26 February 2024

**Comments of the Austrian banking industry**

**on the draft consultation on EBA/CP/2023/35 -**

**Guidelines on preventing the abuse of funds and certain crypto-assets transfers for ML/TF (Travel rule Guidelines) under Regulation (EU) 2023/1113**

We would like to submit the following comments on the EBA draft:

**Regarding Chapter 2, point 4**

It is not technically possible for banks as payment service providers to check individual credit card transactions, as these are not available to the payment service providers. This is possible for the credit card systems (Visa, Mastercard, ...). An analysis of customer trends and customer behavior, including historical payment transactions, in order to determine whether the card payment is used to pay for goods or services would hardly be possible for banks as payment service providers in the case of credit cards and would involve enormous effort in the case of debit cards. The costs of implementing this requirement are probably disproportionate to the expected benefits.

**RZ 8 c**

The inclusion of "smurfing techniques" at this point leads to ambiguities in the interpretation of "linked transfers of funds" when applying the EU Funds Transfer Regulation 2023/1113 (FTR).

In addition, such an examination would involve an extremely high level of effort. As payment service providers, banks theoretically have the option of setting the threshold value to EUR 0. As a result, however, this would lead to a flood of transactions to be checked, whereby the effort involved would bear no relation to this.

**Re chapter 4 margin no. 20ff:**

In our opinion, banks as payment service providers are not providers of crypto services if they only carry out transactions from or to crypto providers for their customers and do not offer crypto services themselves. Such payment service providers must of course fulfill the relevant requirements from the FTR (Art 4 et seq.), but it must be made clear that they do not have to fulfill requirements that are necessary for providers according to Art 14 et seq. of the FTR due to their business model. If the legislator had intended this in the FTR, then payment service providers would also be addressees in Art 14 ff FTR.

**Re margin no. 20**

The term "error" should in any case be clarified, as it appears to be too broad and could include situations that are not relevant for the systematic reporting of errors.

**Re RZ 21**

We do not consider it legally or technically possible to mix card payment processes with credit transfer processes (SEPA and SEPA instant payments).

There is currently no technical possibility to include card numbers in SEPA or SEPA Instant payments.

This issue should be discussed with the international card schemes (Visa, Mastercard, etc.).

**Re RZ 22 c and RZ 27**

The addition of all names and addresses of all holders of joint accounts in the payment notification is not feasible in all cases and constellations of joint accounts for reasons of space; it is not possible in the fields provided for this purpose.