



Press Release

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EU's potential liability in winding up failing banks assessed as "remote", say Auditors

The Single Resolution Board (SRB) and the European Commission – in line with accounting rules – did not disclose any contingent liabilities potentially arising from ongoing judicial proceedings against their role in winding up failing euro area banks, according to a new report by the European Court of Auditors (ECA). At the same time, the SRB disclosed €90 million of contingent liabilities related to legal proceedings in EU and national courts, in which banks challenge their upfront ("ex-ante") contributions to the Single Resolution Fund (SRF).

When a bank in the euro area fails, the Single Resolution Mechanism (SRM) aims to manage the resolution process with minimal negative impact on the real economy and the taxpayer. The SRB is the central player under this mechanism (together with the Commission and the Council), and oversees the SRF, which can support bank resolutions.

At the end of 2018, there were over 100 outstanding judicial proceedings in EU courts against the SRB and the Commission concerning their bank resolution tasks, mainly related to the winding up of *Banco Popular Español S.A.* In accordance with applicable accounting rules, the SRB and the Commission would need to recognise liabilities or provisions, or disclose contingent liabilities in relation to these judicial proceedings in their accounts if they assessed the likelihood of an "outflow of economic resources" as "certain, probable or possible". However, this is not the case, and both the SRB and the Commission assessed the likelihood of such an event to be "remote". The auditors found no evidence that would contradict their assessments, but recommend that the SRB's process should be strengthened further.

The Commission stated that no applicants can have sustained a loss, given that the alternative course of action would have been the bank's insolvency. It also underlined that any shareholder or creditor that would have received better treatment under national insolvency proceedings will be compensated from the SRF. The SRB is currently verifying whether there were any such cases.

"Contingent liabilities and provisions reflect the financial risks to which the SRB, Council and Commission are exposed," said Ildikó Gáll-Pelcz, the ECA Member responsible for the report. "But at this stage, it is difficult to make any predictions concerning the outcome of the judicial proceedings for bank resolutions, mainly because of the complex and unprecedented situation."

The purpose of this press release is to convey the main messages of the European Court of Auditors' report. The full report is available at www.eca.europa.eu.

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Regarding the banks' ex-ante contributions to the SRF, the auditors say the SRB has made a fair effort to disclose the cases from the related legal proceedings as contingent liabilities. Nevertheless, shortcomings remain, as several national resolution authorities stated they were not in a position to assess whether contingent liabilities exist.

Notes to Editors

A contingent liability is a potential obligation that depends on the outcome of a future event, or one that is unlikely to lead to an outflow of resources or whose amount cannot be measured reliably. A liability or provision needs to be recognised if a future outflow is assessed as certain or probable, and a contingent liability needs to be disclosed if assessed as possible but not if assessed as remote.

The SRB and the Council defined "remote" as the probability of such an event being below 10%, while the Commission's ceiling is 20%. All three bodies further defined "possible" as a probability of up to 50%. The Council is not involved in any legal challenges related to its bank resolution tasks, and so did not have any reason to disclose contingent liabilities.

The SRB and the SRF are entirely financed by the banking sector. The SRF has so far not been used for bank resolutions. As no judgments have yet been made in the resolution cases, there is therefore no case law at EU level.

The ECA's report on contingent liabilities arising as a result of the SRB, Council or Commission performing their tasks under the regulation governing the SRM for the financial year 2018 is available on the ECA's website (eca.europa.eu) in 23 EU languages.

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