

## Pathfinder

# Deloitte Monthly Regulatory Update



June 2014

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## Welcome to Pathfinder

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Commission Implementing Regulation  
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Regulation 648/2012 of the European  
Parliament and of the Council - OJ  
04/06/2014

European Commission's state of play on  
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Commission Implementing Regulation  
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Regulation 575/2013 of the European  
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EBA final draft implementing technical  
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575/2013 (CRR) – EBA 05/06/2014

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Commission Delegated Regulation 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile – OJ 06/06/2014

European Commission frequently asked questions: CRD IV – Remuneration – Regulatory technical standard on identified staff – European Commission 26/06/2014

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Commission Delegated Regulation 625/2014 of 13 March 2014 supplementing Regulation 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk – OJ 13/06/2014

EBA final draft technical standards and guidelines on methodology and disclosure for global systemically important institutions– EBA 05/06/2014

 Original text:  
[Final draft regulatory technical standards on G-SII identification](#)  
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**Complaints-handling**

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Joint Committee final report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors - European Securities and Markets Authority and European Banking Authority 13/06/2014

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**DGS**

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Council agreement on Proposal for a Regulation of the European Parliament and of the Council on European Long-term Investment Funds – European Council 25/06/2014



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**EMIR**

Commission Delegated Regulation EU 667/2014 of 13 March 2014 supplementing Regulation EU 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on trade repositories by the European Securities and Markets Authority including rules on the right of defence and temporal provisions – OJ 19/06/2014

ESMA questions and answers on implementation of the Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) – ESMA 23/06/2014



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Commission Implementing Regulation 593/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 16(1) of Regulation 345/2013 of the European Parliament and of the Council on European venture capital funds – OJ 04/06/2014



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**MAD II / MAR**

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Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC – OJ 12/06/2014

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#### **MiFID II / MiFIR**

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Regulation 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation 648/2012 – OJ 12/06/2014

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#### **Reform of the audit market**

European Commission frequently asked questions (updated version) - Reform of the EU statutory audit market - European Commission 16/06/2014

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#### **Statistical data collection (UCI, SIF, SICAR)**

BCL Circular 2014/237 / CSSF Circular 14/588 - Modification of the statistical data collection for money markets funds and non-MMF investment funds – BCL 28/05/2014

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## **Deloitte summaries**

### **Alternative Investment Fund Manager (AIFM)**

**Commission Delegated Regulation 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers** - Official Journal L183 24/06/2014

This Regulation is based on the draft regulatory technical standards submitted by the ESMA to the Commission and its aim is to apply to AIFMs in a uniform manner the rules on liquidity management and the valuation procedure. To do so, the types of AIFMs should be distinguish when an AIFMs is managing AIFs of the open-ended or closed-ended type or both.

The factor determining if the AIFM is managing AIFs of the open-ended or closed-ended type is the fact that the AIFs repurchases or redeems its shares or units at the request of the shareholders or unit holders prior to the commencement of its liquidation phase and in accordance with its rules, instrument of incorporation, prospectus and offering documents.

This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union and is directly applicable in all Member States.

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**ESMA questions and answers on application of the AIFMD – European Securities and Markets Authority 27/06/2014**

This Q&A clarifies some points relating to the reporting to national competent authorities under Articles 3, 24 and 42, the Notification of the AIFs and the MiFID services under Article 6(4) of the AIFMD. This document is reviewed and updated by ESMA on a regular basis.

The following references relating to the Reporting to national competent authorities have been clarified:

- Reference to “EEA” is one of the 28 EU Member States or Iceland, Norway and Liechtenstein.
- Reference to the “Union” is understood as including the 28 EU Member States and, once the AIFMD has been incorporated into the EEA agreement, Norway, Iceland and Liechtenstein.
- The information indicated as mandatory, optional or conditional mentioned by the technical guidance.

Notification of the AIFs:

- An AIFM can manage an AIFs in a host Member State under Article 33 of the AIFMD without having identified AIF in that host Member State beforehand, nevertheless in practice it may be necessary for an AIFM to notify its wish to use the management passport under Article 33 in order to be in position to create and manage AIFs in that host Member State.
- If the AIFM has no prior presence in the host Member State, the AIFM should specify the types of strategy of the AIFs it intends to manage in the host Member State.

MIFID services

The AIFM authorised under Article 6(4) of the AIFMD has the right to provide the MiFID investment services on a cross-border basis under the authorisation granted by the competent authorities of its home Member State.

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**Bank Recovery and Resolution Directive (BRRD)**

**Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending**

Key elements of this Directive are:

- **Preparation and prevention:** Banks and resolution authorities are required to draw up recovery and resolution plans on how to deal with situations which might lead to financial stress or the failure of a bank.
- **Early intervention:** Bank supervisors are accorded an expanded set of powers to enable them to intervene if an institution faces financial distress. These powers will include the ability to dismiss the management and appoint a temporary administrator, as well as convening a meeting of shareholders to adopt urgent reforms and requiring the bank to draw up a plan for the restructuring of debt with its creditors.
- **Resolution:** The objective of resolution is to minimise the extent to which the cost of a bank failure is borne by the State and its taxpayers.
- **Cooperation and coordination:** The BRRD also provides a framework to improve cooperation between national authorities.

Member States shall adopt and publish by 31 December 2014 the laws, regulations and administrative provisions necessary to comply with this Directive.

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## Complaints-handling

**CSSF Circular 14/589: Details concerning Regulation CSSF N° 13-02 of 15 October 2013 relating to the out-of-court resolution of complaints** – *Commission de Surveillance du Secteur Financier 27/06/2014* (French only at this stage)

The CSSF Regulation No. 13-02 on the court settlement of claims ("Regulation 13-02" hereafter) was published on 28 October 2013.

Please refer also to our [Deloitte Regulatory News Alerts](#).

The section 2 of the Regulation 13-02 states certain obligations of professionals in relation to complaints handling will enter into force on 1 July 2014.

Starting from this date the financial sector professionals have to adapt their internal procedures to the requirements of the new CSSF Regulation.

The purpose of this circular is to provide clarification on the implementation of this section 2 by the supervised institutions.

### 1. Procedure for handling complaints from professionals

Professionals subject to the prudential supervision of the CSSF have to implement a policy :

- To manage complaints, in an efficient, clear and transparent way.
- To ensure that each complaint is recorded on a secured basis.
- To ensure that measures are taken within a reasonable period.

### 2. Director is responsible for claims, precision on Article 15

Management of the professional is responsible for:

- Implementation and compliance with the policy and procedures relating to the recommendations of the Regulation 13-02.
- Information to the staff concerned on policies and procedures required by the Regulation 13-02.
- Information to each claimant of the name and people in charge of the case

### **3. Reporting to the CSSF**

On an annual basis, a table containing the number of complaints registered by the professional, shall be communicated to the CSSF. This table shall be classified by type of claims, and includes a summary report of complaints and action taken to treat them. A template is provided in the circular.

The first reporting (table and report) shall be transmitted to the CSSF (before 1 March 2015 and will cover the period from 1 July 2014 to 31 December 2014).

Thereafter, annual reporting must be submitted no later than 1 March of the following year.

Please note that IML Circular 95/118 concerning the processing of customer complaints is repealed.

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### **Joint Committee final report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors** - European Securities and Markets Authority and European Banking Authority 13/06/2014

These guidelines are based on the existing complaints-handling guidelines established by EIOPA for the insurance sector.

The guidelines are applying to the following financial market participants:

- Investment firms (as defined in Article 4(1)(1) of MiFID);
- Management companies (as defined in Article 2(1)(b) of the UCITS Directive) and investment companies that have not designated a management company (as referred to in Article 30 of the UCITS Directive);
- External AIFMs (as defined in 5(1)(a) of the AIFMD) when providing services pursuant to Article 6(4) of the AIFMD;
- Credit institutions (as defined in Article 4(1) of the CRR); and
- Payment institutions and electronic money institutions (as defined in Article 4(4) of the Payment Services Directive (PSD), and Article 2(1) of the E-Money Directive (EMD) respectively)

if they are carrying out:

- Investment services listed in Section A of Annex I of MiFID and ancillary services listed in Section B thereof; or
- A banking service listed in Annex I to CRD; or
- The service of collective portfolio management of UCITS; or
- A payment service as defined in Article 4(3) of the PSD; or
- Issuing electronic money as defined in Article 2(2) of the EMD.



Competent authorities must notify ESMA and/or EBA whether they comply or intend to comply with the guidelines, stating their reasons for non-compliance, within two months of the date of publication of the translated versions by ESMA and EBA.

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## Deposit Guarantee Schemes (DGS)

**Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes** – Official Journal L 173 12/06/2014

Key improvements to Directive 94/19/EC are:

- All banks are required to join a deposit guarantee scheme so that all their covered deposits are protected (eligible deposits of up to €100 000);
- DGSs are required to be supervised on an ongoing basis and to perform regular stress tests of their systems;
- Depositors will no longer have to submit an application for repayment if their deposits become unavailable, the determination of their eligibility for repayment is further simplified and harmonised;
- The time limit for paying out depositors in the event of bank deposits becoming unavailable will be reduced from the current 20 working days to seven working days by 2024.

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## European Long-Term Investment Funds (ELTIFs)

Council agreement on **Proposal for a Regulation of the European Parliament and of the Council on European Long-term Investment Funds** – Council of European Union 25/06/2014

On 25 June 2014, the Council approved the position on proposal to boost long-term investment in the EU economy by creating a new form of fund vehicle. It is expected that the European long-term investment funds (ELTIF) will be able to provide investors with long-term, stable returns.

The Council asked the Italian presidency to start negotiations with the European Parliament in order to enable adoption of the texts based on its approach.

For further background information, please refer to the [Pathfinder of June 2013](#).

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## Market Abuse Directive and Regulation (MAD / MAR)

**Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse** - Official Journal L 173 12/06/2014

**Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse** – Official Journal L 173 12/06/2014

The aim of this package is to reinforce the integrity and the investor protection due to the market development and the power of regulators for investigative and administrative sanctioning.

All Member States have to harmonise criminal offences of insider dealing and market manipulation including the manipulation of benchmarks, and impose a maximum criminal penalties.

The Regulation will enter into force in July 2016 and the Member States have two years to implement the

Directive into their national law.

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## [Markets in Financial Instruments Directive and Regulation \(MiFID II / MiFIR\)](#)

**Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU** – Official Journal L 173 12/06/2014

**Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012** – Official Journal L 173 12/06/2014

We refer to our Deloitte Market Challenge webpage [Markets in Financial Instruments Directive - MiFID II](#).

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## [Statistical data collection \(UCI, SIF, SICAR\)](#)

**BCL Circular 2014/237 / CSSF Circular 14/588 - Modification of the statistical data collection for money markets funds and non-MMF investment funds** – *Commission de Surveillance du Secteur Financier and Banque centrale de Luxembourg 28/05/2014* (French only at this stage)

The objectives of this Circular are:

- To minimise the workload of reporting agent,
- Consistency with data collected for supervisory purposes,
- Complete coverage of the requirement of the European Central Bank in the field of monetary and financial statistics,
- Coverage of the need of financial stability and prudential supervision,
- Comparability with the ESA standard 2010 (European System of National and Regional Accounts).

The Circular applies to the undertakings for collective investment governed by the Law of 17 December 2010 (UCI), the specialised investment funds governed by the Law of 13 February 2007 (SIF), the investment companies in capital risk governed by the Law of 15 June 2004 (SICAR).

This Circular supersedes BCL Circular 2013/231 / CSSF Circular 13/564 with effect from 1 January 2015.

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