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## The SAFE Regulatory Radar in December

Revised Consumer Credit Directive and amendments to various regulations to strengthen European central counterparties



**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.

### CCD II: Revised directive for more consumer protection

Lenders will have to follow stricter pre-contractual information requirements and creditworthiness assessment criteria when granting consumer credits of up to 100,000 euros. On 2 December 2022, the Council of the European Union (EU) and the European Parliament reached a [provisional agreement](#) on the legislative proposal for a revised [Consumer Credit Directive](#) (CCD II). The [CCD II](#) expands the scope of the [original Consumer Credit Directive](#) to account for loans below 200 euros, potentially harmful products (e.g., high-cost short-term credits), and digital lending channels (e.g. crowdfunding platforms), thus complementing the [crowdfunding regulation](#). The proposed directive is embedded in the Commission's [new consumer agenda](#) to ensure that clients are well-informed and creditworthy before concluding credit agreements. Aiming to reduce the risk of mis-selling and over-indebtedness, the provisional [political agreement](#) obliges creditors

- to stop communicating that credits can increase financial resources, substitute for savings, or raise their living standards,
- to prominently warn that borrowing is costly,
- to allow withdrawals from credit agreements within two weeks after conclusion without any reason,
- to stop charging excessive interest rates, annual rates, charges on loans, or the total cost of credit,
- to disregard cancer diseases after a certain period if credits must be insured,
- to enable the repayment of credit before its maturity and at clear conditions,
- to assist in case of difficulties with repayment at a charge no higher than necessary to compensate for costs resulting from a default, and
- to verify that credit obligations can be met by customers.

If automated decision-making systems are involved in evaluating creditworthiness, consumers have the right to obtain human intervention from the creditor, to contest the evaluation, and to receive a meaningful explanation. The credit assessment shall be solely based on accurate and proportionate information about the financial and economic situation of the consumer, excluding personal data (e.g., from social media).

The amount of financial data being shared may indeed be significant for the lending decision. Latest [SAFE insights](#) indicate that transmitting additional consumer information (e.g., bank account data) increases the chance of loan approval (particularly for borrowers with lower credit scores) and reduces interest rates (particularly for borrowers with higher credit scores). Aside from financial inclusion, accessing and assessing data may foster discrimination and therefore require new principles of fair lending, as outlined in another [SAFE Working Paper](#).

Overall, the proposed [CCP](#) will not only affect bank creditors but also non-bank creditors and credit intermediaries (excluding micro-enterprises and small- and medium-sized enterprises) which must now be admitted, registered, and supervised by national authorities. Before going through the formal adoption procedure, the Internal Market and Consumer Protection Committee, the European Parliament, and ultimately the Council must approve the outlined deal.

Additionally, creditors recently received official guidance from the European Banking Authority (EBA) on how to implement sound customer due diligence processes for online credit applications to prevent anti-money laundering and terrorist financing.

## **CRR and UCITS: amendments to reduce dependencies from third-country central counterparties**

European central counterparties (CCPs) may be able to provide more transparent, tailored and faster clearing services. On 7 December 2022, the European Commission proposed two packages of regulatory amendments: The [first package](#) aims at amending the [European Market Infrastructure Regulation \(EMIR\)](#), the [Capital Requirements Regulation \(CRR\)](#), and the [Money Market Funds Regulation \(MMFR\)](#), whereas the second package foresees to modify the [Capital Requirements Directive \(CRD\)](#), the [Investment Firms Directive \(IFD\)](#), and the [Undertakings for Collective Investment in Transferable Securities Directive \(UCITS\)](#). Both packages have been submitted to the European Parliament and Council for adoption.

They aim at reducing the critical dependence of European financial market participants on some services provided by certain third-country [CCPs](#), leading to significant financial stability risks. The limited international attractiveness of European [CCPs](#) results from [clearing-related problems](#) on the supply side (e.g., excessive compliance costs, lack of capacity) and on the demand side (e.g., limited liquidity, network effects favoring concentration), accompanied by cross-border risks. The European Commission thus strives

- to improve the ability of European [CCPs](#) to quicker adopt to changes in market demand,
- to encourage clearing in European [CCPs](#), and
- to address gaps in the way cross-border risk is assessed and managed in the EU.

Therefore, the proposals foresee measures

- to simplify and shorten procedures for changing risk models, launching new products and revising the hedging criteria,
- to require clearing members and clients to keep an active account at European [CCPs](#) to improve the transparency of margin models, and to consider public and private guarantees as eligible collateral, and
- to enhance the existing supervisory framework through a greater consideration of the impacts of intraday margin calls and a greater focus on avoiding procyclical collateral haircuts,

among other things. These amendments are developed to promote the Capital Markets Union (CMU). Its completion requires institutional modifications, as outlined in a [SAFE Policy Letter](#), as well as safe, robust and attractive European clearing services. However, the European Commission sees well-functioning European clearing services to be endangered by an ongoing dominance of British [CCPs](#) for certain trades, even after Brexit.

Regulatory consequences of Britain's withdrawal from the EU are also the subject of the [peer review report](#) that the European Securities and Markets Authority (ESMA) published on 8 December 2022. In its analysis, ESMA focuses on the handling of a firm's relocation to the EU by national competent authorities to achieve greater convergence at the supranational level on the application of the risk-based approach, the proportionality principle, and delegation arrangements.

### **Public consultations**

#### **European Banking Authority (EBA):**

- [Consultation](#) to amend the Implementing Regulation on the benchmarking of credit risk, market risk and IFRS9 models for the 2024 exercise. The deadline is Tuesday, 28 February 2023.
- [Consultation](#) on new guidelines for the effective management of money laundering and terrorist financing risks when providing access to financial services. The deadline is Monday, 6 February 2023.
- [Consultation](#) on draft guidelines on the overall recovery capacity in recovery planning. The deadline is Tuesday, 14 March 2023.

#### **European Securities and Markets Authority (ESMA):**

- [Consultation](#) on changes of the Regulatory Technical Standards on the information to be provided in an application for authorization and registration under the Benchmarks Regulation. The deadline is Tuesday, 31 January 2023.

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*Carl-Georg Luft is a research assistant at the SAFE Policy Center.*



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Leibniz Institute for  
Financial Research SAFE

Theodor-W.-Adorno-Platz 3  
60323 Frankfurt am Main

Phone: +49 69 798 30080

Fax: +49 69 798 30077

Email: [info@safe-frankfurt.de](mailto:info@safe-frankfurt.de)

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