

SAFE Finance Blog

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The SAFE Regulatory Radar in February

Updated rules for the ESG disclosures, key information documents for retail and insurance-based investment products, and new standards for the remuneration of investment firms' material "risk-takers"



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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.

Sustainable Finance: ESAs proposed new technical standards on sustainability-related disclosures

On 4 February 2021, the European Supervisory Authorities (ESAs), consisting of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) published their joint draft Regulatory Technical Standards (RTS) on the content, methodologies, and presentation of disclosures under the Regulation on sustainability-related disclosures in the financial services sector (SFDR). The draft aims to enhance the legal certainty for end-investors regarding sustainable investing, to improve Environmental, Social, and Governance (ESG) reporting as well as to minimize greenwashing.

The first section of the RTS cover the entity-level principal adverse impact disclosures that should illustrate how investments adversely affect ESG aspects. It specifies the scope, methodology, and form of data relevant for the disclosures under SFDR and provides new broad-based sustainability indicators for principal adverse impacts. Financial market participants with fewer than 500 employees can be exempted from the reporting obligations if they provide a reasonable explanation why they do not comply.

The second section of the RTS lay down detailed rules for disclosures at the product level. Specifically, manufacturers of financial products and financial advisers have to explain how and to which extent a product meets sustainability and 'do not significantly harm' objectives. This information has to be declared in periodic reports, on the company's website as well as in the pre-contractual documentation.

The RTS will apply to all financial products and are expected to come into effect on 1 January 2022.

Capital Markets Union: ESAs proposed amendments to the PRIIPs key information document

On 3 February 2021, ESAs presented draft RTS proposing targeted changes to the key information document (KID) for packaged retail and insurance-based investment products (PRIIP). The proposal follows a regulatory review conducted by the ESAs last year that identified a necessity to revise some aspects of the regulation to ensure a consistent and appropriate application of the KID.

In detail, the RTS update the calculation methodology for the presentation of performance scenarios to avoid unrealistic return expectations of retail investors. For a better understanding of different types of cost structures, the standards also propose revised cost indicators, and specify the scope and form of information about PRIIPs' costs. Furthermore, the rules provide clarification on incorporating existing provisions in the PRIIPs regulation. Other refinements strive to ensure the transparency and adequacy of data contained in KID.

Next, the proposal is awaiting adoption by the European Commission. The act will be binding and directly applicable from 1 January 2022 in all member states.

Capital Markets Union: EBA set out new criteria for identifying "risk-takers" and instruments for remuneration purposes

On 21 January 2021, the EBA published two final draft RTS on the criteria to identify investment firms' "risk takers" and on the instruments that are used for the purposes of variable remuneration. The first RTS explain how to identify the so-called "risk-takers", meaning professionals whose activities substantially influence investment firm's risk profile or managed assets. To this end, the document proposes a methodology based on a combination of qualitative and quantitative criteria, while considering the particularities of a business model. The second RTS provide rules to assure that the instruments suitable for variable remuneration adequately indicate the credit quality of investment firms as a going concern. The standards cover provisions for investment firms with respect to Additional Tier 1 or Tier 2 instruments and specify the possible use of alternative arrangements for the payout of variable remuneration.

After passing through the European Commission as well as approval by the European Parliament and the Council of the European Union, the regulation containing RTS will be binding in all member states.

Current Public consultations:

- **European Commission:** public consultation reviewing the Settlement Finality Directive. The deadline is Friday, 7 May 2021.
- **European Commission:** public consultation reviewing the Financial Collateral Directive. The deadline is Friday, 7 May 2021.
- **ESAs:** public consultation to amend the Implementing Regulations on the mapping of credit assessments of External Credit Assessment Institutions for credit risk. The deadline is Friday, 5 March 2021.
- **ESMA:** public consultation on the revision of the Delegated Regulation regarding fees charged to CRAs. The deadline is Monday, 15 March 2021.
- **ESMA:** public consultation on guidelines on the application of certain aspects of the appropriateness and execution-only requirements under Markets in Financial Instruments Directive (MiFID II). The deadline is Thursday, 29 April 2021.
- **EBA:** public consultation on the information concerning the new prudential requirements that competent authorities will be required to disclose publicly for all types of investment firms authorized under the MiFID. The deadline is Tuesday, 11 May 2021.
- **EBA:** public consultation on guidelines on large exposures breaches and time and measures to return to compliance. The deadline is Monday, 17 May 2021.
- **Basel Committee on Banking Supervision:** public consultation on technical amendments to the standard on minimum haircut floors for securities financing transactions. The deadline is Wednesday, 31 March 2021.

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