

Memorandum of Understanding on Cooperation and Information Exchange

between

the European Banking Authority ('EBA')

and

the Bank of England

the Financial Conduct Authority

(hereinafter jointly the **'UK Authorities'** and together with the EBA the **'Signatory Authorities'**)

WHEREAS

- (1) The European Banking Authority ('EBA') is a European Supervisory Authority established by Regulation (EU) No 1093/2010 of the European Parliament and the Council ('EBA Regulation').
- (2) The EBA's core objectives consist in improving the functioning of the EU internal market, including, in particular, a sound, effective and consistent level of regulation and supervision; ensuring the integrity, transparency, efficiency and orderly functioning of financial markets; strengthening international supervisory coordination; ensuring the taking of credit and other risks are appropriately regulated and supervised and enhancing customer, including depositors', protection.
- (3) The EBA may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries in accordance with Article 33 of the EBA Regulation, and seeks to enter into this Memorandum pursuant to that provision.
- (4) The Bank of England ('BoE') is the central bank of the United Kingdom and has the objective to protect and enhance the stability of the UK financial system. It is also entrusted with the supervision of certain financial market infrastructures, and is the designated resolution authority for credit institutions and investment firms where it is responsible for the resolution of a failing bank, building society or investment firm, and their group companies, under the (amended) Banking Act 2009.
- (5) The Prudential Regulation Authority ('PRA', which is part of the BoE and is overseen by the Bank's Prudential Regulation Committee), together with the Financial Conduct Authority,

forms the United Kingdom's "twin peaks" financial services regulatory structure. The PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms. The PRA's role is defined in terms of its two main statutory objectives and its secondary competition objective, namely: to promote the safety and soundness of these firms (the PRA's general objective) and, specifically for insurers, to contribute to the securing of an appropriate degree of protection for policyholders (the PRA's insurance objective); in addition, the PRA must so far as is reasonably possible act in a way which facilitates effective competition in the markets for services provided by PRA-authorized firms (competition objective).

- (6) The Financial Conduct Authority ('FCA') is responsible for ensuring that relevant markets function well. In doing so, it aims to advance the protection of consumers, the integrity of the UK financial system and promote effective competition. It is responsible for the conduct regulation of all financial services firms in the UK, including all banking institutions. The FCA is also responsible for the microprudential regulation of those financial services firms not supervised by the PRA.
- (7) Following the withdrawal of the United Kingdom from the European Union, the United Kingdom will become a third country for purposes of EU law. Following withdrawal, EU law will cease to apply to the United Kingdom.
- (8) The Signatory Authorities therefore intend to ensure an effective level of cooperation and exchange of information for purposes of addressing potential cliff-edge effects that may arise from the withdrawal of the UK from the European Union. For this purpose, they intend to enter into this Memorandum of Understanding ('MoU') allowing the EBA and the relevant UK Authorities to efficiently and effectively assist each other in this context on matters relating to their respective responsibilities. This MoU may serve as a basis for the development of future cooperation arrangements between the Signatory Authorities.

THE PARTIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

Section 1. Purpose and scope

1.1 Cooperation, information exchange and requests for assistance between the EBA and the relevant UK Authorities in accordance with this MoU relate to regulatory, supervisory - including anti-money laundering and countering terrorism financing ('AML/CTF'), consumers and depositor protection – crisis management and resolution matters, with a view to achieving the following objectives:

- a. strengthening international cooperation and information exchange in supervisory, crisis management and resolution matters for internationally active credit institutions, investment firms, payment institutions and e-money institutions (hereinafter in this MoU, collectively referred to as 'institutions') with operations in both the EU and the UK, where relevant for the type of institution concerned; and
- b. ensuring financial stability, integrity, efficiency and orderly functioning of financial markets, and to promote the safety and soundness of financial institutions under their remit;
- c. strengthening international cooperation and information exchange in regulatory,

supervisory and crisis management frameworks, as well as of confidentiality and professional secrecy applied by the authorities.

Section 2. General principles and legal nature

- 2.1 This MoU is a statement of intent between the Signatory Authorities and does not constitute a legally binding and/or legally enforceable agreement. In particular, it does not: (a) create any rights or obligations for any of the Signatory Authorities or third parties; (b) modify or supersede any laws, regulations and requirements in force or applying to the Signatory Authorities; (c) affect any arrangement under other MoUs; and (d) represent a waiver to the immunity or the submission to the jurisdiction of any court.
- 2.2 This MoU is not intended to create commitments for the UK Authorities in relation to each other.
- 2.3 The Signatory Authorities acknowledge that they may only provide information under this MoU if and to the extent permitted under their respective laws, regulations and requirements.
- 2.4 Unless specified otherwise, under this MoU the expression 'information' includes quantitative and qualitative information that can be also confidential.

Section 3. Cooperation and information exchange in supervisory, crisis management and resolution matters

- 3.1 The Signatory Authorities acknowledge that international cooperation and information exchange is essential in order to promote the efficient, effective and coordinated supervision, crisis management and resolution of internationally active institutions with operations in both the EU and the UK.
- 3.2 In circumstances of financial markets instability, in particular having regard to risks originated in the UK that may have potential spill-over effects to the EU and vice-versa:
- 3.2.1 the UK Authorities, subject to the applicable legislation and regulation, may grant to the EBA the possibility to participate in the activities of and have access to the information exchanged in supervisory and resolution colleges or other relevant similar fora maintained by the relevant UK Authorities relating to institutions with operations in both the UK and the EU. The EBA may choose to participate in the activities of such colleges and fora, having regard to the circumstances, to its work programme and resources.
 - 3.2.2 The UK Authorities may request - having regard, among other things, to their work programme and resources - to the relevant EU national authorities to be invited to participate in the activities of supervisory and resolution colleges. The EBA, consistently with its statutory tasks, will monitor and promote the efficient, effective and consistent functioning of such colleges established by the EU and EU national authorities under its remit, including those where the UK Authorities participate.

Section 4. Cooperation and information exchange with regards to the financial stability, efficiency and orderly functioning of financial markets

4.1 The Signatory Authorities may cooperate and exchange information to achieve objectives relating to the financial stability, efficiency and orderly functioning of financial markets within their respective remits, promoting the safety and soundness of financial institutions under their remit and to discharge their statutory duties. In this respect, the Signatory Authorities may, subject to their discretionary assessment of the opportunity to do so, exchange data and information relating to the financial sector in the UK or in the EU respectively, when risks originated in the UK may have potential spill-over effects to the EU and vice-versa.

Section 5. Cooperation with regard to regulatory and supervisory framework

5.1 Where appropriate, and without prejudice to the confidentiality of the rule-making process, the Signatory Authorities may, as needed, exchange information about developments in their regulatory, supervisory and crisis management frameworks, and ongoing policy or regulatory initiatives in the EU and in the UK within their respective remit. In order to ensure the effectiveness of this information exchange, the Signatory Authorities may organise exchanges of information and meetings referred to in Section 9, including at the technical level, as needed.

Section 6. Procedures and arrangements for the exchange of information and assistance

6.1 When receiving requests for information or assistance, each Signatory Authority will, within the framework of this MoU, make reasonable efforts to provide one another with assistance, to better enable them to carry out the responsibilities entrusted to them under the legal framework applicable.

(A) The request

6.2 Requests for the provision of information, or assistance are made in writing. In urgent cases, requests may be made orally in a summary form to be confirmed in writing as soon as possible thereafter, unless agreed otherwise.

6.3 Requests for information and assistance need to specify:

- 6.3.1 the individual or aggregated information or assistance requested;
- 6.3.2 a description of the matter which gives rise to the request;
- 6.3.3 the purpose for which the information is sought (including details of the laws and regulatory requirements pertaining to the matter which is the subject of the request);
- 6.3.4 the persons within the Signatory Authorities believed by the requesting Signatory Authority to possess the information sought;
- 6.3.5 to whom, if anyone, onward disclosure of information is likely to be necessary and the reason for such disclosure;
- 6.3.6 the desired time period for the reply.

(B) Assessment of request

6.4 Each request for information or assistance is assessed on a case-by-case basis by the requested Signatory Authority to determine whether assistance can be provided under the terms of this MoU. Following a consultation between the relevant Signatory Authorities, assistance may be denied:

6.4.1 where the cooperation would require a Signatory Authority to act in a manner that would violate the applicable legislation;

6.4.2 where a request for assistance does not fall within the scope of this MoU or is not made in accordance with the terms of this MoU,

6.4.3 where the provision of information or assistance would be disproportionate or significantly disrupt the functioning of the Signatory Authority receiving the request; or

6.4.4 on reasons of public interest.

6.5 Assistance will not be denied based on the fact that the type of conduct described in the request for assistance would not be a violation of the legal framework application in the jurisdiction of the Signatory Authority receiving the request.

6.6 If the request cannot be fulfilled in part or whole, the requested Signatory Authority may consider other ways of assisting the requesting Signatory Authority, including whether assistance can be provided by another authority within its jurisdiction.

6.7 The Signatory Authorities recognise that assistance may be denied in whole or in part for any of the above reasons or for other reasons in the discretion of the requested Signatory Authority.

6.8 Where a request for information or assistance is denied on the basis of Section 6.4 or the information requested is not available, the Signatory Authority receiving the request should as far as possible provide the reasons for not sharing the information or not granting assistance.

(C) Contact Points

6.9 Information requests and/or assistance under this MoU should be directed to the contact points (departments, teams or people in the organisation) within the Signatory Authorities listed in Annex I. The Signatory Authorities will update the list of contact points when necessary.

(D) Costs

6.10 The Signatory Authorities will bear their own respective expenses that they may incur for the performance of activities under the MoU.

Section 7. Exchange of confidential information and permissible use

7.1 The Authorities acknowledge that all information exchanged on the basis of this MoU may be confidential information within the meaning of the Authorities' applicable legal framework. The Authorities acknowledge that all information exchanged on the basis of this Memorandum of Understanding shall be treated as if it is confidential unless specified otherwise.

7.2 The Authorities will preserve the confidentiality of the information received to the extent permitted

by the applicable legal framework. Any confidential information received by the Authorities on the basis of this MoU will be used exclusively within the responsibilities of the respective Authority for lawful supervisory purposes, and will not be disclosed except as set out below.

- 7.3 The Authorities will ensure that all persons dealing with, or having access to confidential information provided by the other Authority (including members of the Authority, employees, and any external providers having access to confidential information) are bound by the obligations of professional secrecy in compliance with the applicable legal frameworks, including after the termination of their duties.
- 7.4 In providing the confidential information by electronic format or transferring the electronic documents through the Internet, the Authorities should ensure an adequate level of data security.
- 7.5 The Authorities should have appropriate arrangements in place to store, transfer and control the scope of confidential information internally.
- 7.6 Except as provided in paragraph 7.7 and 7.8, before a receiving Authority discloses any confidential information received from another Authority to a third party, the receiving Authority will request and obtain prior written consent, which will not be unreasonably withheld, from the Authority that provided the information. Before disclosing the confidential information to such a third party, the receiving Authority will obtain a commitment from that party that information will be kept confidential.
- 7.7 If the receiving Authority is required by statute or legal process to disclose confidential information received under this MoU to a third party, it will, to the extent permitted by law, inform the Authority that provided the information about such possible onward sharing. If the Authority that provided the information does not consent to such disclosure, then, the receiving Authority will take all available and appropriate steps to resist disclosure, including by employing legal means to challenge the order and by advising the third party requiring such information of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.
- 7.8 Subject to the conditions set out in Annex II, where a receiving Authority transmits information to an onward sharing authority, it will notify the Authority that provided the information, ideally before the transmission of the information and, at the latest, within 30 days from such transmission. Where a receiving Authority transmits information to an onward sharing authority listed in Article 3 of Annex II notification is not required.
- 7.9 No privileges or confidentiality associated with information provided by an Authority are intended to be waived as a result of sharing such information pursuant to this MoU.

Section 8. Data protection

- 8.1 The Signatory Authorities represent and acknowledge that under the terms of this MoU:
 - (i) the EBA processes:
 - a) confidential information in accordance with the relevant provisions of the EBA Regulation and internal requirements on confidentiality and professional secrecy;
 - b) personal data, including that contained in the information received from the UK Authorities, in accordance with Regulation (EU) No 2018/1725 on the protection of

individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies and on the free movement of such data¹.

- (ii) the UK Authorities process:
 - a) confidential information in accordance with the relevant national provisions (in particular sections 348 and 349 of the Financial Services and Markets Act 2000) and internal requirements on confidentiality and professional secrecy;
 - b) personal data, including that contained in information received from the EBA, in accordance with the Data Protection Act 2018, section 3 of the EU (Withdrawal Act) 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (2019/41).

8.2 The Signatory Authorities will ensure that in the absence of a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 or to Article 36(3) of Directive (EU) 2016/680, a transfer of personal data between the EBA and the UK Authorities will comply with the conditions on transfers of personal data to third countries or international organisations as stipulated by the respective legislation.

Section 9. Modalities of cooperation and interaction

9.1 The Signatory Authorities will attempt to have an in-person meeting at least once a year at a mutually agreeable location to discuss supervisory developments, ways to enhance cooperation and other topics of mutual interest.

9.2 This does not preclude more frequent meetings and contacts between the Signatory Authorities at the technical level on specific issues covered by this MoU.

9.3 Communication among the Signatory Authorities for the purposes of this MoU will take place directly between the relevant contact persons of the Signatory Authorities set out in Annex I. Where no relevant contact person can be identified, requests will be directed to the general contact point identified in Annex I. In this MoU, unless the context requires otherwise:

9.3.1 'respective laws, regulations and requirements' means any law, regulation or requirement applicable to the EBA or to a UK Authority in respect of their relevant functions; and

9.3.2 'confidential information' means, in respect of a Signatory Authority, any information regarded as confidential by the respective laws, regulations and requirements of that Signatory Authority.

Section 10. Interpretation, review, termination and publication

10.1 The Signatory Authorities will interpret and apply this MoU in good faith and in a spirit of mutual cooperation.

¹ Regulation 2018/1725 of the European Parliament and of the Council of 23 October 2018 repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

10.2 The Signatory Authorities may review and amend this MoU by mutual consent at any time.

10.3 The EBA or any UK Authority may unilaterally terminate their participation to this MoU by giving 30 days prior written notice to the other Signatory Authorities. Steps will be taken to ensure that the termination does not affect any prior obligation, project or activity already in progress.

10.4 After termination, Section 7 will continue to apply to any confidential information provided under this MoU prior to termination.

10.5 This MoU may be made publicly available in full or in part by any of the Signatory Authorities at any time and in any manner.

Section 11. Application

11.1 This MoU will apply from the date following that on which the European Treaties and European Union legislation cease to apply to and in the United Kingdom.

EXECUTED BY THE PARTIES:

[SIGNED]

European Banking Authority

[SIGNED]

Prudential Regulation Authority

[SIGNED]

Bank of England

[SIGNED]

Financial Conduct Authority

Annex I

Contact list

Annex II

Onward sharing authorities

1. *List of onward sharing authorities*

For the purposes of Section 7.8 of the MoU, onward sharing authorities means any of the authorities listed below, when fulfilling the conditions which are set out in Section 2 of this Annex:

(a) For the UK Authorities:

- the Bank of England (including in its capacity as the Prudential Regulatory Authority),
- the Financial Conduct Authority,
- the Financial Reporting Council,
- the Financial Services Compensation Scheme, and
- the Payment Systems Regulator.

(b) For the EBA:

- competent authorities as referred to in Article 4 (2) of Regulation 1093/2010;
- authorities designated in accordance with Title VII, Chapter 4 of Directive 2013/36/EU;
- the EBA, ESMA, EIOPA and the ESRB;
- national authorities or bodies in charge with a function set out in Article 2 (3) of this Annex.

2. *Conditions*

For the purposes of Section 7.8 of the MoU, an authority listed in Section 1 of this Annex shall be considered as an onward sharing authority, under the following conditions:

- (1) Confidential Information is transmitted only where necessary for the performance of the authorities' lawful supervisory tasks;
- (2) Confidential information is needed for the discharge of the own supervisory functions of the onward sharing authority;
- (3) The supervisory function for which confidential information is needed is one of the following:
 - (a) the public duty of supervising other financial sector entities and the supervision of financial markets;
 - (b) the responsibility for maintaining the stability of the financial system through the use of macroprudential rules;
 - (c) the protection of the stability of the financial system;
 - (d) the administration of contractual or institutional protection schemes, that is a contractual or statutory liability arrangement which has been authorized by the competent authority under the applicable law to protect member institutions and in particular ensure their liquidity

and solvency to avoid bankruptcy where necessary;

(e) the overseeing of bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

(f) the prevention of the use of the financial system for the purposes of money laundering and terrorist financing;

(g) the administration of deposit-guarantee schemes and investor compensation schemes;

(h) the overseeing of persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions;

(j) recovery and early intervention of institutions;

(l) the resolution of financial institutions.

(4) The information received shall in any event be subject under the applicable law to professional secrecy requirements at least equivalent to those applicable to the authority that provided the information. The equivalence of the confidentiality regime applicable to the UK authorities shall be evaluated having regard to the EBA assessment;

(5) In addition to such professional secrecy requirements as may be required by law, confidential information will not be further disclosed by the onward sharing authority, except to other authorities listed in Section 1 of this Annex, and subject to the obligation to notify the Signatory Authority which provided the information in accordance with Section 7.8 of the MoU or as authorised by the authority which has provided the information in accordance with Section 7.6 of the MoU.

3. Notification

By way of derogation to Section 7.8, no notification is required in the following cases:

(a) For the UK, where information is shared within the Bank of England including in its capacity as the PRA or shared between the Bank of England and the Financial Conduct Authority, for the purposes of carrying out their functions set out in Article 2(3) of this Annex;

(b) For the EBA, where information is shared within its organisation and governance or the European System of Financial Supervisors as referred to in Regulations (EU) No 1093/2010 for the purposes of carrying out the functions set out in Article 2(3) of this Annex.