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**HUMAN RIGHTS
IN FINANCE .EU**



Foundation HRIF.EU
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Re: Response to consultation to the Guidelines amending Guidelines EBA/2021/02 on customer due diligence etc etc. .. ('The ML/TF Risk Factors Guidelines') under Articles 17 and 18(4) of Directive (EU) 2015/849.

The foundation Human Rights in Finance.EU was established this year with the intention of promoting the respect for citizens' human rights within regulations, guidelines of supervisors, governments, and the practices of banks. We welcome the opportunity to respond to the above consultation.

We wish to note, with concern, that the current consultation lacks any reference to human rights and fails to address the potential impact on human rights stemming from the proposed guidelines. The term "privacy" is only mentioned in the context of privacy-enhancing measures, which are deemed conspicuous and trigger heightened risk profiles. This approach seems to reveal a skewed perspective concerning the constitutional obligations of the EBA.

Our understanding is that the EBA functions as an official and independent body of the European Union, empowered to enter into various treaties while also upholding them. This leads us to question the compatibility of the consulted guidelines with the privacy and data protection rights enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. Additionally, we are concerned if the principles of necessity and proportionality to infringe on those rights, have been sufficiently considered when drafting these guidelines.

We are keen to gain insight into whether the EBA board has ever conducted a human rights due diligence audit, specifically in terms of understanding the potential impact of the UN Resolution on privacy in a digital age (42/15, adopted on September 26, 2019) on its operations. This resolution calls upon states to refrain from mandating actions that impede privacy rights in an arbitrary or unlawful manner, and to safeguard individuals from harm arising from data collection, processing, storage, sharing, profiling, and the use of automated processes and machine learning.

Given that the EBA operates as a functional arm of the government, bound by the constitutional norms of the European Union, we seek clarity on whether the EBA has officially adopted the aforementioned UN resolution or is familiar with the Guiding Principles for Business and Human Rights endorsed by the Human Rights Council on June 16, 2011.

Our primary concern is that actually none of the EBA guidelines have ever undergone a human rights audit or human rights impact assessment, particularly concerning the extent to which surveillance and risk measures, including temporary blocking, might excessively infringe upon the fundamental human right to privacy and the right to control one's own finances. Numerous instances have come to our attention where customers have been left unsupported due to overly zealous blocking measures by banks (often automated) followed by slow decisions from a classic bureaucratic hierarchy to reverse the block.

While it's not feasible for us to address all the shortcomings and discrepancies related to human rights within the Guidelines, we have one specific remark. We noted the following role for EBA under the Regulation 2023/1113, article 25:

EBA shall issue guidelines on suitable procedures for determining whether to execute, reject, return or suspend a transfer of crypto-assets in situations where compliance with data protection requirements for the transfer of personal data to third countries cannot be ensured.

We kindly ask the EBA to not execute this work. It may be the case that the EBA's collaboration in devising guidelines for customer blockades in the context of crypto-asset transfers lacking complete information for jurisdictions with lower data protection standards could just infringe on the freedom to conduct business wherever and with whomever one chooses. Such freedom shouldn't be contingent on an EBA guideline. If the data protection in country X is insufficient it is irrelevant to the risk management that EBA is responsible for. In fact, the data export mechanism of the Regulation 2023/1113 is clearly in violation of principles of proportionality under 5 TFEU.

We urge the EBA to reconsider its function and guidelines by doing an extensive human rights audit on all guidelines. In addition we propose that the EBA, as a privileged entity, starts an annulment procedure for Regulation 2023/1113.

With kind regards

Simon Lelieveldt
Human Rights in Finance . EU
(digitally sent).