

Pathfinder

Deloitte Monthly Regulatory Update



January 2014

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EBA final draft regulatory technical standards EBA/RTS/2014/01 on own funds requirements for investment firms based on fixed overheads under Article 97(4) of Regulation (EU) No 575/2013 – European Banking Authority 29/01/2014

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**Credit institutions -
Anti-money
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BCBS guidelines and recommendations on sound management of risks related to money laundering and financing of terrorism – Basel Committee on Banking Supervision 15/01/2014

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 Related document:
[CSSF press release 14/05](#) (French only at this stage)

**Insurance sector –
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CAA Circular Letter 14/1: EIOPA guidelines on complaint-handling by insurance undertakings – *Commissariat aux Assurances* 07/01/2014 (French only at this stage)

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 Related document:
[EIOPA guidelines BoS/12-069 on complaints-handling by insurance undertakings](#)

CAA Circular Letter 14/2 implementing a new version of the quarterly return of technical provisions – *Commissariat aux Assurances* 07/01/2014 (French only at this stage)

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**Markets in
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ESMA final report ESMA/2013/1940 of draft technical standards under Article 10a(8) of MiFID on the assessment of acquisitions and increases in qualifying holdings in investment firms – European Securities and Markets Authority 07/01/2014

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**Mortgage Credit
Directive**

Adoption by the Council of European Union of the proposal for a Directive on credit agreements relating to residential property (Mortgage Credit Directive) – Council of European Union 28/01/2014

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 Related document:

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Prospectuses

21st updated version ESMA/2014/35 of ESMA questions and answers on prospectuses - European Securities and Markets Authority 15/01/2014

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**Single Euro
Payment Area
(SEPA)**

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) N° 260/2012 as regards the migration to Union-wide credit transfers and direct debits – European Commission 09/01/2014

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 Related link:

• [European
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**Single Supervisory
Mechanism (SSM)
– Stress tests**

EBA announcement on key features of the
2014 EU-wide stress test – European
Banking Authority 31/01/2014

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 Related documents:

- [Main features of the 2014 EU-wide stress test](#)
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Deloitte alerts and summaries

Accounting Law

CSSF press release 14/04: Implications of the Law of 30 July 2013 reforming the *Commission des normes comptables (CNC)* and amending various accounting provisions – *Commission de Surveillance du Secteur Financier* 17/01/2014 (French only at this stage)

This communication aims to warn on specific provisions of the Law of 30 July 2013, impacting respectively:

- Support PSFs publishing their annual accounts according to LuxGAAP: They are now required to comply with the Standard Chart of Accounts. They must also file their accounting packages using the eCDF platform; and
- Determination of distributable reserves for entities using fair value or international accounting standards.

In addition, the CSSF highlights that any entities submitted to the amended Law of 19 December 2002 or to the amended Law of 10 December 2010 shall consult the amended texts.

Please refer to our **CIPS Bulletin of October 2013 – Law of 30 July 2013 Modernisation of Accounting Law and reform of the CNC** for an overview of all impacts.

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Alternative Investment Fund Managers (AIFMs)

CSSF Circular 14/581: New reporting obligations for alternative investment fund managers – *Commission de Surveillance du Secteur Financier* 17/01/2014

CSSF frequently asked questions on alternative investment funds – *Commission de Surveillance du Secteur Financier* 10/01/2014

The CSSF published on 10 January 2014 its updated Frequently Asked Questions (FAQ) concerning the Luxembourg 2013 Law on Alternative Investment Fund Managers as well as the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing the Alternative Investment Fund Managers Directive (AIFMD). In addition, the CSSF published on 14 January 2014 a technical Circular 14/581 on new reporting obligations.

The FAQ includes amongst others the following new elements:

Determination of the AIFM

The CSSF clarifies the way to identify the AIFM in the case where the AIF would be structured either as a FCP or as a limited partnership (making a distinction between the different types of limited partnerships as provided by the Luxembourg Law of 1915), as well as the specific requirements to be complied with by the appointed AIFM.

Authorisation process

The CSSF announces that entities which need an authorisation as AIFM under the Law of 2013 **shall** submit an application file to the CSSF, as soon as possible and **by 1st April 2014 at the latest**.

AIFMD marketing passport

The FAQ gives clarification regarding the regulatory provisions applicable to AIFMs with regards to the marketing of AIFs, depending on their country of establishment as well as the location of the AIFs managed and the **location** of targeted investors.

Important considerations on regulatory reporting

The CSSF adopts the same requirements as those provided by ESMA in its Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD (“the Reporting”) and the Opinion on Reporting under Article 24(5) of the AIFMD (“the Opinion”).

AIFMs that are not yet authorised and are benefiting from the grand-fathering clause, have the option to submit or not the reporting in advance of their authorisation.

For further background, please refer to the [Market Challenge webpage on AIFMD](#).

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Banking structural reform and Shadow Banking

Proposal for a Regulation of the European Parliament and of the Council on structural measures improving the resilience of EU credit institutions – European Commission 29/01/2014

This proposal aims to stop banks from engaging in the risky activity of proprietary trading. The new rules would also give supervisors the power to require those banks to separate certain potentially risky trading activities from their deposit-taking business if the pursuit of such activities compromises financial stability. Alongside this proposal, the Commission has adopted accompanying measures aimed at increasing transparency of certain transactions in the shadow banking sector. These measures complement the overarching reforms already undertaken to strengthen the EU financial sector.

The approval date is expected for the end 2014 / beginning 2015, for entry into force of the ban on proprietary

trading as of 1 January 2017 and of the effective separation of the other trading activities as of 1 July 2018.

Proposal for a Regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions – European Commission 29/01/2014

Scope

Under the proposals, the Regulation will apply to all counterparties engaging in securities financing transactions (SFTs) and rehypothecation (i.e. the use of client or counterparty assets provided as collateral). Investment funds as defined in UCITS Directive and AIFMD will be subject to additional disclosure requirements.

Reporting to trade repositories

Intended to draw on existing infrastructure and processes already being developed as part of EMIR implementation, counterparties will be required to report SFT transactions to trade repositories on a T+1 basis. Some historical trades will also be captured. While the exact detail, format and frequency of reports will be developed by the ESMA, reported information will include the parties to the SFT, the collateral used, the repo rate or lending fee, whether the trade has been rehypothecated, the haircut and relevant dates. Reporting could be delegated. Regulators and the market have been surprised by the hesitancy of firms to offer a delegated reporting service to help their clients meet the EMIR reporting requirements. However, specifying that any enforcement action would fall on the counterparty as opposed to a firm that undertakes delegated reporting may lead to a different outcome for SFTs.

Transparency requirements for investment funds

In order to increase investor awareness of the risks associated with SFTs, management companies of UCITS, UCITS investment companies and AIFMs will need to disclose additional information to investors about their use of SFTs, as well as other financing structures, over and above current requirements under the AIFMD and the UCITS Directive. The mechanism for investor disclosure is via the prospectus or other pre-investment documentation and within annual reports. This will require a wholesale repapering of prospectus documentation and is likely to drive up the complexity of annual reports.

Rehypothecation

While it provides liquidity and can reduce funding costs, the Commission is concerned that the practice of rehypothecation can create complex collateral chains between the traditional and shadow banking sectors. Stricter rules on rehypothecation seek to address some of these concerns, setting out that counterparties that receive financial instruments as collateral will only be permitted to rehypothecate them with the express consent of the providing counterparty, once they have been informed of the inherent risks, and only after the collateral has been transferred to the counterparty's account.

The proposed Regulation will pass to the European Parliament and Council for negotiation and adoption. Progress is likely to be relatively slow in the short term due to the existing pipeline of initiatives and European Parliament elections in May. The implementation timeline is difficult to predict at this stage, but entry into force before 2015 would be ambitious. The reporting requirements would apply 18 months after entry into force and the investment fund disclosure requirements would apply six months after entry into force.

Capital Requirement Directive and Regulation (CRD IV / CRR)

BCBS Basel III leverage ratio framework and disclosure requirements – Basel Committee on Banking Supervision 12/01/2014

The leverage ratio is to be simple, transparent, non-risk based leverage and is intended to:

- Restrict the build-up of leverage in the banking sector to avoid destabilising deleveraging processes that can damage the broader financial system and the economy; and
- Reinforce the risk-based requirements with a simple, non-risk based “backstop” measure.

The Basel III leverage ratio is defined as the capital measure (numerator) divided by the exposure measure (denominator). Public disclosure of the leverage ratio is proposed starting 2015. A minimum requirement of 3% will continue to be tested for the leverage ratio during the parallel run period (from 1 January 2013 to 1 January 2017).

BCBS liquidity coverage ratio (LCR) disclosure standards – Basel Committee on Banking Supervision 12/01/2014

These disclosures requirements will improve the transparency of regulatory liquidity requirements, reinforce the Sound Principles, enhance market discipline, and reduce uncertainty in the markets as the LCR is implemented. The disclosure requirements should be applied to all internationally active banks on a consolidated basis, but may be used for other banks. These standards shall be implemented in national regulatory framework by no later than 1 January 2015.

As a reminder, the LCR will be introduced on 1 January 2015, with a minimum requirement set at 60%. The minimum requirement will rise in equal annual steps to reach 100% on 1 January 2019.

These requirements and standards shall be considered with CRD IV and CRR, which are the binding regulatory framework in Europe.

Credit institutions - Anti-money laundering

BCBS guidelines and recommendations on sound management of risks related to money laundering and financing of terrorism (ML / FT) – Basel Committee on Banking Supervision 15/01/2014

In addition to the description of essential elements of sound ML / FT risk management (ex: customer acceptance policy, on-going monitoring, asset freezing, etc.), this document provides AML / CFT guidance in a group-wide and cross-border context.

These recommendations are applicable to all banks. Some of them may require adaptation for use by small or specialised institutions, to fit their specific size or activities.

Insurance sector – Complaints handling

Circular Letter 14/1 of the *Commissariat aux Assurances* regarding EIOPA guidelines on complaints handling by direct insurance undertakings – *Commissariat aux Assurances* 07/01/14

This Circular Letter introduces the EIOPA guidelines **EIOPA-BoS-12/069 EN** (French version **EIOPA-BoS-12/069 FR**), which provide guidance on:

- Complaints management policy and function;
- Registration and reporting;
- Internal follow-up of complaints-handling, provision of information and procedures for responding to complaints.

Pension funds and reinsurance undertakings are out-of-scope. Direct insurance undertakings operating by exercise of freedom to provide services (*libre prestation de services*) or freedom of establishment (*libre établissement*), are also out of scope. However they should refer to provisions issued by their authority in their home Member state.

An electronic status report on complaints handling has to be submitted by 31 January 2014 at the latest (**Appendix 2** (French only at this stage) to Circular Letter 14/1).

Circular Letter 14/2 of the *Commissariat aux Assurances* implementing a new version of the quarterly return of technical provisions – *Commissariat aux Assurances* 07/01/2014 (French only at this stage)

The update of the form concerns only the inclusion of a statistical report on the treatment of complaints received by the insurance company. This report shall be completed only once a year, for the 4th quarterly reports 2013 (first application 4th quarter 2013 - to be provided by the end of January 2014).

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Markets in financial instruments Directive (MiFID)

Agreement reached between the European Parliament and the Council of European Union on updated rules for markets in financial instruments – European Commission 14/01/2014

Key elements of MiFID II are :

- Market structure framework which closes loopholes and ensures that trading, wherever appropriate, takes place on regulated platforms;
- Increased equity market transparency and introduction of a principle of transparency for non-equity instruments such as bonds and derivatives;
- Harmonised position-limits regime for commodity derivatives;
- Improvement of conditions for competition in the trading and clearing of financial instruments;
- Trading controls for algorithmic trading activities;

- Stronger investor protection by introducing better organisational requirements, such as client asset protection or product governance;
- Effective and harmonised administrative sanctions; and
- Harmonised regime for granting access to EU markets for firms from third countries is based on an equivalence assessment of third country jurisdictions.

The final texts should be voted during the summer 2014, and the deadline for the implementation and the production of Level 2 measures is estimated for the end of 2015 or early 2016).

For further background, please refer to the [Market Challenge webpage on MiFID](#).

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Mortgage Credit Directive

Adoption by the Council of European Union of the proposal for a Directive on credit agreements relating to residential property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (Mortgage Credit Directive) – Council of European Union 28/01/2014

On 28 January 2014, this proposal has been adopted by the Council. 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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Single Supervisory Mechanism (SSM) – Stress tests

EBA announcement on key features of the 2014 EU-wide stress test – European Banking Authority

31/01/2014

What did we learn from the announcement?

A number of the features of the EBA's methodology are in line with its previous exercises and to that end will not be a surprise for banks. The test will cover the trading and banking books, and banks will be required to stress credit, market and sovereign risks and their cost of funding.

In addition, some of the parameters which will be specific for the 2014 exercise are:

- **Scope:** The exercise will be run at the highest level of consolidation in the European Economic Area (EEA). Insurance activities will be excluded from both the balance sheet and the Profit & Loss statement.
- **Time frame:** Scenarios will cover the period 2014-2016.
- **Minimum capital ratios (hurdle rates):** 8% for the baseline scenario and 5.5% for the adverse scenario, increased from a 5% threshold for both scenarios in 2011.
- **Capital:** Capital adequacy will be based on Common Equity Tier 1 (CET 1). Additional Tier 1 and Tier 2 instruments may need to be reported if they can convert into CET 1 or are written down upon a trigger event and the conversion trigger is above the CET 1 ratio in the adverse scenario. The CET 1 definition will be based on the phase-in of CRD IV requirements from 2014 to 2016.
- **Balance sheet assumptions:** The test will assume a static balance sheet.
- **Data:** The test will rely on 2013 year-end figures.
- **Coordination with AQR:** The EBA explicitly states that AQR results should inform the starting point for the stress test.

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

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