



PRIORITIES & TRENDS
IN THE PREVENTION OF
ML/TF 2023

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1 SUMMARY OF MATERIAL FINDINGS

The FMA has pursued a consistent, risk-based and integrated approach to supervision of the Austrian financial market since an official competence for the prevention of money laundering and terrorist financing (ML/TF) was conferred upon it. In 2023, it focused on the continuing roll-out of a cross-sector zero-tolerance policy: within its operative supervision activities, the FMA conducted 20 on-site inspections and 22 on-site spot checks and held 6 management talks. In addition, it initiated 39 investigation proceedings, 10 sanctioning procedures, and eight registration procedures for virtual asset service providers (VASPs). During the reporting year, Fit and Proper tests were conducted for 11 key function holders in relation to ML/TF. In addition, five home AML colleges were established, and the FMA was invited to participate in AML colleges by sister authorities on 24 occasions. In addition, the FMA organised an AML college conference, attended by 17 authorities from 14 countries. In 2023 the FMA initiated 48 first instance administrative penal proceedings in the field of AML/CFT, with penal orders being issued in 10 instances.

The priority of inspections at virtual asset service providers also clearly demonstrated the many challenges this sector faced in 2023. There is definite room for improvement among this very heterogeneous group of obliged entities, for whom AML/CFT due diligence obligations have only applied since 2020, to some extent especially regarding the understanding of risk, the implementation of the risk-based approach, and ensuring adequate technical resources and staffing for this purpose. During the reporting year, issues addressed during planned supervisory measures included the increasing number of “shell registrations” (registrations without operational activity). The FMA’s consistent approach towards such constructions, where service providers hold a valid registration from FMA pursuant to Article 32a FM-GwG but do not perform any kind of business operations, contributed to registrations decreasing significantly from 24 to 16.

In 2023 the FMA conducted a comprehensive risk assessment of the obliged entities in the Austrian financial market in relation to ML/TF risks to ensure the targeted use of resources in line with the risk-based approach. In the credit institutions sector, only a low percentage of the credit institutions (2.6%) are exposed to a high risk of being abused for the purposes of ML/TF. The largest proportion of CIs fall into the “low” or “medium” risk categories. Similarly, the proportion of obliged entities with a high risk is also low (3.8%) for insurance undertakings; just under one third of IUs are in the “medium” risk category. There is a very different picture among VASPs: 21.1% are allocated to the “high” risk class, with a further 26.3% in the “medium” risk category. The payment institutions, investment firms and investment service providers, and investment fund management companies/alternative investment funds sectors all display a lower level of risk: ultimately none of these entities have a high ML/TF risk.

For the first time, this report examines risk trends in the Austrian financial market derived from data collected annually since 2015 by the FMA for its risk classification of obliged entities.

For example, from this data, the three risks registering the greatest increase are the sub-risks “HNWI customers” (high net worth individuals), “PEP customers” (politically exposed persons) and “risk in relation to beneficial owners”. In contrast, the three most significant decreases have been for the sub-risks “business relationships with foreign trusts”, “geographical risk” and “incoming transactions from countries with an elevated risk”. This development can be traced back to heightened awareness among obliged entities, the FMA’s high requirements in these risk areas, as well as prioritising such matters e.g. within the scope of on-site inspections. The detailed presentations of market trends reflect these “top” risk trends.

The FM-GwG’s requirements, both in organisational terms and regarding the risk-based observance of due diligence obligations including the observance of statutory reporting obligations, are both extensive and resource-intensive. This naturally presents certain challenges – especially for “smaller” obliged entities. Unsurprisingly, a trend continues to emerge towards larger organisational structures and a bundling of know-how. Additionally, making use of outsourcing to meet due diligence and reporting obligations also mirrors current practice.

Technological developments are altering the financial market’s framework: increasing digital transformation opens up new business areas and opportunities, but risks also exist. In the area of AML/CFT, remote/online customer onboarding has become increasingly popular. The unambiguous and secure identification of customers constitutes a particularly central measure for AML/CFT within the know your customer (KYC) procedure. Safeguarding against forgery and misuse and technically secure transmission are at the forefront when deploying new technologies. In turn, data quality and security are increased, while improving customer experience and customer satisfaction.

In 2023, EBA conducted an “AML/CFT Implementation Review” at the FMA. EBA’s feedback was positive in many areas: the FMA’s measures regarding exchanges at national and international level as well as the targeted on-site measures abroad with regard to group-wide strategies and procedures among others were commended. Further room for improvement was identified in AML/CFT supervisory strategy and amounts involved in administrative penalties among other areas.

The FMA welcomes the comprehensive reforms for combating ML/TF in the EU. Two and a half years of political negotiations for the AML package were concluded successfully. The new Anti-Money Laundering Regulation (AMLR), recast Anti Money Laundering Directive (AMLD), and Anti Money Laundering Authority Regulation (AMLAR) are planned to be published and enter into force in Summer 2024. It is planned to formally establish AMLA immediately thereafter, and for AMLA to commence its activities in 2025. Direct supervision by AMLA is planned to begin in 2028. In the future, AMLA will directly supervise up to 40 of the EU’s most risk-exposed institutions (or financial groups).

2 THE FMA'S ROLE IN THE FRAMEWORK FOR AML/CFT

Combating ML/TF is one of the FMA's central aims. Austrian financial market participants must first and foremost act preventatively, e.g. checking customer identity and conducting plausibility checks regarding their money flows, to prevent the financial system being abused for disguising and moving assets of illegal origin, or making (legal) assets available for terrorist activities.

The FMA has consistently adopted a zero-tolerance policy since assuming its competence in the field of AML/CFT: All financial market participants are required to act in a legally compliant manner and continuously works towards the required changes in conduct. If legal obligations are nevertheless breached, the FMA uses the supervisory tools and sanctioning measures at its disposal to punish breaches consistently.

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

- FMA
- The Financial Intelligence Unit (Geldwäschemeldestelle) of 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, regional authorities and chambers

Combating ML/TF is a complex and international issue, involving close cooperation of many national and international authorities and institutions. Along with the competent authorities at national level, the FMA also cooperates closely with other supervisory and law enforcement agencies and academic institutions, and increasingly works as a competence centre and information hub for AML/CFT. Its objective is to further promote networking with national and international players in combating ML/TF and to prepare for the establishment of the future European anti-money laundering supervisory system with the European Anti-Money Laundering Authority (AMLA) with its headquarters in Frankfurt as the leading body – and the FMA's role within this supervisory system.

Austria, and therefore the FMA too, is also assessed by the Financial Action Task Force (FATF) at regular intervals. FATF is the global standard setter in combating money laundering and financing of terrorism and proliferation. Austria's effective implementation of FATF Standards will be reassessed in Q4 2024 to Q2 2026 (The previous FATF assessment was in 2015-2016).

Linking different data and information proves more effective in combating ML/TF. The FMA therefore pursues a data-driven supervisory approach, within which information from various sources relevant for money laundering (from supervised entities, the A-FIU, other authorities etc.) may be used for official activities and risk analyses - increasingly prepared by automated means.

The FMA supervises compliance with the regulatory requirements in the FM-GwG for AML/CFT.

Under Article 1 para. 1 FM-GwG, the FMA supervises credit institutions, financial institutions, and virtual asset service providers. In addition to credit institutions and financial institutions (CIs and FIs) under the Austrian Banking Act (BWG; Bankwesengesetz), obliged entities also include investment fund management companies (MCs) insurance undertakings (IUs), corporate provision funds (CPFs), investment firms (IFs) and investment services providers (ISPs), payment institutions (PIs), electronic money institutions, alternative investments fund managers (AIFMs), and branches and establishments of EEA institutions of these entities registered in Austria. In this context, the FMA checks compliance with legal due diligence obligations in connection with AML/CFT. Where such obligations are breached, the FMA takes the necessary action.

The supervision of participants in the Austrian financial market by the FMA regarding AML/CFT is conducted on a cross-sector basis in a single division, within the “Integrated Supervision” department.

This division is responsible for conducting on-site measures and supervisory administrative proceedings, representing the FMA in national and international fora as well as for legal interpretations in the field of AML/CFT. Since 2020, the division’s mandate has additionally included the registration of and “AML supervision” for VASPs. Where the FMA suspects during supervisory activities that a transaction is being made for ML or TF purposes, it files a suspicious activity report to the A-FIU, to analyse it especially from a criminal law perspective, and where applicable then cooperates directly with law enforcement authorities. There is a far-reaching exchange of information between the authorities based on the legal provisions.

The risk-based approach is the core element of the EU Anti Money Laundering Directive (AMLD) and its national transposition in the FM-GwG, which applies at all levels from legislation through to the application of due diligence obligations by the obliged entities.

The risk-based approach means that supranational authorities, Member States, competent (national) authorities and obliged entities must identify, assess and understand ML/TF risks and take appropriate measures to mitigate these risks. In drawing up entity level risk assessments pursuant to Article 4 para. 1 FM-GwG, obliged entities refer to the National Risk Assessment (NRA) drawn up by the National Coordination Committee housed at the BMF, which especially refers to ML/TF risks that exist in Austria and considers the risks of ML/TF in the Single Market contained in the European Commission’s (EC) Supra-national Risk Assessment (SNRA). The FMA pursues a comprehensive risk-based approach and defines its supervisory measures (including on-site inspections) towards obliged entities based on the identified ML/TF risk. The FMA’s “AML App”, developed using R/Shiny Technology, is the core of its risk-based supervision for AML/CFT.

This report presents the material issues, developments, and trends in AML/CFT in 2023 from the FMA’s perspective.

It draws on the findings from the FMA’s supervisory activities (e.g. on-site inspections or investigations). It also draws on relevant data from supervised entities, which the FMA collects on at least an annual basis. Finally, it provides an insight and overview about the relevant regulatory developments, in which the FMA is involved at both national and international level.

3 TOPICS AND FOCUS OF ACTIVITIES 2023

The FMA's broad scope of activities including the various thematic focuses in the area of AML/CFT during 2023 is as follows:

3.1 RISK-BASED SUPERVISION

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 first conducts a data-based risk classification of the obliged entities. In doing so, the FMA considers:

- information collected from the obliged entities by means of questionnaires
- observations based on supervisory activities (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 a number of 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 number of factors that increase the risk or where the FMA has made critical supervisory observations. Subsequently the risk category is then fed into the planning of on-site measures by the FMA and therefore leads to a higher frequency of inspections at "high risk" obliged entities.

The risk classification of obliged entities is updated on an annual basis. This allows supervision to be concentrated on those entities and areas in which an elevated risk of ML/TF is identified and where as a result more stringent risk mitigation requirements are called for. Ad hoc adjustments are also possible on a case-by-case basis, such where adjustments seem necessary due supervisory observations or media reporting.

In addition to objectified inspection planning, the risk classification also guarantees that the priorities for supervision and inspections are adjusted on a regular basis. The "AML App", which was specifically developed for the annual risk classification of the obliged entities, provides the FMA with a comprehensive 360-degree view of individual obliged entities, and forms the basis for an objective and risk-based data-driven supervision using risk scores. Trends, risk factors and other relevant parameters may also be detected and analysed on an aggregated basis, which also facilitates the regular adjustment of priorities for supervision. The data pool and the results that are derived from it feed into the preparation and follow-up work for specific on- and off-site supervisory measures. The AML App is being continuously developed.

The following sub-chapters provide an overview about the FMA's supervisory activities in AML/CFT, which take place on- and off-site, as well as material findings that have arisen in 2023:

3.1.1 OPERATIONAL SUPERVISORY ACTIVITIES IN THE AREA OF AML/CFT

The following table contains an overview of operational supervisory activities in the area of AML/CFT in 2023 around the FMA's supervisory measures or procedures conducted:

<i>Operative supervisory activities</i>	<i>Quantity</i>	
	<i>2023</i>	<i>2022</i>
Investigation proceedings	39	165
On-site inspections	20	22
On-site spot checks	22	19
Management talks	6	8
Sanctioning procedures (procedures for establishing legal compliance)	10	4
Fit & Proper Tests in accordance with FM-GwG	11	8
Registration procedures pursuant to Article 32a FM-GwG (initial applications)	8	11

Table 1: Overview of operative supervisory activities

In 2023, the FMA initiated 39 investigation proceedings in the area of AML/CFT. Investigative steps or other further investigations are conducted in such proceedings, to determine whether breaches of FM-GwG provisions have occurred. External information, e.g. from whistle-blowers, customers, or other authorities, provide further grounds for initiating investigation proceedings in addition to official observations. Significantly fewer investigation proceedings were initiated during the reporting year than in preceding year¹, due to obliged entities' high degree of awareness for the phenomenon of "financial agents" (known as "money mules"/ breaches of FM-GwG in relation to disclosure of acting on someone else's account - "trust relationships"), their well calibrated monitoring systems and resulting high quality suspicious activity reports, which allow a particularly efficient pooled processing of the relevant cases by the FMA. Ultimately this is also reflected in the lower number of individual investigations initiated. In absolute terms, the FIU forwarded 72 analysis reports to the FMA during the reporting year based on the suspicion of a customer's failure to disclose a trust relationship or a suspicion of money laundering.

In 2023 the FMA conducted a total of 20 on-site inspections, to check obliged entities' compliance with the provisions of the FM-GwG. As a rule, on-site inspections start with the relevant (data-driven) planning and experts' analysis being conducted in the FMA. This not only permits a risk-based and targeted selection of obliged entities in accordance with the current priorities for inspection, but also – in conjunction with comprehensive information and documentation, which are requested from obliged entities prior to the actual visit as part of the questionnaire and processed and analysed in the FMA – the appropriate setting of specific priorities and inspection modules during the on-site visit. During such on-site inspections an FMA inspection team spends around one to two

¹ For example, there were 165 investigation proceedings in 2022.

weeks at the premises of the obliged entity, depending on the type of obliged entity and inspection focus, to both examine the systemic requirements and safeguards and their application in practice, taking into consideration relevant sample cases. This is done using “test cases” in which selected business relationships are investigated regarding all the requirements set out in the FM-GwG, or based on “individual transactions”, where inspection focuses may lie in specific risk factors or indicators. 17 of the on-site inspections during the reporting year – i.e. the vast majority – were conducted at CIs², while two were conducted at VASPs and the remaining one at an IU.

In addition, 22 on-site spot checks were conducted. These are briefer, less comprehensive on-site measures conducted at obliged entities, to check compliance with the provisions of the FM-GwG: ten took place at CIs, two at IUs, two at PIs, two at IFs, with one each respectively at an ISP, a tied agent (VgV), a CPF, an MC as well as two at VASPs.

In addition, the FMA also conducted six management talks. During such management talks, either held on-site or at the FMA’s premises, specific or event-related current issues are discussed with the obliged entities.

During the reporting year, ten sanctioning procedures for establishing legal compliance were initiated. These are official proceedings for establishing legal compliance once a breach against the provisions of the FM-GwG having been determined as occurring. Proceedings for establishing legal compliance are only initiated where the nature and scope of breaches against the FM-GwG require a separate proceeding to rectify the breach. Room for improvement and breaches were naturally determined by the FMA on a more frequent basis during the reporting year, but most cases did not lead to the initiation of separate proceedings. Instead, the establishing of legal compliance generally already occurs during or directly after an on-site measure or investigation proceeding.

In addition, the FMA conducted eleven Fit & Proper tests of key function holders of seven VASPs and AML officers of four CIs, to check their personal and professional reliability regarding the provisions in the FM-GwG. The increasing use of Fit & Proper tests during registrations of VASPs, or the new appointment of AML officers aligns with the FM-GwG’s underlying preventative approach. While the tests generally entail questions about the FM-GwG and the Beneficial Owners Register Act (WiEReG; Wirtschaftliche Eigentümer Registergesetz), the combination of theoretical knowledge with practical implementation is equally relevant to be able to fully answer questions.³

3.1.2 OBSERVATIONS BY THE SUPERVISORY AUTHORITY

At the outset it should be noted that the obliged entities under the FM-GwG that the FMA supervises usually satisfy high standards regarding AML/CFT. Nevertheless, during the course of

² CIs make up by far the largest proportion of obliged entities under the FM-GwG (cf. also Table 2), so naturally most supervisory measures are also conducted in this area.

³ In addition to these Fit & Proper tests, the Division for Prevention of Money Laundering and Terrorist Financing also participates in F&P meetings and management talks with directors, chairpersons of supervisory boards, and key function holders, within the scope of prudential supervision under the integrated approach to supervision. This occurred on eight occasions during the reporting year.

the FMA's operational supervision, supervisory observations ("findings") do arise about room for improvement or breaches in applying the provisions of the FM-GwG.

Technological developments are altering the framework of the financial market - increasing digital transformation is opening up new business areas and opportunities, but is also associated with risks. In the area of AML/CFT, this has also been very clearly demonstrated in the case of online/remote customer onboarding, which has enjoyed increasing popularity. Regarding customer identification and verification (of natural persons) the FM-GwG generally requires official photo identification documents pursuant to Article 6 para. 2 no. 1 FM-GwG to be presented in person, as the standard case, but allows presenting an official photo identification document to be substituted by certain safeguards pursuant to Article 6 para. 4 FM-GwG in the case of business relationships or transactions without personal contact (non-face-to-face business). Online identification constitutes one of the generally permissible exceptions. The unambiguous and secure identification of customers, as part of the KYC procedure, forms a key measure in the area AML/CFT. Practical problems in relation to online identification procedures, such as using forged ID documents, are illustrative of the risk potential of technological developments. Therefore, in the context of online identification, in addition to selecting the (trustworthy) service provider, the obliged entity must ensure that sufficient information is collected to fulfil the FM-GwG's statutory due diligence obligations. On a risk basis it is frequently necessary to collect supplementary information, such as the address, in addition to the minimum information stipulated under law (cf. features of the identification document). To ensure compliance with the statutory requirements, suitable internal (quality) checks by the obliged entities are necessary in order to mitigate the risk of being abused for ML/TF purposes.

The focus on VASPs, for whom AML/CFT due diligence obligations have only applied since 2020, has clearly shown the many challenges this sector faced in 2023. There is room for improvement in this very heterogeneous group of obliged entities (entities differ significantly in terms of size of entities, the scope and complexity of the products offered, number of customers etc.), especially regarding risk awareness, the implementation of the risk-based approach and adequate technical and human resources. In 2023, these issues were again addressed via the FMA's supervisory measures in this area. In addition, there was a particular focus on "shell registrations" - i.e. on service providers that hold a valid registration from FMA pursuant to Article 32a FM-GwG, but which have not performed any kind of business operations. This was due to a significant lack of information necessary for the adequate supervision of VASPs with such "shell registrations" (e.g. the specific point of time of commencing activity, specific services, contractual partners). The FMA's rigorous actions in this regard led to a significant decrease in the number of registrations. While 24 VASPs were registered with the FMA in Q4 2022, as of year-end 2023, there were only 16 VASPs.

Investment service providers – i.e. ISPs and IFs – are obliged entities to which the requirements of the FM-GwG apply unconditionally. The National Risk Assessment (NRA) results indicated a comparatively lower risk of being abused for the purposes of ML/TF due to their business model

being less prone to risks. They fall under the full scope of application of the FM-GwG and also in scope of the relevant FMA Circulars. In line with the cross-sector zero-tolerance policy, exchanges with and supervision of investment service providers were intensified in 2023 including through targeted on-site measures to the systems, checks and procedures implemented in the areas of AML/CFT. In this sector, the risk assessment pursuant to Article 4 para. 1 FM-GwG, i.e. the precise analysis of a company's own business model, customer structure etc., and vulnerability, is particularly important – as it forms the central basis for implementing appropriate preventative measures.

The FM-GwG's requirements, both in organisational terms as well as specifically regarding the compliance with risk-based due diligence obligations and statutory reporting obligations, are diverse and resource-intensive. This comes with certain challenges – especially for “smaller” obliged entities. It is therefore unsurprising, that there is a continued trend towards pooling of know-how in larger organisational structures and outsourcing in relation to the fulfilment of due diligence obligations, mirroring current practices. Outsourcing relationships range from constellations in which the fulfilment of due diligence obligations, such as customer identification or the “first vote” as part of ongoing monitoring or the drawing up and updating of internal standards and rules, are partially outsourced, all the way to the outsourcing the AML Officer function. Obligated entities should note that an outsourcing agreement is always necessary regarding the outsourcing of functions or business activities, and that the ultimate responsibility for the compliance with the requirements of the FM-GwG always remains with (every) individual obliged entity.

Business activities conducted in Austria under the freedom of establishment fall under the scope of the FM-GwG and are subject to supervision by the FMA. Business activities of obliged entities established in a Member State or a Third Country, where provided in Austria through a branch or another establishment (freedom of establishment), fall within the scope of application of the FM-GwG and obliged entities must therefore notify the FMA accordingly, and are then supervised by the FMA. The information that must be submitted to and checked by the FMA includes information about the business plan and the internal control systems, including a description of adequate procedures for complying with the FM-GwG.

3.1.3 ADMINISTRATIVE PENAL PROCEEDINGS IN THE AREA OF AML/CFT

(First instance) administrative penal proceedings initiated	48
Penal orders	10

Table 2: Administrative penal proceedings

Since assuming responsibility as an authority for AML/CFT, the FMA has decidedly insisted on compliance with the statutory provisions. Breaches are punished in a consistent manner.

In 2023 the FMA initiated 48 administrative penal proceedings (first instance) in the field of AML/CFT. This figure also includes procedures initiated against responsible natural persons as part

of the prosecution of the legal person. In ten cases penal orders were issued. Seven of these cases related to CIs and their branches in Austria, with one case each relating to an IU, a VASP, and a natural person. Total fines of EUR 897,267 were imposed. In terms of administrative penalties, the FMA mainly focuses on legal breaches regarding strategies, checks and procedures (Article 23 FM-GwG). In one published case, the FMA imposed a fine of EUR 367,542 by way of the accelerated conclusion of proceedings pursuant to Article 22 para. 2b of the Financial Market Authority Act (FMABG; Finanzmarktaufsichtsbehördengesetz) for failing to verify the identity of the beneficial owner by means of evidential documents for three high risk customers as well as for failing to determine whether the trustors of one of the three high risk customers were politically exposed persons. The penal order is final. Furthermore, in two cases, penalties were imposed in connection with the failure to disclose the identity of the trustee.

In cases where there was no accelerated conclusion of proceedings, the FMA also successfully conducted court proceedings in front of the Federal Administrative Court (BVwG) and the Supreme Administrative Court (VwGH) respectively. The BVwG in the second instance confirmed the fine imposed by the FMA against a CI for failing to determine and verify the identity of all beneficial owners of a customer belonging to the highest risk category (EUR 154,000 fine). In one case, the VwGH rejected the CI's appeal against the BVwG's second instance judgement (EUR 43,120 fine) regarding the CI's failure to apply appropriate procedures at regular intervals to determine whether certain customers were PEPs.

3.2 AML COLLEGES

Since 2021, the FMA as the lead supervisor has been required to establish (home) AML colleges for Austrian obliged entities active on a cross-border basis and which have set up establishments in at least two other Member States. The **EBA Guidelines on AML Colleges** created a framework for cooperation and exchanging information regarding AML/CFT between the competent authorities by means of bilateral agreements and colleges. These Guidelines define the establishment and functioning of AML colleges.

In addition to establishing and participating in AML colleges, the FMA has started an initiative to request EBA to conduct missing equivalence checks (checking of equivalence of confidentiality and professional secrecy regimes) from sister authorities in third countries. A "third-country authority" cannot be invited to an AML college without such a check, and conducting such checks nationally is not expedient due to the considerable redundancies entailed. The proposed joint approach used EBA's shared methodology and joint assessments by national supervisory authorities in the EU. An information collection exercise is currently ongoing, and the EU authorities are jointly setting their priorities.

Implementing the AML college framework has significantly strengthened the exchange of information and cooperation between sister authorities. The FMA hosted an inaugural High-Level AML College Conference in September 2023 for sister authorities from EU Member States and

third countries, especially from Central Eastern and South Eastern Europe (CESEE), to further extend this network and to also closely involve non-EU sister authorities. It addressed the following issues:

- Experiences as home and host authority,
- Third country observers – engagement & equivalence assessments,
- AML group steering in supervision – common approaches and coordinated supervisory actions.

Representatives from relevant authorities from EU Member States and third countries (Albania, Bulgaria, Republika Srpska, Czechia, Croatia, Hungary, Montenegro, Northern Macedonia, Slovenia, Slovakia, Serbia, Romania, Georgia and Moldova) attended the conference.

Sister authorities were very positive about the FMA's initiative and support repeating the format.

3.2.1 HOME-COLLEGES

In 2023, the FMA organised five AML college meetings as the lead supervisor on a risk-based basis in line with the relevant EBA Guidelines. In three cases, the meetings were held to establish AML colleges that did not yet exist.

In addition to the FMA in its function as the supervisory authority/lead supervisor of the area of AML/CFT, other participants of AML colleges represented

- the respective obliged entities (e.g. CIs or IUs),
- AML authorities of countries where Austrian obliged entities have subsidiaries or branch establishments,
- EBA, as well as
- from prudential supervision (FMA/OeNB and ECB).

Participants from supervised entities gave presentations about various relevant issues during these college meetings. In 2023, topics included organisational precautions, “lessons learned” 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). Representatives of participating authorities then discussed about the level of risk of the entity and observations under supervisory law.

3.2.2 HOST COLLEGES

In 2023, the FMA received a total of 24 invitations to AML colleges established by other European authorities as the lead supervisor (host colleges). In seven cases, information was exchanged exclusively in writing. In applying a risk-based approach, FMA participated at nine host college meetings. Information about the risk of the entity as well as relevant observations under supervisory law is submitted as standard for all host colleges, even if the FMA does not participate at the meeting.

3.3 FMA REPRESENTATION IN INTERNATIONAL AND EUROPEAN COMMITTEES

The FMA is actively represented in a wide range of international and European committees. An overview of committees and substantive focuses of the committees' work in 2023 is shown below.

3.3.1 EGMLTF

The European Commission (EC) Expert Group on the AML/CFT (EGMLTF) primarily continued to focus on the negotiations about the EU's AML Package in 2023. In late 2023, the European Commission published a consolidated list of prominent functions at national level, international organisation level, and EU institutions and bodies level considered as politically exposed persons.

3.3.2 FATF

The Financial Action Task Force (FATF) focussed on concluding the 4th round of country assessments as well as preparations for the 5th round (starting in 2024). Austria is scheduled to be one of the first countries assessed by the IMF from late 2024. The 5th round of assessments will focus more intensively on the specific risks in the countries, and a more in-depth review of the non-financial sector. The FMA is preparing intensively for the FATF country assessment and is currently engaged in a close exchange with all national and international stakeholders concerned.

The country assessment for Austria starts in November 2024 with the submission of information about the implementation of FATF Recommendations in the national legal system (technical compliance evaluation). Subsequently, Austria will be required to prove the effectiveness its national ML/TF system and actions by the involved authorities, competent bodies, and the private sector (effectiveness evaluation). A four-tier grading system will apply to the different components of the legal system as well as the national ML/TF system. The IMF inspection team's on-site visit is scheduled to take place in Q2 2025. Austria's country assessment is scheduled to be concluded with the discussion and adoption of the country report at the FATF plenary meeting in Paris in February 2026 (Austria's last assessment by the FATF was in 2015/2016).

In February 2023 – on the first anniversary of Russia's invasion of Ukraine – the FATF passed a resolution suspending the Russian Federation's FATF membership. It condemned the Russian Federation's actions as "illegal, unprovoked and unjustified" and demands the Russian Federation to "immediately, completely and unconditionally withdraw from Ukraine". At the same time, Indonesia was admitted as the newest and meanwhile 38th member of the FATF.

3.3.3 AMLSC

The focus of the EBA Standing Committee for ML/TF (AMLSC) already increasingly shifted in 2023 towards preparations for the transitional period until the new European AML/CFT supervisory regime, centred around the new EU Anti-Money Laundering Authority (AMLA) in

Frankfurt. For this purpose, EBA established a forum, in which national supervisory authorities agreed on the necessary preparatory work together with EBA, the ECB and the EC. Once AMLA is founded, EBA's AML/CFT agendas will be fully transferred to AMLA by the end of 2025 at the latest.

The FMA additionally contributed towards the drawing up of new and updating of existing Guidelines within the AMLSC. Under the recast Transfer of Funds Regulation, Regulation (EU) 2023/1113, in addition to classic transfers of funds, crypto-assets transfers must also submit data about the payer and payee. A preliminary draft of future EBA Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes was drawn up. These Guidelines set out in detail the systems and procedures that payment service providers and crypto-asset service providers must implement for detect records with missing or incomplete information about the payer and payee of transfers. In addition, the Transfer of Funds Regulation for the first time stipulated that Guidelines must be drawn up specifying those internal policies, procedures, and controls for observing EU-wide and national financial sanctions. The amendments to the Transfer of Funds Regulation also necessitated revisions to the Guidelines on Risk-Based Supervision and the Guidelines on ML/TF Risk Factors.

3.3.4 SPECIAL TOPIC: EBA REVIEW 2023

In 2023, EBA conducted an “AML/CFT Implementation Review” at the FMA, conducted by a team consisting of staff members from EBA and sister authorities in the EU. Since 2019, EBA has been assessing the effectiveness of risk-based anti-money laundering supervision of banks in Member States within the scope of this review. The FMA's review took place in 2023 during the fourth and final round of the review. The basis of the review are the requirements of the AMLD, accompanying Commission Delegated Regulations and EBA Guidelines. In addition to meetings with the FMA, meetings also took place with representatives from the banking sector.

During this “implementation review” the FMA profited from exchange between experts about different supervisory approaches in the area of AML/CFT. EBA's feedback was generally positive in many areas: the FMA's measures taken regarding exchanges at national and international level and targeted on-site measures abroad relating to strategies and procedures for groups among others were highlighted as being particularly positive. Potential for improvement was identified in conjunction with a determined AML/CFT supervisory strategy, the sectoral risk assessment, the amounts of administrative penalties and the number of publications as well as the increased strategic deployment of analyses or instruments.

3.4 LEGAL INTERPRETATION AND REGULATORY DEVELOPMENTS

3.4.1 EU AML PACKAGE

In July 2021, the European Commission presented a package of legislative proposals for the fundamental reform in combating ML/TF in the EU. In 2020 an action plan for a comprehensive

policy of the European Union for AML/CFT preceded the EC's legislative package. The package's objective is to strengthen and improve enforcement of EU regulations for combating ML/TF. This is intended to be achieved in particular by means of the "Single Rulebook", a far-reaching harmonisation of ML/TF regulations in a Regulation that is directly applicable in Member States (AML-R) and a recast AMLD, and by establishing an EU Anti Money Laundering Authority (AMLA).

Just under two and a half years later, the co-legislators of the European Union announced the successful conclusion of political negotiations about the EU AML package at the turn of the year 2023/2024. The publication and entry into force of the new AML-R, the recast AMLD and the AMLA-R is planned for Summer 2024. While the AML-R and the AMLD will only be applicable three years after their entry into force, the AMLA-R will already by and large become applicable in 2025, to allow the new authority to commence activities and be established gradually until the end of 2027. The start of direct supervision by AMLA will therefore take place during the first half of 2028 at the earliest. The recast Transfer of Funds Regulation was brought forward and already published in June 2023, and will apply from the end of 2024. Until the new ML/TF rulebook and framework in the EU has been formally completed, more than 30 Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) as well as Guidelines will have to be drawn up in the next three years. The FMA will contribute actively via the competent EBA (and subsequently AMLA) working groups.

By creating a "Single Rulebook", ML/TF due diligence obligations will be harmonised throughout the EU, leading to a consistent application of the legal bases as well as legal clarity for obliged entities and customers in the EU. In addition, an upper limit of cash payments of EUR 10 000 has been introduced, as well as an obligation for the payer to identify themselves exists for payments of between EUR 3 000 and EUR 10 000. As part of EU sanctions against Russia, EU-wide regulations were also established for the first-time to introduce safeguards for ensuring compliance with and preventing the circumvention of financial sanctions. Where appropriate and as already widely used in practice, such policies, procedures, and controls may be systematically integrated into obliged entities' existing systems for AML/CFT. Furthermore, in the recast AMLD, greater convergence will be achieved regarding the working of supervisory authorities and Financial Intelligence Units (FIUs).

The EU's Anti-Money Laundering Authority (AMLA) which will be based in Frankfurt, has been equipped with far-reaching regulatory, supervisory and sanctioning competences. In the future, AMLA will directly supervise up to 40 of the most risk-exposed institutions (or financial groups) in the EU. These could be drawn from obliged entities from all sectors in the financial market⁴, i.e. investment services and crypto-asset service providers in addition to banks and insurance companies, financial institutions, and payment institutions. For obliged entities or areas

⁴ Credit institutions, insurance undertakings, investment firms, investment firms (UCITS), alternative investment funds, central securities depositories, crypto-asset service providers, insurance intermediaries, other financial institutions in accordance with Annex I of the CRD, and branch establishments in the EU of third country financial institutions.

in which AMLA itself does not conduct direct supervision, the supervisory function will continue to be performed by the competent authorities in Member States. In this context, AMLA will however have a function in indirect supervision. By doing so, it is primarily intended to achieve EU-wide convergence in legal interpretation and supervisory practices. Finally, AMLA will also have competences in relation to the non-financial sector. In this area, albeit to a lesser extent, it will also have indirect powers (in the sense of “oversight”) to impose certain standards on the competent supervisory authorities for non-financial undertakings (e.g. certain traders) and regulated professions (e.g. lawyers and notaries) in the Member States.

The FMA welcomes the comprehensive reform in combating ML/TF in the EU. The FMA will work together with sister and EU authorities and national stakeholders, to apply it and implement necessary legal and structural changes in a timely manner.

3.4.2 FROM VASP TO CASP – FROM AML REGISTRATION TO MICAR LICENSING

Since January 2020, certain virtual asset (or crypto asset) service providers, referred to as VASPs, have been subject to the FM-GwG and therefore AML/CFT supervision by the FMA. VASPs wishing to be active in the Austrian market have had to be registered by the FMA prior to commencing activities, irrespective of whether they are VASPs established in Austria or in other EU countries, that actively provide services in Austria. In November 2022, 24 VASPs held such a registration from the FMA. This figure fell to 16 as of year-end 2023.

The EU’s Markets in Crypto-Assets Regulation (MiCAR) creates a comprehensive harmonised regulatory and supervisory regime, rather than one that is restricted to AML/CFT. It will be applicable on a gradual basis from mid-2024⁵ and is accompanied by a harmonised, extended definition of crypto-assets as well as providers of crypto-asset services, known as “Crypto Asset Service Providers” (CASPs). MiCAR specifically regularises transparency and disclosure obligations for the issuance and trading in crypto-assets, authorisation requirements for and supervision of CASPs and issuers of crypto-assets, the orderly business organisation of issuers of crypto-assets as well as CASPs, investor and consumer protection rules for the issuing, trading, and custody of crypto-assets as well as rules for fighting market abuse at crypto-trading venues. This new regulation differentiates between primary market activities, i.e. issuances of crypto-assets, and secondary market services known as crypto-asset services. The provisions on AML/CFT continue to remain an important component of the regulation.

MiCAR enables EU-(EEA-)wide passporting. In the future, CASPs will require authorisation in a single EU Member State, to then be able to be active throughout the entire European Union. This

⁵ Individual articles have been applicable since its entry into force on 29.06.2023, with the provisions about ARTs and EMTs by and large applicable from 30.06.2024, with all other provisions entering into force from 30.12.2024.

should also create a level playing field, i.e. fair conditions in terms of competition, compared against the strictly regulated analogue products and providers of financial services.

The FMA is available to interested market participants as a competent point of contact prior to the application of MiCAR. It endeavours to ensure legal and planning certainty when switching to or in connection with the MiCAR regime. In any case, interested market participants should note that MiCAR, as outlined above, heralds very comprehensive regulatory requirements that are required to be fulfilled. Since observance of AML/CFT regulations forms a material part of these requirements, it is safe to assume, even with a valid registration as a VASP, that it will be very challenging to fulfil MiCAR requirements, especially for smaller crypto service providers.

3.4.3 LEGAL QUESTIONS ABOUT THE FM-GWG

Legal interpretation and practical clarification of (abstract) legal provisions in the FM-GwG fall with the FMA's scope of activities as the competent primary authority. This occurs – among other ways – during the course of on-site measures, official procedures, and naturally to a particular extent when responding to relevant legal enquiries. The FMA receives interesting legal enquiries about the practical interpretation of individual provisions of the FM-GwG. In 2023, for example, they addressed the following topics:

3.4.3.1 Permissibility of outsourcing the querying of PEP status in corresponding data banks

In the FMA's opinion, an investment service provider's outsourcing the obligation pursuant to Article 11 para. 1 no. 1 FM-GwG to a CI (custodian bank), which is also an obliged entity under the FM-GwG, and which is in a business relationship with the investment service provider, is permissible under the conditions set out in Article 15 FM-GwG. Despite an outsourcing contract having been concluded, the obliged investment service provider remains responsible for observing the AML/CFT due diligence obligations. In this context, it should be noted that the entire customer base should be reviewed at regular intervals irrespective of risk class regarding the existence of any PEP characteristic. From the FMA's perspective at least a quarterly monitoring period is necessary to do so - cf. FMA Circular 01/2022 (February 2022) para. 355. According to the FMA Circular on Internal Organisation (February 2022) paras. 46 et seq., where individual tasks are outsourced to fulfil due diligence obligations under the FM-GwG (specifically: outsourcing the PEP review), it is not necessary to notify the FMA. However, in the case of outsourcing as defined in Article 15 FM-GwG, the EBA Guidelines on Outsourcing, published on 25 February 2019 (EBA/GL/2019/02) as well as the respective relevant legal bases contained in the material laws must be observed. Furthermore, reference is also made to the various FMA Circulars published in relation to AML/CFT published in February 2022.

3.4.3.2 Point in time of determining any PEP status

Determination of whether the customer is a PEP as defined in Article 2 no. 6 FM-GwG must be conducted by all obliged entities under the FM-GwG prior to establishing the business

relationship or prior to conducting an occasional transaction. This arises ex lege from Article 11 para. 1 no. 2 lit. a FM-GwG, which defines that the approval of the management level must be obtained in the event of business relationships with PEPs, before the business relationship is started. The business relationship, e.g. with an investment service provider, is required to be justified from the point in time at which the framework contract is concluded between the investment undertaking and the customer classified as a PEP, and not only when the first transaction or first order is conducted, cf. Article 2 no. 10 FM-GwG. Obtaining a self-disclosure from the customer prior to/at the point of time of the business relationship being established is not sufficient (see in the regard the FMA Circular on Due Diligence Obligations (01/2022), February 2022, para. 349, as well as Federal Administrative Court (BVwG) 21.07.2016, W148 2113453-1).

3.4.3.3 Using the ID Austria (Full Function) during the customer identification procedure under the FM-GwG

Using the ID Austria with full function is a statutory procedure under the E-Government Act (E-GovG), which in the meaning of Article 6 para. 4 no. 2 FM-GwG ensures that the same information can be made available as presenting an official photo identification document (“electronic ID card”). When an ID Austria with full function is used to determine and validate the customer’s identity, the attributes of a head shot, forename and surname, date of birth, signature and online identity link must be provided. It should be noted that the ID Austria may also be used to provide other attributes that may also be required on a risk-based basis, for example information on residence/registration address, ID data or nationality. Furthermore, when using the ID Austria with full function, obliged entities must ensure that the data provided is stored and retained in accordance with Article 21 para. 1 no. 1 FM-GwG. Compliance with the FM-GwG’s requirements must be documented by the obliged entity in a verifiable manner (such that it stands up to audit) and which must also be provable towards the FMA if necessary. In addition, the obliged entity must ensure compliance with the risk-based approach.

3.4.3.4 Interface between the FM-GwG and Data Protection Law

Compliance with a statutory obligation constitutes a basis for processing data pursuant to point c of Article 6 (1) GDPR. This includes, in the FMA’s view, compliance with an obligation under supervisory law in accordance with the FM-GwG. The FM-GwG is the lex specialis for the area of the prevention of money laundering and terrorist financing for the obliged entities under the FM-GwG, i.e. for the CIs and FIs supervised by the FMA, as well as for virtual asset service providers. Article 21 FM-GwG contains a specific provision regarding the interface to data protection law and contains explicit statements about the retention obligations and the processing of personal data. For the assessment of admissibility under data protection law, the question of the extent to which collecting specific information, including proof, is required in individual cases under the FM-GwG may therefore be a preliminary question (of relevance for the decision). The FMA’s legal opinion as the competent primary authority about the FM-GwG’s provisions – such as in connection with risk-based compliance with due diligence obligations, risk assessment or reporting obligations – may be

found in the relevant FMA Circulars on AML/CFT (published February 2022). Regarding the risk assessment or the risk classification at individual customer level, i.e. an individual customer being classified in a specific risk class, from the FMA's legal view pursuant to Article 6 para. 5 FM-GwG, for example it is derived that the risk classification forms the necessary basis for an appropriate, risk-based application and compliance of the due diligence obligations in accordance with the FM-GwG. From the legal rules on the classification of risk, from the FMA's view it arises in any case that information that are to be considered by the obliged entity for this purpose, such as information on the origin of funds or (expected) transaction conduct, shall also be allowed to be processed in accordance with Article 21 FM-GwG. In the FMA's view, this must apply accordingly for relevant information or potential risk indicators that only become apparent during the course of the business relationship and which (are required to) lead to an update.

3.4.3.5 Organisational Embedding of the AML Officer

Questions surrounding the embedding of the function of the AML Officer require detailed information in relation to the general organisational structure or the obliged entity's hierarchical levels as well as the mutual specific powers, duties, and competences between the AML function and (other) managerial functions (including the management board) or within the (lived) organisational structure. Regarding the embedding of the AML function in the organisation, para. 25 of the EBA Guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer (EBA/GL/2022/05) states: *"The AML/CFT compliance officer should be appointed at management level. He/she should have sufficient authority [...] to ensure the compliance and effectiveness of the internal AML/CFT measures to the management body in its supervisory and management function."*⁶

3.5 MARKET TRENDS

Selected data from the AML App about different groups of obliged entities in the Austrian market and their respective ML/TF risk or developments regarding their customer base and business areas are subsequently presented especially to CIs. In addition, information is also presented about CIs' foreign payments activity (using data supplied by OeNB).

⁶ In addition, para. 31 of that Guideline states: "The AML/CFT compliance officer should be part of the second line of defence and, as such, part of an independent function, and the following conditions should be met: a) The AML/CFT compliance officer should be independent from the business lines or units he/she controls and he/she cannot be subordinate to a person who has responsibility for managing any of those business lines or units. b) The credit or financial institution has put in place internal procedures to ensure that the AML/CFT compliance officer has at all times unrestricted and direct access to all information that is necessary to the performance of his/her function. The decision on which information he/she needs to access in this regard should be the AML/CFT compliance officer's alone. c) In the case of a significant incident, the AML/CFT compliance officer should be able to report and have direct access to the management body in its supervisory function or to the senior management where no management body is in place."

3.5.1 NUMBER AND BREAKDOWN OF OBLIGED ENTITIES

Based on the analysis of the AML App for 2023, the following figures show which groups of supervised entities (obliged entities) can be found in the Austrian market. Figure 1 shows that the number of obliged entities covered by the AML App has increased overall since 2019. The obliged entities are counted that fill out and submit the annual questionnaire for the AML App 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. Since 2022, additional categories of obliged entities (ISPs/IFs, MCs/AIFMs) have been introduced successively into the risk classification as part of its continuing further development by means of adapted risk questionnaires.

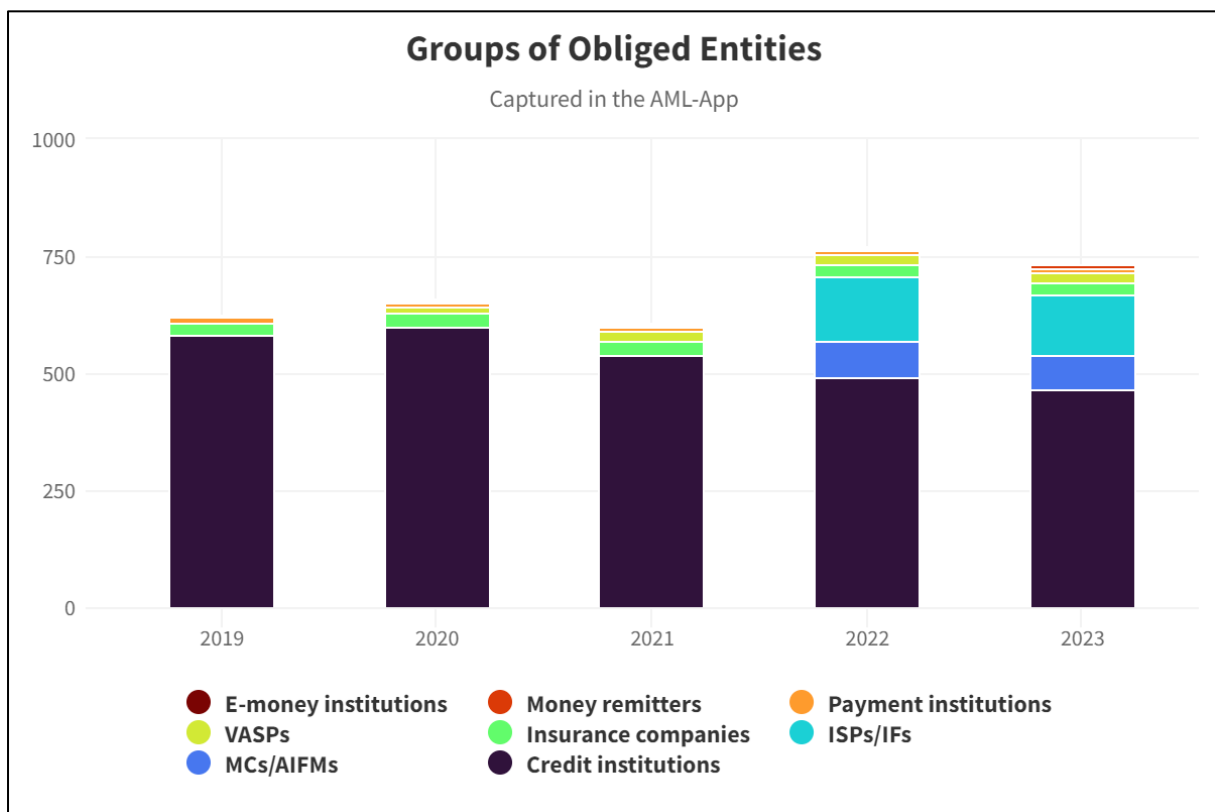


Figure 1: Groups of Obligated Entities in the AML-App

Table 2 contains a breakdown of the total number of obliged entities. It is noticeable that CIs, with 467 (492 in the previous year) form by a considerable amount the largest proportion or 64% of the obliged entities (65% in the previous year), followed by ISPs and IFs (133).

	<i>Quantity</i>
KAGs / AIFMs	70
Credit institutions	467
Money remitters	5
E-money institutions	3
Insurance undertakings	26
VASPs	19
ISPs/IFs	133
Payment institutions	11

Table 2: Number of obliged entities

The following section shows how the overall distribution of risk within the individual categories of obliged entities, for CIs, IUs, VASPs, PIs, IFs/ISPs, MCs/AIFMs⁷. The evaluations are based on specific business activities or compared to other institutions within the same category of obliged entities.

⁷ 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.

3.5.1.1 Credit institutions

Figures 2 and 3 contain visualisations of the worldwide distribution of customers in the CI sector.

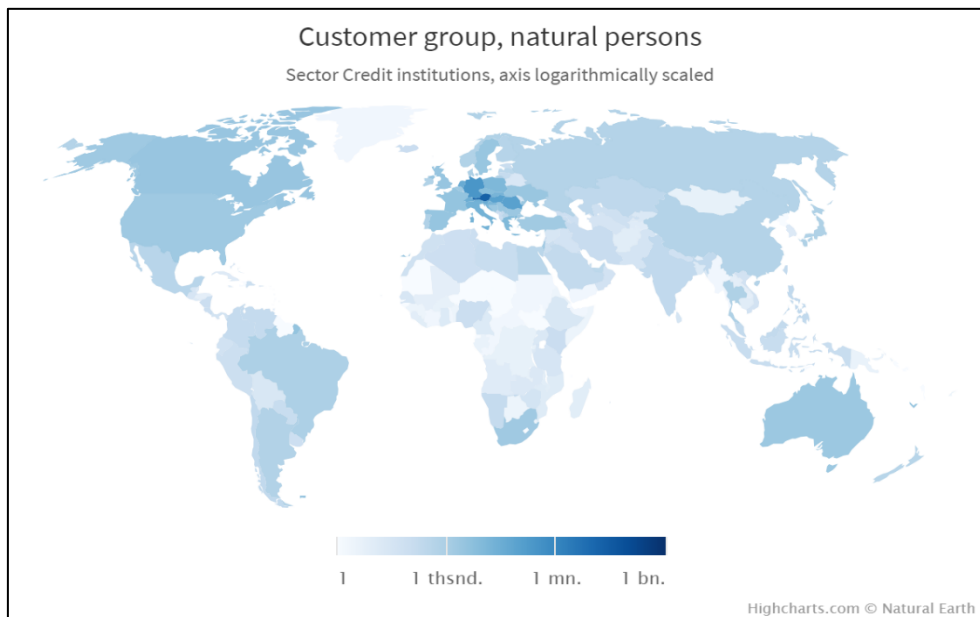


Figure 2: World map of customers in 2023, for credit institutions, natural persons

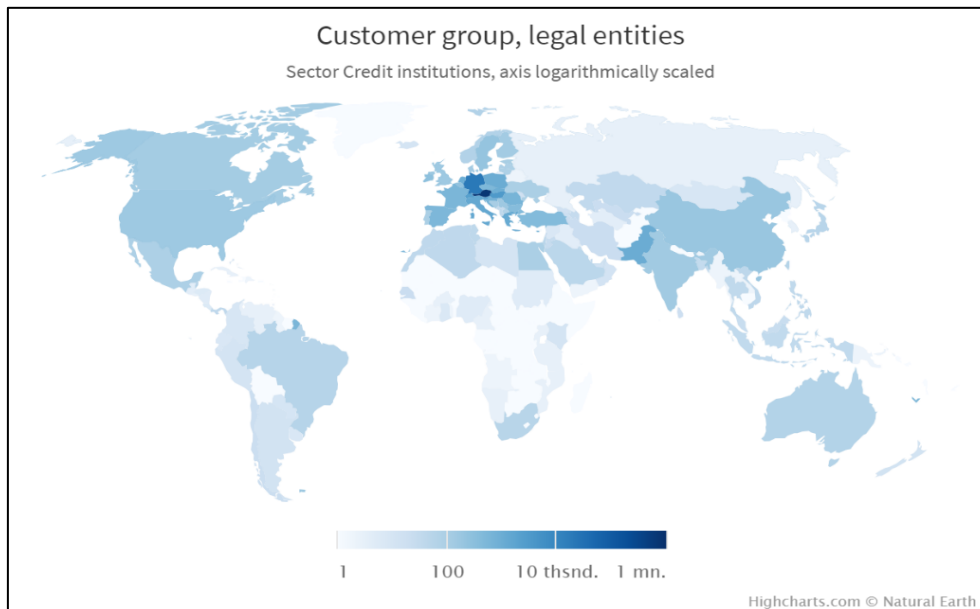


Figure 3: World map of customers in 2023, for credit institutions, legal entities

Figures 4 and 5 show the distribution of the CIs' overall risk. It shows that only a low percentage of CIs (2.6%) are exposed to a high risk of being abused for the purposes of ML/TF. In absolute terms, most CIs fall into the "low" or "medium" risk categories.

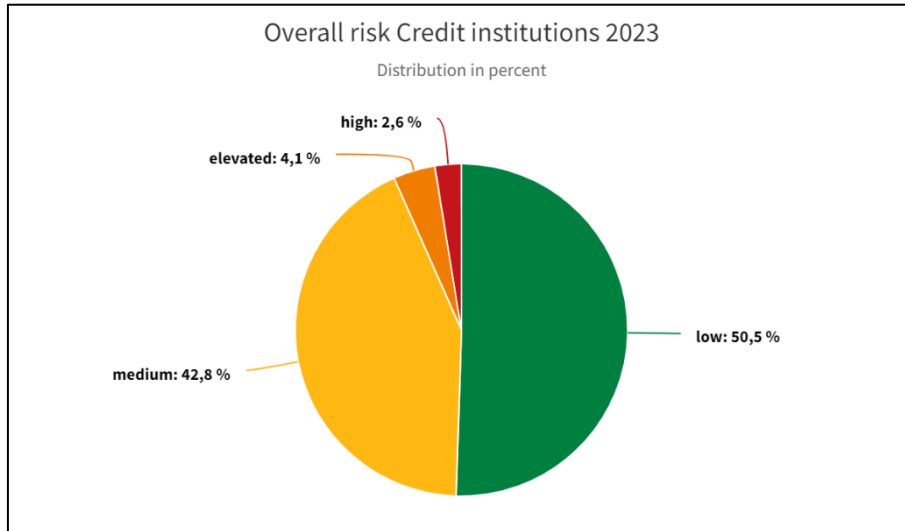


Figure 4: Distribution of CIs' overall risk

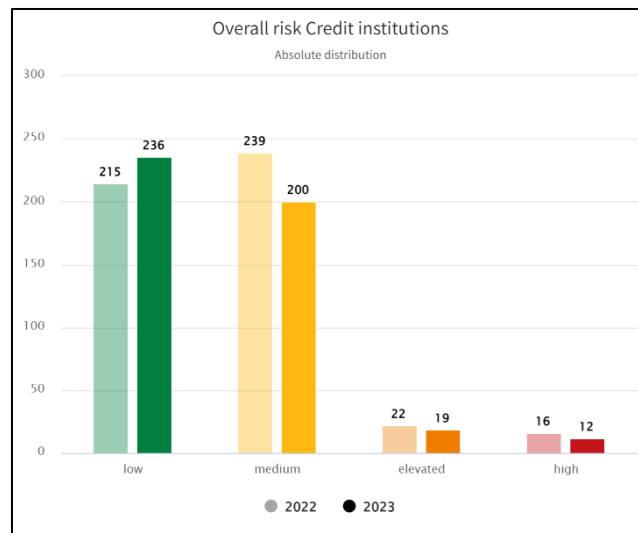


Figure 5: Overall risk - Credit Institutions Quantity 2022, 2023

Figure 6 presents the aggregated total assets by risk class for CIs: by far the highest values are observable in the risk classes “medium” and “high”. This is especially interesting, as the “high” risk class consists of only 12 CIs – corresponding to a mere 2.6% of all CIs (cf. Figure 5). This is an important reason why the risk of being abused for ML/TF purposes is considered increasingly intensely within the scope of prudential supervision.⁸

In contrast, Figure 6 shows how many business relationships CIs have in the respective risk classes from ‘low’ to ‘high’. In contrast to the presentation of risk/total assets, these figures show that Austrian CIs in the ‘high risk’ category do not conduct the majority of business relationships in the Austrian financial market. Most business relationships are conducted in CIs that are allocated a medium or low risk. The FMA acknowledges this by also carrying out on-site and off-site measures to review the suitability and appropriateness of preventive measures for medium and low-risk CIs at appropriate intervals as well as on- and off-site measures conducted on an ad hoc basis.



Figure 6: Credit institutions - total assets aggregated by risk class

⁸ For further information about the interplay between prudential supervision and AML/CFT, see e.g. <https://www.bankingsupervision.europa.eu/banking/tasks/anti-moneylaundering/html/index.en.html> as well as EBA Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units under Directive 2013/36/EU (EBA/GL/2021/15, 16.12.2021).

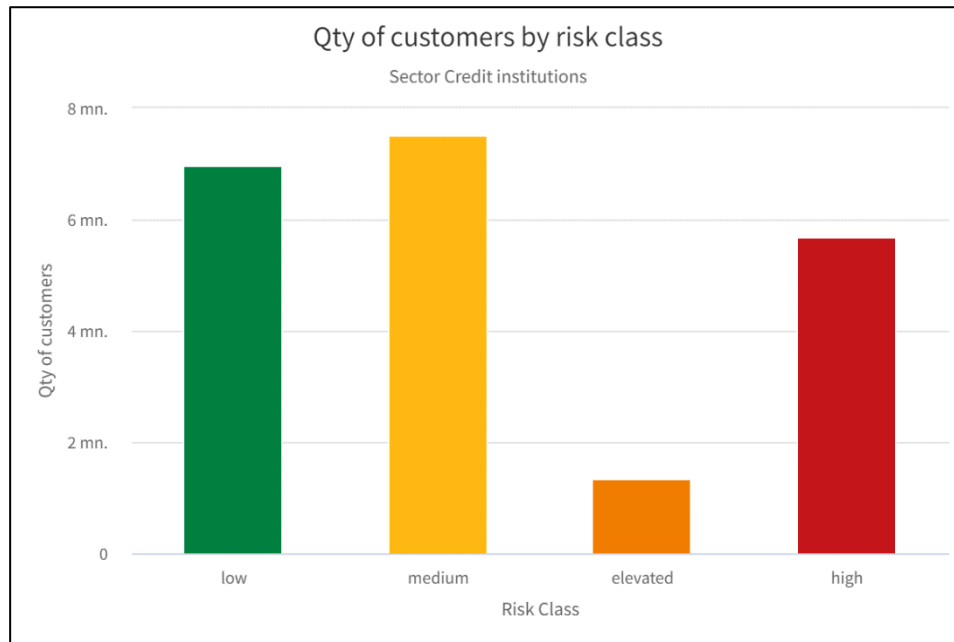


Figure 7: Credit institutions - number of business relationships aggregated by risk class

3.5.1.2 Insurance undertakings⁹

Figures 8 and 9 contain visualisations of the worldwide distribution of customers in the insurance sector.

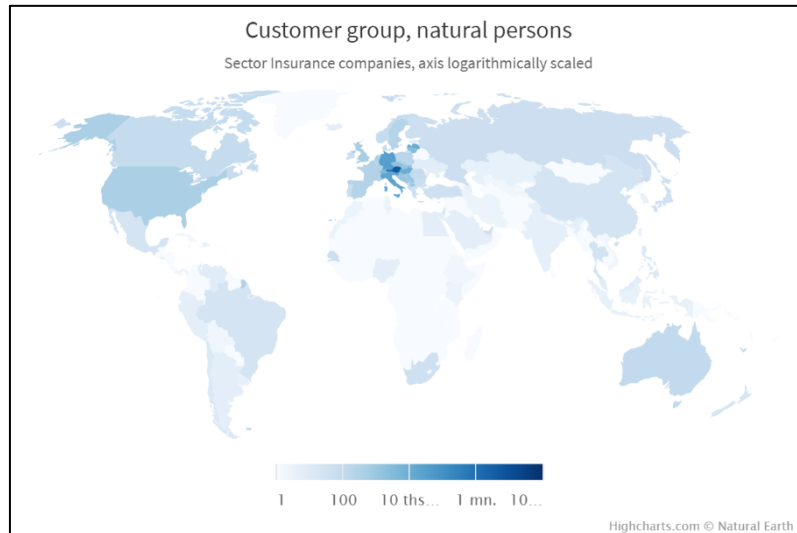


Figure 8: World map of distribution of customers in 2023, for insurance undertakings, natural persons



Figure 9: World map of distribution of customers in 2023, for insurance undertakings, legal entities.

⁹ Only insurance undertakings pursuant to Article 1 para. 1 no. 1 VAG 2016 and small insurance undertakings pursuant to Article 1 para. 1 no. 2 VAG 2016 respectively **within the scope of their life insurance operations** (classes 19 to 22 pursuant to Annex A of VAG 2016) fall within the scope of application of the FM-GWG, cf. Article 1 para. 1 in conjunction with Article 2 no. 2 lit. b FM-GWG.

Figures 10 and 11 show the distribution of the IUs' overall risk. A low proportion (3.8%) of obliged entities are exposed to a high risk of being abused for the purposes of ML/TF. Just under one-third of the undertakings have a medium risk.

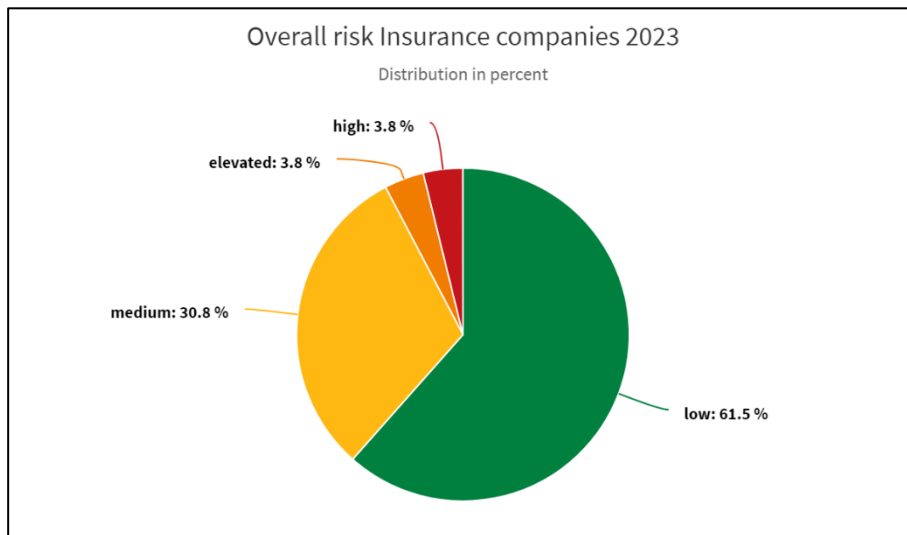


Figure 10: Distribution of overall risk: insurance companies

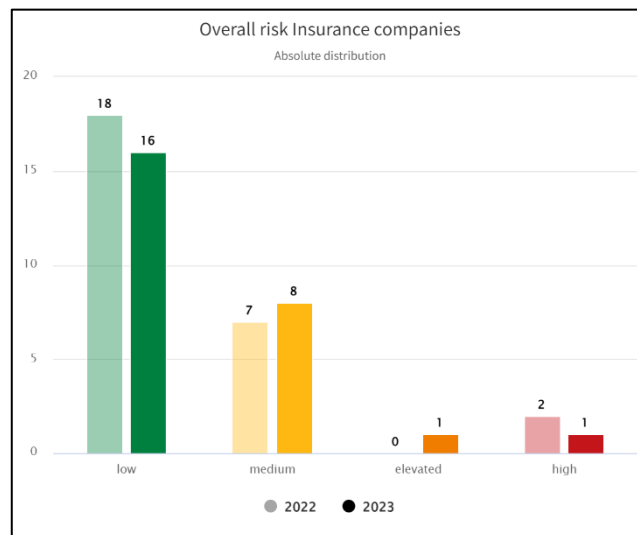


Figure 11: Overall risk insurance companies, quantity 2022, 2023

3.5.1.3 Virtual asset service providers (VASPs)¹⁰

Figures 12 and 13 contain visualisations of the worldwide distribution of customers in the sector.

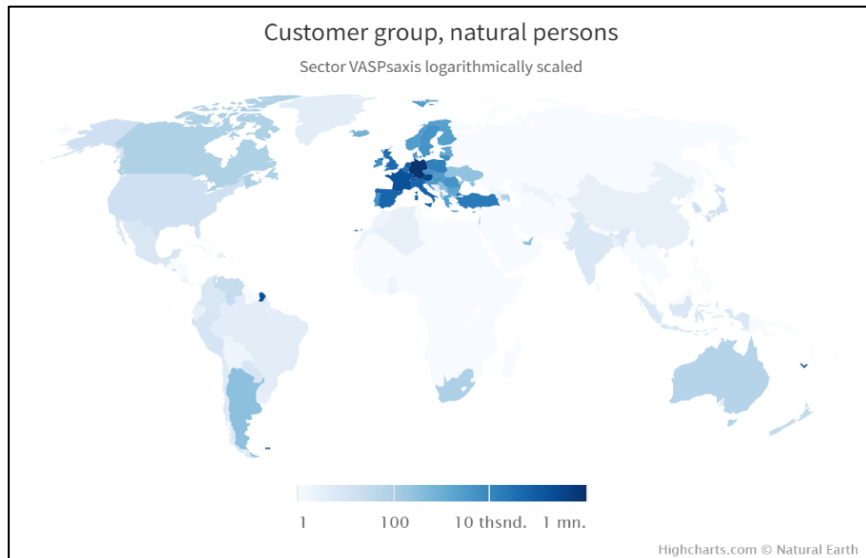


Figure 12: World map of customers in 2023, for VASPs, natural persons

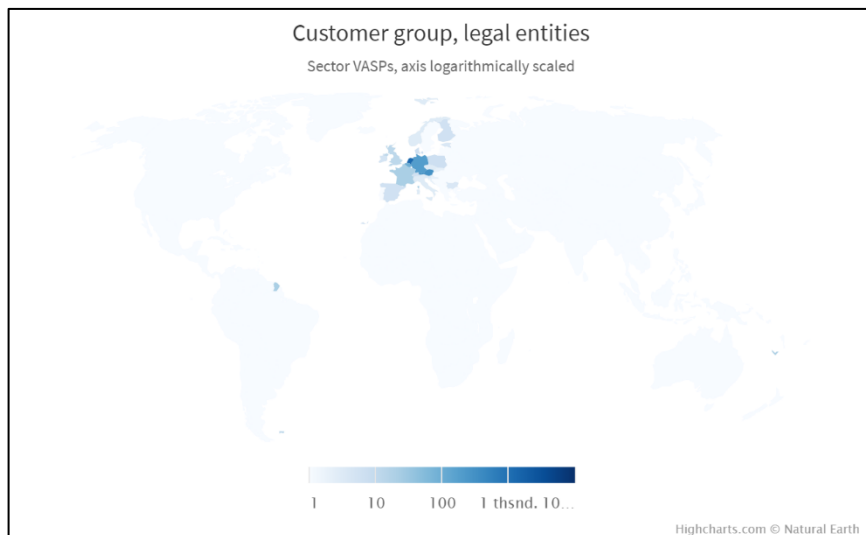


Figure 13: World map of customers in 2023, for VASPs, legal entities

Figures 14 and 15 show the distribution of overall risk of VASPs. More than one-fifth (21.1%) of these obliged entities are exposed to a high risk of being abused for the purposes of ML/TF. More than one-quarter (26.3%) have a medium risk. Their classification in medium and high risk can be traced back

¹⁰ VASPs are currently only subject to supervision in relation to AML/CFT, i.e. the scope of application of the FM-GwG. A comprehensive regulatory and supervisory regime – that is not restricted to AML/CFT enters into force with MiCAR cf. Point 3.4.2.

among other things to the high risk of crypto-currencies, of being abused for purposes of ML/TF as well as the design and functioning of the – often complex – products and services offered. The classification in the low risk 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.

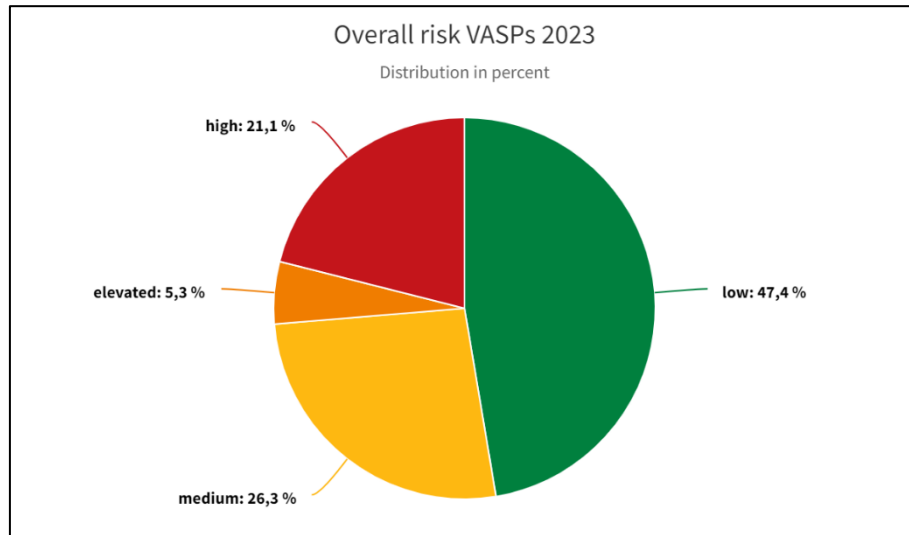


Figure 14: Distribution of overall risk VASPs

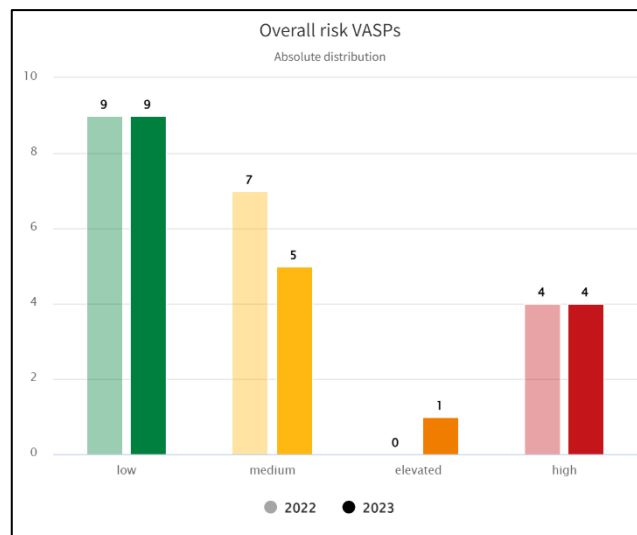


Figure 15: Overall risk VASPs quantity 2022, 2023

3.5.1.4 Payment Institutions

Figures 16 and 17 contain visualisations of the worldwide distribution of customers in the CI sector.

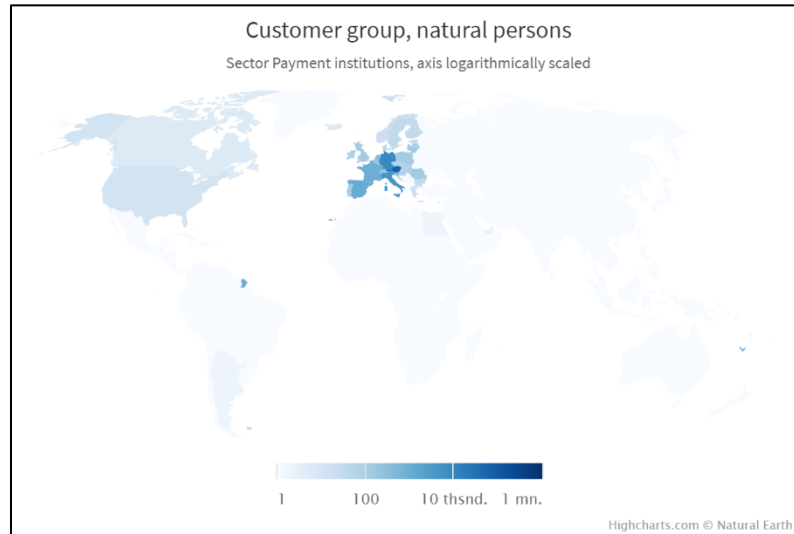


Figure 16: World map of customers in 2023, for PIs, natural persons

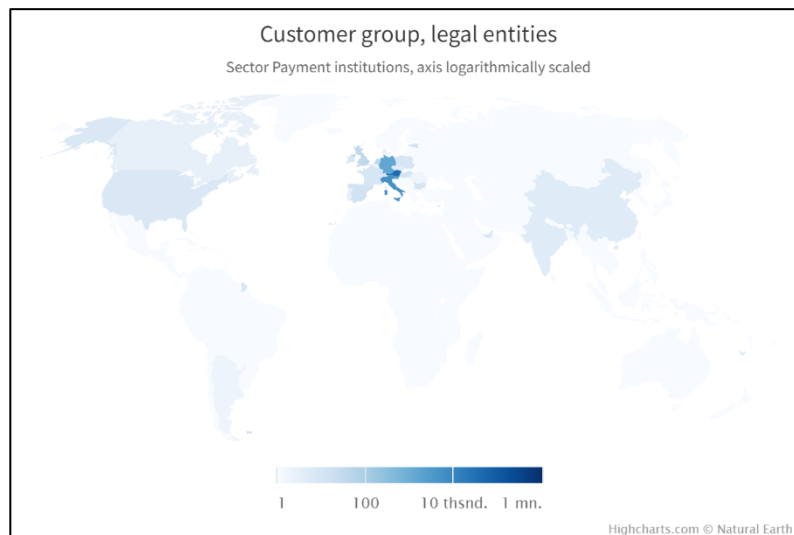


Figure 17: World map of customers in 2023, for PIs, legal entities

The distribution of overall risk of PIs is shown in Figures 18 and 19. None of the obliged entities are exposed to a high risk of being abused for the purposes of ML/TF. Just under one-tenth have an elevated risk, while more than half (54.5%) have a medium risk.

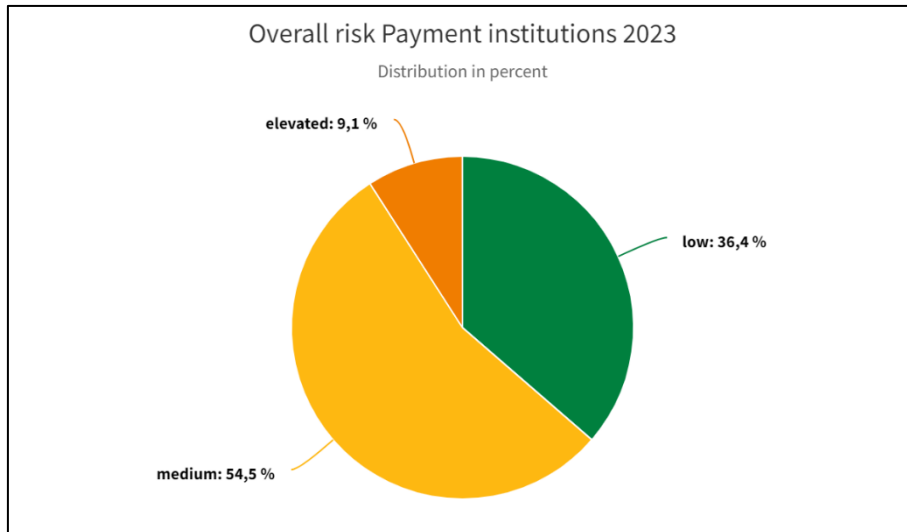


Figure 18: Distribution of overall risk PIs

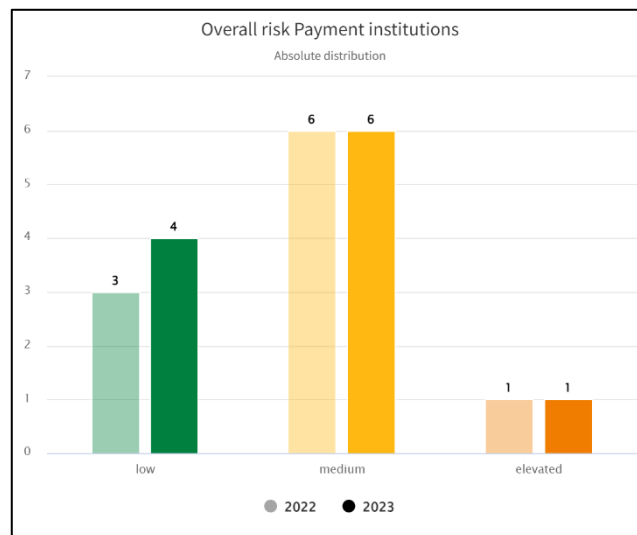


Figure 19: Overall risk PIs quantity 2022, 2023

3.5.1.5 Investment firms and investment services providers

Figures 20 and 21 contain visualisations of the worldwide distribution of customers in the sector.

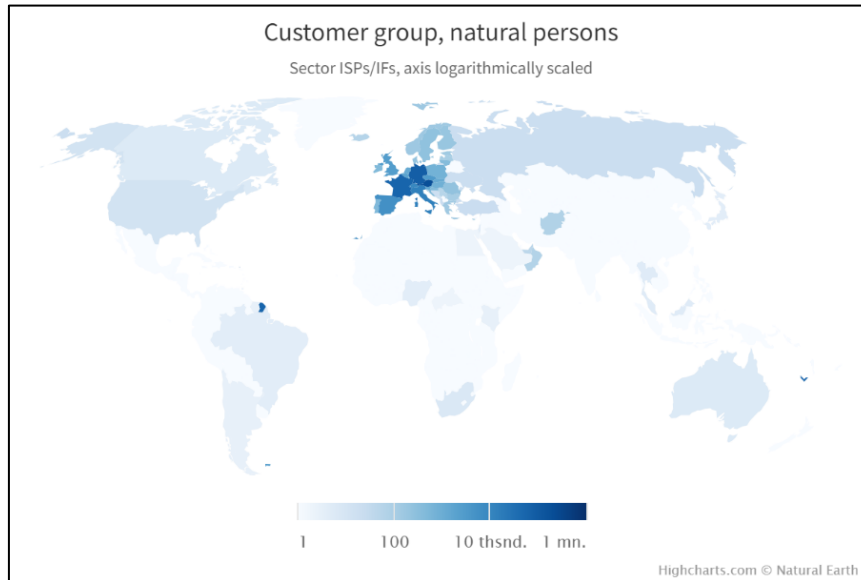


Figure 20: World map of customers in 2023, for IFs/ISPs, natural persons

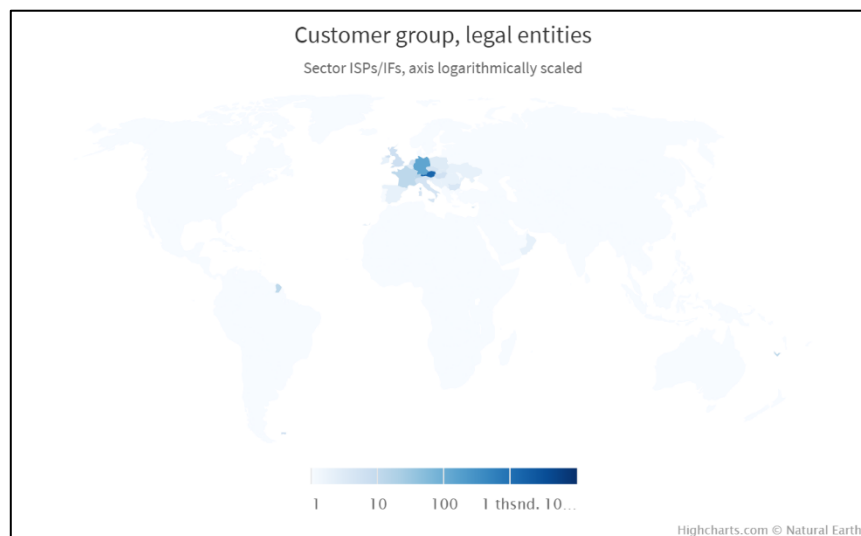


Figure 21: World map of customers in 2023, for IFs/ISPs, legal entities

Figures 22 and 23 show the distribution of overall risk of ISPs and IFs. None of the obliged entities are exposed to a high risk of being abused for the purposes of ML/TF. More than one-third (39.1%) have a medium risk.

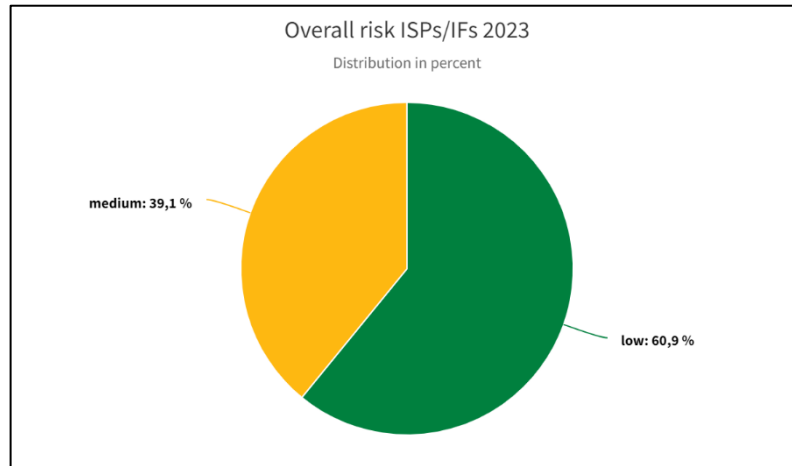


Figure 22: Distribution of overall risk ISPs/IFs

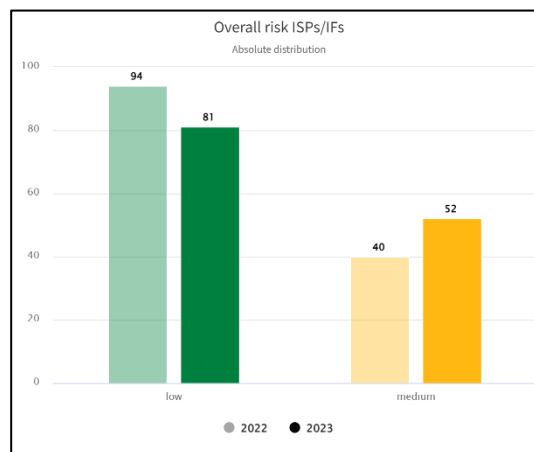


Figure 23: Overall risk ISPs/IFs quantity 2022, 2023

3.5.1.6 Management companies and alternative investment funds

Figures 24 and 25 contain visualisations of the worldwide distribution of customers in the sector.

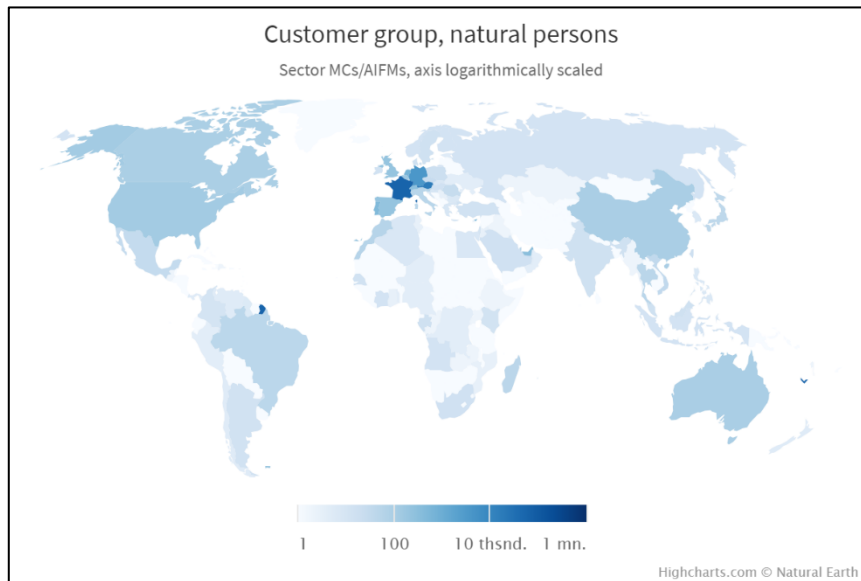


Figure 24: World map of customers in 2023, for MCs/AIFMs, natural persons

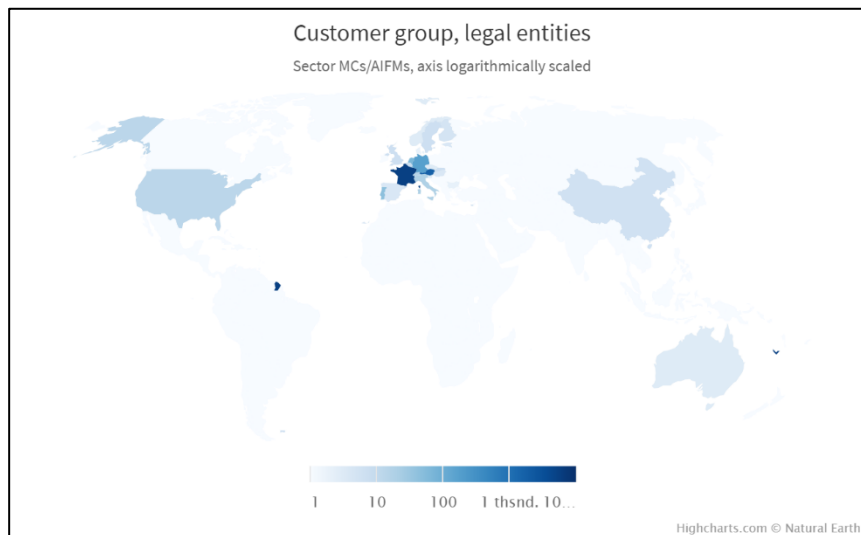


Figure 25: World map of customers in 2023, for MCs/AIFMs, legal entities

Figures 26 and 27 show the distribution of overall risk of MCs and AIFMs. None of the obliged entities are exposed to a high risk of being abused for the purposes of ML/TF. Just under one-half (48.6%) have a medium risk. All other obliged entities were allocated a low risk.

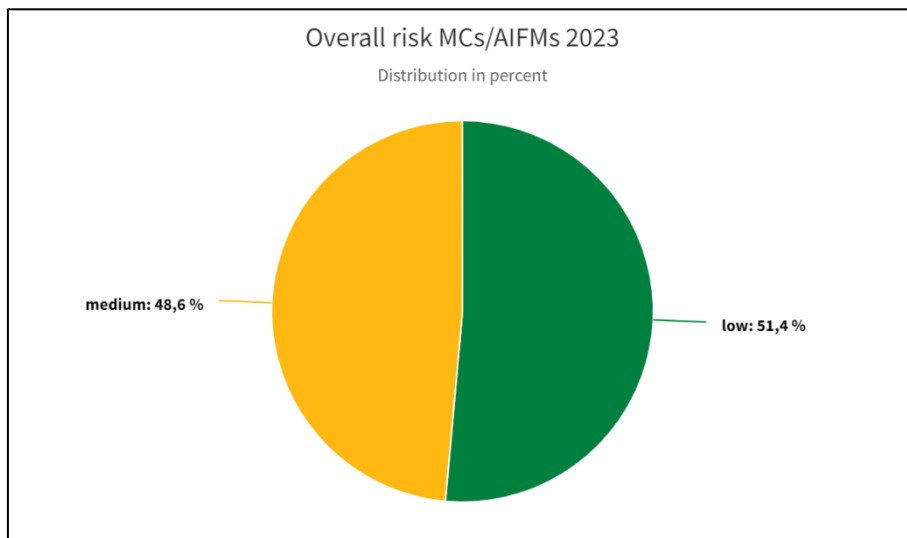


Figure 26: Distribution of overall risk MCs/AIFMs

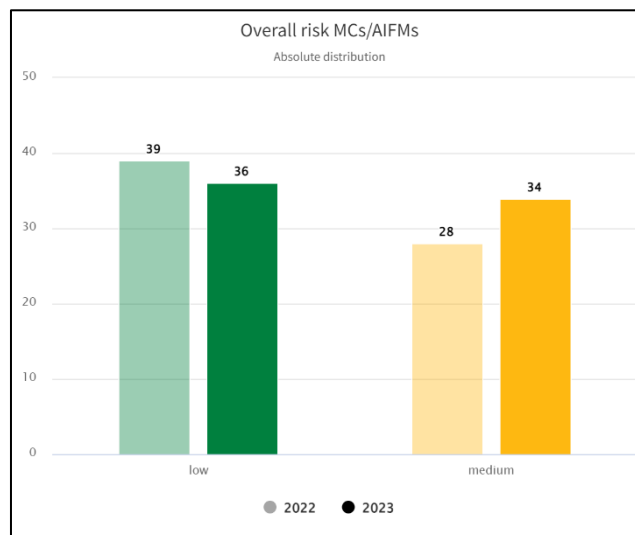


Figure 27: Overall risk MCs/AIFMs quantity 2022, 2023

3.5.2 THE “TOP THREE” RISK FACTORS

Figures 28 and 29 show the three sub-risks that have increased most strongly (HNWI customers, PEP customers, Risk in relation to beneficial owners) as well as those that have decreased most strongly (business relationships to foreign trusts, geographical risk as well as incoming transactions from countries with an elevated risk). The (stagnating) falling trends in these three risk areas are also reflected in the depictions Business relationships to correspondent banks (Figure 30), Business relationships to Russian/Belarussian customers; beneficial owners domiciled in Russia/Belarus (Figure 32 et seq.). This development can on the one hand be traced back to the exposure of global ML/TF scandals by investigative journalists and the reputational damage that arises from such negative reporting, which – in individual cases – led as far as licence withdrawals and convictions under penal law. As a result, this has led (among other things) to consequential increased awareness among the obliged entities. Furthermore, this development reflects the increasingly strict regulations as well as the targeted approach in conjunction with the FMA’s particularly high requirements in relation to certain risk factors and business models.

The trend regarding the “Risk of Location” factor (slight increase since 2020) can also (at least partially) be seen in the following figures: the ongoing extension of the Delegated Regulation has led to a constant increase in the number of high-risk countries, as is also apparent from these figures (cf. Figure 38 et seq.).

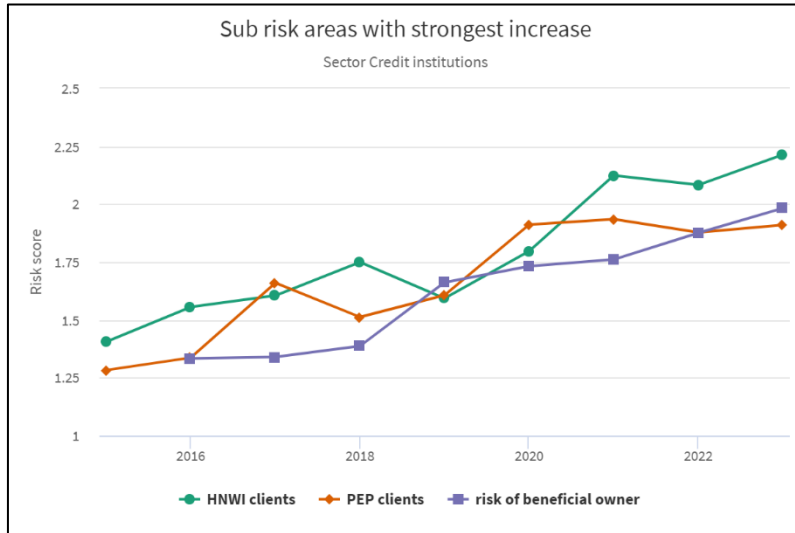


Figure 28: Top three risk factors: strongest increases

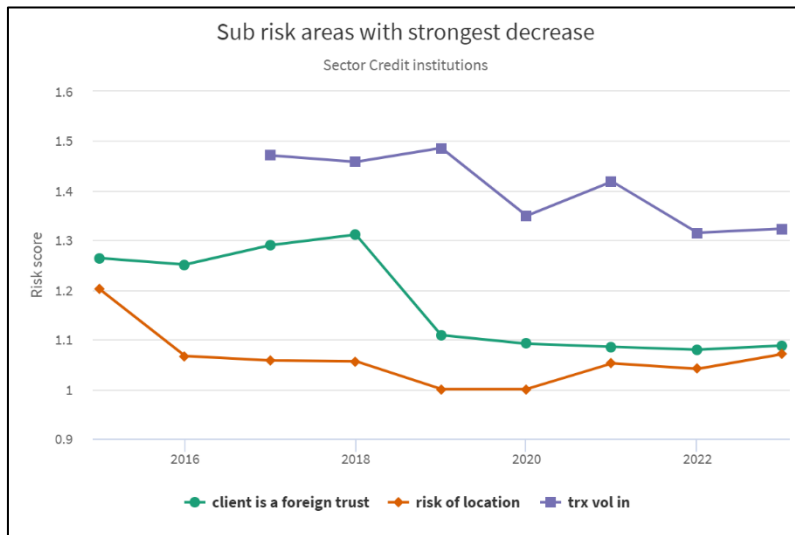


Figure 29: Top three risk factors: strongest decreases

3.5.3 BUSINESS RELATIONSHIPS TO CORRESPONDENT BANKS IN THIRD COUNTRIES

Figure 30 clearly shows the downward trend in business relationships of Austrian CIs with correspondent banks in third countries. Article 10 FM-GwG stipulates that enhanced customer due diligence must be applied to such customers with high communicated requirements (e.g. by EBA¹¹), and an increased level of termination of business relationships by the European correspondent banks observed. The reasons stated for this, include the high costs resulting from high risks, arising from increased (manual) verification and monitoring costs: *“Considering this, it is worrisome that global banks have radically pruned their correspondent bank relationships over the past decade. [...] this retrenchment took place against the backdrop of a sharp increase in compliance costs due to stricter enforcement of financial crime regulation around 2014–15 (Rice, Peter, and Boar 2020)”*¹²

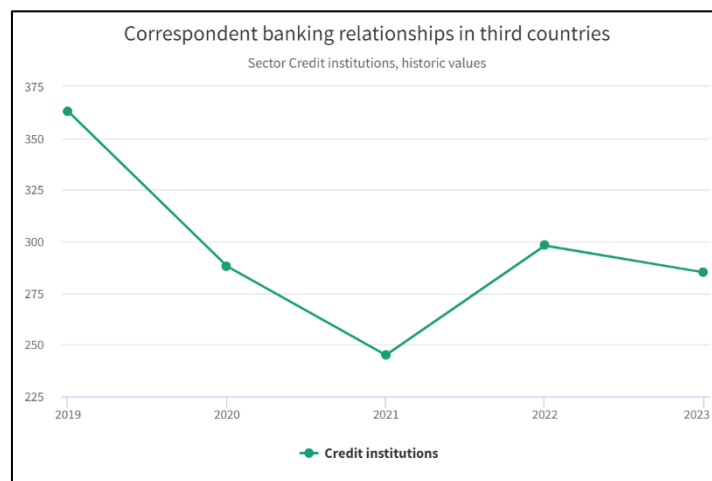


Figure 30: Business relationships to correspondent banks in third countries

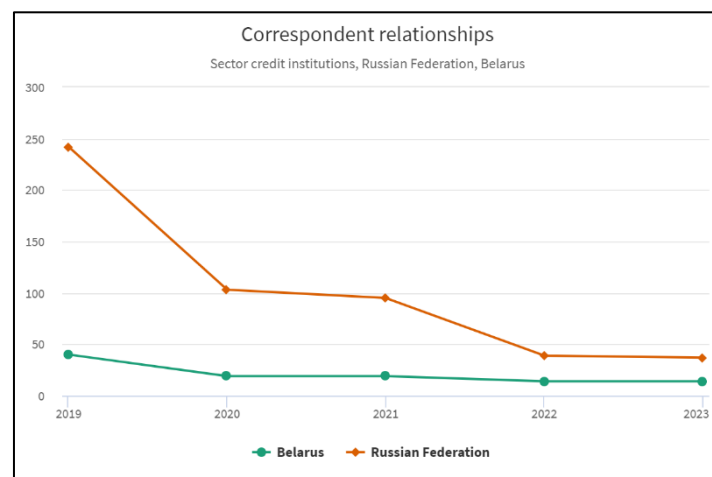


Figure 31: Business relationships to correspondent banks in Belarus and Russia

¹¹ Cf. EBA/GL/2021/02, Guideline 8: Sectoral guideline for correspondent relationships, 01 March 2021.

¹² Broken Relationships: De-Risking by Correspondent Banks and International Trade, European Bank for Reconstruction and Development, 08.12.2023.

Figure 31 shows the decline in correspondent banking relationships of Austrian credit institutions with Russian banks during the period 2019 – 2023. In addition, business relationships to Russian customers in general have declined significantly, cf. Point 3.5.4.

3.5.4 BUSINESS RELATIONSHIPS TO RUSSIAN/BELARUSSIAN CUSTOMERS; BENEFICIAL OWNERS DOMICILED IN RUSSIA/BELARUS

Figures 32 to 35 show the development in business relationships with customers (natural/legal entities, foundations/trusts) or beneficial owners of legal entities domiciled in Russia since 2019. There is a clear downward trend regarding business relationships to customers/beneficial owners of legal entities domiciled in Russia. The number of business relationships with Russian natural persons have fallen by almost 70%, and by 83% for Russian legal entities. The number of beneficial owners domiciled in Russia fell by 84% during the reporting period.

The decrease pre-dates the comprehensive sanctions associated with the war in Ukraine.

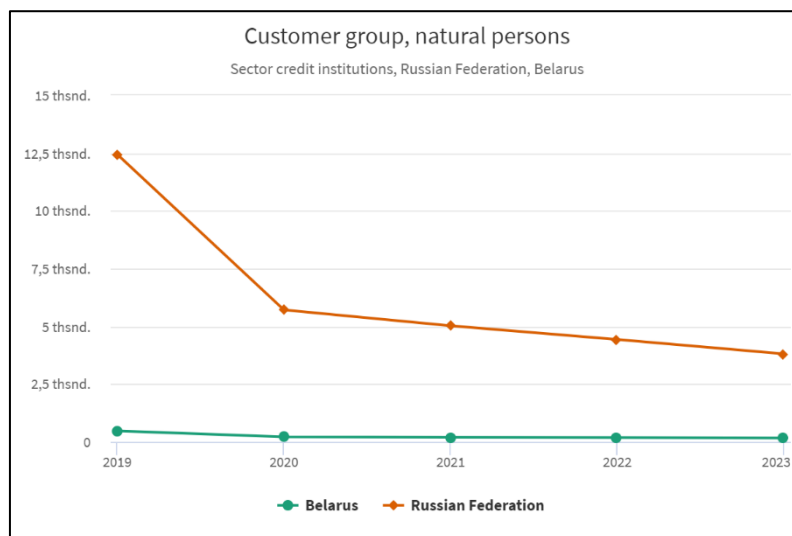


Figure 32: Business relationships to Russian natural persons



Figure 33: Business relationships to Russian legal entities.

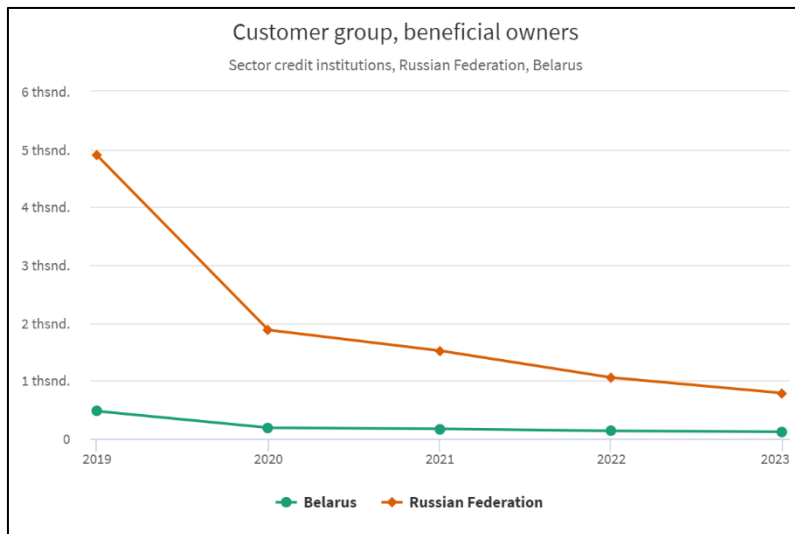


Figure 34: Beneficial owners domiciled in Russia and Belarus

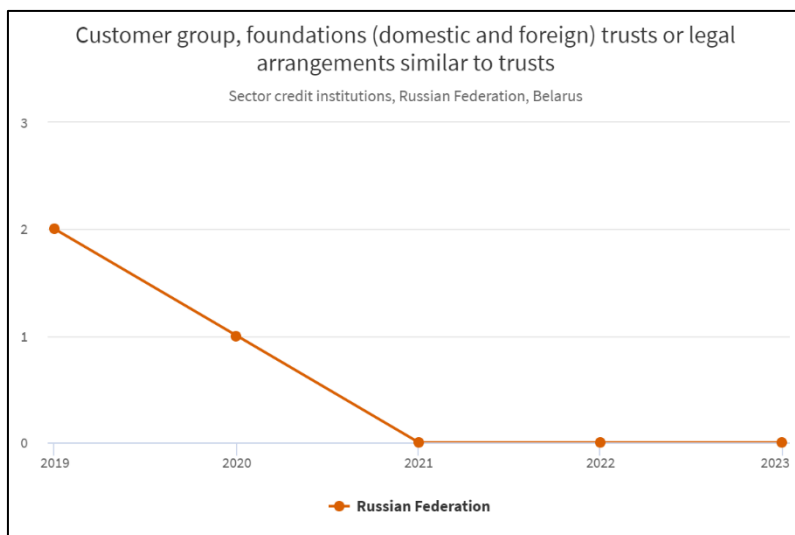


Figure 35: Foundations, trusts etc. domiciled in Russia.

3.5.5 BUSINESS RELATIONSHIPS TO CUSTOMERS IN OFFSHORE JURISDICTIONS

Companies incorporated in offshore financial centres¹³ constitute a significant risk factor within the prevention of money laundering. Criminal offences, that were or have been enabled by offshore financial centres, have repeatedly been mentioned in “Offshore Leaks” like the Panama Papers¹⁴ or Lux Leaks. Companies incorporated in offshore financial centres are frequently used for tax evasion purposes and in conjunction with committing a wide range of criminal offences, especially in the fields of crimes in relation to property, malpractice and corruption.¹⁵ In the interests of objective comparability, the figures shown relate to the IMF’s List of “Offshore Financial Centers (OFCs) (IMF)”, (as of: 20.11.2014).

The FMA has repeatedly focussed on business relationships with customers domiciled in offshore locations, both within the scope of on-site inspections and off-site investigative activities, and its legal interpretation has frequently been upheld by the Federal Administrative Court (BVwG) regarding the particularly strict requirements for effectively addressing offshore risk. Regulatory clarifications coupled with obliged entities’ improved understanding of risk are reflected by this downward trend.

Figures 36 and 37 show a clear trend towards the Austrian financial market’s de-risking towards such customers, even if it has stagnated or decreased since 2022. The figures shown relate to the IMF’s OFCs list. This list has been continuously extended; “country baskets” were defined for the trends presented to ensure the objective comparability across the observation period to permit a consistent comparison (the countries in a “basket” remain the same across the observation period): for the list as of 20.11.2014 (i.e. “Basket 2015”) as well as for the purpose of comparison the countries listed in the IMF lists and the EC¹⁶ as of 13.07.2023 (“Basket 2023”).

¹³ The term “offshore financial centers” is usually used to mean jurisdictions, where for example there is a particularly low level of taxation, where taxes are not collected, whether the regulatory standards of the financial market are considered as moderate or low, or where banking secrecy and preservation of anonymity are among the “services” offered; cf. Offshore Financial Centers IMF Background Paper.

¹⁴ A data leak about the Panamanian law firm Mossack-Fonseca, which is alleged to have established 214,000 offshore companies for its clients.

¹⁵ Federal Ministry of Finance, National Risk Assessment for Money Laundering and Terrorist Financing (2021) 17 et seq.

¹⁶ Cf. EU list of non-cooperative jurisdictions for tax purposes (13.07.2023)

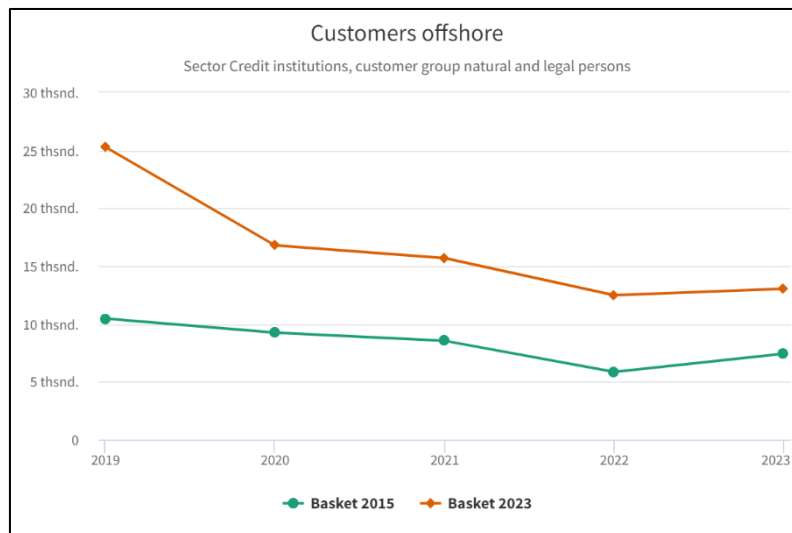


Figure 36: CIs – Change in customer relationships to offshore customers – comparison of different composition of IMF and EC “offshore lists” (“Basket 2015” and “Basket 2023”)

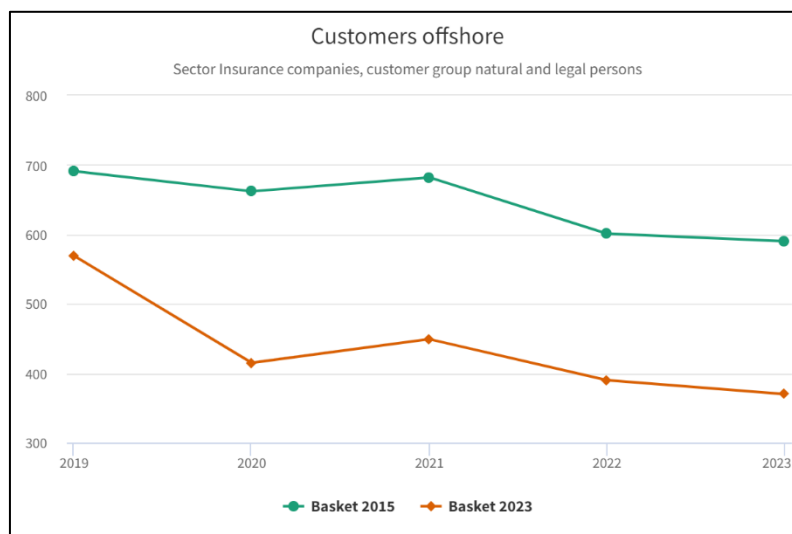


Figure 37: IUs – Change in customer relationships to offshore customers – comparison of different compositions of IMF and EC “offshore lists” (“Basket 2015” and “Basket 2023”)

3.5.6 BUSINESS RELATIONSHIPS WITH CUSTOMERS DOMICILED IN COUNTRIES APPEARING ON THE LIST IN THE DELEGATED REGULATION, AND FATF GREY LIST

The EU identifies high-risk countries in accordance with Article 9 AMLD for the purpose of protecting the EU financial system as well as ensuring the orderly functioning of the Single Market. The Delegated Regulation is largely based on the FATF’s Recommendations. Due to the lists being extended on an ongoing basis, Figures 38 and 39 show a clearly increasing trend. This very clear increase in high-risk customers of Austrian CIs or IUs due to the extension of the lists’ scope, shows how the impact of the FATF’s strict approach on the Austrian financial market in practice. The considerable increase in high-risk customers observed in the CI sector is in particular due to Bulgaria, Russian Federation and South Africa being added to the lists.

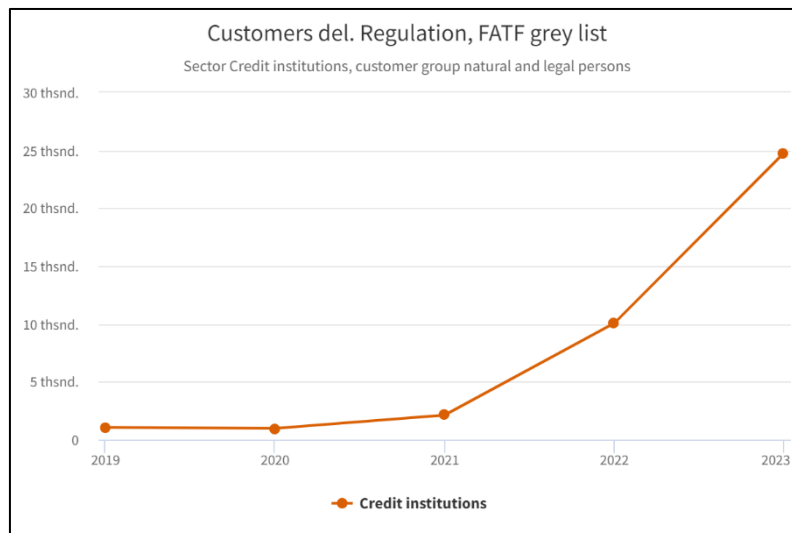


Figure 38: CI – business relationships to customers domiciled in high-risk countries, legal and natural persons

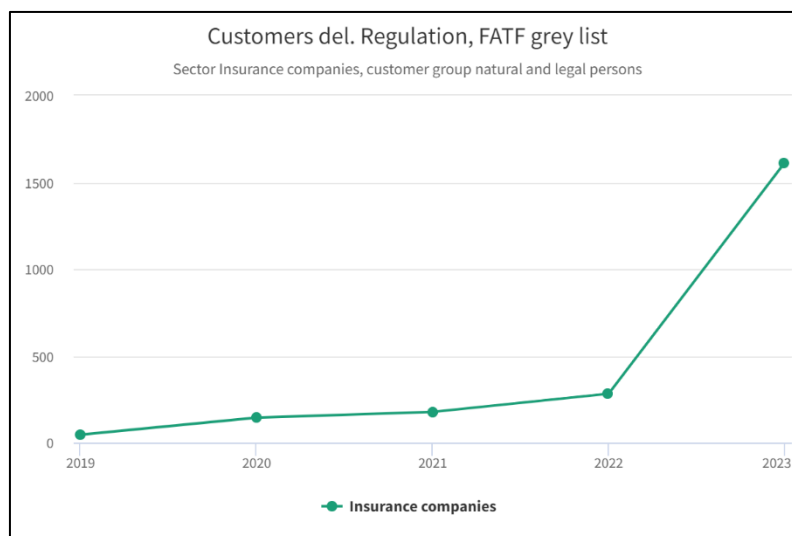


Figure 39: IUs – business relationships to customers domiciled in high-risk countries, legal and natural persons

3.5.7 VASPS: NUMBER AND VOLUME OF TRANSACTIONS

Figures 40 and 41 show the change in incoming and outgoing FIAT transaction volumes: A 54% decrease in incoming FIAT transaction volume has been observed; while in the case of the outgoing FIAT transaction volume, there has been a 72% decrease. The number of transactions in virtual currencies – both incoming and outgoing – are depicted in the chart on the right-hand side: the decreases are 18% for incoming transactions and 88% for outgoing transactions in virtual currencies. Both charts clearly reflect the general decrease in trading in virtual currencies during the period under examination, also known as “crypto winter”, which was repeatedly reported about in the media: “After a spectacular crash earlier this year, the crypto industry’s most popular tokens have gone to sleep, suggesting amateur investors have fallen out of love with the once thrilling asset class and big funds have decided to keep their distance. [...] Digital asset investment and trading group CoinShares describes this as an “apathetic period”. In part, crypto has suffered the same malaise as

other highly speculative asset classes since it became clear almost a year ago that US interest rates would need to rise fast to tackle sticky inflation. [...] **The industry’s market cap has shrunk from \$3.2tn to under \$1tn.** [...] Morgan Stanley estimated this week that 78 per cent of all bitcoin units had not been used for any transaction in the past six months, a record amount. [...]¹⁷

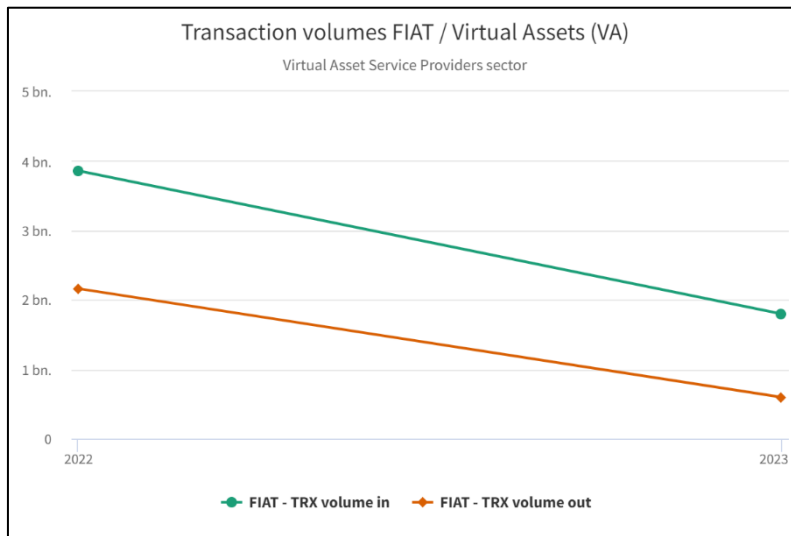


Figure 40: Transaction volumes of fiat currencies

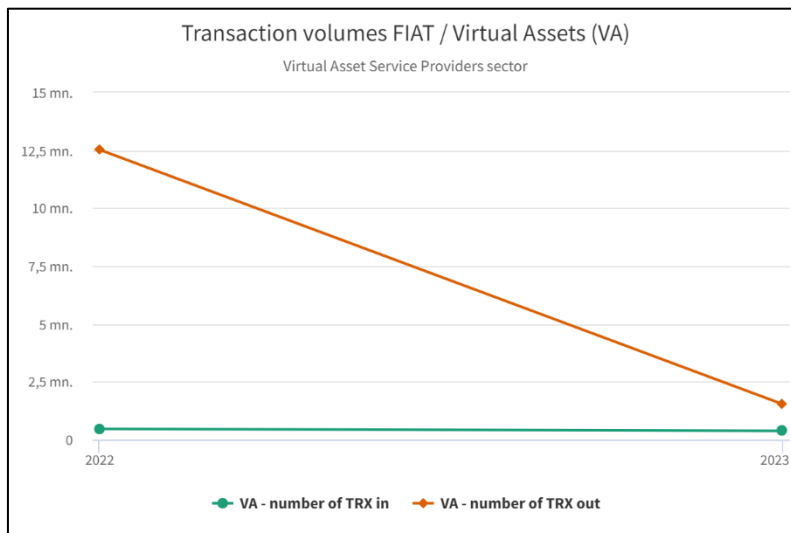


Figure 41: Number of virtual currencies transactions

3.5.8 OUTSOURCING: CREDIT INSTITUTIONS SECTOR

The following figures demonstrate the trend in the CI sector towards outsourcing models: A large proportion (67%) of CIs have at least partially outsourced activities in relation to the due diligence obligations defined in the FM-GwG; only a very small proportion of credit institutions (13%) still

¹⁷ Crypto winter risks turning into ice age, Financial Times, 28.10.2022, <https://www.ft.com/content/aed13252-7958-4259-9575-1b6dc062cd0b>.

conduct all activities relating to due diligence obligations internally within their institution (Figure 42). The AML Officer position is outsourced in 36% of credit institutions (Figure 43).

Around one-half of CIs either only have the “first vote” or fully outsource transaction monitoring (Figure 44).

Almost all CIs offering online identification have outsourced it (99.5%, Figure 47).

The very high proportion of CIs (87%) that either partially or fully outsource due diligence is relevant regarding the specificities of the Austrian financial market, which is characterised by a very large number of market participants, insofar as the knowledge about and proper consideration of such outsourcing arrangements enables the FMA to deploy resources in a risk-based and targeted manner, which is essential where there are a large number of obliged entities. In this way, the FMA’s on-site measures regularly target somewhat larger “sector banks”, which take on and look after large numbers of outsourcing arrangements on an ongoing basis. This approach ensures that only a small number of on-site inspections are needed to identify potential irregularities or specific areas for improvement, not only at the individual obliged entity actually being inspected, but also by reaching “associated” institutions or the sector as a multiplying factor. Furthermore, the bundling of resources and expertise in credit institutions that service others, is also particularly welcome due to the increasingly ever more complex supervisory regulations. The information gathered by experts in the “Outsourcing Centre” also enables an early identification of ML/TF risks, and for countermeasures to be implemented accordingly.

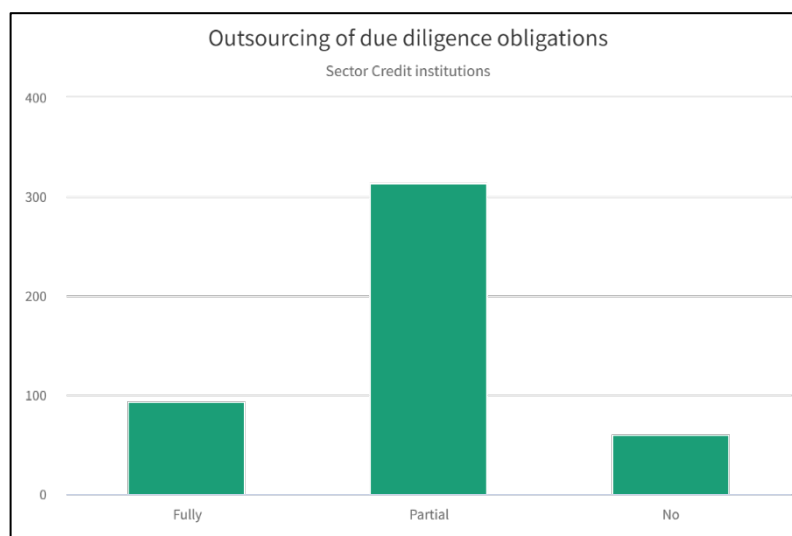


Figure 42: Sector Credit Institutions - Outsourcing general

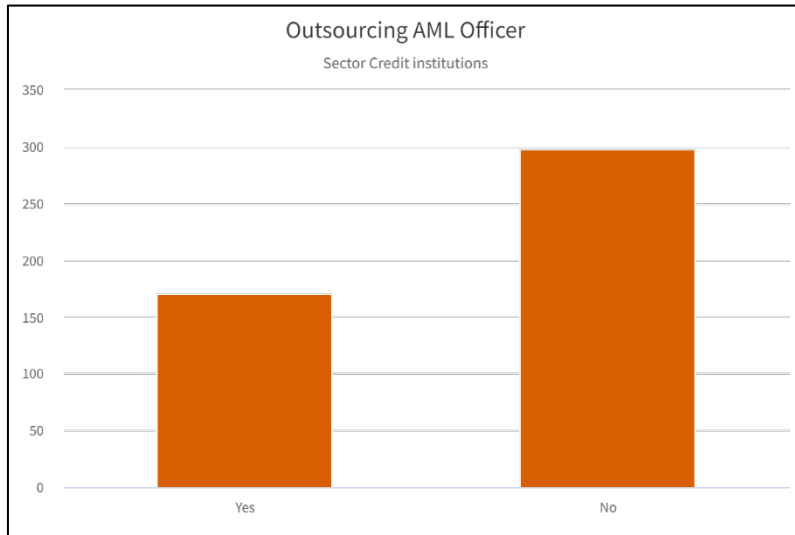


Figure 43: Sector Credit Institutions - Outsourcing of AML Officer

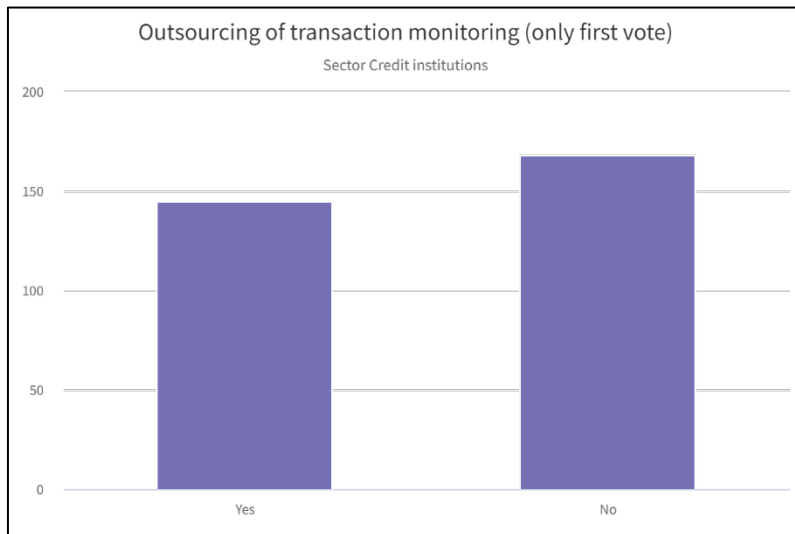


Figure 44: Sector Credit Institutions - Outsourcing of transaction monitoring, subset of partially outsourcing CIs

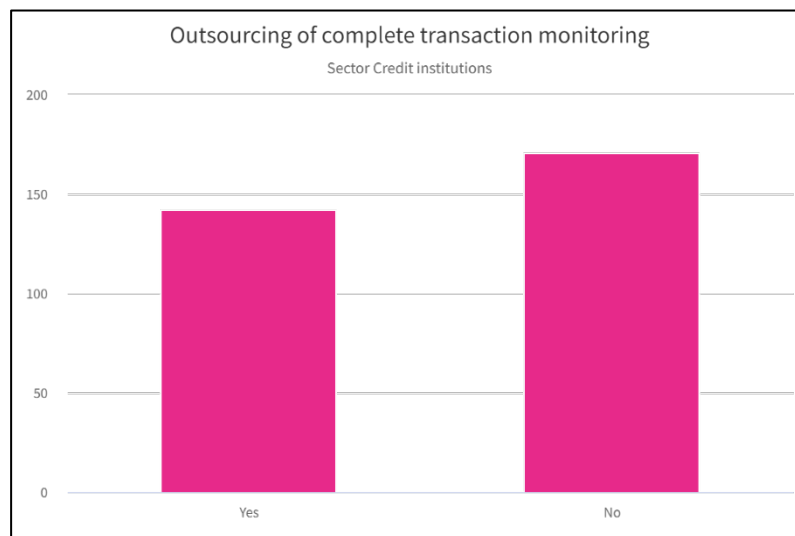


Figure 45: Sector Credit Institutions - Outsourcing of transaction monitoring, subset of partially outsourcing CIs

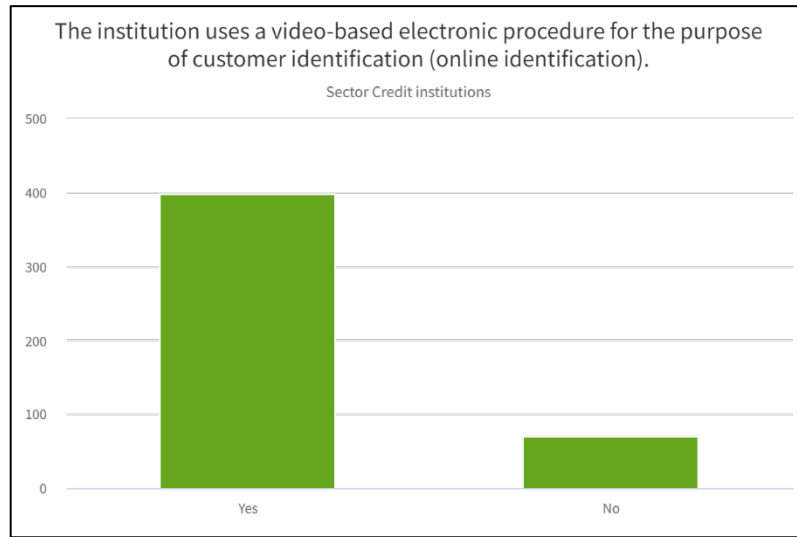


Figure 46: Sector Credit Institutions - Use of Outsourcing and Outsourcing of Online Identification Procedures

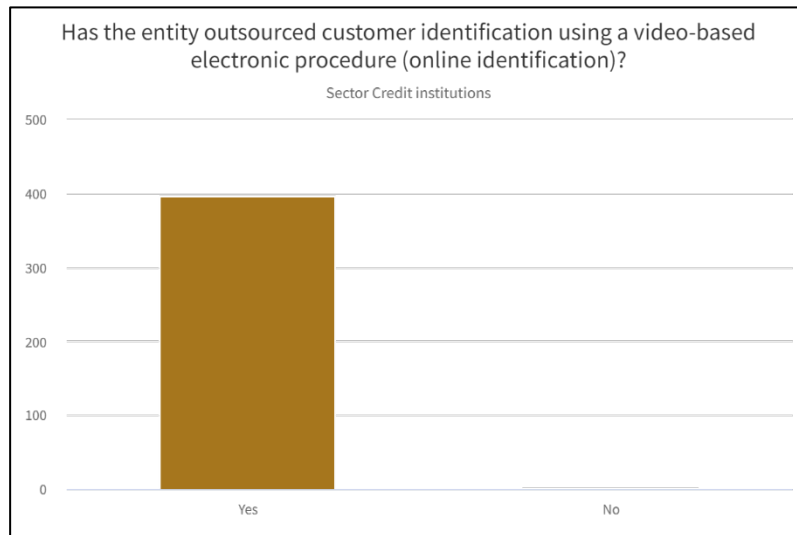


Figure 47: Sector Credit Institutions - Use of Outsourcing and Outsourcing of Online Identification Procedures

3.5.9 TRANSACTIONS

Transactions conducted to and from countries with an elevated risk are considered in the risk assessment and broken down by obliged entities. All transactions settled using the SWIFT cross-border payments system are captured (always for the full year preceding the reporting period).¹⁸

The term ‘high-risk countries’ covers those countries that have severe deficiencies in the field of AML/CFT, or with whom foreign trade is either restricted or completely prohibited in accordance with the corresponding regulations. The following lists are used for this purpose: Embargoes and

¹⁸ Foreign payments for the entire year for 2022 are considered for the 2023 Risk Assessment.

Sanctions¹⁹, Basel AML²⁰, FATF “grey²¹ and black²²” lists, Offshore Financial Centers (IMF²³, EC²⁴). These lists are queried when the risk assessment is drawn up or updated.

Figures 48 and 49 present the total foreign payments to and from CIs. As expected, due to the high level of economic interconnectedness, Germany has the largest proportion.

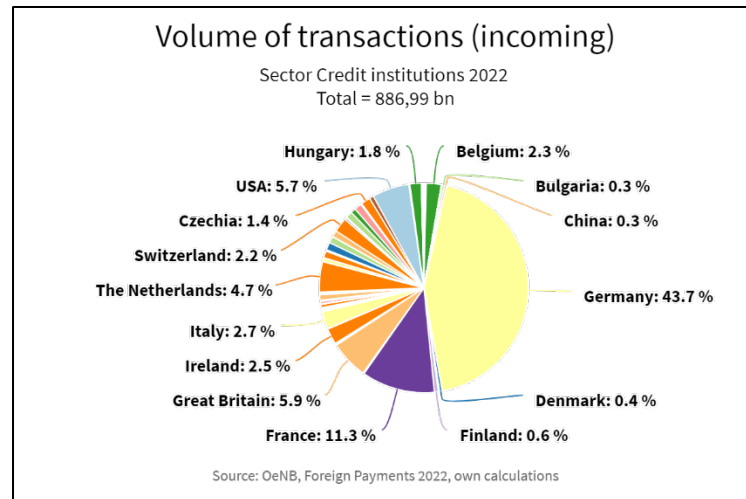


Figure 48: Share of transaction volumes worldwide, incoming

¹⁹ Cf. Embargoes and Sanctions 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. (29.05.2023)

²⁰ Cf. Basel AML Index The Basel AML Index is a tool for estimating the risk of money laundering and terrorist financing in various countries, based on a number of indicators and data. (29.05.2023)

²¹ 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. (29.05.2023)

²² Cf. FATF “black list” (29.05.2023)

²³ Cf. IMF Offshore List (29.05.2023)

²⁴ Cf. EU list of non-cooperative jurisdictions for tax purposes (29.05.2023)

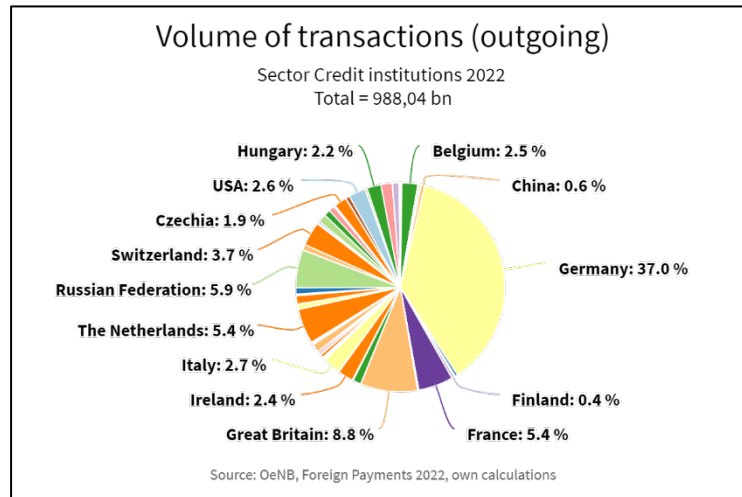


Figure 49: Share of transaction volumes worldwide, outgoing

Selected high-risk countries are shown in Figures 51 and 52. It shows that Türkiye and the United Arab Emirates together account for just under 80% of the incoming and outgoing transaction volumes. United Arab Emirates dominates the countries that are listed in the Delegated Regulation (Figures 52 and 53).

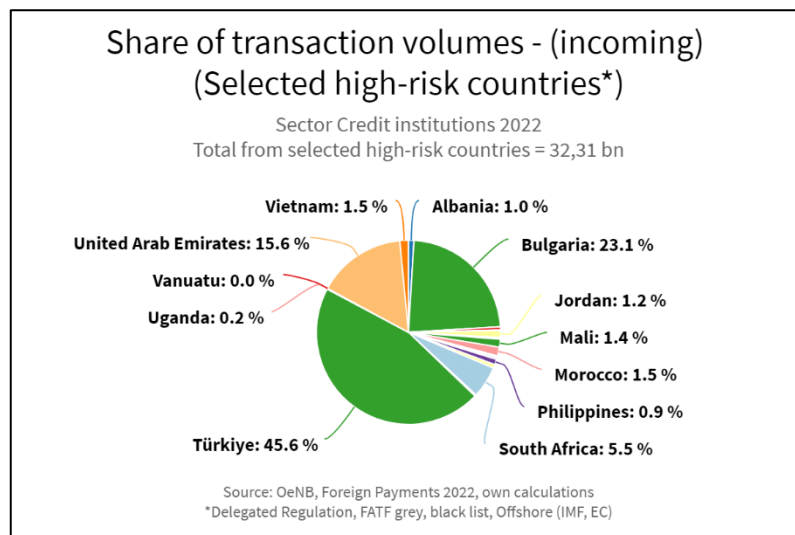


Figure 50: Share of transaction volumes - selected high-risk countries, incoming

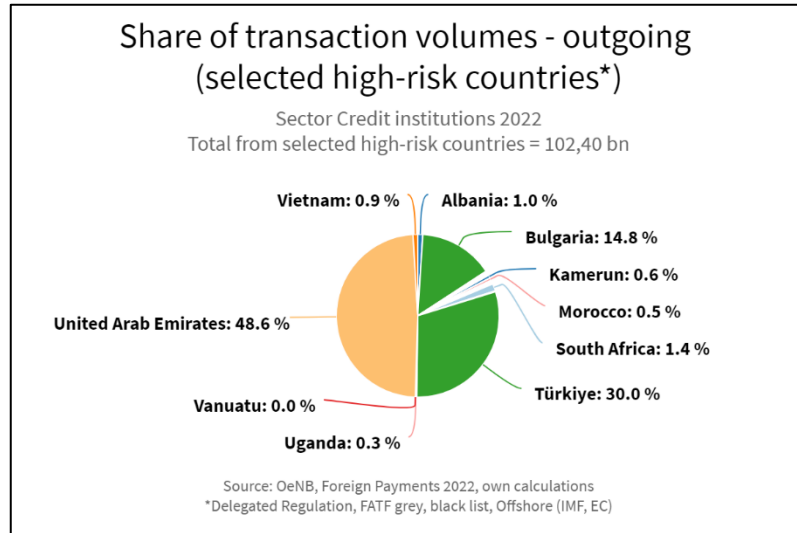


Figure 51: Share of transaction volumes - selected high-risk countries, incoming

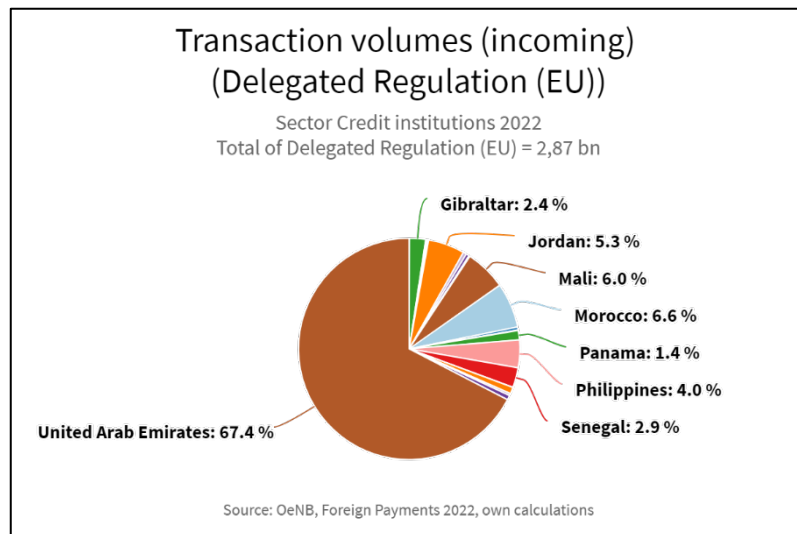


Figure 52: Share of transaction volumes - listed in Delegated Regulation, incoming

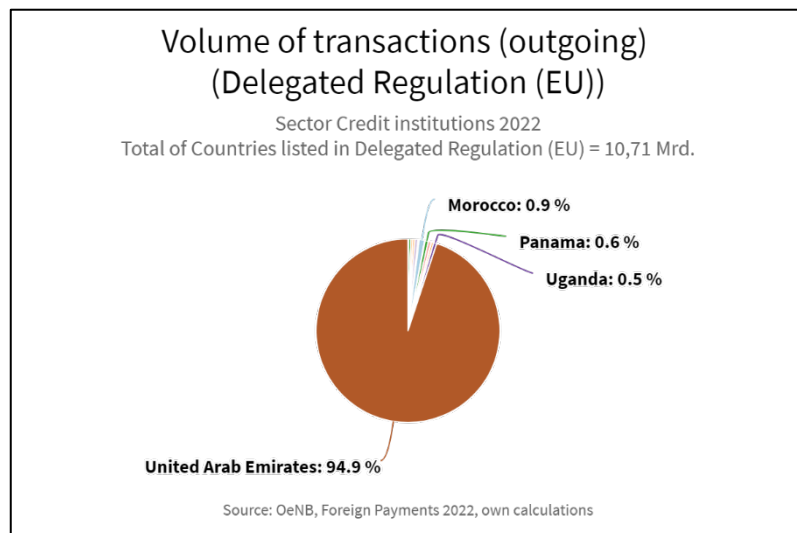


Figure 53: Share of transaction volumes - listed in Delegated Regulation, outgoing

4 OUTLOOK

The implementation of the EU’s AML Package and operative preparation for AMLA will start in 2024. At the FMA’s initiative, EBA has established a forum to reach agreement among the national AML authorities (NCAs) in preparation for the future supervisory system, with NCAs, EBA and the European Commission’s AMLA Task Force meeting at regular intervals. Its aim is to provide mutual assistance to the competent authorities during the transition to the new institutional framework. The central topics include staffing, IT, risk assessments and reporting. In addition, the European Commission’s “Call for Advice”²⁵ has requested EBA and the NCAs to conduct preparatory work in relation to selected Level 2/3 mandates from the AML package that are required as a matter of priority for the future supervisory system.²⁶ The FMA will make use of its years of experience and expertise to contribute constructively in these areas, and take a proactive stance for establishing the foundations of the new supervisory system.

For the first time, MiCAR will herald a comprehensive EU regime for services in relation to crypto-assets and EU-wide “passporting”. The FMA is already available to interested market participants even in the run-up to MiCAR applying as a competent point of contact, and endeavours to guarantee legal and planning certainty in the change to as well as in conjunction with the MiCAR regime. The cross-sector zero-tolerance policy will continue in 2024 and further development of the high supervisory standards for VASPs will occur in implementing the Transfer of Funds Regulation for CASPs; in contrast “forum shopping” will be resolutely opposed in coordination with sister authorities.

Further ongoing development of group supervision in the area of AML/CFT. In 2024, the FMA will combine on-site measures in third countries with college activity for the first time. The objective is closer networking with third country sister authorities in home colleges and exchange with them about the entities that are domiciled there, while conducting on-site measures at those entities in parallel. The information from sister authorities should permit a (more) holistic view of the overall risk of the entity that is active on a cross-border basis within the respective home college or in group supervision.

The FATF will assess Austria for the fifth time from Q4 2024 regarding its implementation of and effective application of the 40 FATF Recommendations. The country assessment, to be conducted by the International Monetary Fund, starts in 2024, is expected to last for 15 months. The IMF Inspection Team’s on-site visit will be the high point of the assessment and is expected to take place in Q2 2025. The country assessment will conclude with the discussion and adoption of the

²⁵ cf. https://www.eba.europa.eu/sites/default/files/2024-03/2d15a537-adaa-49ce-8b2a-54467772dfb6/CfA%20RTSs_GL%20EBA_fin_rev.pdf

²⁶ These consist of the RTS and Guidelines on risk-based supervision, on the risk assessment methodology and the selection criteria for direct supervision by AMLA, as well as on the other hand the RTS on due diligence obligations and the severity of any breaches thereof.

inspection report at the FATF plenary session in February 2026. The FMA has placed utmost priority on preparing for the country assessment intensively together with the other involved authorities and ministries (via's the BMF's National Coordination Committee).

Risk-based supervision means data-based supervision. Linking of data about obliged entities to the FMA's observations and market trends creates an essential overall picture for the risk-based ML/TF supervision. The necessary high quality of reported data required will increasingly form a focus of supervision in 2024 and will flow into the risk classification. Furthermore, increasing integration of different data (sources) expands the supervisor's field of vision, permits greater comparability based on benchmarks and clusters. Consequential further developments in this area will constitute a key activity in 2024 for quickly and adequately recognising and evaluating changes in the financial market.