

CONTRACT FOR THE PROVISION OF SERVICES

PRO-008792 MIB Non Central Bank Member

between

The European Central Bank (the 'ECB')
Sonnemannstraße 20
60314 Frankfurt am Main
Germany

and

<insert Contractor's name> (the 'Contractor')
<insert Contractor's address>

>

(jointly the 'Parties')

1. Contract documents

The following documents together form this contract (the 'Contract') and, in the event of there being differences between the terms in these documents, they shall take precedence over each other in the following ranking and order:

- (a) this contract document (the 'Contract sheet');
- (b) 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) (hereinafter the [Decision](#)) (Annex 5) including its

<insert text>

Annexes, namely Annex I: Market Infrastructure Board Mandate; Annex II: Market Infrastructure Board Rules of Procedure; Annex III: Market Infrastructure Board Code of Conduct; Annex IV: Procedure and Requirements for the selection, appointment and replacement of the non-central bank members of the Market Infrastructure Board

- (c) the ECB's specific contract terms (SCTs) for services, attached hereto as Annex 1;
- (d) the ECB's general contract terms (GCTs), attached hereto as Annex 2;
- (e) the price sheet (Annex 6)
- (f) the description of the services, attached hereto as Annex 3;
- (g) the Contractor's offer, attached hereto as Annex 4.

Provisions which are preceded by a checkbox shall only apply if the checkbox is ticked. If the checkbox is not ticked they do not form part of this Contract.

2. Scope of the Contract

The Contractor shall provide the following services (the 'Deliverables') to the ECB:

- contributing to MIB documentation; - preparations for and participation in all MIB meetings; - preparations for participation in and possibly chairing of MIB Committee meetings; - preparations for and participation in meetings of other groups of the MIB governance; - preparations for and participation in relevant meetings with clients/users; - preparations for and participation in relevant meetings of market groups.

Further details are provided in Annex 3 ('Call for competition and description of service for new non-central bank members of the Market Infrastructure Board of the European Central Bank')

The scope of the Deliverables is further specified in Annex 3 and Annex 4 to this Contract.

The Contractor's contact point at the ECB shall be the Directorate/Directorate General Market Infrastructure & Payments. Both the ECB and the Contractor shall appoint a contract manager for this Contract.

3. Duration and termination

The Contract shall enter into effect on 01 June 2023. The Contract shall remain in force for a period of 36 month(s).

Contract extension: The Contract may be extended at the option of the ECB in accordance with Section 12.1 of the GCTs by the ECB giving advance notice of one month prior to the end of this Contract or of an extension to it. In any event, the total duration of the Contract shall not exceed 72 months.

The period of notice for termination of this Contract pursuant to Section 12.3 of the GCTs shall be six months.

4. Performance of the Contract

The Contractor shall start the provision of the Deliverables immediately after the Contract is signed by both Parties.

Service level agreement: The Contract is subject to the service level agreement contained in Annex 3. Section 2.3 of the SCTs shall apply.

5. Remuneration

Price sheet: The ECB shall pay in accordance with the Price sheet contained in Annex 4.

Fixed price: The ECB shall pay a fixed amount of EUR <insert net fixed price> for the provision of the Deliverables as a one-off payment.

Rates: The ECB shall pay for the Deliverables based on the time expended at a <Choose an item> rate of EUR <insert net rate>.

Overtime pursuant to Section 6.3 of the GCTs requested or approved by the ECB shall be remunerated at the hourly rate of EUR <insert net rate>, unless it is compensated in kind.

Warning ceiling: The total fee for the Contractor's Deliverables shall not exceed EUR 60.000 per calendar year. The Contractor shall inform the ECB without undue delay as soon as it becomes aware that this warning ceiling may be exceeded, and it shall await the ECB's confirmation before continuing to provide the Deliverables if this would result in the warning ceiling being reached or exceeded. The ECB shall not remunerate time spent that exceeds the warning ceiling which it has not approved in writing.

Prices shall remain stable for the duration of the Contract.

The Contractor shall submit to the ECB invoices at the following intervals: |monthly|. |Section 7 of the GCTs shall apply.

6. Particular conditions

The non-central bank member shall comply with the provisions set out in the Code of Conduct. The non-central bank member shall sign the declarations referred to in Section 6.1 to Annex IV to the Decision. The declarations form an integral part of this Contract.

Although the non-central bank member may undertake other activities, they shall avoid any conflicts of interest and shall comply with the provisions and procedures set out in the Code of Conduct in this regard.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Contract:

European Central Bank:

Contractor:

Frankfurt am Main,|

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EUROPEAN CENTRAL BANK

EUROSYSTEM

The European Central Bank's specific contract terms for services

Section 1 - Scope of application

These specific contract terms (SCTs) for the provision of services shall apply to all contracts for the provision of services for the European Central Bank (ECB) or at its request, unless the Contract sheet specifies that different conditions shall apply. The SCTs form an integral part of the contract between the ECB and the Contractor.

Section 2 - Scope of the services

2.1 The Contractor shall provide the services defined in the Contract sheet and its Annexes (the 'Deliverables').

2.2 The ECB may, within reasonable limits and within the limits of the scope stipulated in the Contract and its Annexes, specify the scope of the Deliverables and how they are to be performed by means of instructions in line with the ECB Procurement Rules. The Contractor shall comply with such instructions.

2.3 If the Contract sheet stipulates that the Contract is subject to a service level agreement, the Contractor shall perform the Contract in accordance with the service level agreement. In the case of non-compliance with the agreed service levels, the ECB may claim the service credits laid down in the service level agreement unless the Contractor can prove that the non-compliance is caused by the ECB or an event of force majeure. The total amount of service credits that have to be paid during the measurement period set forth in the service level agreement shall not exceed 5% of the remuneration to be paid for the relevant service in such period. These service credits do not prevent the ECB from claiming damages, taking into account paid service credits, or from terminating this Contract if such remedies are available under this Contract or statutory law.

2.4 Unless specified otherwise, the Contractor shall provide the Deliverables in English and all communication between the ECB and the Contractor shall be in English.

2.5 For communication between the ECB and the Contractor, the Contractor shall use, at the request of the ECB, a specific electronic communication platform.

Section 3 - Intellectual property rights

3.1 Unless otherwise agreed, the Contractor hereby transfers to the ECB, and the ECB accepts, all of its present and future transferable rights and claims in and to the Deliverables and in and to all documents, data, information, scripts, tools, presentations and other work results that the Contractor produces in performing the Deliverables either alone or together with third parties (together the 'Work results'), in each case as from the time when such rights are or will be created, so that the ECB becomes the owner of all such rights in the Work results. Only the ECB shall be entitled (but not obliged) to apply to register worldwide intellectual property rights for the Work results in its own name and shall become the owner of all such intellectual property right applications and all resulting intellectual property rights.

3.2 To the extent that the rights in the Work results are not transferable as such (particularly in the case of copyright under German law), the Contractor hereby irrevocably grants to the ECB, and the ECB accepts, the exclusive right to use the Work results from the moment in time the Work results are protected by law. In

the case of a copyright protected Work, the Contractor shall have the right to exploit the Work after the expiry of 10 years, unless (a) the Contractor makes only a secondary contribution to a Work, Product or Service; (b) the Contractor's Work is a work of architecture or a draft of such work; (c) the Work is intended for use in a trademark or other distinctive sign in a design; (d) the Work is not intended for publication; or (e) the Work is Software. The ECB's right of use shall not be subject to any restriction in terms of time, place or application and it shall cover all forms of use known at the time of entering into this Contract.

3.3 The right to use granted in Section 3.2 shall include, without being limited to, the rights to copy, distribute, process, modify, further develop and/or dispose of the Work results or create derivative works based on the Work results and use them to the same extent as the original results. The granting of rights also refers to types of use unknown at the present time, whereby the Contractor's mandatory rights provided for under the applicable law (e.g. with regard to withdrawal or to adequate remuneration), if any, shall remain unaffected.

3.4 The ECB may transfer the rights of use or may grant rights thereon (sublicences) to third parties in whole or in part.

3.5 Mandatory rights (in particular moral rights), if any, shall remain unaffected.

3.6 Without prejudice to Section 3.1, the Contractor shall remain the owner of all rights relating to documents, tools, methodologies, processes, ideas and know-how that the Contractor developed or owned prior to entering into the Contract or develops or acquires independently of the Deliverables ('Pre-existing deliverables'). If Pre-existing deliverables are made available to the ECB under the Contract, the Contractor shall grant to the ECB the irrevocable, non-exclusive, perpetual right to use, copy and distribute such Pre-existing deliverables internally and within the European System of Central Banks.

3.7 The Contractor hereby transfers and assigns to the ECB its ownership of all physical items containing, embodying or representing the Work results. The ECB hereby accepts such transfer and assignment.

3.8 The charge for transferring ownership rights and granting the rights of use set out in Section 3.1 to Section 3.7 is included in the agreed remuneration.

3.9 The Contractor represents and warrants (i) that it is authorised to transfer and grant the rights as set out in Section 3.1 to Section 3.7 and (ii) that the use of such rights, of the Work results and of the Deliverables by the ECB in accordance with this Contract does not infringe any third party rights. In the event of a dispute the Contractor shall indemnify the ECB from and hold it harmless against all third party claims in accordance with statutory law.

Section 4 – Duration and termination

4.1 In addition to Section 12 of the GCTs, the following shall apply: This Contract shall become effective upon its signature by both Parties and shall remain in force for the period of time defined in the Contract sheet or, if no fixed term is agreed, until the completion of the Deliverables, or until the Contract is terminated in accordance with its terms or in accordance with any statutory provision.



The European Central Bank's specific contract terms for services

4.2 Upon termination or expiration of the Contract, the Contractor shall make all reasonable efforts to enable the ECB to perform the Services on its own or with the support of designated third parties. The Contractor shall ensure that the ECB has access to all necessary Documentation, know-how and other knowledge on technical and operational procedure. The ECB and designated third parties may use all of the Documentation, know-how and information for the purpose defined in the Contract. For this purpose, the Contractor shall collaborate constructively and accountably with the ECB and any designated third parties. The Contractor shall provide only qualified staff for the transition of the Services. Unless specified otherwise in the Contract sheet, this support with the transition of the Services is part of the Deliverables with no additional remuneration.



EUROPEAN CENTRAL BANK

EUROSYSTEM

The European Central Bank's general contract terms

Section 1 - Scope of application

1.1 These general contract terms (GCTs) apply to all works carried out for the European Central Bank (ECB) and to the provision of all services and products to the ECB. They form an integral part of the Contract between the ECB and the Contractor.

1.2 In the event of a conflict between the GCTs and the terms in the Contract sheet or any applicable specific contract terms (SCTs), the terms in the Contract sheet prevail over the SCTs, which shall prevail over the GCTs.

1.3 The Contractor's general terms and conditions shall not apply.

Section 2 - Definitions

The following terms have the meanings given below:

- a) 'Annex' means an annex to the Contract sheet.
- b) 'Confidential information' means any information, data or documents that the ECB has classified, orally or in writing, as 'ECB-Restricted', 'ECB-Confidential' or 'ECB-Secret', or which a reasonable contractor would consider to be confidential. Confidential information shall not include: (i) information which is or which becomes publicly available, except through a breach of confidentiality by the Contractor, any other circumstance the Contractor is responsible for; or (ii) information for which the ECB has given written authorisation for disclosure.
- c) 'Contract' means the Contract sheet and any annexes to it, including the GCTs and any SCTs.
- d) 'Contract sheet' means the individual contract document with regard to specific Deliverables signed by the Parties.
- e) 'Contract value' means the agreed remuneration under the Contract or, in the case of Framework agreements, an Order, taking into account any price adjustment according to Section 6.4 and any change in the remuneration due to Change requests according to Section 6.7.
- f) 'Contractor' means the Party or Parties identified in the Contract sheet as the 'Contractor'.
- g) 'Deliverables' means any works to be carried out or any services or products to be provided by the Contractor to the ECB or at its request in accordance with the Contract.
- h) 'ECB's house rules' means the House rules of the European Central Bank in the version in force at the time of Contractor's performance, available at: <https://www.ecb.europa.eu/ecb/jobsproc/proc/pdf/houserulesen.pdf?4384b7c70c56faa3faad4dd5ffc1ca7a>.
- i) 'ECB premises' means any of the ECB's premises in Frankfurt am Main.
- j) 'ECB Procurement Rules' means 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), as amended, available at: https://www.ecb.europa.eu/ecb/legal/1001/procurement/html/index_en.html
- k) 'ECB public holidays' means the public holidays defined under: http://www.ecb.europa.eu/home/contacts/working-hours/html/index_en.html.
- l) 'EU' means the European Union.
- m) 'Framework agreement' means a framework agreement as defined in Article 1(9) of the ECB Procurement Rules.
- n) 'GCTs' means these general contract terms.
- o) 'Order' means any order placed by the ECB under a framework agreement.
- p) 'Parties' means jointly the parties to a Contract, each individually referred to as a 'Party'.
- q) 'Price sheet' means the detailed table of the agreed remuneration attached to the Contract sheet as an Annex.
- r) 'SCTs' means any specific contract terms applicable to a Contract.
- s) 'Staff member' or 'Contractor's staff member' means an employee or freelance collaborator of the Contractor or the Contractor's subcontractors or the subcontractor itself.
- t) 'Working day' means a working day as defined in the ECB working calendar (at <http://www.ecb.europa.eu/home/contacts/working-hours/html/index.en.html>).

Section 3 - ECB's house rules, security clearance and penalties

3.1 If Deliverables are carried out or provided on the ECB's premises, the Contractor shall comply with the ECB's house rules and ensure that Contractor's staff members also comply with the ECB's house rules. The Contractor shall inform the ECB without delay if it considers that any proposed change to the ECB's house rules will affect the performance of the Contract. The Parties shall then discuss and, if necessary, agree any necessary amendments to the Contract.

3.2 The Contractor's staff members who are assigned to work at the ECB's premises shall comply with the ECB's security clearance procedure. The security clearance procedure is laid down in the ECB's house rules. The Contractor shall be responsible for the timely submission of the documentation required for security clearance, and be liable for the consequences of delayed submission.

3.3 The Contractor shall ensure that the Staff members return all items received from the ECB when leaving the ECB's premises, including but not restricted to: security badges, keys, books and IT equipment. If, for reasons for which the Contractor is responsible, such items are not returned within a reasonable period set by the ECB, the ECB may claim from the Contractor a contractual penalty of up to EUR 500 for each unreturned item. Section 8.4 applies. The ECB shall use equitable discretion when fixing the amount of a penalty, taking into account the value of the missing item. Such penalty shall not prevent the ECB from claiming further damages, taking the contract penalty into account, and/or making further claims under other contractual terms for penalties.

Section 4 - Use of subcontractors, Contractor's staff members

4.1 Unless otherwise agreed, the Contractor shall carry out or provide the Deliverables in person or using its own staff. Subcontracting to a third party requires the ECB's prior written consent. If the Parties have stipulated the use of individually identified subcontractors in the Contract sheet or its Annexes, such consent shall be deemed to have been given with regard to the individually identified subcontractors. The ECB may withdraw its consent if it becomes aware of circumstances that would have justified the exclusion of the subcontractor from a procurement procedure under Article 30 (1), (4) and (5) of the ECB Procurement Rules. In this case, the ECB may request the Contractor to propose an equally qualified replacement within ten calendar days from the notification of the ECB's request. The replacement shall be subject to the ECB's prior written consent, which shall not be unreasonably withheld. In all cases, the Contractor remains responsible for providing all Deliverables in accordance with the Contract.

4.2 If the Contract sheet or its Annexes states that the Contractor shall carry out or provide the Deliverables in person, and if the Contractor is prevented from doing so for reasons beyond its control (for example, in the event of sickness) and the ECB cannot reasonably be expected to wait as a delay would jeopardise the purpose of the Contract, the ECB may either terminate the contract or request the Contractor to propose a replacement in accordance with Section 4.5 below.

4.3 The Contractor shall deploy a sufficient number of staff to provide the Deliverables by the agreed date. Each Contractor's staff member shall be appropriately qualified, skilled and experienced to perform their duties under the Contract. At any time and without additional charge, the ECB may request the Contractor to replace any Contractor's staff member who does not have the necessary qualifications, skills or experience, does not obtain security clearance, or repeatedly or substantially breaches the ECB's house rules, or for any other serious reason.

4.4 If the Contractor deploys specific Contractor's staff members to carry out or provide the Deliverables, the Contractor shall not replace them unless forced to do so for reasons beyond the Contractor's control (such as sickness, or termination of the employment contract by the Contractor's staff member in question).

4.5 Where a Contractor's staff member is replaced under Sections 4.3 and 4.4, the Contractor shall propose replacement staff with at least the same level of experience, skills and qualifications within ten calendar days from the date when the Contractor becomes aware of its own or the Contractor's staff member's unavailability, or from the notification of the ECB's request. The replacement staff shall be subject to the ECB's prior approval, which shall not be unreasonably withheld. The Contractor shall ensure that the replacement is made with an appropriate transfer of knowledge and information, so as to avoid interrupting the fulfilment of the Contract and to maintain a high level of service quality at all times.

4.6 The Contractor represents and warrants its compliance with, and ensures that its subcontractors comply with, all statutory and/or

collectively agreed minimum wage levels. The Contractor hereby unconditionally and irrevocably indemnifies the ECB from and holds it harmless against any third party claims against the ECB due to the Contractor's and/or subcontractor's breach of applicable minimum wage regulations, in particular the Minimum Wage Act (*Mindestlohngesetz*) and the Employee Assignment Act (*Arbeitnehmerentsendegesetz*).

4.7 The Contractor shall by means of a written contract oblige any of its subcontractors to adhere to its obligations under this Contract, in particular Section 9, 11 and 11a.

Section 5 - No employment relationship – Independent contractor

The Contractor shall perform the Contract as an independent contractor and is free to work for other clients. The Contractor is free to determine how the Contract is fulfilled within the limits set out in the Contract. The Parties agree that the Contract does not establish an employment relationship between the ECB and the Contractor or any of the Contractor's staff members. The Contractor and its subcontractors remain responsible for paying all taxes and social security contributions arising out of their activities under the Contract. The Contractor has sole responsibility for ensuring that the Staff members fulfil all the obligations required by applicable legislation concerning foreign nationals in all places of performance, including in particular the obligation to hold a valid residence permit (*Aufenthaltslaubnis*) and work permit (*Arbeitslaubnis*) for the duration of the Contract.

Section 6 – Remuneration, value added tax and change requests

6.1 The ECB shall pay for the Deliverables specified in the Contract on receipt of the Contractor's invoice.

6.2 Unless otherwise agreed, the rates agreed (such as fixed prices and daily, hourly or other rates agreed) shall cover all costs and expenses relating to the provision of the Deliverables. This includes, but is not limited to, expenses for accommodation, travel and subsistence, production, packaging and distribution of the Deliverables and corresponding documents, licences and communication. Travel time of the Contractor shall not be remunerated.

6.3 If daily rates are agreed, parts of days shall be paid pro rata on the basis of eight working hours per day. If an hourly rate for overtime is specified, overtime shall only be paid if requested or approved by the ECB and if not compensated in kind.

6.4 If the Contract sheet provides for a price adjustment, the agreed rates shall remain stable for the first two years following signature of the Contract. Thereafter, the Contractor may claim an adjustment of the agreed rates in line with the development, since signing the Contract, of the Harmonised Index of Consumer Prices in the EU (all items) calculated by Eurostat. Further price adjustments may be made at two-year intervals. In case of a multi-supplier framework agreement without reopening of competition, a price adjustment may lead to a readjustment of the ranking of suppliers, as set out in Section 13.6.

6.5 If the Deliverables are subject to value added tax levied in an EU Member State ('EU VAT'), the agreed remuneration shall be net of such EU VAT, unless otherwise specified in the Contract. In such case, the following shall apply:

- a) If the place of supply of the goods or services under the applicable VAT law is in Germany or Portugal, the ECB shall pay the statutory VAT in addition to the agreed remuneration at the rate applicable on the day on which the respective supply has been carried out to the ECB to the Contractor, unless the Deliverables provided are subject to the German rules on reverse charge according to § 13b(2) No 1 and (5) of the German Act on VAT (*Umsatzsteuergesetz*). The payment of the statutory VAT shall be due upon receipt of an invoice which is in compliance with the provisions of Section 7.1.
- b) If the place of supply of the goods or services under applicable VAT law is in an EU Member State other than Germany or Portugal, the Deliverables are exempt from VAT in accordance with Articles 3 and 22 of the Protocol on the Privileges and Immunities of the European Union and Article 151(1)(aa) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p.1), unless the ECB informs the Contractor that the Deliverables are exceptionally not made for the official use of the ECB and therefore not exempt from VAT. The Contractor shall comply with the necessary formalities required by the competent authorities to ensure that the Deliverables are exempt from VAT and issue an invoice which is in compliance with the provisions of Section 7.1. On request, the ECB shall provide the Contractor with a VAT exemption certificate.

If the Deliverables are subject to value added tax, turnover tax, sales tax or comparable tax or duty levied in a country other than an EU Member State ('third country tax'), the agreed remuneration shall include the amounts of any such applicable third country tax. In such case, or in case the Deliverables are subject to EU VAT and the Contract specifies that the agreed rates include the amounts of applicable EU VAT, the ECB

shall pay the agreed remuneration. The Contractor shall deduct the applicable third country tax or EU VAT from the agreed remuneration.

6.6 In case Orders under a Framework agreement are remunerated based on daily, hourly or other rates, the ECB may request the Contractor to offer fixed prices for specific Orders or parts thereof, which shall be calculated on the basis of the agreed rates.

6.7 The ECB may request alterations to the Deliverables and/or request additional Deliverables ('Change request') in line with the ECB Procurement Rules. The Contractor may refuse to make alterations or provide additional Deliverables if it would be technically impossible or unreasonable to do so or if no appropriate resources are available. The Contractor shall provide the ECB with a binding offer covering at least a cost-and-time evaluation and other relevant aspects that will influence the Contract, if any, within 10 calendar days of receipt of the Change request. The Contractor shall calculate all costs in accordance with the remuneration principles agreed in the Contract. If the ECB accepts an offer prepared by the Contractor in response to a Change request, the offer shall become part of this Contract and the Contractor shall perform the Change request in accordance with the terms and conditions in the Contract. If the ECB has not expressly accepted the Contractor's offer in response to a Change request, the Contractor shall perform its duties as initially agreed between the Parties, unless and until the ECB approves the Contractor's offer.

Section 7 - Invoicing and terms of payment

7.1 All invoices shall include at least the following information: (i) the full name and address of the Contractor and of the ECB, (ii) the VAT identification number or tax number of the Contractor, (iii) the date of issue, (iv) a sequential invoice number, (v) the quantity and the nature of the goods supplied or the extent and the nature of the services rendered, (vi) the date on which the supply of goods or services was made or completed or the date on which the payment was made, in so far as that date can be determined and differs from the date of issue of the invoice, (vii) the unit price exclusive of VAT and discounts or rebates if they are not included in the unit price, (viii) the taxable amount split up per rate or per exemption applicable, (ix) the applicable VAT rate or VAT exemption, (x) the payable VAT amount, (xi) the invoice currency, (xii) a reference to the Contract, (xiii) the contract number and purchase order number, (xiv) the contracted payment terms, (xv) the Contractor's IBAN and BIC codes as well as the name of the account holder, and (xvi) a reference to the VAT exemption or where the ECB is liable for payment of VAT indicating that the supply of goods or services is exempt or subject to the reverse charge procedure. If the Contractor is remunerated on the basis of the time expended, the invoice shall also specify the number of days and hours expended, supported by a detailed record, and the applicable daily/hourly rates.

7.2 The Contractor shall submit invoices to the ECB's Accounting Division. Electronic invoices shall be sent via email to AP.invoices@ecb.europa.eu. Electronic Invoices shall be accepted in either XML or PDF format. Invoices in XML format must be generated using the XRechnung standard and submitted using the Pan-European Public Procurement Online (PEPPOL) submission protocol. Only one invoice in XML format may be submitted per email. Invoices in PDF format, including accompanying documents in attachments relating to the invoice, if any, shall be submitted in a single PDF file. In exceptional cases, and only with the prior consent of the ECB, the Contractor may submit paper invoices.

If requesting the reimbursement of accommodation or travel expenses, the Contractor shall submit an electronic reimbursement request form together with an electronic copy of the original receipts including VAT, if such receipts exist. The reimbursement request form shall be accompanied by an invoice in accordance with the requirements set out in Sections 6.5 and 7.1.

Invoices or reimbursement request forms submitted by post shall be sent by the Contractor to the European Central Bank, Accounting, 60640 Frankfurt am Main, Germany.

The Contractor shall comply with any further instructions of the ECB relating to the provisions of this Section 7.2.

7.3 Unless otherwise agreed, the ECB shall pay the amount of an invoice meeting the requirements set out in Section 7.1 and 7.2, either within 14 calendar days following its receipt less a 2% discount, or the full amount within 30 calendar days following its receipt. Where the date of the receipt of an invoice or request for payment is uncertain, the ECB shall pay within 30 calendar days after the date of receipt of the Deliverables.

7.4 All payments may be made in euro or in the currency mentioned in the invoice.

7.5 The ECB may withhold payment to the extent that an invoice does not meet the requirements set out in this Section.

7.6 Any indemnities for operating costs or interest for late payment shall be governed by statutory law.

Section 8 – Liability, maximum contractual penalties

8.1 The Contractor shall complete performance of the Contract by the agreed date and in the quality necessary to achieve its purpose. The Contractor shall use the relevant professional diligence, and shall comply with the state of the art in technology and industry practice.

8.2 All Parties shall be liable for any deliberate or negligent act or omission of their staff or subcontractors in accordance with statutory law.

8.3 Each member of a temporary grouping (*Bietergemeinschaft*) shall be jointly and severally liable (*Gesamtschuldner*) for all obligations under the Contract.

8.4 The total sum of all contractual penalties under the Contract shall not exceed 5% of the net Contract value during the term of the Contract or, in the case of a Framework agreement, the term of the Order.

Section 9 - Confidentiality, penalty for disclosure

9.1 The Contractor shall treat Confidential information in the strictest confidence, and shall not disclose it to 'Unauthorised persons'. Unauthorised persons means any persons other than those who have been explicitly authorised by the ECB to access Confidential information as well as the Contractor's staff members and the ECB's staff members, who are directly involved in the provision of the Deliverables.

9.2 The Contractor shall use Confidential information only for the purposes for which it is disclosed and shall not use it for its own or another person's benefit. The ECB may request the Contractor and the Staff members to sign individual confidentiality agreements.

9.3 The Contractor shall store properly and protect all Confidential information which the ECB makes available to the Contractor or which the Contractor receives from third parties for the performance of the Contract against unauthorised access by third parties and/or accidental disclosure. The Contractor shall employ all reasonable steps under the circumstances to keep the information secret as required by Art. 2 para. 1 lit. c of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016. In case the Contractor passes on any Confidential information to a third party with the ECB's consent the Contractor has to ensure that such third party complies with this Section 9 and confirms this in writing. On termination of the Contract or an Order, the ECB may request the Contractor to destroy all copies (in whatever form) of Confidential information it has produced or received in connection with the Contract, or return it to the ECB without undue delay. The Contractor shall not invoke any right to retain Confidential information. However, the Contractor may keep copies of information to the extent required by statutory law. If the Contractor assumes a legal duty of retention, the Contractor shall inform the ECB and provide it with all information necessary to assess whether a legal obligation exists under the statutory law. To the extent that the Contractor cannot demonstrate to the ECB that a legal obligation exists, the Contractor shall refrain from keeping copies of the Confidential information.

9.4 The Contractor shall not use the ECB's name in promotional material without the ECB's prior written consent. Such consent shall only cover the material and time period stipulated in the Contractor's request if not stated otherwise in the ECB's consent.

9.5 The ECB may claim a contractual penalty of up to 5% of the net Contract value for each breach of confidentiality for which the Contractor is responsible, including for disclosure of Confidential information and failure to take appropriate measures to prevent unauthorised access to Confidential information. Section 8.4 applies. The ECB shall use equitable discretion when fixing the amount of a penalty, taking into account the seriousness of the breach and the damage caused to the ECB. At the Contractor's request, the amount of a penalty shall be subject to review by a competent court. The imposition of a penalty shall not prevent the ECB from claiming further damages, taking the contract penalty into account, or from terminating the Contract with immediate effect.

9.6 The Contractor shall promptly (i) notify the ECB in writing after becoming aware of any (a) break, interruption, corruption, attempt to break, interrupt, corrupt the security of the hardware, software, telecommunication systems and networks and other IT systems used by the Contractor and/or its subcontractors to provide the Services under this Contract (the 'IT Systems'); (b) unauthorized access or attempt to obtain unauthorized access to the IT System or any data processed in the IT System, or (c) introduction of harmful surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs or web bugs, computer viruses, trojans, or other malware, into the IT System, which has led or may potentially lead to an unauthorized access to and/or a destruction, loss, alteration of any data of the ECB and/or any other data which is subject to the provision of the Services under this Contract (the 'IT Security Incident') and (ii) investigate and – as far as possible - remediate the effects of such an IT Security Incident.

9.7 Upon reasonable request of the ECB, the Contractor shall provide the ECB with detailed information (i) on the nature and effects of any IT Security Incident, including information on which data has been affected or may be affected, (ii) measures taken by the Contractor to remediate

the IT Security Incident reported by the Contractor, and (iii) measures the Contractor will take to prevent similar IT Security Incidents.

9.8 The Contractor's obligations relating to Confidential information, as set out in this Section, shall not apply if, and to the extent that, the Contractor is obliged by mandatory laws or enforceable orders of a court, tribunal or public authority to disclose Confidential information. The Contractor shall, as far as possible, notify the ECB without prior request and without undue delay of i) the fact that disclosure of Confidential information is required, ii) the scope of the disclosure, and iii) all information necessary for the ECB to verify any obligations relating to Confidential information.

9.9 The Contractor consents that the ECB may disclose this contract or information relating to the contract (i) to European or national authorities upon their reasonable request or (ii) to a third party that is not a direct competitor of the Contractor for the purpose of comparing the conditions and pricing of the contract with market conditions and to provide the ECB with a respective assessment and under the condition that the third party is obliged to treat the information confidential.

9.10 The Contractor's obligations relating to Confidential information, as set out in this Section, shall survive and remain in force and effect also after the expiration of the Contract as long as the respective information qualifies as Confidential information.

Section 10 - Data protection

10.1 The ECB processes personal data in or relating to the Contract and/or the fulfilment of the Contract 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 (OJ L 295, 21.11.2018, p. 39–98).

10.2 In its capacity as (data) controller within the meaning of Regulation (EU) 2018/1725, the ECB shall process personal data in or relating to the Contract for contract awards and subsequent contract management. The ECB may process payment settlement data via SWIFT.

10.3 The Contractor or any other person whose personal data are processed in relation to this Contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify any data that is inaccurate or incomplete. Data subjects also have (with some limitations) the right to delete their personal data, to restrict or object to the processing of their personal data in line with the relevant provisions of Regulation (EU) 2018/1725. For all queries relating to such data, the data subjects may address the ECB. The data subject shall have the right of recourse to the European Data Protection Supervisor (EDPS).

The ECB's Privacy Statement for the processing of personal data related to contract management is available at <https://www.ecb.europa.eu/ecb/jobsproc/tenders/html/index.en.html>

10.4 The Contractor shall comply with, and shall ensure that the Staff members comply with, applicable data protection law. In addition, if the Contractor processes personal data, the Contractor has to comply with special legal requirements as set out in the Contract (standard contractual clauses).

10.5 Upon request of the ECB and at the latest at the end of the Contract, the Contractor shall, at the choice of the ECB, either return or delete all personal data received in or relating to the Contract and/or the fulfilment of the Contract as well as any copies of such personal data and furnish proof to the ECB that the respective personal data has been fully and properly deleted. This provision shall not apply in the case of Union or national law requiring the Contractor to store a copy of the personal data for a longer time period. In such a case, the Contractor shall inform the ECB about the statutory retention period and shall delete any remaining personal data at the end of that time period. If the Parties disagree on whether a statutory retention period applies, the ECB and the Contractor shall discuss the matter and seek to find an agreement.

10.6 The Contractor shall ensure that all Staff members whose personal data is transmitted by the Contractor to the ECB, are informed about the processing of their personal data in relation to this Contract by providing them with the ECB's Privacy Statement for the processing of personal data related to contract management, available at <https://www.ecb.europa.eu/ecb/jobsproc/tenders/html/index.en.html>

Section 11 - Standards of behaviour – conflicts of interest

11.1 The Contractor shall comply with, and shall ensure that the Staff members comply with the standards of behaviour set out in this Section 11, including the Annex referred to in Section 11.9, as well as with any related specific obligations set out in the SCTs where applicable (together the 'standards of behaviour'). The ECB may ask the Contractor's staff members to sign a solemn declaration of compliance with these standards of behaviour.

11.2 Conflicts of interest

The Contractor and the Staff members shall avoid any situation where any benefit or potential benefit of a financial or non-financial nature or any commercial or other interest of the Contractor, its subcontractors or 'affiliated enterprises' as referred to in §§ 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*), or any European member of the network to which the Contractor belongs and which trades under the name of the Contractor ('Affiliates'), or of the Staff members, their relatives or their close acquaintances, could influence or appear to influence the impartial and objective performance of the Contractor's contractual obligations under the Contract ('Conflict of interest').

Upon becoming aware of a potential Conflict of interest the Contractor and the Staff members shall immediately inform the ECB thereof and provide any information that the ECB reasonably requires to assess the situation. The ECB may ask the Contractor to take appropriate measures to avoid or resolve the Conflict of interest, including, but not limited to, establishing strict non-disclosure procedures, putting in place additional safeguards to protect Confidential information, and replacing any of the Contractor's staff members exposed to such a situation. If it is not possible to avoid or resolve a Conflict of interest, the ECB may suspend the right of the Contractor to participate in a process of placing Orders under Framework Agreements in accordance with Section 13 and terminate with immediate effect either the entire Contract or, in so far as legally possible, those parts of the Contract affected by the Conflict of interest.

11.3 Gainful occupation of a spouse or recognised partner

The Contractor and the Staff members shall inform the ECB of any gainful occupational activity of the Contractor or the Staff members or Contractor's or any Staff members' spouse or recognised partner that may lead to a Conflict of interest affecting the performance of the Contract. Section 11.2 shall apply accordingly.

11.4 Gifts and hospitality

The Contractor and the Staff members shall neither solicit nor accept for itself or any other person any advantage connected with the performance of the Contract.

'Advantage' means any gift, hospitality or other benefit of a financial or non-financial nature which objectively improves the financial, legal or personal situation of the recipient or any other person and to which the recipient is not entitled by law. Minor hospitality offered during a work-related meeting, with the exception of hospitality offered by credit institutions in the context of on-site inspections or audits undertaken by the ECB, shall not be considered as an Advantage. An Advantage is considered connected with the performance of the Contract if it is offered on the basis of the Contractor's position as a contractor of the ECB, rather than on a personal basis or on the basis of other professional relationships. The Contractor and the Staff members shall inform the ECB without undue delay of any Advantage connected with the performance of the Contract.

11.5 Awards, honours and decorations

The Contractor and the Staff members shall obtain authorisation from the ECB before accepting awards, honours or decorations in connection with the performance of the Contract.

11.6 Relations with external parties

The Contractor and the Staff members shall be mindful of the ECB's independence, reputation and the need to maintain professional secrecy. In the performance of the Contract, the Contractor and the Staff members shall neither seek nor take instructions from any government, authority, organisation or person outside the ECB. The Contractor and the Staff members shall inform the ECB of any attempt by a third party to influence the ECB.

The Contractor and the Staff members shall maintain caution in their relations with interest groups and the media and shall refer all requests for information from the general public or the media connected with the performance of the Contract to the ECB.

11.7 Dignity at work

The Contractor shall in the course of the performance of the contract respect the dignity of the Staff members and the ECB's staff members and refrain from any inappropriate behaviour that demeans others. The Contractor's staff members shall respect the dignity of the ECB's staff and refrain from any inappropriate behaviour that demeans others. For the purpose of the standards of behaviour set out in this Section the following definitions shall apply:

- a) 'Dignity at work' means the absence of inappropriate behaviour. Inappropriate behaviour means any form of direct or indirect discrimination, physical violence, psychological harassment (also referred to as bullying or mobbing) and sexual harassment.
- b) 'Direct discrimination' shall be taken to occur where one person, because of their nationality, gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, is, has been or would be treated less favourably than another person in a comparable situation.
- c) 'Indirect discrimination' shall be taken to occur where an apparently neutral provision, criterion or practice would put a person at a

particular disadvantage on the grounds of nationality, gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation compared to another person, unless the provision, criterion or practice is objectively justified.

- d) 'Physical violence' means the intentional use of physical force or the threat of physical force against another person that results in physical, sexual or psychological harm.
- e) 'Psychological harassment' means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other intentional acts that may undermine the personality, dignity or physical or psychological integrity of any person.
- f) 'Sexual harassment' means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment.

11.8 Use of ECB resources

The Contractor and the Staff members shall respect and protect ECB property. ECB equipment and facilities, whatever their nature, shall not be used without the ECB's prior written authorisation for any purposes other than performing the Contract.

11.9 Financial transactions

If the Contractor and/or its Staff members may have, due to the performance of their obligations under the Contract, access to information which might fulfil the criteria of 'inside information' within the meaning of Article 7 of Regulation (EU) No 596/2014 of the European Council and of the Parliament of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p.1) ('Inside information') or other Confidential information, the Contractor shall also comply with, and shall ensure that its Staff members comply with special requirements regarding financial transactions as set out in the 'Annex on restrictions on financial transactions for Contractors and Contractors staff members', which shall be attached to the Contract.

Section 11a – Auditing and cooperation duties

11a.1 The Contractor shall allow the ECB or its external auditors or consultants bound by confidentiality and professional secrecy obligations to perform audits for the purposes of assessing the compliance of the Contractor with their obligations under this Contract, including obligations in respect of confidentiality, data protection and standards of behavior. Such audits may take place once per calendar year or more often if the ECB has reasonable grounds for conducting additional audits.

11a.2 In particular, the Contractor shall:

- a) grant access to all contract documents, including invoices, accounting and other records, administrative and court decisions, regulatory actions, permits, decrees and other documents related to the Contract or the contractual performance (the 'Contract documents') as well as information, IT systems, equipment and premises which is deemed necessary to carry out an audit;
- b) submit all Contract documents and information requested without undue delay.

11a.3 The Contractor shall ensure that no statutory provision, including any data protection law, or any of its contractual obligations to others will be violated by providing the information or Contract documents.

11a.4 To the extent reasonably possible and required to fulfil the purposes of the audit, the Contractor shall allow the ECB or its external auditors or consultants to interview the Contractor's current and former Staff members.

11a.5 Audits shall be conducted during normal office hours and shall not unreasonably interfere with the normal work or services of the Contractor. The Contractor shall make best efforts to cooperate with the audit. To the extent possible, the ECB shall give the Contractor at least 10 days written notice before conducting an audit.

11a.6 The ECB and the Contractor shall meet promptly to review each audit report and to agree on an appropriate response to any deficiencies identified and changes suggested in the report. If the report indicates that the Contractor does not comply with any of the requirements set out in this Contract, the Contractor shall take prompt action to comply with the findings of the report, rectify any violation of its contractual duties and shall bear all costs of such actions. The information collected through the audit shall not be used for any purpose other than the ECB's specific use concerning the issues raised therein and the enforcement of any consequences that derive from the audit.

11a.7 The Contractor shall fully cooperate with and assist the ECB with any internal administrative inquiry being conducted by the ECB concerning any aspect related to this Contract (e.g. as witness).

11a.8 The provisions set out in this Section shall also apply to the Contractor's staff members and the Contractor shall ensure that its staff members comply with the obligations under this Section.

11.a.9 The ECB's audit rights set out in this Section shall remain in force for a period of 2 years after the termination of the Contract.

11.a.10 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Section.

Section 12 - Duration and termination of the Contract

12.1 If the Contract sheet specifies that the ECB has the option to extend the Contract, the ECB may exercise this option unilaterally and shall notify the Contractor of its request for such extension with the period of notice indicated in the Contract sheet. The ECB may exercise such option several times but not for periods shorter than one calendar month, unless stated otherwise in the Contract sheet.

12.2 If the Contract sheet specifies that the Contract shall be extended automatically, it shall be renewed for the successive periods defined in the Contract sheet unless the ECB notifies the Contractor one month prior to the end of a contract term that the Contract will not be continued.

12.3 The ECB may terminate Contracts without cause. The period of notice of termination shall be as stipulated in the Contract sheet. If no notice period is stipulated, it shall be six months. If the Contract concerns services according to § 627 of the German Civil Code, the ECB may terminate the Contract at any time without notice and the Contractor may terminate the Contract without cause in accordance with § 627(2) of the German Civil Code, subject to it giving three months' prior notice of termination.

12.4 Any Party may terminate the Contract in extraordinary circumstances that render the continuation of the Contract intolerable, considering all the relevant aspects and the interests of the Parties. In particular, the ECB may terminate the Contract if:

- a) it becomes aware of circumstances that would have justified the exclusion of the Contractor or of an entity whose capacities the Contractor has relied on from the procurement procedure under Article 30 (1), (4) and (5) of the ECB Procurement Rules;
- b) the Contractor has substantially or repeatedly breached its obligations under the Contract and has not remedied such breach within a reasonable period set by the ECB, or if the breach cannot be remedied or in other circumstances defined in statutory law;
- c) the Contractor ceases trading;
- d) the Contractor does not provide a suitable replacement for a subcontractor or a Contractor's staff member within the period stated in Section 4;
- e) the Contractor has a conflict of interest that cannot be resolved by appropriate measures in accordance with Section 11.
- f) the Contractor or respectively its subcontractor does not pay to the Staff members at least the statutory and/or collectively agreed minimum wage.

12.5 The right to terminate the Contract in accordance with its terms shall not prejudice any statutory rights or remedies of the Parties.

12.6 Termination of this Contract must be made in writing, whereby it is sufficient to send a copy of the signed declaration by email or fax.

Section 13 - Orders under a Framework agreement

13.1 Where the ECB enters into a Framework agreement, this shall not impose any obligation on the ECB to place any Orders.

13.2 A Framework agreement does not give a Contractor an exclusive right to provide Deliverables. The ECB may engage other contractors at any time.

13.3 The ECB may, at any time, place Orders in accordance with the procedures laid down in Article 18 of the ECB Procurement Rules and in this Section. Such Orders must at least specify the scope, time limits, remuneration and any other relevant conditions for the Deliverables.

13.4 Where a Contract constitutes a single-supplier framework agreement with a direct order (Article 18(3), first sentence, of the ECB Procurement Rules), the following applies:

- (a) The ECB shall place an Order. The Contractor shall confirm its acceptance.
- (b) The Contractor shall provide the Deliverables specified in the Order in accordance with the provisions of the Contract and the Order.

13.5 Where a Contract constitutes a single-supplier framework agreement with a supplementary offer (Article 18(3), second sentence, of the ECB Procurement Rules), the following applies:

- (a) The ECB shall make a request specifying its requirements.
- (b) On receipt of the ECB's request, the Contractor shall prepare a binding supplementary offer and submit it by the date specified by the ECB. Remuneration shall be based on the prices set out in the Contract.
- (c) If the ECB accepts the Contractor's supplementary offer, it shall confirm its acceptance by placing an Order specifying the scope, remuneration, time limits and any other specifications in accordance with the supplementary offer.
- (d) The Contractor shall provide the Deliverables specified in the Order in accordance with the provisions of the Contract and the Order.

13.6 Where a Contract is a multiple-supplier framework agreement,

without reopening of competition (Article 18(4)(a) of the ECB Procurement Rules), the following applies:

- (a) The Contractor acknowledges: (i) that the ECB has entered into Framework agreements with a number of suppliers, as defined in the Contract sheet, including the Contractor; (ii) that the ECB has ranked the suppliers on the basis of the award criteria set out in the tender documentation; (iii) that the Contractor's offer has been ranked as specified in the Contract; and (iv) that the ECB will contact the suppliers in the order of their ranking and place Orders with them according to their availability.
- (b) If so requested by the ECB, the Contractor may prepare a binding offer and submit it by the date specified by the ECB. The remuneration shall be based on the remuneration set out in the Contract sheet. If the Contractor is unable to submit an offer as requested, it shall inform the ECB without undue delay. If the Contractor does not submit an offer by the date set by the ECB, the ECB may request the next-ranked supplier to submit an offer.
- (c) If the ECB accepts the Contractor's offer, the ECB shall place an Order.
- (d) The Contractor shall provide the Deliverables specified in the Order in accordance with the provisions of the Contract and the Order.
- (e) In the event of a price adjustment pursuant to Section 6.4, the ECB may reassess the ranking of suppliers accordingly. To this end, for each supplier who requested a price adjustment, the ECB shall determine a new weighted score of the supplier's offer by replacing the financial offer with the adjusted price, while otherwise maintaining the criteria and results of the evaluation. The ECB shall then rank the suppliers based on the revised weighted scores. The ECB shall inform the Contractor in writing of any resulting change in the Contractor's position in the ranking.

13.7 Where a Contract is a multiple-supplier framework agreement with reopening of competition (Article 18(4)(b) of the ECB Procurement Rules), the following applies:

- (a) The Contractor acknowledges: (i) that the ECB has entered into Framework agreements with a number of suppliers, as set out in the Contract sheet, including the Contractor; and (ii) that for each Order the ECB may reopen competition among all suppliers.
- (b) If the ECB intends to place an Order, it shall invite all suppliers to submit an offer in writing. The request for an offer shall specify at least the scope, timetable, time limit for the submission of offers, and award criteria.
- (c) On receipt of a request for a proposal, the Contractor may prepare and submit a written offer to the ECB which must be in accordance with the requirements set out in the request. If the Contractor is unable to submit an offer as requested, it shall inform the ECB without undue delay.
- (d) The ECB shall place the Order with the supplier who submits the best offer according to the award criteria.
- (e) The Contractor shall provide the Deliverables specified in the Order in accordance with the provisions of the Contract and the Order.

13.8 Unless otherwise agreed, the ECB may terminate an Order without cause by giving two weeks' written notice. Either Party may terminate an Order without notice under the conditions set out in Section 12.4. In the circumstances listed in Section 12.4, the ECB may also decide to suspend the Contractor's right to participate in a process of placing Orders under this Contract for a reasonable period of time.

13.9 The provisions set out in a Framework agreement and its Annexes apply to any Order under such Framework agreement, unless otherwise stated in the Order.

13.10 If a Framework agreement expires or is terminated, the Contractor shall complete any Order placed prior to the expiry or termination of the Contract, unless the Order is terminated at the same time.

Section 14 - Validity of certain provisions; severability

14.1 The legal effects of any provisions of the Contract relating to intellectual property rights and confidentiality, as well as any other contractual provision whose purpose so requires, shall continue in force after the termination of the Contract.

14.2 If any provision of the Contract is or becomes invalid, or if the Contract is incomplete, the validity of the remaining terms and provisions shall not be affected. Missing or invalid provisions shall be replaced by relevant statutory provisions.

Section 15 - Entire agreement and written form

15.1 The Contract constitutes the Parties' full and final agreement on the subject matter of the Contract. On the signing of the Contract by the Parties, all prior written or oral agreements between the Parties on the subject matter of the Contract shall be void. Any amendments or additions to the Contract, including to this clause on written form, and any other legally binding declarations shall be made in writing.

15.2 The Contractor acknowledges that, under Article 38 of the Statute of the European System of Central Banks and of the European Central Bank, any commitment made on the ECB's behalf is only binding on the

ECB if it is signed by the President, two members of the Executive Board or ECB staff duly authorised by the President of the ECB.

Section 16 - Applicable law and jurisdiction

16.1 This contract shall be governed in all respects by German law, including its validity, construction and performance, and without regard to principles of conflicts of law or the United Nations Convention on Contracts for the International Sale of Goods.

16.2 Where the Contractor is a business person within the meaning of the German Commercial Code (*Handelsgesetzbuch*), a legal entity governed by public law or a local authority (*Gebietskörperschaft*) under public law, the exclusive place of jurisdiction for all disputes arising in connection with the Contract shall be Frankfurt am Main.

16.3 If the Contractor has no general venue in the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes arising in connection with the Contract shall be Frankfurt am Main, Germany.

Section 17 – Foreign Trade Regulations

17.1 With regard to applicable EU and German export control, sanctions, customs and foreign trade regulations, including person and country specific restrictions (hereafter "Foreign Trade Regulations"), the ECB may request the Contractor to sign a written confirmation that it has taken necessary measures to ensure that the contractual deliverables are performed in compliance therewith.

17.2 In the event that any circumstances arise as a result of which the execution of the Contract is prohibited or restricted by the applicable Foreign Trade Regulations, the Contractor shall inform the ECB thereof. If it is not possible to remedy these circumstances, e.g. by replacing subcontractors, the ECB may terminate the Contract pursuant to Section 12.4.

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.
-

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):

.....
.....
.....
.....

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

.....
.....
.....
.....
.....

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):

.....
.....
.....
.....

Other:
.....
.....
.....
.....
.....

⁽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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EUROPEAN CENTRAL BANK

**Call for competition for new non-central bank members of the Market Infrastructure Board of the
European Central Bank**

PRO-008792

(Frankfurt am Main, Germany)

Price Sheet

1. The non-central bank member of the MIB shall be entitled to the following indemnities:
 - (a) €2,000 for attendance at a whole-day meeting;
 - (b) €1,000 for participation in a morning or afternoon meeting;
 - (c) €1,500 for each day of activities undertaken in preparation for and as follow-up to the relevant meeting, provided that the non-central bank member actually attends the relevant meeting, as well as for the contribution to MIB documentation.
2. The indemnities shall cover all costs and expenses relating to the provision of the services. In addition, the ECB shall pay a lump sum of €500 per outward and return journey to any EU destination and a lump sum of €200 per overnight stay in Frankfurt or any other EU destination for accommodation, subsistence and local transportation expenses. In case of specific circumstances (e.g. a trade fair in Frankfurt am Main, compulsory ad-hoc late booking of a flight, a preference for staying in the same hotel as other MIB members), if the actual travel or accommodation costs exceed the above-mentioned lump sum expenses, the ECB shall reimburse the actual costs incurred upon submission of the original vouchers and invoices, if agreed between the non-central bank member and the ECB in each specific case. Travel time shall not be separately remunerated, reimbursed or covered by a separate indemnity.
3. Apart from indemnities and lump sum reimbursement of expenses, the non-central bank member shall not be entitled to any other remuneration in connection with the provision of the services.