

EBA/CP/2023/42

21 December 2023

Consultation Paper

Two sets of Guidelines

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

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1. Responding to this consultation

The European Banking Authority (EBA) invites comments on all proposals put forward in this paper.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 25.03.2024. Please note that comments submitted after this deadline or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive summary

Article 23 of Regulation (EU) 2023/1113 mandates the EBA to issue guidelines on the internal policies, procedures and controls payment service providers (PSPs) and crypto-asset service providers (CASPs) need to have in place to ensure compliance with Union and national restrictive measures in the context of transfers of funds and transfers of crypto-assets.

Through these guidelines, the EBA creates a common understanding, among PSPs, CASPs and their supervisors, of the steps PSPs and CASPs need to take to be able to comply with restrictive measures when performing transfers of funds and crypto-assets. A common understanding is key to ensuring the effectiveness of Union and national restrictive measures.

These guidelines:

- set out the role of the management body in the governance framework for compliance with restrictive measures, in its supervisory function and its management function;
- provide guidance on the role of the senior staff member in charge of compliance with restrictive measures;
- set out how financial institutions should conduct a restrictive measures exposure assessment to understand the extent to which each area of their business is exposed to restrictive measures and vulnerable to non-implementation of restrictive measures and circumvention of restrictive measures;
- stress the importance of effective restrictive measures policies and procedures that enable financial institutions to fully and properly implement restrictive measures without delay;
- highlight training policies and procedures in relation to compliance with restrictive measures, tailored to staff and their specific role.

These guidelines also set out:

- the criteria PSPs and CASPs should consider when choosing a screening system and what they should do to satisfy themselves that the screening system is adequate and reliable, that it remains adequate and reliable, and that it enables them to comply effectively with their restrictive measures obligations;
- the steps PSPs and CASPs should take when screening customers and when analysing alerts generated through such screening;
- the steps PSPs and CASPs should take to be able to detect attempts to circumvent restrictive measures;

- the steps PSPs and CASPs should take when suspending the execution of transfers of funds or crypto-assets, when freezing funds and when reporting to national authorities competent for the implementation of restrictive measures.

Next steps

The draft guidelines are published for a three-month public consultation. The EBA will finalise these guidelines once the consultation responses have been assessed.

3. Background and rationale

3.1 Background

1. In July 2021 the European Commission issued a legislative package with four proposals to reform the EU's legal and institutional anti-money laundering and countering the financing of terrorism (AML/CFT) framework. The legislative package included a proposal for a new Regulation (EU) on information accompanying transfers of funds and certain crypto-assets. This Regulation (EU) 2023/1113 was adopted on 9 June 2023 and applies from 30 December 2024.
2. Article 23 of this Regulation requires the EBA to issue guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures when performing transfers of funds and crypto-assets under this Regulation.
3. Restrictive measures are binding on any person or entity under the jurisdiction of Member States. They comprise:
 - a. individual measures, i.e. targeted financial sanctions, restrictions on admissions; and
 - b. sectoral measures, i.e. economic and financial measures or arms and related equipment embargoes.¹
4. In its 2021 Communication², the Commission notes that the implementation of Union restrictive measures is 'not as uniform across the EU as it ought to be'.
5. The EBA in its 2023 Opinion on ML/TF risks affecting the EU's financial sector³ confirmed that significant differences exist in relation to:
 - a. *The way supervision of the internal policies, procedures and controls financial institutions have put in place to comply with restrictive measures is organised.*

Irrespective of the institutional set-up, the EBA found that in practice, both AML/CFT and prudential supervisors assess institutions' control framework in some Member States whereas in other Member States, no financial services supervisor currently assumes this role.
 - b. *Setting supervisory expectations in relation to institutions' internal policies, procedures and controls to comply with restrictive measures.*

¹ [Explanatory Memorandum for the Proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures](#)

² [COM\(2021\) 32 final of 19.1.2021](#)

³ [EBA/Op/2023/08](#)

EU Regulations on restrictive measures do not prescribe how financial institutions should comply with restrictive measures regimes but the European Commission, in a 2021 Opinion⁴, highlights the need ‘to put in place the required due diligence procedures and conduct the appropriate checks in order to avoid breaches of the Regulation’. According to the Commission, these procedures include screening, risk assessment, ‘multi-level based due diligence’ and ongoing monitoring. The EBA found that supervisory expectations and approaches to supervising the implementation of internal policies, procedures and controls for compliance with restrictive measures are not consistent across Member States and they are not always set out in guidance.

- c. *The quality of institutions’ internal policies, procedures and controls to comply with restrictive measures.*

Information provided by supervisory authorities suggests that weaknesses exist in relation to institutions’ internal governance, screening systems and risk management systems. Consequently, not all institutions understand or address their exposure to risks associated with restrictive measures.

6. Divergent approaches by competent authorities make the adoption by financial institutions of an effective approach to compliance with restrictive measures regimes difficult. Weaknesses in internal policies, procedures and controls expose financial institutions to legal risks, reputational risks and the risk of significant fines in case of non-compliance. Together, they undermine the effectiveness of the EU’s restrictive measures regimes and affect the stability and integrity of the EU’s financial system.

3.2 Rationale

7. To address these issues, the EBA is proposing to issue guidelines that set common EU standards on the development and implementation of policies, procedures and controls for the implementation of restrictive measures.
8. One set of draft guidelines addresses financial institutions within the EBA’s supervisory remit. They set common, supervisory expectations of the governance arrangements and internal policies, procedures and controls financial institutions should have in place to be able to comply with restrictive measures.
9. A second set of draft guidelines is specific to payment service providers (PSPs) and crypto-asset service providers (CASPs) and specifies what PSPs and CASPs should do to be able to comply with restrictive measures when performing transfers of funds or crypto-assets.
10. The first set of draft guidelines provides that financial institutions should:
- a. put in place, implement and maintain up-to-date policies, procedures and controls for compliance with restrictive measures.

⁴ https://finance.ec.europa.eu/system/files/2021-06/210609-ukraine-opinion_en_0.pdf

- b. have a sound governance structure where responsibility for compliance with restrictive measures is clearly allocated.
- 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. 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.

11. The second set of draft guidelines provides that PSPs and CASPs that carry out transfers of funds or crypto-assets should:

- a. choose a screening system that is adequate and reliable to comply effectively with their restrictive measures obligations;
- b. define the data set to be screened against Union restrictive measures on the basis of Article 29 TEU or Article 215 TFEU and, where relevant, national restrictive measures.
- c. screen information to:
 - i. verify whether the person, entity or body is designated;
 - ii. manage the risks of violation of sectoral restrictive measures; and
 - iii. manage the risks of circumvention of restrictive measures.

12. Institutions should apply provisions in both draft Guidelines in a manner that is effective and proportionate to each institution's nature and size, the nature, scope and complexity of its activities, and its exposure to restrictive measures.

Competent supervisory authorities should refer to both guidelines when assessing the adequacy of institutions' internal policies, procedures and controls for the implementation of restrictive measures.

13. If the EU Law changes before the publication of the final reports on the two sets of guidelines, the final reports on the two sets of guidelines will be amended to align with those changes.

Interaction with other guidelines

14. The guidelines complement the following EBA guidelines:

- EBA Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with

individual business relationships and occasional transactions ('The ML/TF Risk Factors Guidelines') under Articles 17 and 18(4) of Directive (EU) 2015/849⁵;

- EBA DRAFT Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes under Regulation (EU) 2023/1113 ('The Travel Rule Guidelines')⁶;
- EBA DRAFT Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures⁷;
- EBA Guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer under Article 8 and Chapter VI of Directive (EU) 2015/849⁸;
- EBA Guidelines on internal governance under Directive 2013/36/EU⁹;
- EBA Guidelines on outsourcing arrangements¹⁰;
- EBA Guidelines on ICT and security risk management¹¹.

⁵ EBA/GL/2021/02

⁶ EBA/CP/2023/35

⁷ The two sets of guidelines will be published separately once the final report is approved so they will be mentioned respectively.

⁸ EBA/GL/2022/05

⁹ EBA/GL/2021/05

¹⁰ EBA/GL/2019/02

¹¹ EBA/GL/2019/04



4. Guidelines

EBA/GL/2023/XX

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Draft Guidelines

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

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹². In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with these guidelines.
2. Guidelines set out the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4, point (2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/202x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter and scope of application

5. These guidelines specify the internal policies, procedures and controls financial institutions that are subject to regulation and supervision pursuant to Directive 2013/36/EU, Directive (EU) 2015/2366 and Directive 2009/110/EC should put in place in accordance with Article 74(1) of Directive 2013/36/EU, Article 11(4) of Directive (EU) 2015/2366, and Article 3(1) of Directive 2009/110/EC to ensure the effective implementation of Union and national restrictive measures.

Addressees

6. These guidelines are addressed to:
- (i) competent authorities as defined in legislative acts referred to in Article 4, point (2)(i) of Regulation (EU) No 1093/2010;
 - (ii) competent authorities as defined in Article 4, point (2)(vi) of Regulation (EU) No 1093/2010 with regard to Directive (EU) 2015/2366 and Directive 2009/110/EC;
 - (iii) financial institutions that are subject to regulation and supervision pursuant to Directive 2013/36/EU, Directive (EU) 2015/2366 and Directive 2009/110/EC.
7. Competent authorities that are responsible for assessing internal policies, procedures and controls adopted by financial institutions to ensure the implementation of Union and national restrictive measures, according to the domestic legal framework, may refer to these guidelines when assessing such internal policies, procedures and controls.

Definitions

Unless otherwise specified, terms used and defined in Directive 2013/36/EU, Directive (EU) 2015/2366 and Directive 2009/110/EC have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Restrictive measures

means Union restrictive measures adopted by the Union on the basis of Article 29 TEU or Article 215 TFEU and national restrictive measures adopted by Member States in compliance with their national legal order.

National authorities competent for the implementation of EU restrictive measures

means authorities included in the European Commission's list of national competent authorities for the implementation of EU restrictive measures (sanctions)¹³.

3. Implementation

Date of application

8. These guidelines apply from 30 December 2024.

¹³ https://finance.ec.europa.eu/system/files/2023-01/national-competent-authorities-sanctions-implementation_en.pdf

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

General provisions

1. Financial institutions should identify and assess which areas of their business are particularly vulnerable or exposed to restrictive measures and to circumvention of restrictive measures. On this basis, they should put in place, implement and maintain up-to-date policies, procedures and controls to ensure that they can comply effectively with restrictive measures regimes.
2. These policies, procedures and controls should be effective and proportionate to the size, nature and complexity of the financial institution, and to its restrictive measures exposure.

4.1 Governance framework and the role of the management body

3. Financial institutions should put in place a governance framework to ensure that policies, procedures and controls for the implementation of Union and national restrictive measures are adequate and implemented effectively.
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.
5. Where the business of the financial institution is directed by a single person, this person may assign a senior manager to perform the function of the management body pursuant to paragraph 4.
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, consolidated financial statements and related reports of certain types of undertakings, the group management body should ensure that each management body, business line and internal unit, including each internal control function, of entities of the group has the relevant information and resources necessary to be able to comply with restrictive measures. The ultimate responsibility for compliance with restrictive measures lies with each entity of the group.

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.

4.1.1 The role of the management body in its supervisory function

8. The management body in its supervisory function should be responsible for overseeing and monitoring the internal controls and governance framework the financial institution has put in place to comply with restrictive measures to ensure that it is effective.
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:
 - a. be informed of the results of the latest restrictive measures exposure assessment, pursuant to Section 4.2;
 - b. oversee and monitor, through the internal controls function, the extent to which the restrictive measures policies and procedures are adequate and effective in light of the restrictive 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;
 - 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.
10. Where the financial institution is the parent undertaking of a group, the management body of that parent undertaking should also perform the above tasks listed from a) to c) at group level. The ultimate responsibility for compliance with restrictive measures lies with each entity of the group.

4.1.2 The role of the management body in its management function

11. In addition to the provisions set out in the EBA Guidelines on internal governance under Directive 2013/36/EU, the financial institution's management body in its management function should:
 - a. ensure that it is informed of the results of the latest restrictive measures exposure assessment, pursuant to Section 4.2;
 - b. adopt an appropriate risk management framework and internal control system with sufficient independence from the business they control;
 - c. approve policies, procedures and controls that are proportionate to the financial institution's restrictive measures exposure and adequate to ensure the financial institution's compliance with restrictive measures;
 - d. ensure the effective implementation of the financial institution's processes to comply with restrictive measures;

- e. implement the organisational and operational structure necessary to comply effectively with the restrictive measures strategy adopted by the management body;
- f. ensure that the human and technical resources allocated to the compliance with restrictive measures are appropriate and commensurate to the institutions' exposure to restrictive measures;
- g. promote a culture of compliance with restrictive measures;
- h. where operational functions of the compliance with restrictive measures are outsourced, ensure that these arrangements comply with the EBA Guidelines on outsourcing arrangements¹⁴, and receive regular reports on the effectiveness of the system from the service provider to inform the management body.

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.

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:
- a. this does not affect the ability of this senior staff member to carry out their duties or functions effectively; and
 - b. this combination of tasks does not raise any conflicts of interest, such as conflicts between operational and control tasks assigned to this staff member.
15. The management body may allow the senior staff member to assign and delegate the tasks stipulated in paragraphs 19 to 21 to other staff acting under the direction and supervision of the senior staff member, provided that the ultimate responsibility for the effective fulfilment of those tasks remains with the senior staff member.
16. Irrespective of the institutional arrangements, financial institutions should ensure that:

¹⁴ EBA/GL/2019/02

- a. the senior staff member can coordinate and cooperate effectively with internal control functions; and
- b. the senior staff member is able to report and has direct access to the management body in the management and supervisory function.

17. Where the financial institution is part of a group, the management body of the parent financial institution should appoint a group-level senior staff member.

4.1.3.2 The role of the senior staff member

18. The senior staff member should develop, put in place and maintain policies, procedures and controls that are adequate to ensure the financial institution's compliance with restrictive measures and proportionate to the financial institution's restrictive measures exposure.

19. The senior staff member should:

- a. take the measures necessary to ensure compliance with Section 4.2 on the restrictive measures exposure assessment;
- b. take the measures necessary to ensure compliance with Section 4.3 on effective restrictive measures policies and procedures;
- 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:
 - i) changes to the financial institution's restrictive measures exposure and the outcome of the financial institution's restrictive measures exposure assessment;
 - ii) new or prospective changes to restrictive measures regimes and their impact on the financial institution;
 - iii) statistics and information relating to:
 - the number of alerts generated;
 - the number of alerts awaiting analysis;
 - the number of reports submitted to the competent authority;
 - the time between the alert and the report submitted to the competent authority;
 - the amount of frozen assets and the nature of those assets;
 - the number of breaches identified and the reason for those breaches;
 - iv) information relating to human and technical resources and the adequacy of those resources in light of the financial institution's restrictive measures exposure;
 - v) deficiencies or shortcomings identified in relation to the financial institution's restrictive measures policies, procedures and controls, including information by the national authority competent for the implementation of restrictive measures;
 - vi) breaches and cases of circumvention of restrictive measures and the reasons for those breaches and circumvention;

- vii) proposals on how to address any changes in regulatory requirements or in restrictive measures exposure, or any deficiencies or shortcomings in the financial institution's restrictive measures policies, procedures or controls that have been identified and cases of non-implementation and circumvention of restrictive measures that have been identified.
 - d. report all suspensions of execution of transfers of funds and freezing measures 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;
 - e. cooperate effectively and constructively with national authorities competent for the implementation of restrictive measures and competent authorities for the supervision of policies, procedures and controls for the implementation of restrictive measures.
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.
21. The senior staff member should oversee the preparation and implementation of the training programme as specified in Section 4.4.

4.2 Conducting a restrictive measures exposure assessment

22. Financial institutions should carry out a restrictive measures exposure assessment to understand the extent to which each area of their business is exposed to restrictive measures and vulnerable to circumvention of restrictive measures.
23. When carrying out a restrictive measures exposure assessment, financial institutions should identify and assess:
- a. which restrictive measures regimes apply to them;
 - b. the likelihood of non-implementation of restrictive measures;
 - c. the likelihood of circumvention of restrictive measures;
 - d. the impact of any breaches of restrictive measures; and
 - e. the following risk factors:
 - a) geographic risk, including:

- i. where the financial institution conducts its business, i.e. the jurisdictions and territories in which the financial institution is established or operates;
 - ii. the extent to which those jurisdictions and territories are exposed to restrictive measures or are known to be used to circumvent restrictive measures;
 - iii. origin and destination of transactions.
- 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;
 - ii. the number of customers, type of customers and the complexity of those customers, such as the identification of the beneficial owner;
 - iii. 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.
- c) products and services risk, including:
- i. the nature of the financial institution's products and services;
 - ii. the extent to which the provision of these products and services exposes the financial institution to the risk of breaches of restrictive measures and circumvention of restrictive measures.
- d) delivery channels risk, including whether the use of intermediaries, agents, third parties, correspondent banking relationships or other delivery channels creates vulnerabilities, including by
- i. limiting the visibility the financial institution has on the parties involved;
 - ii. making the financial institution dependent on the screening processes of third parties;
 - iii. increasing the financial institution's exposure to geographic risks because they are operating, or based in, countries for which restrictive measures are in place due to a situation affecting this country or countries known to be used to circumvent restrictive measures.

24. Financial institutions should base this assessment on a sufficiently diverse range of information sources, including at least the following:

- a. information obtained as part of the application of the financial institution's customer due diligence measures, in compliance with the provisions of Article 13 of Directive (EU) 2015/849;
 - b. information from international bodies, government, national competent authorities including AML/CFT supervisors, FIUs and LEAs, such as up-to-date typologies on the circumvention of restrictive measures;
 - c. information from credible and reliable open sources, such as reports in reputable newspapers and other reputable media outlets;
 - d. information from credible and reliable commercial organisations, such as risk reports;
 - e. where this is available, an analysis of previous restrictive measures alerts (true positive and false positive matches) to identify situations where true positive matches are most likely to occur.
25. Financial institutions should consider whether retroactive screening of their customer database and past transaction records could be useful and proportionate in this context. This may be the case where the financial institution has identified or has reasonable grounds to suspect that its previous screening system was inadequate or ineffective.
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:
- a. significant changes in restrictive measures regulations (for instance, the inclusion of a new regime of restrictive measures or addition of new measures to existing regimes);
 - b. prior to providing new products/offering new product delivery channels/servicing new client groups/entering new geographical areas;
 - c. significant changes to the institution's activity profile, customer base, organisational structure or business model;
 - d. identification of non-implementation of restrictive measures and circumvention of restrictive measures, which reveals the inappropriateness of the restrictive measures exposure assessment;
 - e. deficiencies in existing restrictive measures exposure assessment as identified by the financial institution or the competent authority for the supervision of internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures.
27. If the financial institution is the parent undertaking of a group, and a group-wide restrictive measures exposure assessment has been carried out, if permitted under national law, financial institutions that are part of the group should establish whether this group-wide assessment is
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sufficient to meet their information needs and complement it with their own assessment as necessary.

28. Financial institutions should document their methodology for conducting a restrictive measures exposure assessment and the outcome of that assessment and make them available to their competent authority upon request.
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.

4.3 Effective restrictive measures policies and procedures

30. Policies, procedures and controls for the implementation of restrictive measures will be effective if they enable the financial institution to fully and properly implement restrictive measures without delay.
31. They should at least include, in line with provisions in Section 4.4 of the Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures under Regulation (EU) 2023/1113:
 - a. processes to ensure that the financial institutions have all up-to-date information concerning the applicable restrictive measures;
 - b. processes to update applicable lists of restrictive measures regimes as soon as they are published;
 - c. processes to ensure that the restrictive measures exposure assessment remains relevant and up to date;
 - d. processes to ensure that policies, procedures and controls are commensurate to the restrictive measures exposure assessment and that all areas have the resources necessary to ensure compliance with the internal policies, procedures and controls for the implementation of restrictive measures;
 - e. processes to ensure that restrictive measures policies and procedures are regularly reviewed, amended and updated when and where necessary, are implemented effectively and perform as intended, and to take remedial action immediately should shortcomings be identified;

- f. procedures for swiftly investigating all potential matches, including pursuant to the Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures under Regulation (EU) 2023/1113¹⁵;
- 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;
- h. a documented internal organisation that clearly sets out the tasks and responsibilities in relation to restrictive measures, including in case of outsourcing.

4.4 Training

32. Financial institutions should provide training to ensure that their staff are, and remain, aware of:
- a. restrictive measures that apply to it;
 - b. the outcome of the restrictive measures exposure assessment; and
 - c. policies, procedures and controls to comply with restrictive measures.
33. Training should be tailored to staff and their specific role. It should be timely and adequate to enable the financial institution to comply with restrictive measures. Within a group this activity can be performed – fully or partially – by the parent company.
34. Financial institutions should document their training plan and stand ready to demonstrate to their competent authority that their training is adequate and effective upon request.

¹⁵ Currently at the stage of draft consultation paper

5. Accompanying documents

5.1 Draft cost-benefit analysis/impact assessment

As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines and recommendations developed by the EBA shall be accompanied by an impact assessment (IA), which analyses ‘the potential related costs and benefits’. This analysis presents the IA of the main policy options included in this Consultation Paper on the draft Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures (‘the draft Guidelines’). The IA is high level and qualitative in nature.

A. Problem identification and background

Restrictive measures are, as defined in the explanatory memorandum proposal for a directive of the European parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures, ‘*measures (that) comprise individual measures, i.e. targeted financial sanctions (asset freezes) and restrictions on admissions (travel bans), and sectoral measures, i.e. arms embargoes or economic and financial measures (e.g. import and export restrictions, and restrictions on the provision of certain services, such as banking services)*’. These measures have been developed, and are still being developed, by Member States, the EU or other international competent jurisdictions in view of, notably, safeguarding EU values, maintaining international peace and security, and consolidating and supporting democracy, the rule of law and human rights. However, this goal is hampered by the fact that these measures are not applied uniformly within the EU and this lack of uniformity can create situations where prohibitions are circumvented. It is also the EBA’s view that financial institutions’ compliance with the implementation of restrictive measures differs across Member States.

In this context, the EBA was given one mandate¹⁶. The EBA decided to complement these guidelines with own-initiative guidelines on wider restrictive measures systems and controls, as the mandate in the Regulation (EU) 2023/1113 may not be sufficiently broad to address these points.

B. Policy objectives

Being addressed to both financial institutions [subject to regulation and supervision pursuant to Directive 2013/36/EU](#), [Directive \(EU\) 2015/2366](#) and [Directive 2009/110/EC](#) and their prudential supervisors, these draft Guidelines will support the development of common practices related to restrictive measures and thus more effective compliance with restrictive measures.

These draft Guidelines aim to create a common understanding, among financial institutions, of adequate policies, procedures and controls for the implementation of restrictive measures.

¹⁶ In July 2021, the European Commission published an AML/CFT package consisting of four legislative proposals. One of these proposals was the recast of the 2015 Transfer of Funds Regulation (TFR). The co-legislators reached a provisional agreement on the TFR on 29 June 2022. The EBA was given ten legislative mandates. One of the new mandates is the mandate mentioned here.

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

Section C. presents the main policy options discussed and the decisions made by the EBA during the development of the draft Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures. Advantages and disadvantages, as well as potential costs and benefits from the qualitative perspective of the policy options and the preferred options resulting from this analysis, are provided.

Conducting a restrictive measures exposure assessment

The implementation of the restrictive measures is a legally binding requirement and is thus an obligation of results and not of means. 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:

Option 1a: Adding guidance on restrictive measures exposure assessment

Option 1b: Not adding guidance on restrictive measures exposure assessment

A restrictive measures exposure assessment serves to foster the institution's understanding of risks of non-compliance with restrictive measures and risks of circumvention of sanctions, according to the activities and customers of a financial institution. Even though theoretically all the restrictive measures legally apply to all financial institutions, financial institutions can be more exposed to some restrictive measures than to others (given for instance the area of operations of institutions, or the type of products). This evaluation is thus a key and necessary prerequisite for the effective compliance with restrictive measures.

This assessment is different from the anti-money laundering/financial terrorism ('AML/CFT') risk assessment described in the EBA's Risk Factors Guidelines as the same elements can carry different risks from an AML/CFT and restrictive measures perspective, although some synergies exist. For example, a jurisdiction may be associated with high levels of corruption and thus increased ML risk, but it may present very few risks from a restrictive measures perspective. A need for clarification on this matter is, as such, necessary.

Adding guidance on restrictive measures exposure assessment will have the benefit of supporting the financial institutions when complying with the binding restrictive measures in place that ultimately help to notably safeguard EU values, maintain international peace and security, and consolidate and support democracy, the rule of law and human rights. It is thus the EBA's view that the potential costs (for instance IT or compliance human resources expenses) incurred by financial institutions by adding guidance on restrictive measures exposure assessment would be exceeded by the benefits. For competent authorities, having access to clear criteria to assess the adequacy of institutions' restrictive measures exposure assessment and the associated increase in levels of compliance will outweigh any costs associated with the supervision of such assessments.

On these grounds, **Option 1a has been chosen as the preferred option** and the draft Guidelines will include guidance on restrictive measures exposure assessment.

Senior staff member in charge of compliance with restrictive measures

Within the EU, institutions are entitled to nominate, in the compliance area, a chief compliance officer ('CCO') but also – where appropriate with regard to the size and nature of the business – an AML/CFT compliance officer. As mentioned previously, AML/CFT and restrictive measures areas are not completely aligned and the question regarding the need for institutions to appoint a staff member specifically responsible for the compliance with restrictive measures was raised. In this regard, two options have been considered by the EBA:

Option 2a: Requesting institutions to appoint a senior staff member responsible for the compliance with restrictive measures

Option 2b: Not requesting institutions to appoint a senior staff member responsible for the compliance with restrictive measures

Appointing a dedicated senior staff member who will be responsible for the compliance with restrictive measures will have the benefit of enhancing the importance and visibility of this subject inside the institutions and will create one dedicated point of contact for all related questions, issues or projects. Furthermore, instead of just assigning to a senior staff member the tasks related to the compliance with restrictive measures, assigning this staff member a specific responsibility in relation to this compliance will naturally increase his/her implication and enhance the quality of his/her role of reporting to the management body and developing a policies and procedures framework. The duty assigned to this senior staff member will incur costs to institutions but they are mainly implicitly triggered by the institutions' obligation of compliance with the restrictive measures; for instance, the role of the senior staff member responsible for the compliance with restrictive measures to *'develop, put in place and maintain policies, procedures and controls that are adequate to ensure the financial institution's compliance with restrictive measures and proportionate to the financial institution's restrictive measures exposure'* would in any case need to be done by the institutions to respect their obligation of compliance with the restrictive measures. In addition, the draft Guidelines foresee some proportionality (the appointed senior staff member responsible for the compliance with restrictive measures could be 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) and flexibility (the appointed senior staff member responsible for the compliance with restrictive measures could assign and delegate his/her tasks to other staff acting under his/her direction and supervision) possibilities allowing institutions to minimise the costs specifically linked with the appointment (and not with the tasks to be performed) of the senior staff member responsible for the compliance with restrictive measures. As such, the costs associated with the appointment of the senior staff member responsible for the compliance with restrictive measures are exceeded by its benefits.

On these grounds, **Option 2a has been chosen as the preferred option** and the draft Guidelines will request institutions to appoint a senior staff member who will be responsible for the compliance with restrictive measures.

D. Conclusion

The development of the draft Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures is deemed necessary to support competent authorities as defined in legislative acts referred to in Article 4, point (2)(i) of Regulation (EU) No 1093/2010, competent authorities as defined in Article 4, point (2)(vi) of Regulation No (EU) 1093/2010 with regard to Directive (EU) 2015/2366 and Directive 2009/110/EC, and, financial institutions that are subject to regulation and supervision pursuant to Directive 2013/36/EU, Directive (EU) 2015/2366, and Directive 2009/110/EC in the context of the control, the implementation and the compliance with restrictive measures.

For financial institutions, the costs associated with the implementation of the draft Guidelines will be mitigated by the fact that the draft Guidelines will support them in their compliance with the restrictive measures, which should reduce the risk of breaching the regulation and the related fine probability. The enhancement of the compliance with the restrictive measures will help to notably safeguard EU values, maintain international peace and security, and consolidate and support democracy, the rule of law and human rights. These new guidelines hence should achieve their objectives with acceptable costs.

4. Guidelines

EBA/GL/2023/XX

DD MM YYYY

Guidelines

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

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹⁷. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities, PSPs and CASPs must make every effort to comply with the guidelines.
2. Guidelines set out the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4, point (2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2023/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹⁷ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter and scope of application

5. These guidelines specify the internal policies, procedures and controls payment service providers (PSPs) and crypto-asset service providers (CASPs) should put in place to ensure the effective implementation of Union and national restrictive measures when performing transfers of funds and crypto-assets as defined in Regulation (EU) 2023/1113 of the European Parliament and of the Council¹⁸.

Addressees

6. These guidelines are addressed to:
 - a. competent authorities responsible for supervising PSPs and CASPs for compliance with their obligations under Regulation (EU) 2023/1113;
 - b. financial institutions as defined in Article 4, point (1) of Regulation (EU) No 1093/2010, which are PSPs as defined in Article 3, point (5) of Regulation (EU) 2023/1113 and CASPs as defined in Article 3, point (15) of Regulation (EU) 2023/1113.

Definitions

7. Terms used and defined in Regulation (EU) 2023/1113 have the same meaning in these guidelines. In addition, for the purposes of these guidelines, the following definitions apply:

Restrictive measures	means Union restrictive measures adopted by the Union on the basis of Article 29 TEU or Article 215 TFEU and national restrictive measures adopted by Member States in compliance with their national legal order.
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

¹⁸ Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (recast) (OJ L 150, 9.6.2023, p.1.).

	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).
National authorities competent for the implementation of EU restrictive measures	means authorities included in the European Commission's list of national competent authorities for the implementation of EU restrictive measures (sanctions) ¹⁹ .
White lists and whitelisting	means management rules for automatically eliminating potential matches caused by the interaction of certain list terms and frequently encountered data, for example, customer names which have already been confirmed as false positives.
Fuzzy matching	means an algorithm-based technique to match one name (a string of words), where the content of the information being screened is not identical, but its spelling, pattern or sound is a close match to the contents contained in a data set used for screening.

3. Implementation

Date of application

8. These guidelines apply from 30 December 2024.

¹⁹ https://finance.ec.europa.eu/system/files/2023-01/national-competent-authorities-sanctions-implementation_en.pdf

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

General provisions

1. PSPs and CASPs should put in place policies, procedures and controls to be able to comply with restrictive measures. Such policies, procedures and controls should follow the EBA Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures.
2. These policies, procedures and controls should enable PSPs and CASPs to identify subjects of restrictive measures. They should also enable PSPs and CASPs to take the measures necessary to ensure that they do not make any funds or crypto-assets available to those subjects, they do not carry out financial transactions or services prohibited by sectoral restrictive measures, and they manage risks of circumvention of restrictive measures.

4.1 Restrictive measures screening

3. PSPs and CASPs should put in place an effective screening system to reliably identify targets of restrictive measures as further specified in Section 4.4.

4.1.1 Choice of screening system

4. 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.
 5. When taking decisions on their screening system, PSPs and CASPs should consider whether they have access to the resources necessary to use their chosen system effectively.
 6. PSPs and CASPs should regularly review the performance of the screening system to ensure that it remains effective and continues to reliably identify targets of restrictive measures. PSPs
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and CASPs should carry out a review at least once per year and immediately should they have grounds for concern that the system may not be fit for purpose.

7. PSPs and CASPs should understand and document the system's capabilities and limitations and be able to demonstrate to their competent authorities that it is adequate upon their request.

4.1.2 List management

8. PSPs and CASPs should specify in their policies and procedures the national, supranational and international restrictive measures regimes to which they are subject.
9. PSPs and CASPs should have policies and procedures to:
 - a. identify when a new set of restrictive measures is adopted, or an existing restrictive measure is updated or lifted;
 - b. update their internal data set to be screened in compliance with Section 4.1.3 when a new restrictive measure is adopted, or an existing restrictive measure is updated or lifted.

4.1.3 Defining the set of data to be screened

10. PSPs and CASPs should define in their policies and procedures the types of data they will screen for each type of restrictive measure, taking into account the outcome of their restrictive measures exposure assessment and the restrictive measures they have to apply.
11. When deciding the set of data to be screened according to the type of applicable restrictive measure, PSPs and CASPs should consider all data they hold about their customers, including information obtained:
 - a. when applying customer due diligence measures in line with Directive (EU) 2015/849 as transposed by national law; and
 - b. when complying with Regulation (EU) 2023/1113.
12. 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.
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.

4.1.4 Screening the customer base

14. PSPs and CASPs should set out in their policies and procedures how they will screen their customer base.
 15. PSPs and CASPs should screen their entire customer database regularly and determine the frequency of that customer screening based on their restrictive measures exposure assessment.
 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:
 - i. at customer onboarding, before a business relationship has been established, or before a transfer of funds or crypto-assets has been carried out;
 - ii. if significant changes in the customer due diligence data of an existing customer occur, such as change of name;
 - iii. if reasonable grounds exist to suspect that the customer, or a person known to be connected with the customer, is attempting to circumvent restrictive measures.
 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
 - b. for legal persons: the legal name, in the original and/or transliteration of such data;
 - 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.
 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:
 - a. beneficial owners;
 - b. persons authorised to act on behalf of the customer;
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- 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.

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.

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.

21. PSPs and CASPs should screen all parties to transfers of funds or crypto-assets against the restrictive measures-related lists. Intermediary PSPs and CASPs should pay special attention in their restrictive measures exposure assessment to the soundness and reliability of the restrictive measures policies and procedures put in place by PSPs and CASPs they are doing business with to ensure compliance with restrictive measures.

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;
- 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 crypto-assets;
- 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.

23. Where data identifying the payee of a transfer of funds or beneficiary of a transfer of crypto-assets is missing or meaningless, the PSPs and CASPs should, in line with the provisions in Section 6.1 of the Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes under Regulation (EU) 2023/1113 ('The Travel Rule Guidelines'), decide whether to execute, reject or suspend the

transfer. Any new information obtained subsequently, before or after executing the transfer, should also be screened²⁰.

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.

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. Calibration should be neither too sensitive, causing a high number of false positive matches, nor insufficiently sensitive, leading to designated persons, entities and bodies not being detected;
- b. use 'fuzzy matching' techniques and calibrate the percentage of 'fuzzy matching' in their screening system.

26. PSPs and CASPs should decide on the calibration both prior to the development of a new screening system and periodically, in line with their restrictive measures exposure assessment. They should document their rationale and make it available to competent authorities upon request.

4.1.7 Reliance on third parties and outsourcing

27. PSPs and CASPs should set out in their policies and procedures which restrictive measures procedures will be carried out or performed by the PSPs and CASPs, or by outsourced service providers. In compliance with the EBA Guidelines on outsourcing arrangements²¹, where applicable, PSPs and CASPs should have regard to the following key principles:

- a. The ultimate responsibility for compliance with restrictive measures, whether or not specific functions are outsourced, lies with the PSPs or CASPs.
- b. The rights and obligations of the PSPs or CASPs and the service provider should be clearly allocated and set out in a written agreement.

²⁰ Consultation Paper under development

²¹ EBA/GL/2019/02

- c. The PSPs or CASPs relying on an outsourcing agreement should remain accountable for monitoring and overseeing the quality of the service provided.
- d. Intra-group outsourcing should be subject to the same regulatory framework as outsourcing to service providers outside the group²².

28. PSPs and CASPs should put in place and apply the controls necessary to ensure that the use of outsourced service providers does not expose them to the risk of breaches of restrictive measures, and document those controls in the outsourcing agreement.

29. Where PSPs and CASPs rely on outsourced service providers to update lists on the PSPs' and CASPs' behalf, PSPs and CASPs should ensure that these agreements do not expose the PSPs or CASPs to the risk of breaches of restrictive measures due to delays and inefficient processes.

30. When outsourcing agreements are in place, PSPs and CASPs should carry out a regular control of compliance by the service provider with the commitments arising from the agreement, assess the effectiveness of the agreement and take any needed mitigating measures including renegotiating the agreement.

4.2 Due diligence and verification measures for alert analysis

4.2.1 Policies and procedures for the management and analysis of alerts

31. PSPs and CASPs should have in place policies and procedures to investigate alerts. These policies and procedures should enable PSPs and CASPs to confirm whether an alert is a true positive match and, if so, determine the action needed according to the type of restrictive measure that applies.

32. Such policies and procedures should include:

- a. steps for processing an alert without delay, for each type of transfer of funds or crypto-assets;
- b. rules following the general record-keeping policy of the PSPs and CASPs, in compliance with Article 26 of Regulation (EU) 2023/1113, for the documentation of any decision taken in respect of alerts;
- c. measures to comply with Section 4.2.2 of these guidelines;
- d. different levels of review to be carried out, for example the discard of false positives approved by at least two people.

²² Point 27 of the Background sections of the EBA Guidelines on outsourcing arrangements of 25 February 2019: EBA/GL/2019/02

4.2.2 Due diligence measures for alert analysis

33. The screening system should generate alerts for review by trained staff. The alert should indicate the restrictive measures-related element that triggered the alert.
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:
- a. identification data of a natural person that was not used at the screening stage;
 - b. identification data of a legal person that was not used at the screening stage;
 - c. cities, countries, nationality/ies not used at the screening stage;
 - d. representative, management and organisational structure of legal persons not used at the screening stage;
 - e. contact details (private address, email address, website) not used at the screening stage.
35. 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.

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.
37. PSPs and CASPs should:
- a. apply the criteria from Sections 55a and 55b of the EU Council Guidelines²³ and Sections 34, 35, 62 and 63 of the EU Council Best Practices²⁴ to determine whether a legal entity is owned or controlled by another person or entity;
 - b. apply the criteria used under the AML/CFT framework to identify beneficial owners, unless otherwise foreseen by a specific regime;
 - c. use available public sources of information, such as lists of owned and controlled entities and beneficial ownership registers.
38. In case an assessment remains inconclusive, PSPs and CASPs should consider engaging with the national authority competent for the implementation of restrictive measures. The ultimate responsibility for complying with the restrictive measures lies with the PSPs and CASPs.

²³ [Guidelines on implementation and evaluation of restrictive measures \(sanctions\) in the framework of the EU Common Foreign and Security Policy \(doc. 5664/18\)](#)

²⁴ [Update of the EU Best Practices for the effective implementation of restrictive measures \(doc. 10572/22\)](#)

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

39. PSPs and CASPs should take into account the restrictive measures exposure assessment when defining the types of controls they will apply to be able to comply with sectoral restrictive measures. As part of this, PSPs and CASPs should determine which attributes of transaction records will be screened, such as the free text field providing the purpose of the payment.
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. To the extent that this is available, PSPs and CASPs should screen:
- 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.
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.
42. Examples of controls PSPs and CASPs may also put in place include, but are not limited to:
- a. upon establishing business relations, acquiring the relevant information from the customer, such as about the customer's type of business, countries where the customer is conducting business;
 - b. requesting additional information from the customer, such as a description of dual-use goods, information about the appropriate licence for dealing with the dual-use goods, country of origin of the goods, information about the end user of the goods;
 - c. requesting more detailed information from the customer about the purpose of a transfer of funds or crypto-assets;
 - d. using the following data: shipping registers, real estate records and other publicly available data sets (where available).

43. Where PSPs and CASPs use features to automatically read information from documents associated with the transfer of funds or crypto-assets, such as Optical Character Recognition (OCR) algorithms or Machine Readable Zone (MRZ) verifications, they should take the steps necessary to ensure that these tools capture information in an accurate and consistent manner.

4.2.5 Due diligence measures to detect attempts to circumvent restrictive measures

44. 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:

- a. national authorities competent for the implementation of restrictive measures, national supervisory authorities;
- b. FIUs and law enforcement authorities;
- c. relevant public-private partnerships on a national or Union level;
- d. EU authorities²⁵.

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 or crypto-assets to conceal the involvement of a designated party;
- d. conceal the beneficial ownership or control of assets;
- e. use fake or fraudulent background documentation for the transfer of funds or crypto-assets.

46. PSPs and CASPs that are particularly exposed to the risk of being used for circumvention purposes should also consider carrying out an aggregated analysis of payment flows to or from countries subject to restrictive measures and countries known to be used to circumvent restrictive measures.

4.3 Freezing and reporting measures

²⁵ See for example [European Commission Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention](#)

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, 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.

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.

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:

- a. the implementation of a restrictive measure, such as any freezing measures and suspension of operations; and
- b. the discovery of the breach of restrictive measures,
- 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.

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.

4.3.3 Procedures in case of exemptions or when restrictive measures are lifted

51. PSPs and CASPs should have policies and procedures to determine whether exemptions, licence regimes or derogations apply, and if they apply, how to release funds accordingly, in line with the domestic legal framework.

52. PSPs and CASPs should have policies and procedures to be able to identify and release or unblock funds and crypto-assets when restrictive measures are lifted.

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:

- a. reliably detect positive matches;
- 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;
- c. report frozen assets to the competent authorities without delay.

54. PSPs and CASPs should regularly test their screening system settings to determine whether the screening system remains appropriate in light of the PSP's and CASP's restrictive measures exposure assessment, and that it remains effective. PSPs and CASPs should determine the frequency of checks based on the restrictive measures exposure assessment and record them in their policies and procedures.

55. When testing their screening system, PSPs and CASPs should:

- a. test the calibration of the screening system (see more in Section 4.1.6);
- b. assess the accuracy of the list management with the use of applicable and up-to-date restrictive measures;
- c. assess whether all customers and transfers of funds and crypto-assets are being screened when required;
- d. assess the adequacy and relevance of the information fields used in the screening system, such as the scope of the transfers of funds or crypto-assets feeding into the screening system;
- e. assess the timeliness of the automatic suspension of operations;

- f. assess whether the processes and resources available for the analysis of alerts makes prompt reporting of true positive matches possible.

56. PSPs and CASPs should report any weaknesses or deficiencies to the management body and take corrective measures without delay.

5. Accompanying documents

5.1 Draft cost-benefit analysis/impact assessment

As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines and recommendations developed by the EBA shall be accompanied by an impact assessment (IA), which analyses ‘the potential related costs and benefits’. This analysis presents the IA of the main policy options included in this Consultation Paper on the draft Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures under Regulation (EU) 2023/1113 (‘the draft Guidelines’). The IA is high level and qualitative in nature.

A. Problem identification and background

Restrictive measures are, as defined in the explanatory memorandum proposal for a directive of the European parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures, ‘*measures (that) comprise individual measures, i.e. targeted financial sanctions (asset freezes) and restrictions on admissions (travel bans), and sectoral measures, i.e. arms embargoes or economic and financial measures (e.g. import and export restrictions, and restrictions on the provision of certain services, such as banking services)*’. These measures are being developed by Member States, the EU or other international competent jurisdictions in view of, notably, safeguarding EU values, maintaining international peace and security, and consolidating and supporting democracy, the rule of law and human rights. However, this goal is hampered by the fact that these measures are not applied uniformly within the EU and this lack of uniformity can create situations where prohibitions are circumvented.

In this context, the EBA was given one mandate²⁶ by the European Commission. This new mandate is defined by Article 23 of Regulation (EU) 2023/1113 and requires the EBA to issue guidelines on internal policies, procedures and controls that payment service providers (‘PSP’) and crypto-asset service providers (‘CASP’) shall have in place to ensure the implementation of Union and national restrictive measures.

B. Policy objectives

Being addressed to both PSPs and CASPs, these draft Guidelines will create a common understanding, among PSPs, CASPs and their supervisors, of effective systems and controls to comply with restrictive measures, and support the convergence of PSPs’ and CASPs’ practices.

²⁶ In July 2021, the European Commission published an AML/CFT package consisting of four legislative proposals. One of these proposals was the recast of the 2015 Transfer of Funds Regulation (TFR). The co-legislators reached a provisional agreement on the TFR on 29 June 2022. The EBA was given ten legislative mandates. One of the new mandates is the mandate mentioned here.

These draft Guidelines aim to create a common understanding, among financial institutions, of adequate policies, procedures and controls for the implementation of restrictive measures.

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

Section C. presents the main policy options discussed and the decisions made by the EBA during the development of the draft Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures. Advantages and disadvantages, as well as potential costs and benefits from the qualitative perspective of the policy options and the preferred options resulting from this analysis, are provided.

Guidance on the choice of a screening system

It is worth mentioning that the 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, using a restrictive measures exposure assessment in the context of the choice of a screening system to ensure proportionality and effectiveness might be suitable and two options have been considered by the EBA in this regard:

Option 1a: Adding guidance on basing the choice of a screening system on a restrictive measures exposure assessment

Option 1b: Not adding guidance on basing the choice of a screening system on a restrictive measures exposure assessment

A restrictive measures exposure assessment helps PSPs and CASPs to identify and assess where they are exposed to risks of non-compliance with restrictive measures and risks of circumvention of restrictive measures, based on their activities and customer base. This evaluation is thus a key and necessary element for effective compliance with the restrictive measures.

Adding guidance on the consideration of the results of the restrictive measures exposure assessment when choosing a screening system would have the benefit of enhancing the institution's ability to comply with restrictive measures. It will also ensure that the screening system is fit for purpose and proportionate to the institution's business, and the complexity of its operations. This guidance would not only support PSPs' and CASPs' compliance efforts, but ultimately help to safeguard EU values, maintain international peace and security, and consolidate and support democracy, the rule of law and human rights. It is thus the EBA's view that the potential costs incurred by financial institutions by adding guidance on the choice of a screening system based on the restrictive measures exposure assessment would be exceeded by the benefits.

On these grounds, **Option 1a has been chosen as the preferred option** and the draft Guidelines will include guidance on basing the choice of a screening system on a restrictive measures exposure assessment.

KYC information guidance for the financial list-based restrictive measures screening

The screening of customers and transactions is the main control that PSPs and CASPs should have in place to be able to comply with restrictive measures. According to the views expressed by competent authorities ('CA') in the context of the 2023 EBA Opinion on ML/TF risks affecting the EU's financial sector²⁷, while most PSPs had screening systems in place, the quality of these systems was a major concern. CAs reported that deficiencies in screening systems are common, with outdated or incorrect lists used and an overreliance on vendors' screening systems and with a poor understanding of those systems by PSPs and CASPs. Many screening systems are not adequately calibrated, with an inadequate frequency of screening and only limited fuzzy matching. CAs also reported weaknesses in the scope of screening, with not all customers being screened (such as occasional customers), or some transactions or products not covered (like cash deposits or crypto-assets deposits in customers' accounts or ATMs), and some jurisdictions not included in the scope. In addition to that, during discussions held by the EBA with members of the Technical Expert Group on restrictive measures regimes (TEG-RMRs)²⁸, the majority of these deficiencies were reported as being the main challenges for the PSPs and CASPs.

As a result of the above, technical guidance on the screening system itself (choice of the screening system, screening of customers and transactions, calibration settings of the screening system) has been included in the draft Guidelines. Nevertheless, CAs also highlighted that the technical approach of the screening alone is not sufficient to ensure compliance with restrictive measures, and should be complemented by, notably, a strong related customers/beneficial owners ('BO') process, and the EBA considered two options in this context for the draft Guidelines:

Option 2a: Complementing the restrictive measures list-based approach guidance with due diligence measures (for customers and BO) related guidance

Option 2b: Not complementing the restrictive measures list-based approach guidance with due diligence measures (for customers and BO) related guidance

Customers/BO data is fed into the screening system where it is checked against the restrictive measures lists. Even if the screening system was technically sound, incomplete or mistaken customers/BO data would lead to inefficient and inaccurate outcomes. A basic example of this issue would be when the name of a customer is wrongly reported in the customer database or reported in an alphabet that is not the alphabet of the restrictive measures list; in this case, the screening system would not mark this customer name as a true positive match and the institution would not take the necessary actions to comply with the restrictive measures. Another example would be, in the case of missing an update of a customer's shareholder structure, a new BO not being identified and thus not being screened. During the discussions held by the EBA with them, AML/CFT supervisors and members of the TEG-RMRs identified the quality of data as a challenge and agreed that guidance on this area would be appreciated. The related costs of obtaining the right data in the first place would be mitigated by the fact that the EBA foresees that PSPs and CASPs would face lower risks of breaching restrictive measures, hence a lower risk of being criminally charged in case of non-compliance. On the other side, the benefit would be the enhancement of the restrictive

²⁷ [EBA/REP/2023/18](#)

²⁸ [Technical Expert Groups created by the EBA AML.pdf \(europa.eu\)](#)

measures screening. Ultimately this will help to notably safeguard EU values, maintain international peace and security, and consolidate and support democracy, the rule of law and human rights.

Based on the above, **Option 2a has been chosen as the preferred option** and the draft Guidelines section on the restrictive measures list-based approach will be complemented with KYC (for customers and BO) related guidance.

D. Conclusion

The EBA has been given a mandate to develop Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures under Regulation (EU) 2023/1113. For PSPs and CASPs, the costs associated with the implementation of the draft Guidelines will be mitigated by the fact that the draft Guidelines will support them in their compliance with the restrictive measures, which should reduce the risk of breaching the regulation and the related fine probability. Enhancing compliance with the restrictive measures will also help to safeguard EU values, maintain international peace and security, and consolidate and support democracy, the rule of law and human rights. These new guidelines should achieve their objectives with acceptable costs.

5.2 Overview of questions for consultation

Question 1

Do you agree with the proposed provisions? If you do not agree, please explain how you think these provisions should be amended, and set out why they should be amended. Please provide evidence of the impact these provisions would have if they were maintained as drafted'?