

# MIZUHO

The Mizuho logo consists of the word "MIZUHO" in a bold, white, sans-serif font. Below the text is a red, curved swoosh that starts under the 'M' and ends under the 'O', tapering at both ends.

## Regulatory News Q4 2023

Japan Fund Management (Luxembourg) S.A.

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## AML/CFT

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**12-Dec-23:** The European Commission removed the Cayman Islands and Jordan from its list of high-risk third countries with strategic AML/CFT deficiencies.

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**27-Nov-23:** The EU Council formally adopted the final proposal of the EU Parliament for a new regulation on harmonised rules on fair access to and use of data (the 'Data Act').

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# Ukraine Crisis

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**19-Dec-23: The CSSF updated its webpage compiling all the relevant information for the financial sector in relation to the Ukraine crisis.**

<https://www.cssf.lu/en/ukraine-crisis/>

The CSSF maintains a webpage compiling all the relevant information for the financial sector in relation to the Ukraine crisis. The webpage relates to the CSSF's effort to draw attention of the professionals of the financial sector subject to its supervision to the restrictive measures decided by the EU in response to the current situation in Ukraine. The webpage is regularly updated as the situation continues to evolve. It currently comprises the following sections:

- **Laws, regulations and directives**, which includes EU regulations binding in their entirety and directly applicable in national law, such as:
  - Council Implementing Regulation (EU) 2023/2875 of 18 December 2023 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine: [http://data.europa.eu/eli/reg\\_impl/2023/2875/oj](http://data.europa.eu/eli/reg_impl/2023/2875/oj)
- **Other reference texts**, which includes among others:
  - Guidance for EU operators: implementing enhanced due diligence to shield against Russia sanctions circumvention: [https://finance.ec.europa.eu/system/files/2023-09/230905-guidance-eu-operators-russia-sanctions-circumvention\\_en.pdf](https://finance.ec.europa.eu/system/files/2023-09/230905-guidance-eu-operators-russia-sanctions-circumvention_en.pdf)
  - EU Best Practices for the effective implementation of restrictive measures: <https://data.consilium.europa.eu/doc/document/ST-10572-2022-INIT/en/pdf>
- **Publications**, which includes among others:
  - Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the EU: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D2332>
- **Useful links**, which currently provides direct access to:
  - EU sanctions adopted following Russia's military aggression against Ukraine (incl. FAQ): [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine_en)
  - EU Sanctions Whistleblower Tool: <https://eusanctions.integrityline.com>
  - EU Sanctions Map of the European Commission in order to keep abreast of the sanctions regime into force: <https://sanctionsmap.eu/#/main>

# Sustainable Finance (1 of 5)

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**21-Nov-23: The EU Taxonomy Environmental Delegated Act and the Amending EU Taxonomy Climate Delegated Act were published in the EU Official Journal.**

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202302486](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302486) ; [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202302485](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202302485)

The Amending EU Taxonomy Climate Delegated Act added Technical Screening Criteria (TSC) for additional activities. In particular:

**Climate change mitigation:** TSC for some manufacturing activities for components for low-carbon transport and electrical equipment and some transitional activities in waterborne transport and aviation where zero-carbon solutions are not yet sufficiently advanced.

**Climate change adaptation:** TSC for activities enabling adaptation to the unavoidable effects of climate change (e.g. desalination and services for preventing and responding to climate-related emergencies).

The new EU Taxonomy Environmental Delegated Act added TSC for the four remaining environmental objectives under the EU Taxonomy Regulation. In particular:

**Sustainable use and protection of water and marine resources:** TSC focusing on addressing the adverse impact of urban and industrial waste-water discharges; protecting human health from water contamination; improving water management; improving water use efficiency; sustainable use of marine ecosystem services; contributing to the good environmental status of marine waters; flood and drought prevention; and enhancing natural water retention, biodiversity and water quality.

**Transition to a circular economy:** TSC focusing on ensuring that product operators take the long-term value retention and waste reduction of a product over its lifecycle into account; requirements for the design for products' longevity, reparability and reuse; requirements on the use of materials, substances and processes that allow for quality recycling; minimising use of hazardous substances; promoting use of recycled materials in product manufacturing; reducing waste generation; construction, renovation and demolition of buildings and other structures; maintenance of roads and motorways; use of concrete in civil engineering; etc.

**Pollution prevention and control:** TSC focusing on promoting production and use of ingredients that are naturally occurring substances or are classified as readily biodegradable in pharmaceutical manufacturing; the collection, transport and treatment of hazardous waste; and remediation of non-conforming landfills and abandoned or illegal waste dumps and of contaminated sites and areas.

**Protection and restoration of biodiversity and ecosystems:** TSC focusing on the need to protect, conserve or restore biodiversity to achieve the good condition of ecosystems or to protect ecosystems that are already in good condition.

The new Delegated Act also sets out criteria for determining whether these economic activities cause significant harm to any of the other environmental objectives, and amends the Taxonomy Disclosures Delegated Act to ensure consistency of disclosure requirements.

# Sustainable Finance (2 of 5)

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**22-Nov-23: ESMA published three explanatory notes covering key aspects of the EU sustainable finance framework.**

<https://www.esma.europa.eu/document/concepts-sustainable-investments-and-environmentally-sustainable-activities-eu-sustainable>

ESMA published three explanatory notes covering in particular:

- a) The **definition of sustainable investments** in the Sustainable Finance Disclosure Regulation (SFDR) and the definition of environmentally sustainable economic activities in the Taxonomy Regulation (TR).

[https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2279\\_Note\\_Sustainable\\_investments\\_SFDR.pdf](https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2279_Note_Sustainable_investments_SFDR.pdf)

- b) The **'Do No Significant Harm' principle** embedded in the SFDR, the TR and the Benchmark Regulation (BMR).

[https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2281\\_Note\\_DNSH\\_definitions\\_and\\_criteria\\_across\\_the\\_EU\\_Sustainable\\_Finance\\_framework.pdf](https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2281_Note_DNSH_definitions_and_criteria_across_the_EU_Sustainable_Finance_framework.pdf)

- c) The **use of estimates** and equivalent information under the SFDR, the TR and the BMR.

[https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-1668416927-2548\\_Note\\_Use\\_of\\_estimates\\_and\\_equivalent\\_information.pdf](https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-1668416927-2548_Note_Use_of_estimates_and_equivalent_information.pdf)

# Sustainable Finance (3 of 5)

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**30-Nov-23: The European Green Bonds Regulation has been published in the EU Official Journal.**

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202302631](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302631)

72 Articles and 3 templates Annexes are shaping the regulation, laying down specificities for each of the below mentioned objectives.

## **Objectives**

- Establishing a system for the registration and supervision of entities acting as external reviewers for European green bond and to regulate the supervision of issuers of European green bond, bonds marketed as environmentally sustainable and sustainability-linked bonds.
- Issuers that wish to use the designation 'European Green Bond' or 'EuGB' should follow a uniform set of specific requirements, the same rules across the Union in order to increase market efficiency by reducing discrepancies and thereby also reducing the costs for investors of assessing such bonds.
- To provide for optional pre-issuance and post-issuance disclosure templates for bonds marketed as environmentally sustainable and for sustainability-linked bonds to improve transparency and facilitate the comparability of those bonds, facilitating capital raising for projects that pursue environmentally sustainable objectives.

## **Key requirements**

- Bond-related requirements for the use of the designation EuGB: the proceeds of European Green Bonds should be used to finance economic activities that have a lasting positive impact on the environment. Meeting the relevant technical screening criteria of the Taxonomy Regulation and meet the 'Do No Significant Harm'.
- EuGB disclosures templates requires the completion of the European Green Bond factsheet and pre-issuance review by an external reviewer, allocation reports and post-issuance review, European Green Bond impact report, designation of the bond in its prospectus, publication on the issuer's website of those documents and notification to ESMA and competent authorities.
- External Reviewers for EuGB: registration process to ESMA subject to approval, upcoming regulatory technical standards to assess adequacy for Dec 2025.
- Supervision by competent authorities and ESMA: power to disclose templates, suspend an offer or admission to trading, publicly disclose failure to comply and carry out on-site inspections and to impose penalties and fines ranging from EUR 20'000 to 2'000'000.
- Optional disclosures templates for environmentally sustainable and sustainability-linked bonds: upcoming guidelines for Dec 2024 to comply with requirements.

## **Background**

- Jul 2021: the European Commission presented its proposal for a regulation establishing European green bonds, in order to regulate the use of "European Green Bond" or "EuGB" for bonds that pursue environmentally sustainable objectives.
- Jul 2022: trilogue negotiations started and ended with the provisional agreement reached on Feb 2023.
- Oct 2023: the European Parliament adopted the contents of the agreement and the Council adopted the regulation. It entered into force on 20 Dec 2023.

# Sustainable Finance (4 of 5)

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**4-Dec-23: The ESAs published their joint final report on draft RTS on the review of PAI and financial product disclosures in the SFDR Delegated Regulation, proposing amendments to the SFDR RTS.**

[https://www.esma.europa.eu/sites/default/files/2023-12/JC\\_2023\\_55\\_-\\_Final\\_Report\\_SFDR\\_Delegated\\_Regulation\\_amending\\_RTS.pdf](https://www.esma.europa.eu/sites/default/files/2023-12/JC_2023_55_-_Final_Report_SFDR_Delegated_Regulation_amending_RTS.pdf)

On 4 December 2023, the ESAs published their joint final report on draft RTS on the review of PAI and financial product disclosures in the SFDR Delegated Regulation, proposing amendments to the SFDR RTS. Some of the key proposed changes are summarized below:

- **PAI indicators.** New mandatory and opt-in social indicators; modification of existing social and environmental indicators.
- **PAI framework.** Disclosure of the share of PAI that is estimated (or reasonably assumed) to become mandatory; derivatives to be converted to their underlying economic exposure; companies' value chains to be included in the PAI calculations only where the investee company reports on that value chain.
- **GHG emissions reduction targets.** New disclosures to apply to products having GHG emissions reduction as their investment objective under Art. 9 SFDR; simplified disclosures still apply to products passively tracking EU Climate Transition or Paris-Aligned Benchmarks.
- **Pre-contractual and periodic disclosures.** Simplified disclosure templates designed to be delivered electronically, including a summary dashboard as the first page, and refocused on their four essential elements: Sustainable investments; Taxonomy-aligned investments; PAI; and GHG emissions reduction targets.
- **Website disclosures.** New website disclosures including the summary dashboard, the thresholds and criteria for the PAI indicators in the context of the DNSH test, and additional information regarding the GHG emissions reduction targets.

The EC will review the ESAs' final report and decide whether to endorse the draft RTS within three months. These draft RTS will then be applied independently of the EC targeted consultation on the implementation of the SFDR and before any changes resulting from that assessment are introduced.

Any amendments to the SFDR Delegated Regulation that would be adopted by the EC following this ESAs' final report would still have to be published in the EU Official Journal after being subject to a scrutiny period by the EU Parliament and the EU Council. The revised SFDR RTS will probably enter into force in Q2 2024.



# Sustainable Finance (5 of 5)

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**14-Dec-23: The European Parliament and the Council reached a political agreement on the proposed Corporate Sustainability Due Diligence Directive (CSDDD).**

<https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/>

<https://www.europarl.europa.eu/news/en/press-room/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>

The European Parliament and the Council reached a political agreement on the proposed CSDDD, which aims to enhance the protection of the environment and human rights in the EU and globally. The agreed draft law requires formal approval by the Legal Affairs Committee and the European Parliament as a whole, as well as by the Council before it can enter into force.

**Scope.** The CSDDD will apply to EU companies and parent companies over 500 employees and a worldwide turnover higher than EUR 150 million. The obligations will also apply to companies with over 250 employees and with a turnover of more than EUR 40 million if at least 20 million are generated in one of the following sectors: manufacture and wholesale trade of textiles, clothing and footwear, agriculture including forestry and fisheries, manufacture of food and trade of raw agricultural materials, extraction and wholesale trade of mineral resources or manufacture of related products and construction. It will also apply to non-EU companies and parent companies with equivalent turnover in the EU.

**Requirements.** Companies will have to identify, assess, prevent, mitigate, bring to an end to and remedy their negative impact and that of their upstream and downstream partners, including production, supply, transport and storage, design and distribution on people and the planet. To do so, they will be required to make investments, seek contractual assurances from the partners, improve their business plan or provide support to their partners from small and medium-sized enterprises. They will have to integrate so called “due diligence” into their policies and risk-management systems, including descriptions of their approach, processes and code of conduct. They will also have to adopt a plan ensuring their business model complies with limiting global warming to 1.5°C. They will also have to meaningfully engage with those affected by their actions, introduce a complaints mechanism, communicate on their due diligence policies and regularly monitor its effectiveness.

**Supervision.** Each EU country will designate a supervisory authority to monitor whether firms are complying with these obligations. These bodies will exchange best practices and cooperate at EU level within the European Network of Supervisory Authorities established by the Commission. They will be able to launch inspections and investigations and impose penalties on non-compliant companies, including “naming and shaming” and fines of up to 5% of their net worldwide turnover.

# AIFs and UCITS (1 of 3)

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**6-Nov-23: The EU Council published the text of the political agreement reached with the EU Parliament in July 2023, which focuses on amendments to the AIFMD but includes as well amendments to the UCITSD for harmonising the requirements between the two frameworks. (see next slide)**

<https://data.consilium.europa.eu/doc/document/ST-14932-2023-INIT/en/pdf>

The final text will have to be adopted by the EU Parliament and the EU Council, probably during Q1 2024. The directive will then be published in the EU Official Journal and will enter into force on the 20<sup>th</sup> day following its publication. Member States will have 24 months to transpose the adopted amendments into national law following their entry into force. Some of the key amendments proposed are summarized below:

**Substance requirements.** Stricter rules shall apply to the persons who effectively conduct the business of AIFMs, requiring that these are natural persons domiciled in the EU and either full-time employees or executive members of the governing body with a full-time commitment to conducting that business.

**Ancillary (non-core) services.** AIFMs shall be allowed to provide (i) administration of benchmarks according to Regulation (EU) 2016/1011, except where these are used in the AIFs that they manage, and (ii) credit servicing according to Directive (EU) 2021/2167. Other non-core services, such as investment advice, may also be provided in the absence of discretionary portfolio management activities by the AIFM, as long as any potential conflict of interest created by the provision of such services is appropriately managed.

**Delegation/sub-delegation arrangements.** AIFMs shall provide more detailed information on delegation/sub-delegation arrangements to their national competent authority, both at the time they apply for authorisation and in their periodic regulatory reporting. Such information shall include, among others: amount and percentage of fund's assets subject to delegation arrangements concerning the portfolio management function; number of full-time equivalent human resources employed to monitor delegation arrangements.

**Supervisory reporting.** An AIFM shall regularly report to the competent authorities of its home Member State on all markets and instruments (no longer only on the principal ones) in which it trades on behalf of the AIFs it manages. ESMA shall develop draft RTS specifying the details of the information to be reported, the appropriate level of standardisation of the information to be reported, and the reporting frequency and timing. ESMA shall also develop draft ITS specifying among others: the format and data standards for the reports; the legal identifiers that are necessary to connect the data in those reports on assets, AIFs and AIFMs to other supervisory or publicly available data sources; methods and arrangements for submitting the reports.

# AIFs and UCITS (2 of 3)

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**6-Nov-23: The EU Council published the text of the political agreement reached with the EU Parliament in July 2023, which focuses on amendments to the AIFMD but includes as well amendments to the UCITSD for harmonising the requirements between the two frameworks. (continued)**

**Loan origination.** ‘Loan origination’ shall be defined as the granting of a loan directly by an AIF as the original lender or indirectly through a third party or Special Purpose Vehicle (SPV), which originates a loan for or on behalf of the AIF, or for or on behalf of AIFM in respect of the AIF, where the AIFM or AIF is involved in structuring the loan, or defining or pre-agreeing its characteristics, prior to gaining exposure to the loan. A ‘loan-originating AIF’ shall be defined as any AIF (i) whose investment strategy is mainly to originate loans, or (ii) where the notional value of the AIF's originated loans represents at least 50% of its net asset value.

Loan-originating AIFs shall:

- be closed-ended, except where the AIFM can demonstrate that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy. ESMA shall develop draft RTS to determine the requirements to comply with in order to maintain an open-ended structure;
- have a leverage limit, calculated by using the commitment method, of 300% for closed-ended AIFs and 175% for open-ended AIFs;
- limit loan concentration to any single borrower to 20% of the AIF's capital (i.e. aggregate capital contributions and uncalled capital committed to the AIF) where the borrower is a financial undertaking, an AIF or a UCITS.

AIFMs shall:

- be prohibited from managing AIFs whose investment strategy is to originate loans with the sole purpose of transferring those loans to third parties;
- ensure that the managed AIF retains 5% of the loans originated and subsequently transferred to third parties (i) until maturity, for originated loans with a maturity of up to eight years, or for loans granted to consumers regardless of their maturity, and (ii) for at least eight years for other loans;
- implement effective policies, procedures and processes for the granting of credit, as well as for assessing the credit risk and for administering and monitoring their credit portfolio. Such policies, procedures and processes shall be kept up to date and effective, and shall be reviewed regularly and at least once a year.

Transitional rules shall apply to existing AIFs originating loans (exemption for 5 years after the date of entry into force of the amending Directive, with the possibility to opt-in) as well as to existing loans (exemption of loans originated before the date of entry into force of the amending Directive).

**Additional functions.** ‘Originating loans on behalf of an AIF’ and ‘Servicing securitisation SPVs’ are added to the list of additional functions an AIFM may perform. However, an AIFM cannot be authorised to provide only additional functions.

# AIFs and UCITS (3 of 3)

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**6-Nov-23: The EU Council published the text of the political agreement reached with the EU Parliament in July 2023, which focuses on amendments to the AIFMD but includes as well amendments to the UCITSD for harmonising the requirements between the two frameworks. (continued)**

**Liquidity Management Tools (LMTs).** AIFMs managing open-ended AIFs may resort, in exceptional cases and in the interest of AIF investors, to a temporary suspension of redemptions (full restriction) or the activation of side pockets (segregated accounts holding illiquid assets). They shall also select at least two additional LMTs from the list below (in case of open-ended AIFs authorised as Money Market Funds, at least one additional LMT):

- Redemption gating (partial restriction, generally on a pro-rata basis);
- Extension of redemption's notice period;
- Swing pricing (pre-determined NAV adjustment to pass on transaction costs) or dual pricing (pre-determined differentiation of subscription and redemption prices);
- Redemption fee (fee compensating for the cost of liquidity);
- Anti-dilution levy (fee compensating for the costs of buying/selling the underlying assets as a result of large inflows/outflows);
- Redemption in kind (distribution of the underlying assets), subject to certain conditions.

AIFMs shall implement detailed policies and procedures for the activation and deactivation of any selected LMT and the operational and administrative arrangements for the use of such LMT. Despite the primary responsibility for liquidity risk management shall remain with the AIFM, competent authorities may require the AIFM to activate or deactivate the suspension of redemptions in exceptional circumstances, where there are investor protection or financial stability risks. ESMA shall develop draft RTS specifying the characteristics of the LMTs.

**Depository services.** The home Member State of an EU AIF may entitle its competent authorities to allow credit institutions established in another Member State to be appointed as a depository under specific conditions (i.e. lack of adequate depository services in the home Member State, and aggregate amount of assets safekept in the national depository market of the home Member State up to EUR 50 billion). If a third country where a depository is established is identified as a high-risk third country, or added to the EU list of non-cooperative jurisdiction for tax purposes, a new depository shall be appointed within an appropriate period of time.

**Disclosure to investors.** Additional information shall be disclosed to investors, such as: (i) the composition of the originated loan portfolio; (ii) on an annual basis, all fees, charges and expenses that were directly or indirectly borne by investors; (iii) on an annual basis, any parent company, subsidiary or SPV utilised in relation to the AIF's investments by or on behalf of the AIFM.

# AML/CFT (1 of 3)

**27-Oct-23: The FATF plenary meeting added Bulgaria and removed Albania, the Cayman Islands, Jordan and Panama from its grey list.**

<https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>

High-risk jurisdictions subject to a FATF call for action to:

- i. apply countermeasures: **Democratic People's Republic of Korea** (unchanged); **Iran** (unchanged).
- ii. apply enhanced due diligence measures: **Myanmar** (unchanged).

Jurisdictions under increased monitoring by FATF (added jurisdiction: **blue**; removed jurisdiction: ~~strikethrough~~):

Albania	Cayman Islands	Jamaica	Panama	Syria	Vietnam
Barbados	Croatia	Jordan	Philippines	Tanzania	Yemen
<b>Bulgaria</b>	Democratic Republic of Congo	Mali	Senegal	Türkiye	
Burkina Faso	Gibraltar	Mozambique	South Africa	Uganda	
Cameroon	Haiti	Nigeria	South Sudan	United Arab Emirates	

## Background

High-risk jurisdictions have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence and, in the most serious cases, countries are called upon to apply countermeasures to protect the international financial system. This list is often externally referred to as the “FATF black list”.

Jurisdictions under increased monitoring are actively working with the FATF to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. This list is often externally referred to as the “FATF grey list”.

# AML/CFT (2 of 3)

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**12-Dec-23: The European Commission removed the Cayman Islands and Jordan from its list of high-risk third countries with strategic AML/CFT deficiencies.**

[http://data.europa.eu/eli/reg\\_del/2024/163/oj](http://data.europa.eu/eli/reg_del/2024/163/oj)

On 12 December 2023, the European Commission adopted a new Delegated Regulation in relation to third countries which have strategic deficiencies in their AML/CTF regimes. The Delegated Regulation amends Delegated Regulation (EU) 2016/1675.

Jurisdictions identified by the Commission as having strategic deficiencies in their AML/CFT regimes (added jurisdiction: **blue**; removed jurisdiction: ~~strikethrough~~):

Afghanistan	Democratic Republic of Congo	Mali	Philippines	Tanzania	Vietnam
Barbados	Gibraltar	Mozambique	Senegal	Trinidad and Tobago	Yemen
Burkina Faso	Haiti	Myanmar	South Africa	Uganda	
Cameroon	Jamaica	Nigeria	South Sudan	United Arab Emirates	
<del>Cayman Islands</del>	<del>Jordan</del>	Panama	Syria	Vanuatu	

# AML/CFT (3 of 3)

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**13-Dec-23: The European Parliament and the Council reached a provisional agreement on the proposed Regulation (AMLA Regulation) establishing the European Anti-Money Laundering Authority (AMLA).**

<https://www.consilium.europa.eu/en/press/press-releases/2023/12/13/anti-money-laundering-council-and-parliament-agree-to-create-new-authority/pdf>  
[https://www.europarl.europa.eu/pdfs/news/expert/2023/12/press\\_release/20231207IPR15734/20231207IPR15734\\_en.pdf](https://www.europarl.europa.eu/pdfs/news/expert/2023/12/press_release/20231207IPR15734/20231207IPR15734_en.pdf)

The European Parliament and the Council reached a provisional agreement on the proposed Regulation (AMLA Regulation) establishing the European Anti-Money Laundering Authority (AMLA). AMLA will have direct and indirect supervisory powers over high-risk obliged entities in the financial sector. This agreement leaves out a decision on the location of the agency's seat, a matter that continues to be discussed on a separate track. Given the cross-border nature of financial crime, the new authority will boost the efficiency of the anti-money laundering and countering the financing of terrorism (AML/CFT) framework, by creating an integrated mechanism with national supervisors to ensure obliged entities comply with AML/CFT-related obligations in the financial sector. AMLA will also have a supporting role with respect to non-financial sectors, and coordinate financial intelligence units in member states. In addition to supervisory powers and in order to ensure compliance, in cases of serious, systematic or repeated breaches of directly applicable requirements, the Authority will impose pecuniary sanctions on the selected obliged entities.

The provisional agreement adds powers to AMLA to directly supervise certain types of credit and financial institutions, including crypto asset service providers, if they are considered high-risk or operate across borders. AMLA will carry out a selection of credit and financial institutions that represent a high risk in several member states. The selected obliged entities will be supervised by joint supervisory teams led by AMLA that will among other things carry out assessments and inspections. The agreement entrusts the authority to supervise up to 40 groups and entities in the first selection process. For non-selected obliged entities, AML/CFT supervision would remain primarily at national level. For the non-financial sector, AMLA will have a supporting role, carrying out reviews and investigating possible breaches in the application of the AML/CFT framework. AMLA will have the power to issue non-binding recommendations. National supervisors will be able to voluntarily set up a college for a non-financial entity operating across borders if deemed needed. The provisional agreement expands the scope and content of AMLA's supervisory database by asking the Authority to establish and keep up-to-date a central database of information relevant for the AML/CFT supervisory system.

The text of the provisional agreement will now be finalised and presented to member states' representatives and the European Parliament for approval. If approved, the Council and the Parliament will have to formally adopt the texts. Negotiations between the Council and Parliament on the regulation on anti-money-laundering requirements for the private sector and the directive on anti-money laundering mechanisms are still ongoing.



# Miscellaneous (1 of 4)

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**27-Nov-23: The EU Council formally adopted the final proposal of the EU Parliament for a new regulation on harmonised rules on fair access to and use of data (the 'Data Act').**

<https://data.consilium.europa.eu/doc/document/PE-49-2023-INIT/en/pdf>

On 27 June 2023, the EU Council and the EU Parliament reached a provisional agreement for a new regulation on harmonised rules on fair access to and use of data (the 'Data Act'). On 9 November 2023, the EU Parliament formally adopted the final version of the proposal. On 27 November 2023, the EU Council formally adopted the new regulation proposed. Some of the key elements of the Data Act are summarized below:

- **Fair data sharing contracts.** The Data Act contains measures to prevent abuse of contractual imbalances in data sharing contracts due to unfair contractual terms imposed by a party with a significantly stronger bargaining position. These measures will protect EU companies from unfair agreements and give SMEs more room for manoeuvre.
- **Government access to data.** The Data Act provides the means for public sector bodies to access and use privately held data in exceptional circumstances, particularly in case of public emergencies, subject to specific conditions.
- **Trade secrets protection.** The Data Act ensures an adequate level of protection of trade secrets and intellectual property rights, accompanied by relevant safeguards against possible abusive behaviour. While fostering the sharing of data, the Data Act aims at supporting the EU industry while providing safeguards for exceptional circumstances and dispute settlement mechanisms.
- **Data markets.** The Data Act introduces the principle that both the owners of connected devices and product manufacturers can monetise the generated data by sharing, selling or licensing this generated data to other companies, such as start-ups or researchers. Data holders are entitled to receive non-discriminatory and reasonable compensation that might include a profit.
- **Cloud markets.** The Data Act provides for data and cloud interoperability rules allowing end users to easily switch between cloud providers.
- **Governance.** EU Member States are required to designate one or more competent supervisory authority and are responsible for defining the rules on penalties applicable to infringements of the Data Act. In particular, each EU Member State must designate a data coordinator which, in the context of the Data Act, will be the single point of contact for companies and authorities from other EU countries. As far as the protection of personal data is concerned, data protection supervisory authorities continue to be responsible for monitoring the application of the Data Act and the rules on penalties under the GDPR will apply.

The Data Act will be published in the EU Official Journal in the coming weeks and will enter into force on the 20<sup>th</sup> day following its publication. It shall be applicable 20 months after the date of its entry into force.



# Miscellaneous (2 of 4)

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**18-Dec-23: The ESAs updated their consolidated Q&A on the PRIIPs KID.**

[https://www.esma.europa.eu/sites/default/files/2023-05/JC\\_2023\\_22\\_-\\_Consolidated\\_JC\\_PRIIPs\\_Q\\_As.pdf](https://www.esma.europa.eu/sites/default/files/2023-05/JC_2023_22_-_Consolidated_JC_PRIIPs_Q_As.pdf)

The ESAs clarified that:

- In the case of an investment fund (UCITS or AIF), even if the fund delegates functions to third parties, the PRIIP manufacturer can only be the UCITS management company or the AIFM of the fund, or, in the case of a self-managed UCITS or internally managed AIF, the fund itself.
- If a product, linked to a single ISIN code, is available in both the single and recurring premium versions, two separate KIDs need to be prepared.
- The classification of a PRIIP as Category 2 or 3 concerns only the linearity, or not, of its expected pay-off, which will hold irrespective of the way in which investment in the product is made by the retail investor (i.e. either when a single premium or investment is made, or when a regular premium or investment is made).
- In life annuities, in accordance with point 3(b) of Part 1 of Annex V of the PRIIPs Delegated Regulation, only guaranteed amounts should be reflected in the scenario showing the minimum investment return amount.
- Concerning the calculation of performance scenarios, in accordance with point 7(a) of Annex IV of the PRIIPs Delegated Regulation, monthly data shall be used even if the NAV is available at higher frequencies.
- Regarding the calculation of performance scenarios, the description of “Case 3” above point 13 of Annex IV of the PRIIPs Delegated Regulation refers to a PRIIP which does not need to refer to a benchmark in the “What is this product?” section of the KID and does not need to show past performance against a benchmark. In this case, the use of a regulated benchmark may be appropriate for the calculation of the performance scenarios.
- Regarding the SRI calculation, the application of point 15 of Annex IV of the PRIIPs Delegated Regulation does not change the categorisation of the PRIIP in accordance with points 3-7 of Part 1 of Annex II of the PRIIPs Delegated Regulation. Where there are sufficient historical prices in accordance with point 5 of Part 1 of Annex II of the PRIIPs Delegated Regulation and it is a Category 2 PRIIP, the SRI calculation should be performed using those historical prices. Point 8 of Part 1 of Annex II of the PRIIPs Delegated Regulation does not apply in this case.
- For insurance-based investment products offering a range of options for investments, the insurance undertaking is responsible for designing the product, including selecting the investment options that are offered within the product and for complying with the provisions in Chapter II of the PRIIPs Delegated Regulation. In this context, there is not a requirement for the Recommended Holding Period (RHP) of the product to be fully aligned with the RHP of individual investment options offered. However, the implications of any differences in RHPs need to be appropriately addressed by the PRIIP manufacturer.

# Miscellaneous (3 of 4)

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**19-Dec-23: ESMA published its final report on updated guidelines on stress test scenarios under the MMFR.**

[https://www.esma.europa.eu/sites/default/files/2023-12/ESMA50-43599798-9011\\_Final\\_Report\\_MMF\\_ST\\_Guidelines.pdf](https://www.esma.europa.eu/sites/default/files/2023-12/ESMA50-43599798-9011_Final_Report_MMF_ST_Guidelines.pdf)

On 19 December 2023, ESMA published its Final Report on the Guidelines on stress test scenarios under the MMFR, which includes both:

- i) an update of the methodology to implement the scenario related to the hypothetical changes in the level of liquidity of assets, and
- ii) the annual calibration of the risk parameters.

The updated guidelines contained in the final report will be translated into the official languages of the EU and published on the ESMA website, and will start applying 2 months after the publication of the translations.

# Miscellaneous (4 of 4)

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**19-Dec-23: ESMA published its final report on draft RTS under the revised ELTIF Regulation.**

[https://www.esma.europa.eu/sites/default/files/2023-12/ESMA34-1300023242-159\\_Final\\_report\\_ELTIF\\_RTS.pdf](https://www.esma.europa.eu/sites/default/files/2023-12/ESMA34-1300023242-159_Final_report_ELTIF_RTS.pdf)

On 23 May 2023, ESMA published a Consultation Paper on its proposed draft RTS under the revised ELTIF Regulation. The public consultation closed on 24 August 2023. On 19 December 2023, ESMA published its final report taking into account the feedback received to the consultation. The draft RTS include:

- Criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes;
- Circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of its individual assets;
- Requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, as well as criteria to determine its minimum holding period and its maximum percentage of assets to be redeemed;
- Minimum information to be provided by the manager of an ELTIF to the competent authority;
- Circumstances for the use of the matching mechanism, i.e. the possibility of full or partial matching of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors, including:
  - criteria to determine the execution price and the pro-ratio conditions where transfers are matched, and the level of fees, costs and charges (if any) related to the transfer;
  - information that ELTIFs need to disclose to investors when transfers are matched and the timing of such disclosure;
- Criteria for the assessment of the market for potential buyers, as well as criteria for the valuation of the assets to be divested;
- Common definitions, calculation methodologies and presentation formats of costs.

The draft RTS set out in the final report have been submitted to the European Commission for adoption. From the date of submission, the European Commission shall take a decision on whether to adopt the RTS within three months. The Commission may extend that period by one month.

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# Disclaimer

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