



SAFE Finance Blog

The SAFE Regulatory Radar in August 2020

08/31/2020

In August, the European Commission adopted an EU Capital Markets pandemic recovery package and proposed amendments to the Benchmark Regulation while the European Banking Authority published guidelines on disclosures and reporting



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.

Capital Markets Union: Recovery Package to mitigate the impact of the Coronavirus crisis

On 24 July 2020, the European Commission adopted a Capital Markets Recovery Package (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1382) that contains targeted amendments to the Prospectus Regulation (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1129>),

the Markets in Financial Instruments Directive (MiFID II (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1597857409843&uri=CELEX:32014L0065>)), and securitization rules. The package constitutes a part of the European Coronavirus recovery strategy (https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/recovery-plan-europe_en) and aims to support companies to recover from the crisis.

Regarding the changes to the prospectus regime, the Commission introduced a new type of short-form prospectus – "EU Recovery Prospectus" – for companies with a track record in the public market. The goal of this temporary prospectus form is to facilitate the recapitalization of companies.

Changes to MiFID (Markets in Financial Instruments Directive) II strive to remove disproportionate administrative burdens for investors. Furthermore, the Commission amended the MiFID (Markets in Financial Instruments Directive) rules affecting energy derivatives markets to help the development of euro-denominated energy markets.

Amendments to the Securitisation Regulation (https://ec.europa.eu/finance/docs/law/200724-securitisation-review-proposal_en.pdf) and the Capital Requirements Regulation (https://ec.europa.eu/finance/docs/law/200724-crr-review-proposal_en.pdf) extended the framework for simple, transparent, and standardized (STS) to on-balance-sheet synthetic securitizations. Moreover, the Commission removed some regulatory obstacles to the securitization of non-performing exposures.

The changes to the Prospectus Regulation and the Securitization Framework are directly applicable in the member states whereas the amendments to MiFID (Markets in Financial Instruments Directive) II need to be transposed into national laws.

Lending market: amendments to the Benchmark Regulation ahead of LIBOR phase-out

On 24 July 2020, the European Commission proposed (https://ec.europa.eu/info/publications/200722-proposal-benchmarks_en) targeted amendments to the EU Benchmarks Regulation (BMR) in light of the phase-out of the London Interbank Offered Rate (LIBOR) at the end of 2021. LIBOR (London Interbank Offered Rate) reflects the average rate at which major banks can obtain unsecured funding in a specified currency for a particular time in the London Interbank Market. The legislative proposal seeks to avoid a legal vacuum and the negative effects on the banking sector's capacity to provide funding to EU companies after the phase-out of LIBOR (London Interbank Offered Rate).

According to the proposal, the Commission would get a new statutory power to design a replacement rate of LIBOR (London Interbank Offered Rate) in all contracts and financial instruments that mature after 2021. This power of the Commission would only apply to contracts concluded by supervised entities under the BMR (Benchmarks Regulation). For contracts not under the EU supervision, member states are encouraged to adopt national statutory replacement rates.

As a next step, the European Parliament and the Council have to review the Commission's proposal and may propose amendments.

Capital Markets Union: EBA technical standards on disclosures and reporting

On 3 August 2020, the European Banking Authority (EBA) published its final draft Implementing Technical Standards (<https://eba.europa.eu/eba-publishes-final-draft-technical-standards-disclosure-and-reporting-mrel-and-tlac>) (ITS) on disclosure and reporting on total loss absorbency capacity (TLAC) and the minimum requirements for own funds and eligible liabilities (MREL) for global systemically important institutions (G-SII). These standards aim to facilitate the use of information by market participants and regulatory

authorities, necessary to understand and monitor the TLAC (total loss absorbency capacity) and MREL (minimum requirements for own funds and eligible liabilities) of the respective entity. The guidelines further try to increase efficiency for institutions when complying with disclosure and reporting obligations.

A month earlier, EBA presented new ITS on public disclosures (https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards) and revised its final draft ITS on supervisory reporting (https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards). The guidelines follow the changes in the revised Capital Requirements Regulation (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0876>) (CRR2) and the Prudential Backstop Regulation (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0630&from=EN>) and foster market discipline.

The disclosure ITS (Implementing Technical Standards) aims to optimize the Pillar 3 policy framework for credit institutions by providing templates for disclosures of key metrics, risk management objectives and policies, own funds, and prudent valuation adjustments (PVAs). The reporting ITS (Implementing Technical Standards) covered new reporting requirements on counterparty credit risk, net stable funding ratio, and non-performing exposures minimum coverage.

The first disclosure and reporting reference dates under new guidelines will be 30 June 2021.

Current public consultations

- **European Commission: Public consultation** (<https://ec.europa.eu/info/law/better-regulation/have-y>)

alignment-of-undertakings-reporting-non-financial-information) on a roadmap on a Delegated Regulation, Tuesday, 8 September 2020.

- **European Central Bank (ECB): Public consultation ([https://www.ecb.europa.eu/press/pr/date/2020/term-rates-using-the-euro-short-term-rate-\(€STR\)](https://www.ecb.europa.eu/press/pr/date/2020/term-rates-using-the-euro-short-term-rate-(€STR).)). The deadline is Friday, 11 September 2020.**
- **Basel Committee on Banking Supervision: Public consultation (<https://www.bis.org/press/p200806>) management of operational risk (PSMOR). The deadline is Friday, 6 November 2020.**
- **EBA and European Securities and Markets Authority (ESMA): Public consultation (<https://eba.europa.eu/suitability-members-management>) on the assessment of the suitability of members of the management.**
- **EBA: Public consultation (<https://eba.europa.eu/eba-consults-use-regtech-solutions-and-ways-suj>) Wednesday, 30 September 2020.**
- **EBA: Public consultation (<https://eba.europa.eu/eba-consults-draft-technical-standards-default-pr>) default probabilities (PDs) and loss given default (LGD) for default risk model under the Internal Model A deadline is Thursday, 22 October 2020.**
- **EBA: Public consultations on the **conditions institutions should comply when decide to using the al specifying-conditions-substitution-approach-context-%E2%80%9Ctri-party-transactions%E2%80%9C** and on **how institutions should determine exposures arising from derivative and credit derivative specifying-determination-indirect-exposures-arising-credit**) not entered directly into with a client but are Thursday, 22 October 2020 and Friday, 23 October 2020.**
- **EBA: Public consultations on technical standards on the **impracticality of contractual recognition (htt contractual-recognition-bail)** of write-down and conversion powers and on the **methodology to estim: (<https://eba.europa.eu/eba-consults-estimation-pillar-2-and-combined-buffer-requirements-purpo>) Resolution Directive (BRRD). The deadline is Saturday, 24 October 2020.****
- **EBA: Public consultations on technical standards **specifying uniform reporting templates (<https://eba.europa.eu/eba-consults-estimation-pillar-2-and-combined-buffer-requirements-purpo>) instructions and methodology for MREL and **specifying the methods (<https://eba.europa.eu/eba-consults-estimation-pillar-2-and-combined-buffer-requirements-purpo>) groups**) to avoid that instruments indirectly subscribed by the resolution entity for MREL hamper the smc October 2020 and Tuesday, 27 October 2020.****
- **EBA: Public consultation (https://eba.europa.eu/sites/default/documents/files/document_library/Pi) **21%20%28CP%20draft%20GL%20on%20criteria%20for%20the%20use%20of%20data%20inputs%20draft** guidelines on the conditions to be met by the data related to modellable risk factors when using exp**

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