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EBF CONTRIBUTION TO THE EBA CONSULTATION ON TWO SETS OF GUIDELINES ON RESTRICTIVE MEASURES

This paper outlines initial European Banking Federation (EBF) observations on the consultation paper issued by the European Banking Authority (EBA) on the Draft Guidelines on Internal Policies, Procedures and Controls to Ensure the Implementation of Union and National Restrictive Measures issued on 21 December 2023.

General comments:

Overall, we endorse the development and aims of these guidelines, recognising their significance in enabling financial institutions to display their commitment to enforcing restrictive measures in alignment with standardised guidelines across Europe. We are in favour of the EBA's approach of creating a common minimum standard for the internal procedural and control mechanisms of financial institutions with regard to restrictive measures. We wish to cite individual issues that have arisen during the review of the document in the specific comments below. Whilst the aims of the guidelines are laudable, some of the detail remains extremely challenging. We remain available to arrange a meeting to further discuss concerns, as many of the issues raised are fundamental and complex, and a discussion could provide greater clarity.

Firstly, it is worth noting that it is not established within the financial sector whether screening is the most effective approach in ensuring compliance with many of the non-asset freeze requirements (sectoral requirements) of EU sanctions. Client due diligence, for instance, may be a more appropriate means of ensuring compliance with some of the EU restrictive measures, particularly those related to restrictions on the import or export of goods and services.

On the one hand, we agree, that the compliance by the financial institutions with individual restrictive measures is an obligation of results. But on the other hand, the implementation of the sectoral restrictive measures which is based on a screening and analysis of transactions related to special type of business on a specific territory, is an obligation of means.

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Key EBF comments regarding the first set of guidelines (policies/procedures):

1. **General Provisions:**
2. The implementation and compliance timeline (31 December 2024) appears too ambitious, given the consultation already runs until end of March and a finalised set of guidelines may not be published until Q3/2024.
3. The overly proscriptive requirements for senior staff member, appointed by the Board, to report to the Board (4.1.3.2 para. 19c)
4. It is unclear what position in the organisation the senior staff member should have, as the tasks and responsibilities mentioned are a mixture of tasks normally assigned to the first line of defence (e.g. develop policies, procedures, and controls) and the second line of defence (such as reporting). While it is suggested that the senior staff member could be the same person as the AML/CFT compliance officer or the chief compliance officer, it is not mandated that the senior staff member must be in the second line of defence, and the combination of tasks and responsibilities makes it complicated to prevent conflicts between operational and monitoring tasks.
5. The implication that transactions cancelled due to EU sanctions need to be reported to the local competent authority (this is currently only a requirement in the Netherlands, to our understanding) – see paragraph 19d.
6. The customer risk requirements in paragraph 23b appear to go beyond what is required today and do not align with KYC requirements.
7. Without prejudice to the comment above, we recommend EBA to consider adding item iv to Section 4.2, Para. 23 (b) detailing identification of customer's customer within the context of each particular transaction, where there exists a clear risk of sanctions breaches or circumvention.
8. The requirement for **immediate** suspension freezing (and reporting of true positive matches) in paragraph 31g and the requirement in paragraph 47 for "suspension without delay, [of] any operations in relation to which the screening system generates an alert of a possible match" present two key concerns:
   8.1. The term "immediate" is not defined.
   8.2. This could significantly limit the accessibility of the client to their account, while most alerts would be false positives.
9. Paragraph 26.b. requires FIs to base the restrictive measures exposure assessment on a range of sources of information which include *"international bodies and government".* It is our understanding that these Guidelines should only identify the European Union and the United Nations as applicable sources of information, in line with paragraph 44 of the second set of guidelines which states: *"PSPs and CASPs should stay informed of typologies and trends in the circumvention of restrictive measures. Relevant sources of information to which PSPs and CASPs should always refer include at least reports shared by: national authorities competent for the implementation of restrictive measures, national supervisory authorities; FIUs and law enforcement authorities; relevant public-private partnerships on a national or Union level; EU authorities."*
10. **Parent Undertaking of a Group:**

10.1. (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, […]

10.2. (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.

10.3. **Feedback**: Given the definitions of *parent undertaking*, *subsidiary undertaking* and *group in* points 9, 10, and 11 of Article 2 Directive 2013/34/EU, please confirm if the parent undertaking in this context refers exclusively to an entity established in the EU or if it refers to the ultimate parent of the group, even if that parent entity is not established or incorporated in the EU.

11. **Section 3.2**, Para. 10, Sub-para. c. states that "A restrictive measures exposure assessment cannot result in applying a risk-based approach towards the compliance with restrictive measures." Additional clarification as to the role of risk-based approach in compliance with restrictive measures and EBA's perception of the risk-based approach within this context, as well as additional guidance on formulating the organisation's risk appetite towards implementation of restrictive measures would be appreciated. Such clarification would help achieve effective sanctions enforcement. In particular, the current wording needs to be reconciled with the position of the European Commission, which mentioned risk-based approach within the context of complying with restrictive measures in a range of clarifications.

11.1. In Section 3.2. "Rationale" is mentioned in paragraph 10 lit c:

11.1.1. *10. The first set of draft guidelines provides that financial institutions should:*

11.1.2. *c. carry out a restrictive measures exposure assessment, which should inform institutions' decision on the types of controls and measures they need to apply to comply effectively with restrictive measures. A restrictive measures exposure assessment cannot result in applying a risk-based approach towards the compliance with restrictive measures. (…)*

11.2. In this point, as well as in point 4.2, it is clearly stated that the measures to be taken to ensure compliance with restrictive measures must not lead to the application of a risk-based approach. Please clarify the EBA's position on Risk Based Approaches in this context. Regulatory authorities, even some enforcing on a strict liability basis, permit a risk-based approach. We request confirmation that a rule-based approach is therefore required.

11.3. This document describes the assessment and sources of risk assessment. We consider it expedient for the achievement of standardised implementation that it is also defined how the measures to be taken based on the rule-based approach are to be defined on the basis of the result.

11.4. The first and second statement appear somewhat contradictory. We suggest removing the first and keeping the second as it is clear and prescriptive.

12. **Section 4.1.1 The role of the management body in its supervisory function:**

12.1. (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****:*

12.2. […]

12.3. *b. oversee and monitor, through the internal controls function, the extent to which the re-strictive measures policies and procedures are adequate and effective in light of the re-strictive measures exposure and risks of circumvention of restrictive measures to which the financial institution is exposed and take appropriate steps to ensure remedial measures are taken where necessary;*

12.4. 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.*

12.5. **Feedback**: To ensure consistent compliance, please provide additional guidance on how this assessment should be undertaken, i.e., against what criteria.

12.6. We also request further clarification of this obligation, particularly in the context of the reference to supervisory activities. In our understanding, such an assessment could also be covered by the controls of the internal control function already mentioned under b., which in turn has to report to management in its supervisory function on the result and any necessary measures.

13. **Section 4.1.2 The role of the management body in its management function:**

13.1. (11 e). implement the organisational and operational structure necessary to comply effectively with the restrictive measures strategy adopted by the management body.

13.1.1. ***Feedback****: Are we correct to understand that the strategy should emerge exclusively from the Restrictive Measures Exposure assessment?*

13.2. (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.*

13.2.1. **Feedback**:

13.2.1.1. 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?

13.2.1.2. Does "individual level" refer to "unique legal entity level"?

14. **Section 4.1.3 The role of the senior staff member in charge of compliance with restrictive measures**

14.1. ***4.1.3.1 Appointing the senior staff member:***

14.2. *(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.*

14.3. *(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…*

14.4. **Feedback**: Does this "senior staff member" role refer to a "Risk Taker" type role where the holder is appointed to an authority?

15. Section 4.1.3.2 The role of the senior staff member:

15.1. Concerning the role of senior staff members, we note a lack of consideration for materiality, hindering the management body's ability to prioritise pertinent matters. For instance, while the requirement to inform the management body of changes to restrictive measures regimes is essential, the current framework lacks differentiation between significant impacts and minor procedural adjustments. Examples include:

15.1.1. Section 4.1.3.2 c) ii) states that the management body must receive notifications about any potential alterations to restrictive measures regimes and their potential impact on financial institutions. However, given the dynamic nature of these regimes with changes occurring frequently, such as additional designations or trade restrictions, many of these adjustments may have negligible effects on the financial institution. Yet, as the current wording stands, all alterations must be communicated to the management body.

15.1.2. Under Section 4.1.3.2 c) iii) the period between receiving an alert and submitting a report to the competent authority appears inappropriate. Indeed, the duration of investigations may vary depending on various factors and the complexity of the cases to investigate. For instance, a name match against the EU sanctions list can often be promptly resolved, while more extensive investigations of the ownership and control of legal entities and arrangements may be required. Differences in reporting criteria among competent authorities add further complexity, with some of them requiring reports based on reasonable suspicion while others mandate confirmation of a true match before reporting.

15.2. We believe it would be preferable for the senior staff member to give the management body information they deem necessary to fulfil their responsibilities, especially concerning the identification of adverse trends and significant changes. This senior person is appointed by the management body based on the criteria outlined in Section 4.1.3.1, which stipulates that they have the necessary knowledge and understanding of restrictive measures to carry out their duties effectively. Furthermore, the management body retains the prerogative to request additional management information beyond what is provided by the senior staff member.

15.3. We also question the practicality of reporting all rejected payments to national competent authorities, as outlined in Paragraph 19d. This may

lead to an overflow of reports, particularly if the rejected payments are not confirmed breaches of sanctions. Furthermore, we seek clarity on potential data protection implications associated with this requirement.

15.4. *(19). The senior staff member should: […]*

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

15.5.1. **Feedback:** Absent a definition of suspension, a plain read of "reporting 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.

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

15.5.3. We suggest also that a definition of suspension is included. The following definition of suspension is proposed: ***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.*

16. **Section 4.1.4** "Screening the customer base", paragraph 18:

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

16.1.1. *a. beneficial owners;*

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

16.1.3. *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."*

16.2. In this matter, we request that the ÖNB's statement (see below) be taken into account. In our interpretation, the above statement goes further than the requirements under 4.1.4, as not only ultimate controlling persons, but any legal entity with more than 50 % that is part of the ownership chain must be systematically recorded. What is the EBA's understanding of this point?

16.2.1. ÖNB-Feststellung: *"Dies kann nur durch eine systemische Erfassung der sanktionsrechtlich relevanten Beteiligungsverhältnisse in der Eigentümerkette sichergestellt werden. Zur Feststellung, welche Beteiligungsverhältnisse hier jeweils zur Anwendung kommen, verweisen wir im europäischen Kontext auf Kapitel VIII. „Ownership and Control" des aktuellen "Updates of the EU Best Practices for the effective implementation of restrictive measures" des Europäischen Rates vom 27.6.2022".*

16.2.2. *See translation:*

16.2.2.1. *ÖNB statement: "This can only be ensured by systematically recording the shareholdings in the ownership chain that are relevant under sanction law. To determine which ownership structure applies in each case, we refer in the European context to*

Chapter VIII "Ownership and Control" of the current "Update of the EU Best Practices for the effective implementation of restrictive measures" of the European Council of 27 June 2022".

17. **4.2 Conducting a restrictive measures exposure assessment:**

17.1. **Feedback:** As noted above, to allow for full implementation of governance and assurance measures it is requested that a transition period of 18 – 24 months from 31 December 2024 will be required to fully embed and text this new assessment.

17.2. (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.

17.3. **Feedback:** 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.

18. **4.3 Effective restrictive measures policies and procedures:**

18.1. (31).

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

18.2.1. **Feedback:** 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 post publication of new designations. Vendors are often employed to provide updated list data and validate the updates.

*18.3. 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;*

18.3.1. **Feedback:**

18.3.1.1. We suggest replacing with the following:

18.3.1.2. They should at least include:

18.3.1.3. 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 & reporting.

18.3.1.4. **Rejection** is defined as the process of returning a payment to the party from whom it was received pursuant to the requirement of specific restrictive measures.

18.3.1.5. **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.

19. **Conducting a restrictive measures exposure assessment:**
    19.1. **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.
    19.2. **Feedback:** As noted above, the EBA's position on Risk Based Approaches is unclear. Regulatory Authorities, even those enforcing on strict liability basis, permit Risk Based approaches.
20. **5.1.C:** We propose adopting consistent terminology such as "Sanctions Risk Assessment".

Key EBF comments regarding the second set of guidelines (sanctions screening):

1. For the requirement to screen all aliases (paragraph 17c), there is no acknowledgement of concept of strong versus weak aliases.
2. No. 17c: Suggestion to clarify that for screening of aliases of Risk Entities, a risk-based approach should be taken, i.e., whether to screen *weak or low-quality aliases* or not. The screening of weak aliases, such as the name "Mohammad" (in different spellings) leads to a significant increase in false positives.
3. No. 19: Why should only wallet addresses of the beneficiary be screened? Does EBA aim to refer to counterparty addresses (as the assumption is that the PSP's/CASP's own client is KYC'd and NLS'd), or should the screening not be performed on both addresses (as a KYT-tool would usually do that anyway)?
4. Several suggestions are made in the paper to the fact that activity should be suspended until an alert can be dispositioned, for example: Paragraph 35 states that: "PSPs and CASPs should refrain from providing financial services to a person prior to coming to an informed decision." Does this suggest that an account of an existing client should be restricted when a new potential match alert is generated until the alert can be dispositioned?
5. The example of screening a free text field is frequently mentioned across several sections of the Guidelines, e.g., Section 4.2.4, Para. 39. It would be useful to also include in the Guidelines re advanced recommendations and examples, such as:
   5.1. Examples of screening or other fields requiring particular attention based on reports of suspicious transactions available to national regulators.
   5.2. Best practices of screening free text fields, since general screening of these fields does not tend to produce high quality alerts.
6. **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 and **suggested addition**: all restrictions on named entities, e.g., Article 5, 5a, 5aa of EU 833/2014 as amended).
7. We are concerned by the requirement that all sectoral restrictive measures should be controlled by screening, for example under paragraphs 40 and 41. The screening of all information relating to the transfer of funds initiated by customers who are known to conduct business in a specific jurisdiction or territory would require from PSPs and CASPs the overwhelming and disproportionate task of intercepting all transfers of the identified customer group In addition, the definition of sectoral restrictive measures under the Guidelines is too broad to allow compliance with the resulting screening requirements.
8. We would welcome a clarification on the crypto-specific (technical) aspects of freezing requirements, as this is currently not covered in the guidelines.

9. **Section 4.1.1 Choice of Screening System:** "Choice of Screening System," suggests that PSPs and CASPs should base their selection of screening systems on their restrictive measures exposure assessment. However, this implies that organisations should consider replacing their system with each risk assessment, which is impractical for several reasons, notably the time required to implement a new system. A more realistic approach would be to recommend that PSPs and CASPs use their restrictive measures exposure assessment to identify any weaknesses in their current screening systems and take steps to mitigate those weaknesses. The chosen screening system should align with the size, nature, and complexity of the PSPs' and CASPs' business operations, as well as their exposure to restrictive measures. In addition, the EBA states that the system's performance should be regularly reviewed, at least once a year. It is standard industry practice to run quality assurance exercises as part of the testing and auditing essential compliance component. Quality Assurance exercises are run periodically and consist of a post-facto review of a screening alerts sample. We call the EBA to confirm whether this requirement could be satisfied with the aforementioned periodic quality assurance exercise.
10. **Section 4.1.1**, Para 17a and 17c require screening the specified customer information in the original and/or transliteration of such data. We call the EBA to specify the instances when original spelling should be screened. It is unclear whether this requirement should be interpreted broadly, i.e. requiring PSPs and CASPs to always screen client information in the respective local language, or whether it should be restricted to specific cases, scenarios, circumstances and left up to PSPs' and CASPs' discretion based on the outcome of restrictive measures exposure assessment. We also point out that many international payment systems and systems of PSPs and CASPs are limited to English language input only.
11. More granularity is needed in **Section 4.1.2**, Para. 8. In particular, policies and procedures should not only identify the applicable national, supranational, and international restrictive measures regimes, but should also outline specific lists to be implemented, document the procedures of working with the lists and their application, taking into account the products or services involved and locations where the products or services are offered to the customers.
12. **Section 4.1.3 Defining the set of data to be screened:**
    12.1. (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.*

    12.2. **Feedback:**

    12.2.1. Please insert "reasonably" into the sentence above, given that the volume of targets within the population is such that financial institutions should be expected to have data to enable them to **reasonably** establish if a part to the transfer […]

    12.2.2. Please provide definition of **proxy** for the purposes of the statement above and provide (or direct the audience to) guidelines for identification of such proxy's. Please clarify how beneficial owners or proxies are subject to restrictive measures pursuant to 2023/1113, should this not refer to the designating regulation, e.g., the restrictive measures programme?

12.3. *(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.*

12.4. **Feedback:** Please consider replacing "immediately" with "as soon as practicable" to reflect the practical realities of list update processes and timelines.

12.5. The proposed wording of **Section 4.1.3**, Para. 13 does not account for the design of the 'white lists' already featuring a non-manual deactivation of closure/exclusion mechanisms in case of material updates. Such wording would force the review of 'white lists' every time even when their design is robust enough to ensure that material changes are accounted for and do not have any material side effects. We would suggest the addition of an exception for 'white lists' where the design already takes this into account. We also recommend using a more generic term than 'white list' so as to better reflect non-manual closure/exclusion mechanisms for known mismatches.

13. **Section 4.1.4 Screening the Customer Base:**

13.1. always take place and keep this list up to date. Trigger events should include at least:

*13.2. 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.*

*13.3. b. for **individual** customers:*

13.3.1. **Feedback:** both a) and b) appear to be applicable to "all" customers – rather than only the first. Please clarify why a distinction was made between the scenarios.

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

13.5. a. for natural persons:

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

13.7. b. date of birth

13.7.1. **Feedback:** It would not make sense for Date of Birth to be subject to screening. It is an attribute used to determine if the potential match generated through name screening is a positive match to the listed party.

13.8. 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.

13.8.1. **Feedback:** We suggest including the following exception: where common short names or three letter acronyms generate high volumes of false matches.

13.8.2. Paragraph 17c requires PSPs and CASPs to screen for transcriptions in alternative alphabets. While acknowledging the reasoning behind this requirement, it is (1) legally questionable to

imply that an alphabet (and language) generally not used in a country where the client data is stored needs to be considered for the purpose of sanctions screening and (2) it is challenging to comprehend how screening alphabets not supported by the firm's data systems will be efficient. Clarity and legal coherence are warranted in this regard. For instance, the requirement could specify screening transcriptions in other alphabets to the extent relevant from a risk perspective and to the extent supported by the firm's customer and transaction systems, or by other screening systems in use. Additionally, paragraph 18b necessitates the screening of authorised signatories, yet further interpretation is necessary in this regard.

13.9. *(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:*

13.9.1. **Feedback:** Does "available" in this context refer to available in Annex of restrictive measure regulations or another source?

13.10. *a. beneficial owners;* ***feedback:*** *please include applicable definition.*

13.11. *b.* ***persons authorised to act on behalf of*** *the customer;* ***feedback****: please include applicable definition.*

13.12. *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.];*

13.13. **Feedback:**

13.13.1. Suggest "persons connected to the customer" is 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 FIs, 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 improve compliance. The better approach would be to reinforce the importance of and assist with better understanding the concept of control.

13.13.2. The use of "such as" also broadens the scope of the definition of "persons connected to the customer" but without additional definition and it is therefore difficult for Fis to identify intended targets. Compliance improves with clarity and definition.

14. **Section 4.1.5 Screening of transfers of funds and crypto assets:**

14.1. Paragraph 20 mandates that "PSPs and CASPs should screen all transfers of funds and crypto assets prior to their completion." However, this directive conflicts with the clauses proposed for insertion in EU260/2012 regarding the handling of SEPA Instant Payments. These proposed clauses specifically prohibit the screening of SEPA IP transactions against the EU sanctions list. Additionally, this requirement contradicts the prevailing market practice, which typically does not involve screening domestic transfers. Given that domestic transfers constitute the majority of payments in the payment environment, this directive not only opposes the aforementioned proposal but also poses significant challenges, including hindering payment completion and necessitating increased resources for PSPs and CASPs to manage the surge in alert volumes.

14.1.1. The screening of transfers is contrary the Instant Payment Regulation and the EU practice of non-screening of domestic transfer. The new article 5 d. in Directive EU260/2012 prohibits the screening of SEPA IP transactions against the EU sanctions list.

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

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

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

14.4.1. **Feedback:**

14.4.1.1. Both 21. and 22. appear to conflict with Article 5d 2. of the agreed text of the proposed amendments to EU 260/2012 to regulate for instant payments:

14.4.1.2. 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 […]

14.4.1.3. Also, this appears to require screening of domestic funds transfers even though this may not always be necessary. We propose alternative wording that would allow for flexibility/FI discretion when it came to screening domestic funds transfers (absent any local screening requirements).

14.4.2. Please find our alternative screening below:

14.4.2.1. 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.

14.4.2.2. 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.

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

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

14.4.3.1. **Feedback:** Suggest replacing "the nature and type of operation" with more specific guidance, e.g., where the transaction forms part of a trade transaction or an FX settlement, the following should be screened: …

14.5. Section 4.1.5, Para. 23 introduces a data validity requirement into the realm of sanctions screening. We question how this requirement can be reconciled with the requirement of Article 4 of the Funds Transfer Regulation which limits the information that is strictly required to be present in intra-EEA transactions as well as the Instant Payments Regulation referred to above, as data validity checks may take significant

amount of time. We question when PSPs and CASPs should treat transaction information as missing or meaningless.

15. **Section 4.1.6 Calibration:** As currently written, Paragraph 25 implies that automated screening is obligatory. While this may align with the screening practices of medium-sized or larger firms, it may not always be suitable for smaller firms. For instance, a small firm managing only one fund with minimal transactional activity or investor changes may find manual screening to be more feasible or preferable. This aligns with the principle that the screening system should be tailored to the size, nature, and complexity of the PSPs' and CASPs' business operations, as well as their exposure to restrictive measures.

16. **Section 4.2.2 Due diligence measures for alert analysis:**

    *16.1. (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:*

    16.2. **Feedback:** 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.

17. **Section 4.2.4 Controls and due diligence measures to comply with sectoral restrictive measures:**

    17.1. (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.

    17.2. **Feedback**:

    17.2.1. Does all underlying information include all information in the transfer itself?

    17.2.2. 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, and 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.

    17.2.3. 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.

    17.2.4. 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, so the requirement to introduce controls at a funds transfer level doesn't align with the prohibition, nor is it practical.

    17.2.5. It may be better to replace the 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."

17.3. To the extent that this is available [suggested insertion: ***and applicable to the restrictive measure]****, PSPs and CASPs should screen [suggested insertion: the following with respect to clients]:*

17.3.1. a. information on the country (ies) of nationality, place of birth;

17.3.2. b. information on the habitual residence or place of activity through other addresses;

17.3.3. 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;

17.3.4. 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.

17.4. **Feedback: Ref C + D:** Screening all funds transfers for goods and country is hugely disruptive and is not an effective tool for the identification of problematic movement of goods.

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

17.5.1. a. omit, delete or alter information in payment messages such as empty fields or meaningless information;

17.5.2. b. channel transfers through persons connected with a customer who is subject to restrictive measures, for example by examining that customer's recent operations;

17.5.3. c; structure transfers of funds […] to conceal the involvement of a designated party.

17.5.4. **Feedback:** Please clarify whether these are intended to be on a post-facto sample basis checks driven by concerns identified through BAU transaction processing.

18. **Section 4.2.3 Assessing whether an entity is owned or controlled by a designated person:** Paragraph 38 indicates the necessity for firms to have a channel available for consultation with national competent authorities in cases where due diligence investigations yield inconclusive results. While it does not specify the purpose, it is inferred that this consultation would likely involve seeking guidance on whether to apply restrictive measures. However, it appears that this avenue for consultation with national competent authorities is not always provided across Member States.

19. Section 4.3 Freezing and reporting measures:

19.1. 4.3.1 Suspending the execution of transfers of funds or crypto-assets and freezing funds or crypto-assets

*19.2. (47). PSPs and CASPs should have policies and procedures to suspend, without delay (**suggest**: "as soon as possible without introducing risk" instead of "without delay", as this better reflects the best practical reality), 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****:*

19.3. a. freeze the corresponding funds or crypto-assets; or

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

19.5. **Feedback:** "Without delay" is used throughout the document, please provide a definition, or employ a term that better reflects the practical realities of the operations.

19.5.1. Please also include a definition of suspend/suspension. Suggestion provided above.

20. Uploading of lists "as soon as" they are published:

20.1. The consultation (**Section 4.3**. No. 31b – list management) requires a list upload "as soon as". The adequate legal terminology would be "without undue delay" as provided for in No. 30. This is necessary given the technical and personnel restrictions, including labour law, for list updates that are published late at night or on weekends and non-banking days. 365/24/7 workdays are not feasible and are not permissible in the EU.

21. **Section 4.3.2 Reporting Measures:**

21.1. Paragraph 49 mandates the prompt reporting of identified breaches to the local competent authority. However, it should be noted that not all countries enforce a compulsory reporting requirement:

21.2. (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:

21.3. a. the implementation of a restrictive measure, such as any freezing measures and suspension of operations; and

21.4. b. the discovery of the breach of restrictive measures,

21.5. c. any transfers of funds or crypto-assets processed by or for the benefit of a customer subject to restrictive measures after the publication of the measure, for example because of an incident or anomaly in the functioning of the screening system.

21.6. **Feedback:**

21.6.1. "Reporting without delay": As timelines are defined in some restrictive measures programmes and by National Competent Authorities, we suggest the first statement is replaced with "reporting without delay or within the timelines specified by NCAs or the applicable Restrictive Measures regulation; reporting timelines should always be the earlier of that stipulated by the NCA and that of the applicable restrictive measures regulation.

21.7. Paragraph 50 states reporting is in order "when suspecting a possible circumvention of restrictive measures," which implicates that the reporting threshold is very low. It is suggested to amend it to "suspecting cases with a high risk on circumvention."

21.8. (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:

21.8.1. a. report it to the national authority competent for the implementation of restrictive measures;

21.8.2. 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.

21.9. Feedback:

21.9.1. Reporting each suspicion of a possible circumvention will flood NCAs with volumes of potentially incomplete or irrelevant information, i.e., 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.

21.9.2. Please therefore consider 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 same.

22. **Section 4.4 Ensuring the ongoing effectiveness of restrictive measures screening policies, procedures, and systems:**

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

22.2. [..]

22.3. b. suspend the execution of transfers of funds or crypto-assets or freeze funds or

22.4. crypto-assets without delay where true positive matches are confirmed;

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

22.6. Feedback:

22.6.1. b. Please clarify 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.

22.6.2. c. 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.

22.6.3. Please also define what is intended from without delay. Please also consider adding a reference or facility to comply with the timelines specified in the applicable regulation or by the relevant NCAs.

22.7. Paragraph 56 mandates the reporting of any weaknesses or deficiencies to the management body. Once again, this requirement should be proportionate and consider materiality, as discussed in '4.1.3.2 The role of the senior staff member'.

23. **Section 5.1. Options considered, assessment of the options and preferred options:**

23.1. In the KYC information guidance for financial list-based restrictive measures screening, it is mentioned that competent authorities express concerns about the screening coverage, particularly regarding cash deposits and ATM transactions. Cash deposits represent an extension of existing screening, which is currently not commonly practiced. There are several points to consider regarding the risk involved:

23.1.1. Cash lodgements are typically made to customer accounts, which are already subject to screening.

23.1.2. These transactions are domestic in nature and generally fall outside the scope of screening for electronic payments in current market practices.

23.1.3. Unusual patterns of cash deposits should be investigated using other financial crime controls, such as transaction monitoring, with consideration given to restrictive measures if indications of potential breaches or circumventions arise.

23.2. Similarly, ATM withdrawals are conducted using cards issued to customers or authorised users, which are already subject to customer screening. There is no way to ascertain if a third party is using the card. Therefore, we find it challenging to understand why these transactions are highlighted, as they may create impractical expectations for national competent authorities.

Additional observations:

1. **Mixing of distinct AML/CTF and Sanctions processes and competences, multitude of differing guidelines and regulating authorities:**
   1.1. The Guidelines are based on Art. 23 of Regulation (EU) 2023/1113 relating to the EU's legal and institutional anti-money laundering and countering the financing of terrorism (AML/CFT) framework, specifically on the information accompanying transfers of funds and certain crypto-assets. The EBA furthermore states that it "*complements the Guidelines under Regulation (EU) 2023/1113 with own-initiative Guidelines to address wider internal controls and risk management issues, based on Articles 74 of Directive 2013/36/EU, 11(4) of Directive (EU) 2015/2366 and 3(1) of Directive (EC) 2009/110/EC. They clarify how restrictive measures policies and procedures interact with financial institutions' wider governance and risk management frameworks, to avoid operational and legal risks for financial institutions and ensure an effective implementation of restrictive measures.*"
   1.2. No definitions on the "management body," "management body in its supervisory function" and "management body in its management function" are provided, while these are mentioned in the EBA Guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Office. It is suggested to use these definitions also in these Guidelines.
   1.3. Paragraph 4.1.2, point 11g, obliges the management body to "promote a culture of compliance with restrictive measures." As this is a very broad concept and further on there is a paragraph about training (paragraph 4.4) it would be more appropriate to state that the management body should ensure training and awareness within the organisation.
   1.4. Paragraph 4.1.3.1 point 15 states that "The management body **may allow** the senior staff member to assign and delegate the tasks(…)" " while in the EBA Guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Office it is stated that "The AML/CFT compliance officer **should be able** to assign and delegate his/her task (…). It would be more adequate to use the same wording in both Guidelines.
2. **Too specific and partially not feasible operational requirements partially inspired by US requirements and expectations in contrast to the obligation of result and not of means:**
   2.1. Once diverging guidelines, respectively requirements by diverging competent authorities and regulating bodies, set forth specific operational requirements with diverging terminology and distinct expectations as to an FI's processes and structures, the implementation of these becomes all the more difficult.
   2.2. We note the statement that "*It is worth mentioning that the compliance by the financial institutions with the restrictive measures is an*

obligation of results and not of means." (paragraph 46); only considering the individual restrictive measures.

2.3. For example, Section 4.1.3.2. No. 19 sets forth specific statistical requirements on "Management Information". Such requirements and adequateness may differ from FI to FI, also depending on the national authorities' expectations. Thus, it would be more effective to refer to "*statistics which are appropriate to convey to senior management an up-to-date picture of the control environment*". This is also aligned with *EBA/GL/2021/05* "162. *Effective communication and awareness regarding risks and the risk strategy are crucial for the whole risk management process, including the review and decision-making processes, and help prevent decisions that may unknowingly increase risk. Effective risk reporting involves sound internal consideration and communication of risk strategy and relevant risk data (e.g. exposures and key risk indicators), both horizontally across the institution and up and down the management chain". In addition, in accordance with the SSM supervisory statement on governance and risk appetite, the number of metrics presented to the board should be appropriate, meaning there should be a sufficient number of metrics to cover all the risk dimensions, but this number should remain limited to ensure the clarity of the dashboard."*

2.4. In the same Section, it is unclear what "the number of reports submitted to the competent authority and the time between the alert and the report submitted to the competent authority" refers to. **There are no reports submitted as to number of alerts or alerts awaiting analysis under EU or (German) national law.** Furthermore, these metrics relate to performance indicators rather than risk indicators.

2.5. Also, FI's shall be obliged to include in the statistics "*report all suspensions of execution of transfers of funds ….as well as identified breaches of restrictive measures to the relevant national authorities competent for the implementation of restrictive measures and/or to the competent supervisory authority as per national requirements*". **This seems to be inspired by US Block and Reject reports requirements, as well as the obligation to self-incriminate oneself under the US "Voluntary Self Disclosure" rules. There is no such requirement under EU law and also not under (German) national law.**

2.6. Section 4.3. No. 31b (list management) requires a list upload "*as soon as"*. The adequate legal terminology would be "*without undue delay*" as provided for in No. 30. This is necessary given the **technical and personnel restrictions**, including **labour law**, for list updates that are published late at night or on weekends and non-banking days. **365/24/7 workdays are not feasible and are not allowed in the EU and would encompass necessarily outsourcing to such countries as India or similar. As to the technical restrictions, an immediate upload in the screening systems during working hours partially implies interruption of the screening or alert investigation activities and is prone to technical faults.** In these instances, there would be benefit in clarifying the terminology used to ensure a consistent interpretation of requirements, thereby allowing for greater standardization.

2.7. Section 4.1.4. No.17 (pg. 35) requires, that the screening is provided against the date of birth. **There is little value added to screen against the date of birth because there are millions of same dates of birth globally. This would generate a massive number of false positives in the screening tools.** Instead, the date of birth might be used to inform the investigation process after the alert has already been generated on the basis of the listed names.

2.8. Under Section 4.1.5. (No.20) it is required to screen "all transfers of funds". This would, e.g. be contrary to the current draft EU legislation on Instant Payments. Also, it should take account of national exemptions for domestic transfers (given the customer screening that all EU FIs perform). Therefore, as within the EU member states domestic and SEPA payments clients eligible to instant/domestic/SEPA transfer of funds go through the same level of due diligence, the recommendation should be to adopt a proportionality approach commensurate to the risk exposure.

2.9. In Section 4.1.6. (No.25), the difference between a. and b. is unclear. It both relates to the percentages in matching of the fuzzy logic.

2.10. In Section 4.2.2. (No. 35), the Guidelines state "*PSPs and CASPs should set out in their policies and procedures how to deal with cases where it is not possible to conclude with certainty after additional due diligence that a match is a true positive match, a false positive match or a situation of homonyms. PSPs and CASPs should refrain from providing financial services to a person prior to coming to an informed decision.*" 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 FI. It would halt processing of funds considerably given the high number of false positives** generated by the screening tools given the manifold name similarities and the regulatory expectations of fuzzy logic. Moreover, some national authorities may expect processing of funds if there is no clear evidence that the hit is a true hit (e.g. German Bundesbank). There is also legal precedence that civil courts have handed down decisions against banks which had unjustifiably rejected the access to accounts maintained for relevant parties (in the AML space).

2.11. The same comment applies to Section 4.3.1 (No. 47). Here, to the contrary, the statement that "*If PSPs' and CASPs' internal analysis of the alert confirms that the possible match is the designated entity*" seem to imply that the analysis must have been finalized and evidence for the identification must be secured.

2.12. Section 4.2.4 (No. 40) **requires an investigation that goes beyond and thus partially contradicts what is required under AML KYC for client information. FIs 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.**

2.13. As to the same Section, and as mentioned above, screening against the place of birth as such does not yield meaningful results since the place of birth as such does not imply a sanctions problem, as compared to the name of the person or entity that is sanctioned**. Under EU law, there are**

no pure geographical sanctions that attach to "place of birth". Also, countries are not entirely sanctioned anymore under EU law. No single geographical location being a place of birth is as such sanctioned. Although the place of birth may give an indication of the nationality, nationality regimes differ (attaching either to the nationality of parents or to the place of birth). Thus, **the place of birth is primarily an element of identification after having received an alert on the listed name of the sanctioned person**.

2.14. Moreover, there are (as of now) no integrated geolocation tools in screening systems of FIs (No. 41). **This applies primarily to online services of exporters and provider of services and seems mainly to be inspired by US expectations as to US Iranian sanctions and similar country-based sanctions regimes.** EU sanctions are not such comprehensive as to single countries. US sanctions on Iran and Cuba are countered by the EU Anti Blocking Regulation. This seems also problematic in relation to EU Data Protection law.

2.15. Under No. 48, Customers shall be informed by the FI as to his/her options. **There is no such requirement under law.** It would **entail legal counselling** by the FI contrary to restrictions on legal counselling competences and **give the impression of helping the customer to circumvent sanctions.**

3. **The approach to the different types of restrictive measures, as used throughout the guidance documents, in combination with the use of an all-encompassing definition of "restrictive measures" on pages 24 and 44 leads to unclarity as well as inconsistencies with previously issued guidance by the European Commission.**

3.1. For example, both in the Commission's Q&A on due diligence for business with Iran, as well as its Russia Sanctions FAQ, the Commission recommended, in relation to trade sanctions due diligence, a risk-based approach that consists of risk assessment, multi-level due diligence and ongoing monitoring.

3.2. See, for example, the following question in the European Commission's Russia FAQ:

> **5. Is an EU bank required to screen its open account transactions for possible infringement of EU trade restrictions? If so, how must this screening be organised operationally?**
> *Last update: 5 April 2022*
>
> Compliance with trade-related sanctions (e.g. dual-use exports, oil exploration equipment, high tech goods and technology) is not limited to banks processing the related payments but is also the responsibility of operators initiating such trade (e.g. exporters, brokers…). Banks can tailor their compliance programmes to specific risks identified in relation to certain transactions or parties involved, such calibration being then more risk-based than systematic.

3.3. Disregarding those distinctions would come down to stating that compliance with trade-related sanctions is limited to banks processing the related payments and is no longer "also the responsibility of operators initiating such trade".

3.4. While it appears that, given the context, some of the statements in the draft EBA guidance documents at hand are related to specific types of restrictive measures, the distinctions (and thus the specificities) seem to get lost at some points.

3.5. For example, on p. 46: "(…) compliance by the financial institutions with the restrictive measures is an obligation of results and not of means. As such, a risk-based approach is not appropriate in this situation. Nevertheless, (…)"

3.6. While we assume that this statement specifically refers to (targeted) financial sanctions, the all-encompassing definition on the preceding page might suggest otherwise, thereby leaving little room for proportionality or recognition of the responsibility of operators initiating the underlying trades when it comes to trade embargoes (even though "ensuring proportionality" effectively appears to be one of the guiding principles for the EBA).

3.7. It would be helpful if the EBA could have a clearer line on these distinctions (related to the specific type of restrictive measure) reflected throughout the guidelines.

3.8. Moreover, the definition of "sectoral restrictive measures" is confusing as it only extends to measures against individually designated persons and entities, while import and export restrictions are often broader than that.

4. **Use of "without delay" (throughout the text) and "as soon as they are published" (p. 22) leaves room for an interpretation that would not accept any form of reasonable, necessary delay whatsoever.**

   4.1. To take into account the complexity of the screening as well as the operational, practical and technical constraints (for example, the time it takes for data providers to update the relevant data required for the screening), this could be adjusted to "without undue delay".

5. **The use of the word "suspend" under 47.b (p. 42) leads to an unclear situation.**

   5.1. "Suspend" seems to suggest a temporary situation that needs to be followed up by another action at some point. It would appear however that the EBA would envisage a "final" action to be taken here. It would be good if the EBA could specify that action (or options, for that matter) as such. Otherwise, we would end up in a situation where an initial suspension is, following internal analysis confirming a possible match, still only followed by another "suspension".

   5.2. Lack of overall definitions (GENERAL FEEDBACK); for example, "nature of assets".

6. **Section 4.1.5:20:** This paragraph, in particular the wording "all transfers of funds" is in obvious conflict with the new SEPA Instant regulation where PSP's are forbidden to screen against certain restrictive measures-lists. Also, the paragraph is in conflict with best practice in many EU countries where domestic payments are not screened.

7. **Section 4.1.5: 21**: This paragraph, in particular the wording "all parties to transfers of funds" is in obvious conflict with the new SEPA Instant regulation where PSP's are forbidden to screen against certain restrictive measures-lists.

Also, the paragraph is in conflict with best practice in many EU countries where domestic payments are not screened.

8. **Section 4.1.5: 22:** In this paragraph it is stated that details to be screened in transfer of funds should include both information of the payer and the payee. However, if customer screening is executed properly it is not always necessary to screen payer information in transaction screening and this is also therefore not always done.
9. **Section 4.1.5: 22.a**: This paragraph implies that in a transfer of funds the PSP is expected to screen the data of the payer/originator and of the payee/beneficiary. While the PSP is expected to detect whether its customer is subject of restrictive measures, it is standard industry practice to run these checks as part of the name screening and not during payment screening. As opposed to what paragraph 22.a of the 2º set of Guidelines suggest, the customer of the PSP should be screened during the transfer of funds. We request the EBA to acknowledge, on these guidelines, that PSPs do not screen their own customers during transfers of funds, but rather screen these during their online and batch screening.
10. Ad **4.3 Effective restrictive measures policies and procedures**, pkt. 31, litra g. "in case of true positive matches, procedures for follow-up actions including immediate …".
    10.1. Other regulations (i.e. Article 8(1) of EU Council Regulation (EU) 269/2014) highlight a 10 business day requirement in regard to asset freeze reporting - is this "immediate" a new requirement/timeline?
11. As stated below, our members would like to have a clearer indication of what is considered "regular".
12. **Other:**
    12.1. The Consultation Paper does not mention details about the frequency and timing of customer screening. This is an important issue which currently creates uncertainty.
    12.2. The guidelines include some terms which have a broad definition such as: "links", "suspension", "immediately". In these instances, there would be benefit in clarifying the terminology used to ensure a consistent interpretation of requirements, thereby allowing for greater standardization.
    12.3. FIs are requested to carry out a restrictive measures' exposure assessment. It is standard industry practice to perform a yearly Risk and Control Self-Assessment, since the restrictive measures risk exposure referred to on the Guidelines is assessed in this exercise, it is our understanding that this would effectively cover the requirement.
    12.4. Along the 2 sets of Guidelines, the importance of carrying out a risk assessment to understand exposure and vulnerabilities towards restrictive measures circumvention, in addition to its detection is stressed. Notwithstanding, while the European Commission Russia Sanctions Circumvention Guidance covers some red flags, it fails to specify those jurisdictions with a higher risk of circumvention, it only includes a generic mention to "circumvention hubs". Therefore, we believe that a mapping of said jurisdictions would be necessary to effectively comply with the requirement set in these Guidelines. In the light of the weight that anti-circumvention controls have on the effective application of the EU and

National Restrictive Measures, we request the EBA to work jointly with the European Commission to provide a list of those jurisdictions with a higher risk of circumvention.

12.5. Regarding the processes to update the applicable lists as soon as these lists are published, financial institutions use software applications to perform such updates (with information available on the Consolidated Sanctions List EU xml. file published by European Commission), which is not always updated at the same time as the Regulations published in the EU Official Journal. How should the delay of update be understood? With respect to the date of publication in the EU Official Journal, or with respect to the xml. file?

12.6. We also wish to enquire about any planned guidelines for other industry sectors, such as securities transactions.