

## Banks and investment firms

# Regulatory update

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## AML

### 1. Money laundering: Parliament and Council negotiators agree on central registers

The ultimate owners of companies would have to be listed in central registers in EU countries, under a deal struck by Parliament and Council negotiators on a draft EU AML Directive.

The rules would also require banks, auditors, lawyers, real estate agents and casinos, among others, to be more vigilant about suspicious transactions made by their clients.

The **4th Anti-Money Laundering Directive (AMLD)** will oblige to maintain central registers in EU countries, listing information on the ultimate beneficial owners of corporate and other legal entities, in order to fight against secrecy of obscure dealing, money laundering and tax crime. These registers would be accessible to people with a “legitimate interest” like competent authorities and their financial intelligence units.

The new rules also clarifies the draft rules on “politically-exposed persons”.

The deal still needs to be endorsed by EU member states' ambassadors (COREPER) and by Parliament's Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees, before being put to a vote by the full Parliament next year.

## BRRD

### 2. EBA publishes technical standards and guidelines on resolution planning

The EBA published on 19 December 2014 **final draft Regulatory Technical Standards (RTS)** on resolution planning and final Guidelines on measures to reduce or remove impediments to resolvability.

These guidelines and regulatory technical standards aim to promote a consistent and coherent approach to bank resolution across the European Union (EU).

The EBA regulatory technical standards (RTS) identify eight categories of information that should be included in a resolution plan and set out both general and specific requirements to be included in each category to ensure the preferred resolution strategy is achieved.

- Summary
- Description of the resolution strategy
- Arrangements for information
- Arrangements for operational continuity
- Financing
- Communication
- Conclusions of the assessment of resolvability
- Responses from the institution or group

#### The RTS:

- Detail the criteria for resolution authorities to assess resolvability and address any impediments to resolution.
- Require resolution authorities to consider whether and how some liabilities are less likely to be subject to bail-in.
- Recognise the need for proportionality, which is addressed through a staged assessment process, inherently less complex resolution plans for less complex institutions, and the possibility for Member States to apply simplified obligations to certain institutions.

**The guidelines issued along the RTS:**

- Specify the circumstances under which resolution authorities can require measures to overcome obstacles to resolvability
- Allow a case-by-case analysis of the impediments caused by the institution or group and of the best way to address them. The appropriate measure depends on the organisation and the business model of the institution and on its environment.

## Payment Services Directive (PSD2)

### 3. EBA issues guidelines to strengthen requirements for the security of internet payments across the EU

The EBA published on 19 December 2014 its **final Guidelines on the security of internet payments**, which set the minimum security requirements that Payment Services Providers (PSP) in the EU will be expected to implement by 1 August 2015.

The revision of the Payment Services Directive aims at creating a more secure, competitive and consumer-friendly rules for payments in the EU.

Due to the continually high levels of fraud observed on internet payments, a delay in the implementation of the guidelines until the transposition of the PSD 2 in 2017/18 is not a plausible option. Therefore, the EBA decided to issue these guidelines which set the minimum security requirements that Payment Services Providers (PSP) in the EU will be expected to implement by 1 August 2015.

The EBA guidelines on internet payments cover the following fields:

#### General control and security environment

- Governance
- Risk assessment
- Incident monitoring and reporting
- Risk control and mitigation
- Traceability

#### Specific control and security measures for internet payments

- Initial customer identification, information
- Strong customer authentication
- Enrolment for, and provision of, authentication tools and/or software delivered to the customer
- Log-in attempts, session time out, validity of authentication
- Transaction monitoring
- Protection of sensitive payment data

#### Customer awareness, education, and communication

- Customer education and communication
- Notifications, setting of limits
- Customer access to information on the status of payment initiation and execution

These guidelines should be implemented shortly in Luxembourg regulatory framework.

## MiFID II

### 4. ESMA provides implementing rules for MiFID II

The **ESMA has published on 19 December 2014 its final Technical Advice (TA)** and launches a consultation on its draft regulatory technical and implementing standards (RTS/ ITS) regarding the implementation of MiFID II and MiFIR.

Once fully implemented MiFID II will have a significant impact on the EU's Securities Market, MiFID II will provide greater transparency and improve the overall functioning of markets. The ESMA has published on 19 December 2014 its final Technical Advice (TA) and launches a consultation on its draft regulatory technical and implementing standards (RTS/ ITS) regarding the implementation of MiFID II and MiFIR.

#### **MiFID II to include most financial instruments**

- Trading obligation for shares and double volume cap mechanism for shares and equity-like instruments;
- Obligation to trade derivatives on MiFID venues (regulated markets, multilateral (MTFs) or organised trading facilities (OTFs)) only, in line with G20 requirements; increased trade transparency, for non-equity instruments, in particular bonds, derivatives, structured finance products and emission allowances;
- Newly introduced position limits and reporting requirements for commodity derivatives;
- Rules governing high frequency trading, imposing a strict set of organisational requirements on investment firms and trading venues;
- Provisions regulating access to central counterparties (CCPs), trading venues and benchmarks, designed to increase competition in the Union; and
- Requirements for a consolidated tape of trading data, including rules for tape providers, reporting, publication and sales of data.

#### **MiFID II to improve investor protection**

- Clarifications about the circumstances in which portfolio managers can receive research from third parties;
- Clarifications under which circumstances inducements meet the quality enhancement requirement for the provision of advice;
- Requirements for investment firms manufacturing and/or distributing financial instruments and structured deposits to have product governance arrangements in place in order to assess the robustness of their manufacture and/or distribution;
- Requirements for firms to provide clients with details of all costs and charges related to their investment, including cost aggregations, the timing of disclosure (ex-ante and ex-post); information to non-retail clients; the scope of firms subject to this obligation;
- Information on the cumulative effect of costs on the return;
- Organisational requirements for firms providing investment advice on an independent basis; and
- Specification of powers for ESMA and national regulators with regards to prohibiting or restricting the marketing and distribution of financial instruments.

#### **Next Steps**

MiFID II/ MiFIR and its implementing measures will be applicable from 3 January 2017.

## Supervisory Review and Evaluation Process (SREP)

### 5. EBA Final Guidelines on SREP methodologies and processes

The **EBA published on 19 December 2014 its final guidelines** for common procedures and methodologies for the Supervisory Review and Evaluation Process (SREP). These guidelines represent a major step forward in forging a consistent supervisory culture across the Single Market and provide a common framework for the work of supervisors in the assessment of risks to banks' business models, their solvency and liquidity.

The guidelines have been developed in accordance with the Capital Requirements Directive (CRD) and aim at promoting common procedures and methodologies for the supervisory review and evaluation process (SREP). They are intended to improve the functioning of the internal market and to make regulation and supervision effective and consistent, in the banking sector.

**The guidelines are based on four components:**

- Business model analysis;
- Assessment of internal governance;
- Assessment of risks to capital and adequacy of capital;
- Assessment of risks to liquidity and adequacy of liquidity

The assessment shall be summarised in a common scoring and leads to a consistent approach in setting supervisory requirements to hold additional capital and liquidity resources. These Guidelines recognise the proportionality principle and the importance of supervisory judgement, providing a flexible but constrained framework for all EU supervisors. Moreover, they also recognise longer transitional arrangements for the application of certain quantitative liquidity and capital supervisory provisions.

**Next Steps:**

The Guidelines will apply from 1 January 2016 and are addressed to all competent authorities across the Union, including the SSM, who are expected to comply by incorporating them into their supervisory practices.

## Banking prudential reporting

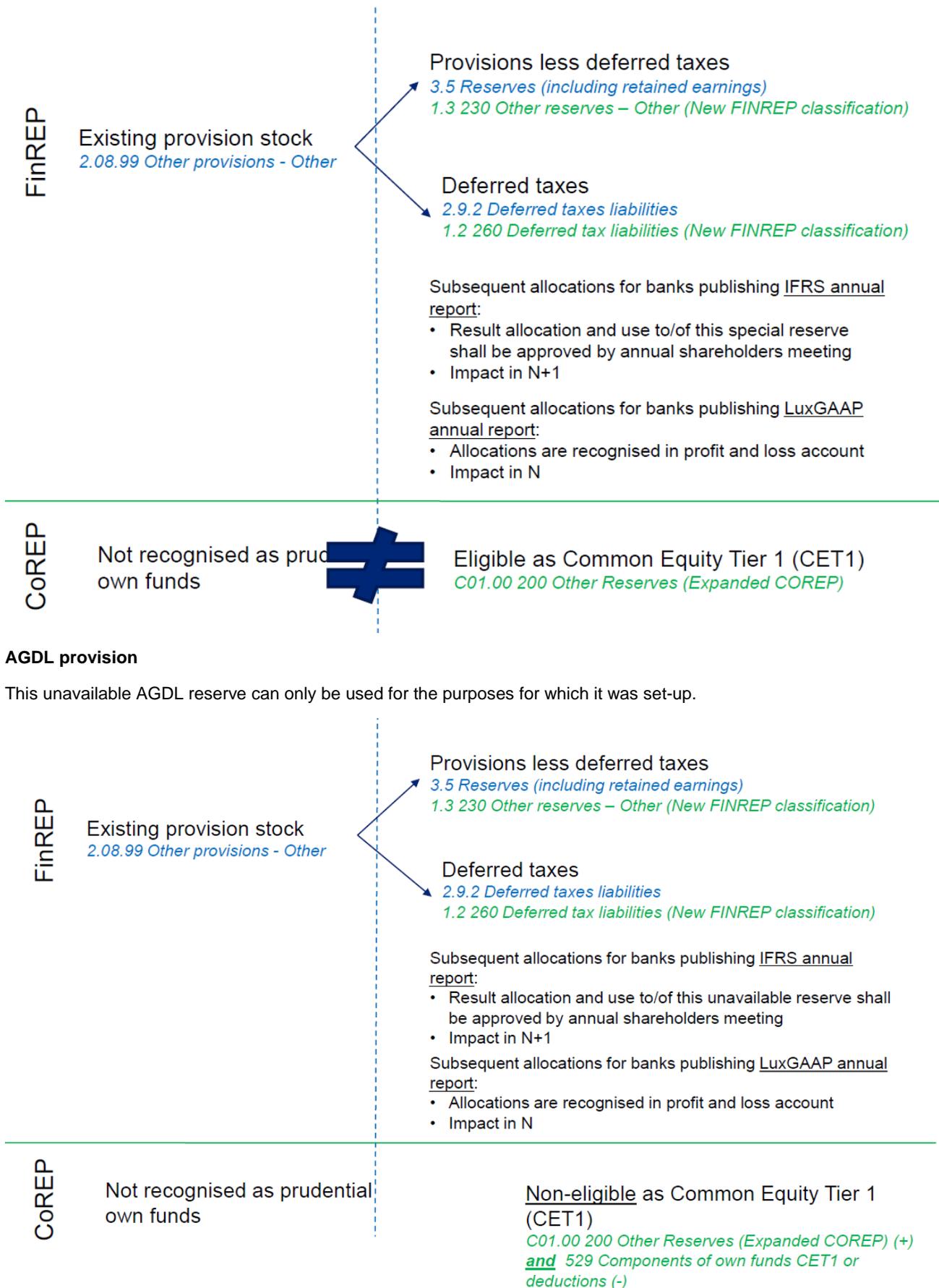
### 6. CSSF Circular 14/599 on accounting treatment of lump-sum and AGDL provisions

On 19 December, the **CSSF published the Circular 14/599** amending the accounting treatment of lump-sum and AGDL provisions. Whilst these provisions were maintained according to FinREP instructions as at 01/01/2008, the new harmonised European reporting and the EU CRR Regulation 575/2013 require a recycling, in respect of IFRS accounting rules. Lump-sum and AGDL provisions do not meet the definition of value adjustment as per IAS 39 (incurred loss) or provision as per IAS 37 (obligation to a third-party). Therefore, the items constitute retained earnings. You will find below an overview of introduced changes.

CSSF Circular 14/599 is already applicable to next prudential reporting.

#### **Lump-sum provision**

The use of the lump-sum reserve is restricted to the purposes for which it was set-up and subject to the prior approval of the CSSF.



Future cash contributions to **Deposit Guarantee Schemes** and **Banking Recovery and Resolution** systems will be recognised in profit and loss account.

**CSSF Circular 14/593 on supervisory reporting requirements applicable to credit institutions as from 2014**

The purpose of this circular is to remind and inform on recent and future developments in prudential reporting. The following table present an overview of applicable reporting on individual and consolidated basis.

<b>Individual basis</b>	<b>Consolidated basis</b>
<p><b>FINREP</b></p> <ul style="list-style-type: none"> <li>- B 1.1 and B 1.6 (monthly)</li> <li>- B 2.1 and B 2.5 (quarterly)</li> </ul> <p>as introduced by CSSF Circular 07/316 and subsequent circulars.</p> <p><u>A transition to the harmonised prudential reporting on individual basis is expected. As long as no instruction from the European Central Bank is received in the context of the Single Supervisory Mechanism, these tables are still applicable on an individual basis.</u></p>	<p><b>New FINREP</b></p> <ul style="list-style-type: none"> <li>- Part 1: Information to be reported quarterly (27 tables)</li> <li>- Part 2: Information to be reported quarterly on threshold basis (10 tables)</li> <li>- Part 3: Information to be reported semi-annually (4 tables)</li> <li>- Part 4: Information to be reported annually (13 tables)</li> </ul>
<p><b>Expanded COREP</b></p> <ul style="list-style-type: none"> <li>- Own funds requirements (Solvency ratio) (quarterly or semi-annually tables)</li> <li>- Losses stemming from lending collateralised by immovable property (semi-annually)</li> <li>- Large exposures (quarterly)</li> <li>- Leverage ratio (quarterly)</li> <li>- Liquidity Coverage requirements (monthly)</li> <li>- Reporting on stable funding (Net Stable Funding requirements (NSFR) (monthly)</li> </ul>	
<p><b>Other</b></p> <ul style="list-style-type: none"> <li>- B 1.5 Liquidity ratio (monthly)</li> <li>- B 2.4 Information on participating interest and subordinated loans (quarterly)</li> <li>- B 4.4 List of head offices, agencies, branches and representative offices (annually)</li> <li>- B 4.5</li> <li>- Analysis of shareholdings (annually)</li> <li>- B 4.6 Persons responsible of certain functions and activities (annually)</li> </ul>	<p>N/A</p>

These reporting will be completed by:

- Forbearance and non-performing exposures (first reporting as at 30 September 2014 due on 31 December 2014);
- Asset encumbrance (first reporting as at 31 December 2014 due on 11 February 2015, please refer also to [our Deloitte Regulatory News Alert on CSSF Circular 14/597 of 3 December 2014](#)); and
- Additional liquidity monitoring metrics (expected 1st July 2015).

### Threshold for notification of large exposures

The CSSF maintains current minimum thresholds for notification of large exposures (10% of own funds or EUR 12.5 million) for tables “Large exposures” (Tables C28.00 and C29.00).

#### Repealed circulars:

- CSSF 14/586
- CSSF 13/570
- CSSF 11/513
- CSSF 10/461
- CSSF 08/344, only regarding requirements on tables B 6.1, B 6.6, B 6.2, B 6.7, B 1.2, B 1.4, B 6.4, B 2.3 et B 6.3
- CSSF 08/381, CSSF 10/450, CSSF 10/493
- CSSF 07/316, CSSF 07/319, CSSF 07/324, CSSF 07/331, only regarding requirements on tables B 6.1, B 6.6, B 6.2, B 6.7, B 1.2, B 1.4 et B 6.4
- CSSF 07/279
- CSSF 06/251
- CSSF 05/227
- IML 93/92.

## PRIIPS

### 7. PRIIPS: the final countdown has just started

On 9 December 2014, the **Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)** (“PRIIPS Regulation”) has been published in the Official Journal of the European Union.

You are fund manager, insurance undertaking, credit institution or investment firm, then you are most probably a PRIIPS manufacturer or advising on or selling PRIIPS to retail investors.

As PRIIPS manufacturer you must be willing to take your responsibilities from 31 December 2016; in essence, it means to be ready for:

- drawing up the KID before the PRIIP is made available to retail investors or monitoring the service provider to which KID production is outsourced;
- publishing the KID on its website;
- designing and implementing appropriate procedures and arrangements in relation to complaints handling.

To know more about:

- what is a PRIIP ?
- what are the responsibilities and liabilities of a PRIIPS manufacturer ?
- what challenges PRIIPS manufacturer or distributor is currently facing ?
- what are the issues that remain outstanding regarding PRIIPS ?
- how **Deloitte KID factory** can help you meeting your three main challenges: content creation, industrialisation and, life cycle management ?

We invite you to go through our **Deloitte KID factory** service brochure.

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