



Electronic Money Association

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Belgium

www.e-ma.org

25 August 2023

Dear Carol,

Re: Consultation on the sectoral guidance on Cryptoassets Transfers ('Travel Rule')

We are writing today to respond on behalf of our members to the JMLSG's consultation on the draft travel rule guidance for cryptoasset transfers. A list of current EMA members is provided in the Annex.

We hope you will consider our comments and remain available for any questions you might have.

Yours sincerely,

A handwritten signature in black ink that reads "Thaeer Sabri". The signature is written in a cursive style with a long, sweeping underline.

Dr Thaeer Sabri
Chief Executive Officer
Electronic Money Association

EMA response

I - Meanings and definitions

The purpose of transactions in para. 1:

“The travel rule obligations apply to cryptoasset transfers irrespective of the commercial purpose of the transfer and regardless of the value. The obligations therefore apply to all payments for goods or services made in cryptoassets, except when the cryptoasset transfer is already a “transfer of funds” within the meaning of Art 3.9 of the Funds Transfer Regulation (FTR).”

Comment: 'Commercial purpose' should be replaced with 'purpose,' as many transfers will be carried out for non-commercial purposes.

Issuance of cryptoassets; new provision after para. 9:

Comment: The issuance of cryptoassets could usefully be addressed in a new paragraph here: 'Where cryptoassets are issued directly to a wallet rather than transferred from one wallet to another, the travel rule applies provided the issuance is made to a third-party wallet (i.e., a wallet not held with the issuer).'

II - Sunrise issue

Para 10:

Comment: The FCA has now published its expectations in relation to the sunrise issue, which could be useful to reference in the guidance. See <https://www.fca.org.uk/news/statements/fca-sets-out-expectations-uk-cryptoasset-businesses-complying-travel-rule>

III - Information accompanying an inter-cryptoasset business transfer

The provision of additional information in para. 12:

“Where all CBs executing the transfers (including intermediaries) are carrying on business in the UK, the CB of the beneficiary may also request the following information which the CB of the originator must also provide within 3 working days:

(i) *If the originator is a legal entity:*

- *Customer identification number; or*
- *Address of originator’s registered office (or principal place of business if none or different*

(ii) *If the originator is an individual, one of the following:*

- *Customer identification number; or*
- *Address; or*
- *Birth certificate number, passport number or national identity card number (or individual’s date and place of birth).”*

Comment: It would be useful to specify supervisory expectations in relation to the provision of the additional information, as previously set out by the FCA. This could state: 'Ideally, given the 3-working day limit, firms could obtain and verify the information in Reg. 64C(6) at the time of the transfer, or at the very least be ready to do so immediately on the receipt of a request.'

The identification of counterparty jurisdiction in para. 14:

“Recipient CBs should ensure that they have taken all reasonable steps to determine the jurisdiction of the originator CBs, especially where the CB may have group entities trading under similar names in other or multiple jurisdictions (see para 41 below).”

Comment: The requirement to identify the jurisdiction of the counterparty applies to both the CBs of the beneficiary and of the originator in order for each to comply with their travel rule obligations. Additionally, the cross reference should be to paras 41 and 42.

IV - Returning a transfer

The obligation to check that a return is possible in para. 32:

“The CB (intermediary or of the beneficiary) should consider the risks and complexities of returning a transfer, prior to making a return, as it may create operational challenges for CBs to reattribute it to the originator. They should make reasonable efforts to ensure that the transfer is able to be returned to the originator.”

Comment: The sentence “They should make reasonable efforts to ensure that the transfer is able to be returned to the originator” appears to establish a stand-alone obligation. It should read 'If a CB has determined it wishes to return the cryptoassets to the originator, it should make reasonable efforts to ensure this is practicable before making the transfer.'

Note also that the assets are returned, not the transfer.

V - Unhosted wallet transfers

Authorising the unhosted transfer in para. 36:

“Where a CB has determined that information should be requested, it should take reasonable steps to obtain the information from its own customer. In higher risk cases, firms should also take further steps to ascertain the source of funds in the unhosted wallet and should only consider authorising the transfer if the control over the unhosted wallet can be reasonably established through appropriate solutions (e.g. micro deposit or cryptographic signature).”

Comment: the language here should be qualified to avoid establishing requirements that go beyond those set out in the law. Replace 'firms should also take further steps' with 'firms may also need to consider taking further steps.'

Furthermore, 'consider' needs to be moved in the sentence, which should read 'and should also consider only authorising the unhosted wallet transfer....' This is to avoid a new obligation being created.

VI - Wallet attribution

Various issues in para. 39:

CBs should adopt a risk-based approach in attributing wallets. All reasonable steps should be taken to identify the counterparty and whether a wallet is hosted or unhosted. Steps taken should also be proportionate to the size and nature of the business and could include, but are not limited to, the following:

- *Blockchain analysis where appropriate (see para 40);*
- *Query the wallet address using discoverability methods provided by the travel rule solution being used by the CB;*
- *Consult the CB's own address book;*
- *Obtain information on the wallet status and/or identity of the CB from the beneficiary.*

All steps taken should be documented.

Comment: The bullet point list should be extended to include 'Confirming information received by the customer through relevant evidential processes.' This is to ensure that in cases of higher risk, information received from the customer is not taken at face-value.

The second bullet suggests that the TR messaging solution that is adopted possesses 'discoverability functionality' and could therefore be seen as preferring such a solution over another. It may be better to say 'that may be provided by the travel rule solution...'

Whilst it may be good practice, record keeping requirements in the MLRs do not extend to the recording of steps taken in the context of wallet attribution. This sentence should therefore be qualified as a suggestion or be deleted.

Data protection in para 40:

"Blockchain analysis and other similar means may be useful in examining the transaction history, risk, volume and other characteristics of the wallet. Where no relevant information is identified or provided by this assessment, firms should adopt a risk-based approach in determining how to proceed further."

Comment: this paragraph could usefully refer to data protection risks in addition to those of financial crime when adopting a risk-based approach in determining how to proceed further.

DEXs; new provision after para. 42:

Comment: Another instance in which wallet attribution questions arise is with the use of DEXs. We suggest addressing this issue at a high level in a new paragraph as follows: 'Where a CB wishes to establish whether a wallet belongs to a decentralised exchange, transaction volumes and values associated with the wallet may inform the conclusion. A risk assessment should determine whether to treat the wallet as unhosted or whether not to make the transfer/return the cryptoassets.'

VII - Layer-2 solutions

Further explanatory text in paras 47-48:

Comment: the text here does not provide the rationale for the guidance, and may therefore be interpreted as taking an arbitrary position on the role of intermediaries in the LN. It may usefully be expanded as follows:

'A cryptoasset business may play different roles in relation to transfers on the Lightning Network ('LN') or other layer-2 solutions with similar characteristics. It may, for example, host a funding wallet or fund a node from its own wallet; host its own node or create individual nodes for its customers. Its obligations under Part 7 will differ according to the role that it plays. Where travel rule compliance is challenging due to the nature of the technology or arrangement, the following principles apply:

- *Where a transfer meets the definition of an 'inter-cryptoasset business transfer' or an 'unhosted wallet transfer,' travel rule obligations must in principle be complied with, regardless of whether the transfer is recorded on the blockchain or takes place off-chain. Firms should take reasonable steps to implement relevant compliance solutions, such as messaging protocols, invoicing tools etc.*
- *Where difficulties with wallet attribution arise, the guidance on wallet attribution may be followed. A risk-based and proportionate approach should be maintained at all times, keeping in mind the financial crime risks inherent in the reliance on self-reported information.*
- *Those parts of a LN transfer that are intermediary to originator and beneficiary are not in scope of the travel rule even where one or both nodes in the channel are cryptoasset businesses. This is because these nodes merely act as routing nodes for transfers between third parties. In doing so, they perform a function more similar to network validators, rather than providing a cryptoasset service. Routing nodes have no ability to stop, inspect, amend or delay a transfer; they cannot identify the originator or beneficiary to the transfer and cannot, whether technologically or practically, remove or change the amount of cryptoassets in a transfer being routed. Hence, nodes that meet these characteristics do not qualify as an 'intermediary cryptoasset business'. The same reasoning may also be applied to any other layer-2 solution that adopts similar technology.'*

VIII - Further comments

Airdrops:

The draft guidance does not address the transfer of Airdrops. The following text (as previously approved by the FCA) could usefully be included:

'Where transfers of Airdrops are undertaken by a cryptoasset business, these are in principle in scope of the travel rule requirements. However, firms may apply a EUR 1,000 threshold for compliance with travel rule obligations where the financial crime risk is deemed to be low and beneficiary information is not available.

Transfers of Airdrops that are not undertaken by a cryptoasset business should be treated as unhosted wallet transfers by the cryptoasset business of the beneficiary. This is because a gratuitous transfer of cryptoassets does not bring the transferring firm within the scope of the definition of a cryptoasset business; no travel rule requirements therefore apply on the sending side.'

Annex

Current EMA membership:

- AAVE LIMITED
- Airbnb Inc
- Airwallex (UK) Limited
- Allegro Group
- Amazon
- American Express
- ArcaPay UAB
- Banked
- Bitstamp
- BlaBla Connect UK Ltd
- Blackhawk Network EMEA Limited
- Boku Inc
- Booking Holdings Financial Services International Limited
- BVNK
- CashFlows
- Checkout Ltd
- Circle
- Citadel Commerce UK Ltd
- Contis
- Corner Banca SA
- Crypto.com
- eBay Sarl
- ECOMMPAY Limited
- Em@ney Plc
- emerchantpay Group Ltd
- Etsy Ireland UC
- Euronet Worldwide Inc
- Facebook Payments International Ltd
- Financial House Limited
- First Rate Exchange Services
- FIS
- Flex-e-card
- Flywire
- Gemini
- Globepay Limited

- GoCardless Ltd
- Google Payment Ltd
- HUBUC
- IDT Financial Services Limited
- Imagor SA
- Ixaris Systems Ltd
- J. P. Morgan Mobility Payments Solutions S. A.
- Modulr Finance Limited
- MONAVATE
- MONETLEY LTD
- Moneyhub Financial Technology Ltd
- Moorwand
- MuchBetter
- myPOS Payments Ltd
- Nuvei Financial Services Ltd
- OFX
- OKG Payment Services Ltd
- OKTO
- One Money Mail Ltd
- OpenPayd
- Own.Solutions
- Park Card Services Limited
- Paymentsense Limited
- Paynt
- Payoneer Europe Limited
- PayPal Europe Ltd
- Paysafe Group
- Paysend EU DAC
- Plaid
- PPRO Financial Ltd
- PPS
- Ramp Swaps Ltd
- Remitly
- Revolut
- Ripple
- Securiclick Limited
- Segpay
- Skrill Limited

- Soldo Financial Services Ireland DAC
- Square
- Stripe
- SumUp Limited
- Swile Payment
- Syspay Ltd
- Transact Payments Limited
- TransferMate Global Payments
- TrueLayer Limited
- Trustly Group AB
- Uber BV
- VallettaPay
- Vitesse PSP Ltd
- Viva Payments SA
- Weavr Limited
- WEX Europe UK Limited
- Wise
- WorldFirst
- Worldpay
- Yapily Ltd