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Banking Union: SRB publishes MREL policy

The Single Resolution Board (SRB) has published its Minimum Requirements for Own Funds and Eligible Liabilities (MREL) [policy](#) following the changes introduced by the banking package (BRRD 2, SRMR 2, CRD 5 and CRR 2).

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The SRB has modified and extended its policy to reflect the revised regulatory framework for MREL, covering:

- MREL requirements for Globally Systemically Important Institutions (G-SIIs);
- changes to the calibration of MREL, including introducing MREL based on the Leverage Ratio Exposure (LRE);
- dedicated rules for certain business models, such as cooperative groups, and for resolution strategies, such as multiple point of entry (MPE);
- changes to subordination requirements;
- provisions on internal MREL for non-resolution entities;
- eligibility of liabilities issued under the law of third countries; and
- transitional arrangements.

The policy will inform MREL decisions implementing the new framework in the 2020 resolution planning cycle, which will replace decisions issued under the previous legal framework. Each new decision, which the SRB intends to communicate to banks in early 2021, will set out two binding MREL targets, including those for subordination:

- the binding intermediate target to be met by 1 January 2022; and
- the fully calibrated MREL (final target) to be met by 1 January 2024.

The SRB intends to address further forthcoming changes to resolution introduced by the banking package, such as maximum distributable amount (MDA) and intermediate parent undertaking (IPU), in future policies.

SRB consults on standardised data set proposals

The SRB has launched a [consultation](#) on its standardised data set to ensure a minimum level of data is available to support a robust valuation for resolution. The consultation is a follow up to the 2019 Framework for Valuation, which aims to provide independent valuers with the SRB's expectations regarding the principles and methodologies for valuation reports. The new standardised data set is the second key building block of the SRB's approach to valuation.

The SRB valuation data set [instructions](#) document develops the SRB valuation data set and aims to establish clear expectations in relation to data needs, including definitions of the data fields. The consultation also covers an [explanatory note](#) which aims to provide guidance to banks regarding their management information systems capabilities to produce information that is as up to date and complete as possible and of adequate quality to carry out a fair, prudent and realistic valuation.

The SRB data set does not impose reporting obligations. It is a tool that defines the SRB's expectations for the information it needs to perform an independent valuation and provides guidance to institutions.

Comments are due by 30 June 2020.

EBA consults on draft RTS on contractual recognition of stays

The European Banking Authority (EBA) has published a [consultation paper](#) (EBA/CP/2020/04) on draft regulatory technical standards (RTS) on the

contractual recognition of stay powers under the Bank Recovery and Resolution Directive (BRRD).

The draft RTS concern the requirement for financial contracts governed by third country law and entered into by relevant institutions and entities to include a contractual term by which the parties recognise that the contract may be subject to the exercise of powers by a Member State resolution authority to suspend or restrict rights and obligations.

The EBA proposes a list of mandatory components which must be present in the required contractual term, including:

- an acknowledgement and acceptance that the contract may be subject to the exercise of certain powers by a resolution authority to suspend or restrict rights and obligations arising from such a contract;
- a description of the powers of the relevant resolution authority as transposed by the applicable national law governing the resolution of the institution or entity concerned;
- the parties' recognition that they are bound by the effect of, and shall endeavour to ensure the effective application of, those powers and the requirements of Article 68 as transposed;
- an acknowledgement and acceptance that no other contractual terms impair the effectiveness and enforceability of the contractual term, and that the contractual term is exhaustive notwithstanding any other agreements, arrangements or understandings between the counterparties relating to the subject matter of the relevant agreement; and
- an acknowledgement that the term is subject to the law of a Member State.

The deadline for comments is 15 August 2020. A public hearing on the draft RTS will take place via conference call on 16 July 2020 from 10:00 to 13:00 (CET).

EBA reports on interlinkages between recovery and resolution planning

The EBA has published a [report](#) which assesses interlinkages between recovery and resolution planning under the BRRD. Although recovery and resolution are formally separated under the BRRD, the EBA notes that planning could be seen as a continuum. The report is intended to enhance synergies between the two phases and ensure consistency in their potential implementation.

The report outlines the EBA's observations and identifies best practices and areas where further improvement or clarifications are needed. It also clarifies, for some common elements between both types of plans, their specific purpose in each planning phase and the advantages and disadvantages of potential convergence or harmonisation.

The report analyses the potential impact of recovery options on an institution's resolvability and introduces an assessment framework to support the assessment and consultation process between resolution and competent authorities. It is also accompanied by two annexes. The first includes a template used to perform the comparative analysis of a sample of recovery and resolution plans, and the second is a practical tool to help resolution

authorities in conducting their analysis of the potential impact of recovery options on the institution's resolvability.

Sustainable finance: ECB consults on climate-related and environmental risks guide

The European Central Bank (ECB) has launched a public [consultation](#) on its [guide](#) to climate-related and environmental risks.

The guide, which is not legally binding, describes how the ECB expects significant institutions to consider climate-related and environmental risks when formulating and implementing their business strategy and governance and risk management frameworks. It further explains how the ECB expects institutions to become more transparent by enhancing their climate-related and environmental disclosures.

The ECB and the national competent authorities (NCAs) have jointly developed the guide, which should be read in conjunction with other ECB guides, and in particular the ECB guide to the [internal capital adequacy assessment process](#) (ICAAP).

The deadline for comments is 25 September 2020.

Brexit: UK Government publishes draft UK-EU free trade agreement

The UK Government has published [draft negotiating documents](#) concerning the future UK-EU relationship.

The draft legal texts, which seek to reflect the UK's intention to negotiate a suite of agreements governing the future relationship, include:

- a [UK-EU Comprehensive Free Trade Agreement](#) (CFTA);
- a Fisheries Framework Agreement;
- an Air Transport Agreement;
- a Civil Aviation Safety Agreement;
- an Energy Agreement;
- a Social Security Coordination Agreement;
- a Civil Nuclear Agreement;
- an Agreement on Law Enforcement and Judicial Cooperation in Criminal Matters;
- an Agreement on the Transfer of Unaccompanied Asylum-seeking Children; and
- an Agreement on the Readmission of People Residing Without Authorisation.

The UK's proposed approach to financial services is set out in Chapter 17 of the draft CFTA.

The third round of negotiations took place between 11 and 15 May 2020. The fourth round is scheduled to begin on 1 June 2020.

Brexit: Draft bill authorising French Government to adopt emergency measures adopted

A [draft bill](#) which authorises the French Government, among other things, to adopt emergency legislation in the form of ordinances for a period of 15 months from the publication of the law has been adopted at first reading by the French National Assembly. These provisions would enable the Government to adapt to Brexit uncertainties following the end of the transition period, notably as regards:

- the conditions for continuing performing insurance contracts;
- the management of collective investments and equity savings plans; and
- the preservation of the situation of British nationals residing in France as well as of UK companies operating in France.

This text will be soon discussed in the Senate.

BaFin publishes note on AML obligations of undertakings providing crypto safe custody business

BaFin has published a [note](#) addressing the anti-money laundering obligations of undertakings providing crypto safe custody business. Following its guidance note of 1 April 2020 on the main features of the licensing procedure and essential licensing requirements, BaFin has highlighted the anti-money laundering obligations pursuant to the German Money Laundering Act (Geldwäschegesetz, GwG).

The note is intended to provide undertakings subject to section 2 para. 1 GwG as of 1 January 2020 with general information regarding their anti-money laundering obligations. It draws attention to relevant topics and addresses frequently asked questions regarding the anti-money laundering obligations.

Section 3 of the note emphasises the three pillars of the German anti-money laundering prevention measures:

- Pillar 1 – Risk management: Undertakings providing crypto safe custody business have to conduct a risk analysis in order to identify and assess the risks of money laundering and terrorist financing for any business transaction pursuant to sections 4 to 6 GwG. The undertakings must establish risk-appropriate internal security measures such as the appointment of a money laundering officer;
- Pillar 2 – KYC-Process: Undertakings providing crypto safe custody business have to conduct an internal KYC-process within the meaning of sections 10 to 15 GwG; and
- Pillar 3 – Money Laundering Reporting System: Undertakings providing crypto safe custody business have to report any suspicious circumstances with regard to money laundering pursuant to section 43 GwG.

BaFin publishes circular on third countries that pose significant risks to international financial system and updates guidance on German Money Laundering Act

BaFin has published [Circular 03/2020 \(GW\)](#) on third countries facing strategic deficits in their systems to counter money laundering and terrorist financing that pose significant risks to the international financial system (high-risk

countries). Based on Article 9 of the Anti-Money Laundering Directive (EU) 2015/849 in connection with Delegated Regulation (EU) 2016/1675 of 14 July 2016, the 'High-Risk Jurisdictions subject to a Call for Actions' statement of the FATF and the FATF report 'Jurisdictions under Increased Monitoring' as of 21 February 2020, BaFin specifies the money laundering obligations under the GwG.

BaFin has also [published](#) adapted interpretation and application guidance in relation to the GwG to reflect recent amendments that entered into force on 1 January 2020. The guidance applies to all obliged entities under the GwG who are subject to supervision by BaFin pursuant to section 50 no. 1 GwG.

CBIRC issues new rules on credit insurance and guarantee insurance business

The China Banking and Insurance Regulatory Commission (CBIRC) has released the '[Measures for the Regulation of Credit Insurance and Guarantee Insurance Business](#)', which replace the 'Interim Measures for the Regulation of Credit and Guarantee Insurance Business' issued in 2017. The Measures set out detailed rules on the operation, internal control, and regulatory measures on credit and/or guarantee insurance business.

With regard to the operational requirements for credit insurance, the Measures provide that:

- only insurers with a core solvency ratio of at least 75% and a comprehensive solvency ratio of at least 150% for the latest two quarters are qualified to underwrite credit insurance for financing contracts (such as lending contracts or financial leasing contracts);
- the accumulative underlying risk retention by an insurer may not exceed ten times its net assets at the end of the previous quarter, or four times in respect of credit insurance for financing contracts, unless the insurer specialises in credit insurance. There is a favourable treatment for credit insurance underwritten for loans to small and micro businesses;
- the underlying risk retention by an insurer for a single debtor and its affiliates may not exceed 5% of its net assets at the end of the previous quarter, or 1% in respect of credit insurance for financing contracts, unless the insurer specialises in credit insurance; and
- an insurer may not underwrite (i) credit insurance policies for private bonds or bonds with an issuer or issuance rating lower than AA+ (except for insurers specialising in credit insurance), (ii) rights relating to an underlying financial contract where the original debtor and creditor has changed, (iii) asset-backed securitisation initiated by non-banking institutions, (iv) financial derivatives, and (v) financing for affiliates of the insurer.

There will be a six-month transitional period for insurers that currently have credit insurance policies for financing contracts to meet the operational requirements under the Measures.

HKEX announces new initiatives to enhance liquidity of exchange traded products

The Hong Kong Exchanges and Clearing Limited (HKEX) has [announced](#) the introduction of the following initiatives with effect from 1 June 2020 to enhance

the liquidity of Hong Kong-listed exchange traded products (ETPs) and develop Hong Kong into Asia's ETP marketplace:

- new spread table for ETPs – the new spread table is intended to map out the minimum price movements for securities trading at different price ranges and reduce tick sizes by as much as 80% compared with the existing spread table. The HKEX has indicated that the reduction of tick size will be equivalent to reducing the minimum achievable spreads investors experience when trading ETPs; and
- continuous quoting market making obligations for ETPs – to create a more competitive liquidity providing environment in Hong Kong-listed ETPs, a new set of market making obligations for ETPs will be introduced to replace the current regime. The new market making scheme has been designed to help investors better access ETP liquidity.

SFC and HKMA announce concurrent thematic review of spread charges and other practices

The Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) have jointly [announced](#) that they will commence a concurrent thematic review in the second half of 2020. The review will assess intermediaries' spread charges and other practices as well as their compliance with requirements governing the disclosure of trading capacity and monetary benefits under the Code of Conduct for Persons Licensed by or Registered with the SFC. In particular, the review is intended to ascertain whether:

- charges may be in excess of the spreads or fees disclosed in the intermediaries' standard documents to clients, or as agreed with or understood by the clients, or spreads may be increased after a trade is executed and the price improvement is retained without agreement with or disclosure to clients; and
- intermediaries understand and properly disclose the capacity in which they are acting when conducting trades for clients.

The review will cover the selected intermediaries' policies, procedures, systems and controls as well as management oversight of the distribution to clients of non-exchange traded investment products such as bonds and structured products.

The regulators have also indicated that the findings of the concurrent thematic review will form the basis for them to assess intermediaries' compliance, and in the event of a breach, take regulatory action. The regulators will share the findings of the thematic review with the industry and consider the need for further guidance, where appropriate.

FSC announces measures to improve exchange-traded fund and exchange-traded note markets

The Financial Services Commission (FSC) has [announced](#) measures to improve the exchange-traded fund and exchange-traded note markets by containing overheated investment demand and mitigating excessive concentration on particular investment products. In particular, the measures are intended to:

- prevent indiscriminate investment behaviour in exchange-traded fund and exchange-traded note markets by requiring minimum deposits and mandatory online education for retail investors;
- improve brokerage firms' management of disparate ratios to minimise investor damage from speculative demand; and
- create an environment for the development of diverse investment products to break up excess demand on particular instruments.

The FSC has indicated that it will begin implementing the measures that require revisions to the listing rules of the Korea Exchange in July 2020. For those measures that requiring changes in laws and development of relevant systems, the implementation will begin in September 2020.

MAS responds to feedback received on proposed regulatory approach for derivatives contracts on payment tokens

The Monetary Authority of Singapore (MAS) has published its [responses](#) to the feedback it received on its November 2019 [public consultation](#) on the proposed regulatory approach under the Securities and Futures Act (SFA) for derivatives contracts that reference payment tokens as underlying assets (payment token derivatives).

Amongst other things, the MAS has clarified its proposals as follows:

- the MAS maintains that it will regulate payment token derivatives offered on an approved exchange (AE), but will not be regulating payment token derivatives offered by other entities to avoid conferring confidence in such products (which could lead to a wider offering to retail investors);
- while the MAS does not prohibit overseas exchanges from offering payment token derivatives, it will not regulate such payment token derivatives under the SFA;
- AEs on which payment token derivatives are offered will be responsible for appointing custodians and ensuring that custodians are properly regulated (i.e. subject to regulation similar to that of custodians for capital markets products) where custody services are provided in relation to those payment token derivatives;
- the MAS will proceed with its proposal for additional measures for retail investors trading in payment token derivatives with financial institutions under the SFA, including minimum margin requirements. In this regard, the MAS discourages retail investors from trading with unregulated entities which could be fraudulent and will continue to step up consumer education efforts regarding the risks of trading payment token derivatives and dealing with unregulated entities;
- derivatives on fiat-backed stablecoins (i.e. derivatives contracts referencing a token which value is permanently fixed to one or more currencies) are not considered payment token derivatives and will not be subject to the additional measures for retail investors. However, they are derivatives contracts as defined and regulated under the SFA;
- the derivatives of utility tokens will be regulated under the SFA if the tokens are within the scope of an 'underlying thing' as defined under the SFA; and

- in line with its general stance of not endorsing specific products, the MAS will not be publishing a list of regulated token derivatives.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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