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

SAFE Finance Blog

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The SAFE Regulatory Radar in May

New directive to ensure fair taxation and guidelines to prevent greenwashing

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.

FASTER initiative: Draft for safer and faster withholding tax procedure by the Council of the EU

The Council of the European Union has reached an agreement on the FASTER initiative to improve withholding tax procedures within the EU. The initiative aims to make these procedures safer and more efficient for cross-border investors, national tax authorities, and financial intermediaries. By introducing a common EU Electronic Tax Residence Certificate (eTRC), the Directive will simplify and speed up the process of obtaining withholding tax relief, reduce administrative burdens, and improve the functioning of the Capital Markets Union (CMU). SAFE White Paper No. 102 highlights obstacles to a functioning CMU and sets out two different paths towards capital market integration.

The FASTER initiative includes two fast-track procedures to complement the existing standard refund procedure: the "relief-at-source" procedure, which applies the correct tax rate at the time of payment, and the "fast-track refund" system, which guarantees refunds within 60 days. These measures aim to harmonize tax relief procedures in all Member States, making them faster, simpler, and more transparent. In addition, the initiative introduces standardized reporting requirements for financial intermediaries and establishes a European portal for certified financial intermediaries to facilitate information exchange and improve tax enforcement.

The next steps are for member states to transpose the Directive into national law by 31 December 2028, with the rules applying from 1 January 2030. The Directive will be subject to legal-linguistic revision and formal adoption by the Council before being published in the EU's Official Journal. This initiative is expected to improve tax compliance, combat tax fraud (e.g. Cum/Ex), and promote a fairer and more transparent tax environment, ultimately encouraging more cross-border investment within the EU.

AIFMD/ UCITS: Guidelines or investment funds to prevent greenwashing

The European Securities and Markets Authority (ESMA) has agreed upon new guidelines for investment funds that use ESG- and sustainability-related names in the respective fund names, as was mandated by recent revisions of the Alternative Investment Fund Managers Directive (AIFMD) and Undertakings for Collective Investment in Transferable Securities (UCITS) Directive. AIFMD and UCITS state that fund managers are under the obligation to act honestly and fairly and "not to mislead" possible investors. SAFE researcher Carmelo Latino investigates the stock market reaction to greenwashing name changes on the firm-level in SAFE Working Paper No. 410.

Following a public consultation and stakeholder input, the amended guidelines relapse from the draft guidelines in some regards, while simultaneously adding new components:

- Any fund with an ESG- or sustainability-related name should include at a minimum 80 percent of investment objectives that follow the Sustainable Finance Disclosure Regulation (SFDR). An additional threshold for 50 percent investments of these 80 percent to comply with Article 2(17) SFDR has been dropped, as the definition was considered too broad to effectively function as a threshold.
- Against the draft guidelines which incorporated strict exclusion criteria (minimum safeguards) for funds in non-alignment with Paris-aligned benchmarks (PAB), most notably including fossil fuel companies, the amended guidelines differentiate between PAB and the Climate Transition Benchmark (CTB) framework to account for transition focused strategies. ESMA introduces a new category for funds with transition-related names that comply with the 80 percent threshold and CTB criteria and

whose names may include terms such as “improving”, “progress”, or “transformation”. Fund managers shall provide measurements to demonstrate a transitory development when using these terms. PAB exclusion criteria continue to apply to funds using sustainability-related terms unless transition-related names are also used, whereas funds related to social and governance terms fall under the CTB framework. SAFE Working Paper No. 415 has unpacked the ESG classification by rating agencies.

Following the translation into the official EU languages and publication on the ESMA website, national competent authorities (NCAs) will have two months to indicate whether they comply or intend to comply with the guidelines. The guidelines will apply three months after the publication, starting a transitional period for existing funds of six months.

Public consultations

- **EBA**: Consultation on draft technical standards on equivalent mechanism for unfinished property under the standardised approach of credit risk. The deadline is 7 June 2024.
- **EBA**: Consultation on draft technical standards on the specification of long and short positions under the derogations for market and counterparty risks. The deadline is 24 July 2024.
- **European Commission**: Targeted consultation assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBFI). The deadline is 24 November 2024.

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