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EUROPEAN CENTRAL BANK (ECB)

TARGET – ECB adopts amending Guideline and Decision

16 November 2023 - The European Central Bank (ECB) has adopted an amending Guideline (ECB/2023/22), dated 7 September 2023, which amends Guideline ECB/2022/8 on a new generation TARGET. The amending Guideline is intended, among other things, to add clarity to certain aspects of TARGET. The ECB has also adopted a Decision (ECB/2023/27) (the Decision), dated 9 November 2023, concerning amendments to the terms and conditions of TARGET-ECB related to the amending Guideline. The Decision entered into force on 20 November 2023 and is immediately applicable.

Guideline (EU) 2023/2415 of the European Central Bank of 7 September 2023 amending Guideline (EU) 2022/912 on a new-generation Trans-European Automated Real-time Gross Settlement Express Transfer system (TARGET) (ECB/2022/8) (ECB/2023/22)

Decision (EU) 2023/2532 of the European Central Bank of 9 November 2023 amending Decision (EU) 2022/911 concerning the terms and conditions of TARGET-ECB (ECB/2022/22) (ECB/2023/27)

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EUROPEAN BANKING AUTHORITY (EBA)

Mapping of external credit assessments under Capital Requirements Regulation and Solvency II – Final reports published by ESAs

13 November 2023 - The Joint Committee of the European Supervisory Authorities (ESAs) has published two final reports on the mapping of external credit assessment institutions' (ECAIs) credit assessments:

- a final report (JC 2023 050) on draft implementing technical standards (ITS) amending Implementing Regulation (EU) 2016/1799 on the mapping of ECAIs' credit assessments under Article 136(1) and (3) of the Capital Requirements Regulation (575/2013) (CRR) as amended; and
- a final report (JC 2023 049) on draft ITS amending Implementing Regulation (EU) 2016/1800 on the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps (CQS) in accordance with the Solvency II Directive (2009/138/EC).

Among other things, the revised draft ITS remove three credit rating agencies that have lost ECAI status from the relevant mapping tables. The ITS will be submitted to the European Commission for endorsement, following which they will be published in the Official Journal.

Final Report: Draft ITS amending Implementing Regulation (EU) 2016/1799 on the mapping of ECAIs' credit assessments under Article 136(1) and (3) CRR (JC/2023/50)

Final Report: Draft ITS amending Implementing Regulation (EU) 2016/1800 on the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with Solvency II (JC/2023/49)

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CRR – EBA publishes draft RTS on assessment methodology for compliance with internal model approach

22 November 2023 - The European Banking Authority (EBA) has published draft regulatory technical standards (RTS) on the assessment methodology under which national competent authorities (NCAs) verify institutions' compliance with the internal model approach (IMA) under Article 325az(8) of the CRR, amended by the CRR II Regulation (EU) 2019/876 (CRR II).

Firms are required under CRR II to seek approval from their NCA to use an IMA for calculating the own funds requirements for market risk. The RTS set out a framework for NCAs to assess those requirements. The RTS specify that governance, the internal risk-measurement model (covering the expected shortfall, and the stress scenario risk measure) and the internal default risk model should all be taken into consideration by NCAs when doing so.

EBA final report: Draft RTS on the assessment methodology under which competent authorities verify an institution's compliance with the internal model approach as per Article 325az(8) CRR2 II (EBA/RTS/2023/05)

Press release

Materiality of extensions and changes to the market risk internal models under CRR – EBA launches consultation (EBA/CP/2023/36)

29 November 2023 - The EBA has published a Consultation Paper (EBA/CP/2023/36) on draft RTS on the conditions for assessing the materiality of extensions and changes to the use of alternative internal models and changes to the subset of the modellable risk factors under the CRR, amended by the CRR II.

The consultation is open until 29 February 2023.

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[EBA Consultation Paper: Draft RTS on the conditions for assessing the materiality of extensions and changes to the use of alternative internal models and changes to the subset of the modellable risk factors referred to in Article 325bc under Article 325az\(8\)\(a\) of the CRR \(EBA/CP/2023/36\)](#)

[Press release](#)

Operational resilience in EU – EBA publishes speech and Commission consults on DORA criteria

15 and 16 November 2023 - The EBA has published a speech delivered by José Manuel Campa, EBA Chair, on operational resilience in the EU financial services sector. Of particular interest is Mr Campa's reference to the high-level exercise conducted by the EBA on the landscape of information and communication technology (ICT) providers in the EU, which revealed a highly concentrated market and a potentially high degree of interconnectedness and interdependencies between ICT providers. The results of this exercise are being used to develop the EBA's supervisory framework under the Regulation on Digital Operational Resilience for the Financial Sector ((EU) 2022/2554) (DORA), which entered into force on 16 January 2023 and will apply from 17 January 2025.

Separately, the European Commission has published two draft delegated acts to be adopted under DORA, one of which specifies the criteria for designating ICT third-party service providers as critical for financial entities. The draft delegated act is open for feedback until 14 December 2023.

[EBA speech: Operational resilience in EU financial services](#)

[Consultation on draft Delegated Act](#)

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Guidelines on preventing abuse of funds and cryptoasset transfers – EBA consults

24 November 2023 - The EBA has published a Consultation Paper (EBA/CP/2023/35) on Guidelines to prevent the abuse of funds and certain cryptoassets transfers for money laundering (ML) and terrorist financing (TF) purposes under Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain cryptoassets (the Transfer of Funds Regulation).

Among other things, the Guidelines set out instructions for payment service providers and intermediary PSPs, among others, on what they should do to detect missing or incomplete information that accompanies a transfer of funds or cryptoassets.

The consultation is open until 26 February 2024.

EBA Consultation Paper: Guidelines on preventing the abuse of funds and certain cryptoassets transfers for money laundering and terrorist financing purposes under Regulation (EU) 2023/1113 ('The Travel Rule Guidelines') (EBA/CP/2023/35)

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SINGLE SUPERVISORY MECHANISM (SSM)

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SINGLE RESOLUTION MECHANISM (SRM)

Decision not to adopt a resolution scheme – PNB Banka A S v SRB

15 November 2023 – On 15 November 2023, the General Court of the European Union (the General Court) delivered a judgement in a case brought by the Latvian credit institution PNB Banka AS (PNB Banka) and other applicants challenging Decision SRB/EES/2019/131 (the Decision) of the Single Resolution Board (SRB) dated 15 August 2019. In the Decision, the SRB chose not to adopt a resolution scheme for PNB Banka. The General Court dismissed PNB Banka's challenge against the Decision.

On 1 March 2019, the European Central Bank (ECB) classified PNB Banka as a significant entity and took over its supervision at the request of the Latvian national competent authority, the Financial and Capital Market Commission (FCMC). The ECB decided to carry out an on-site inspection of PNB Banka, which took place between 4 March and 10 May 2019. On 25 July 2019, PNB Banka published its audited financial statement for 2018. According to its external auditor, PNB had overstated the value of certain assets and underestimated its losses. Subsequently, on 31 July 2019, the SRB mandated an independent external valuer to determine whether PNB Banka was failing or was likely to fail (FOLTF).

According to the independent valuer's report, PNB Banka's assets were worth less than its liabilities as of 31 March 2019. The final ECB on-site inspection report, which was finalised on 13 August 2019, stated that PNB Banka had a negative net worth of EUR 58.2 million, and found nine risk factors concerning the bank's capital. Two days later, on 15 August 2019, the ECB concluded that PNB Banka was deemed FOLTF within the meaning of Article 18(1)(a) of Regulation EU/806/2014 (SRM Regulation). On the same date, the SRB issued the Decision, choosing not to adopt a resolution scheme for PNB Banka, which meant that normal insolvency proceedings would be applied instead.

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An insolvency administrator was appointed by the Riga City Court on 12 September 2019. On behalf of PNB Banka, this administrator brought actions against the ECB, challenging its FOLTF assessment, as well as against the SRB, challenging the Decision. On 8 December 2022, the General Court issued four judgements in which it dismissed all actions brought against the ECB.

In its action against the SRB, PNB Banka put forward several arguments including that: (i) the SRB could not rely solely on the ECB's FOLTF assessment without carrying out its own examination of the condition laid down in Article 18(1)(a); and (ii) PNB Banka's rights were infringed by the Decision - that is, not to adopt a resolution scheme - as the SRB had no power to conclude that there were no reasonable prospects that alternative measures taken in respect of PNB Banka would prevent its failure. The General Court ruled as follows:

- The SRB may rely solely on the ECB's FOLT assessment in its examination of the condition laid down in Article 18(1)(a). Furthermore, PNB Banka was not justified in asserting that the SRB had based its examination solely on the ECB's FOLTF assessment of PNB Banka, as the SRB also mandated an external valuer to carry out a valuation. Also, the General Court attached value to the fact that the SRB had taken into consideration all the other facts about PNB Banka that were available to it. These facts included the assessments made by the FCMC, the ECB, the external auditor of PNB Banka, and the external valuer mandated by the SRB.
- When the ECB concludes that an institution is FOLTF, it is for the SRB to verify whether the ECB's assessment is correct and, if so, whether the other conditions for resolution, referred to in Article 18(1)(b) and (c) of the SRM Regulation, have been met to decide if the credit institution will be the subject of resolution. Furthermore, if the SRB were to lack the authority to decide against implementing a resolution scheme, it could endanger the stability of the institution in question and, potentially, the financial markets. This is because it could give rise to doubts about the appropriate actions to be taken in respect of that institution in light of the ECB's assessment.

Case T-732/19 Judgement of the General Court (Seventh Chamber) ECLI:EU:T:2023:721

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Decision not to compensate shareholders of Banco Popular – ACMO v SRB

22 November 2023 – On 22 November 2023, the General Court delivered a judgement in a case brought by ACMO Sàrl and other applicants challenging Decision SRB/EES/2020/52 of the SRB dated 17 March 2020 (the Decision). In the Decision, the SRB had rejected compensation for the shareholders and creditors of the Spanish credit institution Banco Popular Español, SA (Banco Popular). The applicants are investment funds that owned capital instruments in Banco Popular.

In June 2017, the SRB implemented a resolution plan for Banco Popular, which received approval from the European Commission. This resolution plan resulted in Banco Santander SA (Santander) acquiring Banco Popular's shares at a cost of EUR 1. According to the SRM Regulation, if shareholders or creditors of a resolved entity are found to have experienced more significant losses compared to losses they would have faced in standard insolvency proceedings for that entity, the SRB can use the Single Resolution Fund (SRF) to provide compensation. In the case of Banco Popular, the SRB ordered an independent valuation of the bank based on a hypothetical liquidation scenario, and invited affected stakeholders to provide input. In the Decision, the SRB concluded that the affected shareholders and creditors would not have received better treatment in a liquidation scenario than in the resolution. Consequently, they were deemed ineligible for compensation from the SRF.

The General Court ultimately dismissed the challenges against the Decision, in particular concerns raised about the valuer's role and independence and the alleged failure to uphold the affected stakeholders' right to be heard. The General Court also affirmed that the valuer had employed correct methodology without making significant errors in valuing Banco Popular's assets. Consequently, the outcome in standard insolvency proceedings would have been similar to those resulting from the resolution. This meant that the property rights of affected shareholders and creditors were not violated.

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The SRB made a statement welcoming the General Court’s judgement. SRB Chair Dominique Laboureix said, *“I welcome the decision of the General Court today, which confirms our decision that affected shareholders and creditors would not have been better off if Banco Popular had gone into normal insolvency. Ultimately, the resolution protected financial stability and Spanish taxpayers, and I am glad that the General Court agrees with our position.”*

Case T-330/20 Judgement of the General Court (Third Chamber) ECLI:EU:T:2023:733

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CRISIS MANAGEMENT AND DEPOSIT INSURANCE (CMDI) FRAMEWORK

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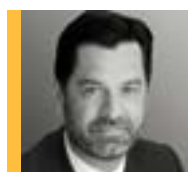
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