

MEMO# 33497

April 24, 2021

European Commission Endorses Final Regulatory Technical Standards on Contractual Recognition of BRRD Resolution Stays

[33497]

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Trading and Markets RE: European Commission Endorses Final Regulatory Technical Standards on Contractual Recognition of BRRD Resolution Stays

As expected, the European Commission (EC) has endorsed final regulatory technical standards (RTS) on the contractual recognition of stay powers under the European Bank Recovery and Resolution Directive (BRRD). The RTS will be deemed adopted, following a three-month no-objection period. After that, the RTS will enter into force 20 days after publication in the Official Journal of the European Union.

Background

In June 2019, the EU adopted final amendments to moratorium powers under the BRRD. The amendments included a provision on cross-border recognition of resolution stays for financial contracts subject to third-country laws. EU member states must require EU banks to include, in financial contracts governed by third-country law, terms by which the parties recognize that the contract may be subject to the exercise of moratorium powers by resolution authorities, as if the contract were governed by the law of the relevant member state. The amendments to the BRRD required the European Banking Authority (EBA) to develop draft RTS to determine the contents of this requirement. Last May, the EBA launched a consultation requesting feedback on its draft RTS, and in December, the EBA published final draft RTS.[\[1\]](#)

Final RTS

The final RTS endorsed by the EC are substantially similar to the final draft RTS published by the EBA in December.^[2] The RTS, like the draft RTS, do not provide for grandfathering of existing financial contracts that reference stay powers, or provide for a longer implementation period. When it issued the final draft RTS, the EBA acknowledged commenters' concerns about the time that may be needed for repapering of contracts and, potentially, the development of revised industry protocols, but noted that "the timing of the requirement to include the contractual recognition term for stay powers is regulated by the transposition into national law of BRRD2, for which the deadline is 28 December 2020." The EC does not discuss this implementation issue, which we expect could be addressed by national competent authorities in connection with member state transposition of these.

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endnotes

^[1] See ICI Memorandum No. 32996 (Dec. 18, 2020), available at <https://www.ici.org/memo32996>.

^[2] Id.

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