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The SAFE Regulatory Radar in June

New rules for OTC derivatives, updated standards on own funds and eligible liabilities, and guidelines on the MiFID II/MiFIR obligations on market data



A *t the end of each month, the SAFE Regulatory Radar highlights a selection of important news and developments on financial regulation at the national and EU level.*

Commission clarifies commercial terms for clearing services for OTC derivatives under EMIR

On 2 June 2021, the European Commission adopted a [Delegated Regulation](#) setting out specified conditions under which commercial terms for clearing services for over-the-counter (OTC) derivatives should be considered as fair, reasonable, non-discriminatory, and transparent (FRANDT). The regulation follows the changes introduced by the European Market Infrastructure Regulation (EMIR) reform ([EMIR Refit](#)) and aims to facilitate access to clearing services for counterparties and to enhance the transparency of commercial terms. New rules will have an impact on clearing members and clients who provide clearing services in the EU (clearing service providers).

In detail, affected institutions must meet several requirements in order to classify their commercial terms as [FRANDT](#). Among others, they must ensure transparency of the on-boarding process which is a procedure of establishing contractual terms and operational processes of clearing services. Clearing service providers must publish a detailed description of the on-boarding process on their webpage, including information about the different steps of that process, the timeline, and the key documentation. Furthermore, the delegated regulation specifies requirements for the risk control assessment, disclosure of commercial terms and fees as well as prices and pass-on costs. It is also explained that a clearing service provider may refuse a clearing order only in exceptional cases and with a justification of the reasons in written form.

The delegated regulation was submitted to the European Parliament and the Council for endorsement and will apply to commercial terms in contracts within 12 months from its entry into force.

New criteria and requirements for eligible liabilities and own funds

On 26 May 2021, the European Banking Authority (EBA) updated its [Regulatory Technical Standards \(RTS\)](#) on own funds and eligible liabilities.

The revised Capital Requirements Regulation (CRR2) included eligible liabilities instruments into the [CRR](#) regime and mandated [EBA](#) to prepare the standards applicable to eligible liabilities instruments to ensure a consistent regulatory approach.

The [RTS](#) align the provisions regarding eligible liabilities with the legislative changes and provide some explanations that liabilities can be qualified as eligible liabilities instruments if they meet the following criteria: the absence of funding for the acquisition of ownership of eligible liabilities by the resolution entity; the absence of incentives to redeem; and the need for the resolution authority's prior permission for the reduction of eligible liabilities. Moreover, the [RTS](#) specify the procedural rules for the national competent authorities (NCAs) and resolution authorities (NRAs) in relation to the prior permission regime. Under the new rules, the threshold to determine the general prior permission was increased from three percent to ten percent of the total amount of outstanding eligible liabilities instruments.

After the formal adoption, the standards will be binding and directly applicable in all member states.

ESMA specifies market data obligations under MiFID II and MiFIR

On 1 June 2021, the European Securities and Markets Authority (ESMA) published its final Guidelines on the [MiFID II](#) and [MiFIR](#) market data obligations. This non-binding document strives to provide clarity for market participants regarding the requirement to provide market data on a reasonable commercial basis (RCB) and the requirement to provide market data 15 minutes after publication (delayed data) free of charge.

ESMA notes that availability and easy access to market data in a fair and non-discriminatory manner is essential for market participants as it should deliver a comprehensive overview of trading activities. In this context, ESMA recommends using clear and unambiguous terms in market data policies and publishing all relevant market data information in standardized publication format. The guidelines also foresee that market data providers should prepare documented cost accounting methodologies and demonstrate how the price of market data is calculated. Moreover, affected institutions must describe different categories of customers in their policies and explain which fees are applied as well as to avoid multiple billing.

The final guidelines will apply to [NCAs](#), trading venues, consolidated tape providers, publication arrangements, and systematic internalizers from 1 January 2022.

Current public consultations:

- **European Securities and Markets Authority (ESMA):** [public consultation](#) on disclosure requirements for initial reviews and preliminary ratings. The deadline is Wednesday, 4 August 2021.
- **ESMA:** [public consultation](#) on draft regulatory technical standards and implementing technical standards specifying the content and the format of the standardised templates for simple, transparent and standardised (STS) notification of on-balance sheet (synthetic) securitisations. The deadline is Friday, 20 August 2021.
- **ESMA:** [public consultation](#) on the guidelines on data transfer between trade repositories under the European Market Infrastructure Regulation, as well as on guidelines regarding data transfer between TRs under the Securities Financing Transactions Regulation (SFTR). The deadline for responding to the consultation is Friday, 27 August 2021.
- European Banking Authority (EBA): [public consultation](#) on draft regulatory technical standards on the calculation of the threshold for investment firms. The deadline is Saturday, 17 July 2021.
- **EBA:** [public consultation](#) on draft guidelines that set out how prudential supervisors, AML/CFT supervisors and financial intelligence units should cooperate and exchange information in relation to AML/CFT. The deadline is Friday, 27 August 2021.
- **EBA:** [public consultation](#) on draft implementing technical standards on Pillar 3 disclosures regarding exposures to interest rate risk on positions not held in the trading book (IRRBB). The deadline is Monday, 30 August 2021.
- **EBA:** [public consultation](#) on draft Regulatory Technical Standards on individual portfolio management of loans offered by crowdfunding service providers under the European Crowdfunding Service Providers Regulation (ECSPR). The deadline is Saturday, 4 September 2021.
- **Financial Stability Board (FSB):** [public consultation](#) regarding targets for addressing the four challenges of cross-border payments cost, speed, transparency and access. The deadline is Friday, 16 July 2021.
- **Financial Stability Board's (FSB's) Task Force on climate-related financial disclosures:** [public consultation](#) on the guidance on climate-related metrics, targets, and transition plans. The deadline is Wednesday, 7 July 2021.
- **Basel Committee on Banking Supervision (BCBS):** [public consultation](#) on the prudential treatment of cryptoasset exposures by credit institutions. The deadline is Friday, 10 September 2021.

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