



Newsletter – Financial services

Winter 2022-2023

As European financial sanctions against Russia were marked by a ninth set of regulations, the DGCCRF (Ministry of Economy) revealed on 12 January 2023 an investigation evidencing significant shortcomings in the detection by real estate agents of real estate assets that ought to have been frozen: disciplinary proceedings before the National Sanctions Committee are expected to follow quickly against real estate agents for not having taken the proper actions...

In this context, it is worth noting the reversal of the principle of non-public hearings in disciplinary proceedings (ACPR release of 20 October 2022): now, public hearings will become the principle and closed hearings the exception, which may raise questions with regard to the secrecy attached to the fight against money laundering.

In addition to the continuous flow of regulations governing the fight against money laundering, a press release issued by the French banking supervisor (ACPR) on 10 October 2022 points to an increasing level of fraud within the financial sector, which raises questions about the duty of vigilance of payment service providers executing financial flows directed towards unauthorised actors. However, a ruling from the French Supreme Court (Cour de Cassation) apparently intends to clear them.

While the Ministry of Economy noted in January 2023 that 60% of social media influencers targeted by its investigative services did not comply with regulations governing advertising and consumer rights, financial actors should review their marketing methods with such influencers, before the authorities step in with increased regulation.

The winter season has not slowed the infernal pace of regulatory changes in the financial sector.

1. Financial Sanctions against Russia/Belarus

In mid-December 2022, a 9th package of sanctions was introduced to amend the two main EU Regulations dealing with restrictive measures against actions (i) by Russia destabilizing the situation in Ukraine and (ii) undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

This is in addition to the EU embargo on seaborne imports of crude oil from Russia and the global cap on crude oil prices agreed with EU's G7 partners, applicable from 5 December 2022 (our [latest newsletter](#)) and from 5 February 2023 for refined products.

The list of persons and entities subject to sanctions include three new banks (the Russian Regional Development Bank, the Credit Bank of Moscow and the Dalnevostochny Bank) and new export bans, including to new legal entities (bringing the total number of legal entities targeted to over 400).

In order to avoid the risk of sanctioned persons operating from countries with less stringent or enforced criminal rules (there have been press reports of countries lagging behind on asset freezing), an EU Council decision of 28 November 2022 paves the way for the future adoption of a Directive imposing criminalization of violations of financial sanctions rules. It will provide for particularly dissuasive levels of sanctions for those found guilty and will designate the national authorities competent to initiate criminal proceedings to punish offenders. It will be added to another Directive currently under discussion on the confiscation of frozen assets (our [latest newsletter](#)), which is intended to manage some €320 billion of "Russian" funds currently frozen.



2. Fight against money laundering (AML/CFT)

2.1 European developments

As part of the developments related to the 5th AML/CFT Directive, the European Banking Authority issued at the end of November 2022 final guidance on the use of remote onboarding solutions. They set up the steps that reporting institutions in the financial sector must follow when choosing remote customer onboarding tools and what they must do to ensure that chosen tools are adequate and reliable, given their customer due diligence obligations.

The main news in Europe was the ruling the Grand Chamber of the Court of Justice of the EU on 22 November 2022 which ruled to terminate the public availability of registers of beneficial owners initiated under the 5th Directive given the disproportionate deprivation of privacy... A number of countries have already acknowledged such ruling by terminating such access to the general public (France clarified its position on 19 January 2023); however, the ruling also affects reporting institutions, in the absence of appropriate solutions for the identification of their staff, or even persons with a “legitimate interest”, as per the rules in force before the 5th Directive.

In addition, the European Commission proposed on 8 December 2022 new tax transparency rules for all service providers facilitating transactions in crypto-assets for customers residing in the EU (referred to as DAC 8). Such rules complement the recent Regulation on markets in crypto assets (MiCA) and the rules on AML/CFT.

Finally, it can be noted that France has officially applied in December 2022 to host the future European supervisory authority dedicated to AML/FT (AMLA).

2.2 National developments

A Ruling from the French Supreme Court (*Cour de Cassation*) dated 21 September 2022 is worth mentioning insofar as it sets aside the obligation of banks to alert their customers when executing transfers to persons who have been the subject of alerts by supervisory authorities (insofar as they are not authorised). It is argued that a possible failure to comply with the AML/CFT rules¹ cannot be used as a basis for contractual liability claims against banks and that the AML/CFT rules are only intended for market discipline of regulated institutions.

In addition, the French authorities updated on 16 January 2023 their guidelines governing the initiation of the French Deferred Prosecution Agreement (DPA), shortly after the recent DPA concluded with a Swiss bank at the end of October 2022. It provides useful clarifications on the conditions of proof of good faith that allow to initiate talks with the national financial prosecutor’s office; in particular, it is necessary to prove the existence of compliance programs and of effective internal alert and investigation procedures.

On the supervision of brokers (banking and insurance sectors), the ACPR has reiterated the requirement for an AML/CFT questionnaire already requested back in 2020. In the context of partnership agreements with brokers, banks and insurers will be able to usefully verify that their partners have met this requirement, in order to meet their own obligation to monitor outsourced services.

3. Digital identity

A Decree dated 28 November 2022 extends the trial period by 12 months and extends availability of the “Mon FranceConnect” teleservice to 200,000 volunteers (French State storage of data solution). This

¹ Which customers sometimes perceive through sanction decisions pronounced by the ACPR (or even the AMF).



service is intended to provide access to personal data that the administration may have collected and stored on a single interface.

4. Payment services

Pending the recast of the 2nd Payment Services Directive (upcoming PSD3) by mid-2023, A Delegated Regulation published in December 2022 and applicable on 25 July 2023 makes (i) the waiver of strong authentication mandatory for 180 days (instead of 90) in case of access to the payment account via an account information service provider (AISP) and (ii) optional for customers accessing their payment account directly to execute payment transactions to persons who have already been beneficiaries of payment transactions in the previous 90 days. The first change will give a welcome boost to AISP, while the second will reveal to customers their banks' attitude towards softening of client experience.

The publication at the end of October 2022 of a draft European Regulation to boost the deployment of instant payments in euros is worth mentioning. The interest of the initiative lies first of all in the obligation imposed on EU payment service providers (PSPs) already offering traditional single credit transfers in euros to make them available as instant transfer in euros at the same price. More importantly, PSPs will be required to check that the bank account number (IBAN) matches the name of the beneficiary provided by the payer, in order to alert the payer to any errors or fraud before the payment is made. This pan-European system would therefore directly combat the increase in fraudulent transfer orders (FTOs), which we have reported on extensively in our previous [newsletters](#).

Fight against fraud is also dealt with by a report of the joint committee of supervisory authorities (ESMA, EBA, EIOPA), published on 12 January 2023 on good practices for raising awareness among customers of financial institutions on the subjects of cybersecurity, fraud and scams. It is also at the heart of the awaited recast of PSD2, where it is expected that dissuasive sanctions will be introduced for banks that exempt themselves from their obligation to demonstrate their customers' negligence in order to refuse to reimburse them for unauthorised transactions, following the example of the recent French law on the same subject (law of 16 August 2022 – see our [latest newsletter](#)).

A report by the European Banking Authority (EBA) published on 11 January 2023 finally sheds light on the harmonization of the authorisation and supervision processes for PSPs in Europe. It highlights the existence of divergent practices with regard to the assessment of PSP business plans, governance and internal control, but above all it highlights differences in compliance with the “local substance” requirement, i.e. the obligation to conduct part of the business in the Member State of the head office.

5. Insurance

With the order of 22 December 2022, insurance companies will acknowledge the strengthening of pre-contractual information on life insurance contracts, applicable since 1 January 2023. This requirement to provide pre-contractual information was the subject of a decision by the ACPR's Sanctioning Committee on 17 October 2022 against an insurance broker, in which Directors were also sanctioned.

This decision confirms that the issue of pre-contractual information is the main cause of sanctions against insurance brokers, particularly in the context of distance sales (telephone or internet), alongside breaches of the duty to advise (obligation to offer a contract that is consistent with the requirements and needs of the policy-holder).

Finally, it is worth introducing ACPR Recommendation of 14 December 2022 on the promotion of extra-financial characteristics of life insurance contracts, as the Regulator ruled to prioritize their supervision (see the Report of the 2021 Joint ACPR-AMF Unit). This recommendation echoed an AMF position-recommendation updated in early 2022, which aimed at ensuring proportionality between the reality of the inclusion of extra-financial criteria in the management of collective investment schemes and the communication made to investors in this regard. The latter is particularly relevant when the underlying assets of insurance contracts are collective investments schemes.



6. Sustainable finance

After adjusting in November 2022² its guidelines on Sustainable Finance Disclosure Regulation (SFDR) to take account of the application by portfolio management companies of the SFDR Delegated Regulation on 1 January 2023³, the French securities regulator (AMF) confirmed on 9 January 2023 that the fight against greenwashing by financial market players was one of its priorities for action and supervision. In November 2022, the AMF provided its views on the first taxonomy reporting⁴. In the meantime, the accounting reporting framework for companies (listed and/or with more than 250 employees) was completed by the publication on 16 December 2022 of the expected Directive, the Corporate Sustainability Reporting Directive (CSRD). The CSRD replaces the 2014 Directive on non-financial reporting by companies and will be applicable from 1 January 2024. It requires the disclosure in the annual report of (i) information on sustainability, (ii) the impact of companies on sustainability issues and (iii) how these issues affect business developments.

At the same time, a regulatory technical standard (RTS) published on 19 December 2022 adjusted the uniform disclosure formats for credit institutions. The RTS intends that disclosure should cover not only the financial impact of ESG factors on their economic/financial activities (internal or outside-in perspective) but also ESG factors that may be triggered by their own activities, where they affect their stakeholders (external or inside-out perspective).

Finally, the European Commission issued on 30 November 2022 a draft Regulation that constitutes the first EU-wide voluntary framework for reliably certifying “high quality” carbon removals, which will profoundly change the markets for non-binding/voluntary certificates.

7. Investment services and asset management

The PRIIPS Regulation for investment funds, which establishes the regulatory framework for key information documents for packaged retail investment products, came into force on 1 January 2023.

As the market of custodians is tending to become an ever-smaller oligopoly, the AMF seems to allude to an increase in the number of inspections of such custodians (press release of 12 October 2022). This statement may be confirmed a UK asset management company and managers were sanctioned with a €93 million fine pronounced on 30 December 2022 after the AMF’s Sanctioning Committee evidenced failures in the monitoring of liquidity and solvency requirements of the funds under management. The said asset manager had been in the news during the 2020 summer (see several of our previous [newsletters](#)). The monitoring of fund liquidity was also at the heart of another ruling issued on 21 December 2022 from the same Committee against another asset manager.

An amendment to the AMF’s General Regulation published on 20 November 2022 not only aims to introduce new provisions on mechanisms to cap redemptions (known as “gates”) but also to require employee savings funds to inform unit holders of mechanisms to offset or reduce portfolio reorganization costs incurred in connection with subscriptions and redemptions.

8. Other European or national developments impacting financial services

While market rumors suggested that France was supporting a request for specific treatment of the banking sector on the draft European Directive on corporate sustainability due diligence (see a previous

² The AMF justified this adjustment by the desire not to require specific information to be sent to investors on 1 January 2023 for a large proportion of the so-called Article 8 and 9 funds under the SFDR Regulation. The change also aims to specify the extra-financial changes that require specific information to be sent to investors.

³ A corrigendum was published in the Official Journal on 27 December 2022.

⁴ As a reminder, in order to comply with the provisions of the SFDR, financial market participants need to calculate the taxonomy alignment of their financial products and thus need the taxonomy alignment data of firms (so-called “Article 8”). This calculation should also enable them to make taxonomy commitments to their clients, thereby contributing to the sustainability preferences introduced in the MiFID2 and IDD Directives.



[newsletter](#)), the Government deemed it appropriate to deny said rumors (press release of 30 November 2022).

It is also worth noting the publication on 27 December 2022 of the Regulation on the digital operational resilience of the financial sector (known as “DORA”), applicable from 17 January 2025, supplemented by a Directive amending the sectoral texts of the financial sector and another Directive on the resilience of critical entities. This Regulation is to be read in conjunction with the Directive amending the measures to ensure a high common level of cybersecurity in the EU (known as NIS 2). Not specific to the financial sector, the publication of the text on 27 December 2022 means that the implementing measures are expected to enter into force on 18 October 2024.

As part of the implementation of the Basel III agreements (the so-called “CRD VI” rules)⁵, the EU Council proposed in November 2022 to remove the requirement proposed earlier by the Commission that a bank established in a third country (e.g. Switzerland or the UK) wishing to provide banking services in the EU be required (excluding the situation of reverse solicitation) to operate through a branch in the EU.

The European implementing regulations on crowdfunding were released (OJ) early November 2022.

In addition, the Minister of the Economy has noted that the rapid rise in rates has led to usury rates becoming too restrictive and limiting access to credit for certain categories of borrowers. Under French law, usury rates are those exceeding an interest rate of more than one third of the average effective market rate charged during the previous quarter. Given the rapid rise in rates, it was decided to calculate the said usury rate on a monthly basis for the next six months, so as to limit access to credit to these borrowers, without removing the objective of protecting most vulnerable borrowers.

By ruling (*arrêté*) released on 23 November 2022⁶, savings account holders shall be authorised to make transfers from a current account opened in the name of the same holder, regardless of the banking institution with which it is opened. In addition to the fact that the opposite situation is not addressed by the ruling, one can note that transfers between savings accounts remain unauthorized.

⁵ See the text mentioned in our [winter 2021-2022 newsletter](#). At the same time, we can also mention the publication at the end of December 2022 of texts pushing for the harmonization of the authorisation process of the banking sector (CRD V).

⁶ Applicable on 1 July 2023, pursuant to a ruling (*arrêté*) released on 24 December 2022.

