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CRD IV - ECB Decision on the exclusion of staff members from the presumption of having a material impact on risk profile published in OJ

4 March 2022 - European Central Bank (ECB) Decision (EU) 2022/368 amending Decision (EU) 2015/2218 on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile (ECB/2022/6) (the Decision) has been published in the Official Journal of the European Union (OJ).

The Decision follows Commission Delegated Regulation (EU) 2021/923, which contains regulatory technical standards (RTS) supplementing the remuneration provisions in the Capital Requirements Directive (2013/36/EU) (CRD IV).

The ECB adopted the Decision on 18 February 2022. It will enter into force on 24 March 2022.

[Decision \(EU\) 2022/368 of the European Central Bank of 18 February 2022 amending Decision \(EU\) 2015/2218 on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution's risk profile \(ECB/2022/6\)](#)

Climate-related and environmental risks disclosures - ECB publishes report and speech

14 March 2022 - The ECB has published a report on its supervisory assessment of institutions' climate-related and environmental risks disclosures, which covers 109 directly supervised banks. The report highlights that, compared to the ECB's first assessment in 2020, more banks now disclose meaningful information on climate and environmental risks. The ECB cautions, however, that the overall level of transparency is still insufficient and that banks' disclosure of key metrics is not sufficiently in line with supervisory expectations. To this end, the report provides areas for improvement and examples of good practice.

The ECB has sent individual feedback letters to the banks explaining their main shortcomings, expecting them to take decisive action. The ECB highlights the importance this action will play in helping banks prepare for new regulatory requirements, such as the European Banking Authority's binding standards on Pillar 3 disclosures of ESG risks.

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Finally, the report sets out the ECB's future work in this area, which includes the ECB's first climate risk stress test and a thematic review of how banks incorporate climate and environmental risks into their processes. The ECB is also integrating climate and environmental risks into its regular supervisory methodology, which will ultimately affect Pillar 2 capital requirements. The ECB will review banks' climate and environmental disclosures again at the end of 2022.

Alongside the report, the ECB has published the keynote speech delivered by Frank Elderson, a member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, at the 14th European Bank Institute Policy Webinar. In the speech, Mr Elderson notes that there is "*very little justification for this lack of substantial progress, particularly considering the vast amount and quality of climate-related data, tools and information shared by different international and European organisations and institutions in recent years.*" He highlights that "*addressing climate-related and environmental risks, and publishing good-quality disclosures, is not optional.*"

[ECB report on banks' progress towards transparent disclosure of their climate-related and environmental risk profiles](#)

[Press release](#)

[Keynote speech by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, 14th European Bank Institute Policy Webinar on the ECB's supervisory approach on climate-related and environmental risks](#)

Ukraine – The ECB publishes presentation

15 March 2022 - The ECB has published the presentation given by Andrea Enria, Chair of the ECB's Supervisory Board, at the Morgan Stanley European Financials Conference on the impact of the Russian invasion of Ukraine on the European banking sector.

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Mr Enria focusses on a number of areas in his presentation, including:

- the end-2021 outlook, which was positive, both from a macroeconomic and bank capital position, and in relation to the containment of COVID-19 related asset quality deterioration;
- investors' concerns in relation to EU bank exposure to Russian counterparties, including those subject to sanctions; on the operational risks banks face from potentially increased cyber attacks and IT connections with Russia and/or Ukraine; and the macroeconomic impact of lower GDP growth and price inflation;
- that EU banks' direct exposures to Russia appear contained. This includes exposures to credit, securities and derivatives, and the exposures of EU entities within Russian banking groups (for example, Sberbank AG);
- that there are several channels of indirect impact but none appear 'disruptive' so far. These include the exposures of both regulated and unregulated non-bank financial intermediation entities, which appear limited at the moment; the possibility of a Russian sovereign default scenario; counterparty credit risk losses arising from broader market volatility, which also appear contained at the moment; and cyber risk across the EU, which remains a 'concrete' threat albeit no major events reported so far; and
- that shareholder distributions and share buy-backs are slightly higher than pre COVID-19 levels and broadly acceptable given the previous period of restriction because of COVID-19. That said, banks most affected by the conflict are revising their distribution plans.

Mr Enria highlights the importance of ensuring any distributions are made in line with capital targets, including minimum thresholds above supervisory requirements and buffers, and of entering into supervisory dialogue before distribution are announced. He also highlights the ex-ante authorisation requirement in relation share buy-backs within three months and that distributions of excess capital are permitted provided they are consistent with sound capital planning and capital targets.

Presentation by Andrea Enria, Chair of the Supervisory Board of the ECB, at the Morgan Stanley European Financials Conference on the invasion of Ukraine

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Securitisation Regulation - ECB publishes Guide on notification of securitisation transactions

18 March 2022 - The ECB has published a Guide for banks on the notification of securitisation transactions, following the ECB's consultation on the same matter published in November 2021. The Guide relates to the notification process for originators or sponsors of securitisation transactions with reference to the risk retention, transparency and resecuritisation requirements under Articles 6 to 8 of the Securitisation Regulation ((EU) 2017/2402).

New transactions are to be notified to the ECB within one month of the origination date. The Annex to the Guide sets out the information that is to be provided.

The Guide will be updated periodically to reflect developments in the regulation and supervision of securitisations.

[ECB Guide on the notification of securitisation transactions: Articles 6 to 8 of the Securitisation Regulation](#)
[Notification template](#)

Central clearing - ECB publishes speech

22 March 2022 - The ECB has published the welcome address speech by Fabio Panetta, a member of the Executive Board of the ECB, at the Fourth Annual Joint Conference of the Deutsche Bundesbank, ECB and Federal Reserve Bank of Chicago on central counterparty (CCP) risk management.

On CCPs' resilience, Mr Panetta highlights recent events, including the COVID-19 pandemic, supply chain bottlenecks, rapidly rising energy and commodity prices, and now the fallout from the Russian invasion of Ukraine. This has prompted the ECB to revisit the procyclicality of margins and to examine its system-wide impact. Mr Panetta also notes the heightened threat of cyber attacks and promotes the cyber information and intelligence sharing initiative launched by the Euro Cyber Resilience Board for pan-European Financial Infrastructures as a platform to promote preparedness and resilience.

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Mr Panetta champions a diversified approach towards risk management that will provide banks and end users with the flexibility to react and adapt to individual crisis scenarios and other challenges. He foresees a “dynamic and robust” European clearing ecosystem that can increase the overall attractiveness of central clearing and further reduce systemic risk, to the benefit of global financial markets, and believes that the euro’s relevance as an international currency, combined with the size of the European economy, means that there is ample room for the EU to expand the availability of clearing options. To this end, Mr Panetta notes the European Commission’s (the Commission’s) consultation on expanding EU clearing capacity and revising the supervisory framework to ensure that risks remain appropriately managed.

Mr Panetta cautions that the fast evolution of the clearing ecosystem may produce risks that have not been considered previously, while new channels might help spread existing risks. He highlights the importance of understanding new risks stemming from climate change and notes that ESMA’s work to develop a climate risk stress test for CCPs is an important step that the ECB is actively supporting. Mr Panetta also sets out the importance of understanding the role of CCPs in relation to cryptoassets, noting that oversight and supervision is the minimum that must be done and that the impact of cryptoassets from the perspective of corporate responsibility should also be considered.

Welcome address by Fabio Panetta, Member of the Executive Board of the ECB, at the Fourth Annual Joint Conference of the Deutsche Bundesbank, European Central Bank and Federal Reserve Bank of Chicago on CCP Risk Management

Basel 3.1 and CRR amendments - EBA publishes opinion on proposed CRR III Regulation

25 March 2022 - The ECB has published an opinion (CON/2022/11) on the Commission’s legislative proposal for a Regulation to amend the Capital Requirements Regulation ((EU) 575/2013) (CRR) in relation to the requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (CRR III Regulation). The proposed amendments would implement the outstanding Basel III reforms in the EU (sometimes referred to as Basel 3.1), reinforce the EU Single Rulebook and enhance the prudential framework for credit institutions.

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The ECB welcomes the Commission's proposals and emphasises the importance of finalising EU implementation of the Basel III reforms in a "*timely, full and faithful*" manner. It highlights the risks of deviating from the Basel III standards in areas including: (i) the output floor; (ii) the standardised approach to credit risk; (iii) operational risk; and (iv) credit valuation adjustment risk.

Where the ECB recommends amendments to the proposed CRR III Regulation, it has set out specific drafting proposals in a technical working document accompanied by explanatory text.

The ECB also welcomes the Commission's mandate to report on a new proposal on the prudential treatment of cryptoassets.

Opinion of the European Central Bank of 24 March 2022 on a proposal for amendments to Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (CON/2022/11)

Options and discretions policies - ECB finalises revisions

28 and 30 March 2022 - The ECB has published final changes (dated 25 March 2022) to its policies on the exercise of options and discretions in the supervision of banks. Among other things, the revisions take account of legislative changes that have been adopted since the policies were first published in 2016, including those introduced by the Capital Requirements Directive V ((EU) 2019/878) (CRD V) and the Capital Requirements Regulation II ((EU) 2019/876) (CRR II). The ECB consulted on the proposed amendments in June 2021.

Following the consultation, the ECB has made a small number of amendments to the related guide on options and discretions, including the introduction of new guidance on liquidity waivers and on article 428h of the Capital Requirements Regulation (575/2013/EU) (CRR).

Regulation (EU) 2022/504 amending Regulation (EU) 2016/445 on the exercise of options and discretions available in EU law under the Capital Requirements Regulation (575/2013/EU) (CRR) has since been published in the Official Journal of the European Union (OJ), as well as two additional instruments:

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- Guideline (EU) 2022/508 amending Guideline (EU) 2017/697 on the exercise of options and discretions by national competent authorities (NCAs) in relation to less significant institutions; and
- Recommendation ECB/2022/13 amending Recommendation ECB/2017/10 on common specifications for the exercise of some options and discretions by NCAs in relation to less significant institutions.

The ECB adopted the Regulation, Guidelines and Recommendation on 25 March 2022 and recommended that national competent authorities apply the Guidelines and Recommendation from that date. The Regulation entered into force on, and applies from, 4 April 2022.

[Regulation \(EU\) 2022/504 of the European Central Bank of 25 March 2022 amending Regulation \(EU\) 2016/445 on the exercise of options and discretions available in Union Law](#)

[Guideline \(EU\) 2022/508 of the European Central Bank of 25 March 2022 amending Guideline \(EU\) 2017/697 of the European Central Bank on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions](#)

[Recommendation of the European Central Bank of 25 March 2022 amending Recommendation ECB/2017/10 on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions \(ECB/2022/13\)](#)

[ECB Guide on options and discretions available in Union law: Consolidated version](#)

[Feedback statement: Responses to the public consultation on revisions to the ECB's options and discretions policies](#)

[Press release](#)

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Leveraged transactions - ECB publishes Dear CEO letter

30 March 2022 - The ECB has published a Dear CEO letter (dated 28 March 2022) addressed to the CEOs of significant institutions (SIs) setting out the ECB's expectations around leveraged transactions and, in particular, the establishment of risk appetite frameworks for leveraged transactions (LT RAFs).

According to the ECB, in less than four years, reporting SIs have, on aggregate, increased leveraged loan exposures in their hold books from around 40% of Common Equity Tier 1 capital to almost 60%. The ECB cautions that excessive risk taking is of particular concern when coupled with inadequate risk management. It explains that high levels of leveraged transaction exposure on banks' balance sheets leave them vulnerable to renewed shocks, which could arise from unexpected and sharp economic showdowns or higher than expected interest payments on outstanding loans. The ECB has identified a number of significant deficiencies in banks' risk management practices and in general, it has observed that LT RAFs are still insufficiently developed and do not adequately capture and limit the multiple risks posed by leveraged transactions.

All SIs that engage in leveraged transactions are expected to take steps to comply with the expectations in the ECB's letter. Failure to remedy any deficiencies will be addressed using all available supervisory tools, including potentially, where relevant, Pillar 2 requirements in the annual supervisory review and evaluation process.

ECB Dear CEO letter: To the CEO of the significant institution: Leveraged transactions - supervisory expectations regarding the design and functioning of risk appetite frameworks and high levels of risk taking (SSM-2022-0239)

Review of EU macro-prudential framework - ECB publishes response to European Commission's call for evidence

31 March 2022 - The ECB has published its response to the Commission's call for evidence on its review of the EU banking macro-prudential framework, together with supporting information in annexes 1 and 2. The call for evidence reflects the Commission's mandate to complete a review of the macro-prudential provisions in the Capital Requirements Regulation (575/2013/EU) (CRR) and the Capital Requirements Directive (2013/36/EU) (CRD IV) by June

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2022. If deemed appropriate, the ECB will submit a legislative proposal to the European Parliament and the Council of the EU by December 2022.

The four areas covered in the ECB's response include the overall design and functioning of the buffer framework; missing or obsolete instruments; internal market considerations, coordination mechanisms and procedures; and global risks.

Of particular note is the ECB's proposal to increase the flexibility and effectiveness of the countercyclical capital buffer (CCyB) framework and not to extend leverage buffers to other systemically important institutions (O-SIIs) at this stage. The ECB will not introduce the power to impose binding system-wide restrictions on distributions at the EU and/or national level in the CRR/CRD IV. It suggests mandating the European Banking Authority, in consultation with the European Systemic Risk Board, to issue guidelines on a revised methodology for O-SII identification and buffer calibration. It has also proposed a streamlining of the procedures governing national flexibility measures in article 458 of CRR.

[ECB response to the European Commission's call for advice on the review of the EU
macroprudential framework](#)

[Annex 1](#)

[Annex 2](#)

Annual Report 2021 - published by the ECB

31 March 2022 - The ECB has published its annual report for 2021 describing some of its main priorities. These include seizing the opportunity to address structural weaknesses through effective digitalisation strategies and enhanced governance as well as tackling emerging risks, including climate-related and environmental risks, IT and cyber risks.

The ECB has also published a speech on the ECB's supervisory priorities for the future, delivered by Andrea Enria, Chair of the Supervisory Board of the ECB to the European Parliament's Economic and Monetary Affairs Committee.

[ECB Annual Report 2021](#)

[Hearing at the European Parliament's Economic and Monetary Affairs Committee: Introductory
statement by Andrea Enria, Chair of the Supervisory Board of the ECB](#)

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Identification and mobilisation of collateral in resolution - SRB publishes operational guidance

17 March 2022 - The Single Resolution Board (SRB) has published its operational guidance on the identification and mobilisation of collateral in resolution. It is aimed at banks' capacity to identify and mobilise certain asset classes that could be used as collateral in resolution in a timely way to support financial continuity.

The SRB's operational guidance is structured around three objectives:

- ensuring that banks' collateral governance and management is able to support the resolution scheme and contribute to the financial continuity of the group;
- ensuring that banks have capacity to identify collateral, including its amount, location, governing law, currency and overall availability; and
- assessing banks' capacity to mobilise collateral, and in particular non-marketable assets and assets not eligible for ordinary central bank funding.

[Operational Guidance on the Identification and Mobilisation of Collateral in Resolution](#)

[Webpage](#)

[Press release](#)

Resolution and financial stability - SRB publishes speech

30 March 2022 - The SRB has published a speech delivered by Elke König, Chair of the SRB, at the SRB annual press breakfast.

Ms König refers to the SRB's resolution decisions regarding Sberbank made in Croatia, Slovenia and Austria, citing them as "*further proof that the EU resolution framework works.*" She states that the Sberbank case also serves as a reminder of the need for a harmonisation of the framework for insolvency of financial institutions, "*not least to allow handling the failure of a bank in a consistent manner within the Banking Union or better still, being consistent right across the EU.*"

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Ms König goes on to explain that banks lagging behind on the resolvability assessment “must get their house in order”. For the minimum requirement for own funds and eligible liabilities (MREL), Ms König highlights that all but a few banks are meeting the immediate targets of January 2022 but there is still a gap for the final target.

Looking ahead, priority topics for the SRB in 2022/23 include (i) adequate MREL capacity; (ii) banks’ capabilities in managing liquidity and funding in resolution; (iii) separability and business reorganisation plans; (v) work on management information systems; and (vi) the Single Resolution Fund.

SRB Chair, Elke König speech at the SRB Annual Press Breakfast

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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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