EUROPEAN BANKING NEWSLETTER

MARCH 2022

BONELLIEREDE
BREDIN PRAT
DE BRAUW
HENGELER MUELLER
SLAUGHTER AND MAY
URÍA MENÉNDEZ

QUICK LINKS

EUROPEAN CENTRAL BANK (ECB)

SREP 2021 results – the ECB publishes the SREP 2021

10 February 2022 - The European Central Bank (ECB) has published the results of its 2021 Supervisory Review and Evaluation Process (SREP) cycle, which included a full capital assessment; the assignment of SREP scores to banks' overall risk profiles and their main elements; and the issuance of formal decisions, rather than just recommendations.

The results reflect both the resilience of the European banking sector and potential emerging risks and the vulnerability of the sector to them. Overall, SREP scores are broadly stable, with significant institutions maintaining solid capital and liquidity positions and most banks going beyond the levels required by regulatory capital requirements and guidance. Concerns about risks on the horizon are reflected in qualitative findings and measures relating to the broader quality of banks' internal risk control frameworks and the effectiveness and diversity of banks' management bodies, with banks being asked to enhance both risk management and governance structures.

The 2021 assessment has formed a basis for the ECB's decisions on supervisory priorities for the period 2022-24. These include:

- ensuring that banks 'emerge healthy' from the pandemic by addressing topics such as credit risk management practices and leveraged finance;
- addressing structural weaknesses through effective digitalisation strategies and enhanced governance. In relation to governance, the ECB will focus particularly on the collective suitability and diversity of management bodies;
- tackling emerging risks, such as climate-related and environmental risks, and operational and IT resilience risks.

Publication

QUICK LINKS

EUROPEAN CENTRAL BANK (ECB)

SINGLE SUPERVISORY MECHANISM (SSM)

SINGLE RESOLUTION MECHANISM (SRM)

EFIG GROUP

COVID-19 - ECB announces no further extension of capital and leverage relief for banks

10 February 2022 - TThe ECB has announced that it sees no need to allow banks to operate below the level of capital defined by their Pillar 2 Guidance beyond December 2022, nor to extend beyond March 2022 the supervisory measure that allows them to exclude central bank exposures from their leverage ratios. The ECB introduced these provisions in March and September 2020 respectively to assist banks in the context of COVID-19.

The ECB notes that there is still some uncertainty regarding the impact of COVID-19. However, it highlights that banks have ample headroom above their capital requirements and above the leverage ratio requirement. At the end of September 2021, the aggregate Common Equity Tier 1 ratio of banks under direct ECB supervision stood at 15.47% and their average leverage ratio stood at 5.88%.

In light of this, the ECB sets out that banks should: (i) operate above Pillar 2 Guidance from 1 January 2023; and (ii) re-include central bank exposures in their leverage ratios from 1 April 2022. It has published an updated version of the FAQs on its supervisory measures in relation to COVID-19 to reflect its decision.

Press release

FAQs on ECB supervisory measures in reaction to the coronavirus

FX Global Code - ECB publishes statement of commitment

15 February 2022 - The ECB, alongside all members of the European System of Central Banks (ESCB), has published a statement of commitment to the global Code of Conduct for the wholesale foreign exchange market (FX Global Code). In an accompanying press release, it stated that the ESCB welcomes the July 2021 update to the FX Global Code by the Global Foreign Exchange Committee, which sought to align the code with the ongoing evolution of the foreign exchange market.

To fully achieve the objective of the FX Global Code, the EU central banks also encourage foreign exchange market participants in their jurisdiction to review the updated FX Global Code and renew their statement of commitment.

ECB Statement of commitment to the FX Global Code

Press release

BONELLIEREDE
BREDIN PRAT
DE BRAUW
HENGELER MUELLER
SLAUGHTER AND MAY
URÍA MENÉNDEZ

QUICK LINKS

EUROPEAN CENTRAL BANK (ECB)

SINGLE SUPERVISORY MECHANISM (SSM)

SINGLE RESOLUTION MECHANISM (SRM)

EFIG GROUP

AML/CFT - Council of the EU publishes two ECB opinions

17 February 2022 - The Council of the EU (the Council) has published two opinions of the ECB on legislative proposals that form part of the package of measures implementing the European Commission's (the Commission) anti-money laundering (AML) and countering the financing of terrorism (CFT) action plan. These are:

- an Opinion on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) (AMLAR); and
- an Opinion on a proposal for a directive and a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Although the ECB welcomes the initiatives reflected in the legislative proposals, it recommends that the proposed legislation is amended in several areas. For example, the opinion on the AMLAR makes specific observations about the limited scope of the AMLA's direct and indirect supervision, and the governance structure of the AMLA and continuity arrangements. The opinion on the proposed directive and regulation on the prevention of the use of the financial system for money laundering or terrorist financing makes specific observations on the impact of the limitation on payments in cash, and risk factors for customer due diligence.

The Commission adopted the legislative proposals in July 2021.

Opinion of the European Central Bank on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) (AMLAR) (CON/2022/4) (6348/22)

Opinion of the European Central Bank on a proposal for a directive and a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (CON/2022/5) (6349/22)

Climate-related and environmental risks – ECB publishes speech given by Frank Elderson on the thematic review on climate-related and environmental risks

18 February 2022 - The ECB has published a speech given by Frank Elderson, member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, at an industry outreach event organised by ECB Banking Supervision.

In 2020, the ECB issued the ECB guide on climate-related and environmental (C&E) risks and in 2021 conducted a supervisory review of banks' approaches to managing these risks based on their own assessments. Mr Elderson states that 2022 will be the year that C&E risks become integrated in the day-to-day activities of the ECB's joint supervisory teams, who are in constant contact with banks. The ECB notes that banks are currently making little progress towards more actively managing the C&E risks they face, and have a considerable way to go in developing their risk management capabilities. Mr Elderson further notes that these risks may also influence banks' minimum capital requirements.

The ECB expects banks to analyse how C&E risks can or will affect their portfolios and products over the short, medium and long term. This does not entail an outright withdrawal from carbon-intensive industries, but it does mean that banks are expected to have the capacity to manage the risks emerging from climate change. Through the 2022 ECB supervisory stress test and upcoming thematic review, the ECB will be looking more closely at the risk management practices in relation to environmental risks such as water stress, pollution and risks to biodiversity. All banks under the direct supervision of the ECB will receive comprehensive feedback setting out any shortcomings identified.

With the exercises the ECB is conducting this year, the prudential supervision of C&E risks is moving closer to maturity. The thematic review is the next step in fully immersing C&E risks in the work of the Bank's joint supervisory teams and marks key progress towards their integration in the Supervisory Review and Evaluation Process (SREP).

Speech by Frank Elderson, ECB Executive Board member and Vice-Chair of ECB Supervisory Board

Please see the 'Single Supervisory Mechanism (SSM)' section below for an item on the ECB's power to withdraw the authorisation of credit institutions.

SINGLE SUPERVISORY MECHANISM (SSM)

Pilatus Bank and another v European Central Bank (Case T-27/19) EU:T:2022:46

2 February 2022 - The European Court of Justice (Ninth Chamber) has delivered a ruling confirming that the European Central Bank (ECB) was competent to withdraw the authorisation of a bank on the basis of its assessment of the good repute of an individual who indirectly held 100% of its capital and voting rights.

The ECB has exclusive competence concerning the withdrawal of authorisations of all credit institutions in the Single Supervisory Mechanism (SSM) under the SSM Regulation (1024/2013). In November 2018, it withdrew the authorisation of Pilatus Bank plc (the Bank) following the arrest in the US earlier that year of an individual who indirectly held 100% of the Bank's capital and voting rights. The charges against the individual were withdrawn by the US authorities during the course of the court proceedings.

The court dismissed an action to annul the ECB's decision, accepting the ECB's argument that it was entitled to withdraw a bank's authorisation where it is not satisfied as to the suitability of the shareholders or members who are likely to influence that bank, in particular because of their lack of good repute.

Pilatus Bank and another v European Central Bank (Case T-27/19) EU:T:2022:46

QUICK LINKS

EUROPEAN CENTRAL BANK (ECB)

SINGLE SUPERVISORY MECHANISM (SSM)

SINGLE RESOLUTION MECHANISM (SRM)

EFIG GROUP

SINGLE RESOLUTION MECHANISM (SRM)

No relevant items

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.

EUROPEAN BANKING NEWSLETTER

MARCH 2022

BONELLIEREDE
BREDIN PRAT
DE BRAUW
HENGELER MUELLER
SLAUGHTER AND MAY
URÍA MENÉNDEZ

QUICK LINKS

EUROPEAN CENTRAL BANK (ECB)

SINGLE SUPERVISORY MECHANISM (SSM)

SINGLE RESOLUTION MECHANISM (SRM)

EFIG GROUP

BONELLIEREDE

Stefano Micheli
stefano.micheli
@belex.com

BONELLIEREDE

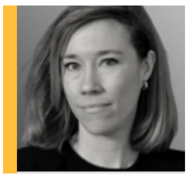
Giuseppe Rumi
giuseppe.rumi
@belex.com

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

EUROPEAN BANKING NEWSLETTER

MARCH 2022

BONELLIEREDE

www.belex.com

Milan, Genoa, Rome, Addis Ababa*, Brussels, Cairo*, Dubai, London

*: *in cooperation with local law firm*

BREDIN PRAT

www.bredinprat.com

Paris, Brussels

DE BRAUW

www.debrauw.com

Amsterdam, Brussels, London, Shanghai, Singapore

HENGELER MUELLER

www.hengeler.com

Frankfurt, Berlin, Dusseldorf, Munich, Brussels, London

SLAUGHTER AND MAY

www.slaughterandmay.com

London, Beijing, Brussels, Hong Kong

URÍA MENÉNDEZ

www.uria.com

Madrid, Barcelona, Bilbao, Bogotá, Brussels, Lima, Lisbon, London, New York, Porto, Santiago, Valencia