



Press Release

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EU bank resolution: 2019 risk disclosures are appropriate, but EU auditors highlight potential future risks

The European Court of Auditors (ECA) has an obligation to report each year on any financial risk arising, in particular from legal proceedings, relating to the Single Resolution Mechanism (SRM), the EU system managing the orderly winding-up of failing banks within the Banking Union. For the 2019 financial year, the Single Resolution Board (SRB) reported contingent liabilities relating to ongoing legal challenges. However, the auditors draw attention to the possible financial implications of certain subsequent legal judgments, as well as some arising from new judicial challenges.

The SRM aims to manage the winding-up of a failing bank with minimal negative impact on the real economy and on taxpayers. The SRB plays a central role in this mechanism, together with the European Commission, the Council and the national resolution authorities. The legal framework governing resolution is relatively new, and has created a complex and specific legal landscape for which no precedents exist. There are currently a number of legal disputes pending before EU and national courts in relation to the SRM Regulation.

Contingent liabilities and provisions reflect the financial risk to which an entity is exposed. For 2019, the SRB disclosed contingent liabilities amounting to €2 047 million, while the Commission and the Council did not disclose any. The contingent liabilities reported by the SRB relate to legal disputes against the contributions banks pay upfront (ex-ante) to finance the Single Resolution Fund (SRF). However, no possible outflow of resources was identified in relation to actual resolution decisions, because the SRB and the Commission considered this eventuality to be remote. The auditors saw no evidence that would contradict that assessment.

“In 2019, the SRB’s disclosure of financial risk was appropriate,” said Rimantas Šadžius, the member of the European Court of Auditors responsible for the report. “But a number of recent judgments and new legal cases may pose additional financial risks. Anticipating such risks is a principle of good and prudent administration of public money. This is why we recommend that the SRB should carry out a thorough reassessment of its risks for the 2020 accounts”.

In the light of a number of recent judgments by EU courts, the auditors noted that the SRB will have to reassess all pending and new judicial proceedings linked to the calculation of ex-ante contributions to the SRF. In particular, the General Court found that the legal framework for the

The purpose of this press release is to convey the main messages of the European Court of Auditors’ annual report on the SRM’s contingent liabilities. The full report is available at www.eca.europa.eu

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method used to make the calculation was unlawful in part. As some cases were notified to the SRB only recently, those should also be considered for the 2020 accounts, the auditors say.

Most pending legal cases connected with bank resolution at EU and national level are related to the resolution of Banco Popular Español in 2017. Applicants are seeking the annulment of the SRB's resolution scheme and the Commission's endorsing decision. Additionally, there are three actions before EU courts seeking the annulment of the SRB's non-resolution decisions for two ABLV banks and PNB Banka (all of them based in Latvia). Some applicants have brought pleas of illegality against the underlying legal framework, and damages claims against the EU. Against this backdrop, the auditors recommend that the SRB and the Commission consider all litigation cases for their final accounts, as well as any information that could lead to an outflow of resources.

Background information

On 15 June 2020, there were 107 cases pending before EU courts related to resolution and non-resolution decisions, 7 cases related to the no-creditor-worse-off principle (i.e. the treatment of creditors and shareholders under insolvency proceedings) and 23 cases against ex-ante contributions to the Single Resolution Fund. Furthermore, 2 112 cases at the national level were reported to the SRB.

This audit report deals exclusively with contingent liabilities arising as a result of the performance by the SRB, the European Commission and the Council of their tasks under the SRM Regulation for the 2019 financial year. It is available on the ECA website (eca.europa.eu) in 23 EU languages.

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