



Regulatory Insights

January 2024



Anti-Money Laundering

EBA extends ML and TF factors to CASPs

On 16 January 2024, the EBA published a [final report](#) ("Report") which amends the scope of the original guidelines on money laundering ("ML") and terrorist financing ("TF") to include crypto-asset service providers ("CASPs") ("Guidelines"). The Guidelines highlight the ML/TF risk factors and mitigating measures associated with individual business relationships and occasional transactions that CASPs must consider.

The Guidelines have been amended following a consultation on the proposed changes launched in May 2023, and the Report summarises the feedback it received and explanation of the changes that have been made as a result.

The amended Guidelines:

- insert risk factors specific to crypto-assets and CASPs;
- provide guidance for credit and financial institutions on the ML/TF risks associated with customers that are providing crypto-asset services, but are not authorised or regulated in line with MiCA and its amending Regulations **(1)**;
- provide sector specific guidance for CASPs on the factors that they should consider when assessing ML/TF risks with associated businesses;
- describes additional risks that CASPs should consider associated with transactions, products, the nature of customers and their behaviour and the customers' or beneficial owners' links to high risk jurisdictions or transactions to/from jurisdictions associated with a high risk of ML/TF;
- provide guidance on mitigating measures that CASPs should apply in situations where the ML/TF is increased including circumstances that warrant the use of advanced analytical tools as part of monitoring its business relationships; and
- provide guidance on mitigating measures that CASPs should apply in lower ML/TF situations to the extent that it is permitted by national law.

The Guidelines will apply from **30 December 2024**. After the Guidelines are translated and published on the EBA's website, competent authorities will have two months after the publication to report whether or not they intend to comply with the Guidelines.

(1) *Regulation of the European Parliament and of the Council on markets in crypto-assets and amending Regulations (EU) No 1093/2010 and (EU) 1095/2010.*

Cayman Islands removed from list of high-risk third countries

[Commission Delegated Regulation \(EU\) 2024/163](#) which will remove the Cayman Islands (and Jordan) from the list of high-risk third countries for AML/CFT purposes came into force on 7 February 2024.

Anti-Money Laundering (2)

Council of the European Union and the European Parliament reach provisional agreement on proposed AML Regulation and MLD6

On 18 January 2024, the [Council of the European Union \(the Council\)](#) and the [European Parliament \(the Parliament\)](#) have published press releases announcing that they have reached a provisional agreement on:

- the proposed regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML Regulation); and
- the proposed directive on the mechanisms to be put in place by the member states for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (Sixth Money Laundering Directive or MLD6).

The AML Regulation, among other things, expands the list of obliged entities to new bodies (including most of the crypto sector and professional football clubs and agents), sets an EU-wide maximum limit of EUR10,000 for cash payments and makes the rules on beneficial ownership more harmonised and transparent.

MLD 6, grants more powers to financial intelligence units and further harmonises the content and functioning of beneficial owners' registers.

The texts of the AML Regulation and MLD6 (which have not yet been published) will now be finalised before they are formally adopted by the Council and the Parliament.



Asset Management

ESMA Reports on risks in EU Alternative Investment Funds (AIFs) market

ESMA, on 30 January 2024 shared a [report on EU Alternative Investment Funds](#) (AIFs) and highlighted risks linked to leveraged AIFs in the EU. ESMA notes concerns about Real Estate (RE) funds due to decreasing transactions and falling prices in some areas. This is especially risky for open-ended RE funds with daily liquidity, notably in places where RE funds hold a significant market share.

Looking at the whole sector and focusing on risks tied to leveraged AIFs, ESMA found:

- The sector size slightly decreased (-3%) to EUR 6.8tn in 2022, with AIFs making up 36% of the EU fund industry.
- Valuation losses in funds dealing with bonds and equities were the main reasons for the decline.
- RE funds face risks related to leverage, market impact, valuation differences, and liquidity mismatches.
- Hedge funds have high leverage, posing a market impact risk, but they often have enough cash to handle potential margin calls, reducing the risk of sudden sell-offs.
- Liability-Driven Investment (LDI) funds, with leveraged exposures to the UK government bond market, pose reported risks, and measures taken after stress in September 2022 are considered appropriate.

ESMA reports on actions taken by authorities to address identified risks and commits to working with NCAs for financial stability. These documents contribute to ESMA's financial stability goal and maintain consistency in supervisory approaches between ESMA and NCAs regarding data reported under AIFMD.

UK government announces EEA UCITS equivalence under the overseas funds regime

On 30 January 2024, the UK government published a written [statement](#) granting an equivalence decision for European Economic Area (EEA) undertakings for the collective investment in transferable securities - UCITS funds - (other than money market funds) under the UK Overseas Funds Regime (OFR). This means that subject to additional legislation being put in place, UCITS funds established in the EEA can be marketed into the UK without needing to meet any additional UK requirements.

CySEC issues quarterly statistics bulletin for third quarter of 2023

For the third quarter of 2023, the total Assets Under Management (AUM) reached €8.6 billion, marking a 19.8% decrease since the second quarter of 2023. In comparison with the same period in 2022, the decrease amounted to 12.8%. This reduction in AUM can be primarily attributed to the liquidation of units in two investment funds.

Of the total AUM, 59% is attributed to assets managed by Alternative Investment Fund Managers (AIFMs), 18% by AIFMs/UCITS Management Companies (ManCos), 12% by Sub-threshold AIFMs, 10% by UCITS ManCos, and 1% by foreign fund managers.

Breaking down the AUM for alternative funds further, investments in Private Equity account for 32.9%, Hedge Funds represent 13.8%, Funds of Funds comprise 11.7%, and Real Estate investments constitute 11.6% of the total AUM. In terms of investor composition, 68.1% are categorised as well-informed investors, 20% as professional investors, and only 12.7% as retail investors. The Quarterly Statistics Bulletin is available for reference [here](#).

Asset Management (2)

ESMA report on exposures the EU securities and markets and asset management sector have to real estate.

The [report](#) dated 10 January 2024 analyses the exposure of the EU securities, markets, and asset management sectors to real estate. Key findings include:

- High debt levels in real estate pose risks, especially from non-bank financial players.
- Interconnections with the banking system are significant, leading to potential transmission of sector shocks across the EU financial system.
- Future real estate market exposures will be influenced by interest rate risks.
- Credit risk indicators for real estate companies are showing signs of deterioration, and liquidity mismatches are a vulnerability for real estate investment funds.

The study covers the past five years and reveals:

- A widespread decline in the valuation of main equity and bond real estate indices.
- Listed real estate firms and investment trusts experienced valuation declines, increased trading, and securities lending activity.
- Real estate-related securities are used as collateral.
- Real estate firms' leverage has significantly increased.
- Investment funds, alongside credit institutions, play a crucial role in the real estate sector, acting as major investors and counterparties in derivatives and securities transactions.



Banking & Finance

Commission Delegated Regulation (EU) 2024/397 supplementing the CRR II with regard to RTS on the calculation of the stress scenario risk measure published in the OJ

ECB updated version of its supervisory manual for the Single Supervisory Mechanism (SSM)

ECB report on the results of an assessment of the alignment of the EU banking sector with the EU climate objectives

The [Delegated Regulation \(EU\) 2024/397](#) containing Regulatory Technical Standards (RTS) supplementing the Capital Requirements Regulation (575/2013) (CRR) on the calculation of the stress scenario risk measure has been published in the Official Journal of the European Union.

The RTS set out two main methods to develop the extreme scenarios of future shock for non-modellable risk factors: (i) the [direct method](#), which requires institutions to develop the extreme scenario of future shock for a given non-modellable risk factor by calculating the expected shortfall measure of the losses occurring when varying that risk factor according to its historically observed levels during a stress period; or (ii) the [stepwise method](#), which requires institutions to obtain the extreme scenario of future shock for a given non-modellable risk factor by calculating an expected shortfall measure on the returns observed for that risk factor, and calculating the loss corresponding to the movement in the risk factor identified by that expected shortfall measure. Under both methods, the RTS requires institutions to adjust the extreme scenario of future shock to reflect the statistical uncertainty in determining the extreme scenario of future shock by introducing an uncertainty compensation factor.

The Delegated Regulation will enter into force on **18 February 2024**.

The [manual](#) describes the organisational set-up of the SSM and defines the methodologies, processes, and procedures for banking supervision in the euro area. It also explains how the SSM cooperates with other authorities in the wider institutional framework.

The manual first describes how the SSM is organised and how it discharges its supervisory tasks and then details how supervision is conducted in practice. The manual covers: (i) the functioning of the SSM; (ii) the supervisory cycle; (iii) the supervision of all supervised entities; (iv) the supervision of significant institutions; and (v) the supervision of less significant institutions. This revised manual updates the manual that was first published in March 2018. The ECB explains that the updated version offers the most up-to-date information on European banking supervision, reflecting, among other things, the reorganisation of ECB Banking Supervision that took place in 2019. The revised manual also replaces the 2014 guide on banking supervision.

On 23 January 2024, the ECB has published a [report](#) on the results of an assessment of the alignment of the EU banking sector with the EU climate objectives, together with a related blog post by Frank Elderson, ECB executive board member and supervisory board vicechair. The analysis of 95 banks covering 75% of euro area loans shows that: **(i)** currently banks' credit portfolios are substantially misaligned with the goals of the Paris Agreement, leading to elevated transition risks for roughly 90% of these banks; **(ii)** transition risks largely stem from exposures to companies in the energy sector that are lagging behind in phasing out high-carbon production processes and are late in rolling out renewable energy production; **(iii)** 70% of these banks could face elevated litigation risks as they are publicly committed to the Paris Agreement, but their credit portfolio is still measurably misaligned with it.

Digital Finance & Fintech

ESMA consults on reverse solicitation and classification of crypto assets as financial instruments under MiCA

ESMA has released on 29 January 2024 two consultation papers on guidelines for the MiCA regulation: 1. [Reverse Solicitation Guidelines](#) under which ESMA seeks feedback on proposed guidance regarding the conditions for applying the reverse solicitation exemption.

The guidance emphasises that third-country firms can only provide crypto-asset services when the client exclusively initiates the service, making this exemption a narrow exception and not a way to bypass MiCA.

ESMA aims to prevent circumvention through supervision practices by NCAs.

2. [Crypto-Asset Classification Guidelines](#) under which ESMA is seeking input on clear conditions and criteria for classifying crypto-assets as financial instruments, aligning MiCA with MiFID II for consistency across the EU.

The proposed guidelines offer structured yet flexible criteria for NCAs and market participants to determine if a crypto-asset qualifies as a financial instrument.

The draft aims to strike a balance between guidance and avoiding a one-size-fits-all approach, providing clarity and contributing to global standards in crypto-asset regulation.

Stakeholders are invited to provide comments on these guidelines by **29 April 2024**.

The ESAs have released the initial set of finalised technical standards under DORA

These standards aim to reinforce the digital operational resilience of the EU financial sector by reinforcing Information and Communication Technology (ICT) and third-party risk management, along with incident reporting frameworks. The key elements of these standards include:

- [Regulatory Technical Standards \(RTS\) on ICT risk management framework, both standard and simplified versions](#): provide guidelines for managing risks related to ICT. They aim to harmonise practices for financial entities of varying sizes, ensuring a simplified approach to ICT risk management.
- [RTS outlining criteria for classifying ICT-related incidents](#) : outline criteria for categorising major ICT incidents. They make the incident reporting process across the financial sector more straightforward and uniform by defining criteria, thresholds, and assessing incidents' relevance in different regions.
- [RTS defining the policy on ICT services supporting critical functions provided by third-party service providers](#) : set rules for financial entities using third-party ICT services. They ensure that financial organisations maintain control over operational risks, information security, and business continuity when engaging with external ICT service providers.
- [Implementing Technical Standards \(ITS\) establishing templates for an information register](#) : establish templates for financial entities to maintain records of their agreements with ICT third-party service providers. This register is essential for supervising compliance with DORA and designating critical ICT service providers under regulatory oversight.

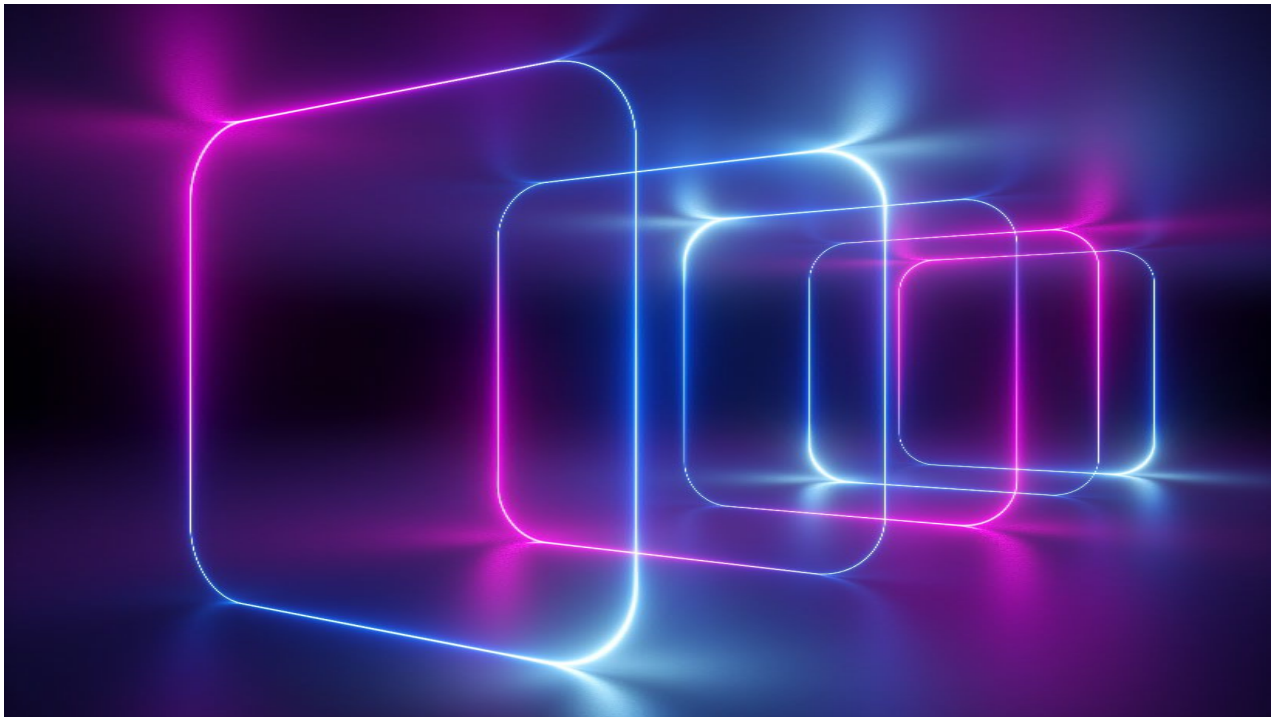
Securities & Markets

ESMA launches a Common Supervisory Action (CSA) on the implementation of pre-trade controls under MiFID II

On 11 January 2024, ESMA [announced](#) that it had launched a common supervisory action (CSA) with national competent authorities (NCAs) to assess the implementation of Pre-Trade Controls (PTCs) by EU investment firms using algorithmic trading techniques. ESMA and NCAs will carry out the CSA in the course of 2024. The CSA will examine the following aspects:

- the implementation of PTCs including their calibration methodology and the use of hard and soft blocks in the design of PTCs;
- the establishment of credit and risk limits and their interaction with PTCs;
- the monitoring and governance framework related to PTCs; and
- the implementation and monitoring of PTCs in case of outsourcing of trading activity to third countries.

This initiative and the related sharing of practices across NCAs aim at ensuring consistent application of EU rules, helping to promote stable and orderly markets. The rules governing the use of PTCs are set out in MiFID II and more specifically in [commission delegated regulation 2017/589 \(RTS 6\)](#) which specifies the organisational requirements of investment firms engaged in algorithmic trading.



Glossary

AIF Alternative Investment Fund (EU)

AIFMD Directive 2011/61/EU on Alternative Investment Fund Managers

AIFMs Alternative Investment Fund Managers

AML Anti-Money Laundering

CSRD Corporate Sustainability Reporting Directive

CySEC Cyprus Securities and Exchange Commission

CP Consultation Paper

EBA European Banking Authority

ESG environmental, social, and governance

EMIR European Market Infrastructure Regulation

ESAs European Supervisory Authorities (EBA, EIOPA and ESMA)

ESMA European Securities and Markets Authority

EIOPA European Insurance & Occupational Pensions Authority

EU European Union

MiCA Regulation of the European Parliament and of the Council on markets in crypto-assets

MiFID Markets in Financial Instruments Directive

NCA National Competent Authority

RTS Regulatory Technical Standards

SFDR Sustainable Finance Disclosure Directive

OECD Organisation for Economic Co-operation and Development

UCITS Directive directive 2009/65/EC on Undertakings for Collective investments in Transferable Securities

UCITS Undertakings for Collective investments in Transferable Securities (EU)



Main Contacts

Eleni Neocleous

Board Member

Risk and Regulatory, Risk Consulting

T: + 357 22 209 023

E: eneocleous@kpmg.com

Eleni Poyiadji

Principal, MiFID and AML expert

Risk and Regulatory, Risk Consulting

T: + 357 22 209 248

E: epoyaji@kpmg.com

Marie-Hélène Angelides

Senior Associate, Asset Management expert

Regulatory Compliance, Risk Consulting

T: + 357 22 209 227

E: mangelides@kpmg.com



kpmg.com.cy

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