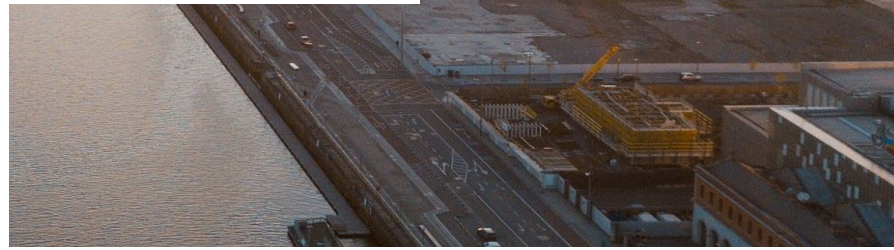
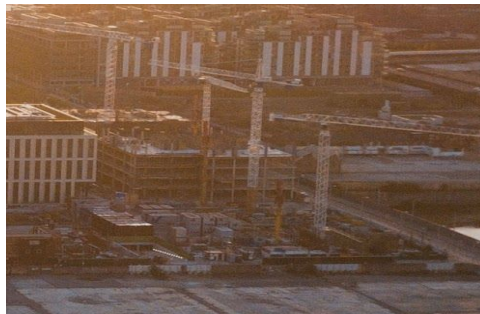
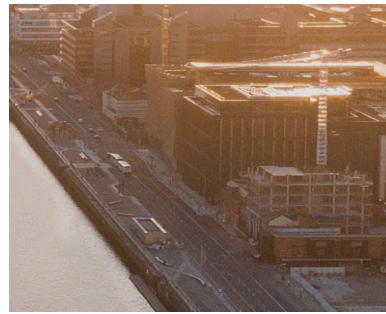


Financial Crime Update - Q1 2023



Introduction

Welcome to the latest edition of our new Financial Crime update, which outlines all of the latest news and regulatory updates across the world of Financial Crime.

From an Irish perspective, the CBI released a “Dear CEO” letter in January 2023 which focused on supervisory findings and expectations for Payment and Electronic Money Firms. Statutory guidelines were also issued which provided guidance on the definition of ‘prominent public function’ under the Criminal Justice Act.

From a European perspective, in March 2023, the European Banking Authority issued new guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services. In addition to this, the EBA issued a consultation paper on amendments to Guidelines on risk based AML/CFT supervision to include crypto-asset service providers.

We hope you enjoy reading this newsletter, which contains further details on the issues outlined above, and more!

Sinead Ovenden
Partner, FS Risk and Regulation

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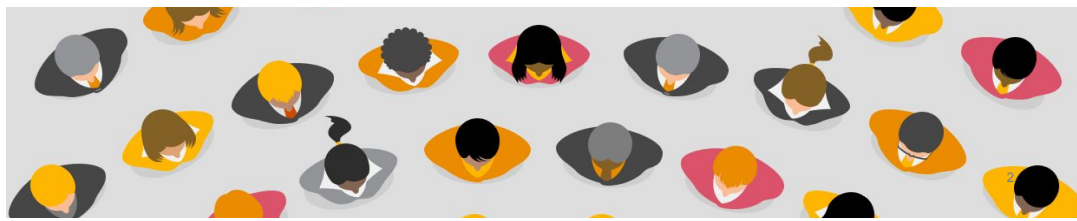
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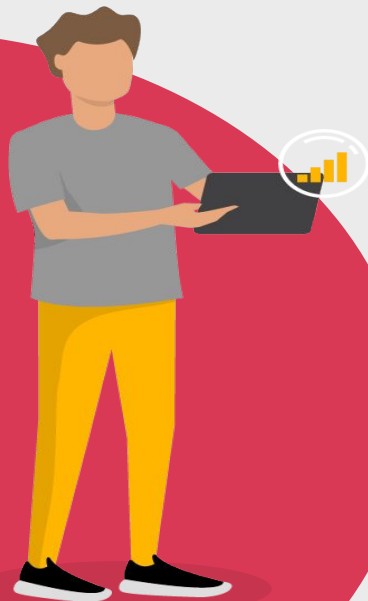
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IRISH FINANCIAL CRIME UPDATES





S.I. No. 22/2023 - European Union (Money Laundering and Terrorist Financing) (Use of Financial and Other Information) Regulations 2023

The European Union (Money Laundering and Terrorist Financing) (Use of Financial and Other Information) Regulations 2023 (*the Regulations*) was signed into law in February 2023. These regulations have a close link to the European Union (Anti-Money Laundering: Central Mechanism for Information on Safe-Deposit Boxes and Bank and Payment Accounts) Regulations 2022, which requires the Central Bank of Ireland (CBI) to establish and maintain a central database, containing information of payment accounts, bank accounts and safe-deposit boxes held with credit institutions within their territory.

The 2023 regulations confirm that regulations 4 - 7 will come into operation on the date of the establishment of the Central Database under the Central Mechanism Regulations. Key areas addressed by the new 2023 regulations include:

- providing authorities with the power to access and search on a case by case basis and in a direct and immediate manner, bank account information when necessary for the performance of their tasks for the purposes of preventing, detecting, investigating or prosecuting a serious criminal offence or supporting a criminal investigation concerning a serious criminal offence, including the identification, tracing and freezing of the assets related to such investigation;
- placing an obligation on the CBI to ensure that the security of the data that is available to be accessed and searched in accordance with this Regulation is maintained to high technological standards;
- requiring the CBI to keep a record of each time an Article 3(1) authority accesses or searches bank account information

The Regulation can be accessed [here](#)

2023 Dear CEO letter re Supervisory Findings and Expectations for Payment and Electronic Money (E-Money) Firms

The Central Bank of Ireland (“CBI”) published their latest “Dear CEO” letter in January 2023. This letter focused on supervisory findings and expectations for Payment and Electronic Money (E-Money) Firms in Ireland. This 2023 letter is a follow up to the “Dear CEO” letter which was published in December 2021. The 2021 letter had provided greater clarity on the supervisory expectations for the Payment and E-Money sector. Over the 12 months since the 2021 letter was released there has been intense scrutiny on the sector. This intense scrutiny was due to significant deficiencies identified in the governance, risk management and control frameworks of some Payment and E-Money firms.

There were five key areas across which findings arose during the CBI's supervisory engagement in 2022 and which were addressed in the latest 2023 letter.

The areas covered were:

1. **Safeguarding:** it was noted that one of the most important objectives of the CBI is ensuring that users' funds are protected;
2. **Governance, Risk Management, Conduct and Culture:** the CBI expectation is that firms are well run with cultures that seek to do the right thing for their consumers;
3. **Business Model, Strategy and Financial Resilience:** the 2023 letter provided insights from the CBI's 2022 thematic review of business model and strategic risk;
4. **Operational Resilience and Outsourcing:** it was noted that there has been an increased focus on this area to ensure that firms can demonstrate readiness for, and resilience to, operational disruptions;
5. **Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT):** the 2023 letter provided observations arising from recent supervisory engagements with the Payment and E-Money sector, and resulting expectations as to how firms should address these.

Further AML/CFT insights were provided across a number of areas:

- **Risk based approach** - the CBI outlined that controls are not as robust as they should be and are not commensurate with the level of risk exposure. The CBI noted a particular area of weakness in relation to transaction monitoring controls;
- **Distribution Channels** - the letter noted that Distributors and Agents are a common feature in the Payment and E-Money section, however weaknesses have been identified with regard to the oversight of these relationships;
- **Electronic Money Derogation and Simplified Due Diligence** - the CBI has identified some instances of misapplication of the derogation provided under Section 34A of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, relating to Simplified Due Diligence, leading to incorrect levels of CDD being applied to customers. The CBI emphasised that the derogation should only be availed of when appropriate to do so and where all criteria have been met.

The full Dear CEO letter is available [here](#).



Definition of ‘prominent public functions’ - Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 - issued to competent authorities on 20 January 2023

In January 2023, the Minister for Justice, with the consent of the Minister for Finance, issued Guidelines under section 37(12) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended). The guidelines clarified those functions in the State that may be considered to be “prominent public functions” for the purposes of the Act.

The Guidelines define a ‘prominent public function,’ in respect of such functions within the State, and where not otherwise specified, as “an office or other employment in a public body in respect of which the remuneration is not less than the lowest remuneration in relation to the position of Deputy Secretary General in the Civil Service”. For the purposes of this definition, ‘public body’ shall not include courts.

The guidelines provide an overview of the application of these provisions to roles in the State. An example of a provision in the Guideline is : ‘*a head of state, head of government, government minister or deputy or assistant government minister*’, and the application of this includes the President, the Taoiseach and Government Ministers and Ministers of State.

For more details on the Guidelines, please refer to this [link](#).

Minister McGrath announces intention for Ireland to seek to host new EU AML Authority

In March 2023, Ireland's Minister for Finance Michael McGrath obtained the approval of his Cabinet colleagues to put Ireland forward to host the new EU AML Authority (AMLA). The AMLA will be a significant EU institution, tasked with supervision – either directly or jointly with national supervisors – of entities in the financial services sector in the first instance, but eventually also in the non-financial sector. The supervision will be in respect of the entities' compliance with anti-money laundering and countering financing of terrorism rules and standards.

AMLA will acquire the AML/CFT competences of the European Banking Authority and will also host the secure communications network for the EU member States' national Financial Intelligence Units (in Ireland, this is a division of An Garda Síochána), which is currently maintained by Interpol.

At the end of March, there were nine prospective candidates, however, Minister McGrath informed the Cabinet that Ireland would be “an ideal location” for this EU authority given the country's significant financial services sector, skilled workforce, and its reputation for strong administration and governance.

The final decision for the location is to be decided later this year and will be made jointly by the European Council and European Parliament. It is expected that the institution will be established in 2024 but that it will not be fully operational until 2026/2027.

The jobs to be filled in AMLA will be across governance, technology, administration and business support areas.





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EUROPEAN FINANCIAL CRIME UPDATES



AFME Position Paper on Amendments to the Anti-Money Laundering Regulation

On 30th January 2023, the Association for Financial Markets in Europe (AFME) issued a position paper on amendments, to the proposed text, in the Anti-Money Laundering Regulation (AML-R) ahead of the European Parliament's Committee on Economic and Monetary Affairs (ECON) Shadow meeting.

This note provides views on the AML-R amendments to the European Commission (EC) proposed text, in particular, around the following priority issues:

- **Article 42 - Identification of beneficial owners:** the AFME note that the proposal to lower the threshold from 25% to 5% is not only a significant deviation from the Financial Action Task Force's (FATF) internationally agreed standards, but introduces higher operational complexity and administrative burdens, and diverts critical resources away from ensuring effective controls.
- **Article 44 - Beneficial ownership information:** the AFME outlines that the proposal is inconsistent with the FATF's international standards and disregards the risk-based approach. The proposal will lead to duplicative, costly, and operationally complicated implementation for Obligated Entities.
- **Article 47 - Nominee shareholders and nominee directors:** the AFME is concerned with proposals relating to the prohibition of nominee shareholders and nominee directors, which will have a significant effect on legitimate non-financial business professionals. It was suggested that the EP refer to the FATF draft guidance on recommendation 24 which provides helpful measures to ensure no misuse of the nominee shareholders and nominee directors.

The full position paper from the AFME is available [here](#)



MEPs approve stricter rules to close existing gaps in combating ML/TF and evasion of sanctions in the EU

In late March 2023, MEPs from the Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees adopted their position on three pieces of draft legislation on the financing provisions of EU Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) policy. The package consists of:

- the EU “single rulebook” - regulation - with provisions on conducting due diligence on customers, transparency of beneficial owners and the use of anonymous instruments, such as crypto-assets, and new entities, such as crowdfunding platforms. It also includes provisions on so-called “golden” passports and visas.
- The 6th Anti-Money Laundering directive - containing national provisions on supervision and Financial Intelligence Units, as well as on access for competent authorities to necessary and reliable information, e.g. beneficial ownership registers and assets stored in free zones.
- The regulation, establishing the European Anti-Money Laundering Authority (AMLA) with supervisory and investigative powers to ensure compliance with AML/CFT requirements.

Some key changes proposed through the adopted texts include:

- Restricting transactions in cash and crypto assets: MEPs want to cap payments that can be accepted by persons providing goods or services. They set limits up to €7000 for cash payments and €1000 for crypto-asset transfers, where the customer cannot be identified.
- Beneficial Ownership: MEPs agreed that beneficial ownership means having 15% plus one share, or voting rights, or other direct or indirect ownership interest, or 5% plus one share in the extractive industry or a company exposed to a higher risk of money laundering or terrorist financing.
- Beneficial Owners’ registers: Information on beneficial ownership held in national central registers should be available digitally, in an EU official language plus English, and include current and historical information for a defined period. The entity in charge of the central register will have the right to request from corporate and legal entities any information necessary to identify and verify their beneficial owners.

For more details on the adopted texts and requirements, please refer to this [link](#).

Eva Maria Poptcheva (co-rapporteur for the Anti-Money Laundering Authority - Renew, ES) noted that “Until now, the EU's hands-off approach towards dirty money has only yielded scandals. The time has come for a crackdown. AMLA is the game-changer we needed, and with it the EU can end the economic nationalism that has fuelled this laundromat.”

Read more on the quotes of the MEPs who will lead the negotiations on the final shape of the bills [here](#).



EBA issues Guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services - unwarranted derisking

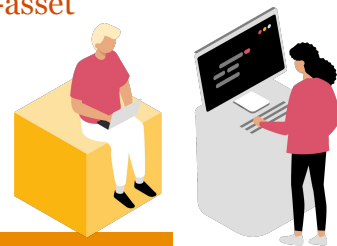
On March 31st 2023, the European Banking Authority (EBA) issued new guidelines to ensure that customers have access to the financial services they need to fully participate in society and that they are not denied this access on unsubstantiated Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) grounds or without valid reason. On the publication of these guidelines, the EBA outlined that the guidelines will contribute to foster a common understanding by institutions and AML/CFT supervisors of effective money laundering and terrorist financing (ML/TF) risk management practices in situations where access by customers to financial products and services should be safeguarded, in particular for the most vulnerable ones.

The EBA's assessment of the scale and impact of de-risking highlighted that while decisions not to establish or to end a business relationship, or not to carry out a transaction, may be in line with the EU AML/CFT framework, de-risking of entire categories of customers, without due consideration of individual customers' risk profiles, can be unwarranted and a sign of ineffective ML/TF risk management. To clarify regulatory expectations, and tackle unwarranted de-risking, the EBA has issued two new sets of Guidelines.

1. Annex to the EBA ML/TF risk factors Guidelines, which set out what financial institutions should do to identify and assess ML/TF risk associated with customers who are Not-for-Profit organisations (NPOs). Further detail on these amendments can be found [here](#).
2. Guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services, which can be found [here](#).



EBA consults on amendments to Guidelines on risk-based AML/CFT supervision to include crypto-asset service providers - a consistent approach



On March 29th 2023, the European Banking Authority (EBA) launched a public consultation on amendments to its Guidelines on risk-based anti-money laundering and countering the financing of terrorism (AML/CFT) supervision. The changes propose to extend the scope of these Guidelines to AML/CFT supervisors of crypto-asset service providers (CASPs). The EBA note that by its nature, the provision of crypto asset services is a cross border activity and is therefore important to ensure that the same standards apply wherever CASPs operate in the single market.

The amendments to the guidelines seek to:

- provide guidance on the sources of information competent authorities should consider when assessing ML/TF risks associated with CASPs;
- highlight the importance of a consistent approach to setting supervisory expectations where multiple competent authorities are responsible for the supervision of the same institutions; and
- stress the importance of training to ensure that staff from competent authorities have the technical skills and expertise necessary for the execution of their functions.

In publishing the consultation paper, the EBA notes that specific AML/CFT guidance for CASPs will be delivered through:

- the forthcoming amendments to the EBA's Risk Factors Guidelines;
- the amendments to the Guidelines to prevent the abuse of fund transfers for ML/TF purposes; and
- the new Guidelines on policies and procedures for compliance with restrictive measures.

The consultation runs until 29 June 2023 and can be accessed [here](#).

EBA Peer Review report on authorisation under PSD2

In January 2023, the European Banking Authority (“EBA”) released a peer review report on authorisations under the Payment Services Directive (PSD2). The revised Payment Services Directive -PSD2, has been applicable since 13 January 2018 and sets out the requirements that applicants must meet in order to be authorised as payment institutions (PIs) and electronic money institutions (EMIs). This report sets out the findings of the EBA's peer review on the authorisation of PIs and EMIs under the PSD2, taking into account the EBA Guidelines on authorisation issued in 2017 in support of the Directive.

This review found that Competent Authorities (CAs) have largely implemented the guidelines, and where implemented, these have had the desired effect of improving consistency and transparency in the authorisation information that prospective payment institutions and E-money firms have to submit.

However, the report found that some CAs have not fully implemented the Guidelines, in particular in relation to obtaining the full set of information from applicants. This potentially limits the extent to which those CAs can scrutinise applications compared with having the information required under the Guidelines.

Guideline 14: AML/CFT internal control framework

In relation to AML/CFT, the Peer Review Committee (PRC) found that not all CAs require the entire list of information specified in Guideline 14 as part of the authorisation process. Specific examples were provided where AML/CFT gaps in the authorisation process for individual CAs were identified. AML/CFT information not requested included:

- policies and procedures to ensure that branches and agents of the applicant comply with AML/CFT obligations
- background and competency verification of the person in charge of ensuring AML/CFT compliance
- systems and controls to ensure that the internal AML/CFT framework remains up to date and relevant

The report noted that obtaining the documents required under GL 14 is necessary but it is not sufficient to ensure compliance with the PSD2 requirements. It is essential that information obtained from the applicant on AML/CFT controls is also assessed by experts with appropriate AML/CFT expertise.

The full report is available [here](#).



Publication of the Wolfsberg Group and IIF Comment Letter to EBA on de-risking

The European Banking Authority (EBA) launched a public consultation in December 2022 on new Guidelines on the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services (i.e. de-risking).

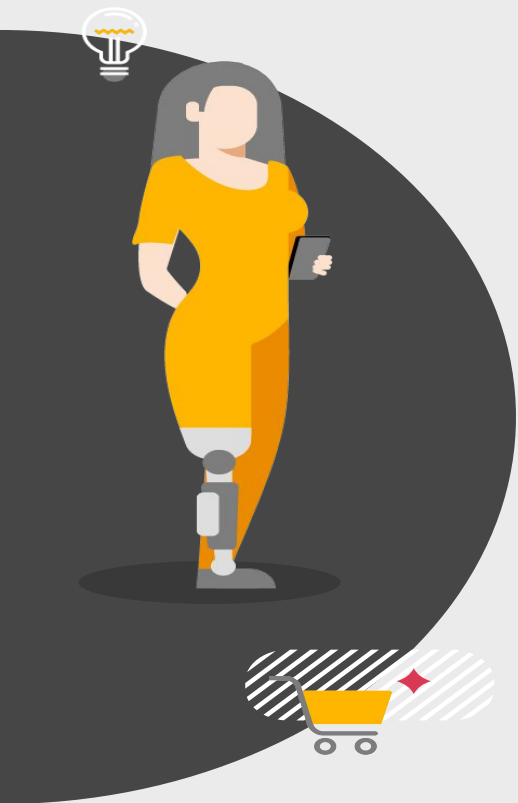
In February 2023, the Wolfsberg Group and Institute of International Finance (IIF) published a comment letter in response to this public consultation on 'de-risking'.

The joint comments outline a set of recommendations across a number of areas, including:

- **Definition of 'de-risking':** recommendation that the EBA adopts FATF's definition of 'de-risking' to align with international standards and to avoid unintended consequences: "financial institutions terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk in line with the FATF's risk-based approach."
- **General Requirements:** It is recommended that the General Guidance should acknowledge the following:
 - The principle of FIs having legitimate risk management reasons for exiting/declining individual customers on a case-by-case basis.
 - That it is appropriate and prudent business practice to consider the cost of effective risk management when determining the viability of a relationship or product offering.
- **Applying restrictions to services or products:** recommendation that the EBA revisits this guidance to ensure it does not result in tension with Article 17 of the Directive 2014/92/EU (Characteristics of a payment account with basic features) and does not result in unintended consequences.
- **Non-Profit organisations ("NPOs"):** recommendation that the annex that sets out factors to be considered when assessing the ML/TF risks associated with NPOs is updated to reflect the full spectrum of ML/TF financing risk posed by different NPOs. This will empower FIs to apply a true risk-based approach (RBA) to NPOs and not be required to treat the sector as homogenous. This is in line with FATF Recommendation 8.

The full letter, which complements a detailed submission is available [here](#).





3 FATF Insights

Outcomes of FATF Plenary, 22-24 February 2023



The second Financial Action Task Force (FATF) plenary under the Presidency of T. Raja Kumar of Singapore took place in Paris on 22-24 February 2023. The outcomes of the discussions included the following:

- Membership of the Russian Federation was suspended by the FATF;
- The FATF discussed and adopted the mutual evaluation report of Indonesia, an observer to the FATF since June 2018, and Gulf Cooperation Council Member Qatar;
- South Africa and Nigeria were confirmed as new jurisdictions subject to increased monitoring by FATF;
- Jurisdictions no longer under increased monitoring were confirmed as Morocco and Cambodia;
- In preparation for the next round of mutual evaluations that will commence in 2024, FATF delegations agreed on the sequence of countries to be assessed during the first year of the assessment cycle where FATF is to assess approximately seven countries each year.
- The FATF Plenary finalised a guidance document which will help countries implement the revised requirements of Recommendation 24 - this recommendation requires countries to ensure that beneficial ownership information is held by a public authority or body functioning as a beneficial ownership registry, or an alternative mechanism they will use to enable efficient access.
- The Plenary also agreed on enhancements to Recommendation 25 on legal arrangements to bring its requirements broadly in line with those for Recommendation 24 on legal persons to ensure a balanced and coherent set of FATF standards on beneficial ownership.
- The FATF completed research that analyses the methods that criminals use to carry out their ransomware attacks and how they launder ransom payments. This report is due to be published in March 2023 and includes a list of risk indicators that can help public and private sector entities identify suspicious activities related to ransomware.
- The Plenary agreed on a roadmap to strengthen implementation of FATF Standards on virtual assets and virtual asset service providers, which will include a stocktake of current levels of implementation across the global network. In the first half of 2024, the FATF will report on steps FATF members and FSRB countries with materially important virtual asset activity have taken to regulate and supervise virtual asset service providers.
- The FATF finalised [a report](#) that explores the link between money laundering and art and antiquities. This report was published in February 2023.
- The Plenary selected Mr. Jeremy Weil, from Canada to be the next FATF Vice President.

The full discussion is available [here](#).



FATF - Guidance on Beneficial Ownership of Legal Persons, Revisions to Recommendation 24

In March 2022, the FATF agreed on tougher global beneficial ownership standards through its Recommendation 24. This recommendation required countries to ensure that competent authorities have access to adequate, accurate and up-to-date information on the true owners of companies.

In March 2023, the FATF updated this guidance to help countries identify, design and implement appropriate measures in line with the revised Recommendation 24 - to ensure that beneficial ownership information is held by a public authority or body functioning as a beneficial ownership registry, or an alternative mechanism that enables efficient access to the information.

The revised Recommendation 24 explicitly requires countries to use a multi-pronged approach, i.e., to use a combination of different mechanisms, for collection of beneficial ownership information to ensure that adequate, accurate and up-to-date information on the beneficial ownership of legal persons is available and can be accessed by the competent authorities in a timely manner. This may help FIs implement customer due diligence (CDD) requirements on corporate vehicles including in relation to the requirement to identify the beneficial owner, identify and manage ML/TF risks, and implement AML/CFT controls and measures based on those risks (including suspicious transaction reporting and sanctions implementation requirements).

The revisions to Recommendation 24 require countries to follow a risk-based approach and consider the risks of legal persons in their countries, not only those posed by legal persons created in their countries, but also by foreign-created legal persons with sufficient links with their country.

The changes also specify that access to information by competent authorities should be timely, and information should be adequate for identifying the beneficial owner, accurate - based on verification, and up-to-date.

The changes also include stronger controls to prevent the misuse of bearer shares and nominee arrangements.

The full FATF Guidance on Beneficial Ownership of Legal Persons is available [here](#).





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Crypto Insights

European banking industry sets out a vision for a digital euro



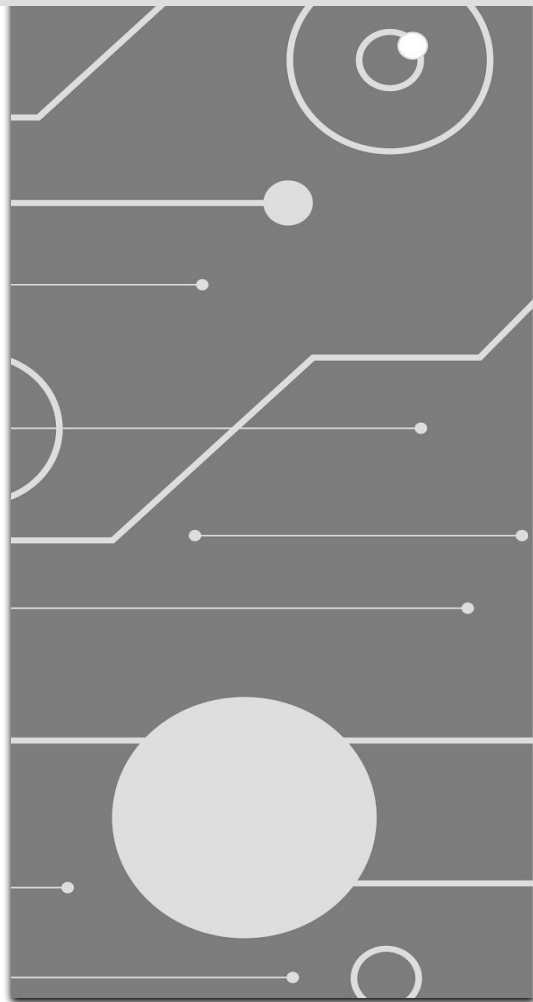
On March 28th 2023, the European Banking Federation (EBF) published a vision paper on a Digital Euro eco-system. This ecosystem of the future proposed by the EBF includes:

- a retail digital Euro;
- a wholesale Central Bank Digital Currency (CBDC); and
- bank issued money tokens,

With focus on the retail digital Euro, the paper notes that a retail digital euro should be developed with strong market involvement, in a full and transparent public-private partnership, to ensure that it:

- creates value for end-customers and the economy for existing and new innovative use cases, without crowding out payment services provided by the private sector;
- preserves financial stability and bank funding, thus maintaining European banks' lending capacity to the economy;
- foresees a robust business model so as to incentivise intermediaries to provide services and innovate based on the digital euro;
- balances design choices to safeguard privacy and enable the fulfilment of compliance requirements (KYC, AML, CFT) while allowing intermediaries to process customers' payment data based on customers' consent to provide value-added services; and
- leaves ample room for the private sector to add on solutions and services to better serve customers.

The full paper can be found [here](#).



Future UK financial services regulatory regime for crypto assets

On 1st February, 2023 the UK government released a consultation paper (the Consultation) on its proposed regulatory regime for crypto-assets.

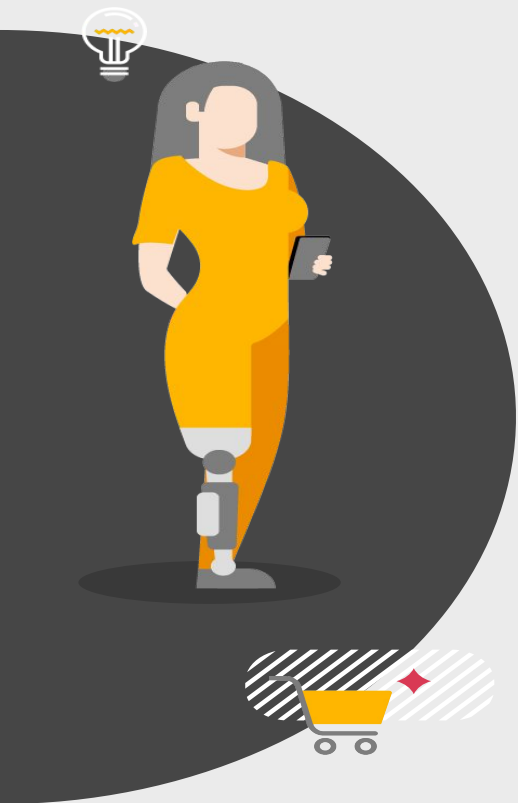
This was following the consultation paper released by HM Treasury (HMT) in April 2022 on the regulation of fiat-linked stablecoins, which the HMT refers to as Phase 1. The most recent Consultation sets out further details on the Phase 1 approach as well as a proposal to regulate certain other categories of crypto-assets. This consultation is referred to by the HMT as Phase 2.

The Consultation proposes to:

- Expand the definition of activities subject to authorisation by the Financial Conduct Authority (FCA) in order to regulate certain activities involving crypto-assets
- Establish a crypto-asset issuance and disclosure regime
- Require crypto-asset trading venues to define requirements for admission and disclosure documents
- Further regulate crypto-asset intermediaries and custodians
- Adopt a crypto-asset market abuse regime
- The FCA plans to extend its new financial promotions regime for high-risk investments to cover crypto-assets. The strict standards that apply to high-risk products will apply equally to cryptoassets.

The closing date for the Consultation is 30th April, 2023.

For more details on the Consultation, please refer to this [link](#).



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How can PwC help you

PwC Financial Services Regulatory Team

Our Financial Services Regulation Team at PwC Ireland have the experience and expertise to provide solutions that have the overarching aim of addressing new and existing financial crime threats. Get in touch to find out more on how we can help you.

Central Bank RMPs focused on AML

PWC can assist firms in navigating the many demands and challenges of addressing and responding to an AML focused RMP with a selection of our services provided below:

- Design and implementation of a RMP response framework, including tracking, monitoring and reporting
- Constructing a Governance framework, that includes management and Board reporting
- Developing risk mitigation planning, implementation, and progress monitoring
- Leveraging the latest technology to assist in assessing risk and data analytics

Customer Due Diligence & ESG

Our team are experienced in designing policies and procedures for conducting ESG risk assessments, as well as identifying ESG risk:

- Leveraging our established AML / KYC due diligence and risk assessment process to support firms in identifying ESG risk in their customer portfolios and creating a suitable ESG framework.
- Providing access to our network of ESG practitioners consisting of Subject Matter Experts, trainers, experienced project managers and due diligence analysts.

AML Remediation Programmes

PWC have vast experience in conducting large scale AML remediation programmes, achieved by:

- Designing a tailored and specific remediation plan, which includes a formalised governance framework and comprehensive resource planning.
- Providing a team of highly experienced and industry focused individuals.
- Assisting clients with the delivery of the programme, including customer outreach and independent quality assurance.

AML Risk Mitigation

The appropriate assessment of risk is at the core of the management of AML/CTF and is a key area of focus for the CBI. We can support you to assess and enhance your AML risk assessment process through the review of:

- Your Business Wide Risk Assessment - identification of gaps and opportunities for improvement in AML/CFT policies, methodology and processes.
- Your Customer Risk Assessment process - identifying and assessing a comprehensive list of risks making up your customer's risk profile.

Target Operating Model

PwC can assist firms in transforming their AML / Financial Crime Target Operating Model through:

- Reviewing your current operating model to identify / address regulatory gaps
- Assessing and advising on the most appropriate technology available to manage your FC risks
- Advising on your 3LOD structure to ensure that all FC activities are operating effectively, efficiently and meeting regulatory expectations

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