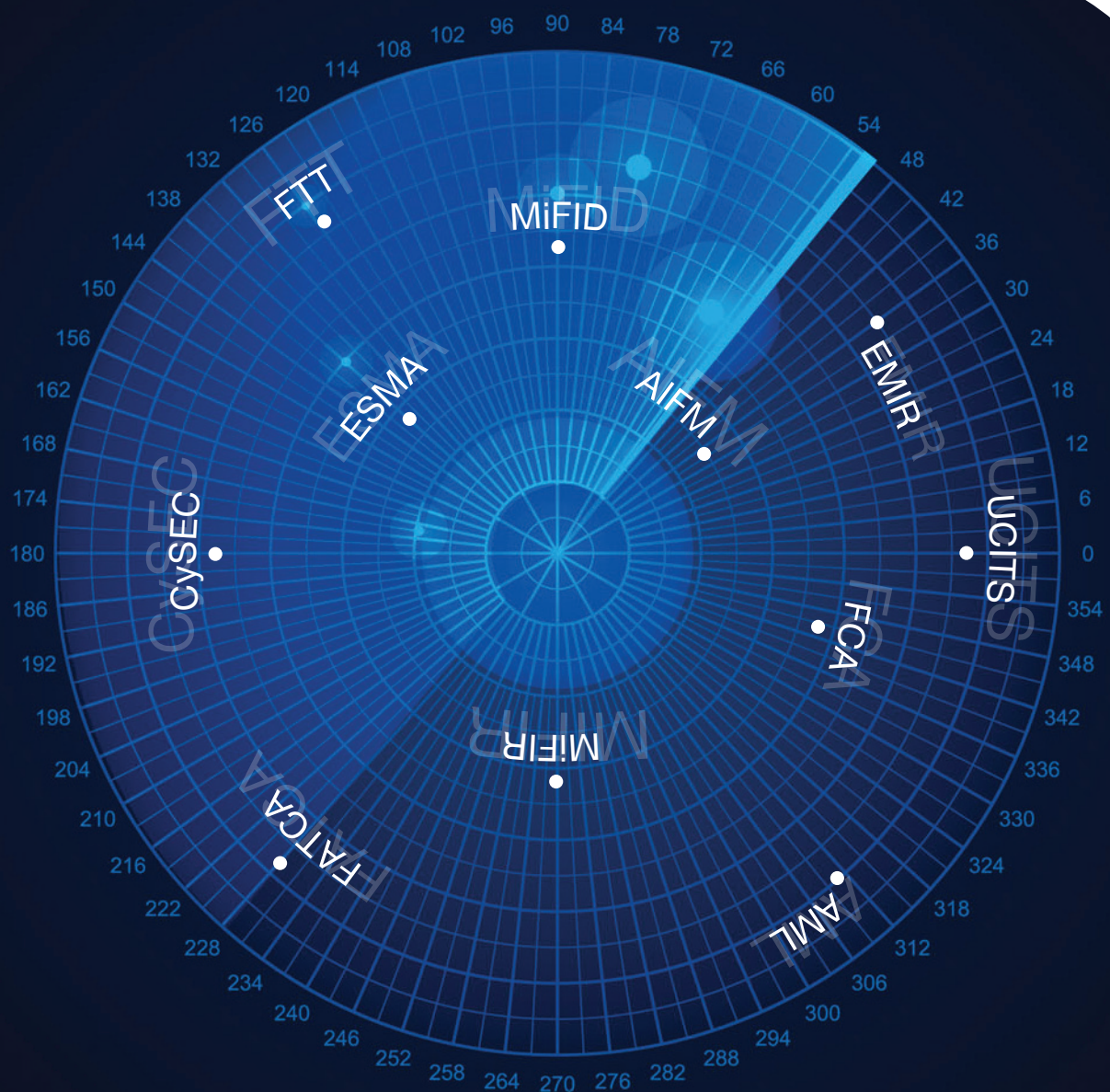


# REGULATORY RADAR

Periodical round-up on major regulatory and legislative developments in the EU and Cypriot financial services sector





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# 60 Second Summary

## 1. Developments in the EU Financial Services Legislation Affecting Investment Firms

- **MiFID II**
  - ESMA continues to issue guidance in the form of questions and answers, frequently asked questions; opinions, reports and other publications as well as issuing market data and further consultations
  - European Commission makes proposals for changes to MiFID II
  - EBA and ESMA are consulting on revising joint guidelines for assessing the suitability of members of the management body and key function holders
- **EMIR**
  - Mandatory margin requirements for non-cleared OTC derivatives are being introduced on a staggered basis: variation margin is required except for physically-settled FX forwards; initial margin implementation phases are deferred by one year due to Covid-19

## 2. Anti-Money Laundering Legislation

- European Commission refers Member States to the Court of Justice of European Union for failure to fully implement rules
- An amended list of high-risk third countries is published in Official Journal

## 3. EU Financial Transaction Tax (FTT)

- Political decisions on FTT postponed until Brexit outcome is known

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- No update

## 5. Fund Regulation

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## 7. UK - Developments of Interest to Investment Firms

- Brexit: following the UK's exit from the EU on 31 January 2020, an implementation period runs until 31 December 2020
- Brexit: the UK temporary permission regime notification window will re-open on 30 September 2020
- ESMA urges market participants to finalise their preparations in advance of the end of the UK's transition period on 31 December 2020

## 8. EU - Developments of interest to CFDs and Binary Options providers

- ESMA continues to monitor activities in relation to CFDs and binary options and other speculative products notwithstanding permanent restrictions in Member State

## 9. CySEC Developments

- Amending Law regarding the provision of investment services, the exercise of investment activities and the operation of regulated markets of 2017, regarding orders Large in Scale applicable to the Cyprus' Regulated Market
- Thematic Review of inactivity fees charged by CIFs: Feedback on good and bad market practices

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- Public Consultation on the national discretions provided by Directive (EU) 2018/849 on the prevention of the use of financial system for the purposes of money laundering and terrorist financing

# 1. Developments in the EU Financial Services Legislation Affecting Investment Firms

## I. MiFID II

The MiFID II legislation consists of an amending [MiFID II](#) Directive (MiFID II) and a new regulation [MiFIR](#) (the Markets in Financial Instruments Regulation = MiFIR) (together MiFID II).

### ESMA's MiFID/MiFIR data

ESMA, in cooperation with national competent authorities (NCAs) in the European Economic Area, oversaw the launch of MiFID II and MiFIR on 3 January 2018. A key element in ensuring the new regime functions properly is ensuring the availability of data to market participants – firms and trading venues – and NCAs. This data is available on ESMA's [website](#) and is continuously updated.

#### ESMA publishes updated annual transparency calculations for equity and equity-like instruments

By way of background, MiFID II/MiFIR introduced pre-trade and post-trade transparency requirements for equity and non-equity instruments. Pre-trade transparency requirements may be waived for transactions, whose size is above large-in-scale thresholds (LIS), and systematic internalisers (SIs) have pre-trade transparency obligations for instruments traded on a traded venue which are liquid and when dealing with orders up to the standard market size (SMS). The publication of post-trade information can be deferred for transactions whose size is above large-in-scale thresholds (LIS).

On 7 July 2020, ESMA made available the updated results of the annual transparency calculations for a limited number of equity and equity-like instruments. These updated annual transparency calculations apply as of 13 July.

The update of the results for around 7,500 ISINs was necessary because ESMA identified a data quality issue with the data reported by a trading venue. In this new publication there are 957 liquid shares and 617 liquid equity-like instruments other than shares, subject to MiFID II/MiFIR transparency requirements.

The full list of assessed equity and equity-like instruments is on the ESMA website link above under “Financial Instruments Transparency System (FITRS) Database for equity and non-equity transparency calculation results”.

#### ESMA publishes the annual transparency calculation of LIS and SSTI thresholds for bonds

By way of background, MiFID II/MiFIR introduced pre-trade and post-trade transparency requirements for equity and non-equity instruments. For transactions whose size is above the relevant “large in scale” (LIS) thresholds and the “size specific to instrument” (SSTI) threshold, pre-trade transparency requirements may be waived and the publication of post-trade information can be deferred.

On 30 April 2020, ESMA published the annual calculation of the large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds.

The transparency requirements based on the results of the annual calculations of the large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds apply from **1 June 2020 until 31 May 2021**.

On 9 April 2020, ESMA published a [public statement](#), announcing that due to Covid-19, ESMA, in cooperation with the NCAs would postpone the publication of those calculations which include the liquidity assessment and the determination of the pre-trade and post-trade large in scale and size specific to the instrument thresholds for derivatives, exchange traded commodities, exchange traded notes, emission allowances and structured finance products from 30 April 2020 to 15 July 2020 and their application from 1 June 2020 to 15 September 2020. Until and including 14 September 2020 the transitional transparency calculations will continue to apply.

#### ESMA issues latest Double Volume Cap data

On 7 August 2020, ESMA updated its website (the ESMA website link is above under “Double volume cap mechanism data”) with the latest set of double volume cap (DVC) data.

By way of background, the double volume cap mechanism aims to limit so called “dark trading” in equities allowed under the reference price waiver and the negotiated transaction waiver. The DVC is calculated per instrument (ISIN) based on the rolling average of trading in that instrument over the last 12 months. The DVC data and calculations published cover the period of 1 July 2019 to 30 June 2020.

The number of new breaches is 56: 33 equities for the 8% cap, applicable to all trading venues, and 23 equities for the 4% cap, that applies to individual trading venues. Trading under the waivers for all new instruments in breach of the DVC thresholds should be suspended from 12 August 2020 to 11 February 2021. The instruments for which caps already existed from previous periods will continue to be suspended. As of 7 August 2020, there is a total of 309 instruments suspended.

#### ESMA makes available bond liquidity data

On 31 July 2020, ESMA made available the latest quarterly liquidity assessment for bonds available for trading on EU trading venues. There are currently 569 liquid bonds subject to MiFID II transparency requirements. The full list of assessed bonds is available on the ESMA website through the “Financial Instruments Transparency System (FITRS)”.

By way of background, MiFID II introduced pre-trade and post-trade transparency requirements for equity and non-equity instruments, including for bonds. Post-trade, MiFID II requires real-time publication of the price and quantity of trades in liquid bonds. It is possible to defer the publication of post-trade reports if the instrument does not have a liquid market, or if the transaction size is above large-in-scale thresholds (LIS), or above a size specific to the instrument (SSTI). In order to assist market participants to know whether a bond should be considered as liquid or not, ESMA publishes these quarterly liquidity assessments for bonds.

The transparency requirements for bonds deemed liquid on 31 July 2020 will apply from **16 August 2020 to 15 November 2020**.



### ESMA updated plan for systematic internaliser regime calculation and publications and publication of data for systematic internaliser calculations for equity, equity-like instruments and bonds

By way of background, MiFID II and MiFIR stipulates that investment firms dealing on own account when executing client orders over the counter (OTC) on an organised, frequent, systematic and substantial basis are subject to the mandatory systematic internaliser (SI) regime. ESMA, upon request of market participants, decided to compute, on a voluntary and best effort basis, the total volume and number of transactions executed in the EU in order to help market participants in the performance of the SI test since that data is essential for the operation of the SI regime and is not otherwise easily available.

On 31 July 2020, ESMA published data for the systematic internaliser quarterly calculations for equity, equity-like instruments, bonds and, for the first time, for other non-equity instruments. The total number of trades and total volume over the period January-June 2020 for the purpose of the systematic internaliser calculations under MiFID II for:

- 20,204 equity and equity-like instruments;
- 121,040 bonds; and
- as announced on 9 April 2020, for 5,896 sub-classes of derivatives (including equity derivatives, interest rate derivatives, commodity derivatives, C10 derivatives, emission allowance and derivatives thereof and contracts for difference (CFDs)) and

The SI test shall be performed by:

- 15 August 2020 for equity and equity-like instruments;
- 15 August 2020 for bonds;
- 15 September 2020 for all other non-equity instruments, including those for which ESMA has not published the SI data due to data-related issues.

Please refer to the ESMA website link above under “Data for the systemic internaliser calculations” for the current data.

## **ESMA publishes MIFID MIFIR Annual Review Report**

On 23 July 2020, ESMA published the [MiFID/MiFIR Annual Review Report](#) under [Commission Delegated Regulation \(EU\) 2017/583](#) (RTS 2). This report lays down the thresholds for the liquidity criterion ‘average daily number of trades’ for bonds, as well as the trade percentiles.

In the report, ESMA is suggesting to the European Commission to move to the next stage for:

- the criterion ‘average daily number of trades’ used for the quarterly liquidity assessment of bonds; and
- the trade percentiles that determine the pre-trade sizes specific to the financial instrument for bonds.

These measures are designed to increase the transparency available to market participants in the bond market.

ESMA does not recommend moving to the next stage for the trade percentiles that determine the pre-trade sizes specific to the financial instrument for other non-equity financial instruments. ESMA considers such

move premature since the first annual transparency calculation for these non-equity instruments will only be published this year.

In light of the assessment undertaken and the conclusions reached, ESMA has prepared an amended version of the applicable regulatory technical standards as foreseen in RTS 2.

The European Commission would have to endorse the amended regulatory technical standards. Following such endorsement, they are then subject to a non-objection procedure by the European Parliament and the Council.

## European Commission proposes changes to MIFID II due to COVID-19

On 24 July 2020, the European Commission adopted a [legislative proposal](#) for a directive amending MiFID II as part of a capital markets recovery package designed to facilitate the economic recovery following the COVID-19 pandemic. The amendment to MiFID II applying to investments in financial instrument aims to remove administrative burdens that result from documentation and disclosure rules that are not counterbalanced by corresponding increases in investor protection.

Key changes include:

- *Phase-out of the paper-based default method for communication*
- *Costs and charges disclosure*: Introduction of an exemption for eligible counterparties and for professional clients for other services than investment advice and portfolio management
- *Alleviate ex-post reporting requirements*: in particular, the end-of day loss reporting requirement promotes a short-term view among inexperienced investors and fosters “herd behaviour” which is not conducive to taking informed views of the market. Professional clients are allowed to opt-in
- *Suspend best execution reports*: In their current form best execution reports are not read by investors, while buy-side investment firms receive all the relevant information via other means (e.g. via brokerage meetings). To reduce the burden of producing those reports, this obligation will be suspended for two years, pending a thorough analysis with regard to a possible streamlining of the reports
- *Alleviate cost benefit analysis*: As part of the suitability assessment, firms are required to obtain information about the client in order to perform a cost-benefit analysis in case they ‘switch’ between products in the course of an ongoing relationship. For professional clients this is overly burdensome
- *Product governance*: to facilitate the financing of the economy bonds with make-whole clauses will be exempted from the product governance regime

The proposed amendments to MiFID II will now be reviewed by the European Parliament and Council, and if approved, they must then be transposed into national law by each Member State before they can take effect.



## European Commission consults on authorising bundled SME research

On 24 July 2020, the European Commission launched a [consultation](#) on amendments to the MiFID II Delegated Directive (EU) 2017/593 to increase the regime for research on small and mid-cap issuers and on fixed-income instruments to help the recovery from the COVID-19 pandemic. The European Commission believes that increasing the visibility of European companies to investors will promote more investment for the economic recovery. Therefore, this amending act introduces a narrowly defined exception authorising the joint payment for execution services and research on small and midcap issuers and research on fixed income instruments. Small and mid-cap companies would be defined as companies that did not exceed a market capitalization threshold of EUR 1 billion over a 12 months period. The consultation closed on 4 September 2020.

## ESMA issues second report on sanctions under MIFID II

On 13 July 2020, ESMA published its second [report](#) on sanctions and measures imposed under MiFID II by National Competent Authorities (NCAs).

Overall, in 15 (out of 30) EEA Member States, NCAs imposed a total of 371 sanctions and measures in 2019 of an aggregated value of about €1.8 million.

The Report provides an overview of the applicable legal framework and the sanctions and measures imposed by NCAs under the MiFID II framework during the year 2019. Due to differences in the identification of sanctions and measures for the purpose of the reporting to ESMA and the length of the enforcement processes, the data does not provide at this time the basis for detailed statistics, clear trends or tendencies in the imposition of sanctions and measures.

## ESMA updates to its Questions and Answers (Q&As)

### Q&A on MiFIR data reporting

On 8 July 2020, ESMA updated its [questions and answers \(Q&As\) documents on MiFIR data reporting](#). The Q&As contain clarification in relation to requirements for transaction reporting in respect of algorithm trading.

### Q&A on MiFID II and MiFIR transparency topics and market structures topics

On 8 July 2020, ESMA updated its Questions and Answers regarding [transparency issues](#). The new Q&A document provides technical clarifications for the performance of the mandatory systematic internaliser test.

The current Q&A on [market structures](#) is dated 29 May 2020.

### Q&A on MiFID Investor Protection and Intermediaries

The current [Questions and Answers](#) on the implementation of investor protection topics is dated 28 May 2020.

## EBA and ESMA launch consultation to revise joint guidelines for assessing the suitability of members of the management body and key function holders

On 31 July 2020, the European Banking Authority (EBA) and the European Supervisory Market Authority (ESMA) launched a [public consultation](#) on their revised joint Guidelines. This review reflects the amendments introduced by the fifth Capital Requirements Directive and the Investment Firms Directive in relation to the assessment of the suitability of members of the management body.

Combating money laundering and terrorist financing is crucial for maintaining stability and integrity in the financial system. Therefore, uncovering any involvement of credit institutions and investment firms in money laundering and terrorist financing can have an impact on the viability and trust in the financial system. In this context, the draft joint Guidelines clarify that the knowledge, experience and skill requirements are important aspects in the fit and proper assessment of members of the management body and key function holders as they contribute to identifying, managing and mitigating money laundering and financing of terrorism risks.

These draft joint Guidelines also clarify that being a member of affiliated companies or affiliated entities does not in itself represent an obstacle for a member of the management body to acting with independence of mind.

The Guidelines further specify that a gender-balanced composition of the management body is of particular importance. Institutions should respect the principle of equal opportunities for any gender and take measures to improve a more gender-balanced composition of staff in management positions.

A public hearing will take place on 1 October 2020. The consultation runs until 31 October 2020.

The joint EBA and ESMA Guidelines will apply to Competent Authorities across the EU, as well as to institutions on a solo and consolidated basis. Once the revised Guidelines will enter into force, the [2017 Guidelines](#) will be repealed.

## II. Securities Financing Transactions (“SFTs”)

On 9 July 2020, ESMA launched [consultation](#) on draft guidelines on the calculation of positions by trade repositories (TRs) under the Securities Financing Transactions Regulation (SFTR).

The aim of the guidelines is to ensure consistency of position calculation across TRs, with regard to the time of calculations, the scope of the data used in calculations, the data preparation, the recordkeeping of data and the calculation methodologies.

The consultation paper on the draft guidelines sets out the relevant clarification to TRs with regard to the compliance with Article 4(6) of SFTR containing a general requirement for TRs to calculate positions (by cross-reference to Article 80 of the European Market Infrastructure Regulation (EMIR)). Article 12(2) of SFTR requires TRs to collect and maintain details of SFTs (i.e. including positions) and Article 5 of the regulatory technical standards on data aggregation specifically requires TRs to calculate positions in SFTs in a harmonised and consistent manner.

The deadline for comments is 15 September 2020. ESMA will consider the responses to this consultation with a view to finalise the proposed guidelines and to publish a final report in Q4 2020/Q1 2021.

## III. MARKET ABUSE REGULATION

### ESMA Q&As

The current version of the ESMA [Questions and Answers on the Market Abuse Regulation](#) is dated 29 March 2019.

The current version of the ESMA [Questions and Answers on the common operation of the Market Abuse Directive](#) is dated 1 April 2016.

## IV. EMIR

### EMIR Refit

The [Regulation](#) amending the European Markets Infrastructure Regulation as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (sometimes referred to as “EMIR 2.1” or “EMIR REFIT”) came into force on 17 June 2019. Not all the provisions became immediately applicable: certain provisions became applicable on 18 December 2019 and 18 June 2020, other provisions will become applicable from 18 June 2021.

The Regulation to amend EMIR introduces simpler clearing rules, a new category of “small financial counterparties” which will be exempted from clearing obligations, reduced clearing obligations for non-financial counterparties, extending by a further two years the temporary exemption of pension scheme arrangements from the clearing obligation, and modifications to the reporting obligations.

As of June 18, 2020, financial counterparties (FCs) are legally liable for the timely and accurate reporting of over-the-counter (OTC) derivatives contracts on behalf of both themselves and their non-financial counterparty minus (NFC-) clients.

### ESMA EMIR Q&As

On 8 July 2020, ESMA updated its [Questions and Answers](#) document on practical questions regarding data reporting issues, under EMIR. The new Q&A in respect of trade repositories provides clarification that a counterparty should follow its local time and the relevant calendar of its Member State to specify the “working day” in the context of determining the deadline for reporting.

## Margin requirements for non-centrally cleared derivatives - one year deferral of the two implementation phases

On 4 May 2020, the European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs), in response to the COVID-19 outbreak published a [joint draft Regulatory Technical Standards](#) (RTS) to amend the Delegated Regulation on the risk mitigation techniques for non-centrally cleared OTC derivatives (bilateral margining),

under EMIR, to incorporate a one-year deferral of the two implementation phases of the bilateral margining requirements.

The Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) had announced on 3 April their agreement to defer by one year, the deadline for completing the final two implementation phases of the bilateral margin requirements, in order to provide additional operational capacity for counterparties to respond to the immediate impact of COVID-19. The ESAs draft RTS present the changes to the Delegated Regulation on bilateral margining to incorporate in the EU regulatory framework the one-year deferral agreed by the BCBS and IOSCO.

These changes would result in covered counterparties with an aggregate average notional amount of non-centrally cleared derivatives above €50 billion becoming subject to the requirement to exchange initial margin from 1 September 2021, while covered counterparties with an aggregate average notional amount of non-centrally cleared derivatives above €8 billion becoming subject to the requirement from 1 September 2022.

A first version of these draft RTS had been submitted to the Commission and published on the websites of the ESAs on 5 December 2019. This first version dealt with the treatment of physically settled FX forward and swap contracts, intragroup contracts, equity option contracts and the implementation of the initial margin requirements. However, in response to the Covid-19 outbreak, the Final Report and the draft RTS have now been updated to take into account the agreement from the BCBS and IOSCO to defer by one year the deadline for completing the final two implementation phases of the bilateral margin requirements. This updated version (4 May 2020) of the [Final Report on the draft RTS on bilateral margining](#) thus replaces entirely the version submitted to the Commission in December 2019.

The ESAs have submitted this second version of the draft RTS to the Commission for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument applicable in all Member States of the European Union. Following the endorsement, they are then subject to non-objection by the European Parliament and the Council.

## 2. Anti-Money Laundering

### **Fourth Money Laundering Directive (MLD 4) - European Commission refers Member States to the Court of Justice of European Union for failure to fully implement rules**

On 2 July 2020, the European Commission referred Austria, Belgium and the Netherlands to the Court of Justice of the European Union, with a request for financial sanctions, for failing to fully implement the MLD4 into their national law. The incomplete transposition concerns fundamental aspects of the anti-money laundering framework, such as betting and gambling legislation (Austria), mechanisms under which the Financial Intelligence Units exchange documents and information (Belgium), and the information to be provided on the beneficial ownership of corporate and other legal entities (Netherlands).

All Member States had to implement the rules of the MLD4 by 26 June 2017. After this deadline passed, the Commission opened infringement proceedings against all Member States, as none of them had notified complete transposition of MLD4.

There are open infringement procedures on incomplete transposition against eight Member States: three Member States have received Reasoned Opinions, proceedings against two Member States are pending before the Court, and the Commission decided to refer another three Member States to the Court.

## **MLD 4 – Amended list of high-risk third countries in Official Journal**

The Commission Delegated Regulation (EU) [2020/855](#) amending Delegated Regulation (EU) 2016/1675 supplementing the fourth Money Laundering Directive (MLD 4), as regards adding the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the table in point I of the Annex and deleting Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia from this table, has been published in the Official Journal of the EU.

## **3. EU Financial Transaction Tax (FTT)**

Political decisions on the FTT are being postponed until the EU's future relationship with the UK is settled. This does not mean the end of FTT negotiations, with technical meetings on scope and further implementation mechanisms still ongoing.

## **4. FATCA & CRS**

There was no further public information since September 2016 on FATCA or CRS. Please refer to Issues [12](#) and [10](#) of MAP S.Platis Regulatory Radar for the latest information on FATCA and CRS, respectively.

## **5. Fund Regulation**

### **ESMA recommends priority topics in AIFMD review**

On 18 August 2020, ESMA [wrote](#) to the European Commission highlighting areas to consider during the forthcoming review of the Alternative Investment Fund Managers Directive (AIFMD).

ESMA's letter includes recommendations for changes in 19 areas including harmonising the AIFMD and UCITS regimes; delegation and substance; liquidity management tools; leverage; the AIFMD reporting regime and data use; and the harmonisation of supervision of cross-border entities.

Policy enhancements are proposed in Annex I to the letter and reporting recommendations are made in Annex II. Many of the recommendations made also require consideration of changes to the UCITS legislative framework.

## AIFMD and UCITS - ESMA Q&As

The current Q&A on the application of [AIFMD](#) is dated 4 December 2019 and of [UCITS](#) is dated 4 June 2019.

## 6. Packaged Retail and Insurance-based Investment Products (PRIIPs)

### ESAs notify the European Commission about the outcome of the review of the PRIIPS key information document

On 20 July 2020, the European Supervisory Authorities (ESAs) [informed](#) the European Commission of the outcome of the review conducted by the ESAs of the key information document (KID) for PRIIPs.

This follows the ESAs' consultation paper published on 16 October 2019 on draft regulatory technical standards (RTS) to amend the technical rules on the presentation, content, review and revision of KID.

The ESAs were not able to adopt the draft RTS and so are not in a position to formally submit the draft RTS to the Commission.

### PRIIPs KID – ESAs Q&A

The current European Supervisory Authorities [Q&A](#) on the key information document (KID) requirements for Packaged Retail and Insurance-based Investment Products (PRIIPs) is dated 4 April 2019.

## 7. UK – Developments of Interest to Investment Firms

### UK Financial Conduct Authority – Brexit – Temporary permissions regime (TPR)

The UK left the EU on 31 January 2020 and entered a transition period which is due to operate until 31 December 2020. During the transition period, EU law will continue to apply in the UK and passporting will continue.

The TPR will now take effect at the end of the transition period.

The window for firms and fund managers to notify the FCA that they want to use the TPR is currently closed. Firms and fund managers that have already submitted a notification need take no further action at this stage.

On 20 August 2020, the FCA announced it would re-open the notification window on 30 September 2020. This will allow firms and fund managers that have not yet notified to do so before the end of the transition period. There will also be an opportunity for fund managers to update their previously submitted notifications, if necessary.



## **ESMA tells market participants to continue preparations for the end of the UK transition period**

On 17 July 2020, ESMA issued a statement urging financial market participants to finalise preparations and implement suitable contingency plans in advance of the end of the United Kingdom's (UK) transition period on 31 December 2020. ESMA also confirmed that previously agreed Memoranda of Understandings (MoUs) on cooperation and information exchange concluded with the UK's Financial Conduct Authority (FCA) remain valid and will come into effect at the end of the transition period.

On 1 January 2021, once the UK's transition period ends, financial market participants whose activity might be impacted should have fully implemented their preparatory measures to mitigate any risks stemming from the end of the transition period. All entities should also have provided appropriate information to their clients on any resulting consequences.

On 1 February 2019, ESMA and EU national securities regulators announced the agreement of MoUs with the UK's FCA to cover cooperation and exchange of information in the event the UK left the EU without a withdrawal agreement. At midnight (CET) on 31 January 2020, as the Withdrawal Agreement took effect and the UK entered into a transition period, whereby EU law continues to apply in and to the UK, these MoUs were not required to take effect.

ESMA, EU national securities regulators, and the FCA confirm that these MoUs, agreed in 2019, remain relevant and appropriate to ensure continued good cooperation and exchange of information and will come into effect at the end of the transition period, which is set to expire on 31 December 2020.

## **UK Financial Conduct Authority – Brexit implementation period**

On 31 January 2020 the UK left the European Union (EU) and entered an implementation period, which is due to last until 31 December 2020. Firms and funds will continue to benefit from passporting between the UK and EEA. However, the FCA has cautioned firms not to expect the current passporting arrangements to continue after the transition period ends, to anticipate a range of possible scenarios for the end of the transition period, including that the activities conducted might not be covered by arrangements agreed between the UK and the EU, and to consider what action may be required to be ready for 1 January 2021.

During the implementation period, EU law will continue to apply. Consumer rights and protections derived from EU law will also remain in place.

# **8. EU - Developments of interest to CFDs and Binary Options providers**

## **ESMA continues to monitor CFDs and binary options**

In July 2019, ESMA announced that it would not renew the temporary restrictions on the marketing, distribution or sale of contracts for differences (31 July 2019) and of binary options (1 July 2019) to retail clients in the EU.

However, ESMA will continue to monitor activities in relation to these and other related speculative products to determine whether any other EU-wide measures may be needed.

## ESMA warning to CFD providers

On 12 July 2019, ESMA [published a statement](#) addressed to providers marketing, distributing or selling contracts for differences (CFDs) to retail clients. The statement is in response to various practices and situations observed in the market, which raise concerns of non-compliance with the legal requirements relating to some CFD providers are advertising to retail clients the possibility to become professional client on request and some third-country firms marketing CFDs that do not comply with ESMA's measures to protect retail clients in the European Union and some EU firms engaging in activities that are intended to circumvent product intervention measures, for example, some CFD providers established in the EU are marketing the possibility for retail clients to move their accounts to an intra-group third-country entity. The statement remains in force.

## 9. CySEC Developments

### The EBA and the new prudential framework for Investment Firms

On 16 June 2020, through the issuance of [Circular C389](#), the CySEC informed CIFs about the launch of consultation papers, a public hearing, and data collection exercise by the European Banking Authority (EBA) in regards to the new regulatory [prudential supervision framework](#) (IFR/IFD). The Circular invited CIFs to participate in the process by providing feedback to the Consultation Papers published by the EBA or remotely attend the public hearing for the aforesaid Consultation Papers. In addition, CySEC invited CIFs to voluntarily opt in to the process by providing data to the EBA in relation to the new prudential framework.

### EBA's Call for input on 'de-risking' and its impact on access to financial services

On 18 June 2020, through the issuance of CySEC's [Circular C391](#), the CySEC informed Regulated Entities that the EBA was requesting the input of Regulated Entities in relation to "de-risking", by 11 September 2010. Any comments/responses to this call can be submitted [here](#).

Financial Institutions need to establish and maintain policies and procedures to identify and manage the risks to which they are exposed. Where a financial institution considers that it cannot effectively manage those risks it may decide to restrict access to, or withdraw from providing a particular financial product or service, or servicing a particular customer or category of customers. This is referred to as "de-risking".

The feedback gathered from this call for input will feed into the EBA's next Opinion on the risks of money laundering and terrorist financing affecting the Union's financial sector with the objective of understanding why financial institution choose to de-risk instead of managing the risks associated with certain sectors or customers.

## RBSF – Electronic submission of information for the year 2019

On 23 June 2020, through the issuance of CySEC's [Circular C392](#), the CySEC informed Fund Managers and Self-managed Funds about the issuance of the new version of the [RBSF-MC Version 3](#) (hereinafter, the "Form").

The Form must be successfully submitted electronically via the CySEC's Transaction Reporting System (TRS) by 3:00 pm on 24 July 2020.

## Interest Rate Benchmarks

On 29 June 2020, through the issuance of [Circular C394](#), the CySEC informed Regulated Entities on the latest developments with regards to the London Interbank Offered Rate (LIBOR) which is due to be phased out by the end of 2021.

In light of the above, CySEC expects that Regulated Entities are proactive in relation to this matter and take all necessary steps to remove any dependencies on LIBOR by the end of 2021, where appropriate.

## Management Companies and Self-Managed Funds Quarterly Statistics

On 30 June 2020, through the issuance of [Circular C393](#), the CySEC informed Regulated Entities about the issuance of [QST-MC Version 9](#) (hereinafter, the "Form") which is the latest version of the Quarterly Statistics Form for all Regulated Entities that were authorised or appointed to act as External Managers.

The Form was due for submission via CySEC's Transaction Reporting System (TRS) by 3:00 pm on 31 July 2020.

## CIF Quarterly Statistics

On 30 June 2020, through the issuance of [Circular C395](#), the CySEC informed Cyprus Investment Firms (CIFs) about the issuance of [QST-CIF Version 5](#) (hereinafter, the "Form") which is the latest version of the Quarterly Statistics Form for CIFs.

The Form was due for submission via CySEC's Transaction Reporting System (TRS) by 3:00 pm on 31 July 2020.

## ASP Quarterly Statistics

On 30 June 2020, through the issuance of [Circular C396](#), the CySEC informed Administrative Service Providers (ASPs) about the issuance of [QST-ASP Version 3](#) (hereinafter, the "Form") which is the latest version of the Quarterly Statistics Form for ASPs.

The Form was due for submission via CySEC's Transaction Reporting System (TRS) by 3:00 pm on 31 July 2020.

## Amending Law regarding the provision of investment services, the exercise of investment activities and the operation of regulated markets

On 30 June 2020, the CySEC published on its [website](#) the Amending Law 44(I)/2020 regarding the provision of investment services, the exercise of investment activities and the operation of regulated markets law (only in Greek).

The Amending Law, amends article 50 of Law 87(I)/2017 and adjusts the tick price regime applicable to the Regulated Market of the Republic, allowing the aforesaid Regulated Market to define orders Large in Scale at the midpoint of current buy and sell market prices.

## Recommendation 2020/07 of the ESRB on restriction of distributions during COVID-19

On 7 July 2020, through the issuance of [Circular C397](#), the CySEC informed CIFs that the European Systemic Risk Board (ESRB) issued on 27 May 2020 the [Recommendation 2020/07](#) on restrictions of distributions during the COVID-19 pandemic (hereinafter, the “Recommendation”).

The Recommendation stipulates that at least until 1 January 2021 the relevant authorities request from financial institutions under their supervisory remit (including investment firms) to refrain from undertaking any of the following actions due to the severe economic shock caused by COVID-19:

1. make a dividend distribution or give an irrevocable commitment to make a dividend distribution;
2. buy-back ordinary shares;
3. create an obligation to pay variable remuneration to a material risk taker.

CySEC decided to adopt the above-mentioned recommendations and urges CIFs that have been recognised as Other Systematically Important Institutions (OSIIs) to refrain from any of the above-mentioned actions.

## Thematic Review on the inactivity fees charged by CIFs

On 7 July 2020, through the issuance of [Circular C398](#), the CySEC informed CIFs that it had carried out a review of the circumstances that are taken into account when applying inactivity fees to clients, as well as the ex-ante information disclosed by CIFs (hereinafter, the “Review”) to ensure compliance with the provisions of Articles 25(1), 25(3)(a) and 25(4)(a) of the Investment Services and Activities and Regulates Markets Law of Cyprus.

The Review uncovered several areas of concern that CySEC wishes to highlight to all CIFs. These include areas of concern include:

- Inactivity Fee Circumstances: Several CIFs did not provide adequate information about the circumstances under which a (potential) client’s account is considered inactive/dormant. Moreover, CIFs tied the inactivity fee to number of trades, availability of KYC documents etc.
- Size of Inactivity Fees: Generally, CIFs did not clarify the quantitative and qualitative factors taken into

consideration for calculating the size of the inactivity fee. Furthermore, a small number of CIFs applied excessively high inactivity fees either on a monthly basis or retroactively without providing sound reasoning.

- **Ex-Ante Disclosure of Inactivity Fees:** In the case of several CIFs the information on the circumstances under which a client and/or his trading account shall be considered inactive, as well as the size of the relevant fee, was not easily accessible on their website. Others included conflicting statements and/or did not disclose the amount of the inactivity fee at all. Further, the majority of CIFs failed to disclose to (potential) clients whether or not they would be informed once they were categorised as inactive.

Moreover, CySEC identified some instances of good market practices regarding the inactivity fee which were referenced in the circular.

All CIFs should consider the issues raised in the Circular against their existing policies and arrangements in relation to their application of the inactivity fee as well as to the relevant disclosures made to (potential) clients. If, when reviewing the policies and arrangements in place, CIFs identify any weaknesses, they must take immediate actions to ensure compliance.

## FATF COVID-19-related ML/TF Risks and Policy Responses

On 16 July 2020, through the issuance of CySEC's [Circular C399](#), the CySEC informed Regulated Entities that FATF released a [Paper](#) which identified challenges, good practices and policy responses to new Money Laundering (ML) and Terrorist Financial (TF) threats and vulnerabilities arising from the COVID-19 crisis.

The CySEC expects that Regulated Entities take due account and consult the FATF's Paper when implementing appropriate measures and procedures on a risk-based approach and then implementing customer identification and due diligence procedures.

## European Commission's Communication "Getting Ready for Changes"

On 17 July 2020, the CySEC via an [announcement](#), informed regulated entities and the general public that the European Commission has adopted a number of [Communications](#) entitled "Getting ready for changes" (hereinafter, the "Communications") to help national authorities, businesses and citizens prepare for the inevitable changes that will arise at the end of the transition period provided in the Withdrawal Agreement between the United Kingdom and the European Union.

CySEC urged regulated entities and the general public to keep informed on all the issues in relation to the withdrawal of the UK from the EU and at the end of the transitional period prepare accordingly for the changes that will take place, whatever the conclusion of the negotiations for the future EU relationship with the UK.

## Actions to be taken with regards to CIF Record

On 23 July 2020, through the issuance of CySEC's [Circular C401](#), the CySEC reminded CIFs of the implementation of the CIF Portal ([Circular C211](#)), and informed CIFs on the actions that they should be taking with respect of maintaining up to date and correct data on the CIF portal.

Furthermore, CIFs should submit to CySEC, via email at [supervision@cysec.gov.cy](mailto:supervision@cysec.gov.cy), a letter signed by their Compliance Officer confirming that the data submitted via the CIF Portal is complete, accurate and up to date, no later than 30 September 2020.

## **Public Consultation on Capital Adequacy for Investments Firms Law**

On 30 July CySEC reproduced on its [website](#) a [public consultation paper](#) by the Ministry of Finance of the Republic of Cyprus (issued in Greek only) in relation to:

- The Capital Adequacy Investment Law of 2020.
- The Investment Service and Activities and Regulated Markets Law (Amending Law) of 2020.

The consultation closed on 7 August 2020.

## **Change of deadline regarding the submission of CoREP forms based on audited financial statements**

On 31 July 2020, through the issuance of CySEC's [Circular C402](#), the CySEC informed CIFs that the deadline regarding the submission of the CoREP forms based on the audited financial statements has been extended to 31 August 2020.

## **Public Consultation regarding the discretions provide by Directive (EU) 2019/2162 on the issue of covered bonds and covered bon public supervision**

On 6 of August CySEC reproduced on its [website](#) a [public consultation paper](#) from the Ministry of Finance of the Republic of Cyprus (issued in Greek only) in relation to a bill titled "The issue and Covered Bond Public Supervision Law of 2020".

The consultation closed on 7 August 2020.

## **Public Consultation regarding the discretions provided by Directive (EU) 2019/2034 on the prudential supervision of investment firms**

On 7 of August CySEC reproduced on its [website](#) a [public consultation paper](#) (in Greek only) from the Ministry of Finance of the Republic of Cyprus on the discretions provided by Directive (EU) 2019/2034 on the prudential supervision of investment firms.

The consultation closed on 25 August 2020.



## **Public Consultation regarding the discretions provided by Directive (EU) 2018/849 on the prevention of the use of financial system for the purposes of money laundering and terrorist financing**

On 7 of August 2020 CySEC reproduced on its [website](#) a [public consultation paper](#) (in Greek only) from the Ministry of Finance of the Republic of Cyprus on the discretions provided by Directive (EU) 2018/849 on the prevention of the use of financial system for the purposes of money laundering and terrorist financing.

The consultation closed on 7 September 2020.

## **Announcement regarding the amendment in the authorisation process for Collective Investment Schemes**

On 14 August 2020, the CySEC issued an [announcement](#), following its announcements dated [9 July 2015](#) and [18 November 2016](#), informing all persons who have submitted or are about to submit an application for Collective Investment Schemes, in relation to the amendment of their authorisation process.

The amended procedure shall come into effect from 1 September 2020. Therefore, Collective Investment Schemes which have already been licensed, or will be licensed by 31 August 2020, must comply with the conditions set by the CySEC and submit the data within the deadline to complete the licensing process.

# Acronyms & Definitions used

AIF	Alternative Investment Fund under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
AIFLNPs	Alternative Investment Funds of Limited Number of Persons
AIFMs	Alternative Investment Fund Manager
AMF	Autorite des Marchés Financiers
ASPs	Administrative Service Providers
CBC	Central Bank of Cyprus
CDS	Credit Default Swap
CFD	Contracts for Difference
CIF	Cyprus Investment Firm
Commission	European Commission
CP	Consultation Paper
CySEC	Cyprus Securities and Exchange Commission
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
EBA	European Banking Authority
ESAs	Joint Committee of the European Supervisory Authorities (EBA, ESMA, EIOPA)
ESMA	European Securities and Markets Authority
ETD	Exchange-Traded Derivative
EU	European Union
FCA	UK Financial Conduct Authority
FTT	Financial Transaction Tax
FX	Foreign Exchange
ICF	Investors Compensation Fund
IRS	Interest Rate Swap
ITS	Implementing Technical Standards
LIBOR	London Inter bank Offered Rate
MAD	Directive no.2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse
MAR	Regulation no. 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (compromise reached, number to be assigned)
MiFIR	Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories [EMIR]
MMF	Money Market Fund
NDF	Non-deliverable forwards
Official Journal	The Official Journal of the European Union

OTC	Over-the-Counter
Q&As	Questions and Answers
PRIIPS	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
RTS	Regulatory Technical Standards
SFT	Securities Financing Transaction
TA	Technical Advice
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
UCITS MCs	UCITS Management Companies
UCITS V	Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions

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