

Question ID

2024_7167

Legal act

Regulation (EU) No 2023/1114 (MiCAR)

Topic

Other MiCAR topics

Article

18, 21, 25, 109

COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations

Not applicable

Article/Paragraph

N/A

Name of institution / submitter

Autorité de contrôle prudentiel et de résolution

Country of incorporation / residence

France

Type of submitter

Competent authority

Subject matter

Passporting procedure for non-CI ART issuers

Question

Shall NCAs consider that articles 18, 21, 25 and 109 of MICA regulation set a specific passporting framework for "pure" ART issuers where:

1. ART issuers are authorized to market tokens in Member States they declared during the authorization process as soon as they are authorized by home NCAs;
2. within two working days of granting authorization, home NCAs only have to inform host national competent authorities, ESMA, EBA, ECB and competent national central bank of the Member States of the member states where ART issuers intend to market their token ;

3. this information regarding passporting of ART issuers is publicly available on ESMA register?

Background on the question

Cross-border/passporting activities of ART issuers are mentioned in different articles of MICA Regulation:

First, regarding the data collection from national competent authorities (NCA) receiving ART issuers' applications :

- Information regarding cross-border activities shall be provided to NCAs at authorization stage. Article 18(2)(r) explicitly states that *"The application [of an ART issuer] referred to in paragraph 1 shall contain all of the following information (...) (r) where applicable, a list of host Member States where the applicant issuer intends to offer the asset-referenced token to the public or intends to seek admission to trading of the asset-referenced token."* However, this information does not seem to be standardized in the [technical standards on information for authorisation as issuers of ARTs under MiCAR](#).
- Templates for white papers published by ESMA (Annex II of ITS on standard forms and templates for the crypto-asset white paper) do not mention Member states where the ART is marketed (there no field on this topic in the templates).

Second, regarding the way the home NCA should transmit information on ART issuers' cross-border activities:

- MICA article 21(5) seems to provide for an obligation to notify host Member states, ESMA, EBA, ECB and competent national central bank in case of crossborder activities for ART issuers (*"Competent authorities shall, within two working days of granting authorisation, communicate to the single point of contact of the host Member States, to ESMA, to EBA, to the ECB and, where applicable, to the central bank referred to in Article 20(4), the information specified in Article 109(3)."*).

However, it is not entirely clear whether this notification should be a stand-alone form - which is not mentioned in MICA or delegated regulations and whose format is not defined- or whether transmission of the sole white paper would be enough. As some information mentioned in article 109(3) do not seem to be mentioned in white paper (namely points d) and f)), we infer that a notification additional to the white paper is necessary.

- However, MICA only provides that changes in the white papers should be transmitted to host NCA, to ESMA, to EBA, to ECB and competent national central bank as per article 25.5, but not changes in the scope of cross border activities for example. This means that if the list of member states where an ART is marketed should be sent through a stand-alone notification, then MiCAR does not provide for the obligation to send an updated list (both for issuers and home NCA) on an ongoing basis for authorized ART issuers (in case of change related to the passported activities)

Third, regarding publication of information related to passporting of ART issuers :

- No provisions in MiCA foresee that national registers should mention passporting activities for ART issuers. All information transmitted according to article 21(5) and, by reference, article 109(3) shall however be published on the ESMA register as per the same article. Article 109(3)(d) of MiCAR explicitly states that ESMA public register shall contain information regarding "[...] *the list of host Member States where the applicant issuer intends to offer an asset-referenced token to the public or intends to seek admission to trading of the asset-referenced tokens*

Submission date

08/08/2024

Final publishing date

05/09/2025

Final answer

MiCA requires a legal person/entity to be established in one Member State in order to offer or seek admission to trading of ARTs in the Union. The home competent authority will communicate to the host Member States, ESMA, EBA, the ECB and, where applicable, the central bank referred to in Article 20(4) of MiCA, the list of host Member States where the applicant issuer intends to offer or seek admission to trading of ARTs. The ESMA register will make public the list of such host Member States.

Status

Final Q&A

Answer prepared by

Answer prepared by the EBA.
