

The SAFE Regulatory Radar in August

Amendments to the European resolution framework and new rules to enhance supervisory disclosure and cooperation for investment firms

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At 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.

Banking Resolution: Latest regulatory developments

On 16 August 2021, the European Commission published in the Official Journal of the EU a [Delegated Regulation](#) that supplements the [Bank Recovery and Resolution Directive](#) (BRRD) and contains regulatory technical standards (RTS) on contractual terms on recognition of resolution stay powers.

Under the [BRRD](#), resolution authorities are granted broad powers to facilitate the rescue of failing banks. Among other things, these authorities may suspend bank's payment or delivery obligations, impose temporary restrictions on the enforcement of security interests and suspend termination rights on the entity's counterparties (taken together: resolution stay powers). The [BRRD](#) requires affected institutions to incorporate a clause in any financial contract which is governed by third-country law by which the parties recognize the potential application of stay powers. The in-scope financial contracts are, among others, securities contracts, futures and forwards, swap agreements, inter-bank borrowing agreements.

The new rules aim to enhance the effective application of stay powers despite the differences in the legal systems of third countries and other inconsistencies arising from various forms of financial contracts. Therefore, the latest regulation introduces a list of mandatory contractual components that must be present in the stay powers recognition clause. These components include provisions indicating the acknowledgment and acceptance that the contract may be subject to the exercise of resolution stay powers, a description of those powers, and the parties' recognition that they are bound by those powers. Furthermore, the affected entities must acknowledge that other contractual terms do not impede efficiency and executability of the clause recognizing stay powers. The delegated regulation enters into force on 5 September 2021.

Furthermore, on 3 August 2021, the European Banking Authority (EBA) proposed draft implementing technical standards (ITS) amending the [current ITS](#) on the provision of information for resolution planning. The [ITS](#) contain minimal technical amendments that follow the changes to the minimum requirement for own funds and eligible liabilities (MREL) introduced by the [BRRD2](#). The original ITS specify the procedure of the resolution reporting and provide a minimum set of templates to gather the necessary information. Resolution authorities collect the data from credit institutions or investment firms to draw up and implement resolution plans that include detailed characteristics of an institution and a description of the preferred resolution strategy and its tools. To prevent any technical obstacles for the in-scope institutions, the draft [ITS](#) change some rows in the templates and introduce minor corrections to references as well as an updated list of deposit guarantee schemes. The proposed [ITS](#) were submitted to the European Commission for endorsement and will be applied to the reports as of 31 December 2021.

In addition, the [EBA](#) published its [Annual Report](#) on resolution colleges for 2020 on 17 August 2021. These bodies enable effective cooperation between all parties of the resolution process at all stages. To organize meetings in a virtual format was the central challenge for colleges caused by the pandemic. However, the [EBA](#) has admitted that the level of interaction between home and host resolution authorities and the administration of meetings remained consistent. The report also has indicated the fields it intends to monitor in the next years, which includes the credibility of the preferred resolution strategy and the analysis of alternative resolution strategies; the suitability of written arrangements underpinning colleges; changes in response to the economic effects of COVID-19.

Financial supervision: new rules for supervisory disclosure under the Investment Firms Directive

On 25 June 2021, [EBA](#) published final draft Implementing Technical Standards (ITS) on information on supervisory approaches and aggregate statistical data that national competent authorities (NCAs) must disclose under the [Investment Firms Directive](#) (IFD) for all types of EU investment firms authorized under [MiFID II](#).

Specifically, the draft ITS determine the format, structure, contents list, and annual publication date of the information on the texts of laws and guidance in the field of prudential regulation; criteria and methodologies that [NCAs](#) use in the supervisory review and evaluation process (SREP); and aggregate statistical data on key aspects of the implementation of the [IFD](#) and the [Investment Firm Regulation](#) (IFR). To ensure the consistency of these disclosures, the draft [ITS](#) also include detailed templates.

The [ITS](#) will be formally adopted in a form of a Regulation and will be binding and directly applicable in all member states. [NCAs](#) will start disclosing this information in June 2022.

Financial supervision: new standards to improve supervisory cooperation for investment firms

On 5 July 2021, the [EBA](#) published final draft regulatory technical standards (RTS) on colleges of supervisors for investment firm groups and [implementing technical standards](#) (ITS) on information exchange. The [RTS](#) specify the conditions under which supervisory colleges, bodies consisting of “home” and “host” supervisors of investment firms, exercise their tasks. In particular, the standards specify rules on the establishment and functioning of colleges as well as on planning and coordination of supervisory activities. The [ITS](#) complement the [RTS](#) and address situations when investment firms operate in a member state where colleges are not established. For that case, the [ITS](#) set out procedures and templates necessary for the regular exchange of information between member states.

The technical standards strive to enhance the level of cooperation between the supervisors of investment firms. Both the [RTS](#) and the [ITS](#) were submitted to the Commission. After formal adoption, they will be binding in all member states.

Current public consultations:

- **European Commission:** public [consultation](#) on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures in accordance with the Capital Requirements Regulation (CRR). The deadline is Friday, 3 September 2021.
- **European Commission:** public [consultation](#) on amendments to UCITS Directive on PRIIPs KID exemption. The deadline is Thursday, 9 September 2021.
- **European Commission:** public [consultation](#) looking into the functioning of the EU securitization framework. The deadline is Friday, 17 September 2021.
- **European Commission:** public [consultation](#) on public-private partnerships that are currently operating in EU Member States in the area of anti-money laundering. The deadline is Tuesday, 2 November 2021.
- **European Banking Authority (EBA):** public [consultation](#) on draft regulatory technical standards (RTS) setting out criteria for the identification of shadow banking entities for the purposes of reporting large exposures. The deadline is Tuesday, 26 October 2021.
- **EBA:** public [consultation](#) on new guidelines on the role, tasks and responsibilities of anti-money laundering and countering the financing of terrorism (AML/CFT) compliance officers. The deadline is Tuesday, 2 November 2021.
- **European Securities and Markets Authority (ESMA):** public [consultation](#) on draft guidelines on certain aspects of the MiFID II remuneration requirements. The deadline is Tuesday, 19 October 2021.
- **The International Organization of Securities Commissions (IOSCO):** public [consultation](#) on the implications of the activities of environmental, social and governance (ESG) ratings and data providers and on establishing frameworks to mitigate risks stemming from these activities. The deadline is Monday, 6 September 2021.

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