

Luxembourg

Pathfinder

Deloitte Monthly Regulatory Update

December 2013



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Final draft technical standards EBA/RTS/2013/09 on own funds - European Bank Authority 13/12/2013

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European Bank Authority 17/12/2013

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Report on appropriate uniform definitions of extremely high quality liquid assets (extremely HQLA) and high quality liquid assets (HQLA) and on operational requirements for liquid assets under Article 509(3) and (5) CRR and Report on impact assessment for liquidity measures under Article 509(1) of the CRR - European Bank Authority 20/12/2013

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Final guidelines EBA/GL/2013/02 on capital measures for foreign currency lending to unhedged borrowers under the supervisory review and evaluation process (SREP) - European Bank Authority 20/12/2013

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Final draft technical standards on market risk and credit valuation adjustment risk:

- Final draft technical standards EBA/RTS/2013/16 on the definition of market
- Final draft technical standards EBA/RTS/2013/17 on credit valuation adjustment risk

European Bank Authority 20/12/2013

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Technical advice EBA/Op/2013/03 to the Commission on possible treatments of unrealised gains measured at fair value - European Bank Authority 19/12/2013

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Credit rating agencies (CRAs)

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Deposit guarantee scheme (DGS) Agreement reached on the revised Deposit Guarantee Schemes Directive - Council of European Union 18/12/2013

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**Insurance
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Guidelines EIOPA-BoS-13/164 on
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**Insurance sector -
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**Insurance sector -
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**Life insurance
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Letter 08/1 on investment rules for life
insurance products related to investment
funds – *Commissariat aux Assurances*
19/12/2013 (French only at this stage)

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Market abuse Directive (MAD) Agreement confirmed on the draft Directive on criminal sanctions for market abuse - Council of European Union 20/12/2013

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Mortgage credit Directive Adoption of a proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property – European Parliament 10/12/2013

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Payment account Directive Adoption of amendments to the proposal for a Directive of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts – European Parliament 12/12/2013

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Questions and answers on professionals of insurance sector (PSA) in re-insurance sector – *Commissariat aux Assurances* 12/12/2013

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CSSF Circular 13/576: Update of table B 4.6 now entitled table B 4.6 "Persons responsible for certain functions and activities" for credit institutions – CSSF
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Single resolution mechanism (SRM) and a single bank resolution fund (SRBF)

Agreement by the European Council on the establishment of a single resolution board and a single fund for the resolution of banks – Council of European Union 18/12/2013



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Solvency I and II

Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013 amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (Solvency I) - OJ L341 of 18/12/2013



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UCITS V

Agreement by the Council of European Union on a draft Directive aimed at amending EU rules on investment funds as concerns depositary functions, remuneration policies and sanctions (UCITS V) – Council of European Union 04/12/2013



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Deloitte summaries

Alternative investment fund managers

Commission delegated Regulation 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 – European Commission 17/12/2013

Under the AIFM Directive, AIFMs have to follow specific rules depending on the type of AIF concerned: open-ended or closed-ended.

An AIFM of an open-ended AIF is considered as an AIFM which manages an AIF the shares or units of which are, at the request of any of its shareholders or unitholders, repurchased or redeemed prior to the commencement of its liquidation phase or wind-down, directly or indirectly, out of the assets of the AIF and in accordance with the procedures and frequency set out in its rules or instruments of incorporation, prospectus or offering documents.

An AIFM of a closed-ended AIF shall be an AIFM which manages an AIF other than of the type described above.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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Capital requirement (CRD/CRR) and liquidity coverage ratio (LCR)

Final draft technical standards EBA/RTS/2013/07 on the determination of the overall exposure to a client or a group of connected clients in respect of transactions with underlying assets - European Bank Authority 05/12/2013

The RTS establish:

- the methodology for the calculation of the value of exposures to transactions with underlying assets,
- the procedure used to determine the contribution of underlying exposures to overall exposures to clients and groups of connected clients, and
- the conditions under which the structure of the transaction does not constitute an additional exposure.

Further when the value of the exposure is sufficiently small, there is no need to apply the look-through approach.

The final draft standards have been sent to the European Commission for their adoption as EU Regulations.

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Guidelines EBA/GL/2013/01 on retail deposits subject to different outflows for the purpose of liquidity reporting - European Bank Authority 06/12/2013

The aim of these guidelines is to establish the criteria for identifying retail deposits subject to different outflow during the following 30 days for the purpose of liquidity reporting. Retail deposits subjects to different outflows should be allocated to three different categories, depending on their underlying risk. Institutions should report

the amounts of retail deposits allocated to each of the three categories together with their own estimates of expected outflows under stress conditions.

These guidelines will be implemented by national competent authorities within three months.

National competent authorities must notify the EBA by 6 February 2014 if they comply or intend to comply or provide the reasons for non-compliance.

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Final draft technical standards EBA/RTS/2013/11 on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 94(2) of Directive 2013/36/EU - European Bank Authority 16/12/2013

These draft RTS set out criteria for the identification of categories of staff who have a material impact on the institution's risk profile ('Identified Staff') in accordance with the requirements of Article 92(2) of the CRD:

- the identification criteria are a combination of qualitative and appropriate quantitative criteria,
- the qualitative criteria identify staff within the management body, senior management and other staff with key functions or managerial responsibilities over other identified staff within institutions,
- the quantitative criteria are different in nature: one is based on total remuneration in absolute terms (staff earning more than EUR 500 000 in the preceding financial year), and one is defined in relative terms (0.3% of staff with the highest remuneration).

These draft RTS has been submitted to the European Commission for adoption. They will enter into force after their publication in the Official Journal of the European Union. The EBA will review the development of identification practices and the exclusion of staff in the course of 2015.

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Final draft technical standards EBA/RTS/2013/09 on own funds - European Bank Authority 13/12/2013

The key objectives of the draft RTS are:

- to achieve greater harmonisation and increased conservatism in the way deductions of investments in financial sector entities as well as own capital instruments are applied;
- to set criteria for broad market indices so as to avoid that the interest rate/dividend paid by institutions on floating rate capital instruments increases when the credit standing of the institution decreases;
- to harmonise the calculation of minority interests to be included in regulatory capital.

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Final draft technical standards EBA/ITS/2013/11 on metrics for monitoring additional liquidity - European Bank Authority 18/12/2013

These final draft implementing technical standards "ITS" set out five metrics to assess the liquidity risk profile of institutions.

- contractual maturity ladder;

- concentration of counterbalancing capacity by issuer/counterparty;
- concentration of funding by counterparty and product type;
- prices for various lengths of funding;
- roll-over of funding.

The final standards have been sent to the European Commission for their adoption as EU Regulations. The proposed application date is 1 July 2015.

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Deposit guarantee scheme

Agreement reached on the revised Deposit Guarantee Schemes Directive (DGS) - Council of European Union 18/12/2013

The target level for funds of DGS is 0.8% of covered deposits to be collected from banks over a 10-year period.

Repayment deadlines will be gradually reduced from the current 20 working days to 7 working days in 2024.

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Insurance intermediaries in handling complaints

Guidelines EIOPA-BoS-13/164 on complaints handling by insurance intermediaries - European Insurance and Occupational Pensions Authority 27/11/2013

On 3 December 2013, the EIOPA published its guideline on complaints handling by insurance intermediaries. These guidelines specify that procedures shall allow customers and other parties to register complaints about insurance and reinsurance intermediaries.

EIOPA published also **Report on best practices by insurance intermediaries in handling complaints**.

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Insurance sector – Anti-money laundering

Regulation N°13/01 of the Commissariat aux Assurances of 23 December 2013 relating to anti-money laundering and terrorism financing – *Mémorial* A 224 of 24/12/2013 (French only at this stage)

Circular Letter 13/14 on the entry into force of CAA Regulation N° 13/01 of 23 December 2013 relating to anti-money laundering and terrorism financing and repealing CAA Circular Letters 09/6 and 10/7 – *Commissariat aux Assurances* 23/12/2013 (French only at this stage)

This Regulation clarifies and supplements the Luxembourg provisions relating to the fight against money laundering and financing of terrorism as applicable to professionals subject to CAA supervision and stipulated in Article 2 of the Law of 12 November 2004.

This Regulation confers a binding character on pre-existing professional obligations set out so far by Circular Letters from CAA and takes into consideration some new recommendations from the FATF adopted in February 2012.

The provisions of the Regulation CAA n°13/01 are relating to the following subjects:

- risk approach,
- due diligence obligations,
- internal organisation,
- cooperation with authorities and,
- control by the réviseur d'entreprises agréé.

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Mortgage credit Directive

Adoption by European Parliament of a legislative proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property – European Parliament

10/12/2013

Creating a fair single market for mortgage credit – Frequently asked questions – European Commission

10/12/2013

The European Parliament approved on 10 December 2013 a measure to enforce EU rules that will ensure home buyers across the EU are fully informed of the real costs of taking on a mortgage, and are protected against the worst risks.

The legislation will cover mortgages on residential property, residential property including an office space and building land.

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Payment account Directive

Adoption by European Parliament of amendments to the proposal for a Directive of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts – European Parliament 12/12/2013

The main amendments are :

- A comprehensive fee information document has to be provided by the payment service providers to consumers for all services linked to the payment account. The fee information document should use the standardised terms and definitions established at Union level, where possible.
- An independent and free website shall be established in each Member State allowing comparison of fees charged and interest paid by banks, as well as their level of service.

No later than three years after the entry into force of the paying account Directive, EBA will provide a publicly accessible Union comparison website that enables consumers to compare payment accounts offered within the internal market.

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Prudential reporting of banks and investment firms

CSSF Circular 13/577: Introduction of table EI "Responsible persons for certain functions and activities" for investment firms – CSSF 03/12/2013

CSSF Circular 13/576: Update of table B 4.6 now entitled table B 4.6 "Persons responsible for certain functions and activities" for credit institutions – CSSF of 03/12/2013

These Circulars introduce changes required by the entry into force of the Circular 12/552 (as amended) abrogating the Circulars IML 96/126, IML 98/143, and CSSF 04/155.

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Single resolution mechanism (SRM) and a single bank resolution fund (SRBF)

Agreement by the European Council on the establishment of a single resolution board and a single fund for the resolution of banks – Council of European Union 18/12/2013

On 18 December 2013, the Council set out its position on the establishment of a single resolution board and a single fund for the resolution of banks.

The compromise reached within the Council consists of a draft Regulation on the single resolution mechanism, and a decision by euro-area member states committing them to negotiate, by 1 March 2014, an intergovernmental agreement on the functioning of the single resolution fund.

When a bank is failing or likely to fail, the Council will adopt a resolution scheme placing the bank into resolution and would determine the application of resolution tools and the use of the single resolution fund.

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Solvency I and II

Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013 amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (Solvency I) - OJ L341 of 18/12/2013

Application dates are reported to March 2015 and January 2016.

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UCITS V

Agreement by the Council of European Union on a draft Directive aimed at amending EU rules on investment funds as concerns depositary functions, remuneration policies and sanctions (UCITS V) – Council of European Union 04/12/2013

The draft directive introduces :

- specific provisions on the depositary's safekeeping and oversight duties, and defines the conditions in which safekeeping duties can be delegated to a sub-custodian.
- it sets out a list of entities eligible to act as UCITS depositaries, and clarifies the depositary's liability in the event of the loss of a financial instrument held in custody.

- the draft directive introduces a requirement for the UCITS management company to implement policy that is consistent with sound risk management and complies with minimum principles.

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