This Memorandum of Understanding applies in full to large branches which, if they were subsidiaries, would be considered by the competent authority of the host Member State as systemically important credit institutions. Provisions that apply to 'large branches' do not apply to all significant branches.

4. This Memorandum of Understanding is intended to facilitate cooperation between Participants in (a) the supervision of significant branches within the meaning of Article 51 of Directive 2013/36/EU and (b) crisis management in respect of cross-border groups containing one or more such significant branches in line with Directive 2013/36/EU and Directive 2014/59/EU of the European Parliament and of the

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1 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/EC (OJ L 176, 27.6.2013, p. 338).

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

Council<sup>3</sup> and based on the following guiding principles: (i) the Participants take a reciprocal approach; (ii) the Participants take decisions jointly when applying the criteria laid down in Article 51 of Directive 2013/36/EU for the designation of branches as significant; and (iii) the Participants take a risk-based approach to the ongoing supervision of branches in each jurisdiction, which leads to a level of engagement that increases with the importance of the significant branches in that jurisdiction. The level of engagement will be further specified in the credit institution-specific written cooperation and coordination arrangements.

4a. The Participants acknowledge that the degree of cooperation among them is subject to Union law and has been devised taking into account the current level of cooperation among competent authorities of the Nordic countries.

5. The enhanced cooperation provided for in this Memorandum of Understanding only applies to each Participant insofar as it concerns a matter for which that Participant is competent under Union law. The competences of the ECB that are relevant for this Memorandum of Understanding are those in Regulation (EU) No 1024/2013. Therefore, the provisions of this Memorandum of Understanding concerning information and communications technology (ICT), payment systems and payment services, anti-money laundering and terrorism financing, and consumer protection do not apply to the ECB.

6. In the light of the possible impact that significant branches may have on the financial system of a host Member State, including through the channel of payment systems and payment services, the Participants recognise the need for effective and efficient cooperation in respect of the supervision of significant branches located within the Nordic region, in line with Directive 2007/64/EU of the European Parliament and of the Council<sup>4</sup>, Directive 2013/36/EU and Directive 2014/59/EU. Furthermore, the Participants recognise the importance of close cooperation on supervisory activities and also the importance of striving for a high level of transparency and information-sharing in order to ensure sound cross-border supervision.

7. While recognising that the main responsibility for the supervision of significant branches remains with the competent authority of the home Member State, the Participants acknowledge the need for that competent authority to carefully consider supervisory and local market concerns regarding significant branches raised by the competent authorities of the host Member State pursuant to Article

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<sup>3</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

<sup>4</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

7 of Directive 2013/36/EU.

## II. DEFINITIONS

8. For the purposes of this Memorandum of Understanding the terms and expressions have the same meaning as in Directives 2013/36/EU and 2014/59/EU, unless stated otherwise.

9. The following definitions apply:

- a. 'competent authority of the home Member State' means a Participant that has granted authorisation to a credit institution that has a significant branch in another signatory country, including the ECB with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013;
- b. 'competent authority of the host Member State' means the Participant within whose territory a significant branch is located, including the ECB with regard to specific tasks conferred on it by Article 4(2) of Regulation (EU) No 1024/2013;
- c. 'significant branch' means a branch that is designated as significant under Article 51(1) of Directive 2013/36/EU;
- d. 'large branch' means a significant branch considered by the competent authority of the host Member State as systemically important in the country it operates, i.e. it would have been designated as a significant credit institution (O-SII) if it was a subsidiary instead of a branch;
- e. 'inspection' means any on-site inspection or on-the-spot check conducted by the competent authority of the home Member State or the competent authority of the host Member State in accordance with the applicable laws in their respective jurisdictions;
- f. 'outsourcing' means a contractual agreement with another legal entity regarding the performance of certain services, such as information technology (IT), data storage, or a control and compliance function;
- g. 'internal outsourcing' means the entrustment of tasks within the same legal entity, such as internal service level agreements.
- h. 'critical functions' has the same meaning as defined in Article 2(35) of Directive 2014/59/EU, also including critical functions in the host Member State.

10. Finanstilsynet (Denmark), Finanssivalvonta (Finland), the European Central Bank, Finanstilsynet, (Norway) and Finansinspektionen (Sweden) are hereafter separately and jointly referred to as the ("Participant or Participants").

## III. GENERAL PROVISIONS

11. Enhanced cooperation among the Participants will take place in accordance with, and without prejudice to, their responsibilities under national and Union law. This Memorandum of Understanding is without prejudice to the Participants' respective institutional responsibilities and does not restrict their capacity for independent and timely decision-making in their respective fields of competence, notably with regard to the conduct of day-to-day supervisory tasks.

12. For the purposes of this Memorandum of Understanding the principle of proportionality is applied where appropriate. The intensity of supervision will be determined by the competent authorities of the home and host Member States on a case-by-case basis using a risk-based analysis, taking into account the systemic impact of the branch in the country in which it operates and/or in the euro area or European Economic Area, as appropriate, as a whole. The Participants agree that the highest level of cooperation applies to the large branches.

13. This Memorandum of Understanding represents the shared understanding of the Participants. As the provisions of this Memorandum are not legally binding on the Participants, they may not give rise to any legal claim on behalf of any Participant or third parties in the course of their practical implementation.

14. This Memorandum of Understanding does not affect any provisions under other multilateral or bilateral agreements in force and applicable to the Participants. Its purpose is to complement existing agreements and applicable Union law.

15. This Memorandum of Understanding is without prejudice to other arrangements on cooperation between the Participants.

#### **IV. EXCHANGE OF INFORMATION**

16. The Participants acknowledge that the exchange of information under this Memorandum of Understanding is to be carried out in accordance with Articles 50, 51 and, if applicable, 116 of Directive 2013/36/EU, and Article 415(5) of Regulation (EU) No 575/2013/EU of the European Parliament and of the Council<sup>5</sup>. The exchange of information shall contribute to the effective and efficient supervision of significant branches, in order to protect depositors, investors and consumers, ensure the secure and reliable operation of payment services and systems and the sound operation of ICT systems and information security, and contribute to financial stability within the Nordic region and the euro area. In

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<sup>5</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

accordance with the principle of proportionality, the scope of the information exchanged may differ from case to case.

17. Information should be exchanged in accordance with Directive 2013/36/EU and the relevant Commission delegated regulations specifying the information that competent authorities of home and host Member States supply to one another and Commission Implementing Regulation (EU) No 620/2014<sup>6</sup> laying down implementing technical standards with regard to information exchange between competent authorities of home and host Member States.

18. The Participants acknowledge that all information regarding large branches relevant for the appropriate performance of the supervision of such branches should be available to the competent authority of the host Member State.

In view of the current level of cooperation among the Nordic supervisory authorities and the history of extensive information-sharing among these authorities, the Participants acknowledge the importance of continued extensive information-sharing so that information regarding the group should be available to the competent authority of the host Member State. The Participants take into account Article 50 of Directive 2013/36/EU, which requires the Participants to supply one another with all information to facilitate the monitoring of credit institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, other factors that may influence the systemic risk posed by the credit institution, administrative and accounting procedures and internal control mechanisms. The Participants will apply the principle of proportionality when assessing the relevance of information relating to the group.

Taking into account both the principle of proportionality and recognising the current level of cooperation among the Nordic countries, depending upon the relevance of the significant branch - to be further specified in the written cooperation and coordination arrangements, the information to be exchanged, may include, but is not limited to, the following:

- o Liquidity reports from the group in accordance with Article 415 of Regulation (EU) No 575/2013/EU. The reports should be provided to the competent authority of the host Member State when they are received and no later than at the time when they are provided to the European Banking Authority as required under Article 415(5) of the Regulation.
- o Internal ratings-based data as reported in the Common European Reporting standard (COREP) on a quarterly basis.

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<sup>6</sup> Commission Implementing Regulation (EU) No 620/2014 of 4 June 2014 laying down implementing technical standards with regard to information exchange between competent authorities of home and host Member States, according to Directive 2013/36/EU of the European Parliament and of the Council (OJ L 172, 12.6.2014, p. 1).

- o Documentation in relation to applications for the permissions and notifications of changes referred to in Article 143, Article 151(4) and (9), and Articles 283, 312 and 363 of Regulation (EU) No 575/2013/EU.
- o Information regarding operational risk incidents and operational risk losses including any substantial faults or disruptions in services provided to customers or in payment services or IT systems, including those caused by cyber-attacks or information security incidents and threats, as well as disruptions or faults that damage or jeopardise the capacity of the branch and/or group to continue its business activities or fulfil its obligations as a payment system and payment service provider.
- o Management information insofar as it is relevant to that branch, including but not limited to regular reports from the branch's management (e.g. risk reports, reports on breach of limits, reports on IT, internal audit reports, country-level risk appetite reports, internal risk classification of the credit portfolio, and operational and compliance risk reports), any offering of significant new products or services not covered by Article 39 of Directive 2013/36/EU, any upcoming major changes in IT systems, and business continuity and contingency arrangements.
- o Significant supervisory risk metrics used by the competent authority of the host Member State.
- o Recovery plans.
- o Reports from internal auditors focusing, inter alia, on the branch's position within the group.
- o The external auditor's findings if relevant in order to understand the group's overall risk profile or the risk profile of the branch specifically, and reports submitted to the group and the branch pursuant to inspections, and any other supervisory remarks, as well as communication between the group and the competent authority relevant in order to obtain an understanding or knowledge of the group's overall risk profile or for the branch specifically.
- o Data reported to the competent authority of a host Member State if relevant for the competent authority of the home Member State for the coordination of the supervision of the group.

Other information the supervisory college may find relevant to exchange among the Participants are, for example additional risk and audit reports, in accordance with the special nature of the Nordic supervisory cooperation. Such information will be further specified in credit institution-specific decisions on information exchange taken by the supervisory colleges. Detailed lists specifying the information to be shared will be agreed in the supervisory colleges as soon as this Memorandum of Understanding is signed.

19. In stress situations, the competent authorities of the home Member State should, in accordance with

Article 17 of Commission Delegated Regulation (EU) No 524/2014<sup>7</sup>, immediately notify the relevant competent authorities of the host Member State and provide information on, inter alia, the following: (i) the expected impact of the stress on the liquidity of the group as well as on the liquidity position of the branches in the host Member States; (ii) the measures that have been taken or are planned in order to mitigate the liquidity stress; and (iii) the latest available quantitative information regarding liquidity specified in points (c) to (h) of Article 4(1) of the Delegated Regulation.

20. If a request for information is denied or the information requested is not available, the Participant to which the request was addressed will endeavour to provide reasons for not sharing the information.

21. Both the request for information and the delivery of the information (as applicable), should be made in writing, regardless of the format (paper, electronic communication or other). Both the request for information and the communication of the requested information will be addressed by the Participants primarily through the designated contact persons. In urgent circumstances, requests may be made by telephone, provided that they are subsequently confirmed in writing within five working days. Information will not be shared until the written request is received, except in urgent circumstances.

22. The Participants undertake to exchange information actively, both at their own initiative and/or when requested, and in a timely manner, and to make reasonable efforts to ensure that the information exchanged meets the need of the Participants involved, particularly the need of the competent authority of the host Member State(s) as regards information on branch activities and branch risk profiles.

23. The Participants will endeavour to provide adequate and accurate information, thereby facilitating the efficient, effective and full performance of supervisory tasks.

## **V. PRINCIPLES OF PRUDENTIAL SUPERVISION**

24. The Participants agree that in order to facilitate their enhanced cooperation the competent authorities of the relevant home and host Member States should establish a college of supervisors, which should be chaired by the competent authority of the home Member State. The establishment and functioning of the college should be based on written coordination and cooperation arrangements to be determined, after consulting the competent authorities concerned, by the competent authority of the home Member State in accordance with Article 51 of Directive 2013/36/EU.

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<sup>7</sup> Commission Delegated Regulation (EU) No 524/2014 of 12 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information that competent authorities of home and host Member States supply to one another (OJ L 148, 20.5.2014, p. 6).

25. The relevant competent authority of the home Member State and the competent authorities of the host Member States should collaborate closely in order to supervise the activities of significant branches operating in host Member States, in accordance with Article 51 of Directive 2013/36/EU.

26. If the supervisory college is organised in such a way that there is a core college sub-structure, the competent authority of the home Member State should consider inviting the competent authority of the relevant host Member State in which a significant branch is located, to participate in the core college. Where the branch is considered as a large branch, the competent authority of the home Member State should invite the competent authority/authorities of the relevant host Member State(s) to participate in the core college.

27. The Participants recognise that the functioning of the supervisory colleges will be governed by Commission Delegated Regulation (EU) 2016/98<sup>8</sup> and Commission Implementing Regulation (EU) 2016/99<sup>9</sup> as well as by college-specific written coordination and cooperation arrangements to be entered into by the competent authorities. The written coordination and cooperation arrangements should be comprehensive and coherent and provide an adequate basis for the Participants to discharge their relevant supervisory functions in coordination with the supervisory college.

28. The Participants should, in order to avoid duplicating tasks (including duplicating information requests addressed to the supervised entities of a group), on a regular basis consider entrustment of tasks when developing the college's supervisory examination programme. Entrustment of tasks does not alter the overall responsibility of the competent authority of the home Member State for the prudential supervision of the credit institution.

29. The competent authority of the home Member State should involve the competent authority/authorities of the relevant host Member State(s) in the supervisory review and evaluation process provided for in Article 97 of Directive 2013/36/EU, the extent of such involvement to be specified in the supervisory examination programme.

30. The competent authority of the home Member State should involve the competent authority/authorities of the relevant host Member States(s) in producing the group risk assessment report and the group liquidity risk assessment report. For example, the competent authority of the host Member State should be given the opportunity to provide the competent authority of the home Member

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<sup>8</sup> Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (OJ L 21, 28.1.2016, p. 2).

<sup>9</sup> Commission Implementing Regulation (EU) 2016/99 of 16 October 2015 laying down implementing technical standards with regard to determining the operational functioning of the colleges of supervisors according to Directive 2013/36/EU of the European Parliament and of the Council (OJ L 21, 28.1.2016, p. 21).

State with contributions to the group risk assessment report and group liquidity risk assessment report. Upon request from the competent authority(s) of the host Member State(s), such contributions should be added as annexes to the draft or final group risk assessment report or group liquidity risk assessment report.

31. The competent authorities will strive to ensure that the institution at a Group level has sufficient liquidity in relevant currencies, including the currencies of countries with large branches, and that large branches should have sufficient availability of liquidity. The liquidity risk assessment should take into account liquidity in relevant currencies and the availability of liquidity to significant branches. When deciding on the adequacy of liquid assets and the composition of liquid assets to cover outflows in local currencies, the competent authority of the home Member State will take into account national requirements for domestic banks (see paragraph 46).

32. When taking a decision that will have an impact on the robustness of a group and its branches, pursuant to the current existing cooperation among the Nordic countries, including the annual decisions on liquidity and capital requirements, the competent authority of the home Member State should consult the competent authorities of the host Member State(s) prior to making the decision. The competent authority of the home Member State should not unwarrantedly dismiss any information or concerns received from the competent authorities of the host Member State. Where relevant the competent authority of the home Member State should give reasons for not taking the concerns of the competent authority of the host Member State fully into account in the final decision.

33. For large branches, the competent authority/authorities of the host Member State(s) should have the right to provide their input to the competent authority of the home Member State prior to the decisions regarding new internal models or existing internal models that have a material impact, as identified in Commission Delegated Regulation (EU) No 529/2014<sup>10</sup>, on a group or on the exposures of a large branch. The competent authority of the home Member State should also without delay inform the competent authority/authorities of the host Member State(s) of all applications and notifications in respect of the use, extensions of, or changes in existing internal models that affect the operations of a significant branch located in the territory of a host Member State. When available and upon request, the competent authority of the home Member State should without undue delay provide the competent authority of the host Member State with validation reports regarding internal models that have a material impact on the exposures of the large branch. The competent authority/authorities of the host Member State(s) should provide the home competent authority with any information relevant for the assessment of the application to use, extend or change the model.

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<sup>10</sup> Commission Delegated Regulation (EU) No 529/2014 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for assessing the materiality of extensions and changes of the Internal Ratings Based Approach and the Advanced Measurement Approach (OJ L 148, 20.5.2014, p. 36).

34. The competent authority of the home Member State should invite the competent authority/authorities of the host Member State(s) to participate in on-site inspections at group level carried out by the competent authority of the home Member State in respect of activities relevant to significant branches. If the competent authority of the host Member State participates, the competent authority of the home Member State should consult the competent authority of the host Member State prior to forwarding the report to the credit institution concerned.

35. The Participants acknowledge the value and mutual benefit obtained where a competent authority of a host Member State is able to conduct on-site inspections of a significant branch. As for all planned inspections, planned inspections by the competent authorities of the host Member States should be agreed within the college and envisaged in the supervisory examination programme for the group, without prejudice to the powers and responsibilities granted to the competent authorities of the home and host Member States under Article 52(3) of Directive 2013/36/EU. The Participants should make efforts to have a coordinated inspection programme to ensure that they have a clear group-wide overview of the group's position and operations and to avoid duplication.

36. If an on-site inspection is carried out by the competent authority of the home Member State, the competent authority of the host Member State should be invited to participate and should be kept appropriately informed about the start of the on-site inspection, its purpose, main findings, the supervisory decision and any corrective measures taken. Findings of common relevance should be discussed between the competent authorities of the home and host Member States.

37. The competent authority of the host Member State may conduct ad hoc on-the-spot checks and inspections in accordance with the powers and responsibilities granted under Article 52(3) of Directive 2013/36/EU. The competent authority of the home Member State should be offered to participate in any on-the-spot checks or inspections carried out by the competent authority of the host Member State. In this case, the competent authorities of the home and host Member State should strive to reach a common understanding on the conclusions of the inspections and the message to the credit institution. If the competent authority of the home Member State cannot take into account the assessment of the competent authority of the host Member State, the competent authority of the home Member State will explain the rationale in writing prior to communicating with the credit institution. The competent authority of the home Member State should without unnecessary delay inform the credit institution. If the competent authority of the home Member State does not participate in the inspection, the competent authority of the host Member State may communicate its findings directly to the branch. This communication should take place after having informed the competent authority of the home Member State and after having taken into account the comments provided by the competent authority of the home Member State. The communication with the credit institution shall in all cases be coordinated. The competent authority of the home Member State should communicate its comments

within a reasonable time and should duly take into account those findings in determining its supervisory examination programme.

The principle of proportionality also applies to cooperation in respect of on-site inspections, particularly in relation to the degree of involvement of the host competent authorities, without prejudice to the content of the written coordination and cooperation arrangement related to on-site inspections.

38. In addition to the inspections described above, the competent authorities of the host Member State have the right to require all necessary information regarding the branch's outsourced activities and, after consulting the consolidating supervisor, to carry out on-site inspections in accordance with applicable law as a part of the supervisory programme, planned and ad hoc, insofar as necessary for the supervision of the significant branch. Such on-site inspections should be coordinated with the competent authority of the home Member State, however, the purpose of such coordination is not to deny the possibility to carry out on-site inspections. On-site inspections regarding internal outsourced activities should follow the procedures described in paragraph 34 and, as a general rule, be carried out by the competent authorities of the host and home Member States jointly.

39. The Participants recognise the importance of close dialogue and regular meetings between the competent authority of the host Member State and the management of the branch. Such meetings should either be provided for in the supervisory examination programme or conducted on a case-by-case basis in coordination with the competent authority of the home Member State.

40. The competent authority of the host Member State should also have the possibility to access group senior management, together with the home competent authority, to discuss issues relevant for the significant branches, including from a group-wide perspective and its key risk control functions, if relevant in order to understand the branch's strategy, activities and risk profiles or the financial stability of the host Member State. Such meetings should be provided for in the supervisory examination programme or conducted on a case-by-case basis upon prior coordination with the competent authority of the home Member State.

41. Pursuant to Article 6(2) and Article 8 of Directive 2014/59/EU, the competent authorities of the host Member States should be involved in recovery planning. The main objectives of this task should be to ensure a high standard of crisis prevention and to preserve the financial stability of the local market focusing on ensuring (a) a robust cooperation procedure among supervisory authorities involved in crisis management, (b) reliable recovery solution for the local operations, and (c) any critical local economic functions. The home supervisory authority should consult with the competent authorities of the host Member State before an assessment of a recovery or of a group recovery plan is carried out, especially in matters relating to liquidity recovery plans and recovery solutions for any critical local functions. For the purpose of this Memorandum of Understanding, the recovery plan and group recovery

plan for a credit institution should in the Nordic context normally be assessed as relevant for large branches of that institution.

42. If subsidiaries that have been systemically important credit institutions are transformed into large branches of the parent institution, the competent authority of the home Member State should ascertain that the actual and planned capital and the liquidity in the parent institution and the group reflect the group's systemic importance in the Nordic region as well as at national level of a host Member State.

## **VI. PRINCIPLES OF CONSUMER PROTECTION SUPERVISION**

43. The Participants acknowledge the importance of level playing field and adequate level of consumer protection and the significance of uniform compliance with relevant legislation and appropriate practices in each jurisdiction also regarding significant branches. Without prejudice to the applicable laws and regulation, and having regard to the fact that a Memorandum of Understanding cannot confer powers upon authorities which are not included in the legislation to which they are subject, the Participants agree on the following:

The competent authority of the host Member State has, according to applicable laws, responsibility for the supervision of consumer protection regarding the market conduct by the branch in the host Member State. This includes issues related to contractual relationships between the branch and its customers.

The competent authority of the host Member State has the powers to require the branch to inform in good time in advance the host competent authority of offering any significant new products and services to consumers.

As a primary rule, information is exchanged in accordance with paragraph 18 of this MoU and supervisory activities carried out in accordance with the procedures in paragraphs 34, 35 and 36 of this MoU and the applicable laws, however without prejudice to the powers and responsibilities granted to the competent authorities of the host Member States under Article 44 of Directive 2013/36/EU. Supervisory activities include supervision of business continuity arrangements and contingency arrangements for severe disturbances and national emergencies, when necessary for consumer protection. In matters of emergency, the competent authority of the host Member State has, in accordance with Article 43(1) of Directive 2013/36/EU the power to take precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in the host Member State.

The competent authority of the host Member State is, according to applicable laws, allowed to set

reporting and disclosure requirements to the branch, such as reporting of the consumer complaints, terms and conditions of products and the disclosure of supervisory remarks insofar as the remarks are relevant for the supervision of the business carried on in the host Member State.

Where the competent authority of the host Member State ascertains that the branch does not comply with the national law and regulations, the competent authority of the host Member State may take appropriate measures according to procedures set out in applicable national and Union law to ensure that the irregular situation will be terminated.

The Participants agree to inform each other of any significant supervisory actions without delay.

## **VII. PRINCIPLES OF SUPERVISION OF INFORMATION AND COMMUNICATION TECHNOLOGIES, PAYMENT SERVICES AND SYSTEMS**

44. The Participants acknowledge the importance of payment systems and Information and Communication Technologies (hereinafter referred to as ICT) provided by significant branches in the countries where they operate and the need for timely and effective supervision of these services and systems. Substantial disruptions in payment transmission and card payments of a significant branch may be, for example, disruptions and delays affecting a large number of customers or disruptions where customer information has come into the possession of external parties. Without prejudice to the applicable laws and regulation, and having regards to the fact that a Memorandum of Understanding cannot confer powers upon authorities which are not included in the legislation to which they are subject, the Participants agree on the following:

The competent authority of the host Member State may, after consultation with the competent authority of the home Member State, carry out on-site inspections regarding the branches fulfillment of the requirements on providing secure and reliable operation of payment systems, online payment channels (such as internet bank and mobile bank) and payment cards. This includes the supervision of relevant outsourced activities and processes.

Supervisory powers regarding ICT systems and information security of a branch are included in the mandate of the competent authority of the host Member State in accordance with applicable law.

The competent authority of the host Member State may in consultation with the competent authority of the home Member State require access to information and right of inspection of the critical functions, as defined in paragraph 9h, As a primary rule, information is exchanged in accordance with paragraph 18 of this MoU and supervisory activities, necessary for the purpose of this, including the power to require, audit and supervise business continuity arrangements and contingency arrangements for severe disturbances and national emergencies, are carried out in accordance with the procedures in

paragraphs 34, 35 and 36. On-site inspections regarding internal outsourced activities should follow the procedures described in paragraph 34 and, as a general rule, be carried out by the competent authorities of the host and home Member States jointly.

In matters of urgency, in accordance with Article 43(1) of Directive 2013/36/EU, the competent authority of the host Member State has the power to take precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in the host Member State.

As for all planned inspections, planned inspections by the competent authority(s) of the host Member State(s) should be agreed within the college and envisaged in the supervisory examination programme for the group, however without prejudice to the powers and responsibilities granted to the competent authorities of the home and host Member States under Article 44 and Article 52(3) of Directive 2013/36/EU.

The competent authority of the host Member State has the power to require the branch to immediately inform the competent authority of the host Member State of any substantial faults or disruptions in services provided to customers or in payment systems or ICT systems. This includes cyberattacks or information security incidents and threats as well as disruptions or faults damaging or jeopardising the capacity of the branch to continue its business activities or fulfill its obligations.

The Participants agree to inform each other of any significant supervisory actions without delay.

#### **VIII. PRINCIPLES OF SUPERVISION OF ANTI-MONEY LAUNDERING AND THE FINANCING OF TERRORISM**

45. The competent authority of the host Member State has full powers to supervise and monitor that the branch complies with the national provisions and regulations applicable to it concerning prevention and detection of money laundering and the financing of terrorism; this includes right to obtain information from the branch, inspect it and impose administrative sanctions, falling within the competent authority of the host Member States competences.

The Participants agree to inform each other of any significant supervisory actions without delay.

#### **IX. PRUDENTIAL REGULATION BY THE HOST MEMBER STATE**

46. The Participants acknowledge the single rulebook which is implemented by Directive 2013/36 and in particular preambles 6 and 13 which stipulate that the smooth operation of the internal market

requires not only rules but also close and regular cooperation and significantly enhanced convergence of regulatory and supervisory practices between the competent authorities of the Member States and that transparent, predictable and harmonised supervisory practices and decisions are necessary for conducting business and steering cross-border groups of credit institutions, in order to ensure a well-functioning internal market.

The Participants recognise that the implementation of the single rulebook by European Economic Area and European Free Trade Association Member States may give rise to certain discrepancies in otherwise harmonised microprudential framework (the single rulebook).

The Participants acknowledge that some differences in applicable local regulations or supervisory practices may exist in areas such as provisioning practices and risk-weight floors and that these local regulations are relevant for the financial system of a Member State.

The Participants acknowledge that the existing reciprocity of micro-prudential requirements, such as residential mortgage risk weight floors, works well in the Nordic area.

In order to ensure a level playing field in the local financial markets and to minimise the risk of regulatory and supervisory framework being diluted, while at the same time being cognizant of the Directive 2013/36/EU requirements of well-functioning internal market, the competent authority of the home Member State should strive to ensure that credit institutions adopt adequate practices in line with national rules, guidelines, and supervisory practices applicable in the host Member State, which have a significant effect on prudential outcomes. The participants recognize the requirement of Directive 2013/36/EU preamble 50, pursuant to which the competent authorities should duly consider the effect of their decisions not only on the stability of the financial system in their jurisdictions but also in all other Member States concerned<sup>11</sup>.

In case the above is not met, the risks associated with any divergent practices should be appropriately dealt with in the supervisory review and evaluation process for credit institutions with significant branches in host Member States.

## **X. MACROPRUDENTIAL TOOLS (RECIPROCITY)**

47. The Participants acknowledge Recommendation ESRB/2015/2 of the European Systemic Risk

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<sup>11</sup> CRD IV preamble 50; The mandates of competent authorities should take into account, in an appropriate manner, the Union dimension. Competent authorities should therefore duly consider the effect of their decisions not only on the stability of the financial system in their jurisdiction but also in all other Member States concerned. Subject to national law, that principle should serve to promote financial stability across the Union and should not legally bind competent authorities to achieve a specific result.

Board<sup>12</sup> as minimum standard for reciprocity in macroprudential matters.

The Participants acknowledge the importance of reciprocity in order to facilitate financial stability and the proper functioning of local markets and the EU common market, in particular as means of preventing banks from circumventing macroprudential measures by exploiting differences in the regulatory frameworks. The competent authorities of the home and host Member States will communicate with each other in respect of planned measures in order to facilitate reciprocity and the consistent implementation of regulatory frameworks.

The general principle shall be full reciprocity, with recognition that the Participants must respect applicable national and Union law. The Participants recognise the unique competence of the competent authorities of the host Member States to assess which macroprudential measures are necessary for financial stability in the host Member States. If a particular measure is not legally available to the competent authority of the home Member State, the Participant will apply the macroprudential policy measure available in its jurisdiction that has the most equivalent effect to the activated macroprudential policy measure. In the efforts to use the same macroprudential policy measure, the Participants will facilitate discussions and exchange relevant assessments.

Examples of macroprudential measures set by the competent and/or designated authorities of the host Member States in relation to credit institutions located within their territory that should, in principle, be subject to reciprocation are combined buffer requirements as defined in Article 128 of Directive 2013/36/EU, asset-class specific risk weight floors, the requirements laid down in Article 458 of Regulation (EU) No 575/2013, and regulations and supervisory standards on mortgage lending (e.g. mandatory amortisation, loan-to-income and loan-to-value limits).

## **XI. CONFIDENTIALITY AND DATA PROTECTION**

48. Any confidential information requested or received by a Participant under this Memorandum of Understanding will be (a) exchanged in accordance with relevant national and Union law, (b) used exclusively for lawful purposes, and (c) used only in relation to the performance of the Participants' duties and tasks and for the purposes stated in the request.

The Participants will endeavour, to the extent permitted by law, to maintain the confidentiality of the information, and will not disclose confidential information to third parties without obtaining the prior consent of the Participant which has disclosed it.

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<sup>12</sup> Recommendation of the European Systemic Risk Board of 15 December 2015 on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures (ESRB/2015/2) (2016/C 97/02).

Where required under a legal obligation to disclose confidential information received pursuant to this Memorandum of Understanding, the requesting Participant will, to the extent permitted by law, inform the requested Participant of the purposes for which the information is proposed to be shared, the uses the third party receiving the information could make of it, and the safeguards that the third party will apply to ensure confidentiality.

Where the requested Participant does not consent to the disclosure of confidential information to a third party, and where possible and appropriate, the requesting Participant 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 Participants.

The Participants will ensure that all persons dealing with, or having access to such confidential information, are bound by the obligations of professional secrecy in accordance with the applicable Union law, even after their duties have ceased.

49. This Memorandum of Understanding neither modifies nor supersedes the applicable Union data protection framework. The ECB will process any personal data contained in the information exchanged under this Memorandum of Understanding in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council<sup>13</sup> and Decision ECB/2007/1 of the European Central Bank<sup>14</sup>. The Participants will process any personal data contained in the information exchanges under this Memorandum of Understanding in accordance with Directive 95/46/EC of the European Parliament and the Council<sup>15</sup> and the national laws implementing it.

Transfers of personal data to third country authorities by the ECB will be carried out in accordance with Article 9 of Regulation (EC) No 45/2001. Transfers of personal data to third country authorities by the Participants will be carried out in accordance with Articles 25 and 26 of Directive 95/46/EC and the national laws implementing it.

## **XII. REVIEW**

50. This Memorandum of Understanding will be subjected to (a) review in the event of material changes to any relevant provisions in Directives 2013/36/EU and 2014/59/EU and other relevant Union and national legislation, and (b) review of the Memorandum of Understanding on prudential supervision

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<sup>13</sup> Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with the regard of processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>14</sup> Decision ECB/2007/1 of the European Central Bank of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank (OJ L 116, 4.5.2007, p. 64).

<sup>15</sup> Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p.31).

of significant branches in Sweden, Norway, Denmark and Finland, entered into by the Finnish, Norwegian and Swedish Ministries of Finance and the Danish Ministry of Business and Growth.

51. After its entry into effect, other competent authorities may sign this Memorandum of Understanding if agreed by the Participants.

52. Any Participant may require a renegotiation of this Memorandum of Understanding with 6 months prior notice to other parties. If ECB is the Participant requesting the renegotiation and in case the Participants cannot reach an agreement within this period of time, the ECB may leave the MoU. This will enter into force 6 months later.

### **XIII. ENTRY INTO EFFECT**

53. This Memorandum of Understanding will enter into effect on 2 December, 2016.