Leibniz Institute for Financial Research SAFE

SAFE Finance Blog

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The SAFE Regulatory Radar in July

Agreements on Markets in Crypto-Assets Regulation, on sustainability reporting, and new rules against market abuse in liquidity contracts

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

Digital finance: final agreement on the Markets in Crypto-Assets Regulation

On 30 June 2022, the Council Presidency and the European Parliament reached an agreement on the Regulation on Markets in Crypto-assets (MiCA). The initial proposal was submitted on 24 September 2020 as part of the digital finance package, which also includes the framework for digital operational resilience and a pilot regime for market infrastructures based on distributed ledger technology. MiCA aims to provide legal clarity on the European market by developing a comprehensive regulatory framework for crypto-assets, crypto-assets issuers, and crypto-asset service providers. The regulation also strives to strengthen investor protection, ensure financial stability, and prevent misuse of crypto-assets.

Most types of crypto-assets so far unregulated in the EU, including asset-referenced, utility, and e-money tokens, now fall into the scope of MiCA. However, MiCA does not regulate crypto-assets issued by central banks or other public authorities. In the last round of negotiations, non-fungible tokens (NFTs) were also excluded from MiCA. The final version of the regulation foresees stricter requirements, particularly in terms of minimum liquidity, for so-called “stablecoins” that are backed with an asset and/or currency basket or use algorithmic stabilizing methods. Recent developments in the stablecoins market, especially the launch of “TerraUSD”, an algorithmic stablecoin tied to the US dollar, showed the growing risk for the market and financial stability in the absence of regulation.

Notably, the U.S. have just recently started to develop a comprehensive federal approach to crypto regulation following the executive order of the president on ensuring the responsible development of digital assets in March 2022. Under MiCA, issuers of significant stablecoins will be directly supervised by the European Banking Authority (EBA). Apart from that, stablecoin holders have the right to claim payment from the issuer at any time and free of charge. For Big Tech’s potential in the cryptocurrency market in light of MiCA, see Policy Letter No. 97, which discusses how recent regulatory developments address financial, competition, and monetary law issues arising from the launch of tokens by Big Tech.

To operate in the EU market, crypto-asset service providers are subject to authorization requirements. Authorized providers are allowed to carry a wide range of services, including custody, administration, exchange, placement, execution, and transmission of orders for crypto-assets. In the area of investor protection, MiCA makes crypto-asset service providers liable for damages or losses of investors’ crypto-assets. Regarding sustainability aspects, issuers of crypto assets must disclose data on their environmental and climate footprint. To prevent money laundering, the EBA will run a public register of non-compliant crypto asset service providers.

The European Parliament and Council of the EU will formally approve the agreed text. MiCA is expected to enter into force at the end of 2023.

Sustainable finance: agreement on new social and environmental reporting rules for large companies

On 21 June 2022, the Council and the European Parliament reached an agreement on the Corporate Sustainability Reporting Directive (CSRD). The details of the initial proposal for CSRD that sets out mandatory reporting on environment, social, and governance criteria (ESG) for large companies and listed small and medium-sized enterprises (SMEs) were outlined in the SAFE Regulatory Radar in May 2021. The last changes to the directive aim to ensure that reporting obligations are clear for financial market participants as well as to ensure better monitoring progress on climate, biodiversity, and human rights.

New reporting standards are based on double materiality, covering both the companies' impacts on the planet as well as risks and opportunities to the company arising from sustainability matters. To ensure the high quality of the data disclosed, reporting must be certified by an accredited independent auditor or certifier. Initially, CSRD had to be incorporated into national law by the end of 2023. However, the agreement includes a delayed application to 2024 for companies that are already covered by EU Non-Financial Reporting Directive, to 2025 for other large listed and non-listed companies with above 250 employees, and to 2026 for listed SMEs, small and non-complex credit institutions, and captive insurance undertakings.

After official formal adoption, member states must implement measures to transpose the directive into national law. The European Financial Reporting Group (EFRAG) will be the competent authority for setting up the sustainability reporting standards. The first set of standards is expected to be released by November 2022.

For a globally consistent approach to sustainability reporting, there is a need to enhance coordination and cooperation in the standard-setting process. On 12 July 2022, finance, climate, and legal researchers discussed relevant practical issues on gathering and reporting data and assessed and evaluated sustainability standards at the first Sustainability Standards Watchers Conference, co-organized by SAFE.

Market abuse: new rules for liquidity contracts

On 13 July 2022, the European Commission published a Delegated Regulation supplementing the Market Abuse Regulation (MAR) that contains regulatory technical standards (RTS) on a template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market. The RTS strive to establish fair conditions for SME issuers to enter liquidity contracts. In detail, the RTS provide the requirements that parties to a liquidity contract should comply with, including opening a liquidity account, setting the limits on the maximum number of resources that can be allocated to the liquidity account, and obligations of the liquidity provider to act fair and independently. Other provisions cover fee structure, remuneration, and transparency rules. This binding regulation enters into force on the twentieth day following its official publication.

Current public consultations:

- **European Securities and Markets Authority (ESMA)**: public consultation on draft guidelines on standard forms, formats, and templates to apply for permission to operate a distributed ledger technology (DLT) market infrastructure. The deadline is Friday, 9 September 2022.
- **ESMA**: public consultation on amendments to the Central Securities Depositories Regulation cash penalty process for cleared transactions. The deadline is Friday, 9 September 2022.
- **ESMA**: public consultation on the review of the regulatory technical standards (RTS) on the form and content of an application for recognition under the Benchmarks Regulation (BMR). The deadline is Friday, 9 September 2022.
- **ESMA**: public consultation on the clearing obligation (CO) and derivative trading obligation (DTO) in view of the 2022 status of the benchmark transition. The deadline is Friday, 30 September 2022.
- **ESMA**: public consultation on the review of the Guidelines on MIFID II product governance requirements. The deadline is Friday, 7 October 2022.
- **European Insurance and Occupational Pensions Authority (EIOPA)**: public consultation on draft supervisory statement on differential pricing practices. The deadline is Friday, 7 October 2022.
- **Basel Committee on Banking Supervision**: public consultation on the prudential treatment of banks' crypto asset exposures. The deadline is Friday, 30 September 2022.
- **Platform on Sustainable Finance**: public consultation on a draft report on minimum safeguards. The deadline is Monday, 22 August 2022.

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