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Guidance note on compliance with applicable EU restrictive measures for crypto assets and crypto asset service providers

Background Information

Crypto-Asset Service Providers (CASPs) are required to ensure compliance with applicable EU restrictive measures. These obligations may arise under different EU sanctions regimes and may include targeted asset freezing measures, prohibitions on making funds or economic resources available to designated persons or entities, transaction prohibitions and restrictions specifically applicable to the provision of crypto-asset services.

This Guidance focuses principally on certain measures under Council Regulation (EU) No 833/2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine and Council Regulation (EU) No 269/2014 concerning targeted restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

The measures outlined below are not exhaustive. CASPs remain responsible for identifying and complying with all restrictive measures applicable to their activities, customers and transactions, including amendments to the relevant EU restrictive measures that may apply.

Article 5b of Regulation (EU) No 833/2014

This restriction concerns the provision of crypto-asset wallet, account or custody services to Russian nationals, persons residing in Russia and legal persons, entities or bodies established in Russia, subject to the exceptions and derogations provided for in the Regulation.

This Guidance does not seek to address all aspects of Article 5b in detail. CASPs should nevertheless have regard to these restrictions when assessing their customers and the services they provide.

Article 5ad: Transactions with Listed Third-Country Financial and Crypto-Asset Entities

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Article 5ad establishes transaction prohibitions in relation to specified third-country credit or financial institutions and entities providing crypto-asset services. The provision is particularly relevant where such entities have been identified and listed in Annex XLV in connection with specified conduct, including facilitating certain prohibited trade flows or frustrating or circumventing particular restrictive measures. The prohibition also extends to entities acting on behalf or at the direction of the entities concerned.

For CASPs, this means that the relevant compliance assessment should not be limited to whether a customer itself is designated. Consideration may also need to be given to whether a transaction involves a crypto-asset service provider or other entity that is itself subject to a transaction prohibition.

Articles 5ba and 5bb: Crypto-Asset Service Providers and Platforms

Articles 5ba and 5bb introduce further transaction restrictions of particular relevance to the crypto-asset sector. In particular, Article 5bb concerns transactions with crypto-asset service providers or platforms enabling the exchange or transfer of crypto-assets that are established in Russia.

CASPs should therefore ensure that their controls are capable of identifying not only designated persons and wallet addresses but also relevant crypto-asset service providers, exchanges and platforms involved in a transfer, where these are subject to applicable transaction prohibitions. CASPs should apply appropriate due diligence measures to assess the circumstances of each case and determine the appropriate course of action under the applicable restrictive measures. Responsibility for that assessment and the resulting compliance decision remains with the CASP.

Targeted Asset Freezes

CASPs must also have regard to the targeted financial sanctions imposed by the EU. These measures provide for the freezing of funds and economic resources of designated persons and entities and form part of the EU's restrictive measures. This is conceptually different from the

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transaction prohibitions referred to above. A CASP should therefore establish the specific legal basis applicable to the particular transaction or assets concerned, rather than treating every sanctions related blockchain exposure as giving rise to the same legal consequence.

These measures should be distinguished from transaction prohibitions, which prohibit particular transactions or dealings with specified persons, entities, providers or platforms. A transaction prohibition does not, in itself, necessarily amount to an asset freezing obligation. CASPs should therefore identify the specific restrictive measure engaged and the legal consequence flowing from it before determining the appropriate treatment of the assets concerned. A sanctions-related blockchain screening alert or exposure should not, by itself, be treated as establishing that assets must be frozen. The CASP should assess the underlying sanctions measures including the persons, entities, wallets, service providers or platforms involved and determine the applicable obligation on the basis of the relevant EU restrictive measure.

Treatment of Assets Following a Transaction Prohibition

Where, due to the technical characteristics of a crypto-asset transfer, a CASP is unable to prevent the receipt of assets originating from an entity or platform subject to an applicable transaction prohibition, the assets should not automatically be returned to the originating entity or platform. Such a return may itself constitute a prohibited transaction where the entity subject to the transaction prohibition remains involved, directly or indirectly.

The CASP should therefore hold the assets while undertaking the necessary due diligence to determine the appropriate treatment of the assets. The fact that the assets were initially received from, or through, an entity subject to a transaction prohibition does not dispense with the need to assess the proposed subsequent transaction on its own circumstances.

Where the CASP is satisfied, following appropriate due diligence, that the entity or platform subject to the transaction prohibition would no longer be involved, directly or indirectly, in the proposed return or onward transfer, the CASP should assess whether the transaction may

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proceed under the applicable restrictive measures. This may include circumstances where the customer provides an alternative wallet address which the CASP has verified, through appropriate due diligence, as being unaffiliated with the prohibited entity or platform. The provision of an alternative wallet address should not, in itself, be considered sufficient.

Each transaction should therefore be assessed separately. The CASP should establish the persons, entities, wallets, platforms and service providers involved and satisfy itself that the proposed transaction would not directly or indirectly involve an entity subject to the relevant transaction prohibition. Responsibility for this assessment and the resulting compliance decision remains with the CASP.

Derogations and Authorisations

This should be distinguished from circumstances where the entity subject to the transaction prohibition remains involved in the proposed transaction. Where the prohibition continues to apply, the CASP should determine whether the relevant Regulation provides for an applicable derogation or authorisation and, where appropriate, the relevant procedure should be followed.

The possibility of seeking a derogation or authorisation does not replace the CASP's responsibility to first determine, through appropriate due diligence, whether the proposed transaction is in fact subject to the prohibition.

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