



AFM

SSM/2017/0210

Memorandum of Understanding on cooperation
between
the European Central Bank
and
the Netherlands Authority for the Financial Markets

This Memorandum of Understanding (MoU) is made BETWEEN

The European Central Bank (ECB), with its headquarters at Sonnemannstrasse 22, 60640 Frankfurt am Main, Germany,

AND

the Netherlands Authority for the Financial Markets (AFM), with its headquarters at Vijzelgracht 50, 1001 GS, Amsterdam, the Netherlands.

(hereinafter jointly the 'Parties' and each of them, individually, a 'Party')

WHEREAS:

- (1) Pursuant to Article 3(1) of Council Regulation (EU) No 1024/2013¹ (hereinafter referred to as the SSMR), the ECB shall enter into memoranda of understanding with competent authorities of Member States responsible for markets in financial instruments. The AFM is the authority responsible for markets in financial instruments in the Netherlands;**
- (2) Recognising the benefits of mutual cooperation in issues of joint interest and to ensure proper supervision of financial institutions referred to in the SSMR and in the Financial Markets legislation.**
- (3) Desiring to use their best efforts possible to assist one another with the fullest mutual assistance possible to facilitate the performance of the tasks they are entrusted with by Applicable legislation, as defined in this MoU.**

THE PARTIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

¹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring special tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63)

Article 1

Scope and purpose

- (1) This MoU has been agreed between the ECB and the AFM as a national competent authority (NCA) responsible for markets in financial instruments in order to have appropriate cooperation arrangements in place as provided for under Article 3(1) and recital 33 of the SSMR.
- (2) This MoU describes in general terms how the Parties will cooperate with one another in the performance of their supervisory tasks under Union Law in relation to financial institutions referred to in the SSMR with regard to supervisory tasks conferred on the ECB and the tasks of the AFM related to market intermediaries and the protection of their clients. This MoU is without prejudice to cooperation arrangements between national competent authorities responsible for prudential supervision and NCAs, and any other cooperation arrangements that the ECB and these NCAs might enter into, also having regard to national legislation.
- (3) Article 4 of the SSMR confers on the ECB certain exclusive competences to be carried out in relation to the credit institutions established in the participating Member States.
- (4) Article 3(1) of the SSMR requires the ECB to cooperate closely with the European Authorities and the other Authorities which form part of the European System of Financial Supervision. Article 3(1) of the SSMR establishes that, where necessary, the ECB will enter into memoranda of understanding with national competent authorities responsible for markets in financial instruments. Recitals 31 and 33 of the SSMR recognise that it would be beneficial to establish channels for collaboration and exchange of information between authorities vested, for different purposes, with responsibilities with respect to the same financial institutions and their clients.
- (5) The purpose of this MoU is to facilitate the establishment of the cooperation arrangements in relation to the respective supervisory tasks between the ECB and the AFM and the newly established Single Supervisory Mechanism. Within this purpose, and subject to such restrictions and arrangements as may be considered necessary by either Party to preserve the confidential nature of certain information, the Parties will cooperate and exchange information.
- (6) With this MoU, the Parties will use their best efforts to provide to each other to the fullest extent possible mutual assistance in the performance of their respective tasks.

Article 2

Definitions

For the purposes of this MoU:

- (1) 'Authority' means a signatory to this MoU, being the ECB or AFM, or any successor;
- (2) 'Requested Authority' means the Authority to whom a Request is made under this MoU;
- (3) 'Requesting Authority' means the Authority making a Request under this MoU;
- (4) 'SSMR' means the Council Regulation (EU) No 1024/2013;

- (5) 'Financial Markets legislation' means Directive 2004/39/EC², Directive 2014/65/EU³, Regulation (EU) No 600/2014⁴, and the national legislation transposing the above directives;
- (6) 'Request for Assistance' means a request made by a Requesting Authority to a Requested Authority pursuant to this MoU;
- (7) 'Supervised entity' means a financial institution referred to in Article 2 of the SSMR and in the Financial Markets legislation;
- (8) 'Applicable legislation' means the abovementioned SSMR and Financial Markets legislation and the national implementation thereof.

Article 3

General provisions

- (1) Pursuant to the applicable legislation and in accordance with the scope of their respective tasks and obligations, the Authorities will, within the framework of this MoU, use their best efforts to assist each other with the fullest cooperation and assistance possible in any matter within their competence as regards:
- (a) general supervisory and regulatory issues;
 - (b) issues relating to the operations, activities, and regulation of Supervised entities;
 - (c) investigation and enforcement of the provisions of the applicable legislation falling within the remits of their respective tasks; and
 - (d) any other areas of mutual supervisory interest.
- (2) The Authorities agree to provide each other information upon request, to the extent permitted by laws and rules, when they are in possession of information that is needed for the other authority's performance of duties under the Applicable legislation. Each Authority may on its own initiative provide information to the other Authority to the extent permitted by laws and rules, when it believes it is in possession of information that is needed for the other authority's performance of duties under the Applicable legislation. This MoU neither establishes any legally binding obligations nor supersedes any provisions of national, international or supranational legislation in force either in the Netherlands or any Union law applicable to the ECB or the AFM.
- (3) The Parties agree to respect the resource and timing constraints of each of the Parties. In particular, the Parties agree that cooperation under this MoU is on a best effort basis and will not constrain the other Party from the proper fulfilment of its tasks.

² Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.04.2004, p. 1).

³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

⁴ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

Article 4

Exchange of information

Pursuant to the Applicable legislation and in accordance with the scope of their respective tasks and obligations, each Authority will use its best efforts to provide the other Authority, upon written request, with assistance and information, also in the form of sharing documents prepared by the Authority or otherwise in its possession to enable the Requesting Authority to fulfil its tasks under applicable legislation.

Article 5

Investigations and on-site inspections

- (1) The Authorities will take reasonable steps to cooperate in respect of investigations and onsite inspections of Supervised entities to the extent consistent and within the remits of their respective supervisory tasks when the investigation relates to supervisory tasks of both Authorities.
- (2) The Authorities will exchange information in connection with their respective onsite inspection programmes, as appropriate and purely for coordination purposes, insofar as the planned inspection refers to a Supervised entity either individually or at the group level and exchange is relevant for their respective supervisory tasks.
- (3) Each Authority will notify the other Authority of any non-public enforcement or sanction decision against a Supervised entity which is also supervised by that other Authority.

Article 6

Execution of requests for exchange of information or assistance ("requests")

- (1) Requests and replies for exchange of information or assistance submitted in accordance with Article 3 will be made in a written letter of request (as an e mail attachment, except where not appropriate or practical, when it should be made by post or fax) and addressed to the relevant contact identified in Annex 1. A request should specify the following:
 - (a) A description of the information or assistance sought by the Requesting Authority, and the objective for which the information or assistance is sought;
 - (b) A concise description of the facts underlying the request and the purpose for which the information or the assistance is sought, including references to the relevant applicable legislation and provisions on which basis the request for information is made;
 - (c) Any information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in processing the request;
 - (d) An indication of any special precautions that should be taken into account, including but not limited to the sensitivity of the information or its confidentiality;
 - (e) Where appropriate, the urgency of the request.
- (2) If a request is urgent, it may be made and answered orally, then it shall subsequently be confirmed in writing. A Requesting Authority shall ensure that a request for urgent processing is confined to cases of necessity.

- (3) The Requested Authority will:
- (a) Acknowledge receipt of a request without delay;
 - (b) Request further clarifications in whatever form as soon as possible if it has any doubt in relation to the precise information requested;
 - (c) Take all reasonable steps within the scope of its powers to provide the assistance and information requested;
 - (d) Execute requests without delay, taking into account the complexity of the request;
 - (e) Provide the assistance and information requested in a timely manner, taking into account the complexity and the nature of the assistance and information sought by the Requesting Authority and any special urgency indicated by the Requesting Authority in its request.
- (4) Following consultation, cooperation may be denied:
- (a) where the cooperation would require an Authority to act in a manner that would violate the applicable legislation or be detrimental to the effective performance of its tasks;
 - (b) where the request does not fall within the supervisory tasks of the requested authority;
 - (c) where a request is not made in accordance with the terms of the MoU; or
 - (d) Where complying with the Request is likely to adversely affect the Authority own investigations, enforcement activities or, where applicable, a criminal investigation.
- (5) If a Requested Authority denies all or part of the execution of a Request, such denial will include explanations and will be provided to the Requesting Authority as soon as decided upon.

Article 7

Permissible uses of information

- (1) The Authorities may use confidential information and confidential documents received under this MoU solely for the exercise of their respective tasks and duties resulting from the Applicable legislation, as set forth in the Request for assistance. The Authorities may use confidential information and documents received under this MoU also for the performance of their enforcement and sanctioning duties under the Applicable legislation.
- (2) In order to use information and documents received under the terms of this MoU for a purpose different from that stated under paragraph 1 above, the Requesting Authority will obtain the prior written consent of the Requested Authority.

Article 8

Confidentiality and onward sharing of information

- (1) Each Authority will hold information shared under this MoU as confidential to the extent permitted by the applicable legislation. This requirement will not preclude the permissible uses of information under Article 6.

- (2) Except as provided in paragraph 3, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing information received under this MoU to a third party i.e. a party that is not a signatory of this MoU.
- (3) In the event of a legally enforceable demand to disclose information that an Authority has received, the Authority subject to the demand will notify the other Authority prior to complying with the demand and will indicate all appropriate legal exemptions or privileges with respect to such information as may be available. The Authority will take reasonable efforts to uphold the non-disclosure if requested by the other Authority.

Article 9

Consultation

- (1) The Authorities will periodically consult each other on issues related to the matters covered by this MoU and exchange views and share experiences and knowledge gained in the discharge of their respective duties to the extent consistent with the applicable legislation. In addition, the Authorities expect that informal contacts between the staff of the Authorities will continue, including holding meetings where useful.
- (2) The Authorities will consult each other in matters relating to specific Requests made pursuant to this MoU (e.g. where a Request may be denied, or if it appears that further clarifications may be needed on the content of a Request).

Article 10

Review

Based on the experience in cooperation under this MoU, the authorities will periodically review the scope and nature of their cooperation. The first review will be performed by 2018. In particular the Authorities will review whether an extension of the scope of Applicable legislation is appropriate and in the joint interest of both Authorities, in particular as to ensure proper supervision of Supervised entities.

Article 11

Termination of the MoU

- (1) This MoU will be concluded for an unlimited period of time.
- (2) An Authority seeking to withdraw from this MoU will provide at least 30 calendar days prior written notice to the other Authority before doing so.
- (3) Any requests for information communicated before the effective date of its withdrawal will be processed under this MoU unless the withdrawing Authority requests otherwise.
- (4) Following an Authority's withdrawal from this MoU, that Authority will continue to apply the confidentiality protections set out in this MoU and the withdrawal will not have any impact on that Authority's obligation of cooperation and information exchange under the applicable legislation.

Article 12

Entry into force

This MoU enters into force following its signature by the representatives of the Parties.

For the Netherlands Authority for the Financial Markets

Merel van Vroonhoven

Amsterdam,

For the Netherlands Authority for the Financial Markets

Femke de Vries

Amsterdam,

For the European Central Bank

Danièle Nouy

Frankfurt,

For the European Central Bank

Sabine Alice Lautenschlager-Peiter

Frankfurt,

