

March 22, 2024

European Banking Authority

Delivered via: Consultation submission portal

Re: Two sets of Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures

Notabene Inc. welcomes the opportunity to comment on the European Banking Authority's ("**EBA**") consultation on the "*Two sets of Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures*".

We would like to commend the EBA for issuing the Guidelines defining the steps CASPs need to take to be able to comply with restrictive measures when performing transfers of crypto-assets. This instrument is a valuable complement to the EBA Travel Rule Guidelines, reinforcing Travel Rule compliance as a vital component of CASPs' broader AML/CTF and restrictive measures programs. It is paramount that the Travel Rule is implemented in an effective manner that enhances CASPs' ability to prevent transactions involving sanctioned entities and those subject to sectoral restrictive measures. The EBA's Guidelines steer the industry in the right direction.

We welcome the opportunity to be part of the ongoing dialogue and are available for follow-up meetings regarding our responses.

Introduction and Overview:

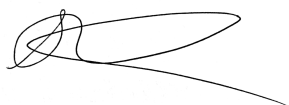
Notabene, the crypto industry's only pre-transaction authorization decision making platform, helps to identify and stop high-risk activity before it occurs. The platform offers a secure, holistic view of crypto transactions, enabling customers to automate real-time decision-making, perform counterparty sanctions screening, identify self-hosted wallets, conduct VASP Due Diligence, and complete the smooth rollout of Travel Rule compliance in line with global regulations.

Notabene was founded in 2020 with the explicit mission to enable safe and trusted crypto transactions by developing a comprehensive solution to help companies comply with the FATF's Travel Rule. A continued strong relationship with global financial regulators, including FATF, industry associations, and Virtual Asset Service Providers (VASPs) across multiple jurisdictions, arms us with an unparalleled view of the complex and critical nature of regulatory compliance in the crypto space.

It is worth pointing out that, even with current AML and know-your-customer (KYC) compliance frameworks in place, VASPs can unknowingly facilitate transactions with sanctioned counterparties. **Only Travel Rule compliance gives VASPs transaction-level counterparty and sanction insight, allowing them to recognize if their clients are sending transactions to sanctioned entities, wallets, or jurisdictions.** VASPs worldwide are in different stages of compliance, which leaves many companies vulnerable to exposure to sanctioned individuals.

We appreciate the opportunity to respond to this consultation and look forward to continued engagement and clarification.

Very truly yours,



Lana Schwartzman
Head of Regulatory and Compliance

Catarina dos Santos Veloso

Catarina Veloso
Regulatory and Compliance Senior Associate

RESPONSE TO CONSULTATION

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Introduction

Throughout the document we use “**CASPs**” to refer to EU crypto-asset providers as defined in Regulation (EU) 2023/1113 (“**TFR**”) and “**VASPs**” to more broadly refer to entities of equivalent nature globally.

Given Notabene’s focus and extensive experience in crypto Travel Rule compliance, our response to the consultation will focus on the on the second set of Guidelines - the “*Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures under Regulation (EU) 2023/1113*” (“**Guidelines**”) - as they apply to CASPs.

Paragraph 12 - Information adequacy

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

Regarding the party involved in the transfer who isn't the CASP's customer (hereinafter referred to as the counterparty customer), the information utilized by the CASP for conducting restrictive measures' assessments is the data mandated by the TFR, specifically outlined in Articles 14/1, 14/2, and 16/1.

Since compliance with restrictive measures constitutes a primary objective of the information collection and transmission obligations outlined in the TFR, the dataset

mandated by the referenced TFR articles should ideally suffice for CASPs to adequately adhere to these measures. **Therefore, introducing supplementary data collection obligations concerning counterparty customers should be avoided.**

However, the beneficiary information required under Article 14/2 - i.e., name, distributed ledger address and crypto-asset account number - often proves insufficient for reliably assessing whether the beneficiary is subject to restrictive measures.

Notabene's Request/Recommendation

Notabene kindly requests further clarification on how CASPs should proceed when the counterparty customer information collected in compliance with the TFR is insufficient for effective compliance with restrictive measures. We propose that, in such instances, CASPs should have the discretion to gather additional information from their own customers, without the obligation to transmit or receive this additional information to/from the counterparty CASP/VASP.

Paragraph 22 - Mandatory screening data set

In paragraph 22 of the Guidelines, the EBA defines the set of data that CASPs must necessarily screen against the restrictive measures-related lists:

- a. identifying data of the payer/originator and the payee/beneficiary stipulated in Articles 4 and 14 of Regulation (EU) 2023/1113;**
- 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;*
- c. details of PSPs and CASPs involved in the transfer of funds or crypto-assets, including intermediate institutions, correspondents, with screening of identification codes such as BIC, SWIFT and other;**
- d. other details of the transfer of funds or crypto-assets, depending on the nature, type of the operation, the supporting documentation received.*

To comply with the TFR information collection requirements, CASPs must gather the data sets outlined in paragraphs a) and c) above. However, CASPs should not be expected to have the data sets listed in paragraphs b) and d) as they are not required under the TFR. As mentioned above, adhering to the TFR information obligations should ideally enable CASPs to effectively comply with restrictive measures, and the introduction of additional obligations should be avoided.

Notabene's Request/Recommendation

Notabene humbly suggests that paragraph 22 of the Guidelines should be revised to encompass solely paragraphs a) and c), thereby ensuring CASPs are obligated to screen only the information mandated for collection under the TFR. The supplementary information detailed in paragraphs b) and d) could then be utilized to support the analysis of alerts in instances where doubt arises regarding the accuracy of a match, in line with paragraph 34 of the Guidelines.