



Newsletter – Financial services

Fall-Winter 2023-2024

Adoption of the European framework for crypto assets (MiCA Regulation) should pave the way for the crypto-assets being developed and promoted by regulated platforms. It is however questionable whether the promotion of crypto currencies will be able to recover from repeated scandals, such as the guilty plea, at the end of November 2023, by the head of the most of famous platforms (with unprecedented \$4bn in agreed fines). This news cast a dark cloud over the regulated sector; some are even surprised that the French subsidiary of the guilty platform is still registered in France with the Financial securities regulator.

Europe's payment industry will be paying close attention to the mid-2024 launch of the "Wero" European digital payment wallet (not to be confused with the hypothetical rollout of the digital euro), it should give a boost to instant mobile payments, with a test phase initiated in December 2023.

Having no shortage of regulatory developments over the period; all of our usual themes are touched by the avalanche of regulations, many of which are currently in draft form and should be released as final regulations between now and June, ahead of the 2024 European elections.

Given this avalanche of regulations, one wonders whether the European Commission uses artificial intelligence (AI) to monitor the flow of regulations; a political agreement (revealed on 9 December 2023) between the various members of the European legislator was reached for AI's supervisory framework.

1. Financial Sanctions against Russia

The 12th set of sanctions against Russia adopted and published on 18 December 2023 once again extended the list of sanctioned persons (in consolidated Regulation 269/2014), now beyond the circle of Russian persons (anti-circumvention rules¹).

It also added a new set of restrictive measures (Regulation 833/2014): a way of showing that EU/Russia trade has not come to a complete halt, with some of the measures due to come into force in the 2nd half of 2024. Above all, it closed a number of loopholes that had been identified, including (i) keeping sanctions applicable despite the death of a sanctioned person, (ii) targeting of people benefiting from forms of expropriation or (iii) forcing Member States to trace the ownership of frozen assets.

Finally, a campaign to keep Russian financial assets out of the EU financial sector may ultimately bear results from the scheduled, from 1 May 2024, requirement of quarterly notification of transfers in excess of €1 million outside the EU from any EU entity owned above 40% by Russian capital.

To avoid inextricable situations arising from the sanctions regime (e.g. EU companies controlled by Russians), derogation regimes at the discretion of Member States were also detailed.

More technical regulations were also published in Q4 2023². This unusual focus on a very detailed sanctions regimes should not make the financial sector forget that other States are targeted (not necessarily related to the Russian situation) and also that sanctions also target individuals for their responsibility in human rights abuses (pursuant to EU Regulation 2020/1998).

¹ On 7 September 2023, the European Commission published Guidance to help European operators assess the risks of circumventing sanctions, by providing best practice for assessing trading partners, transactions and goods.

² Concerning gas purchases and related derivatives.





2. Fight against money laundering (AML/CFT)

2.1 European developments

In December 2023, the European Commission removed the Cayman Islands and Jordan from its list of “high-risk third countries”³, after adopting regulatory technical standards⁴ in November 2023 specifying the criterion for the significance of vulnerabilities to be taken into account in risk classification. Member States will have to enter their national vulnerabilities⁵ in a database held in a register by the European Banking Authority (EBA), before the register is taken over by the future European AML/CFT supervisory authority (AMLA).

The EBA published an update in November 2023 of its guidelines for supervisory authorities, applicable from 30 December 2024⁶. These guidelines should not be confused with those issued to financial sector institutions:

- customer due diligence measures and the factors to be taken into account when assessing money laundering and terrorist financing (ML/FT) risk associated with individual business relationships or transactions entered into on an occasional basis, applicable from 3 November 2023⁷;
- policies and controls for the effective management of BC/FT risks when providing access to financial services, also applicable from 3 November 2023; as well as
- measures on the use of remote solutions for entering into business relationships, applicable from 2 October 2023, on which the ACPR and the AMF have recently agreed.

With regard to the European legislative package mentioned in our [latest newsletter](#), a political agreement was reached in mid-December 2023 on the draft Regulation governing the AMLA⁸, before a political agreement was revealed on 18 January 2024⁹ on the other two expected regulations (AML Regulation and 6th Directive); the hope is for a final adoption of these by the European Parliament ahead of June 2024 elections, thus having a complete/comprehensive package in force.

Draft Guidelines on the application of financial transparency of crypto-asset exchange platforms (Travel Rule) to crypto-asset providers was also published on 24 November 2023, to echo the 4th text of the AML legislative package published in June 2023, the Regulation on information accompanying transfers of funds and certain crypto-assets (so-called FTR)¹⁰.

A ruling by the Court of Justice of the EU on 7 September 2023 upheld the withdrawal of an Estonian bank’s authorisation associating prudential and AML/CFT breaches.

³ The consolidated list published on 18 January 2024 covers 25 countries: those with strategic deficiencies in their AML/CFT arrangements that pose a significant threat to the EU’s financial system. The list should not be confused with the EU list of non-cooperative jurisdictions for tax purposes (16 States), for which Member States are expected to apply one of the unfavorable tax measures set out in guidelines set by the European Council.

⁴ RTS awaiting publication in the Official Journal, applicable 21 days after publication.

⁵ See first the sectoral risk analysis of the financial sector, but eventually of all AML-FT reporting entities.

⁶ Concerning the characteristics of a risk-based supervisory approach to AML/CFT and the procedure to be followed during risk-based supervision.

⁷ In mid-January 2024, the EBA extended them to crypto-asset service providers.

⁸ In November 2023, France officially applied to host the future AMLA, before the Member States agreed in December to establish the procedure for designating the chosen headquarters.

⁹ It includes the innovative idea of an enhanced due diligence obligation for business relationships with very wealthy individuals (HNWI), although the threshold for triggering this due diligence obligation remains unknown at this stage. In addition, the European rules in the pipeline aim to cap cash payments at €10,000. Beneficial owners would be defined as shareholders with “25% or more” (instead of “more than 25%”).

¹⁰ This complements the MiCA Regulation on crypto-asset markets (see our [last newsletter](#)).





2.2 National developments

In addition to confirmations by the French supervisory authorities (ACPR and AMF) that they subscribe to the above-mentioned applicable EBA guidelines, a report issued by the French financial intelligence unit (Tracfin) on the state of the threat (of ML/TF) highlighted the growing importance of crypto-assets and the need to take them into account when analyzing the risks to be conducted in the money flows of customers in the financial sector, particularly at the time of fiat currency conversion phases on crypto-assets exchange platforms. Tracfin later stated that in 2023 it had passed the threshold of 180,000 suspicious transaction reports from reporting entities, an increase of more than 5%.

On 15 November 2023, the French Supreme Court (*Cour of Cassation*) upheld the conviction of a major Swiss bank for aggravated tax fraud laundering and illegal financial solicitation, but asked the referring Court of Appeal to reassess the amount of the due penalties and compensation.

In another decision released in September 2023, the same Court held that a competitor's failure to comply with the obligations imposed under the AML-TF confers on the latter an undue competitive advantage, which may constitute an act of unfair competition. At the ACPR's annual conference at the end of November 2023, a member of the ACPR publicly expressed his delight at this decision. Some academics believe that the decision could be a reversal of the *Cour of Cassation's* historical view that a bank's failure to comply with the AML-TF did not constitute a fault that could give rise to civil liability¹¹.

Finally, the Sanctions Committee of ACPR also released a few decisions over the last quarter¹².

3. Digital identity

A political agreement was reached and revealed on 8 November 2023 in connection with the draft Regulation (EiDAS2 - amending R 910/2014) concerning the establishment of a European framework for a digital identity. The European Parliament is likely to formally endorse it at the end of February 2024; it is due to enter into force in 2026.

The text will make it easier for companies in the financial sector to meet their requirements for identifying prospects/customers by authenticating them through the EU's digital identity wallet when they log on to their online services. In addition to securely storing the digital identity, the wallet will enable users to open bank accounts, make payments and store digital documents, such as supporting documents that may have to be produced at the request of institutions subject to the AML/CFT rules.

4. Payment services

While 30 December 2024 is an important date for cryptoasset providers to apply the new European MiCA regime¹³, the draft texts for levels 2 and 3 are no less important and are gradually being made public by the authorities responsible for enacting them¹⁴.

¹¹ As already mentioned in [previous newsletters](#), the decision of 7 September 2023 (Appeal no. 21-21.995) can be compared with that of 21 September 2022 (Appeal no. 21-12.335).

¹² See the decisions rendered on 12 October 2023 against an insurer, on 21 November 2023 against a health insurance company and on 12 December 2023 against one of France's oldest electronic money institutions.

¹³ Pending this Regulation, a decree and an order were published before autumn 2023 to implement the enhanced registration of French providers of digital assets from 1 January 2024, in order to facilitate the transition to the MiCA regime for crypto-assets service providers.

¹⁴ This concerns in particular the continuity plans of these providers or their liquidity stress tests (two draft EBA guidelines dated 8 November 2023), obligations on remuneration policy (draft dated 20 October 2023), the governance of issuers of crypto asset tokens (draft guidelines dated 20 October 2023) or their liquidity (draft RTS dated 8 November 2023) or adjustments to their capital (2 draft RTS dated 8 November 2023) and other level 2 or 3 texts.





Pending finalization of the text of the Instant Payment Regulation, a political agreement was reached on 7 November 2023 and a text reflecting this agreement was made public on 29 November 2023.

As suggested in the Commission's proposal, the financial sector offering the ordinary single credit transfer will be obliged to offer the instant credit transfer functionality at the same price, with a rapid entry into force in the euro zone and a longer one beyond. Payment service providers other than banks will be directly affected, but will benefit from a transitional period. In addition to the feature of instant payment (IP), the other emblematic feature is the obligation to check that the IBAN and the name of the beneficiary match, so as to warn the payer in the event of error or fraud before the transaction is carried out. The European legislator could agree that the technical arrangements should follow the same rules as those envisaged in the recast of PSD2 for ordinary credit transfers (significant unjustified differences had been noted). Uncertainties remain over the draft regulation governing IP, notably because it amends certain provisions of PSD2 that have already been recast...

The implementation of these new rules should benefit the European digital wallet "Wero", due to be launched in mid-2024 and offered by all European payment players. In the long term, IP could be a differentiating factor compared with the competition, even outside the circle of payment players alone (e.g. among insurance companies).

With the Olympic Games looming in Paris over the summer, the French representative bodies of the payment industry (e.g. the *CNMP*) have called at the beginning of December 2023 on players in the French payments market to pay particular attention to the issues of resilience and acceptability of payment methods, shortly after a major British bank suffered the complete unavailability of its services to its British customers on 24 November 2023.

Other technical developments published in October and November 2023 on the new-generation Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET) are also worth noting. In the French payment sector, the postponement of the launch of electronic invoicing project until 2024 saw the publication on 18 January 2024 of the first list of 46 operators applying for the status of partner platform of the French State. By 2026 all French businesses will have to issue invoices via a public portal or via intermediary platforms approved by the French tax authorities.

5. Insurance

The European legislator is preparing to modify the supervisory framework for insurers with the revision of the Solvency 2 Directive and the introduction of rules on the recovery and resolution of insurance companies¹⁵, due to come into force at the beginning of 2026.

On 1 December 2023 the ACPR published notices (with an explanatory cover letter)¹⁶ detailing how the French supervisory authority monitors compliance with the current rules (Solvency 2). In addition

¹⁵ See the political agreement of 14 December 2023, followed by the texts of the final compromise published at the end of January 2024:

- On the Solvency 2 component, the compromise includes in particular (i) the integration of a more proportionate framework of rules according to the size of insurance companies, (ii) greater involvement of the European supervisory authority (EIOPA) in establishing technical standards and other delegated acts, particularly with regard to capital requirements.
- In terms of resolution, the Directive, which is in the process of being definitively adopted, aims to replicate the resolution framework for the banking sector (for which the ACPR stated on 20 October 2023 that it was in compliance with recent EBA guidelines), the requirements for which will again depend on the size of the insurer; it should be noted that for the banking sector, the ACPR published on 16 January 2024 an important summary of the bail-in rules.

¹⁶ They concern (i) the communication of information to the ACPR and information intended for the public (RSR/SFCR), (ii) the methods for calculating prudential ratios, (iii) governance (appointment of executive directors and heads of key functions, governance system, data quality requirements, internal risk and solvency assessment exercise), (iv) the use of an internal model and (v) the internal risk and solvency assessment exercise (ORSA) and the associated report.





to the explanatory and highly educational nature of these notices, it is the summary of EIOPA's guidelines that will be appreciated by compliance and internal audit managers, since the aforementioned European developments herald an increase in the various level of rules¹⁷.

Given the fall in the value of the French listed real estate funds (SCPI) and the impact of this fall on the liquidity of the life insurance market backed by these assets, in mid-January 2024 the ACPR stated that in 2024 it wished to pay particular attention to the risk of policyholders redeeming units of account whose underlying assets are units in real estate funds.

The same Authority has also published the results of its 2023 survey on the outsourcing of critical or important activities to French insurers. The results of this survey should enable the insurance sector to better prepare for the rules on IT resilience (including the DORA Regulation) that will come into force on 17 January 2025. The ACPR also specifically pointed out the weaknesses linked to exposure to various types of cloud services, which often require new risks to be mastered.

Finally, on 7 November 2023, as part of the joint unit with the French securities regulator (AMF), the ACPR published a major summary of interviews with 16 financial institutions or federations (banking and insurance sectors combined) on the cross-cutting matter of the treatment of vulnerable people. This report establishes the importance of (i) appointing a Vulnerability Officer, (ii) carrying out staff training and awareness-raising initiatives, and (iii) taking account of this issue in business strategy and operational processes.

6. Sustainable finance

In the area of sustainable finance, financial institutions will be paying close attention to the publication of a Regulation¹⁸ applicable from 21 December 2024 on EU green bonds (EuGB). The Regulation is as relevant for issuers as it is for investors. The EuGB designation naturally refers to economic activities that are environmentally sustainable and therefore geared towards achieving the environmental objectives set out in the Taxonomy Regulation mentioned several times in [our newsletters](#). On 21 November 2023, the European Commission published two Delegated Regulations on this subject, applicable from 1 January 2024:

- DR 2023/2486 of 27 June 2023 supplementing the Taxonomy Regulation with technical review criteria to determine under which conditions an economic activity can be considered to contribute substantially to the sustainable use and protection of aquatic and marine resources, the transition to a circular economy, pollution prevention and control, or the protection and restoration of biodiversity and ecosystems, and whether that economic activity does not cause significant harm to any of the other environmental objectives; and
- DR 2023/2485 of 27 June 2023 amending RD (EU) 2021/2139 with additional technical review criteria to determine under which conditions certain economic activities can be considered to contribute substantially to climate change mitigation or adaptation and whether these activities do not cause significant harm to any of the other environmental objectives.

On 20 December 2023, the European legislator published a series of three regulations¹⁹ on the establishment and operation of the European Single Access Point (ESAP), which is intended to improve EU-wide public access to financial and non-financial information relating to capital markets, financial services or sustainable finance. By creating a single point of access to this data, it will be

¹⁷ An example of this trend is the Implementing Regulation of 20 November 2023 laying down the technical information to be used to calculate technical provisions and core capital.

¹⁸ Regulation (EU) 2023/2631 of 22 November 2023 on European green bonds and the optional publication of information for bonds marketed as environmentally sustainable bonds and for sustainability-linked bonds.

¹⁹ Two Regulations and a Directive: One Regulation sets up the single European access point, while the other two texts respectively amend other texts relating to the subject of reporting.





easier for investors to consult and compare data, which is expected to help investors in their decision-making process.

In France, the AMF's 2024 action plan states that a standard inspection of a real estate management company resulted in a statement of objections relating to ESG aspects, which is a way of saying that the learning phase for the new rules is over.

In addition, on 12 December 2023, the French Ministry of the Economy published the new (more demanding) guidelines for the "Socially Responsible Investment" label (ISR), which will come into force on 1 March 2024. The eligibility of funds subject to this label will exclude those exploiting coal or non-conventional hydrocarbons, as well as companies launching new projects to explore, exploit or refine hydrocarbons (oil or gas). In addition, the funds must support companies in their transition, aiming to gradually align their ISR portfolios with the Paris Agreement, with targets that are ultimately not very restrictive: only 15% of the portfolio invested in high-impact sectors must have transition plans aligned with this Agreement by 1 January 2026.

7. Investment services and asset management

More than 6 years after the French implementation of the Second Financial Markets Directive (MiFID2), France has amended the French definition of the reception and transmission of orders (RTO) service by Decree. Since 1 September 2023, receiving an order and transmitting it to a third party with a view to carrying out a transaction in a financial instrument has been sufficient to constitute an RTO, whereas since 2017, an RTO was only triggered when the order was transmitted to a French or foreign investment services provider (ISP). The French change is justified by the fact that the ISP status is mandatory for receiving and transmitting an order to an issuer or a promoter of a crowdfunding project (cf. European regulation on crowdfunding financing).

On 7 December 2023, the French securities regulator (the AMF), put its educational credentials on display with a Webinar Workshop for professionals on how to satisfy the suitability requirements for investment advice, with a focus on the need to take account of vulnerable people, including some senior citizens.

At the end of 2023, the AMF, like its counterpart in insurance supervision (the ACPR), published a summary of its inspections of the IT resilience preparedness of five asset management companies, noting (i) potential vulnerabilities of channels for exchanging IT data with other partners and that (ii) automated monitoring of the information system was limited to business hours only. The AMF suggested that it could initiate legal proceedings not on the grounds of a defective cyber system but following the discovery of proven theft/corruption of customer data as a result of a cyber attack.

Like with the ACPR, the AMF released several administrative plea agreements as well as several sanctions by its sanctioning body. A very first sanction was imposed on a professional association (ANACOFI-CIF) for failings relating to the examination of membership applications from financial investment advisers (CIF).

8. Other European or national developments impacting financial services

The most significant banking news is the release on 14 December 2023 of the political agreement to revise the prudential rules for the banking sector²⁰, which is due to come into force on 1 January 2025, despite a final adoption that is due to arise just before the European elections.

²⁰ Amendments to the CRD5 banking package (Directive 2013-36 as amended) and CRR2 (Regulation 2013/575 as amended) to align European rules with the so-called Basel 3 standards; a full list of the amendments made is beyond the scope of this news note, although it should be remembered that the primary objective of the reform is not to significantly increase capital requirements but to limit (i) the variability of capital requirements resulting from internal models and (ii) the gap between internal models and standard approaches. In addition to prudential ratios





The news also include the publication of the recast Directive on consumer credit agreements²¹, which must be implemented by 20 November 2025 and applied from 20 November 2026. The text:

- Aims at limiting situations of implementation creating distortions of competition between lending players in the EU as they resulted in reduced demand for goods and services and inadequate and inconsistent level of consumer protection in the EU;
- Establishes the principle that the practice of “Buy Now, Pay Later” (BNPL) falls within the scope of the rules. By way of exception, BNPL is not subject to the rules if payment without interest or charges must be made in full within 50 days (from delivery of the goods or provision of the service), unless it is offered by major suppliers²². In the latter case, the supplier can still escape the rules if (i) no third party offers or buys credit, (ii) payment is made in full within 14 days and (iii) the purchase price is paid without interest or other charges (other than limited charges payable by the consumer in the event of late payment);
- Applies to loans excluded under the old Directive, including loans of up to €200, loans with high charges in the event of default, rental or leasing contracts with a purchase option, overdraft facilities repayable within one month or loans repayable within three months and for which only negligible charges are required; under such circumstances, Member States will however be able to alleviate the restrictions on advertising, pre-contractual information and contractual information.

In addition, as part of the implementation of Directive 2019/882 of 17 April 2019 on accessibility requirements for products and services referred to in the Law of 9 March 2023 (known as the DADDUE), two orders of 6 September 2023 have strengthened:

- Sanctions for non-compliance with the obligations set out in article 47 of the 2005 Disability Act regarding the accessibility of online public communication services; and
- Accessibility of telephone services, in particular by implementing a universal telephone accessibility solution, which the Ministry indicated in December 2023 had passed important stages in recent months²³.

We note the publication on 17 January 2024 of the final versions of the first four regulatory or implementing technical standards (RTS/ITS) of the DORA Regulation²⁴ mentioned in [our previous newsletters](#). Still on the subject of European cybersecurity regulation, we are still waiting for the European certification scheme for cloud services providers²⁵ currently being drawn up by the EU’s Cybersecurity Agency (ENISA).

This certification issue is important for the financial sector as the NIS 2 Directive on cybersecurity, which comes into force on 15 October 2024, gives EU Member States the option of requiring “essential or significant entities” to use only EUCS-certified cloud services, which would oblige cloud providers to adopt EUCS for their customers subject to these requirements. Some European countries, including France, are supporting a version of the EUCS that includes a requirement for immunity from non-European laws, calling for the “high” level of EUCS certification to be available only

(the calculation methods for which will still be in the news in the 4th quarter of 2023 with delegated regulations), the CRD6/CRR3 package sets out new expectations regarding the satisfaction of ESG criteria.

²¹ Directive 2023/225 of 18 October 2023, which replaces Directive 208/48 and brings the applicable rules of Directive 2022/65 on distance financial services more into line with each other (in the event of conflict, the rules of the new Directive take precedence). Moreover, the latter Directive has just been repealed by a Directive dated 22 November 2023.

²² Other than micro/small/medium-sized enterprises (within the meaning of EC recommendation n°2003/361).

²³ As a reminder, the requirement to provide the universal telephone accessibility solution applies in particular to companies in the financial sector with a turnover of €250M (Decree 2017-875).

²⁴ Regulation on the digital operational resilience of the financial sector (known as the “DORA” for Digital Operational Resilience Act), applicable from early 2025.

²⁵ European Union Cybersecurity Certification Scheme on Cloud Services (EUCS).





to cloud providers located in Europe and not controlled by outside entities, along the lines of the French SecNumCloud 3.2 scheme²⁶.

On 7 December 2023, the French legislature published a fast track law (*ordonnance*)²⁷ implementing Directive 2021/1267 on credit managers and credit purchasers²⁸, which is rather misleadingly named as it only concerns non-performing exposures (“NPLs”). With a few exceptions, NPL managers are supposed to seek by 29 June 2024 a license set out in the French Monetary and Financial Code, under the supervision of the ACPR. Despite some new burdens, such as the management of claims²⁹, the whole system is not likely to significantly modify the way debt collection contracts are drafted.

On 17 October 2023, the European Commission proposed an overhaul of the framework for Alternative Dispute Resolution, including a revision of the historic Directive, a repeal of the European Regulation on Online Dispute Resolution and a Recommendation, which is already applicable.

Against the backdrop of the difficulties already mentioned in our [previous newsletters](#) concerning borrowers financing their property acquisition projects, a new decision by the French Financial Stability Board on 4 December 2023 once again relaxed the conditions for granting mortgage loans with technical adjustment measures.

²⁶ The adoption of the ENISA scheme depends in particular on the revision of Regulation 2019/881 of 17 April 2019 on cybersecurity certification, which is sometimes referred to as the amending Regulation on "managed security services" (to refer to network security services that have been outsourced to a service provider). The revised draft Regulation has been in trialogue since the end of November 2023.

²⁷ Of 6 December 2023, supplemented by a Decree of 20 December 2023.

²⁸ This Directive is supplemented by directly applicable Level 2 texts, including an Implementing Regulation dated 26 September 2023 (2023/2083).

²⁹ The EBA published draft guidelines on 9 November 2023.

