



Newsletter – Financial services

Summer 2024

In mid-July 2024, a flaw in a software update (CrowdStrike) designed to block security vulnerabilities triggered a “blue screen” and prevented millions of computers from rebooting. The chaos caused by this mishap illustrates what the financial sector needs to anticipate/prevent as part of the requirements of the so-called “DORA” rules (governing the digital resilience of the financial sector). Their implementing measures have yet to be timely published, notwithstanding of the expected early 2025 application.

In the criminal sphere for the fight against money laundering, the acquittal of the defendants associated with the “Panama Papers” at the beginning of the summer 2024 confirmed that the whole case was an “international hoax” set up to damage the Panamanian financial system, according to the Panamanian President. In view of the multiple money laundering criminal actions lead across the globe subsequently to the revelation of the affair in 2016, the statement stands out and could inspire the European Commission to keep the country on its list of high-risk territories (since 2020), even though the country has been removed from the FATF’s grey list in October 2023.

Generally speaking, the recent renewal of the European Parliament – followed by that of the French Parliament – is likely to mark a pause in the adoption of new regulations impacting the financial sector; A few implementing regulations of those already adopted are likely to be released during the last quarter.

1. Financial Sanctions against Russia

On 24 June 2024, the EU legislator adopted a 14th sanctions package¹ introducing a sector-specific legal basis to prevent any transactions with third-country financial institutions involved in circumvention schemes associated with sensitive goods. In addition, EU entities are in principle barred from connecting to the Russian equivalent of SWIFT (the SPFS financial messaging system) or participating in transactions with specifically listed entities.

Generally speaking, the amending regulation aims to limit circumvention of the sanctions, notably by making it mandatory to contractually prohibit the re-export of certain goods to Russia, and to monitor compliance with this prohibition². The revised regulation clarified that intentional circumvention is characterized not only when a person knowingly and deliberately participates in an activity the object or effect of which is to circumvent restrictive measures, but also when he or she is aware that such participation may have this object or effect, and accepts this possibility.

This sanctions package was closely followed by a Regulation against Belarus³, inspired by the restrictions in the Regulation against Russia. In particular, it imposed (i) new bans on certain exports as well as imports enabling this country to diversify its sources of revenue (e.g. diamonds), (ii) the obligation for operators to introduce non-re-export clauses to this country for certain goods in contracts concluded after 1 July 2024, and (iii) a ban on the supply of financial, legal, consulting and marketing services and software to the Belarussian state.

¹ Composed of adjustments to the two historic Regulations with 116 new freezing measures for the Assets Freeze Regulation, which provides for some exemptions.

² The French customs authorities have also reported on an operation against a customs clearance professional prosecuted for hundreds of fraudulent exports. The ECB is also putting pressure on banks to withdraw completely from the Russian market; a demand contested by a systemic bank of Italian origin, against a backdrop where the amending Regulation comes precisely to support companies in their disengagement from Russia and even adopts measures associated with Russian counter-sanctions.

³ Dated 29 June 2024 and amending the historic Regulation n°765/2006, with progressive entries into force, in particular applicable from 2 August 2024 and 2 January 2025.





2. Fight against money laundering (AML/CFT)

2.1 European developments

The publication of the AML/CFT package on 19 June 2024, is attracting a great deal of attention⁴. Even if the underlying texts will not be applicable before 10 July 2027, their direct applicability in the near future calls on the financial sector to converge national practices and internal procedures with European rules. However, these rules will have to be specified by numerous technical regulatory standards that the new European authority (AMLA) will have to propose⁵. Here are a few notable examples:

- In the private banking sector, the substantial regulations resulting from this reform (AMLR) create a new obligation by inviting the institutions concerned to exercise greater vigilance when they have to process transactions for very wealthy customers (HNWI)⁶ with assets of at least €5 million. As the AMLA is expected to specify how to determine whether a customer holds such assets, it is to be hoped that open finance could play a role in this determination⁷.
- For the financial sector, interaction with new reporting entities (e.g. traders in high-value goods⁸) should be important, with new provisions on outsourcing likely to develop shared KYC and even the sharing of suspicions. Naturally, the AMLR intends to combat the anonymisation of crypto-assets⁹, while referring to special regimes (e.g. self-hosted wallets/privacy corners) whose risk mitigation measures involve technical outsourcing to crypto-asset service providers (PSCA or CASP).
- Lastly, the AMLR mentions the situation of virtual IBANs (vIBANs), for which payment service providers (PSPs) were recently asked by the European Banking Authority (EBA) to take certain steps to better combat the risk of money laundering¹⁰. The EBA even called for 'clarification' of the very recent Instant Transfer Regulation on the service for verifying the beneficiary of a transfer in the context of vIBANs, even though some of its provisions are applicable from 9 January 2025.

The subject of identifying the beneficiaries/payers of fund transfers (sometimes referred to as the Travel Rule) is also in the news, with the publication in July 2024 of EBA guidance on the expectations of financial service providers in incorporating the new rule arising from the 2023 Amending Regulation¹¹, particularly in the context of transfers involving crypto assets.

Finally, it is interesting to point to a European Central Bank's decision at the beginning of August to withdraw the authorisation of a Luxembourg institution for AML-CFT breaches.

2.2 National developments

Previously, we pointed out that although the transparency of beneficial owners was essential for the European legislator, open data access to registers had been abolished, at the request of the Court of Justice of the EU. On the pretext of this development, France has ended open data access to the French

⁴ Adopted on 31 May this year, it comprises two Directives (on the mechanisms to be put in place by Member States and on centralized registers of bank accounts) and two Regulations (including the AMLA Regulation).

⁵ An industry meeting organized by the ACPR on this subject was held on 4 July 2024. This meeting was followed by a publication in July 2024 on the subject of politically exposed persons in the context of the difficulty of understanding this concept for international customers.

⁶ Individuals with assets of at least €50m (excluding private residences).

⁷ See [our discussion](#) at the Club Banque [round table on 4 April](#).

⁸ With a definition that is much more precise and extensive than the historical definition, including dealers in the top-of-the-range automobile sector and in yachts and aircraft.

⁹ The MiCA Regulation will ensure its development, with its implementing texts (adopted in mid-June 2024), in line with the application of the Travel Rule resulting from the recent overhaul of the Regulation on fund transfers.

¹⁰ A report published in May 2024 incidentally shows that while vIBANs can be used to combat fraud, they can also be used by money launderers. Care should be taken with consumers, who can sue the PSP in the country designated by the vIBAN.

¹¹ (Regulation 2023/1113 amended Regulation 2015/847): the guidelines apply from 30 December 2024, although they are still awaiting publication in the Official Journal.



register on 31 July 2024. Institutions subject to AML/CFT and persons with a legitimate interest must now identify themselves in order to access the French register, complicating the associated practical organisation for above institutions, particularly those in the non-financial sector, especially those with a very international clientele (e.g. antique dealers). This development marks a step backwards in terms of financial transparency and increases the regulatory burden, without any compensation from the State¹².

The publication at the end of July 2024 by the French financial intelligence unit (Tracfin) of its 2023 annual report reveals an increased level of objections by Tracfin to the execution of certain suspicious financial transactions. The report also sheds some particularly useful light on new types of cases, particularly in connection with the development of crypto assets¹³.

In the most recent case law, a ruling by the French Supreme Court (*cour de cassation*)¹⁴ seems to legitimise the criminal conviction of a taxable person for aggravated money laundering in the event of a disciplinary breach. This decision should be seen in the light of another ruling delivered back in September 2023, which held that an AML/CFT breach constituted an undue competitive advantage to the detriment of competitors.

Lastly, the publication in July 2024 of joint sectoral implementing principles relating to transactions in precious metals provides a common perspective for regulators from a variety of backgrounds (financial institutions, numismatists, art dealers), without being very convincing of the ability of some of these institutions to understand expectations which are often poorly tailored to some of these institutions¹⁵.

3. Payment services

While the public offering of stablecoins¹⁶ and/or the admission of crypto asset tokens to trading on a platform have require since 30 June 2024 to comply with the licensing rules of the so-called “MiCA” Regulation on crypto assets, fully decentralised finance (DeFi) players are free to issue their utility tokens without such licensing.

Although the European legislator has yet to finally adopt the European payment package (PSR and PSD3), an assessment of the provisions suggests that a significant development concerns the obligation of the major online platforms covered by the DSA Regulation (the Big Techs) to cooperate with payment service providers when the latter point out to the former that these platforms are being used to commit identity theft¹⁷.

In France, the anti-scam measures introduced by the SREN Act¹⁸ are likely to benefit the banking sector by making it easier to claim gross negligence on the part of customers who have fallen victims to fraudulent websites.

¹² The same applies to a decree of 26 June 2024 on the technical conditions for reporting discrepancies between knowledge of a trust and the data contained in the French register.

¹³ The subject of crypto assets was also included in the *Autorité des marchés financiers'* update of its sectoral analysis of BC/FT risks at the beginning of the summer.

¹⁴ Published on the same day as the European AML-CFT package.

¹⁵ On the other hand, it is gratifying that in a sanction decision handed down on 27 June 2024, the ACPR's Enforcement Committee was able to consider that it was not required to implement an automated filtering tool for negative public information likely to affect the risk profile of customers.

¹⁶ Which include electronic money tokens (EMT) and tokens referring to one or more assets (ART).

¹⁷ This perception is essentially reflected in certain recent British debates, even if the subject of fraud by impersonation is still recently referred to in a joint EBA/ECB report of 1 August, in addition to an EBA opinion of 29 April 2024. The criminal pressure brought to bear on the head of the famous Russian-based messaging platform is no stranger to this idea either.

¹⁸ The law to secure/regulate the digital space (cf. 'DSA' and 'DMA' rules): every Internet browser will have to warn Internet users if they are heading for a malicious site (e.g. blacklists targeted by the AMF/ACPR).



4. Insurance

In France, the ACPR published a recommendation on 28 June 2024 on the implementation of European rules on insurance distribution (IDD), which follows on from the inspections undertaken since 2018 and replaces a recommendation adopted last summer on the same subject.

The ACPR recommendation of 2 July 2024 on handling complaints¹⁹, which replaces a recommendation of 9 May 2022, follows the same trend: in particular, it sheds new light on the concept of ‘complaint’, which calls for a regulatory response from financial institutions.

At the beginning of July 2024, as part of the implementation of French legislation on pension savings plans (*PERs*), the government amended the rules governing the investment universe of *PERs*, as well as those on risk diversification and dispersion²⁰, by means of Decrees and Orders (*Arrêtés*).

As part of the Green Industry Act, the frequency with which insurance distributors must check the suitability of the allocation profile in the context of the arbitration mandate for life insurance policies has been set at 4 years²¹, with effect from 24 October 2024. The rules of conduct associated with the distributor's duty to provide advice are also specified in another Order (*arrêté*), to determine the intrinsic changes that justify the distributor ensuring that the contract remains appropriate or, as the case may be, adequate to the requirements and needs expressed. Another Decree adopted in mid-June specified the conditions for using estimated values for life insurance policies when their underlying assets are illiquid assets.

A Decree of 12 June 2024 also adopted in application of the same Green Industry Act specified the conditions for calculating and publishing the estimated value of insurance policies invested in assets that are not listed. It also provides for the possibility of reducing the redeeming value of an insurance policy whose underlying asset is illiquid. Finally, it specifies that the reduction value (known as a “reduction indemnity”) may be applied in exceptional or non-exceptional circumstances, which is a way of passing on to the policyholder the lack of liquidity of the underlying unlisted securities.

5. Investment services and asset management

In the investment services and asset management sector, the ACPR adopted a very important position on 28 June 2024 on capital advice, which should be seen in the context of a long-standing position of the AMF on the same subject.

At the beginning of July 2024, as part of the implementation of the European Long-Term Investment Fund (ELTIF2) regime, the French Government worked to make the French framework more attractive, in particular by creating a new corporate form of unincorporated specialised professional fund (SPF).

Lastly, an AMF report published at the end of June 2024 on the conditions for delegating financial management could foreshadow the emergence of upcoming disciplinary inspections on French management companies; the AMF having identified the following poor practices in this area:

- the absence of documentary evidence that controls have been carried out on the services provided by the service provider;
- an assessment of the quality of the service limited solely to an examination of the performance of the delegated portfolios;

¹⁹ In addition to the insurance sector, it also applies to providers of banking and investment services.

²⁰ At the end of June 2024, as part of the Green Industry Act, it adopted a host of regulations (decrees and orders) on (i) the financial transparency of charges applied to life insurance policies and (ii) the content of the arbitration mandate agreement.

²¹ Order published on 16 June 2024. A shorter period of 2 years applies if the subscription is part of a personalized recommendation.



- the failure to include in the risk mapping the various operational risks associated with the delegation of financial management.

6. Sustainable finance

Sustainable finance is not only contained in the rules governing taxonomy or financial transparency contained in the SFDR Regulation²². It is also impacted by the aforementioned Directive of 13 June 2024 on companies' duty of care with regard to sustainability (known as "CS3D")²³. The companies concerned by the historic French regulations governing the same will feel the legal risk of such a regulation, with the publication on 18 June 2024 of 3 rulings rendered by the Paris Court of Appeal.

In France, a Decree published at the end of May 2024 overhauled the reference framework and control plan for the French 'Socially Responsible Investment' label.

7. Other European or national developments impacting financial services

The publication in the Official Journal on 12 July 2024 of the European Regulation on Artificial Intelligence (the AI Act) is attracting a great deal of attention. While its application has been deferred until 2 August 2026, its general provisions and prohibited practices²⁴ are applicable from 2 February 2025. It is on these practices that the supervisory authorities could inspect in the coming months to raise awareness in the financial sector, in addition to the subject of the impact of AI on internal governance and risk management rules²⁵. Prior to this, the European Commission is expected to publish an assessment²⁶ of the main trends and issues relating to the use of AI applications in the financial sector, which could serve as a basis for future "SPOT" checks in France by both regulators.

In anticipation of the entry into force on 17 January 2025 of the rules on IT resilience in the financial sector (DORA), the European Authorities (EBA, EIOPA, ESMA) undertook over the summer an workshop to prepare technically the financial sector with the obligation to set up a register of 'ICT' service providers²⁷. Such register must be made available to the competent supervisory authority, in accordance with technical procedures specified by implementing texts that have not yet been fully published²⁸.

In France, the last law adopted before the elections²⁹ established the principle that confiscation becomes a compulsory additional penalty, which could ease the burden on the financial sector that is still involved. In particular, the French State agency (AGRASC) will be able to sell property seized before judgment if the cost of preserving it is too high in relation to its economic value, including the cost of co-ownership or maintenance charges. Lastly, the confiscation of a property is tantamount to eviction of the convicted person or persons in his or her circle.

²² The EU's Joint Committee of Financial Authorities published an assessment of the latter regulation in an opinion dated 18 June 2024, shortly after a similar exercise by the AMF on its mystery visits.

²³ Not to be confused with the Corporate Sustainability Reporting Directive (CSRD) mentioned in our [previous newsletter](#). Since it was published in the Official Journal on 5 July 2024, the precise timetable has now been set for its transposition and entry into force for the large companies concerned.

²⁴ Articles 1 to 4 and Article 5 respectively.

²⁵ In France, this is precisely what the ACPR announced in a press release published at the beginning of July 2024. Anecdotally, the ACPR also announced the imminent arrival of the new portal for exchanges with supervised institutions, indicating that it would be called Mercure.

²⁶ The expected report will be based on a position taken by ESMA on 30 May 2024 on consumer investment services and on a public consultation open until 13 September 2024.

²⁷ For the record, ICT services consist wholly or mainly of transmitting, storing, retrieving or processing information by means of networks and information systems.

²⁸ Finalized versions of 6 expected texts were adopted in mid-July, pending their publication in the Official Journal. They were supplemented at the end of July by the very important draft technical regulatory standards on subcontracting for critical or important functions.

²⁹ The 'Warsmann' Act of 24 June 2024 improving the effectiveness of measures for the seizure and confiscation of criminal assets): it helps to ensure that offenders are effectively deprived of the fruits of the offence committed.