EUROPEAN BANKING NEWSLETTER

APRIL 2020

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NEWS FROM THE ECB

COVID-19 - ECB publishes letter on significant institutions' contingency preparations
6 March 2020 - The European Central Bank (ECB) has published a letter, dated 3 March 2020, from Andrea Enria (Chair of the ECB Supervisory Board) to all banks classified as significant institutions under the Single Supervisory Mechanism Regulation (1024/2013/EU) in relation to their contingency preparations in light of the COVID-19 outbreak.

The letter states that the ECB expects banks to review their business continuity plans and consider what actions can be taken to minimise the potential adverse effects of the spread of the virus. The ECB also warns of potential difficulties for banks arising from employees being unable to perform their usual tasks and key third-party service providers and outsourcers being unable to maintain critical processes.

ECB letter from Andrea Enria (Chair of the ECB Supervisory Board) to all banks classified as significant institutions on their contingency plans in relation to the coronavirus (COVID-19) is *here*.

COVID-19 - ECB announces temporary capital and operational relief
12 March 2020 - The ECB has announced a number of measures designed to ensure that its directly supervised banks can continue to fulfil their role in funding the real economy as the economic effects of COVID-19 become apparent. The measures provide that:

- banks will be allowed to operate temporarily below the level of capital defined by the Pillar 2 guidance, the capital conservation buffer and the liquidity coverage ratio. The ECB considers that these temporary measures will be enhanced by the appropriate relaxation of the countercyclical capital buffer by the national macroprudential authorities; and
- banks will be allowed to use partial capital instruments that do not qualify as common equity Tier 1 capital to meet the Pillar 2 requirements. This measure was initially scheduled to come into effect in January 2021 under the fifth Capital Requirements Directive (EU) 2019/878 (CRD V).

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The ECB also states that: (i) it is discussing individual measures with banks, including adjusting timetables, processes and deadlines (examples of such measures include the implementation of remediation action and rescheduling on-site inspections); and (ii) it supports the European Banking Authority's decision to postpone the 2020 EU banking stress test until 2021.

Press release: ECB announces temporary capital and operational relief in light of COVID-19 is *here*.

COVID-19 - ECB's Governing Council announces EUR750 billion PEPP, expansion of CSPP, and easing of collateral standards

18 March 2020 - the ECB's Governing Council has announced the following measures in response to the COVID-19 pandemic:

- the launch of the Pandemic Emergency Purchase Programme (PEPP) - a new, temporary €750 billion asset purchase programme of private and public sector securities. Purchases will be conducted until at least the end of 2020 and will include all asset categories eligible under the existing asset purchase programme (APP). A waiver of the eligibility requirements for securities issued by the Greek government will be granted for purchases under PEPP;
- the inclusion of non-financial commercial paper in the range of eligible assets under the corporate sector purchase programme (CSPP) - making all commercial papers of sufficient credit quality eligible for purchase under CSPP; and
- the easing of the collateral standards by adjusting the main risk parameters of the collateral framework - in particular, the scope of Additional Credit Claims (ACC) will be expanded to include claims related to the financing of the corporate sector.

These measures were published in the Official Journal of the European Union on 24 March 2020.

Press release is *here*.
Decision of the European Central Bank on a temporary pandemic emergency purchase programme is *here*.

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Flexibility for banks in wake of COVID-19 - ECB announces further measures -
20 March 2020 - The ECB has announced the adoption of further measures to ensure that banks can continue to fund households and businesses during the global economic shock caused by the COVID-19 pandemic. These include:

- activating the capital and operational relief measures announced by the ECB on 12 March 2020 (including €120 billion worth of capital relief to be used to absorb losses without triggering any supervisory action or to potentially finance up to €1.8 trillion of loans to households and corporate customers in need of extra liquidity);
- introducing supervisory flexibility regarding the prudential treatment of non-performing loans, including allowing banks to benefit from those guarantees and moratoriums put in place by public authorities; and
- encouraging banks to avoid procyclical assumptions in their models or to opt for IFRS 9 transitional rules.

The ECB has also published FAQs on these additional measures.

Press release: ECB announces further measures in response to the economic impact of COVID-19 is *here*.
FAQs are *here*.

Dividend distribution policies - ECB publishes Recommendation in response to COVID-19
27 March 2020 - The ECB has published a Recommendation, dated 27 March 2020, on credit institutions' dividend distribution policies in light of the COVID-19 pandemic. The ECB recommends that firms should not pay dividends for the 2019 and 2020 financial years until at least 1 October 2020 and that banks should also refrain from share buy-backs which aim to remunerate shareholders.

The ECB explains that, although the Recommendation does not retroactively cancel the dividends already paid out by some banks for the 2019 financial year, banks that have asked their shareholders to vote on a dividend distribution proposal in their upcoming general shareholders meeting will be expected to amend such proposals in line with the Recommendation.

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The Recommendation repeals the ECB's Recommendation on credit institutions' dividend distribution polices for the 2019 financial year, published in January 2020. The ECB intends to further evaluate the economic situation and consider whether further suspension of dividends is advisable after 1 October 2020.

ECB Recommendation on firms' dividend distribution policies in light of COVID-19 is *here*.
Press release is *here*.

Transition from EONIA to €STR - ECB working group publishes consultation on recommendations for swaptions impacted by the CCP discounting switch
13 March 2020 - The ECB industry-led working group on euro risk-free rates has published a public consultation on whether to issue recommendations to address specific issues for interest rate swaption products in relation to the transition from the euro overnight index average (EONIA) to the euro short-term rate (€STR). The consultation observes that the central counterparty (CCP) discounting switch from EONIA to the €STR, planned for June 2020, will cause specific issues for swaption products: if the exercise date of these contracts is after the CCP transition date, their valuation may change as a result of the transition. The CCP compensation mechanism will not currently apply to them, however, because the contracts are bilateral, not cleared.

The consultation focuses only on euro-denominated contracts and seeks feedback on whether the ECB should issue recommendations regarding the voluntary exchange of cash compensation between bilateral counterparties to swaption contracts.

The consultation period closes on 3 April 2020.

ECB working group consultation on recommendations for swaption products impacted by the CCP discounting switch is *here*.
Webpage is *here*.
Press release is *here*.

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TARGET2 and TARGET2-Securities - ECB publishes update on consolidation project

25 March 2020 - The ECB has published an update on its project to consolidate various technical and functional elements of TARGET2 and TARGET2-Securities (T2-T2S), including the implementation of a new trans-European automated real-time gross settlement express transfer system using the ISO 20022 messaging standard.

The ECB states that SWIFT intends to delay the ISO 20022 migration date for cross-border payments from November 2021 to end-2022 but confirms that this will not affect the T2-T2S launch date which is scheduled for November 2021. The ECB also encourages banks to discuss with SWIFT how to manage the proposed phasing and to ensure a safe transition of their correspondent banking business once the new T2-T2S consolidated platform goes live. User testing of ISO 20022 for TARGET2 high-value payments is set to commence in March 2021.

Press release: ECB publishes update on the T2-T2S consolidation project is *here*.

EURIBOR fallbacks and the transition from EONIA to €STR - ECB working group publishes factsheets

March 2020 - The ECB industry-led working group on euro risk-free rates has published factsheets on: (i) understanding euro interbank offered rate (EURIBOR) fallbacks; and (ii) the transition from EONIA to the €STR.

The factsheets aim to provide information on EURIBOR fallbacks in the context of interest rate benchmark reform and the key messages regarding products, models, and the legal, accounting and risk management implications of the transition from EONIA to the €STR.

ECB working group factsheet on EURIBOR fallbacks is *here*.
ECB working group factsheet on the transition from EONIA to the €STR is *here*.

NEWS FOR THE SINGLE SUPERVISORY MECHANISM (SSM)

Please see the European Central Bank (ECB) section above for an item on the ECB's letter to significant institutions concerning their contingency preparations in light of COVID-19.

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NEWS FOR THE SINGLE RESOLUTION MECHANISM (SRM)

Expectation for banks - published by the SRB

March 2020 - The Single Resolution Board (SRB) has published its 'Expectations for Banks' document, which outlines the actions and capabilities the SRB expects banks to demonstrate in order to show that they are resolvable. The document also describes best practice and sets benchmarks for assessing resolvability. The document has been updated to reflect industry feedback following its public consultation between October and December 2019.

The SRB states that the expectations outlined will be phased-in gradually and that banks will be expected to have built up their capabilities in all areas by the end of 2023, except where otherwise indicated. The expectations are tailored to each individual bank and its resolution strategy, allowing for flexibility and proportionality. Acknowledging the current challenges caused by the COVID-19 pandemic, the SRB confirms that it is prepared to give banks the necessary flexibility to implement the expectations on an individual basis.

SRB Expectations for Banks is *here*.
Press release is *here*.

Banco Popular Español - Single Resolution Board decision on shareholder and creditor compensation

March 2020 - The SRB has announced its decision that no compensation is due to shareholders and creditors affected by the resolution, on 7 June 2017, of Banco Popular Español, S.A. (BPE). Its decision has concluded that shareholders and creditors would not have been better off under normal insolvency proceedings. The decision is based on the post-resolution valuation by an independent valuer, as well as on the analysis of comments received in the context of the 'right to be heard' process.

SRB Website is *here*.
Press Release is *here*.
Final Decision is *here*.

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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.

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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BONELLIEREDE

Stefano Micheli
stefano.micheli
@belex.com

BONELLIEREDE

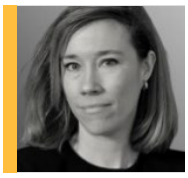
Giuseppe Rumi
giuseppe.rumi
@belex.com

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

Ben Kingsley
ben.kingsley
@slaughterandmay.com

URÍA MENÉNDEZ

Pedro Ravina
pedro.ravina
@uria.com

URÍA MENÉNDEZ

Carlos Costa Andrade
carlos.andrade
@uria.com

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