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The SAFE Regulatory Radar in April

Adjustments on resolution and deposit insurance rules, new guidelines for product governance requirements, and amended anti-money laundering measures



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.*

CMDI: Proposals to extend the framework on smaller banks

Proposed adjustments regarding the resolution of failing banks will facilitate the use of bank's own funds and industry-funded safety nets. These adjustments will apply for financial institutions of any size and business model, including smaller players. On 18 April 2023, the European Commission proposed to adjust and further strengthen the existing EU bank crisis management and deposit insurance (CMDI) framework. The core part of this reform consists of three legislative proposals amending the [Bank Recovery and Resolution Directive \(BRRD\)](#), the [Single Resolution Mechanism Regulation \(SRM Regulation\)](#), and the [Deposit Guarantee Schemes Directive \(DGSD\)](#).

Over the past years, failing medium-sized and smaller banks were rescued using taxpayers' money instead of the bank's own funds and industry-funded safety nets. To protect depositors from bearing losses as well as taxpayers from having to step in to preserve financial stability, the EU Commission proposed to facilitate the use of deposit guarantee schemes. Though before relying on deposit guarantee schemes, banks will have to exhaust their internal loss absorption capacity and already be earmarked for resolution in the first place.

Furthermore, the proposed rules will make resolution as a key component of the crisis management toolbox more attractive. Resolution is less disruptive than liquidation as clients can keep access to their account, for example by being transferred to another bank, and the bank's critical functions can be preserved.

Besides the coverage of 100,000 euros per depositor and bank according to the [DGSD](#), the depositor protection is extended to public entities (i.e., hospitals, schools, municipalities), as well as to client money deposited in certain types of client funds (i.e., by investment companies, payment institutions, e-money institutions). Moreover, temporary high balances of bank accounts with more than 100,000 euros are protected if linked to specific life events (such as inheritance or insurance indemnities).

These proposals are in line with a realistic scenario as expected by the SAFE researchers Jan Krahn and Tobias Tröger in the SAFE Finance Blog. However, the SAFE researchers urge policy makers to be more ambitious and push for a European Deposit Insurance Scheme (EDIS) to [cover all deposits](#) which are prone to bank runs.

The legislative package will now be discussed by the European Parliament and Council.

MiFID II: Final guidelines for structured deposit requirements

Final guidelines improve product governance obligations to ensure that financial instruments and structured deposits ("products") are manufactured and distributed in the best interest of clients. On 27 March 2023, the European Securities and Markets Authority (ESMA) published the [final guidelines](#) on Markets in Financial Instruments Directive (MiFID II) product governance requirements.

The revised guidelines aim at reducing the risk of mis-selling, regulatory and supervisory arbitrage as well as greenwashing in the manufacturing and distribution of products.

The amendments include the obligation for firms to specify any sustainability-related objectives the product is compatible with. Furthermore, firms may use a common approach for products with comparable features (i.e., clustering approach) to define the target market. To ensure the compatibility of the distribution strategy and the product's target market, distributors should identify additional measures when more complex products are distributed under non-advised services (e.g., not actively but only on the client's initiative distribute a complex product). Moreover, the manufacturers and distributors should review on a regular basis whether products and services reach the target market, while the frequency and depth of these reviews can vary with the nature of the product.

The guidelines are currently being translated and will apply two months after the date of the publication on [ESMA's](#) website in all EU official languages.

AML/CFT: Refined anti-money laundering measures

Members of the European Parliament close existing regulation gaps to combat money laundering and terrorist financing. On 28 March 2023, [MEPs](#) from the Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees [adopted their position](#) on three pieces of draft legislation on the financing provisions of EU Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) policy. The package consists of

- the EU "single rulebook" regulation, which covers conducting customer due diligence, transparency of beneficial owners, the use of anonymous instruments (e.g., crypto-assets), and new entities (e.g., crowdfunding platforms)
- the 6th Anti-Money Laundering Directive, which includes national provisions on supervision and Financial Intelligence Units, and on access to necessary and reliable information (e.g., beneficial ownership registers and assets stored in free zones)
- the regulation establishing the European Anti-Money Laundering Authority (AMLA), which provides supervisory and investigative powers to ensure compliance with [AML/CFT](#) requirements to the Authority. On 23 February 2023, the German Federal Minister of Finance [announced](#) that Germany bids to host the new [AMLA](#) in Frankfurt am Main.

While this package contains stricter rules on [AML/CFT](#) for crypto-market participants as one of the key elements, the European Parliament finally agreed on 20 April 2023 on new common rules regarding the supervision, consumer protection, and environmental safeguards of crypto-assets, including crypto-currencies. The [SAFE Regulatory Radar in October 2022](#) explains the details of the [Regulation on Markets in Crypto-assets \(MiCA\)](#).

To prevent customers from being denied full financial market access on unsubstantiated [AML/CFT](#) grounds or without valid reason, the European Banking Authority (EBA) published new guidelines on 31 March 2023. These rules comprise an [annex to EBAML/TF risk factors Guidelines](#), which helps financial institutions understand how Not-for-Profit organizations operate and supports them in managing [ML/TF](#) risks associated with [NPOs](#) effectively, instead of denying them access to financial services.

The second set of guidelines clarifies the interaction between the access to financial services and the institutions' [AML/CFT](#) obligations. In particular, several steps should be taken, and options considered before an institution decides to refuse or terminate a business relationship based on [ML/TF](#) or [AML/CFT](#) compliance grounds.

Public consultations

- **European Supervisory Authorities** (EBA, EIOPA and ESMA – ESAs): [public consultation](#) on amendments to the Delegated Regulation of the Sustainable Finance Disclosure Regulation (SFDR). The deadline is 4 July 2023.
- **European Securities and Markets Authority** (ESMA): [public consultation](#) on amendments to its Guidelines for Trade Repositories (TRs) on position calculation under EMIR. The deadline is 9 May 2023.
- **European Banking Authority** (EBA): [public consultation](#) on standards for supervisors assessing the new market risk internal models under the Fundamental Review of the Trading Book. The deadline is 26 June 2023.
- **EBA**: [public consultation](#) on amendments to Guidelines on risk-based AML/CFT supervision to include crypto-asset service providers. The deadline is 29 June 2023.
- **EBA**: [public consultation](#) on draft Guidelines on resubmission of historical data under the EBA reporting framework. The deadline is 31 July 2023.
- **EBA**: [public consultation](#) on Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under the Capital Requirements Directive (CRD) and the Investment Firms Directive (IFD). The deadline is 24 July 2023.
- **EBA**: [public consultation](#) on draft Guidelines on the criteria related to simplicity, standardisation and transparency and additional specific criteria for on-balance-sheet securitisations (so-called STS criteria). The deadline is 7 July 2023.
- **EBA**: [public consultation](#) on Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under the Non-Performing Loans Directive. The deadline is 19 July 2023.
- **European Commission** (EC): [call for evidence](#) on the InvestEU Programme. The deadline is 10 May 2023.
- **EC**: [call for feedback](#) on the EU environmental taxonomy. The deadline is 3 May 2023.
- **EC**: [call for feedback](#) on the review of the bank crisis-management & deposit-insurance framework (SRMR review). The deadline is 21 June 2023.
- **EC**: [call for feedback](#) on the review of the bank crisis management & deposit insurance framework (DGSD review). The deadline is 21 June 2023.
- **EC**: [call for feedback](#) on clarifications to the 'daisy chain' deductions. The deadline is 21 June 2023.

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