EUROPEAN BANKING NEWSLETTER

OCTOBER 2022

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EUROPEAN CENTRAL BANK (ECB)

SREP – ECB appoints five experts to re-evaluate annual supervisory review process

1 September 2022 - The Supervisory Review and Evaluation Process (SREP) is the core supervisory tool to assess the way a bank deals with its relevant risks and the elements that could adversely affect the banks' capital now and in the future. The ECB has tasked five high level banking supervision experts on with reviewing the effectiveness and efficiency of SREP and how it relates to other supervisory processes. The group will engage with major stakeholders and other international experts to gather information and perspectives on supervisory best practices. Its mandate runs until the end of Q1 2023.

Press release

CSDR – ECB opinion on proposed Regulation published in OJ

26 September 2022 -The European Central Bank's (ECB) opinion (CON/2022/25) on the proposed Regulation amending the Central Securities Depositories (CSDs) Regulation (909/2014/EU) (CSDR) has been published in the Official Journal of the European Union.

The ECB makes a number of specific observations, including on:

- **the settlement discipline regime**: the ECB welcomes the objective of establishing a more targeted scope for the CSDR's settlement discipline regime. It also welcomes the proposed exclusions from the settlement discipline regime of both settlement fails caused by factors not attributable to the participants to the transaction and fails occurring in the context of transactions not involving two trading parties. The ECB also favours excluding securities financing transactions from the scope of any mandatory buy-ins;
- **the establishment of colleges**: the ECB proposes that the scope of passporting colleges' mandate should be widened to cover other types of cross-border activities, including settlement in foreign currencies and the operation of interoperable links; and
- **banking-type ancillary services**: the ECB notes that, while the objective of the amendments is to facilitate settlement in foreign currencies, they also open up the possibility of banking CSDs being able to offer, without restriction, any banking-ancillary

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services to user CSDs. The scope of services offered by banking CSDs to user CSDs should be limited to services which are provided for the purposes of settlement in foreign currencies.

Opinion of the European Central Bank of 28 July 2022 on the Proposal for a Regulation amending the Central Securities Depositories Regulation (CON/2022/25)

Qualifying holding procedures – ECB publishes consultation on draft Guide

28 September 2022 - The European Central Bank (ECB) has published a consultation on its draft Guide to qualifying holding procedures.

The ECB has exclusive competence to assess acquisitions and increases of qualifying holdings (shareholdings of 10% or more) in all credit institutions participating in the Single Supervisory Mechanism (SSM). The Guide aims to clarify how the ECB assesses applications to acquire such holdings in banks in order to increase the transparency of the process for market participants.

The Guide explains when qualifying holding assessments apply, the application documentation required to and how the ECB assesses these transactions. It also provides information on complex acquisition structures, the application of the principle of proportionality and specific procedural elements.

The ECB invites comments from banks, investors and other stakeholders involved in bank acquisitions by 9 November 2022. Following this, it will publish the comments received, together with a feedback statement and final version of the Guide. There is also a planned stakeholder meeting on 19 October 2022 as part of the consultation process.

Consultation on the draft guide to qualifying holding procedures

Draft Guidelines

Press release

SINGLE SUPERVISORY MECHANISM (SSM)

Please see the ‘European Central Bank (ECB)’ section above for an item on the ECB’s Guide on qualifying holdings for credit institutions participating in the Single Supervisory Mechanism.

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TLAC and MREL – SRB publishes press release on updated policy

22 September 2022 - The Single Resolution Board (SRB) has published a press release on its change of policy for banks with a multiple point of entry (MPE) resolution strategy. This follows proposed revisions to the treatment of total loss absorbing capacity (TLAC) surpluses in third countries for MPE banks in the Regulation on amendments to the Capital Requirements Regulation and Capital Requirements Regulation II concerning TLAC and the minimum requirement for own funds and eligible liabilities (MREL) ((EU) 2020/873) (known as the 'CRR quick fix').

The revisions to Article 72e(4) of the CRR clarify that a resolution authority can only take TLAC surpluses into consideration for loss absorbing or recapitalisation purposes when they are located in third countries with a legally enforceable resolution framework that meets the standards of the Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes, as well as the TLAC term sheet. The SRB states that, where it recognises surpluses of this kind for the purpose of a parent entity's TLAC resources, the subsidiary should deduct the corresponding amount in accordance with Article 72e(4). It will apply the same principles when determining the MREL for all MPE banks, including banks that are not global systemically important institutions (G-SIIs).

Under new Article 477a of the CRR, until 31 December 2024, a resolution authority may recognise a surplus in a third country that does not have a resolution regime in place, provided certain conditions are met. The SRB will require affected banks to provide a legal opinion on the absence of impediments to the prompt transfer of assets from the subsidiary to the parent institution. From 1 January 2025, if the relevant third country still does not have an appropriate resolution regime, the SRB will no longer count surpluses in that jurisdiction when monitoring a bank's TLAC capacity and when computing the MREL requirement.

Press release

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Global systemic importance indicators – EBA publishes amended Guidelines

29 September 2022 - The European Banking Authority (EBA) has published its amended Guidelines on the specification and disclosure of global systemic importance indicators (EBA/GL/2022/12).

The Guidelines amend the EBA's November 2020 Guidelines which relate to the ex ante disclosures by European Banking Union-headquartered global systemically important banks (G-SIBs). In May 2022, the Basel Committee on Banking Supervision (BCBS) completed its targeted review of the treatment of cross border exposures within the Banking Union on the methodology for G-SIBs and agreed to give recognition in the G-SIB framework to the progress made in developing the Banking Union, through the existing methodology (which allows for adjustments to be made according to supervisory judgement).

The data items relating to the recognition of the Banking Union therefore constitute a core part of the classification of global systemically important institutions (G-SII) in the EU and must be disclosed. To reflect this, the EBA has amended the Guidelines to make clear that these items must be taken into account under the G-SII identification and allocation methodology.

EBA Amending Guidelines on the specification and disclosure of systemic importance indicators (EBA/GL/2020/14)

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.

f 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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