

Pathfinder

Deloitte Monthly Regulatory Update



November 2013







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Welcome to Pathfinder

The following table is structured by regulatory topic and provides links to Deloitte analysis and summaries, as well as to original publications. The column "Leg/Reg" presents the new key publications from Luxembourg and European legislators/regulators and the column "Prof/Assoc" from Luxembourg and European authorities and professional associations.

Regulatory summary table – November 2013

Topic	Leg/Reg	Prof/Assoc
<p>Alternative investment fund manager (AIFM)</p>		<p>ALFI position paper on the Commission Regulation (EU) n° 231/2013 of 19 December 2012 - Treatment of subscription and redemption orders under AIFM Directive - ALFI 25/11/2013</p> <p> Original text</p> <hr/> <p>ESMA final report 2013/1339 on revised guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of AIFM Directive - ESMA 15/11/2013</p> <p> Original text</p> <p> Related links:</p> <p>AIFMD reporting IT technical guidance (revised) (2013/1358)</p> <p>Consolidated AIFMD reporting template (revised) (2013/1359)</p> <p>Tables 8-9-10 of Annex 2 of ESMA guidelines on AIFMD reporting obligation (revised) (2013/1360)</p> <p>AIFMD - Reporting - XML documents - V1.1 (revised) (2013/1361)</p> <p>AIFMD Reporting - Annex 2 -Tables 1-7 (2013/1586)</p> <p>CSSF press release 13/50 of 21/11/2013</p>
<p>European market and infrastructure Regulation (EMIR)</p>		<p>ESMA list of applicant central counterparties (CCPs) established in non-EEA countries which have applied for recognition under Article 25 of EMIR (2013/1581) - ESMA 05/11/2013</p> <p> Original text</p> <hr/> <p>ESMA press release 2013/1629: ESMA registers DDRL, KDPW, Regis-TR, and UnaVista as trade repositories - ESMA 07/11/2013</p> <p> Deloitte alert</p> <p> Original text</p>

Updated ESMA questions and answers
2013/1633 on EMIR implementation - ESMA
11/11/2013

 [FAQ](#)

ESMA final report 2013/1657 on draft
technical standards under EMIR on contracts
with a direct, substantial and foreseeable
effect within the Union and non-evasion -
ESMA 18/11/2013

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ALFI frequently asked questions on EMIR /
OTC derivatives issue 1 - ALFI 15/11/2013

 [FAQ](#)

**Exchange traded
funds (ETFs) and
other UCITS issues**

Updated ESMA questions and answers
2013/1547 concerning the guidelines
ESMA/2012/832 on ETFs and other UCITS
issues - ESMA 27/11/2013

 [Deloitte alert](#)

 [FAQ](#)

Insurance brokers

CAA frequently asked questions on insurance
broker - CAA 12/11/2013

 [FAQ](#) (French only at
this stage)


**Key information
documents for
packaged retail
investment
products (PRIIPs)** Adoption by the European Parliament of
amendments on the proposal for a
Regulation on key information documents
for investment products - European
Parliament 20/11/2013

 [Deloitte alert](#)

 [Original text](#) (pages
293 to 345)

**Prudential
reporting of
investment firms** CSSF Circular 13/575: Supervisory
reporting requirements applicable to
investment firms as from 2014 – CSSF
18/11/2013

 [Deloitte alert](#)

 [Original text](#) (French
only at this stage)

Solvency II and Omnibus II Directives Trilogue agreement by Council and Parliament on the "Omnibus II" Directive amending the Solvency II Directive (2009/138/EC) and the Prospectus Directive (2003/71/EC) – Council of European Union 27/11/2013

 [Original text](#)

Single supervisory mechanism (SSM) and single resolution mechanism (SRM)

Council statement on EU banks' asset quality reviews and stress tests, including on backstop arrangements and Council discussion on the draft Regulation for a single resolution mechanism – Council of European Union 15/11/2013

ECB reply to European Parliament on ECB comprehensive assessment in advance of the single supervisory mechanism – ECB 15/11/2013

 [Original text](#)

 [Original text](#) (pages 14 to 19)

Transparency requirements

Directive 2013/50/EU of 22 October 2013 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC - OJ L 294 06/11/2013

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Deloitte alerts and summaries

European market and infrastructure Regulation (EMIR)

ESMA press release 2013/1629: ESMA registers DDRL, KDPW, Regis-TR, and UnaVista as trade repositories - ESMA 07/11/2013

Publication of the list of trade repositories (TRs) operating in Europe

According to Article 9 of **Regulation 648/2012/EU of the European Parliament and of the Council of 4 July 2012 on over-the-counter (OTC) derivatives, central counterparties and trade repositories (EMIR)**, counterparties and Central counterparties (CCPs) shall report the details of any derivative contract they have concluded and of any modification or termination of the contract to a registered TR. TRs centrally collect and maintain the records of derivatives. They play a central role in enhancing the transparency of derivative markets and reducing risks to financial stability. ESMA has direct responsibilities regarding the registration, supervision and recognition of TRs.

On 7 November 2013, ESMA published the list of the first four TRs operating in Europe:

- Regis-TR S.A. (Luxembourg);
- DTCC Derivatives Repository Ltd (UK);
- Krajowy Depozyt Papierów Wartościowych S.A. (Poland);
- UnaVista Ltd (UK).

All asset classes will be covered by the registered TRs (commodities, credit, foreign exchange, equity, interest rates and others), the derivative contract is OTC or exchange traded.

Start date of reporting obligations

Following the announcement of these registrations, the reporting obligations will be **effective on 12 February 2014**, i.e. 90 days after the official registration date of these four TRs (14 November 2013).

Please see our website for further information on the **European Market and Financial Infrastructure Regulation (EMIR)** and on the **EMEA Centre for Regulatory Strategy**.

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ESMA final report 2013/1657 on draft technical standards under EMIR on contracts with a direct, substantial and foreseeable effect within the Union and non-evasion - ESMA 18/11/2013

ESMA has issued **final draft regulatory technical standards (RTS)** related to derivative transactions by non-European Union counterparties. The RTS implement provisions of the **Regulation on OTC derivatives, central counterparties and trade repositories**. This final report has been submitted to the European Commission by 15 November 2013. The Commission has three months to decide whether to endorse ESMA's draft regulatory technical standards.

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Exchange traded funds (ETFs) and other UCITS issues

Updated ESMA questions and answers concerning the guidelines ESMA/2012/832 on ETFs and other UCITS issues (2013/1547) - ESMA 27/11/2013

On 27 November 2013, the ESMA published an updated version of the [Q&A on ETFs and other UCITS issues](#). Compared to the previous versions dated of 15 March 2013 and 11 July 2013, this new version adds two Q&A's on the following matters: issuer concentration limits applicable to reinvested cash collateral (Q&A 6m), rule on changes to previously published index values ("backfilling") (Q&A7i).

Key takeaways from the new Q&A's are:

- The reinvested cash collateral should be combined with direct holdings and taken into account for the calculation of the issuer concentration limits laid down in the UCITS Directive;
- The provision that prevent retrospective changes to previously published index values ("backfilling") does not apply to calculation mistakes.

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Key information documents for packaged retail investment products (PRIIPs)

Adoption by the European Parliament of amendments on the proposal for a Regulation on key information documents for investment products (page 289) - European Parliament 20/11/2013

On 20 November 2013, the European Parliament approved the draft rules defining the Key Information Documents (KID) for PRIIPs. The KID has to be provided by professionals to small investors beforehand contracting for investment products. The KID aims to provide clear, comparable and complete information on investment products.

The targeted products

According to the current texts, the following investment products should be accompanied by a KID when sold to retail investors:

- Products with capital guarantees, and those where, in addition to capital, a proportion of the return is also guaranteed;
- Investment funds, whether closed-ended or open-ended (including UCITS);
- All structured products, whatever their form (e.g. packaged as insurance policies, funds, securities or banking products). The European Parliament confirmed that insurance products should remain in scope.
- Insurance products whose surrender values are determined indirectly by returns on the insurance companies' own investments or even the profitability of the insurance company itself as well as derivative instruments. Some of these products may be used as individual retail pension products, i.e. accumulation vehicles for the purposes of retirement planning.

The provisional text adopted on 20 November 2013 by the European Parliament confirmed the scope and the exclusion from the rules of insurance products which do not offer a surrender value.

As the Council has a different opinion on the scope of the investment products concerned by the Law, the negotiations on the exact scope of targeted products may however continue.

KID drawn up by the product manufacturers

The KID is a stand-alone document to be produced by the product manufacturer and that will need to be published on its website. It must be clearly distinct and separate from any marketing materials. Making the KID available, as per the current proposal, is only compulsory for retail investors.

The product manufacturer shall employ a risk-management process which enables it to monitor and measure at any time the risk profile of the investment product. The current proposal contains multiple measures and criteria on independence in valuation of derivatives, managing global exposure and calculating value-at-risk.

Warning label for complex products

For investment products considered as complex, the following standard text should be included at the top of the first page of the KID: "This product is considered to be very complex, and may not be appropriate for all retail investors". The initial proposal foresaw a more rigorous text ("The competent authority considers this product to be too complex to be sold to non-professional investors, and has therefore not assessed its information document for that purpose") that was now abandoned in favor of the new proposal.

The following investment products are considered as complex and hence not considered as suitable for retail investors if at least one of the following conditions is met:

- The risk-reward profile or the costs are presented in an overly complicated manner;
- The risk-reward profile is conditional upon the simultaneous occurrence of two or more events linked to at least two different asset classes;
- The product invests in underlying assets not commonly invested in by non-professional investors;
- A number of different mechanisms are used to calculate the final return on the investment, creating a greater risk of misunderstanding on the part of the investor;
- The investment return includes packaging features which take advantage of investors' behavioural biases, such as by offering a "teaser" fixed rate followed by a much higher floating conditional rate, or an iterative formula;
- The global exposure of the financial product, measured by its monthly value at-risk calculated within a 99% confidence interval at the time of trade, is above 20%.

Transitional period

The Council would like to grant five years after the entry into force of the Regulation whereas the current proposal submitted by the European Parliament seeks to reduce this period to three years (Article 24).

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Prudential reporting of investment firms

CSSF Circular 13/575: Supervisory reporting requirements applicable to investment firms as from 2014 – CSSF 18/11/2013

This Circular announces the coming **implementing technical standards on supervisory reporting** (ITS hereafter) which will be **applicable on 1 January 2014 (expanded COREP), and on 1 July 2014 (new FINREP)**. The final draft has been approved by the EBA and is submitted to the European Commission. The scope of the ITS is COREP, COREP large exposures and FINREP. As these rules will be published as a new European Regulation, **the ITS will be applicable directly in Luxembourg** without any transposition provisions, that is without any delay.

The structure of the new reporting and their applicability are:

	Expanded COREP	New FINREP
Structure	Equity funds and requirements of equity funds (Art. 99 of the CRR*)	Reporting related to financial information (Art. 99 of the CRR) on a consolidated basis.
	Losses generated by exposures for which a company has identified properties as a guarantee (Art. 101 of the CRR)	
	Information of large exposures (Art. 394 of the CRR)	
	Ratio leverage (Art. 430 of the CRR)	
	Reports on liquidity (Art. 415 of the CRR)	
	This information shall be disclosed on individual and consolidated basis.	
All the investments firms offering ancillary services: safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management	In scope	
Investment advisers (Art. 24)	Out of scope*	
Brokers in financial instruments (Art. 24-1)	Out of scope*	
Commission agents (Art. 24-2)	Out of scope but CSSF 07/290 still applicable	No change on an individual basis.
Private portfolio managers (Art. 24-3)	Out of scope but CSSF 07/290 still applicable	Only for entities publishing their consolidated financial statements according to IFRS.
Professionals acting for their own account (Art. 24-4)	In scope	
Market makers (Art. 24-5)	In scope	
Underwriters of financial instruments (Art. 24-6)	In scope	
Distributors of units/shares in UCIs (Art. 24-7)	Out of scope* **	
Financial intermediation firms (Art. 24-8)	Out of scope	
Investment firms operating an MTF in Luxembourg (Art. 24-9)	In scope	

* Whose professionals providing the ancillary service as defined in the Law of 5 April 1993 on financial sector) shall comply with the ITS (Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management).

** Excepted whose professional providing investment services (Annex II Section A of the Law of 5 April 1993 on financial sector).

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Transparency requirements

Directive 2013/50/EU of 22 October 2013 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC - OJ L 294 06/11/2013

On 17 October 2013, the European Council approved a Directive updating the transparency requirements introduced in the Directive 2004/109/EC (the Transparency Directive), Directive 2003/71/EC and Directive 2007/14/EC.

On 6 November 2013, the Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 has been published in the Official Journal of the European Union.

Transparency requirements for listed companies have been revised primarily to reduce the administrative burden for small and medium-sized issuers, harmonise the notification and reporting requirements and to lay down sanctions in the event of breach in the transparency requirements, among others.

The changes will need to be introduced in Luxembourg regulations **by the end of November 2015** at the latest.

Transparency requirements for issuers in the regulated market

What are the main modifications in the revised Transparency Directive?

- **Publishing interim financial reports**
 - **Abolishing the requirement to publish interim management statements and quarterly financial information:** The obligation to publish interim management statements or quarterly financial reports is deemed too burdensome for small and medium-sized issuers to the extent that it is no longer sustainable for investor protection measures. Hence, this requirement has been abolished. However, the home Member State may only under specific conditions require issuers to publish additional periodic financial information on a more frequent basis than the annual or half-yearly reports required by the Directive, namely if, after an assessment of the impacts, it is shown that such additional requirement does not lead to an excessive focus on short-term results and performance of the issuers and to a negative impact on the access of small and medium sized issuers to capital in the regulated market. Companies could also decide to publish quarterly information on a voluntary basis, if they wish to.
 - **Extending the deadline for publishing half yearly financial reports:** The deadline for publishing half yearly financial reports have been extended to three months after the end of the reporting period.
- **Activities in the extractive or logging of primary forest industries**
 - **Requirement to disclose, on an annual basis, the payments made to governments in countries where the issuer operates:** Listed companies operating in the oil, gas and mineral extractive as well as forest industry need to disclose in a separate report prepared annually at consolidated level, any payments made to governments in the countries where they operate. The Directive refers to the principles defined in Chapter 10 of Directive 2013/34/EU on materiality (EUR 100,000 threshold), government and project-by-project reporting, universality and comprehensiveness.

- **Notification requirements**
 - **New definition of financial instruments covered by the disclosure requirements:** The definition of financial instruments is broadened to all instruments of similar economic effect to holdings of shares and entitlements to acquire shares, whether giving right to a physical settlement or not. It covers cash-settled derivatives (a derivative contract where one party holds a long position and the other party holds a short position in a particular stock, with any nominal value difference at maturity settled in cash) as well as similar financial instruments not yet available on the markets but which could be the result of financial innovation. The new definition focuses on the economic effect of a financial instrument rather than enumerating the types of financial instruments covered. The holdings of financial instruments with similar economic effect to holdings of shares and entitlements to acquire these that provide exclusively for a cash-settlement, shall be calculated on a “delta-adjusted” basis. ESMA shall develop draft regulatory standards to specify the methods of determining delta for this purpose which will be submitted to the Council for adoption.
 - **New rules for aggregation of holdings of shares with holdings of financial instruments:** Holdings of financial instruments will be aggregated with holdings of shares for the purpose of calculating the thresholds that trigger the notification requirement. Should the aggregated holdings of the voting rights including those from the financial instruments exceed the notification threshold without affecting the overall percentage of the previously notified holdings, a new notification is required to disclose the change in the nature of the holdings. Member States are allowed to set lower or additional thresholds for notification of holdings of voting rights and impose stricter notification obligations than in the Transparency Directive with regard to content, process, timing and additional information.
- **Access to and storage of regulated information**
 - **Improving access to regulated information:** In order to create an effective pan-European marketplace for capital, the European Commission will take measures to improve the functioning of the network of officially appointed national storage mechanisms and to develop technical criteria for access to regulated information at the EU level. Together with ESMA, the European Commission aims to develop and create a web portal that will serve as the European electronic “access point” of regulated information.
- **Sanctions for breaches**
 - **Reinforcing sanctions for non-compliance to key provisions:** Sanctions for serious breaches in the provisions of the Transparency Directive have been reinforced. Member States are allowed to broader powers to apply such sanctions in other circumstances or to apply higher levels of administrative sanctions than those mentioned in the Transparency Directive.
- **Definition of Issuers**
 - **Clarifying the definition of issuers:** The definition of issuer has been further clarified to also include issuers of non-listed securities represented by depositary receipts admitted to trading on the regulated market. The definition now also includes natural persons as issuers.
- **Home Member States**
 - **Simplifying how to determine home Member State:** The new revisions provide clarity on how

home Member State are determined including rules on the notification of the choice of home Member State.

- **Overlap in regulations**

- **Abolition of the disclosure of new loan issues:** Due to implementation complexities and overlap with other EU Directives, the requirement to disclose new loan issues by the issuers has been removed.
- **Abolition of the communication to authorities of change's proposals in the issuer's incorporation documents:** To reduce unnecessary burden on the issuers, the requirement to transmit to the competent authority of the home Member State and to the regulated market, any amendments to the issuer's instrument of incorporation or statutes has been abolished.

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

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