

4th February 2025

The BSG welcomes the opportunity to respond to the EBA consultation on draft Regulatory Technical Standards on the criteria for appointing central contact points (“**CCPs**”) for electronic money issuers (“**EMIs**”) and payment service providers (“**PSPs**”) as required under Article 45(10) of Directive (EU) 2015/849 (“**4MLD**”). This amends the Commission Delegated Regulation (EU) 2018/1108, and introduces Crypto Asset Service Providers (“**CASPs**”) into the scope of the RTS.

1. Background to the RTS

The concept of a CCP was introduced by 4MLD allowing host Member States (“**MS**”) national competent authorities (“**NCA**s”) to require an EMI or PSP with an establishment, other than a branch to appoint a person within the MS to act as the point of contact with the NCA. The objectives are stated at Recital 50 and at Article 45(9) 4MLD, as ensuring compliance by the establishment, and to facilitate supervision by the NCA, providing documents and information that may be requested.

Article 45(10) then sets out the objective of the ESA RTS, establishing the circumstances when appointment of a CCP is appropriate and the functions that they should serve.

The provisions for a CCP were then expanded by the legislator in 2023 to include Crypto Asset Service Providers (“**CASPs**”). The consultation proposes to leave provisions in relation to EMIs and PSPs unamended and to extend the provisions to CASPs.

The RTS sets out three circumstances when a CCP could be appointed:

- (i) When the turnover of the establishment exceeds EUR 3m annually – (Article 3(1) of the CCP Regulation).
- (ii) When it is justified by the level of money laundering or terrorist financing risk – (Article 3(2))
- (iii) In exceptional circumstances when the MS NCA believed that there is a high risk of money laundering or terrorist financing – (Article 3(4)).

Article 4 then sets out the functions that the CCP should serve, which are summarised as follows:

- Facilitate the development and implementation of AML policies by informing the appointing institution of obligations that pertain to it
- Oversee effective compliance with host obligations by the establishment
- Inform the head-office of breaches or information that may prevent effective compliance
- Ensure corrective measures are implemented where there is non-compliance
- Represent the appointing institution in communications with the NCA or FIU
- Facilitate supervision by the NCA of the establishment

2. General Comments

We make the following comments in relation to the draft RTS as a whole and not only in relation to its extension to CASPs.

The appointment of a CCP as a point of engagement with host NCAs serves specific needs for the NCAs in particular circumstances. One can, for example, envisage a PSP having an extensive agent network in a host MS, which gives rise to local matters that would benefit from local oversight, and local engagement with the NCA or FIU. Under such circumstances, the provision addresses that purpose. It is difficult to envisage a more general application however, and it is helpful therefore to focus on the circumstances that could give rise to such an obligation for a passporting firm.

The risk-based approach: we note that the appointment of a CCP in this context is a significant matter, as this will be a local resource whose role is specific and will be funded from the compliance resource of the business. The appointment of a CCP needs therefore to be consistent with the risk-based approach, as it will necessarily result in resources being diverted from other compliance functions of the firm. This will of course mean that the risk that triggers a CCP must be such that (i) it cannot be managed centrally by the head-office of the firm, necessitating a stand-alone appointment and (ii) relates to a business that is of a particular size to justify the associated cost.

3. The criteria for appointment

- (i) In such circumstances, we note that the first criterion of the establishment's executed transactions exceeding EUR 3m in value is unlikely to relate to the type of network of agents that we envisaged above. This threshold is low and could in our view benefit from review. As an example, if the gross revenue of such a business was 1%¹ of transactions executed, then for the EUR 3m threshold, the business would be generating revenue of EUR 30,000 annually. It would probably struggle to meet its own overheads, and could not employ a CCP. We suggest an increase in this metric of at least an order of magnitude and possibly two to EUR 50m or EUR 100m.
- (ii) The second criterion provides that the appointment should be commensurate with the money laundering or terrorist financing risk. This approach is sound, but could perhaps be complemented by a broader approach that also examined the effectiveness of remote supervision by the head-office firm, or of periodic visits by compliance staff. Similarly, it could provide for mitigating measures that may be deployed. The risk in applying the test narrowly is of depriving the

¹ Transaction revenue varies depending on the payment product and on the type of transaction; debit card payment vary from 0.2%-0.5%, or are charged as a small fixed fee per transaction, while credit card fees can for most payments vary from 1-3% per transaction, while cross border payment (out of the EU) can vary from 1%-5%, while new providers such as Wise can charge 0.5-2%. Digital wallets can vary from 0.1-1% and bank payments can vary by member state.

firm from deploying its resources in a more efficient and risk-based manner, that may better address the risks posed.

- (iii) The final criterion addresses exceptional circumstances, where an establishment presents a high risk of money laundering or terrorist financing. We wonder if it may be appropriate in such circumstances for the RTS to also direct the NCA to address the matter the parent firm as a matter for resolution by the governing body. Perhaps a CCP would be appointed, but a broader assessment of such circumstances may reasonably be envisaged. The RTS could encourage the resolution of such matters through a number of means prior to the appointment of a CCP.

4. The functions of a CCP

The RTS elaborates the 4MLD objectives of (i) ensuring compliance by the establishment and (ii) facilitating supervision by the host MS NCA. It does so by setting out CCP activities that could comprise such compliance functions as well as those activities that elaborate on the activity of engagement. We have summarised those in section 1 above.

We note that most payment and crypto asset businesses are organised in a centralised manner, with compliance staff being co-located with the systems that they deploy to assess compliance, monitor activities, develop policies and iterate the development of systems and controls to maximise functionality.

It is likely therefore that a person undertaking a CCP function in a host MS will not be the source of information on compliance requirements, nor on the practices of the business, nor will they be in the location that best enables them to monitor business practices, or in the event of breaches to offer a remedy.

It is also relatively rare that day to day operational engagement between an FIU or NCA and a supervised entity takes place on a face-to-face basis. Most engagement is undertaken remotely and even if a more direct engagement is preferred, this usually takes the form of video calls. Similarly, in most cases oversight of remote infrastructure can be undertaken through the systems that are deployed, and physical presence is not required.

It may therefore be that in the majority of instances that a firm will have establishments in a host member state, effective compliance and communication can be equally if not better performed by having a direct line of engagement with the head-office of the firm, perhaps appointing a person at that location to be a permanent point of contact.

This is particularly true for CASP businesses that are focused on the online environment and where the main example of establishment that may be deployed in host MSs is that of an ATM. It is our view that the criteria for appointment of a CCP for a CASP could be set at significantly high level, and be subject to tests that examine

the possibility of resolving AML/CTF risks through remote means; triggering a CCP in only very exceptional circumstances.

This would be consistent with the objectives of a CCP and the objectives of a risk-based approach; enabling businesses to deploy their compliance resources in the most effective and targeted manner.

5. Conclusions

- We believe that the criteria for the appointment of a CCP merit review; both the quantitative criterion and the qualitative criteria as well as their application to all three types of entities: EMIs, PSPs, and CASPs.
- We are similarly of the view that the review would benefit from taking note of current business practices and the ability of firms to deploy compliance resources centrally, in an efficient manner. This is particularly true for CASPs.
- Finally, we note the limited resources of firms and the need to maintain a risk-based approach ensuring that resources are deployed to the areas where the risk is greatest.