

Banks and investment firms

Regulatory update

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BRRD

1. Eligibility of institutions for simplified obligations under the Bank Recovery and Resolution Directive (BRRD)

The EBA published its final Guidelines and final draft Implementing Technical Standards (ITS) relating to the eligibility of institutions for simplified obligations in the context of recovery planning, resolution planning and resolvability assessments under the Bank Recovery and Resolution Directive (BRRD). The EBA also issued final draft ITS on the procedures, forms and templates for submitting information on resolution plans under the BRRD. The work of the EBA aims at promoting a common EU framework for the application of simplified obligations, in line with the principle of proportionality, and to facilitate cooperation among EU authorities.

The guidelines clarify that globally systemically important institutions (G-SII) and other systemically important institutions (O-SII) should not be subject to simplified obligations as it is clear that the failure and subsequent winding up under normal insolvency proceedings of such institutions would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.

The guidelines include a number of mandatory indicators which should be used by the authorities when assessing institutions against the criteria listed of the Directive. Each mandatory indicator has been assigned to a specific criterion in order to promote a uniform approach to the assessment of institutions against the criteria.

A list of optional indicators is also set out in the guidelines. The authorities may take into account one or more of the optional indicators, in addition to the mandatory indicators, when assessing institutions against the criteria. In selecting and applying the optional indicators, the authorities should choose those indicators relevant to the institution, or category of institution (e.g. credit institution or investment firm), in question. The list of optional indicators includes all of the mandatory indicators in order that the authorities may use any indicator in relation to criteria other than the criterion to which it has been assigned as a mandatory indicator (e.g. the indicators 'total deposits' and 'total covered deposits' could be considered, for example, in relation to the 'nature of business' criterion as well as being required to be considered in relation to the 'scope and complexity of activities' criterion).

2. Processes for notifying that a banking institution is failing

The EBA published its final draft Regulatory Technical Standards (RTS) on notifications and notice of suspension. These RTS have been developed within the framework established by the Bank Recovery and Resolution Directive (BRRD) and aim at harmonising at EU level the process and content of notifications, as well as the notice of suspension, to be followed when a banking institutions operating in the EU is failing or likely to fail.

[Read more.](#)

3. Minimum Requirement for Own Funds and Eligible Liabilities / Contractual recognition of bail-in

The European Banking Authority (EBA) published its **final draft Regulatory Technical Standards (RTS) on the Minimum Requirement for Own Funds and Eligible Liabilities (MREL)**, and on the contractual recognition of bail-in. Both standards provide further specification of essential elements to ensure the effectiveness of the resolution regime established by the Bank Recovery and Resolution Directive (BRRD).

The draft RTS on Minimum Requirement for Own Funds and Eligible Liabilities first seek to clarify how the resolution authority's assessment of the amount of MREL needed to absorb losses and, where necessary, recapitalise a firm after resolution, should be linked to the institution's going concern capital requirements. They provide that resolution authorities should, as a default, seek to rely on supervisory assessments of the degree of loss that a bank needs to be able to absorb and the capital it needs to operate. In addition, resolution authorities should consider any additional MREL needed to successfully implement the resolution plan.

The draft RTS on Contractual recognition of bail-in determines the list of liabilities to which the exclusion from the requirement to include the contractual term applies. For example, the draft RTS specify key elements which Union resolution authorities should assess as present before determining that the liabilities or instruments referred to in the first subparagraph of Article 55(1) of the Directive can be subject to write-down and conversion by a resolution authority pursuant to the law of a third country or to a binding agreement with that third country. This will ensure that the exclusion is interpreted homogenously across the Union (and therefore that contractual terms are required to be included in the same cases across the Union).

4. CSSF Circular 15/617 : future national resolution fund

The Commission de Supervision du Secteur Financier (CSSF) has issued **CSSF Circular 15/617** on 7 July 2015, regarding information requirements for the calculation of the 2015 contribution to the future national resolution fund to be paid by the Luxembourg credit institutions with the exception of branches of credit institutions that are not established in the European Union.

The CSSF has requested credit institutions to provide certain information, which are not contained in their financial, and the prudential reporting.

CSSF Circular 15/617 contains in its annex a spreadsheet including explanatory notes, which needs to be completed by the credit institutions. This spreadsheet needs to be approved by a member of the authorised management of the credit institution and then submitted to the CSSF at the latest by 1 September 2015.

CRD IV

5. Transposition of CRD IV in Luxembourg legislation

Law of 23 July 2015 implementing CRD IV

The Basel III framework has been transposed in the European legislation through the 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) and the Regulation 575/2013/EU on prudential requirements for credit institutions and investment firms ("CRR" hereafter).

On July 23rd 2015, the Luxembourg Chamber of Representatives has adopted the Law implementing the CRD IV in local legislation. As a reminder, the CRR was directly applicable in all member states and is live since 1 January 2014.

CRD IV and its national discretions is implemented by 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.

Law of 25 July vs. CRR

The split of requirements between the newly adopted Law and the CRR is as follows:

Area	Law of 23 July 2015	CRR
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	

Key highlights of the Law

While the Law covers several areas ranging from governance and supervisory sanctions (Pillar II) to disclosure requirements (Pillar III), we would like to raise your attention on two specific elements: **capital buffers** and **limitations in directorships for Board members**.

Capital buffers

While capital buffers are applicable to all credit institutions, the Law confirms that most of the investment firms are **exempted** from these requirements. The only exception is for investment firms that are

- authorised to provide the investment services listed in points 3 (Dealing on own account) and/or 6 (Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.) of Section A of Annex I to Directive 2004/39/EC; **and**
- cannot be considered as a small or medium-sized company in accordance with Commission Recommendation 2003/361/EC.

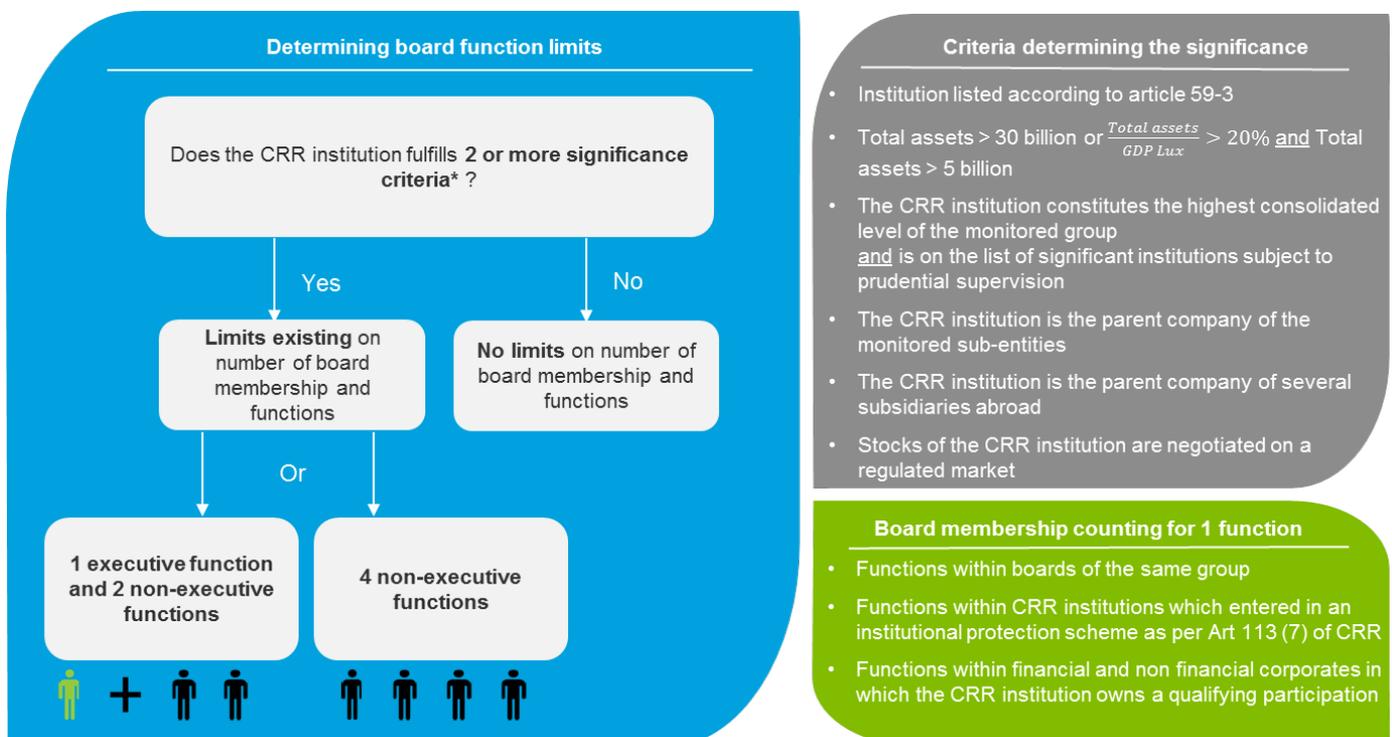
The table below summarizes important information on each capital buffer.

Buffer	Ref to new LFS articles	Mandatory or discretionary	Level	Applicable as from
Capital conservation buffer	LSF art. 59-5	Mandatory	2,5%	01/01/2014
Countercyclical capital buffer	LSF art. 59-6 and 59-7	Mandatory	0 – 2,5%	01/01/2016
Buffer applicable to Global Systemically Important Institutions (G-SII) *	LSF art. 59-8 and art 59-3.	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	Discretionary	0 – 2%	01/01/2016
Systemic risk buffer	LSF art. 59-10	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.

Limitations in directorships

A much awaited provision of the Law relates to the maximum number of directorships held by members of the Board of Directors in banks. Article 39-2 clarifies the limits and the related criteria, as summarized below:



CRD IV/CRR

6. Liquidity risk: liquidity monitoring metrics

The European Banking Authority (EBA), following requests from stakeholders, published on July 17, 2015 an update on the application date of its **final draft Implementing Technical Standards (ITS) on additional liquidity monitoring metrics**.

The EBA had originally submitted its final draft ITS on additional liquidity monitoring metrics to the European Commission in December 2013, with a proposed application date of 1 July 2015. Considering that the European Commission has not yet adopted the final draft ITS, it is highly likely that the application date, which will be specified once the ITS are published in the EU Official Journal, will be postponed by at least three months. The final application date will depend on the timeline of adoption of the ITS by the European Commission.

7. Pillar 3 disclosures: guidelines on materiality, proprietary, confidentiality and on disclosure frequency

CSSF Circular 15/618 on the transposition of EBA guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) No. 575/2013 is addressed to all institutions subject to the disclosure requirements of part eight of the Capital Requirement Regulation.

This Circular entered into force with immediate effect the 22 July 2015.

The EBA guidelines transposed by CSSF Circular 15/618 aim to contribute to the strict functioning of market discipline by addressing feebleness and ensuring some consistency in the assessments of materiality, of the proprietary or confidential nature of information and of the need to provide more recurrent disclosures.

The EBA guidelines give a common but flexible framework covering the following main points:

1. The process that institutions should follow and the criteria that institutions should consider when assessing the use of any disclosure waiver based on their application of the concepts of materiality, proprietary or confidential nature of disclosures; and
2. The process that institutions should follow and the criteria they should consider when

assessing the frequency of their disclosure.

8. Technical standards on non-delta risk options and identified staff

The European Banking Authority (EBA) issued **amendments** to the adopted Regulatory Technical Standards (RTS) on the treatment of non-delta risk of options in the standardised market risk approach and on the criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.

These RTS were published by the Commission on 20 May 2014 and 6 June 2014, respectively.

During the legal adoption process of these two RTS, The European Commission introduced changes, which have inadvertently altered their meaning. The EBA is, therefore, proposing to amend the text of these two Delegated Acts to ensure they reflect the intention of the text originally submitted to the European Commission in December 2013.

The redraft ensures that the simplified approach can only be used by institutions that exclusively purchase options and warrants, without obliging them to use that approach.

The redraft ensures that for any staff whose total remuneration takes them into the same remuneration bracket as senior management and risk takers the refutable presumption exist that they constitute staff whose professional activities have a material impact on the institution's risk profile ('identified staff').

FATCA

9. FATCA – Luxembourg – Filing deadline postponed to 31 August 2015

Luxembourg and the United States signed, on 28 March 2014, a (reciprocal) Model I FATCA intergovernmental Agreement (IGA) to improve international tax compliance between both jurisdictions. On 27 March 2015, the Draft Law (n°6798) transposing the IGA in national law was released, requiring the first FATCA reporting to be submitted by 30 June 2015. However, although the draft law was voted on 1 July 2015, it has not been published until today.

After having announced an extension of the first filing deadline up to 31 July 2015, the Luxembourg Tax Authorities have announced today that an additional one month extension to submit the first FATCA reporting is granted (i.e. the first reporting deadline is pushed to 31 August 2015).

The extension is a welcome relief for reporting financial institutions who need to timely report on “Specified US persons”, but also need to ensure data protection notifications are made to those persons sufficiently in advance of the reporting, allowing the latter to exercise their rights under the data protection legislation.

We will keep you updated in case of any new developments in this respect.

Governance

10. Guidelines: corporate governance principles for banks

Effective corporate governance is critical to the proper functioning of the banking sector and the economy. While there is no single approach to good corporate governance, the Basel Committee's revised principles provide a framework where banks and supervisors should operate within to achieve robust and transparent risk management and decision-making and, in doing so, promote public confidence and uphold the safety and soundness of the banking system.

[Read more.](#)

11. EBA guidelines for retail banking products

Context

On 15 July 2015 the European Banking Authority (EBA) published its Guidelines on product oversight and governance (POG) arrangements for retail banking products.

Developments in the markets for financial services in recent years have shown that failures in the conduct of financial institutions towards their customers can cause significant consumer detriment and undermine market confidence, financial stability and the integrity of the financial system. The Guidelines are the EBA's response to increasing risks arising from the misconduct of financial institutions in their interaction with consumers and are part of EBA's work to enhance consumer protection across the EU.

The Guidelines will apply from 3 January 2017. Competent authorities and financial institutions must make every effort to comply with these guidelines.

Scope

The Guidelines deal with the establishment of product oversight and governance arrangements for both, manufacturers and distributors as an integral part of the general organisational requirements linked to internal control systems of firms. They refer to internal processes, functions and strategies aimed at designing products, bringing them to the market, and reviewing them over their life cycle. They establish procedures for ensuring the interests, objectives and characteristics of the target market. However, these Guidelines do not deal with the suitability of products for individual consumers.

The Guidelines apply to manufacturers and distributors (as defined in the Guidelines) of retail banking products offered and sold to consumers that fall within the EBA's regulatory limit, i.e. mortgages, personal loans, deposits, payment accounts, electronic money and payment services such as credit and debit cards.

The Guidelines apply to all products brought to the market after the implementation date of the Guidelines as well as to all existing products on the market that are significantly changed after the implementation date of these Guidelines.

These Guidelines supplement other EBA guidelines that may be relevant to product oversight and governance, in particular, the EBA Guidelines on Internal Governance of 27 September 2011.

Impact on Luxembourg regulations

The CSSF Circular 12/552 on central administration, internal governance and risk management, that takes into account the following international guidelines into Luxembourg regulations:

- EBA guidelines on internal governance of 27 September 2011;
- BCBS guidelines on the internal audit function in banks of 28 June 2012

will need to be updated during 2016.

Guidelines

Guidelines have been established for both manufacturers and distributors. The Guidelines can be summarized as follows:

Guidelines for manufacturers

Guideline 1: Establishment, proportionality, review and documentation

The manufacturer should establish, implement and review effective product oversight and governance arrangements. The arrangements should aim (i) to ensure that the interests, objectives and characteristics of consumers are taken into account, (ii) to avoid potential consumer detriment and (iii) to minimise conflicts of interest.

Moreover arrangements should be regularly reviewed and updated, considered in the new product approval policy (NPAP), duly documented and proportionate to the nature, scale and complexity of the business.

Guideline 2: Manufacturers' internal control functions

The manufacturer should ensure that the arrangements are an integral part of its governance, risk management and internal control framework (cf. EBA Guidelines on Internal governance, where applicable). To that end, the manufacturer's management body should endorse the establishment of the arrangements and subsequent reviews. Senior management, with support from representatives of the manufacturer's compliance and risk management functions, should be responsible for continued internal compliance with the product oversight and governance arrangements (to be integrated in their normal line of duties).

Guideline 3: Target market

Manufacturers should include steps and features that need to be followed to identify, and update when necessary, the relevant target market of a product. The manufacturer should ensure that the product is deemed appropriate for the interests, objectives and characteristics of the identified target markets.

Guideline 4: Product testing

Before a product is brought to the market, an existing product is sold to a new target market or significant change is made to an existing product, the manufacturer should conduct product testing, in order to be able to assess how the product would affect its consumers under a wide range of scenarios, including stressed scenarios. If necessary appropriate product changes should be foreseen.

Guideline 5: Product monitoring

Once the product is brought to market, the manufacturer should monitor the product on an ongoing basis to ensure that the interests, objectives and characteristics of consumers continue to be appropriately taken into account.

Guideline 6: Remedial Action

If the manufacturer identifies a problem related to the product in the market, or when monitoring the performance of the product as required in guideline 5 above, the manufacturer should take the necessary measures to mitigate the situation and prevent a reoccurrence of detriment.

Guideline 7: Distribution channels

The manufacturer should select distribution channels that are appropriate for the particular target market and monitor that the products are distributed to the identified target market.

Guideline 8: information for distributors

Where relevant, the manufacturer should provide the distributor with adequate, clear, precise and up to date information and details of the products (risks and limitations and total price).

Guidelines for distributors

Guideline 9: Establishment, proportionality, review and documentation

The distributor should establish, implement and review effective product oversight and governance arrangements to ensure that the interests, objectives and characteristics of consumers are appropriately taken into account, potential consumer detriments are avoided and conflicts of interest are minimized. Arrangements should be reviewed and updated on a regular basis and all actions taken by the distributor should be duly documented.

Guideline 10: Distributors' governance

The distributor should ensure that product oversight and governance arrangements are an integral part of its general systems and controls (endorsed by the management body).

Guideline 11: Knowledge of the target market

Based on the information provided by the manufacturer, the distributor should have relevant knowledge and the ability to determine whether a consumer belongs to the target market.

Guideline 12: Information and support for the manufacturer's arrangements

The distributor should take into account the information provided by the manufacturer and disclose to the consumer a description of the main characteristics of the product, its risks and the total price of the product to be paid by the consumer. If the distributor identifies any problems regarding the product features, product information of the target market when offering and selling products, the distributor should promptly inform the manufacturer of the issue.

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