



Regulatory insights

January 2023



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Cyprus updates



Cyprus Securities and Exchange Commission

Publication of CySEC's reviews of compliance with the reporting obligation in accordance with article 9 of Regulation (EU) No 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories, as amended ('EMIR')

- CySEC carried out a series of reviews on the quality of data reported to Trade Repositories, under Article 9(1) of EMIR by Regulated Entities.
- The relevant CySEC [circular C545](#) dated 12 January 2023 sets out the Commission's observations and asks all regulated entities (Cyprus investment firms, UCITS and management companies, AIFs managed by AIFMs, and non-financial counterparties) to consider whether they comply with their EMIR reporting obligation.

European updates



Asset Management

ESMA publishes technical standards on cross-border activities under the UCITS Directive and AIFMD

On 21 December 2022, ESMA published a [Final Report](#) specifying the information to be provided, and templates to be used, when AIFMs and UCITS ManCos inform NCAs of the cross-border marketing and management of investment funds and the cross-border provision of services by fund managers under the UCITS Directive and the AIFMD. The draft RTS have been submitted to the EC for adoption.

Cross-border Distribution of Investment Funds

On 9 December 2022, ESMA published [updated hyperlinks and summaries of national rules](#) governing marketing requirements and levies for investment funds.

PRIIPs Q&As updated for Level 2 rules applying from 1 January 2023

On 21 December 2022, the European Supervisory Authorities (ESAs) published updated Q&As on the PRIIPs KID. Questions were updated (or deleted in their entirety), to reflect the amendments introduced in Commission Delegated Regulation (EU) 2021/2268, which entered into force on 1 January 2023.

The amended Q&As are labelled within the document as having been updated on 21 December 2022 and can be found within the following sections / sub-sections of the Q&As:

- Performance scenarios
- PRIIPs with a recommended holding period (RHP) of less than one year
- Derivatives
- Multi-option products (MOPs)
- Methodology for calculation of costs
- List of costs of investment funds (except transaction cost related questions)
- Methodology set out in Point 21 of the Level 2 Annex VI (standardised costs)
- Calculation of the summary cost indicators
- Presentation of costs.

PRACTICAL GUIDANCE ON UCITS KIID REPLACEMENT:

- FROM 1 JANUARY 2023, UCITS WILL HAVE TO PROVIDE A PRIIPs KID TO RETAIL INVESTORS AND EITHER A UCITS KIID OR A PRIIPs KID TO NON-RETAIL INVESTORS



Corporate Sustainability Reporting

The EU has published the new **Corporate Sustainability Reporting Directive (CSRD)** which revises the Non-Financial Reporting Directive (NFRD).

The CSRD amends the Accounting Directive 2013/34/EU as well as the Transparency Directive 2004/109/EC and the Audit Regulation No 537/2014 and the Audit Directive 2006/43/EC. The CSRD significantly expands existing rules on non-financial reporting.

All companies listed on an EU-regulated market (with the exception of micro-enterprises) are covered by the new reporting obligation.

In addition, all non-capital market oriented companies are covered by the CSRD if they fulfil **two of the following three criteria**:

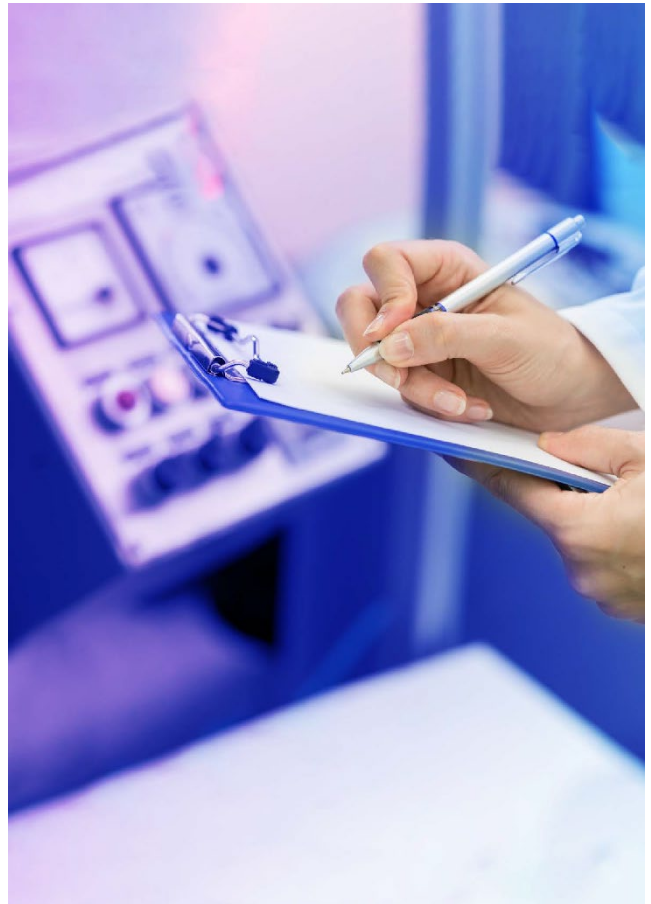
- Balance sheet total > 20 million euros
- Net sales > 40 million euros
- Number of employees > 250

The CSRD follows a double materiality perspective. This means that companies must record the effect of sustainability aspects on the economic situation of the company and they must clarify the impact of operations on sustainability aspects. The CSRD requires reporting to include information on:

- Sustainability goals,
- the role of the executive board and the supervisory board,
- the company's most significant adverse impacts, and
- intangible resources not yet accounted for.

Sustainability information is to be disclosed exclusively in the management report.

The new rules will ensure that investors and other stakeholders have access to the information they need to assess investment risks arising from climate change and other sustainability issues. They will also create a culture of transparency about the impact of companies on people and the environment. Finally, reporting costs will be reduced for companies over the medium to long term by harmonising the information to be provided.



The CSRD will end greenwashing, strengthen the EU's social market economy and lay the groundwork for sustainability reporting standards at global level ”

EU Parliament press release, 10 November 2022

THE FIRST COMPANIES WILL HAVE TO APPLY THE NEW RULES FOR THE FIRST TIME IN FINANCIAL YEAR 2024, FOR REPORTS PUBLISHED IN 2025



European Commission package of proposals to simplify the EU listing rules.

On 7 December 2022, the EC published a package of proposals (referred to collectively as the "Listing Act") to simplify the EU listing rules. The package forms part of the EC's commitment in the Capital Markets Union action plan to simplify listing rules. The package includes proposals for:

- An amending regulation amending Regulation (EU) 2017/1129 ("Prospectus Regulation"), Regulation (EU) 600/2014 ("MiFIR") and Regulation (EU) 596/2014 ("MAR");
- an amending directive amending Directive 2014/65/EU ("MiFID") and repealing Directive 2001/34/EC (the "Listing Directive");
- a new directive on multiple-vote shares for small and medium-sized enterprises ("SMEs").

Proposal to amend MIFIR and MIFID

On 16 December 2022, the European Council agreed its general approach for the proposed Regulation amending MiFIR ([here](#)) and proposed Directive amending MiFID II ([here](#)).

The European Council states that the priorities for this review of MiFIR and MiFID II are to improve transparency and availability of market data, improve the level-playing field between execution venues and ensure that EU market infrastructures can remain competitive at international level.

The next step is for negotiations between the European Council and the European Parliament to begin with a view to reaching a final agreement on the future legislation.

Guidance on Supervising Cross-border Activities

On 14 December 2022, the European Securities and Markets Authority ("ESMA") published a MiFID II supervisory briefing outlining guidance on the supervision of cross-border activities of investment firms ([here](#)). The briefing summarises the key elements of the rules and also includes indicative questions that supervisors are expected to ask themselves, or a firm, when assessing the approach to the supervision of cross-border activities to retail clients of investment firms.





Digital finance & Fintech

European regulation on digital operational resilience for the financial sector (DORA) was adopted 28 November 2022 under number 2022/2554.

On 27 December 2022, the Digital Operational Resilience Act (“DORA”) and a related Directive were published in the Official Journal of the European Union. Both DORA and the related Directive entered into force on 16 January 2023. DORA aims to consolidate and upgrade ICT risk as part of operational risk requirements that have, up to this point, been addressed separately in various EU legal acts.

The focus of DORA is on ‘digital operational resilience’ and DORA is intended to address risk deriving from all types of “ICT Services”. To that end, the definition of ICT services is to be understood in a broad manner, encompassing digital and data services provided through ICT systems to one or more internal or external users on an ongoing basis. DORA will apply from 17 January 2025.

The full text is available [here](#).



ESMA published new guidelines and Q&As regarding Regulation (EU) 2022/858 of 30 May 2022 on a pilot regime (the “DLT Pilot Regime”) for market infrastructures based on distributed ledger technology (DLT) (the “DLT Pilot Regime Regulation”).

On 15 December 2022, ESMA published a draft final report on guidelines on standard forms, formats and templates to apply for permission to operate a distributed ledger technology (“DLT”) market infrastructure (“MI”) under the Regulation on a pilot regime for market infrastructures based on distributed ledger technology (Regulation (EU) 2022/858) (“DLT Pilot Regime Regulation”) ([here](#)).

These Guidelines apply from 23 March 2023.

On 16 December 2022, ESMA published its first set of Q&As regarding the implementation of the DLT Pilot Regime Regulation ([here](#)). The Q&As aim to promote common supervisory approaches and practices in the application of the DLT pilot regime to regulatory data reporting, trading and settlement. The Q&As relate to transaction reporting, financial instrument reference data and order record keeping.

MiCA Delegated Acts

On 21 December 2022, the European Commission published a letter and a provisional request to the EBA for advice on delegated acts under the Regulation on markets in crypto-assets (“MiCA”) concerning certain criteria for classification of asset-referenced tokens and e-money tokens as significant and the fees that are to be charged by the EBA to issuers of significant asset-referenced tokens and e-money tokens.

MiCA is subject to legal revision prior to its formal adoption by the European Parliament and the European Council and publication in the Official Journal is planned for Spring 2023. The EC asks the EBA to deliver its technical advice by 30 September 2023.



Anti-Money Laundering

Proposed new AML Regulation and MLD6

On 7 December 2022, the European Council announced that it has adopted a position on the following proposed AML legislation:

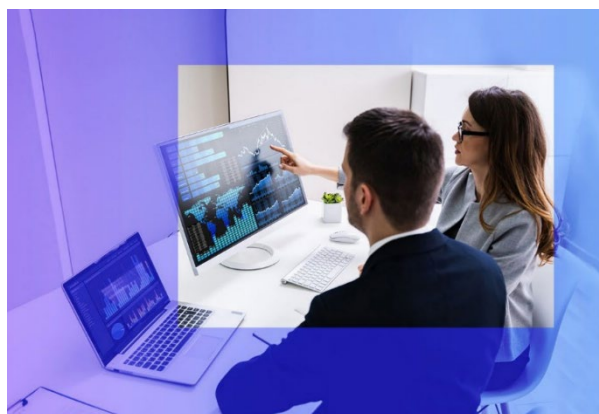
- 1 Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("AML Regulation"), and
- 2 Directive on the mechanisms to be put in place by the member states for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 ("MLD6") ([here](#)).

The European Council states that it has made a number of clarifications to the beneficial ownership provisions to make them more transparent, as well as providing that any natural or legal person that can demonstrate a legitimate interest can access certain information from the beneficial ownership registers.

Additionally, the European Council states that it has proposed rules requiring crypto asset service providers ("CASPs") to apply customer due diligence ("CDD") measures when carrying out transactions of €1,000 or more. The European Council has also introduced measures to mitigate risks relating to transactions with self-hosted wallets and introduced specific enhanced due diligence measures for cross-border correspondent relationships for CASPs.

High-risk third countries

On 19 December 2022, the European Commission adopted a Delegated Regulation that amends the list of high-risk third countries with strategic AML and CFT deficiencies under Article 9(2) of the MLD4. The Delegated Regulation adds the Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and the United Arab Emirates and removes Nicaragua, Pakistan and Zimbabwe.



Payment Institutions and e-money institutions

EBA publishes its peer review on authorisation of payment institutions and e-money institutions

On 11 January 2023, the European Banking Authority (EBA) published a report setting out its finding following a peer review on the authorisation of payment institutions and e-money institutions under the revised Payment Services Directive (PSD2), taking into account the EBA guidelines on authorisation issued in 2017 in support of the Directive.

The review generally found increased transparency and consistency of the information required in the authorisation process. However, it also identified significant divergences in competent authorities' assessment and the degree of scrutiny of applications.

More specifically, there are divergent practices in relation to the assessment of business plans and applicants' governance arrangements and internal control mechanisms. This includes the assessment of directors and persons responsible for the management of PIs and EMIs, and of whether applicants meet 'local substance' requirements.

Finally, the report recommends to the EC to clarify, as part of its ongoing PSD2 review process, the delineation between the different categories of payment services and e-money issuance, the applicable governance arrangements for institutions, including the criteria that NCAs should use in assessing the suitability of management, and what having sufficient local substance requires.

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
- 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
- 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
- KID Key information Document (under UCITS Directive)
- 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 & Medium sized enterprises
- SFDR Sustainable Finance Disclosure Directive
- OECD Organisation for Economic Co-operation and Development
- UCITS Directive directive 2009/65/EC on Undertakings for Collective investments in Transferable Securities
- UCITS Undertakings for Collective investments in Transferable Securities (EU)

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