ÖSTERREICHISCHE
FMA · FINANZMARKTAUFSICHT

PRIORITIES & TRENDS IN THE PREVENTION OF ML/TF 2022

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1 SUMMARY OF MATERIAL FINDINGS

The process of clearing up international scandals in the Prevention of Money Laundering & Terrorist Financing (ML/TF) has clearly demonstrated the necessary for a robust (European) system for combating ML/TF. This is increasingly reflected in the FMA's multifaceted work in international and European committees, cross-border procedures as well as within the "AML colleges" that have been successively established.

The Austrian financial market is characterised by the large number and diversity of the market participants supervised by the FMA. For many years, such obliged entities under the Financial Markets Anti-Money Laundering Act (FM-GwG; Finanzmarkt-Geldwäschegesetz) have been making a substantial contribution towards a clean financial centre, by taking the necessary precautions and implementing measures to be able to adequately address the risks of being misused for the purposes of ML/TF. The FMA has been driving this since it took over the official competence in the field of prevention of ML/TF by means of its resolute, risk-based, and integrated supervision of the Austrian financial market, in which it pursues a cross-sector zero-tolerance policy.

The FMA monitors compliance with the obligations set out in the FM-GwG in a risk-based manner in accordance with its legal mandate. In practice, this means that the FMA conducts a data-based risk classification of the obliged entities, which allows it to concentrate its supervisory activities upon those entities and fields in which an increased ML/TF risk is identified. The priorities for supervision and inspections that have been set accordingly in recent years have led to a significant reduction in business areas with a particular affinity to risk (e.g., in business relationships with an offshore link or back-to-back business models).

During the FMA's operative supervisory activity over the reporting year, the greatest challenges for the obliged entities were determined in the risk-based observance of due diligence requirements in accordance with the FM-GwG: "ongoing monitoring of the business relationship", "origin of funds", "updates", or the purpose and type of the business relationship". One of the priorities for inspections in 2022 was on the compliance with the provisions of the FM-GwG by virtual asset service providers (VASPs). Since 2020 they have belonged to the group of obliged entities supervised by the FMA in accordance with the FM-GwG. The requirements for VASPs in the registration procedure as well as specificities of prevention work by VASPs were also addressed in a swathe of updates in 2022 in the relevant FMA Circulars on the Prevention of ML/TF.

The number of obliged entities in the Austrian market has continued to decrease slightly – the already established trend towards "larger organisational structures has continued. This is particularly due to mergers in the sector that is still by far the largest group of obliged entities: credit

institutions (CIs). In contrast, with the advent of VASPs, new obliged entities have emerged, which in turn require new resource-intensive approaches to supervision. Over the course of time, the number of bank customers has remained relatively constant. However, changes have been seen in business lines; in particular, correspondent banking business, which is especially prone to risk and which the FMA has placed an inspection focus on, has declined. Over time, the proportion of beneficial owners with the legal form of a foundation, a trust or a similar legal construction has also fallen. Furthermore, the number of such owners and natural persons domiciled in (high) risk jurisdictions has fallen during the course of the FMA's supervisory activities.

The outlook for 2023 shows the continuing development of existing thematic focuses and trends. Cooperation between authorities in the fight against ML/TF will be deepened within the framework of existing instruments and broadened in preparation for future EU regulation and the new supervisory model with a dedicated EU authority at its heart. Comprehensive data and digital software solutions to be able to exchange, evaluate and analyse data form the foundations for the risk-based approach for the prevention of ML/TF - for both supervisors and supervised entities. The ML/TF risks in the crypto sector remain a priority for the FMA's supervision. In addition, there are also cooperations with traditional financial sector entities.

2 THE FMA'S ROLE IN THE FRAMEWORK FOR PREVENTION OF ML/TF

The prevention of ML/TF is one of the FMA's central aims. To prevent the financial system from being misused for the purpose of disguising and shifting of assets of illegal origin as well as making (also legal) assets available for terrorist activities, the participants in the Austrian financial market must first and foremost take preventative measures, such as checking the identity of customers and conducting plausibility checks regarding their money flows.

The FMA has consistently followed a zero-tolerance policy since assuming its competence in the field of the prevention of ML/TF: it demands all market participants act in a legally compliant manner and works in a sustainable manner towards the required changes in conduct. Where legal obligations are nevertheless breached, the FMA uses the supervisory tools and sanctioning measures at its disposal. Breaches are punished with the due degree of consequence.

Various authorities and institutions are involved in the prevention of ML/TF in Austria.

- FMA
- Financial Intelligence Unit (Geldwäschemeldestelle) at the Criminal Intelligence Service Austria (A-FIU)
- Directorate National Security and Intelligence Service (DSN)

- Federal Ministry for Justice (BMJ)
- Federal Ministry of Finance (BMF)
- Oesterreichische Nationalbank (OeNB)
- Other ministries and chambers

Combating ML/TF is a complex and international issue, where many national and international authorities and institutions cooperate closely. Along with the competent authorities at national level, the FMA also cooperates closely with other supervisory or law enforcement agencies as well as academic institutions, and increasingly works as a competence centre and information hub for the prevention of ML/TF. Its objective is to further promote networking with national and international players in combating ML/TF and in preparation for the establishment of the European Anti-Money Laundering Authority (AMLA) – including the FMA's role within this decentralised system.

Combating ML/TF is more effective with the help of networking of different data and information. The FMA therefore pursued a data-driven supervisory approach, within which information that is relevant for money laundering of various sources (from supervised entities, the A-FIU, other authorities etc.) can be made usable for official activities and risk analyses - and which are increasingly also prepared by automated means.

The FM supervises observance of the regulatory requirements in the FM-GwG for the prevention of ML/TF. It is the competent supervisory authority for credit institutions and financial institutions or VASPs pursuant to Article 1 para. 1 FM-GwG. In addition to classical credit institutions and financial institutions under the Austrian Banking Act (BWG; Bankwesengesetz) obliged entities also include insurance undertakings (IUs), corporate provision funds, investment firms (IFs) and investment services providers (ISPs), payment institutions (PIs), electronic money institutions, alternative investments fund managers (AIFMs), as well as the branches and branch establishments of EEA institutions of these entities registered in Austria. In this context, the FMA checks compliance with the legal obligations with to due diligence obligations in connection with the prevention of ML/TF. If these obligations are breached, the FMA takes the necessary steps.

The supervision of participants in the Austrian financial market by the FMA in relation to the prevention of ML/TF is conducted on a cross-sector basis by a single division, housed in the department for "Integrated Supervision". This division is responsible for conducting on-site measures and official supervisory administrative proceedings, for representing the FMA in national and international committees as well as for legal interpretations in the field of the prevention of ML/TF. In addition, since 2020 the division's scope of competence has also included the registration of and "AML supervision" for VASPs. Where there is a suspicion for the FMA conducting supervisory activities that a transaction is being made for ML or TF purposes, then it makes a suspicious activity report to the A-FIU, which then analyses it from a criminal law perspective, and where applicable

then cooperates directly with the law enforcement authorities. There is a far-reaching exchange of information between the authorities based on the legal provisions.

The EU Anti Money Laundering Directive (AMLD) as well as its transposition into national law in the FM-GwG stipulate a risk-based approach for among other things the competent supervisory authority and its activities. The risk-based approach means that supranational authorities, governments, competent (national) authorities as well as obliged entities must identify, evaluate, and understand the risks in the area of prevention of ML/TF in order to be able to take appropriate measures to mitigate risks. When drawing up their risk assessment at entity level, pursuant to Article 4 para. 1 FM-GwG, the obliged entities shall refer to the the National Risk Assessment by the (national) coordination committee housed in the BMF, which refers in particular to the ML/TF risks that exist in Austria as well as taking into account the risks contained in the European Commission's Supra-national Risk Assessment on the risks of ML/TF in the Single Market. The FMA implements the risk-based approach for its supervisory activities as the competent (national) authority by using its own proprietary money laundering risk assessment tool among other ways.

This report presents the material issues, developments and trends in the prevention of ML/TF in 2022 from the FMA's perspective. The basis is on the one hand the findings from the supervisory authority's typical activities (such as on-site Inspections or investigations). On the other hand, the report is also based on relevant data, which the FMA collects from the supervised entities and analyses on an at least an annual basis. In addition, the report provides an insight and overview about the material regulatory developments, in which the FMA is involved at both national and international level.

3 TOPICS AND FOCUS OF ACTIVITIES 2022

The FMA's broad scope of activities including the various thematic focuses in the field of the prevention of ML/TF during 2022 is as follows:

3.1 SUPERVISORY ACTIVITIES

The FMA monitors compliance with the obligations in the FM-GwG in a risk-based manner in accordance with its legal mandate. In practice, this means that the FMA conducts a data-based risk classification of the obliged entities via its Money Laundering Risk Assessment Tool (Geldwäsche-Risikoanalysetool).

The FMA's risk assessment tool considers:

- the information collected from the obliged entities by means of questionnaires
- Observations based on supervisory law (e.g., arising from on-site inspections, investigative proceedings etc.)
- additional internal and external data (e.g., transaction data, shareholding structures)

The risk classification is calculated based on this data. The calculation is based on several factors, for example: customer structure, transaction volumes, the proportion of transactions in cash etc. Entities classified as "high risk" include obliged entities that display a large proportion of factors that increase the degree of risk or about whom observations by the supervisory authority exist. Subsequently the risk category is then fed into the planning of on-site measures by the FMA and therefore leads to a closely interval between inspections for "high risk" obliged entities.

Using the FMA's risk assessment tool allows a concentration of supervision on those entities and areas in which an increased risk of ML/TF is identified and where consequently there are particularly strict requirements in prevention work. The risk classification of the obliged entities is updated annually and in addition to objectified inspection planning also guarantees that the priorities for supervision and inspections are adapted on a regular basis. Adaptations are of course also possible on an ad hoc basis, such as in the case that such an adaptation seems necessary due to current official observations or media reporting. The FMA's priorities for supervision and inspections in recent years have led to there being a significant decrease in particularly risk-prone business lines in the Austrian financial market: In this regard, it should be highlighted that there has been a strong decrease in activity in "business relationships with an offshore link" or "back-to-back business models"[1].

The FMA's operative supervision in the area of the prevention of ML/TF takes place both in the form of on-site measures as well as within the scope of supervisory procedures. The following sections provide an overview about these activities as well as the material observations that have arisen in 2022.

[1] *In "back-to-back" business models (also called "trust loans") a collateral provider = trustor (often a foreign credit institution/financial institution) pledges, for example, a (cash) deposit to a credit institution and issues a trust mandate to the credit institution that credit funds are granted in the name of the credit institution but for the account of the trustor to a third party (named by the trustor) = borrower (often companies domiciled offshore), whereby the deposit is pledged as collateral (to the credit institution).*

3.1.1 OFFICIAL PROCEDURES CONDUCTED IN THE AREA OF PREVENTION OF ML/TF

Table 1 below contains an overview of the supervisory procedures conducted in 2022 in relation to the prevention of ML/TF:

	Quantity
Investigative procedures	165
Administrative penal procedures initiated	117
Administrative penalties against obliged entities	7
Personalised publications of administrative penalties	1
Sanctioning procedures	4
Fit & Proper tests	8

Table 1: supervisory procedures

In 2022, the FMA initiated 165 investigative procedures in the field of the prevention of ML/TF. These are official proceedings, during which investigative steps or other further investigations should determine whether the provisions of the FM-GwG were breached, or not. In addition to official observations, especially external information, e.g., from whistleblowers, customers or other authorities provides reasons to initiate investigative procedures. In 2022, the FMA initiated 117 administrative penal proceedings in the area of the prevention of money laundering and terrorist financing. This figure also includes those procedures that were initiated against accountable persons in the pursuit of legal persons. In the specific case in hand where there was a personalised publication, in a specific case in hand the entity failed to re-classify the business relationships in question as "high" risk and failed to make a suspicious activity report. A EUR 100,000 fine was imposed.

During the reporting year, four sanctioning procedures (procedures for establishing legal compliance) were initiated. These are official procedures with the purpose of establishing legal compliance, following a breach against the provisions of the FM-GwG having been determined to have occurred. The relatively small number of sanctioning procedures during 2022 can be attributed to the fact that breaches against the FM-GwG only determined to have ultimately occurred in a mere four cases, in which cases separate official procedures needed to be conducted due to their nature and size. Naturally, the FMA determined potential for improvement or breaches over the course of the reporting year on a more frequent basis, but in most cases, it did not lead to separate (sanctioning) procedures being initiated. Instead, legal compliance as a rule is already established during or directly after an on-site measure or an investigative procedure.

In addition, the FMA conducted eight oral Fit & Proper tests of AML officers of VASPs, to check their personal and technical suitability regarding the provisions set forth in the FM-GwG.

3.1.2 ON-SITE MEASURES

The following table contains an overview of the 49 supervisory measures conducted "on site" in 2022 in relation to the prevention of ML/TF - i.e., at the premises of obliged entities.

	Quantity
On-site inspections	***22***
- CIs	*11*
- VASPs	*5*
- AIFMs	*1*
- Agents of PIs	*5*
Examinations	***19***
- CIs	*10*
- IUs	*2*
- IFs	*1*
- VASPs	*4*
- CCP of PI	*2*
Management meetings	***8***
Total on-site measures	49

Table 2: On-site measures

In 2022 the FMA conducted a total of 22 on-site Inspections, to check that obliged entities comply with the provisions of the FM-GwG: 11 of those, the largest proportion, were conducted at CIs[2], a further five at VASPs, one at an Alternative Investment Fund Manager (AIFM) as well as the remaining five at agents of PIs.

In addition, there were also 19 examinations – these are shorter or less comprehensive on-site measures - at obliged entities to check compliance with the provisions of the FM-GwG: Ten such examinations were conducted at CIs, two at insurance undertakings (IUs), one at an IF, four at VASPs as well as two at the central contact points of payment institutions (CCP PIs).

In addition, the FMA also conducted eight management meetings. During such management meetings, either on-site or in any case also at the FMA's premises, current topics or a specific or case-by-case basis are discussed with the obliged entities.

[2] *Since CIs make up by far the largest proportion of obliged entities under the FM-GwG (cf. also Table 2), naturally most on-site measures are also conducted in this area.*

3.1.3 OFFICIAL OBSERVATIONS BROKEN DOWN THEMATICALLY

Firstly, it should be stated that as a rule the obliged entities under the FM-GwG supervised by the FMA satisfy high standards regarding the prevention of ML/TF. Nevertheless, during the FMA's operational supervision, supervisory observations ("findings") do arise relating to potential for improvement or breaches in applying the provisions of the FM-GwG.
Table 3 shows the areas in which findings were made during the reporting year:

Selected official findings by thematic area	Quantity
Risk assessment at enterprise- or individual customer-level	20
Identification of the customer/beneficial owner/trustor/authorised representative	26
Purpose and nature of the business relationship/origin of funds	42
Ongoing monitoring of the business relationship (incl. IT systems/manual checks)	39
Updating of information, data and documents	20
Enhanced customer due diligence obligations	11
Qualified third parties/outsourcing	2
Reporting obligations	15
Prevention of terrorist financing	1
Internal organisation (Strategies/controls & procedures, AML officer function, training)	13

Table 3: Quantity of thematic areas (on-site measures, supervisory procedures).

During the reporting year[3], the **largest challenges** for the obliged entities in relation to the risk-based observance of due diligence obligations under the FM-GwG were associated with the areas of "ongoing monitoring of the business relationship", "origin of funds", "updates", or the purpose and type of the business relationship" as well as the risk assessment at customer level (i.e., the risk classification of customers).

Findings in individual cases were along the lines of the assessment of all relevant ML/TF risks of individual customers not occurring or conducted incorrectly regarding the required legal standards. Based on this, customers were allocated to the wrong risk category. In particular, this was due to an inadequate data basis - due to a lack of information being collected or due to the incorrect evaluation of the collected information or incorrect entry of the data. It should be noted that regular evaluations, control routines, staff training etc. are urgently needed in this area, even when automated risk classification systems are used.

Furthermore, there was potential for improvement in conjunction with the risk-oriented assessment and collection of information about the purpose and intended nature of the business relationship as well as the risk-based collection and verification of information about the origin of funds. Risk-based never means that individual due diligence rules are waived but means that their scope on a case-by-case basis is based on the risk category. Ultimately in the case

[3] *The observation period from 01.01.2021 to 30.09.2022 was determined regarding its cut-off point in connection with the risk classification, which is conducted before the end of the calendar year.*

of customers in the low-risk category it is regularly possible to rely on the plausibility of verified information (e.g. from the current account for low-risk customers), while in the high-risk category, or in the scope of application of enhanced customer due diligence there is a high objective benchmark attached to the collection, evaluation or verification of the corresponding information and the up-to-dateness and evidential nature of proof (e.g. contracts, invoices etc. for high-risk customers).

Appropriate **risk-based updating** not only covers the (routine) updating of available information that was collected to meet the due diligence requirements for the prevention of ML/TF regarding customers, but also any ad hoc updates and a regular review about whether all the necessary information data and documents are available to ensure compliance with due diligence requirements. If, for example, in the case of customers in the high risk category, only rudimentary information, which is inappropriate given their high-risk status, is collected during the process of establishing the business relationship about the "purpose and nature of the business relationship" or the "origin of funds", then even if such rudimentary information is updated annually, it is not possible to assume that the legal obligation to update information is being met.

With regard to the **"ongoing monitoring of the business relationship",** it must be emphasised that obliged entities are obliged to evaluate and ensure their ongoing monitoring (by automated means), and that anomalies are detected and addressed in a timely manner or their plausibility verified by means of recent and evidential documentation, or where appropriate that the reporting obligations set out in Article 16 FM-GwG are observed.

Especially, in relation to money remitters, from the FMA's perspective particular challenges existed in this sector during the reporting year: especially in connection with the conducting of money transfer business (in cash) not linked to accounts, where there are particular challenges especially in relation to the "verification of the origin of funds" as well as in the "application of enhanced customer due diligence with regard to transactions to or from high-risk countries" pursuant to Delegated Regulation (EU) 2016/1675.

The priority for inspections in relation to VASPs in 2022 have shown the many challenges in this sector, for which due diligence obligations have only applied for the prevention of ML/TF since 2020. There is potential for improvement in this very heterogeneous group of obliged entities, in part in particular relating to the understanding of risk, the implementation of the risk-based approach and the adequate technical and staffing resources.

3.2 AML COLLEGES

The **EBA Guidelines on ML/TF Colleges** (AML colleges) created a framework for cooperation and exchanging information regarding the combating of ML/TF between the competent authorities by means of bilateral agreements and colleges. These Guidelines define how AML colleges are established and work.

The FMA as the lead supervisor must established AML colleges for Austrian obliged entities that are active on a cross-border basis, which have set up establishments in at least two other Member States (home colleges). The FMA's first home colleges were organised on a risk-oriented basis in 2021; with the FMA's AML college framework and network having been successively extended with regard to home and host colleges.

Risk-oriented organisation in the case of AML colleges means that depending on the risk level of an obliged entity that AML college was established at and earlier point in time and is held at shorter intervals. In this context, in particular risk factors like the number of establishments abroad, the risk classification in accordance with the FMA's annual risk assessment as well as the business model are taken into consideration. Furthermore, the ad hoc organisation of AML colleges is also intended.

3.2.1 HOME COLLEGES

In 2022, the FMA organised eight college meetings as the lead supervisor on a risk-based basis in line with the relevant EBA Guidelines. In six cases the meetings were held to establish AML colleges that did not yet exist.

In addition to the FMA in its function as supervisory authority / lead supervisor for the area of the prevention of ML/TF representatives from the following also participated at college meetings:

- the respective obliged entities (as a rule, CIs or IUs);
- the AML authorities of foreign countries in which Austrian obliged entities have subsidiaries or branch establishments;
- EBA as well as
- prudential supervision (FMA/OeNB and ECB).

During these colleges meetings the participants from the supervised entities give presentations about various relevant topics. In 2022 the topics included organisational precautions, "lessons learnt" from on-site inspections conducted by the FMA and other authorities, actions taken, current challenges, new business models as well as monitoring systems equipped with artificial intelligence (AI).

Thereafter the representatives of the participating authorities discuss about the level of risk of the entity as well as about observations under supervisory law. Every authority presents its risk evaluation about the obliged entity as well as the supervisory measures it has taken like e.g. on-site inspections as well as the resulting findings.

Regarding the FMA's supervisory activities, home colleges serve as an important source for gaining knowledge regarding the quality of the implemented processes and measures regarding AML/CFT in the subsidiaries/branches of Austrian banks and insurance groups. Findings from on-site inspections of sister authorities provide important guides regarding any necessary supervisory measures required to be taken by the FMA regarding (among other issues) group controlling. AML colleges therefore serve as an important tool for the FMA for extending its perspective about a supervised entity, especially with regard to the strategies and procedures to be applied throughout the group for the purposes of combating ML/TF.

In this context, in the future it is also planned to increasingly feed information such as the risk evaluation of sister authorities as well as their findings from on-site Inspections into the FMA's risk assessment. In Autumn 2023, the FMA will host a high-level AML college conference for partner authorities from other EU Member States and third countries as the home authority.

3.2.2 HOST COLLEGES

In 2022, the FMA received 29 invitations to AML colleges established by other European authorities as the lead supervisor (host colleges). In applying a risk-based approach, it participated at seven host college meetings. The submission of information about the risk of the entity as well as relevant observations under supervisory law occurs as standard for all host colleges, even in the case that the FMA does not participate at the meeting.

Independently of organised gatherings in the college meetings, on three occasions in host colleges and on three occasions during home colleges there were also (written) exchanges about relevant observations and information.

3.3 LEGAL INTERPRETATION

The FM-GwG is the central legal basis about the prevention of ML/TF for the entities in Austria supervised by the FMA. The FMA has published four relevant circulars within the scope of application of the FM-GwG. These circulars contain the FMA's legal interpretation in relation to the respective thematic areas. Following a comprehensive consultation process, they were revised, and the latest version available for download on the FMA website under Circulars.

The individual circulars address the thematic areas of due diligence obligations, the risk assessment, reporting requirements and internal organisation:

- **FMA Circular on due diligence obligations for the prevention of ML/TF (Published: 23.02.2022)**
  - The FMA Circular on Due Diligence Obligations for the prevention of ML/TF in particular contain updates or clarifications about the thematic areas of queries of the Register of Beneficial Owners (WiEReG), the beneficial owners of private equity funds, AML supervision of VASPs, the purpose and nature of the business relationship regarding virtual currencies, Know-Your-Customer's-Customer (KYCC), proof of origin of funds in relation to cash transactions as well as politically exposed persons (PEPs).
- **FMA Circular on risk assessment for the prevention of ML/TF (Published: 23.02.2022)**
  - The FMA Circular on risk assessment for the prevention of ML/TF was expanded especially to include current statements on the supra-national or national risk assessment as well as risk factors in relation to virtual currencies.
- **FMA Circular on reporting obligations for the prevention of ML/TF (Published: 23.02.2022)**
  - The most significant updates in the FMA Circular on Reporting Obligations for the prevention of ML/TF relate to anomalies in relation to virtual currencies, usage of goAML as well as information exchange between obliged entities pursuant to Article 22 para. 2 FM-GwG.
- **FMA Circular on internal organisation obligations for the prevention of ML/TF (Published: 23.02.2022)**
  - The FMA Circular on internal organisation obligations for the prevention of ML/TF, in particular clarifies that only a natural person may be considered for the role as AML officer of an obliged entity as well as that obliged entities, as is relevant in the case of VASPs, that are not obliged to establish an internal audit function shall be required to have regular audits conducted by an independent bodies in relating to the area of the prevention of money laundering and terrorist financing.

3.4 FMA REPRESENTATION IN INTERNATIONAL AND EUROPEAN COMMITTEES

The FMA is actively represented in a wide range of international and European committees. A brief overview follows about these committees as well as the substantive focuses of their work in 2022.

- EGMLFT

In the European Commission's working group on the prevention of ML/TF (Expert Group on AML/CFT (EGMLFT)), in 2022 the focus was primarily on the negotiations of the EU AML Package, the updating of the EU's Supra-national Risk Assessment (published in October 2022) as well as scrutinising of the implementation of the 4th AMLD, which was conducted by the European Council.

- FATF

Regarding the Financial Action Task Force (FATF), the international AML/CFT standard-setter, in addition to the country inspections on the implementation of FATF standards in relation to VASPs, the implementation of the "Travel Rule" – which prescribes that VASPs are required to collect and transmit information about the identity of the sender and recipient of crypto transfers – is particularly relevant for the FMA. There were also intensive discussions regarding the changes being made for the 5th round of FATF country inspections starting in 2024 (Austria is due to be expected in 2025/26). This round is intended to be shorter than previous rounds of inspections but should focus more on the respective risks in the countries that are being inspected. In the future, greater focus will be placed on the non-financial sector.

- AMLSC

EBA's AML/CFT Standing Committee (AMLSC) focussed in 2022 on the operation start of the EU's new AML database (EuReCA). This database not only contains the material weaknesses of the obliged entities that have been determined in implementing AML standards, but also gathers measures and fines subsequently imposed or levied by supervisory authorities for breaches. In addition, the competent supervisory authorities are also required to make all necessary information available to be able to inform EBA about all further developments relating to the information provided.

EBA will use the EuReCA database to obtain a picture about the ML/TF risks that exist within the financial sector in the EU. In this regard, EuReCA is intended to serve as an AML early warning tool in the EU, which helps the competent authorities to act before ML/TF risks are realised. Following the implementation of the EU AML package, the EuReCA database is intended to be taken over by the new EU Anti Money Laundering Authority (AMLA).

In addition, the FMA also contributed towards the development of the Guidelines[4] on Online Identification within the AMLSC. They specify the strategies, controls and procedure required to be observed if credit institutions and financial institutions introduce or outsource solutions for applying due diligence obligations to new customers by means of non-face-to-face operations. These Guidelines are consistent with the FMA Online Identification Regulation and therefore already corresponds to established supervisory practices.

3.5 MARKET TRENDS

Selected data from the risk assessment tool about different groups of obliged entities in the Austrian market and their respective ML/TF risk or developments regarding their customer base and business

[4] *https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-countering-financing-terrorism/guidelines-useremote-customer-onboarding-solutions (29.05.2023)*

areas are subsequently presented to CIs in particular. In addition, information that originates from the OeNB is then added about the CI's foreign payments.

3.5.1 NUMBER AND BREAKDOWN OF OBLIGED ENTITIES

Based on the analysis of the risk assessment tool for 2022, the following figures show which groups of supervised entities (obliged entities) can be found in the Austrian market.

Figure 1 shows an overall increase in the number of obliged entities covered by the risk assessment tool since 2019. Obliged entities are counted that fill out the annual questionnaire for the risk assessment tool and submit it to the FMA. The number of CIs, which make up the largest proportion, has fallen. Mergers constitute one of the main reasons for this development. The reason for the increase in the total number is that a few categories of obliged entities have successively been included - during the continuing development process, due to the questionnaire having been adapted. In 2020 e-money institutions and VASPs were admitted to the participants in the risk assessment tool, while in 2022 MCs, AIFMs, IFs and ISPs were added. In previous years, MCs received the questionnaire as part of CIs. Since 2022, they, together with AIFMs, have been asked to fill out a separate risk questionnaire.

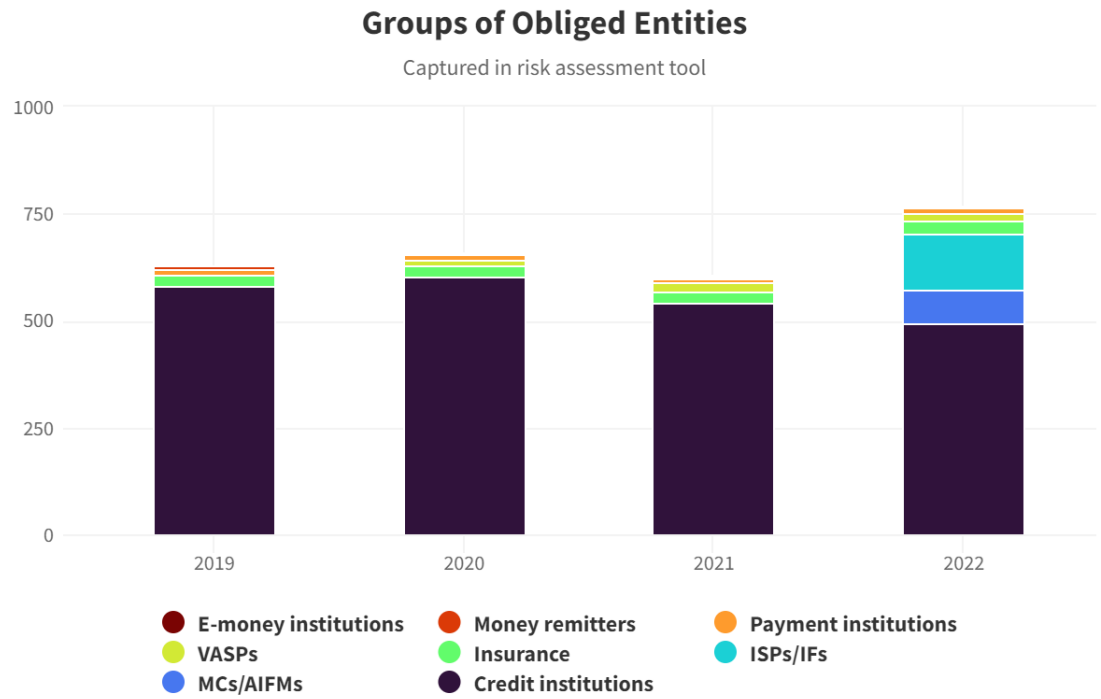

Figure 1: Groups of Obliged Entities

Table 4 shows the total number of obliged entities. Most noticeably, CIs (492) constitute considerably the largest proportion of obliged entities (65 %), followed by ISPs and IFs (134).

	Quantity
MCs/AIFMs	79
Credit institutions	492
Money remitters	4
E-money institutions	3
Insurance undertakings	27
VASPs	21
ISPs/IFs	134
Payment institutions	10

Table 4 Number of obliged entities

The following section shows how risk is distributed overall within the individual categories of obliged entities, in the case of CIs, IUs, VASPs, PIs, IFs/ISPs, MCs/AIFMs[5]. The evaluations relate to the specific business activities or compared to peers within the same category of obliged entities.

3.5.1.1 Credit institutions

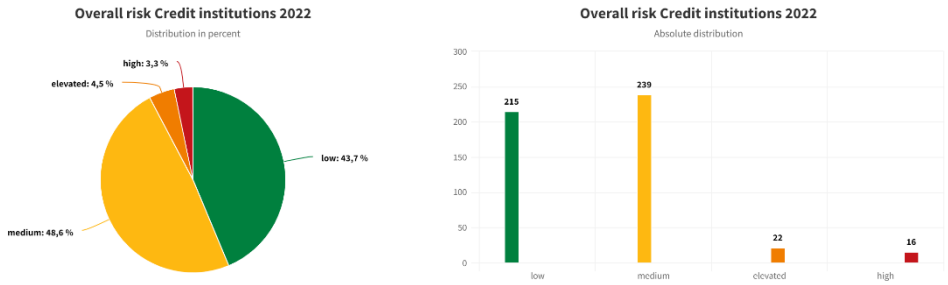

Figure 2: Overall risk credit institutions

Figure 2 shows the distribution of the CIs' total risk. It shows that only a low percentage of the obliged entities (3.3%) are exposed to a high risk of being misused for the purposes of ML/TF. In absolute terms, most CIs fall into the "low" or "medium" risk categories.

3.5.1.2 Insurance undertakings

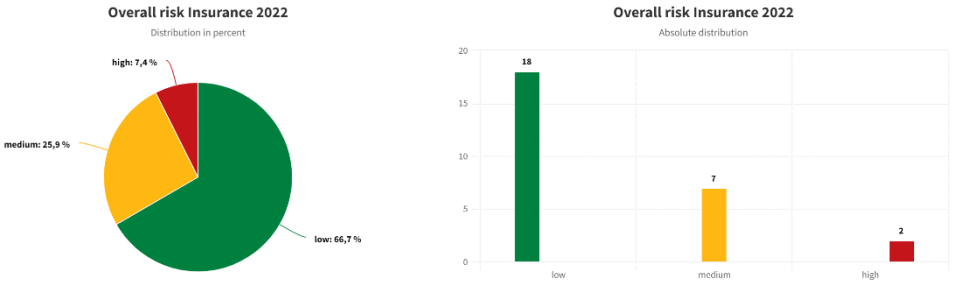

Figure 3: Overall risk insurance undertakings

[5] *Due to the low number of obliged entities in the group E-money institutions and money remitters, the classifications have not been presented to avoid conclusions being apparent about the classification of the respective institutions.*

Figure 3 shows the distribution of the IUs' total risk and shows that some of the obliged entities (7.4%) are exposed to a high risk of being misused for the purposes of ML/TF. A quarter of the undertakings have a medium risk.

3.5.1.3 Virtual asset service providers (VASPs)

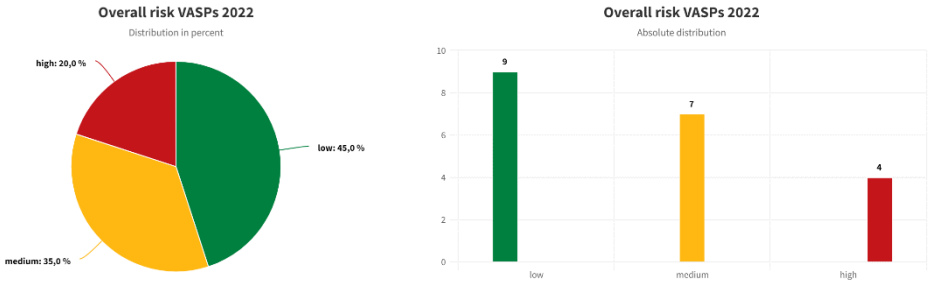

Figure 4: Overall risk VASPs

Figure 4 shows the distribution of the VASPs' total risk. It shows that one-fifth (20%) of obliged entities are exposed to a high risk of being misused for the purposes of ML/TF. A further third have a medium risk. The classification in the 'low' or 'medium' risk categories in many case results from there being a low number of customers or transactions during the reference period in comparison with other institutions in the same category.

3.5.1.4 Payment institutions

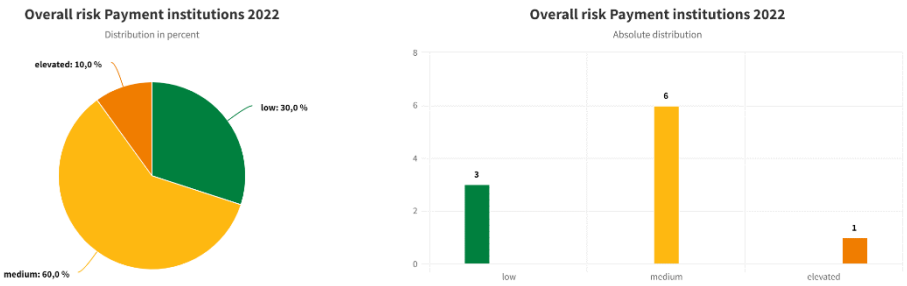

Figure 5: Overall risk payment institutions (PIs)

Figure 5 shows the distribution of the PIs' overall risk. None of the obliged entities are exposed to a high risk of being misused for the purposes of ML/TF. One-tenth have an elevated risk, while more than half (60%) have a medium risk.

3.5.1.5 Investment firms and investment services providers

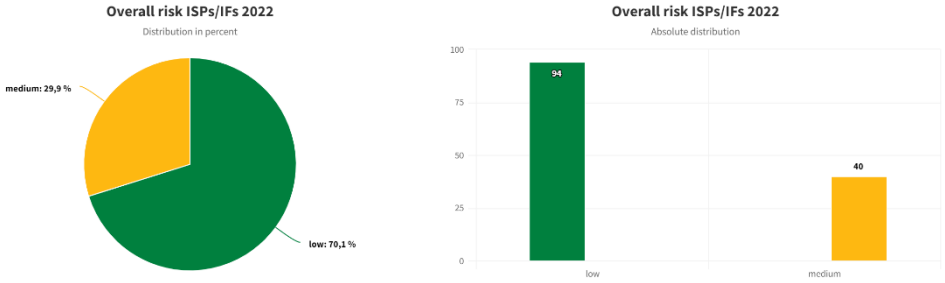

Figure 6: Overall risk ISPs/IFs

Figure 6 shows the distribution of the ISPs and IFs' overall risk. None of the obliged entities are exposed to a high risk of being misused for the purposes of ML/TF. Almost one-third (29.9%) have a medium risk.

3.5.1.6 Management companies and alternative investment funds

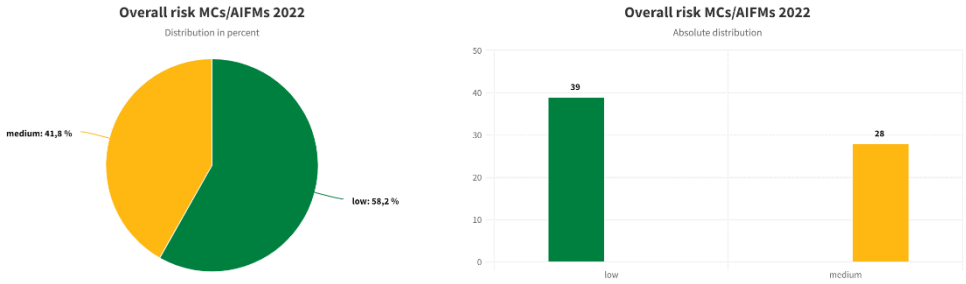

Figure:7: Overall risk of MCs/AIFMs

Figure:7 shows the distribution of the MCs and AIFMs' overall risk. None of the obliged entities are exposed to a high risk of being misused for the purposes of ML/TF. A minority (41.8%) has a medium risk. All other obliged entities have a low risk.

3.5.2 CUSTOMER GROUPS

As a rule, both natural persons and legal entities may directly be customers of obliged entities. Obliged entities are not only required to determine and verify the identity of their direct customers, but also the identities of their trustors and beneficial owners. For the FM-GwG's purposes, beneficial owners are all natural persons, under whose ownership or control a legal entity ultimately stands.[6] The following figures show how the customer groups of the CIs have changed over time, broken down into geographical groups[7]. Only the CIs' customer groups are presented here, as these have been logged for the longest period of time. In turn, this permits a comparison between the data from recent years.

3.5.2.1 Natural persons and legal entities

Over the last 4 years, in the banking sector, there has been a slight decrease in the natural persons customer group (-8.9%), while the group for legal entities has remained constant. This number of natural persons domiciled in countries appearing on the FATF's "black list" has fallen since 2019 during the course of the FMA's supervisory activities and the constant indication of the associated elevated risk.

[6] *Detailed information in this context may be found in particular in the FMA Circular on Due Diligence Obligations for the Prevention of ML/TF, published on 23.2.2022).*

[7] *To avoid double counting, customers domiciled in countries that appear on several lists are only captured in one category. The categories are arranged in the same order as is shown in the graphic (from bottom to top).*

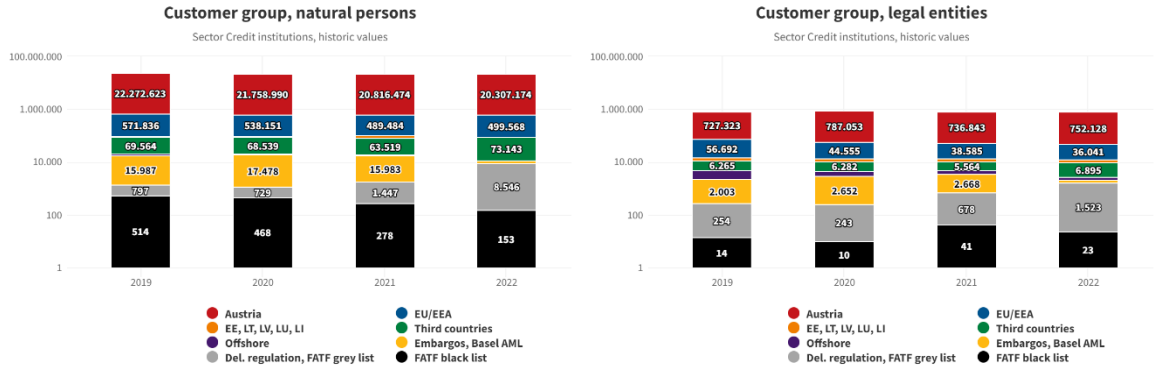

Figure 8: Customers, natural persons, and legal entities

3.5.2.2 Beneficial owners and foundations

As can be seen in Figure 9, the number of beneficial owners in the customer base has increased since 2019 (+21.0%). In contrast, the proportion of foundations, trusts, or legal arrangements similar to trusts within the customer base of CIs have fallen since 2019 (-15.6%). The number of foundations, trusts, and legal arrangements similar to trusts, domiciled in countries listed in the Delegated Regulation/FATF "grey" or "black" lists has fallen during the course of the FMA's supervisory activities and due to constant indications about the associated elevated risk.

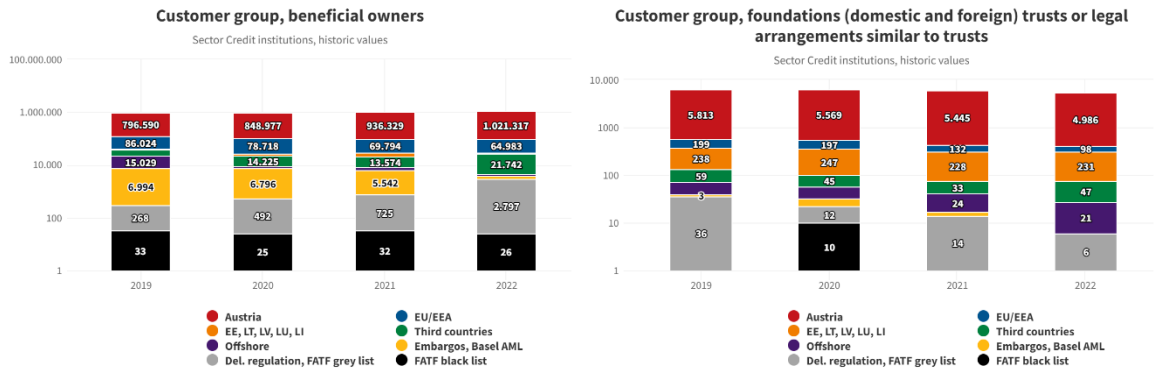

Figure 9: Customers, beneficial owners, and foundations

3.5.2.3 Correspondent banking business, subsidiary banks and branch establishments

The risk-prone correspondent banking business that has constituted a significant focus (for inspections) for the FMA in recent years, has fallen significantly in recent years, (-25.6% since 2019) - see Figure 10. The number of foreign subsidiary banks and branch establishments has fallen by a similar level (-27.7% since 2019).

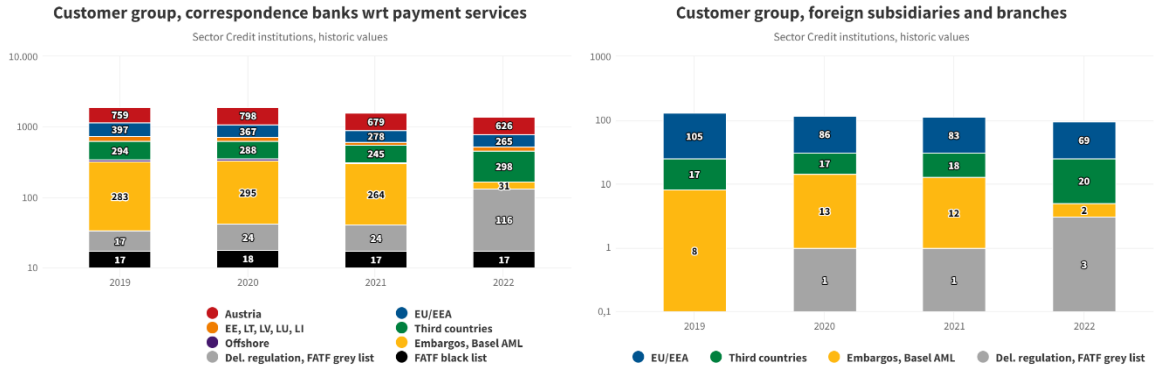

Figure 10: Customers, correspondent banking business and subsidiary banks and branch establishments

3.5.3 TRANSACTIONS

In the risk assessment, among other things, the transactions to and from countries with an increased risk are taken into account broken down by obliged entities. Cross-border payments in Euro or in foreign currencies by CIs as settled in "foreign payments". All transactions that are settled using the SWIFT cross-border payments system are captured (always for the entire preceding year of the reporting period)[8].

The term 'high-risk countries' covers those countries with severe deficiencies in the prevention of ML/TF, or with whom foreign trade is either restricted or completely prohibited in accordance with the corresponding regulations. Use is made of the following lists for this purpose: Embargos and Sanctions[9], Basel AML[10], FATF grey[11] and black[12] lists, Offshore Financial Centres (IMF[13], EC[14]). These lists are queried at the respective point in time when the risk assessment is drawn up or updated. Figure 11 depicts the total foreign payments to and from CIs. As expected, due to the high level of economic interconnectedness, Germany has the largest proportion.

[8] *The foreign payments for the entire year for 2021 are observed for the risk assessment for 2022.*
[9] *Cf. Embargos and Sanctions (in German only). Embargoes are economic sanctions imposed against a specific country that restrict foreign trade with this country in accordance with the prevailing rules, generally fully prohibiting foreign trade. (accessed 29 May 2023)*
[10] *Cf. Basel AML Index. The Basel AML Index is a tool to estimate the risk of money laundering and terrorist financing in various countries, based on a number of indicators and data. (accessed 29 May 2023)*
[11] *Cf. FATF "grey list". The grey list (Increased Monitoring List) and the black list (High-Risk Jurisdictions subject to a Call for Action) are lists drawn up by the Financial Action Task Force (FATF) upon which countries are places that are considered to be particularly vulnerable to money laundering, terrorist financing and other financial risks. (accessed 29 May 2023)*
[12] *Cf. FATF "black list" (accessed 29 May 2023)*
[13] *Cf. IMF Offshore List (accessed 29 May 2023)*
[14] *Cf. European Commission Offshore List (accessed 29 May 2023)*

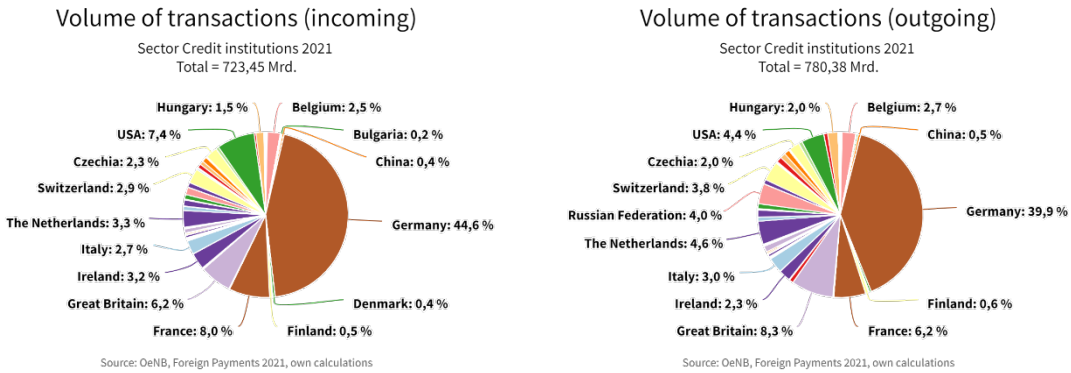

Figure 11: World-wide transaction volume

Selected high-risk countries are shown in Figure 12. It shows that Türkiye and the United Arab Emirates together account for over 85% of the incoming and outgoing transaction volumes.

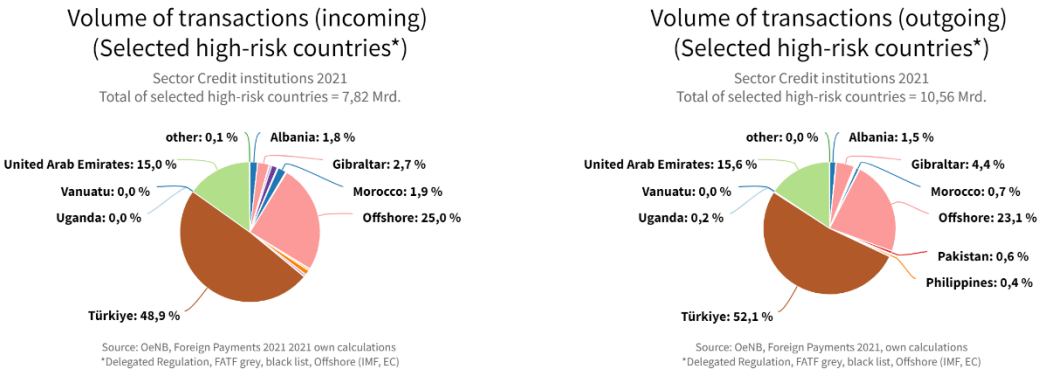

Figure 12: Transaction volumes (selected high-risk countries)

The breakdown of transactions from and to countries with a high risk pursuant to the relevant EU Delegated Regulation[15] are shown in Figure 13.

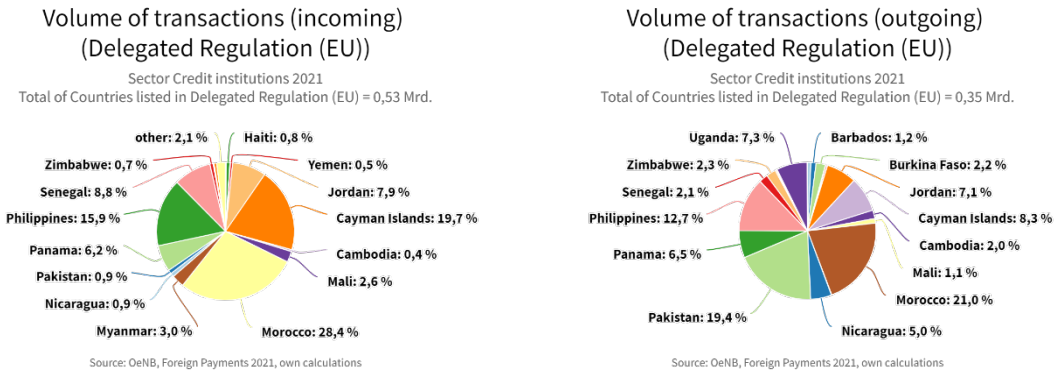

Figure 13: Transaction volumes (delegated Regulation)

[15] *Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies, OJ L 254, 20.09.2016, in the amended version applicable during the observation period.*

4 OUTLOOK

The legislative procedure relating to the EU's AML package[16] reaches a decisive phase in 2023. In May 2023, the EU Council, European Parliament and the European Commission started interinstitutional negotiations, and wish to conclude them prior to the end of this legislative period in early 2024. The new regulations are intended to improve the prevention of ML/TF by means of greater harmonisation and supervisory convergence. While still subject to change during the current legislative procedure, the European legislator's thrust is however clear about its intention to address breaches relating to anti-money laundering law in an (even) stronger and more effective way in the future. The AML package is intended to be fully applicable three years after its publication in the Official Journal of the EU. The EU's new AML Authority (AMLA) is expected to commence its activities somewhat later than was originally planned. From the AML package the recast Money Transfer Regulation, which should make it possible to trace crypto transfers, is set to already enter into force in 2024 (together with the Markets in Crypto Assets Regulation (MiCAR)).

For the first time, future regulation of the financial market will include a comprehensive, EU-wide harmonised regime for services in relation to crypto assets and will introduce EU-wide "passporting". It is already observable that international VASPs with complex business models are increasingly submitting applications for registrations in Austria under the FM-GwG. In particular, this relates to business models in the field of "DeFI" with services like "crypto-lending" as well as business models with specific crypto-assets like "stable coins". Networking as well as targeted coordination with European sister authorities for applications from VASPs that are active on a cross-border basis with therefore become even more important to prevent "supervisory gaps" that currently exist due to the different registration requirements during the transitional regime under MiCAR, and to consequently continue or further develop the zero-tolerance policy.

Co-operations between entities from the traditional financial sector (such as CIs or IUs) and the crypto sector are increasingly being part of the supervisory focus, especially within the area of white label solutions. "White label" solutions are products or services that are distributed by an entity or an organisation under their own brand, but which are actually provided by third parties[17]. They may bring a broader range of offered products, which may however make it necessary to conduct more detailed analysis, evaluation, and consideration of potential associated risks.

Further increasing digitalisation in the prevention of ML/TF in 2023. On the one hand technological solutions are being development to be able to use digital identification documents within KYC checks. On the other hand, an increasing number of entities are making use of artificial Intelligence (AI) for compliance with ML/TF due diligence obligations (especially for transaction

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[16] In July 2021, the European Commission proposed a legislative package for improving the combating of money laundering and terrorist financing (the "AML Package"). It consists of the 6th AML Directive, an AML Regulation, the AMLA Regulation which establishes a new European AML Authority (AMLA), and a recast of the Transfer of Funds Regulation.

[17] An example of this would be a CI providing a service for purchasing virtual currencies or distributing them under its own brand, although the virtual currency would be provided by a third party. Customers of, for example, a CI would be able to purchase virtual currencies via such a "white label" solution, although the CI does not even offer the service itself.

monitoring or risk classification). In supervision, in addition to the automated evaluation of large quantities of data with the risk assessment, the development of new data-driven "tools" is becoming ever more important to be able to act in a risk-based manner.

Further development of group supervision in the area of the prevention of ML/TF. On the one hand, specific data about foreign activities of Austrian financial groups are collected for risk assessment purposes. On the other hand, cooperation within the AML colleges for obliged entities that are active on a cross-border basis has been strengthened – ML/TF risks can be better captured, analysed, and addressed by means of a close exchange of information and coordinated measures by the competent supervisory authorities.