



Regulatory insights

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KPMG Cyprus

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Cyprus updates



Cyprus Securities and Exchange Commission

New Form for the AML/CFT Monthly Prevention Statement for CySEC regulated entities

On 20 April 2023 CySEC through Circular [C567](#) notified all regulated entities about the new version of the AML/CFT Monthly Prevention Statement (MPS) Form. The new version of the form needs to be submitted every month using CySEC's Transaction Reporting System (TRS), instead of the CySEC Portal.

- Starting **from May 2023**, the new MPS Form will replace the current Form 144-08-11.
- The first submission of the new form shall cover the period of 01/04/2023 – 30/04/2023.
- After this initial submission, the new form will need to be submitted monthly and **within 15 days from the end of each month**.

CySEC Risk Based Supervision for CIFs (RBS-F Form) and new deadline for the year 2022

CySEC has issued Circular [C563](#) (for CIFs), regarding their reporting obligation to submit Form RBSF-CIF new version 7. CySEC specifies that this latest version of the form does not require any additional information compared to the version 6 of the form.

CIF regulated entities that were authorised by 31 of December 2022, are required to submit this form electronically via CySEC's Transaction Reporting System (TRS), the latest by **15:00 on Friday, 26 of May 2023**.

CySEC Risk Based Supervision for ASPs (RBS-F Form) and new deadline for the year 2022

CySEC has issued Circular [C564](#) and [C565](#) (for ASPs), regarding their reporting obligation to submit Form RBSF-ASP new version 6. CySEC specifies the amendments to the form and additional information requested in particular under section E – Products, Services and Transactions.

All ASP that were authorised by 31 of December 2022, are required to submit this form electronically via CySEC's Transaction Reporting System (TRS), the latest by **15:00 on Wednesday, 31 of May 2023**.



Guidance to Cyprus AIFMs (CAIFMs) and AIFs, on key principles and concepts governing the Alternative Investments Fund Managers Directive 2011/61/EU ('AIFMD')

Through Circular [C562](#), CySEC wishes to provide guidance to CAIFMs and/or AIFs externally managed by CAIFMs on some key aspects of the application of the AIFMD. CySEC directs CAIFMs to ensure better understanding and compliance with the **single AIFM principle**, the **principles governing the delegation of functions** and the **'letter box entity' concept**, as well as the **AIFMD and AIF scope**.



A. SINGLE AIFM PRINCIPLE

The CAIFM is the *only legal person with ultimate responsibility to manage an AIF (the **Single AIFM Principle**)*. For CAIFMs and AIFs to comply with the 'Single AIFM Principle', the following should be followed:

- Each externally managed AIF appoints a single CAIFM, who is the person legally responsible for ensuring compliance of the management of the AIF with the CAIFM Laws and for providing the investment management functions as outlined under the AIFM Laws.
- The CAIFM **should not be considered a delegate/ third party provider to the AIF**. The CAIFM should be the legal person appointed by the AIF to manage the fund in accordance with the CAIFM Laws. The Investment Management agreement between a CAIFM and an AIF should be construed on this basis.
- **An externally managed AIF cannot itself perform and/or be involved in any way in the execution of functions included under Annex I of the AIFMD as incorporated in the CAIFM Laws.**

The role of the Board of Directors of the AIF is limited to in particular:

(i) determining the Investment objective and policy; (ii) monitoring the appointment of the CAIFM. (ii) In the event of delegation of functions by the CAIFM, **the AIF should only be part of the Delegation agreement signed between the CAIFM and the third party/delegate, where necessary.**



B. DELEGATION PRINCIPLES- 'LETTER-BOX ENTITY' CONCEPT

The CAIFMs and Internally Managed AIFs remain responsible for ensuring compliance with the CAIFM Laws relevant to the execution of the delegated functions. It should be ensured at all times that their functions are not delegated, especially investment management functions, to the extent they become a 'letter-box entity'. In this respect the following should be followed:

- Each time a function is delegated, the sufficiency and appropriateness of human and technical resources of the delegate should be assessed at all stages from its selection, ongoing monitoring, and supervision.
- In relation to the investment management functions, every time a new function is delegated, all existing delegations for a specific AIF should be considered.

It is clarified that the assessment of a 'Letter-box entity', is applicable at the level of each AIF under management and not at the AIFM level.



C. AIFMD AND AIF SCOPE

CAIFMs should always ensure that their business and/or the investment undertaking fall within the AIFMD and AIF scope of application.

Investment managers which manage one or more AIFs and whose only investors are the CAIFM itself or a related party of the CAIFM *do not fall under the AIFMD framework*.

Investment undertakings which invest the private wealth of investors without raising external capital *should not be considered as AIFs meeting the relevant AIF definition*.

In order for an investment undertaking to constitute an AIF and hence fall under the scope of the AIFM Legal Framework, it must be assessed according to the [ESMA Guidance on Key Concepts of the AIFMD](#).

CySEC expects CAIFMs to review their arrangements, policies and procedures in accordance with the present circular and if identifying any areas of concern to take immediate actions to ensure compliance.



European updates



ESG and Sustainable Finance

Sustainable finance: EU Commission adopts clarifications regarding SFDR

The EU Commission has published [responses](#) to questions raised by the ESAs on the Sustainable Finance Disclosure Regulation (SFDR). The aim of the Q&As is to help financial market participants apply the SFDR, especially in the context of the requirements of the regulatory technical standards in place since January 2023. The Q&As are also intended to contribute to clarifying the interaction between the SFDR and the different pieces of the sustainable finance framework.

ESAs consult on review of SFDR Delegated Regulation

The ESAs have published a [consultation paper](#) with amendments to the Delegated Regulation of the SFDR. The ESAs are proposing changes to the disclosure framework to address issues that have emerged since the introduction of the SFDR.

Among other things, the proposed amendments include:

- extending the list of universal social indicators for the disclosure of the principal adverse impacts of investment decisions on the environment and society;
- refining the content of other indicators for adverse impacts and their respective definitions;
- adding product disclosures regarding decarbonization targets.
- improving the disclosures on how sustainable investments 'do not significantly harm' the environment and society; and
- simplifying pre-contractual and periodic disclosure templates for financial products.

The deadline for comments on the consultation is 4 July 2023. The ESAs will deliver the final report by the end of October 2023.

IAASB (International Auditing and Assurance Standards Board) advances timeline for consultation for proposal on sustainability assurance

IAASB confirmed last month its intention to advance the consultation on its proposed new standard for sustainability assurance (ISSA 5000). Stakeholders can now expect the public consultation on the proposed standard to open in the latter part of July or early August 2023 and extend into December 2023. The consultation was originally scheduled to commence in October 2023.

The advanced consultation period will in particular better ensure the completion of the final standard in 2024. IOSCO had highlighted in a recent report the importance of having ISSA 5000 developed in accordance with due process and ready in 2024 to support a global baseline for sustainability reporting and assurance standards that meets the public interest.

Annexes to SFDR Delegated Regulation

On 23 March 2023, the ESAs made available in an editable format annexes to Commission Delegated Regulation (EU) 2022/1288 supplementing the Sustainable Finance Disclosure Regulation (“**SFDR**”) which can be found [here](#).



Anti-Money Laundering

Guidelines under MLD4

On 31 March 2023, the EBA published a set of final reports on guidelines issued under the Fourth Money Laundering Directive (“**MLD4**”). The EBA states it is seeking to clarify supervisory expectations for financial service providers in relation to AML/CFT obligations, whilst seeking to avoid unwarranted de-risking.

- Final Report: *Guidelines amending Guidelines EBA/2021/02 on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions (“**The ML/TF Risk Factors Guidelines**”)* under Articles 17 and 18(4) of Directive (EU) 2015/849 ([here](#)); and
- Final Report: *Guidelines on policies and controls for the effective management of money laundering and terrorist financing (“**ML/TF**”) risks when providing access to financial services ([here](#)).*

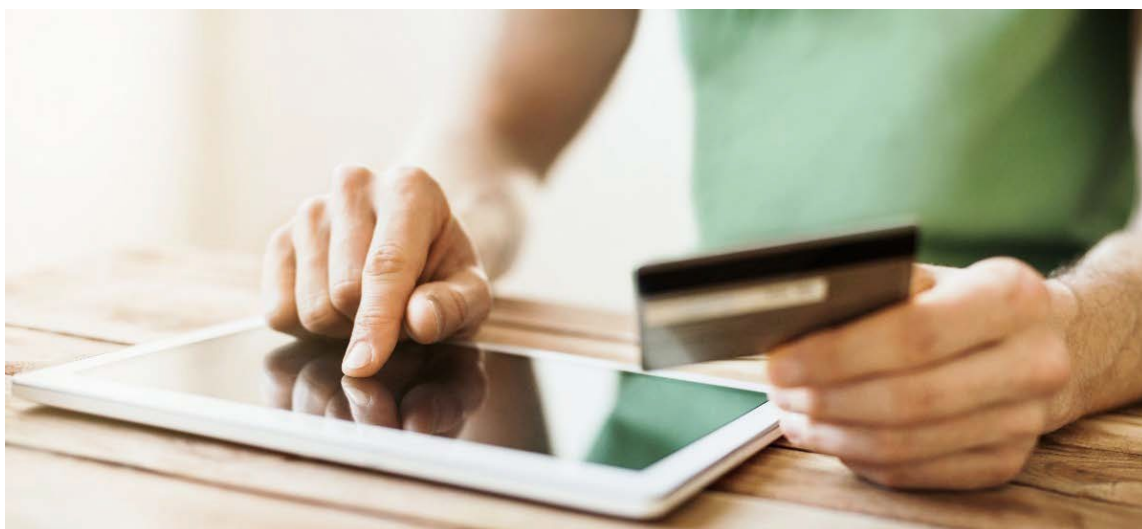


EU Parliament Committees publish report on proposed Anti-Money Laundering Authority regulation

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) and Committee on Civil Liberties, Justice and Home Affairs (LIBE) have published their [report](#) dated 5 April 2023 on the proposal for a regulation establishing a new Anti-Money Laundering Authority (AMLA), which forms part of the EU Commission's July 2021 AML/CTF legislative package. The report, adopted on 28 March 2023, sets out amendments to the proposed text. The EU Council agreed its partial negotiating position on the proposal on 29 June 2022 and the co-legislators will enter trilogue negotiations to agree on a final version of text.

AMLD6: Council agrees negotiating mandate on single access point to bank account registries

The EU Council has [adopted](#) its negotiating mandate on the EU Commission's proposal for a directive amending Directive (EU) 2019/1153 as regards access of competent authorities to centralised bank account registries through a single access point. The directive would extend the access to the bank account registers single access point, which will be established by a proposed sixth anti-money laundering directive (AMLD6) and operated by the EU Commission, to any authorities designated by Member States as competent for the prevention, detection, investigation or prosecution of criminal offences under Directive (EU) 2019/1153. The EU Council's mandate goes beyond the original proposal to require that transaction records, i.e. bank statements, shared by financial institutions as part of an investigation are in a harmonised format. The co-legislators will now enter trilogue negotiations to agree on a final version of the text.



EBA consults on inclusion of crypto asset service providers in risk-based AML/CFT supervision guidelines

The EBA has launched a [consultation](#) on amendments to its guidelines on risk-based AML/CFT supervision. The amendments extend the scope of the guidelines to AML/CFT supervisors of crypto asset service providers (CASPs). According to the EBA, it is important that the same standards apply wherever CASPs operate in the EU, as the provision of crypto asset services is a cross-border activity.

The amendments, among other things:

- provide guidance on the sources of information competent authorities should consider when assessing ML/TF risks associated with CASPs;
- highlight the importance of a consistent approach to setting supervisory expectations where multiple competent authorities are responsible for the supervision of the same institutions; and
- stress the importance of training to ensure that staff from competent authorities have the technical skills and expertise necessary for the execution of their functions.

The EBA intends to deliver specific AML/CFT guidance for CASPs in the future through:

- amendments to the EBA's risk factors guidelines;
- amendments to the guidelines to prevent the abuse of fund transfers for ML/TF purposes; and
- new guidelines on policies and procedures for compliance with restrictive measures.

A public hearing on the consultation will take place on 7 June 2023. Comments are due by 29 June 2023.



MiFID2: ESMA publishes guidance for supervision of copy trading services

ESMA has published a [supervisory briefing](#) on firms offering copy trading services. The briefing includes guidance on the qualification of copy trading services as an investment service and sets out supervisory expectations with regard to MiFID2 requirements on:

- information requirements (including on marketing communications and costs and charges);
- product governance;
- suitability and appropriateness assessment;
- remuneration and inducement; and
- qualifications of traders whose trades are being copied.

The briefing sets out the supervisory expectations of both ESMA and national competent authorities (NCAs) and also includes indicative questions that supervisors could ask themselves, or firms, when assessing firms' approaches to the application of the relevant MiFID2 rules.

MiFID2: ESMA updates product governance guidance

ESMA has published a [final report](#) setting out amendments to its guidelines on product governance under MiFID2. The changes seek to reflect regulatory and supervisory developments and include:

- the specification of sustainability-related objectives a product is compatible with;
- the practice of identifying a target market per cluster of products instead of per individual product;
- the determination of a compatible distribution strategy where a distributor considers that a more complex product can be distributed under non-advised sales; and
- the periodic review of products, including the application of the proportionality principle.

The guidelines will apply two months after the date of the publication on ESMA's website in all EU official languages.



MiFID2: ESMA publishes updated suitability and remuneration guidelines

ESMA has published two sets of updated guidelines on MiFID2 suitability requirements and remuneration requirements.

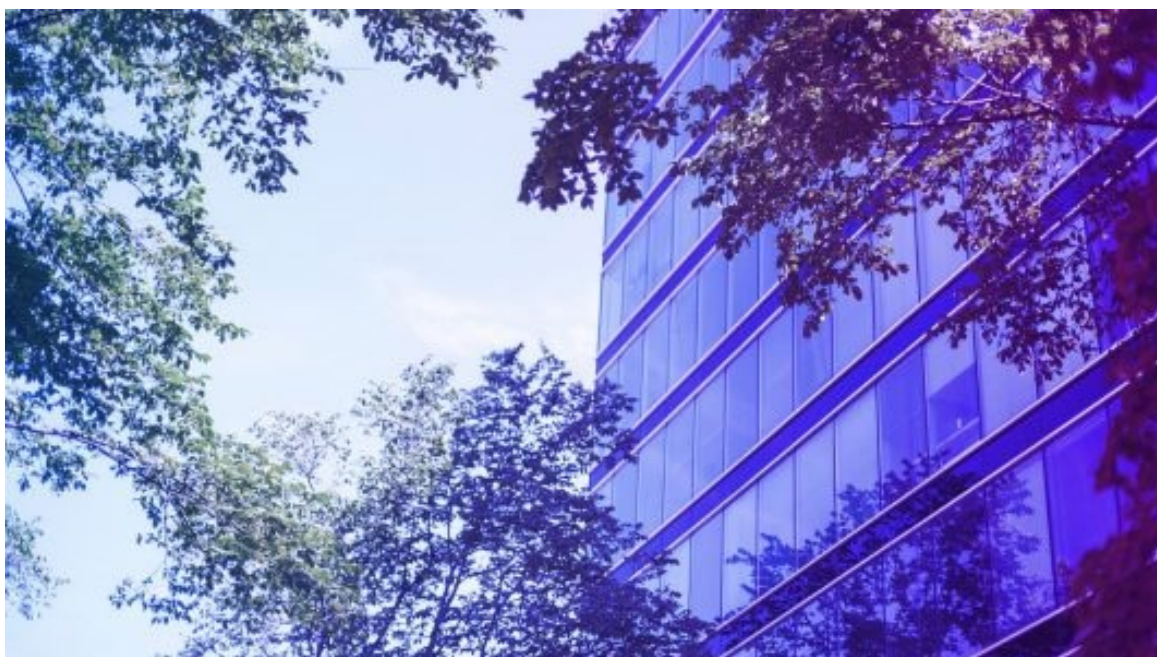
The [updated guidelines on suitability requirements](#) build on the 2018 guidelines and have been reviewed to take account of:

- the integration of sustainability factors;
- the practices identified in ESMA's 2020 common supervisory action (CSA) on suitability; and
- amendments introduced by MiFID2 Quick Fix.

The [updated guidelines on remuneration requirements](#) build on, and will replace, the 2013 guidelines and have been reviewed to provide additional detail on some aspects and to take account of:

- remuneration requirements that were originally set out in the 2013 guidelines being incorporated into MiFID2 and delegated acts; and
- the results of supervisory activities conducted by national competent authorities (NCAs) on the implementation of the remuneration requirements.

Both sets of guidelines will apply six months from the date of publication on ESMA's website in all EU official languages.





Digital finance & Fintech

Digital finance: EU Parliament adopts MiCA and AML/CTF measures for crypto assets

The EU Parliament has formally adopted on 20 April 2023 the Markets in Crypto Assets Regulation (MiCA) and the recast Regulation on information accompanying transfers of funds and certain crypto assets. MiCA establishes an EU regulatory framework for the issuance, offering, intermediation and dealing in crypto assets, including licensing, conduct of business requirements and enhanced consumer protection, as well as a market abuse regime. The recast Regulation on information accompanying transfers of funds, which is part of a package of legislative amendments designed to strengthen the EU's anti-money laundering and counter terrorist financing (AML/CTF) rules, is intended to improve the traceability of crypto asset transfers and the identification of suspicious transactions.

For the time being, unique non-fungible tokens (NFTs) are out of scope, but the EU Commission will look at this again in late 2024 to see if an NFT-related regime is warranted based on market developments between now and then.

Subject to adoption by the EU Council the text will enter into force in July 2023. It will be applicable 18 months after this date, from January 2025 (except measure relating to stablecoins, which will come into force 12 months after the entry into force of the text i.e., in July 2024).

MiCA will not apply to crypto assets that are already covered by existing EU financial services regulations (e.g., if they constitute a MiFID financial instrument).

Banking

Non-Performing Loans Directive: EBA consults on draft guidelines on management or administrative organ of credit servicers

The EBA has launched a [consultation](#) on its draft guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under the Non-Performing Loans Directive. The guidelines are intended to ensure that the management or administrative organs are suitable to conduct the business of the credit servicer in a competent and responsible manner. The guidelines specify the criteria for the assessment of the management or administrative organs' collective knowledge and experience, which will be performed based on the individual members' assessment by credit servicers, considering the principle of proportionality.

The guidelines set out the main requirements of the credit servicers assessment process, including the good reputation, and specify when such an assessment has to be performed.

Comments are due by 19 July 2023. The EBA intends to publish the final guidelines by the end of 2023.



Glossary

AIF Alternative Investment Fund (EU)
AIFMD Directive 2011/61/EU on Alternative Investment Fund Managers
AIFMs Alternative Investment Fund Managers
AML Anti-Money Laundering
AUM Assets under Management
CASP Crypto Asset Service Providers
CySEC Cyprus Securities and Exchange Commission
CP Consultation Paper
DLT Distributed Ledger Technology
DORA Digital Operational Resilience Act
EBA European Banking Authority
EC European Commission
ECB European Central Bank
ECON EU Parliament's Committee on Economic and Monetary Affairs
ESG Environmental, social, and governance
EMIR European Market Infrastructure Regulation
ESAs European Supervisory Authorities (EBA, EIOPA and ESMA)
ESMA European Securities and Markets Authority
EIOPA European Insurance & Occupational Pensions Authority
EU European Union
ICT Information and Communications Technology
KIID Key Investor Information Document (under PRIIPS)
MiCA Markets In Crypto-Assets regulation
MiFID Markets in Financial Instruments Directive
NCA National Competent Authority
PRIIPS Package Retail and Insurance-based products
RTS Regulatory Technical Standards
SME Small and Medium-sized enterprises
SFDR Sustainable Finance Disclosure Directive
OECD Organisation for Economic Co-operation and Development
UCITS Directive 2009/65/EC on Undertakings for Collective investments in Transferable Securities
UCITS Undertakings for Collective investments in Transferable Securities (EU)



Main Contacts

Eleni Neocleous

Board Member

Risk and Regulatory, Risk Consulting

T: + 357 22 209 023

E: eneocleous@kpmg.com

Marie-Hélène Angelides

Senior Associate, Asset Management expert

Regulatory Compliance, Risk Consulting

T: + 357 22 209 227

E: mangelides@kpmg.com

Eleni Poyiadji

Principal, MiFID and AML expert

Risk and Regulatory, Risk Consulting

T: + 357 22 209 248

E: epoyaji@kpmg.com



kpmg.com.cy

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