

# BULLETIN | EU Financial Services and Regulation

May 2014

Welcome to the EU edition of the Financial Services and Regulation Bulletin, featuring a full round-up of the main regulatory and legislative developments in the European financial services sector for May 2014.

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## PROGRESS OF LEGISLATIVE PROPOSALS

### 1. EU COUNCIL ADOPTS THE BANK RECOVERY AND RESOLUTION DIRECTIVE (BRRD)

On 6 May 2014, the Council of the European Union (EU Council) adopted the proposed [Bank Restructuring and Resolution Directive \(BRRD\)](#). The European Parliament approved the BRRD proposal in April.

The BRRD harmonises the framework for dealing with bank crises across the EU. Specifically, banks will have to draw up recovery plans setting out the measures required to restore their financial position in the event of significant deterioration. In addition, the competent national authorities will have to prepare resolution plans for each bank and set up resolution funds. New bail-in provisions will enable the authorities to write down or convert into equity the claims of the banks' shareholders and creditors, minimising bail-out costs borne by taxpayers.

The Council has published a [press release](#) detailing the measures established by the BRRD. Member States have until 31 December 2014 to transpose the BRRD into national law.

### 2. EU COUNCIL FORMALLY ADOPTS THE MiFID II LEGISLATION

On 13 May 2014, the EU Council adopted the revised [Markets in Financial Instruments Directive \(MiFID II\)](#) and the new [Markets in Financial Instruments Regulation \(MiFIR\)](#). The MiFID II legislative package will be published in the EU's Official Journal (OJ) in the second quarter of 2014. The Council has published a [press release](#) detailing the scope of the new measures.

### 3. IMD2 PRESIDENCY COMPROMISE PROPOSAL

On 13 May 2014, the EU Council published the first Compromise Proposal on the revised [Insurance Mediation Directive \(IMD2\)](#). The compromise text makes a number of amendments to the original Commission Proposal. In particular, the revised text:

- excludes from its scope claims managers and loss adjusters.
- improves the regime for the treatment of conflicts of interest and customer information.
- extends certain obligations to market participants who sell insurance products on an ancillary basis.
- amends certain professional requirements.
- amends requirements related to bundled products.
- obliges insurance providers to disclose whether their remuneration is calculated on the basis of a commission or a fee, but does not oblige them to disclose the commission or fee amounts.
- limits the execution only services to non-complex products, in accordance with the MiFID II rules.

Negotiations between the Council, the European Commission, and the newly elected European Parliament will resume in several months.

### 4. ESMA PUBLISHES CONSULTATION AND DISCUSSION PAPERS ON MiFID II

On 22 May 2014, the European Securities and Markets Authority (ESMA) published a [Consultation](#) and a [Discussion](#) Paper, setting out its position on the implementation of certain delegated acts required under on MiFID II and MiFIR. The Consultation Paper outlines ESMA's views on certain

topics on which the European Commission has requested ESMA to provide technical advice (investor protection, transparency, data publication, micro-structural issues, and requirements applying on and to trading venues, commodity derivatives and portfolio compression).

The Discussion Paper poses questions related to certain more innovative or technically complex topics dealt with by the new rules. Based on responses to that paper, ESMA will publish a Consultation Paper with draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) in several areas covered by MiFID II and MiFIR. Interested parties may submit responses to both papers by 1 August 2014.

## 5. ELTIF REGULATION

On 27 May 2014, the EU Council published the [Compromise Proposal](#) for the Regulation on European Long-Term Investment Funds (ELTIF Regulation). The Proposal builds on the existing regulatory framework established through [Directive 2011/61/EU](#) and several acts adopted for its implementation.

An ELTIF is a proposed new form of fund allowing investments in companies and projects that need long-term capital. Long-term capital may finance (i) tangible assets (such as energy, transport, communication infrastructures, industrial and service facilities, housing and climate change technologies) or (ii) intangible assets (such as education and research and development).

## 6. PRESIDENCY COMPROMISE PROPOSALS AND GENERAL APPROACH RELATING TO MLD4 AND WTR

On 27 May 2014, the EU Council published [a note](#) containing its views on the proposed Fourth Money Laundering Directive (MLD4). On the same day, the Council published [a note](#) on the Wire Transfer Regulation (WTR) i.e., regulation on information accompanying transfers of funds.

The MLD aims to combat money laundering and terrorist financing, while ensuring that the EU framework is aligned with the standards established by the Financial Action Task Force's (FATF). The WTR ensures the traceability of electronic fund transfers (domestic and cross-border, in any currency), which are sent or received by EU-established payment service providers.

## 7. REVISED AGENDA RELATED TO NEW FINANCIAL SERVICES MEASURES

On 23 May 2014, the European Commission updated its [agenda and timetable](#) related to the legislative and non-legislative acts that the Commission expects to adopt between 1 May 2014 and 31 December 2014. The agenda includes several initiatives related to the financial services sector, including:

- certain implementing measures for the Regulation on wholesale energy market integrity and transparency (REMIT) (estimated to be adopted in June 2014);
- certain Capital Requirements Regulation (CRR) implementing measures (estimated to be adopted in June 2014);
- specific implementing measures for the European Markets Infrastructure Regulation (EMIR) (estimated to be adopted in August 2014);
- a Green Paper on European contract law instrument in the area of insurance (estimated to be adopted in the third quarter of 2014);

- a Regulation on the definition of FX derivative contracts (estimated to be adopted in the third quarter of 2014);
- certain implementing rules for the Transparency Directive (estimated to be adopted in the fourth quarter of 2014).

## NEW REGULATIONS

### 1. NEW DELEGATED REGULATIONS PUBLISHED IN THE OJ

On 20 May 2014, the [European Commission Delegated Regulations 524/2014, 527/2014 and 530/2014](#) were published in the EU's OJ. These regulations supplement the Capital Requirements Directive (CRD IV) with regard to certain regulatory technical standards (RTS).

Also on 20 May 2014, the [European Commission Delegated Regulations 523/2014, 525/2014, 526/2014, 528/2014 and 529/2014](#) were published in the EU's OJ. These delegated regulations supplement the Capital Requirements Regulation (CRR) with regard to certain RTS.

The CRR and the CRD IV Directive replaced the directives that comprised the CRD (Directives 2006/48/EC and 2006/49/EC) from 1 January 2014. The CRR contains detailed and prescriptive provisions relating to the single rulebook (including provisions relating to the majority of the Basel III reforms); the CRD IV Directive contains provisions on issues where the degree of prescription is lower, and which are implemented by national laws.

### 2. ECB SINGLE SUPERVISORY MECHANISM REGULATIONS PUBLISHED IN THE OJ

On 14 May 2014, [Regulations 468/2014 and 469/2014](#) of the European Central Bank (ECB) relating to the single supervisory mechanism (SSM) were published in the OJ. The SSM forms part of the European Commission's framework for the Banking Union for countries in the Euro Zone.

Regulation 468/2014 lays down the basis for the ECB's work following the formal start of its supervisory role on 4 November 2014, while Regulation 469/2014 clarifies that the ECB's powers to impose sanctions extend only to its non-supervisory central bank tasks.

On 14 May 2014, the [ECB's recommendation](#) concerning the powers of the ECB was also published. The ECB recommends new provisions addressing the general principles applying to administrative penalties; the regime applicable to administrative penalties imposed by the ECB in the exercise of its supervisory tasks; and other amendments to ensure that the principles and procedures governing the imposition of sanctions by ECB are compatible with those in the SSM Regulation.

## NEW GUIDANCE

### 1. ESMA ANNOUNCES ITS INTENTION TO EASE EMIR FRONTLOADING REQUIREMENTS

ESMA announced that it intends to ease certain frontloading requirements under the EMIR framework (Regulation on OTC derivative transactions, central counterparties (CCPs) and trade repositories, or [Regulation 648/2012](#)).

The frontloading requirement is an obligation to clear over-the-counter (OTC) derivative contracts entered into after a CCP has been authorised under EMIR and before the date of application of the clearing obligation. The current requirement implies that contracts concluded on a bilateral basis

following the authorisation of a CCP might become subject to the clearing obligation before their expiration date.

The frontloading requirement may introduce significant uncertainties in the market, with the consequences being borne by derivatives end-users. In a [letter](#) dated 8 May 2014 to the European Commission, ESMA outlines potential steps that could mitigate that negative impact. ESMA will outline those steps in a public consultation paper, which will be published prior to the finalisation of the draft RTS on the clearing obligation.

## UNITED KINGDOM DEVELOPMENTS

Please see our [United Kingdom Bulletin](#) for more information on developments in the United Kingdom.

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If you have any questions concerning the material discussed in this bulletin, please contact the following members of our financial regulation practice group:

<b>Charlotte Hill</b>	+44.(0)20.7067.2190	<a href="mailto:chill@cov.com">chill@cov.com</a>
<b>William Maycock</b>	+44.(0)20.7067.2191	<a href="mailto:wmaycock@cov.com">wmaycock@cov.com</a>
<b>Agnieszka Polcyn</b>	+44.(0)20.7067.2039	<a href="mailto:apolcyn@cov.com">apolcyn@cov.com</a>
<b>Wim van Velzen</b>	+32.(0)2.549 .5250	<a href="mailto:wvanvelzen@cov.com">wvanvelzen@cov.com</a>
<b>Jean De Ruyt</b>	+32.(0)2. 549 .5289	<a href="mailto:jderuyt@cov.com">jderuyt@cov.com</a>
<b>Paul Adamson</b>	+32.(0)2. 545 .7507	<a href="mailto:padamson@cov.com">padamson@cov.com</a>
<b>Sophie Noya</b>	+32 (0)2. 549 .5257	<a href="mailto:snoya@cov.com">snoya@cov.com</a>

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