EUROPEAN CENTRAL BANK
EUROSYSTEM

Call for papers

Application deadline: 3 February 2020

Legal Research Programme 2020

The European Central Bank (ECB) is seeking applications from established scholars or promising early-career researchers for up to six legal research scholarships to be awarded in 2020. The Legal Research Programme (LRP) was launched in 2008 to foster analysis of areas of law relevant to the ECB's statutory tasks, and to establish closer contacts with scholars. The LRP scholarships will be awarded in two categories.

The first category of applicants (the 'Junior Scholars') includes scholars who are doctoral candidates or obtained their doctoral degree no earlier than 1 January 2018. The second category of applicants (the 'Senior Scholars') includes all scholars whose academic qualifications do not meet the criteria for inclusion in the Junior Scholars category.

Each scholarship is endowed with a grant of EUR 6 000 (for Junior Scholars) or EUR 8 000 (for Senior Scholars), which is not compatible with any other fellowships or grants received from third parties in relation to the same research project, unless the ECB expressly consents to this.

Research projects

Applicants who are awarded a scholarship under the LRP (the 'Scholars') will be required to write a research paper during 2020 on one of the following research topics.

1. ### Enforcement of fines and other pecuniary obligations imposed by the ECB: Union and national law aspects

   On the basis of Article 34(3) of the Statute of the ECB and of the European System of Central Banks, and within the limits and under the conditions laid down by Council Regulation (EC) No 2532/98, the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. Additional rules on the ECB's exercise of its powers to impose sanctions are set out in ECB Regulation (EC) No 2157/1999. For example, the ECB imposes sanctions in the context of its supervisory tasks, and in the event of non-compliance with its statistical reporting requirements or minimum reserve requirements. The ECB may also impose pecuniary obligations other than sanctions, such as supervisory fees.

   The regime applicable to the enforcement of fines and other pecuniary obligations imposed by the ECB has received scant attention to date. Article 299 of the Treaty on the Functioning of the European Union (TFEU) provides that pecuniary obligations imposed by the ECB are enforceable. This provision sets out certain procedural rules and requires enforcement to be governed by the rules of civil procedure in force in the State in the territory in which it is carried out. This hybrid legal regime for enforcement merits further legal research. Which aspects are governed by Union law and which by national law? Are the various national regimes comparable? Which authorities are involved in the different Member States? What procedural requirements apply to the ECB? Which pecuniary obligations are covered? More generally, what is the role of the ECB in this context and what role is played by the Eurosystem national central banks and the Single Supervisory Mechanism (SSM) national competent authorities? What falls within the jurisdiction of the Court of Justice of the European Union (CJEU) and what is within that of the national courts? Can any lessons be drawn from the experience of other Union institutions regarding enforcement, notably the Commission and the Council?

2. ### Could the ECB issue an electronic equivalent of paper-based euro banknotes? Under what conditions might such 'electronic banknotes' have legal tender status?

Article 128 TFEU provides that euro banknotes 'issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union'. However, the wording of this core provision, which codifies the legal tender status of euro banknotes, does not address the issue of the effects of the legal tender status of printed euro banknotes on alternative means of payment. As the digital economy becomes increasingly important, alternative means of payment have de facto become the standard means of payment for certain types of transactions. Despite this fact, printed euro banknotes currently remain the only means of providing Union citizens with direct access to central bank money, and euro-denominated alternative means of payment are typically based on a claim to be paid out in printed euro banknotes. Furthermore, a recent request for a preliminary ruling from a Member State's highest administrative court (joined cases C-422/19 and C-423/19) demonstrates that in some Member States there is even a move to restrict the use of cash payments in euro. The research paper should assess the criteria that Article 128 TFEU sets out for the use of the euro as legal tender.

In particular, the paper should assess whether issuing an electronic equivalent to a printed euro banknote could be based on the current TFEU provisions, and whether such an electronic equivalent could benefit from legal tender status under the current TFEU provisions.

3. ## The European Central Bank and its evolving role in the field of retail payments: is there scope for further Eurosystem action?

The statutory mandate of the ECB includes the promotion of the smooth and efficient operation of payment systems, both as an independent objective and as a means of facilitating the effective transmission of monetary policy across the euro area. In view of the rapid evolution of the retail payments landscape, driven in particular by the use of digital financial innovation, the Eurosystem has publicly declared its intention of exploring the scope for further action, which is consistent with its role as a catalyst.

To the extent that any future Eurosystem initiatives in the retail payments field would have an impact on TARGET2 and the TARGET Instant Payment Settlement (TIPS) service, and considering that the Eurosystem operates in compliance with the principle of an open market economy, it is necessary to consider the limits of the Eurosystem's competence in the retail payments field, and the contribution of future Eurosystem action in this field towards fulfilling the Eurosystem's mandate under the TFEU and the Statute of the ESCB.

The research paper should, therefore, assess the Eurosystem's current role in the field of retail payments, providing a general overview and focusing on instant payments in particular. In addition the paper should examine the scope and need for further Eurosystem action in the retail payments space, with particular reference to: (a) the mandate of the Eurosystem under Articles 3 and 22 of the Statute of the ESCB, and (b) concrete Eurosystem policy objectives consistent with that mandate.

4. ## Corporate restructuring versus financial resolution: benchmarks for the lawful treatment of creditors and shareholders

Directive (EU) 2019/1023 (the 'PRD') lays down rules on preventive restructuring frameworks available for debtors facing financial difficulties and likely to become insolvent. Credit institutions and investment firms are excluded from the scope of the PRD as they are subject to Directive 2014/59/EU on bank recovery and resolution (the 'BRRD'). However, this clear cut separation does not entirely exclude possible interactions between the BRRD and the PRD (see ECB opinion CON/2017/22), for example, with regard to the treatment of shareholders and creditors. The benchmarks that apply in each area differ: 'no creditor worse off than under normal insolvency proceedings' (see Article 74 BRRD) and the 'best-interest-of-creditors' test and 'absolute or relative priority' rule (see Articles 2(1)(6) and 11(1)(c) and Article 11(2) PRD). Under the PRD the (default) relative priority rule applies together with the best-interest-of-creditors test, which is based on liquidation or the next best alternative scenario. The relative priority rule departs from the usual approach of applying absolute priority in the waterfall satisfaction of claims, which is also reflected in the BRRD's 'no creditor worse off' principle. Preventive restructuring under the PRD does not qualify as a 'normal insolvency proceeding' for credit institutions and investment firms, thus it cannot be the basis for a straightforward comparison with the 'no creditor worse off' principle in resolution. Therefore preventive restructuring may not be formally considered as a benchmark for the treatment of shareholders and creditors in resolution. However, the question arises as to whether this kind of restructuring could become a de facto benchmark. Indeed the PRD gives businesses more room to manoeuvre and greater flexibility in how they treat stakeholders compared with the BRRD. The research paper should assess the possible impact of the PRD's relative priority rule on the proportionality-driven evaluation of the treatment of stakeholders in resolution under the BRRD, based on the features of the PRD and the BRRD (e.g. underlying rationale, interplay between any public and private interests, tools and actions, procedural rules, legal safeguards and balances, involvement of judicial and administrative authorities).

5. ## Venturing into the Union's exclusive competences?

Article 3 of the TFEU confers exclusive competence on the Union to adopt legally binding acts in certain areas. In principle, this means that Member States cannot act in these areas of exclusive Union competence. The research paper should address the question, and propose an answer to it, of where the limits to these exclusive competences lie.

One category of limits can be found in the TFEU, with Member States being allowed to legislate in areas of exclusive Union competence when empowered to do so by the Union or where this is necessary to implement Union acts. The question of what constitutes implementation, and of when implementing measures are required or even possible, arguably remains open to interpretation. For instance, it is not clear whether or not Member States may adopt implementing measures for directly effective TFEU provisions in a field of exclusive Union competence if these measures aim to facilitate the effective enforcement of the TFEU provision.

Limits also arise due both to the difficulty in defining certain areas of exclusive competence and in determining whether specific measures fall within these areas. For example, certain measures could be regarded as falling either within the area of monetary policy measures (exclusive competence) or within that of the internal market (shared competence). This difficulty is particularly marked in the field of monetary policy and banking supervision (see, for example, Joined Cases C-202/18 and C-238/18 *Rimšēvičs & ECB v Latvia* and *Cases C-219/17 Berlusconi* and *C 450/17 P Landeskreditbank Baden Württemberg v ECB*).

Another category of limits is to be found in Member States' actions in their own fields of competence, which may have an indirect effect on areas of exclusive Union competence. The CJEU has discussed this possibility (see Cases C 370/12 *Pringle* and C-62/14 *Gauweiler*).

It might also be worth addressing the issue of whether Member States may exceptionally act in a field of exclusive Union competences to fill a legal lacuna that results from a lack of action on the part of the Union (see Cases 141/78 *France v UK*, 32/79 *Commission v UK*, 804/79 *Commission v UK*, 41/76 *Donckerwolcke* and 174/84 *Bulk Oil*). The question of whether Article 3(2) TFEU and the CJEU's related case-law can, by analogy, help to interpret these limits could also be explored.

6. ## The interaction between banking supervision and accounting rules

The legal framework applicable to the ECB's supervisory activities contains several safeguards, which were put in place to ensure that prudential supervision does not encroach on the area of accounting. For example, recital 19 of Regulation (EU) No 1024/2013 (the 'SSM Regulation') states that the SSM must not be understood as changing the accounting framework applicable pursuant to Union or national law. Recital 39 of the SSM Regulation states that ECB's requests to banks for information to perform its calculations should not force the banks to apply different accounting frameworks to those applicable pursuant to other Union or national acts. Recital 39 of Regulation (EU) No 2013/575 (the 'CRR') refers to the acts under Union and national law governing the accounting frameworks of the supervised institutions. All these safeguards demonstrate the clear intention of the legislators to ensure that prudential supervision does not use a backdoor to encroach on the accounting regime, for example, by undermining the freedom of banks to choose between existing national accounting traditions ('national GAAPs') on the one hand and International Accounting Standards (IAS) or International Financial Reporting Standards (IFRS) on the other, or by upsetting the carefully calibrated regulatory regime put in place to enact and amend the IAS/IFRS standards applicable in the Union.

However, accounting rules may significantly impact on areas that fall within the core supervisory remit of the ECB as a prudential authority. For instance, such rules determine the valuation of the assets on a bank's balance sheet and thus constitute a key driver of its profit-and-loss statement and capital figures. Provisioning is another example, since booking it reduces a bank's profitability but provides additional safety cushions for potential risks – both aspects that would interest a prudential supervisor.

These considerations illustrate the potential for a degree of tension between the accounting regime on the one hand and prudential regulation and supervision on the other. Prudential authorities may not interfere with the accounting framework, however, the accounting framework applied by a bank, and the exercise of options available under it, may have a direct impact on the bank's prudential situation. A reasonable and carefully drawn delineation between the two areas is therefore necessary. For instance, where do the powers and competences of the prudential authority end and those protected by the accounting safeguards begin? Are there matching safeguards in place enabling prudential authorities to act if the accounting framework results in an insufficient, from a prudential perspective, coverage of risks? Numerous related questions arise with regard to the complicated overlap between these two different, yet closely related, regimes. A research paper addressing this topic could either

present a holistic analysis of this overlap, or focus on certain specific questions, such as those raised above.

Applicant categories – Research groups

Junior Scholars: scholars who are doctoral candidates or obtained their doctoral degree no earlier than 1 January 2018.

Senior Scholars: scholars whose academic qualifications do not meet the criteria for inclusion in the Junior Scholars category.

Research groups: applications may be also submitted by research groups, comprising a maximum of three scholars. Applications submitted by research groups will be assessed in the Senior Scholars category, unless all the members of the research group individually qualify as Junior Scholars.

None of the scholars involved in a research paper may be in an employment relationship with the ECB.

Scholarship details

The ECB will award up to six LRP scholarships for one or more of the six research topics listed above. The ECB aims to allocate at least two LRP scholarships to Junior Scholars. The ECB may decide not to award a scholarship for any of the above research topics, or for any category of applicants if, in its opinion, no application of a sufficient quality has been submitted for that research topic or by that category of applicants. The applications will be assessed by a committee composed of legal counsels within the ECB's Legal Services. Each selected Scholar will be required to prepare a high-quality, original research paper of a minimum of 12 000 words in length, excluding footnotes, which must meet, in the ECB's assessment, the overall standard expected of papers published in internationally renowned and peer-reviewed academic journals. Scholars may be invited to the ECB to present their research, even after the completion of the research programme and payment of the grant.

They will be responsible for their own transportation arrangements and costs, but will be reimbursed for such costs under the ECB Terms of Reference for reimbursement of travel expenses. The Scholarship will be paid upon completion by the selected Scholar of all five phases of the Legal Research Programme, ending with acceptance for publication of the research paper in an internationally renowned and peer-reviewed academic journal within the required deadline.

Phase 1 - Submission of the application

Applications must include the applicant's curriculum vitae and a proposal for one of the research topics described above. Applications submitted for the Junior Scholars category must include an official statement confirming the doctoral candidate status of the applicant or the date on which the doctoral degree was obtained The proposal must consist of:

1. a statement of the issues to be addressed
2. the proposed methodology
3. an analysis of the originality and significance of the proposed research paper in view of the existing academic literature
4. a discussion of the feasibility for completion of the research project by November 2020

Proposals should be no longer than 1 500 words (not including charts, graphs, or bibliography). Applications should be sent by email to **LegalResearchProgramme@ecb.europa.eu** no later than **3 February 2020**. The ECB will notify the Scholars of the acceptance of their proposal for a research paper by 16 March 2020.

Phase 2 - Presentation of the research proposal

The selected Scholars will be invited to a seminar to be held at the ECB in spring 2020, to present their proposal against the background of their previous research in the relevant field. This seminar is intended to establish a productive relationship between the ECB's Legal Services and the Scholars, and to provide Scholars with constructive feedback on their research subject from practitioners in the field.

Phase 3 - Submission of the first draft

The Scholar must submit a first draft of his or her research paper to the ECB by 1 July 2020, and must immediately inform the ECB if there is a risk of not meeting that deadline. The ECB will review and referee the research paper by September 2020.

Phase 4 - Finalisation of the draft

The Scholar is expected to take the remarks and suggestions of the ECB's review into consideration and will complete the research paper by 16 November 2020.

Phase 5 - Submission for publication

Scholars are expected to seek publication of the research paper in a well-recognised, internationally renowned and peer-reviewed academic journal. The paper should be accepted for publication by the journal by 30 September 2021 at the latest.

Following completion of all five phases above, including acceptance of the research paper for publication in an internationally renowned and peer-reviewed academic journal, Scholars will receive the final honorarium.