

## The SAFE Regulatory Radar in November

Enhancements to the CMDI framework, new compliance rules for banks considering capital requirements, and progress on the Capital Markets Union



**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.

### **BRRD/SRMR: The Daisy Chains proposal complements the CMDI framework**

Proposed amendments provide clarity on the determination of the internal Minimum Requirement for Own Funds and Eligible Liabilities (MREL) on a consolidated basis for banking groups. On 17 November 2023, the Council published its position on the Commission's proposal to amend the Bank Recovery and Resolution Directive (BRRD) and the [Single Resolution Mechanism Regulation \(SRMR\)](#), the so-called Daisy Chains proposal. The Daisy Chains proposal is part of the Crisis and Management Deposit Insurance (CMDI) framework, which is explained in more detail in the [SAFE Regulatory Radar of April 2023](#). It has been presented as a stand-alone piece of legislation to allow for an early adoption ahead of the rest of the CMDI review proposals.

This review addresses certain issues related to the treatment of the internal MREL in banking resolution groups. These requirements aim at ensuring an effective and credible application of the bail-in tool. An MREL instrument that is issued by a subsidiary within a banking group and subscribed, directly or indirectly, by its parent company is referred to as "internal MREL". These internal MREL holdings must be deducted from the subsidiary's own funds to ensure the integrity and loss absorbency of the MREL instruments.

However, given the potentially adverse impact of the deduction requirement on the internal MREL for certain banking group structures, the proposal aims to give resolution authorities the power to determine internal MREL on a consolidated basis. The conditions for such a consolidated treatment are that it does not impair the effective resolvability of the group, that it does not lead to a shortage of eligible resolution resources across the group, and that the group meets certain structural requirements.

In addition, "liquidation entities", defined as entities within a banking group that are to be wound up in accordance with insolvency laws, would be required to meet an MREL requirement in excess of their own funds requirements, unless the resolution authority decides otherwise on a case-by-case basis to protect financial stability.

The Council's position mainly provides further detail on the conditions for applying consolidated treatment and clarifies the definition and scope of liquidation entities. Based on this position, the Council will start negotiations with the European Parliament.

### **CRR: Verifying bank's compliance with internal models**

New rules clarify the assessment methodology based on which the competent authority decides whether to approve a credit institution's use of an internal model. On 22 November 2023, the European Banking Authority (EBA) published a final report on the draft regulatory technical standards (RTS) on the assessment methodology by which member states' competent authorities verify an institution's compliance with the Internal Model Approach (IMA) under the [Capital Requirements Regulation \(CRR\)](#).

In particular, the [RTS](#) specify a number of governance requirements that the institutions must fulfill. These requirements are based on those proposed in the previous [RTS on assessment methodology](#), but have been adapted to reflect the new framework for the Fundamental Review of the Trading Book (FRTB). In addition, the [RTS](#) include chapters on the internal risk-measurement model – covering expected shortfall, and the stress scenario risk measures – and the internal default risk model. These chapters provide competent authorities with a set of assessment methodologies and techniques to verify the requirements to which the institutions are subject. While some of the assessment techniques described in the [RTS](#) are mandatory for the competent authorities to apply, others remain optional depending on the situation of the institution, e.g. based on proportionality considerations. The draft [RTS](#) also contain a number of documentation requirements that institutions will have to comply with to enable competent authorities to carry out their assessment on a harmonized basis.

The aim of reducing the divergence between internal and standardised models for measuring capital requirements in light of the EU banking package is discussed in the [SAFE Finance Blog](#).

The regulation will be binding and will enter into force on the twentieth day following its publication in the Official Journal of the European Union.

## SEPA: Improving instant payment options for consumers and businesses

In light of the completion of the Capital Markets Union, the proposed rules aim to improve the availability of instant payment options in euro for consumers and businesses in the EU and European Economic Area countries. On 11 November 2023, the Council of the EU [announced](#) that it had reached a provisional agreement with the European Parliament on the instant payments proposal. According to the agreement, money transfers within the same country as well as to another EU member state will have to be executed within 10 seconds, regardless of the day or hour. Payment service providers, such as banks, offering transfer services in euros, will be obliged to offer the service of sending and receiving instant payments in euro. If charges apply, they may not be higher than those for standard credit transfers.

The Council and the Parliament agreed that the new rules will come into force after a transitional period, which will be longer in member states whose currency is not the euro. In addition, there will be a special derogation for non-euro area countries outside business hours given possible concerns about access to liquidity in euros.

Moreover, to prevent a credit transfer from being sent to an unintended payee, [PSPs](#) should have robust and up-to-date fraud detection and prevention measures in place, such as a service to immediately verify the identity of the payee to whom the payer intends to send a credit transfer. If the [IBAN](#) of the beneficiary does not match the name provided by the payer, the customer should be notified and, if such information is not provided, the customer should be compensated by the [PSP](#) for any financial loss. This requirement will also apply to regular transfers. In addition, customers should be given the possibility to set a maximum amount for instant credit transfers in euro, which they could easily change before the next transfer. [PSPs](#) should also immediately check whether their customers are subject to sanctions or other restrictive measures related to the prevention of money laundering and terrorist financing.

The provisional agreement must now be approved by the Council and the Economic and Monetary Affairs Committee of the European Parliament, followed by a plenary vote, before it can enter into force.

### Public consultations

- **European Commission (EC):** [call for feedback](#) on critical ICT third-party service providers - criteria and fees. The deadline is 14 December 2023.
- **EC:** [call for feedback](#) on supervision of crypto-assets – criteria, procedures and fees. The deadline is 6 December 2023.
- **European Banking Authority (EBA):** [public consultation](#) on draft Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes. The deadline is 26 February 2024.
- **EBA:** [public consultation](#) on draft Guidelines on complaints handling by credit servicers under the Credit Servicers Directive (CSD). The deadline is 9 February 2024.
- **EBA:** [public consultations](#) on draft technical standards on own funds requirements and stress testing of issuers under MiCAR. The deadline is 8 February 2024.
- **EBA:** [public consultation](#) on draft technical standards on supervisory colleges under the Markets in Crypto-Assets Regulation (MiCAR). The deadline is 8 February 2024.
- **EBA:** [public consultations](#) on the reporting of transactions with asset-referenced tokens and e-money tokens denominated in a non-EU currency under MiCAR. The deadline is 8 February 2024.
- **EBA:** [public consultations](#) on draft regulatory technical standards on liquidity requirements and on draft Guidelines on liquidity stress testing of relevant issuers of tokens, under MiCAR. The deadline is 8 February 2024.

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*Dr. Angelina Hackmann is Co-Head of the SAFE Policy Center.*



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