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European Central Bank

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**CP1 – Framework Regulation Consultation**

Dear ladies and gentlemen,

Clearstream Holding AG (CH) welcomes the opportunity to comment on the public consultation of the draft SSM Framework Regulation.

Clearstream Holding AG as a financial holding company is the parent undertaking of Clearstream Group currently supervised as a financial holding group by the German regulatory authorities. Among others, the two main subsidiaries Clearstream Banking S.A., Luxembourg (CBL) and Clearstream Banking AG, Frankfurt/Main (CBF) are (I)CSDs<sup>1</sup> and are due to their business model at the same time credit institutions. The banking activities of the group are limited in nature and are related to short term maturities only. In consequence of the importance of the group entities for the financial markets, the group as well as its banking entities are classified as systemically important though not on a global scale. However, the group and its entities are to be seen more as systemically important financial markets infrastructures than as credit institutions.

Despite this, the importance of the group for the financial markets may lead to the classification as significant credit institution or significant group within the meaning of the SSM Regulation and / or the SSM Framework Regulation. Consequently, we have an interest in the current consultation and therefore want to share our views on the proposal with the ECB.

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## A. Management Summary

We have analysed the draft SSM Framework Regulation but also the underlying SSM Regulation. By doing so, we have recognised that there seem to be some inconsistencies related to the questions on the determination of single entities and / or groups respectively to come under direct ECB supervision as well as with regards to the question which entities will be in scope of direct supervision in case any group entity has been identified as being significant and in scope of direct ECB supervision. While direct ECB supervision is envisaged to be in principle on consolidated level only, the level for assessment is partially referred to as “institution” although obviously in general targeting on group level. In our understanding of the SSM Framework Regulation direct ECB supervision is placed to the group as well as to all (banking) regulated entities on stand alone level in addition in case any part of the group or the group in total is identified as being relevant for direct ECB supervision. However, this is not clear throughout the proposed regulation. Furthermore, we have spotted some elements which in our view require further clarification as the proposed wording is either not precise or unclear. Finally we give some hints of more technical nature which in our view could or should be adjusted.

## B. Detailed comments

### I. Aimed level of direct ECB supervision

One of our major issues with the SSM Regulation and the draft SSM Framework Regulation is the absence of a clear and consistent defined boundary between entities in scope of the direct ECB supervision and entities under the supervisory framework of the ECB but supervised on a day to day basis by National Competent Authorities (NCAs). Our understanding of the aim of the SSM – confirmed in general during the public hearing on the draft SSM Framework Regulation at the ECB – is that the direct ECB supervision shall be on highest consolidated level (only) in case a regulated group exists within the participating Member States. However, there are also various text passages both in the SSM Regulation and in the draft SSM Framework Regulation which indicate stand alone legal entity supervision directly performed by the ECB (even

to be read as the guiding principle). We therefore see these texts to some extent as contradicting or at least inconsistent<sup>2</sup>.

The contradicting wording can be seen by the following examples (beside others):

- The general role of the ECB as supervisor on the consolidated level as guiding principle is laid down e.g. in the following passages:

Article 4 (1) lit g) SSM Regulation<sup>3</sup>, Recital 38 SSM Regulation, Recitals 5 and 39 SSM Regulation, Article 6 (4) sentence 1 SSM Regulation<sup>4</sup> and Article 8 draft SSM Framework Regulation.

- Contrary, the supervision on individual basis is stressed inter alia at the following places:

Article 6 (4) sentence 2 SSM Regulation, Article 6 (4) sentences 4 and 5 SSM Regulation, Article 6 (5) lit b) SSM Regulation, Article 33 (3) SSM Regulation, Recital 5 of the draft SSM Framework Regulation, Article 1(1) lit (a) No. (i) draft SSM Framework Regulation, Article 45 (1) and (4) draft SSM Framework Regulation, etc.

- A very good example to reverse the guiding principle is given in Recital 26 SSM Regulation:

“In addition to supervision of individual credit institutions, the ECB’s tasks should include supervision at the consolidated level, ....”

- A good example for the inconsistency of the wording is Recital 40 of the SSM Regulation:

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<sup>2</sup> With regards to stand alone credit institutions being significant within the participating Member States but not belonging to any group or to a group outside the participating Member States we do not see this conflict and this is not the topic we want to raise. However, we see this rather as an exceptional case than the standard. While having in mind such institutions, we refrain in the following in general from referring to them and focus on groups and institutions being part of groups within SSM area.

<sup>3</sup> We want to point out, that the SSM Regulation in Article 4 confers to the supervision on consolidated level only. The definition of the ECB responsibilities in that article does not give any legal basis for direct supervision of stand alone credit institutions or single entities within a direct supervised group. We – once more – regret that this is contradicting to other passages in the legal texts.

<sup>4</sup> The responsibility for the NCAs is defined on a consolidated basis which in turn leaves the consolidated basis also for the direct ECB supervision.

“Where a credit institution has been considered significant or less significant, that assessment should generally not be modified more often than once every 12 months, except if there are structural changes in the banking groups, such as mergers or divestitures.”

Also Article 6 (4) sentence 3 SSM Regulation is underpinning unclear language:

“The ECB may also, on its own initiative, consider an institution to be of significant relevance where it has established banking subsidiaries<sup>5</sup> in more than one participating Member States and its cross-border assets or liabilities represent a significant part of its total assets or liabilities subject to the conditions laid down in the methodology.”

We also want to point out, that the header of Article 40 draft SSM Framework Regulation is also misleading as it instead of the classification of supervised groups as being significant is referring on supervised entities for that purpose.

In our subsequent comments in the chapters II to IV below we list and comment (further) examples in the respective context.

In line with the general aim on either consolidated OR stand alone level also the assessment of direct ECB supervision must be performed. Based on our understanding this should in principle therefore be on a consolidated level<sup>6</sup>.

Despite this fact our subsidiary CBL has been included in the assessment for possible direct ECB supervision whereas this is not the case for the consolidated level. The inclusion of CBL into the review is neither the consequence of direct state assistance nor of being one of the three biggest institutions in the country of residence. Beside the above mentioned inconsistencies in the legal texts this at least demonstrates also possible inconsistencies in practical implementation.

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<sup>5</sup> An institution with banking subsidiaries is in general a group!

<sup>6</sup> The criteria “direct state assistance” or “one of the three biggest institutions in the participating Member State” are however to be performed on an individual institution level. This is in our mind not contradicting the general approach on consolidated level supervision, as any institution fulfilling this criterion will lead to the inclusion of the complete group into direct ECB supervision.

In consequence we strongly urge the ECB to be clear and specific in the SSM Framework Regulation with regards to the aimed approach. Furthermore we kindly ask the ECB to take care at the next convenient point in time to adjust the SSM Regulation in this regard as well.

In the following sections we focus on open questions in the draft SSM Framework Regulation<sup>7</sup> as the SSM Regulation as such is not part of the current consultation.

## II. Level of assessment for direct ECB supervision

In our view in principle six criteria exist for the assessment of possible direct ECB supervision. Three of those criteria seem to apply clearly on group level (Size criterion in Article 50 to 55, economic importance criterion in Article 56 to 58, cross-border activity criterion in Article 59 and 60), two apply to our reading on single entity level (Direct public financial assistance criterion in Article 61 to 64 and three most significant credit institutions criterion in Article 65 and 66) while one may be applied on either levels (Article 39 (5)).

However Article 39 is addressing the first five criteria on individual basis only while Article 40 (1) of the draft Framework Regulation is referring for all five criteria to the consolidated level in case one or more entities are part of a supervised group.

A group however can never be one of the three most significant CREDIT INSTITUTIONS in a participating member state and to our understanding direct public financial assistance in principal is given to a legal entity and not to a group.

Overall we feel that the driving principal should come first and the exemption should follow. As such the group approach in Article 40 should come prior to the exemption for stand alone, not group related, significant credit institutions currently dealt with in Article 39. You can find our proposal for revised Articles 39 and 40 plus a new Article 40a in the Annex I.<sup>8</sup>

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<sup>7</sup> In the following any reference stated is referring to the draft SSM Framework Regulation if not stated otherwise.

<sup>8</sup> We want to point out that we also see the need to clarify some phrases e.g. the EUR

All in all and taking the misleading wording of the title of Article 40 into account, we see the need to clearly address the targeted level. This however, is currently not the case:

- While Article 39 (3) refers to the single entity level, Article 40 (2) lit (a) refers to the group's highest level of consolidation. For the size criterion, Article 50 refers to both levels while Article 51 is contrary referring to the group level only in case a group exists. To solve the problem, Article 50 could be reduced to the following: "Significance on the basis of the size criterion shall be determined by reference to the total value of assets. Significance in that sense is given in case the total value of assets exceeds EUR 30 billion or counter-value (hereinafter 'size threshold')." This would avoid possible misinterpretations;
- Similar argumentation stands for the economic importance criterion. Article 56 is not clear if for supervised entities being part of a supervised group within the participating member states the group level only or in addition also the stand alone view is relevant. Again, as the level of application should be regulated in Articles 39 and 40 the introductory part of the text should not refer to the level but be generic in nature: "The significance on the basis of the economic importance criterion shall be given if:". For further comments on the indicator as such see our comments below;
- Interesting enough, Title 5 with regards to the "cross-border activities criterion" is referring to groups only. So even if only a very significant single entity exists which may be caught by its cross-border activities and which is clearly in scope of the current Article 39 (3) lit (c), literally this would not be captured by Title 5;
- Moreover, Title 7 offers a choice of taking either the three most significant credit institutions or the three most significant groups or both or any mixture. Here we clearly ask for limitation on institution level only.

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counter-value to include non-Euro participating Member States or the use of "or" in some cases instead of "and" etc. We have phrased our proposals in that regards in Annex I or in the wording proposals within this document but refrain from commenting on all such points in detail.

The respective groups will follow anyway. The current wording to our mind is contradicting Article 40 (2) lit c.

### III. Effects of direct ECB supervision on other (group) entities

In accordance with Article 40 (2) each of the supervised entities forming part of a supervised group shall be deemed to be a significant supervised entity if the supervised group at its highest level of consolidation within the participating Member States fulfils the size criterion, the economic importance criterion or the cross-border activities criterion or any supervised entity of the group fulfils the direct public financial assistance criterion or the three most significant credit institutions criterion. From our perspective this doesn't seem entirely consistent as the direct ECB supervision is targeted on consolidated level ONLY and not on single entity level. Furthermore, we cannot see the real need to directly supervise even small local supervised entities within a group at all. Therefore, the classification as significant supervised entity should at least be limited by appropriate thresholds such as minimum total value of assets being EUR 5 million or the individual fulfilment of either of the economic importance or cross-border activities criteria.

A related issue are joint supervisory teams (JSTs) as Article 3 (1) sets the requirement that a JST shall be set up for each significant supervised entity or significant supervised group in participating Member States. In our reading that targets for JST on a single entity level in addition to a JST on the group level. At least for small supervised entities (see above) we do not agree to this approach. Moreover, even for significant single entities we doubt that on top of JST on group level, single entity JSTs will significantly improve supervision and the cost / benefit ratio of such approach for both the supervised entities but also the supervisors is more than doubtful. We therefore clearly ask to remove JST on single entities being part of a significant supervised group in participating Member States.

Contrary to that and taking into account the reasoning to introduce the three most significant credit institution criterion, we do not agree to make a whole group being significant in case the only reason for that is having one single entity in the group which is one of the three most significant credit institutions

in its country of residence. In this case (and having in mind that the classification of the group as being significant by any of the other criteria is not changed) we disagree to have the group and all other supervised entities being classified “significant” unless the total value of assets of that single entity has at least a substantial size. As Article 56 gives an indication for such threshold being EUR 5 billion, we would see this as a lower boundary for such a threshold; The upper one being the threshold given in Article 50 (i.e. EUR 30 billion). Our proposal therefore would be to have in that dedicated case a threshold of EUR 15 billion. This avoids having groups whose importance for the Union is minor being included in the direct ECB supervision just due to the fact that a reasonable small credit institution being however important for a relatively small participating Member State is included under direct ECB supervision for the reason of national importance.

#### IV. Criteria for direct ECB supervision

While we believe that the size criterion, the direct public financial assistance criterion and the three most significant credit institution criterion is content wise clear (however, level of application to be clarified as stated above), we see clearly a need for clarification for the other criteria.

- Criterion for economic importance

Unfortunately, Article 56 does not give any rule how to deal with single entities or groups being active in more than one participating Member State. While there is a rule related to the nominator A, there is no indication for the denominator B. We are therefore asking for guidance in this respect. An easy way forward could be using the total of the GDP of all the countries where entities are located (including branches) or even services are performed (via cross-border service provisions).

In addition, Articles 57 and 58 give further options to include supervised groups or supervised entities under direct ECB supervision. In this regard, we do not see any legal basis for Article 57 at all. In case need be, the targeted flexibility for ECB is more than covered by Article 39 (5) and we therefore kindly ask the ECB to remove Article 57 completely. The guiding principle for the SSM Framework Regulation needs to be legal certainty to the extent pos-

sible. While we however accept the need for some degree of flexibility to cover exceptional situations, we feel that this should be strictly limited and not be spread throughout the whole SSM Framework Regulation. Having said this, we also question the need for Article 58, nevertheless accepting that at one place in the SSM Framework Regulation there may also be a rule for some flexibility to allow NCAs to ask for inclusion under direct ECB supervision as it deems necessary to reflect national importance not covered otherwise.

- Criterion for cross-border activities

With regards to the criterion of cross-border activities we clearly disagree to the basis for its determination.

- First of all, the two elements of Article 59 (1) and (2) are to our reading and confirmed by the Luxembourg regulator CSSF to be seen as cumulative. However, this is not fully clear by the way the rules are worded;
- Secondly, the criteria are only indicative (“may”) and allow the ECB to deviate in case they want to. Taking our wish of legal certainty into account, this seems not to be appropriate. However, in order to fulfil both, legal certainty as well as some flexibility, we would prefer to phase the rule the other way round and clearly exclude those entities or groups which are in any case not in scope of this criterion. This gives legal certainty for those entities / groups without taking away the flexibility for ECB not to include those which are not explicitly excluded (see below);
- Thirdly, Title 5 only deals with groups. This is inter alia the natural consequence of the requirement having at least two supervised credit institutions belonging to the group. This once more is clearly in conflict with the text of Article 39 (3) lit c) which for single entities introduce the cross-border activities criterion under reference to Title 5. In case, it is not intended to classify a single (non-group related) supervised entity using the cross-border activities criterion, than that should be clearly stated in Article 39. Otherwise, a rule for this needs to

be incorporated in Title 5. We are clearly in favour to limit this criterion to group level only;

- Furthermore, the 10 % threshold rule is applied even if the underlying business is small and no back stop regime is introduced to apply this rule only in case significant business is performed cross-border. The reliance only on relative size of the cross-border activities and ignoring its absolute terms and even kind seems not to be appropriate. For institutions close to any border the local markets e.g. for the financing of housing (mortgage based) or deposit takings are borderless. It therefore seems to be necessary to introduce an overall minimum threshold for the size of the credit institutions and / or the size of cross-border assets and / or liabilities;
- In addition, also fragmentation of the cross-border activities needs to be considered. In case the relative and / or absolute threshold as described above are breached, it nevertheless may be the case that the exposures are spread to 10 or more Member States and in any case they are not relevant to create significance. We propose to tackle this aspect in a qualitative manner once the excluding thresholds are surpassed;
- Moreover, we also have doubts that 10 % as a threshold as such is already to be seen as significant cross-border activity. Taking our two arguments above into account, at least additional boundaries (i.e. absolute cross-border activity measure) need to be taken into account if not the relative size threshold should be lifted more to 15 % or even 20 %;
- Finally, we disagree to the approach as outlined in Article 60 that cross-border is to be viewed as being in a different Member State than the parent undertaking. Cross-border activities need to be viewed from the perspective of the group as a whole or from the perspective of each single supervised entity within the group. The current approach is leading clearly to strange results in a variety of circumstances. We have added one extreme but very illustrative example for this in Annex II. The

natural approach being consistent with CRD IV (country by country reporting, Article 89 CRD IV) would be to take the consolidated view only. However, we clearly see a weakness as (a) the cross-border activities between the group entities would get lost due to consolidation effects and (b) as the basis would be all countries where group entities are located, most of the cross-border activities would get lost. We therefore ask the ECB to consider an aggregation approach by which the analysis should be performed on the basis of the values per each supervised credit institution which are then added (i.e. [cross-border assets of Entity1 + cross-border assets of Entity2 + ...] in relation to [total assets of Entity1 + total assets of Entity2 + ...] and similarly for liabilities).

We have developed a proposed set of rules which we have attached as wording proposal in Annex III.

#### V. Further technical issues

While analysing the draft SSM Framework Regulation we came across a variety of further technical issues and inconsistencies we want to bring to the attention of the ECB:

- Based on Article 8 the ECB will be the consolidated supervisor as defined in Article 111 CRD IV. Taking this for granted, we fail to see why this will completely waive the principle of home / host supervisors and the need to establish a college in case only supervised entities within the participating Member States are part of a significant group. We fail so far to see the legal basis for this and kindly ask the ECB to clarify this within the final document to publish the SSM Framework Regulation. Article 10 is speaking of a co-existence of ECB/NCA and a respective supervisory college in case the consolidated supervisor is not in a participating member state, but not mentioning the replacement of the college by JST as discussed on the ECB meeting mentioned above;
- In Article 2 “supervised entity” is defined in point 20. For a mixed financial holding it is referred to conditions laid down in point (22) (b). Unfortu-

nately, such point does not exist. We suppose the reference is targeted to refer to point 21 (b)?

- In Article 2 point 21 “supervised group” is defined. We ask for clarification that for the term “supervised group” the prudential scope of consolidation is meant and not the statutory scope of consolidation. Then this would be in line with the method of consolidation as stated in article 54;
- In Article 35 notification of supervisory decisions is discussed. In points 4, 5 and 9 several assumptions are made which are rejected by us. It is not appropriate to assume that notifications are received by supervised entities or group per-se 10 days after the letter has been handed over to the courier service. At least a back-confirmation should be considered. The ECB cannot turn upside down the duty to demonstrate received information to the supervised entities. In case of failures of services providers or technology in the reach of ECB or any telecommunication provider in between, the supervised entity has no information at all on the send documents;
- Article 129 treats possible fines and penalties for credit institutions. The amount of penalties for single entities is determined depending on the consolidated revenues. This leads to the dangerous situation that penalties on single entity level may lead to bankruptcy as risk bearing capacity of institutions is limited but consolidated revenues on group level may be substantially higher. We therefore disagree to this approach as there clearly needs to be a limit based on the financial capacity of the single entity in question.
- In Article 140 the supervisory reporting of credit institutions/supervised entities to competent authorities is covered. Supervised entities shall communicate their reporting to the relevant NCA which shall perform the initial data checks and make the information available to the ECB. We miss a specific reporting procedure for regulated groups, as the approach for supervised entities can't be mapped to supervised groups as no NCA exists any longer according to Article 8. We clearly disagree to the introduction of direct reporting or additional reporting to the ECB for standard prudential purposes based on CRD IV / CRR. These reports have to follow national rules / law based on EU legislation and should be made via the

national existing technical formats and infrastructure of the country of the NCA being determined as the consolidated supervisor according to Article 111 and subsequent CRD IV. It needs to be noted, that this might be conflicting with the general aim to replace this mechanism (determination of the consolidated supervisor) by the SSM and in turn creates the problem to determine the respective national standard for consolidated reporting. Once more, we clearly reject any proposal to give the ECB the power to set the standards, formats and technical set up for the standard consolidated supervisory reports. This clearly also includes the definition of the relevant accounting standards for consolidated accounts and as a basis for supervisory / regulatory reporting. We clearly want to point out, that currently no standard software exist that would allow direct reporting to the ECB and that this would lead at least 18 month to be set up. Here, clearly need for action to clarify the approach is addressed.

We hope our comments are supported by the ECB and are reflected in the final regulation.

Yours faithfully,

Jürgen Hillen

Matthias Oßmann

Annex I

Article 39

Classifying supervised groups as significant

1. If one or more supervised entities are part of a supervised group within the participating Member States, the criteria for determining significance shall be determined at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Titles 3 to 7 of Part IV;
2. Where a supervised group is determined to be significant or is determined to be no longer significant, the ECB shall adopt an ECB supervisory decision on the classification as a significant supervised group, or on the lifting of the classification as a significant supervised group, and shall provide the beginning or end dates of direct supervision by the ECB to the parent undertaking entity of the group pursuant to Articles 43 to 49, explaining the underlying reasons for such decision. The ECB shall also provide the related decision for the beginning or lifting of the classification as significant supervised entity including the underlying reasons for such decision to each supervised entity forming part of the supervised group in question;
3. A supervised group can be classified a significant supervised group on the basis of any of the following:
  - (a) Its size, as determined in accordance with Articles 50 to 55 (hereinafter the 'size criterion');
  - (b) its importance for the economy of the Union or any participating Member State, as determined in accordance with Articles 56 to 58 (hereinafter the 'economic importance criterion');
  - (c) Its significance with regard to cross-border activities, as determined in accordance with Articles 59 and 60 (hereinafter the 'cross-border activities criterion');
4. A supervised group can also be classified a significant supervised group on the basis of any supervised subsidiary within the supervised group meeting any of the following:
  - (a) a request for or the receipt of direct public financial assistance from the European Stability Mechanism (ESM), as determined in accordance with Articles 61 to 64 (hereinafter the 'direct public financial assistance criterion');
  - (b) the fact that the supervised entity is one of the three most significant credit institutions in a participating Member State, as determined in accordance with Article 65 and 66 (hereinafter the 'three most significant credit institutions criterion');

5. Each of the supervised entities forming part of a supervised group shall be deemed to be a significant supervised entity in any of the following circumstances:
  - (a) if the supervised group at its highest level of consolidation within the participating Member States fulfils the size criterion, the economic importance criterion, or the cross border activities criterion;
  - (b) if one of the supervised entities forming part of the supervised group fulfils the direct public financial assistance criterion;
  - (c) if one of the supervised entities forming part of the supervised group is one of the three most significant credit institutions in a participating Member State;
6. Significant supervised entities shall be directly supervised by the ECB unless particular circumstances justify supervision by the relevant NCA in accordance with Title 9 of this Part.

#### Article 40

##### Classifying a supervised entity on an individual basis as significant

1. A supervised entity that is not part of a supervised group within the participating member states shall be considered a significant supervised entity if the ECB so determines in an ECB supervisory decision addressed to the relevant supervised entity pursuant to Articles 43 to 49, explaining the underlying reasons for such decision;
2. Article 39 points 3, 4 and 6 are to be applied respectively;
3. A supervised entity shall cease to be classified as a significant supervised entity if the ECB determines, in an ECB supervisory decision addressed to the entity explaining the underlying reasons for such decision, that it is a less significant supervised entity or is no longer a supervised entity.

#### Article 40a

##### Additional provisions for classifying supervised groups or entities

1. The ECB shall also directly supervise a less significant supervised entity or a less significant supervised group under an ECB supervisory decision adopted pursuant to Article 6(5)(b) of the SSM Regulation to the effect that the ECB will exercise directly all relevant powers referred to in Article 6(4) of the SSM Regulation. For the purposes of the SSM, such a less significant supervised entity or less significant supervised group shall be classified as significant;
2. Prior to taking the decisions referred to in Articles 39 and 40 and in this Article, the ECB shall consult with the relevant NCAs. Each ECB supervisory decision referred to in these Articles shall also be notified to the relevant NCAs.

## Annex II

We consider a regulated group (Group A), where the parent undertaking (being a financial holding company with no own business other than holding the participations) is established in Member State A with two supervised subsidiaries (Sub B and Sub C) being credit institutions established in Member States B and C respectively.

The two credit institutions have 100 % of their assets in their home country. The parent undertaking shows only the two participations in its balance sheet which are by nature not located in country A.

As a consequence, despite the fact that the two banking entities purely operate locally, the cross-border ratio is 100 %.

## Annex III

### Article 59

#### Criteria for determining significance on the basis of the significance of cross-border activities of a supervised group

1. A supervised group may not be considered significant by the ECB on the basis of its cross-border activities when any of the below listed criteria is met:
  - a. the parent undertaking of a supervised group has not established subsidiaries, which are themselves credit institutions, in more than one participating Member States or
  - b. not more than 10 % of their assets or liabilities result from cross-border activities or
  - c. Cross-border activities are below EUR 1 billion or
  - d. The supervised group's balance sheet value is below EUR 15 billion.
2. A supervised group may be considered significant by the ECB on the basis of its cross-border activities only if all criteria in point 1 lit. a to d of this Article are exceeded.

### Article 60

#### Cross-border assets and liabilities

1. 'Cross border assets', in the context of article 59 means the part of all the total assets in respect of which the counterparties are credit institutions or other legal or natural persons located in a participating Member State other than the Member State in which the single supervised entity has its head office. 'Cross border assets', in the context of a supervised group means the total of cross border assets of all supervised entities belonging to that group. For the purpose of calculating the relevant share of cross border assets of a supervised group, the cross border assets of that group are compared to the sum of the total assets of that supervised entities.
2. 'Cross border liabilities', in the context of article 59 means the part of all the total liabilities in respect of which the counterparties are credit institutions or other legal or natural persons located in a participating Member State other than the Member State in which the single supervised entity has its head office. 'Cross border liabilities', in the context of a supervised group means the total of cross border liabilities of all supervised entities belonging to that group. For the purpose of calculating the relevant share of cross border liabilities of a supervised group, the cross border liabilities of that group are compared to the sum of the total liabilities of that supervised entities.