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Delegation and internal tasks – ECB decisions published in OJ

6 September 2021 – A number of European Central Bank (ECB) decisions have been published in the Official Journal of the EU (OJ), relating to tasks and procedures of the ECB when carrying out certain functions in a member state whose currency is not the Euro. These include, among others:

- Decision (EU) 2021/1437 amending Decision (EU) 2017/934 on the delegation of decisions on the significance of supervised entities (ECB/2021/33);
- Decision (EU) 2021/1438 amending Decision (EU) 2017/935 on delegation of the power to adopt fit and proper decisions and the assessment of fit and proper requirements (ECB/2021/34); and
- Decision (EU) 2021/1439 amending Decision (EU) 2018/546 on delegation of the power to adopt own funds decisions (ECB/2021/35).

All of these decisions enter into force on 26 September 2021.

Decision (EU) 2021/1437 amending Decision (EU) 2017/934 on the delegation of decisions on the significance of supervised entities (ECB/2021/33)

Decision (EU) 2021/1438 amending Decision (EU) 2017/935 on delegation of the power to adopt fit and proper decisions and the assessment of fit and proper requirements (ECB/2021/34)

Decision (EU) 2021/1439 amending Decision (EU) 2018/546 on delegation of the power to adopt own funds decisions (ECB/2021/35)

Decision (EU) 2021/1440 amending Decision (EU) 2019/1376 on delegation of the power to adopt decisions on passporting, acquisition of qualifying holdings and withdrawal of authorisations of credit institutions (ECB/2021/36)

Decision (EU) 2021/1441 amending Decision (EU) 2019/322 on delegation of the power to adopt decisions regarding supervisory powers granted under national law (ECB/2021/37)

Decision (EU) 2021/1442 on delegation of the power to adopt decisions on internal models and on extension of deadlines (ECB/2021/38)

Decision (EU) 2021/1443 nominating heads of work units to adopt delegated internal models and extension of deadlines decisions (ECB/2021/40)

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Basel III – EU implementation of outstanding reforms

7 September 2021 – The European Banking Authority (EBA) and European Central Bank (ECB), in addition to a group of EU prudential supervisors and central banks, have written separate letters to the European Commissioner for Financial Services, Financial Stability and Capital Markets Union, Mairead McGuinness, on the implementation of outstanding Basel III reforms.

Both letters highlight that further postponements of the implementation of the outstanding reforms in 2023 could have a negative impact on the confidence of the EU banking sector and credibility of the EU regulatory framework. They observe that it is crucial to avoid implementation approaches that are inconsistent with international agreements and that would, in addition, leave shortcomings in the existing framework. In particular, both letters draw attention to the potential impact of delays to the implementation of the output floor, which reduces variability in how banks risk-weight their assets and is a key element of the Basel III framework.

In March 2021, Commissioner McGuinness announced that the European Commission would adopt a legislative proposal on the implementation of the final Basel III standards in July 2021. The Commission has since indicated that the legislative proposal will be adopted by the European Parliament during its October 2021 plenary session.

[EU prudential supervisors and central banks: Joint letter to the European Commission: The EU should stick to the Basel III agreement](#)

[ECB/EBA: Letter to the European Commission: EU implementation of outstanding Basel III reforms](#)

Corporate sustainability reporting – ECB Opinion

10 September 2021 – The ECB has published an Opinion on a proposal for a directive on corporate sustainability reporting. In short, the ECB welcomes the proposed directive's objective of improving the quantity, quality and availability of sustainability-related information.

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On 29 June 2021 the European Parliament requested the ECB for an opinion on its proposal for a directive of the European Parliament and of the Council amending the Accounting Directive (2013/34/EU), the Transparency Directive (2004/109/EC), the Statutory Audits Directive (2006/43/EC) and the Regulation (EU) No 537/2014 on statutory audits of public interest entities, in relation to corporate sustainability reporting. Under the proposed directive, the disclosure of sustainability-related information would become mandatory as of 1 January 2023 for all large undertakings, and as of 1 January 2026 for all small and medium-sized undertakings whose transferable securities are admitted to trading on an EU regulated market.

The ECB welcomes the extended scope of the proposed directive but also acknowledges that the administrative burden associated with additional reporting requirements can have a disproportionate impact on smaller companies and underlines the importance of avoiding an excessive administrative burden on small and medium-sized enterprises (SMEs). In this respect, the ECB welcomes the proposal to moderate the additional reporting burden for smaller companies, by providing for a gradual phase-in approach and simplified reporting standards for listed SMEs which will be developed by the European Financial Reporting Advisory Group (EFRAG).

The ECB also strongly supports the stipulation in the proposed directive that the information to be reported should include forward-looking targets.

Opinion of the European Central Bank of 7 September 2021 on a proposal for a directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (CON/2021/27)

Economy-wide climate stress test results – ECB publishes Occasional Paper

22 September 2021 – The ECB has published an Occasional Paper on the results of its first economy-wide climate stress test. The stress test assessed the resilience of banks in the Eurozone and non-financial corporates (NFCs) to transition and physical risks using a range of assumptions related to future climate policies over a time horizon of 30 years.

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According to the ECB, the results show that:

- there are clear benefits to ‘acting early’, with the short-term costs of transition proving to be small in comparison to the costs of unfettered climate change in the medium to long term;
- when comparing the effects of transition and physical risk, the outcomes indicate that physical risk will be more prominent in the long run, particularly if policies for a transition towards a greener economy are not introduced; and
- climate change represents a major source of systemic risk, particularly for banks with portfolios concentrated in certain economic sectors and specific geographical areas.

These conclusions will inform the 2022 supervisory climate stress test for the banks in the Single Supervisory Mechanism. They will also be reflected in the climate stress test of the Eurosystem balance sheet, planned for the first quarter of 2022.

Occasional paper

Press release: Firms and banks to benefit from early adoption of green policies, ECB’s economy-wide climate stress test shows

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NEWS FOR THE SINGLE SUPERVISORY MECHANISM (SSM)

SSM – ECB speech on obstacles to banking sector integration in EU legislation

9 September 2021 – The European Central Bank (ECB) has published a speech by the Chair of the Supervisory Board of the ECB, Andrea Enria, on concrete actions the European banking sector can take to achieve progress towards an integrated prudential jurisdiction within the Single Supervisory Mechanism (SSM).

In the speech, Mr Enria highlights the main obstacles to integration within EU banking legislation, including limitations placed on intra-group waivers, the fact that many national macro-prudential powers are delinked from EU legislation, and issues relating to transfer between deposit guarantee schemes.

Mr Enria further argues that, if banking groups were to make greater use of branches and the free provision of services to develop cross-border business within the banking union, rather than subsidiaries, there might be significant efficiency gains in terms of simplified legal structures and corporate governance, savings related to annual accounts and internal audit, and lower overall regulatory requirements.

Speech by Chair of the Supervisory Board of the ECB, Andrea Enria: How can we make the most of an incomplete banking union?

Climate and environment – ECB speech on integrating the climate and environmental challenge into the missions of central banks and supervisors

23 September 2021 – The ECB has published a speech by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB.

Mr Elderson discusses the challenge of climate change and environmental degradation and the recent analysis of the Intergovernmental Panel on Climate Change (IPCC), as well as the different missions of central banks and supervisors and the fact that many of them have joined forces in the Network for Greening the Financial System (NFGS). Mr Elderson further looks at how the ECB has been systematically and consistently integrating climate and

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environmental considerations into the activities through which it carries out its tasks and fulfils its responsibilities. He points out some of the main steps that the Bank has set out, and is currently taking, such as the process of benchmarking banks' self-assessments and action plans (on which the Bank will challenge relevant banks as part of ongoing supervision) and its plan to conduct a full supervisory review of banks' practices for incorporating climate risks into their risk frameworks in 2022.

Speech by Vice-Chair of the ECB Supervisory Board, and member of the ECB Executive Board, Frank Elderson: Integrating the climate and environmental challenge into the missions of central banks and supervisors

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NEWS FOR THE SINGLE RESOLUTION MECHANISM (SRM)

CRR – SRB publishes communication on application of RTS provisions on prior permissions for eligible liabilities

16 September 2021 – The Single Resolution Board (SRB) has published guidance to assist institutions that apply for permissions to reduce eligible liabilities under the Capital Requirements Regulation (575/2013/EU) (CRR), in line with the pending regulatory technical standards (RTS) on own funds and eligible liabilities.

In May 2021, the European Banking Authority (EBA) published the final draft RTS, mandated under Article 78(3) of the CRR, on the permission regime to be applied as of 1 January 2022. However, the delegated regulation containing the RTS is unlikely to be finalised before 1 January 2022, which is the deadline for institutions to comply with the intermediate minimum requirement for own funds and eligible liabilities (MREL) targets set under the Single Resolution Mechanism Regulation (806/2014/EU).

In the communication, the SRB sets out guidance on the procedures that need to be followed when seeking the SRB's permission to call, redeem, repay or repurchase eligible liability instruments before their contractual maturity for the purposes of article 77(2) of the CRR. The guidance covers:

- the scope of the article 77 requirement for institutions and instruments;
- the process for making an application the SRB; and
- the type of permissions and requirements, with guidance on applications for ad hoc permissions and for general prior permissions.

The SRB will update the communication if any parts of the draft RTS are changed when the European Commission endorses the Delegated Regulation.

Communication on application of RTS provisions on prior permission for reducing eligible liabilities instruments as of 1 January 2022)

Press release:

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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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