

Feedback on the input provided by the European Parliament as part of its “Resolution on Banking Union – Annual Report 2018”

ECB Banking Supervision appreciates the feedback provided by the European Parliament in its “Resolution on Banking Union – Annual Report 2018”¹ (hereafter “the Resolution”) of 16 January 2019. In line with the standard practice established for the European Parliament’s annual resolutions on the banking union, this document comprises ECB Banking Supervision’s reply to the comments and suggestions provided by the European Parliament, underscoring ECB Banking Supervision’s strong commitment to accountability.

1. Risks in the financial system

1.1 Brexit

The Resolution (in paragraph 14) stresses the importance of banking supervisors being prepared for all possible outcomes in the Brexit negotiations between the EU27 and the United Kingdom. It also calls on the European Commission and supervisory authorities to perform a comprehensive analysis of the impact of Brexit and calls on the EU27 to deepen common regulation and common supervision while enhancing the depth and breadth of the capital markets within the EU27.

Since the UK referendum on leaving the EU took place in 2016, the ECB has been conducting an ongoing analysis of the impact of Brexit and Brexit-related risks from a supervisory perspective. The ECB has been in close contact with the most exposed banks, including banks that have their headquarters in the euro area and operate in the United Kingdom as well as international banks seeking to relocate their activities from the United Kingdom to the euro area.

To promote a consistent approach to Brexit, ECB Banking Supervision launched a project covering the entire Single Supervisory Mechanism (SSM), with a view to ensuring that banks and supervisors are properly prepared. In the context of this project, the ECB and national supervisors together developed supervisory expectations (which were communicated publicly through FAQs²) to make sure that Brexit-related issues are dealt with in a consistent manner throughout the SSM. Among the issues that have been dealt with are the assessment of booking models as well as internal governance and risk management, with a view to avoiding a situation in which institutions have only minimum capabilities in the euro area and extensively outsource their activities in the EU to entities based in non-EU countries.

¹ http://www.europarl.europa.eu/doceo/document/TA-8-2019-0030_EN.pdf.

² <https://www.bankingsupervision.europa.eu/banking/relocating/html/index.en.html>

In line with the Resolution, ECB Banking Supervision has been emphasising for some time that banks should plan for all possible contingencies, including a no-deal scenario leading to a hard Brexit. Euro area supervisors have also prepared themselves, e.g. by setting up additional joint supervisory teams for new significant institutions and making arrangements to allow for continued cooperation and information exchange with the UK authorities after Brexit. Supervisors will continue to closely follow banks' implementation of their Brexit plans and monitor their adherence to supervisory expectations.

Throughout the Brexit process, the ECB has been assessing the risks to the euro area economy and financial system and preparing for all possible outcomes, including a no-deal scenario. The ECB has also worked with the Bank of England to assess risks in the area of financial services in a no-deal scenario under the auspices of a technical working group chaired by the ECB President and the Governor of the Bank of England.³ The ECB welcomed the adoption by the European Commission and the European Securities and Markets Authority (ESMA) of temporary and conditional equivalence and recognition for central counterparties, which would mitigate cliff-edge risks with respect to cross-border clearing services. These measures are in line with the ECB's analysis of possible areas of vulnerability in the event of a no-deal Brexit. In other areas, such as uncleared over-the-counter derivatives transactions, cross-border insurance contracts and the transfer of personal data, the ECB's analysis has found that there are means available to the private sector to mitigate financial stability risks. For this reason, the ECB has consistently maintained that primary responsibility for preparing for Brexit should remain with market participants and has repeatedly encouraged financial institutions to prepare for all possible contingencies, including a no-deal Brexit.⁴

The ECB supports the European Parliament's call to deepen common regulation and common supervision. The authorisation and supervision of branches of third-country institutions, for example, is still based on national legislation. The ECB believes that there is a need for harmonisation in this area to ensure that material risks are addressed consistently and to prevent regulatory arbitrage.⁵

Regarding the capital markets union (CMU) agenda more broadly, the ECB and the Eurosystem as a whole have been strong supporters of the CMU project since its inception, as expressed in the response to the Commission's 2015 Green Paper on Building a Capital Markets Union⁶, as well as in the

³ See "Statement: ECB and BoE convene joint technical working group on Brexit-related risks", press release, ECB, 27 April 2018, and the remarks by Mario Draghi, President of the ECB, at the press conference on 24 January 2019.

⁴ For an assessment of the risks to the euro area financial sector from a disruptive hard Brexit, see *Financial Stability Review*, ECB, November 2018 and May 2019.

⁵ See "[OPINION OF THE EUROPEAN CENTRAL BANK of 22 August 2018 on the review of prudential treatment of investment firms \(CON/2018/36\)](#)"

⁶ https://www.ecb.europa.eu/pub/pdf/other/150521_eurosystem_contribution_to_green_paper_-_building_a_cmuen.pdf

contribution to the European Commission's 2017 consultation on the Capital Markets Union mid-term review⁷. The CMU project has the potential to boost economic growth, reduce barriers to cross-border investment, broaden sources of financing in the EU, and promote cross-border private risk-sharing, thereby benefiting EU citizens and the EU economy. A lack of progress and ambition in this area will significantly impair the EU's growth potential, as well as the capacity of the financial system to share risks across Member States through private channels.

1.2 Non-performing loans

In the Resolution (paragraph 16), the European Parliament takes note of the ongoing negotiations on the non-performing loan (NPL) package and notes the ECB addendum on NPLs and the work of the European Banking Authority (EBA) on guidelines on management of non-performing and forborne exposures. It also welcomes the reduction in the volume of NPLs over the past years; reiterates its concern that the total number, and proportion, of non-performing loans and of Level 2 and Level 3 instruments remains well above average in some Member States, while stressing that the risk to financial stability posed by NPLs is still significant but nevertheless lower than it was a few years ago, and agrees with the Commission that the primary responsibility for reducing NPLs lies with the Member States – notably through efficient insolvency laws – and banks themselves, but emphasises the interest of the EU to reduce the share of NPLs.

The NPL package has recently been completed with the approval and publication of the amendments to the Capital Requirements Regulation (CRR), known as the “Pillar 1 backstop”. The ECB has fully supported this approach, which addresses the coverage expectations for NPLs of credit risk exposures originated after the entry into force of the amendments (26 April 2019).

Following the amendment to the CRR regulation establishing minimum loss coverage for non-performing exposures (NPEs), the ECB has decided to revise its supervisory expectations for prudential provisioning of NPEs specified in the Addendum to the NPL Guidance. The revision follows the ECB's commitment to reconsider supervisory expectations for new NPEs once the new legislation on the Pillar 1 treatment of NPEs had been finalised.

In order to increase the consistency and simplicity of the overall approach to NPEs, reducing the reporting burden for banks, the scope of the ECB's supervisory expectations for new NPEs will be limited to NPEs arising from loans originated before 26 April 2019, which are not subject to the Pillar 1 NPE backstop. NPEs arising from loans originated from 26 April 2019 onwards will be subject to the Pillar 1 backstop, with the ECB paying close attention to the risks arising from them.

⁷ https://www.ecb.europa.eu/pub/pdf/other/ECB_contribution_to_EC_consultation_on_CMU_mid-term_review_201705.en.pdf

Furthermore, the relevant prudential provisioning time frames, progressive path to full implementation and split of secured exposures for NPEs arising from loans originated before 26 April 2019 have been aligned with the Pillar 1 NPE backstop.

Supervisory expectations for the stock of NPLs (i.e. loans classified as NPL on 31 March 2018) remain unchanged, as communicated in the SREP letters to banks and in the press release in July 2018.

NPL reduction is, and will continue to be, one of the ECB's key priorities, and banks have already made significant progress in reducing their legacy NPLs, with the NPL ratio of significant institutions falling from 8% in 2014 to 3.7% at the end of March 2019 (or, in terms of volume, from EUR 1 trillion to EUR 587 billion).

The ECB continues to fully support the initiatives of the July 2017 Council conclusions on the action plan to tackle NPLs, welcomes the good progress made, and encourages all stakeholders to complete the remaining parts of the action plan. The ECB has also played its part, contributing in particular to the guidelines on management of NPLs which were published by the EBA on 31 October 2018 and will be applicable to all credit institutions in the EU. In addition, the ECB has contributed to the exploratory work on the development of secondary markets for NPLs via platforms, which would allow banks more easily to manage or sell bad loans. The ECB is strongly supporting this promising concept, which has received very positive feedback from market participants, on both the buy and the sell side. The transaction platforms have considerable potential to improve pricing and trading volumes in markets for NPLs, while relying primarily on private enterprise and steering clear of State aid. At the same time, further work on operationalising this concept, including liaising with market participants, is needed. In this context the ECB welcomes the proposed steps to harmonise rules on how non-credit institutions can buy credit agreements from banks, which should remove obstacles preventing the transfer of NPLs from banks to non-credit institutions. This would contribute to addressing the risks related to high stocks of NPLs in Europe.

1.3 Internal models

The Resolution (paragraph 17) expresses concern about the wide use of internal models by banking institutions and calls on the SSM and the EBA to continue their work on the adequacy of internal models in order to establish their credibility and achieve a level playing field across institutions.

Since the start of the SSM, supervision of internal models has been high on the ECB's agenda. A dedicated large-scale project (the targeted review of internal models, or TRIM) was launched in early 2016 with the aim of confirming the adequacy of the internal models used by the institutions directly supervised by the ECB. TRIM is conducted in close cooperation with the national competent authorities (NCAs) and is expected to involve around 200 on-site investigations conducted at about 65 institutions over 2017-19, covering all internal models for market risk and counterparty credit risk, as well as the most

material and critical models for credit risk. The inspection teams use common investigation techniques and the results of the review are subsequently subject to several layers of quality assurance to further ensure consistently high supervisory standards across institutions. In the context of TRIM, the ECB produced a guide to internal models to provide transparency on how the ECB understands the current applicable regulatory requirements for internal models. Against this background, and with supervisory decisions having been communicated to the respective institutions for almost half of the investigations completed so far, TRIM has already contributed significantly to ensuring a level playing field in the area of internal models and to reducing the non-risk-based variability of capital requirements.

While the impact of TRIM will extend beyond the limited timeline of the project, it is not the only initiative related to the harmonisation of internal model supervision. The ECB continues to fulfil its regular responsibilities in the field of internal model supervision, and there are a number of other activities through which the ECB can further foster a level playing field in the area of internal models, complementing and reinforcing the work done within TRIM. These include:

- Strengthening off-site supervision of internal models by providing the line supervisors in the Joint Supervisory Teams (JSTs) with effective tools and information to conduct the ongoing model monitoring. There is an initiative to develop reporting instructions for internal validation functions in order to both promote more uniform reporting of institutions' validation results, and to define common metrics for assessing the performance of internal models across the SSM. Following a one-year pilot project on credit risk reporting, the reporting instructions and template have been updated with a view to regular reporting by significant institutions starting in the second half of 2019.
- Participating in international regulatory and supervisory discussions, as a means of contributing to improving the quality and consistency of internal model practices in the medium term. ECB staff are actively involved in ongoing international initiatives, participating in international working groups at the Basel Committee on Banking Supervision and the EBA, for example, and preparing for the implementation within the SSM of new regulatory requirements such as the EBA's internal ratings-based repair programme (involving a new definition of default, and the implementation of the EBA Guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures).

1.4 Money laundering

The Resolution (paragraphs 9 and 12) emphasises that the European Parliament is deeply concerned that some cases of bank failure raised issues concerning the enforcement of anti-money laundering rules in the banking union. In this regard, it welcomes the Commission proposal to strengthen the role of the EBA in the fight against money laundering in the financial sector and calls on the co-legislators to adopt the proposal without undue delay. The Resolution urges the need for enhanced cooperation and

information-sharing between national supervision authorities based on common standards within the EU and subject to EU-level coordination and support where national authorities are overwhelmed

Involvement in money laundering or terrorist financing can pose a significant risk to a bank, and can even ultimately threaten its viability. For this reason, the ECB, within the remit of its prudential supervisory functions, takes the prudential implications of money laundering risks very seriously. The ECB is not responsible for enforcing legislation on preventing the use of the financial system for the purpose of money laundering or terrorist financing. That task rests with national authorities responsible for anti-money laundering/countering the financing of terrorism (AML/CFT). The ECB depends entirely on the information provided by national AML/CFT authorities (directly or indirectly via national prudential supervisors). It is therefore of the utmost importance that the ECB, as well as other prudential supervisors, receive from AML/CFT supervisors timely and reliable information about risks to and breaches of AML/CFT requirements on the part of supervised entities. At the same time, the ECB is fully committed to convey to AML/CFT authorities all the information gathered or created in the performance of its prudential supervision, that might be relevant and necessary for their tasks in the area of AML/CFT.

In line with this objective, ECB staff actively participated in the Joint Working Group that was convened by the European Commission to assess ways of strengthening the cooperation between AML/CFT authorities and prudential supervisors, and of improving the integration of AML/CFT considerations into prudential supervision, two objectives that the ECB broadly supports.

On 10 January 2019 the ECB signed an agreement on the exchange of information between the ECB and the AML/CFT supervisors in the European Economic Area, as mandated by the 5th AML Directive, and has already started exchanging information under that framework.

The ECOFIN AML Action Plan suggests that the ECB could ensure that practical arrangements be put in place to allow it to consistently factor AML/CFT concerns into the performance of its supervisory tasks. To further improve its supervisory capabilities on issues linked to AML, the ECB is creating an AML coordination function. This coordination function will facilitate exchanges of information between the ECB and national AML/CFT supervisors, coordinate the JSTs with regard to supervisory AML/CFT-related matters, and chair a network of SSM NCA experts as a forum for discussing the prudential implications of risks related to money laundering and the financing of terrorism.

Looking ahead, a more European approach to combatting money laundering and the financing of terrorism is needed. Since money laundering is often a cross-border phenomenon, weaknesses in implementing AML/CFT rules in one Member State can have negative effects in other Member States. Greater harmonisation of the applicable rules could therefore be considered.

1.5 Shadow banking

The European Parliament remains concerned about the extent of shadow banking in the EU and recalls that at the end of 2017 it was estimated to account for around 40% of the EU financial system (see paragraph 20 of the Resolution).

It should be stressed that an increase in market-based finance can help diversify the funding base of the real economy. It also gives investors greater choice and enables them to benefit from the diversification effects offered by investment products. These benefits are some of the motivations behind the capital markets union project.

At the same time, there is a growing need for greater vigilance with regard to the risks that may arise in the non-bank sphere. The ECB is aware of this need and closely monitors leverage, liquidity, procyclicality and interconnectedness in the non-bank financial sector.⁸ However, the lack of a comprehensive macroprudential framework for non-banks constitutes a significant gap in the regulatory framework. In order to provide the authorities with the means to address risks at the system level, the macroprudential toolkit should be extended to the non-bank financial sector.

2. Crisis management procedures, stress tests and supervisory approach

2.1 The memorandum of understanding between the ECB and the SRB

The Resolution (paragraph 30) welcomes the revised memorandum of understanding (MoU) between the ECB and the Single Resolution Board (SRB) and stresses that a streamlined and in some cases automated exchange of information increases efficiency and helps to ensure that the reporting burden on banks is kept to a minimum.

The updated MoU signed in 2018 by the ECB and the SRB takes into account the experience gained in the first two years of its implementation and addresses the practical challenges encountered, in particular in the exchange of information between the ECB and the SRB on a day-to-day basis.

2.2 The ECB's "failing or likely to fail" assessments

In the Resolution (paragraph 9 and 25), the European Parliament stresses the need to improve the response times of European banking supervision in the context of "failing or likely to fail" (FOLTF) assessments. It further considers that the harmonisation of practices concerning the assessment of whether a bank is failing or likely to fail as well as a clearer distinction between supervisory powers and early intervention powers would help to make crisis management by competent authorities, prior to

⁸ See, for example, the ECB's Financial Stability Review, May 2019.

resolution, more effective. The Parliament also reaffirms its position that the rules for precautionary recapitalisation need to be clarified and notes that, while precautionary recapitalisation can be an instrument for crisis management, its use should be strictly limited to exceptional cases where the bank is compliant with the harmonised minimum regulatory capital levels and therefore solvent and where compliance with EU State aid rules is ensured.

The ECB has established a crisis management framework, the SSM Emergency Action Plan, which ensures a timely and effective response to a crisis (including a timely FOLTF assessment). The framework covers three stages of escalation, namely: (i) enhanced monitoring of an institution, (ii) preparation for early intervention, and (iii) preparation for a potential FOLTF assessment.

Under the crisis management framework defined by the Single Resolution Mechanism Regulation (SRMR) and the Bank Recovery and Resolution Directive (BRRD), there is a lack of clarity as to whether the ECB or the NCA is responsible for making FOLTF assessments for cross-border less significant institutions.⁹ Clearly allocating the respective competences in the SRMR to the responsible NCA would help to further strengthen the EU crisis management framework.¹⁰

Over the course of 2018, the ECB crisis management framework was further improved. In line with the recommendations made by the European Court of Auditors (ECA), an extended set of qualitative and quantitative indicators was incorporated into the framework to define the transition from one stage to the next. These include indicators related to capital, liquidity and significant events, as well as indicators defined in each bank's recovery plan. For the quantitative indicators, clear thresholds have been defined. Moreover, irrespective of the indicators, escalation can also be based on supervisory expert judgement.

The EBA guidelines on interpreting the circumstances in which an institution is to be deemed failing or likely to fail (EBA/GL/2015/07) set out a harmonised list of objective elements to support the determination that an institution is FOLTF. The guidelines also clarify that an institution should not automatically be deemed FOLTF if one such objective element is identified. On the contrary, in each case, the FOLTF assessment should be carried out on the basis of a comprehensive assessment of both qualitative and quantitative objective elements, taking into account all other circumstances and information relevant for the institution.

Regarding the issue of early intervention measures, the ECB agrees that there is a need to enhance the effective use of such measures, which has proven to be challenging under the current legal framework.

⁹ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund; and Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

¹⁰ See also ECB opinion of 8 November 2017 on the revisions to the Union crisis management framework (CON/2017/47).

The ECB has identified two main areas where amendments to the legal framework are needed and has made appropriate recommendations in its Opinion on revisions to the Union crisis management framework (CON/2017/47).

First, there is a significant overlap between the supervisory measures provided for in the Capital Requirements Directive (CRD IV) and the SSM Regulation, and the early intervention measures provided for in the BRRD. The overlap applies both to the content and the conditions for the application of the measures. This overlap creates significant challenges for the practical implementation of the early intervention framework, particularly in view of the lack of clarity regarding the conditions for early intervention. Second, the ECB must exercise its early intervention powers on the basis of national transpositions of the BRRD. This results in uncertainty and inconsistency regarding the available measures and the conditions for their application in different Member States. Consequently, the ECB recommends: (i) removing from the BRRD those early intervention measures that are already provided for in CRD IV and the SSM Regulation; and (ii) amending the SRMR in order to provide a direct legal basis for the ECB's early intervention powers in order to facilitate their consistent application.

2.3 Liquidity in resolution

The European Parliament stresses the importance of access to liquidity for banks in resolution, both during and immediately after resolution proceedings, and follows with interest the ongoing debates on a possible tool for the provision of liquidity in resolution (paragraph 27).

The ECB has on several occasions stressed the importance of addressing liquidity provision to banks in resolution and in May 2018 put forward a proposal to use European-level guarantees for this purpose. In December 2018, the Euro Summit agreement acknowledged that liquidity provision in resolution is crucial to enhance and support the credibility of the resolution framework and, hence, of the whole banking union. Against this background, discussions have continued in various EU fora with the aim of fulfilling the mandate given to the Eurogroup to make a proposal to address the issue by December 2019. The ECB is actively involved in these discussions.

2.4 Stress tests and Level 2 and Level 3 instruments

The Resolution (paragraph 10) notes the results of the EBA's EU-wide stress test and welcomes the inclusion of Level 2 and Level 3 instruments in the scope of the 2018 stress tests. The European Parliament believes that stress tests should be interpreted in combination with other ongoing supervisory monitoring activities, calling on the SSM, the EBA and the European Systemic Risk Board to use consistent methodologies when defining stress tests in order to ensure a high level of transparency and to prevent possible distortions.

The ECB has focused more closely in recent years on the valuation risk that characterises complex assets and liabilities assessed at fair value, such as Level 2 and Level 3 instruments, and it identified

“trading risk and asset valuations” as a supervisory priority for 2019. In addition to the inclusion of Level 2 and Level 3 instruments in the 2018 stress tests, a series of coordinated off-site and on-site initiatives are being undertaken with the aim of identifying the portion of banks’ portfolios characterised by ex-ante high valuation risk, and assessing banks’ accounting and prudential frameworks to properly account for complex instruments.

The ECB notes that stress tests are combined with other ongoing supervisory monitoring activities. Stress tests are one tool for supervisors to assess the resilience of financial institutions to adverse market developments. As such they contribute to the annual overall Supervisory Review and Evaluation Process (SREP) to ensure institutions’ capital and liquidity adequacy, as well as sound risk coverage and internal processes.

As regards the call for the use of consistent methodologies for stress tests to ensure a high level of transparency, the ECB notes that the EBA defines a common methodology as well as minimum quality assurance guidance for competent authorities. Before every stress test, the applicable methodology is discussed with both representatives from supervisory authorities and industry representatives.

2.5 Proportionality

The Resolution (paragraphs 6 and 7) stresses that the Basel Committee on Banking Supervision (BCBS) standards should not be enacted wholesale into European law without taking proper account of the specific characteristics of the European banking system and of the proportionality principle. The European Parliament considers that one of the aims of the banking union, besides ensuring financial stability, should be, keeping in mind the proportionality principle, to preserve the diversity of sustainable EU banking models and to avoid guiding the European banking system towards a single model or disproportionately penalising smaller banks, as this diversity enables the requirements of citizens and of their projects to be met, as well as acting as a diversification tool, a key feature to cope with potential shocks.

The ECB supports the full, timely and consistent implementation of the Basel standards and agrees that regulation that is proportionate and well-aligned to the size and complexity of banks allows for a diverse and sound banking sector. Proportionality is already embedded in the current framework, in the form of simpler approaches to measuring risks and reduced reporting requirements, for example. The introduction of a common definition for small and non-complex banks in the Capital Requirements Regulation, as well as the mandate for the EBA to propose amendments to reporting requirements following its assessment of the related costs and benefits, are expected to further promote a more consistent application of the principle of proportionality and reduce the administrative and operational burden for smaller and non-complex banks. It is important that more tailored approaches for smaller banks do not compromise their safety and do not impede supervisors’ ability to receive appropriate

information from the institutions, as their capacity to conduct forward-looking supervision must be preserved. It should also be noted that smaller banks, taken together, can pose large risks to the financial system and need to remain resilient during an economic downturn in order to continue to provide credit to the economy.

In terms of its supervisory approach, the ECB extensively follows the principle of proportionality both when directly supervising significant institutions (SIs) and in its oversight tasks related to less significant institutions (LSIs). The ECB does not per se promote any specific business model, but rather seeks to ensure that banks are sound and sustainable over time.

For SIs, the ECB tailors the intensity and frequency of supervisory activities and measures to the institutions' risk profile, measured by their potential impact on the financial system and the riskiness as assessed in the SREP. The minimum level of supervisory engagement with each SI depends on the size, risk profile and complexity of the institution in question. The ECB thus follows a proportionate, risk-based and consolidated supervisory approach, in which the engagement and intensity of supervision vary. This in practice translates into, for example, less frequent and shorter on-site missions, less intensive off-site supervision, smaller JSTs and reduced reporting requirements.

Regarding the ECB's oversight tasks, the ECB assigns priority rankings to LSIs according to a methodology agreed with the NCAs. This methodology classifies LSIs into high, medium and low priority, based on the impact of the LSI on its domestic financial system and the intrinsic riskiness of the LSI. It is subject to an annual review in cooperation with NCAs to ensure that the list for each category is adequately maintained. This classification of LSIs is reflected in the intensity of the notifications and reports from NCAs to the ECB on the performance of their supervisory tasks on LSIs (for example, NCAs are only requested to notify the ECB of supervisory decisions that are material and concern high-priority LSIs). Hence, low priority banks are subject to oversight of supervision, but less intensively than medium or high-priority banks.

3. Transparency, accountability and separation

3.1 Audits by the European Court of Auditors (ECA)

The Resolution (paragraph 29) welcomes the conclusion of the ECA in its report on the operational efficiency of the ECB's crisis management for banks, and recalls that cooperation and exchange of information between authorities are essential for the smooth implementation of resolution measures.

The ECB has benefitted from the ECA's external perspective on what can be further improved in relation to crisis management practices. To address the potential improvements identified in ECA's findings, the ECB has developed and executed precise follow-up measures. In this context, escalation procedures

within the crisis management framework have been refined with an extended set of qualitative and quantitative indicators to define the transition from one crisis stage to another. The quantitative indicators are in line with EBA guidelines for early intervention and FOLTF, and include i.a. items related to capital and liquidity, as well as to significant events. For quantitative indicators, clear thresholds have been defined for determining a potential deterioration in a credit institution's financial condition. These indicators are monitored centrally by the ECB's Crisis Management Division. Institution-specific indicators and thresholds, such as those defined in each bank's recovery plan, are considered in the framework. Irrespective of the indicators, escalation can also be based on expert judgement by the JSTs and the ECB's Crisis Management Division.

The ECA's audit on the operational efficiency of the ECB's crisis management also made findings on the SSM's cooperation and information exchange with the SRB. In response to these findings, the Memorandum of Understanding (MoU) between the ECB and the Single Resolution Board has been revised in 2018. This new MoU promotes enhanced and streamlined cooperation and information exchange between the ECB and SRB.

The ECB highly values the audits conducted by the ECA. It is committed to cooperating closely with the ECA and providing it with all the information needed to facilitate its work. In the light of the Treaty provisions concerning the scope of the ECA's mandate to audit the ECB, in 2017 the Commission suggested that the ECB and the ECA conclude an interinstitutional agreement to "specify the modalities of information exchange". An agreement to establish a Memorandum of Understanding (MoU) for information sharing between the ECB and the ECA has now been reached, and will be signed by both parties in October 2019. This agreement is a sign of the good-will between both parties and of the shared intention to co-operate constructively in the context of ECA audits on ECB banking supervision.

3.2 Transparency of ECB decisions

The European Parliament believes that decisions by the supervisory and resolution authorities must be coherent, properly explained, transparent and made public. It also urges the supervisory and resolution authorities to be as restrictive as possible in applying the provisions that allow them to refuse access to documents (see paragraph 8 of the Resolution).

ECB Banking Supervision is fully committed to transparency and fulfilling its accountability obligations and has made significant efforts to increase the transparency of ECB decisions within the constraints of confidentiality and professional secrecy requirements. For the purpose of transparency and accountability, and given the general public interest, the ECB publishes non-confidential versions of failing-or-likely-to-fail (FOLTF) assessments on its website. In order to comply with professional secrecy obligations, confidential information is not disclosed. The publication of non-confidential FOLTF assessments is an exception to the general communications policy of the ECB, which, in line with legal

requirements, does not provide for the publication of individual supervisory decisions or assessments that are protected by professional secrecy rules. However, ECB Banking Supervision does publish individual supervisory decisions where there is a legal basis to do so; for example, decisions permitting supervised entities to include in Common Equity Tier 1 capital instruments subscribed by public authorities in emergency situations¹¹ are published on the ECB Banking Supervision website, as are ECB decisions imposing penalties on supervised entities.

More broadly, transparency is ensured through the ECB's public access regime. The ECB's Decision on public access to ECB documents is in line with the objectives and standards applied by other EU institutions and bodies with regard to public access to their documents. The ECB invokes exceptions to providing public access to ECB documents restrictively, and in line with established European case-law. The ECB also has to comply with professional secrecy requirements imposed on it by the European legislator¹², which prevent the ECB from disclosing, among other things, information received from supervised entities as well as any supervisory assessment made on the basis of that information, and any steps taken with respect to an individual credit institution. This approach ensures transparency, while at the same time taking into account the independence of the ECB and the NCAs and ensuring that certain matters specific to the performance of the ECB's tasks remain confidential.

3.3 Separation of supervisory and monetary policy role

In the Resolution (paragraph 21), the European Parliament recalls the initial debate on the role of the ECB as both monetary and supervisory authority and considers that, overall, the ECB has succeeded in keeping the two roles separate. It also believes, however, that further debate is necessary to avoid the risk of a conflict of interests between the two tasks. Finally, it stresses the importance of the cooperation between the EBA as a regulatory authority and the SSM as a supervisory authority within the banking union, while respecting the division of responsibilities.

The ECB prevents conflicts of interests between monetary policy and supervisory responsibilities by fully implementing the separation principle: the ECB ensures a separation of objectives, decision-making processes and tasks.

The ECB carries out its supervisory tasks without prejudice to and separately from its tasks relating to monetary policy and any other tasks. The staff involved in carrying out supervisory tasks are organisationally separate from the staff involved in carrying out other tasks conferred on the ECB and are subject to separate reporting lines. The Governing Council ensures a complete separation of its monetary policy and supervisory functions, including strict separation of meetings and agendas.

¹¹ under Article 31 CRR

¹² in particular in Article 27 of the SSM Regulation and Article 53 et seq. of the CRD IV

At the same time, effective separation between the monetary policy and supervisory functions should not prevent the ECB from reaping, wherever possible and desirable, all the benefits to be expected from combining these two policy functions in the same institution. The ECB therefore has to ensure that mechanisms are in place to allow an adequate flow of data and other confidential information between the two policy functions within a clear and strict framework.

ECB Banking Supervision works closely with the EBA towards their shared objectives of increasing financial stability and promoting consistent supervision across the European banking sector. ECB Banking Supervision actively contributes to the EBA's work at all levels. For example, in 2018 ECB staff participated in a total of 50 EBA committees and work streams, taking the role of chair or co-chair in four of these. The ECB participates as a non-voting member in the EBA Board of Supervisors, and the EBA Chair can be invited to the ECB Supervisory Board meetings as an observer for specific items. The EBA also participates in a number of SSM networks and working groups as appropriate. A structured dialogue between the EBA and the ECB has been established, which entails regular meetings at Chairs' level and at Senior Management level.