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## EUROPEAN CENTRAL BANK (ECB)

### **SSM - ECB publishes Supervisory Priorities for 2022-24**

7 December 2021 - The European Central Bank (ECB) has published its key supervisory priorities for 2022 to 2024, in relation to the supervision of significant banks in the Euro area under the Single Supervisory Mechanism (SSM).

The ECB highlights its new internal processes, noting that supervisory resources will be deployed in a risk-focused manner, across fewer, clearer priorities. Among other things, these priorities include moving faster to tackle climate risks, for example, by carrying out a thematic review (2022) on risk management practices, and a climate-risk stress test covering all banks under the ECB's supervision. The ECB also stresses the importance of increasing supervisory focus on IT and cyber risks, particularly deficiencies in banks' management of IT outsourcing arrangements and the increased reliance on third-party IT providers.

[ECB SSM Supervisory Priorities for 2022-24](#)  
[ECB: The Supervision Blog](#)

### **Guide to fit and proper assessments - ECB publishes revisions**

8 December 2021 - The ECB has published revised versions of its Guide to fit and proper assessments and its fit and proper Questionnaire template for members of the management bodies of significant credit institutions under the SSM.

The revisions to the Guide have two main objectives: (i) explain in greater detail the existing policies applied by the ECB when assessing the suitability of members of the management bodies of significant banks; and (ii) introduce and explain enhanced supervisory expectations regarding the collective suitability of boards, the individual accountability of board members and the new criteria that will be used to reassess them.

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The revisions to the Questionnaire include new policies and practices that have developed since its introduction. The ECB explains that streamlining the necessary requests for information from the supervised entity and the appointee increases efficiency and harmonisation across the SSM, and enables better data quality and use of digitalisation and artificial intelligence.

[ECB: Guide to fit and proper assessments](#)

[Updated Fit and proper questionnaire - ECB template](#)

[ECB: Feedback statement: Responses to the public consultation on the draft Guide to fit and proper assessments and new Fit and proper questionnaire](#)

[Webpage](#)

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## **Opinion on a proposal for a regulation laying down harmonised rules on artificial intelligence – ECB publishes opinion**

29 December 2021 - On 3 November 2021 the ECB received a request from the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts. The ECB welcomes the objective of the proposed regulation to improve the functioning of the internal market by laying down a uniform legal framework for the development, marketing and use of trustworthy artificial intelligence, as the ECB further acknowledges the increasing importance of AI-enabled innovation in the banking sector. However, the ECB emphasises that the proposed regulation should be set out in sectoral regulation and supplemented by supervisory guidance.

The ECB would welcome further clarifications regarding the applicable requirements and competent authorities with regard to outsourcing by credit institution users of high-risk AI systems. The ECB's role under the proposed regulation should also be clarified. The ECB indicates in the opinion that it remains committed to a technology-neutral approach in the prudential supervision of credit institutions.

[Press release](#)

[Proposed Artificial Intelligence Act](#)

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# EUROPEAN BANKING NEWSLETTER

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## SINGLE SUPERVISORY MECHANISM (SSM)

**Please see the ‘European Central Bank (ECB)’ section above for items on the ECB’s supervisory priorities for 2022-24 and its updated fit and proper assessments Guide.**

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## SINGLE RESOLUTION MECHANISM (SRM)

### **Solvent wind-down of trading books - SRB publishes guidance**

*1 December 2021* - The Single Resolution Board (SRB) has published guidance on the solvent wind-down (SWD) of derivatives and trading books in resolution. SWD is an approach that can be used for exiting trading activities in an orderly manner while avoiding risks to financial stability.

In particular, the new guidance provides additional detail on how banks should to demonstrate resolvability under Principle 7.1 of the SRB's 'Expectations for Banks' (Efb) document, first published on 1 April 2020.

The SRB guidance states that all global systemically important banks (G-SIBs) are expected to work on SWD planning as a priority for the 2022 resolution planning cycle (RPC). Other banks will be identified and approached during 2020, following a further assessment of their trading books. These identified banks will be expected to work on SWD planning as an RPC 2023 priority.

*[SRB: Solvent wind-down of trading books: Guidance for banks 2022](#)*  
*[Press release](#)*

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### **SRB's 2022 priority list – Speech by the SRB Chair at the ECON Committee**

*1 December 2021* – the SRB has published a speech given by its Chair, Elke König, to the ECON Committee which outlines the SRB's priority list of work for 2022. The programme for 2022 will be the second year of the SRB's current three-year multi-annual work programme. The focus will be on three areas:

- liquidity and funding in resolution. Banks under the SRB's remit have been able to build up the necessary MREL buffers this year. The SRB encourages all banks to continue to build up their MREL in this favourable market. The banks know the requirements that they must fulfil until 2024;

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- separability and reorganisation plans. For mid-sized banks, the SRB is prioritising the work on transfer tools, separability and adjustments of MREL for such transfer tools. The SRB issued a guidance note in December 2021 on separability and will continue to work on this area; and
- IT and cyber risks. The pandemic has brought about a considerable acceleration in advances in this area. However, while some banks have accelerated their efforts on this front, others are still hesitating. The SRB wants to encourage banks' reorganisation efforts to become more efficient and customer-focused. However, Ms König states that IT and cyber risks and their management, particularly regarding the timely availability of data, must be a key priority for banks.

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[Press release](#)

[Operational guidance for banks on separability for transfer tools](#)

### **Algebris (UK) Ltd and another v Single Resolution Board (SRB) (Case C-934/19) EU:C:2021:1042**

*21 December 2021 - Interpretation of requirement for ex-post definitive valuation under SRM Regulation*

The European Court of Justice (ECJ) has considered the circumstances in which the SRB is required to produce an ex-post valuation under Article 20(11) of the Single Resolution Mechanism (SRM) Regulation (806/2014/EU).

Article 20 of the SRM Regulation requires the SRB to ensure that a fair and realistic valuation of a bank's assets and liabilities is carried out by an independent person before it takes resolution action regarding that bank or uses its power to write down or convert relevant capital instruments and eligible liabilities. If this is not immediately possible, the SRB may carry out a provisional valuation itself, followed by a definitive valuation carried out by an independent expert.

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Article 20(11) states that a valuation that does not comply with all of the requirements in Article 20(1) and (4) to (9) should be considered to be provisional until an independent person has carried out a valuation (an ex-post definitive valuation) that is fully compliant with all those requirements. This should be done “as soon as practicable” to inform the decision to write back creditors’ claims or to increase the value of the consideration paid, in accordance with Article 20(12).

The ECJ concluded that Article 20(11) did not place an obligation on the SRB to produce an ex-post definitive valuation in all scenarios. It stated that:

- the labelling of the Article 20(11) valuation as an ‘ex-post’ definitive valuation allowed for the possibility of other definitive valuations. This was supported by the wording of Article 20(2), which states that a valuation should be considered as definitive where all the Article 20(1) and (4) to (9) requirements are met; and
- since Article 20(12) relates to situations in which the SRB has recourse to the bail-in tool, the bridge institution tool or an asset management vehicle, the reference in Article 20(11) to Article 20(12) indicates that an Article 20(11) valuation only applies in those situations.

The judgment is relevant to the interpretation of Article 36(10) of the Bank Recovery and Resolution Directive (2014/59/EU) (BRD), which has equivalent wording to Article 20(11) of the SRM Regulation.

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*Algebris (UK) Ltd and another v Single Resolution Board (SRB) (Case C-94/19) EU:C:2021:1042 (21 December 2021)*

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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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