



Asset Management and Investment Funds newsletter

July 2021

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A. Cyprus Updates

Welcome to our semi-annual issue of our newsletter with all the latest news in the asset management industry for the period January-June 2021 in Cyprus and Europe.

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1. Registered alternative investment funds and CySEC revised policy on loan origination and participation activities

The Cyprus Securities and Exchange Commission ("CySEC") is to revise its policy to allow registered Alternative Investment Funds (RAIFs) established under the Alternative Investment Funds Law 124(I)/2018 to engage in loan origination and loan participation activities.

We are awaiting for the issue of the relevant CySEC Directive as this relate to the applicable requirements.

2. Transposition of the 5th EU Directive 2018/843 of 30 May 2019 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and maintenance of the register of UBOs

Since this year Cyprus has introduced requirements for the disclosures, of the ultimate owners of companies or other legal entities incorporated in Cyprus in compliance with the transposition of the 4th EU AML Directive (EU 2015/849) into national law (Section 61A(4) of L.188(I)/2007). The Registrar of Companies and Official Receiver (the “Registrar”) is the competent authority to maintain a centralised register of beneficial owners (the “Register”)

On 18th February 2021, the provisions of the 5th EU AML Directive were also implemented in the national legislation. [Available here in Greek](#). The 5th EU Directive 2018/843 of 30 May 2019 (5 AMLD) amended the 4 AMLD to increase the level of transparency of information about UBOs. In particular, access to Registers becomes public, while, according to the 4 AMLD, access to information in UBO registers was only provided to competent authorities and “obliged entities” (as part of Due diligence/KYC procedures) and any other person could

receive such information only upon request and if they had a “legitimate interest”.

It is to be noted that for the interim solution, information in the Register will not be publicly available and only Competent Supervisory Authorities, the FIU, the Customs Department, the Tax Department and the Police will be granted unrestricted access upon written request to the Registrar of Companies. At the final stage, the information collected will be transferred to the new system which will be in place beginning of 2022. Access to that platform will be based on the provisions of the 5th AMLD and thus it will be accessible to the public.

Further for the trusts and other similar legal arrangements, the Register will be kept with the CySEC and the information will not be open to the public UNLESS the interested person can show legitimate interest.

Clarifications are awaited from the competent authorities for the Limited Partnerships presently considered as out of scope of the beneficial owners’ disclosures.

Definition of “beneficial owner”

The “Beneficial Owner” of a company and/or other entity is defined as the natural person who ultimately owns or controls the company, directly or indirectly. (i) Direct ownership may be indicated by shareholding of 25% + 1 share or an ownership interest of more than 25% in the entity. (ii) Indirect ownership may be indicated by a shareholding of 25% + 1 share or an ownership interest of more than 25% in the entity held by a corporate entity, which is under the control of a physical person(s), or by multiple corporate entities, which are under the control of the same physical person(s) or through a nominee shareholder (whether physical or corporate) or other legal arrangements.

A. Cyprus Updates (cont.)

Data to be reported to competent authorities

On 12 March 2021, the Registrar issued a directive (the 'Directive') with guidelines regarding the maintenance and operation of the Register, as well as a manual for the system developed for this purpose.

The information to be filed in the Beneficial Owners (UBO) register for individual person beneficial owner is the following:

- Name, surname, date of birth, nationality and residential address;
- Nature and extent of the beneficial interest held directly or indirectly by each UBO, including through percentage of shares, voting rights, or the nature and extent of the significant influence or control with other means exercised by each controlling person;
- ID details for Cypriot national and passport details for foreigners;
- Date on which the person was entered in the register as UBO;
- Date on there were changes in the particulars of the person or the date on which the person ceased to be a beneficial owner.

In case where no natural person can be identified as the UBO based on ownership rights or when there is doubt that the person identified is the UBO, the details of the senior management officials must be submitted, indicating whether the persons are directors in the company or whether they hold another position, by declaring that position.

Timelines for submissions of Beneficial Owners details

For all companies and other legal entities incorporated before 12 March 2021 will be granted a period of twelve (12) months to submit their beneficial owners' details into the system. Therefore, the reporting deadline is on 12 March 2022.

Entities that are registered after 12 March 2021 inclusive (new entities) must submit all required information with respect to each of their beneficial owners to the Register no later than thirty (30) days after the incorporation date.

In the event of a change in the details of a beneficial owner, the company or other legal entity and its officers must submit to the Register the details of the new beneficial owner or any change in the details of an existing beneficial owner within fourteen (14) days from

the date on which they became aware of such change.

Responsibility for filings with the competent authorities

The responsibility for the true and correct submission of the information on the beneficial owner(s) rests with the company or other legal entity itself and its officers.

Exceptions

The regulation does not apply to the following companies:

- Company listed on a regulated market that is subject to disclosure requirements consistent with Union law;
- Companies whose directors submitted an application for strike off pursuant to Article 327 (2A) (a) of the Companies Law, prior to the commencement of the regulation;
- Companies whose liquidation has been enacted before the commencement of the regulation;
- Overseas companies.

For further information regarding the operation of the beneficial owner register you may refer to the relevant [Directive](#) of the Registrar (Κ.Δ.Π. 112/2021), which was published on 12.03.2021 in the Official Gazette of the Republic (Ε.Ε. Παρ. III(I), Αρ. 5479), as well as to the [Guidance](#) for the Interim Solution of the UBOs Register.

3. Cysec consultation paper on the regulation of the promoters of applications

On the 10th June 2021 the CySEC has issued a [consultation paper](#) on the regulation of the promoters of applications.

CySEC proposes the introduction of specific rules and obligations on such promoters that engage in the submission and promotion of applications for the granting of a license to a regulated entity by CySEC or other material changes. More precisely, the suggestion is for the below-mentioned services provided by promoters, to be added under section 4 of the define ASP Law 196(I)/2012 as administrative services, for which an entity needs a license as an ASP (Administrative Service Provider).

- The preparations and/or submission of an application for the granting of an operational license according to the relevant legislation of CySEC.

A. Cyprus Updates (cont.)

- The submission of notifications for material changes in relation to the relevant legislation.
- The representation and liaising with CySEC during the examination and evaluation of an application or notification of a material change.

The intention is to capture under this proposal promoters which are not regulated by any regulating body, the services they provide are not regulated and as such have no legal obligation to comply with any rules when they provide these services.

The submission and promotion of applications or notifications of material changes to CySEC by audit/accounting firms and legal firms will not require an ASP license because these entities according to the ASP law are considered to be exempted persons and can provide administrative services without an ASP license.

It is noted that it is not compulsory for regulated entities to use the services of a promoter when liaising with CySEC. Applications submitted by the regulated entity itself, without the use of a promoter is excluded from the scope of the consultation.

Interested parties were requested to provide their views no later than 1 July 2021.

4. Cysec consultation paper on regulating the provision of investment fund administration services

On the 16 June 2021 CySEC issued a Consultation Paper (CP-02-2021 [available here](#)) on a proposed draft law regulating the profession of investment fund administrators (the 'Proposed IFA Law') and the provision of the relevant services (the 'Administration Services') in or from Cyprus.

The key provisions of the draft Law as detailed in CySEC relevant press release include:

- Exemptions, which take into account the fact that an EU Manager, whose authorisation also includes Administration Services may prefer to perform Administration Services in-house without proceeding to a delegation or it may act as a delegate of another EU Manager in respect of Administration Services;
- Bespoke licensing regime, given the variety of a Fund's investable asset classes and their differing characteristics (liquid/illiquid, tradable or not etc.), its investor-dealing frequency (e.g. Funds raising capital during an one-off fundraising period up to Funds being open to subscriptions and redemptions daily) or the range of Administration Services offered (for certain

Funds the mere incorporation of values is sufficient for the calculation of the NAV, whereas for other Funds a valuation process needs to take place). At the same time, an Administrator may obtain CySEC's ad hoc approval for the provision of other services under certain conditions;

- Bespoke organizational requirements, in order to ensure the prudent management of the Administrator.
- Bespoke prudential requirements, taking into consideration the fact that the two main entities involved in the Fund's operations, i.e. the Manager and the depositary, are already subject to sufficient capital requirements, whereas the risks relating to the provision of the Administration Service are operational in nature;
- Conduct of business rules, taking into consideration the fact the Administrator can provide simultaneously Administration Services to more than one (competing) Funds, so that conflicts of interest need to be addressed; or that an Administrator when performing its back-office tasks needs to perform relevant due diligence on investors, so that it has to be considered as an 'obliged entity' for AML purposes; or that an Administrator needs to be familiar with the obligations and rules laid down in the offering documents of a Fund or the regulatory framework governing the Fund and/or the Manager, which may not be Cyprus-based, so that a compliance function needs to be established;
- Requirements relating to the provision of the Administration Services, e.g. as to the NAV calculation process, including cases of rectification of an error in the NAV calculation and the subsequent need to determine a materiality threshold; or the close links between the processing of investor subscription and/or redemption orders and the need to ensure that the Funds' registry is updated accordingly; and
- Reporting obligations related with the Administration Services provided and the type of Funds serviced.

The consultation is opened until the 20th July 2021.

5. CYSEC quarterly statistics

Based on the latest available statistics for the 1st quarter of 2021 the value of Total Assets Under Management reached €9.8bn, recording a 14% increase over the 4th quarter of the 2020.

A. Cyprus Updates (cont.)

The UCIs, which are managed by the Management Companies, had a Net Asset Value (NAV) of €7.97 billion. Approximately 52% of the AUM relates to Assets managed by the AIFMs, while 17% are managed by Sub-threshold AIFMs, 23% by AIFMs and UCITS Management Companies, 7% by UCITS Management Companies and only 1% by Regulated UCIs managed by Foreign Fund Managers.

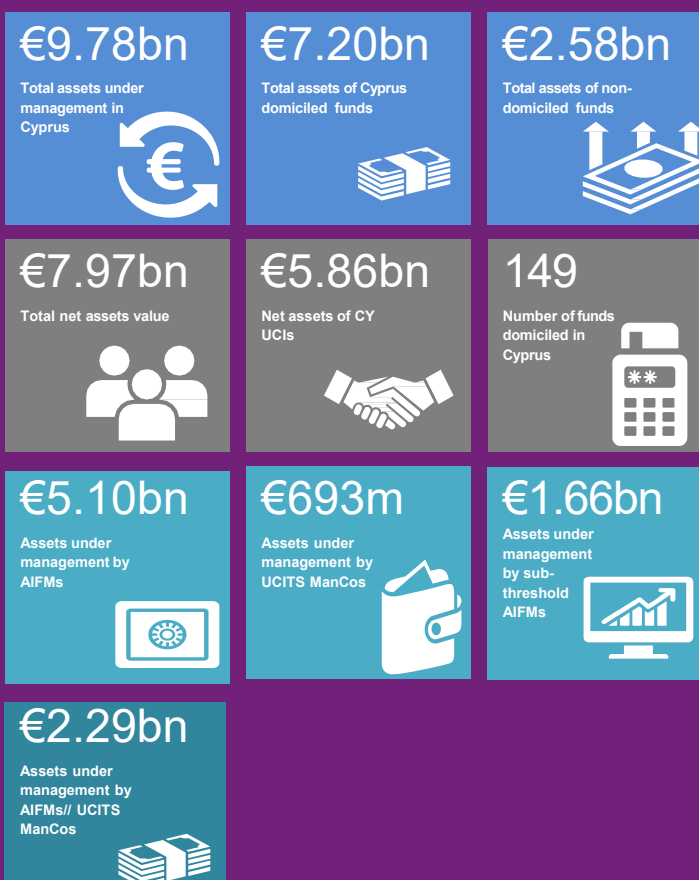
AIFs, AIFLNP and RAIFs mainly invest in Private Equity (36%), while 13% of the AUM are invested in Real Estate. There are a total of 166 UCIs in operation. Comprising 74% of the total AUM, there are 149 UCIs domiciled in

Cyprus (10 UCITS, 51 AIF, 63 AIFLNP and 25 RAIF). From the total of 166 UCIs managed by UCIs Management Companies, 123 invest in Cyprus either entirely or partially, and €2.2 billion (22.8%) are investments made in Cyprus. The 54% of the investments in Cyprus are in Private Equity, while 14% are in Real Estate.

Regarding the specific sectors that UCIs invested in during the 1st quarter of 2021, the AUM in the Energy sector totaled €314.9m (3.22% of total AUM), while €36m was invested in Fintech (0.37% of total AUM), €31.7m in Shipping (0.32% of total AUM), €39.5m in the Sustainability sector (0.40% of total AUM) and €5.6m in

The Cyprus funds industry in numbers

(30 March 2021)



B. European updates

6. European securities and markets authority (ESMA)

6.1 ESMA published the final report regarding the guidelines for marketing communications which will apply to ucits management companies, aifms, euveca managers and eusef managers.

On the 27 May 2021 ESMA published the [final report](#) on its Guidelines under the Regulation on cross-border distribution of funds. This final report contains a feedback statement mentioning modifications and clarifications which have been made further to the public consultation which ended on 8 February 2021.

The purpose of the Guidelines is to clarify the requirements that funds' marketing communications must meet, which is to:

- be identifiable as such;
- describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner; and
- contain clear, fair and not misleading information, taking into account the on-line aspects of marketing communications.

The guidelines apply to UCITS management companies (including any UCITS which has not designated a UCITS management company), Alternative Investment Fund Managers, EuVECA managers and EuSEF managers, and apply in respect of all marketing communications addressed to investors or potential investors, including when they are set up as EuVECAs, EuSEFs, ELTIFs and MMFs.

The guidelines provide examples of those materials which may be considered as marketing communications, such as messages advertising UCITS or AIFs, or messages broadcasted on any social media platform when such messages refer to any characteristics of a UCITS or AIF. The guidelines also set out those communications that should not be considered as marketing materials, including any legal and regulatory documents of a fund (such as the prospectus), or short messages broadcast online that only include a link to a webpage where a marketing communication is available, but which do not contain any information on a specific AIF, UCITS or group of AIFs or UCITS.

6.2 ESMA published annual statistical report on aif sector

On 8 April 2021 ESMA published its [third annual statistical report on the Alternative Investment Fund](#) ('AIF') sector.

The main findings of the report were:

- The size of the EU AIF universe continued to expand, reaching €6.8tn in NAV at end-2019, a 15% increase from 2018;
- Funds of funds accounted for 15% of the NAV of EU AIFs – at the very short end, investors could redeem 39% of NAV within one day, whereas only 29% of assets could be liquidated during that timeframe;
- Real Estate Funds accounted for 12% (€802bn) of the NAV of EU AIFs, which continued to grow, albeit at a more moderate pace compared to previous years. Compared with 2018, the proportion of retail investors was stable (21%) but remains high compared with other AIF categories, and liquidity risk remains a concern;
- The size of the EU Hedge Fund sector remained stable in 2019 at €354bn (5% of all AIFs), however given their heavy reliance on derivatives, hedge funds accounted for 62% of all AIFs when measured by gross exposures;
- Private Equity Funds accounted for 7% (€456bn) of the NAV of all AIFs, and experienced the largest growth in 2019 (+28% compared with +66% in 2018). They follow a range of strategies and are almost exclusively sold to professional investors;
- Other AIFs accounted for 60% (4tn) of the NAV of EU AIFs, covering a range of strategies, with fixed income and equity strategies accounting for 68% of the NAV and an additional residual category amounting to 29%;
- EU Member States can allow non-EU asset managers to market alternative funds at national level under the National Private Placement Regime ('NPPR'), even though such funds cannot subsequently be passported in to other Members States. This market is comparatively large, with a NAV of €2.1tn. NPPR fund marketing is concentrated in a small number of Member States, with 98% of investors being professional investors.

6.3 ESMA proposes rules for taxonomy alignment of non-financial undertakings and asset managers

On 1 March, the ESMA published its [final report](#) on advice to the European Commission under article 8 of the Taxonomy Regulation, setting out information to be provided by non-financial undertakings and asset managers to comply with their disclosure obligations

B. European updates (cont.)

under the Non-Financial Reporting Directive ('NFRD'). The recommendations define the Key Performance Indicators ('KPIs') disclosing how, and to what extent, the activities of businesses that fall within the scope of the NFRD qualify as environmentally sustainable under the Taxonomy Regulation. The key recommendations relate to the definitions to be used by non-financial undertakings for the calculation of certain KPIs, including the KPI that asset managers should disclose.

In respect of asset managers in particular, ESMA's proposals also set out the methodology to be applied in the calculation of the KPI and recommendations for the development of a coefficient methodology to assess Taxonomy-alignment of investments in investee companies that do not report under the NFRD. ESMA proposes the use of standardised tables for article 8 disclosures by non-financial undertakings and asset managers, and recommends a transitional application of the Level 2 provisions

Separate advice was also provided by the [EBA](#) and [EIOPA](#).

6.4 ESMA finalises rules on standardised information to facilitate cross-border distribution of funds

On 1 February, ESMA published its [final report](#) on implementing technical standards under the Regulation on cross-border distribution of funds.

The draft ITS sets out standard forms, templates and procedures for the publications and notifications by national competent authorities ('NCAs') on their websites, the notification of information by NCAs to ESMA and the publication of information by ESMA on its website. This includes the information to be published on NCA websites regarding the national rules governing marketing requirements for funds, and the regulatory fees and charges levied by NCAs in relation to fund managers' cross-border activities.

6.5 ESMA assesses compliance with ucits liquidity rules, highlighting areas for vigilance

On 24 March, [ESMA published the results of the 2020 Common Supervisory Action \('CSA'\) on liquidity risk management within UCITS](#). The CSA found that the overall level of compliance with the applicable rules was satisfactory in most cases, but that there was room for improvement for some UCITS. The CSA also highlighted certain areas in which ESMA will focus its attention in order to promote supervisory convergence across NCAs.

The report refers to a number of areas for improvement reported by NCAs having regard to findings made against a limited number of UCITS, as well as observed best practice, including:

- The documentation of liquidity risk management arrangements, processes and techniques in some cases were absent or lacked clarity or granularity in key areas such as pre-investment liquidity analyses and forecasts, design phase, escalation processes and verification of data reliability;
- The quality of liquidity risk management ('LRM') procedures, which in some cases did not provide for the documentation of LRM arrangements, processes and techniques or did not cover all asset types or the use of liquidity management tools.
- The quality of LRM mechanisms and methodologies, which, in respect of the latter, was not always appropriate, forward-looking, nor justified and back-tested.
- In some cases, an over-reliance on a liquidity presumption with respect to listed securities.
- Examples of the application of liquidity presumptions to financial instruments which were not admitted to or dealt on regulated markets in violation of Article 2(1) of the UCITS Eligible Assets Directive.
- Instances of delegation of the LRM functions to the entity to whom the portfolio management function was also delegated, with an insufficient involvement of the internal risk management function, as well as insufficient delegation monitoring and due diligence.
- In some cases, a widespread lack of data quality checks where there was over-reliance on very few data providers.
- In some cases, missing, inaccurate or unclear disclosures on liquidity risks and liquidity management tools to investors in UCITS KIID and/or prospectuses.
- In some cases, insufficient (through infrequency, granularity and/or clarity) reporting to senior management.
- In certain cases, no regular second and third-level controls of LRM policies and procedures, which were not able to detect the shortcomings identified by NCAs in the course of the CSA.
- External controls by the depositary and external auditors of the UCITS and UCITS managers were not performed in all cases.

B. European updates (cont.)

- Market participants are asked to critically review their LRM frameworks in order to ensure that none of the adverse supervisory findings referred to above may be found in their respective LRM frameworks, and to ensure compliance with all relevant UCITS regulatory requirements. NCAs will undertake follow-up actions on individual cases to ensure that regulatory breaches as well as other shortcomings or weaknesses identified are remedied.

6.6 ESMA updates Q&As on the ucits and aifm directives

On 23 March, ESMA updated its Q&As on the application of the UCITS Directive, adding two new Q&As on the ESMA guidelines on performance fees and certain types of AIFs:

- An answer on crystallisation of performance fees clarifies that the guidelines on performance fees do not prevent the payment of performance fees during the performance reference period of 5 years and/or in the first years of a fund's existence. However, this should not prevent the imposition of stricter rules by NCAs.
- An answer on the timeline of the application of the performance reference period provides that managers of any funds already compliant with paragraphs 40 and 41 of the guidelines on performance fees (recommending a minimum 5 year performance reference period) prior to the application date of the guidelines should look at the past 5 years or the whole life of the fund for the purpose of setting the performance reference period, and not reset the reference period after the application date of the guidelines. In all other cases, managers should apply the performance reference period starting from the beginning of the financial year following 6 months from the application date of the guidelines.

ESMA also updated its [Q&As on the application of the AIFMD](#), which provides identical answers to those above, in addition to clarifying that ELTIFs marketed to retail investors that do not have a closed-ended structure within the meaning of Article 1(2) of Delegated Regulation 694/2014, and are not venture capital/private equity or real estate AIFs, are within the scope of the guidelines.

Further updates were made to the [ESMA Q&A documents](#) on the application of the UCITS Directive, as well as on the application of the AIFMD on made on 28 May 2021.

6.7 ESMA and EFAMA highlights areas for improvement regarding eltif regulation

On 3 February, ESMA [wrote](#) to the European Commission, further to the Commission's consultation on this topic, highlighting some areas of the European Long-Term Investment Funds Regulation ('ELTIFs Regulation') where improvements could be made. This follows a survey recently conducted by ESMA to map the state of play of the ELTIF industry relating to AuM, fees, portfolio holdings and performance of ELTIFs.

The changes proposed by ESMA are aimed at bringing ELTIFs more in line with the needs of investors, thereby making them a more attractive investment vehicle for professional investors, and a more attractive savings placement alternative for retail investors. ESMA also considers this would also improve the access to funding for SMEs and enable the ELTIF framework to reach its purpose in the recovery of the European economy and deepening of the capital markets union. ESMA's proposals include the following:

- Further extending and clarifying the scope of ELTIF's eligible assets and investments;
- Removing the requirement for the additional authorisation of an AIFM who intends to manage the ELTIF;
- Clarifying the specific situations targeted by Article 12 of the ELTIF Regulation regarding conflicts of interest;
- Allowing ELTIFs to invest in less than 10 investments;
- Developing a regime to allow an ELTIF of indefinite duration under certain circumstances;
- Loosening the reporting requirements on the schedule for the orderly disposal of ELTIF assets;
- Ordering of the messages presented in prospectuses and/or reducing the amount of mandatory information included in them;
- Removing the requirement for ELTIF managers to have a local physical presence in the states where it markets ELTIFs.

Similarly, on 26 January, the European Fund and Asset Management Association ('EFAMA') also shared its [response](#) to the European Commission's consultation on measures to be taken to improve the ELTIF regime, and made the following recommendations:

- Turning ELTIF into an open-ended structure alongside the existing closed-ended one by removing the current limitations to its life cycle and introducing appropriate redemption terms;

B. European updates (cont.)

- Broadening the scope of the current eligible asset provision to include other types of funds;
- Lowering the current €10m threshold for investments in “real assets”;
- Removing quantitative limits, allowing investments into ELTIFs from €1,000 to reduce supply-side constraints; and,
- Guaranteeing the tax neutrality of the ELTIF structure to make it a worthwhile investment tool.
- Following the Commission’s consultation, it is expected that it will send a report to the EU Parliament and Council assessing the functioning of ELTIFs.

7. European commission updates

7.1 European commission adopts package of measures to help improve flow of money towards sustainable activities across the eu

On 21 April 2021, the European Commission [adopted a package](#) of measures to help improve the flow of money towards sustainable activities across the European Union, which are considered to be instrumental in making Europe climate neutral by 2050.

Among the measures includes a proposal for a Corporate Sustainability Reporting Directive (‘CSRD’) which aims to improve the flow of sustainability information in the corporate world by making sustainability reporting more consistent so that financial firms, investors and the broader public can use comparable and reliable sustainability information. The proposals extend the scope of reporting rules beyond public interest entities, to include all large companies, irrespective of whether they are listed, and without the previous 500 employee threshold. In addition, the Commission proposes to extend the scope to include listed SMEs, with the exception of micro enterprises. The European Financial Reporting Advisory Group (‘EFRAG’) will be responsible for developing the draft standards, following public consultations.

In addition, the Commission has also adopted six [amending Delegated Acts](#) on fiduciary duties, investment and insurance advice to ensure that financial firms, including asset managers, include sustainability in their procedures and investment advice to clients.

The European Fund and Asset Management Association (‘EFAMA’) [called for prompt adoption of the CSRD](#)

[proposal](#), as being essential in reducing the ESG data gaps faced by asset managers and supporting the development of green products. EFAMA supported the Commission’s proposal as it considers that it:

- expands the scope of reporting companies to enable asset managers to consider sustainability risks and opportunities, assess adverse impacts of investments on sustainability factors and calculate their green asset ratio;
- requires the Commission to take account of EFRAG’s technical advice;
- clarifies the principle of double materiality and requires companies to assess and disclose the information that is material;
- requires the submission of financial statements and management reports in a single, comparable electronic format, with digitally tagged sustainability information; and
- seeks legislative consistency with the information needed to comply with the SFDR disclosure requirements and the forthcoming taxonomy-related technical screening criteria.

8. Industry and other updates - european and fund asset management association (EFAMA)

8.1 EFAMA welcomes proposed transitional period under article 8 of the taxonomy regulation

On 2 June 2021, EFAMA published its [response](#) to the draft Delegated Act under Article 8 of the Taxonomy Regulation, welcoming the Commission’s proposal for a transitional period under Article 11 of the Delegated Act, as it considers that this will address numerous practical implementation challenges previously identified.

Notwithstanding this, EFAMA has made a number of recommendations in relation to the delegated act, namely:

- The alignment of timelines of taxonomy-related product disclosures in the SFDR, the ESG updates to MiFID II and Insurance Distribution Directive delegated acts, as well as the Ecolabel;
- The need to address the potential confusion that might be caused by quantitative taxonomy eligibility disclosure requirements during the transition period;
- The need to have consistent taxonomy alignment methodologies at both entity and product levels;

B. European updates (cont.)

- The need to align the taxonomy of firms that are not in the scope of the NFRD; and
- Consideration of providing taxonomy alignment disclosures for Article 8 and 9 funds, with the possibility to conduct taxonomy screening of Article 6 SFDR fund portfolios on an optional basis.

8.2 EFAMA calls for consistency of taxonomy KPI metrics under the eu's sustainable finance regime

On 18 May 2021, the EFAMA published its [response](#) to the joint ESA consultation on taxonomy related sustainability disclosures under the Sustainable Finance Disclosure Regulation ('SFDR').

The response identifies six key issues which EFAMA thinks the ESAs ought to address, namely:

- Timeline-related implementation challenges, noting that if the taxonomy-related amendments to the SFDR RTS were finalised only after the Commission endorsed the SFDR RTS submitted by the ESAs in February, the technical standards would not be endorsed as a single rulebook, but instead would result in two sets of RTS coming into force at different times, resulting in con-fusing interpretation by the market.
- Key performance indicators should be consistent with the forthcoming Delegated Act under Article 8 of the Taxonomy Regulation, with financial under-takings being allowed a choice of using either turnover or CapEx, depending on which indicator is more relevant to a particular sector or company.
- Derivatives to only be included on an optional discretionary basis given their complexity and the technical questions that could arise in the event of their inclusion, as well as potentially disproportionate reporting requirements.
- The proportion of non-assessable assets (such as sovereign bonds, cash or commodities) to be disclosed in the template as a secondary indicator in a pie-chart or the accompanying narrative in order to balance the principles of comparability, conciseness and relevance.
- EFAMA commented that it didn't see a need for statements on compliance to be audited by external or third parties as the market and standards were not mature enough to include third-party assessments.
- EFAMA recommends that the periodic disclosures Level 2 requirements should enter into application

in 2023 given that investors will not have the data available for periodic disclosures in 2022.

- Finally, EFAMA notes that due to the market concentration amongst ESG data, research and rating providers, there is a risk of high fees being charged by taxonomy data providers, leading to increased costs for end-investors, which would be detrimental for smaller asset managers and would create barriers to entry for new players and sustainable investors.

8.3 EFAMA welcomes european commission's proposal for an initiative on sustainable corporate governance

On 9 February, EFAMA published a [reply strongly welcoming the European Commission's consultation for an initiative on sustainable corporate governance](#). EFAMA supported the objective of ensuring that environmental and social interests were fully embedded into business strategies, and believed that this could contribute to improving the reliability of information disclosed by companies under the Non-Financial Reporting Directive ('NFRD'). EFAMA also considered that the initiative had the potential to strengthen the stewardship role of asset managers by improving shareholders' understanding of the company's sustainability practices and stakeholder considerations, ultimately enhancing the disclosures made by asset managers to their clients, and enabling better-informed investment decisions.

EFAMA noted that investors would benefit from an EU legal framework with due diligence guidelines and reporting requirements for companies and the real economy; this framework should be consistent with the reporting requirements under the NFRD and disclosures under SFDR while promoting and cooperating with similar initiatives at an international level.

In respect of directors' duty of care and stakeholders' interests, EFAMA notes the following:

- Being able to clearly define and identify stakeholders and their interests is considered essential to manage sustainability risks and opportunities. This should be left to a materiality assessment carried out by each company.
- Requiring companies to set up measurable science based targets is premature, as existing methodologies and the current ESG landscape do not support this.
- The assumption that shareholders are only interested in short term financial performance is strongly

B. European updates (cont.)

opposed.

- Any enforcement role for stakeholders in relation to the directors' duty of care is strongly opposed, and would raise several unintended legal and practical issues.

In respect of the duty of due diligence, EFAMA supports a balanced and proportionate definition of due diligence duty, consistent with international principles, and supports, in principle, the adoption of a principles-based approach consisting of guidelines and transparency requirements. EFAMA suggests that to reduce competitive disadvantages for the EU industry, non-EU companies listed on EU regulated markets should be subject to the same obligations, with lighter reporting requirements for SMEs.

Finally, EFAMA supports variable pay being linked to the achievement of long-term sustainability goals, but notes that these requirements should not be disproportionate and fail to adapt performance criteria to different activities, risks, and investment strategies. EFAMA believes that prescriptive measures designed to enhance sustainability expertise at board level should be considered with great caution, and notes that it does not see any merits for further legislative action in the area of share buybacks.

8.4. Efama responds the european commission consultation on the review of the aifmd

On 1 February, EFAMA published its [response](#) to the European Commission's consultation on the review of the AIFMD. EFAMA called on the Commission to follow a set of three overarching principles when reviewing the AIFMD framework in order to ensure it is adequately revised without undermining its foundations, namely:

1. Do not fix something that is not broken the review should be targeted only at addressing the material shortcomings that are clearly demonstrated, and which cannot otherwise be addressed through supervisory convergence or Level 2 harmonisation;
2. Keep the AIFMD a 'manager' regulation as distinct from a 'product' regulation as the AIFM sector is too diverse to include product-specific rules;
3. Focus on supervisory and enforcement convergence, through the use of the powers at the Commission's disposal, including enforcement powers, to promote greater supervisory and enforcement convergence.

In its response, EFAMA also comments a range of other aspects of the AIFMD framework, and in particular, it

notes:

- Given the high standard of harmonisation under the framework, it sees the need for few targeted amendments through Level 2 and Level 3 to improve the effectiveness of AIFMD.
- Cross-border marketing and investor access rules for AIFs (and UCITS) do not need to be reviewed.
- Given that AIFs are generally aimed at professional investors, flexibility must be given to AIFMs to provide relevant and meaningful information to their investors.
- A passporting regime for retail AIFs is not necessary in light of the low cross-border retail demand for AIF products as compared to other products, in addition to their less standardised nature, greater requirement for financial literacy, and lower suitability for the needs of retail investors.
- The introduction of a depositary passport is not recommended.
- The inclusion of restrictive definitions or rules in the deployment of Liquidity Management Tools is cautioned against.
- There are opportunities for supervisory authorities to work on their own data-sharing practices by allowing more efficient sharing and cross-referencing of data already provided by AIFMs.
- Disproportionate requirements on AIFMs should be avoided in respect of sustainable finance and ESG factors.
- Attributing additional competences and power to ESMA via the present AIFMD review is firmly opposed, and ESMA should first rely on its recently gained tools to bring about greater convergence.
- A proposal to merge the UCITS Directive and AIFMD into a single regime is not supported, and the existing body of norms for asset management companies is built on the recognition that fund product types differ substantially from one another, as do their investor bases, and the current difference in treatment is considered justified.

8.5. Efama reports record net sales for ucits and aifs for December 2020

On 1st July 2021 EFAMA published its 2021 industry Fact Book - Report which highlights key developments in the European fund industry in 2020.

B. European updates (cont.)

Key findings include:

- Net sales of UCITS in 2020 – Net outflows from UCITS amounted to EUR 314 billion in March, the largest monthly outflows ever observed in absolute terms. Investor confidence returned in April and net sales remained strong during the following months, resulting in a total of EUR 474 billion of net sales over the year. Broken down by fund type, 2020 has been marked by record-breaking net sales of money market funds (MMFs) and strong net inflows into equity funds.
- Net sales of AIFs in 2020 – Net inflows into AIFs were hardly impacted by the pandemic, they stayed positive in March and only turned slightly negative in April. The resilience of AIFs amid the Covid-19 pandemic confirms the longer-term investment horizon of insurers and pension funds who are the primary investors in AIFs.
- ESG UCITS – Net assets of European ESG UCITS funds have grown strongly in the last five years, with more significant increases in 2019 and 2020. The share of ESG funds grew from almost 7% of total net assets in 2015 to 11% in 2020, or EUR 1.2 trillion. This growth was supported by an exponential rise of net sales of ESG UCITS in 2020, to an estimated total of EUR 235 billion, despite the Covid-19 pandemic.
- Investor demographics - Insurers and pension funds are by far the largest investors. At the end of 2020, they held 41% of the UCITS and AIF net assets owned by European investors. Households came second, with a market share of 25%. Other financial intermediaries, which are mainly long-term investment funds, followed closely, with 24%.
- Domestic markets - The countries with the highest levels of fund ownership at the end of 2020 were Germany, the UK, France, the Netherlands and Italy. Reflecting the size of their economies and populations, the four largest European countries feature in this top five. The Netherlands takes fourth place in terms of fund ownership, thanks to the size of Dutch occupational pension funds, which tend to invest a significant share of their portfolios into investment funds.
- Fund domiciles - At the end of 2020, 78% of the net assets of UCITS and AIFs were domiciled in only five countries. Luxembourg and Ireland are the two largest domiciles, due to their status as the main cross-border fund hubs. The large shares of Germany, France and the United Kingdom can be explained by the relative size of their economies and domestic fund markets.
- Fees - The cost of UCITS has been steadily declining across Europe in recent years. The costs of actively managed equity and bond funds decreased by 11% and 18%, respectively, between 2016 and 2020. This trend is expected to go on in the future due to increased transparency around fees and continuing pressure from passive funds.

In addition, on 2 June, EFAMA published its [quarterly statistical data release](#) describing the trends in the European investment fund industry in Q1 2021. Net assets of UCITS and AIFs grew by 4.5% over the quarter to €19.6tn, attracting €201bn in net inflows.

Demand for equity funds climbed to another record - After the already exceptionally high net inflows in Q4 2020 (EUR 129 billion), net sales of equity funds edged even higher in Q1 2021 (EUR 133 billion). The sustained attractiveness of equity funds was supported by strong stock market performances, both in Europe and across the world.

8.6. EFAMA publishes markets insights report looking at the esg ucits market, the impact of covid-19, and the behaviour of non-esg funds

On 11 March, EFAMA published its latest [Market Insights report](#), examining major trends in the ESG UCITS market, the impact of the COVID-19 pandemic and the behaviour of ESG and non-ESG funds, highlighting a number of matters, including:

- Growth of ESG funds at more than double the rate of non-ESG funds in the last 5 years;
- An increase in ESG funds by 37.1% in 2020 to reach €2.1tn as of end-December, with net sales of €235bn in 2020;
- The proportion of actively managed funds (80%) versus passive funds (20%) in the ESG fund universe;
- The dominance of environmental funds within the ESG impact fund category, with those funds focusing on low carbon emission being the most dominant (55%);
- The broadly similar performance of ESG and non-ESG funds since 2016, save for in 2020 when ESG equity and bond funds recorded a higher average gross performance; and
- The slightly cheaper average cost of ESG funds as compared to non-ESG funds, with a downward cost trend for both types of funds.

B. European updates (cont.)

8.7. EFAMA publishes response to the iosco consultation on market data in the secondary equity market

On 26 February, EFAMA published its [response to the IOSCO consultation on market data in the secondary equity market](#), noting its support for the initiatives launched by IOSCO and other regulators to analyse issues surrounding this market. EFAMA considers that, from the investment managers' perspective, the scope of the Consultation Report is too restrictive in that it does not fully consider the issues relating to data provided by data vendors, in respect of which market participants are confronted with significant issues.

EFAMA also notes that market participants face challenges relating to excessively high market data fees and unfair licencing provisions from some market data providers. In order to provide data on a reasonable commercial basis, EFAMA suggests that market data fees should have some relation to the cost of production of the data, and notes that the abuse of dominant positions by monopolies poses a problem.

EFAMA further notes that it supports the use of Consolidated Tape on a voluntary basis, to the extent that this is properly constructed and governed, but notes that this is not a solution to the fundamental issues of the costs of market data, which must be addressed regardless of the existence of a Consolidated Tape. EFAMA suggests the development of guidance by IOSCO concerning market data licencing practices and terminology used by exchanges for basic market data products, and that IOSCO should recognise that exchanges hold disproportionate market power.

8.8. Esas issue letter to commission on the adoption of the priips kid regulatory technical standards

On 4 February, the Chairs of the three European Supervisory Authorities (EBA, EIOPA and ESMA – 'ESAs') [wrote](#) to the European Commission advising that the [draft regulatory technical standards](#) to amend Commission Delegated Regulation (EU) 2017/653 ('the PRIIPS Delegated Regulation') had been approved by EIOPA's Board of Supervisors, and hence can be submitted to the Commission for adoption.

In July 2020 the ESAs advised the European Commission of the outcome of a review conducted on the PRIIPs key information document, at which stage the draft RTS was adopted by both the EBA and ESMA, but did not have the support of EIOPA. While some national competent authorities continued to express reservations on the draft

RTS through EIOPA, they supported the proposal based on further details provided by the European Commission on their approach to the broader review of the PRIIPs Regulation, to include an examination of:

- how to achieve better alignment between PRIIPs, the Insurance Distribution Directive and MiFID II regarding provisions on costs disclosure;
- the scope of products as foreseen by the PRIIPs Regulation;
- how to ensure that the key information document (KID) contains the necessary information for retail investors without having too much or complex information;
- how to allow for the creation of a digitalised KID allowing for layered information; and
- the need for a more tailored approach, such as for multi-option products ('MOPs'), in order to maximise understanding and use of information, while allowing for comparability of similar products.

8.9. Esas publish final report and draft regulatory technical standards on disclosures under sfdr

On 4 February, the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) delivered to the European Commission the [final report](#), including the draft Regulatory Technical Standards (RTS), on the content, methodologies and presentation of disclosures under the EU Regulation on sustainability-related disclosures in the financial services sector (SFDR). The proposed RTS aim to strengthen protection for end-investors by improving environmental, social and governance (ESG) disclosures to end-investors on the principal adverse impacts of investment decisions and on the sustainability features of certain financial products. The draft RTS also contain templates for pre-contractual and periodic product disclosures.

The proposals can be divided into two categories, namely:

- Entity-level principal adverse impact disclosures, which should take the form of a statement showing how investments adversely impact indicators in relation to the climate and the environment, as well as social and employee matters, human rights, anti-corruption and bribery;
- Pre-contractual, website and periodic product-level disclosures setting out the sustainability characteristics or objectives of financial products.
- The draft RTS relate to several disclosure obligations under the SFDR, including:

B. European updates (cont.)

- Presentation and content of information relating to the principle of “do not significantly harm” under article 2(17) SFDR, and presentation of indicators under article 4(6) and (7);
- Pre-contractual information on how a product with environmental or social characteristics meets those characteristics, and whether an index has been designated as a reference benchmark (article 8 SFDR);
- Pre-contractual information to show how products with sustainable investment objectives and a designated index as a reference benchmark that the index is aligned with the sustainable investment objective, and how that differs from a broad market index (article 9(1) SFDR);
- the environmental or social characteristics of financial products or the sustainable investment and the methodologies used (article 10 SFDR); and,
- Information contained in period reports specifying the extent to which products with ESG characteristics meet those characteristics, and other information in respect of products with an objective of a reduction in carbon emissions.

The European Commission is expected to endorse the RTS within three months of their publication. The ESAs have proposed that the RTS should apply from 1 January 2022.

8.10. ESAs publish joint supervisory statement on the application of the sustainable finance disclosure regulation

On 25 February, the three European Supervisory Agencies ('ESAs') published a [joint supervisory statement](#) on the effective and consistent application and national supervision on the SFDR, which aims to achieve an effective and consistent application and national supervision of the SFDR. The statement complements the final report issued on 4 February (see above), and recommends that the draft RTS be used as a reference when applying the provisions of the SFDR in the interim period between the application of the SFDR (10 March 2021) and the later application of the RTS. The statement includes in the annex specific guidance on the application of timelines of certain provisions of the SFDR, the Taxonomy Regulation and the related RTS.

8.11. ESAs consult on taxonomy-related product disclosures

On 15 March, the Joint Committee of the ESAs published a [joint consultation paper](#) on taxonomy-related sustainability disclosures. The paper seeks input on the draft Regulatory Technical Standards concerning disclosures of financial products investing in economic activities that contribute to an environmental investment objective. The proposed draft RTS aim to both facilitate disclosure to end-investors regarding the investment of financial products in environmentally sustainable activities, as well as to create a single rule book for sustainability disclosures under the Taxonomy Regulation and the Sustainable Finance Disclosure Regulation.

The proposal set out by the ESAs comprises both a graphical representation of the taxonomy alignment of investments of the financial product and a key performance indicator calculation in respect of that alignment, as well as a statement that the activities funded by products qualifying as environmentally sustainable, are compliant with the Taxonomy Regulation.

The closing date for submissions was 12 May 2021.

8.12. Eba consults on its proposals for an aml/cft database

On 6 May 2021, the European Banking Authority issued a [consultation paper](#) on draft Regulatory Technical Standards concerning the creation of a central database on anti-money laundering and countering the financing of terrorism ('AML/CFT') in the EU. Law introduced in January 2020 requires the EBA to establish and keep up-to-date a central database with information on AML/CFT weaknesses that national competent authorities ('NCAs') across the EU have identified in respect of individual financial institutions. The database will also contain information on the measures competent authorities have taken to rectify those material AML/CFT weaknesses, and that data will be used by NCAs and the EBA to allow them to be more targeted and effective in its fight against ML/TF in the EU, as well as serve as an early warning tool to enable the NCAs to act before the ML/TF risk crystallizes.

The draft RTS provide for the definition and materiality of weaknesses identified by the NCAs, the type of information collected, how that information will be communicated to the EBA, and how the EBA will, in turn, analyse and disseminate the information. The RTS also set out the rules to ensure the database's effectiveness, as well as protection of confidentiality of the data, including personal data.

The EBA has also performed a draft Data Protection Impact Assessment alongside the consultation paper in order to assess the impact of the processing on the fundamental rights to privacy and the protection of individuals' data, and to determine whether the mitigation measures taken sufficiently limit the risks to the rights of individuals, taking account the scale of the database and the fact that special categories of personal data may be processed and further shared.

The consultation closed on 17 June 2021

9. International organization of securities commissions- iosco

9.1 IOSCO publishes work programme for 2021-2022

On 26 February 2021, the International Organization of Securities Commissions ('IOSCO') published its [work programme for 2021-2022](#) to further its objectives of protecting investors, maintaining fair, efficient and transparent markets and addressing systemic risks. The programme covers eight priorities, two of which are new, namely:

- Financial stability and systemic risks of non-bank financial intermediation activities, in respect of which a number of reports are expected to be published, including a report on liquidity risk and its management in open-ended funds (late-2021), a re-report on valuations in funds, a report on exchange-traded funds (late-2021/H1 2022), and a report on global leverage in investment funds.
- Risks exacerbated by the COVID-19 pandemic, such as misconduct risk, fraud and operational resilience, in respect of which impact-related reports are to be delivered by 2022.

IOSCO will also focus on six other topics, namely:

- Sustainable finance - with the delivery of a report on sustainability-related disclosures for issuers by end June 2021, and delivery of reports on sustainability related disclosures for asset managers, ESG ratings and ESG data providers by end-2021.
- Passive investing and index providers – IOSCO is developing a thematic analysis report on the impact of the growth of passive investing on equity capital markets, and will produce a report on conduct-related issues in index provision, to be delivered in 2021.
- Market fragmentation in securities and derivatives

markets, with a review to be undertaken in 2021 on the use of supervisory colleges and other mechanisms of cooperation with the aim of identifying good practices that authorities can use in establishing and conducting supervisory activities.

- Crypto-assets and stablecoins – conducting follow up work to the FSB Regulatory Issues in Stablecoins report.
- Artificial intelligence and machine learning ('AIML') – IOSCO continues to explore how AIML is being used in capital markets, and their associated emerging risks, and expects to publish its final report on the use of AIML by market intermediaries and asset managers in Q2 2021.
- Retail distribution and digitalisation – IOSCO is currently developing a set of policy measures to address and mitigate the risks posed by online cross border marketing and distribution, and will deliver its final report by end-Q3 2021.

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