

Pathfinder

Deloitte Monthly Regulatory Update







March 2014

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**Anti-money
laundering (AML)**

Adoption by the European Parliament of:

- The proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;
- The proposal for a Regulation on information accompanying transfers of funds

European Parliament 11/03/2014



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Related documents:

[Draft Directive](#)

[Draft Regulation](#)

**Banks –
Supervisory
reporting**

CSSF Circular 14/586: Amendment to CSSF Circular 13/570 concerning the supervisory reporting requirements applicable to credit institutions as from 2014 – *Commission de Surveillance du Secteur Financier* 13/03/2014 (French only at this stage)



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**Banks – VISA
procedure**

Update of the document "Summary of the other documents to be submitted to the CSSF" – *Commission de Surveillance du Secteur Financier* 05/03/2014 (French only at this stage)



[Deloitte summary](#)



[Original text](#)



Related documents:

[Summary of the other documents to be submitted to the CSSF](#)

[Marked-up version](#)

Capital Requirements Directive and Regulation (CRD IV / CRR)

EBA Guidelines GL/2014/01 on the applicable notional discount rate for variable remuneration – European Banking Authority 27/03/2014

 [Original text](#)

EBA final draft regulatory technical standards RTS/2014/05 on additional liquidity outflows corresponding to collateral needs resulting from the impact of an adverse market scenario on the institution's derivatives transactions, financing transactions and other contracts for liquidity reporting under Article 423(3) of Regulation (EU) No 575/2013 – European Banking Authority 28/03/2014

 [Original text](#)

Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 with regard to regulatory technical standards for own funds requirements for institutions – Official Journal L 74 14/03/2014

 [Original text](#)

EBA final draft regulatory technical standards RTS/2014/03 on own funds – multiple dividends and differentiated distributions (part four) under Regulation (EU) No 575/2013 – European Banking Authority 27/03/2014

 [Original text](#)

Adoption by the European Commission of the draft Commission Delegated Regulation supplementing Directive 2013/36/EU 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 – European Commission 04/03/2014

 [Original text](#)

EBA final draft regulatory and implementing technical standards (RTS and ITS) on liquidity requirements – European Banking Authority 28/03/2014

 Original texts:

[EBA/RTS/2014/04 on derogations for currencies with constraints on the availability of liquid assets](#)

[EBA/ITS/2014/01 on currencies for which the justified demand for liquid assets exceeds the availability of those assets](#)

[EBA/ITS/2014/02 on currencies with an extremely narrow definition of central bank eligibility](#)

Adoption by the European Commission of package of nine regulatory technical standards (RTS) to implement the single banking rule book (Capital Requirements Regulation and Directive) – European Commission 13/03/2014



[FAQ](#)



[Original text](#)

EBA final draft regulatory technical standards RTS/2014/06 on prudent valuation under Article 105(14) of Regulation (EU) No 575/2013 – European Banking Authority 31/03/2014



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Deposit Guarantee Scheme (DGS)

Adoption by the European Council of the draft Directive on Deposit Guarantee Scheme – European Council 03/03/2014



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European Cooperative Society

Law of 10 March 2014 amending the Law of 10 August 1915 on commercial companies in order to implement Council Regulation 1435/2003 regarding the statute for a European Cooperative Society – *Mémorial A* 39 19/03/2014 (French only at this stage)



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European Market and Infrastructure Regulation (EMIR)

Commission Delegated Regulation (EU) No 285/2014 of 13 February 2014 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards on direct, substantial and foreseeable effect of contracts within the Union and to prevent the evasion of rules and obligations – Official Journal L 85 21/03/2014



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Update of ESMA questions and answers 2014/297: Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) – European Securities and Markets Authority 20/03/2014



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European Social Entrepreneurship Fund (EuSEF) and European Venture Capital (EuVeCa)

ESMA questions and answers 2014/311: Application of the EuSEF and EuVECA Regulations – European Securities and Markets Authority 26/03/2014












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[FAQ](#)

Eurosystem refinancing operations and eligibility of collateral	ECB Decision 2014/11 of 12 March 2014 amending Decision ECB/2013/35 on additional measures relating to Eurosystem refinancing operations and eligibility of collateral – European Central Bank 12/03/2014	ECB Guideline 2014/12 of 12 March 2014 amending Guideline ECB/2013/4 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 - European Central Bank 12/03/2014
	 Original text	 Original text
Exchange traded funds (ETFs) and other UCITS issues		ESMA final report 2014/294: Revision of the provisions on diversification of collateral in ESMA's Guidelines on ETFs and other UCITS issues – European Securities and Markets Authority 24/03/2014
		 Deloitte alert
		 FAQ
		 Original text
Insurance - Annual return	CAA Circular Letter 14/4 amending Circular Letter 2003/02 relating to the annual return of direct insurance undertakings subject to Luxembourg law, as amended – <i>Commissariat aux Assurances</i> 04/03/2014 (French only at this stage)	
	 Deloitte summary	
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Insurance - Complaints-handling	EIOPA One-Minute Guide - EIOPA Guidelines BOS-14/03 on complaints-handling by insurance intermediaries – European Insurance and Occupational Pensions Authority 27/03/2014	
	 Original text	
Insurance sector professionals	Draft Grand-Ducal Regulation on procedures of authorisation and exercise of insurance and reinsurance intermediaries, and professionals of insurance sector – <i>Conseil de Gouvernement</i> 14/03/2014 (French only at this stage)	
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	 Original text	

Investor protection for retail products		ESMA opinion 2014/332: Structured retail products - Good practices for product governance arrangements – European Securities and Markets Authority 24/03/2014
		 Original text
Omnibus II / Solvency II	Adoption by the European Parliament of the proposal for a Directive amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (Omnibus II Directive) – European Parliament 11/03/2014	
	 Deloitte summary	
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Reinsurance - Annual return	CAA Circular Letter 14/5 amending Circular Letter 1999/6 relating to the annual return of reinsurance undertakings, as amended – <i>Commissariat aux Assurances</i> 12/03/2014 (French only at this stage)	
	 Deloitte summary	
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	 Related link/document:	
	Consolidated version of Circular Letter 1999/6	
Single Euro Payments Area (SEPA)	Regulation (EU) No 248/2014 of 26 February 2014 amending Regulation (EU) No 260/2012 as regards the migration to Union-wide credit transfers and direct debits – Official Journal L 84 20/03/2014	
	 Original text	
Single Supervisory Mechanism (SSM) –Comprehensive assessment	ECB Decision of 4 February 2014 identifying the credit institutions that are subject to the comprehensive assessment (ECB/2014/3) – Official Journal L 69 08/03/2014	ECB phase 2 manual for asset quality review – European Central Bank 11/03/2014
		 Original text
	 Original text	

Systemic Risk Board Draft Law 6653 establishing a Systemic Risk Board – *Chambre des Députés* 28/02/2014 (French only at this stage)

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Deloitte alerts and summaries

Alternative Investment Fund Manager (AIFM)

CSSF frequently asked questions version 6 concerning the Luxembourg Law of 12 July 2013 (AIFM Law) on alternative investment fund managers as well as the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage transparency and supervision – *Commission de Surveillance du Secteur Financier* 17/03/2014

Confirmation of starting dates for reporting

The CSSF clarified the dates of the first reporting obligations under Articles 24(1), (2) and (4) of the AIFM Directive (“the Reporting”) in its updated frequently asked questions on AIFMs published on 17 March 2014.

AIFMs authorised between 22 July 2013 and 30 June 2014 are required to submit the first reporting according to the following table:

Reporting frequency	Reporting period start date	Reporting period end date	Deadline for transmission for AIFs that are not funds of funds	Deadline for transmission for AIFs that are funds of funds
Quarterly	01/07/2014	30/09/2014	31/10/2014	15/11/2014
Half-Yearly	01/07/2014	31/12/2014	31/01/2015	15/02/2015
Annually	01/07/2014	31/12/2014	31/01/2015	15/02/2015

AIFMs authorised between 1 and 22 July 2014 are required to submit the first reporting – covering the period from 1 October 2014 to 31 December 2014 – for 31 January 2015 at the latest (15 February 2015 at the latest where the AIF is a fund of funds) whatever its reporting frequency is.

AIFMs have the option to report voluntarily in advance of those dates.

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ESMA questions and answers 2014/296: Application of the AIFMD – European Securities and Markets Authority 25/03/2014

CSSF application questionnaire for the set up of a fully licensed alternative investment fund manager – *Commission de Surveillance du Secteur Financier* 20/03/2014

On 20 March 2014, the CSSF updated its questionnaire on the AIFM application file regarding three main categories: the business plan, the capital, financial and business information and the organisational requirements and internal governance.

Business plan

The business plan has been changed to request information on the level of delegation of activities, licence status for discretionary management and information on investment strategies at the level of sub-funds, if not the same within one AIF.

For AIFs under management that are not included in the application, it is now required to provide an explanation for their exclusion.

Concerning the depositary, additional documentation of compliance with Article 19 of the AIFM Directive:

- Draft of the depositary contract(s) or the current status of negotiations;
- Confirmation that the contract includes, at least, all elements listed under Article 83(1) of the Delegated Regulation;
- Confirmation that neither portfolio management nor risk management activities are delegated to the depositary or any sub-depositaries of the AIFs; and
- Letter of confirmation of compliance issued by the depositary and which specifically describes how assets are segregated.

Capital, financial and business information

The update confirms that the currency to disclose the total Assets under Management (AuM) is Euro and, in the case of existing entities, the amount of previous years general expenses in Euros is expected to be provided.

Concerning the coverage for professional liabilities, a new appendix is expected which must provide methodologies used for portfolios values calculations which clearly illustrate compliance with the calculation method set in the Delegated Regulation.

Pertaining to the professional indemnity insurance, it is not necessary to disclose the value and percentage of AuM covered by the policies but rather it is expected to provide the amount of deductibles within insurance contracts.

Organisational requirements and internal governance

For UCITS management companies, it is necessary to provide one combined Risk Management Policy (RMP) covering both UCITS and AIFs and clearly indicate where processes differ between AIFs and UCITS. This RMP has to be provided in both clean and track changes version.

With respect to investment in securitisation positions, an additional sub-point, in which it is required to confirm that the AIFM is fully compliant with Articles 51 to 54 of the Delegated Regulation or justification of the lack thereof.

Finally, regarding remuneration, there are two additional sub-points, in which it is required to provide:

- A table comparing each requirements of the AIFM Law with the equivalent clause in the AIFM's actual remuneration policy.
- In case of delegation of activity, the demonstration of how the compliance with the AIFM Law is ensured by the delegates and indication of any other regulatory standards they comply with.

ESMA technical advice 2014/312 to the European Commission on the information that competent authorities should provide to ESMA pursuant to Article 67(3) of the AIFMD – European Securities and Markets Authority 26/03/2014

On 26 March 2014, ESMA published its technical advice on the information that national competent authorities should provide ESMA on a quarterly basis according to Article 67(3) of the AIFM Directive.

The aim of this technical advice is to ensure ESMA receives the requested information in a clearly defined and consistent format in terms of detail and granularity and that it covers all elements referred to in Article 67(2) AIFM Directive.

This information will allow ESMA to issue its opinion and advice, by 22 July 2015, to determine the possible extension of the AIFMD passport to non-EU AIFs and non-EU AIFMs. The first deadline for responses is 19 May 2014 and covers the period 22 July 2013 to 31 March 2014.

The requested information is split into three sections:

- The functioning of the passport for EU AIFMs managing and/or marketing EU AIFs;
- The functioning of the marketing of non-EU AIFs by EU AIFMs in the Member States and the management and/or marketing of AIFs by non-EU AIFMs in the Member States in accordance with the applicable national regimes; and
- The functioning of both systems including potential market disruptions and distortions in competition or any general or specific difficulties which EU AIFMs encounter in establishing themselves or marketing AIFs they manage in any third country.

Anti-money laundering (AML)

Adoption by the European Parliament of:

- The **proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;**
- The **proposal for a Regulation on information accompanying transfers of funds**

European Parliament 11/03/2014

The main improvements to the existing regulatory framework are:

- Broadening scope to cover the gambling sector;
- Thresholds for traders in goods (reduced thresholds for traders in high value goods from EUR 15 000 to EUR 7 500 for cash transactions);
- Introduction of a set of minimum principle-based rules to strengthen administrative sanctions;
- Reinforcement of the requirement regarding the collecting and reporting of statistical data;
- Introduction of provisions in the Directive to clarify the interaction between AML/CTF and data protection requirements;
- Inclusion of tax crimes in the scope;

- Availability of beneficial owner information;
- Identification of Beneficial Owner (clarification of the 25% threshold);
- Introduction of new rules clarifying home and host supervisory responsibilities for AML;
- Introduction of new requirements for domestic PEPs/PEPs working in international organisations, with risk-sensitive measures to be applied.

No indicative implementation date is available at this stage.

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Banks – Supervisory reporting

CSSF Circular 14/586: Amendment to CSSF Circular 13/570 concerning the supervisory reporting requirements applicable to credit institutions as from 2014 – *Commission de Surveillance du Secteur Financier* 13/03/2014 (French only at this stage)

This Circular announces the upcoming entry into force of the **implementing technical standards on supervisory reporting** from EBA which still have to be adopted by the European Commission as an European Regulation. For further background information, please refer to our **Regulatory News Alert of 7 August 2013: CRD IV / CRR - ITS on supervisory reporting**. The CSSF draft version of **reporting requirements for credit institutions** is already available on the **CSSF website**.

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Banks – VISA procedure

Update of the document "Summary of the other documents to be submitted to the CSSF" – *Commission de Surveillance du Secteur Financier* 05/03/2014 (French only at this stage)

Summary of the other documents to be submitted to the CSSF (documents to be submitted to the CSSF in the context of the legal publication of accounts and *ad hoc* reports) and **marked-up version** – *Commission de Surveillance du Secteur Financier* 05/03/2014 (French only at this stage)

The CSSF has updated its guidelines regarding the applicable procedure in the context of the publication of annual accounts. Requirements introduced by the **CSSF Circular 12/552** on central administration, internal governance and risk management have been added, banks shall address to the CSSF its annual declaration of compliance to **CSSF Circular 12/552**, with the summary reports of compliance, internal audit and risk management.

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Deposit Guarantee Scheme (DGS)

Adoption by the European Council of the **draft Directive on Deposit Guarantee Scheme** – European Council 03/03/2014

On 3 March 2014, the European Council adopted the draft Directive aiming to harmonise and improve EU rules on DGS. Key improvements to **Directive 94/19/EC** are:

- All banks are required to join a DGS 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.

The Member States will have one year after entry into force to implement within national law.

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European Cooperative Society

Law of 10 March 2014 amending the Law of 10 August 1915 on commercial companies for the purpose of implementing Council Regulation 1435/2003 regarding the status of the European Cooperative Society – *Mémorial A 39 19/03/2014*

Thanks to the Law of 10 March 2014, the Luxembourg legal framework is henceforth fit to welcome the European Cooperative Society amongst the list of companies available to Luxembourg investors.

The European Cooperative Society has legal personality and its capital may not be less than EUR 30,000. The subscribed capital of a European Cooperative Society will be divided into shares and no member of a European Cooperative Society will be liable for more than the amount subscribed unless otherwise provided by the bylaws.

A European Cooperative Society may be formed as follows:

- By five or more natural persons resident in at least two Member States;
- By five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, resident in, or governed by the law of, at least two different Member States;
- By companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State which are governed by the law of at least two different Member States;
- By a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States;
- By conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if for at least two years it has had an establishment or subsidiary governed by the law of another Member State.

For further details on this subject, please view the [Council Regulation 1435/2003](#).

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European Market and Infrastructure Regulation (EMIR)

Update of ESMA questions and answers 2014/297: Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) – European Securities and Markets Authority 20/03/2014

This update concerns the following areas:

- Intragroup transactions;
- Notional amounts;
- Risk Mitigation techniques for OTC derivative contracts not cleared by a central counterparty (CCP);
- Segregation and portability (CCP questions);
- Reporting of outstanding positions following the entry into force of EMIR (Backloading);
- Reporting to trade repositories (TRs): Buy/Sell indicator for swaps;
- Reporting to TRs: Underlying field;
- Reporting to TRs: Field 15 for NFC;
- Reporting to TRs: MIC codes;
- Reporting to TRs: Exchange rate.

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[European Social Entrepreneurship Fund \(EuSEF\) and European Venture Capital \(EuVeCa\)](#)

ESMA questions and answers 2014/311: Application of the EuSEF and EuVECA Regulations – European Securities and Markets Authority 26/03/2014

The aim of this document is to promote a common approach on the application of the **European Social Entrepreneurship Funds (EuSEF)** and **European Venture Capital Funds (EuVECA)** Regulations by competent authorities across the European Union.

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[Exchange traded funds \(ETFs\) and other UCITS issues](#)

ESMA final report 2014/294: Revision of the provisions on diversification of collateral in ESMA's Guidelines on ETFs and other UCITS issues – European Securities and Markets Authority 24/03/2014

ESMA questions and answers 2014/295: ESMA's guidelines on ETFs and other UCITS issues – European Securities and Markets Authority 24/03/2014

On 24 March 2014, ESMA published a revision of its guidelines on ETFs and other UCITS issues and an updated version of the related questions and answers (Q&A).

Taking into account feedback from the industry, ESMA grants some flexibility on rules for diversification of collateral made of transferrable securities or money market instruments issued by governments or their bodies. Those revised guidelines apply from two months after publication of translation.

The updated Q&A provides further clarification on requirements for financial indices eligibility.

Diversification of collateral

ESMA takes into account industry concerns and aligns diversification rules applicable to transferrable securities or money market instruments issued by governments or their bodies held as collateral with those applicable when directly held in portfolio. As such, UCITS are entitled to hold securities issued by a single government up to 100%, provided that the UCITS holds securities from at least six different issues and no issue accounts for more than 30%.

Investment in financial indices

The updated Q&A provides a clear definition of the public availability eligibility criteria for financial indices. The calculation methodology should be published in such a way that direct access to this information is possible. For instance, via a source which directly links to a public website which is not password protected, encrypted and allows for immediate and direct access.

Finally, technical clarifications are provided for commodity without historical data of five years when calculating correlation to assess indices eligibility. It allows for the use of proxy after documented qualitative and quantitative validation of its adequacy by Management Companies.

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Insurance - Annual return

CAA Circular Letter 14/4 amending Circular Letter 2003/02 relating to the annual return of direct insurance undertakings subject to Luxembourg law, as amended – *Commissariat aux Assurances* 04/03/2014 (French only at this stage)

Further to the adoption of **EIOPA set of guidelines for the preparation of Solvency II**, Circular Letter 14/4 slightly modifies Chapter VIII on governance report of Circular Letter 2003/2. A consolidated version of Circular Letter 2003/2 is available in annex.

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Insurance sector professionals

Draft Grand-Ducal Regulation on procedures of authorisation and conduct of business of insurance and reinsurance intermediaries, and insurance sector professionals – *Conseil de Gouvernement* 14/03/2014 (French only at this stage)

This text will replace the **Grand-Ducal Regulation of 24 November 2005** and aims to adapt the framework according to changes introduced in the **Law of 6 December 1991 on the insurance sector** by the **Law of 12 July 2013**.

The main impacts are:

- Introduction of a new category, insurance sector professionals, which is supervised by the *Commissariat aux Assurances* ; and
- Distinction between insurance brokers acting for own account and insurance brokers acting on behalf of a brokerage company.

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Omnibus II / Solvency II

Adoption by the European Parliament of the **proposal for a Directive amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (Omnibus II Directive)** – European Parliament 11/03/2014

The European Parliament approved on 11 March 2014 the so-called “Omnibus II Directive” that completes the **Solvency II Directive** and finalises the new framework for insurance regulation and supervision in the European Union.

Omnibus II will amend existing legislation in a number of ways. Key measures are:

- Replaces “implementing measures” with “delegated acts” and “implementing technical standards”;
- Introduces specific tasks and powers for EIOPA and ESMA (i.e. defines the areas in which they will be able to propose technical standards and details how they will settle the disagreements between national supervisors);
- Contains a package of measures to provide clarity on the treatment of insurance products with long-term guarantees in order to mitigate the effects of artificial volatility (a matching adjustment, a volatility adjustment, extrapolation of the risk-free interest rate, two specific transitional measures, and extension of the recovery period);
- Introduces certain transitional provisions like transitional third-country equivalence if deemed necessary to avoid market disruption and to allow a smooth transition to the new regime under Solvency II.

Once approved by European Council and published in the Official Journal, Omnibus II will bring effectively Solvency II into force from January 2016 and requires that Member States implement all rules by 31 March 2015.

For more information, please visit [the dedicated webpage of the European Commission](#).

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Reinsurance - Annual return

CAA Circular Letter 14/5 amending Circular Letter 1999/6 relating to the annual return of reinsurance undertakings, as amended – *Commissariat aux Assurances* 12/03/2014 (French only at this stage)

Consolidated version of Circular Letter 1999/6 relating to the annual return of reinsurance undertakings, as amended – *Commissariat aux Assurances* 12/03/2014 (French only at this stage)

The key point of interest is the amendment of Point 11 ter regarding the governance report in order to implement **EIOPA guidelines on system of governance**. This Circular also modifies of Point 11 bis e) regarding the calculation of the minimum capital requirement (MCR). This Circular shall apply for the first time to accounts for the year 2013.

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