

# Memorandum of Understanding between Banco de Portugal and UK Authorities for the purposes of supervisory cooperation

This Memorandum of Understanding is made BETWEEN:

Banco de Portugal with its headquarters at Rua do Comércio, 148, 1100-150 Lisboa, Portugal, hereinafter the 'BdP',

AND

The Bank of England (including in its capacity as the Prudential Regulation Authority, hereinafter the 'PRA'), with the Bank's headquarters at Threadneedle Street, London EC2R 8AH, United Kingdom and its PRA functions largely carried on from the Bank's premises at 20 Moorgate, London EC2R 6DA, United Kingdom, hereinafter the 'BoE',

AND

The Financial Conduct Authority, with its headquarters at 12 Endeavour Square, London E20 1JN, United Kingdom, hereinafter the 'FCA' and, together with the BoE, the 'UK Authorities' and each of them, a 'UK Authority'.

(And hereinafter jointly 'the Authorities' and each of them, individually, 'an Authority')

## Definitions

For the purpose of this Memorandum of Understanding:

- **‘AML/CFT supervision’** means, if relevant for an Authority, the approach of an Authority to effectively monitor, and taking the measures necessary to ensuring compliance with, supervised entities’ anti-money laundering / counter-terrorist financing obligations;
- **‘applicable legal framework’** means any law, regulation or requirement applicable to the BdP or to the BoE, the PRA or the FCA in respect of its relevant functions;
- **‘college of supervisors’** means permanent but flexible structures for collaboration, coordination and information-sharing among the authorities responsible for and involved in the supervision of cross-border banking groups<sup>1</sup> or similar structures;
- **‘conduct supervision’** means, if relevant for an Authority, supervisory activities performed by that Authority aimed at ensuring compliance with applicable requirements governing the conduct of supervised entities, including with respect to maintaining the integrity of financial markets and protecting consumers, to the extent compatible with the specific competences conferred on each Authority;
- **‘cross-border establishment’** means a branch, a subsidiary or any other entity of a supervised entity operating or localised within one jurisdiction, and over which the authority of the other jurisdiction exercises supervisory responsibilities;
- **‘disclosing Authority’** means an Authority that discloses, or receives a request for disclosure of, confidential information within the meaning of and pursuant to this Memorandum of Understanding;
- **‘EBA Regulation’** means Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;
- **‘early intervention measures’** means actions and measures taken by the Authorities that are similar to the measures specified in Article 27 of Directive 2014/59/EU;
- **‘General Data Protection Regulation’ or ‘GDPR’** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to

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<sup>1</sup> See Basel Committee on Banking Supervision Principles for Effective Supervisory Colleges (<https://www.bis.org/publ/bcbs287.pdf>)

the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

- **‘home authority’** means an Authority responsible for the supervision of the supervised entity on a consolidated basis<sup>2</sup>, and for the supervision of the supervised entity operating a branch in the jurisdiction of the host Authority;
- **‘host authority’** means an Authority responsible for the supervision of the cross-border establishment of a supervised entity;
- **‘jurisdiction’** means the territory of the country concerned under this Memorandum of Understanding, or the territory of the SSM Member States, where the ECB or national authorities are competent to carry out its supervisory tasks, taking into account the division of responsibilities between the ECB and the national authorities<sup>3</sup>;
- **‘prudential supervision’** means supervisory activities performed by an Authority as provided for in the applicable legal framework for such Authority, aimed at ensuring supervised entities’ compliance with applicable prudential requirements;
- **‘receiving Authority’** means an Authority that has received, or makes a request for disclosure of, confidential information from a disclosing Authority pursuant to this Memorandum of Understanding;
- **‘requesting Authority’** means an Authority that makes a request for the information to be provided pursuant to this Memorandum of Understanding;
- **‘risk assessment’** means a supervisory process undertaken by an Authority to form a view on the material prudential or conduct risks posed by activities of a supervised entity, focused on the Authority’s areas of competence;
- **‘SoR’** means a split of responsibilities document – a written cooperation and coordination arrangement setting out an agreed division of responsibilities between the PRA/BdP and the home supervisor for the supervision of UK/Portuguese branches of supervised entities headquartered in the home country, and more detailed arrangements for cooperation between the PRA/BdP and the home supervisor on the supervision of these branches;
- **‘SSM Member State’** means a European Union Member State whose currency is the euro, or a Member State whose currency is not the euro which has established a close cooperation with the ECB under Article 7 of the SSM Regulation;

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<sup>2</sup> Consolidated basis means consolidation under either Authority’s applicable legal framework.

<sup>3</sup> As described in Articles 4 and 6 of the SSM Regulation.

- **‘SSM’** means the system of financial supervision composed of the ECB and national competent authorities of participating Member States as described in Article 6 of the SSM Regulation;
- **‘SSM Regulation’** means Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;
- **‘supervised entity’** means an entity, other than an insurance or reinsurance undertaking or a pension scheme, which falls within the prudential, conduct or AML/CTF supervisory remit of an Authority, as specified in their applicable legal framework;
- **‘supervisory measures, measures, sanctions, penalties’** means supervisory actions taken by the Authorities in accordance with the applicable legal framework, in relation to a supervised entity or cross-border establishment;
- **‘unauthorised activity’** means the exercise of financial activity by entities that have not been authorised to carry out such activities as required by the FCA or the BdP and which are not exempt persons under the legislation in the applicable jurisdiction or entities that are duly authorised but are acting outside the scope of their authorisation. The statements of intent in this MoU in respect to unauthorised activities are not applicable to the PRA.
- **‘WCCA’** means a written cooperation and coordination arrangement for a particular college of supervisors of the kind referred to in Article 21 of the EBA Regulation.

## Section I – General provisions

### *Article 1*

#### **Purpose and general principles**

1. Following the withdrawal of the United Kingdom from the European Union, the United Kingdom has become a third country within the meaning of European Union law, and European Union law has ceased to apply to the United Kingdom.
2. The purpose of this Memorandum of Understanding (MoU) is to formalise supervisory cooperation and information sharing arrangements between
  - a. BdP, and
  - b. one or other or both of the BoE (including in its capacity as the PRA), and the FCA, being the supervisory authorities of the United Kingdom.

Such cooperation is essential in order to promote the integrity, stability and efficiency of the supervised entities and financial system.

3. This MoU focuses on information exchange and supervisory cooperation between the UK Authorities on the one hand, and the BdP on the other hand, in the field of prudential supervision of supervised entities and their cross-border establishments, and, to the extent applicable pursuant to the specific competence conferred on each of the Authorities, on conduct and AML/CFT supervision of supervised entities and their cross-border establishments as well as on the carrying out of unauthorised activity. This MoU complements any other memoranda of understanding between the Authorities.
4. This MoU is aimed at ensuring the effective cooperation and exchange of supervisory information for the performance of the Authorities' respective supervisory powers over supervised entities, to the extent permitted by their applicable legal framework, and in accordance with the highest standards for international supervision<sup>4</sup>.
5. The Authorities acknowledge that unless otherwise stated, all general provisions for supervisory cooperation and information exchange specified in Articles 1-6 of this MoU apply to the tasks specified in the Section II of this MoU and are applicable to all provisions of that Section. References to proportionality considerations in Section II of this MoU include consideration of the materiality of the supervised entity or its cross-border establishments to the group and systemic importance and impact on financial stability in the jurisdictions of the requesting Authority and the Authority receiving the

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<sup>4</sup> For example Basel Committee on Banking Supervision (BCBS) Core principles for effective banking supervision (September 2012) <https://www.bis.org/publ/bcbs230.pdf>.

request. The Authorities acknowledge that the level of cooperation sought and provided is likely to be greater in relation to the supervised entities or their cross-border establishments where these are material or systemically important to one or both of the Authorities.

6. The Authorities also recognise that where supervised entities and their cross-border establishments are both part of a group headquartered in a third country, the Authorities may inform the third-country group supervisor of any specific arrangements agreed between the Authorities for cooperation and exchange of information under the terms of this MoU. The circumstances in which onward disclosure of any confidential information received under this MoU may be made are set out in Article 4, along with the process which will be followed in such cases. This paragraph does not create any commitment in respect of information-sharing between one or both of the Authorities and a third-country group supervisor.
7. This MoU represents a statement of intent between the 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 Authorities or third parties; (b) modify or supersede any laws, regulations and requirements in force or applying to the Authorities; (c) affect any particular arrangement under a WCCA or SoR; and (d) represent a waiver to the immunity or the submission to the jurisdiction of any court. Neither Authorities nor any third party can bear or seek any liability regarding the performance of this MoU.
8. This MoU is not intended to create commitments for the UK Authorities in relation to each other.

## *Article 2*

### **Principles regarding exchange of information and assistance**

1. Each Authority intends to share and provide another Authority, on a timely basis upon request, where appropriate and insofar as is feasible and to the extent permitted by their applicable legal framework, with any information or assistance under its supervisory remit that is necessary for the exercise of the other Authority's supervisory tasks or responsibilities.
2. The Authorities also intend to, on their own initiative and on a best efforts basis, share relevant information in their possession or discovered regarding their supervised entities and/or cross-border establishments where such information relates to the following:
  - a. events with a potential to endanger the financial stability of the supervised entities or the financial system in the jurisdictions of the Authorities;

- b. serious financial difficulties or relevant weaknesses related to the management, internal controls or reputation of a supervised entity and/or cross-border establishment, including information which gives rise to a suspicion of breach or likely breach of the applicable supervisory or legislative requirements in the jurisdictions of the Authorities;
  - c. any material violation of applicable laws and/or sanctions imposed (or any formal enforcement action taken) on a supervised entity or its shareholders or management;
  - d. application of resolution tools, withdrawal of authorisation, liquidation proceedings or similar;
  - e. to the extent compatible with the specific competences conferred on each Authority, money laundering or terrorist financing risks related to the ownership and control of financial institutions and financial institutions' AML/CFT systems and controls; and situations where money laundering or terrorist financing risk has crystallised; or
  - f. to the extent compatible with the specific competences conferred on each Authority, risks related to the conduct of a supervised entity; including where those risks have crystallised.
3. The Authorities intend to share the information specified above as soon as practically possible and without undue delay after the determination by the Authorities of such events. The Authorities intend to provide information in written or electronic form to the relevant contact person identified in the contact list referred to in Article 3 of this MoU, unless specified otherwise in the request for such information.
4. In accordance with paragraph 1 above, the Authorities intend to provide and share information upon request from the other Authority. An Authority requesting the information intends to transmit a request for information in written or electronic form to the relevant contact person identified in the contact list referred to in Article 3 of this MoU.
5. A request for information or assistance referred to in paragraph 4 will include the following:
- a. a description of the facts underlying the request, and its purpose;
  - b. if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
  - c. the reasons why the information is likely to be relevant for the proper performance of the requesting Authority's tasks in the field of prudential, conduct, or AML/CTF supervision, and in light of the requesting Authority's legislation, including a specification of the supervisory tasks that are connected with the subject matter of the request;

- d. to whom, if already known, onward disclosure of information provided to the requesting Authority is likely to be necessary as well as the need-to-know and the purpose of which such disclosure would serve;
  - e. any information known to, or in the possession of, the requesting Authority that might assist the Authority receiving the request in fulfilling the request; and,
  - f. reasonable time by which the response must be provided taking into account the nature and urgency of the request and information requested.
6. When receiving requests for information or assistance, the Authorities will, within the framework of this MoU, provide one another with assistance to better enable them to carry out the responsibilities entrusted to them under the legal framework applicable.
7. Following the consultation between the Authorities, assistance may be denied:
- a. where the cooperation would require an Authority to act in a manner that would violate the applicable legal framework;
  - b. where a request for assistance is not falling within the scope of this MoU or is not made in accordance with the terms of this MoU;
  - c. where the provision of information or assistance would be disproportionate or significantly disrupt the functioning of the Authority receiving the request; or
  - d. on reasons of public interest.

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 Authority receiving the request.

8. If the request for information or assistance cannot be fulfilled in part or whole, the Authority receiving the request may consider other ways of assisting the requesting Authority, including whether assistance can be provided by another authority within its jurisdiction.
9. Where a request for information or assistance is denied on the basis of paragraph 7 of this Article, or the information requested is not available, the Authority receiving the request intends to provide the reasons for not sharing the information or not granting assistance.
10. The exchange of information is intended to be conducted in writing, regardless of its format (paper, electronic communication or other). Both the request for information and the communication of the requested information is intended to be addressed between the Authorities primarily through the



designated contact persons identified in the contact list referred to in Article 3 of this MoU, unless specified otherwise in the request for information.

11. For the events specified in paragraph 2 of this Article, or for any other circumstances that can be classified as an urgent or emergency situation the information may be exchanged or requested by telephone or through a physical meeting between the Authorities, including within the framework of colleges of supervisors. Unless otherwise agreed, such requests will be subsequently confirmed in writing within 5 working days.
12. The Authorities intend to also advise each other upon request or on own initiative on any aspect of their regulatory and supervisory systems and notify any major change in their domestic rules and regulations within their jurisdiction which is likely to have a significant bearing on the activities of cross-border establishments.

### *Article 3*

#### **Contact lists**

1. In order to allow for smooth communication, the Authorities intend to nominate contact persons who represent them in the activities covered by this MoU (see list in Annex 1 providing the contact details of the contact persons).
2. At a minimum the contact lists established in accordance with this Article will contain relevant contacts, including emergency contact details, for the exchange of information in relation to: (i) supervision and authorisation matters, and (ii) policy and enforcement matters.
3. The Authorities intend to maintain up-to-date contact lists, and review the contact lists each year. The Authorities intend to inform each other of any changes in those contacts without undue delay. The Annex with the contact lists may be amended without the need to amend this MoU.

### *Article 4*

#### **Confidentiality**

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.
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.

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.
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.
5. The Authorities should have appropriate arrangements in place to store, transfer and control the scope of confidential information internally.
6. Except as provided in paragraph 7 and 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. 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.
8. Subject to the conditions set out in Annex 2, 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.
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.

## *Article 5*

### **Data protection**

1. The Authorities are bound by the applicable legal framework to the protection of personal data contained in the information that they exchange under the terms of this MoU.
2. Requested information will usually not include customer account information unless this is of particular relevance to the supervisory concern prompting the request as may be the case in relation to AML/CFT or unauthorised activity. If this is the case, such customer account information will be collected and, to the extent permitted by law, will be provided by the disclosing Authority itself.
3. The Authorities acknowledge on the one hand, that the BdP processes personal data, including that contained in the information received from the UK Authorities, in accordance with the applicable EU legal framework, notably with the GDPR , and on the other hand, that the UK Authorities process personal data, including that contained in information received from the BdP, in accordance with the GDPR , as brought into UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (“UK GDPR”), and the Data Protection Act 2018.
4. In light of Article 1(1) of the European Commission’s Implementing Decision of 28 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom (the ‘Adequacy Decision’), the Authorities further acknowledge, on the one hand, that the Commission has concluded, in the Adequacy Decision, that the UK ensures an adequate level of protection for certain personal data transferred within the scope of the GDPR from the European Union to the UK, with the exceptions referred to therein, and on the other hand, that should the Commission decide to suspend, repeal or amend the Adequacy Decision, the Authorities will endeavour to reach an agreement setting forth the conditions on transfers of personal data in accordance with Article 46 (2) a) or Article 46 (3) b) of the GDPR.

## *Article 6*

### **Status of this Memorandum of Understanding**

1. This MoU is without prejudice to other specific cooperation arrangements that each Authority might conclude. It can, therefore, be supplemented with other more detailed and operational arrangements, including but not limited to WCCA, between the same Authorities agreed upon for the

purpose of cooperating for the supervision of a specific supervised entity and its cross-border establishment, in accordance with the applicable legal framework.

2. Where one or more supervised entities headquartered in Portugal operates through a branch or branches in the UK and is a PRA-authorized entity, as well as where one or more supervised entities headquartered in the UK operates through a branch or branches in Portugal and is a BdP-authorized entity, the Authorities intend to agree and document the split of responsibilities between them for prudential supervision of those branches. That SoR document will also set out in more detail how the Authorities will cooperate in respect of the supervision of those branches, separate to but under the umbrella of this MoU, including provision for joint supervisory work. Where such branches exist, the Authorities will use their best endeavours to agree a SoR document as soon as possible, in form and substance satisfactory to the relevant Authorities.
5. The Authorities recognise that cooperation under this MoU may be denied on the grounds of the applicable legal framework, or public interest, as well as where it would interfere with an on-going investigation or jeopardise the proper performance of the tasks of the Authorities, including due to resources constraints.
6. The Authorities intend to settle any disagreement arising from the interpretation or the performance of this MoU amicably by means of consultations between the Authorities.
7. The MoU has been prepared and signed in [three] equal copies in English. Any amendment to this MoU, including this Article, will be made by the Authorities' mutual consent and formulated in English, and have effect only if executed by the Authorities in writing.
8. This MoU enters into force on the date of its signing.
9. Any Authority may terminate their participation to this MoU by giving 30 days' prior written notice to the other Authorities. Any Authority terminating its participation in the MoU, will endeavour to take all reasonable steps to continue any prior projects or activities already in progress.
10. An Authority may terminate its participation to this MoU by giving notice to the other Authorities if the relevant professional secrecy regimes are not judged to be equivalent to the one applicable under the Authority's relevant law, also having regard to any relevant assessment made by the EBA or UK Authorities as applicable.
11. In the event of termination, Article 4 of this MoU will continue to apply to any confidential information provided under this MoU prior to termination.
12. This MoU will, upon written request of an Authority, be subject to review.

13. This MoU (excluding Annex 1) may be made publicly available in full or part by any of the Authorities, at any time and in any manner including publication electronically on the websites of the Authorities.
14. In the case that one of the Authorities merges with another authority or agency or their competence is transferred to another authority or agency within their jurisdiction (succession), this MoU should be maintained with the same provisions, unless otherwise determined. This automatic succession will not affect the right of the Authorities, including any successor, to terminate the MoU in accordance with this Article.

## **Section II – Specific provisions**

### *Article 7*

#### **On-going coordination/cooperation**

1. In addition to the cooperation within the framework of colleges of supervisors as specified in Article 10, the Authorities may conduct regular meetings, as appropriate, to discuss general supervisory and coordination matters, issues concerning supervised entities that maintain cross-border establishments in their respective jurisdictions, and to review the effectiveness of this MoU.
2. The Authorities may also convene ad-hoc meetings to promote addressing supervisory problems concerning a cross-border establishment in the respective other jurisdiction, whenever either side reasonably requests on the basis that it has a material supervisory concern.
3. To facilitate the ongoing supervision of the supervised entities and their cross-border establishments, the Authorities may agree to establish supervisory examination programmes for specific supervised entities with cross-border establishments, where relevant and namely within the framework of colleges of supervisors and following the processes specified in the WCCA. Such supervisory examination programmes may, where agreed, cover relevant tasks and activities, such as:
  - a. pre-planned meetings between authorities, including through the framework of colleges of supervisors;
  - b. pre-planned on-site examinations of the supervised entities and cross-border establishments;
  - c. pre-planned supervisory visits to the supervised entities and cross-border establishments;
  - d. pre-planned activities within the colleges of supervisors.

### *Article 8*

#### **Cooperation in relation to authorisation procedures, qualifying holdings assessments, fit and proper assessments**

1. The Authorities intend to cooperate during the authorisation and licensing processes of supervised entities and their cross-border establishments, in the assessment of proposed acquisitions that require approval or non-objection from the relevant Authority where another Authority may possess relevant information, as well as in cases of withdrawal of authorisation of a supervised entity operating in both the UK and EU and initiation of liquidation proceedings of cross-border establishments in their respective jurisdiction.

2. Where a supervised entity applies for authorisation to an Authority to establish a new entity, or to acquire control of another entity, the Authority receiving the application may seek confirmation from the home Authority of that supervised entity that the home Authority has no objection to the application, and that the supervised entity is in compliance with the home Authority's requirements for authorisation. The Authority receiving the application may also seek confirmation from the home Authority whether it is aware of any material information in areas such as programmes of operation, type of business envisaged, the amount of own funds, solvency ratio and the historic track records of the supervised entity relevant to the other Authority's consideration of the application.
3. Subject to proportionality considerations, the Authorities intend to share upon request additional information to assist each other in assessing applications from entities supervised by the Authorities in question, and in reaching their own decisions.
4. To the extent permitted by the applicable legal framework, the Authorities intend to share information upon request on the fitness and propriety of prospective or current directors and managers, shareholders, and, where relevant, key function holders, of a cross-border establishment, including administrative penalties imposed and information concerning criminal investigations, prosecutions and convictions. The communication of such personal data is subjected to the applicable data protection legal framework and in particular to the applicable rules on transfers of personal data.

#### *Article 9*

##### **Cooperation in relation to internal models or advanced approaches**

1. Subject to proportionality considerations, the Authorities intend to share views and information on their supervised entities' design and use of internal models such as the use of internal models in decision making, information on data and IT frameworks to ensure that all relevant information is properly reflected into the internal models, and controls and governance over approved internal models, where this may be relevant and material for an Authority's supervision of a supervised entity and its cross-border establishments.
2. Subject to proportionality considerations, the Authorities intend to share upon request relevant information in their possession, to assist each other in reaching their respective decisions on an internal model application from a supervised entity, such as the supervised entities' plans for implementing the internal models for regulatory purposes, the results of the Authorities' assessment and the main deficiencies identified. With respect to the BdP only, this information should also be shared for Monetary Policy purposes.

3. Information requested as per this Article will be shared where available. It is understood that availability of this data will depend on the need for Authorities to collect such information, taking into account the principle of proportionality.
4. Where an Authority intends to perform an on-site inspection of a supervised entity's internal model in another Authority's jurisdiction, the Authorities intend to apply Article 12.

#### *Article 10*

##### **Organisation and functioning of colleges of supervisors**

1. Each Authority intends, subject to the applicable legal framework, to invite the other Authority to join the work of colleges of supervisors in respect of supervised entities with cross-border establishments, where these entities are individually or on any consolidated basis, supervised by the Authorities.
2. The establishment and functioning of individual colleges of supervisors, and terms of the participation of each of the Authorities, including their participation in various college sub-structures, if relevant, will be based on WCCAs to be determined, after consulting other college members, by the home Authority.
3. Within the framework of colleges of supervisors, the Authorities may consider entrustment of tasks when developing the college's supervisory examination programme. Entrustment of tasks does not alter the overall responsibilities of the Authorities.

#### *Article 11*

##### ***Cooperation on ongoing supervision, including sharing of risk assessments***

1. Subject to proportionality considerations, the Authorities intend to share information on their risk assessments of supervised entities and their cross-border establishments, where the information is relevant and material to the other Authority in the performance of the ongoing supervision.
2. The Authorities may invite each other to participate in and contribute to an overall group risk assessment, for example as part of an overall college assessment.
3. When the Authorities agree to share information on their respective risk assessments, and where they agree to perform any joint work (such as joint examinations), the nature and format of any information provided will be agreed between the Authorities within the relevant college of supervisors.
4. The Authorities intend to provide the information specified in this Article as far as practicable and subject to the applicable legal framework, and in accordance with the principles set out in this MoU.



## *Article 12*

### **Cooperation in relation to on-site visits or inspections to cross-border establishments**

1. The Authorities intend to facilitate as far as practicable, the conduct of on-site visits or inspections of the cross border establishments situated in the other Authority's jurisdiction, or, where relevant for such cross-border establishments, to the supervised entities. Where assistance cannot be provided, the Authority requested to provide assistance intends to notify it to the other Authority as soon as deemed practical.
2. The Authorities intend to duly notify each other of plans to inspect a cross-border establishment, or to appoint a third party to conduct an inspection on its behalf. The notification will be made by means of supervisory examination programme in accordance with Article 7 or by informing the Authority concerned in a timely manner for non-urgent inspections. This notification will detail the purposes, scope, expected starting and ending dates of the inspection, the cross-border establishment to be inspected, and the names of the persons leading the inspection.
3. The Authorities reserve the right to accompany each other on visits or inspections of cross-border establishments.
4. Where both the home Authority and host Authority agree to jointly perform a visit or inspection, they intend to give each other a possibility to comment on any reports produced prior to their submission to supervised entities or cross-border establishments.
5. Where only one Authority performs the on-site visit or inspection, the Authority performing the visit or examination intends to share any findings with the non-participating Authority within a reasonable timeframe.
6. On-site examinations to the supervised entities and their cross-border establishments may be provided for in the supervisory examination programme in accordance with Article 7, or conducted on a case-by-case/ad-hoc basis in coordination between the Authorities.

*Article 13*

**Collection and exchange of supervisory and other information from the institutions and sharing such information between authorities**

1. Subject to proportionality considerations, the Authorities intend to share further information needed for the performance of their ongoing supervisory tasks and responsibilities in relation to the specific supervised entities and their cross-border establishments. Specific information-sharing arrangements may be further specified in the WCCAs.
2. Where it is agreed by the Authorities to be relevant and proportionate, such information may include, but is not limited to, the following:
  - a. capital and liquidity positions;
  - b. significant failures in a supervised entity's prudential governance or control arrangements, including major operational incidents, operational losses or IT system disruption, where relevant to its cross-border establishments;
  - c. material findings from a supervised entity's internal risk or audit functions relevant to the cross-border establishment;
  - d. material findings from external auditor reviews, where relevant to the cross-border establishment;
  - e. to the extent compatible with the specific competences conferred upon each Authority, information on money laundering/terrorist financing risks and the effectiveness of the supervised entity's AML/CFT systems and controls, where relevant for the cross-border establishment.
3. Before making requests for information to another Authority under this Article, the Authority seeking the information will consider whether it is more appropriate to request it directly from the supervised entity or its cross-border establishment concerned, unless the information originally stems from the other Authority. Such information stemming from the other Authority includes, amongst other things, the methods of supervision adopted by the Authorities, communications and transmissions of information between authorities, and between Authorities and supervised entities, and all other information contained in non-public statements or communications by the Authorities.

#### *Article 14*

##### **Application of supervisory measures and sanctions on micro-prudential level, including early intervention measures**

1. The Authorities intend to inform each other in good time and to the extent reasonable about any event known to them which has the potential to endanger the stability of the supervised entities or cross-border establishments in the respective other jurisdiction. The Authorities intend to notify each other of material non-public administrative pecuniary penalties, enforcements or sanctions decisions, supervisory measures, or early intervention measures, which they have imposed in respect of such a cross-border establishment as host Authority or on the parent undertaking as home Authority.
2. The Authorities acknowledge that information regarding application of early intervention measures should, subject to the obligations placed upon them by their respective applicable legal framework, be shared with resolution authorities in their respective jurisdictions in accordance with the applicable legal framework.
3. The Authorities intend to provide the information specified in this Article as far as practicable and subject to the applicable legal framework, and in accordance with the principles set out in this MoU.

#### *Article 15*

##### **Application of macro-prudential supervisory measures**

1. The Authorities recognise the unique competence of the host Authorities to assess which macro-prudential measures are necessary for financial stability in the host jurisdiction. The Authorities intend to communicate with each other to exchange relevant assessments and to facilitate discussions in respect of planned measures where this may assist in assessing and mitigating risks to financial stability in their respective jurisdictions.

#### *Article 16*

##### **Assessment of recovery plan**

1. Without prejudice to their involvement in the colleges of supervisors and other relevant cross-border cooperation fora, the Authorities intend to assist each other in an assessment of the group recovery plan prepared by the supervised entities and, where relevant, their cross-border establishments insofar as it is relevant to the entities or cross-border establishments under their supervision. To facilitate such assessment, the Authorities intend to share in accordance with the applicable legal framework parts of the recovery plans prepared by the supervised entities or their cross-border

establishments that are relevant for the other Authorities. The main objectives of the Authorities assisting each other in this assessment are to ensure a high standard of crisis prevention and to preserve the financial stability of the local market focusing on ensuring:

- a. effective cooperation between supervisory authorities involved in crisis management,
- b. reliable recovery options for the local operations, and continuity of any critical local economic functions.

#### *Article 17*

##### **Cooperation in relation to emergency situations /crisis management**

1. Without prejudice to Article 2 of this MoU, the Authorities intend to inform each other immediately if they become aware of an incipient crisis such as, but not limited to, serious financial difficulties which might have an adverse impact on operations relating to any supervised entity in the respective jurisdictions of the Authorities. Under the same circumstances, the Authorities intend also to inform each other as soon as reasonably practical after a supervised entity or its cross-border establishment has activated their respective recovery plans or taken any recovery actions in accordance with the applicable legal framework.
2. To the extent possible, and without prejudice to their involvement in the relevant cross-border cooperation fora, the Authorities intend to seek coordinated responses to any crisis emerging in a cross-border establishment operating in their respective jurisdictions, in accordance with the applicable legal frameworks.
3. If an Authority is taking any action, including early intervention measures, that could trigger instability elsewhere in a supervised entity or group or in the financial system of another Authority's jurisdiction, wherever and to the extent possible, the Authorities intend to cooperate in seeking potential solutions while acknowledging that each Authority reserves the right to act on its own initiative if necessary to preserve domestic financial stability or achieve any other domestic resolution objectives, in the absence of effective early intervention or other actions taken by another Authority, in line with the applicable legal framework.

## *Article 18*

### **Cooperation and information exchange in relation to enforcement**

1. The Authorities recognise that there may be circumstances in which either of them wishes to take enforcement action in a situation where the other Authority has a regulatory interest. The Authorities intend to cooperate in carrying out enforcement actions to the extent possible under their applicable legal frameworks.
2. If a request for assistance, as described in this MoU, relates to actual or possible enforcement action, the request should include as much detail as possible to allow the other Authority to consider the request (for example, a description of the conduct or suspected conduct, applicable legal framework, the link between the specified rule or law and the regulatory functions of the requesting Authority, and whether certain Persons should be present during interviews which form part of an investigation).
3. Similarly, where an investigation concerns suspected breaches of the law of both jurisdictions, the Authority suggesting the establishment of a joint investigation involving members from both Authorities should provide the other Authority with as much detail as possible to allow the other Authority to consider the nature, expected duration, funding, management and objectives of the joint investigation.

## *Article 19*

### **Cooperation and information exchange in relation to financial crime**

1. The Authorities intend to cooperate closely when they identify suspected financial crime activities in or related with supervised entities. For the purposes of this MoU, financial crimes include in particular: money laundering and all violations of the Portuguese, UK, EU and national laws and regulations on financial markets. This also includes unauthorised activity.
2. Where necessary and in the absence of other relevant cooperation arrangements, and subject to any restrictions on confidentiality in their applicable legal frameworks, the Authorities may act as intermediaries to facilitate the contact between a Financial Intelligence Unit in one jurisdiction, and an Authority in another jurisdiction.
3. Without prejudice to their domestic provisions on privacy and data protection, all information exchanged by the Authorities in the area of the prevention of ML/TF and unauthorised activity shall be treated confidentially and used exclusively for supervisory purposes, to the extent permitted by

the applicable legal frameworks and within the competences of the Authorities. To the extent information about unauthorised activities amounts to a crime and where the BdP is under an obligation to pass this information to the relevant law enforcement body it will proceed as per Article 4(7).

4. In the event when an Authority, during an examination or inspection conducted on the territory of the counterparty's jurisdiction, detects a serious criminal violation of the applicable legal framework of its jurisdiction, the Authority may be under a strict legal obligation to pass the information immediately to the appropriate law enforcement authorities in its home country. In these circumstances, to the extent permitted by law, the Authority should inform the other Authority of its intended action. The Authority, upon completion of an on-site inspection of a cross-border establishment in which the other Authority did not participate, in case of request received or if it considers it necessary, will intend as soon as possible to provide the other Authority with general information on the financial condition of the cross-border establishment, violations of legal acts identified and deficiencies found, including those related to the prevention of ML/TF and unauthorised activity.

#### *Article 20*

##### **External communication, including in times of stress and emergency situations**

The Authorities intend to notify each other of any intended public communication regarding the cross-border establishments and supervised entities, when relevant for their cross border establishments, before their publication, in particular during emergency situations.

#### *Article 21*

##### **Notification practice and procedure**

To the extent permitted by the applicable legal framework for each Authority, each Authority intends to notify the other, on a timely basis, of any relevant, material changes in their respective legislative provisions relating to privacy and protection of information.

## **Annex 1 - Contact details of contact persons [redacted]**

## **Annex 2 - Onward sharing authorities**

### ***Article 1 - List of onward sharing authorities***

For the purposes of Article 4(8) of the MoU, 'onward sharing authorities' means any of the authorities listed below, when fulfilling the conditions which are set out in Article 2 of this Annex:

(a) For the UK:

- the BoE (including in its capacity as the PRA);
- the FCA;
- the Financial Reporting Council;
- the Financial Services Compensation Scheme;
- the Payment Systems Regulator; and
- national authorities or bodies charged with a function set out in Article 2 (3) of this Annex.

(b) For BdP:

- competent authorities as referred to in Article 4 (2) of the EBA Regulation;
- 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 charged with a function set out in Article 2 (3) of this Annex.

### ***Article 2 - Conditions***

For the purposes of Article 4(8) of the MoU, an authority listed in Article 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 authorised 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, resolution and early intervention of 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 Article 1 of this Annex, and subject to the obligation to notify the Authority which provided the information in accordance with Article 4(8) of the MoU or as authorised by the Authority which has provided the information in accordance with Article 4(6) of the MoU.



### ***Article 3 - Notification***

By way of derogation to Article 4(8), no notification is required in the following cases:

- (a) For the UK, where information is shared within the BoE or shared between the BoE and the FCA, for the purposes of carrying out their functions set out in Article 2(3) of this Annex;
- (b) For BdP, where information is shared within BdP or within the Single Supervisory Mechanism as referred to in the SSM Regulation or the European System of Financial Supervisors as referred to in the EBA Regulation for the purposes of carrying out the functions set out in Article 2(3) of this Annex.