EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Single Resolution Board

MEMORANDUM OF UNDERSTANDING BETWEEN THE SINGLE RESOLUTION BOARD, THE EUROPEAN CENTRAL BANK, BANKOWY FUNDUSZ GWARANCYJNY AND KOMISJA NADZORU FINANSOWEGO, IN RESPECT OF COOPERATION AND EXCHANGE OF INFORMATION FOR THE PERFORMANCE OF THEIR TASKS UNDER DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

The Single Resolution Board (SRB), the European Central Bank (ECB), Bankowy Fundusz Gwarancyjny and Komisja Nadzoru Finansowego (hereinafter jointly the 'Participants', and individually, the 'Participant') have concluded this non-binding Memorandum of Understanding ('MoU') in respect of cooperation and exchange of information in connection with the performance of their tasks under 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) 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (hereinafter the 'BRRD')[1] concerning entities with cross-border activities. The Participants express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective statutory objectives, enhancing communication and cooperation, assisting each other in the planning and the conduct of an orderly resolution of an Entity, and maintaining confidence and financial stability in the participating Member States of the European Union and Poland.

WHEREAS:

(1) The SRB fulfils the tasks of a resolution authority as part of the Single Resolution Mechanism (SRM) in accordance with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (hereinafter the 'SRM Regulation').[2] The main aims of the SRM Regulation are to ensure effective and uniform resolution rules and equal conditions of resolution financing across participating Member States under a centralised power of resolution.

[1] OJ L 173, 12.6.2014, p. 190.
[2] OJ L 225, 30.7.2014, p. 1.

(2) The ECB fulfils the tasks of a banking supervisory authority in the context of the Single Supervisory Mechanism (SSM) in accordance with 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 (hereinafter the 'SSM Regulation').[3] The ECB is competent to authorise and withdraw authorisations of all credit institutions within the SSM as well as to assess notifications of acquisition of qualifying holdings in those credit institutions according to Article 4(1)(a) and (c), and Articles 14 and 15 of the SSM Regulation. The general terms for cooperation (including information exchange) established in this MoU relate solely to the ECB in its supervisory function.

(3) Bankowy Fundusz Gwarancyjny fulfils the tasks of the Resolution Authority in accordance with the Act on the Bank Guarantee Fund, Deposit Guarantee Scheme and Resolution.[4]

(4) Komisja Nadzoru Finansowego fulfils the tasks of the Competent Authority in accordance with the Act on the Supervision of Financial Market[5] and the Act – Banking Law.[6]

(5) Under the BRRD, competent authorities and resolution authorities are provided with various supervisory and resolution tools to handle situations involving crisis and failures of institutions.

(6) Financial markets worldwide are highly integrated and interconnected with many financial institutions and groups operating across borders, both in participating and non-participating Member States. Effective resolution of institutions or group Entities operating across the European Union requires cooperation among competent authorities and resolution authorities at all stages covered by the BRRD.

(7) In accordance with the first subparagraph of Article 32(2) of the SRM Regulation, the SRB, the ECB and the Resolution Authorities and Competent Authorities of the non-participating Member States shall conclude memoranda of understanding describing in general terms how they will cooperate with one another in the performance of their tasks under the BRRD.

(8) The Participants will cooperate under this MoU in accordance with their respective responsibilities and tasks under relevant Union and national laws.[7]

(9) In accordance with Article 87 of the BRRD, the Participants should ensure that, when making decisions or taking actions pursuant to the BRRD which may have an impact in one or more Member States, they have due regard to the principles listed therein. In particular, pursuant to Article 87(c) of

[3] OJ L 287, 29.10.2013, p. 63.
[4] Article 100 of the Act of 10 June 2016 on the Bank Guarantee Fund, Deposit Guarantee Scheme and Resolution ([Journal of Laws] of 2022 Item 2253, as amended).
[5] Article 3a of the Act of 21 July 2006 on the supervision of financial market ([Journal of Laws] of 2022 Item 660, as amended).
[6] Article 131 of the Act of 29 August 1997 – Banking Law ([Journal of Laws] of 2022 Item 2324, as amended).
[7] In the case of the ECB, its tasks are listed in Article 4 of the SSM Regulation.

the BRRD, competent authorities and resolution authorities cooperate with each other to ensure that decisions are made and actions are taken in a coordinated and efficient manner.

THE PARTICIPANTS HAVE REACHED THE FOLLOWING UNDERSTANDING:

Article 1

Objective

1. The purpose of this MoU is to facilitate the cooperation and the exchange of information between the Participants in order to ensure and enhance efficient, effective and timely cooperation between them in the performance of their respective supervisory and resolution tasks under the BRRD relating to the recovery and resolution of credit institutions under Union law and national legislation.
2. The Participants should endeavour to provide each other, in a timely manner, with all necessary and relevant information available to them and necessary for the performance of their respective tasks under the BRRD to the extent permitted by Union and national laws.

Article 2

Scope of cooperation and exchange of information

3. This MoU covers the cooperation and exchange of information between the Participants with regard to Entities belonging to a group, where such group has Entities established or located both in participating Member States, and in Poland.
4. Notwithstanding the articles of this MoU, the Participants may commonly agree on further cooperation and exchange of information on a regular or case-by-case basis in areas that are not covered by this MoU, where deemed necessary by the Participants.
5. With respect to the ECB, this MoU covers:
   (i) Entities established or located in Poland that belong to a Significant institution that the ECB supervises;
   (ii) Entities established or located in Poland that belong to a Less significant institution, insofar as the ECB is exclusively competent to carry out tasks in accordance with Article 4(1)(a) and (c), of the SSM Regulation for prudential purposes; and
   (iii) Entities established or located in Poland which are the parent company of a Significant institution that the ECB supervises.

6. With respect to the SRB, this MoU covers:

   (i) Entities established in Poland that belong to a Significant institution or another cross-border group under the direct responsibility of the SRB in accordance with Article 7(2) of the SRM Regulation;

   (ii) Entities established in Poland that belong to Less significant institutions under the direct responsibility of the SRB in accordance with Article 7(4)(b) and Article 7(5) of the SRM Regulation;

   (iii) Entities established in Poland that belong to Less significant institutions under the direct responsibility of the national resolution authorities of participating Member States in accordance with Article 7(3) of the SRM Regulation, insofar as the cooperation and exchange of information is necessary for the SRB to perform its tasks under the SRM Regulation (including its tasks under Article 31 of the SRM Regulation);

   (iv) Entities established in Poland that are the parent of an Entity under the direct responsibility of the SRB in accordance with Article 7(2), 7(4)(b) and 7(5) of the SRM Regulation; and

   (v) Entities established in Poland that are parent of Less significant institutions under the direct responsibility of the national resolution authorities designated by participating Member States in accordance with Article 7(3) of the SRM Regulation, insofar as the cooperation and exchange of information is necessary for the SRB to perform its tasks under the SRM Regulation (including its tasks under Article 31 of the SRM Regulation).

7. Taking account of Article 32(4) of the SRM Regulation, this MoU may also be relied upon for cooperation and exchange of information between the national resolution authorities of participating Member States, Bankowy Fundusz Gwarancyjny and Komisja Nadzoru Finansowego with respect to Entities established in Poland that belong to Less significant institutions under the direct responsibility of national resolution authorities of participating Member States in accordance with Article 7(3) of the SRM Regulation.

   The SRB is informed of all direct contacts between the national resolution authorities of participating Member States and Bankowy Fundusz Gwarancyjny under this MoU.

Article 3

Definitions

8. For the purpose of this MoU, the definitions set out in Article 2 of the BRRD, Articles 3 and 4 of the SRM Regulation, Article 2 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national

designated authorities (SSM Framework Regulation) (ECB/2014/17)[8] (hereinafter the 'SSMFR'), Article 4 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012[9] (hereinafter the 'CRR') and Article 3 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC[10] (hereinafter the 'CRD') apply, unless stated otherwise.

9. In addition, the following definitions apply:

(i) 'Competent Authority' means the ECB and the competent authority of Poland, in accordance with Article 2(1)(21) of the BRRD (hereinafter jointly referred to as the 'Competent Authorities');

(ii) 'Resolution Authority' means the resolution authority of Poland in accordance with Article 2(1)(18), of the BRRD, and the SRB in accordance with Article 5(1) of the SRM Regulation (hereinafter jointly referred to as the 'Resolution Authorities');

(iii) 'Entity' means any credit institution belonging to a group as defined in Article 2(1)(26) of the BRRD, or a significant branch as defined in Article 2(1)(34) of the BRRD as well as in any national legislation implementing the BRRD which is in the respective remit of the Participants for the purposes of the performance of the tasks under the BRRD (hereinafter jointly referred to as the 'Entities');

(iv) 'Significant institution' means a significant supervised Entity, as this term is defined in Article 2(16) of the SSMFR, in conjunction with Article 2(17) and (18) of that Regulation;

(v) 'Less significant institution' means a less significant supervised Entity, as defined in Article 2(7) of the SSMFR, in conjunction with Article 2(8) of that Regulation.

Article 4

Legal nature of this MoU

10. This MoU does not modify nor supersede any Union law or national laws, nor does it affect any provisions under other multilateral or bilateral arrangements in force and applicable to the Participants. Should any conflict arise when applying different cooperation arrangements, the Participants will solve such discrepancies on a best-effort basis.

[8] OJ L 141, 14.5.2014, p. 1.
[9] OJ L 176, 27.6.2013, p. 1.
[10] OJ L 176, 27.6.2013, p. 338.

11. This MoU does not constitute a binding agreement. Therefore its provisions do not give rise to any directly or indirectly enforceable rights, obligations or legal claims against any of the Participants. The Participants will fulfil their responsibilities under this MoU on a best-effort basis.

12. This MoU applies without prejudice to the cooperation between the ECB and SRB, which is specifically governed by the ECB-SRB MoU.[11]

13. Furthermore, this MoU does not affect any existing or future arrangements under other agreements or memoranda of understanding related to the supervision or resolution of individual institutions. Should any conflict arise when applying different cooperation arrangements, the Participants will solve such discrepancies on a best-effort basis.

14. This MoU does not authorise or prohibit a Participant from taking measures (other than those identified in this MoU) to obtain information necessary to ensure compliance with relevant Union and national laws.

Article 5

Communication between the participants

15. Communication between the Participants may take place at working level directly between the relevant units and responsible persons. In case no relevant unit can be identified, requests will be directed to a general contact point. The contact details of responsible persons and the general contact points are provided in the Annex.

16. The Participants agree that, unless expressly specified otherwise, any information shared under this MoU that is considered confidential by the originating Participant, will be exchanged via a secured communication channel, in accordance with the confidentiality rules provided for in Article 9 of this MoU.

17. The working language between the Participants is English. The Participants will use the English language when sending documents to each other, unless this is impossible for reasons of urgency or if the document to be forwarded is not in English and a translation is not available at that point in time. In that case, the document will be transmitted in its original language, and if possible and available, accompanied by a provisional English summary of the key aspects of the document. This rule applies unless otherwise specifically agreed between the Participants for one or more individual cases.

[11] Memorandum of Understanding between the Single Resolution Board and the European Central Bank in respect of cooperation and information exchange, signed on 22 December 2015 and revised on 30 May 2018, and as it may be amended in the future.

18. Bankowy Fundusz Gwarancyjny and Komisja Nadzoru Finansowego will be responsible for any translation into their national language required by their national laws.

Article 6

External communication

19. The Participants endeavour to coordinate their external communication, if appropriate, on matters related to recovery and resolution within their respective responsibilities. In case external communication is deemed appropriate, the Participants will provide a list of relevant units and responsible persons as well as general contact points responsible for external communication.

Article 7

Common principles of cooperation and information exchange

20. The Participants will endeavour to bilaterally inform each other about decisions or measures that might be of significant relevance for the performance of the other Participants' tasks under the BRRD. The Participants will endeavour to inform each other prior to adopting the decisions or measures or, as circumstances permit and subject to relevant applicable law, as soon thereafter as practicable. Without prejudice to cases of urgency and the effective and prompt performance of each of the Participants' tasks relevant for this MoU, this information should be exchanged within a reasonable time.

21. The Participants will ensure that they bilaterally provide each other access to any available information needed to perform their tasks under the BRRD with regard to the Entities within the scope of this MoU, and in accordance with Union and national laws.

22. Cooperation between the Participants can be conducted in any form, including physical meetings, emails, video and/or conference calls.

23. The Participants will endeavour to communicate promptly to each other, where feasible, relevant changes in their legal and regulatory frameworks with respect to the recovery and resolution of Entities.

24. In order to share expertise and knowledge, each Participant may, as appropriate, give presentations to and conduct training sessions for other Participants.

Article 8

Provision of information

25. Information requests should be written, addressed to the relevant contact person(s) (as set out in the Annex), and specify the following:

    (i) the information sought by the requesting Participant;

    (ii) a general description of the matter which is the subject of the request and the purpose for which the information is sought;

    (iii) to whom, if already known, onward disclosure of information provided to the requesting Participant is likely to be necessary on a need-to-know basis;

    (iv) any information known to, or in the possession of, the requesting Participant that might assist the Participant receiving the request in fulfilling the request; and

    (v) a desired timeframe for reply and, where appropriate, the urgency thereof.

    When receiving requests for information or assistance, the Participants should endeavour to provide one another with the fullest cooperation consistently with this MoU and their responsibilities and legal frameworks. In case of denial of assistance, the requested Participant should give reasons for not providing the requested assistance.

26. The requested Participant will endeavour to respond to the request within the indicated timeframe, taking into account the urgency of the request and resource implications.

27. This Article does not preclude a Participant's duty to inform another Participant pro-actively of any information, which it deems necessary for the performance of the other Participant's responsibilities.

Article 9

Permissible use of information and confidentiality

28. The Participants will ensure that no confidential information received under this MoU is disclosed unless in cases permitted by the Union or national law, and will use it exclusively for lawful purposes and only when needed for the exercise by the Participants of their respective duties, tasks and responsibilities.

29. The Participants will ensure, to the extent permitted by Union and national law, that all persons under their responsibility, dealing with or having access to confidential information, are bound by the obligation of professional secrecy in accordance with Article 339 of the Treaty on the

Functioning of the European Union, and/or relevant Union and national laws. In particular, this includes Article 98 of the BRRD, Article 88 of the SRM Regulation, Article 53 of the CRD and Article 27 of the SSM Regulation, as well as the requirements of Poland's national law that provides for professional secrecy for the purposes of Article 84 of the BRRD and Article 53 of the CRD, as applicable.

30. Prior to any disclosure of any confidential information under this MoU to any third party, the Participant considering disclosure should endeavour to, unless prevented from doing so by the applicable law:

    (i) obtain the express agreement in writing of the originating Participant to disclose the confidential information;

    (ii) require that the disclosed confidential information, including personal data, will be used by the third party solely for the purposes for which the originating Participant gave its agreement; and

    (iii) verify that the third party is subject to professional secrecy requirements and that the transfer of confidential information complies with the applicable data protection requirements, in particular when a transfer of personal data to an Entity outside the European Economic Area (EEA) is envisaged.

    If one Participant receives bilaterally information from another Participant under this MoU, prior to disclosing such information to any of the other Participants of the MoU, it will have to obtain the express agreement in writing of the originating Participant.

31. If a Participant is legally compelled to disclose to a third-party confidential information originating from another Participant and shared under this MoU, it will, unless prevented from doing so by applicable law, inform the originating Participant of the purpose for which the information is shared, the uses that the third party could make of the information, and the safeguards that the third party would apply to ensure confidentiality.

    If so required by the originating Participant, the requested Participant will preserve the confidentiality of the information to the extent permitted by the relevant Union and national laws.

32. The exchanges of information between the ECB and national competent authorities of participating Member States[12] will not be covered by the provisions of this Article and will be governed by Article 6(2) of the SSM Regulation. The exchanges of information between the SRB and the national resolution authorities of Participating Member States, the national competent authorities of

[12] For the purposes of the information sharing provisions of this Memorandum of Understanding, national competent authorities of participating Member States have the same meaning as defined in Art. 2(9) of the SSMFR.

Participating Member States, the ECB, the European Commission and the Council of the European Union[13] will not be covered by the provisions of this Article and will be governed by Article 30(2) of the SRM Regulation.

Article 10

Data protection

33. The Participants will process any personal data contained in the information exchanged under this MoU according to the following legal frameworks:

    (i) The ECB and SRB in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC[14] and, as far as they transfer personal data to third-country authorities outside the EEA, in particular in accordance with Chapter V of Regulation (EU) 2018/1725;

    (ii) Bankowy Fundusz Gwarancyjny and Komisja Nadzoru Finansowego in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);[15]

    (iii) The national resolution authorities of participating Member States relying on this MoU under Article 2(7) of this MoU – in accordance with the General Data Protection Regulation.

34. The Participants share the view that such exchange of personal data is a transmission from one controller to another independent separate controller.

Article 11

Settlement of disputes

35. Any disagreement among Participants concerning the interpretation or application of this MoU or its performance will be settled, to the maximum extent possible, in an amicable and equitable manner.

[13] Information sharing with the Council will concern information necessary for the purposes of its tasks in the context of a specific resolution procedure.
[14] OJ L 295, 21.11.2018, p. 39.
[15] OJ L 119, 4.5.2016, p. 1.

36. For the avoidance of doubt, the existence of a disagreement, its resolution, as well as any information including documentation related to it, will be treated as confidential information in accordance with Union and national laws.

Article 12

Review and amendment

37. The Participants may reassess the functioning and effectiveness of the cooperation and information exchange under this MoU, and amend this MoU if deemed necessary.

38. Any amendment to this MoU requires the mutual consent of the Participants and will be made in writing, unless otherwise agreed upon. Updates of the contact list in the Annex will not be considered as a formal amendment and will not require a written agreement of the Participants, but will be communicated between the Participants.

Article 13

Publication of this MoU

39. Following prior agreement of all Participants, this MoU, excluding the contact list in the Annex, may be made publicly available in full or in part by any of the Participants, at any time and in any manner, including publication electronically on the websites of the Participants.

Article 14

Effect and termination

40. This MoU will come into effect on the date it has been signed by all the Participants.

41. Any Participant may terminate this MoU by giving six months' prior written notice to the other Participants at any time. If the MoU is terminated by a Participant, steps will be taken to ensure that termination does not affect any prior obligation, project or activity already in progress.

42. Termination of this MoU is without prejudice to any obligations regarding cooperation, exchange of information and confidentiality of information between the Participants under the respective applicable laws.

Signed at Brussels, Frankfurt and Warsaw on the dates mentioned below in four original copies each in the English language and signed by the Participants' duly authorised representatives.

[SIGNATURE PAGES FOLLOW]

EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Single Resolution Board

Signed at Brussels,

this 16th day of May, 2024

[signed]

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Dominique Laboureix

Chair

Single Resolution Board

Signed at Frankfurt,

this 11th day of April, 2023

[signed]

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Andrea Enria

Chair of the Supervisory Board

European Central Bank

Signed at Frankfurt,

this 11th day of April, 2023

[signed]

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Frank Elderson

Vice-Chair of the Supervisory Board

European Central Bank

EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Single Resolution Board

Signed at Warsaw,

this 6th day of May, 2024

[signed]

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Marcin Mikołajczyk

Deputy Chair of the Board

Komisja Nadzoru Finansowego

EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Single Resolution Board

Signed at Warsaw,

this 14th day of May, 2024

[signed]

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Piort Tomaszewski

President of the Management Board

Bankowy Funduszu Gwarancyjny