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Sustainable Architecture for Finance in Europe (<https://safe-frankfurt.de/>)

SAFE Finance Blog

The SAFE Regulatory Radar in June

06/30/2020

Updated rules for non-EU clearing houses, guidelines on loan origination and monitoring in the EU and amendments to prudent valuation to mitigate the impact of the COVID-19 pandemic: A selection of financial regulatory developments from this month



At 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. In June 2020, the European Commission and the European Banking Authority (EBA) set up new rules on the Capital Markets Union (CMU).

Central clearing counterparties: New rules regarding the systemic importance, fees, and compliance of non-EU clearing houses

On 11 June 2020, the European Commission published three draft delegated regulations supplementing the European Markets Infrastructure Regulation (EMIR (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32012R0648>)) regarding third-country central counterparties (CCPs). On 1 January 2020, the revised rules for clearing counterparties following Brexit became applicable. The details of the reform were outlined in the SAFE Regulatory Radar in October 2019 (<https://safe-frankfurt.de/news-latest/safe-finance-blog/details/the-safe-regulatory-radar-in-october.html>). The latest proposals aim to provide legal certainty on the new supervisory regime.

The first regulation (https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwilu_Sn-ojqAhXEyKQKHbRHAY0QFjACegQIARAB&url=https%3A%2F%2Fwww.findknowdo.com%2Fsites%2Fdefault%2Fec-delegated-act-systemic-importance-third-country-central-counterparties-11-june-2020.pdf&usg=AOvVaw09j9iRxxgKkEvxtCGkeP71U) specifies the criteria the European Securities and Markets Authority (ESMA) has to apply when determining whether a third-country CCP (central counterparty) is systemically important or likely to become systemically important for the financial stability of the EU or its member states. In detail, the regulation defines a core set of elements to be assessed by ESMA (European Securities and Markets Authority), including the nature, size and complexity of a CCP (central counterparty), the effect of its failure, and other interactions. It further provides quantitative indicators allowing ESMA (European Securities and Markets Authority) to estimate the exposure of clearing members. The second regulation ([https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1552022837489&uri=PI_COM:Ares\(2020\)3026705](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1552022837489&uri=PI_COM:Ares(2020)3026705)) considers the types of fees, the matters for which fees are due, the amount of fees, and the manner in which fees are to be paid by third-country CCPs (central counterparties). The last regulation ([https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1552022837489&uri=PI_COM:Ares\(2020\)3026676](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1552022837489&uri=PI_COM:Ares(2020)3026676)) establishes the minimum elements ESMA (European Securities and Markets Authority) has to evaluate when non-EU CCPs (central counterparties) request for comparable compliance, i.e. whether a clearing house may comply with EMIR (European Markets Infrastructure Regulation) through its compliance with its domestic law.

After the consultation period, the drafts are expected to be adopted by the European Commission and shall be binding and directly applicable in all member states.

Financial supervision: EBA presents guidelines on loan origination and monitoring

On 29 May 2020, the European Banking Authority (EBA) published guidelines (<https://eba.europa.eu/eba-seeks-future-proof-loan-origination-standards-taking-consideration-significant-transition>) on loan origination and monitoring. The guidance was prepared in response to the European Council Action Plan (<https://www.consilium.europa.eu/en/press/press-releases/2017/07/11/conclusions-non-performing-loans/>) on tackling high levels of non-performing loans in bank balance sheets.

Addressing shortcomings in institutions' credit-granting policies and practices after the recent financial crisis, the guidance aims to strengthen future lending and asset quality by establishing prudential standards and ensuring consumer protection.

The guidelines specify the internal governance arrangements, processes and mechanisms laid down in Capital Requirements Directive (CRD (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013L0036>)), introduce requirements for assessing the borrowers' creditworthiness and

set out supervisory expectations for the risk-based pricing of loans. The document also specifies the ongoing monitoring of credit risk and credit exposures, including regular credit reviews of borrowers.

In the context of the COVID-19 pandemic, the EBA is setting out a three-phase implementation of the

In the context of the COVID-19 pandemic, the EBA is setting out a three-phase implementation of the guidelines to give the institutions additional time to deal with any COVID-19 related immediate operational priorities. The guidelines will apply from 30 June 2021, whereby the transitional period ends on 30 June 2024.

Banking Union: Commission revised regulatory technical standards for prudent valuation under CRR following the COVID-19 pandemic

On 28 May 2020, the European Commission adopted a delegated regulation (<https://ec.europa.eu/transparency/regdoc/rep/3/2020/EN/C-2020-3428-F1-EN-MAIN-PART-1.PDF>) supplementing the Capital Requirements Regulation (CRR (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0575>)) with regard to regulatory technical standards (RTS) for prudent valuation.

The delegated act introduced a temporary increase of the aggregation factor from 50 percent to 66 percent that is used to calculate the aggregated amounts of additional valuation adjustments (AVA). The purpose of this temporary adjustment is to mitigate the excessive effect of the current extreme market volatility on AVA (additional valuation adjustments) amounts deducted from banks' own funds. Further, the increased aggregation factor may reduce the amount deducted from institutions' common equity tier 1 capital (CET1). CET1 (common equity tier 1 capital), the highest quality of regulatory capital, absorbs losses immediately when they occur. The provision should apply until 31 December 2020 in all member states.

Current public consultations

- **European Commission: Public consultation (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12445-Systemic-importance-of-third-country-central-counterparties>)** on a Delegated Regulation supplementing EMIR with regard to the criteria that ESMA should take into account to determine whether a third-country CCP is systemically important or likely to become systemically important for the financial stability of the EU or of one or more of its Member States. The deadline is Thursday, 9 July 2020.
- **European Commission: Public consultation (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12446-Fees-to-be-charged-to-third-country-central-counterparties>)** on a Draft Delegated Regulation supplementing EMIR with regard to fees charged by ESMA to third-country CCPs. The deadline is Thursday, 9 July 2020.
- **European Commission: Public consultation (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12023-Delegated-regulation-on-comparable-compliance-for-systemically-important-third-country-Central-Counterparties>)** on a Draft Delegated Regulation supplementing EMIR with regard to minimum elements to be assessed by ESMA when assessing third-country CCPs requests for comparable compliance and the modalities and conditions for that assessment. The deadline is Thursday, 9 July 2020.
- **International Organization of Securities Commissions (IOSCO): Public consultation (<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD654.pdf>)** on its 'Principles for Outsourcing'. The deadline is Thursday, 1 October 2020.
- **European Banking Authority (EBA): Public consultation (https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations_on_Reporting_and_disclosures_for_investment_firms/884616/EBA-CP-2020-07_CP_on_Reporting_and_disclosures_for_investment_firms.pdf)** on Draft Regulatory Technical Standards related to implementation of a new prudential regime for investment firms. The deadline is Friday, 4 September 2020.
- **European Banking Authority (EBA): Public consultation**

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 ([https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/CP on Reporting and disclosures for investment firms/884616/EBA-CP-2020-07 CP on Reporting and disclosures for investment firms.pdf](https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/CP%20on%20Reporting%20and%20disclosures%20for%20investment%20firms/884616/EBA-CP-2020-07%20CP%20on%20Reporting%20and%20disclosures%20for%20investment%20firms.pdf)) on Draft Regulatory Technical Standards on reporting and disclosure for investment firms. The deadline is Friday, 4 September 2020.
- **European Banking Authority (EBA): Public consultation**
 ([https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/CP on RTS on instruments for IF remuneration/884630/EBA-CP-2020-08 CP on RTS on instrument remuneration.pdf](https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/CP%20on%20RTS%20on%20instruments%20for%20IF%20remuneration/884630/EBA-CP-2020-08%20CP%20on%20RTS%20on%20instrument%20remuneration.pdf)) on Draft Regulatory Technical Standards on instruments for investment firms remuneration. The deadline is Friday, 4 September 2020.
- **European Banking Authority (EBA): Public consultation**
 ([https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/CP on RTS on instruments for IF remuneration/884630/EBA-CP-2020-08 CP on RTS on instrument remuneration.pdf](https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/CP%20on%20RTS%20on%20instruments%20for%20IF%20remuneration/884630/EBA-CP-2020-08%20CP%20on%20RTS%20on%20instrument%20remuneration.pdf)) on Draft Regulatory Technical Standards on pay out in instruments for variable remuneration under IFD. The deadline is Friday, 4 September 2020.
- **European Central Bank (ECB): Public consultation**
 (https://www.bankingsupervision.europa.eu/legalframework/publiccons/html/climate-related_risks.en.html) on a Draft Guide on climate-related and environmental risks. The deadline is Friday, 4 September 2020.

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