REGULATORY COMPLIANCE UPDATE

AML/CTF REGULATION

08.2024

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FINTRAC issues a real estate operational alert, the EBA/ECB publish their payment fraud report, and the US launches a whistleblower incentive scheme

LINK

The European Banking Authority (EBA) and the European Central Bank (ECB) published today a joint Report on payment fraud data. The report assesses payment fraud reported by the industry across the European Economic Areas (EEA), which amounted to €4.3bn in 2022 and €2.0bn in the first half of 2023. The Report confirms the beneficial impact of strong customer authentication (SCA) on fraud levels.

The Report examines the total number of payment transactions and the subset of fraudulent transactions in terms of value and volume. In addition to the aggregated values, the Report also presents data based on volumes and also sorted by type of payment instruments, i.e. credit transfers, direct debits, card payments, cash withdrawals, and e-money transactions.

SCA-authenticated transactions featured lower fraud rates than non-SCA transactions, especially for card payments, both in terms of values and volumes. Furthermore, fraud shares for card payments, both in terms of values and volumes, were 10 times higher when the counterpart is located outside the EEA, where the application of SCA is not legally required and may therefore not have been requested. Hence, the report confirms the beneficial impact of the SCA requirements that were introduced by the PSD2 and the supporting technical standards that the EBA had issued in 2018 in close cooperation with the ECB.

The new European AML package

LINK

Over the past few years European money laundering law requirements have become increasingly complex and detailed. In July 2024, the long-awaited AML package came into force, introducing significant changes to the current anti-money laundering (AML) framework.

The AML package underscores that combating money laundering and countering terrorist financing (CTF) remain top priorities for legislators, regulators and law enforcement agencies. Financial institutions, in particular, must stay abreast of new requirements, update internal processes and foster a culture that promotes AML compliance.

The AML package consists of:

- Regulation (EU) 2024/1624 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML Regulation, AMLR)
- Directive (EU) 2024/1640 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML Directive 6, AMLD6)
- Regulation (EU) 2024/1620 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA Regulation, AMLAR)
- Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets (Funds Transfer Regulation 2, FTR2)

This AML package is a comprehensive and complex new legal framework. Colleagues from nine Freshfields offices across six European jurisdictions have prepared an AML navigator to serve as your initial source to get an overview over the AML package.

The navigator is available here.

Detailed and full Regulatory Compliance report on AML/CTF regulation can be found here:

Our recommendations and details are in this file

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REGULATORY COMPLIANCE UPDATE

EMI, PI REGULATION

08.2024

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Publication by ECB

LINK

The Eurosystem is considering introducing a value-added service for payment service providers that would enable their customers, as payers, to verify the payee before initiating an instant payment. Under the EU Instant Payments Regulation (Regulation 2024/886), payment service providers will be required to offer a Verification of Payee (VoP) Service for euro credit transfers.

The new Regulation requires payers to be informed of any discrepancies between the payment account number and the intended payee's name. The payer can then decide whether or not to initiate the payment, depending on the result: "match", "close match", "no match" or "other".The Eurosystem aims to support payment service providers in offering this service to their customers with a view to enhancing payment security and limiting instant payment-related fraud.

The European Payments Council has drawn up an initial version of a rulebook for the VoP scheme. The obligation for payment service providers in the euro area to provide a VoP service to their customers will enter into force in October 2025.

Bank of Lithuania Consultative Events

LINK LINK

The Bank of Lithuania is organizing important consultative events for financial market participants to provide information on the new requirements of the European Union's Digital Operational Resilience Act (DORA).The first event "DORA Regulation: supervisory reporting" is scheduled for September 11. A consultative event will include a presentation on the reporting of major ICT incidents and the submission of the ICT Service Register to the Bank of Lithuania.

On September 26, the Bank of Lithuania will host a second event dedicated to DORA's requirements for information technology (ICT) risk management.

The third event organized by the Bank of Lithuania is dedicated to Basel III reform. The event will take place on 19 September and will focus on the important changes to the CRD (Capital Requirements Directive) and CRR (Capital Requirements Regulation) that will come into force as part of the Basel III implementation process.

Policy on non-bank PSPs access to central bank operated payment systems and to central bank accounts for safeguarding of users' funds

LINK

The Eurosystem has announced a significant policy change that will allow non-bank Payment Service Providers (PSPs) direct access to central bank-operated payment systems. This move is part of a broader initiative to enhance the efficiency and inclusivity of the European financial ecosystem.

Under the new policy, non-bank PSPs will be permitted to directly participate in Eurosystem payment systems, provided they meet specific conditions such as compliance with national laws related to PSD2 and the establishment of safeguarding accounts with credit institutions. CENTROlink services will continue to onboard new customers and maintain operations while preparing existing customers for a smooth transition to the new direct participation model. Notably, UK-licensed PSPs are excluded from this new access.

Transition is expected to be implemented during 2025 (parallel current model of participation and direct participation will be coexistent excluding safeguarding services).

Detailed and full Regulatory Compliance Report on EMI, PI regulation can be found here:

Our recommendations and details are in this file

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REGULATORY COMPLIANCE UPDATE

PERSONAL DATA PROTECTION AND ICT REGULATION

ECOVIS ProventusLaw

08.2024

Regulation (EU) 2022/2554, known as the Digital Operational Resilience Act (DORA Act)

LINK

DORA Actoutlines requirements for managing ICT third-party risk. Financial entities must ensure compliance with DORA and manage ICT risks proportionally based on their impact. Financial entities must evaluate whether entering into contracts for critical ICT services might result in dependence on non-substitutable providers or multiple contracts with the same or closely connected providers. DORA Act outlines key contractual provisions for ICT services. Contracts must clearly define the rights and obligations of both the financial entity and the ICT third-party service provider, including detailed service descriptions, data protection measures, and termination conditions.

Our recommendation:

- review and update all ICT service agreements to ensure compliance with DORA's requirements before its implementation date.
- update outsourcing policy, risk management, ICT policies and other internal documents to meet the requirements for managing ICT third-party risk.

General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679)
The State Data Protection Inspectorate (VDAI) of Lithuania has released Version 4 of its "Security Measures Guidelines." The updated guidelines provide a framework for ensuring the security of personal data in compliance with the General Data Protection Regulation (GDPR).

LINK

The State Data Protection Inspectorate (VDAI) of Lithuania has released Version 4 of its "Security Measures Guidelines." The updated guidelines provide a framework for ensuring the security of personal data in compliance with the General Data Protection Regulation (GDPR).

Our recommendation:

To enhance data protection practices in line with the latest guidelines, we suggest the following:

- Regularly update the risk assessment to identify new threats promptly.
- Consider implementing advanced technical measures, such as multi-factor authentication, to bolster data security.
- Conduct regular training for employees on the latest data protection practices.

NIS2 Directive – The European Union directive aimed at ensuring a high common level of cybersecurity across the EU (Directive (EU) 2022/2555).
Cybersecurity Law – The new national legislation in Lithuania designed to implement the NIS2 Directive and enhance national cybersecurity regulation.

LINK

Lithuania has adopted a new Cybersecurity Law to enhance national cybersecurity and align with the EU NIS2 Directive. This law aims to boost resilience against cyber threats and improve incident response.

The law takes effect on October 18, 2024. By April 17, 2025, entities must be identified and included in the Cybersecurity Information System and must ensure compliance within 12 months of the effective date.

Our recommendation:

We recommend conducting a gap analysis to identify possible gaps and prepare to comply with the established requirements.

Detailed and full Regulatory Compliance update on PERSONAL DATA PROTECTION and ICT Regulation can be found here:

Our recommendations and details are in this file

REGULATORY COMPLIANCE UPDATE

FINANCIAL AND ECONOMIC SANCTIONS 08.2024

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Switzerland adopts EU's 14th package of sanctions against Russia

LINK

The Swiss Federal Council has decided to adopt further measures within the EU's 14th package of sanctions against Russia (see previous post).

The measures take effect on 27 August 2024 and include:

- a clarification of the bans on Russian diamonds;
- and an extension of the deadlines for granting exemption permits regarding the withdrawal of investments from Russia.

The EU's 14th package of sanctions implements additional measures, which the Federal Council will discuss "in due course".

Lithuanian vehicle export company fined €13.6m for breaching Russia sanctions

LINK

A Lithuania-registered company exporting vehicles has been fined 13.6 million euros for violating international sanctions, the Lithuanian Customs reported on Wednesday.

The company reportedly failed to ensure compliance with sanctions in its transactions with companies registered in Kazakhstan, Belarus and Turkey, the Customs said. Transporting the detained vehicles to their recipients was therefore deemed a violation of international sanctions.

This is not the first time that companies have been subjected to such a measure for breaches of the Law on International Sanctions, following the introduction of enhanced screening measures by the Lithuanian Customs.

Lithuanian Customs will tighten controls on Common High Priority (CHP) items leaving (exported, reexportes or in transit) to third countries via LT airports.

LINK

On 22 August 2024, Lithuanian Customs will tighten controls on Common High Priority (CHP) items leaving (exported, reexportes or in transit) to third countries via LT airports.

US sanctions 400 entities aiding Russia's war including Chinese firms

LINK

The United States on Friday imposed sanctions on more than 400 entities and individuals for supporting Russia's war effort in Ukraine, the State Department said, including Chinese companies that U.S. officials believe are helping Moscow skirt Western sanctions and build up its military.

Detailed and full Regulatory Compliance report on Financial and Economic Sanctions can be found here:

Our recommendations and details are in this file

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REGULATORY COMPLIANCE UPDATE

CONSUMER PROTECTION

08.2024

BoL newsfeed

LINK

The Bank of Lithuania has contacted the Lithuanian Investment and Pension Funds Association regarding the advertising practices of its members, specifically concerning investment life insurance and third-pillar pension funds.

As of 2025, the income tax relief for contributions to these financial products will be replaced by an investment account system. However, Luminor, SEB, and Swedbank have been promoting contracts that need to be signed by December 31, 2024, suggesting that customers can still benefit from the tax relief for another ten years.

The Bank of Lithuania is concerned that these advertisements may not comply with legal requirements and could set a negative precedent. The advertisements seem to focus more on the tax benefits rather than the suitability of the financial products for consumers. The Bank of Lithuania has requested detailed explanations and evidence from the association to justify the compliance of these ads with the law. The central bank will review the responses before deciding on further action.

This situation underscores the importance of transparent and lawful advertising in the financial sector. The outcome may influence future advertising practices within the industry.

Our recommendation

Financial institutions should ensure their advertisements comply with legal standards and focus on the suitability of financial products rather than just tax benefits.
It's important to provide clear, balanced, and transparent information, especially about upcoming changes in tax regulations.

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REGULATORY COMPLIANCE UPDATE

EMPLOYMENT

08.2024

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Resolution No 709 of the Government of the Republic of Lithuania ON THE MINIMUM WAGE APPLICABLE IN 2025

LINK

The government has approved the Ministry of Social Security and Labour's proposal to increase the minimum monthly wage (MMW) to €1,038 starting in 2025.

Our recommendation:

- Verify Compliance: Regularly check your payroll practices to ensure they meet the new requirements.

EU Directive on Pay Transparency

LINK

By June 2026, Lithuania will need to incorporate the new EU Directive on Pay Transparency into national law. This directive is designed to reduce gender pay gaps by addressing direct and indirect discrimination. Key provisions include:

- Salary Disclosure Restrictions
- Pay Transparency
- Right to information
- Mandatory Reporting

Our recommendation:

Begin reviewing and revising your pay structures and disclosure policies now to ensure compliance and to position your organization as a leader in fairness and transparency.

Detailed and full Regulatory Compliance report on Employment can be found here:

Our recommendations and details are in this file

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REGULATORY COMPLIANCE UPDATE

CRYPTO

08.2024

Bank of Lithuania's letter of expectation regarding the requirements for crypto-asset service providers

LINK

Bank of Lithuania's expectations for crypto-asset service providers (CASPs)

The Bank of Lithuania issued expectations for future crypto-asset service providers in light of the upcoming EU MiCA regulation, effective from December 30, 2024. Key points include the need for strong governance, client asset protection, and conflict-of-interest management. The Bank emphasizes the importance of risk management, including anti-money laundering (AML) measures, and requires providers to demonstrate transparency, sound financial practices, and robust internal controls. Firms should prepare for a stringent regulatory environment and ensure full compliance to avoid operational disruptions.

ESMA newsletter on MiCA and DORA
ESMA publishes latest "spotlight on markets" newsletter on MiCA and DORA

LINK

The latest ESMA newsletter highlights key regulatory developments, including the Regulation on Markets in Crypto-Assets (MiCA) and the Digital Operational Resilience Act (DORA). ESMA emphasizes the importance of adhering to global standards for crypto firms, updates on sustainable finance frameworks, and stress test results for Central Counterparties. It also discusses new consultations related to the Central Securities Depositories Regulation and MiFIR review, alongside updates on the European Single Electronic Format.

ESMA Working Paper No. 3, 2024. Decentralised Finance: A categorization of smart contracts

Understanding Smart Contracts in Decentralized Finance: An ESMA Categorization for Regulatory Compliance

LINK

The ESMA working paper provides a detailed categorization of smart contracts within decentralized finance (DeFi). It explores the functional aspects of smart contracts, their uses, and potential risks. The paper categorizes these contracts based on their governance, execution, and use cases, highlighting the importance of understanding these aspects for regulatory and risk management purposes.

EBA Staff paper series N. 18-08/2024.

LINK

EBA's perspective on optimal design of stablecoin frameworks

The document explores the nuances of how to create a stablecoin framework that would on a technical level evaluate all of its fundamental risks.

Lithuanian Financial Investigation Unit capital requirements for VASPs

LINK

Lithuanian Financial Investigation Unit

Starting from 1st August 2024, companies providing crypto-asset exchange or wallet services in Lithuania had to comply with a new requirement regarding their capital. From that date the companies need to maintain a 125 000 € own capital. In addition, the companies need to provide documents proving their compliance to the said requirement by 31st August 2024.

Detailed and full Regulatory Compliance report on Crypto Regulation can be found here:
Our recommendations and details are in this file

REGULATORY COMPLIANCE UPDATE

EU WHISTLEBLOWING DIRECTIVE

ECOVIS ProventusLaw

Whistleblowing Directive Implementation

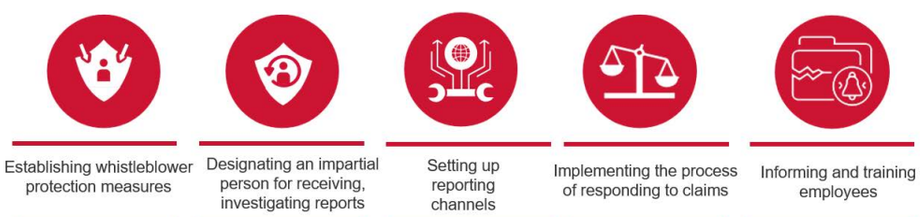
LINK

The EU Whistleblower Directive is mandatory for all organisations with more than 50 employees. **For financial institutions this legislation is mandatory regardless of number of employees** and is designed to protect individuals who report breaches of EU law. It establishes minimum standards for reporting mechanisms and safeguards against retaliation for whistleblowers across the European Union, thereby bolstering Environmental, Social, and Governance (ESG) principles. This directive underscores transparency, accountability, and responsible conduct, aligning with broader ESG objectives to promote sustainable and ethical business practices across the European Union and beyond.

This Directive introduces several key provisions, including:

1. Scope: The directive covers many areas where EU law applies, including public procurement, financial services, product safety, environmental protection, public health, consumer protection, and more.
2. Reporting Channels: Member states and certain private entities must establish secure and confidential reporting channels for whistleblowers. These channels must be easily accessible and capable of handling reports effectively.
3. Protections: The directive prohibits retaliation against whistleblowers, including dismissal, demotion, harassment, and discrimination. It also requires member states to provide effective remedies for whistleblowers who experience retaliation.
4. Confidentiality: Whistleblowers' identities must be kept confidential throughout the reporting process unless disclosure is necessary for investigation or legal proceedings.
5. Follow-Up: Once a report is submitted, the relevant authorities or organisations must acknowledge receipt and provide feedback to the whistleblower within a reasonable timeframe.

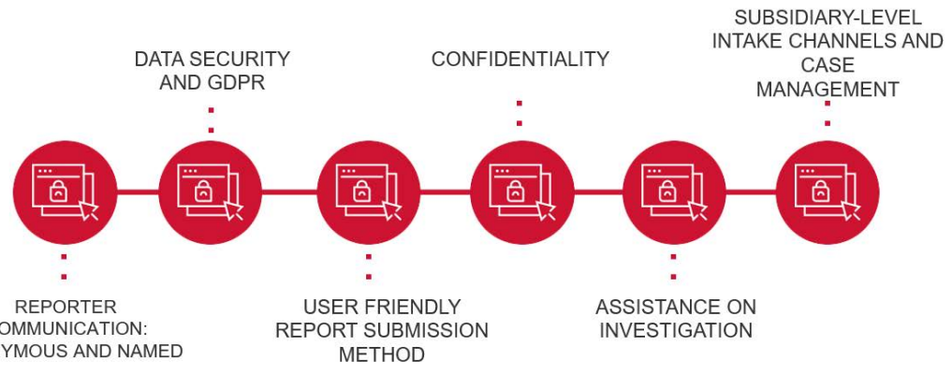
Under the EU Whistleblower Directive, organisations must establish secure and confidential reporting channels for whistleblowers. The reporting process is designed to ensure the protection of whistleblowers and the effective handling of reports of wrongdoing.



WHISTLEBLOWING SOLUTION BY ECOVIS
Outsourcing solution for companies

LINK

Ecovis provides a whistleblowing system as an outsourced channel for companies, ensuring compliance with the EU Whistleblower Directive. Our service offers a convenient solution, as we provide secure and confidential reporting channels that meet the directive's standards. By entrusting the handling of whistleblower reports to us, companies can streamline the reporting process, enhance transparency, and mitigate the risk of internal bias or conflict of interest. This allows organisations to focus on their core activities while effectively managing whistleblowing cases.



Discover how Ecovis Whistleblowing's outsourced system ensures confidentiality and data security in accordance with directive standards while offering two flexible options for companies:

Option 1: Utilize our system solely as a reporting channel, receiving all reports directly without our involvement in the initial investigation process.
Option 2: Entrust us to handle the investigation process as well.

Whether companies require a reporting channel only or a comprehensive investigative service, Ecovis Whistleblowing provides a reliable solution tailored to their needs, fostering transparency and compliance with the EU Whistleblower Directive. Contact us at vilnius@ecovis.lt, and we will ensure compliance with the Whistleblowing Directive tailored to your specific situation and available resources.