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EUROPEAN CENTRAL BANK (ECB)

Board of Directors unlawfully grants ‘authority to act’ to a lawyer – CJEU Pilatus Bank v ECB (Case C-256/22 P and Case C-750/21 P)

8 February 2024 – On 8 February 2024, the Court of Justice of the European Union (CJEU) delivered two judgments in appeals brought by Pilatus Bank plc (the Appellant) asking to set aside the order of the General Court of the European Union (the General Court) of 24 September 2021 (Case T-139/19) and its judgment of 2 February 2022 (Case T-27/19). The present judgments set aside the order and judgment of the General Court but dismiss the actions brought by the Appellant on identical grounds.

The Appellant was a less significant credit institution established in Malta. Its indirect 100% shareholder was arrested on 19 March 2018. Following his arrest, the Appellant received withdrawal requests totalling EUR 51.4 million worth of deposits, amounting to approximately 40% of deposits on its balance sheet. On 22 March 2018, the Malta Financial Services Authority (MFSA) appointed a competent person with authority to “*assume all powers, functions, and duties of the Appellant in respect of all assets*”. Subsequently, the European Central Bank (ECB) withdrew the Appellant’s authorisation to take up the business of a credit institution.

During the administrative procedure for the withdrawal of authorisation, the Appellant’s board of directors granted ‘authority to act’ to a lawyer, who represented the Appellant in the two actions before the General Court. The CJEU held in both appeals that, having regard to appointment and authority granted to the competent person, the Appellant’s board of directors was no longer entitled to represent the Appellant and no longer had the power to grant a lawyer authority to act on Appellant’s behalf. In addition, the CJEU held that legal representation in connection with challenging a withdrawal of authorisation may fall within the remit of the competent person as it necessarily concerns the assets of the Appellant.

Pilatus Bank v ECB Case C-750/21 P

Pilatus Bank v ECB Case C-256/22 P

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Supervision of third-country banks in EU - ECB publishes memorandum of cooperation

19 February 2024 – The ECB has published a memorandum of co-operation that it has entered into with certain EU national competent authorities (NCAs) that aims to improve the way in which third-country banks operating in the EU are supervised. In short, the memorandum seeks to ensure that the authorities work together to strengthen the supervisory framework established by the Capital Requirements Directive (2013/36/EU) (CRD IV) and the Capital Requirements Regulation (575/2013) (CRR) that applies to third-country groups in the EU, prevent the circumvention of the requirements applicable to such groups and prevent any detrimental impact to the financial stability of the EU.

Memorandum of Cooperation between competent authorities for the performance of their supervisory tasks in relation to the supervision of Third-Country Groups and Third-Country Branches

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EUROPEAN BANKING AUTHORITY (EBA) / EUROPEAN COMMISSION

BigTech and financial services - ESAs publish stocktake of provision

1 February 2024 –The European Supervisory Authorities (ESAs) have published a report on their stocktake of BigTechs carrying out financial services in the EU. The stocktake shows that BigTechs have subsidiary companies carrying out financial services in the EU payments, e-money, insurance and (in limited cases) banking sectors, but not in the securities and markets sector.

The report suggests that some risks relating to intra-group interconnectedness may warrant policy actions should the provision of financial services by BigTechs continue to grow. In particular, the activity-based supervision and regulation of BigTech financial services activities (as opposed to entity/group-based) mean that risks posed by intra-group interdependencies could be insufficiently mitigated.

The ESAs intend to further strengthen the cross-sectoral mapping of BigTech financial services activities and relevance to the financial sector via the establishment of a data mapping tool within the European Forum for Innovation Facilitators (EFIF).

ESAs report: 2023 stocktaking of BigTech direct financial services provision in the EU (JC 2024 02)

EBA press release

Acquisition of qualifying holdings – EBA publishes follow-up on Peer Review of ESAs Guidelines

12 February 2024 – The European Banking Authority (EBA) has published a follow-up report to the EBA 2021 peer review report on the application of the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings. The peer review was carried out by a Peer Review Committee consisting of EBA and competent authorities' (CAs') staff.

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The Guidelines define common procedures and assessment methodology of the assessment criteria set out in Articles 22 and 23 of the Capital Requirements Directive (2013/36/EU) (CRD). The 2021 peer review assessed 30 CAs (all 27 CAs of the EU Member States, the ECB-SSM and 2 EEA countries) on how they applied a selection of the most critical areas of the Guidelines. The follow-up report was carried out under 17 CAs who in the 2021 peer review were assessed as having at least one supervisory benchmark which was not ‘fully applied’. The EBA assessed the CAs on, among other things, the adequacy and effectiveness of the actions undertaken to remedy these instances of non-compliance. The follow-up report finds that all the CAs in scope have made significant progress in resolving previously identified deficiencies in the application of the Guidelines. The follow-up report also identified particular improvements in the areas of assessment of the financial soundness of proposed acquirers and of suspicions of money laundering/terrorist financing issues.

The EBA publishes follow-up on the Peer Review on the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings | European Banking Authority

CRR III – EBA consults on amendments to operational risk supervisory reporting requirements and business indicator

20 February 2024 – The EBA has launched two consultations in respect of the implementation of the Capital Requirements Regulation III (2021/0341(COD)) (CRR III).

The first consultation (EBA/CP/2024/05) concerns two draft regulatory technical standards (RTS) and draft implementing technical standards (ITS) that aim to clarify the composition of the new business indicator (BI) component of the own funds requirement for operational risk under the Capital Requirements Regulation (575/2013) (CRR), reflecting reforms introduced by the CRR III. These are intended to clarify the composition of the new BI, which is central to the operational risk capital requirements calculation. The consultation is open until 21 May 2024.

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The second consultation (EBA/CP/2024/06) concerns two sets of draft ITS amending Commission Implementing Regulation (EU) 2021/637 on public disclosures of the information on operational risk under Article 446 of the CRR. The purpose of these ITS is to implement requirements under the CRR III Regulation, bringing together the reporting and disclosure requirements for operational risk together with the broader Pillar 3 disclosures and supervisory reporting changes into one document. The consultation is open until 30 April 2024.

[Consultation paper \(EBA/CP/2024/05\)](#)

[Press release](#)

[Consultation paper \(EBA/CP/2024/06\)](#)

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SINGLE SUPERVISORY MECHANISM (SSM)

ECB internal models under SSM – Final guide published

19 February 2024 – The European Central Bank (ECB) has published its final revised guide to internal models under the Single Supervisory Mechanism (SSM) following a consultation on the proposed changes in June 2023. Among other things, the revised guide contains clarifications on the inclusion of material on climate-related and environmental risks in banks' models. It also outlines how banks can revert to the standardised approach for calculating risk-weighted assets and explains how to measure default risk in trading book positions in the chapter on market risk.

The ECB has published a feedback statement, providing an overview of the comments received during the consultation and its assessment of them; it has also republished its related FAQs.

[ECB guide to internal models](#)

[Feedback statement](#)

[Press release](#)

[Updated FAQs](#)

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SINGLE RESOLUTION MECHANISM (SRM)

Banking Union - SRB launches its ‘SRM Vision 2028’ Strategy

13 February 2024 – On 13 February 2024, the Single Resolution Board (SRB) launched its ‘SRM Vision 2028’ strategy. The launch of the strategy marks a new phase for the Single Resolution Mechanism (SRM). The SRB and national resolution authorities will shift their focus from resolution planning and preparation, to incorporating a renewed emphasis on operationalisation, resolution testing and crisis readiness. To achieve this, the strategy formulates nine strategic objectives with 20 actions to be implemented between now and the end of 2028.

[SRM Vision 2028 strategy](#)

[Press release](#)

Single Resolution Fund - SRB confirms reached target level

15 February 2024 – After completing the target level verification exercise, the SRB has confirmed that the financial means available in the Single Resolution Fund (SRF) on 31 December 2023 represented EUR 78 billion. This means that it has reached the target level of at least 1% of covered deposits held in member states participating in the SRM as set by Article 69(1) of Single Resolution Mechanism Regulation ((EU) 806/2014) (SRM Regulation).

As such, no regular annual contributions will be collected in 2024 from the institutions falling under the SRF, and contributions will only be collected if there are specific circumstances or resolution actions involving the use of the SRF. Under normal circumstances, the target level verification exercise is performed annually to confirm that the SRF’s available financial means are at least 1% of the amount of covered deposits of all credit institutions authorised in participating member states. If the result of such exercise should require it, the SRB will restart the regular collection of contributions to SRF.

[Press release](#)

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MREL – European Parliament adopts proposed Directive on MREL reforms to BRRD and SRM

27 February 2024 – The European Parliament has published the text of a proposed Directive that it has adopted at first reading which makes amendments to the Bank Recovery and Resolution Directive (BRRD) (2014/59/EU) and the SRM Regulation in relation to certain aspects of the minimum requirement for own funds and eligible liabilities (MREL) (also known as the “daisy-chain proposal”).

The Council of the EU now needs to formally adopt the proposed Directive. Once it has entered into force, member states must adopt and publish the measures necessary to comply with the Directive within six months.

European Parliament legislative resolution of 27 February 2024 on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities

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No relevant items.

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Stefano Micheli
stefano.micheli
@belex.com



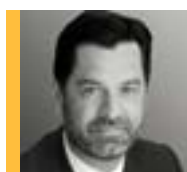
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Giuseppe Rumi
giuseppe.rumi
@belex.com



BREDIN PRAT

Didier Martin
didiermartin
@bredinprat.com



BREDIN PRAT

Matthieu Pouchepadass
matthieupouchepadass
@bredinprat.com



DE BRAUW

Mariken van Loopik
mariken.vanloopik
@debrauw.com



DE BRAUW

Pete Lawley
pete.lawley
@debrauw.com



HENGELER MUELLER

Dirk Bliesener
dirk.bliesener
@hengeler.com



HENGELER MUELLER

Christian Schmies
christian.schmies
@hengeler.com



SLAUGHTER AND MAY

Jan Putnis
jan.putnis
@slaughterandmay.com



SLAUGHTER AND MAY

Nick Bonsall
nick.bonsall
@slaughterandmay.com



URÍA MENÉNDEZ

Pedro Ravina
pedro.ravina
@uria.com



URÍA MENÉNDEZ

Carlos Costa Andrade
carlos.andrade
@uria.com

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