bitkom

Position Paper

Bitkom Position Paper on the Transfer of Funds Regulation (TFR)
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Verification of Self-Custody Wallets

Self-custody wallets are a healthy part of the ecosystem. Bitkom and the broader industry have significant concerns with the proposals regarding the collection, recording, verification, and reporting requirements in connection with these wallets. For a number of reasons:

1. It has limited effectiveness for reducing Anti Money Laundering (AML)-risks and will decrease the effectiveness of compliance programs as Crypto Asset Service Providers (CASPs) will be forced to focus on bulk data collection rather than heightened transaction monitoring — a more effective means of combating illicit finance, leveraging the power of blockchain analytics not present in traditional finance.
2. The measures will not be able to be implemented with any success information, regarding non-customer counterparties will not be able to be provided and verified with any accuracy. Further, it will reduce law enforcement oversight as users are encouraged to use non-regulated service providers.
3. It will create significant consumer protection issues around security and data protection. Non-customer counterparties may not know their data is being passed on shared or used by a third party CASP and is greatly at odds with principles of data minimization, proportionality and transparency.
4. It is highly disproportionate to the risks posed in relation to AML, lacks parity with traditional finance, and goes above and beyond Financial Action Task Force (FATF) guidance – without providing supportive data.

Reporting requirements for transactions with self-custody wallets of 1,000 Euros, regardless of whether suspicious activity is suspected, is disproportionate and will become an unmanageable administrative burden for crypto market participants and national competent authorities while being of limited operational utility.

Technology Neutrality

The removal of the 1,000 Euros reporting threshold goes beyond the FATF proposal and shows a disproportionate approach between thresholds for existing financial transactions and those for the crypto sector. Without consideration of the benefits of Distributed Ledger Technology (DLT) based systems which allow for more thorough and easier analytics of transactions, the removal goes against the principal of technological neutrality.

Data Protection

Establishing dedicated obligations for CASPs to verify the adequacy of data protection rules in non-EU jurisdictions appears to be disproportionate and should be addressed holistically in the context of political negotiations. Moreover, any suchlike obligation needs to consider the unintended consequences for the EU crypto-asset industry which would be considered non-compliant with globally agreed controls to prevent financial crime when being legally obliged to hold back mandatory data transfers.