

DECISION (EU) 2019/166 OF THE EUROPEAN CENTRAL BANK**of 25 January 2019****on the Market Infrastructure Board and repealing Decision ECB/2012/6 on the establishment of the TARGET2-Securities Board (ECB/2019/3)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.3 thereof,

Having regard to Guideline ECB/2012/13 of 18 July 2012 on TARGET2-Securities ⁽¹⁾,

Whereas:

- (1) The Eurosystem offers market infrastructures, platforms, applications and related services in the fields of cash settlement, securities settlement and collateral management, comprising TARGET services which include TARGET2, T2S and TIPS services.
- (2) On 16 March 2016, the Governing Council approved the establishment of the Market Infrastructure Board, the governance body responsible for technical and operational management tasks in the field of market infrastructure and platforms.
- (3) In the past, the Market Infrastructure Board has met in different dedicated formats in accordance with the different market infrastructures, platforms and projects for which it is responsible. Since the establishment of the Market Infrastructure Board, the T2S Board, originally established by virtue of Decision ECB/2012/6 ⁽²⁾, has been operating as one of such dedicated formats of the Market Infrastructure Board, as reflected in Decision (EU) 2017/1403 of the European Central Bank (ECB/2017/20) ⁽³⁾.
- (4) The T2S Board was not solely established by Decision ECB/2012/6 but is also based on a T2S protocol signed by the Eurosystem central banks.
- (5) A review of the operation of the Market Infrastructure Board has shown that no dedicated formats are necessary for its efficient functioning. Therefore, Decision ECB/2012/6 should be repealed and the format of the Market Infrastructure Board should be revised so that the Market Infrastructure Board is structured and functions in accordance with this Decision.
- (6) The Market Infrastructure Board in its revised format shall support the Governing Council in ensuring that the Eurosystem's market infrastructures, platforms, applications and related services in the fields of cash settlement, securities settlement and collateral management are maintained and further developed, as well as that projects in the above fields are developed, in line with the Treaty objectives of the European System of Central Banks (ESCB), the ESCB's business needs, technological advances, as well as regulatory and oversight requirements, as applicable from time to time.
- (7) It is understood that the legal effect of Annex III to this Decision ('Code of Conduct') is conditional on the MIB Members' signature of the declarations in Appendices 1 and 2 to Annex III,

HAS ADOPTED THIS DECISION:

*Article 1***Definitions**

All references to the T2S Board in Guideline ECB/2012/13, Decisions ECB/2011/20 ⁽⁴⁾ and ECB/2011/05 ⁽⁵⁾ shall be read as references to the Market Infrastructure Board. All other terms used in this Decision shall have the same meaning as in Guidelines ECB/2012/27 ⁽⁶⁾, and ECB/2012/13.

⁽¹⁾ OJ L 215, 11.8.2012, p. 19.

⁽²⁾ Decision ECB/2012/6 of 29 March 2012 on the establishment of the TARGET2-Securities Board and repealing Decision ECB/2009/6 (OJ L 117, 1.5.2012, p. 13).

⁽³⁾ Decision (EU) 2017/1403 of the European Central Bank of 23 June 2017 amending Decision ECB/2012/6 on the establishment of the TARGET2-Securities Board (ECB/2017/20) (OJ L 199, 29.7.2017, p. 24).

⁽⁴⁾ Decision ECB/2011/20 of 16 November 2011 establishing detailed rules and procedures for implementing the eligibility criteria for central securities depositories to access TARGET2-Securities services (OJ L 319, 2.12.2011, p. 117).

⁽⁵⁾ Decision ECB/2011/5 of 20 April 2011 on the selection of TARGET2-Securities network service providers (OJ L 134, 21.5.2011, p. 22).

⁽⁶⁾ Guideline ECB/2012/27 of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L 30, 30.1.2013, p. 1).

*Article 2***Market Infrastructure Board**

1. The mandate of the Market Infrastructure Board (MIB), including its objectives, responsibilities and tasks are set out in Annex I to this Decision.
2. The Rules of Procedure of the MIB, including its composition and working procedures, are set out in Annex II to this Decision.
3. The Code of Conduct for the members of the MIB, set out in Annex III to this Decision is endorsed by the Governing Council.
4. The procedures and requirements for the selection, appointment and replacement of the non-central bank members of the MIB are set out in Annex IV to this Decision.
5. It is understood that this Decision establishes no presumption to the effect that every new market infrastructures project falling within the scope of this Decision's definition of Eurosystem infrastructure project is to automatically be entrusted to the MIB. Only those projects explicitly entrusted by the Governing Council to the MIB are to be managed by the MIB.

*Article 3***Repeal**

Decision ECB/2012/6 is repealed.

*Article 4***Transitional provisions**

In order to ensure a smooth and orderly transition to the MIB, established in accordance with this Decision, including the appointment of its members, the term of office of incumbent MIB members, at the time of the entry into force of this Decision, is deemed to be extended by four months.

*Article 5***Final provisions**

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 25 January 2019.

The President of the ECB
Mario DRAGHI

ANNEX I

MARKET INFRASTRUCTURE BOARD

MANDATE

INTRODUCTION

The Eurosystem offers market infrastructures, platforms, applications and related services in the fields of cash settlement, securities settlement and collateral management, comprising TARGET services which include TARGET2, T2S and TIPS services as well as, in the future, ECMS (the 'Eurosystem infrastructure services').

The Market Infrastructure Board (MIB) is the governance body that supports the Governing Council (the 'Governing Council') of the European Central Bank (ECB) in ensuring that the Eurosystem infrastructure services are maintained and further developed, as well as that projects concerning Eurosystem infrastructure services (the 'Eurosystem infrastructure projects' or 'projects') are managed, in line with the Treaty objectives of the European System of Central Banks (ESCB), the business needs, technological advances, the legal framework applicable to Eurosystem infrastructure services and projects, as well as regulatory and oversight requirements, in full respect of the mandates of the ESCB committees established under Article 9 of the ECB Rules of Procedure. The MIB reports to the ECB decision-making bodies.

This Decision establishes no presumption to the effect that every new market infrastructures project falling within the scope of this Decision's definition of Eurosystem infrastructure project is to automatically be entrusted to the MIB. Only those projects explicitly entrusted by the Governing Council to the MIB are to be managed by the MIB.

1. Role of the Market Infrastructure Board

The Governing Council hereby entrusts the MIB with the performance of the tasks defined in this mandate.

Without prejudice to its ultimate decision-making power, the Governing Council has entrusted the MIB with the performance of clearly defined tasks, related to both operation of Eurosystem infrastructure services, as well as Eurosystem infrastructure projects. The Governing Council, without prejudice to the NCBs' competence under the Statute of the European System of Central Banks and of the European Central Bank, may assign to the MIB further clearly defined tasks, in addition to those stipulated under paragraph 2, which are otherwise within the remit of the Governing Council. In the light of the Governing Council's ultimate competence on Eurosystem infrastructures issues, any of its tasks entrusted to the MIB can still be taken over and performed by the Governing Council.

2. Responsibilities and tasks of the Market Infrastructure Board*2.1. Preparation of proposals for decision by the Governing Council on Eurosystem infrastructure services and projects*

Without prejudice to the responsibility of the Executive Board to prepare the meetings of the Governing Council and to be responsible for the current business of the ECB, the MIB prepares proposals for the Governing Council to decide upon in the following matters, to the extent that the Governing Council has entrusted the MIB with a specific project/infrastructure, and in full respect of the mandates of the ESCB committees established under Article 9 of the ECB Rules of Procedure:

- (a) the overall strategy, including the definition of scope of services and service descriptions;
- (b) project governance issues;
- (c) financial matters, including:
 - (i) the elaboration of the main features of the financial regime (in particular, budget, amount, time period cover, financing);
 - (ii) regular analysis of the financial risks to which the Eurosystem is exposed;
 - (iii) the management rules for accounts held in the books of the ECB and managed by the MIB on behalf of the Eurosystem;
 - (iv) cost methodology;
 - (v) pricing policy; and
 - (vi) liability regime analysis;
- (d) the overall planning;

- (e) the legal framework with the National Central Banks (NCBs) that provide market infrastructure services to or that execute Eurosystem infrastructure projects with the Eurosystem (the 'providing NCBs'), and with customers, as well as any contractual arrangement or conditions to be signed between the Eurosystem and external stakeholders;
- (f) the risk management framework;
- (g) service level agreements with relevant parties;
- (h) authorisation and prioritisation of change requests and testing/migration strategies;
- (i) network connectivity strategies;
- (j) crisis management strategies;
- (k) cyber resilience and information security strategy and frameworks;
- (l) liability and other claims; and
- (m) compliance of the Eurosystem infrastructure services participants with the applicable eligibility criteria.

2.2. *Management activities in respect of Eurosystem infrastructure services and projects*

2.2.1. Management and Steering

The MIB carries out the overall management of Eurosystem infrastructure services and projects, to the extent that the Governing Council has entrusted the MIB with a specific project/infrastructure, and in full respect of the mandates of the ESCB committees established under Article 9 of the ECB Rules of Procedure. In this context, the MIB:

- (a) ensures that the Eurosystem infrastructure services and projects meet the market needs;
- (b) implements and/or manages the overall strategies, including the definition of scope of service/s and/or service descriptions;
- (c) implements and/or manages the governance arrangements;
- (d) implements and/or manages the financial arrangements and strategies;
- (e) manages the relevant change and release management activities;
- (f) manages, within the parameters set by the Governing Council, the development, operation and maintenance of simulator tools, and manages, in consultation with the Eurosystem's Market Infrastructure and Payments Committee (MIPC) and other relevant ESCB committees where applicable and subject to a decision of the Governing Council, feasibility studies;
- (g) coordinates change management processes and prioritises authorised change relating to new releases, establishes test scenarios for Eurosystem acceptance tests, coordinates tests which involve various types of stakeholders, and coordinates user testing processes;
- (h) manages the detailed planning of Eurosystem infrastructure services and projects on the basis of the overall programme plans, as approved by the Governing Council;
- (i) implements and/or manages the relevant risk management frameworks, within the parameters set by the Governing Council;
- (j) implements and/or manages the relevant migration strategies, within the parameters set by the Governing Council;
- (k) implements and/or manages the relevant operational frameworks, including the incident and crisis management strategy, within the parameters set by the Governing Council;
- (l) ensures the proper functioning and quality of the Eurosystem infrastructure services;
- (m) implements and/or manages the network connectivity strategies;
- (n) implements and/or manages the crisis management strategies;
- (o) implements and/or manages cyber resilience and information security strategy and frameworks; and
- (p) ensures compliance with regulatory and oversight requirements.

2.2.2. Financial regime

The MIB approves and/or initiates:

- (a) the payment of instalments to the providing NCBs, in accordance with an agreed payment schedule approved by the Governing Council, once the relevant deliverables have been accepted by the MIB;

- (b) the reimbursement of costs related to additional support from the providing NCBs to the Eurosystem central banks, in accordance with the relevant Level 2-Level 3 agreement and any other related agreements;
- (c) the payment of instalments to the ECB, on the basis of the costs incurred by the latter in relation to Eurosystem infrastructure services and projects; and
- (d) the collection of fees from customers, where applicable, and the reimbursement of these fees to Eurosystem central banks. To the extent required, the ECB provides appropriate support to the MIB.

2.2.3. Relations with the providing NCBs

The MIB:

- (a) ensures the involvement of the providing NCBs in all relevant matters;
- (b) conducts the negotiations of any amendments to the relevant Level 2-Level 3 agreement and any other related agreements between the providing NCBs and the Eurosystem central banks and submits such amendments for endorsement by the Governing Council;
- (c) establishes and maintains regular contacts with the providing NCBs in order to obtain all of the information needed for the performance of its tasks in line with such agreements;
- (d) validates proposals from the providing NCBs and approves of deliverables pertaining to the technical and functional design (developed by the providing NCBs); and
- (e) assists the Governing Council in managing the relationships with the providers of network connectivity services, where the latter form part of the Eurosystem infrastructure service.

2.2.4. Relations with Eurosystem governance bodies and external stakeholders

The MIB:

- (a) manages, as appropriate, relations with the ESCB committees, with regulatory and oversight authorities, as well as with other relevant public authorities in relation to the Eurosystem infrastructure services and projects;
 - (b) interacts with customers and ESCB central banks to facilitate their migration, and discusses, coordinates and aims to find possible solutions to settle disputes within the applicable legal framework and within its mandate to be endorsed by the responsible bodies;
 - (c) negotiates draft participation agreements (jointly with Eurosystem central banks, where applicable) with Eurosystem infrastructure services and projects participants, and non-euro area central banks which have signed participation agreements, including any amendment to these agreements;
 - (d) coordinates with the other Eurosystem infrastructure services and project governance bodies;
 - (e) where relevant, appoints the chairpersons of the technical groups after consultation with the pertinent governance bodies, and ultimately receives reports from technical groups;
 - (f) interacts with providers of network connectivity services where forming part of the Eurosystem infrastructure service;
 - (g) defines the technical communication policy in relation to the Eurosystem infrastructure services and projects; and
 - (h) ensures transparency through the timely and consistent publication of relevant technical documentation in relation to the Eurosystem infrastructure services and projects subject to the confidentiality obligations set out in the Code of Conduct.
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ANNEX II

MARKET INFRASTRUCTURE BOARD

RULES OF PROCEDURE

CHAPTER 1

Appointment and Membership

INTRODUCTION

The Eurosystem offers market infrastructures, platforms, applications and related services in the fields of cash settlement, securities settlement and collateral management, comprising TARGET services which include TARGET2, T2S and TIPS services as well as, in the future, ECMS (the 'Eurosystem infrastructure services').

The Market Infrastructure Board (MIB) is the governance body that supports the Governing Council (the 'Governing Council') of the European Central Bank (ECB) in ensuring that the Eurosystem infrastructure services are maintained and further developed, as well as that projects concerning existing or new Eurosystem infrastructure services (the 'Eurosystem infrastructure projects' or 'projects') are managed, in line with the Treaty objectives of the European System of Central Banks (ESCB), the business needs, technological advances, the legal framework applicable to Eurosystem infrastructure services and projects, as well as regulatory and oversight requirements, in full respect of the mandates of the ESCB committees established under Article 9 of the ECB Rules of Procedure. The MIB reports to the ECB decision-making bodies.

This Decision establishes no presumption to the effect that every new market infrastructures project falling within the scope of this Decision's definition of Eurosystem infrastructure project is to automatically be entrusted to the MIB. Only those projects explicitly entrusted by the Governing Council to the MIB are to be managed by the MIB.

1. Designation and appointment

MIB members are appointed by the Governing Council on the basis of a proposal from the ECB's Executive Board (the 'Executive Board').

Applications are presented to the Executive Board by the Governor or President, as applicable, of the relevant National Central Bank (NCB). In its proposal to the Governing Council, the Executive Board shall give preference to candidates who report directly to the highest governance body in their central bank. The Executive Board ensures in its proposal that the principles set out in section 3 of this Annex II are complied with.

Applications for non-central bank members of the MIB are collected by the Executive Board pursuant to the procedure for selection of such members pursuant to Annex IV to this Decision.

2. Membership and term of office — Participation of observers

Once appointed, MIB members shall act independently and in the best interest of the Eurosystem. They shall not be subject to instructions from any public or private body. MIB members shall report collectively and exclusively to the ECB decision-making bodies when they act in their capacity as MIB members. The central bank members of the MIB may seek, where appropriate, at their own initiative and discretion, the views of other staff members from their central bank, but they shall neither seek nor take instructions from their central bank, or commit to take a specific position during the deliberations and voting of the MIB.

The MIB has a Chairperson who is a senior manager at the ECB.

The MIB is composed of thirteen (13) members, as follows:

- (a) Nine members from Eurosystem NCBs, including one member per NCB that provides market infrastructure services to the Eurosystem or that executes Eurosystem infrastructure projects with the Eurosystem (the 'providing NCB');
- (b) Two members from non-Eurosystem NCBs participating in Eurosystem infrastructure services (e.g. having signed the T2S Currency Participation Agreement or participating in TARGET2);
- (c) Two non-central bank members (without voting rights), one with experience as a senior official in the payments industry, and one with experience as a senior official in the securities industry.

The Chairperson is supported by a Deputy Chairperson from the MIB members who is appointed by the Governing Council. The exclusive task of the Deputy Chairperson shall be to chair MIB meetings, in the Chairperson's temporary absence during a meeting, in accordance with the pre-determined agenda for the MIB meeting in question.

The term of office of MIB members lasts for 36 months and may be renewed. The Governing Council may decide on a shorter mandate, including when members resign or retire before the expiry of their mandate.

In order to ensure that all NCBs (Eurosystem and NCBs participating in the relevant Eurosystem infrastructure services and projects) have the opportunity to send a representative to the MIB, there should be a rotation of members from non-providing NCBs, normally at the time the initial 36 months' term of office of the MIB members expires. It is understood that the above rotation scheme shall not result in the exclusion of the same non-providing NCB for more than two rotation periods.

An appropriate balance shall be maintained between members with project management experience, experience in the Eurosystem market infrastructure business, and IT experience.

The Chairperson shall invite non-voting observers from relevant ESCB Committees for discussing Eurosystem infrastructure services or projects within their field of competence. The MIB members are expected to dedicate at least 30 % of their working capacity to the MIB issues.

The MIB members shall not be directly involved in the oversight of Eurosystem's infrastructure services or of entities participating in the above (e.g. central securities depositories that outsource settlement operations to T2S), to the extent that such involvement could give rise to actual or potential conflicts with their functions as MIB members. Appropriate measures shall be put in place to identify and avoid any such conflicts. Members shall not be part of the Eurosystem's Internal Auditors Committee (IAC), nor shall they be involved in Level 3 activities on a day-to-day basis.

CHAPTER 2

Working procedures

1. Decision-making

In accordance with principles of good governance, members shall regularly participate in MIB meetings. Participation is strictly on a personal basis; members may not be replaced.

In order for the MIB to validly deliberate, there must be a quorum of seven members with voting rights. If there is no quorum, the Chairperson may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

To the extent possible, decisions of the MIB are to be taken by way of consensus. Failing that, and at the request of the Chairperson, the MIB may decide by way of simple majority vote. In the case of a tie, the Chairperson shall have the casting vote.

The MIB proceeds to vote at the request of the Chairperson. The Chairperson shall also initiate a voting procedure upon the request of at least 3 MIB members with a voting right. A member shall abstain from voting if they have a conflict of interest, within the meaning of the Code of Conduct. Absent voting Members may delegate their voting right in respect of a specific voting procedure to another voting member provided that no voting member may exercise more than two votes on any given issue.

Decisions may also be taken by written procedure, unless three or more members with voting rights object. A written procedure shall require: (a) no less than two working days' notice, (other than in exceptional circumstances, identified as such by the MIB Chairperson); and (b) a record of any such decision in the conclusions of the subsequent meeting of the MIB.

The non-central bank MIB members are appointed in a personal capacity. They do not have voting rights and they may not delegate their responsibilities to another MIB member or a third party.

2. Conduct of MIB meetings

The MIB decides on the dates of its meetings upon proposal by the Chairperson. The MIB should meet regularly based on a schedule it prepares in good time before the start of each year.

The Chairperson may convene extraordinary meetings of the MIB whenever it may deem it necessary. The Chairperson will convene an extraordinary meeting if a request for such a meeting is submitted by at least three members.

The MIB shall generally hold its meetings at the ECB's premises.

Meetings may also be held by means of teleconference, unless three or more members object.

The MIB adopts an agenda for each meeting.

Attendance at MIB meetings is restricted to the MIB members and other persons invited by the Chairperson.

3. Reporting to the ECB decision-making bodies

The MIB reports to the ECB decision-making bodies on a regular basis. In this respect, it prepares reports to the ECB decision-making bodies as necessary.

4. Internal flow of information and transparency

Non-central bank MIB members shall receive, under strict confidentiality conditions, all documentation on Eurosystem infrastructure services and projects submitted to the Governing Council.

Eurosystem NCBs not represented in the MIB shall have automatic access to all MIB documentation, including MIB agendas and minutes, at the same time as MIB members and may provide written comments prior to MIB meetings so that their views can be duly taken into account by the MIB. They may also make a request to the Chairperson to participate in the MIB if they have a particular interest in a topic. The Chairperson will be responsible for informing such Eurosystem NCBs if it is considered that they might have a particular interest and may also bring any point raised by such a Eurosystem NCB before the MIB.

In order to ensure that the Eurosystem's Market Infrastructure and Payments Committee (MIPC) is kept abreast of the MIB's work, there will be a regular reporting item on MIB topics on each MIPC agenda. If deemed appropriate, joint meetings of the MIPC and the MIB may be held.

The interaction between the MIB and other ESCB committees shall take place by means of written consultations.

The MIB's activities are subject to the review of the IAC.

5. External flow of information, transparency and representation

The Chairperson regularly informs any relevant stakeholder about all relevant issues concerning Eurosystem infrastructure services and projects under the responsibility of the MIB. The Chairperson ensures transparency through the timely and consistent availability of relevant technical documentation in relation to the Eurosystem infrastructure services and projects on the MIB-dedicated section of the ECB's website.

Members must inform the Chairperson in advance of undertaking any relevant and substantial external activities/communication in relation to the MIB's responsibilities and tasks, such as speaking on Eurosystem infrastructure services and projects under the responsibility of the MIB at conferences or meetings with relevant stakeholders, and must provide the MIB with a written summary within five working days following the event. Any substantial external activity/communication must be in the interest of the Eurosystem and must be consistent with any policy decisions of the Governing Council.

6. Support

The MIB shall receive organisational support from the ECB, inter alia, for the preparation of the MIB meetings, including the meeting documentation.

As a rule, the ECB sends documents for discussion to members five working days in advance of a meeting. However, short documents may be sent one working day in advance. Documents sent less than two working days in advance are considered 'table documents' which cannot lead to a decision by the MIB, unless all members agree otherwise.

Following each MIB meeting, the ECB prepares draft minutes recording the topics that were under consideration and the results of the discussion, as well as the agreed follow-up. The draft minutes include positions expressed during the meeting by individual members when so requested. The draft minutes are circulated to the members within five working days of the meeting.

Also following each MIB meeting, the ECB prepares a draft action list containing the tasks and deadlines that were allocated and agreed during that meeting, which is circulated to the members within five working days of the meeting.

The draft minutes and action list are submitted to the MIB for approval at the subsequent meeting (or, if necessary, earlier by written procedure) and are signed by the Chairperson.

The MIB shall appoint, and receive input from, a Controller, which may be one of its members.

The MIB may create substructures in agreement with the ECB. A substructure may be established differently to the MIB composition, and it would be open to all Eurosystem NCBs and, where relevant, non-Eurosystem NCBs to participate.

7. Revision of mandate

The MIB mandate may be reviewed every five years in the light of the experience made.

ANNEX III

MARKET INFRASTRUCTURE BOARD

CODE OF CONDUCT

INTRODUCTION

The Market Infrastructure Board (MIB) is composed of members appointed by the Governing Council (the 'Governing Council') of the European Central Bank (ECB). Members must act solely in the best interest of the Eurosystem and are to allocate sufficient time to their active involvement in the work of MIB.

The MIB is the governance body that supports the Governing Council in ensuring that the Eurosystem market infrastructures, platforms, applications and related services in the fields of cash settlement, securities settlement and collateral management (the 'Eurosystem infrastructure services') are maintained and further developed, as well as that projects concerning existing or new Eurosystem infrastructure services (the 'Eurosystem infrastructure projects' or 'projects') are managed, in line with the Treaty objectives of the European System of Central Banks (ESCB), the business needs, technological advances, the legal framework applicable to Eurosystem infrastructure services and projects, as well as regulatory and oversight requirements, in full respect of the mandates of the ESCB committees established under Article 9 of the ECB Rules of Procedure. The MIB reports to the ECB decision-making bodies.

It is essential for the informed and independent decision-making of the Governing Council that the MIB's work is unaffected by any circumstances that may give rise to a conflict of interest of any of its members. It is also essential for the preservation of the reputation and credibility of the Eurosystem and the ESCB and for the legal soundness of the Eurosystem infrastructure services and projects that the MIB members be guided, and be seen to be guided, by the general interest of the Eurosystem. Members shall therefore (a) avoid situations of actual or apparent conflicts of interest; (b) only act in the best interests of the Eurosystem in their dealings with public authorities, central banks, representatives of industry and other external stakeholders involved in the design, development and operation of market infrastructures, platforms, applications and related services offered by the Eurosystem; and (c) ensure objectivity, neutrality and fair competition among suppliers with an interest in market infrastructures, platforms, applications and related services offered by the Eurosystem.

The obligation of professional secrecy stated in Article 37.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') applies to both ECB staff and National Central Bank (NCB) staff performing ESCB tasks, and covers, amongst other things, confidential information regarding trade secrets or any other information of a commercial value. An equivalent obligation applies to non-central bank members of the MIB. Non-central bank members must also comply with any additional rules of conduct that may be provided for in the letter of their appointment and in their contract with the ECB.

It is appropriate, and consistent with good administrative practice, that the Conditions of Employment applicable to the Chairperson of the MIB, and the provisions applicable to MIB members who are staff members of an NCB, should provide for legal redress for breaches of this Code of Conduct (the 'Code'). An equivalent provision applies to the non-central bank members of the MIB, as described in Annex IV.

This Code is without prejudice to any requirements resulting from other ethical provisions as may be applicable to the members of the MIB in their function as members of staff of the ECB or an NCB.

1. Definitions

For the purposes of this Code:

- (a) 'Chairperson' means the person appointed by the Governing Council to chair MIB;
- (b) 'Deputy Chairperson' means the person supporting the Chairperson who is appointed from the MIB members by the Governing Council. The exclusive task of the Deputy Chairperson shall be to chair MIB meetings, in the Chairperson's temporary absence during a meeting, in accordance with the pre-determined agenda for the MIB meeting in question.
- (c) without prejudice to the obligation of professional secrecy in Article 37.1 of the Statute of the ESCB or to the classification of documents according to the ECB confidentiality regime which are provided to each member of the MIB, 'confidential information' means (i) trade secrets of the Eurosystem or third parties and any information having a commercial value other than for the purpose of the work of the MIB; (ii) any information the non-authorised disclosure of which, could harm the essential interests of the Eurosystem; and (iii) any information that a reasonable

person would consider to be confidential; 'confidential information' does not include any information which: (i) is or becomes generally available to the public, other than through a breach of this Code; or (ii) is developed independently by a third party with no access to confidential information; or (iii) subject to Section 3, is required to be disclosed by law;

- (d) 'non-central bank member' means a member of the MIB who is not an ECB or an NCB staff member;
- (e) 'mandate' means the mandate set out in Annex I;
- (f) 'member' means a member of the MIB, including the Chairperson;
- (g) 'suppliers' means commercial entities and trade organisations currently providing or having an interest in providing goods and/or services related to the market infrastructures, platforms, applications and related services offered by the Eurosystem.

2. Avoidance of conflicts of interest

- (a) In respect of the provision of goods and/or services relevant to the MIB's mandate, a conflict of interest shall be deemed to arise in the circumstances described in Article 0.2.1.2 of the ECB Staff Rules, and, in particular, where a member has a commercial or professional interest or stake in a supplier, whether through ownership, control, investment, personal allegiance or otherwise, which actually influences, or may influence, the impartial and objective performance of that member's duties.
- (b) Members shall act in the general interest of the Eurosystem and in pursuit of the MIB's responsibilities and tasks. They shall avoid any situations that are likely to give rise to a conflict of interest.
- (c) If a conflict of interest arises, or is likely to arise, in connection with the MIB's tasks, the member concerned shall make known such actual or potential conflict of interest to the compliance authority of that member's central bank (or, in the case of a non-central bank board member, to the ECB's Compliance and Governance Office) by using the form set out in Appendix 2 and shall simultaneously inform the Chairperson thereof. If the compliance authority (or, in the case of a non-central bank member, the ECB's Compliance and Governance Office) concludes that a conflict of interest exists, it shall give its recommendation to the Governor or President, as applicable, of the central bank concerned (or, in the case of a non-central bank member, to the ECB's President) regarding the appropriate management of the conflict of interest in question.
- (d) If, during a MIB meeting, a member has reasons to believe that the participation of another member in the discussion, voting or written procedure of the MIB could give rise to a conflict of interest, that member shall inform the Chairperson immediately.
- (e) The Chairperson shall invite the member about whom concerns with a conflict of interest have been raised pursuant to paragraph (c) and (d), to state whether an actual or potential conflict of interest exists. The Chairperson shall inform the compliance authority of the central bank concerned (or, in the case of a non-central bank member, the ECB's Compliance and Governance Office) of any such case without undue delay and, if deemed necessary, also the Governing Council.
- (f) If the Chairperson is the concerned member under paragraph (c), (d) or (e), the Chairperson shall inform the ECB's Compliance and Governance Office.
- (g) Members shall immediately recuse themselves from taking part in any discussions, deliberations or votes on any matter in respect of which that member has a conflict of interest and shall not be provided any related documentation.

3. Proper use of confidential information

- (a) Members shall use confidential information solely for the purposes of, and in the interests of, the Eurosystem and in pursuit of the MIB's objectives, in accordance with the MIB's mandate.
- (b) Members shall under no circumstances disclose, beyond their mandate, confidential information to third parties and/or entities in or outside the Eurosystem. As regards the Chairperson of the MIB, and NCB staff members, they may only disclose confidential information to members of staff of their central bank on a strict 'need to know' basis, and with the sole purpose of providing advice to enable an opinion on a specific issue to be formed. Confidential information marked 'members only' shall, in principle, not be disclosed by members to members of staff of their central bank, unless otherwise agreed by the MIB.
- (c) Members shall take all necessary measures to prevent the accidental disclosure of, or non-authorised access to, confidential information.

- (d) Members shall not use confidential information for their own benefit or for the benefit of any other person in accordance with Article 4.1.3 of the ECB's Ethics Framework and national measures implementing Article 7(2) of Guideline (EU) 2015/855 of the European Central Bank ⁽¹⁾. In particular, they shall not take advantage of confidential information in any private financial transaction or in recommending or advising against such transactions.
- (e) In so far as a member is ordered by a court or a regulatory, supervisory or other competent authority that has jurisdiction over that member to disclose or make available confidential information, that member shall:
 - (i) give prompt written notice, when permitted by law, of such an order to the Chairperson and the compliance authority (or, in the case of a non-central bank member, the ECB's Compliance and Governance Office) of their central bank, with as much detail as possible;
 - (ii) obtain expert legal advice as to the lawfulness and enforceability of such an order, if considered necessary by the Chairperson;
 - (iii) cooperate with all the central banks concerned, and provide such assistance as the Chairperson may reasonably request to allow the MIB or the NCB of the member concerned to seek legal remedies to protect the confidential information;
 - (iv) notify the court or authority concerned of the confidential nature of the information, and request the court or authority to preserve the confidentiality of the information, to the extent permitted by law.

If the Chairperson is concerned by this Section, he/she shall inform the ECB's Compliance and Governance Office.

4. Principles of communication with external parties

- (a) Subject to the requirements regarding confidential information, in their contacts with suppliers or trade organisations representing the suppliers, members shall strive to maintain fair competition and provide objective and pertinent information to all suppliers or representatives in a coordinated and non-discriminatory manner. Depending on the information to be provided, this aim may be achieved by engaging them in constructive dialogue and sharing documentation with them in consultative groups.
- (b) Members shall give due consideration to any written communication addressed to them by the suppliers or trade organisations representing the suppliers. Members shall treat such communications as confidential, unless the contrary is explicitly stated by the supplier or representative.
- (c) Paragraphs 4(a) and 4(b) shall not be construed as impeding contacts between the MIB and the suppliers or trade organisations representing the suppliers.

5. Advice on ethical questions

If a member has any question on the application of the Code, that member shall seek advice from the ECB's Compliance and Governance Office.

6. Sanctions and final provisions

- (a) Without prejudice to the rules on disciplinary proceedings contained in their conditions of employment or to any applicable criminal, disciplinary, administrative or contractual penalty, a member who breaches this Code shall be eligible for dismissal from the MIB and replacement.
- (b) A member shall continue to be bound by Sections 2 and 3 even after that member has ceased its duties as MIB member.
- (c) A former member shall not use confidential information in order to gain employment with a supplier or reveal or use any confidential information acquired by virtue of their participation in the MIB as an employee of a supplier.

⁽¹⁾ Guideline (EU) 2015/855 of the European Central Bank of 12 March 2015 laying down the principles of a Eurosystem Ethics Framework and repealing Guideline ECB/2002/6 on minimum standards for the European Central Bank and national central banks when conducting monetary policy operations, foreign exchange operations with the ECB's foreign reserves and managing the ECB's foreign reserve assets (ECB/2015/11) (OJ L 135, 2.6.2015, p. 23).

- (d) During the first year after their duties have ceased, members shall continue to avoid any conflict of interest that could arise from any new professional activity or appointment. They shall, in particular, inform the Chairperson in writing whenever they intend to engage in any professional activity or accept an appointment, and shall seek the MIB's advice before committing themselves. The MIB shall refer matters to the Compliance and Governance Office, as appropriate.
- (e) If a former member does not respect the requirements set forth in paragraphs (c) and (d), the MIB may inform that former member's employer that a conflict of interest arises or is likely to arise between that former member's new position and its previous position.

7. Addressees and distribution

This Code is addressed to the members. A copy is distributed to each existing member and to new members upon appointment. Members are requested to sign Appendices 1 and 2 before attending their first MIB meeting.

*Appendix 1***DECLARATION OF COMPLIANCE WITH THE CODE OF CONDUCT**

By this Declaration, I accept the attached Code of Conduct and acknowledge my obligations hereunder, in particular my obligation to (a) treat in strictest confidence and not disclose any confidential information acquired by me, also in accordance with the ECB Confidentiality regime; (b) avoid and declare situations that would involve a conflict of interest in the performance of my duties as a member of the Market Infrastructure Board (the 'MIB') in relation to the MIB's competences; and (c) not use confidential information for my own benefit or for the benefit of any other person; in particular, I shall not take advantage of confidential information in any private financial transaction or in recommending or advising against such transactions.

.....
(Signature and date)

.....
(Full name)

.....
(Address)
.....

Appendix 2

DECLARATION OF INTEREST ⁽¹⁾

.....
(Full name)

.....
(Address)

.....
(Occupation)

The competences of the Market Infrastructure Board (the 'MIB') are directly or indirectly (e.g. in relation to a family member) affected by the following pecuniary and/or non-pecuniary interests, which might create a conflict of interest within the meaning of the Code of Conduct ⁽²⁾:

Investment (e.g. direct or indirect in a commercial entity, including subsidiaries or other entities belonging to the same corporate group, which has an interest as a supplier, unless held via investment or pension funds or similar):

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Position (e.g. current or previous, paid or unpaid, with a commercial entity which has an interest as a supplier):

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Income or gifts (e.g. current, previous or expected remuneration, including deferred benefits, options to be exercised at a later stage and pension rights transfers, or gifts, received from a commercial entity which has an interest as a supplier):

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Other:
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⁽¹⁾ If a member has no relevant interest, this should be indicated by stating 'none' in the relevant field(s).
⁽²⁾ A member with a relevant interest should describe all relevant facts and circumstances, using additional space if necessary.

I hereby declare, on my honour, that the information disclosed is true and complete to the best of my knowledge.

.....

(Signature and date)

.....

(Full name)

ANNEX IV

PROCEDURES AND REQUIREMENTS FOR THE SELECTION, APPOINTMENT AND REPLACEMENT OF THE NON-CENTRAL BANK MEMBERS OF THE MARKET INFRASTRUCTURE BOARD**1. Call for competition**

- 1.1. The European Central Bank (the 'ECB') shall publish a call for competition for experts to be appointed as non-central bank members of the Market Infrastructure Board (the 'MIB') and to create a reserve list. The call for competition shall be carried out in accordance with Decision (EU) 2016/245 of the European Central Bank (ECB/2016/2) ⁽¹⁾. However, it shall deviate from Article 22 of Decision (EU) 2016/245. The call for competition shall be consistent with at least the main principles of public procurement and ensuring proper and transparent competition.
- 1.2. The call for competition shall set out, amongst other things: (a) the role of the MIB; (b) the role of the non-central bank members of the MIB; (c) the selection criteria; (d) relevant financial aspects; and (e) the application procedure, including a deadline for receipt of applications.
- 1.3. The call for competition shall be published simultaneously in the *Official Journal of the European Union* and on the ECB's website. Where appropriate, the ECB may use additional means to publicise the call for competition. In case of discrepancies, the version published in the *Official Journal of the European Union* shall take precedence over other versions.
- 1.4. The deadline for candidates to submit an application shall be at least 35 calendar days following publication of the call for competition in the *Official Journal of the European Union*.

2. Selection procedure

- 2.1. The ECB's Governing Council (the 'Governing Council') shall appoint the non-central bank members of the MIB on the basis of a proposal of the ECB's Executive Board (the 'Executive Board'), following the completion of the relevant procurement procedure.
- 2.2. The Executive Board shall evaluate the candidates according to the selection criteria set out in Section 3 of this Annex IV.
- 2.3. The MIB Chairperson, representatives from Eurosystem national central banks, and ECB staff may support the Executive Board in completing the candidate assessment forms, which include a summary of merits and shortcomings of the candidate in the context of the selection criteria for the mandate and a recommendation for appointment according to a candidate's suitability.
- 2.4. In deviation from Article 22(6) of Decision (EU) 2016/245 (ECB/2016/2), two candidates shall be appointed directly, and a reserve list of candidates shall be established for future vacancies.

3. Selection criteria

The selection criteria are as follows:

- (a) expertise as a senior official in the payments industry or expertise in the securities industry, either as a service provider or as a user of services in this field, as well as expertise relating to the wider Union financial sector;
- (b) at least 10 years of experience in interacting with major market players in Union financial markets;
- (c) relevant experience, preferably in project management; and
- (d) the ability to effectively communicate in English.

4. Reserve list

- 4.1. The ECB shall aim to always maintain a reserve list of candidates to fill the positions of non-central bank members of the MIB.

⁽¹⁾ Decision (EU) 2016/245 of the European Central Bank of 9 February 2016 laying down the rules on procurement (ECB/2016/2) (OJ L 45, 20.2.2016, p. 15).

- 4.2. If a non-central bank member vacancy arises in the MIB, the Executive Board may select a candidate from the reserve list according to their ranking and propose them to the Governing Council as non-central members of the MIB for a 36 months' or shorter mandate. That mandate may be renewable for a further term of no longer than 36 months so that the total term does not exceed the maximum term permitted for non-central bank members of six years.
- 4.3. The reserve list shall remain valid for a period of thirty-sixth months once it has been approved by the Governing Council. The Governing Council may extend the validity of the reserve list for a further period of 36 months if it deems it necessary to do so.
- 4.4. In deviation from Article 22(7) of Decision (EU) 2016/245 (ECB/2016/2), the reserve list shall not be open for new applicants.
- 4.5. In deviation from Article 22(8) of Decision (EU) 2016/245 (ECB/2016/2), candidates may access, update or correct their data but may not update or correct information relevant to their fulfilment of the selection criteria after the closing date of the call for competition.

5. **Appointment**

- 5.1. Non-central bank members of the MIB shall be appointed in their personal capacity. They may not delegate their responsibilities to another member or a third party.
- 5.2. All appointments shall be subject to the appointee signing a contract of appointment countersigned by the MIB Chairperson as well as a contract with the ECB, setting out the applicable indemnities and rights of reimbursement in respect of expenses, and also the declarations referred to in Section 6.1.
- 5.3. The Governing Council shall appoint non-central bank members of the MIB as non-voting members of the MIB for up to 36 months, renewable for a further term of no longer than 36 months so that the total term does not exceed the maximum term permitted for non-central bank members of six years.

6. **Declarations**

- 6.1. Non-central bank members of the MIB commit to abide by the MIB Code of Conduct. Accordingly, they are required to sign the 'Declaration of compliance with the Code of Conduct' in Appendix 1 of Annex III and to complete and sign the 'Declaration of interest' in Appendix 2 of Annex III.
- 6.2. Non-central bank members of the MIB are also required to sign the declarations provided in the call for competition.

7. **Termination and replacement**

- 7.1. The Governing Council may terminate the mandate of a non-central bank member of the MIB if, in the case of that non-central bank member, any of the following occurs: a conflict of interest, a breach of duty, an inability to perform their duties, a breach of the Code of Conduct and/or serious misconduct.
 - 7.2. The mandate of a non-central bank member is considered as terminated when that non-central bank member resigns or its mandate expires without being renewed.
 - 7.3. If a mandate is terminated prior to the end of a 36 months' term, Sections 4.2 and 4.3 shall apply.
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