EUROPEAN BANKING NEWSLETTER

NOVEMBER 2022

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EUROPEAN CENTRAL BANK (ECB)

Margin for redemptions of eligible liabilities – SRB and ECB reach agreement

12 October 2022 – The Single Resolution Board (SRB) and the European Central Bank (ECB) have reached an 'in principle' agreement on the margin for redemptions of eligible liabilities under Article 78(1)(b) of the Capital Requirements Regulation ((EU) 575/2013) (CRR).

In accordance with Article 77(1) of the CRR, credit institutions are required to obtain authorisation from their resolution authority before reducing, calling, redeeming, repaying or repurchasing eligible liabilities instruments ahead of their contractual maturity. To redeem eligible liabilities, institutions need to demonstrate that they would meet their minimum requirement for own funds and eligible liabilities (MREL) and the combined buffer requirement plus a margin after the transaction has been performed. The margin is set by the resolution authority in agreement with the relevant national competent authority.

The 'in principle' agreement will set the margin at the lower value of either the requested General Prior Permission (GPP) predetermined amount or the institution's Pillar 2 Guidance. A different margin may be set depending on the circumstances of the case.

Press release

TLTRO III – Governing Council of the ECB recalibrates targeted longer-term refinancing operations

27 October 2022 – The ECB has announced that its Governing Council has taken the decision to recalibrate the third series of targeted longer-term refinancing operations (TLTRO III) to ensure consistency with broader monetary policy.

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The TLTROs are Eurosystem operations that provide financing to credit institutions. The Governing Council's decision forms part of the monetary policy measures adopted by the ECB to restore price stability over the medium term. The recalibration of the TLTRO III terms and conditions will contribute to the normalisation of bank funding costs. It wll also help address unexpected and extraordinary inflation increases by reinforcing transmission of policy rates to bank lending conditions.

The existing interest rate calculation method will be maintained for the period from the settlement date of each respective TLTRO III operation until 22 November 2022. From 23 November 2022, interest rates on all remaining TLTRO III operations will be indexed to average applicable key ECB interest rates. These changes of terms and conditions of TLTRO III will be implemented through a sixth amendment to the ECB's Decision of 22 July 2022.

Press release

Remuneration of minimum reserves – Governing Council of the ECB announces adjustment

27 October 2022 – The ECB has announced that its Governing Council has taken the decision to set the remuneration of minimum reserves at the Eurosystem's deposit facility rate (DFR).

The minimum reserves were, until now, remunerated at the ECB's main refinancing operations rate. However, the Bank is of the opinion that, under the prevailing market and liquidity conditions, the DFR better reflects the rate at which funds can be invested in money market instruments if not held as minimum reserves, and the rate at which banks borrow funds in the money market to fulfil minimum reserves. The change will become effective as of the beginning of the reserve maintenance period starting on 21 December 2022.

Press release

EUROPEAN BANKING AUTHORITY (EBA)

TLAC and MREL instruments – EBA issues second monitoring report

7 October 2022 – The EBA has published its second monitoring report (the Report) (EBA/REP/2020/23) on total loss absorbing capacity (TLAC) and minimum requirements for own funds and eligible liabilities (MREL) instruments, as required by Article 80(1) of the CRR. The report is based on a review of 25 transactions issued in 16 jurisdictions totalling approximately €15.3 billion.

The latest report includes new sections on make-whole clauses (to be disallowed), clean up calls (to be allowed) and substitution and variation clauses (for which prior approval is needed in certain circumstances). Other sections have been updated based on new analysis, such as the sections on netting and set-off waivers, and dual governing law and bail-in. Alignment with the Additional Tier 1 report findings and recommendations has also been introduced where needed, including in relation to regulatory and tax calls, and supervisory approval for early redemptions.

The EBA will continue to monitor the quality of the TLAC-MREL instruments issued.

EBA Report on the Monitoring of TLAC-/MREL-Eligible Liabilities Instruments of European Union Institutions – Update (EBA/REP/2022/23)

Press release

CRR – EBA publishes amending Guidelines on disclosure of non-performing and forborne exposures

12 October 2022 – The EBA has announced that it will repeal three disclosure Guidelines which have been entirely, or partly, replaced by the Implementing Technical Standards on Pillar 3 disclosures (ITS). It has also published amending Guidelines which clarify the scope of the Guidelines on disclosure of non-performing and forborne exposures (EBA/GL/2018/10) (NPE Guidelines).

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The EBA intends to repeal the following Guidelines:

- Guidelines on disclosure requirements under the CRR (EBA/GL/2016/11);
- Guidelines on liquidity coverage ratio (LCR) disclosure to complement the disclosure of liquidity risk management (EBA/GL/2017/01);
- Guidelines on disclosure of encumbered and unencumbered assets (EBA/GL/2014/03).

In addition, the EBA has published amending Guidelines which adjust the scope of the NPE Guidelines. They clarify that, despite the narrower scope of the ITS, the NPE Guidelines will continue to apply to listed small and non-complex institutions as well as medium-sized non-listed institutions. The EBA explains that this will ensure that all EU institutions will continue to disclose relevant information in this area and maintain high standards of transparency.

The amending Guidelines will apply from 31 December 2022.

Consolidated Guidelines on disclosure of non-performing and forborne exposures

Amending Guidelines on disclosure of non-performing and forborne exposures

Press Release

EBA publishes European Resolution Examination Programme and European Supervisory Examination Programme for 2023

27 October 2022 – The European Banking Authority (EBA) has published two documents: (i) the European Resolution Examination Programme (EREP); and (ii) the European Supervisory Examination Programme (ESEP).

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The EREP is aimed at shaping national resolution authorities' work priorities and respective practices. The authorities are expected to consider the following key topics when developing their 2023 priorities:

- how the minimum requirement for own funds and eligible liabilities (MREL) shortfalls are being addressed against the deadline of 1 January 2024, as well as monitoring MREL quality;
- the development of management information systems for valuation in resolution. This considers the main challenges encountered by institutions in developing IT systems, as well as the ability of authorities to perform valuations in the evolving environment;
- preparations for managing liquidity needs in resolution, including consideration of the strategies and arrangements to ensure liquidity in resolution, the possible impediments to this and the challenges in relation to the use of moratoria powers; and
- operationalisation of the bail-in strategy. This includes potential impediments to achieving smooth execution of bail-in a cross border environment.

The ESEP identifies key topics for supervisory attention across the EU and contributes to the enhancement of EU supervisory convergence by providing common directions and areas of focus for national supervisors. This is intended to help such authorities shape their prudential supervisory priorities and respective practices. The key topics include:

- macroeconomic and geopolitical risks, including the Russian invasion of Ukraine, the legacy of COVID-19, interest rate rises, inflation risk and related asset price corrections;
- operational and financial resilience. Operational resilience includes risks in relation to information and communication technology, risk data aggregation and the ability to face, and recover from, a crisis. Financial resilience focuses on appropriate staging and adequate provisioning, and stress testing capabilities;
- transition risks towards sustainability and digitalisation, including ESG risks in business strategies and in overall governance frameworks; and
- money laundering and terrorist financing risks in the supervisory review and evaluation process, and internal controls and governance.

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EBA: 2023 European Resolution Examination Programme (EREP) for Resolution Authorities (EBA/REP/2022/27)

Press release

EBA: 2023 European Supervisory Examination Programme (ESEP) for Prudential Supervisors (EBA/REP/2022/28)

Press release

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No relevant items

SINGLE RESOLUTION MECHANISM (SRM)

Please see the ‘European Central Bank (ECB)’ section above for an item on the Single Resolution Board and ECB’s agreement on the eligible liabilities’ redemption margin under the CRR.

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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.

f 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

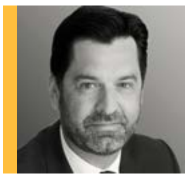
Stefano Micheli
stefano.micheli
@belex.com

BONELLIEREDE

Giuseppe Rumi
giuseppe.rumi
@belex.com

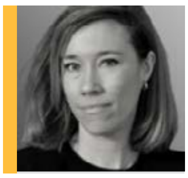
BREDIN PRAT

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

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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BONELLIEREDE	*www.belex.com* Milan, Genoa, Rome, Addis Ababa*, Brussels, Cairo*, Dubai, London *: *in cooperation with local law firm*
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