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European Central Bank Regulation ((EU) 2021/728) published in the Official Journal

5 May 2021 – The European Central Bank (ECB) Regulation ((EU) 2021/728) (Amending Regulation), which amends the Regulation on oversight requirements for systemically important payment systems (SIPS) ((EU) 765/2014) (the SIPS Regulation), has been published in the Official Journal of the EU (OJ), together with two related ECB decisions ((EU) 2021/729 and (EU) 2021/730).

The Amending Regulation revises the ECB Regulation to:

- allow for both the ECB and a national central bank to be designated as competent authorities in exceptional circumstances where a pan-European payment system has been overseen by the national central bank for five or more years before becoming a SIPS;
- introduce an additional methodology that allows the ECB Governing Council to identify certain payment systems as SIPS that are outside the current criteria set out in the SIPS Regulation;
- require the ECB to follow process procedures concerning the identification of SIPS, which include issuing a written notice when initiating the identification process and stating the reasons behind its decision to identify a payment system as a SIPS; and
- clarify the circumstances in which the ECB will consider that a payment system should no longer be identified as a SIPS.

The ECB decisions make consequential amendments to: (i) ECB Decision (EU) 2017/2098 on the procedural aspects concerning the imposition of corrective measures for non-compliance with the SIPS Regulation; and (ii) ECB Decision (EU) 2019/1349 on the procedure and conditions for exercise by a competent authority of certain powers in relation to the oversight of SIPS.

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[Regulation \(EU\) 2021/728 amending Regulation \(EU\) 795/2014 on oversight requirements for systemically important payment systems \(ECB/2021/17\)](#)

[Decision \(EU\) 2021/729 amending Decision \(EU\) 2017/2098 on procedural aspects concerning the imposition of corrective measures for non-compliance with Regulation \(EU\) 795/2014 \(ECB/2021/18\)](#)

[Decision \(EU\) 2021/730 amending Decision \(EU\) 2019/1349 on the procedure and conditions for exercise by a competent authority of certain powers in relation to oversight of systemically important payment systems \(ECB/2021/19\)](#)

[Updated webpage](#)

Crisis management and deposit insurance framework – European Central Bank publishes response to European Commission consultation

6 May 2021 – The ECB has published a response to the European Commission’s consultation, launched in January 2021, on the review of the crisis management and deposit insurance (CMDI) framework. The framework consists of three legislative acts: (i) the Bank Recovery and Resolution Directive (2014/59/EU); (ii) the Regulation on the Single Resolution Mechanism (806/2014/EU); and (iii) the Deposit Guarantee Schemes Directive (2014/49/EU).

The ECB’s response makes a number of points:

- improvements to the CMDI framework and completing the banking union should be achieved in parallel. This is because differences in national bank failure regimes currently prevent a fully integrated market and a uniform level of protection for investors and depositors;
- the introduction of a European Deposit Insurance Scheme (EDIS) should form an essential part of the Commission’s review;
- the introduction of harmonised procedures will strengthen the CMDI framework by providing additional funding sources to support asset transfers in resolution and liquidation;
- progress in facilitating cross-border banking within the EU should remain a priority and improvements to the CMDI framework should cover all stages of a bank’s crisis; and

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- the early intervention framework should be clarified to make practical implementation easier.

European Central Bank response to the European Commission's targeted consultation on the review of the crisis management and deposit insurance framework

Securitisation Regulation – European Central Bank announces it will start supervising credit institutions' compliance

14 May 2021 – The ECB has announced it will start supervising the compliance of those credit institutions for which it has direct supervisory responsibility with requirements for risk retention, transparency and resecuritisation as set out in Articles 6 to 8 of the Securitisation Regulation ((EU) 2017/2404).

In April 2021, Regulation (EU) 2021/557 (Amending Regulation) - which made amendments to the Securitisation Regulation as part of the COVID-19 capital markets recovery package - was published in the Official Journal of the European Union. Recital 26 of the Amending Regulation stated that monitoring the compliance of financial institutions with the obligations in Article 5 to 9 of the Securitisation Regulation was the responsibility of competent authorities in charge of their prudential supervision.

The ECB is of the view that, following this clarification, the supervision of risk retention, transparency and the ban on resecuritisation requirements falls within the scope of its direct supervision of credit institutions. The ECB aims to define how it intends to perform this role over the coming months and it then intends to provide further details on its supervisory approach and model. This will include obligations for credit institutions to notify their supervisor of securitisation-related activities.

Press Release: ECB Banking Supervision to supervise securitisation requirements for banks

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SupTech – ECB publishes speech on the importance of supervisory technology

27 May 2021 – The ECB has published a speech by ECB Supervisory Board Member, Pentti Hakkarainen, on the importance of using supervisory technology (SupTech). In the speech, Mr Hakkarainen notes that COVID-19 has underlined the need for banks to embrace fully the latest technology and digitalisation, and for banking supervisors to adapt. In addition, ECB Banking Supervision aims to be a ‘SupTech pioneer’ and is in the process of becoming a digital innovation house, with over 100 SupTech tools under development.

In particular, Mr Hakkarainen notes that frontline supervisors need impactful tools that use state-of-the-art technology. The ECB is developing tools and solutions in several areas, with a particular focus on tools that use natural language processing techniques, for example, to analyse bank documents and flag irregularities. Another key area of focus is advanced analytics and applications to help obtain the most from large quantities of data. The ECB has simplified the way it interacts with banks by introducing the IMAS portal, a digital gateway through which banks submit documents and communicate directly with the ECB. Lastly, the ECB is developing a Virtual Lab to provide a unified suite of collaboration and communication tools available to all users across European banking supervision - it is due to go live later in 2021.

[Speech by Member of the Supervisory Board of the ECB, Pentti Hakkarainen: The necessity of using supervisory technology](#)

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ABLV Bank AS and others v European Central Bank (Cases C-551/19 P and C 552/19 P)

ECB assessment - whether a credit institution is failing or likely to fail – Article 18 SRM Regulation - review under Article 263 TFEU

The European Court of Justice (ECJ) has considered whether an assessment conducted by the ECB on whether a credit institution was failing or likely to fail can be subject to review under Article 263 of the Treaty on the Functioning of the European Union (TFEU).

The ECJ decision relates to the challenge of an ECB assessment made in February 2018 that two banks were failing or likely to fail. The Single Resolution Board (SRB) agreed with the ECB, but concluded that resolution action was not necessarily in the public interest. In May 2019, the General Court dismissed as inadmissible the appellants' actions for an annulment of the ECB's assessment.

The ECJ upheld the decision of the General Court concluding that the ECB's assessment was a "preparatory" act that did not bring about a "distinct change in the appellants' legal position" within the meaning of Article 263 of the TFEU (which would have required the SRB to adopt a resolution scheme and implement resolution tools).

ABLV Bank As and others v European Central Bank (Cases C-551/19 P and C 552/19 P)
EU:C:2021:369

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NEWS FOR THE SINGLE SUPERVISORY MECHANISM (SSM)

Single supervisory mechanism – European Central Bank adopts amendments on reporting of supervisory financial information

18 May 2021 – The European Central Bank (ECB) has adopted a Regulation (ECB/2021/24) (Amending Regulation) amending ECB Regulation (EU) 2015/534 on the reporting of supervisory financial information under the single supervisory mechanism (SSM) (Financial Reporting Regulation).

The Financial Reporting Regulation applies to supervised entities and groups in the SSM, and sets out reporting requirements for credit institutions and rules for the submission of information by national competent authorities to the ECB.

The ECB adopted the Amending Regulation on 14 May 2021. It will enter into force on the fifth day following that of its publication in the Official Journal of the European Union and will apply from 28 June 2021.

Regulation (EU) [YYYY/XX] amending Regulation (EU) 2015/534 on reporting of supervisory financial information (ECB/2021/24)

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NEWS FOR THE SINGLE RESOLUTION MECHANISM (SRM)

Progress on SRB activities – Single Resolution Board issues bi-annual reporting note to Eurogroup

18 May 2021 – The SRB has published a note on its progress in several areas, including:

- resolution planning, resolvability and own funds and eligible liabilities (MREL);
- policy developments; and
- the build-up of the Single Resolution Fund.

The Chair of the SRB, Elke König will inform the Eurogroup ministers about these ongoing activities of the SRB on Friday 21 May 2021. This reporting takes place twice a year in parallel with the hearing of the Chair of the ECB Supervisory Board.

[SRB bi-annual reporting note to Eurogroup](#)

[Press release](#)

Crisis management and deposit insurance framework – Single Resolution Board publishes blueprint

18 May 2021 – The Single Resolution Board (SRB) has published a blueprint setting out key considerations for the European Commission's review of its crisis management and deposit insurance (CMDI) framework. The CMDI framework sets out the rules for handling bank failures while protecting depositors. As stated in a related item under the ECB section above, it consists of three EU legislative texts acting together with national legislation: the Bank Recovery and Resolution Directive (2014/59/EU), the Regulation on the Single Resolution Mechanism (806/2014/EU) and the Deposit Guarantee Schemes Directive (2014/49/EU).

Among other things, the SRB considers the following points:

- the CMDI should enshrine the hybrid model of the European Deposit Insurance Scheme (EDIS) into law, but with a time-bound transition period towards the steady state where

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the SRB acts as the central authority with powers to manage all bank failures in the Banking Union, handling both the EDIS and the Single Resolution Fund (SRF);

- the SRB is enhancing its public interest assessment analysis and ensuring all relevant factors are accounted for, in particular a system-wide stress scenario which might expand the number of banks falling under resolution tools; and
- in relation to the use of external funds to banks, there are two possible sources of additional funds in resolution: the SRF and deposit guarantee scheme funds.

[Blueprint for the CMDI framework review](#)

[Webpage](#)

MREL – Single Resolution Board updates minimum requirement for own funds and eligible liabilities policy

26 May 2021 – The SRB has published an updated version of its policy for the minimum requirement for own funds and eligible liabilities (MREL) under the EU banking package (that is the Bank Recovery and Resolution Directive ((EU) 2019/879) (BRRD II), the Capital Requirements Regulation ((EU) 2019/876) (CRR II) and the Regulation on the Single Resolution Mechanism ((EU) 2019/877) (SRM II)). The updated policy introduces a number of new elements and refinements, based on the changes made under the EU banking package.

In particular, the updated policy introduces:

- the MREL maximum distributable amount, which allows the SRB to restrict banks' earnings distribution in the event of MREL breaches;
- policy criteria to identify systemic subsidiaries for which granting an internal MREL waiver would raise financial stability concerns, based on the absolute asset size and relative contribution to the resolution group; and
- the approach to MREL-eligibility of UK instruments without bail-in clauses.

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The updated policy also refines:

- the methodology to estimate the Pillar 2 requirements post-resolution (one of the components used for MREL calibration);
- the MREL calibration on preferred versus variant resolution strategy, confirming that the SRB computes MREL in line with the preferred strategy; and
- the MREL calibration methodology for liquidation entities, under which the SRB clarifies that the loss absorption amount may increase beyond the default adjustment in proportion to financial stability concerns.

The SRB notes that MREL is one of the key tools in resolvability, ensuring banks maintain a minimum amount of equity and debt to support an effective resolution.

Updated policy: Minimum requirement for own funds and eligible liabilities – SRB Policy under the Banking Package

SRB MREL Dashboard – Q4 2020

Press release

Resolution framework public interest assessment – Single Resolution Board publishes addendum

31 May 2021 – The SRB has published an addendum setting out its revised approach to the resolution framework public interest assessment (PIA). The SRB's updated approach takes into account that a bank's failure may take place under either an idiosyncratic scenario, a system-wide event or as a result of broader financial instability. The updated approach consists of a single assessment and conclusion, under which two sets of circumstances are considered, namely normal market conditions and system-wide events. The SRB considers that this approach strengthens the choice of the best resolution strategy to protect EU taxpayers and promote EU financial stability.

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The PIA addendum is being implemented in the current resolution planning cycle. The SRB is also considering whether further enhancements to its PIA framework are needed, including in relation to the protection of covered deposits and the scope of critical functions.

[SRB Addendum to the Public Interest Assessment: SRB Approach](#)

[Press release](#)

[Blog: System-wide events in the Public Interest Assessment](#)

See the **News from the ECB** section for items on the ECB's response to the European Commission's consultation on the credit management and deposit insurance framework, and the case of ABLV Bank AS and others v European Central Bank (Cases C-551/19 P and C 552/19 P).

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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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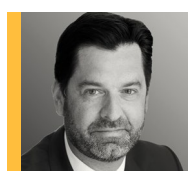
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