

The SAFE Regulatory Radar in October

Proposed reforms to the EU Solvency II regime, new technical standards on disclosure for investment firms, and on securitization notification



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.

Solvency II: The European Commission adopted its review package

On 22 September 2021, the European Commission adopted a legislative package on the review of the [Solvency II Directive](#), which includes a [proposal to amend the framework directive](#) and a proposal for a new [EU Insurance Recovery and Resolution Directive \(IRR\)](#).

The proposed changes strive to strengthen insurers' contribution to the EU's post-pandemic recovery and to enhance further development of the Capital Markets Union (CMU).

First, the Commission changes long-term guarantee measures for the valuation of insurance liabilities. Particularly, it introduces a new extrapolation method for the risk-free interest rates and increases the general application ratio for the volatility adjustment from 65 percent to 85 percent. Second, to ensure a more proportionate approach to supervision, the proposal allows small insurers exemptions from Solvency II requirements and introduces a lighter regulatory regime for a new category of low risk-profile insurers and reinsurers. Third, it refines reporting requirements for low-risk profile undertakings and sets new reporting deadlines as well as an updated structure of the Solvency and Financial Condition Report (SFCR). Fourth, the amendment integrates macroeconomic considerations and analysis into the own risk and solvency assessment by insurers. Fifth, the rules on transparency and the ongoing compliance with prudential rules are modified. Finally, it strengthens the assessment of climate and systemic risks by providing new requirements on long-term climate change scenario analysis.

The draft [IRR](#) aims to create a harmonized approach to the recovery and resolution of insurance companies and to effectively address financial distresses. The new framework provides supervisory authorities with a set of early intervention tools and puts forward key requirements on resolution authorities and provisions on resolution planning and resolvability assessments. It also sets out rules for cross-border group resolution and ancillary provisions for resolution, including valuation, safeguards, procedural obligations and rights of appeal, and exclusion of other actions.

Nonetheless, the proposals do not entail any rules for the alignment of insurance guarantee schemes.

Both legislative proposals were submitted to the Council and the European Parliament for further consideration. Following the final adoption, the EU member states must implement the directive after 18 months.

Financial supervision: new rules on disclosure of investment policy under the Investment Firms Regulation

On 19 October 2021, the European Banking Authority (EBA) published [draft regulatory technical standards \(RTS\)](#) on disclosure of investment policy by investment firms.

According to the [Investment Firms Regulation \(IFR\)](#), investment firms with on- and off-balance-sheet assets on average greater than 100 million euros over a four-year period must disclose the information on the proportion of voting rights attached to shares held, voting behavior, use of proxy advisor firms, and voting guidelines. The [RTS](#) specify the information to be disclosed and aim to make it easier for stakeholders with voting rights to understand their influence over the companies.

The [RTS](#) contain templates and tables for the disclosure of information on the investment firm's voting behavior, explanation of the votes, and the ratio of the approved proposal. The standards also provide detailed instructions with legal references and guidance concerning specific positions for these templates and tables. Furthermore, they clarify the content of voting guidelines and the use of proxy advisory firms to address potential conflicts of interest as well as information on investment firms.

After the formal adoption by the European Commission, the [RTS](#) will be binding in all member states. The first disclosure date will be 31 December 2021.

Securitization Regulation: new standards for on-balance sheet securitizations

On 12 October 2021, the European Securities and Markets Authority (ESMA) published a [final report](#) containing [RTS](#) and implementing technical standards (ITS) on the content and format of the simple, transparent and standardized (STS) securitization notification for on-balance sheet securitizations (also called synthetic securitizations) following the latest amendments to the [Securitization Regulation](#). Unlike traditional securitizations, on-balance sheets securitizations do not involve the effective legal transfer of the assets to the issuer of the securities.

The standards aim at establishing consistency between the [STS](#) notification frameworks for traditional and synthetic securitizations and specify which information must be disclosed to comply with the [STS](#) notification requirements for synthetic securitizations. Notification requirements apply to the originator, sponsor, and securitization special purpose entity.

Because on-balance-sheet securitizations are almost exclusively executed in the private markets, [ESMA](#) has concluded that they fall within the scope of “private transactions” for disclosure and notification purposes. Therefore, they are exempted from the prospectus obligation under the [Prospectus Directive](#). [ESMA](#) has also explained that listed credit linked notes (CLNs) do not qualify the synthetic securitizations and must be treated as public securitizations. Moreover, to avoid unnecessary duplication of information, [ESMA](#) has supported to link the [STS](#) notification template and the transaction documentation also for synthetic securitizations. Additionally, the [ITS](#) specify the relevant templates for notifying [ESMA](#).

[ESMA](#) has sent the technical standards to the European Commission for endorsement in form of a binding delegated regulation.

Current public consultations:

- **European Commission:** public [consultation](#) on the proposal for the reviewed Solvency II Directive. The deadline is Wednesday, 15 December 2021.
- **European Commission:** public [consultation](#) on unlawful extra-territorial sanctions and amendment of the Blocking Statute. The deadline is Thursday, 4 November 2021.
- **European Supervisory Authorities (ESAs):** public [consultation](#) on the European Commission mandate regarding the PRIIPs Regulation. The deadline is Thursday, 16 December 2021.
- **ESMA:** public [consultation](#) on the review of the Short Selling Regulation (SSR). The deadline is Friday, 19 November 2021.
- **ESMA:** public [consultation](#) on proposals for a review of the MiFID II best execution reporting regime. The deadline is Thursday, 23 December 2021.
- **ESMA:** public [consultation](#) on retail investor protection measures under MiFID II. The deadline is Sunday, 2 January 2022.

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