



# Newsletter – Financial services

## Fall 2024

*The news in October 2024 that the personal data of millions of customers of a major telephone operator had been hacked has raised fears of possible fraud on direct debits based on the hacked IBAN numbers. As the ACPR pointed out in recent conferences addressing the rules governing digital resilience for the financial sector (DORA), cyber security is becoming more critical than prudential rules.*

*The news in September 2024 that a major clothing retailer was the subject of a criminal investigation by the Chinese authorities following the retailer's decision to stop sourcing from companies in the region of Xinjiang (because of fears that these suppliers might be associated with the persecution of minorities) raises questions in the context of European Union (EU) rules governing corporate sustainability due diligence<sup>1</sup> and the consequences triggered by the EU law on international financial flows.*

*While the Hungarian Presidency of the Council of the EU seems to prevent the adoption of new sanctions against Russia, Russia is likely to be soon added to the EU's list of high-risk third countries, but not to the FATF's blacklist (Ukraine had requested such latter listing).*

*A decision rendered by the French Supreme Court (Cour de Cassation) on 18 September 2024 regarding litigation brought by a French depositor against a Lebanese bank provides an enriched interpretation of the criteria that may potentially lead to more foreign banks to be litigated in France.*

### 1. **Financial Sanctions against Russia**

While the last set of sanctions adopted at the end of June was essentially aimed at preventing attempts to circumvent European sanctions<sup>2</sup>, including those concerning the Russian energy sector, the 15th set of sanctions envisaged is unlikely to see the light of day under the Hungarian Presidency of the Council of the EU<sup>3</sup>, even though on 8 October 2024 the Council adopted a new framework of sanctions aimed at individuals associated with hybrid threats carried out by Russia abroad<sup>4</sup>.

Beyond this, the sanctions are also topical at court level with (i) the rejection in October 2024 by the EU Court in Luxembourg of appeals against the ban on providing legal advisory services to the Russian government and Russian entities, (ii) the affirmation in September 2024 by the Court of Justice of the EU that the sanctions apply even outside European transit of the goods affected by the sanctions and (iii) the opening in October 2024 in London of the trial of insurers who refused to honour the insurance cover for the owners of aircraft stranded in Russia after the invasion of Ukraine.

### 2. **Fight against money laundering (AML/CFT)**

In France, a bill passed by the Senate on 9 October 2024 intends to require banks to give reasons for any termination of a contractual relationship "except where such reasons contravene the objectives of national security or the maintenance of public order". If such a development were to be confirmed, it would seriously undermine the confidentiality expected of AML/CFT.

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<sup>1</sup> In particular, the European 'CS3D' rules [previously mentioned](#).

<sup>2</sup> This issue also features in the positions adopted by the Authorities at the end of September 2024 (European Commission and customs authorities, as part of the decisions taken at G7 level).

<sup>3</sup> Hungary also opposed the adoption of the Regulation of 24 October 2024 establishing the European Cooperation Mechanism providing macro-financial assistance to Ukraine. The financing will be reimbursed from a financial contribution due to the EU by central securities depositories holding reserves and assets of the Central Bank of Russia in excess of €1 million.

<sup>4</sup> An adoption without publication of a list of those responsible for destabilising actions.





In addition, the Order of 15 October 2024 adapts the French regulatory framework to the EU Regulation on information accompanying transfers of funds and certain crypto-assets<sup>5</sup>.

At recent industry meetings organized by the ACPR<sup>6</sup>, the French watchdog for AML/CFT controls in the banking and insurance sectors discussed its expectations regarding control points specific to banking activities (BaaS activity, virtual IBANs, receipt or issue of transfers likely to be perceived as fraudulent) and presented its control methodology using artificial intelligence<sup>7</sup>.

French case law revealed the conclusion of a public interest judicial agreement (CJIP) for a famous Danish bank, followed by a river disciplinary sanction against a property manager (notably on AML/CFT). A criminal trial was then held in September 2024 involving two alleged fraudulent schemes amid a multitude of fictitious companies scattered between France, Europe and China. In October 2024, the public prosecutor's office reported on a significant seizure of real estate assets acquired through opaque financial arrangements involving tax havens<sup>8</sup>.

### **3. Payment services**

#### **3.1 European developments**

The European Commission's very long July 2024 Q&A in relation to the March 2024 Instant Payment Regulation raises fears that two of its flagship measures will be difficult to achieve<sup>9</sup>. On the IBAN Check service, partnerships in Europe seem to be emerging to ensure that the service can operate in time<sup>10</sup>.

While the Council of the EU is slow to take a position on the reform of the European framework for payment services (PSD3), the European courts continue to rule on the current framework (PSD2)<sup>11</sup>.

With respect to crypto assets services (MiCA)<sup>12</sup>, the European Commission and ESMA recently exchanged views on the changes requested to ESMA's drafts of some of the draft regulatory technical standards (RTS). Five RTS were finally adopted on 31 October<sup>13</sup>, ahead of imminent publication in the EU Official Journal for application on 30 December 2024<sup>14</sup>.

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<sup>5</sup> Applicable from 30 December 2024, the text extends the identification of beneficiaries/payers of fund transfers (the *Travel Rule*) to situations involving crypto-assets. Foreign crypto asset providers operating in France must appoint a permanent representative, alike the rule applicable under PSD2 rules.

In a communication at the end of September 2024 on the development of crypto assets, the French Financial Intelligence Unit (Tracfin) expressed concern with the emergence of crypto havens with the development of crypto assets with enhanced anonymity (such as Monero) or mixing protocols - aimed at preventing the public authorities from tracking the money.

<sup>6</sup> In addition to a meeting on 4 July, there will be the ACPR-AMF Fintech Forum on 14 October 2024.

<sup>7</sup> It was able to provide information on its software for the AML/CFT supervision of financial institutions through Artificial Intelligence.

<sup>8</sup> The rise of the presumption of money laundering, which celebrated its 10<sup>th</sup> anniversary this year, reverses the burden of proof, requiring defendants to prove the source of funds.

<sup>9</sup> By 9 January 2025 for real-time verification of whether the customer is on sanctions/asset freeze lists ("at least once per calendar day") and from 9 October 2025 for the Confirmation of Payee service (aka IBAN Check).

<sup>10</sup> For example, the partnership between SEPAmal and its Italian counterpart (press release dated 9 October 2024).

<sup>11</sup> Two rulings handed down by the ECJ in 2024 on respectively (i) the difference between electronic money and payment services and (ii) the meaning of a power of attorney with regard to the concept of a payment instrument.

<sup>12</sup> The European framework concerns both issuers of crypto-assets (including *stablecoins*, in the form of EMT electronic money tokens or referring to one or more ART assets) and crypto-asset service providers (CASPs).

<sup>13</sup> On the authorisation process for crypto asset service providers (CASPs), issuers of regulated tokens (ART or EMT), and the continuity and regularity standards for CASP services.

<sup>14</sup> It is also by this date that the European Commission is due to deliver its report on the assessment of the development of decentralised finance. ESMA stresses that the major supervisory challenge is to address the execution of transactions by major global crypto platforms outside the scope of MiCA.





### 3.2 National developments

In France, as part of the implementation of the MiCA Regulation, an Fast track law (*ordonnance*) adopted on 15 October 2024 made adjustments to the current regime for virtual asset providers (VASPs), introduced by the 2019 PACTE Act, which will be phased out at the end of the transitional period for VASPs that are already authorised<sup>15</sup>. In addition, two court decisions handed down on 12 and 18 September 2024 have clarified the scope of the obligations of VASPs in terms of (i) information and vigilance on clients as well as (ii) customer warnings.

As part of the fight against fraud, the report by the French Institute for the monitoring of means of payment (OSMP) released on 10 September 2024<sup>16</sup> has revealed that since October 2024, fraudsters are no longer able to usurp the business telephone numbers of financial institutions<sup>17</sup>. That should reduce attempts of corporate fraud. Incidentally, it points out that while data sharing between payment operators can be an effective leverage for the fight against fraud<sup>18</sup>, French banking secrecy rules bar such data sharing.

A ruling by the French Supreme Court on 2 October 2024<sup>19</sup> challenges the idea that it is up to each company/bank user to put in place its own verification protocols to ensure the identity of the beneficiaries of transfers. In this case, the highest court ruled that a bank is required, on receipt of transfer orders with apparent anomalies, to verify their regularity with the legal representative, where the unusual circumstances of such bank orders suggested a possible fraud. This case demonstrates that financial institutions are inclined to use the AML/CFT processes for the benefit of the fight against fraud.

Finally, it is worth noting the *b.connect* French interbank initiative, which reuses the multi factor authentication methods that online shoppers have adopted with the PSD2 to pay online, without having to identify themselves further to merchant sites. All that remains to be done is to convince the latter, which use customer identification as a loyalty-building tool.

## 4. Insurance

In Luxembourg, the temporary suspension of redemptions of funds associated with the bankruptcy of the Luxembourg insurer FWU was finally lifted in September 2024.

In France, on 9 September 2024, the insurance sector finally drew the consequences of an ACPR recommendation of 2023 on the remuneration practices of intermediaries in insurance transactions by issuing recommendations on remuneration practices<sup>20</sup>. In addition, following an extensive review of the exclusion clauses used by many insurance companies in their contracts with consumers, the ACPR called in September 2024 on insurers to review all their contracts to bring them into line with the recommendation of the Insurance Ombudsman and case law of the French Supreme Court.

The life insurance arbitration mandate regime referred to [in previous newsletters](#) came into force on 24 October 2024. Since that date, a management mandate from a policyholder resident in France can only be given to a duly licensed insurance intermediary (registered with ORIAS).

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<sup>15</sup> That is to say, on 1 July 2026.

<sup>16</sup> Shortly followed by the CNMP's 2025-2030 national means of payment strategy on 11 October 2024.

<sup>17</sup> In application of the *Naegelen* law of 2020 aimed at securing displayed caller numbers. This is great news for bank given a decision rendered by the *Cour de Cassation* on 23 October 2024 dismissing that a client victim of a *spoofing* was liable for gross negligence; therefore, the bank had to be.

<sup>18</sup> It mentioned the MISP (*Malware Intelligence Sharing Platform*).

<sup>19</sup> Commercial, Financial and Economic Chamber of the *Cour de Cassation* (#23-13.282).

<sup>20</sup> Pre-discounting is the payment of a higher commission when a policy is taken out than in subsequent years, in order to remunerate prospecting work, whereas discounting consists of paying a commission to an insurance intermediary when a policy is taken out.





## 5. Digital identity

As mentioned in our introductory remarks, the launch in France of an interbank initiative (*b.connect*) serves as a form of French-style digital identity. It combats e-commerce fraud and aims to put an end to unnecessary passwords and reduces the number of shopping basket abandonments.

## 6. Investment services and asset management

In France, the AMF Ombudsman pointed out in September 2024<sup>21</sup> that financial institutions are absolutely entitled to close divest securities and close the attached securities account if a customer ignores the financial institution's request to update or complete KYC documentation.

## 7. Sustainable finance

While compliance with sustainable finance was recently illustrated in a deferred prosecution agreement (*accord de composition administrative*) concluded with a property management company, the biggest current trend relates to the application of the Corporate Sustainability Reporting Directive to companies listed on a regulated market and the largest companies active on the European market<sup>22</sup>, which involves the application of European sustainability reporting standards<sup>23</sup>.

On 7 August 2024, the European Commission released a set of frequently asked questions (FAQs) clarifying the interpretation of certain provisions on sustainability *reporting* introduced by the CRSD, with the aim of facilitating their implementation by companies. The FAQs also clarify certain points of the European regulation on the reporting required under the so-called 'SFDR' Regulation<sup>24</sup>.

## 8. Other European or national developments impacting financial services

Cyber resilience is naturally the topic that is the most concerning for financial services players. It is worth noting that the European Central Bank recently released a guide to outsourcing cloud services to ICT service providers (the largest of which are due to be designated as critical service providers by the European Commission in the near future).

The Cyber resilience issue is also included in the implementing regulations for the DORA Regulation adopted in the end of October. It was revealed mid-October that the Commission had modified the draft regulatory technical standards (RTS) that were originally suggested by the European Supervisory Authorities. One of the points of contention concerns the addition by the Commission of an additional identifier to identify ICT service providers, namely the EUID, in addition to the Legal Entity Identifier (LEI). As the European Supervisory Authorities have pointed out, the Commission's addition is likely to make the implementation of DORA more difficult, especially given that the official versions of the RTS have yet to be released through official publication.

Finally, a French bill to implement the NIS2 Directive was finally released in mid-October 2024.

As indicated in our introductory remarks, an important ruling by the French Supreme Court in September 2024 opens the door to more French litigation against foreign banks. This is due to the broad interpretation of a condition for their admissibility, namely that the bank must "directs its activities" to France.

The French banking and insurance sector will be affected by the introduction of the ACPR e-portal at the end of 2024, which aims to centralise email exchanges within a single e-application.

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<sup>21</sup> Following a position already expressed by the same ombudsman on 4 December 2023.

<sup>22</sup> *Corporate Sustainability Reporting Directive* or CSRD.

<sup>23</sup> *European Sustainability Reporting Standards* or ESRS norms.

<sup>24</sup> On sustainability in the financial services sector, already mentioned in our [previous newsletters](#).

