



## **Guidance Note concerning Restrictive Measures in view of Russia's actions destabilising the situation in Ukraine: Crypto-assets and Cryptocurrencies**

02 September 2022

### **1. Are crypto-assets and cryptocurrencies covered by EU sanctions?**

In Council Regulation (EU) No 269/2014, the non-exhaustive definition of 'funds' covers crypto-assets, including cryptocurrencies, and the definition of 'economic resources' may also extend to certain crypto-assets.

Essentially, crypto-assets are covered by the relevant provisions on the asset freeze and prohibition to make funds or economic resources available to listed persons. For its part, Council Regulation (EU) No 833/2014 clarifies that 'transferable securities' include crypto-assets, but it adds 'with the exception of instruments of payment'.

To summarise, all transactions prohibited in the Regulations are also prohibited if carried out in crypto-assets, and all transactions allowed in the Regulations remain allowed if carried out in crypto-assets. In addition, crypto-assets should not be used to circumvent any EU sanctions.

### **2. Do any EU restrictive measures target crypto-currencies?**

In terms of Article 5b(2) of Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine it is prohibited to provide crypto-asset wallet, account or custody services to Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of crypto-assets of the natural or legal person, entity or body per wallet, account or custody provider exceeds EUR 10,000.

### **3. How does the restriction concerning the EUR 10,000 limit effect existing crypto-asset wallets and accounts in Maltese VFASPs which belong to Russian nationals or natural persons residing in Russia, or a legal person or entity or body established in Russia? Is any action necessary on existing balances after 8 April 2022 which are in excess of EUR 10,000? Can any new deposits be received over and above existing deposits in excess of EUR 10,000?**

With regard to existing deposits belonging to a Russian national or natural person residing in Russia, or a legal person or entity or body established in Russia exceeding EUR 10,000 in a crypto-asset wallet or account on the day of entry into force of Council Regulation 2022/576 of 8 April 2022, the relevant crypto-assets in a wallet or account are grandfathered. This means that the Russian national or natural person residing in Russia, or a legal person or entity or body established in Russia may keep the crypto-assets and use them as desired, but the balance may not be increased in a way that it would exceed EUR 10,000 (unless the competent authority in Malta grants an authorisation under Article 5c or 5d).



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It should be noted that the EUR 10,000 limit is a fixed capping and therefore any amounts in excess of this ceiling (excluding any grandfathered amounts) should be removed from the particular customers' crypto-asset wallet or account . This can be achieved in two ways:

- (i) By transferring the excess in crypto-assets to other addresses, crypto-asset wallets or accounts, held at other service providers or under the customers' own direct control; OR
- (ii) Liquidating the crypto-assets in excess of the ceiling into official currency (FIAT currency) and hold for or transfer the amount to the customer such official currency. Here one should note that other restrictive measures will apply, namely that the amount in FIAT currency should not exceed the EUR 100,000 deposit limited per EU institution for each customer.

**4. Deposits in crypto-asset wallets and accounts are held in crypto-assets and not in EUR, and therefore volatility can affect the value of these assets. For example, if a Russian individual holds Bitcoin in his crypto-asset wallet today with an equivalent value of EUR 9,500, but tomorrow the price of Bitcoin goes up substantially resulting in his assets appreciating to a value of EUR 12,500, should any action be taken by the VFASP?**

As the value of crypto-assets is volatile, the VFAPS are expected to monitor actively the EUR 10,000 ceiling of these crypto-asset wallets or accounts. It is being recommended that this exercise is done on a daily basis. Furthermore, it is expected that safeguards are put in place by VFASPs to ensure that crypto-assets held for a Russian person mounting below the threshold do not increase to more than the EUR 10,000 ceiling as a result of the crypto-asset price volatility. Inadequate safeguards may put VFASPs at risk of falling foul of the mentioned sanctions.