

SAFE Finance Blog

30 APR 2021

The SAFE Regulatory Radar in April

Detailed rules for central counterparties extending their businesses, new standards for prudential consolidation, and draft law on the oversight framework in Germany after Wirecard scandal



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.*

Central counterparties: ESMA publishes technical standards to extend activities and the validation process for CCPs

On 8 April 2021, the European Securities and Markets Authority (ESMA) proposed a final draft Regulatory Technical Standards (RTS) on changes to services and models of central counterparties (CCPs) in cooperation with the European System of Central Banks (ESCB).

The RTS strive to establish uniform procedures and a consistent approach throughout the EU by specifying the provisions of the European Markets Infrastructure Regulation (EMIR). In particular, the standards introduce the criteria for extension of CCP's authorization that cover a new type of financial products, a category of an instrument, a type of transaction, and payments in a new currency. Another part of the RTS explains which changes to the CCP's models and parameters require validation from its national competent authority (NCA) and ESMA. Among others, significant adaptations of the operational structure, the development of new contract specifications, or new risks linked to the different characteristics of the assets are indicators that a CCP must obtain validation. Moreover, the RTS shed light on consultation procedures of the CCP colleges of supervisors. The last amendments to the regulation of the CCP colleges were outlined in the Regulatory Radar in September 2020.

After passing through European Commission and formal adoption by the European Parliament and the Council, the standards will be binding in all member states.

Capital Markets Union: EBA sets out new rules on prudential consolidation under CRR

On 15 April 2021, the European Banking Authority (EBA) published its final draft Regulatory Technical Standards on the methods of prudential consolidation under the Capital Requirements Regulation (CRR) for credit institutions, investment firms, ancillary services undertakings, and other financial institutions. Under the prudential consolidation regime, the affected entities must comply with additional requirements laid down in the Investment Firm Directive and Regulation (IFR/IFD). The RTS aim to clarify the provisions of the CRR and to support the affected institutions and national competent authorities (NCAs) when choosing the appropriate method of prudential consolidation.

Under the general rule, institutions must be fully consolidated. However, the CRR allows them in some cases to carry out other methods of consolidation. Accordingly, the RTS provide some indicators and conditions for the proportional method on a case-by-case basis or the aggregation method for undertakings managed on a unified basis. The EBA also considers some specific cases of participation in institutions and the possible ways to apply other consolidation methods such as equity method.

NCAs must consider these conditions when permitting the use of a method as well as to take into account risks stemming from the consolidations.

The European Commission is expected to endorse a delegated regulation containing the RTS that will be binding throughout the EU.

Market supervision: German government draws its lessons from the Wirecard scandal

On 14 April 2021, the Finance Committee of the German Bundestag held the second public hearing on the draft government bill for a law to strengthen financial market integrity ("Finanzmarktintegritätsstärkungsgesetz", FISG). As a response to the Wirecard scandal, the law aims to restore market confidence in financial reporting by companies listed in Germany and in the impartial enforcement of capital markets and accounting law by the Federal Financial Supervisory Authority BaFin.

In 2017, [ESMA](#) has already noted that Germany does not comply with the [Guidelines on Enforcement of Financial Information](#) due to a lack of powers by [BaFin](#), indicating that the [Transparency Directive](#) is not correctly transposed into German law.

The draft government bill gives [BaFin](#) more extensive rights to intervene and investigate without consulting the German Financial Reporting Enforcement Panel (FREP) at the first stage if it suspects misconduct. However, delegating random examinations to a privately organized body like [FREP](#), is not excluded in the draft. Other regulatory changes target the auditing industry such as an increase of the auditors' liability under German civil law, more frequent audit firm rotations and a more rigid separation from their consulting business. Finally, [BaFin](#) employees are no longer permitted to privately trade specific financial products.

Proposed amendments cover especially mystery shopping as an instrument to evaluate the quality of financial services. Ann-Katrin Kaufhold from Ludwig Maximilian University in Munich and SAFE Director Jan Krahen recommended in a [statement for the German parliament](#) (Bundestag) dissociating [BaFin](#) from the Federal Ministry of Finance which oversees the legality and appropriateness of BaFin's enforcement decisions ("Rechts- und Fachaufsicht"). By shielding [BaFin](#) from undue political influence, vigorous enforcement in terms of investor protection and market integrity would become more credible.

After approval of the Bundesrat, the [FISG](#) is scheduled to enter into force on 1 July 2021.

Current public consultations:

- **European Commission:** [public consultation](#) on the review of bank crisis management and deposit insurance framework (BRRD review). The deadline is Thursday, 20 May 2021.
- **European Commission:** [public consultation](#) on instant payments. The deadline is Wednesday, 23 June 2021.
- **European Banking Authority (EBA):** [public consultation](#) on its revised Guidelines on recovery plan indicators. The deadline is Friday, 18 June 2021.
- **EBA:** [public consultation](#) on draft regulatory technical standards (RTS) on disclosure of investment policy by investment firms. The deadline is Thursday, 1 July 2021.
- **EBA:** [public consultation](#) on its draft Regulatory Technical Standards (RTS) on the list of countries with an advanced economy for calculating the equity risk under the alternative standardized approach (FRTB-SA). The deadline is Friday, 2 July 2021.
- **The European Securities and Markets Authority (ESMA):** [public consultation](#) on potential reforms of the EU Money Market Funds Regulation (MMFR). The deadline is Wednesday, 30 June 2021.
- **The European Insurance and Occupational Pensions Authority (EIOPA):** [public consultation](#) on revised Guidelines on the use of the Legal Entity Identifier (LEI). The deadline is Wednesday, 30 June 2021.
- **EIOPA:** [public consultation](#) on framework to address value for money risk in the European unit-linked market. The deadline is Friday, 16 July 2021.

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