

---

## QUICK LINKS

[NEWS FROM THE ECB](#)

[NEWS FOR THE SSM](#)

[NEWS FOR THE SRM](#)

[EFIG GROUP](#)

---

## NEWS FROM THE ECB

### **TARGET2 – ECB publishes Decision amending terms and conditions**

*30 October 2017* – The European Central Bank (ECB) has published a Decision (ECB/2017/30) (dated 10 October 2017) amending Decision ECB/2007/7 on the terms and conditions of TARGET2-ECB (ECB/2016/9), the real-time gross settlement system owned and operated by the Eurosystem. The amendments include a new article 3a on the remuneration of guarantee funds.

ECB/2017/30 came into force on 20 October 2017 and applies from 13 November 2017.  
ECB/2017/30 is [here](#).

### **TARGET2 – ECB Decisions and Guideline published in the Official Journal**

*14 November 2017* - Decision (EU) 2017/2080 of 22 September 2017 amending Decision ECB/2010/9 on access to, and use of, certain TARGET2 data (ECB/2017/29) and Decision (EU) 2017/2081 of 10 October 2017 amending Decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB (ECB/2017/30) have been published in the Official Journal. Decision (EU) 2017/2080 entered into force on 15 November 2017. Decision (EU) 2017/2081 entered into force on 20 October 2017 and applied from 13 November 2017.

Guideline (EU) 2017/2082 of 22 September 2017 amending Guideline ECB/2012/27 on TARGET2 (ECB/2017/28) has also been published in the Official Journal of the EU. It came into force on the day of its notification to the national central banks of Member States whose currency is the euro. National central banks of the Member States whose currency is the euro were required to comply with the Guideline by 13 November 2017.

Decision (EU) 2017/2080 is [here](#).

Decision (EU) 2017/2081 is [here](#).

Guideline (EU) 2017/2082 is [here](#).

### **Applications for EU banking licences – ECB publishes interview with Danièle Nouy**

*8 November 2017* – The ECB has published an interview with the Chair of its Supervisory Board, Danièle Nouy. Among other things, Ms Nouy mentions that the ECB has been approached by almost 50 banks, and that 20 of those banks want to obtain or extend their European banking licences.

The interview is [here](#).

### **Revisions to the Union crisis management framework – ECB publishes Opinion**

*8 November 2017* - The ECB has published an Opinion on proposed revisions to the European Union's crisis management framework in relation to:

- the implementation of the total loss-absorbing capacity (TLAC) standard in the European Union;
- amendments to the minimum requirement for own funds and eligible liabilities (MREL);
- transitional arrangements for MREL;
- early intervention measures;

- the pre-resolution moratorium tool; and
- the 'failing or likely to fail' assessment regarding less significant credit institutions under the direct responsibility of the Single Resolution Board (SRB).

The Opinion is [here](#).

#### **Amending CRD IV and CRR – ECB publishes Opinion**

*10 November 2017* – The ECB has published an Opinion (dated 8 November 2017) on:

- the proposal for a Regulation amending the Capital Requirements Regulation (Regulation 575/2013) (CRR) as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and amending EMIR (Regulation 648/2012); and
- the proposal for a Directive amending the Capital Requirements Directive (2013/36/EU) (CRDIV) as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers, and capital conservation measures.

The Opinion is [here](#).

#### **Banks' Brexit relocation plans – ECB sets out 'red flags'**

*15 November 2017* – The ECB has published a statement on the Brexit-related relocation plans of banks that operate in the euro area through a subsidiary or branch located in the UK. The ECB states that some elements of these plans do not meet the ECB's expectations. It is particularly concerned about 'empty shells' or 'letter box' banks, banks that wish to transfer all market risk to a third-country group entity, and 'dual-hatting', a practice where staff carry out functions in more than one group entity.

The ECB states that:

- EU subsidiaries and branches must have permanent local trading capabilities and local risk committees (including local infrastructure, staff and risk management functions);
- they must trade and hedge risks with diversified counterparties and not just the group (to ensure recoverability);
- dual-hatting needs to be thoroughly assessed, as it may limit independence, create conflicts of interest, and result in insufficient time being available for each function;
- it would have concerns if employees of a euro area bank were seen to be spending most of their working time in a third country;
- in general, ECB Banking Supervision expects control functions and local governance to be sufficiently independent and banks to have staff in place locally;
- the risk management function must be in place from day one;
- banks must have full control of their balance sheets and be able to see the full risk picture;
- the management bodies of EU banks must be fully responsible for the activities carried out by the banks they manage; and
- in the event of transitional arrangements being agreed upon with the ECB and/or national supervisors, banks should set out clearly what the steady state will be, commit to this and explain how and when they will get there.

The newsletter is [here](#).

**SIPS Regulation – two ECB amending Regulations and two ECB Decisions published in the Official Journal**

16 November 2017 – Two Regulations amending the Systemically Important Payments Systems Regulation (795/2014/EU) (SIPS Regulation) have been published in the Official Journal of the EU:

- Regulation (EU) 2017/2094 of the ECB of 3 November 2017; and
- Regulation (EU) 2017/2095 of the ECB of 3 November 2017, amending Regulation (EC) No 2157/1999 on the powers of the ECB to impose sanctions.

Two Decisions concerning the SIPS Regulation have also been published in the Official Journal:

- Decision (EU) 2017/2097 of the ECB of 3 November 2017, on the methodology for calculating sanctions for infringements of the oversight requirements for SIPS; and
- Decision (EU) 2017/2098 of the ECB of 3 November 2017, on procedural aspects concerning the imposition of corrective measures for non-compliance.

The Regulations and the Decisions enter into force on 6 December 2017.

Regulation (EU) 2017/2094 is [here](#).

Regulation (EU) 2017/2095 is [here](#).

Decision (EU) 2017/2097 is [here](#).

Decision (EU) 2017/2098 is [here](#).

**Outgoing and incoming banks - speech by ECB's Sabine Lautenschläger**

20 November 2017 – The ECB board member and Supervisory Board Vice-Chair, Sabine Lautenschläger, has spoken about the Brexit plans of banks which access the UK market from the EU – so-called ‘outgoing’ banks from the ECB’s perspective. She said “some of these plans remain a bit too high-level, in our view”. Ms Lautenschläger mentioned the need to consider the Settlement Finality Directive (98/26/EC), continuity of contracts, and recovery plans.

The EBA published some ‘red lines’ for banks which access the European market from the UK (‘incoming’ banks, from the ECB’s point of view). In this regard, Ms Lautenschläger mentioned that the EBA is currently working on a booking model assessment framework, which will set out what it expects from banks. She also criticised inventive set-ups:

*“In order to avoid having to move staff and assets to the Continent, some banks seem to be considering the idea of establishing a subsidiary in the euro area, which would then set up a branch in the United Kingdom. This branch would use the subsidiary’s EU passport to enter the European market from the UK. We have serious misgivings about this. First, the primary reason for establishing a branch should be to serve the market of the country where the branch is based. Then, there are legal issues. Can a third-country branch use its parent company’s EU passport to access the European market from that third country? That cannot be in the spirit of European law. And the subsidiary might just serve as a shell company. As I said, we do view these kinds of design critically.”*

Ms Lautenschläger also talked about non-performing loans, and supervisory approval of internal models.

The speech is [here](#).

**Cyber-resilience strategy for FMIs – speech by ECB's Marc Bayle de Jessé**

21 November 2017 – The ECB’s Director General Market Infrastructure and Payments, Marc Bayle de Jessé, has given a speech in which he outlines the ECB’s cyber resilience strategy for financial market infrastructures (FMIs).

The speech is [here](#).

### **IFRS 9 accounting standard - ECB publishes findings of a thematic review**

24 November 2017 - The ECB has published the findings of its thematic review on IFRS 9 which, as part of its supervisory priorities, assessed how prepared institutions are for the implementation of the standard. The ECB also sets out key supervisory expectations for the ongoing implementation and application of IFRS 9.

The ECB's press release is [here](#).

### **Risks to the euro area financial system – ECB publishes Financial Stability Review**

29 November 2017 - The ECB has published its latest Financial Stability Review. The Review singles out four main risks to financial stability in the euro area over the next two years:

- abrupt and sizeable repricing of risk premia in global financial markets leading to a tightening of financial conditions;
- an adverse feedback loop between weak bank profitability and low nominal growth amid structural challenges in the euro area banking sector;
- public and private sector debt sustainability concerns amid a potential repricing of risk premia and increased political fragmentation; and
- liquidity risks in the non-bank financial sector, with potential spillovers to the broader financial system.

The Review also contains four special features: overcoming non-performing loan market failures with transaction platforms; an overview of euro area cross-border banking over the past decade; recent developments in repo markets and how regulatory reform is affecting the functioning of these markets; and low volatility in financial markets and potential triggers and amplifiers that could lead to higher volatility in the future.

In the ECB's May 2017 Financial Stability Review, the ECB stated that Brexit was not a primary concern for euro area financial stability (page 6 of the May 2017 Review). However, in this Review (pages 25-26) the ECB acknowledges that:

*"The United Kingdom's decision to withdraw from the European Union could have adverse financial stability implications for the euro area, but the risk that access to wholesale and retail financial services would be materially restricted for the euro area economy appears limited".*

The November 2017 Financial Stability Review is [here](#).

Slides from the press briefing on the Review are [here](#).

The webpage is [here](#).

The press release is [here](#).

The May 2017 Financial Stability Review is [here](#).

### **FX Global Code – 15 ESCB central banks, including the ECB, publish statements of commitment**

29 November 2017 – 15 central banks in the European System of Central Banks (ESCB), including the ECB, have published statements of commitment to the global Code of Conduct for the wholesale foreign exchange market (FX Global Code). The ECB states that the remaining central banks in the ESCB will do so in 2018.

The ECB statement of commitment is [here](#).

The ECB press release is [here](#).

### **Eurosystem oversight report – ECB publishes 2016 report**

*November 2017* - The ECB has published the 'Eurosystem oversight report 2016'. As mentioned in the report, the safety and efficiency of financial market infrastructures are critical for the proper functioning of financial markets and the economy more generally. The report covers:

- the Eurosystem's oversight responsibilities (chapter 1);
- the oversight activities that the Eurosystem carried out between June 2014 and the end of 2016 (chapter 2); and
- the outlook for Eurosystem oversight in the future (chapter 3).

It also provides a set of 'special articles' on instant payments, cyber resilience, and regulatory technical standards (RTS) for Directive EU 2015/2366 (PSD2) on Strong Customer Authentication and Common and Secure Communication (chapter 4).

The report is [here](#).

### **(1) New unsecured overnight interest rate; (2) working group on euro risk-free rates and related substructures – ECB launches consultation on (1); and calls for expressions of interest on (2)**

*November 2017* - The ECB has published a first consultation paper on the high-level features of a new unsecured overnight interest rate. The ECB announced on 21 September 2017 its plan to publish the new interest rate. The interest rate would complement existing benchmark rates produced by the private sector and serve as a backstop reference rate. A second consultation related to the methodology will follow later in the process.

Part A of the consultation paper provides an overview of the unsecured money market, including: a) activity in the unsecured euro money market, b) the current use and role of unsecured overnight benchmarks, and c) the potential use of money market statistical reporting (MMSR) data for the design of the new rate. Part B of the consultation paper contains the proposed design of a new benchmark interest rate. The consultation period closes on 12 January 2018.

The ECB intends to launch a second consultation related to the methodology of the new rate "later in the process".

The ECB has also issued a call for expressions of interest to join the working group on euro risk-free rates and related substructures. The call is also being issued on behalf of the Belgian Financial Services and Markets Authority (FSMA), the European Securities and Markets Authority (ESMA) and the European Commission. The new working group's terms of reference have also been published.

The consultation paper is [here](#).

The consultation webpage is [here](#).

The webpage on the new rate is [here](#).

The ECB's September 2017 announcement is [here](#).

The press release on the consultation is [here](#).

The press release on the call for expressions of interest to participate in the working group on euro risk-free rates is [here](#).

The webpage for the working group is [here](#).

## **NEWS FOR THE SINGLE SUPERVISORY MECHANISM (SSM)**

### **Single Supervisory Mechanism – ECB publishes report on the supervision of less significant institutions**

*8 November 2017* – The ECB has published a report on the supervision of less significant institutions (LSIs) in the SSM.

The report is [here](#).

## NEWS FOR THE SINGLE RESOLUTION MECHANISM (SRM)

### **SRB's sixth Industry Dialogue - SRB publishes presentations**

22 November 2017 - The Single Resolution Board (SRB) has published the presentations that were given during its sixth Industry Dialogue in Brussels on 21 November 2017. The presentations cover the following topics: Resolution Planning - Lessons learnt and way forward, the 2017 MREL Policy, Critical functions and bank reportings, and the Update on the Delegated Regulation on administrative contributions.

The SRB's press release is [here](#).

### **Single Resolution Board – Commission proposes to extend mandate of Elke König, Chair of the Board**

29 November 2017 – The European Commission has proposed to extend the mandate of Elke König, Chair of the SRB, for five years from 24 December 2017. The proposal will be sent to the European Parliament for approval. If approved, the Council will then adopt an implementing decision to extend the mandate.

The European Commission's press release is [here](#).

### **Decisions of the SRB Appeal Panel on access to documents with respect to Banco Popular resolution - SRB publishes press release**

29 November 2017 - The SRB has announced that the SRB Appeal Panel has decided that certain elements of the SRB's decision concerning the adoption of a resolution scheme in respect of Banco Popular and certain elements of related documents should be disclosed. The SRB states that it is analysing the steps that it will need to take in the coming days.

The SRB's announcement is [here](#).

### **The Banking Package – Estonian Presidency publishes progress report and four compromise texts**

30 November 2017 – The Estonian Presidency has given a progress report to the Permanent Representatives Committee on six legislative proposals relating to the Banking Union (the Banking Package).

#### *The state of play*

The Directive amending the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD) as regards the ranking of unsecured debt instruments in the insolvency hierarchy, and the Regulation on transitional arrangements for IFRS 9 and large exposures (amending the Capital Requirements Regulation (575/2013/EU) (CRR)), should be published in the Official Journal of the EU before the end of the year. The Presidency has prepared compromises on the four remaining proposals amending: the CRR, the Capital Requirements Directive (2013/36/EU) (CRD), the BRRD, and the Single Resolution Mechanism Regulation (806/2014/EU) (SRMR).

#### *Key political issues*

Section II of the progress report sets out the key political issues.

*Further technical amendments necessary*

The progress report indicates that a number of technical adjustments need to be made to the compromise texts. In particular, the SRMR text needs to be further adjusted to reflect the specificities of the Single Resolution Mechanism and to ensure consistency with the BRRD framework, as appropriate.

*What happens next*

The Estonian Presidency asks the Council to take note of this report, with a view to continuing the work. It also asks the Bulgarian Presidency to build on the progress made when it takes over.

The presidency compromise text for the SRM II Regulation is [here](#) and the procedure file is [here](#).



## 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.



BONELLIEREDE  
Stefano Micheli  
stefano.micheli@belex.com



BONELLIEREDE  
Giuseppe Rumi  
giuseppe.rumi@belex.com



BREDIN PRAT  
Mathieu Françon  
mathieufancon@bredinprat.com



BREDIN PRAT  
Olivier Saba  
oliviersaba@bredinprat.com



DE BRAUW BLACKSTONE WESTBROEK  
Mariken van Loopik  
mariken.vanloopik@debrauw.com



DE BRAUW BLACKSTONE WESTBROEK  
Ernest Meyer Swantee  
ernest.meyerswantee@debrauw.com



HENGELER MUELLER  
Dirk Bliesener  
dirk.bliesener@hengeler.com



HENGELER MUELLER  
Thomas Paul  
thomas.paul@hengeler.com



SLAUGHTER AND MAY  
Jan Putnis  
jan.putnis@slaughterandmay.com



SLAUGHTER AND MAY  
Ben Kingsley  
ben.kingsley@slaughterandmay.com



URÍA MENÉNDEZ  
Carlos Costa Andrade  
carlos.andrade@uria.com



URÍA MENÉNDEZ  
Juan Carlos Machuca  
juancarlos.machuca@uria.com

---

**EUROPEAN  
BANKING  
NEWSLETTER**

DECEMBER 2017

---

**BONELLIEREDE**

*www.belex.com*

Milan, Rome, Genoa, Brussels, London

**BREDIN PRAT**

*www.bredinprat.com*

Paris, Brussels

**DE BRAUW BLACKSTONE WESTBROEK**

*www.debrauw.com*

Amsterdam, Brussels, London, New York, Shanghai,  
Singapore

---

**HENGELER MUELLER**

*www.hengeler.com*

Berlin, Düsseldorf, Frankfurt, Munich, Brussels,  
London, Shanghai

**SLAUGHTER AND MAY**

*www.slaughterandmay.com*

London, Brussels, Hong Kong, Beijing

---

**URÍA MENÉNDEZ**

*www.uria.com*

Madrid, Barcelona, Valencia, Bilbao, Lisbon, Porto,  
Brussels, Frankfurt, London, New York, Bogotá,  
Buenos Aires, Lima, Mexico City, Santiago de Chile,  
São Paulo, Beijing

---

*This material is for general information only and is not intended to provide legal advice.*