

# Regulatory Flash: Q4 2023

Simmons & Simmons Spain

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# Regulatory Flash – Q4 2023

Spain – Q4 2023 – Regulatory update

## 1. Spanish Regulation

### 1.1 Amendments to the Investors Compensation Scheme (Fondo de Garantía de Inversiones – FOGAIN) for entities providing investment services

The [Royal Decree 1180/2023](#), of 27 December, published on 28 December in Spain's Official State Gazette (BOE), introduces several amendments to, among others, the Investors Compensation Scheme (FOGAIN) approved by [Royal Decree 948/2001](#).

The recent amendments to the FOGAIN regulation serve three primary purposes: to distribute annual contributions from affiliated entities more equitably, to align each entity's contribution with the risk it presents to the system, and to ensure the financial sector's stability.

Coverage scope amendments include the addition of national financial advisory firms (EAFN) to FOGAIN and the exclusion of professional investors' money and securities from FOGAIN's guarantee.

Money, securities and instruments entrusted by the following investors are excluded from the guarantee of the scheme: Professional investors as referred to in Article 194 of Law 6/2023.

The annual contribution scheme has been restructured, with fixed amounts based on the list of investment services and activities, resulting in substantial reduction of the current fixed amounts (from EUR 20,000 to 40,000), with EUR 2,700 for portfolio management, EUR 1,000 for reception and transmission of orders (including placement of financial instruments without a firm commitment basis), EUR 800 for investment advice, and EUR 2,700 for all other investment services and ancillary services consisting of the custody and administration services on behalf of clients.

A variable contribution system has also been introduced, based on 0.2% of cash up to EUR 100,000 per covered client and 0.008% of the value of deposited or managed securities which correspond to clients covered by the scheme.

The contribution regime has been further modified by introducing a formula to progressively reduce variable contributions based on the asset volume and adjusting the formula for calculating assets that trigger the suspension of variable contributions.

However, both the reduction and the suspension mentioned above shall only apply to contributions linked to cash and covered client securities; the reduced fixed amount shall always be paid by the member entities of the FOGAIN.

Financial advisory firms will have a three-month transitional period to adapt to the new Royal Decree.

This Royal Decree will be effective from 17 January 2024, with a special regime for the reduction of contributions to FOGAIN. Entities subject to FOGAIN may benefit from a voluntary system of gradual adaptation to the new contribution regime established in Article 8 of Royal Decree 948/2001. In addition, relevant entities shall notify the management of the FOGAIN whether or not it avails itself of this regime within fifteen calendar days of the entry into force of this Royal Decree.

Entities subject to FOGAIN will receive further individualised instructions directly by this scheme in the coming days.

## 1.2. Amendments to Regulation on Collective Investment Schemes (RD 1082/2012)

The regulations governing Collective Investment Schemes (IIC) have also been amended by the Royal Decree 1180/2023.

Key changes include adjustments to the commercialisation of shares or units of Hedge Funds to non-professional investors in a similar way to that included in private equity regulation by Law Create and Grow 18/2022. The Royal Decree introduces more flexibility for non-professional investors in terms of minimum investment amounts in Hedge Funds. In this regard, non-professional investors can now invest in Hedge Funds if they commit to a minimum investment of EUR 100,000 and acknowledge the associated risks in writing, or if they invest at least EUR 10,000 based on personalised advice from an intermediary, provided the investment does not exceed 10% of their financial capital, up to a maximum of EUR 500,000.

The management fee structure has been revised to allow the use of reference net asset values, benchmark indices, or critical performance rates for calculating performance-based management fees. It shall establish a performance benchmark period such that the performance management fee may only be paid when a positive performance has been accumulated during the performance benchmark period. The performance reference period must cover at least the last 5 years of the fund on a rolling basis. The provisions on performance fees apply to SICAVs, with the exception of those relating to maximum limits.

Furthermore, the fund is prohibited from bearing the cost of marketing the IIC in which it invests when they are managed by its own management company or by another management company belonging to the same group.

Changes to the custody and administration fee include the removal of a condition that previously prevented fund distributors belonging to the same group as the management company from charging fees for the custody and administration of fund units. This amendment allows for the application of custody fees to funds managed by the same company, provided other requirements are met.

Other amendments to the IIC regulations introduced by Royal Decree 1180/2023 include adjustments to the success fee regime in line with ESMA guidelines, changes to the analysis expenses regime following the MIFID Quick-Fixes Directive, and the removal of quantitative limits on IIC investments in voting rights instruments while maintaining restrictions on significant influence over issuers. The Royal Decree also contains the removal of the requirement to include an ongoing charges figure in the prospectus, and there are improvements in liquidity management, such as the elimination of the 1% liquidity ratio and increased flexibility in calculating the net asset value.

Click [here](#) to see the Royal Decree.

## 1.3 Publication in the Spanish Official Gazette of four pieces of legislation that develop Law 6/2023, on Securities Markets and Investment Services

On 9 November, four Royal Decrees were published in the Official State Gazette (BOE), which mainly implement the recent Law 6/2023 of 17 March on Securities Markets and Investment Services.

[Royal Decree 813/2023 on the Legal Regime of Investment Firms and other Entities providing Investment Services.](#)

It develops the authorisation regime, organisational measures, financial and solvency requirements and rules of conduct to be observed by national investment firms and financial advice firms.

Some of the provisions are the following:

- Creation of the National Financial Advisory Firms (EAFN) which will have no European passport and no solvency requirements.

- Completion of the transposition of ESG and shareholder engagement policy obligations, as well as the incorporation of Quick-Fixes.
- Electronic format is established as the default form of delivery of information to the client, unless the retail client has requested to receive the information in paper form, in which case the information will be provided to them in paper form free of charge.
- In the case of non-face-to-face transactions, it is established the possibility of communicating to the customer information on costs and expenses in the purchase or sale of a financial instrument after the transaction has been completed, provided that the company has given the customer the option of delaying the conclusion of the transaction until the customer has received the information, or the customer has consented to receive the information without undue delay after the conclusion of the transaction. In addition, institutions must offer customers the possibility to receive this information by telephone prior to the conclusion of the transaction.
- For services provided to professional clients other than investment advice and portfolio management, institutions are exempted from the obligation to report costs and charges.

[Royal Decree 814/2023 on Financial Instruments, Admission to Trading, Registration of Negotiable Securities and Market Infrastructures.](#)

This regulation develops matters relating to the registration of negotiable securities and their admission to trading, as well as the regime for central counterparties and central securities depositories.

[Royal Decree 815/2023 developing the administrative powers and faculties of the CNMV.](#)

It specifies and details the CNMV's actions in areas such as administrative registers, and powers of cooperation and coordination with other supervisory authorities.

[Royal Decree 816/2023 amending Royal Decree 1082/2012, of 13 July, approving the Regulations implementing Law 35/2003, of 4 November, on Collective Investment Institutions.](#)

It develops the new changes in collective investment schemes incorporated in the Law Create and Grow 18/2022, of 28 September and in the new Law 6/2023, of 17 March, on Securities Markets and Investment Services aimed, among other things, at promoting venture capital and collective investment as an alternative means of business financing to bank financing. This regulation also facilitates the development of sustainable finance by establishing that fund management companies must take sustainability risks into account across their activities.

## **1.4 1 December 2023 was the cut-off date for firms to be compliant with Law 2/2023 on Whistleblowing**

We remind you again that Law 2/2023 of 20 February on the protection of persons who report violations of the Law and the fight against corruption ([Law 2/2023](#)) which transposed the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law ([Whistleblowing Directive](#)) came into force on 1 March 2023.

Spanish and some Non-Spanish companies (see below) are required to adapt their procedures and policies to Law 2/2023 and to ensure that they do comply with the relevant new requirements at the soonest.

Existing Whistle-blower Systems established at the parent company level shall be reviewed and be adapted to Law 2/2023.

Companies with more than 50 employees and the following entities of less than 50 employees are obliged to comply with this Law 2/2023:

Companies that fall within the scope of European Union law on financial services, products and markets, prevention of money laundering and terrorist financing, transport safety, or environmental protection; and legal persons if, although not domiciled in Spain, they carry out activities in Spain through branches or agents or by providing services without a permanent establishment.

## 1.5 Central Registry of UBO created by Royal Decree 609/2023 of 11 July

Click [here](#) to see the Law. Click [here](#) to Simmons and Simmons update.

Spain has created the Central Registry of Ultimate Beneficial Owners and approves its Regulation by means of Royal Decree 609/2023, of 11 July, which entered into force on 19 September 2023.

The Spanish Central UBO Registry will contain information on Ultimate Beneficial Owners of all Spanish legal entities and entities or structures without legal personality that (i) have the seat of their effective management or their principal activity in Spain or (ii) are administered or managed by individuals or legal entities residing or established in Spain, as well as other structures without legal personality that, although not managed or administered from Spain or another European Union State, and not registered in another European Union State, intend to establish business relations, carry out occasional operations or acquire real estate in Spain.

The UBO Registry will centralise beneficial ownership information currently available in Spain from a variety of sources (Mercantile and Property Registry, Registry of Foundations, General Council of Notaries, etc) in addition to that which will be provided directly to it by obliged subjects, if necessary.

Obliged subjects, and other parties with legitimate interest, will have access to the information contained in the Spanish Central UBO Registry and will obtain electronic certification of the Register (or an extract of it) in order to fulfil their obligations regarding the identification of the beneficial owner.

They will be able to obtain information on the nature and extent of the beneficial interest held and of this beneficial ownership, in particular, whether it is due to the control of the ownership or that of the management body of the same and the percentage of participation, including, in the case of indirect ownership, information on the intervening legal entities and their participation in each of them.

## 2. Spanish Supervising Authorities

### 2.1 CNMV adopts ESMA Guidelines on Product Governance

Click [here](#) to access the document and the CNMV's document can be seen [here](#).

On 11 October 2023, the Spanish Securities Market Commission - *Comisión Nacional del Mercado de Valores* (CNMV) notified ESMA that it will comply with ESMA's [Guidelines](#) on MiFID II product governance requirements Product Governance, since the product governance requirements introduced by MiFID II have proven to be one of the most important elements of the investor protection framework, with the objective of ensuring that only financial products are produced and/or distributed in the best interest of clients.

Among the most novel aspects are the following, depending on whether they affect manufacturers or distributors or both:

- Manufacturers:
  - It is established that, in identifying the target market for a product, the results of the scenario analyses and the cost structure carried out must be taken into account.
  - In relation to the category of objectives and customer needs, it is stated that any objectives related to sustainability with which the product is compatible should be specified.
  - Criteria are included on how to identify the target market by grouping products that have sufficiently comparable characteristics and risks (clustering approach) rather than by singular product approach.

- Distributors:
  - Where institutions intend to use gamification practices that seek to induce customer transactions through digital means for the distribution of certain products, distributors should assess whether they are in the best interest of customers.
  - In the case of more complex products, when detailing the target market initially defined by the manufacturer, distributors should assess whether they need access to the results of the scenario and cost structure analysis carried out by the manufacturer.
  - Where the distributor considers that a more complex product with a relatively small target market can also be distributed under non-advised services, he should identify measures to ensure that the distribution strategy is compatible with the target market.
  - In the case of portfolio management or advice with a portfolio approach it is indicated that sales outside the positive target market may occur also in relation to objectives related to the sustainability of the product, provided that it is consistent with the approach described in the ESMA Guidelines on certain MiFID II suitability requirements.

In particular, in the second bullet point of paragraph 38 of the ESMA Sustainability Guidelines, it is stated that "(...) in the case of the provision of a portfolio management service, given that it is the firm which makes investment decisions on behalf of the client, the level of knowledge and experience that the client needs in respect of all financial instruments may be less detailed than the level that would be required in the case of investment advice. However, even in these situations, the client will at least understand the total risks of the portfolio and have a general understanding of the risks associated with each type of financial instrument that may be included in the portfolio. Firms shall have a very clear knowledge and understanding of the client's investment profile".

- Both, manufacturers and distributors:
  - The guidelines include the obligation for manufacturers and distributors to justify and document the decisions taken on their product governance arrangements, including the identification of the target market and the corresponding distribution strategies.
  - They state that manufacturers must determine what information they need in order to be able to draw reliable conclusions as to whether products have been distributed in the identified target market. It specifies that it may be necessary to collect more information about their customers or that they should even reconsider their distribution strategy for more complex products distributed through non-advised sales if, for example, the review shows that such products have been distributed outside the positive target market (or even within the negative target market) too frequently.
  - It is also clarified that the identification of the negative target market is not required for products that consider sustainability factors in relation to sustainability-related objectives, as these products are compatible with customers who do not have sustainability preferences, as long as they are compatible with the characteristics of the other categories defining the target market.

### 3. EU

#### 3.1 New Directive as regards financial services contracts concluded at a distance

You can access the full content of the Directive by clicking on this [link](#).

On 28 November 2023, the Directive (EU) 2023/2673, amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC which also dealt with the distance marketing of financial services ([Directive 2023/2673](#)) was published in the Official Journal of the European Union. The aim of the new Directive is to harmonise the rules for the distance marketing of consumer financial services and the rules applicable to distance contracts for the sale of goods and provision of services concluded between a trader and a consumer.

Some of the most relevant aspects of this Directive are the consumer information requirements, whereby the consumer must be provided with a list of information included in the Directive, such as the identity of the trader, the characteristics of the financial service, withdrawal rights, etc. In addition, the Directive requires a reminder to be sent to the consumer between one and seven days after signing the contract about the possibility of withdrawing from the contract.

In this regard, it is important to highlight the consumer's right to withdraw from the distance contract, which compels the consumer to be provided with an option for fourteen calendar days on the website where he can withdraw, an option which he can make use of during this time without having to justify the reason for withdrawal. This Directive also establishes that companies must provide adequate explanations of the financial services proposed, thus allowing consumers to assess whether the proposal is suitable for their needs and financial situation.

This Directive entered into force on 18 November 2023, Member States will have until 20 November 2025 to adopt and publish it. They will apply these measures from 20 November 2026.

### 3.2 New Directive on credit agreements for consumers

You can access the full content of the Directive by clicking on this [link](#).

You can also access to our Simmons & Simmons alert in the following [link](#).

Directive (EU) 2023/2225 on credit agreements for consumers and repealing Directive 2008/48/EC (Directive 2023/2225) was adopted on 18 October 2023 with the aim of establishing a common framework for the harmonisation of various aspects, in particular in the online environment and the increasing mobility of EU citizens, which can be adapted to future forms of credit. This is intended to increase the level of protection of consumers' interests and to ensure that credit offers are made under the best possible conditions.

All credit agreements up to EUR 100,000, including consumer credit agreements where the total amount of credit is less than EUR 200, which were excluded in Directive 2008/48/EC, are included in the scope of this Directive. It also includes 'buy now, pay later' schemes, among others. However, some agreements, such as certain deferred payments or certain credit agreements in the form of deferred debit cards, remain out of scope.

This Directive adopts specific provisions on the advertising of credit agreements, such that basic information must be provided in a clear, concise and prominent manner and by means of a representative example. It also prohibits the granting of unsolicited credit and mandate that the consumer's ability and willingness to repay the credit be assessed and checked prior to the conclusion of a credit agreement. It is important to highlight the right of withdrawal without penalty and without obligation of justification, increasing the withdrawal period to twelve months and fourteen days from the conclusion of the contract. Consumers should also be allowed to settle their obligations before the date agreed in the credit agreement.

This Directive entered into force on 19 November 2023. However, Articles 23, 24, 25 (second sentence of paragraph 1 and paragraph 2), 28 and 39 shall apply to all open-end credit agreements in force on 20 November 2026.

## 4. RETAIL INVESTMENT STRATEGY (RIS)

The [Retail Investment Strategy](#) and Annexes (RIS) is making its way through the Parliament and Council. It also includes related but separate documentation, proposing minor amendments to PRIIPs Regulation (you can find Simmons & Simmons' separate briefing [here](#) on that).

Click [here](#) to see a Briefing issued by the European Parliament on the legislation in progress on RIS.

It is also worth looking at published info: [https://finance.ec.europa.eu/publications/retail-investment-strategy\\_en](https://finance.ec.europa.eu/publications/retail-investment-strategy_en), and a useful roadmap can be found here: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-EU-strategy-for-retail-investors\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-EU-strategy-for-retail-investors_en)

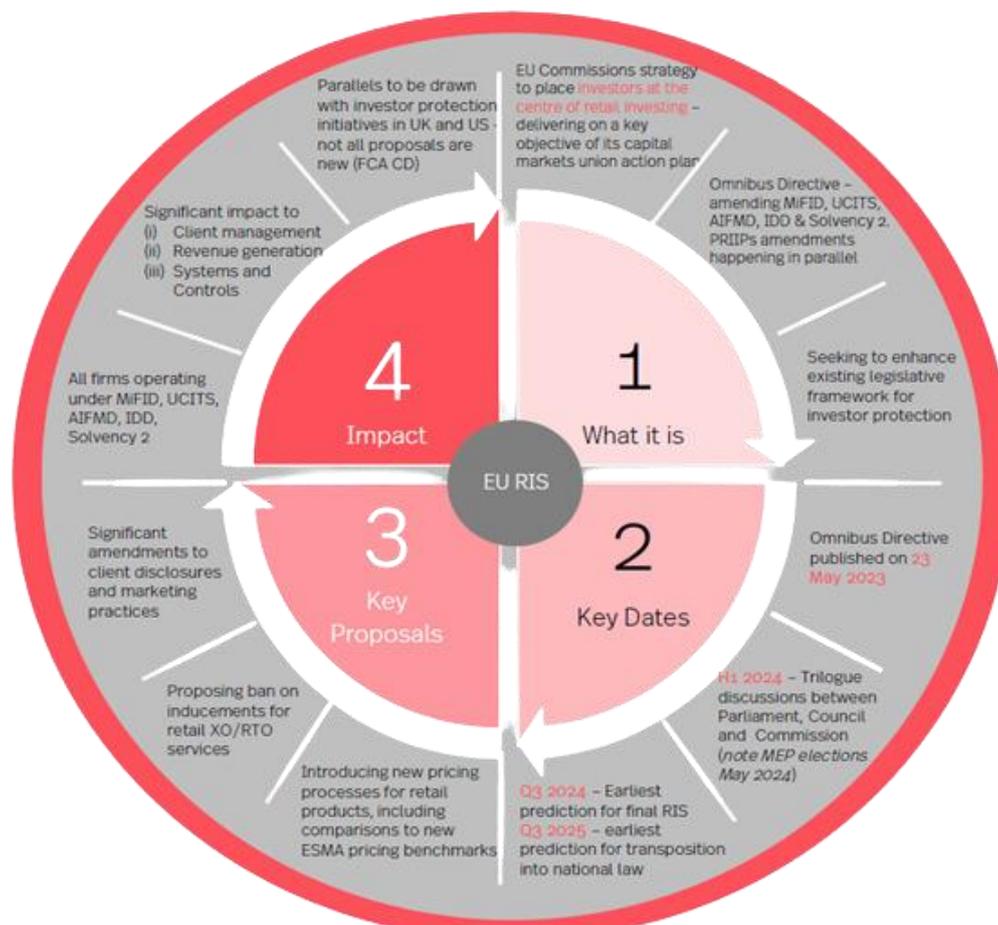
In the following [link](#), you will see the key take-aways. You can also watch a [recording of our webinar](#) on this.

The RIS comes as part of the EU Commission's long-running 2020 [Capital Markets Union Action Plan](#) (CMU Plan) - the stated aims of which are to improve access for retail investors to financial markets, as well as ensuring investor protection. The RIS is the first major proposal arising from this edition of the CMU Plan and it's not been without controversy, especially on the topics of inducements and product governance.

Its wide-reaching scope proposes to make changes, in the retail client arena, to MiFID, PRIIPs and (from a product governance angle) AIFMD and UCITS. It also proposes to amend the Insurance Distribution Directive (IDD) and Solvency 2, most of which are aimed at aligning IDD and MiFID.

It will be important to follow developments as the RIS goes through the Council and Parliament, and to align your business with ongoing lobbying efforts where relevant. The RIS proposals have not yet entered trilogue so are a while away from being finalised/agreed/implemented.

See below our infographic on RIS:



## 5. MICA

You can access the MiCADamy created by Simmons & Simmons in this [link](#), which will guide you through the intricacies of this ground-breaking regulation, helping you understand the implications and plan for compliance effectively.

### 5.1 MICA Regulation application is anticipated in Spain

Click [here](#) to access the government's press release.

The Spanish Ministry of Economic Affairs and Digital Transformation published at the end of October 2023 its decision to bring forward the implementation of the European Regulation on the crypto-assets market (MiCA) by six months, to be implemented in Spain in December 2025, in order to create a stable regulatory and supervisory framework that provides legal certainty and protects investors in relation to the provision of crypto-asset services.

This option brings forward the implementation of the Regulation in Spain, and allows the CNMV to start supervision earlier, with the estimated date of implementation of the Regulation being 30 December 2024. From that date, all providers wishing to provide crypto-asset services will have to apply for a MiCA licence. However, for those entities already providing crypto-asset services, the Regulation foresees that a *grand-fathering period* of up to 18 months can be applied to allow them to obtain the licence (until 30 June 2026).

The competent authorities in charge of the implementation of the MiCA Regulation in Spain are the CNMV and the Bank of Spain, published in the Securities Markets and Investment Services Law in March 2023.

## 6. ESMA

### 6.1 ESMA's Public Statement on Funds' names using ESG or sustainability-related terms

Click [here](#) to access ESMA's Public Statement.

On 14 December, ESMA published a Public Statement updating the guidelines on fund's names using ESG or sustainability-related terms.

According to the Public Statement, funds' names are a powerful marketing tool. In order not to mislead investors, ESMA believes that ESG- and sustainability-related terms in funds' names should be supported in a material way by evidence of sustainability characteristics or objectives that are reflected fairly and consistently in the fund's investment objectives and policy.

ESMA (i) has decided to postpone the publication of the Guidelines to ensure that the outcome of the review of the AIFMD and UCITS are fully considered; (ii) plans to adopt the relevant Guidelines shortly after the date of entry into force of the amended AIFMD and UCITS legal texts; and (iii) has decided to publish this Public Statement to highlight the key content of the guidance that it intends to provide in the upcoming Guidelines:

#### Threshold for sustainable Investments

Deviating from the initial approach of considering a threshold of 50% in sustainable investments for the use of sustainability-related words in funds' names, now ESMA considers it more appropriate that sustainability-related terms in funds' names should be used in accordance with the following:

- the fund should apply the 80% minimum proportion of investments used to meet the sustainability characteristics or objectives,

- the fund should apply the Paris-aligned Benchmark (PAB) exclusions<sup>1</sup>, and
- the fund should invest meaningfully in sustainable investments defined in Article 2(17) SFDR, reflecting the expectation investors may have based on the fund's name.

### Adaptation to transition

In order not to disadvantage funds that follow a climate transition strategy, ESMA proposes to introduce a new category for transition-related terms. In addition to the 80% threshold, Climate Transition Benchmark (CTB) exclusions<sup>2</sup> should be applied. Some exemptions apply where "S" and "G" terms are used.

Finally, funds using "transition"- or "impact"-related terms in their names should also ensure that investments under the minimum proportion of investments are made with the intention to generate positive, measurable, social or environmental impact alongside a financial return or are on a clear and measurable path to social or environmental transition.

Exclusions for EU Paris-aligned Benchmarks are contained in Article 12(1)(a)-(g) of Commission Delegated Regulation (EU) 2020/1818 which includes:

- companies involved in any activities related to controversial weapons;
- companies involved in the cultivation and production of tobacco;
- companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises;
- companies that derive 1 % or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite;
- companies that derive 10 % or more of their revenues from the exploration, extraction, distribution or refining of oil fuels;
- companies that derive 50 % or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels;
- companies that derive 50 % or more of their revenues from electricity generation with a GHG intensity of more than 100 g CO<sub>2</sub> e/kWh.

Exclusions for EU Climate Transition Benchmarks are those contained in Article 12(1)(a)-(c) of Commission Delegated Regulation (EU) 2020/1818.

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<sup>1</sup>Exclusions for EU Paris-aligned Benchmarks are contained in Article 12(1)(a)-(g) of Commission Delegated Regulation (EU) 2020/1818 which includes:

- companies involved in any activities related to controversial weapons;
- companies involved in the cultivation and production of tobacco;
- companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises;
- companies that derive 1 % or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite;
- companies that derive 10 % or more of their revenues from the exploration, extraction, distribution or refining of oil fuels;
- companies that derive 50 % or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels;
- companies that derive 50 % or more of their revenues from electricity generation with a GHG intensity of more than 100 g CO<sub>2</sub> e/kWh.

<sup>2</sup>Exclusions for EU Climate Transition Benchmarks are those contained in Article 12(1)(a)-(c) of Commission Delegated Regulation (EU) 2020/1818.

## 7. ESG

### 7.1 Simmons & Simmons ESG view December 2023

We invite you to read the latest edition of [ESG View](#) issued by Simmons & Simmons which analyses the most recent developments at Global and EU level and interestingly focused on developments from COP28 in Dubai and including other global updates such as, among others, the ICMA Guidance Handbook, the publication of the ICMA Code of Conduct for ESG ratings and data providers, and a live consultation from the Basel Committee on disclosure of climate-related financial risks.

Specifically, the latest ESG View relates to the following:

- Historic agreement reached with the “[UAE Consensus](#)” at COP28, with nearly 200 countries agreeing to transition away from fossil fuels and reach net zero emissions globally by 2050.
- Updates to ICMA Guidance Handbook (Global – financial institutions): On 29 November the International Capital Market Association (ICMA) and the Executive Committee of the Principles published an updated edition of the [Guidance Handbook](#).
- ICMA Code of Conduct for ESG ratings and data providers (Global ESG ratings and data): on 14 December, the ICMA published a [Code of Conduct](#) launched by the Data and Ratings Working Group for ESG ratings and data products providers.
- The Basel Committee consults on disclosure of climate – related financial risks (Global – financial institutions): On 20 November the Basel Committee of Banking Supervision (BIS) published a [consultation](#) on disclosure of climate-related financial risks. It forms part of its holistic approach to address climate-related financial risks to the global banking system.
- IOSCO report published on Supervisory Practices to address Greenwashing (Global – multi sector): On 4 December, published the [final report](#) which provides an overview of the initiatives undertaken in various jurisdictions to address greenwashing in line with the IOSCO [recommendations](#) published in 2021 and maps current or planned regulatory and supervisory approaches and practices by regulators to address greenwashing in the areas of asset management and ESG and data product providers.
- Biodiversity and Nature Credit Markets continue to evolve at pace (Global – multi sector)
- Agreement at long last: the EU corporate sustainability due diligence directive (EU – multi sector): On 14 December, after months of negotiation, the European Council and Parliament reached a provisional agreement on the corporate sustainability due diligence directive (CSDDD) (see the [EU Parliament press release](#) and [European Council press release](#) for details). CSDDD will create obligations for large companies regarding actual and potential adverse impacts on human rights and the environment, with respect to its own operations, those of its subsidiaries, and those carried out by business partners. CSDDD will apply to large companies i.e. those that have more than 500 employees and a net worldwide turnover over EUR 150 million. It will also impact certain non-EU countries three years from its entry into force. Notably, the financial sector will **not** be included in the scope of CSDDD but this will be reviewed for future inclusion.
- The FCA publishes final SDR and greenwashing rules (UK – asset management).

We remind you of our upcoming webinars:

- 11 January 2024: [Simmons SDR “deeper dive” webinar series -The Anti-Greenwashing Rule – what is it and how do you avoid breaching it?](#)
- 16 January 2024: [Global insights: COP28 Debrief and Roadmap for 2024](#).

## 7.2 EU Green Bond Standard

Click [here](#) to see the Regulation.

On 30 November, the European the Regulation (EU) 2023/2631, of 22 November, on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds was published in Official Journal of the European Union.

This Regulation is designed to prevent greenwashing in the fixed-income markets and ensure that Green Bonds align with the EU taxonomy regulation. This move is part of the European Green Deal and represents the world's first regulation of its kind, setting a voluntary standard for both public and private bond issuers who wish to label their bonds as "European green bonds" or "EUGB."

A key feature of the agreement is that the proceeds from the bonds must finance activities that comply with the EU's taxonomy and are subject to review by an external verifier registered with ESMA.

The Regulation entered into force on the twentieth day following that of its publication in the Official Journal of the European Union and shall apply from 21 December 2024.

## 8. CRYPTO VIEW

Visit our [CRYPTO VIEW](#) issued on 5 December for the latest edition dealing with the enforcement action carried out by the DOJ against some of the big players, stablecoins and the proposal from the FCA to regulating fiat – basket stablecoins that may be used for payments, the response published by HMT to the consultation issued by the Digital Securities Sandbox, and tokenisation of funds according to the interim report issued by the Investment Association.

## 9. AML

### 9.1 The Financial Action Task Force (FATF) updates the list of countries under control in the prevention of money laundering and terrorist financing

On 27 October 2023, FATF published the [Jurisdictions under Increased Monitoring - 27 October 2023 \(also known as "Grey List"\)](#).

The list now added Bulgaria, and removed Albania, The Cayman Islands, Jordan and Panama of the countries included in the last update. Therefore, the jurisdictions that have strategic deficiencies in their regimes to counter money laundering, terrorist financing and proliferation financing are the following: 1) Barbados; 2) Bulgaria; 3) Burkina Faso; 4) Cameroon; 5) Democratic Republic of Congo; 6) Croatia; 7) Gibraltar; 8) Haiti; 9) Jamaica; 10) Mali; 11) Mozambique; 12) Nigeria; 13) Philippines; 14) Senegal; 15) South Africa; 16) South Sudan; 17) Tanzania; 18) Türkiye; 19) UAE; 20) Uganda; 21) Vietnam and 22) Yemen.

### 9.2 EBA's Consultation Guidelines on the prevention of the misuse of funds from certain crypto-asset transfers

Click [here](#) to see the Consultation Paper.

The European Banking Authority (EBA) has published a consultation in relation to amendments to its guidelines on the prevention of the misuse of funds from certain crypto-asset transfers for money laundering or terrorist financing purposes, which will remain open until 26 February 2024. The Guidelines implement Regulation (EU) 2023/1113, known as the **Travel Rule**, on information accompanying transfers of funds of certain crypto-assets and amending Directive (EU) 2015/849.

### 9.3 EBA guidelines on risk management for the prevention of money laundering and terrorist financing in the provision of financial services

Click [here](#) to see these Guidelines.

On 3 November 2023, the EBA Guidelines published on 3 March 2023, on policies and controls for the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services entered into force. These are intended to safeguard access to financial services for certain categories of customers who are rejected as posing a high ML/TF risk. They are addressed to financial credit institutions and national competent authorities.

They adjust the intensity of ML/TF risk monitoring measures to apply to the customer's profile, and include some steps for monitoring, such as regularly reviewing the customer's account or gathering expectations about the customer's behaviour to detect unusual transactions. The guidelines also indicate that national policies should include options and criteria for tailoring the features of products and services offered to a given customer on an individual and risk-based basis.

Complaints mechanisms are introduced, so that when a decision to refuse a business relationship is reported, the person should be informed of his or her right to contact the competent authority designated for the resolution of the dispute and be provided with the relevant contact details.

### 9.4 The EU Council updates the list of non-cooperative countries and territories for tax purposes

Click [here](#) for more information.

The list of non-cooperative countries and territories for tax purposes established by the Council of the European Union is regularly updated as a measure to prevent tax evasion. It is composed of countries which have failed to fulfil their commitments to comply with tax good governance criteria within a specific timeframe, and countries which have refused to do so. These should be considered as risk countries by obliged subjects on AML/TF.

The latest update is dated 10 October 2023, which came into force on the same day and automatically replaced the previous one. The countries and territories included in the list are the following: 1) American Samoa; 2) Anguilla; 3) Antigua and Barbuda; 4) Bahamas; 5) Belize; 6) Fiji; 7) Guam; 8) Palau; 9) Panama; 10) Russia; 11) Samoa; 12) Seychelles; 13) Trinidad and Tobago; 14) Turks and Caicos Islands; 15) US Virgin Islands; 16) Vanuatu.

### 9.5 EU Commission updates the list of high-risk third countries with strategic deficiencies in the prevention of ML/TF

Click [here](#) to see the Delegated Regulation.

The European Commission issued Delegated Regulation (EU) 2023/2070, which amends Delegated Regulation (EU) 2016/1675 to include Cameroon and Vietnam in the list of high-risk third countries. This contains the updated list of countries with strategic deficiencies in the prevention of money laundering and terrorist financing. This list applies from 18 October 2023: 1) Afghanistan; 2) Barbados; 3) Burkina Faso; 4) Cameroon; 5) Cayman Islands; 6) Democratic Republic of the Congo; 7) Gibraltar; 8) Haiti; 9) Jamaica; 10) Jordan; 11) Mali; 12) Mozambique; 13) Myanmar/Burma; 14) Nigeria; 15) Panama; 16) Philippines; 17) Senegal; 18) South Africa; 19) South Sudan; 20) Syria; 21) Tanzania; 22) Trinidad and Tobago; 23) Uganda; 24) United Arab Emirates; 25) Vanuatu; 26) Vietnam; 27) Yemen.

## 9.6 EBA Guidelines on the use of Remote Customer Onboarding Solutions

Click [here](#) to see these Guidelines.

On 2 October 2023, the EBA Guidelines on the use of remote customer enrolment solutions came into force, establishing a set of guidelines for credit and financial institutions headquartered within the EU to comply with the identification obligations of AML/TF directives.

This is the last step in the process of issuing the guidelines in order to standardise the processes for the prevention of money laundering and terrorist financing. In Spain, both the Bank of Spain and SEPBLAC have committed to comply with these guidelines in their supervisory functions of credit and financial institutions.

Credit and financial institutions should review their procedures for remote customer on-boarding to ensure that they comply with the requirements of these guidelines, which range from policies and procedures to technical issues.

## Simmons & Simmons Spain – Funds and Regulatory team

You may contact our Regulatory team in Spain at [madrid.fundsandregulatory@simmons-simmons.com](mailto:madrid.fundsandregulatory@simmons-simmons.com)



**María Tomillo**  
Partner  
T +3491 426 2583  
E [maria.tomillo@simmons-simmons.com](mailto:maria.tomillo@simmons-simmons.com)



**Andreas Elofs**  
Of Counsel  
T +3491 426 2715  
E [andreas.elofs@simmons-simmons.com](mailto:andreas.elofs@simmons-simmons.com)



**Gema Fernández**  
Supervising Associate  
T +3491 426 2892  
E [gema.fernandez@simmons-simmons.com](mailto:gema.fernandez@simmons-simmons.com)



**Jacobo Pérez-Pla**  
Associate  
T +3491 426 2415  
E [jacobo.perez-pla@simmons-simmons.com](mailto:jacobo.perez-pla@simmons-simmons.com)



**Gonzalo Fernández**  
Associate  
T +3491 426 2893  
E [gonzalo.fernandez.cortes@simmons-simmons.com](mailto:gonzalo.fernandez.cortes@simmons-simmons.com)