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# EUROPEAN BANKING NEWSLETTER

FEBRUARY 2021

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BREDIN PRAT  
DE BRAUW  
HENGELE MUELLER  
SLAUGHTER AND MAY  
URÍA MENÉNDEZ

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## NEWS FROM THE ECB

### **EU Cross-border payments – ECB publishes opinion on proposed Regulation**

26 January 2021 – The European Central Bank (ECB) has published an opinion on the European Commission's proposal for a Regulation on EU cross-border payments (CON/2021/3), following a request from the Council of the European Union. The proposed Regulation aims to codify the existing Regulation on cross-border payments ((EC) 924/2009), as last amended by Regulation (EU) 2019/518 (which requires payment service providers in non-euro area Member States to levy equal charges for cross-border payments in euro and national currencies).

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The ECB welcomes the codification exercise and notes that it does not include substantive changes, but provides its opinion on one provision, Article 4(1), of the proposed Regulation. That provision aims to supplement the transparency and information requirements set out in the Payment Services Directive ((EU) 2015/2366) in relation to currency conversion services. It requires payment service providers and parties providing currency conversion services at ATMs or at the point of sale to express the total currency conversion charges as a percentage mark-up over the latest available ECB euro foreign exchange reference rates (ECBRRs). The ECBRRs are intended to be used for reference purposes only.

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The ECB's opinion indicates its view that the reference to ECBRRs in Article 4(1) of the proposed Regulation could, contrary to the objectives of the ECBRRs, create incentives for some market participants to trade at the ECBRRs. Therefore, the ECB recommends the reference is revised and replaced by an appropriate reference to a foreign exchange benchmark rate which falls within the EU Benchmarks Regulation ((EU) 2016/1011).

ECB: Opinion of the European Central Bank of 25 January 2021 on a proposal for a regulation on cross-border payments in the Union (CON/2021/3) (25 January 2021) is [here](#).

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## **Stress testing – ECB announces scope of participation in 2021 EU-wide EBA stress test**

29 January 2021 – The ECB has indicated that, as part of the 2021 EU-wide stress test led by European Banking Authority (EBA), it will stress test 38 banks covering broadly 70% of euro area banking assets. The EU-wide exercise will take place in 2021, after the 2020 stress test was postponed due to the coronavirus pandemic to support banks in prioritising operational continuity.

In parallel, the ECB will conduct a stress test for 53 directly supervised banks that are not included in the EBA sample. This exercise will be consistent with the EBA's methodology and scenarios, while also including proportionality elements as suggested by the overall smaller size and lower complexity of these banks.

The results of both stress tests will be used to assess each bank's Pillar 2 capital needs in the context of the Supervisory Review and Evaluation Process (SREP). Furthermore, they will support macroprudential tasks and the ECB will assess the macroprudential implications of the exercise for the euro area.

Press release is [here](#).

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**Please see the Single Supervisory Mechanism (SSM) for items on the ECB's final guidance on bank consolidation and its 2021 supervisory priorities for the Single Supervisory Mechanism.**

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## NEWS FOR THE SINGLE SUPERVISORY MECHANISM (SSM)

### **Single Supervisory Mechanism – ECB finalises guidance on supervisory approach to consolidation**

12 January 2021 – The European Central Bank (ECB) has published a final guide outlining its supervisory approach to consolidation for banks in the single supervisory mechanism (SSM), following a public consultation which closed on 1 October 2020. The guide seeks to clarify “*the principles underpinning the prudential supervisory approach ... when determining whether the arrangements implemented by a credit institution resulting from a consolidation ensure the sound management and coverage of its risks.*” Although the document is founded on a baseline case that involves a bank in the SSM acquiring control of another bank in the SSM, the principles therein remain valid, with necessary adaptations, in other cases (for example when a non-bank or non-SSM bank is involved).

ECB’s final guide on the supervisory approach to consolidation in the banking sector is [here](#). Feedback statement on responses to the public consultation on the draft ECB guide is [here](#). ECB press release is [here](#).

### **SREP – ECB publishes SREP outcomes and announces SSM 2021 supervisory priorities**

28 January 2021 – The ECB has published the outcomes of its 2020 Supervisory Review and Evaluation Process (SREP) and its supervisory priorities for the SSM which reflect those outcomes.

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In 2020, the ECB adopted a pragmatic approach to the SREP, focusing on banks’ ability to address the challenges and risks to capital and liquidity arising from COVID-19. The ECB also postponed the deadlines of previous SREP qualitative measures as a result of COVID-19, meaning many findings remain unaddressed from previous SREP cycles.

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The SREP 2020 outcomes indicate that euro area banks started the year with significantly higher capital levels and far greater resilience to economic deterioration than before the 2008 financial crisis. However, vulnerabilities still remain and the ECB has, therefore, identified the following priority areas for 2021:

- **credit risk management** – supervisors should focus on the adequacy of banks' credit risk management, aiming to foster timely identification, efficient monitoring and the mitigation of procyclicality;
- **capital strength** – the EBA's EU-wide stress test will be an important element in gauging banks' capital resilience;
- **business model suitability** – banks' strategic plans and the underlying measures they take to overcome structural deficiencies will remain an area of focus; and
- **internal governance** – there will be continued supervision of the adequacy of banks' crisis management frameworks, risk data aggregation, and the management and governance of IT, cyber and anti-money laundering risks.

ECB publication on SSM supervisory priorities for 2021 is [here](#).

Outcome of SREP 2020 is [here](#).

Assessment of risks and vulnerabilities for 2021 is [here](#).

Press release is [here](#).

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## NEWS FOR THE SINGLE RESOLUTION MECHANISM (SRM)

### **Managing the failure of cross border banks - SRB and the Bank enter into cooperation agreement**

6 January 2021 – The Single Resolution Board (SRB) and the UK's Bank of England have entered into a cooperation arrangement that came into force on 1 January 2021, underpinning their efforts to continue to work closely together and ensure that appropriate arrangements are in place for effective cooperation on the management of the failure of cross-border banks.

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The cooperation arrangement sets out the framework for consulting, cooperating and exchanging information when preparing for and implementing bank resolution in the UK and the Banking Union, in line with the rules in both jurisdictions. The arrangement is based on reciprocity and proportionality and it is hoped that it will facilitate bank resolution while maintaining financial stability in the EU and the UK.

SRB and Bank cooperation arrangement is [here](#).

Press release is [here](#).

### **MREL Reporting – checklist on reported liabilities and sign-off form**

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8 January 2021 – The SRB has published a checklist and sign-off form which it has asked banks to use when preparing the Additional Liability Report (ALR) in order to provide additional assurance on liabilities reported as eligible for MREL.

The checklist is to be used by resolution reporting officers as a guide when filling out the ALR. It lists eligibility criteria and conditions that should be met for reported liabilities to be considered MREL eligible.

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The institution's CEO or board member responsible for resolution should fill out the sign-off form, confirming that procedures and controls were put in place to ensure that the reported data in the ALR corresponds to liabilities which meet the eligibility criteria in the relevant legislation under the Banking Package (the Bank Recovery and Resolution Directive II ((EU) 2019/279), the Capital Requirements Directive V ((EU) 2019/878), the Capital Requirements Regulation II ((EU) 2019/876) and the Single Resolution Mechanism Regulation II ((EU) 2019/877).

Checklist is [here](#).

Sign-off form is [here](#).

Press release is [here](#).

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## **Single Resolution Mechanism – European Court of Auditors publishes special report**

15 January 2021 – The European Court of Auditors (EcoA) has published a report on resolution planning in the Single Resolution Mechanism (SRM). Rimantas Šadžius (the Member of the EcoA responsible for the report) has stated that “*further steps are needed to properly plan the orderly winding-up of failing banks*,” with the report concluding that, while some progress has been made in the SRM, some key elements are missing and additional steps are needed in relation to bank resolution planning.

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The report notes that although the quality of resolution plans improved between 2016 and 2018, the Single Resolution Board (SRB) was late in adopting the 2018 resolution plans and updated only a limited number of plans in 2019. Additionally, some national regulatory authorities (NRAs) have not met their targets or have postponed their plans for more complex banks.

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The EcoA presents several recommendations for the SRB to enable the progress of resolution planning in the SRM, including: (i) improving the policies which guide the SRM's resolution planning; (ii) ensuring timely adoption and full compliance of resolution plans with legal requirements; (iii) improving the organisational set-up of the SRM; and (iv) inviting legislators to set up objective and quantified criteria for timely supervisory action.

European Court of Auditors report on resolution planning in the SRM is [here](#).

Webpage is [here](#).

Press release is [here](#).

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## **Banking stability and depositor protection – European Commission launches consultation**

26 January 2021 – The European Commission has launched a consultation on the revision of the EU's crisis management and deposit insurance framework, publishing a consultation paper and consultation strategy document. The results of the consultation will feed into the Commission's work to make the framework, which sets out the rules for handling bank failures while protecting depositors, more coherent and robust.

The consultation focuses on three EU legislative texts: the Bank Recovery and Resolution Directive (2015/59/EU) (BRRD), the Single Resolution Mechanism Regulation (2014/806/EU) (SRM Regulation) and the Deposit Guarantee Schemes Directive (2014/49/EU) (DGSD). Its main purpose is to: (i) assess how the current crisis management and depositor insurance framework works; (ii) find ways to make the framework more proportionate, efficient and consistent in handling the resolution or liquidation of any bank in the EU, including by securing appropriate funding within and outside the Banking Union; and (iii) improve the synergies between crisis management and depositor protection, including by taking steps to complete the Banking Union.

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The consultation closes on 20 April 2021.

European Commission [BRRD/SRM/DGSD]: Consultation paper: Targeted consultation on the review of the crisis management and deposit insurance framework (26 January 2021) is [here](#). Consultation strategy is [here](#).

List of acronyms is [here](#).

Webpage is [here](#).

## **Single Resolution Fund – Eurogroup publishes statement on backstop**

27 January 2021 – The Eurogroup has published a statement on the early introduction of the backstop to the Single Resolution Fund (SRF). The statement announces that EU Member States have signed the following agreements relating to the backstop: (i) amendments to the European Stability Mechanism Treaty (ESM Treaty); and (ii) amendments to the Intergovernmental Agreement on the transfer and mutualisation of contributions to the SRF (SRF IGA).

The SRF provides medium-term funding support for the resolution of banks within the scope of the SRM. The purpose of the backstop is to address instances where the SRF is insufficiently funded by the banking sector and it will take the form of a revolving credit line from the ESM to the SRF.

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EU Member States will now ratify the amended agreements. They have made a joint declaration of their intention to complete the ratification process as soon as necessary for the backstop's early introduction and the Eurogroup intends the amendments to enter into force at the start of 2022.

Eurogroup statement on the ESM Treaty and the Single Resolution Fund amending agreements is [here](#).

Agreement amending the ESM Treaty is [here](#).

Agreement amending the Intergovernmental Agreement for the Single Resolution Fund is [here](#).

Joint declaration announcing ratification intentions is [here](#).

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## EFIG GROUP

Our European Financial Institutions Group, consisting of ‘Best Friends’ BonelliErede, Bredin Prat, De Brauw Blackstone Westbroek, Hengeler Mueller, Slaughter and May and Uría Menéndez, brings together market-leading lawyers with corporate and financing experience and financial regulatory skills.

We have unrivalled coverage of regulatory developments in the EU, which enables us to provide pure regulatory advice on the interpretation and application of EU directives and regulations. We also have strong connections with the best financial institutions lawyers in the United States, Asia and South America.

Our many years of experience of advising a diverse range of major financial institutions allows us to offer the most incisive advice available.

If you would like to discuss any of the developments in this update, or any other financial regulatory matter, please contact one of the following or your usual EFIG contact.

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