AFME response to the EBA's draft Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures

25 March 2024

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on two sets of Guidelines published by the European Banking Authority (EBA) on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate for stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA), a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We provide below both general comments relating to the document as a whole, and comments on particular sections of the document. For the comments on particular sections, we use the title and sub-title as provided in the Consultation Paper, as well as the paragraph number where available, to link the comment we offer to the relevant section of the document.

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General Comments

We welcome the EBA's provision of draft Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures. We support both the ambition and the broad approach of the EBA. We consider the Guidelines will likely prove helpful to diligent and compliance-focused cryptoasset and payment service providers in their design of policies and processes to comply with EU restrictive measures.

AFME member firms seek to comply with both the spirit and the letter of legislation. In many cases, AFME member firms already do or have in place what the draft Guidelines require. There are certain instances however where the draft Guidelines suggest action which would increase operational burden without necessarily leading to concomitant societal benefit. In these instances, we have set out requests for clarification or suggested alternative possibilities to achieve the objectives sought.

We encourage consideration of the proportionality of certain requirements for different sizes of cryptoasset and payment service providers. We also encourage consideration of the importance of a firm's own risk-based assessment in defining the cornerstones of any risk control solution.

With regard to the timeline for implementation and compliance, we note that the consultation will remain open almost until the end of Q1 2024. As the EBA will rightly need time to process and assess the feedback received, a final version of the Guidelines may not be available until Q3 or Q4 2024. Once a final version of the Guidelines is published, firms will then also need time to design policies and processes to implement the final choices made. With this in mind, we suggest that supervisors and other authorities show pragmatism and flexibility in the post-publication period in assessing the compliance of firms which demonstrate a clear desire to comply as quickly as possible, but which may be subject to dependencies and constraints which will necessarily take time to work through.

In several areas, the Guidelines mention areas where national authorities have already provided guidance. In certain instances, the positions expressed in the draft Guidelines differ from positions taken by certain authorities. In these instances, we request that the EBA and national authorities work together to avoid financial institutions finding themselves in the uncomfortable position of having to choose between the views of public authorities at different levels of the European supervisory architecture.

We note the ambition of the Guidelines to provide guidance on AML, CFT, and sanctions processes and competences. The legal regimes, processes and competences for regulation differ considerably between AML/CFT and sanctions. Much guidance has already been published covering these topics, with many authorities having provided opinion and instruction. It is crucial for effective and efficient implementation of the various regulatory regimes that requirements and accompanying guidance are clear, consistent and administered either by a single competent authority, or by multiple authorities working in close co-operation with each other, so as to provide clarity and legal certainty for financial institutions.

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Comments by section (using the titles and subtitles of the draft Guidance document)

3. Background and rationale

3.2 Rationale

10. *c. A restrictive measures exposure assessment cannot result in applying a risk-based approach towards the compliance with restrictive measures. Restrictive measures policies, procedures and controls are commensurate to the restrictive measures exposure assessment to determine that all areas have the resources necessary to ensure compliance with the internal policies, procedures and controls for the implementation of restrictive measures.*

We perceive an inconsistency between the first and second quoted sentences. We note that regulatory authorities, even some enforcing on a strict liability basis, do permit a risk-based approach. We suggest removing the first sentence and retaining the second as it is clear and prescriptive. We would also welcome clarification of the EBA's position on risk-based approaches in this context.

Draft Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures

3. Implementation

Date of application

8. *These guidelines apply from 30 December 2024.*

We recognise that Article 23 of Regulation (EU) 2023/1113 requires the EBA to issue Guidelines by 30 December 2024.

Given the scope and specificity of the restrictive measures exposure assessment prescribed in the Guidelines, we propose that an additional 18-24 months be provided for financial institutions to undertake and implement the assessment after publication of the final draft of the Guidelines.

This additional time will be necessary to assess and adapt existing assessment processes across various legal entities and geographies, e.g., data collection, business interaction models, assessment algorithms, country-level assessment, governance flows, training, testing, implementation, and roll out.

If firms receive the final version of the Guidelines on (for example) 29 December 2024, they will not be able to complete all necessary work to the required standard within a working day. A period of time must therefore be granted for the work to be undertaken. It is not clear however how different supervisory authorities will approach the question of how to define the amount of time to be granted for financial institutions to undertake the work required. It would be helpful to establish a consistent supervisory approach to implementation before publication to ensure coherent and consistent outcomes across the Union.

4. Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures

4.1 Governance framework and the role of the management body

4. *The financial institution's management body should be responsible for* ***approving the financial institution's overall strategy for compliance with restrictive measures and for overseeing its implementation****. All the members of the management body should be aware of the exposure of the financial institution to restrictive measures and its vulnerability to circumvention of restrictive measures.*

In our reading, this provision will encompass approval by the management board of the firm's sanctions policy. It remains unclear if and to what extent this responsibility can be delegated to the senior manager responsible for the implementation of restrictive measures (note that the corresponding paragraph 15 only refers explicitly to tasks stipulated for the senior staff members in charge of restrictive measures). We would welcome clarification.

6. *Where the financial institution is* ***the parent undertaking of a group*** *within the meaning of point 11 of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, […]*

7. *Where the financial institution is the parent of a group, the group management body should ensure that the group entities perform their own restrictive measures exposure assessment, as explained in Section 4.2, in a coordinated way and based on a common methodology, reflecting the group's specificities.*

We note the definitions of 'parent undertaking', 'subsidiary undertaking' and 'group' in points 9, 10, and 11 of Article 2 of Directive 2013/34/EU. Given these definitions, we would welcome your confirmation as to whether 'parent undertaking' in this context refers to

a) an immediate parent undertaking, or an ultimate parent undertaking, or to both,
b) exclusively to an entity or entities established in the EU, or to entities that may be established or incorporated outside of the EU.

4.1.1 The role of the management body in its supervisory function

9. *In addition to the provisions set out in the EBA Guidelines on internal governance under Directive 2013/36/EU,* ***the management body in its supervisory function should****:*

[…]

c. at least once a year, ***assess the effective functioning of the restrictive measures compliance function****, including internal policies, procedures and controls, including with regard to the appropriateness of the human and technical resources allocated to the compliance with restrictive measures.*

We agree with the requirement for the management body to assess the effective functioning of the restrictive measures compliance function. To ensure consistent compliance outcomes, it would be helpful for you to provide additional guidance and criteria against which this assessment should be undertaken.

4.1.2 The role of the management body in its management function

11. *e. implement the organisational and operational structure necessary to comply effectively with the restrictive measures strategy adopted by the management body;*

We understand that the restrictive measures strategy should emerge exclusively from the restrictive measures exposure assessment. We would appreciate your confirmation of this.

g. promote a culture of compliance with restrictive measures;

This is a very broad provision. We would expect all firms – and certainly all AFME member firms – to promote a culture of compliance across the board. As the Guidelines specifically draw out the promotion of a culture of compliance with restrictive measures, it would be helpful to understand what the EBA would consider good practice in this area.

12. *Where the financial institution is the parent undertaking of a group, the management body of that parent undertaking should ensure that the above tasks listed from a) to* ***i)*** *are also performed at* ***individual levels*** *and*

that policies and procedures entities put in place are aligned with the group's procedures and policies, to the extent permitted under applicable national law.

We would welcome clarification as to whether 'individual levels' refers to 'unique legal entity levels'.

We note that the points in paragraph 11 are listed a) to **h)**, but paragraph 12 refers to a) to **i)**. Should 12 read a) to **h)**, or has point **i)** been omitted in error?

4.1.3 The role of the senior staff member in charge of compliance with restrictive measures

4.1.3.1 Appointing the senior staff member

13. *Financial institutions should appoint a senior staff member in charge of performing the functions and tasks set out in paragraphs 19 to 21. The management body should ensure that the senior staff member has the knowledge and understanding of restrictive measures necessary to fulfil their functions effectively.*

14. *The management body may assign this role to a senior staff member who already has other duties or functions within the financial institution (such as the AML/CFT compliance officer or the chief compliance officer) provided that […]*

We would welcome clarification as to whether the 'senior staff member' role refers to a 'Risk Taker' type role where the holder is appointed to an authority.

4.1.3.2 The role of the senior staff member

19. *The senior staff member should:*

[…]

c. provide regular and adequate information to the management body to enable it to carry out its functions as defined in Section 4.1.1 and Section 4.1.2. Management information should at least include […]

The requirements set out for the reporting are comprehensive. The Guidelines do not state however the temporal interval at which the reports should be provided. We assume that such reports should be provided at least on an annual basis. It would be helpful however if you could provide clarification of your expectations on this matter.

d. ***report all suspensions of execution of transfers of funds*** *and freezing measures as well as identified breaches of restrictive measures […]*

In the absence of a definition of 'suspension', a plain reading of 'report all suspensions of execution of transfers' would include reporting each time a transaction is held in suspense even if only while a potential match is investigated, i.e., not suspended in accordance with the requirements of a specific restrictive measure.

We suggest therefore that 19.d. is qualified to make it clear that the reporting requirement refers only to suspensions arising from positive matches to parties subject to restrictive measures requiring suspension.

We suggest also that a definition of suspension be included. We propose the following definition of suspension:

> ***Suspension*** *is defined as the process of holding a transaction in suspense pursuant to EU restrictive measures which prohibit the processing onwards or return of the transaction but which do not require freezing.*

20. *Where the financial institution is part of a group, the group-level senior staff member should assess the effectiveness of policies, procedures and controls for the compliance with relevant restrictive measures* ***across branches, subsidiaries, intermediaries, distributors and agents where applicable****. The ultimate responsibility for compliance with restrictive measures lies with each entity of the group.*

This scope of this requirement is very large – and is potentially beyond the ability of institutions to fulfil. The reference to intermediaries, distributors and agents implies that review of relevant policies, procedures and control results would be required to assess the effectiveness of the parties mentioned. We recommend reducing the scope of this requirement to direct branches and subsidiaries, which are legally linked to the group.

4.2 Conducting a restrictive measures exposure assessment

As noted above, we propose that an additional period of 18–24 months from 31 December 2024 be granted to fully embed this new assessment.

> 23. *When carrying out a restrictive measures exposure assessment, financial institutions should identify and assess:*
>
> *[…]*
>
> *e. the following risk factors:*
>
> *[…]*
>
> *b) customer risk, including:*
>
> *i) links of customers and, if applicable, their* ***beneficial owners and shareholders****, to countries for which restrictive measures are in place due to a situation affecting this country, or known to be used to circumvent restrictive measures; (…)*

This requirement would appear to require the mandatory identification of beneficial ownership below 25%. For various reasons (not least data protection), it is unlikely that this information will be provided by the counterparties to the level of detail required for performing such an assessment. It may then be preferable to recommend the adoption of a best-efforts approach (consider if known or obtainable, then screening and risk exposure determination to take place).

> *ii)* ***activity of its customer base, and complexity of the activity****, including any links to industries or sectors that may be subject to economic or any other restrictive measures, as well as frequency and types of transactions.*

This requirement is similarly far-reaching. Numerous sectors may be subject to economic or restrictive measures (e.g., dual-use goods). The requirement as drafted may cause far more firms to pass a trigger threshold than the EBA perhaps intends and which would be helpful to the identification of genuine sources of risk.

We note that this section makes no mention of internal or employee risk. We suggest that the EBA may consider requiring the assessment of such a risk at this point.

26. *Financial institutions should ensure that their restrictive measures exposure assessment remains up to date and relevant. To achieve this, financial institutions should review and, if necessary, update their restrictive measures exposure assessment in at least the following situations:*

[…]

b. prior to providing new products/offering new product delivery channels/servicing new client groups/entering new geographical areas;

This provision would link the new product process to the sanctions exposure analysis. This appears to be a very far-reaching requirement. We would instead recommend amending this to read that when offering a new product, the restrictive measures exposure assessment is taken into account.

29. *Where the financial institution is the parent of a group, the group management body should ensure that the group entities perform their own restrictive measures exposure assessment in a coordinated way and based on a* ***common methodology, yet reflecting their own specificities****.*

Given the variety of client, sector and restrictive measure exposure profiles across the EU**,** it is critical that the phrase 'common methodology, yet reflecting their own specificities' is intended to refer to high level commonalities in approach with allowance for divergence at a local level within each assessment pillar, e.g., customer risk, product and services risk.

4.3 Effective restrictive measures policies and procedures

31. *They should at least include:*

[…]

b. *processes to update applicable lists of restrictive measures regimes* ***as soon as*** *they are published;*

This is the first of several references to requirements to undertake actions in time periods which we consider require clarification or amendment. In this instance, we propose replacing 'as soon as' with 'as soon as practicable after', as this better reflects the practical reality of the best timeline of processes associated with list updates following publication of new designations. Vendors are often employed to provide updated list data and validate the updates. A short amount of time is necessary for vendors and firms to process the updates and make necessary changes.

g. *in case of true positive matches, procedures for follow-up actions, including* ***immediate*** *suspension,* ***freezing and reporting*** *to competent authorities once the screening system generates an alert of a possible match pursuant to the Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures under Regulation (EU) 2023/1113;*

As with the point set out immediately above, the use of 'immediate' does not allow relevant parties to take the action necessary. In the absence of a clear definition, it is likely to lead to inconsistent supervisory actions and outcomes. We suggest replacing this point with the following (including the definitions set out below):

> g. *procedures to prescribe the required actions when a positive match is identified on a funds transfer, such that it requires rejection, suspension or freezing and reporting to competent authorities. The procedures must describe the process and timelines applicable for each operation within the process up to and including rejection, suspension and freezing and reporting.*
>
> ***Rejection*** *is defined as the process of returning a payment to the party from which it was received pursuant to the requirement of specific restrictive measures.*
>
> ***Suspension*** *is defined as the process of holding a transaction in suspense pursuant to EU restrictive measures which prohibit the processing onwards or return of the transaction but which do not require freezing.*

5. Accompanying Documents

5.1 Draft cost-benefit analysis / impact assessment

C. Options considered, assessment of the options and preferred options

Conducting a restrictive measures exposure assessment

As such, a true risk-based approach is not adequate in this situation. Nevertheless, conducting restrictive measures exposure assessments in the context of restrictive measures might be suitable *and two options have been considered by the EBA in this regard:*

As noted above, the official sector position on risk-based approaches is unclear. Regulatory authorities, even those enforcing on a strict liability basis, do permit risk-based approaches. It would be helpful for the EBA and other regulatory authorities to consider this point and work closely together to avoid any confusion arising.

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Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures under Regulation (EU) 2023/1113

2. Subject matter, scope and definitions

Definitions

Sectoral restrictive measures *means restrictive measures such as arms and related equipment embargoes or economic and financial measures against individually designated persons and entities (e.g. import and export*

restrictions, and restrictions on the provision of certain services, such as banking services) as opposed to targeted financial sanctions (freezing of funds and economic resources and prohibition to make funds or other economic resources owned or controlled directly or indirectly available).

We suggest adding '…and all restrictions on named entities, e.g., Article 5, 5a, 5aa of EU 833/2014 as amended') immediately after the final parenthesis.

4.1.1 Choice of screening system

14. *PSPs and CASPs should use their restrictive measures exposure assessment to decide which screening system they will use to comply with applicable restrictive measures. The screening system should be adapted to the size, nature and complexity of the PSPs' and CASPs' business and its restrictive measures exposure.*

We note that most PSPs' choice of screening system will predate the exposure assessment, so there is not likely to be anything 'to decide' at the moment the assessment is completed. It may therefore be helpful to amend the text to read 'to decide (or validate) which screening system they will use (or are already using)…'.

4.1.3 Defining the set of data to be screened

12. *PSPs and CASPs should assess whether the data they hold is sufficiently accurate, up to date and detailed to enable them to (**reasonably**) establish if a party to the transfer or their beneficial owner or **proxy** is subject to restrictive measures pursuant to Regulation (EU) 2023/1113.*

We propose inserting 'reasonably' into the sentence above as indicated, given that the volume of targets within the population is such that financial institutions should be expected to have the data to enable them to reasonably establish what they are asked to establish.

We request that you provide a definition of 'proxy' for the purposes of the statement above, and provide (or direct the reader to) guidelines for the identification of such proxies.

We would also welcome clarification as to how beneficial owners or proxies may be subject to restrictive measures pursuant to 2023/1113. We wonder if this should not perhaps refer to the designating regulation, e.g., the restrictive measures programme.

13. *To avoid repeated false alerts concerning persons who are not subject to restrictive measures, PSPs and CASPs may decide to 'white list' those persons and document the reason for this decision appropriately. PSPs and CASPs should review 'white lists' **immediately** once a new restrictive measure is published, a restrictive measures-related list is amended, or if the customer information has changed, to ensure that persons on the 'white list' are not designated.*

We suggest replacing 'immediately' with 'as soon as practicable' to reflect the practical realities of list update processes and timelines.

The wording of this requirement could lead a conservative auditor to expect a documented review process where, based on the technical set up of some firms' white listing, such a process would be obsolete and unnecessary.

4.1.4 Screening the customer base

16. *They should also list trigger events when screening should always take place and keep this list up to date. Trigger events should include at least:*

> *a. for **all** customers: a change in any of the existing designations or restrictive measures, or a new designation or the adoption of a new restrictive measure.*
>
> *b. for **individual** customers: […]*

We read both a. and b. as appearing to be applicable to 'all' customers – rather than only the first. We would welcome clarification of any intended distinction between the scenarios.

17. *PSPs and CASPs should screen at least the following **customer information**, in line with the applicable restrictive measures:*

a. for natural persons:

*a. the first name and surname, in the original **and transliteration of** such data; and*

b. date of birth

We do not consider that any value is added by subjecting date of birth to screening. Date of birth is an attribute used to determine if a potential match generated through name screening is a positive match to the listed party. It is not a primary identifier in itself.

> c. *for both natural persons and legal persons: any other names, aliases, transcriptions in other alphabets, trade names, where available in the restrictive measures-related lists.*

The requirement to screen by the criteria set out is likely to lead to a very large number of false positives. The requirement to screen transcription in other alphabets is potentially without practical limit. We therefore suggest reducing the scope of this requirement to more practical and finite criteria.

We note that the US authorities have clarified that for weak or low-quality aliases, a risk-based approach should be taken. In the absence of such an approach, a requirement to screen weak aliases, such as the many possible matches of alternative spellings of the name 'Mohammad' for example, would lead to a significant increase in false positives with no benefit for the objective pursued. Similarly, we suggest consideration of an exception where common short names or three-letter acronyms generate high volumes of false matches.

18. *When screening customers that are legal persons or natural persons, PSPs and CASPs should, to the extent that this information is **available**, also screen:*

It would be helpful to clarify whether 'available' in this context is intended to mean available via the annexes of restrictive measures regulations, or via another source.

a. *beneficial owners*

It would be helpful to include (or point to) the applicable definition of 'beneficial owner'.

b. *persons authorised to act on behalf of the customer*

Again, it would be helpful to include or point to the applicable definition.

c. ***persons connected to the customer, such as*** *natural and legal persons* ***within the management or ownership structure****, who may be controlling/exercising a dominant influence on the entity as defined in Article 1 of Council Regulation (EC) No 2580/2001*.]

We suggest 'persons connected to the customer' be replaced with 'persons controlling the customer', with a confirmation of the criteria for assessing control. While assessing for control is a difficult task for most financial institutions, it is made somewhat easier by the provision of criteria for assessment. The introduction of a different but similar concept, i.e., 'connected with…', is likely to confuse rather than to improve compliance. The better approach would be to reinforce the importance of and assist with the understanding of the concept of control.

We note the use of 'such as' also broadens the scope of the definition of 'persons connected to the customer'. With no additional definition, it is therefore difficult for financial institutions to identify intended targets. Compliance improves with clarity and definition.

The use of 'within the management or ownership structure' would introduce a new, more onerous, standard. Checking names within multi-tiered structures that are neither the contractual partner nor the ultimate beneficial owner is not standard industry practice. This information is often not provided as it is not specifically mandated in AML laws specifying customer cooperation duties.

19. *CASPs should screen the wallet addresses of the beneficiary of a transfer of crypto-assets against official lists of wallet addresses linked to restrictive measures and terrorist financing, to the extent that this information is available.*

It is not clear why only the address of a beneficiary should be screened. We question whether this should instead refer to the address of the counterparty, or whether in fact screening should not be performed on the addresses of both parties.

4.1.5 Screening of transfers of funds and crypto-assets

20. *PSPs and CASPs should screen all transfers of funds and crypto-assets prior to their completion, whether they are carried out as part of a business relationship or as part of a one-off transaction*.

This appears to require financial institutions to screen domestic funds transfers even though this may not always be necessary or helpful to the objective of achieving what the Guidelines seek to achieve. We suggest alternative wording that would allow for appropriate flexibility and discretion with regard to the screening of domestic funds transfers:

CASPs should screen all transfers of funds and cryptoassets prior to their completion, whether they are carried out as part of a business relationship or as part of a one-off transaction.

PSPs should screen all cross-border transfers of funds prior to their completion, whether they are carried out as part of a business relationship or as part of a one-off transaction – unless screening is not required by the relevant national competent authority or competent supervisory authority.

PSPs are not required to screen domestic transfer of funds unless screening is required by the relevant national competent authority or competent supervisory authority.

21. *PSPs and CASPs should screen all parties to transfers of funds or crypto-assets against the restrictive measures-related lists.*

22. *Details to be screened should include at least:*

a. identifying data of the payer/originator and the payee/beneficiary stipulated in Articles 4 and 14 of Regulation (EU) 2023/1113;

We consider that both 21. and 22. appear to conflict with Article 5d. 2 of the agreed text of the proposed amending regulation to Regulation (EU) 260/2012 as regards instant credit transfers in euro. Article 5d. 2 states

During the execution of an instant credit transfer, the payer's PSP and the payee's PSP involved in the execution of such transfer shall not verify whether the payer or the payee whose payment accounts are used for the execution of that instant credit transfer are listed persons or entities […]

We would welcome clarification on the interaction between the proposed Guidelines and the amendments to Regulation (EU) 260/2012.

b. the purpose of the transfer of funds or crypto-assets and other free text fields that provide further information regarding the actual sender/recipient of funds or cryptoassets;

We would welcome confirmation of approval to take a risk-based approach to free-text fields considering the expected use of such fields in financial (or related) messages. Screening free text fields which are broadly used across the industry to include, for example, standardised codes would lead to a significant increase of false positives. A reference to compare a crypto-asset or payment service provider's screening to industry practice assessments (e.g., the annual SWIFT Industry Screening Practice Survey) is a possible alternative.

d. other details of the transfer of funds or crypto-assets, depending ***on the nature, type of the operation, the supporting documentation received****.*

We suggest replacing references to the nature and type of operation with more specific guidance. This may include, for example, 'where the transaction forms part of a trade transaction or an FX settlement, the following should be screened: …'.

24.*Where appropriate based on the volume and number of transfers of crypto-assets, CASPs should consider incorporating blockchain analysis for transaction monitoring purposes into the existing framework.*

We consider that this section could be expanded to consider know your transaction (KYT) and blockchain analysis more fully. KYT analysis software is not limited only to transaction monitoring but may also undertake (and which we consider particularly relevant for this particular use case) wider social and environmental screening.

4.1.6 Calibration

25. *PSPs and CASPs should determine how to calibrate the settings of an automated screening system to maximise alert quality while ensuring compliance with restrictive measures. Based on their restrictive measures exposure assessment and regular testing, PSPs and CASPs should at least:*

*a. define, for each context, the appropriate percentage of matching that is likely to generate a reasonable alert that allows the PSPs and CASPs to comply with their restrictive measures obligation, by checking the **percentage** of true positive results associated with different **percentages** of matching.*

Not all screening systems use a screening tolerance that is expressed (or can be expressed) in percentages. We therefore suggested to insert 'or other metric or criteria appropriate to the technical specification of the system'.

4.2.1 Policies and procedures for the management and analysis of alerts

32. *Such policies and procedures should include:*

[…]

*d. different levels of review to be carried out, for example the discard of false positives approved by **at least two people**.*

It is unclear whether this is an illustrative example or a regulatory expectation. If intended to be the latter, this could result in additional process requirements for the first-level processing unit, which may currently not employ a four-eye principle for closing (obvious) false positives. It is not clear that such additional process would yield any benefit.

4.2.2 Due diligence measures for alert analysis

34. *In case of doubt about the trueness of a match, PSPs and CASPs should use additional information they **may hold** to support the analysis of alerts to the extent that this information is available, such as:*

We suggest replacing 'may hold' with 'may hold and/or obtain'. This will reduce the number of rejections due to insufficient information as financial institutions will have the option to request additional detail to assist with their assessment of the potential match to a listed party.

35. […] *PSPs and CASPs should refrain from providing financial services to a person prior to coming to an informed decision*

We would welcome clarification as to whether this sentence suggests that that an account of an existing client should be restricted when a new potential match alert is generated until the alert can be assessed. If so, this would halt the processing of funds considerably given the high number of false positives generated by the screening tools given name similarities and the regulatory expectations of fuzzy logic. If this is the desired outcome, such (interim) freezing of assets and rejection of processing payment instructions in case of insufficient information should be set forth in legal EU requirements in order to prevent (civil) liability of the financial institution.

Such interim freezing – if this is what is intended – also appears to be inconsistent with later section 4.3.1 (47.). Here, the text states 'If PSPs' and CASPs' internal analysis of the alert confirms that the possible match is the designated entity, or owned, held or controlled by a designated person or entity, PSPs and CASPs should…'. This seems to imply that the analysis must have been finalised and evidence for the identification secured before action is taken.

4.2.3 Assessing whether an entity is owned or controlled by a designated person

36. *PSPs and CASPs should set out in their policies and procedures how they will assess whether an entity is owned or controlled by a designated person.*

We are uncertain as to whether any value will result from explicitly requiring banks to add to their policies and procedures what is readily available in the referenced guidance.

4.2.4 Controls and due diligence measures to comply with sectoral restrictive measures

40. *PSPs and CASPs should pay particular attention to sectoral restrictive measures that are related to a specific jurisdiction or territory. Under such restrictive measures,* ***PSPs and CASPs should screen all underlying information relating to the transfer of funds or crypto-assets to or from that specific jurisdiction*** *or territory or to transfers of funds or crypto-assets initiated by customers who are known to conduct business in that specific jurisdiction or territory.*

We would welcome clarification as to whether 'all underlying information' is to be understood as including the information within the transfer itself.

Assuming the screening is to be completed prior to processing, the requirement to screen all underlying information relating to a transfer of funds to or from a specific jurisdiction to identify potential concerns will lead to substantial disruption of funds transfers given the inevitable spike in potential matches. It is unlikely to identify risk within the flows because many of the targets of sectoral restrictive measures do not lend themselves to standard screening given the complexity of technology and goods nomenclature.

We acknowledge that screening for the involvement of parties subject to non-asset freeze restrictions but listed in the annexes to EU regulations aligns with standard processes.

Many of the prohibitions within the definition of 'sectoral restrictive measures' do not apply to funds transfers, e.g., the definition of 'financing or financial assistance' specifically excludes payments. The requirement to introduce controls at a funds transfer level therefore does not align with the prohibition. It is also impractical.

We consider that it would be preferable to replace this statement with (something similar to) 'PSPs and CASPs should implement a suite of controls, e.g., KYC, screening, client survey to ensure compliance with sectoral restrictive measures. Screening should be employed to capture the involvement in funds transfers of parties listed in Annexes to EU Restrictive Measure regulations.'

40. (continued) *To the extent that this is available* …

Here we suggest adding '…and applicable to the restrictive measure'…

… *PSPs and CASPs should screen*…

Here we suggest adding '…the following with respect to clients'…

> *a. information on the country (ies) of nationality, place of birth;*
> *b. information on the habitual residence or place of activity through other addresses;*
> *c. information on the country to or from which the transfer of funds or crypto-assets is carried out, where the transfer of funds or crypto-assets is executed;*
> *d. purpose of the transfer of funds or crypto-assets and other free text fields that provide further information regarding the goods, vessels, country of destination or country of origin of the goods for which the payment is made.*

Screening all funds transfers for goods and country would be hugely disruptive. We do not consider that it would prove an effective tool for the identification of problematic movement of goods. The costs of the proposal are not therefore likely to be balanced by any proportionate benefit.

We note that as with date of birth, place of birth is an attribute used to determine if a potential match generated through name screening is a positive match to the listed party. Screening against place of birth would not yield meaningful results.

We also note that financial institutions do not have information on the 'habitual residence or place of activity' in practice. The terminology should thus be better aligned with AML KYC requirements.

41. *If warranted by the restrictive measures exposure assessment, PSPs and CASPs should consider incorporating in their screening system geolocation tools and tools to detect the use of proxy services to identify and prevent IP addresses that originate from a country for which restrictive measures are taken in view of a situation affecting this country from accessing the PSP's and CASP's website and services for an activity that is prohibited under restrictive measures regimes*.

This is quite an extensive expectation. We note the qualification 'if warranted', but nevertheless suggest that the reference to IP screening and monitoring requirements be re-worded to account for each CASP's / PSP's chosen risk-based approach. The use of proxy services does not *per se* indicate deception tactics (as they are

broadly used by for example institutional and corporate clients), and follow-through technology for the detection of actual locations of customers is not 100% accurate, and still evolving.

45. *Due diligence policies and procedures should allow PSPs and CASPs to detect possible attempts to circumvent restrictive measures, such as attempts to:*

a. omit, delete or alter information in payment messages such as empty fields or meaningless information;
b. channel transfers through persons connected with a customer who is subject to restrictive measures, for example by examining that customer's recent operations;
c. structure transfers of funds […] to conceal the involvement of a designated party.

We would welcome clarification as to whether these are intended to be checks carried out on an *ex post* sample basis driven by concerns identified through BAU transaction processing.

4.3 Freezing and reporting measures

4.3.1 Suspending the execution of transfers of funds or crypto-assets and freezing funds or crypto-assets

47. *PSPs and CASPs should have policies and procedures to suspend,* ***without delay****…*

Here we suggest 'as soon as possible without introducing risk' instead of 'without delay', as this better reflects the best practical reality achievable.

…any operations in relation to which the screening system generates an alert of a possible match with a natural person or a legal person or entity subject to restrictive measures. If PSPs' and CASPs' internal analysis of the alert confirms that the possible match is the designated entity, or owned, held or controlled by a designated person or entity, PSPs and CASPs should ***without delay****:*

a. freeze the corresponding funds or crypto-assets; or
b. suspend the execution of transfer of funds or crypto-assets that would be in violation of sectoral restrictive measures.

As noted previously, we highlight that 'without delay' is used throughout the document. We would welcome a definition of this and related terms, or the employment of a term that better reflects the practical realities of the operations.

We would also welcome a definition of 'suspend'/'suspension'. We have provided a suggestion above.

48. *PSPs and CASPs should set out in their policies and procedures which information they will provide to customers whose transfer of funds or crypto-assets has been frozen. This information should include information about the* ***customer's options****.*

We would welcome further explanation of the requirement to inform the customer of their options following the freezing of their transfer of funds or crypto-assets. This is likely something that few firms have in their procedures at the moment. The fulfilment of such a requirement could suggest the provision of legal counsel by the financial institution, contrary to restrictions on legal counselling competences, or give the impression of helping the customer to circumvent sanctions.

4.3.2 Reporting measures

49. *PSPs and CASPs should have clear processes for **reporting without delay** to the national authority competent for the implementation of restrictive measures or to the competent supervisory authority in accordance with national requirements as applicable:*

With regard to 'reporting without delay' – as timelines are defined in some restrictive measures programmes and by competent authorities, we suggest the first statement is replaced with 'reporting without delay or within the timelines specified by a competent authority or the applicable restrictive measures regulation; reporting timelines should always be the earlier of that stipulated by the competent authority and that of the applicable restrictive measures regulation'.

50. *When **suspecting** a **possible circumvention** of restrictive measures, or detecting an attempted transfer of funds or crypto-assets to a designated person, entity or body, **PSPs and CASPs should**:*

> *a. report it to the national authority competent for the implementation of restrictive measures;*
> *b. if the circumvention of restrictive measures is a crime that constitutes a predicate offence to money laundering in the Member State where the PSPs and CASPs operate, promptly submit a suspicious transactions report (STR) to the domestic FIU where the requirements set out under Article 33(1)(a) of Directive (EU) 2015/849 are met.*

Reporting each suspicion of a possible circumvention will flood competent authorities with volumes of potentially incomplete or irrelevant information, e.g., data on events that do not amount to circumvention or attempts to circumvent, or data on true attempts with insufficient detail to contribute to investigation and resolution.

We therefore suggest replacing the above with the provisions of Article 6b EU 833/2014 and/or provide clear thresholds for suspicions that are to be reported and examples of the same.

4.4 Ensuring the ongoing effectiveness of restrictive measures screening policies, procedures and systems

53. *To be effective, a PSP's and CASP's restrictive measures screening policies, procedures and systems should enable it to:*

> [..]
>
> *b. **suspend** the execution of transfers of funds or crypto-assets or freeze funds or crypto-assets without delay where true positive matches are confirmed;*

We would welcome clarification of what is meant by 'suspend' in this context. Is it intended to refer to the action taken when a positive match is identified relating to a restrictive measure that requires suspension but not freezing, e.g, Article 5aa EU 833/2014's prohibition on engaging in transactions with certain parties, or is it simply the act of holding a transaction in suspense while a potential match is being investigated?

> *c. report frozen assets to the competent authorities **without delay**.*

We would welcome clarification here as to what is intended by the phrase 'without delay'. We also suggest adding a reference or facility to comply with the timelines specified in the applicable regulation or by the relevant NCA, such that the sentence may read '… report frozen assets to the competent authorities as soon as possible/without delay but at least within the timelines prescribed in the applicable legislation or by the relevant competent authority'.

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