Draft Regulatory Technical Standards on supervisory colleges under Article 119(8) of Regulation (EU) No 2023/1114 (MiCAR)

Question 1: Do you agree with the criteria proposed in Article 2(1), and (5) of the draft RTS for assessing which are the most relevant CASPs, credit institutions or investment firms, as referred to in Article 119(2), point (d) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

We agree with the proposed criteria.

Question 2: Do you agree with the criteria proposed in Article 2(3), and (5) of the draft RTS for determining which are the most relevant trading platforms, as referred to in Article 119(2), point (e) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

In general, we agree with the proposed criteria. However, we are concerned about the operational feasibility of the provisions. An issuer does only know its direct counterparties but do not know the identity of market participants which are further behind in the transfer chain. Therefore, it might not be possible to determine the relevant trading platforms.

Question 3: Do you agree with the criteria proposed in Article 2(3) and (5) of the draft RTS for assessing which are the most relevant PSPs providing payment services in relation to the significant e-money tokens, as referred to in Article 119(2), point (f) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

In general, we agree with the proposed criteria. However, we are concerned about the operational feasibility of the provisions. An issuer does only know its direct counterparties but do not know the identity of market participants which are further behind in the transfer chain. Therefore, it might not be possible to determine the relevant payment service providers.

Question 4: Do you agree with the criteria proposed in Article 2(4) and (5) of the draft RTS for assessing which are the most relevant CASPs providing custody and administration of crypto-assets on behalf of clients, as referred to in Article 119(2), point (h) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

In general, we agree with the proposed criteria. However, we are concerned about the operational feasibility of the provisions. An issuer does only know its direct counterparties but do not know the identity of market participants which are further behind in the transfer chain. Therefore, it might not be possible to determine the relevant CASPs providing custody and administration for token holders.

Question 5: Do you agree with the criteria proposed in Article 3 of the draft RTS for assessing when a significant ART or a significant EMT is "used at large scale" in a Member State, as referred to in Article 119(2), point (l) of MiCAR? If not, please provide your reasoning and the underlying evidence and suggest an alternative approach.

We are concerned about the operational feasibility of the provisions. An issuer does only know its direct counterparties but do not know the identity of token holders how receive the token from these (or other) counterparties rather than from the issuer directly. As many token are designed to be freely transferable, it seems operationally hardly feasible to determine the location of the token holders in accordance with Article 3.1 (a). In addition, also the provisions of Article 3.1 (b) are operationally not feasible as there is no single source of truth with the knowledge of the location of all market participants which could aggregates the trading volumes by location.

Question 6: Taking into account the scope of the mandate in Article 119(8) of MiCAR, do you have suggestions regarding other aspects, beyond those covered in Articles 6 to 11 of the draft RTS, that are relevant for the functioning of supervisory colleges under MiCAR and that, in your view, should be covered by the draft RTS? If yes, please provide your reasoning, and details of the aspects that in your view should be further specified in the draft RTS.

We do not have further topics beyond the Articles 6 to 11. However, as general comments we are referring to our concerns stated in the previous questions. In addition, we doubt if a classification of most relevant parties based on a single significant asset-referenced token or e-money token might be the right approach for a determination of important service providers. It might be more reasonable to use an approach to determine the importance of third-party service providers based on their services to not only one token but rather several token. Such a consolidated view would in our opinion have the following advantages:

- There are less colleges as there is no need to create a college for every single token
- Third-party service providers will not be determined to be significant in several different colleges
- Third-party service providers that are slightly below the threshold for several tokens, will also be recognized
- Due to the leaner structure, operational effort and costs are reduced