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FINANCIAL MARKETS

REFORM OF LISTING RULES: TOWARDS IMPROVED MARKET-BASED FINANCING FOR EU COMPANIES THROUGH THE LISTING ACT

The European Commission has proposed to revise the rules for businesses' access to public markets, to improve market-based financing access for companies of all sizes with a particular emphasis on SMEs, that heavily rely on bank loans. On 1 February 2024, a provisional agreement was reached between the European Parliament and the Council regarding the Listing Act. This text aims to simplify the process for companies wishing to go public while maintaining high standards of transparency, investor protection, and market integrity.

Initially presented in December 2022, the Listing Act includes measures to revise several existing regulations and introduce a new directive on multiple voting share structures. The goal is to reduce costs and regulatory requirements for businesses, with an estimated annual savings of approximately 100 million for listed companies in the EU, of which 67 million would come from simplifying prospectus rules.

The new rules will also allow companies, especially SMEs, to benefit from a more flexible governance structure, enabling founders and owners to retain control while being publicly listed. SMEs will gain better visibility among investors thanks to enhanced provisions for investment research and a more proportionate sanction regime for minor market rules infractions.

Overall, the Listing Act represents a significant step towards making public listing in the EU more attractive for companies.

For further information: European Commission - Listing Act

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INSURANCE

MARKET LAUNCH OF THE FRENCH 'PLAN D'ÉPARGNE AVENIR CLIMAT'

Created by the French Green Industry Act of 23 October 2023[1], the 'plan d'épargne avenir climat' (PEAC) is a new sustainable investment product open to subscription for young people. An order[2] and two decrees[3] published in the Official Journal of the French Republic on 17 June 2024 set out the conditions for implementing this new product:

• Information requirements prior to product subscription, notably concerning the investment vehicles available and their performance as well as the fees applied;

• Subscription conditions, as the 'plan d'épargne avenir climat' is restricted to people not older than 21 years old and resident in France, with no possibility of multiple holdings;

• The maximum amount that can be invested in the plan, which is set at 22,950;

• The eligible investment vehicles and the allocation of investments to these vehicles, with compulsory investment in vehicles with an 'ISR' or 'France finance verte' label;

• Plan management rules, which can be either free or guided;

• Annual information, which must be clear and comprehensible to a young audience and include details of investments made, investment performance, any arbitrages carried out, and fees charged;

• The terms and conditions for transferring the plan, which must be free of charge if the plan has been open for more than 5 years and the holder is at least 18 years old;

• Closure of the plan, which takes place automatically on 31 December of the year during which the holder reaches the age of 30 years old.

Banks, insurance companies, and provident institutions have been able to market the 'plan d'épargne avenir climat' since 1 July 2024.

For further information:

Légifrance - Plan d'épargne avenir climat 1

Plan d'épargne avenir climat 2

Plan d'épargne avenir climat 3

Author: **Valentin Giandomenico** *(Senior Consultant)*

1 : Law no. 2023-973 of 23 October 2023 on green industry.

2 : Order of 15 June 2024 on the implementation of the 'plan d'épargne avenir climat.'

3 : Decree no. 2024-548 of 15 June 2024 relating to the implementation of the 'plan d'épargne avenir climat,' and decree no. 2024-547 of 15 June 2024 relating to the implementation of the 'plan d'épargne avenir climat' and the control of the holding of regulated savings product.

SUSTAINABLE FINANCE

PUBLICATION OF THE NEW EUROPEAN DIRECTIVE CS3D (CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE)

The Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (known as CS3D) was published in the Official Journal of the European Union on 5 July 2024, and will come into force this 25 July 2024.

EU Directive contains rules relating to obligations of businesses with respect to adverse human rights and working environment impacts related to their own activities, the activities of subsidiaries, and the ones carried out by partners along the supply chain. It creates the obligation to implement a transition plan for climate change mitigation and ensure their business model and economic strategy envision the transition to a sustainable economy.

The scope and principles of implementation of the directive are as follows:

• Obligations that Member States must transpose are intended to apply to companies which employ more than 1,000 employees and achieve a net global turnover above 450 million. They also apply to companies which are ultimate parent companies of a group which reaches this level, and to companies which operate by means of licensing agreements in the European Union;

• The following measures should be undertaken by the companies:

1. Integrate the duty of care into all their relevant policies and risk management systems,

2. Take appropriate measures to assess negative impacts arising from their own activities, those of their subsidiaries, and those of their business partners when linked to their chains of activities,

3. Take appropriate measures to prevent or, where prevention is not possible, to adequately mitigate potential negative impacts that have been identified,

4. Take appropriate action to address actual negative impacts that have been or should have been identified,

5. Where a company has caused, alone or jointly, a real negative impact, it provides redress,

6. Allow individuals and entities to file complaints with them regarding legitimate concerns about negative impacts with respect to their operations,

7. Carry out periodic assessments of their own activities and measures, those of their subsidiaries, and their business partners,

8. Report on the matters covered by this directive by publishing an annual statement on their website.

This new directive enforces, with the coercive and normative force of European law and in its extraterritorial application, a set of principles and standards implemented over the last decade and that aims at improving the environment and workers' rights across the world.

For further information: EUR-Lex - CS3D

Author: **Gil Vanden Broeck** *(Senior Manager)*

EUROPEAN SUPERVISORY AUTHORITIES POINT VIEW ON THE RISKS OF GREENWASHING IN THE FINANCIAL SECTOR

On 4 June 2024, the European Supervisory Authorities (ESAs) published their final reports on the issue of greenwashing in the financial sector. The reports reveal both a coordinated approach and divergent perspectives.

Greenwashing is a phenomenon that can mislead consumers, investors, and other market participants. The ESAs emphasise the responsibility of financial market actors to provide clear, accurate, and non-misleading information. Additionally, they put forward proposals on how to strengthen oversight around sustainability.

However, they diverge on their approaches and findings.

1.CEuropean Banking Authority report

The European Banking Authority (EBA) highlights the risk of greenwashing in the financial sector and its impact on financial institutions, noting a general increase in this phenomenon, including a 26.1% rise in cases among EU banks compared to 2022. The report analyses presumed, real, and potential cases of greenwashing, emphasising the negative impact on both institutions and consumers, particularly regarding reputational and operational risks.

Furthermore, the EBA recommends that institutions ensure the accuracy and timeliness of sustainability claims and urges competent authorities to continue their monitoring efforts and ongoing work in this area.

2. European Securities and Markets Authority report

The European Securities and Markets Authority (ESMA) clarifies that greenwashing can be intentional or negligent and may involve entities not initially subject to European sustainable finance legislation.

It calls on national supervisory authorities to:

• Strengthen human and technological resources and expertise necessary for thorough examination of greenwashing claims;

• Continue developing a risk-based approach;

• Establish complementary guidelines for higher-risk areas;

• Promote financial education among retail investors.

3. European Insurance and Occupational Pensions Authority report

The European Insurance and Occupational Pensions Authority (EIOPA) observes a growing interest from insurance providers and pension institutions in environmentally friendly business models while warning of the risk of greenwashing. To combat this risk, EIOPA proposes measures to enhance oversight and the regulatory framework related to sustainable finance, based on four key principles to consider when assessing companies' sustainability claims. Practical advice and examples are provided for this purpose.

For further information: ESAs - Greenwashing

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AML

ADOPTION BY THE EUROPEAN COUNCIL OF THE NEW AML PACKAGE

On 30 May 2024, the Council of the European Union definitively adopted the 'AML Package,' a set of new rules to combat money laundering and terrorism financing. The package comprises the 6th European Directive (AMLD6), the Single Anti-Money Laundering Regulation (AMLR), and the Regulation establishing the AMLA.

The new regulation aims to harmonise and clarify the rules applicable to the private sector throughout the EU. This first AML/CFT regulation, which is directly applicable, provides for:

• The extension of LCB-FT rules to new reporting entities. These include most of the crypto-assets sector, traders in luxury goods, sellers of luxury vehicles, and major soccer clubs;

• Harmonisation of the rules on beneficial ownership, with the applicable threshold set at 25% based on an analysis of the two components of ownership and control;

• The creation of a cash payment limit of 10,000 – a limit which already exists in several European countries, but which will enable harmonisation at EU level.

The Directive, which replaces the 5th Directive, covers the organisation of national AML/CFT institutional systems in the Member States. It improves the organisation of national anti-money laundering systems by establishing clear rules for cooperation between financial intelligence units (i.e. Tracfin in France), notably through the exchange of information or the performance of joint analyses, and supervision authorities.

Finally, the creation of the European Anti-Money Laundering and Countering the Financing of Terrorism Authority (AMLA) establishes direct and indirect supervision of high-risk entities in the financial sector. The AMLA will be able to carry out on-site or off-site inspections of entities under its direct supervision, as national authorities would against entities under their own supervision, and to impose sanctions in the event of non-compliance.

The texts were published in the Official Journal of the European Union on 19 June 2024. Member States will have two years to transpose certain parts of the anti-money laundering directive and three years for other parts. The anti-money laundering regulation will apply three years after its entry into force. The AMLA will be based in Frankfurt and will start operations in mid-2025.

For further information: European Council - AML Package

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INTRODUCTION OF THE NEW AML-CFT DATABASE EURECA

EuReCa is a European database created by the European Banking Authority (EBA) dedicated to combating money laundering and terrorist financing (AML/CFT).

Launched in January 2022, it aims to enhance European-level supervision by making it more informed, targeted, and effective. To this end, national supervisory authorities report significant deficiencies in AML/CFT to the EuReCa. The term 'significant deficiencies' should be understood to include any breach of AML/CFT related requirements, any potential breach thereof, as well as any ineffective or inappropriate application of policy and procedures in this regard. Consequently, the scope of situations that can be reported to EuReCa is broad.

A substantial portion of these submissions concern customer due diligence obligations, especially regarding the ongoing monitoring of business relationships and the adequate transactions monitoring systems. In terms of entities involved, the majority of submissions concerns credit institutions and payment institutions.

Since the publication of Regulation (EU) No. 1093/2010 of 9 November 2023 in the Official Journal of the European Union (OJEU) on 16 February 2024, collecting personal data of natural persons is allowed, within the limits and proportionality established by this regulation.

For further information: ABE - EuReCA

Author: **Nelly Zylberberg** *(Confirmed Consultant)*

THE FINANCIAL ACTION TASK FORCE GUIDANCE ON BENEFICIAL OWNERSHIP AND TRANSPARENCY OF LEGAL ARRANGEMENTS

On 11 March 2024, the Financial Action Task Force (FATF) issued guidelines complementing its previous work on enhancing the transparency of legal persons (Recommendation 24), now focusing on the requirements applicable to trusts and similar legal arrangements (Recommendation 25).

These guidelines are directed at all individuals in both the public and private sectors who regulate, supervise, enforce, establish, manage, or administer trusts or similar legal structures.

The guidelines provide insights mainly on:

• How to understand and assess the risks associated with these legal arrangements;

• Information that is considered satisfactory, accurate, and up to date;

• Methods and sources for obtaining information on beneficial owners;

• Applicable sanctions;

• International cooperation.

Trusts and other similar legal arrangements, while often used for legitimate purposes, can be exploited for abusive or illicit ends. Indeed, these legal structures present opacity risks due to their private nature, the choice of applicable law, their flexibility, the existence of flee clauses, ease of establishment, the potential overlap of multiple parties, and asset protection mechanisms.

In a European context of combating money laundering, it is therefore crucial to establish and understand the rules regarding the transparency of actors within the EU financial system. In this regard, these guidelines represent a step further towards achieving this European objective.

For further information: FATF - Guidance

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SANCTIONS AND EMBARGOES

EU SANCTIONS AGAINST RUSSIA

The Council of the European Union, through its new 'Russian Elites, Proxies, and Oligarchs' Task Force (REPOTF), which allows the EU to cooperate with the G7 countries, adopted on 24 June 2024 a fourteenth package of individual, economic, and sectoral sanctions against Russia since its full-scale invasion of Ukraine, in February 2022.

This additional package added 116 individuals and entities to the list of individuals and entities responsible for actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine. In addition, political parties and foundations, as well as NGOs, will no longer be allowed to accept funding from Russia. In this respect, 69 individuals and 47 entities have already been sanctioned.

The new sanctions include the prohibition of:

• Russian Liquefied Natural Gas (LNG) refuelling services on EU territory for the purpose of transfer operations to third countries;

• New investments for the completion of LNG projects under construction;

• The use of the system for transfer of financial messages (SPFS) of the Central Bank of Russia;

• Access to ports and the provision of services to ships contributing to Russia's war;

• Flights in the EU for Russian aircraft.

This package also includes additional controls and restrictions applied to import and export sectors.

As of July 2024, the EU has a global list of 4,909 sanctioned individuals and entities, 36 sanctioned regimes, and 79 sanctioned nationalities.

For further information:

European Council - Russia sanctions

EUR-Lex - Russia sanctions

EU Sanctions Map - Russia sanctions

Author: **Valeria Vargas de Acha** *(Manager)*

DATA PRIVACY AND CYBERSECURITY

ADOPTION AND IMPLEMENTATION OF THE ARTIFICIAL INTELLIGENCE ACT

Since 13 March 2024, the world of Artificial Intelligence (AI) has become more regulated with the official adoption of the Artificial Intelligence Act (AI Act) by the European Parliament, following a political agreement and signature by the Committee of Permanent Representatives (COREPER). The AI Act establishes clear rules for the development, marketing, and use of artificial intelligence systems. The law will come into force twenty days after its publication in the Official Journal of the European Union, in May 2024.

This new regulation provides for the main below rules:

• AI systems with unacceptable risks, such as social rating systems and manipulative AI, are prohibited;

• The majority of AI Act regulations pertain to high-risk AI systems. The main obligations fall on the providers of these systems;

• Limited-risk AI systems must ensure that end users are aware they are interacting with an AI;

• Minimal-risk AI systems are not regulated, but this situation is changing with the development of generative AI;

• Most obligations primarily concern providers of high-risk AI systems;

• Users are individuals or legal entities using AI for professional purposes;

• All providers/developers of so-called 'General-Purpose AI' (GPAI) models must provide technical documentation of their systems;

• GPAI systems free of charge and under open-source licenses must only comply with copyright laws;

• GPAI systems presenting a systemic risk must carry out a series of tests and evaluations of their model and report any serious incidents, if applicable.

The AI Office, created within the European Commission, will monitor the implementation of the law, and ensure the compliance of GPAI model providers. It will be able to carry out assessments to evaluate compliance and investigate systemic risks.

The adoption of the AI Act by the European Parliament is a significant milestone in AI regulation on a global level. Companies and AI system developers must prepare to comply with the new obligations, some of which will become applicable as early as December 2024.

For further information: EUR-Lex - IA Act

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PUBLICATION OF THE NEW EUROPEAN REGULATION FIDA (FINANCIAL DATA ACCESS)

Following on from the PSD2 directive, which is a step forward in the implementation of Open Finance at the EU level, the European Commission's objective with FiDA regulation (Financial Data Access) is to establish a new framework for financial data access management. In this regulatory backdrop, the EDPB (European Data Protection Board) has just issued its opinion on this future regulation.

In terms of regulation, this new framework will make it possible to offer consumers and organisations greater transparency on their financial situation, but also to make customers more responsible by providing greater visibility of all their financial assets.

The scope of the FiDA proposal covers a wide range of data:

• Consumer financials, including accounts;

• Payments and transactions of mortgages and loans, savings accounts and investment products;

• Occupational and personal pension products, non-life insurance products and data linked to the assessment of corporate solvency. For insurers, it excludes data associated with health products.

The proposal will enable third parties, through the creation of 'data sharing systems,' to facilitate access to and consultation of data held by financial institutions. It encourages innovation in financial information services (FISP) while regulating them. It provides for the creation of financial 'data sharing systems' (FDSS), between data holders and data users and consumers. These programs will enable data holders to charge financial compensation for the use of dedicated interfaces offered to financial service providers. Improved consumer protection and rights are still awaited.

Recently, the EDPB has issued its conclusions on FiDA and, by extension, the European Payment Package, with requests for clarification on:

• Clearer rules on the recording and dissemination of personal data, in the context of PSR (Payment Service Regulation);

• The notion of 'permission' as regards access to such data;

• Certain categories of personal data;

• Cooperation and coordination between the various authorities responsible for supervising personal data.

For further information:

FUSG - Open Finance

EDPB - FIDA

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CRYPTOCURRENCIES AND BLOCKCHAIN

ENTRY INTO FORCE OF THE MICA REGULATION RELATING TO STABLECOINS

As part of the digital finance strategy, the European Commission adopted the Regulation on the Markets in Crypto-Assets (MiCA), which came into force on 29 June 2023.

Its provisions are applicable according to a specific timetable. The rules concerning stablecoins (ART and EMT) are applicable since 30 June 2024, while the remainder of the regulation will come into force on 30 December 2024.

The objectives pursued by this regulation can be summarised as follows:

• Increase legal certainty by establishing a directly applicable European regulatory framework;

• Support innovation through a harmonised European approach;

• Enhance the protection of consumers and investors against the inherent risks of crypto-assets;

• Protect various stakeholders (clients, holders, service providers);

• Maintain financial stability and market integrity of crypto-assets.

In terms of implications, natural and legal persons, and certain other undertakings that issue, offer to the public, or admit stablecoins to trading stablecoins, or those intending to do so, must comply with the new requirements of the MiCA regulation, namely:

• Information and transparency obligations (particularly regarding reserve assets, including the nature and amounts thereof);

• Liquidity and capital requirements (demonstrating financial robustness);

• Governance, operational functioning, and resilience rules (e.g. risk management, internal controls, procedures, and policies);

• Prudential requirements (as the reporting, authorisations, notifications, questionnaires within the framework of the European passport).

To support the implementation of the MiCA regulation provisions related to stablecoins, the EBA adopted new recommendations on 5 July 2024, for ART and EMT issuers. It is also important to highlight the four delegated acts adopted by the European Commission concerning the classification criteria for significant stablecoins, intervention powers (of ESMA and EBA), penalties (fines and periodic penalty payments), and fees (charged by EBA to issuers of significant stablecoins).

For further information:

European Commission - MiCA

EBA - MiCAR

CSSF - MiCA

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