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The SAFE Regulatory Radar in February

Reports on the central counterparties recovery regime, review of the money market funds framework, and procedural rules for benchmark administrators and data reporting services providers



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.*

Central counterparties: Detailed rules on recovery regime

On 31 January 2022, the European Securities and Markets Authority (ESMA) published a package of regulatory technical standards (RTS) and guidelines on the recovery regime for central counterparties (CCPs) following the new EU Regulation on CCP recovery and resolution (CCPRRR).

Legal acts aim to ensure that CCPs can continue to provide critical functions in a situation of financial distress or significant deterioration and to increase the preparedness of the market.

In detail, the RTS clarify the methodology for calculation and maintenance of a CCP's additional amount of pre-funded dedicated own resources and explain the conditions of the recompense mechanism applicable to not contractually committed losses to the clearing members. Furthermore, standards specify the factors to assess the CCP recovery plan by the national competent authority (NCA) and the supervisory college. This includes the CCP's capital and organizational structure and financial risk, the substitutability of the CCP's activities, the risk profile of the CCP, and other factors. The RTS are submitted to the European Commission for the endorsement in form of binding delegated regulations.

Likewise, non-binding guidelines will complement the CCPRRR. The guidelines on the consistent application of the triggers for the use of Early Intervention Measures provide indicators for the application of these triggers and illustrate the situations under which the NCAs should consider the application of early intervention measures to CCPs. Additionally, ESMA sets out the minimum list of qualitative and quantitative CCP recovery plan indicators relating to the financial soundness and operational viability of the CCP. In its guidelines on recovery plan scenarios, ESMA recommends CCPs to include at least one actual scenario in their recovery plans for each of the seven types of scenarios and to develop additional scenarios, if necessary. The package also deals with the circumstances to implement temporary restrictions for CCPs in the case of a significant non-default event under the European Market Infrastructure Regulation (EMIR). The NCAs must inform ESMA whether they comply with these non-binding guidelines or provide reasons for non-compliance.

Money market funds: reforms to the regulatory framework

On 16 February 2022, ESMA issued a final report proposing amendments to the regulatory framework for money market funds (MMFs). Based on the outcome from a public consultation, this report suggests policy measures for more resilient MMFs.

In light of the upcoming review of the MMF Regulation, ESMA addresses the issues observed during the COVID-19 crisis. In its assessment, ESMA has identified several vulnerabilities of MMFs, including a severe deterioration of liquidity of money market instruments on the asset side and redemptions from investors on the liability side.

Targeting both sides, [ESMA](#) proposes to remove the possibility to use amortized costs for low volatility net asset values (LVNAVs). It would eliminate the risk that investors would redeem from the [MMF](#) at values of the underlying assets that do not reflect the market valuations of those assets. Other proposals cover reviewing requirements for liquidity buffers and their utilization, liquid assets ratios, and the pool of eligible assets. The European Commission will consider the input given by the [ESMA](#) and work closely with [ESMA](#) throughout the review of the [MMF](#) Regulation.

On 14 February 2022, [ESMA](#) updated its guidelines on common reference parameters for the stress test scenarios conducted by [MMEs](#) or managers of [MMEs](#). Specifically, [ESMA](#) adjusted parameters for reporting purposes, including liquidity discount factor, credit spread, corporate credit spreads, interest rate yield shocks, and FX shocks. Taking into consideration the latest market developments, [ESMA](#) revises common reference parameters at least every year. The updated guidelines apply from two months of their publication. In case of non-compliance, [NCAs](#) must notify [ESMA](#).

ESMA supervision: Procedural rules applicable to benchmark administrators and data reporting service providers

On 16 February 2022, the European Commission adopted three delegated regulations supplementing the [Benchmarks Regulation](#) (BMR) and the [Markets in Financial Instruments Regulation](#) (MiFIR).

As of 1 January 2022, the [BMR](#) gave [ESMA](#) the mandate to supervise and authorize administrators of a critical benchmark of [BMR](#) and third-country administrators of benchmarks. Likewise, under the new [MiFIR](#) provisions, [ESMA](#) was granted authorization and supervisory powers over data reporting services providers.

To provide procedural clarifications, two [delegated regulations supplement the BMR](#). These regulations contain detailed provisions on the rights of the defense and the collection of fines or periodic penalty payments applicable to benchmark administrators. They set up the types of fees and clarify the amount of the fees and the payment procedure. Similarly, the [delegated regulation supplementing the MiFIR](#) specifies [ESMA's](#) powers to impose fines or penalty payments on data reporting service providers.

Legislative proposals will be scrutinized by the European Parliament and the Council.

Current public consultations:

- **European Commission:** public [consultation](#) on expansion central clearing activities in the EU and improving the attractiveness of EU CCPs. The deadline is Tuesday, 8 March 2022
- **European Commission:** public [consultation](#) on options to enhance the suitability and appropriateness assessments. The deadline is Monday, 21 March 2022.
- **European Securities and Markets Authority (ESMA):** public [consultation](#) on the Credit Ratings Agency Regulation (CRA) for private credit ratings. The deadline is Friday, 11 March 2022.
- **ESMA:** public [consultation](#) on requirements for central counterparties (CCPs), including requirements aiming to limit the procyclicality of margin requirements under the European Markets Infrastructure Regulation (EMIR). The deadline is Thursday, 31 March 2022.
- **ESMA:** public [consultation](#) on draft guidelines on certain aspects of the MiFID II suitability requirements. The deadline is Wednesday, 27 April 2022.
- **ESMA:** public [consultation](#) on its opinion on the trading venue perimeter. The deadline is Friday, 29 April 2022.

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