



Navigating the Regulatory Landscape: Key EU Regulations Shaping Private Markets

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1 Introduction

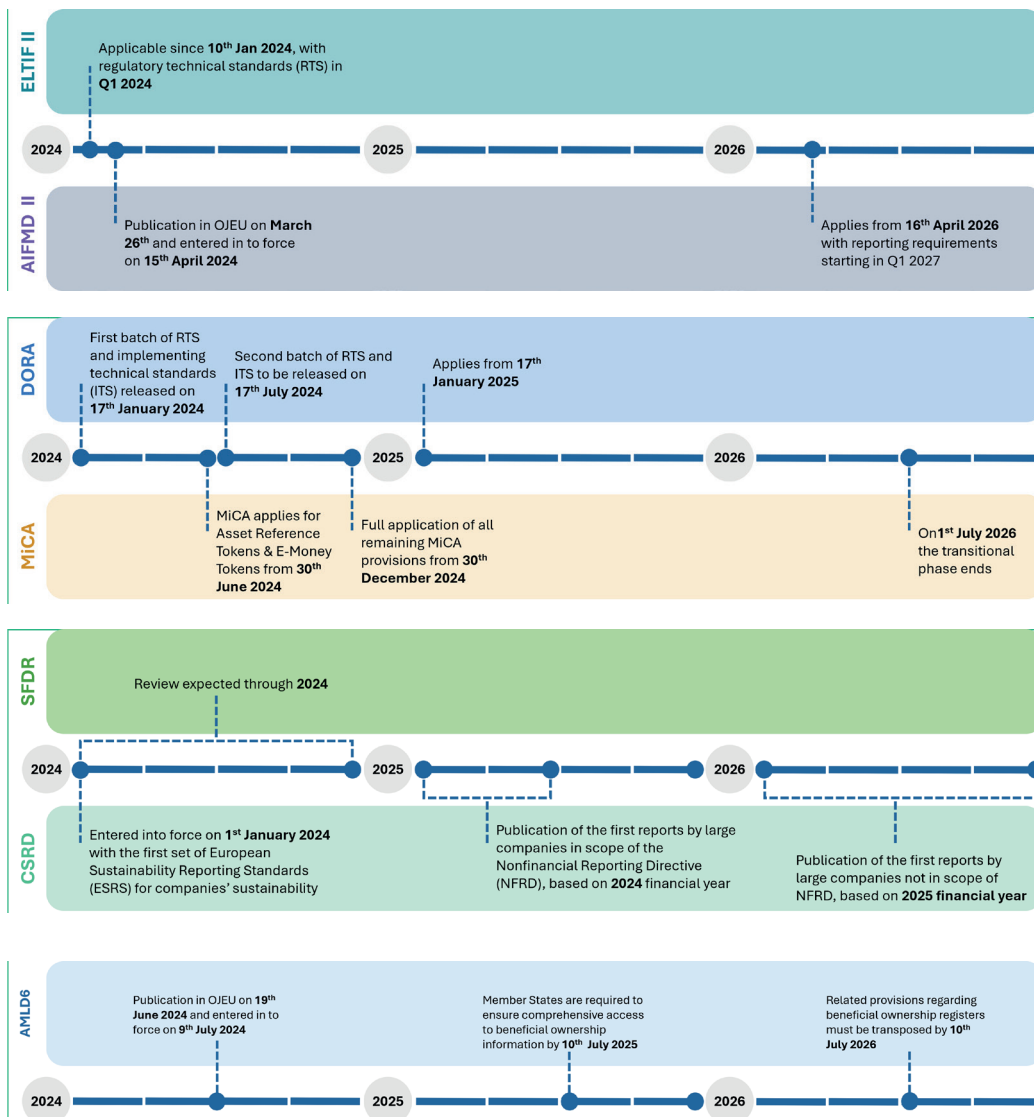
The rapid expansion of over the past decade has captured the attention of both governments and regulators.

The regulatory landscape for private markets and private assets is set to undergo significant changes from 2024 to 2026. These forthcoming regulations aim to enhance transparency, sustainability, and operational resilience, aligning with broader EU initiatives to create a more robust and integrated financial system.

They bring specific requirements and changes that will impact private market participants, imposing strategic adjustments and thorough preparation to ensure compliance and capitalise on emerging opportunities.

It is expected that the sector's level of supervisory scrutiny will intensify in 2024. The industry must make substantial investments to properly resource its risk and compliance functions, ensuring they have strong control frameworks and efficient operational processes.

2 Timeline



3 DORA

Digital Operational Resilience Act (DORA) is a comprehensive EU legislative framework aimed at strengthening the digital operational resilience of the financial sector. It ensures that participants can withstand, respond to, and recover from ICT-related disruptions and threats. The regulation applies to financial entities and critical third-party service providers.

Key changes

Governance and internal organisation

- **Active cyber risk management** - Management bodies must actively define and implement ICT risk management strategies, including roles and responsibilities for ICT functions
- **Continuous monitoring** - Commitment to continuous monitoring of ICT risks through defined processes
- **Staff training and investment** - Training for all staff and appropriate allocation of ICT investments to manage cyber risks

ICT risk management

- **Resilient ICT systems** - Requirement to establish and maintain resilient ICT systems and tools with appropriate cyber risk protection measures
- **Threat detection and incident management** - Continuous detection of cybersecurity threats, incident management processes, business continuity strategies, and disaster recovery plans

ICT incident management and reporting

- **Incident management processes** - Establish and implement processes for monitoring and managing ICT-related incidents, with criteria for classification
- **Incident reporting** - Obligation to report serious incidents to relevant supervisory authorities and formalise a communication plan for stakeholders

Digital operational resilience testing

- **Security testing** - Requirement for periodic security testing to identify ICT weaknesses, including advanced penetration tests every three years on live production systems
- **Corrective actions** - Implementation of necessary corrective actions based on testing outcomes

Management of third-party services

- **Comprehensive monitoring** - Execution of a comprehensive process to monitor ICT risks from third parties throughout contractual relationships
- **Contractual agreements register** - Maintenance of a register of contractual agreements with third parties

Information-sharing arrangements

- **Intelligence sharing** - Consideration of joining European mechanisms for

exchanging intelligence on cyber threats to reduce their propagation and strengthen defence capabilities

4 MiCAR

Markets in Crypto-Assets Regulation (MiCAR) establishes a harmonised regulatory framework for the crypto-assets market within the EU, aiming to protect investors, ensure financial stability, and foster innovation. The regulation becomes fully applicable on December 30, 2024.

Key changes

Crypto-Asset classification

- **Asset-Referenced Tokens (ARTs)** - Crypto-assets that maintain a stable value by referencing another value or right
- **Electronic Money Tokens (EMTs)** - Crypto-assets that maintain a stable value by referencing the value of one official currency
- **Other crypto-assets** - Excludes DeFi, NFTs, utility tokens, and instruments already regulated by EU capital markets

Crypto-Asset Service Providers (CASPs)

- **Authorisation** - Requirement for CASPs to obtain authorisation within the EU, ensuring high governance standards
- **Governance** - Senior management must be of good repute and capable of ensuring compliance with MiCA regulations
- **Conflict management** - Effective handling of conflicts of interest and client complaints
- **Capital requirements** - Meeting minimum capital requirements and implementing safekeeping measures to protect clients' crypto-asset ownership rights
- **Environmental impact disclosure** - Disclosure of environmental impacts of managed crypto-assets
- **Enhanced oversight** - Additional oversight for large CASPs with at least 15 million active users annually within the EU

Issuer obligations

- **Authorisation and white paper** - ART and EMT issuers must obtain authorisation and publish a crypto-asset white paper providing comprehensive information about the crypto-asset and its associated risks
- **Reporting requirements** - Quarterly reports for tokens exceeding €100 million in issued value
- **Reserve asset segregation** - Maintenance of a reserve of assets segregated from the issuer's own assets
- **Custody policies** - Establishment of robust custody policies for reserve assets
- **Redemption rights** - Ensuring permanent redemption rights for token holders
- **Capital requirements** - Adherence to capital requirements, up to €350,000 or 2% of average reserve assets

- **Recovery plan** - Development of a comprehensive recovery plan for potential issues related to asset reserves and token redemption
- **Significant issuers** - Increased controls and capital requirements for issuers with large-scale operations

Market abuse rules

- **Prohibition of market abuse** - New rules prohibiting market abuse, including insider trading, unlawful disclosure of inside information, and actions likely to disrupt or manipulate crypto-assets

5 ELTIF 2.0

European Long-Term Investment Fund (ELTIF) 2.0 aims to enhance the functionality and appeal of ELTIFs. The regulation, applicable since January 10, 2024, seeks to address the limitations of the original framework to facilitate increased investments into the real economy, supporting sustainable and inclusive growth across the EU. Existing ELTIFs compliant with the initial ELTIF 1.0 regulation and not raising additional capital automatically comply with the new regulation until January 11, 2029, providing a transition period for adjustment to the new standards.

Key changes

Expansion of eligible investment assets

- **Global investment** - Fund managers are now permitted to invest globally, including assets located in third countries
- **Broader definition of real assets** - Redefines “real assets” to include any asset with intrinsic value due to its substance and properties, eliminating the previous EUR 10 million minimum investment threshold and the requirement for direct asset ownership
- **Inclusion of new asset types** - Securitised assets with an STS-label and green bonds issued by qualifying portfolio undertakings are now included
- **Market capitalisation threshold** - Increased to EUR 1.5 billion for listed qualifying portfolio undertakings
- **Minimum asset allocation** - Reduced from 70% to 55% of the fund’s net asset value

Professional investors

- **Portfolio composition** - Removal of stringent portfolio composition, diversification, and concentration rules for funds marketed exclusively to professional investors
- **Leverage cap** - Increased from 30% to 100% of the fund’s capital, allowing for the use of leverage in financing loans
- **Conflict of interest rules** - Softening of rules, such as lifting the ban on (minority) co-investments, allowing asset managers more freedom to co-invest, provided conflicts are appropriately managed

Borrowing limits

- **Relaxed borrowing limits** - Increased to 50% of the fund's net asset value
- **Investment advice requirement** - Abolished, aligning these funds with MiFID II standards, simplifying the investment process and enhancing fund accessibility

Master-Feeder and Fund-of-Fund structures

- **Legal frameworks** - Introduction of legal frameworks for master-feeder and fund-of-funds structures
- **Fund-of-Funds ELTIFs** - Invest in a broader range of Alternative Investment Funds (AIFs), extending beyond the limited options of previous regulations

Redemption policies

- **Flexible redemption regimes** - Allows for more flexible redemption regimes while maintaining stringent liquidity management requirements
- **Regulatory technical standards** - The final standards from the European Securities and Markets Authority (ESMA), still pending approval, will be crucial in determining the operational feasibility of these new redemption options

Secondary market mechanisms

- **Innovative mechanisms** - Introduction of secondary market mechanisms, such as a matched secondary market and periodic liquidity windows, to provide viable liquidity solutions for retail investors

6 AIFMD II

Alternative Investment Fund Managers Directive (AIFMD) II revises Directive 2011/61/EU, enhancing the regulatory framework for Alternative Investment Fund Managers (AIFMs) within the EU. The updated directive aims to improve investor protection, market integrity, and financial stability by addressing issues identified since the original directive's implementation.

Key changes

Authorisation of AIFMs

- **Detailed information requirements** - More granular information on staff roles, titles, seniority levels, reporting lines, and responsibilities vis-à-vis the AIFM and other entities
- **Resource descriptions** - Detailed descriptions of the technical and human resources supporting AIFM activities and those used for day-to-day portfolio or risk management tasks.
- **Delegation monitoring** - Descriptions of human and technical resources used to monitor delegated tasks, with a summary of delegated portfolio or risk management functions for each AIF

Delegation requirements

- **Expanded supervision and administration** - Additional requirements for host AIFMs to provide material information to regulators about delegation arrangements

- **Detailed delegation information** - Expanded information at the authorisation stage, including legal names, identifiers, jurisdictions, and regulators of delegates
- **Notification of delegated activities** - Expanded notification requirements to include any Annex I function, and MiFID services provided under top-up permissions

Liquidity Management Tools (LMTs)

- **Tool employment** - Requirement for EU AIFMs managing open-ended AIFs to employ at least two LMTs from a specified list
- **Oversight and notification** - Implementation of policies and procedures for LMTs, with regulatory notifications for tool activation and deactivation
- **Regulatory intervention** - Permitted in exceptional circumstances to require suspension of redemptions

Conflicts of interest

- **Detailed explanations** - Requirement for AIFMs managing AIFs at the initiative of third parties to provide detailed explanations to regulators about steps taken to prevent conflicts of interest
- **Conflict management** - Requirement for AIFMs to identify, manage, monitor, and disclose conflicts of interest to safeguard investor interests

Article 23 investor disclosure

- **Expanded disclosure requirements** - Inclusion of fees, charges, and expenses covered by the AIFM, and information on the use of LMTs relevant to open-ended funds

Sustainability and Environmental, Social, and Governance (ESG)

- **ESG Integration** - Requirement for AIFMs to integrate ESG factors into their risk management processes and disclosures

7 AMLD6

The European Union continues to evolve its regulatory framework to combat money laundering and terrorist financing. The Sixth Anti-Money Laundering Directive (AMLD6) was published in the official journal on 19 June 2024, and it aims to repeal and replace AMLD4 and AMLD5, establishing a broader and robust Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) framework. Member states are required to transpose AMLD6 into their national legislation within three years, by 10 July 2027, allowing for a structured transition to new standards that address previously unregulated aspects of money laundering and terrorist financing risks.

Key Changes

Reinforced rules on beneficial ownership registers

- Requirement for authorities to verify the accuracy, adequacy and up-to-date nature of the information submitted to central registers
- Requirement for authorities to screen and flag entities or arrangements associated

- with financial sanctions targets to detect potential circumvention attempts
- Powers for authorities in charge of registers to carry out on-site inspections in case of doubts regarding the information provided
- Access to registers will be granted to supervisory and public authorities, as well as obliged entities and may be granted to persons of the public with legitimate interest (e.g., press and civil society) for a period of three years
- Access will be digital and national central registers will be interconnected at EU level
- Registers will have to include historical information for up to 10 years, plus an additional five years in case of ongoing criminal investigations

Easier access to real estate registers for criminal investigations

- Real estate registers will be accessible to competent authorities investigating criminal schemes involving real estate via a single access point, providing various data available

Reinforced powers for FIUs

- Immediate and direct access to financial, administrative and law enforcement information
- Enhanced cooperation between FIUs and other competent authorities, such as AMLA, Europol, Eurojust and the European Public Prosecutor's Office
- Enhanced cooperation between member states' FIUs in complex or cross-border cases through joint analysis, assisted by AMLA, with an upgraded FIU.net system.
- Increased powers to analyse and detect AML cases, together with a framework for FIUs to suspend or withhold consent to a transaction, account or business relationship, while it is being investigated.
- Requirements to apply fundamental rights as part of their work and decision-making, through the establishment of a Fundamental Rights Officer

Emphasised importance of supervisory authorities

- All obliged entities will have to be subject to adequate and effective supervision, by one or more supervisors applying a risk-based approach
- Harmonised rules on powers, measures and sanctions will be introduced
- Supervisors will be required to report to FIUs on suspicious activities or transactions

Strengthened cooperation between supervisors in the non-financial sector

- Supervisory colleges will be introduced for the non-financial sector, based on regulatory technical standards defined by AMLA

Confirmed relevance of risk assessments

- Both EU and national risk assessments will be required under AMLD6, with the Commission now empowered to make recommendations to member states. Member states will have to commit to mitigate risks they identified at the national level

8 Sustainable finance

Sustainable finance regulations, including the Sustainable Finance Disclosure Regulation (SFDR) and the Corporate Sustainability Reporting Directive (CSRD), aim to enhance transparency, reliability, and comparability of sustainability disclosures. These regulations help investors make informed decisions and ensure companies are accountable for their social and environmental performance. The 2024 updates to SFDR and the amendments to CSRD reflect feedback from market players and significantly improve the current legal framework.

Key changes

Sustainable Finance Disclosure Regulation (SFDR)

Product categories clarification

- **Article 8 Funds** - Clear definitions of “environmental” and “social” characteristics
Guidelines for thresholds and benchmarks to demonstrate minimum environmental/ social performance ratings
Criteria for assessing good governance practices
- **Article 9 Funds** - Precise definition of “sustainable investment,” requiring substantial contribution to environmental or social objectives
Clarification of the Do Not Significant Harm (DNSH) principle with detailed guidelines
Rigorous alignment with EU Taxonomy, providing evidence of taxonomy-aligned investments

Principal Adverse Impacts (PAIs)

- **Broadened scope** - Inclusion of more specific indicators related to environmental (e.g., carbon emissions, biodiversity impacts), social (e.g., labour rights, community relations), and governance (e.g., anti-corruption measures) factors
- **Standardised disclosures** - Detailed and standardised disclosures on PAIs, with a comprehensive list of mandatory and optional indicators for easier comparison across entities and products

Taxonomy alignment

- **Detailed disclosures** - Requirement for financial market participants to provide more detailed disclosures on the proportion of investments aligned with the EU Taxonomy
- **Integration into disclosures** - Taxonomy alignment information must be integrated into pre-contractual and periodic product disclosures, ensuring both prospective and current investors receive clear information

Regulatory Technical Standards (RTS)

- **Standardised templates** - Introduction of comprehensive and standardised templates for pre-contractual, periodic, and website disclosures, ensuring consistency across financial market participants and products
- **Data verification** - Recommendations for third-party verification and regular data audits to ensure accuracy, completeness, and reliability of disclosed data

Corporate Sustainability Reporting Directive (CSRD)

Expanded scope of applicability - The CSRD expands the scope to include all large companies and all companies listed on EU-regulated markets, with the exception of listed micro-enterprises. This broadens the scope to include small and medium-sized (SMEs) that are publicly listed. Even smaller companies, if listed, must adhere to the new reporting standards, significantly increasing the number of participants required to report on sustainability matters.

Standardisation and comparability - The CSRD mandates the use of European Sustainability Reporting Standards (ESRS), developed by the European Financial Reporting Advisory Group (EFRAG) to ensure that sustainability information is reported consistently across companies, enhancing comparability.

Digitisation of reporting - Companies are required to prepare their sustainability reports in a digital, machine-readable format (XHTML), facilitating easier access, analysis, and comparability of data.

9 Key considerations

The regulations impose key considerations that financial entities need to consider. These include:

- **Reporting** - Collectively, the regulations enhance transparency and accountability across various sectors
- **Data security and privacy** - Entities must prioritise data security and privacy to safeguard sensitive information from breaches and unauthorised access. These regulations necessitate the implementation of robust cybersecurity measures and data protection protocols. Participants must ensure compliance with data privacy laws such as the General Data Protection Regulation (GDPR) while managing and storing data related to financial transactions, sustainability metrics, and customer information. Proactive measures, including regular security audits, encryption, and access controls, are essential to mitigate risks associated with data vulnerabilities and to maintain stakeholder trust
- **Risk management** - Participants are required to develop and maintain comprehensive risk management frameworks that address the specific risks associated with sustainability, digital operations, and crypto-assets
- **Sustainability integration** - The integration of sustainability considerations into business practices is a significant aspect of corporate strategy. Participants are required to implement a strategic approach that aligns environmental and social goals with business objectives

10 Conclusion

Preparing for future regulatory developments is a key consideration for participants. The regulatory landscape is continuously evolving, and participants must stay proactive in anticipating and responding to new regulations. This involves monitoring regulatory trends, participating in industry consultations, and engaging with regulators to provide feedback and influence policy development. Future preparedness ensures that participants remain agile and capable of adapting to emerging regulatory challenges and opportunities.

How can we support you?

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Impact of new regulations:

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