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Consultations

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19 April 2023 – EBA consults on draft Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers

On April 19, 2023, the European Banking Authority (EBA) [opened](#) a public consultation to seek the views of relevant stakeholders on its draft guidelines on the assessment of adequate knowledge and experience of members of the management bodies of credit service providers. These guidelines are developed under the [Non-performing loans directive \(NPL directive\)](#).

With these new guidelines, the EBA wishes to ensure that the management and administrative bodies of credit service providers are competent and able to conduct their business in a responsible manner.

The [guidelines](#) proposed by the EBA thus specify

- the criteria for assessing the knowledge and experience of management bodies. The assessment will be made on the basis of the individual assessment of the members of the management body in application of the principle of proportionality.
- the main requirements for the process of assessing credit service providers, including good repute, and when such an assessment should be carried out. Where deficiencies are identified in the assessment, the credit service provider must take appropriate remedial action, including training or replacing members of the management body.

The guidelines are intended to apply to competent authorities and credit organizations, regardless of their governance structure (unitary, two-tiered or other).

Next steps:

The consultation is open until 19 July 2023. As part of the consultation, EBA is [organizing](#) a public hearing on June 12, 2023.

The guidelines are expected to enter into force in early 2024, three months after their final adoption and publication in all official EU languages.

18 April 2023 – EBA consults on draft Guidelines on resubmission of historical data

On April 18, 2023, the European Banking Authority (EBA) [opened](#) a consultation on its draft guidelines regarding the re-submission of legacy data for EBA reporting.

The objective of the [draft guidelines](#) is to provide a common approach for the resubmission by financial institutions of legacy data to competent and resolution authorities in the event of errors, inaccuracies or other changes in the data reported under the supervisory and resolution reporting framework established by the EBA.

- The general approach set forth in the draft guidelines is to limit the number of historical periods subject to resubmission, based on the frequency of initial reporting and reference dates affected by errors or misstatements.
- Under this approach, financial institutions are expected to resubmit corrected data for the current reporting date and old data for past reference dates going back at least one calendar year, except for

data with a monthly reporting frequency. Within this framework, the guidelines also specify general circumstances under which resubmission of historical data may not be required.

- Resubmission of historical data is also relevant to ensure data consistency and to enable competent authorities, resolution authorities and the EBA to use high-quality, consistent and complete data.

Next steps:

The [consultation](#) is open until July 31, 2023. In particular, EBA would like to receive feedback from relevant financial institutions on the possibility of including additional proportionality elements in data reporting.

A [public hearing](#) will be held on June 7, 2023.

12 April 2023 – ESAs consult on the review of SFDR Delegated Regulation

On April 12, 2023, the European Supervisory Authorities (EBA, ESMA, EIOPA) [opened](#) a consultation to gather the views of relevant stakeholders on a joint proposal for amendments to the [Delegated Act](#) on the [Sustainable Finance Disclosure Regulation \(SFDR\)](#).

The European Supervisory Authorities received a mandate in April 2022 in which the European Commission asked them to assess and propose a revision of the regulatory technical standards (RTS) for the implementation of the Financial Sector Sustainability Reporting Regulation (FSRR).

In this context, the ESAs propose several changes to the sustainability reporting framework established by the SFDR regulation in order to address several issues that have arisen since the introduction of the regulation (see [consultation paper](#)): in particular, the inclusion of sustainability indicators when disclosing key negative impacts and the application of the RTS to pre-contractual documents and the online presentation of sustainability information on investment products.

Next Steps:

[Consultation](#) on the ESAs' proposed changes is open until July 4, 2023.

ESAs plan to publish their final report including revised regulatory technical standards for the implementation of the SFDR Regulation in October 2023. The European Commission will then adopt an amending delegated act based on the changes proposed by the ESAs.

Banking regulation

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18 April 2023 – CRR/CRD trilogues update

On 18 April 2023 took place the second trilogue regarding CRR/CRD review.

The Council and the Parliament still have very different positions on the level of application of the output floor. In line with the position he has defended until now in the ECON Committee, the rapporteur Jonas Fernandez (S&D, ES) asked the Council to examine several new options for setting the output floor level of consolidation. The Rapporteur defended that the approach adopted by the Parliament was more "in line" with the internal market. The Swedish Presidency said it had taken note of the rapporteur's proposal but stressed that no Member

State seemed open to it at the moment. Member States also refused to give the European Commission a mandate to examine the different options available for determining the level of application of the minimum threshold.

However, some progress has been made on the provisions for transitional measures. They should in all likelihood apply until 2032 and take into account as far as possible the specificity and diversity of the European banking sector. The transitional measures should also limit capital requirements for exposure to unlisted companies, low-risk mortgages and financial derivatives. The adoption of an annex setting clear deadlines for the application of the transitional measures is envisaged.

On the provisions relating to the ex-ante "fit and proper assessment" of a person who is to be appointed to the management of a large systemic bank, the positions of the Parliament and the Council remain far apart. The Swedish Presidency of the EU Council justifies its position on the grounds that strengthening such provisions would represent an administrative overload, whereas the current rules seem to work according to the member states.

Finally, the question of the supervision of national/European branches of banking groups originating from third countries but operating in the EU was addressed. As the Parliament and the Council remain relatively far apart in their positions, the Commission has been given a mandate to propose a set of options for consideration by the co-legislators, which will be examined at a forthcoming trialogue meeting. In this context, the Swedish Presidency has stressed that competences relating to systemic risk remain national. The rapporteur insisted on the fact that the provisions applicable to these institutions must reflect those that apply to branches of European banks operating in third countries ("level playing field").

Discussions are continuing at the technical level and the next political trialogue is scheduled for May 10.

18 April 2023 – European Commission presents new legislative proposal on banking crisis management framework

On 18 April 2023, the European Commission [presented](#) a package of legislative proposals with the ambition to revise the banking crisis management framework. It was followed by the publication of a [consultation](#) on 20 April 2023.

The aim is to increase the effectiveness of the system bank crisis management framework and ensure depositors protection, by extending its scope to smaller banks. The underlying objectives of the reform are to ensure that in the event of bank failure :

- Protecting efficiently depositors and the real economy from the potential impact of a bank failure ;
- Preserving financial stability and preventing the use of public funds to bail-out banks.

Legally speaking, the European Commission is only proposing to amend existing legislation :

- [Proposal for amendments to the Directive on conditions for resolution and financing of resolution action \(BRRD\)](#)
- [Proposal for amendments to the Regulation on conditions for resolution and funding of resolution action \(SRMR\)](#)
- [Proposal for amendments to the Directive on the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency \(DGSD\)](#)

- [Proposal for amendments to the Directive on certain aspects of the minimum requirement for own funds and eligible liabilities “Daisy chain” Directive \(MREL in particular\)](#)

The main measures proposed are:

1. Clarification of the public interest assessment in the management of banking crises and extension of the banking resolution scope

In order to determine whether a bank should be liquidated according to national rules or whether it should be subject to a resolution, the competent authorities would carry an assessment (*public interest assessment* or PIA) to assess whether, based on objective criteria, there is a public interest in subjecting a bank to a resolution process.

In its proposal, the European Commission seeks to provide a better framework regarding competent authorities’ discretionary powers, which in its view contributes to a “restrictive” application of the public interest assessment. The Commission’s proposed amendments introduce the possibility of considering that there is a public interest in initiating a resolution procedure if the impact of the failure is only regional. Currently, only national and European impacts are considered. This amendment to the current framework would therefore allow smaller banks to access the resolution procedure.

While the public interest assessment remains at the discretion of resolution authorities, the European Commission notes that in the event of a bank default, national insolvency procedures should be chosen as the preferred strategy only when they are more effective than resolution. This will require resolution authorities to further demonstrate why a resolution is not in the public interest.

This clarification of the assessment would ensure that a full range of crisis management tools, such as transfer tools, could also be applied to struggling small and medium-sized banks, if this enables to achieve the objectives of safeguarding financial stability and protecting depositors. Transfer tools include selling the defaulting bank or portions to a viable buyer, transferring to a bridge bank, or using an asset management vehicle.

2. Increased involvement of national deposit guarantee schemes in the resolution process

While they are generally used only in the event of the liquidation of a bank, the European Commission proposes to facilitate the use of national deposit guarantee schemes (DGS) in a resolution process, in particular to finance the transfer of covered deposits from a defaulting institution to one or more other banks.

The use of funds from deposit guarantee schemes, when applied to small or medium-sized banks resolution, including to access the Single Resolution Fund, should only be possible:

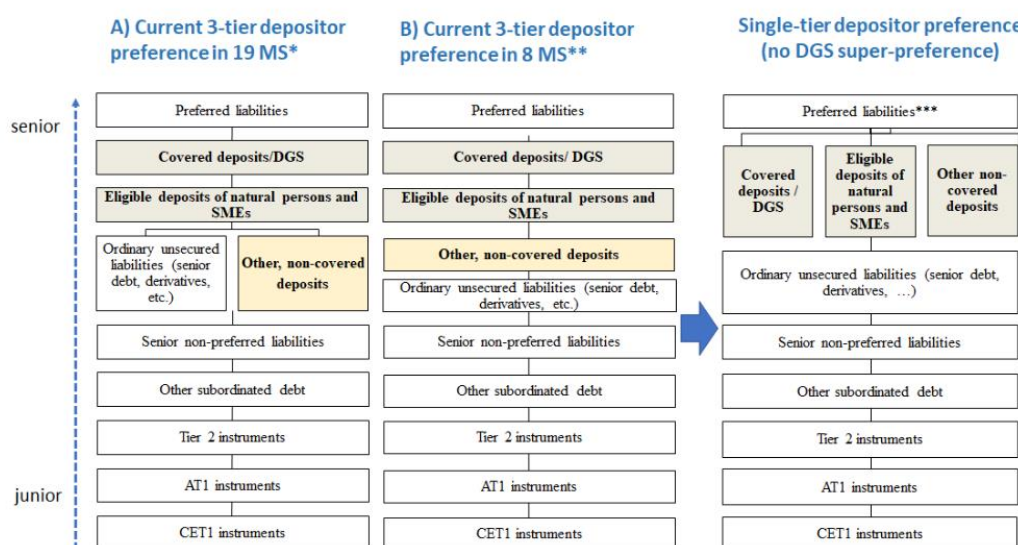
- a. when deemed necessary by the resolution authority or authorities to preserve financial stability and protect taxpayers while facilitating market exit ;
- b. when it avoids imposing losses on depositors ;
- c. when it is subject to appropriate conditions and guarantees. In particular, in the case of access to the Single Resolution Fund, the bank concerned must have been the subject of a resolution plan which has been planned in advance for resolution.

3. Change of the hierarchy of claims in insolvency

- A facilitated use of the deposit guarantee system (DGS) as part of a resolution process would be made possible by the modification – and harmonisation – of the hierarchy of claims in insolvency (*see diagram below*). The internal capacity of banks to absorb losses remains the “first line of defence”. The alternative use of funds from the deposit guarantee system to finance crisis management tools must also be subject to a harmonised “least cost” test.

To facilitate the use of DGS schemes in a resolution process, the European Commission suggests streamlining the current hierarchy of claims in insolvency by creating a single category including all deposits and depositors (individuals, SMEs and large enterprises) regardless of amounts. Depositors in this new single category would be placed on an equal footing in the event of bank default (*see diagram below*).

Stylised view of creditor hierarchy in insolvency under the current framework (three-tier depositor preference) and under the proposed reform (single-tier general depositor preference)



* AT, BE, CZ, DE, DK, EE, ES, FI, FR, IE, LV, LT, LU, MT, NL, PL, RO, SE and SK.

** Other 8 Member States have preferred non-covered deposits relative to ordinary unsecured claims (BG, CY, EL, HR, HU, IT, PT and SI).

*** The Single Resolution Fund/National Resolution Funds are also among preferred liabilities.

Note: This illustration is stylised and simplified. In reality, the hierarchies of claims across Member States are only partially harmonized (particularly the subordinated layers), while the senior layers are unharmonised and may include additional sub-classes.

Source: Commission staff.

This single category would also be included in the BRRD directive, where it would be better placed in the hierarchy of claims in insolvency in the event of actual repayment of creditors.

Finally, it should be noted that all branches/branches belonging to banks established in third countries will be required to join bank deposit schemes in the Member States where they are active if this is not already the case. The European Commission hopes that the adoption of the text will, by completing the financial supervision framework, unblock discussions on a European deposit guarantee system (EDIS) – the missing pillar of the Banking Union, which has been blocked for nearly ten years.

Next steps :

The EU Parliament and Council will now examine legislative proposals made by the European Commission in accordance with the ordinary legislative procedure.

It should be noted that reaching an agreement between co-legislators on this legislative package before the end of the legislature in April 2024 could be a challenge. However recent bank failures could help speed up decision-making.

The Commission has [opened](#) a consultation for stakeholders to share their views on the proposal, the deadline is set to the 15 June 2023.

Banking supervision

28 April 2023 – Basel Committee presents its next priorities

On April 28, 2023, during the Eurofi conference, Pablo HERNANDEZ de COS, Chairman of the Basel Committee on Banking Supervision, [presented](#) the main projects currently underway within the Basel Committee on Banking Supervision.

The Chairman underlined the positive role of the Basel framework in the resilience of global banks. However, he emphasized the fact that despite everything, public intervention had been necessary in order to avoid contagion.

He therefore detailed the Committee's main strategic priorities for 2023 and 2024:

- Regarding **macroprudential supervision**, the Chairman presented several projects that the Committee will be working on:
 - **Risk management:** the Committee still identifies serious governance and risk management deficiencies for some banks. In addition, he stressed the need to maintain effective supervision and not to reduce prudential requirements. The Chairman does not rule out reopening negotiations on the Basel Accords.
 - **Emerging risks:** the Committee continues to closely monitor emerging risks (inflation) and to assess the adequacy and robustness of internal models developed by banks in light of recent events.
- **Concerning digital finance**, the Basel Committee is deepening its monitoring of digital finance risks and will publish a report within two years on the impacts of digital finance on the sector.
- **Regarding financial risks related to climate change** the Committee will address several actions:
 - Examine the current "blind spots" in the Basel framework for addressing climate risk in order to better address them;
 - Assess the feasibility of conducting work on bank transition plans and the use of climate change scenarios;
 - The Committee will launch a consultation on the inclusion of a sustainability disclosure framework within Pillar 3 of the Basel framework.

Finally, the Chairman announced that the Basel Committee would review the Core Principles for Banking Supervision, consult with stakeholders in mid-2023 and consider a revision of this guidance for non-bank financial institutions.

25 April 2023 – ESAs report on the risks brought by inflation

On 25 April 2023, the European Supervisory Authorities (EBA, EIOPA and ESMA) jointly published their [report](#) on risks and vulnerabilities in the EU financial system.

First, the report highlights a significant deterioration in the macroeconomic environment in the second half of 2022 due to high inflation, tighter financial conditions and an uncertain economic outlook. On the other hand, recent market pressures on banks following the collapse of some mid-sized banks in the US and the emergency merger of Credit Suisse with UBS have highlighted the continuing high level of market uncertainty, the sensitivity of the European financial system to exogenous shocks and the potential risks associated with the end of more than a decade of very low interest rates.

In view of these risks, the Joint ESA Committee advises national supervisors, financial institutions, and market participants to adopt several measures:

- It is important to maintain a solid regulatory framework in order to preserve the resilience of the financial sector, in particular by accurately implementing the finalisation of Basel III in the EU, without delay and with as little deviation as possible, and by avoiding further deviation from EIOPA's advice on the revision of the Solvency II Directive.
- Risk management capacity and disclosure of environmental, social and governance (ESG) risks should be strengthened, as these risks are increasingly becoming a source of financial risk.

4 April 2023 – EBA publish its banking sectors risks dashboard

On 4 April 2023, the European Banking Authority (EBA) published a revised version of its [Risk Dashboard](#) for the banking sector for the Q4 2022 period.

On this occasion, EBA is also publishing [the first edition of the report](#) assessing the risks specific to minimum capital requirements and eligible liabilities (MREL).

In these two publications, EBA points out specifically that the equity and debt volatility of EU/EEA banks has been "*significantly affected*" by the recent events related to Silicon Valley Bank (SVB) and Credit Suisse, although the direct exposures of EU/EEA banks to these two banks are limited.

However, the Authority mentions that banks' capital and liquidity ratios remain strong, and that profitability continues to increase.

Sustainability reporting

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25 April 2023 – JURI Committee adopts its position on CSDD

On 25 April 2023, the Committee on Legal Affairs (JURI) of the European Parliament [adopted](#) (finalized report will soon be available) its report on the proposal for a Directive on Corporate Sustainability Due Diligence (CSDD).

Key amendments adopted by the Legal Affairs Committee :

- **Regarding article 4 that defines due diligence and its related obligations** : it would be the Member States' responsibility to ensure that companies conduct a prior assessment, based on a risk-based approach, of the environmental and human rights aspects of their activities and of the activities of the entities/organizations with which they have a contractual relationship (and thus enter into the "*value chain*").
 - Companies falling within the scope of the directive will have to integrate due diligence measures into their corporate policies (e.g., Article 7 includes a reference to the adoption of a climate transition plan) and identify the potential adverse effects of their activities on the environment and on human rights.
 - They must make public the potential impacts identified as well as the measures adopted in response to prevent or mitigate the potential risks of negative impact.
 - They will have to keep for at least ten years the documents proving that they comply with this directive.

- **According to the position adopted by the Parliament, the contribution to an adverse impact means that the activities of a company, in combination with those of other entities, cause a negative impact or that the activities of the company facilitate or induce other entities to cause an adverse impact.** The contribution to an adverse impact must be substantial: assessing the substantial nature of the contribution and understanding when the company's actions may have caused, facilitated, or induced another entity to cause an adverse impact may involve consideration of multiple factors. The following factors may be considered:
 - the extent to which a firm may encourage or motivate an adverse impact by another entity, i.e., the extent to which the activity increased the risk of the impact occurring ;
 - the extent to which a company could or should have known of the adverse impact or risk of adverse impact, i.e., the extent to which the activity increased the risk of adverse impact or the potential for adverse impact, i.e., the degree of predictability ;
 - the extent to which any of the company's activities actually mitigated the adverse impact or decreased the risk of the impact occurring.

The mere existence of a business relationship or activities that create the general conditions under which an adverse impact may occur does not in itself constitute a contribution to an adverse or negative environmental impact: **the activity in question must substantially increase the risk of an adverse impact.**

- **The threshold from which European companies will be subject to due diligence obligations is lowered:** companies will be concerned as soon as they have more than 250 employees and a turnover of more than 40 million in the EU. European subsidiaries of international companies, operating globally with more than 500 employees and with a turnover of more than 150 million, are also included in the scope of the directive if their turnover exceeds 40 million in the EU. The reference to companies in high-risk sectors is deleted.

- **MEPs also propose to broaden the definition of the "value chain" so that more activities are included in the scope of activities subject to special vigilance.** A rewrite of Article 3 defining the value chain is proposed. **The provision of financial services by a regulated financial undertaking is part of the activities included in the value chain and this activity is therefore subject to CSDD due diligence obligations** (recital 19). In order to avoid overlapping due diligence exercises for financial undertakings, companies or other legal entities that are part of the value chain are excluded from the scope of this Directive in case due diligence obligations are already laid down in other EU regulations. In addition,

customers who are households and natural persons not acting in a professional or commercial capacity, as well as small and medium-sized enterprises, should not be considered part of the "value chain" of regulated financial undertakings.

- The Parliament's position makes a reference to ESAP by completing article 11a. The information related to due diligence obligations, included in the company's annual report, will be integrated on the ESAP platform, in the same way as the financial and extra-financial information already reported, and thus made accessible to investors and consumers.

Next steps:

The position of the JURI Committee still needs to be voted on in the Parliament's plenary session: the vote is expected to take place on 1 June 2023. The inter-institutional negotiations can then begin, as the Council already adopted its position in December 2022.

Rapporteur Lara WOLTERS (S&D, NL) is aiming for an agreement in trilogues before the end of 2023

21 April 2023 – ECB alerts on the low level of climate risks reporting from banks

On 21 April 2023, the European Central Bank, as a banking supervisor, published a [report](#) on practices and trends in environmental and climate-related risk reporting entitled "*The importance of being transparent*".

The ECB acknowledges that large European banks are publishing more data on their exposure to environmental and climate risks, but regrets that the quality of this information is still too low compared to the [technical implementation standards for ESG reporting](#), developed by the EBA and applicable from June 2023 in the EU.

The ECB report highlights the following figures:

- Out of 103 systemic and 28 medium-sized banking groups analysed in the report, 86% of the largest institutions disclose "*basic*" data on their environmental and climate risk exposure.
- According to the ECB, the quality of the data published is often insufficient. The supervisor estimates that only 6% of large groups disclose information in the five categories (materiality assessment, business model and strategy, governance, risk management, measures and targets) of data analysed.
- In particular, with regard to the amount of greenhouse gas emissions financed by European banks, half of the institutions report this figure. However, the ECB considers that in the vast majority of cases this information is incomplete, inaccurate and poorly substantiated.

Nevertheless, the ECB notes that European systemic banks are performing better in reporting on environmental and climate change risks than their counterparts in third countries.

Frank ELDERSON, Vice-President of the ECB's Supervisory Board, stated that "*European banks have made progress, but further improvements are needed quickly*".

Next steps: The ECB has announced that non-compliance with [EBA's new technical implementation standards on ESG reporting](#), applicable from June 2023, will constitute a breach of EU law and will lead to supervisory action where appropriate.

14 April 2023 – European Commission publishes its answer to ESAs regarding SFDR implementation

On 14 April 2023, the European Commission [published](#) a set of [responses](#), at the request of the European Supervisory Authorities (ESA), to facilitate the consistent implementation of the sustainability-related disclosures in the financial services sector [Regulation](#) (SFDR).

The purpose of this Q&A document is to assist financial sector actors in applying the Regulation, in particular with regard to the requirements of the regulatory technical standards in force since January 2023. These Q&As also help to clarify the interaction between the SFDR Regulation and the various elements of the Sustainable Finance Framework, including the EU Taxonomy Regulation. The Commission also provides clarification on the qualification of "sustainability" of an investment product.

Commissioner Mairead McGuinness, responsible for financial services and financial stability, explained that *"the implementation of the SFDR requirements is a challenge for the industry and regulators"* and that the Q&A will be able to offer guidance to facilitate the correct and harmonised implementation of the rules.

On 19 January, during a plenary debate on the investment practices of sustainable investment funds, MEPs asked the European Commission to clarify certain points in the SFDR regulation that could affect the usability of reporting data. Clarification is needed on certain provisions to prevent any risk of "greenwashing".

All responses are [available](#) on the ESMA website.

Next steps:

Commissioner Mairead McGuinness has announced the opening of a public consultation in autumn 2023 to assess the implementation of the SFDR regulation.

3 April 2023 – Finance Watch calls for additional harmonization between sustainable regulations

On 3 April 2023, Finance Watch [published](#) a position paper calling on legislators to harmonise the transition plan provisions between the various EU regulations currently under review relating to the prudential framework for financial institutions.

- **Risk of overlapping requirements and legal uncertainty**
The diversity of contexts and legal terms in which these requirements are drafted does not provide legal clarity for transition plans for banks and insurers. Consistency between the different requirements is needed to ensure that financial institutions do not have to prepare different versions of transition plans for the different purposes of risk management, due diligence and sustainability reporting.
- **Risk of unfair treatment**
Applying the requirements for transition plans to all European banks and insurers would create a level playing field and encourage virtuous behaviour.
- **Finance Watch proposes the introduction of a single EU-level disposition for transition plan requirements**
The introduction of clear and common requirements for transition plans between different EU regulations, both in CRR and Solvency II, would avoid overlaps with sustainability and due diligence reporting requirements, thus reducing legal uncertainties while allowing the "portability" of requirements from one financial sector to another.

Taxation incl. VAT and Legal Affairs

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Insolvency

25 April 2023 – Exchange of views in JURI Committee regarding the Insolvency directive

On April 25, 2023, the Legal Affairs Committee (JURI) of the European Parliament held an exchange of views on the [proposed](#) Insolvency Directive.

Pascal ARIMONT (EPP, BE), rapporteur for the JURI Committee on the text, opened the debate by presenting his position on the text and by stating his support for the European Commission's proposal. He welcomed the harmonization efforts to ensure consistency of insolvency rules at the European level and to facilitate access to capital for SMEs. However, he indicated that he had some questions about certain proposals:

- **Revocatory actions (Articles 4 to 10):** the rapporteur wonders about the period that should be maintained concerning the suspect period either the opening of the insolvency proceedings or the date of the interruption of payments. The rapporteur is concerned that these periods differ Member States and therefore calls for their harmonisation at European level in order to reduce legal uncertainty.
- **Simplified insolvency procedures for microenterprises (Title VI):** the rapporteur is concerned about the repercussions that a simplified liquidation procedure could have. Indeed, he estimates that between 80 and 90% of bankruptcies in Belgium are the result of enterprises falling into this category, which could be detrimental to them and provide less legal certainty. The rapporteur is therefore in favour of deleting this title.

The shadow rapporteurs on the text also presented their position in more detail:

- **René REPASI (S&D, DE):** the shadow rapporteur welcomed the European Commission's proposal, which should help foster cross-border investments, but indicated that he had concerns about some of the text's provisions:
 - **Pre-pack proceedings:** the shadow rapporteur welcomes this proposal but stresses that it is not widespread in all member states and that the relevance of introducing it in European law can be discussed.
 - **Simplified insolvency procedure for microenterprises:** the shadow rapporteur is concerned about the lack of qualified professionals to supervise these procedures, which could pose risks in the long run.
- **Yana TOOM (Renew, EE):** the shadow rapporteur welcomes a proposal that should provide more legal certainty for investors and creditors. She hopes that best practices in insolvency proceedings will be introduced in other Member States. However, she was cautious about the provisions on pre-pack proceedings and simplified insolvency procedures for microenterprises.

Finally, the European Commission has intervened to clarify certain provisions of the text:

- **Tatyana PANOVA**, member of the Directorate General for Financial Services, Financial Stability and Capital Markets Union (DG FISMA), emphasized that this text will reduce cost of capital for companies by harmonizing the 27 insolvency regimes. She also indicated that, in the long run, insolvency information could be introduced within the European Single Access Point (ESAP).
- **Andreas STEIN**, member of the Directorate General in charge of Justice and Consumers (DG JUST), indicated that the proposal would make it possible to protect creditors against actions that could reduce the insolvency estate. Moreover he indicated, that he preferred the date of opening of an insolvency procedure as reference date for the "suspect period". Finally, he emphasized that the pre-pack proceedings would protect the rights of employees.

Next steps:

A further exchange of views should take place at the end of June.

Late Payment Directive

19 April 2023 – European Commission refers Slovakia and Portugal to the CJUE

On 19 April 2023, the European Commission [referred](#) two Member States to the European Court of Justice for non-implementation of the [late payment Directive](#), which was enacted in 2011.

This referral follows the launch of two infringement proceedings in 2017, against Portugal and Slovakia respectively, for failing to correctly apply and ensure the correct application on their territory of the provisions of the late payment Directive.

The directive requires public authorities to pay their bills within 30 days and hospitals within 60 days. Portugal and Slovakia have repeatedly failed to meet their obligations.

In the case of Portugal, several public administrations reported particularly long payment delays in the Azores archipelago and Madeira. Moreover, the progress observed has been considered insufficient by the Commission since the start of the infringement procedure in 2017.

In Slovakia, several public hospitals failed to pay their suppliers.

Furthermore, the Commission indicated on the same day that it had sent several letters of formal notice and reasoned opinions to Belgium, Greece and Italy for not having correctly transposed or applied the Payment Time Directive.

Other topics of interest

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25 April 2023 - ECON Committee discusses regulatory divergences in the UK and its effects for the Union

On April 25, 2023, the European Parliament's Committee on Economic and Monetary Affairs (ECON) organized an exchange with Thorsten BECK and Christy ANN PETIT, authors of a [study](#) commissioned by the ECON Committee regarding the evolution of financial regulation in the United Kingdom and its impact on European regulation.

The authors of the study first presented their conclusions. They point out that, for the time being, the financial sector has been excluded from the main agreements signed between the United Kingdom and the European Union (Trade and Cooperation Agreement - TCA) and that the memorandum of understanding concerning financial services is currently on hold. However, academics note that recent advances in cooperation, particularly with regard to the situation in Northern Ireland, should allow progress on this issue. Both the Memorandum of Understanding (MoU) and the future "*regulatory forum*" should not, however, bring about key changes in the short term, but should rather be part of a long-term logic.

They also point out that, as it stands, the UK is not fundamentally changing the EU regulations that have been introduced into UK law, and recent statements by UK leaders seem to indicate that they wish to limit the level of regulatory divergence.

The authors highlight two key points driven by the "Edinburgh reforms": the transfer of a significant amount of financial regulatory power from legislators to UK supervisors (the Prudential Regulation Authority - PRA - and the Financial Conduct Authority - FCA) and the inclusion of ensuring the growth and global competitiveness of the UK financial sector as a secondary objective for supervisors.

Thorsten BECK and Christy ANN PETIT pointed out that as things stand, the European Union maintains a restrictive approach to equivalence with UK-based financial services. Indeed, the Commission has proposed in the context of the revision of the European Market Infrastructure Regulation (EMIR) to reduce the EU's reliance on UK-based central counterparties (CCPs).

Several MEPs had the opportunity to speak on the subject:

- **Danuta Maria HUBNER (EPP, PL)**, rapporteur for the ECON Committee on the review of the European Market Infrastructure Regulation (EMIR), **and Jonas FERNANDEZ (S&D, ES)** expressed concern that the mandates of UK regulators include the objective of ensuring the competitiveness of the financial sector. The authors of the study told them that :
 - The UK's approach to more flexibility and agility is a historic position and is shared by both the Conservatives and Labour;
 - A change in the governing party should not alter the UK government's position in favor of greater competitiveness for the financial sector.
 - Despite this new competitiveness objective, UK supervisors remain very committed to ensuring effective financial stability supervision.
- **Erik POULSEN (Renew, DK)**, shadow rapporteur on the EMIR review, warned of the risks to the European financial sector should the UK decide to adopt a more hostile approach to European financial institutions in its regulation. The MEP's intervention focused on two main points:
 - The MEP warned of the risk of the UK imposing greater obligations on European banks that clear with UK-based central counterparties.
 - He proposes the development of a joint recovery and resolution framework with the UK to supervise CCPs located in the UK.

Regarding the joint supervisory framework proposed by the MEP, speakers stressed that cooperation structures already exist between ESMA and the UK authorities, but that it remains to be determined whether this existing framework is sufficiently adequate.

- **Aurore Lalucq (S&D, FR)**, shadow rapporteur on the EMIR review, expressed alarm at the possibility that the UK might reduce the requirements for central counterparties (CCPs) in order to increase their competitiveness. Stakeholders were more cautious, however, and felt that, as it stands, regulatory divergence should remain at a low to medium level.



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