



Newsletter – Financial services

Summer 2023

While the adoption of the European framework for crypto assets (MiCA Regulation) should have paved the way for the development of regulated crypto asset service providers (CASP), the United States recently targeted the largest of them¹, before the French authorities finally got involved, with home visits, revealing at the very least certain shortcomings in anti-money laundering monitoring (AML/CFT).

It was also shortcomings in AML/CFT monitoring that led to the withdrawal of the license of a Lithuanian electronic money institution performing EU cross-border activities. The Lithuanian supervisory authorities were apparently concerned about the reputation of its local dynamic ecosystem of fintechs. The European trend also echoed sanctions recently imposed in Singapore against banks associated with supervisory shortcomings related with a former German fintech (Wirecard).

In addition to the tightening of sanctions against Russia, against entities registered outside the EU involved in circumventing European sanctions, and even against the related non-EU countries themselves, updates impacting the financial sector continues are numerous. This is always from the angle of our usual sections, foremost among which are significant developments in the payment sector.

1. Financial Sanctions against Russia/Belarus

An 11th set of sanctions was adopted and published on 23 June 2023. It added new blacklisted persons, including those outside the circle of Russian individuals and companies². While the European Union refrains from issuing rules with extraterritorial application, the said rules provided that third-country operators may be blacklisted if (i) their main activity consists in circumventing European sanctions³, or (ii) such circumvention can be implied from the very sharp increase in their sales⁴. It even raises the possibility of placing third countries themselves on the list of export bans targeted by sanctions against Russia, if they themselves contribute by their inaction to the circumvention activities of their nationals⁵.

As part of the anti-circumvention measures, the ban on supplying financial instruments to Russian residents has been extended to include instruments denominated in any currency, with different effective dates for the new bans depending on the currencies.

The European Commission's June and July 2023 updates of its frequently asked questions (FAQs) provide enlightening details of very practical situations recently encountered by practitioners.

Lastly, in June and July 2023, the European Council adopted new regulations implementing the EU Regulation concerning restrictive measures against serious human rights violations and abuses, including in connection with the violations and abuses related to the invasion of Ukraine.

¹ The US authorities ruled that the said provider fail to comply with the rules governing the issuance of financial securities.

² This is a first, outside Iran, and includes entities in the United Arab Emirates, Hong Kong and other former USSR countries.

³ The recitals of the texts refer, for example, to deceptive practices by ships transporting Russian crude oil and petroleum products, repeated deactivation of on-board automatic identification systems, and incorporation of blacklisted goods into finished products in third countries.

⁴ Article 3 §1 (h) of Regulation 269/2014 (as amended) and Annex IV of Regulation 833/2014 (as amended).

⁵ Article 12 f of Regulation 833/2014 (as amended).





2. Fight against money laundering (AML/CFT)

2.1 European developments

The Financial Action Task Force (FATF) has just placed new jurisdictions on its grey list (including Cameroon and Vietnam). The addition of Croatia seems like a slap in the face of the EU.

In terms of regulatory developments, the European legislator is moving ahead with the formalization of the new European AML/CFT rules, with the European Parliament adopting the so-called AML package at the end of March 2023, which includes (i) the Single EU Regulation containing provisions on customer due diligence, transparency of beneficial owners, (ii) the 6th Directive containing national provisions on supervision and national TRACFIN as well as access by competent authorities to registers of beneficial owners and assets stored in free zones, and (iii) the Regulation bringing to life the new dedicated European AML/CFT Authority (AMLA).

This adoption was supplemented by the agreement of the Parliament and the Council on 31 May 2023 to amend the Regulation on information accompanying transfers of funds and certain crypto assets (publication pending). For ease of reference, this Regulation applies to transfers of funds (in any currency) sent or received by a payment service provider (or intermediary) established in the EU. It aims to guarantee the financial transparency of crypto asset platforms (travel rule) carried out via service providers whose registered office is in the EU, except where transfers fall within the scope of waivers (under the situations of non-hosted wallets, self-hosted addresses, transactions between private individuals, etc.). This Regulation was streamlined with the simultaneous adoption of the MiCA Regulation on markets in crypto assets (publication pending) which are part of the European parliamentary work on AML/CFT.

A draft Directive to harmonize national frameworks for combating corruption was published in early May 2023. The Directive is expected to impact the French financial sector only marginally, given strong French rules stemming from the Sapin 2 law.

2.2 National developments

In France, institutions under the jurisdiction of the banking and insurance regulator (ACPR, which supervises both banks and insurance companies) will also be able to enhance their AML/CFT risk mapping with the 2nd version of the sector-specific risk analysis for the sector, which translates the [previously mentioned](#) national risk analysis published on 14 February 2023 by the dedicated French board (COLB). Among the expected heightened risks are corruption, environmental crime and the proliferation of weapons of mass destruction. The ACPR also mentioned fast-growing risks, such as the risk of fraud and cybercrime, including in the form of ransomware. A new feature is the introduction of a four-level risk rating scale (instead of three, with the addition of a “very high” level), based on a cross-reference between threats and the robustness of mitigation measures.

In addition, the ACPR issued a declaration of compliance dated 14 June 2023, for the implementation of the European Banking Authority (EBA) guidelines on the use of remote customer onboarding solutions (translated in March 2023), which are to be applied from 2 October 2023. The ACPR’s decision echoes its April 2023 thematic review on automated AML-CFT transaction monitoring systems, which highlights various approaches of financial institutions in France.

Aside the usual disciplinary sanctions that were released, one should pay attention to the 27 September 2023 hearing of the appeal to the French Supreme Court (*Court de Cassation*) by Switzerland’s leading bank against its 2021 conviction and thus far the most serious fine for aggravated money laundering of tax fraud and illegal financial solicitation.



3. Digital identity

Political agreement was reached at the end of June 2023 on the Proposal for a Regulation (EIDAS2) amending EU Regulation n°910/2014 as regards to the establishment of a European framework for a digital identity. For the record, this text is due to facilitate the introduction of a personal digital wallet in the form of a secure mobile application. Acceptance of this wallet will eventually be mandatory for many sectors, including the banking and financial services sector.

4. Payment services

What's most newsworthy about payment services is the Commission's proposal of 28 June 2023 to overhaul the legal framework for payment services/electronic money and their users and providers. First, it merges two historic Directives, one from 2009 on electronic money (EMD2) and the other from 2015 on payment services (PSD2). It then acts by splitting up the legislative vehicles⁶, deciding to enact:

- a (full harmonization) Directive, henceforth to be known as the PSD3, on the authorisation and supervision of payment institutions ("PIs", which now include electronic money institutions); and
- a (directly applicable) Regulation, to be known as the PSR, governing the transparency of conditions and information requirements for payment/electronic money services and the respective rights and obligations of their providers and users.

In addition to the above, there is also a Regulation on a framework for Financial Data Access (FIDA) to bring the legal framework governing payment services in line with the requirements of the GDPR. The most significant developments in the PSD3 are as follows:

- The possibility for PIs to ring-fence their customers' funds in an account opened at a central bank (subject to the latter's discretion), instead of relying solely on banks;
- Clarification of the responsibilities of the supervisory authorities of PIs operating under the freedom of establishment or the freedom to provide services, and greater accessibility of the EBA register to the APIs of banks and other payment service providers, which is essential in the context of the development of open banking;
- The will to compete with traditional ATMs by liberalizing the merchant cashback system;
- Opening up EPs to direct participation in payment infrastructures, by revising the so-called "Finality" Directive (98/26/EC), once again to emancipate them from the banks;
- Simplification of the payment services framework, although the ancillary credit activity does not mean that BNPL (Buy Now Pay Later) can be deployed.

Within the PSR, one can note the following:

- Improvements to the strong authentication system for payment service users, particularly in terms of its suitability for the disabled and for specific categories of customer, essentially the elderly and other people who have "lost touch" with the digital world;
- A legal basis for smooth exchanges between PSPs on fraud situations;
- The extension to all transfers in EU currencies of the IBAN verification service (consistency of the IBAN/beneficiary pairing), which had already been made mandatory for instant transfers under the recent draft Regulation on instant transfers;
- The possible reversal of liability in the event of fraud in payment situations initiated by merchants (Authorised Push Payments) and a possible assumption of responsibility for credit transfer fraud by the beneficiary's payment service provider;
- Extending the ban on surcharging for transactions denominated in currencies other than the euro; and

⁶ Justified by the excessive fragmentation of national implementations; the authorisation and supervision of their service providers is better suited to a Directive, given the national competence of the Member States.

- The obligation for banks to make available to their customers the dashboard enabling them to withdraw access to data from a given open banking provider.

The other news, which is part of the recast of PSD2 since payment service providers will be involved in its distribution and monitoring, is also the adoption of a "single currency package", with a legislative proposal defining the legal framework for the introduction of a possible digital euro⁷ to complement euro notes and coins⁸, and another proposal to ensure that euro cash remains widely accepted as a means of payment and easy to obtain for citizens and businesses throughout the euro zone.

In the shadow of these major changes is the adoption of technical regulations⁹ governing the transmission of information to be notified to the ACPR in the event of problems encountered in the use of dedicated interfaces (APIs) made available by banks to third-party service providers.

Against the backdrop of the application of PSD2 and a wealth of case law, we should also note the publication in mid-May 2023 of 13 important recommendations by the dedicated division of the French Central Bank (OSMP) on processing of refunds for victims of fraud.

Lastly, in July 2023, the ACPR amended its stance on combining regulated/exempt payment instruments or exempt payment instruments, providing details on some of the practicalities.

5. Insurance

In the face of various EU attempts to prohibit the remuneration of life insurance intermediaries through legitimate insurers' kickbacks (cf. debates within EIOPA), France is taking action to maintain the current balance while working to increase transparency so that greater competition can emerge. Despite the recent reforms on this subject, mentioned in our [previous newsletters](#)¹⁰, the ACPR said on 14 June 2023 that it wanted to ensure in the next annual review of unit-linked products that the recent market agreement supported by the professional association *France Assureurs*¹¹ would lead to the gradual elimination of unit-linked products whose cost/performance ratio was too low¹².

In addition, in response to audits revealing a "heterogeneous" application of the European rules on the distribution of insurance products (known as the DDA), the ACPR adopted a recommendation on 17 July 2023, applicable from 1 January 2024, to address expectations regarding the governance of insurance products, remuneration and the prevention and management of conflicts of interest.

Lastly, in addition to [law of 9 March 2023](#), an important Decree outlines the procedures for setting up the French sub-account of the pan-European individual retirement savings products (PEPP).

6. Sustainable finance

At European level, in mid-June 2023 the European Commission completed its taxonomy with new delegated acts on the criteria for economic activities that make a substantial contribution to one or more of the non-climate environmental objectives.

⁷ While electronic money can be stored without limit, the storage capacity of the digital euro will be limited. Like electronic money, the digital euro will not be free, but the levels of charges will be constrained by the European Central Bank.

⁸ This may seem a strange initiative, given that the eventual launch of the digital euro depends on a decision by the European Central Bank. The European Commission is breaking new ground by adopting a theoretical legal framework that may never be put into practice.

⁹ ACPR Instruction of 18 April 2023.

¹⁰ e.g. Order of 24 February 2022, amended by a recent Order of 4 April 2023.

¹¹ In particular, it includes the publication of enhanced market statistics by the industry, which should enable investors to assess the price and performance of their investment relative to competing offers.

¹² Such monitoring is also in line with the expectations of the European insurance regulator (EIOPA) regarding the value for money of life insurance products.



In France, the General Regulation of the AMF was amended in mid-April 2023 (OJ of 7 May) to be more specific on the obligation for investment services providers and asset management companies to issue annual reports as required under Article 29 of the Energy and Climate Change Act.

7. Investment services and asset management

The Financial securities regulator (AMF) adjusted its positions to take account of recent updates to the guidelines issued by the European Securities and Markets Authority (ESMA) on certain aspects of MiFID2, which have now been translated into French, more specifically in connection with (i) remuneration requirements and (ii) suitability requirements. Its positions will come into force on 3 October 2023 for investment services providers, asset management companies and financial advisers (the latter are specifically subject to the guidelines on suitability). In June, the AMF Enforcement Committee took action on the latter issue, concerning two banks belonging to the same group.

Following the legislative authorisation (DDAUE) for the application of European rules on distributed registers (DLT) or blockchain ([previously mentioned](#)), a Decree of 31 May 2023 makes it possible to issue, register, transfer and store financial instruments known as tokenized, i.e. in the form of digital tokens whose rights are attached to a DLT.

8. Other European or national developments impacting financial services

The Regulation on the Digital Operational Resilience of the Financial Sector (known as "DORA" for Digital Operational Resilience Act), applicable early 2025, must be supplemented by regulatory technical standards (RTS), of which the first drafts were unveiled on 19 June 2023.

In France, it is worth noting the publication on 10 June 2023 of the law aimed at regulating commercial influence and combating the abuses of influencers on social networks¹³. In particular, it introduces the need to hold accountable companies (especially financial companies)¹⁴ that may have benefited in the past from the "clumsy" intervention of influencers to the detriment of the credulity of French savers. Above all, it prohibits¹⁵ the promotion by these influencers of some financial products (CFDs, binary options, crypto assets or unregulated digital tokens).

Against the backdrop of difficulties encountered by borrowers in financing their property purchases, a recent decision by the French Financial Stability Board from 29 June 2023 eases the conditions for granting home loans by allowing banks to derogate from the regulatory ceilings¹⁶. This measure is supplemented by the monthly updating of the usury rate, extended for another 6 months via a decree dated 27 June 2023 (applicable until January 2024).

Aside the new requirements on the [already mentioned](#) "three-click" cancellation of insurance contracts, a Decree dated 31 May 2023 makes it mandatory for consumer contracts concluded electronically to be able to terminate the same electronically.

¹³ This practice is already subject to increased controls by the Investigating Committee within the Ministry of Economy, the DGCCRF (see press release of the Ministry of Economy dated 3 May 2023).

¹⁴ By establishing joint liability between the influencer and his commercial partner for damages caused to third parties in the performance of the commercial influence contract between them.

¹⁵ By administrative penalties (which are cumulative but capped at €100,000).

¹⁶ 35% of the borrowers' effort ratio and the maturity of the loan (25 years) up to 20% of the production of new property loans granted each calendar quarter, if a minimum of 70% (instead of 80%) of the maximum flexibility is reserved for buyers of primary residences and a minimum of 30% for first-time buyers.

