



Regulatory insights

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KPMG Cyprus

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Cyprus updates

New regulated entities under CySEC's supervision

- EUROPEAN CROWDFUNDING SERVICE PROVIDERS
- PROVIDERS OF PAN-EUROPEAN PERSONAL PENSION PRODUCT

Cyprus Securities and Exchange Commission

Press release CySEC's annual review

During CySEC's annual review press conference held on 15 March 2023, it was noted that two new types of entities were brought under the supervision of CySEC, namely the European Crowdfunding Service Providers (see further below) and the providers of Pan-European Personal Pension Product under European Regulation 2020/1503 and 2019/1238 respectively.

It was also noted that during 2022, a total of 86 applications for licenses were approved for all types of entities under the supervision of CySEC. CySEC rejected six applications for Cyprus Investment Firms (CIFs) licenses and a further of 15 applications were withdrawn, including applications for CIF licences and collective investments.

In 2022, CySEC imposed administrative fines totaling approximately €2.9 million, of which the overwhelming majority related to fines and settlements for CIFs. The press release can be found [here](#)

CySEC policy statement and related Directive on Crowdfunding Service Providers under Regulation (EU) 2020/15032 on European Crowdfunding Service Providers for Business (“ECSP Regulation”)

CySEC has published on 13 March 2023 a [Policy Statement](#) following the publication of [Directive DI73-2009-02](#) on the ECSP Regulation.

The policy aims to:

- Outline its position as regards the discretions provided to NCA that are entrusted with the supervision of Crowdfunding Service Providers (“CSPs”);
- Inform market participants that CySEC will commence accepting applications from prospective CSPs;
- Specify the information to be notified to CySEC on an ongoing basis, as well as the cases where an assessment will be undertaken by CySEC and the scope thereof; and
- Outline the respective fees and charges applicable to CSPs

Circular C553 on the guidelines on certain aspects of the compliance function

On 14 March 2023 CySEC issued [circular C553](#) on the guidelines on certain aspects of the compliance function requirements to provide guidance on the application of certain aspects of the compliance function requirements provided in Article 17(2) of the Investment Services and Activities and Regulated Markets Law and Article 22 of the MiFID II Delegated Regulation 2017/565, to ensure the common, uniform and consistent application of these legal requirements.

The above guidance applying to Cyprus investment firms apply mutatis mutandis to AIFMs and UCITS management companies.

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CySEC statistics

CySEC has published on 28 March 2023 its quarterly statistics bulletin for the collective investments sector. For the 4th quarter of 2022, the total AUM have reached €9.5 billion, recording a 3.7% decrease since the 3rd quarter of 2022, whereas comparing with the same period in 2021, the decrease amounts to 17.7%. This is mainly due to devaluation of assets, redemptions of investment shares and asset disposals. The statistics can be found [here](#)



European updates

Asset Management

EU Council adopts ELTIF2

On 20 March 2023, Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements of pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules (“ELTIF 2.0”) was published in the Official Journal of the European Union. **ELTIF 2.0 will apply across the EU from 10 January 2024.** We addressed some of the key amendments in our previous February issue which can be found [here](#).

ELTIFs authorised before 10 January 2024 which comply with the rules applicable before 10 January 2024 will be deemed compliant with the amended ELTIF until 11 January 2029, and even after then if they do not raise additional capital.

Over the next few months, ESMA will be developing draft regulatory technical standards (RTS) further specifying the possibility of an early redemption, circumstances in which the life of an ELTIF is considered compatible with the life-cycles of its assets, and details regarding a new ability to match buying and selling investors in secondary transactions.

Management Companies and Self-Managed Funds Quarterly Statistics

Cysec issued on 25 March [Circular 557](#) informing of the latest version of the form, [QST-MC](#) which must be completed and submitted to CySEC by all regulated entities that were authorised or appointed to act as external managers (in case no authorisation is required by the relevant legislation), by March 31, 2023. In this respect, regulated entities that were authorised or appointed to act as external managers by March 31 2023, but have not made use of their authorisation must also submit the form.

ESG and Sustainable Finance

ESAs call for enhanced climate-related disclosure for structured finance product

The ESAs along with the European Central Bank (ECB) published a [Joint Statement](#) on climate-related disclosure for structured finance products. The Statement encourages the development of disclosure standards for securitised assets through harmonised climate-related data requirements. Currently, there is a lack of climate-related data on the assets underlying structured finance products. This poses an obstacle for the classification of products and services under the SFDR and hinders the proper assessment and management of climate-related risks. The Statement sets out the joint efforts of the ECB and the ESAs to facilitate access to climate-related data with a view to improving sustainability-related transparency in securitisations and to promote consistent and harmonised requirements for similar instruments.

Securities & Markets

ESMA publishes the results of the annual transparency calculations for equity and equity-like instruments

ESMA published on 1 March 2023 the results of the [annual transparency calculations](#) for equity and equity-like instruments.

The calculations made available include:

- the liquidity assessment as per Articles 1 to 5 of CDR 2017/567;
- the determination of the most relevant market in terms of liquidity as per Article 4 of CDR 2017/587 (RTS 1);
- the determination of the average daily turnover relevant for the determination of the pre-trade and post-trade large in scale thresholds;
- the determination of the average value of the transactions and the related the standard market size; and the determination of the average daily number of transactions on the most relevant market in terms of liquidity relevant for the determination of the tick-size regime.

The transparency requirements based on the results of the above published annual transparency calculations will apply from 1 April 2023 until 31 March 2024.

Amendments to MiFIR/MiFID II - ECON adopts draft reports

The ECON has voted on 1 March 2023 to adopt draft [reports](#) on the EU Commission's proposals for a Directive amending the Markets in Financial Instruments Directive (MiFID3) and proposed Regulation amending MiFIR (MiFIR2). The EU Council agreed its negotiating position on MiFID3 and MiFIR2 in December 2022 and the co-legislators will enter trilogue negotiations in due course.

Proposed CSDR Refit Regulation - ECON adopts draft report

ECON has voted to adopt a [draft report](#) on a proposed Regulation amending the Central Securities Depositories Regulation (909/2014/EU) (CSDR Refit).

ESMA updates its guidance on product governance

ESMA published on 27 March 2023 its [Final Report](#) on Guidelines on MiFID II product governance guidelines.

The main amendments introduced to the guidelines concern:

- the specification of any sustainability-related objectives a product is compatible with;
- the practice of identifying a target market per cluster of products instead of per individual product ("clustering approach");
- the determination of a compatible distribution strategy where a distributor considers that a more complex product can be distributed under non-advised sales;
- 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.

ESMA consults on position calculations for Trade Repositories (TR)

In its [consultation](#) issued on 28 March 2023 ESMA is seeking input from market participants, in particular TRs and authorities with access to EMIR data, on the extent to which consistency of position calculation can be enhanced across TRs under EMIR Refit standards regarding:

- the scope of data to be used;
- the time of calculation, and
- the calculation methodologies.

ESMA will consider the feedback it receives to this consultation with a view to publishing its final report together with the updated XML schemas by early Q4 2023.

Anti-Money Laundering

The FATF has published guidance on beneficial ownership of legal persons

In March 2022, the FATF had agreed on tougher global beneficial ownership standards in its Recommendation 24 by requiring countries to ensure that competent authorities have access to adequate, accurate and up-to-date information on the true owners of companies. The FATF has now [updated the guidance](#) that will help countries implement the revised Recommendation 24.

The guidance will help countries identify, design and implement appropriate measures in line with the revised Recommendation 24 to ensure that beneficial ownership information is held by a public authority or body functioning as a beneficial ownership registry, or an alternative mechanism that enables efficient access to the information. The guidance will also help countries assess and mitigate the money laundering and terrorist financing risks associated with foreign companies to which their countries are exposed. The guidance explains types and sources of relevant information, and mechanisms and sources to obtain such information. This includes the multi-pronged approach, which consists of combining information from, among others, companies themselves, public authorities in a registry, or alternative mechanism if it ensures rapid and efficient access to beneficial ownership information. FATF's mutual evaluations demonstrated that countries using a multi-pronged approach were more effective in preventing the misuse of legal persons for criminal purposes and ensuring transparency of beneficial ownership than countries using a single approach.

Banking

EBA consults on amendments to the reporting on the Fundamental Review of the Trading Book (FRTB)

The EBA has launched [a public consultation](#) on its draft Implementing Technical Standards (ITS) amending the ITS on specific reporting requirements on market risks (FRTB reporting), aiming at providing supervisors with the necessary tools to monitor these risks. The planned amendments are intended to provide supervisors with the necessary data to monitor institutions' implementation of the FRTB approaches and their compliance with the own funds requirements for market risk. The amendments mostly affect institutions with significant business subject to market risk, thus reflecting the proportionality elements embedded in the Capital Requirements Regulation (CRR). **The consultation runs until 21 June 2023.**

EBA publishes Handbook on data submission for supervisory benchmarking

The EBA published on 16 March 2023 a [Handbook](#) on supervisory benchmarking of internal models. The Handbook is an online tool that provides guidance and links to relevant documents and information for the supervisory benchmarking to facilitate their accessibility. In particular, the Handbook includes overviews for all applicable Q&As relevant to credit risk, market risk and IFRS9 benchmarking. More detailed information is also provided for the key credit risk elements of the data submission. The Handbook will be regularly updated.

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The ECJ clarified that "in order to give a useful answer to the referring court, those questions must be understood as relating to the interpretation of Article 47(1)(a) of Directive 2007/64 and not to the interpretation of Article 38(a) of that directive."

The ECJ concluded that Article 47(1)(a) must be interpreted as meaning that a payer's payment service provider is required to provide that payer, with information enabling the natural or legal person who benefited from a payment transaction debited from that payer's account, to be identified and not only the information which that provider, after making its best efforts, has available with regard to that payment transaction.

While PSD 1 was replaced by Payment Services Directive ((EU) 2015/2366) ("PSD 2"), a similar provision to Article 47(1)(a) is contained in Article 57(1)(a) of PSD2.

ECJ ruling on the meaning of the provision of "information relating to the payee" under PSD1

On 16 March, the Court of Justice of the EU ("ECJ") gave a preliminary ruling relating to a query posed to it by a Belgian court, concerning the interpretation of Article 47(1)(a) of the Payment Services Directive (2007/64/EC) ("PSD 1"). The case is referred to as **ZG v Beobank SA (Case C-351/21)**.

Briefly, Article 47(1)(a) of PSD 1 provides that once a payment transaction made by a payer is debited from their account, the payment service provider must provide the payer with "a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee".

The query posed to the ECJ was

- **whether under Article 38(a) of PSD 1, the payer's payment service provider is under a best endeavours obligation or an obligation of result regarding the provision of "information relating to the payee"; and**
- **whether the "information relating to the payee", a term defined in Article 47(1) includes information from which the natural or legal person that received the payment can be identified.**



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)

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