

Luxembourg

Pathfinder

Deloitte Monthly Regulatory Update












February 2014

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CSSF Regulation N°14-01 on the implementation of certain discretions of Regulation (EU) No 575/2013 - *Commission de Surveillance du Secteur Financier*
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 **Deloitte alert**

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CSSF Circular 14/583 - Entry into force of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 - *Commission de Surveillance du Secteur Financier* 11/02/2014

 **Deloitte alert**

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CSSF Circular 14/582 - Processing of deposits of retail customers for the purpose of the new liquidity reporting including EBA guidelines EBA/GL/2013/01 on retail deposits subject to different outflows for purposes of liquidity reporting under Regulation (EU) No 575/2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Capital Requirements Regulation – CRR) - *Commission de Surveillance du Secteur Financier*
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Central securities depositories Agreement reached between the Council of European Union and the European Parliament on the proposal for a Regulation on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC – Council of European Union
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Credit institutions – Data collection BCL Circular 2014/235 – Modification of the statistical reporting from credit institutions – *Banque centrale de Luxembourg* 20/01/2014

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Credit ratings EBA, EIOPA and ESMA final report JC-2014-004 on mechanistic references to credit ratings in the ESAs' guidelines and recommendations – European Supervisory Authorities 06/02/2014

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Deposit guarantee scheme Agreement reached between the Council of European Union and the European Parliament on the proposal for a Directive on deposit guarantee schemes - Council of European Union 18/02/2014

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**European Social
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Market abuse

European Parliament vote on the proposal
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Markets in Financial Instruments Directive and Regulation (MiFID / MiFIR)	<p>CSSF Circular 14/585 - Transposition of ESMA guidelines on remuneration policies and practices (MiFID) - Addition of Annexe V to Circular CSSF 07/307 - <i>Commission de Surveillance du Secteur Financier</i> 25/02/2014</p> <p> Deloitte summary</p> <p> Original text</p>	<p>ESMA opinion 2014/146 - MiFID practices for firms selling complex products – European Securities and Markets Authority 07/02/2014</p> <p> Original text</p> <p> Related document:</p> <p>ESMA investor warning 2014/154</p>
<p>Agreement reached between the Council of European Union and the European Parliament on the revised rules for markets in financial instruments (MiFID/MiFIR) - Council of European Union 19/02/2014</p> <p> Original text:</p> <p>Draft Directive</p> <p>Draft Regulation</p>		
Mortgage Credit Directive	<p>Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 – Official Journal L 60 28/02/2014</p> <p> Deloitte summary</p> <p> Original text</p>	
PSF - Authorisation		<p>CSSF questions and answers (Part I) on how to obtain authorisation as PSF – <i>Commission de Surveillance du Secteur Financier</i></p> <p> FAQ (French only at this stage)</p>
Single Euro Payment Area (SEPA)	<p>Deadline for SEPA payments extended to 1 August - Council of the European Union 18/02/2014</p> <p> Original text</p>	

Endorsement by the Economic and Monetary Affairs Committee of the proposal for a Directive on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC – European Parliament 20/02/2014

 [Original text](#)

Endorsement by the Economic and Monetary Affairs Committee of the proposal for a Regulation on interchange fees for card-based payment transactions – European Parliament 20/02/2014

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Single Resolution Mechanism (SRM) and Single Bank Resolution Fund

Amendments adopted by the European Parliament on the proposal for a Regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 - European Parliament 06/02/2014

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Solvency II

EIOPA timeline for the delivery of Solvency II implementing technical standards and guidelines – European Insurance and Occupational Pensions 31/01/2014

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Transparency Law

CSSF questions and answers on the Transparency Law and the Grand-ducal transparency regulation – *Commission de Surveillance du Secteur Financier* 25/02/2014

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Deloitte alerts and summaries

Alternative Investment Fund Managers (AIFM)

ESMA questions and answers on application of AIFMD – European Securities and Markets Authority
17/02/2014

Updated CSSF questions and answers on AIFMD – *Commission de Surveillance du Secteur Financier*
20/02/2014

Remuneration

On 17 February 2014, ESMA published a Questions & Answers document to promote a common approach and practices on the application of the AIFMD. This alert provides a brief summary of the major points raised regarding remuneration rules.

First application of the remuneration rules:

- **For AIFMs performing AIFMD activities before 22 July 2013**

ESMA reiterated that AIFMs performing activities under the AIFMD before 22 July 2013 have one year to submit an application and they become subject to the relevant rules on remuneration as of the date of authorisation.

Nevertheless, the rules on variable remuneration for identified staff (under Sections XI and XII of the Remuneration Guidelines) should apply for the first time to the first full performance period following the date of authorisation. ESMA provided the following examples to ensure common application of this principle for an existing AIFM whose accounting period ends on 31 December:

- When authorisation is obtained between 22 July 2013 and 31 December 2013, the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2014 accounting period.
- When authorisation is obtained between 1 January 2014 and 22 July 2014, the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2015 accounting period.
- However, when application for authorisation is submitted by 22 July 2014 and authorisation is obtained after that date (including after 31 December 2014), the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2015 accounting period.

- **For AIFMs not performing AIFMD activities before 22 July 2013**

AIFMs not performing AIFMD activities before 22 July 2013 and obtaining an authorisation under the AIFMD after 22 July 2013 are subject to the same principles as described above: although they become subject to the relevant rules on remuneration as of the date of authorisation, the rules on variable remuneration for identified staff should apply first to the first full performance period following the date of authorisation.

ESMA clarified that in practice, an AIFM submitting an application for authorisation in the year N (after 22

July 2013), should apply the AIFMD remuneration regime on variable remuneration only to the calculation of payments relating to the accounting period for year N+1.

Remuneration rules in case of delegation of portfolio management or risk management activities

ESMA clarified the following principles with regard to remuneration practices in delegated entities:

- “Appropriate contractual arrangements” to ensure that there is no circumvention of the remuneration rules (paragraph 18(b) of the Remuneration Guidelines) should be in place only in respect of the delegate’s identified staff with a material impact on the risk profile of the AIFs it manages as a result of the delegation, and only in respect of such delegated activities.
- In a delegation arrangement where the delegate is subject to CRD rules, the delegate can be considered to be subject to regulatory requirements that are equally as effective as those applicable under the Remuneration Guidelines, provided that the staff of these entities who are identified staff are subject to the CRD rules.

Update of CSSF FAQ document

The CSSF published on 21 February 2014 its updated Frequently Asked Questions (FAQ) and gave additional clarification on the valuation of AIF assets and the disclosure of transaction costs.

Valuation of AIF assets

The Law of 2013 transposing the AIFMD foresees that the AIFM may perform the valuation function itself or appoint one or several external valuers. The CSSF has confirmed as foreseen by Level 2 that the administrator of an AIF can be considered as an external valuer if they provide tailor-made valuation for individual assets, specifically those requiring subjective judgement on the value of the assets.

Accordingly, an AIFM may prefer not to consider administrators, who go no further than gathering prices from external sources as external valuers and keep the function internally within the AIFM itself.

Additionally, the AIFM may appoint the depositary as external valuer provided that the depositary has functionally and hierarchically separated its depositary functions from its task as external valuer.

Transaction costs

The CSSF confirms that AIFs established under Part II of the Law of 2010 must disclose transaction costs in their financial reports following Schedule B of the Annex I of this Law.

MiFID services passporting

The European Commission, in its Q&A published on 27 March 2013, clarifies that an AIFM authorization would be incompatible with an authorization for a credit institution or for a firm subject to the Directive 2004/39/EC (a MiFID firm). Nonetheless, the AIFMD set forth the possibility for an AIFM to perform non-core services comprising:

- investment advice;
- safe-keeping and administration in relation to shares or units of collective investment undertakings;
- reception and transmission of orders in relation to financial instruments.

The question hence raised by market players was whether such services may benefit from an EU passport. The position of the European Commission in its Q&A was that the AIFM passport only applies to management and marketing activities, and not to these non-core activities.

This position has since been challenged, in particular in the United Kingdom and in France, and on 12 February 2014, the Financial Conduct Authority (FCA) published an announcement on its website relating to the ability to passport these non-core services. The FCA explains that this decision follows the agreement reached during the recent EU negotiations on the proposed revision of the Markets in Financial Instruments Directive (MiFID 2). This agreement concerns the introduction of an amendment to Article 33 of the AIFMD and will make explicit that the right to passport AIFM services includes the non-core services.

We should stress that, up until now, the European Commission has not officially adopted a revised position and ESMA has not confirmed the FCA position, however it is likely that this opinion will be shared very soon by other EU regulators.

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Anti-money laundering (AML)

CSSF Circular 14/584: FATF statements - *Commission de Surveillance du Secteur Financier* 17/02/2014
(French only at this stage)

Circular Letter 14/3 of the Commissariat aux Assurances on FATF statements - *Commissariat aux Assurances* 24/02/2014 (French only at this stage)

Both Circulars notify that:

- Jurisdictions whose anti-money laundering and terrorist financing regimes have substantial and strategic deficiencies are still Iran and Democratic Republic of Korea;
- Jurisdictions not making sufficient progress are Algeria, Ecuador, Ethiopia, Indonesia, Burma / Myanmar, Pakistan, Syria, Turkey and Yemen;
- Jurisdictions whose anti-money laundering and terrorist financing regimes are not satisfactory are the following: Afghanistan, Albania, Angola, Argentina, Cambodia, Cuba, Iraq, Kenya, Kyrgyzstan, Kuwait, Laos, Mongolia, Namibia, Nepal, Nicaragua, Uganda, Papua New Guinea, Sudan, Tajikistan, Tanzania and Zimbabwe.

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Capital Requirements Directive and Regulation (CRD IV / CRR)

CSSF Regulation N°14-01 on the implementation of certain discretions of Regulation (EU) No 575/2013 - CSSF 20/02/2014 (French only at this stage)

CSSF Circular 14/583 - Entry into force of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 - *Commission de Surveillance du Secteur Financier* 11/02/2014
(French only at this stage)

CSSF Circular 14/582 - Processing of deposits of retail customers for the purpose of the new liquidity reporting including EBA guidelines EBA/GL/2013/01 on retail deposits subject to different outflows for purposes of liquidity reporting under Regulation (EU) No 575/2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Capital Requirements Regulation – CRR) - Commission de Surveillance du Secteur Financier 31/01/2014 (French only at this stage)

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (“CRR”) entered into force on 1 January 2014. It is applicable to institutions and investment firms of the EU member states and is not subject to local transposition. In particular, Part X of the CRR includes a series of national discretions related to some phased-in arrangements of these new rules. On February 12, the CSSF has published Circular 14/583 and Regulation 14-01 to disclose rules applicable to Luxembourg. This will shortly be accompanied by the revision of the Law of 5 April 1993 on financial services that will transpose Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (“CRD IV”).

One of the key elements of Regulation 14-01 is Article 20 that defines conditions applicable for benefiting from **large exposures exemption for intra group transactions**. Institutions having such exemptions in place shall be able to justify at any time their compliance with these conditions to the CSSF. Any breach might result in the enforcement of limits by the CSSF.

Regulation 14-01 also defines the phase-in arrangements related to the **level of minimum own funds requirements and new capital buffers**. Rules applicable to Luxembourg are listed in the table below.

As from 1 January...	2014	2015	2016	2017	2018	2019
Minimum Common Equity Tier 1 Capital Ratio			4.5%			
Tier 1 Capital Ratio			6%			
Total Capital Ratio			8%			
Additional Buffers (composed of Common Equity Tier 1):						
Capital Conservation Buffer			2.5%			
<i>Institution Specific</i> Countercyclical Capital Buffer	NA		0.625%	1.25%	1.875%	2.5%
<i>Institution Specific</i> Global and Other Systematically Important Institutions Capital Buffer (the higher of both)	NA		1%	1.75%	2.625%	3.5%
<i>Institution Specific</i> Systemic Risk Capital Buffer*	Institution specific application determined by the CSSF (ranging from 1% to 3.5%)					
Total Capital Ratio could be up to	14%	14%	14.625%	15.25%	15.875%	16.5%

The Institution Specific Countercyclical Capital Buffer (additional Tier 1 Capital) (CRD, art. 160) might be subject to a shorter transitional period based on the institution specific implementation timeline defined by the CSSF. The Regulation 14-01 also describes the approval process of additional Tier 1 and Tier 2 capital instruments and determines the deduction rates applicable to elements of Common Equity Tier 1, Additional Tier 1 and Tier 2 Capital.

Other **additional transitional treatments** are as follows:

Topics	The CSSF Regulation 14-01 states...	References
Treatment of qualifying holdings outside the financial sector	Holdings outside the financial sector which exceed 15% of eligible capital of the institution are no longer prohibited in Luxembourg and are now subject to specific risk weights.	CRR, art. 89
Exposures in the form of covered bonds	Until end of 2017, the 10% limit of the nominal amount of the outstanding issue for senior units of <i>French Fonds Communs de Titrisation</i> used as collateral for covered bonds is not applicable (under conditions).	CRR, art. 129.2
Liquidity coverage requirement	Until the introduction of the minimum liquidity coverage standards in January 2015, the national rules on liquidity are maintained (Circular IML 93/101).	CRR, art. 412
Unrealised losses measured at fair value	Unrealised losses measured at fair value (excluding those referred to in Article 33 of CRR) shall be included in the Common Equity Tier 1 items by applying the following percentages: <ul style="list-style-type: none"> • 20% in 2014 • 40% in 2015 • 60% in 2016 • 80% in 2017 • 100% as from 2018 	CRR, art. 467
Unrealised gains measured at fair value	Unrealised gains booked at fair value (excluding those referred to in Article 33 of CRR and those related to investment properties) should be entirely removed from the CET 1 items as from 2014 (percentage set at 100%).	CRR, art. 468
Exemption from Deduction of Equity Holdings in Insurance Companies from Common Equity Tier 1 Items	The possibility to exempt participations in insurance undertakings from CET 1 deduction is not applied in Luxembourg.	CRR, art. 471
Introduction of amendments to IAS 19	The possibility to add items related to defined benefit pension funds or plans within CET 1 capital is not applied in Luxembourg.	CRR, art 473
Deduction from Common Equity Tier 1, Additional Tier 1 and Tier 2 items	Treatment of deferred tax assets that rely on future profitability and arise from temporary differences and corresponding deduction from Common Equity Tier 1 until 2018. National transposition of the deductions applicable from	CRR, art. 478

	Common Equity Tier 1 capital, Additional Tier 1 and Tier 2 from 2014.	
Recognition in consolidated CET 1 capital of instruments and items that do not qualify as minority interests	Items that would qualify as consolidated reserves in accordance with national transposition measures for Article 65 of Directive 2006/48/EC that do not qualify as consolidated Common Equity Tier 1 are not recognisable in Luxembourg as from 2014 (percentage set at 0%).	CRR, art. 479
Additional filters and deductions	Percentage is set at 0% as from 2014 for the additional filters and deductions applicable to Common Equity Tier 1 items, Tier 1 items, Tier 2 items or own funds items. These filters and deductions relate to elements foreseen in CRD III but not required as per CRR/CRD IV.	CRR, art. 481
Limits for grandfathering of items within Common Equity Tier 1, Additional Tier 1 and Tier 2 items	Applicable rate for grandfathering items eligible into the own funds for 2014 is 80% and then decreases by 10% each year until 2022.	CRR, art. 486
Treatment of equity exposures under the IRB Approach	Until 31 December 2017, equity exposures held in the books as of 31 December 2007 might be exempted from IRB treatment and be applied the standard method instead.	CRR, art. 495
Leverage ratio	Derogation to calculate the Leverage Ratio on a quarter-end figures only is not applied, meaning that all institutions will be required to compute this ratio based on arithmetic mean of the monthly ratios.	CRR, art. 499

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Draft Law 6660 implementing the Capital Requirement Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms – *Chambre des Députés* 28/02/2014 (French only at this stage)

Draft Law 6660 implementing CRD IV

On 28 February 2014, the Luxembourg Government has submitted to the *Chambre des Députés* the **Draft Law 6660** implementing the **Capital Requirement Directive 2013/36/EU** of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (“CRD IV” hereafter).

CRD global standards on bank capital adequacy (issued from Basel III rules) have already been partially implemented through the Regulation 575/2013/EU on prudential requirements for credit institutions and investment firms (“CRR” hereafter). Please refer to our **Deloitte Regulatory News Alert of 27/02/2014** regarding CSSF Regulation 14-01 on the implementation of certain discretions of CRR.

Context

This regulatory package is one of consequences of the financial crisis which has triggered an unprecedented level of failures of major financial institutions and serious adverse consequences for financial markets. This crisis

has indeed revealed many weaknesses in the way financial institutions had been operating. Key improvement shall be introduced to face the highlighted weaknesses, as insufficient capital (quantitative and qualitative) compared to held assets and to cover the potential losses. Corporate governance and investigative powers available to national authorities need also to be improved, and more penalties are needed to deter these institutions from infringing rules on capital requirements.

Implementation

The topics distribution between the Draft Law 6660 implementing CRD IV, and CRR introduced by the CSSF Circular 14/583 and supplemented by the CSSF Regulation 14-01 (“Luxembourg CRR package” hereafter) is:

Area	Draft Law 6660	Luxembourg CRR package
Access to taking-up / pursuit of business	X	
Exercise of freedom of establishment and free movement of services	X	
Corporate governance	X	
Capital		X
Capital buffers	X	
Large exposures		X
Counterparty credit risk		X
Liquidity		X
Leverage		X
Disclosure requirements		X
Prudential supervision	X	
Sanctions	X	

CRD IV and its national discretions will be implemented by the amendment of the following texts:

- Law of 5 April 1993 on the financial sector (“LFS” hereafter);
- Law of 23 December 1998 establishing a financial sector supervisory commission (CSSF); and
- Law of 12 July 2013 on alternative investment fund managers.

Capital buffers – New chapter 5 of LFS

This new Chapter implements Chapter 4 Title VII of CRD and introduces capital buffers. Own funds held for capital buffers provide an increased protection to institutions in scope.

This new Chapter is applicable to credit institutions and investment firms providing the following investment services (“institutions as per LFS Article 59-1” hereafter) :

- Dealing on own account; and
- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.

The following table provide main information on each buffer:

Buffer	Ref. to new LFS articles	Scope	Mandatory or discretionary	Level	Applicable as from
Capital conservation buffer **	LSF Art. 59-5	Institutions as per LFS Art. 59-1	Mandatory	2,5%	01/01/2014
Countercyclical capital buffer **	LSF Art. 59-6 et 59-7	Institutions as per LFS Art. 59-1	Mandatory	0 – 2,5%	01/01/2016
Buffer applicable to Global Systemically Important Institutions (G-SII) *	LSF Art. 59-8 lu conjointement avec art 59-3.	G-SIIs only	Mandatory	1 – 3,5%	01/01/2016, progressive phase-in until 2019
Buffer applicable to Other Systemically Important Institutions (O-SII) *	LSF Art. 59-9	O-SIIs only	Discretionary	0 – 2%	01/01/2016
Systemic risk buffer	LSF Art. 59-10	All or some institutions as per LFS Art. 59-1	Discretionary	No limit	01/01/2014

* The CSSF is in charge of identifying, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been authorised within its jurisdiction.

** Subject to exemption under certain conditions.

Non-compliance to capital buffer requirements does not constitute a violation of the LFS which could lead to the withdrawal of approval, but it will result in restrictions on capital distributions (dividends, bonuses paid to employees, etc.) and the obligation to prepare a remedial action plan to the CSSF.

Corporate governance – New Chapter 4bis of LFS

Corporate governance arrangements

CRD IV introduces additional requirements related to corporate governance arrangements and mechanisms for institutions. These rules concern the composition of boards, their functioning and their role in risk oversight and strategy in order to improve the effectiveness of risk oversight by boards. The status and the independence of the risk management function are also enhanced. Supervisors will play an explicit role in monitoring risk governance

arrangements.

The key element added by CRD IV compared to Circular 12/552 relates to the maximum number of directorships which may be held by a member of the management body of an institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities. We will provide more details in a dedicated communication soon.

Remuneration

In addition to the current remuneration principles that are already reflected in Luxembourg regulation and local remuneration policies, the Draft Law will add a clear distinction between the fixed and variable remunerations (new Article 38-5 of LFS):

- Basic fixed remuneration, which shall reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment and;
- Variable remuneration which shall reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment

For variable remuneration, the two following principles shall apply (new Article 38-6 of LFS):

- The variable component shall not exceed 100% of the fixed component of the total remuneration for each individual:
- Upon approval (> 66%) from the shareholders or owners of the institution (excluding people concerned by the ratio), the maximum level of the ratio can be higher, up to an overall maximum of 200% of the fixed component for each individual.

Diversity

The nomination committee (or, subject to proportionality, the Board itself) as defined per the new Article 38-8 of LFS shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target.

The target, policy and its implementation shall be made public as part of Pillar III disclosure (new Article 38-10. (3) of LFS).

Transparency

As per the new Article 38-3 of LFS, institutions shall disclose annually, specifying, by Member State and by third country in which it has an establishment, a set of information related to revenues and tax paid in various jurisdictions on a consolidated basis for the financial year.

The new Article 38-4 of LFS states that Institutions shall disclose in their annual report among the key indicators their return on assets, calculated as their net profit divided by their total balance sheet.

Institutions shall maintain on their website (if any) explanations on their compliance with the requirements relating, amongst other to governance, remuneration and disclosures (new Article 38-11 of LFS).

Resolution and recovery

The Draft Law introduces in the Luxembourg regulatory framework a requirement to set-up a resolution and recovery plan in case of significant deterioration. The application of such provisions depends on the size, the business model and the interactions of the concerned institutions and shall be considered together with the [draft Law 6653](#) establishing a Systemic Risk Board.

Technical Standards

Technical standards issued by the European Banking Authority (E BA) related to CRD IV and CRR) can be consulted on [its website](#).

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Market abuse

European Parliament vote on the [proposal for a Directive on criminal sanctions for insider dealing and market manipulation](#) - European Parliament 04/02/2014

[European Commission frequently asked questions: Directive on criminal sanctions for market abuse](#) – European Commission 04/02/2014

On 4th February 2014, the European Parliament approved the European Commission's proposal for a Directive on criminal sanctions for market abuse. The aim of this Directive is to counter insider dealing and market manipulation in its financial markets through strict and effective criminal sanctions.

The Member States will be required to impose criminal sanctions for the criminal offenses of insider dealing and market manipulation and also for inciting, aiding and abetting market abuse, as well as for attempts to commit such offences.

The Directive defines the offences, which should be regarded by Member States as criminal offences at least when they are *serious* and *committed intentionally*, as follow :

- The insider dealing which occurs when a person who has price-sensitive inside information trades in related financial instruments;
- Unlawful disclosure;
- Market manipulation which takes place when a person artificially manipulates the price of financial instruments through practices such as the spreading of false or misleading information and conducting trades in related instruments to profit from its.

The market abuse offences shall be deemed *serious* in cases such as those where the impact on the integrity of the market, the actual or potential profit derived or loss avoided or the level of damage caused to the market is high.

Legal persons will also be punishable by effective proportionate and dissuasive criminal or non-criminal fines.

The adoption of this Directive means that the Member States :

- Will have a common EU definitions of market abuse offences;

- Will have a common set of criminal sanctions including fines and imprisonment of four years for insider dealing/market manipulation and two years for unlawful disclosure of inside information;
- Need to establish jurisdiction for these offences if they occur in their country or the offender is a national;
- Need to ensure that judicial and law enforcement authorities dealing with these highly complex cases are well trained.

The Directive on criminal sanctions for market abuse is subject to revisions by legal linguists and revisers, including where necessary alignment with the final political agreement on the Directive for Markets in Financial Instruments (MiFID II).

Members States will have two years to implement the Directive into national law from the publication of the Directive in the Official Journal, which is expected in June 2014.

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Markets in Financial Instruments Directive (MiFID)

CSSF Circular 14/585 - Transposition of ESMA guidelines on remuneration policies and practices (MiFID) - Addition of Annex V to Circular CSSF 07/307 - *Commission de Surveillance du Secteur Financier* 25/02/2014

This Circular implements ESMA Guidelines on conflicts of interest and incentives by adding an Annex V to CSSF Circular 07/307.

It is applicable **with immediate effet** to:

- Credit institutions;
- Investment firms;
- Management companies according to Article 101, paragraph 3 a) and b) of the Law of 17 December 2010; and
- External AIFMs according to Article 5, paragraph 4 a) and b) of the Law of 12 July 2013.

The guidelines address situations where services are provided to retail clients, and should also be applied, to the extent they are relevant, when services are provided to professional clients.

Persons directly concerned are those who can have a significant influence on the service provided or corporate behaviour of the firm (e.g. client-facing front-office staff, sales force staff, persons involved in complaints handling, claims processing, client retention, product design and development or tied agents).

Their purpose is to ensure the consistent and improved implementation of the existing MiFID conflicts of interest and conduct of business requirements in the area of remuneration. On the one hand, remuneration policies and practices should ensure compliance with the conflicts of interest requirements set out in Articles 13(3) and 18 of MiFID; and on the other hand they should also ensure compliance with the conduct of business rules set out in Article 19 of MiFID.

Action required: All firms concerned by this Circular should ensure that their current remuneration policy is sufficiently documented and in line with these guidelines. Practical examples of good and bad practices are detailed in the guidelines.

Mortgage Credit Directive

Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 – Official Journal L 60 28/02/2014

Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property , so-called « Mortgage credit Directive » has been published in Official Journal. Please find below the Directive's objectives as described in our **Pathfinder of January 2014**:

The objective of the Directive is to harmonise mortgage credits markets in the EU and to increase consumer protection. The Directive aims notably to implement:

- Measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements;
- Rules ensuring that the creditor, credit intermediary or appointed representative acts honestly, fairly, transparently and professionally;
- Rules ensuring that the manner in which creditors remunerate their staff and credit intermediaries and the manner in which credit intermediaries remunerate their staff and appointed representatives do not impede compliance with the obligation above-mentioned;
- Rules ensuring that creditors, credit intermediaries and appointed representatives require their staff to possess and to keep up-to-date an appropriate level of knowledge and competence;
- Rules ensuring that, when information is provided to consumers in compliance with the requirements set out in this Directive, such information is provided without charge to the consumer;
- Set-up of harmonised pre-contractual information to be provided to their customers;
- Set-up of harmonised rules on tying and bundling practices;
- Obligation to assess the creditworthiness of the consumer;
- Set-up of reliable standards for the valuation of residential immovable property for mortgage lending purposes are developed;
- Rules regarding disclosure and verification of consumer information;
- Standards for advisory services.

Concerned entities are:

- Credit institutions;
- Non-credit institutions providing credit; and
- Credit intermediaries.

Member states will have two years to transpose the Directive into their national laws, regulations and

administrative provisions.

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Transparency Law

CSSF questions and answers on the Transparency Law and the Grand-ducal transparency Regulation – Commission de Surveillance du Secteur Financier 25/02/2014

This document specifies more details on information to disclose by issuers benefiting of exemptions as provided by the Transparency Law.

Such precisions are disclosed in FAQ n°48.

The issuers that benefit from an exemption set out in Articles 7 or 30(6) of the Transparency Law and thus are not or only partially subject to the periodic information requirements set out in Articles 3, 4 and 5 of said Law are nonetheless still required to publish any information considered as inside information according to Article 6(1) of Directive 2003/6/CE on insider dealing and market manipulation (“Market Abuse Directive”).

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For other topics, please click on hyperlinks presented in the regulatory summary table above.

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