Leibniz Institute for Financial Research SAFE
Sustainable Architecture for Finance in Europe

SAFE Finance Blog

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The SAFE Regulatory Radar in April

New “daisy chains” directive, rules on crypto-asset service providers, and new guidelines for investment firm groups

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.

BRRD/ SRMR: New directive on indirect subscription chains

On 26 March 2024, the Council of the EU adopted the so-called ‘Daisy Chains’ directive that amends the Bank Recovery and Resolution Directive and the Single Resolution Mechanism Regulation. In the past, the Commission had adopted a legislative package known as the reform of the Crisis Management and Deposit Insurance framework (CMDI) setting out amendments to the BRRD and to the SRMR. As part of the CMDI package, the Commission had also adopted a targeted amendment to the BRRD and to the SRMR as a separate legal instrument (the “Daisy Chains proposal”) to address specific issues on the treatment of internal ‘MREL’ (“minimum requirement for own funds and eligible liabilities”). Where an MREL instrument is issued by a subsidiary within a banking group and subscribed directly or indirectly by its parent company, it is referred to as ‘internal MREL’. SAFE White Paper No. 92 analyses MREL holders, inter alia retail and interbank holdings.

The Council and Parliament reached a provisional agreement on the proposal on 6 December 2023. The Daisy Chains proposal has been presented as a self-standing legal instrument for the co-legislators to fast-track its adoption ahead of the rest of the CMDI review proposals. For more information on the Daisy Chains proposal see also the SAFE Regulatory Radar in November and April 2023.

The new Directive has two aims. The first is to support effective resolution: The BRRD requires banks and other credit institutions established in the EU to meet an MREL to ensure an effective and credible application of the bail-in tool. Failure to meet the MREL may negatively impact institutions’ loss absorption and recapitalization capacity and, ultimately, the overall effectiveness of resolution. In case of an internal MREL, the intermediate subsidiary must deduct its holdings of internal MRELfrom its own funds to ensure the integrity and loss absorbency of the MREL instruments.

Second, the new rules should avoid disproportionate effects: After analysis, the Commission found that the application of the deduction requirement on internal MREL could have a disproportionate detrimental impact for certain banking group structures, namely those operating under a parent holding company and certain operating company structures. The new rules aim to give the resolution authorities the power to set internal MREL on a consolidated basis, subject to certain conditions. Where the resolution authority allows a banking group to apply such consolidated treatment, the intermediate subsidiaries will not be obliged to deduct their individual holdings of internal MREL, thus preventing the detrimental effect identified by the Commission. In addition, the new rules introduce a specific MREL treatment for ‘liquidation entities’.

This is the last step in the adoption process. The Directive will enter into force 20 days after its publication in the EU’s Official Journal.

MiCA: Finalized rules on crypto-asset service providers

On 25 March 2024, the ESMA published the first Final Report under the Markets in Crypto-Assets Regulation (MiCA).

The report aims to promote clarity and predictability, fair competition between crypto-asset service providers (CASPs), and a safer environment for investors across the Union.

It includes proposals on information required for the authorization of CASPs, the information required where financial entities notify their intent to provide crypto-asset services, information required to assess the intended acquisition of a qualifying holding in a CASP, and how CASPs should address complaints.

ESMA has submitted the Final Report to the Commission and will provide further advice and technical guidance in this area if requested by the Commission.

IFR: New final Guidelines on the group capital test for investment firm groups

On 11 April 2024, the EBApublished its final Guidelines on the application of the group capital test for investment firm groups.

These Guidelines, in accordance with Article 8 of the Investment Firm Regulation (EU) 2019/2033, aim to standardize how the group capital test is applied across the EU. The EBA created the Guidelines independently as mandated by its founding Regulation and addresses competent authorities or financial institutions to establish consistent, efficient, and effective supervisory practices within the European System of Financial Supervision and uphold EU laws.

The Guidelines cover both quantitative and qualitative aspects. Quantitatively, they specify, among others, the number of undertakings and levels within a group. Qualitatively, they emphasize the need for simple capital ties and a clear ownership structure. The Guidelines also provide a methodology to guide Competent Authorities to evaluate the adequacy of own funds requirement of third country undertakings of EU groups.

Public consultations

- **IOSCO**: Call for Feedback on the evolution of market structures and proposed good practices . The deadline for comments on the consultation report is 3 July 2024.
- **FSB**: Call for Comments on its consultation report on liquidity preparedness for margin and collateral calls. The deadline for responses is 18 June 2024.

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