Draft Regulatory Technical Standards to specify the procedure and timeframe to adjust its own funds requirements for issuers of significant asset-referenced tokens or of e-money tokens subject to the requirements set out in Article 45(5) of Regulation (EU) 2023/1114 on markets in crypto-assets

Question 1. Is the procedure clear and the timelines for the issuer to submit the plan reasonable?

The procedure is clear. However, we are concerned about the timeframe to deliver the plan to increase own funds by the asset-referenced token issuer or the e-money token issuer. As the increase in funds from 2% to 3% when becoming classified as "significant issuer" will involve a significant increase in own funds (e.g. EUR 50.000.000 if the criteria in accordance with Article 43 (b) is fulfilled) and issuers will therefore need a very comprehensive plan how to gather the respective amount. The creation of such a plan will most likely require more than 20 working days taking into account that the responsible employees for the creation of the plan are also bound into the daily business operations. We therefore recommend to extend the timeframe or create a flexible time frame based on the amount of additional own funds and the complexity for the issuer to gather own funds.

Question 2. Are the timeframes for issuers to adjust to higher own funds requirements feasible?

We consider the timeframe of three months or less to be not feasible as the additional own funds most likely need to be raised from external resources. Raising the appropriate capital may be more difficult and costly for asset-referenced token issuers or e-money token issuers than for financial institutions since there may be a more limited access to the capital markets. Accordingly, there should clearly be a different standard applied by the competent authorities for issuers of asset-referenced tokens. In our opinion, raising the additional capital in order to meet the higher own funds requirements would take at least six months, most likely longer. Therefore, we strongly suggest that the option should be introduced to extend the three months to a longer period, if the issuer can demonstrate a) a plan to reach the higher own funds requirements within a dedicated timeframe and b) existing own funds are sufficient to cover current risks.

Question 3. During the period when own funds need to be increased by the issuer, should there be more restrictions on the issuer to ensure timely implementation of the additional own funds requirements, for example banning the issuance of further tokens?

While we fully support raising own fund requirements in the event of increased risks to the financial market, we would like to stress that it is of utmost importance to be able for the issuer to remain operable and to meet its requirements for the benefit of the markets and the investors, as laid out in the white paper. In particular, it is important to ensure that the asset-referenced token keeps the peg to the specific underlying asset. The creation and redemption of new asset referenced tokens are therefore essential. However, the restrictions should not limit the issuer in providing services deriving from the white paper as well as its regulatory obligations, nor endanger the issuer to significant operational risk. Therefore, we suggest foreseeing a hearing process in which the issuer should have the opportunity to comment on proposed restrictions and explain if certain requirements are operationally not feasible (or not feasible to the proposed extent) or imbalanced, respectively.

In addition, could you please elaborate hat risk is being mitigated by prohibiting new issuance when own funds are being raised? These funds are linked to operational expenses not reserve assets. If the risks are “issuer external” and likely to crystallize then issuance throttling might be justified, if it due to relative size with nothing likely to crystallize then there is no justification and own funds increases should form part of the standard regulatory cycle. Regulatory induced throttling etc. could create runs which should be easily manageable but would unduly impact the issuers likelihood of commercial success.