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WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services (Crypto Assets)
Subject:	MiCA: Presidency compromise proposal

Presidency compromise proposal regarding

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Introduction

On the basis of the discussions held so far and the comments made by delegations, the Presidency has prepared the below (global) compromise proposal, including recitals

In this document, you will find the latest changes presented in red ***bold*** *underline (**additions**) and red strikethrough (deletions). Further detailed explanations are provided in the text (**in blue**). This means that:*

- for the Recitals, the changes are presented compared with the German Presidency technical redrafting proposal (WK 14906/2020);

- for Titles I, II and III, the changes are presented compared with the previous Presidency proposal (WKs 2380/2021, 3352/2021 and 3406/2021);

- for Titles IV, V and VI, the text is presented clean of the changes proposed in the previous Presidency proposal (WKs 4350/2021 and 4377/2021). To ensure coherence with the rest of the text, the Presidency only proposes additional changes to Articles 46 (10a), 55(6), 56(3) and 58(2) - which are dully highlighted;

- for Titles VII, VIII and IX, the changes are presented compared with the German Presidency technical redrafting proposal (WK 14906/2020 ADD2).

In some circumstances, the Presidency had tested, in the discussion papers prepared for the meetings, some drafting proposals (for example in WKs 3351/2021, 3403/2021 or 4351/2021). Changes to these drafting proposals are not highlighted, but they are stated in the respective explanations.

2020/0265 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) ~~The Commission's communication on a Digital Finance Strategy aims~~ **It is important** to ensure that the Union's financial services legislation is fit for the digital age, and contributes to a future-ready economy that works for the people, including by enabling the use of innovative technologies. The Union has a stated and confirmed policy interest in developing and promoting the uptake of transformative technologies in the financial sector, including ~~blockchain and~~ distributed ledger technology (DLT).

Explanation

- **Not necessary to restrict those aims to the Commission Communication; this is a shared objective**
- **Blockchain is a type of DLT**

(2) ~~In finance, e~~**C**rypto-assets are one of the major DLT applications. Crypto-assets are digital representations of value or rights that have the potential to bring significant benefits to both market participants and consumers. **Representation of value includes external, non-intrinsic value attributed to a crypto-asset by parties concerned or market participants.** By streamlining capital-raising processes and enhancing competition, issuances of crypto-assets can allow for a ~~cheaper, less burdensome and more~~ **innovative and** inclusive way of financing**, including for** small and medium-sized enterprises (SMEs). When used as a means of payment, payment tokens can present opportunities in terms of cheaper, faster and more efficient payments, in particular on a cross-border basis, by limiting the number of intermediaries.

Explanation

- **As proposed by MS:**
  - **crypto-assets are not only useful in finance**
  - **The conclusion that DLT technology entails automatically "cheaper and less burdensome" capital raising processes is not straight forward (is the issuance of a financial instrument cheaper and less burdensome with DLT?)**
  - **Given the introduction of instant payments the focus should be on cross-border payments**
  - **Clarification of "representation of value"**

(3) Some crypto-assets **may** qualify as financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU of the European Parliament and of the Council**, deposits as defined in Article 2, point (2), of Directive 2014/49/EU of the European Parliament and of the Council, funds as defined in Article 4(25), of Directive 2015/2366/EU of the European Parliament and of the Council, included in payments account, securitisation positions in the context of a securitisation as defined in Article 2, point (1), of Regulation (EU)**

2017/2402 of the European Parliament and of the Council or insurance contracts and pensions schemes. The majority of crypto-assets, however, fall outside of the scope of Union legislation on financial services**, as transposed and applied by the Member States**. There are no rules**, other than AML rules as the case may be,** for services related to **these unregulated** crypto-assets, including for the operation of trading platforms for crypto-assets, the service of exchanging crypto-assets against ~~an official currency of a country~~ **funds** or other crypto-assets, or the custody of crypto-assets. The lack of such rules leaves holders of crypto-assets exposed to risks, in particular in areas not covered by consumer protection rules. The lack of such rules can also lead to substantial risks to market integrity ~~in the secondary market of crypto-assets~~, including market manipulation. To address those risks, some Member States have put in place specific rules for all – or a subset of – crypto-assets that fall outside Union legislation on financial services. Other Member States are considering to legislate in this area.

Explanation

- **Introduction of other exclusions from Art 2(2)**
- **No need to specify secondary markets (it is also relevant for primary markets)**

(4) The lack of an overall Union framework for crypto-assets can lead to a lack of users' confidence in those assets, which will hinder the development of a market in those assets and can lead to missed opportunities in terms of innovative digital services, alternative payment instruments or new funding sources for Union companies. In addition, companies using crypto-assets will have no legal certainty on how their crypto-assets will be treated in the different Member States, which will undermine their efforts to use crypto-assets for digital innovation. The lack of an overall Union framework on crypto-assets could also lead to regulatory fragmentation, which will distort competition in the Single Market, make it more difficult for crypto-asset service providers to scale up their activities on a cross-border basis and will give rise to regulatory arbitrage. The crypto-asset market is still modest in size and does not yet pose a threat to financial stability. It is, however, likely that a subset of crypto-assets which aim to stabilise their price **in relation** ~~by linking their value~~ to a specific asset or a basket of assets could be widely adopted by consumers. Such a development could raise

additional challenges to financial stability, monetary policy transmission or monetary sovereignty.

(5) A dedicated and harmonised framework is therefore necessary at Union level to provide specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework. Such harmonised framework should also cover services related to crypto-assets where these services are not yet covered by Union legislation on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of consumer protection and market integrity in crypto-asset markets. A clear framework should enable crypto-asset service providers to scale up their business on a cross-border basis and should facilitate their access to banking services to run their activities smoothly. It should also ensure financial stability and address monetary policy risks that could arise from crypto-assets that aim at stabilising their price **in relation to** ~~by referencing~~ a currency, an asset or a basket of such. While increasing consumer protection, market integrity and financial stability through the regulation of offers to the public of crypto-assets or services related to such crypto-assets, a Union framework on markets in crypto-assets should not regulate the underlying technology ~~and should allow for the use of both permissionless and permission-based distributed ledgers~~.

Explanation

- **No need to refer explicitly to the different DLTs; the current drafting seems to convey the message that the type of DLT is not relevant to comply with MICA which is not accurate as the different types of DLT will face different challenges (and it is not entirely clear if all DLT configuration will be possible)**

(6) Union legislation on financial services should ~~not~~ **be neutral** ~~favour one~~ **as regards the use of** ~~particular~~ technology. Crypto-assets that qualify as 'financial instruments' as defined in Article 4(1), point (15), of Directive 2014/65/EU should therefore remain regulated under the general existing Union legislation, including Directive 2014/65/EU, regardless of the technology used for their issuance or their transfer.

(6a) It is appropriate to exempt certain intragroup transactions and some public entities from the scope as they do not pose risks. Public international organisations exempted include the International Monetary Fund and the Bank of International Settlements, among others.

Explanation

- **Introduction of other exclusions from Art 2(3)**

(7) Crypto-assets issued by central banks acting in their monetary authority capacity or by other public authorities should not be subject to the Union framework covering crypto-assets, and neither should services related to crypto-assets that are provided by such central banks or other public authorities.

(7a) Pursuant to the fourth indent of Article 127(2), of the Treaty on the Functioning of the European Union (TFEU), one of the basic tasks to be carried out through the European System of Central Banks (ESCB) is to promote the smooth operation of payment systems. The ECB may, pursuant to Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), make regulations to ensure efficient and sound clearing and payment systems within the Union and with other countries. In this respect, the European Central Bank (ECB) has adopted regulations on requirements for systemically important payment systems. This Regulation is without prejudice to the responsibilities of the ECB and the national central banks (NCBs) in the ESCB to ensure efficient and sound clearing and payment systems within the Union and with other countries. Consequently, and in order to prevent the possible creation of parallel sets of rules, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the ESCB should cooperate closely when preparing the relevant draft technical standards. Further, the access to information by the ECB and the NCBs is crucial when fulfilling their tasks relating to the oversight of clearing and payment systems.'

Explanation

- **As proposed by the ECB**

(8) Any legislation adopted in the field of crypto-assets should be specific, future-proof and be able to keep pace with innovation and technological developments. 'Crypto-assets' and 'distributed ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets **which can have a financial use, such as being used as a mean of exchange or for investment, and** which currently fall outside the scope of Union legislation on financial services. Such legislation should also contribute to the objective of combating money laundering and the financing of terrorism. **The** ~~Any~~ definition of 'crypto-assets' should therefore **be sufficiently broad to cover** ~~correspond to the definition of~~ 'virtual assets' **as defined** ~~set out~~ in the recommendations of the Financial Action Task Force (FATF)~~.~~ **Therefore, it covers virtual currencies as defined in AMLD.** For the same reason, ~~any~~ **the** list of crypto-asset services **regulated by this Regulation** should also encompass virtual asset services that are likely to raise money-laundering concerns and that are identified as such by the FATF. ~~Therefore~~ **Consequently, it covers the services provided by "providers engaged in exchange services between virtual currencies and fiat currencies" and by "custodian wallet providers" as defined in article 1, (1) c) of AMLD.**

Explanation

- **The aim of the reference to financial use, including the examples provided, is to state the objective of the Regulation rather than to set objective criteria; objective criteria will be set in definitions and scope, including related recitals, to define what's covered and what is not covered**
- **Explain the relation with the current AML; provided that the negotiation of the incoming AML review finishes after the MICA negotiation the reference will be accurate**

(8a) This legislation should only apply to crypto-assets that may be transferred among holders. This means that crypto-assets which are only accepted by the issuer or the offeror, being technically impossible to transfer directly to other holders without the issuers permission, are excluded from the scope. Examples of such crypto-assets may

include merchant's loyalty schemes that use DLT system, with the crypto-assets analogous to loyalty points.

(8b) This legislation should not apply to crypto-assets that are unique and not fungible with other crypto-assets, including digital art and collectibles, whose value is attributable to each crypto-asset's unique characteristics and the utility it gives to the token holder. Similarly, it also does not apply to crypto-assets representing services or physical assets that are unique and not fungible, such as product guarantees or real estate. While these crypto-assets may be traded in market places, be accumulated speculatively and, in limited cases be used as means of exchange, they are not readily interchangeable and the relative value of one crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset. Such features limit the extent to which these crypto-assets can have a financial use, thus limiting risks to users and the system and justifies the exemption. The fractional parts of an unique and non-fungible crypto-asset should not be considered unique and not fungible. The sole attribution of a unique identifier to a crypto-asset is not sufficient to classify it as a unique or not fungible.

Explanation

- Following the support to exclude unique and non fungible tokens from scope the Presidency adapted recital X (proposed in WK 3351/2021); it also clarified the meaning of non fractionable
- The recital provides examples both of native digital assets (digital art and collectables) and of crypto-assets representing physical assets or services
- Financial uses are possible, as it is possible for any physical asset not represented in DLT;

(9) A distinction should be made between three sub-categories of crypto-assets, which should be subject to more specific requirements. The first sub-category ~~consists of a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and that is only accepted by the issuer of that token ('utility tokens'). Such 'utility tokens' have non-financial purposes related to the operation of a digital platform and digital services and should~~

~~be considered as a specific type of crypto-assets. A second sub-category~~ of crypto-assets are 'asset-referenced tokens'. Such asset-referenced tokens aim at maintaining a stable value by referencing several **official** currencies ~~that are legal tender~~, one or several commodities, one or several crypto-assets, or a basket of such assets. ~~By stabilising their value, those asset-referenced tokens often aim at being used by their holders as a means of payment to buy goods and services and as a store of value.~~ A ~~third~~ **second** sub-category of crypto-assets are crypto-assets that ~~are intended primarily as a means of payment aim at stabilising their value by~~ referenc~~ing~~ only one official currency of a country. The function of such crypto-assets is very similar to the function of electronic money, as defined in in Article 2, point 2, of Directive 2009/110/EC of the European Parliament and of the Council~~-~~. Like electronic money, such crypto-assets are electronic surrogates for coins**,** ~~and~~ banknotes **and deposits** and are used for making payments **or as a store of value**. These crypto-assets are defined as 'electronic money tokens' or 'e-money tokens'. **The third sub-category are those crypto-assets that are not 'asset-referenced tokens' or 'e-money tokens', which include a wide variety of crypto-assetsincluding utility tokens.When they represent the purchase of a good or service or they may only be used in exchange for goods and services in a limited network of merchants, and they are not admitted to trading in a platform, the potential for financial use is very limited and therefore they should be exempted from most provisions of this Regulation.**

(10) **Currently,** ~~D~~despite their similarities, electronic money and crypto-assets referencing a single official currency of a country differ in some important aspects. Holders of electronic money as defined in Article 2, point 2, of Directive 2009/110/EC are always provided with a claim on the electronic money institution and have a contractual right to redeem their electronic money at any moment against an official currency of a country at par value with that currency. By contrast, some of the crypto-assets referencing one official currency of a country do not provide their holders with such a claim on the issuers of such assets and could fall outside the scope of Directive 2009/110/EC. Other crypto-asset referencing one official currency of a country do not provide a claim at par with the currency they are referencing or limit the redemption period. The fact that holders of such crypto-assets do not have a claim on the issuers of such assets, or that such claim is not at par with the currency those crypto-assets are referencing, could undermine the confidence of users of those crypto-assets. To avoid

circumvention of the rules laid down in Directive 2009/110/EC, any definition of 'e-money tokens' should be as wide as possible to capture all the types of crypto-assets referencing one single official currency of a country~~. To avoid regulatory arbitrage,~~ **and** strict conditions on the issuance of e-money tokens should be laid down, including the obligation for such e-money tokens to be issued either by a credit institution as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council, or by an electronic money institution authorised under Directive 2009/110/EC. For the same reason, issuers of such e-money tokens should also grant the users of such tokens with a claim to redeem their tokens at any moment and at par value against the currency referencing those tokens. Because e-money tokens are also crypto-assets and can also raise new challenges in terms of consumer protection and market integrity specific to crypto-assets, they should also be subject to rules laid down in this Regulation to address these challenges to consumer protection and market integrity.

(11) Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for issuers **and offerors** of crypto-assets ~~that should be any legal person who offers to the public any type of crypto-assets~~ **as well as** ~~or~~ **persons asking** ~~seeks~~ the admission of such crypto-assets to a trading platform for crypto-assets. **The publication of a bid and offer prices is not to be regarded in itself as an offer of crypto-assets to the public and is therefore not subject to the obligation to draw up a white paper under this Regulation. A white paper should only be required where such publication is accompanied by a communication constituting an 'offer to the public' as defined in this Regulation.**

Explanation

- **"Communication" is used as in the Prospectus Regulation**

(12) It is necessary to lay down specific rules for entities that provide services related to crypto-assets. A first category of such services consist of ensuring the operation of a trading platform for crypto-assets, exchanging crypto-assets against ~~official currencies of a country~~ **funds** or other crypto-assets by dealing on own account, and the service, on behalf of third parties, of ensuring the custody and administration of crypto-assets or ensuring the control of means to access such crypto-assets. A second category of such services are the placing of crypto-assets,

the reception or transmission of orders for crypto-assets, the execution of orders for crypto-assets on behalf of third parties, ~~and~~ the provision of advice on crypto-assets **and portfolio management**. Any person that provides such crypto-asset services on a professional basis should be considered as a 'crypto-asset service provider'.

(12a) This Regulation applies to natural and legal persons and the activities and services performed and provided by them. This Regulation covers the rights and obligations applicable to issuers and offerors of crypto-assets and to crypto-asset service providers. Where crypto-assets have no issuer or offeror, for example because they emerge on the market exclusively as the result of mining or the application of a computer protocol not under the control of an identifiable legal or natural person, the provisions of Titles II, III or IV do not apply. Crypto-asset services provided for such crypto-assets by service providers covered by Title V should be subject to this Regulation. Decentralised exchanges and other crypto-asset trading or custody activities that are not provided and controlled by a service provider do not constitute crypto-asset services covered by this Regulation.

Explanation

- **Drafting proposed (Recital X in WK 4351/2021) for the meeting 09/04; the Presidency will wait for comments to that meeting to update the recital.**

(13) To ensure that all offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, **which can potentially have a financial use,** in the Union, or all the admissions of ~~such~~ crypto-assets to trading on a trading platform for crypto-assets are properly monitored and supervised by competent authorities, all ~~issuers~~ **offerors or persons seeking admission to trading** of **those** crypto-assets should be legal entities.

Explanation

- **In line with the approach to reduce scope of Art 4 (offers) and increase scope of Art 4a (admission to trading)**

(14) In order to ensure ~~consumer~~ protection **of holders of crypto assets**, prospective ~~purchasers~~ **holders** of crypto-assets should be informed about the characteristics, functions and risks of crypto-assets they intend to purchase. When making a public offer of crypto-assets**, other than asset-referenced tokens or e-money tokens,** in the Union or when seeking admission of crypto-assets to trading on a trading platform for **such** crypto-assets, ~~issuers,~~ offerors or persons seeking admission to trading ~~of crypto-assets~~ should produce, notify to their competent authority and publish an information document ('a crypto-asset white paper') containing mandatory disclosures. Such crypto-asset white paper should contain general information if applicable on the issuer or the offeror or person seeking admission to trading, on the project to be carried out with the capital raised, on the public offer of crypto-assets or on their admission to trading on a trading platform for crypto-assets, on the rights and obligations attached to the crypto-assets, on the underlying technology used for such assets and on the related risks. The information contained in the crypto asset white paper **and marketing communication, including**~~,~~ advertising messages and marketing material, ~~including~~ **also** through new channels such as social media platforms, should be ~~accurate~~ **fair, clear** and not misleading. Advertising messages and marketing material should be consistent with the information provided in the crypto-asset white paper.

(14a) In order to ensure a proportionate approach, no requirements of this Regulation should apply to the offeror of crypto assets, other than asset-referenced tokens or e-money tokens, where the crypto-assets represent the purchase of an existing good or service, enabling the holder to collect the good or use the service, and where the holder of the crypto assets has the right to use them in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror. Such exceptions do not include crypto assets representing stored goods which are not meant to be collected by the purchaser following the purchase.

(15) In order to ensure a proportionate approach, the requirements to draw up and publish a crypto-asset white paper should not apply to offers of crypto-assets, other than asset-referenced tokens or e-money tokens, that are offered for free, or offers of crypto-assets that are exclusively offered to qualified investors as defined in Article 2, point (e), of Regulation (EU) 2017/1129 of the European Parliament and of the Council and can be exclusively held by such

qualified investors, or that, per Member State, are made to a small number of persons~~, or that are unique and not fungible with other crypto-assets~~. **Some requirements related to the conduct and organisation of the offeror remain, however, applicable.**

(16) Small and medium-sized enterprises and start-ups should not be subject to excessive administrative burdens. Offers to the public of crypto-assets**, other than asset-referenced tokens or e-money tokens,** in the Union that do not exceed an adequate aggregate threshold over a period of 12 months should therefore be exempted from the obligation to draw up a crypto-asset white paper. **Some requirements related to the conduct and organisation of the offeror remain, however, applicable.** ~~However~~ **Additionally**, EU horizontal legislation ensuring consumer protection, such as ~~Directive 2011/83/EU of the European Parliament and of the Council ,~~ Directive 2005/29/EC of the European Parliament and of the Council or the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts , including any information obligations contained therein, remain applicable to these offers to the public of crypto-assets where involving business-to-consumer relations.

Explanation

- **Directive 2011/83/EU does not apply financial services; referring it would be contradictory with the purpose of restricting the scope to financial like products/services**

(17) Where an offer to the public concerns utility tokens for a service that is not yet in operation, the duration of the public offer as described in the crypto-asset white paper shall not exceed twelve months. This limitation on the duration of the public offer is unrelated to the moment when the product or service becomes factually operational and can be used by the holder of a utility token after the end of the public offer.

(18) In order to enable supervision, ~~issuers~~ **offerors and persons seeking admission to trading** of crypto-assets**, other than asset-referenced tokens or e-money tokens,** should, before any public offer of crypto-assets in the Union or before those crypto-assets are admitted to trading on a trading platform for crypto-assets, notify their crypto-asset white paper and, where applicable, their marketing communications, to the competent authority of the Member State

where they have their registered office or a branch. Issuers that are established in a third country should notify their crypto-asset white paper, and, where applicable, their marketing communication, to the competent authority of the Member State where the crypto-assets are intended to be offered or where the admission to trading on a trading platform for crypto-assets is sought in the first place.

(19) Undue administrative burdens should be avoided. Competent authorities should therefore not be required to approve a crypto-asset white paper before its publication. Competent authorities should, however, after publication, have the power to request that additional information is included in the crypto-asset white paper, and, where applicable, in the marketing communications.

(20) **Competent authorities are expected to verify the classification of the crypto asset as proposed by the offeror or person seeking admission to trading.** Competent authorities should be able to suspend or prohibit a public offer of crypto-assets**, other than asset-referenced tokens or e-money tokens,** or the admission of such crypto-assets to trading on a trading platform for crypto-assets where such an offer to the public or an admission to trading does not comply with the applicable requirements**, including when the white paper or the marketing communications are not fair, not clear or are misleading**. Competent authorities should also have the power to publish a warning that an issuer has failed to meet those requirements, either on its website or through a press release.

Explanation

- **To state the expectation that Competent Authorities should assess the classification of the crypto asset and to refer to the possibility of exercising powers**

(21) Crypto-asset white papers and, where applicable, marketing communications that have been duly notified to a competent authority should be published, after which **offerors and persons seeking admission to trading** ~~issuers~~ of crypto-assets**, other than asset-referenced tokens or e-money tokens,** should be allowed to offer their crypto-assets throughout the Union and to seek admission for trading such crypto-assets on a trading platform for crypto-assets.

(21a) ~~Issuers~~ **Offerors** of crypto-assets, other than asset-referenced tokens or e-money tokens, shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets raised. These arrangements shall also ensure that any funds or other crypto-assets collected from ~~purchasers~~ **holders** or potential **holders** ~~purchasers~~ are duly returned as soon as possible, where an offer to the public **that is time limited** is cancelled for any reason or where a ~~consumer~~ **retail holder** exercises a right of withdrawal.

(22) In order to further ensure ~~consumer~~ protection **of retail holders of crypto assets**, ~~the consumers~~ **retail holders** who are acquiring crypto-assets, other than asset-referenced tokens or e-money tokens, directly from the issuer or from a crypto-asset service provider placing the crypto-assets on behalf of the issuer should be provided with a right of withdrawal during a limited period of time after their acquisition. Furthermore, the right of withdrawal should not apply where the crypto-assets, other than asset-referenced tokens or e-money tokens, are admitted to trading on a trading platform for crypto-assets, as, in such a case, the price of such crypto-assets would depend on the fluctuations of crypto-asset markets.

(23) ~~Even where exempted from the obligation to publish a crypto-asset white paper, all issuers~~ **Offerors and persons seeking admission to trading** of crypto-assets, other than asset-referenced tokens or e-money tokens, should act honestly, fairly and professionally, should communicate with holders of crypto-assets in a fair, clear and truthful manner, should identify, prevent, manage and disclose conflicts of interest, should have effective administrative arrangements to ensure that their systems and security protocols meet Union standards. In order to assist competent authorities in their supervisory tasks, the European Securities and Markets Authority (ESMA), in close cooperation with the European Banking Authority (EBA) should be mandated to publish guidelines on those systems and security protocols in order to further specify these Union standards.

(24) To further protect holders of crypto-assets, civil liability rules should apply to crypto-asset issuers and their management body for the information provided to the public through the crypto-asset white paper.

(25) Asset-referenced tokens aim at stabilising their value by reference to several official currencies of a country, to one or more commodities, to one or more other crypto-assets, or to a basket of such assets. They could therefore be widely adopted by users to transfer value or as a means of payments and thus pose increased risks in terms of ~~consumer~~ protection **of holders of crypto assets, in particular consumers,** and market integrity compared to other crypto-assets. Issuers of asset-referenced tokens should therefore be subject to more stringent requirements than issuers of other crypto-assets.

(26) So-called algorithmic 'stablecoins' that aim at maintaining a stable value **in relation to an official currency of a country or to one or several assets**, via protocols, that provide for the increase or decrease of the supply of such crypto-assets in response to changes in demand should ~~not~~ be considered **e-money tokens or** ~~as~~ asset-referenced tokens, provided that they **are captured by the asset referenced tokens or e-money tokens definitions** ~~do not aim at stabilising their value by referencing one or several other assets~~.

Explanation

- **The recital is unclear when describing a stablecoin which would not fall under MICA scope: it would have "to aim at maintaining a stable value [to one or several assets – one assumes]" while "not aim at stabilising their value by referencing one or several other assets"**
- **It is preferable to clearly state that crypto assets whose design does not comply with MICA rules for ART or EMT would need to adapt to MICA if they are captured by the definition of ART or EMT**

(27) To ensure the proper supervision and monitoring of offers to the public of asset-referenced tokens, issuers of asset-referenced tokens should have a registered office in the Union.

(28) Offers to the public of asset-referenced tokens in the Union or seeking an admission of such crypto-assets to trading on a trading platform for crypto-assets should be possible only where the competent authority has authorised the issuer of such crypto-assets and approved the crypto-asset white paper regarding such crypto-assets. The authorisation requirement should however not apply where the asset-referenced tokens are only offered to qualified investors,

or when the offer to the public of asset-referenced tokens is below a certain threshold. **The verification of compliance with such threshold should be made with a 12 months average, using the aggregated value of outstanding tokens at the end of each day contributing to the average.**

Explanation

- **Clarification of calculation methodology**

(28a) Credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council[1] should not need another authorisation under this Regulation in order to issue asset-referenced tokens. National procedures established under the transposition of Directive 2013/36/EU would apply complemented by a requirement to notify the respective competent authority with elements enabling it to verify their ability to issue ARTs. In the case of credit institutions authorised under Directive 2013/36/EU, the issuer of such asset-referenced tokens would still be subject to all remaining MiCA applicable requirements without prejudice of targeted exceptions, and should be still required to produce a crypto-asset white paper to inform buyers about the characteristics and risks of such asset-referenced tokens and to subject it to the approval of the relevant competent authority, before publication. The relevant administrative powers provided in Directive 2013/36/EU and in this regulation, as implemented in national law, including the power to restrict or limit a credit institution's business and the powers to suspend or prohibit an offer to the public, would also be applicable.

Explanation

- **Split to avoid having an excessively large recital**
- **This recital is presented as proposed in WK 3406/2021**

[1] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(29) A competent authority should refuse authorisation where the prospective issuer of asset-referenced tokens' business model may pose a serious threat to financial stability, monetary policy transmission ~~and~~ monetary sovereignty **and market integrity**. The competent authority should consult the EBA and ESMA and, where the asset-referenced tokens is referencing Union currencies, the European Central Bank (ECB) and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation. The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent authority with a**n** ~~non-binding~~ opinion on the prospective issuer's application. **Competent authorities should refuse authorisation when the ECB or a national central bank gives a negative opinion on grounds of smooth operation of payment systems, monetary policy transmission, or monetary sovereignty. Competent authorities should also refuse authorisation when the EBA gives a negative opinion to a asset-referenced token which would be significant if authorised.** Where authorising a prospective issuer of asset-referenced tokens, the competent authority should also approve the crypto-asset white paper produced by that entity. The authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer such crypto-assets in the Single Market and to seek an admission to trading on a trading platform for crypto-assets. In the same way, the crypto-asset white paper should also be valid for the entire Union, without possibility for Member States to impose additional requirements.

(30) To ensure consumer protection, issuers of asset-referenced tokens should always provide holders of asset-referenced tokens with clear, fair and not misleading information. The crypto-asset white paper on asset-referenced tokens should include information on the stabilisation mechanism, on the investment policy of the reserve assets, on the custody arrangements for the reserve assets, and on the rights provided to holders. Where the issuers of asset-referenced tokens do not offer a direct claim or redemption right on the reserve assets to all the holders of such asset-referenced tokens, the crypto-asset white paper related to asset-referenced tokens should contain a clear and unambiguous warning in this respect. Marketing communications of an issuer of asset-referenced tokens should also include the same statement, where the issuers do not offer such direct rights to all the holders of asset-referenced tokens.

(31) In addition to information included in the crypto-asset white paper, issuers of asset-referenced tokens should also provide holders of such tokens with information on a continuous basis. In particular, they should disclose the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets, on at least a ~~monthly~~ **weekly** basis, on their website. Issuers of asset-referenced tokens should also disclose any event that is likely to have a significant impact on the value of the asset-referenced tokens or on the reserve assets, irrespective of whether such crypto-assets are admitted to trading on a trading platform for crypto-assets.

(32) To ensure consumer protection, issuers of asset-referenced tokens should always act honestly, fairly and professionally and in the best interest of the holders of asset-referenced tokens. Issuers of asset-referenced tokens should also put in place a clear procedure for handling the complaints received from the holders of crypto-assets.

(33) Issuers of asset-referenced tokens should put in place a policy to identify, manage and potentially disclose conflicts of interest which can arise from their relations with their managers, shareholders, clients or third-party service providers.

(34) Issuers of asset-referenced tokens should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or might be exposed. The management body of such issuers and their shareholders should have good repute and sufficient expertise and be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. Issuers of asset-referenced tokens should also employ resources proportionate to the scale of their activities and should always ensure continuity and regularity in the performance of their activities. For that purpose, issuers of asset-referenced tokens should establish a business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the performance of their core payment activities. Issuers of asset-referenced tokens should also have a strong internal control and risk assessment mechanism, as well as a system that guarantees the integrity and confidentiality of information received.

(35) Issuers of asset-referenced tokens are usually at the centre of a network of entities that ensure the issuance of such crypto-assets, their transfer and their distribution to holders. Issuers of asset-referenced tokens should therefore be required to establish and maintain appropriate contractual arrangements with those third-party entities ensuring the stabilisation mechanism and the investment of the reserve assets backing the value of the tokens, the custody of such reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public.

(36) To address the risks to financial stability of the wider financial system, issuers of asset-referenced tokens should be subject to capital requirements. Those capital requirements should be proportionate to the issuance size of the asset-referenced tokens and therefore calculated as a percentage of the reserve of assets that back the value of the asset-referenced tokens. Competent authorities should however be able to increase or decrease the amount of own fund requirements required on the basis of, inter alia, the evaluation of the risk-assessment mechanism of the issuer, the quality and volatility of the assets in the reserve backing the asset-referenced tokens or the aggregate value and number of asset-referenced tokens.

(37) In order to ~~stabilise~~ **cover their liability** ~~the value of their asset-referenced tokens~~, issuers of asset-referenced tokens should constitute and maintain a reserve of assets ~~backing~~ **matching the risks reflected in such liability** ~~those crypto-assets at all times~~. **Such reserve serves the function of collateralising the issuer liabilities against holders of asset-referenced token.** Issuers of asset-referenced tokens should ensure the prudent management of such a reserve of assets and should in particular ensure that the ~~creation~~ **issuance** and ~~destruction~~ **redemption** of asset-referenced tokens are always matched by a corresponding increase or decrease in the reserve assets and that such increase or decrease is adequately managed to avoid adverse impacts on the market of the reserve assets. Issuers of asset-~~backed~~ **referenced tokens** ~~crypto-assets~~ should therefore establish, maintain and detail policies that describe, inter alia, the composition of the reserve assets, the allocation of assets, the comprehensive assessment of the risks raised by the reserve assets, the procedure for the ~~creation~~ **issuance** and **redemption** ~~destruction~~ of the asset-referenced tokens, the procedure to **increase and**

decrease ~~purchase and redeem the asset-referenced tokens against~~ the reserve assets and, where the reserve assets are invested, the investment policy that is followed by the issuer.

Explanation

- **Drafting different from the proposal in the discussion note (WK 3403/2021) to avoid repetition/overlap in the last sentence**

(38) To prevent the risk of loss for asset-referenced tokens and to preserve the value of those assets issuers of asset-referenced tokens should have an adequate custody policy for reserve assets. That policy should ensure that the reserve assets are entirely segregated from the issuer's own assets at all times, that the reserve assets are not encumbered or pledged as collateral, and that the issuer of asset-referenced tokens has prompt access to those reserve assets. The reserve assets should, depending on their nature, be kept in custody either by a credit institution within the meaning of Regulation (EU) No 575/2013 or by an authorised crypto-asset service provider. Credit institutions or crypto-asset service providers that keep in custody the reserve assets that back the asset-referenced tokens should be responsible for the loss of such reserve assets vis-à-vis the issuer or the holders of asset-referenced tokens, unless they prove that such loss has arisen from an external event beyond reasonable control.

(39) To protect holders of asset-referenced tokens against a decrease in value of the assets backing the value of the tokens, issuers of asset-referenced tokens should invest the reserve assets in secure, low risks assets with minimal market and credit risk. As the asset-referenced tokens can be used as a means of payment, all profits or losses resulting from the investment of the reserve assets should be borne by the issuer of the asset-referenced tokens.

(40) **Issuer of asset-referenced tokens shall provide redemption rights on the issuer.** Some asset-referenced tokens may offer all their holders **additional** rights, such as **a permanent** redemption right~~s or claims on the reserve assets~~ or on the issuer, while other asset-referenced tokens may not grant such **additional** rights to all their holders ~~and may limit the right of redemption to specific holders~~. Any rules regarding asset-referenced tokens should be flexible enough to capture all those situations. Issuers of asset-referenced tokens should therefore inform the holders of asset-referenced tokens on whether they are provided with a ~~direct~~

permanent redemption right ~~claim~~ on the issuer ~~or redemption rights~~. Where issuers of asset-referenced tokens grant **permanent redemption** ~~direct~~ rights on the issuer ~~or on the reserve assets~~ to all the holders, the issuers should precisely set out the conditions under which such rights can be exercised. Where issuers of asset-referenced tokens restrict such **permanent redemption** ~~direct~~ rights on the issuer ~~or on the reserve assets~~ to a limited number of holders of asset-referenced tokens, the issuers should still offer minimum rights to all the holders of asset-referenced tokens. Issuers of asset-referenced tokens should ensure the liquidity of those tokens by concluding and maintaining adequate liquidity arrangements with crypto-asset service providers that are in charge of posting firm quotes on a predictable basis to buy and sell the asset-referenced tokens against ~~an official currency of a country~~ **funds**. Where the value of the asset-referenced tokens varies significantly from the value of the reserve assets, the holders of asset-referenced tokens should have a right to request the redemption of their asset-referenced tokens ~~against reserve assets~~ directly from the issuer. Issuers of asset-referenced tokens that voluntarily stop their operations or that are orderly wound-down should have contractual arrangements in place to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens.

(41) To ensure that asset-referenced tokens are mainly used as a means of exchange and not as a store of value, issuers of asset-referenced tokens, and any crypto-asset service providers, should not grant interests to users of asset-referenced tokens for time such users are holding those asset-referenced tokens. Some asset-referenced tokens and e-money tokens should be considered significant due to the potential large customer base of their promoters and shareholders, their potential high market capitalisation, the potential size of the reserve of assets backing the value of such asset-referenced tokens or e-money tokens, the potential high number of transactions, the potential interconnectedness with the financial system or the potential cross-border use of such crypto-assets. Significant asset-referenced tokens or significant e-money tokens, that could be used by a large number of holders and which could raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty, should be subject to more stringent requirements than other asset-referenced tokens or e-money tokens.

(42) Due to their large scale, significant asset-referenced tokens can pose greater risks to financial stability than other crypto-assets and asset-referenced tokens with more limited issuance. Issuers of significant asset-referenced tokens should therefore be subject to more stringent requirements than issuers of other crypto-assets or asset-referenced tokens with more limited issuance. They should in particular be subject to higher capital requirements, to interoperability requirements and they should establish a liquidity management policy.

(43) Issuers of asset-referenced tokens should have a~~n orderly wind-down~~ plan **for the orderly redemption of the tokens** to ensure that the rights of the holders of the asset-referenced tokens are protected where issuers of asset-referenced tokens ~~stop~~ **are not able to comply with their obligations** ~~their operations or when they are orderly winding down their activities according to national insolvency laws~~.

(44) Issuers of e-money tokens should be authorised either as a credit institution under Directive 2013/36/EU or as an electronic money institution under Directive 2009/110/EC and they should comply with the relevant operational requirements of Directive 2009/110/EC, unless specified otherwise in this Regulation. Issuers of e-money tokens should produce a crypto-asset white paper and notify it to their competent authority. Where the issuance of e-money tokens is below a certain threshold or where e-money tokens can be exclusively held by qualified investors, issuers of such e-money tokens should not be subject to the authorisation requirements. However, issuers should always draw up a crypto-asset white paper and notify it to their competent authority.

(45) Holders of e-money tokens should be provided with a claim on the issuer of the e-money tokens concerned. Holders of e-money tokens should always be granted with a redemption right at par value with the official currency of a country that the e-money token is referencing and at any moment. Issuers of e-money tokens should be allowed to apply a fee, where holders of e-money tokens are asking for the redemptions of their tokens for the official currency of a country. Such a fee should be proportionate to the actual costs incurred by the issuer of electronic money tokens.

(46) Issuers of e-money tokens, and any crypto-asset service providers, should not grant interests to holders of e-money tokens for the time such holders are holdings those e-money tokens.

(47) The crypto-asset white paper produced by an issuer of e-money tokens should contain all the relevant information concerning that issuer and the offer of e-money tokens or their admission to trading on a trading platform for crypto-assets that is necessary to enable potential buyers to make an informed purchase decision and understand the risks relating to the offer of e-money tokens. The crypto-asset white paper should also explicitly indicate that holders of e-money tokens are provided with a claim in the form of a right to redeem their e-money tokens against an official currency of a country at par value and at any moment.

(48) Where an issuer of e-money tokens invests the funds received in exchange for e-money tokens, such funds should be invested in assets denominated in the same currency as the one that the e-money token is referencing to avoid cross-currency risks.

(49) Significant e-money tokens can pose greater risks to financial stability than non-significant e-money tokens and traditional electronic money. Issuers of such significant e-money tokens should therefore be subject to additional requirements. Issuers of e-money tokens should in particular be subject to higher capital requirements than other e-money token issuers, to interoperability requirements and they should establish a liquidity management policy. Issuers of e-money tokens should also comply with certain requirements applying to issuers of asset-referenced tokens, such as custody requirements for the reserve assets, investment rules for the reserve assets and the obligation to establish an orderly wind-down plan.

(50) Crypto-asset services should only be provided by legal entities that have a registered office in a Member State and that have been authorised as a crypto-asset service provider by the competent authority of the Member State where its registered office is located.

(51) This Regulation should not affect the possibility for persons established in the Union to receive crypto-asset services by a third-country firm at their own initiative. Where a third-country firm provides crypto-asset services at the own initiative of a person established in the Union, the crypto-asset services should not be deemed as provided in the Union. Where a

third-country firm solicits clients or potential clients in the Union or promotes or advertises crypto-asset services or activities in the Union, it should not be deemed as a crypto-asset service provided at the own initiative of the client. In such a case, the third-country firm should be authorised as a crypto-asset service provider.

(52) Given the relatively small scale of crypto-asset service providers to date, the power to authorise and supervise such service providers should be conferred to national competent authorities. The authorisation should be granted, refused or withdrawn by the competent authority of the Member State where the entity has its registered office. Such an authorisation should indicate the crypto-asset services for which the crypto-asset service provider is authorised and should be valid for the entire Union.

(53) To facilitate transparency for holders of crypto-assets as regards the provision of crypto-asset services, ESMA should establish a register of crypto-asset service providers, which should include information on the entities authorised to provide those services across the Union. That register should also include the crypto-asset white papers notified to competent authorities and published by issuers of crypto-assets.

(54) Some firms subject to Union legislation on financial services should be allowed to provide crypto-asset services without prior authorisation. Credit institutions authorised under Directive 2013/36/EU should not need another authorisation to provide crypto-asset services. Investment firms authorised under Directive 2014/65/EU to provide one or several investment services as defined under that Directive similar to the crypto-asset services they intend to provide should also be allowed to provide crypto-asset services across the Union without another authorisation.

(55) In order to ensure consumer protection, market integrity and financial stability, crypto-asset service providers should always act honestly, fairly and professionally in the best interest of their clients. Crypto-asset services should be considered ‘financial services’ as defined in Directive 2002/65/EC of the European Parliament and of the Council . Where marketed at distance, the contracts between crypto-asset service providers and consumers should be subject to that Directive. Crypto-asset service providers should provide their clients with

clear, fair and not misleading information and warn them about the risks associated with crypto-assets. Crypto-asset service providers should make their pricing policies public, should establish a complaint handling procedure and should have a robust policy to identify, prevent, manage and disclose conflicts of interest.

(56) To ensure consumer protection, crypto-asset service providers should comply with some prudential requirements. Those prudential requirements should be set as a fixed amount or in proportion to their fixed overheads of the preceding year, depending on the types of services they provide.

(57) Crypto-asset service providers should be subject to strong organisational requirements. Their managers and main shareholders should be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. Crypto-asset service providers should employ management and staff with adequate skills, knowledge and expertise and should take all reasonable steps to perform their functions, including through the preparation of a business continuity plan. They should have sound internal control and risk assessment mechanisms as well as adequate systems and procedures to ensure integrity and confidentiality of information received. Crypto-asset service providers should have appropriate arrangements to keep records of all transactions, orders and services related to crypto-assets that they provide. They should also have systems in place to detect potential market abuse committed by clients.

(58) In order to ensure consumer protection, crypto-asset service providers should have adequate arrangements to safeguard the ownership rights of clients' holdings of crypto-assets. Where their business model requires them to hold funds as defined in Article 4, point (25), of Directive (EU) 2015/2366 of the European Parliament and of the Council in the form of banknotes, coins, scriptural money or electronic money belonging to their clients, crypto-asset service providers should place such funds with a credit institution or a central bank. Crypto-assets service providers should be authorised to make payment transactions in connection with the crypto-asset services they offer, only where they are authorised as payment institutions in accordance with Directive (EU) 2015/2366.

(59) Depending on the services they provide and due to the specific risks raised by each type of services, crypto-asset service providers should be subject to requirements specific to those services. Crypto-asset service providers providing the service of custody and administration of crypto-assets on behalf of third parties should have a contractual relation with their clients with mandatory contractual provisions and should establish and implement a custody policy. Those crypto-asset service providers should also be held liable for any damages resulting from an ICT-related incident, including an incident resulting from a cyber-attack, theft or any malfunctions.

(60) To ensure an orderly functioning of crypto-asset markets, crypto-asset service providers operating a trading platform for crypto-assets should have detailed operating rules, should ensure that their systems and procedures are sufficiently resilient and should be subject to pre-trade and post-trade transparency requirements adapted to the crypto-asset market. Crypto-asset service providers should ensure that the trades executed on their trading platform for crypto-assets are settled and recorded on the DLT swiftly. Crypto-asset service providers operating a trading platform for crypto-assets should also have a transparent fee structure for the services provided to avoid the placing of orders that could contribute to market abuse or disorderly trading conditions.

(61) To ensure consumer protection, crypto-asset service providers that exchange crypto-assets against an official currencies of a country or other crypto-assets by using their own capital should establish a non-discriminatory commercial policy. They should publish either firm quotes or the method they are using for determining the price of crypto-assets they wish to buy or sell. They should also be subject to post-trade transparency requirements. Crypto-asset service providers that execute orders for crypto-assets on behalf of third parties should establish an execution policy and should always aim at obtaining the best result possible for their clients. They should take all necessary steps to avoid the misuse of information related to clients' orders by their employees. Crypto-assets service providers that receive orders and transmit those orders to other crypto-asset service providers should implement procedures for the prompt and proper sending of those orders. Crypto-assets service providers should not receive any monetary or non-monetary benefits for transmitting those orders to any particular trading platform for crypto-assets or any other crypto-asset service providers.

(62) Crypto-asset service providers that place crypto-assets for potential users should communicate to those persons information on how they intend to perform their service before the conclusion of a contract. They should also put in place specific measures to prevent conflicts of interest arising from that activity.

(63) To ensure consumer protection, crypto-asset service providers that provide advice on crypto-assets, either at the request of a third party or at their own initiative, should make a preliminary assessment of their clients' experience, knowledge, objectives and ability to bear losses. Where the clients do not provide information to the crypto-asset service providers on their experience, knowledge, objectives and ability to bear losses, or it is clear that those clients do not have sufficient experience or knowledge to understand the risks involved, or the ability to bear losses, crypto-asset service providers should warn those clients that the crypto-asset or the crypto-asset services may not be suitable for them. When providing advice, crypto-asset service providers should establish a report, summarising the clients' needs and demands and the advice given.

(64) It is necessary to ensure users' confidence in crypto-asset markets and market integrity. It is therefore necessary to lay down rules to deter market abuse for crypto-assets that are admitted to trading on a trading platform for crypto-assets. However, as issuers of crypto-assets and crypto-asset service providers are very often SMEs, it would be disproportionate to apply all the provisions of Regulation (EU) No 596/2014 of the European Parliament and of the Council to them. It is therefore necessary to lay down specific rules prohibiting certain behaviours that are likely to undermine users' confidence in crypto-asset markets and the integrity of crypto-asset markets, including insider dealings, unlawful disclosure of inside information and market manipulation related to crypto-assets. These bespoke rules on market abuse committed in relation to crypto-assets should be applied, where crypto-assets are admitted to trading on a trading platform for crypto-assets.

(65) Competent authorities should be conferred with sufficient powers to supervise the issuance of crypto-assets, including asset-referenced tokens or e-money tokens, as well as crypto-asset service providers, including the power to suspend or prohibit an issuance of crypto-assets or

the provision of a crypto-asset service, and to investigate infringements of the rules on market abuse.

(65a) **Competent authorities should also have the power to impose** ~~sanctions~~ **penalties on issuers, offerors or persons seeking admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, and crypto-asset service providers.** Competent authorities, when determining the type and level of an administrative penalty or other administrative measures to be imposed, shall take into account ~~the extent to which the infringement is intentional or results from negligence and~~ all ~~other~~ relevant circumstances. ~~The EBA, when adopting a decision imposing a fine, shall also take into account the nature and seriousness of the infringement~~. ~~For these purposes, an infringement shall be considered to have been committed intentionally if the competent authorities or the EBA find objective factors which demonstrate that such an issuer or its management body acted deliberately to commit the infringement.~~

Explanation

- **Part moved from recital 65b**
- **Aligned with amendment introduced in Art 93**
- **Moved to recital 70 topics related to EBA**

(65b) Given the cross-border nature of crypto-asset markets, competent authorities should cooperate with each other to detect and deter any infringements of the legal framework governing crypto-assets and markets for crypto-assets. ~~Competent authorities should also have the power to impose sanctions on issuers of crypto-assets, including asset-referenced tokens or e-money tokens and crypto-asset service providers.~~

(66) Significant asset-referenced tokens can be used as a means of exchange and to make large volumes of payment transactions on a cross-border basis. To avoid supervisory arbitrage across Member States, it is appropriate to assign to the EBA the task of supervising the issuers of significant asset-referenced tokens, once such asset-referenced tokens have been classified as significant.

(67) ~~The EBA should establish a college of supervisors for issuers of significant asset-referenced tokens . Those issuers are usually at the centre of a network of entities that ensure the issuance of such crypto-assets, their transfer and their distribution to holders. The members of the college of supervisors should therefore include all the competent authorities of the relevant entities and crypto-asset service providers that ensure, among others, the custody of the reserve assets, the operation of trading platforms for crypto-assets where the significant asset-referenced tokens are admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant asset-referenced tokens on behalf of holders. The college of supervisors should facilitate the cooperation and exchange of information among its members and should issue non-binding opinions on supervisory measures or changes in authorisation concerning the issuers of significant asset-referenced tokens or on the relevant entities providing services or activities in relation to the significant asset-referenced tokens~~.

Explanation

- **Merged with recital 69**

(68) Competent authorities in charge of supervision under Directive 2009/110/EC should supervise issuers of e-money tokens. However, given the potential widespread use of significant e-money tokens as a means of payment and the risks they can pose to financial stability, a dual supervision by both competent authorities and the EBA of issuers of significant e-money tokens is necessary. The EBA should supervise the compliance by issuers of significant e-money tokens with the specific additional requirements set out in this Regulation for significant e-money tokens.

(69) The EBA should establish a college of supervisors for issuers of significant **asset-referenced tokens and** e-money tokens. Issuers of significant **asset-referenced tokens and** e-money tokens are usually at the centre of a network of entities which ensure the issuance of such crypto-assets, their transfer and their distribution to holders **of crypto-assets**. The members of the college of supervisors for issuers of significant **asset-referenced tokens and** e-money tokens should therefore include all the competent authorities of the relevant entities and crypto-asset service providers that ensure, among others, the operation of trading platforms for crypto-assets where the significant **asset-referenced tokens and** e-money tokens are

admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant **asset-referenced tokens and** e-money tokens on behalf of holders. The college of supervisors for issuers of significant **asset-referenced tokens and** e-money tokens should facilitate the cooperation and exchange of information among its members and should issue non-binding opinions on changes in authorisation or supervisory measures concerning the issuers of significant **asset-referenced tokens and** e-money tokens ~~or on the relevant entities providing services or activities in relation to those significant e-money tokens~~.

Explanation

- **The college does not issue opinions on CASPs supervision**

(70) To supervise the issuers of significant asset-referenced tokens **and e-money tokens**, the EBA should have the powers, among others, to carry out on-site inspections, take supervisory measures and impose fines. ~~The EBA should also have powers to supervise the compliance of issuers of significant e-money tokens with additional requirements set out in this Regulation~~. **The EBA, when adopting a decision imposing a fine, shall also take into account the nature and seriousness of the infringement. For these purposes, an infringement shall be considered to have been committed intentionally if the EBA finds objective factors which demonstrate that such an issuer or its management body acted deliberately to commit the infringement.**

Explanation

- **Despite the dual supervision on EMT, EBA supervisory powers apply equally to EMT and ART**
- **Moved from recital 65a as they are related to EBA powers; the clarification as regards intentionally is restricted to EBA; as regards NCA it should be national law**

(71) The EBA should charge fees on issuers of significant asset-referenced tokens and issuers of significant e-money tokens to cover its costs, including overheads. For issuers of significant asset-referenced tokens, the fee should be proportionate to the size of their reserve assets. For

issuers of significant e-money tokens, the fee should be proportionate to the amount of funds received in exchange for the significant e-money tokens.

(72) In order to ensure the uniform application of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the modifications of the definitions set out in this Regulation in order to adapt them to market and technological developments, to specify the criteria and thresholds to determine whether an asset-referenced token or an e-money token should be classified as significant and to specify the type and amount of fees that can be levied by EBA for the supervision of issuers of significant asset-referenced tokens or significant e-money tokens. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making . In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(73) In order to promote the consistent application of this Regulation, including adequate protection of ~~investors~~ **holders of crypto-assets and clients of crypto-assets service providers, in particular when they are** ~~and~~ consumers**,** across the Union, technical standards should be developed. It would be efficient and appropriate to entrust the EBA and ESMA, as bodies with highly specialised expertise, with the development of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.

(74) The Commission should be empowered to adopt regulatory technical standards developed by the EBA and ESMA with regard to the procedure for approving crypto-asset white papers produced by credit institutions when issuing asset-referenced tokens, the information to be provided in an application for authorisation as an issuer of asset-referenced tokens, the methodology for the calculation of capital requirements for issuers of asset-referenced tokens, governance arrangements for issuers of asset-referenced tokens, the information necessary for

the assessment of a qualifying holdings in an asset-referenced token issuer's capital, the procedure of conflicts of interest established by issuers of asset-referenced tokens, the type of assets which the issuers of asset-referenced token can invest in, the obligations imposed on crypto-asset service providers ensuring the liquidity of asset-referenced tokens, the complaint handling procedure for issuers of asset-referenced tokens, **the pre and post transparency requirements on trading platforms,** the functioning of the college of supervisors for issuers of significant asset-referenced tokens and issuers of significant e-money tokens, the information necessary for the assessment of qualifying holdings in the crypto-asset service provider's capital, the exchange of information between competent authorities, the EBA and ESMA under this Regulation and the cooperation between the competent authorities and third countries. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council and Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

(75) The Commission should be empowered to adopt implementing technical standards developed by the EBA and ESMA, with regard to machine readable formats for crypto-asset white papers, the standard forms, templates and procedures for the application for authorisation as an issuer of asset-referenced tokens, the standard forms and template for the exchange of information between competent authorities and between competent authorities, the EBA and ESMA. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010 and Article 15 of Regulation (EU) No 1095/2010.

(76) Since the objectives of this Regulation, namely to address the fragmentation of the legal framework applying to issuers of crypto-assets and crypto-asset service providers and to ensure the proper functioning of crypto-asset markets while ensuring ~~investor~~ protection **of holders of crypto-assets and clients of crypto-assets service providers, in particular consumers**, market integrity and financial stability cannot be sufficiently achieved by the Member States but can rather, be better achieved at Union level by creating a framework on which a larger cross-border market for crypto-assets and crypto-asset service providers could develop, the Union may adopt measures, in accordance with the principle of subsidiarity as

set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(77) In order to avoid disrupting market participants that provide services and activities in relation to crypto-assets that have been issued before the entry into force of this Regulation, issuers of such crypto-assets should be exempted from the obligation to publish a crypto-asset white paper and other applicable requirements. However, those transitional provisions should not apply to issuers of asset-referenced tokens, issuers of e-money tokens or to crypto-asset service providers that, in any case, should receive an authorisation as soon as this Regulation enters into application.

(78) Whistleblowers can bring new information to the attention of competent authorities which helps them in detecting infringements of this Regulation and imposing penalties. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to actual or potential infringements of this Regulation and to protect them from retaliation. This should be done by amending Directive (EU) 2019/1937 of the European Parliament and of the Council in order to make it applicable to breaches of this Regulation.

(79) The date of application of this Regulation should be deferred by 18 months in order to allow for the adoption of regulatory technical standards, implementing technical standards and delegated acts that are necessary to specify certain elements of this Regulation.

TITLE I

Subject Matter, Scope and Definitions

Article 1

Subject matter

This Regulation lays down uniform rules for the following:

(a) transparency and disclosure requirements for the issuance, offer to the public and the admission to trading of crypto-assets;

(b) the authorisation and supervision of crypto-asset service providers and issuers of asset-referenced tokens and issuers of electronic money tokens;

(c) the operation, organisation and governance of issuers of asset-referenced tokens, issuers of electronic money tokens and crypto-asset service providers;

(d) ~~consumer~~ protection **of** ~~rules for~~ **holders of crypto-assets in** the issuance, offering to the public **and**~~,~~ **admission to** trading**;**

(da) protection of clients of~~, exchange and custody of~~**t** crypto-assets **service providers**;

Explanation

- **To avoid naming only some of the CA services**

(e) measures to prevent market abuse to ensure the integrity of crypto-asset markets.

Article 2

Scope

1. This Regulation applies to legal and natural persons that are engaged in the issuance, offer to the public and the admission to trading of crypto-assets or provide services related to crypto-assets in the Union.

2. However, this Regulation does not apply to crypto-assets that qualify as:

(a) financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU;

(b)

(c) deposits as defined in Article 2(1), point (3), of Directive 2014/49/EU of the European Parliament and of the Council**, including structured deposits as defined in Article 4(1), point (43), of Directive 2014/65/EU**;

Explanation

- **Some MS asked the (re)introduction of structured deposits; to avoid overlap between exclusions, and since structured deposits are a subset of deposits, the Presidency proposes to include it as an example of deposits**

(ca) funds, other than e-money tokens, included in a payments account as defined in Article 4 (12) of Directive 2015/2366/EU;

Explanation

- **An exclusion of payments accounts is introduced but excluding the possibility of those accounts having EMT (otherwise EMI/PI would be providing custody services without CASP license)**

(d)

(e) securitisation positions in the context of a securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402 of the European Parliament and of the Council~~.~~**;**

(f) non-life or life insurance products as listed in Annex I and II to Directive 2009/138/EC or reinsurance and retrocession contracts pursuant to the reinsurance or retrocession activities referred to in Directive 2009/138/EC;

(g) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;

(h) officially recognised occupational pension schemes within the scope of Directive (EU) 2016/2341 or Directive 2009/138/EC;

(i) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

Explanation

- **Following MS comments the Presidency proposes to include specific exclusions for insurance and pension products; the proposal on pension products is inspired on PRIPPs Regulation.**

3. This Regulation does not apply to the following entities and persons:

(a) the European Central Bank, national central banks of the Member States when acting in their capacity as monetary authority or other public authorities;

(b)

(c) a liquidator or an administrator acting in the course of an insolvency procedure, except for the purpose of Article 42;

(d) persons who provide crypto-asset services exclusively for their parent companies, for their subsidiaries or for other subsidiaries of their parent companies;

(e) the European investment bank;

(f) the European Financial Stability Facility and the European Stability Mechanism;

(g) public international organisations.

4. ~~Where issuing asset-referenced tokens, including significant asset-referenced tokens, credit institutions authorised under Directive 2013/36/EU shall not be subject to:~~

(a) ~~the provisions of chapter I of Title III, except Articles 15 Paragraph 4, 17, 21 and 22;~~

(b) ~~Article 31.~~

5. ~~Where providing one or more crypto-asset services, credit institutions authorised under Directive 2013/36/EU shall not be subject to the provisions of chapter I of Title V, except Articles 57 and 58.~~

6. ~~Investment firms authorised under Directive 2014/65/EU shall not be subject to the provisions of chapter I and chapter II of Title V, except Articles 57, 58, 60 and 61, where they only provide one or several crypto-asset services equivalent to the investment services and activities for which they are authorised under Directive 2014/65/EU. For that purpose:~~

(a) ~~the crypto-asset services defined in Article 3(1), point (11), of this Regulation are deemed to be equivalent to the investment activities referred to in points (8) and (9) of Section A of Annex I to Directive 2014/65/EU;~~

(b) ~~the crypto-asset services defined in Article 3(1), points (12) and (13), of this Regulation are deemed to be equivalent to the investment services referred to in point (3) of Section A of Annex I to Directive 2014/65/EU;~~

(c) ~~the crypto-asset services defined in Article 3(1), point (14), of this Regulation are deemed to be equivalent to the investment services referred to in point (2) of Section A of Annex I to Directive 2014/65/EU;~~

(d) ~~the crypto-asset services defined in Article 3(1), point (15), of this Regulation are deemed to be equivalent to the investment services referred to in points (6) and (7) of Section A of Annex I to Directive 2014/65/EU;~~

(e) ~~the crypto-asset services defined in Article 3(1), point (16), of this Regulation are deemed to be equivalent to the investment services referred to in point (1) of Section A of Annex I to Directive 2014/65/EU~~

(f) ~~the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be equivalent to the investment services referred to in point (5) of Section A of Annex I to Directive 2014/65/EU.~~

Article 3

Definitions

1. For the purposes of this Regulation, the following definitions apply:

(1) 'distributed ledger technology' or 'DLT' means a technology that enables the operation and use of distributed ledgers, whereas;

(1a) 'distributed ledger' means an information store that keeps records of transactions **or information** and is shared across a set of DLT network nodes and synchronized between the DLT network nodes~~. using a consensus mechanism~~;

Explanation

- **MS referred to the circularity of the definition but the Presidency does not consider to be the case; while the word DLT is included in the DLT definition, such word it is part**

of a broader expression "DLT network nodes" and therefore there is no circularity (the word "DLT" could even be removed without any impact).

- **"Information" added to align with the OECD expert group on blockchain.**
- **"Consensus mechanism" removed as it may not be relevant in private/permissioned DLT.**

(1b) a 'consensus mechanism' means rules and procedures by which an agreement among DLT network nodes is achieved **and** ~~that~~ a transaction is validated;

(1c) "DLT network node" is a device, person, entity or process that participates in a network and that holds a complete or partial replica of DLT records;

(2) 'crypto-asset' means a **fungible and not unique** digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology;

(3) 'asset-referenced token' means a type of crypto-asset that purports to maintain a stable value by referring to the value of more than one official currency of a country, one or several commodities or one or several crypto-assets, or a combination of such assets;

(4) 'electronic money token' or 'e-money token' means a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of an official currency of a country;

(5) 'utility token' means a type of crypto-asset which is only intended to provide ~~digital~~ access to a ~~service,~~ good or **a service** ~~product~~ **provided**~~, and is only accepted~~ by **the issuer of that token.**

(6) 'issuer of crypto-assets' **means the natural or legal person who issues the crypto-assets** ~~means a legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets~~;

Explanation

- **The inclusion of natural persons on the definition is not in contradiction with the requirements of Title II nor III; in Title II there are no requirements for the issuer but just for the offeror and person seeking admission to trading; in Title III the inclusion of natural person in the definition helps the enforcement of the requirement for the issuer to be a legal person**
- **In relation to the changes proposed in the discussion paper (WK 3351/2021):**
  - **Use of the term issues instead of creates, aligning with other amendments**
  - **Removal of identifiable as it was found not to be necessary**

(7) 'offer to the public' means **a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the crypto-assets to be offered, so as to enable potential holder to decide to purchase those crypto-assets** ~~an offer to third parties to acquire a crypto-asset in exchange for funds or crypto-assets~~;

(7a) 'offeror' means natural person or legal , including the issuer of crypto-assets, which offers crypto-assets to the public;

(7a) "funds" means funds as defined in **A**~~a~~rticle ~~2~~ **4,** point **(**2**5), of** ~~from~~ Directive **(EU)** ~~2009~~ **2015/2366** ~~110/EC~~;

(8) 'crypto-asset service provider' means any natural or legal person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis;

(9) 'crypto-asset service' means any of the services and activities listed below relating to any crypto-asset:

(a) the custody and administration of crypto-assets on behalf of third parties;

(b) the operation of a trading platform for crypto-assets;

(c) the exchange of crypto-assets for funds;

(d) the exchange of crypto-assets for other crypto-assets;

(e) the execution of orders for crypto-assets on behalf of third parties;

(f) placing of crypto-assets;

(g) the reception and transmission of orders for crypto-assets on behalf of third parties

(h) providing advice on crypto-assets;

(i) providing portfolio management on crypto-assets;

(10) 'the custody and administration of crypto-assets on behalf of third parties' means safekeeping or controlling, on behalf of third parties, crypto-assets or the means of access to such crypto-assets, where applicable in the form of private cryptographic keys, ~~or similar means~~;

Explanation

- **Some MS argued that it was not necessary as "means of access to such crypto-assets" includes "similar means" and that it would be preferable to not deviate from existing AMLD5 definition**

(11) 'the operation of a trading platform for crypto-assets' means the management of one or more multilateral systems, which brings together or facilitates the bringing together of multiple third-party buying and selling interests for crypto-assets – in the system and in accordance with its ~~non-discretionary~~ rules - in a way that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for funds;

Explanation

- **At request of a MS removal of reference to non-discretionary; it will be introduced as a requirement in Art 68**

(12) 'the exchange of crypto-assets for funds' means concluding purchase or sale contracts concerning crypto-assets with third parties against funds by using proprietary capital;

(13) 'the exchange of crypto-assets for other crypto-assets' means concluding purchase or sale contracts concerning crypto-assets with third parties against other crypto-assets by using proprietary capital;

(14) 'the execution of orders for crypto-assets on behalf of third parties' means concluding agreements to buy or to sell one or more crypto-assets or to subscribe for one or more crypto-assets on behalf of third parties and includes the conclusion of agreements to sell crypto-assets issued by the crypto-asset service provider at the moment of their issuance;

(15) 'placing of crypto-assets' means the marketing, on behalf of or for the account of the issuer or of a party related to the issuer, of crypto-assets to purchasers;

(16) 'the reception and transmission of orders for crypto-assets on behalf of third parties' means the reception from a person of an order to buy or to sell one or more crypto-assets or to subscribe for one or more crypto-assets and the transmission of that order to a third party for execution;

(17) 'providing advice on crypto-assets' means offering, giving or agreeing to give personalised or specific recommendations to a third party, either at the third party's request or on the initiative of the crypto-asset service provider providing the advice, in respect of one or more transactions relating to crypto-assets, or the use of crypto-asset services;

(17a) 'providing portfolio management on crypto-assets' means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more crypto-assets;

(18) 'management body' means the body or bodies of an issuer of crypto-assets, or of a crypto-asset service provider, which are appointed in accordance with national law, and which are empowered to set the entity's strategy, objectives, the overall direction and which oversees and monitors management decision-making and which includes persons who effectively direct the business of the entity;

(19) 'credit institution' means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013;

(20) 'qualified investors' means 'qualified investors' as defined in Article 2, point (e), of Regulation (EU) 2017/1129;

(21) 'reserve assets' means the ~~basket of~~ assets ~~[expressing exposures to] / [denominated in] an official currencies of a country, commodities or crypto-assets,~~ backing the value of an asset-referenced tokens~~, or the investment of such assets~~;

Explanation

- **Simplification of the definition; its functioning and assets eligible are defined in Chapter III of Title III**

(22) 'home Member State' means:

(a) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, has its registered office in the Union, the Member State where the issuer of crypto-assets has its registered office;

(b) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, has no registered office in the Union but has one or more branches

in the Union, the Member State chosen by the issuer among those Member States where the issuer has branches;

(c) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, is established in a third country and has no branch in the Union, at the choice of that issuer, either the Member State where the crypto-assets are intended to be offered to the public for the first time or the Member State where the first application for admission to trading on a trading platform for crypto-assets is made;

(d) for issuer of asset-referenced tokens, the Member State where the issuer of asset-referenced tokens has its registered office;

(e) for issuers of electronic money tokens, the Member States where the issuer of electronic money tokens is authorised as a credit institution under Directive 2013/36/EU or as a e-money institution under Directive 2009/110/EC;

(f) for crypto-asset service providers, the Member State where the crypto-asset service provider has its registered office;

(23) 'host Member State' means the Member State where an issuer of crypto-assets has made an offer of crypto-assets to the public or is seeking admission to trading on a trading platform for crypto-assets, or where crypto-asset service provider provides crypto-asset services, when different from the home Member State;

(24) 'competent authority' means:

(a) the authority or authorities, designated by each Member State in accordance with Article 81 for issuers of crypto-assets, issuers of asset-referenced tokens or crypto-asset service providers;

(b) the authority, designated by each Member State, for the application of Directive 2009/110/EC for issuers of e-money tokens;

(25) 'commodity' means **any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity** ~~'commodity' under Article 2(6) of Commission Delegated Regulation (EU) 2017/565~~;

Explanation

- **Using the wording of the Delegated Act instead of referring to it; the Commission may update the definition, if necessary, through paragraph 2**

(26) 'qualifying holding' means any direct or indirect holding in an issuer of asset-referenced tokens or in a crypto-asset service provider which represents at least 10% of the capital or the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council , taking into account the conditions regarding aggregation thereof laid down in paragraphs 4 and 5 of Article 12 of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists**;**

(27) 'inside information' means any information of a precise nature that has not been made public, relating, directly or indirectly, to one or more issuers of crypto-assets or to one or more crypto-assets, and which, if it was made public, would be likely to have a significant effect on the prices of those crypto-assets or on the price of a related crypto-assets;

Explanation

- **Some MS asked for the inclusion of related derivative crypto-assets; nevertheless the Presidency notes that such derivatives on DLT would also be crypto-assets**

(28) '~~consumer'~~ **retail holder'** means any natural person who is acting for purposes which are outside his trade, business, craft or profession **and which is not a qualified investor;**

(28a) 'online interface' means any software, including a website, part of a website or an application, that is operated by or on behalf of an issuer or crypto-asset service provider, and which serves to give holders of crypto-assets and clients of crypto-asset service providers access to their crypto-assets or services.

Explanation

- **To complement Art 82(2)(ac)**

2. The Commission is empowered to adopt delegated acts in accordance with Article 121 to specify technical elements of the definitions laid down in paragraph 1, and to adjust those definitions to market developments and technological developments.

TITLE II

Crypto-Assets, other than asset-referenced tokens or e-money tokens

Article 4

Offers of crypto-assets, other than asset-referenced tokens or e-money tokens, to the public, ~~and admission of such crypto-assets to trading on a trading platform for crypto-assets~~

1. No ~~issuer~~ **offeror** of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, in the Union, offer such crypto-assets to the public~~, or seek an admission of such crypto-assets to trading on a trading platform for crypto-assets,~~ unless that ~~issuer~~ **offeror**:

(a) is a legal entity;

(b) has drafted a crypto-asset white paper in respect of those crypto-assets in accordance with Article 5;

(c) has notified that crypto-asset white paper **and marketing communications** in accordance with Article 7;

(d) has published the crypto-asset white paper in accordance with Article 8;

(e) complies with the requirements laid down in Article**s 6 and** 13.

2. Paragraph 1~~, points (b) to (d)~~ **and any other requirements of this Title** shall not apply **in the primary offers** where:

(a) the crypto-assets are offered for free;

(b) the crypto-assets are automatically created as a reward for the maintenance of the DLT or the validation of transactions **in the context of a consensus mechanism**;

Explanation

- **Some MS questioned the inclusion of the reference to consensus mechanism; the Presidency notes that: i) while there are DLT without a consensus mechanism the automatic creation of new CA is associated to the remuneration of those settling transactions in a consensus mechanism; ii) without the restriction this letter could capture remuneration of the offeror workers or outsourcers**
- **Inclusion of initial/primary offers to avoid interpretations where the exemption would be provided to all subsequent offers of crypto assets automatically created;**

(c) ~~the crypto-assets are unique and not fungible with other crypto-assets;~~

(ca) the crypto-assets represent the purchase of an a good or service which is exists or is in operation and enables the holder to collect the good or use the service;

Explanation

- **Adjustments to drafting of WK 3351/2021 to provide for alignement with wording of**

paragraph 3 following MS questions on the meaning of "existing good or service". See related recital 14a

- **Not inclusion of validity limit following MS comments.**

(cb) where the holder of the crypto assets has only the right to use them in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror.

Explanation

- **In comparison with the version proposed in WK 3351/2021, the Presidency added "only" in relation to the wording proposed in the discussion note to avoid allowing the holder being offered access to additional goods and services or even to have a redemption right at par.**
- **The Presidency did not include a MS proposal to restrict this provision to digital goods and services.**

(d) ~~the crypto-assets are offered to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account;~~

(e) ~~over a period of 12 months, starting with the beginning of the offer, the total consideration of an offer to the public of crypto-assets in the Union does not exceed EUR 1 000 000, or the equivalent amount in another currency or in crypto-assets;~~

(f) ~~the offer to the public of the crypto-assets is solely addressed to qualified investors and the crypto-assets can only be held by such qualified investors.~~

For the purpose of point (a), crypto-assets shall not be considered to be offered for free where purchasers are required to provide or to undertake to provide personal data to the issuer in exchange for those crypto-assets, or where the issuer of those crypto-assets receives from the prospective holders of those crypto-assets any third party fees, commissions, monetary benefits or non-monetary benefits in exchange for those crypto-assets.

An authorisation pursuant Article 53 is not required regarding the custody and admnistration of crypo assets listed in the first subparagraph.

Explanation

- **Clarification of drafting proposed in the version proposed in WK 3351/2021**

2a. Paragraph 1, points (b) to (d) shall not apply to any of the following types of offers of crypto assets to the public:

(d) **an** ~~the crypto-assets are~~ offer~~ed~~ to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account;

(e) over a period of 12 months, starting with the beginning of the offer, the total consideration of an offer to the public of crypto-assets in the Union does not exceed EUR 1 000 000, or the equivalent amount in another currency or in crypto-assets;

Explanation

- **One MS asked for an increase of the threshold to 5 million; the Presidency did not included such proposal as it would be a deviation from the Prospectus Regulation**

(f) **an** ~~the~~ offer **of** ~~to the public of the~~ crypto-assets ~~is~~ solely addressed to qualified investors and the crypto-assets can only be held by such qualified investors.

2b. The exemptions referred to in paragraph 2 and 2a shall not apply if the offeror communicates its intention of seeking admission to trading in a white paper or in any marketing communications.

3. Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for ~~a~~ **goods and** services~~, goods, or products~~ that ~~is~~ **are** not yet

in operation or exist~~ing~~, the duration of the public offer as described in the crypto-asset white paper shall not exceed 12 months **from the publication of the crypto-asset white paper**.

3a. No additional white paper shall be required in any subsequent offer of crypto-assets or when seeking admission to trading as long as a white paper is available in accordance with Article 5, updated in accordance with Article 11, and the offeror responsible for drawing up such white paper consents to its use by means of a written agreement.

Article 4a

Admission of crypto-assets, other than asset-referenced tokens or e-money tokens, to trading on a trading platform for crypto-assets

1. No person shall ask for admission of a crypto-assets, other than asset-referenced tokens or e-money tokens, to trading on a trading platform for crypto-assets, unless that person:

(a) is a legal entity;

(b) has drafted a crypto-asset white paper in respect of those crypto-assets in accordance with Article 5;

(c) has notified that crypto-asset white paper and marketing communications in accordance with Article 7;

(d) has published the crypto-asset white paper in accordance with Article 8;

(e) complies with the requirements laid down in Article 6 and 13.

The operator of the trading platform shall be liable to comply with this paragraph when the crypto assets are admitted to trading on its own initiative.

2. Upon agreement between the person seeking admission of a crypto-assets to trading on a trading platform and the respective operator, the operator may become liable for compliance with all or part of the requirements of paragraph 1.

Such agreement shall set out an obligation for the person seeking admission to trading to provide all the necessary information to enable the operator to comply the requirements foreseen in paragraph 1.

3. The operator of the trading platform shall be liable to comply with paragraph 1 when the person seeking admission of a crypto-assets to trading is established in a third country.

In such case, the operator of the trading platform shall ensure that the person seeking admission of a crypto-assets to trading provides all the necessary information to enable the operator to comply with the requirements set out in paragraph 1.

Explanation

- In comparison with the version proposed in WK 3351/2021, the drafting was adapted to place the provision as an obligation to the operator rather than an obligation to the third country entity.

4. Paragraph 1, points (b) to (d) shall not apply:

(a) where the crypto-assets are fungible with crypto-assets already admitted to trading on the same trading platform in the Union;

(b) where the crypto-assets are already admitted to trading on another trading platform in the Union;

(c) in the cases set out in Article 4(3a).

Explanation

- **Previous reference to unique and not fungible (as it was suggested in WK 3351/2021) removed as it was removed from the definition / scope.**

Article 5

Content and form of the crypto-asset white paper

1. The crypto-asset white paper referred to in Article 4(1), point (b), shall contain all the following information **as specified in Annex I including**, where applicable:

(a) a detailed description of the issuer, of the issuer's project, and a presentation of the main participants involved in the project's design and development;

(aa) if different from the issuer, the identification of the person which prepared the white paper and the reason why ~~it~~ **that person** prepared the white paper;

(b) the type of crypto-asset that will be offered to the public or for which admission to trading is sought, the reasons why the crypto-assets will be offered to the public or why admission to trading is sought and where relevant the planned use of the funds or other crypto-assets collected via the offer to the public;

(c) a detailed description of the characteristics of the offer to the public, in particular the number of crypto-assets that will be issued or for which admission to trading is sought, the issue price of the crypto-assets, vesting period and the subscription terms and conditions, including a **minimum and maximum target subscription goals** ~~soft and a hard cap~~ **and information on the consequences if those goals are not reached os exceeded**, where applicable;

Explanation

- **Following MS requests for clarification of soft and hard caps the Presidency used wording already used in Art 22 of Crowdfunding Regulation**
- **The Presidency also added a requirement to explain the consequences**
- **The Presidency did not introduce a mandatory soft cap at 100 000 EUR as requested by one MS**

(d) a detailed description of the rights and obligations attached to the crypto-assets, including any limitation of those rights and obligations**, conditions under which the rights and obligations may be modified**, and the procedures and conditions for exercising those rights;

(e) information on the underlying technology and standards applied by the issuer of the crypto-assets allowing for the holding, storing and transfer of those crypto-assets;

(f) a detailed description of the risks relating to the issuer of the crypto-assets, the crypto-assets, the offer to the public of the crypto-asset and where relevant the implementation of the project;

(g) ~~the disclosure items specified in Annex I;~~

Explanation

- **Reference to Annex I moved to the introductory part of the paragraph.**

(h) the country of incorporation of the issuer **and the offeror or person seeking admission to trading if different from the issuer**, the applicable law and the competent court;

(i) ~~if applicable,~~ a detailed description of the crypto-asset trading platforms on which crypto-assets are to be admitted to trading, how investors can access such trading platforms and what costs are involved.

2. All information referred to in paragraph 1 shall be fair, clear and not misleading. The crypto-asset white paper shall not contain material omissions and shall be presented in a concise and comprehensible form.

Explanation

- **A MS asked to remove "fair" for being subjective; the Presidency notes that this is a concept imported from Prospectus Regulation.**

3. The crypto-asset white paper shall contain the following clear and prominent statement on the first page: "This crypto-asset white paper has not been reviewed or approved by any competent authority in any Member State of the European Union. The offeror of the crypto-assets is solely responsible for the content of this crypto-asset white paper".

   Where the crypto-asset white paper is prepared by the person seeking admission to trading a reference to its name should be included in the statement instead of "offeror".

4. The crypto-asset white paper shall not contain any assertions on the future value of the crypto-assets, other than the statement referred to in paragraph 5.

5. The crypto-asset white paper shall contain a clear and unambiguous statement that:

   (a) the crypto-assets may lose their value in part or in full;

   (b) the crypto-assets may not always be transferable;

   (c) the crypto-assets may not be liquid;

   (d) where the offer to the public concerns utility tokens, that such utility tokens may not be exchangeable against the good or service promised in the crypto-asset white paper, especially in case of failure or discontinuation of the project;

(e) **where applicable,** public protection schemes protecting the value of crypto assets and public compensation schemes do not exist.

6. Every crypto-asset white paper shall contain a statement from the management body of the offeror or person seeking admission to trading of the crypto-assets. That statement shall confirm that the crypto-asset white paper complies with the requirements of this Title and that, to the best knowledge of the management body, the information presented in the crypto-asset white paper is correct and that there is no significant omission.

7. The crypto-asset white paper shall contain a summary which shall in brief and non-technical language provide key information about the offer to the public of the crypto-assets or about the intended admission of crypto-assets to trading on a trading platform for crypto-assets, and in particular about the essential elements of the crypto-assets concerned. The summary shall be presented and laid out in easily understandable words and in a clear and comprehensive form, using characters of readable size. The format and content of the summary of the crypto-asset white paper shall provide, in conjunction with the crypto-asset white paper, appropriate information about essential elements of the crypto-assets concerned in order to help potential ~~purchasers~~ **holders** of the crypto-assets to make an informed decision. The summary shall contain a warning that:

(a) it should be read as an introduction to the crypto-asset white paper;

(b) the prospective ~~purchaser~~ **holder** should base any decision to purchase a crypto-asset on the content of the whole crypto-asset white paper;

(c) the offer to the public of crypto-assets does not constitute an offer or solicitation to purchase financial instruments and that any such offer or solicitation to purchase financial instruments can be made only by means of a prospectus or other offering documents pursuant to national laws;

(d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129 or another offering document pursuant to Union legislation or national laws.

8. Every crypto-asset white paper shall contain the date of the notification.

8a. Every crypto-asset white paper shall contain an index of the information contained in the document, placed after the summary pursuant to paragraph 7.

9. The crypto-asset white paper and the respective summary shall be drawn up in at least one of the official languages of the home Member State and **either** in a language **accepted by the competent authorities of each host Member State notified or** customary in the sphere of international finance if offered in another Member State.

Explanation

- **Further alignment with Art 27(3) of Prospectus Regulation**

10. The crypto-asset white paper shall be made available in machine readable formats.

11. ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 10.

ESMA shall submit those draft implementing technical standards to the Commission by [please insert date 12 months after entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 6

Marketing communications

1. Any marketing communications relating to an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, or to the admission of such crypto-assets to trading on a trading platform for crypto-assets, shall comply with all of the following:

(a) the marketing communications shall be clearly identifiable as such;

(b) the information in the marketing communications shall be fair, clear and not misleading**, and shall describe the risks and rewards of purchasing crypto-assets in an equally prominent manner**;

(c) the information in the marketing communications shall be consistent with the information in the crypto-asset white paper, where such a crypto-asset white paper is required in accordance with Article 4 **and 4a**;

(d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the offeror or the person seeking admission to trading of the crypto-assets concerned.

(e) marketing communications shall contain the following clear and prominent statement on the first page: "This crypto-asset marketing communication~~s~~ has not been reviewed or approved by any competent authority in any Member State of the European Union. The offeror of the crypto-assets is solely responsible for the content of this crypto-asset marketing communications".
Where the crypto-asset white paper is prepared by the person seeking admission to trading a reference to its name should be included in the statement instead of "offeror".

2. Prior to the publication of the white paper no marketing communications can be disseminated, where such a crypto-asset white paper is required in accordance with Article 4 and 4a.

Article 7

Notification of the crypto-asset white paper, and, where applicable, of the marketing communications

1. Competent authorities shall not require an ex ante approval of a crypto-asset white paper~~[~~, nor of any marketing communications relating to it~~]~~.

2. Offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their crypto-asset white paper ~~[~~and, in case of marketing communications as referred to in Article 6, such marketing communications,~~]~~ to the competent authority of their home Member State.

Explanation

- **Following MS replies the Presidency re-introduced the Commission proposal**

3. The notification of the crypto-asset white paper shall explain why the crypto-asset described in the crypto-asset white paper is not to be considered:

   (a) a financial instrument as defined in Article 4(1), point (15), of Directive 2014/65/EU;

   (b) an electronic money token as defined in Article 3(1), point (4) of this Regulation;

   (c) a deposit as defined in Article 2(1), point (3), of Directive 2014/49/EU;

   (d)

   (e) an asset~~-~~-referenced token as defined in Article 3(1), point (3) of this Regulation.

3a. The elements referred in paragraphs 2 and 3 shall be notified at least 20 working days before the publication of the crypto-asset white paper, ~~[~~except for the marketing communications made during the offer to the public or after admission to trading, which shall be notified at least ~~10~~ **5** working days before their publication~~]~~.

Explanation

- **Reduction of deadline following a MS request**

4. ~~Issuers~~ **Offerors and persons seeking admission to trading** of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, together with the notification referred to in paragraphs 2 and 3, provide the competent authority of their home Member State **designated as a single point of contact in accordance with Article 81** with a list of host Member States, if any, where they intend to offer their crypto-assets to the public or intend to seek admission to trading on a trading platform for crypto-assets. They shall also inform **the competent authority of** their home Member State of the starting date of the intended offer to the public or intended admission to trading on ~~such~~ a trading platform for crypto-assets **and of any change to such dates**.

~~The competent authority of the home Member State shall notify the competent authority of the host Member State of the intended offer to the public or the intended admission to trading on a trading platform for crypto-assets and transfer the corresponding crypto-asset whitepaper within 2 working days following the receipt of the list referred to in the first subparagraph.~~

5. **The single point of contact referred to in paragraph 4** ~~Competent authorities~~ shall communicate to ESMA the ~~documents~~ **information specified in paragraphs 2 and 3 as well as the starting date of the intended offer to the public or intended admission to trading and of any change thereof** ~~notified in accordance to paragraph 2 and the date of their notification~~. **They shall communicate such information within two working days after receiving them from the offeror or from the person seeking admission to trading.**

ESMA shall notify without undue delay the competent authorities of the host Member States of the information specified in paragraphs 2 and 3 and the starting date of the intended offer to the public or intended admission to trading and of any change thereof.

ESMA shall make the **information referred to in Article 91a(2)** ~~notified crypto-asset white papers~~ available in the register referred to in Article ~~57~~ **91a on the starting date of the offer to the public or admission to trading**.

6. In order to ensure uniform conditions of application of this Regulation, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notification of the white paper referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

7. ESMA shall develop draft regulatory technical standards to specify the data necessary for the classification of crypto-asset white papers in the register referred to in Article 57, and the practical arrangements to ensure that such data, including the LEIs of the issuer, is machine readable.

ESMA shall submit those draft regulatory technical standards to the Commission by XXX.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 8

Publication of the crypto-asset white paper, and, where applicable, of the marketing communications

1. Offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish their crypto-asset white paper, and, where applicable, their marketing communications, on their website, which shall be publicly accessible, by no later than the starting date of the offer to the public of those crypto-assets or the admission of those crypto-assets to trading on a trading platform for crypto-assets. The crypto-asset white paper, and, where applicable, the marketing communications, shall remain

available on the ~~offerors or person seeking admission trading~~ website **of the offeror or person seeking admission trading** for as long as the crypto-assets are held by the public.

2. The published crypto-asset white paper, and, where applicable, the marketing communications, shall be identical to the version notified to the relevant competent authority in accordance with Article 7, or, where applicable, modified in accordance with Article 11.

Article 9

Information on the result of the offer and safeguarding of funds and other crypto-assets received during offers

1. Offerors of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit on their offer to the public of those crypto-assets shall publish on their website the result of the offer within 20 working days from the end of the subscription period.

1a. Offerors of crypto-assets, other than asset-referenced tokens or e-money tokens, that do not set a time limit on their offer to the public of those crypto-assets shall publish on their website on an ongoing basis**, at least monthly,** the number of crypto-assets that have been sold.

2. Offerors of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit for their offer to the public of crypto-assets shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets, raised during such offer. For that purpose, such offerors shall ensure that the funds or crypto-assets collected during the offer to the public or during the withdrawal period are kept in custody by either of the following:

(a) a credit institution, where funds are raised during the offer to the public;

(b) a crypto-asset service provider authorised for the custody and administration of crypto-assets on behalf of third parties~~.~~**;**

(c) ~~[~~the offeror itself if an adequate custody mechanism is available~~]~~**, including a smart contract set up by the offeror, based on a distributed ledger technology, which automatically carries out the procedures for management of the funds and crypto assets as determined by the offeror**.

3. When the offer to the public has no time limit, the offeror shall comply with paragraph 2 until the **retail** ~~consumer/client/~~holder~~/~~ right to withdrawal foreseen in article 12 has expired.

3a The ESMA shall develop draft regulatory technical standards to specify the requirements applicable to the offeror when it provides the custody mechanism referred to in letter c) of paragraph 3, in order to ensure that the rights of the potential holders are not adversely affected.

ESMA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after the entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 10

~~Permission~~ ***Rights of offerors and persons seeking admission to trading of*** *~~to offer~~ crypto-assets, other than asset-referenced tokens or e-money tokens~~, to the public or to seek admission for trading such crypto-assets on a trading platform for crypto-assets~~*

1. After publication of the crypto-asset white paper in accordance with Article**s 7 and** 8, and, where applicable, Article 11, ~~issuers of crypto-assets~~ **offerors** may offer ~~their~~ crypto-assets, other than asset-referenced tokens or e-money tokens, throughout the Union and **such crypto assets may be** ~~seek~~ admi~~ss~~tted~~ion~~ to trading ~~of such crypto-assets~~ on a trading platform for crypto-assets.

Explanation

- **Reference to Article 7 which includes the 20 days period; if publication is before the 20 deadline the passport should not be valid**

2. ~~Issuers~~ **Offerors and persons seeking admission to trading** of crypto-assets, other than asset-referenced tokens or e-money tokens, that have published a crypto-asset white paper in accordance with Article 8, and where applicable Article 11, shall not be subject to any further information requirements, with regard to the offer of those crypto-assets or the admission of such crypto-assets to a trading platform for crypto-assets.

Article 11

Modification of published crypto-asset white papers and, where applicable, published marketing communications after their publication

1. Offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, shall modify their published crypto-asset white paper, and, where applicable, published marketing communications, when there has been a significant new factor, material mistake or material inaccuracy which is capable of affecting the assessment of the crypto-assets.

This requirement applies during the duration of the offer and as long as the crypto asset is admitted to trading.

Explanation

- **Following MS concerns as regards the (lack of) validity date of the white paper and the absence of periodic information**

1a. Offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their modified crypto-asset white papers, and where applicable, modified marketing communications, to the competent authority of their home Member State, including the reasons for such modification, at least seven working days before their publication.

2. After the seven working days referred in paragraph 1a, or earlier if required by the competent authority the offerors or the person seeking admission to trading shall immediately inform the public on its website of the notification of a modified crypto-asset white paper with the competent authority of its home Member State and shall provide a summary of the reasons for which it has notified a modified crypto-asset white paper.

3. The order of the information in a modified crypto-asset white paper, and, where applicable, in modified marketing communications, shall be consistent with that of the crypto-asset white paper or marketing communications published in accordance with Article 8.

4.

5. Within 2 working days of the receipt of **the** ~~a draft~~ modified crypto-asset white paper, and, where applicable, the modified marketing communications, the competent authority of the home Member State **designated as a single point of contact in accordance with Article 81** shall notify the modified crypto-asset white paper and, where applicable, the modified marketing communications~~, to the competent authority of the host Member State referred to in Article 7(4) and communicate the notification~~ and the date of the ~~notification~~ **publication** to ESMA.

ESMA shall notify without undue delay the modified crypto-asset white paper and, where applicable, the modified marketing communications to the competent authorities of the host Member States.

ESMA shall make the ~~notified~~ modified crypto-asset white paper~~s~~ available in the register referred to in Article ~~57~~ **91a as soon as it is published.**

6. Offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish the modified crypto-asset white paper, and, where applicable, the modified marketing communications, including the reasons for such modification, on their website in accordance with Article 8.

7. The modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall be time-stamped. The latest modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall be marked as the applicable version. All the modified crypto-asset white papers, and, where applicable, the modified marketing communication, shall remain available for as long as the crypto-assets are held by the public.

8. Where the offer to the public concerns utility tokens, the changes made in the modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall not extend the time limit of 12 months referred to in Article 4(3).

8a. The older versions of the crypto-asset white paper and the marketing communications shall remain on the website with a prominent warning stating that they are no longer valid and **with** the hyperlink to the dedicated website sections where the final version is published.

Article 12

Right of withdrawal

1. ~~Issuers~~ **Offeror** of crypto-assets, other than asset-referenced tokens and e-money tokens, shall offer a right of withdrawal to any ~~consumer~~ **retail holder** who buys such crypto-assets directly from the ~~issuer~~ **offeror** or from a crypto-asset service provider placing crypto-assets on behalf of that issuer.

~~Consumers~~ **Retail holders** shall have a period of 14 calendar days to withdraw their agreement to purchase those crypto-assets without incurring any cost and without giving reasons. The period of withdrawal shall begin from the day of the ~~consumers'~~ **retail holders** agreement to purchase those crypto-assets.

2. All payments received from a ~~consumer~~ **retail holder** , including, if applicable, any charges, shall be reimbursed without undue delay and in any event not later than 14 days from the day on which the ~~issuer~~ **offeror** of crypto-assets or a crypto-asset service provider placing crypto-

assets on behalf of that ~~issuer~~ **offeror** is informed of the **retail holders** ~~consumer~~'s decision to withdraw from the agreement.

The reimbursement shall be carried out using the same means of payment as the ~~consumer~~ **retail holder** used for the initial transaction, unless the ~~consumer~~ **retail holder** has expressly agreed otherwise and provided that the ~~consumer~~ **retail holder** does not incur any fees as a result of such reimbursement.

3. ~~Issuers~~ **Offerors** of crypto-assets shall provide information on the right of withdrawal referred to in paragraph 1 in their crypto-asset white paper.

4. The right of withdrawal shall not apply where the crypto-assets are admitted to trading on a trading platform for crypto-assets.

5.

Article 13

Obligations of offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens

1. Offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, shall:

   (a) act honestly, fairly and professionally;

   (b) communicate with the holders and prospective holders of crypto-assets in a fair, clear and not misleading manner;

   (c) identify, prevent, manage and disclose any conflicts of interest that may arise;

   (d) maintain all of their systems and security access protocols to appropriate Union standards.

For the purposes of point (d), ESMA, in cooperation with the EBA, shall develop guidelines pursuant to Article 16 of Regulation (EU) No 1095/2010 to specify the Union standards.

2. Offerors and persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens, shall act in the best interests of the holders of such crypto-assets and shall treat them equally, unless any preferential treatment of specific holders and the reasons for the preferential treatment of the specific holders are disclosed in the crypto-asset white paper, and, where applicable, the marketing communications.

3. Where an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, is cancelled, offerors of such crypto-assets shall ensure that any funds collected from ~~purchasers~~ **holders** or potential ~~purchasers~~ **holders** are duly returned to them, no later than 30 days **after the date of cancellation**.

Article 14

Liability of offerors or persons seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens for the information given in a crypto-asset white paper

1. Member States shall ensure that responsibility for the information given in the crypto-asset white paper or in a modified crypto-asset white paper, attaches to at least the offeror or persons seeking admission trading, or its administrative, management or supervisory bodies, ~~the offeror or the person asking for the admission to trading platform,~~ as the case may be. ~~The persons responsible for the crypto-asset white paper or the modified crypto-asset white paper, shall be clearly identified in the crypto-asset white paper or the modified crypto-asset white paper by their names and functions or, in the case of legal persons, their names and registered offices.~~ The crypto-asset white paper or the modified crypto-asset white paper shall also include declarations by them that, to the best of their knowledge, the information contained in the crypto-asset white paper or in the modified crypto-asset white paper is in accordance with the facts and that the crypto-asset white paper or the modified crypto-asset white paper makes no omission likely to affect its import.

Explanation

- **Correction of typo and simplification as the information is already foreseen in Art 5**

Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to those persons responsible for the information given in a white paper.

2.

3. A holder of crypto-assets shall not be able to claim damages for the information provided in a summary as referred to in Article 5(7), including the translation thereof, except where:

(a) the summary is misleading, inaccurate or inconsistent when read together with the other parts of the crypto-asset white paper; or

(b) the summary does not provide, when read together with the other parts of the crypto-asset white paper, key information in order to aid consumers and investors when considering whether to purchase such crypto-assets.

4. **This Article does not exclude further civil liability claims in accordance with national law.**

Explanation

- **Re-introduction following MS questions**
- **The Presidency had deleted paragraph 4 while aligning with Prospectus Regulation, but does not see problems with it**

TITLE III: Asset-referenced tokens

Chapter 1

Authorisation to offer asset-referenced tokens to the public and to seek their admission to trading on a trading platform for crypto-assets

Article 15

Authorisation

1. No person shall, within the Union, offer asset-referenced tokens to the public, or seek an admission of such assets to trading on a trading platform for crypto-assets, unless **that person is** the issuer of such asset-referenced tokens **and**:

Explanation

- **In order to restrict the ability to offer/ seek admission to issuers**
- **Such restriction does not prejudice the ability of the issuer to contract a CASP to place the ART, as the placing of CA should be considered as part of the issuer offer**

(a) Is a legal entity that is established in the Union and have been authorised to do so in accordance with Article 19 by the competent authority of their home Member State; or

(b) Is a credit institution authorised under Directive 2013/36/EU and complies with requirements of Article 15a.

2.

3. Paragraph 1 shall not apply to any of the following types of offers of crypto-assets to the public:

(a) **where,** over a period of 12 months, calculated at the end of each calendar day, the average outstanding value of all asset-referenced tokens issued in the EU by an issuer of asset-referenced tokens never exceeds EUR 5 000 000, or the equivalent amount in another currency; or

Explanation

- **Please check clarification in recital 28**

(b) an offer of the asset-referenced tokens solely addressed to qualified investors and the asset-referenced tokens can only be held by such qualified investors.

In ~~these~~ cases **under letters a) and b)** issuers shall, ~~however,~~ produce a crypto-asset white paper as referred to in Article 17 and notify that crypto-asset white paper, and where applicable, their marketing communications, to the competent authority of their home Member State in accordance with Article 7.

4.

5. The authorisation **referred to in paragraph 1(a)** granted by the competent authority shall be valid for the entire Union and shall allow an issuer to offer the asset-referenced tokens for which it has been authorised throughout the Union, or to seek an admission of such asset-referenced tokens to trading on a trading platform for crypto-assets.

Explanation

- **This provision is not related to credit institutions, which have the passport in CRD**

6. The approval granted by the competent authority of the issuers' crypto-asset white paper under Article 15a(1), **Article** 19 or ~~on a~~ **of the** modified crypto-asset white paper under Article 21 shall be valid for the entire Union. ~~A white paper shall be valid for 12 months after its approval for offers to the public or admissions of such assets to trading on a trading platform for crypto-assets.~~

Explanation

- **As the offer of ART is not expected to be limited in time and the process for authorisation is very long a new authorisation/approval of the WP every 12 months seems excessively burdensome, furthermore issuers are required to update the WP, where necessary; this is similar to the approach in UCITS KID, which does not have validity**

Article 15a

Requirements applicable to authorised credit institutions

1. An asset-referenced token issued by a credit institution authorised under Directive 2013/36/UE may be offered to the public or admitted to trading on a trading platform for crypto-assets, if the credit institution:

(a) produces a crypto-asset white paper as referred to in Article 17 for every asset-referenced token issued, submits that crypto-asset white paper for approval by the competent authority of their home Member State in accordance with the procedure set out in the regulatory technical standards pursuant to paragraph ~~3~~ **7**, and the white paper is approved by the competent authority;

(b) notifies the respective competent authority, at least four months before issuing an asset-referenced token for the first time, with the following information:

(a) a programme of operations, setting out the business model that the ~~applicant~~ **credit institution** ~~issuer~~ intends to follow;

(b) an independent written and reasoned legal opinion that the asset-referenced tokens do not qualify as:

(i) financial instruments as defined in Article 4 (1), point (15), of Directive 2014/65/EU;

(ii) electronic money as defined in in Article 2, point 2, of Directive 2009/110/EC;

(iii) deposits as defined in Article 2(1), point (3), of Directive 2014/49/EU**, including structured deposits as defined in Article 4(1), point (43), of Directive 2014/65/EU**; or

(iv) ~~structured deposits as defined in Article 4(1), point (43), of Directive 2014/65/EU;~~

(c) a detailed description of the ~~applicant issuer's~~ governance arrangements **as referred to in Article 30(1)**;

(d) the policies and procedures referred to in Article 30(5), points (a) to (k);

(e) a description of the contractual arrangements with the third parties referred to in the last subparagraph of Article 30(5);

(f) a description of the ~~applicant issuer's~~ business continuity policy referred to in Article 30(8);

(g) a description of the internal control mechanisms and risk management procedures referred to in Article 30(9);

(h) a description of the procedures and systems to safeguard the security, including cyber security, integrity and confidentiality of information referred to in Article 30(10).

Explanation

- **Removal of applicant issuer as there is no authorisation**

1a Credit institutions which have already been authorised to issue asset-referenced tokens shall not be required to submit the information which was previously submitted to the competent authority where such information would be identical. When submitting the information required under paragraph 2 the credit institution shall explicitly state that the information not submitted is still up to date.

2 Where issuing asset reference tokens, including significant asset-reference tokens, credit institutions authorised under Directive ~~2012~~ **2013**/36/EU shall not be subject to Articles 16, 18, 19, 20, 31, 37 and 38 of this Title.

3 Paragraph 1 does not prejudice procedures **implemented under national law** for authorisation of credit institution**, namely** to provide services ~~foreseen under~~ **referred in** Annex I of Directive 2013/36/~~UE~~ **EU** pursuant the transposition of said Directive.

Explanation:

- **To bring clarity to the relation between national powers and the CRD (and Annex I).**

5. The competent authority designated as a single point of contact in accordance with Article 81 shall communicate to ESMA the information specified in Article 91a(3) and the starting date of the intended offer to the public or intended admission to trading and of any change thereof after verifying the completeness of the information received in paragraph 1.

ESMA shall make such information available in the register referred to in Article 91a on the starting date of the offer to the public or admission to trading.

6. The competent authority designated as a single point of contact in accordance with Article 81 shall communicate to ESMA the withdrawal of authorisation of a credit institution which issues asset-referenced tokens.

7. The EBA shall, in close cooperation with ESMA **and the ESCB**, develop draft regulatory technical standards to specify the procedure for the approval of a crypto-asset white paper referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after the entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 16

Application for authorisation

1. Issuers of asset-referenced tokens shall submit their application for an authorisation as referred to in Article 15 to the competent authority of their home Member State.

2. The application referred to in paragraph 1 shall contain all of the following information:

(a) the address of the applicant issuer;

(b) the articles of association of the applicant issuer;

(c) a programme of operations, setting out the business model that the applicant issuer intends to follow;

(d) an independent written and reasoned legal opinion that the asset-referenced tokens do not qualify as

(i) financial instruments as defined in Article 4 (1), point (15), of Directive 2014/65/EU,

(ii) electronic money as defined in in Article 2, point 2, of Directive 2009/110/EC,

(iii) deposits as defined in Article 2(1), point (3), of Directive 2014/49/EU**, including structured deposits as defined in Article 4(1), point (43), of Directive 2014/65/EU,** ~~or~~

(iv)

(e) a detailed description of the applicant issuer's governance arrangements as referred to in Article 30**(1)**;

(f) the identity of the members of the management body of the applicant issuer;

(g) proof that the persons referred to in point (f) are of good repute and possess appropriate knowledge and experience to manage the applicant issuer;

(h) where applicable, proof that any natural or legal persons who own a qualifying holding or, where there are no qualifying holdings, of the 20 largest shareholders or members, have good repute ~~and competence~~;

Explanation

- **Competence is not part of shareholder's evaluation in financial services legislation**

(i) a crypto-asset white paper as referred to in Article 17;

(j) the policies and procedures referred to in Article 30(5), points (a) to (k);

(k) a description of the contractual arrangements with the third parties referred to in the last subparagraph of Article 30(5);

(l) a description of the applicant issuer's business continuity policy referred to in Article 30(8);

(m) a description of the internal control mechanisms and risk management procedures referred to in Article 30(9);

(n) a description of the procedures and systems to safeguard the security, including cyber security, integrity and confidentiality of information referred to in Article 30(10);

(o) a description of the applicant issuer's complaint handling procedures as referred to in Article 27**;**

(p) a list of host Member States, if any, where the applicant issuer intends to offer the asset reference token to the public or intends to seek admission to trading on a trading platform for crypto-assets.

2a Issuers which have already been authorised to issue asset-referenced tokens shall not be required to ~~notify~~ **submit** the information which was previously ~~notified~~ **submitted** to the competent authority where such information would be ~~the same~~ **identical**. **When submitting the information required under paragraph 2** ~~T~~**t**he issuer shall explicitly state that the information not ~~notified~~ **submitted** is still up to date.

3. For the purposes of paragraph 2, points (g) and (h), applicant issuers of asset-referenced tokens shall provide proof of all of the following:

(a) for all the persons involved in the management of the applicant issuer of asset-referenced tokens, its shareholders or members that have qualifying holdings, the absence of a criminal record in respect of convictions or penalties under national rules in force in the fields of commercial law, insolvency law, financial services legislation, anti-money laundering legislation, legislation countering the financing of terrorism, fraud, or professional liability;

(b) that the members of the management body of the applicant issuer of asset-referenced tokens collectively possess sufficient knowledge, skills and experience to manage the issuer of asset-referenced tokens and that those persons are required to commit sufficient time to perform their duties.

4. The EBA shall, in close cooperation with ESMA **and the ESCB**, develop draft regulatory technical standards to specify the information that an application shall contain, in accordance with paragraph 2.

The EBA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after the entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

5. The EBA shall, in close cooperation with ESMA, develop draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.

The EBA shall submit those draft implementing technical standards to the Commission by [please insert date 12 months after the entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 17

Content and form of the crypto-asset white paper for asset-referenced tokens

1. The crypto-asset white paper referred to in Article 15a(1), point (a) and Article 16(2), point (i), shall comply with all the requirements laid down in Article 5. In addition to the information referred to in Article 5, however, the crypto-asset white paper shall contain all of the following information:

(0a) a detailed description of the claim that the asset-referenced token represents for holders, including the contribution to such claim of each asset being referenced when more than one asset is referenced;

(a) a detailed description of the issuer's governance arrangements, including a description of the identity, role, responsibilities and accountability of the third-party entities referred to in Article 30(5), point (h);

(b) a detailed description of the reserve of assets referred to in Article 32;

(c) a detailed description of the custody arrangements for the reserve assets, including the segregation of the assets, as referred to in Article 33;

(d) in case of an investment of the reserve assets as referred to in Article 34, a detailed description of the investment policy for those reserve assets;

(e) detailed information on the nature and enforceability of rights, including direct redemption right**s** that holders of asset-referenced tokens have against the issuer and any right**s** ~~legal or~~ natural **or legal** person**s** as referred in Article 35(3) may have against the issuer, including how such rights may be treated in insolvency procedures;

(f) where applicable , detailed information on the mechanisms referred to in Article 35(4) to ensure the liquidity of the asset-referenced tokens;

(g) a detailed description of the complaint handling procedure referred to in Article 27;

(h) the disclosure items specified in Annexes I and II.

For the purposes of point (e), where no permanent direct claim or redemption right has been granted to all the holders of asset-referenced tokens, the crypto-asset white paper shall contain a clear and unambiguous statement that all the holders of the crypto-assets cannot redeem those reserve assets with the issuer at any time.

2.

(a)

(b)

(c)

(d)

3.

4.

5.

6. ESMA, after consultation of the EBA **and in close coordination with the ESCB**, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of Article 5(10) when applied to asset-referenced tokens.

ESMA shall submit those draft implementing technical standards to the Commission by [please insert date 12 months after entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 18

Assessment of the application for authorisation

1. Competent authorities receiving an application for authorisation as referred to in Article 16 shall, within 30 working days of receipt of such application, assess whether that application, including the crypto-asset white paper referred to in Article 16(2), point (i), is complete. They shall immediately notify the applicant issuer of whether the application, including the crypto-asset white paper, is complete. Where the application, including the crypto-asset white paper, is not complete, they shall set a deadline by which the applicant issuer is to provide any missing information.

Where the applicant issuer indicates in their application for authorisation that it wishes to classify its asset referenced token as significant pursuant to Article 40(1) or where the asset-referenced token is deemed to be potentially relevant for financial stability, monetary policy transmission, monetary sovereignty or market integrity, competent authority shall inform the EBA **and the** ~~,~~ ECB ~~or relevant central bank of the application and its completeness~~.

Where the applicant issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets,

competent authorities shall transmit their draft decision and the application file to the central bank of that Member State, in the cases described in the previous sub-paragraph.

2. The competent authorities shall, within 3 months from the receipt of a complete application, assess whether the applicant issuer complies with the requirements set out in this Title and take a fully reasoned draft decision granting or refusing authorisation. Within those three months, competent authorities may request from the applicant issuer any information on the application, including on the crypto-asset white paper referred in Article 16(2), point (i).

2a. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the applicant issuer, the assessment period under paragraphs 1 and 2 shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

3. Competent authorities shall, after the three months referred to in paragraph 2, transmit their draft decision and the application file to the EBA, ESMA and the ECB. Where the applicant issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, competent authorities shall transmit their draft decision and the application file to the central bank of that Member State.

4. The EBA, ESMA, the ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 2 months after having received the draft decision and the application file, issue a ~~non-binding~~ opinion on the application and transmit their ~~non-binding~~ opinions to the competent authority concerned.

5. That competent authority shall duly consider ~~those~~ **the** ~~non-binding~~ opinions **referred in paragraph 4 and refuse the authorisation in the cases specified in Article 19(2a).**

Article 19

Grant or refusal of the authorisation

1. Competent authorities shall, within one month after having received the ~~non binding~~ opinions referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and, within 5 working days, notify that decision to applicant issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved.

   Where the competent authority fails to take a decision within the time limits laid down in this regulation, such failure shall not be deemed to constitute approval of the application.

2. Competent authorities shall refuse authorisation where there are objective and demonstrable grounds for believing that:

   (a) the management body of the applicant issuer may pose a threat to its effective, sound and prudent management and business continuity and to the adequate consideration of the interest of its clients and the integrity of the market;

   (aa) the shareholders or members that have qualifying holdings are not deemed suitable~~, taking into account the need to ensure the sound and prudent management of the issuer of asset referenced token~~.

Explanation

- **The Presidency simplified the previously proposed drafting and introduced a mandate for EBA guidelines on suitability**

   (b) the applicant issuer fails to meet or is likely to fail to meet any of the requirements of this Title;

(c) the applicant issuer's business model may pose a serious threat to financial stability, **the smooth operation of payment systems** ~~monetary policy transmission, monetary sovereignty~~ or market integrity.

EBA shall shall develop guidelines pursuant to Article 16 of Regulation (EU) No 1095/2010 on the assessment of the suitability of management body and shareholders.

2a. Competent authorities shall also refuse authorisation:

(a) When the ECB or, where applicable, a central bank as referred to in Article 18(3), gives a negative opinion under Article 18(4) on grounds of smooth operation of payment systems, monetary policy transmission, or monetary sovereignty;

(b) When the EBA classifies the asset-referenced token of the applicant issuer as significant pursuant to Article 40(4) and gives a negative opinion under Article 18(4).

3. **The** ~~C~~**c**ompetent ~~authorities~~ **authority designated as a single point of contact in accordance with Article 81** shall **communicate to ESMA the list of the host Member States, the information referred to in Article 91a(3) and the starting date of the intended offer to the public or intended admission to trading within two working days after granting authorisation** ~~inform the EBA, ESMA and the ECB and, where applicable, the central banks referred to in Article 18(3), of all authorisations granted~~.

ESMA shall notify without undue delay the information referred to in Article 91a(3) to the competent authorities of the host Member States, the EBA, the ECB and, where applicable, the central banks referred to in Article 18(3).

ESMA shall ~~include the following~~ **make such** information **available** in the register ~~of crypto-assets and crypto-asset service providers~~ referred to in Article ~~57~~ **91a on the starting date of the offer to the public or admission to trading**~~:~~**.**

(a) ~~the name, legal form and the legal entity identifier of the issuer of asset-referenced tokens;~~

(b) ~~the commercial name, physical address and website of the issuer of the asset-referenced tokens;~~

(c) ~~the crypto-asset white papers or the modified crypto-asset white papers;~~

(d) ~~any other services provided by the issuer of asset-referenced tokens not covered by this Regulation, with a reference to the relevant Union or national law.~~

4. Competent authorities shall also inform the EBA, ESMA and the ECB, and where applicable, the central banks referred to in Article 18(3), of all authorisations not granted, and provide the underlying reasoning for the decision and explanation for deviation from their opinion, where applicable.

Article 20

Withdrawal of the authorisation

1. Competent authorities shall have the power to withdraw the authorisation of issuers of asset-referenced tokens in any of the following situations:

(a) the issuer has not used its authorisation within 12 months after the authorisation has been granted;

(b) the issuer has ceased to engage in business for 6 successive months;

(c) the issuer has obtained its authorisation by irregular means, including making false statements in the application for authorisation referred to in Article 16 or in any crypto-asset white paper modified in accordance with Article 21;

(d) the issuer no longer meets the conditions under which the authorisation was granted;

(e) the issuer has seriously infringed the provisions of this Title;

(f) the issuer has been put under an orderly wind-down plan, in accordance with applicable national insolvency laws;

(g) the issuer has expressly renounced its authorisation or has decided to stop its operations;

(h) the issuer's activity poses a serious threat to financial stability, monetary policy transmission or monetary sovereignty or market integrity.

Issuers of asset-referenced tokens shall notify their competent authority of any of the situations referred to in points (f) and (g).

2. Competent authorities of the entities referred below shall notify the competent authority of an issuer of asset-referenced tokens of the following without delay:

(a) the fact that a third-party entity as referred to in Article 30(5), point (h) has lost its authorisation as a credit institution as referred to in Article 8 of Directive 2013/36/EU, as a crypto-asset service provider as referred to in Article 53 of this Regulation, as a payment institution as referred to in Article 11 of Directive (EU) 2015/2366, or as an electronic money institution as referred to in Article 3 of Directive 2009/110/EC;

(b) the fact that an issuer of asset-referenced tokens, or the members of its management body, have breached national provisions transposing Directive (EU) 2015/849 of the European Parliament and of the Council in respect of money laundering or terrorism financing.

3. Competent authorities shall withdraw the authorisation of an issuer of asset-referenced tokens where they are of the opinion that the facts referred to in paragraph 2, points (a) and (b), affect

the good repute of the management body of that issuer, or indicate a failure of the governance arrangements or internal control mechanisms as referred to in Article 30.

When the authorisation is withdrawn, the issuer of asset-referenced tokens shall implement the procedure under Article 42.

Article 21

Modification of published crypto-asset white papers for asset-referenced tokens

1. Issuers of asset-referenced tokens shall also notify the competent authority of their home Member States of any intended change of the issuer's business model likely to have a significant influence on the purchase decision of any actual or potential holder of asset-referenced tokens, which occurs after the authorisation mentioned in Article 19 or the approval of the white paper pursuant Article 15a. Such changes include, among others, any material modifications to:

(a) the governance arrangements;

(b) the reserve assets and the custody of the reserve assets;

(c) the rights granted to the holders of asset-referenced tokens;

(d) the mechanism through which asset-referenced tokens are issued, created and destroyed;

(e) the protocols for validating the transactions in asset-referenced tokens;

(f) the functioning of the issuer's proprietary DLT, where the asset-referenced tokens are issued, transferred and stored on such a DLT;

(g) the mechanisms to ensure the redemption of the asset-referenced tokens or to ensure their liquidity;

(h) the arrangements with third parties, including for managing the reserve assets and the investment of the reserve, the custody of reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public;

(i) the liquidity management policy for issuers of significant asset-referenced tokens;

(j) the complaint handling procedure.

The competent authority of their home Member States shall be notified 30 working days prior to the intended changes taking effect.

2. Where any intended change as referred to in paragraph 1 has been notified to the competent authority, the issuer of asset-referenced tokens shall produce a draft modified crypto-asset white paper and shall ensure that the order of the information appearing there is consistent with that of the original crypto-asset white paper.

The competent authority shall electronically acknowledge receipt of the draft modified crypto-asset white paper as soon as possible, and within 2 working days after receiving it.

The competent authority shall grant its approval or refuse to approve the draft modified crypto-asset white paper within 30 working days following acknowledgement of receipt of the application. During the examination of the draft modified crypto-asset white paper, the competent authority may also request any additional information, explanations or justifications on the draft modified crypto-asset white paper. When the competent authority requests such additional information, the time limit of 30 working days shall commence only when the competent authority has received the additional information requested.

The competent authority ~~may~~ **shall** also consult the EBA, ESMA and the ECB, and, where applicable, the central banks of Member States the currency of which is not euro. **They shall provide an option within 1 months after having received the consultation request.**

3. Where approving the modified crypto-asset white paper, the competent authority may request the issuer of asset-referenced tokens:

(a) to put in place mechanisms to ensure the protection of holders of asset-referenced tokens, when a potential modification of the issuer's operations can have a material effect on the value, stability, or risks of the asset-referenced tokens or the reserve assets;

(b) **to** take any appropriate corrective measures to address concerns related to financial stability, ~~effective monetary policy transmission,~~ **smooth operation of payment systems,** ~~monetary sovereignty~~ or market integrity.

The competent authority shall request the issuer of asset-referenced tokens to take any appropriate measures to address concerns related to smooth operation of payment system, effective monetary transmission, or monetary sovereignty, if such corrective measures are proposed by ECB or, where applicable, a central bank as referred to in Article 18(3) in consultations under paragraph 2

3a. The competent authority designated as a single point of contact in accordance with Article 81 shall communicate the modified white paper to the ESMA within two working days after granting approval.

ESMA shall notify the modified white paper to the competent authorities of the host Member States, the EBA, the ECB and, where applicable, the central banks referred to in Article 18(3), and make it available in the register referred to in Article 91a without undue delay.

Article 22

Liability of issuers of asset-referenced tokens for the information given in a crypto-asset white paper

1. ~~Where an issuer of asset-referenced tokens or its management body has infringed Article 17, by providing in its crypto-asset white paper or in a modified crypto-asset white paper~~

~~information which is not complete, fair or clear or by providing information which is misleading, a holder of such asset-referenced tokens may claim damages from that issuer of asset-referenced tokens or its management body for damage caused to her or him due to that infringement.~~

~~Any exclusion of civil liability shall be deprived of any legal effect.~~ **Member States shall ensure that responsibility for the information given in the crypto-asset white paper or in a modified crypto-asset white paper, attaches to at least the issuer or its administrative, management or supervisory bodies. The crypto-asset white paper or the modified crypto-asset white paper shall include declarations by them that, to the best of their knowledge, the information contained in the crypto-asset white paper or in the modified crypto-asset white paper is in accordance with the facts and that the crypto-asset white paper or the modified crypto-asset white paper makes no omission likely to affect its import.**

Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to those persons responsible for the information given in a white paper.

2. ~~It shall be the responsibility of the holders of asset-referenced tokens to present evidence indicating that the issuer of asset-referenced tokens has infringed Article 17 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said asset-referenced tokens.~~

3. A holder of asset-referenced tokens shall not be able to claim damages for the information provided in a summary as referred to in Article 17(2), including the translation thereof, except where:

   (a) the summary is misleading, inaccurate or inconsistent when read together with the other parts of the crypto-asset white paper;

(b) the summary does not provide, when read together with the other parts of the crypto-asset white paper, key information in order to aid ~~consumers and investors~~ **potential holders** when considering whether to purchase such asset-referenced tokens.

4. This Article does not exclude further civil liability claims in accordance with national law.

Chapter 2
Obligations of all issuers of asset-referenced tokens

Article 23
Obligation to act honestly, fairly and professionally in the best interest of the holders of asset-referenced tokens

1. Issuers of asset-referenced tokens shall:

(a) act honestly, fairly and professionally;

(b) communicate with the holders and prospective holders of asset-referenced tokens in a fair, clear and not misleading manner.

2. Issuers of asset-referenced tokens shall act in the best interests of the holders of such tokens and shall treat them equally, unless any preferential treatment is disclosed in the crypto-asset white paper, and, where applicable, the marketing communications.

Article 24
Publication of the crypto-asset white paper, and, where applicable, of the marketing communications

Issuers of asset-referenced tokens shall publish on their website their approved crypto-asset white paper as referred to in Article 19(1) and, where applicable, their modified crypto-asset white paper referred to in Article 21 and their marketing communications referred to in Article 25. The approved crypto-asset white papers shall be publicly accessible by no later than the starting date of

the offer to the public of the asset-referenced tokens or the admission of those tokens to trading on a trading platform for crypto-assets. The approved crypto-asset white paper, and, where applicable, the modified crypto-asset white paper and the marketing communications, shall remain available on the issuer's website for as long as the asset-referenced tokens are held by the public.

Article 25

Marketing communications

1. Any marketing communications relating to an offer to the public of asset-referenced tokens, or to the admission of such asset-referenced tokens to trading on a trading platform for crypto-assets, shall comply with all of the following:

   (a) the marketing communications shall be clearly identifiable as such;

   (b) the information in the marketing communications shall be fair, clear and not misleading;

   (c) the information in the marketing communications shall be consistent with the information in the crypto-asset white paper;

   (d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the crypto-assets.

2. Where no permanent redemption right has been granted to all the holders of asset-referenced tokens, the marketing communications shall contain a clear and unambiguous statement that all the holders of the asset-referenced tokens ~~do not have a claim on the reserve assets or~~ cannot redeem those reserve assets with the issuer at any time.

3. Marketing communications and the respective modifications shall be notified to the competent authority. Competent authorities shall not require an approval of marketing communications before publication.

Explanation

- **Alignment with Art 7**

Article 26

Ongoing information to holders of asset-referenced tokens

1. Issuers of asset-referenced tokens shall at least every week and in a clear, accurate and transparent manner disclose on a publicly and easily accessible place on their website the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets referred to in Article 32.

2. Issuers of asset-referenced tokens shall as soon as possible and in a clear, accurate and transparent manner disclose on a publicly and easily accessible place on their website the full and unredacted results of the audit of the reserve assets referred to in Article 32(5).

3. Without prejudice to Article 77, issuers of asset-referenced tokens shall as soon as possible and in a clear, accurate and transparent manner disclose on their website any event that has or is likely to have a significant effect on the value of the asset-referenced tokens, or on the reserve assets referred to in Article 32.

Article 27

Complaint handling procedure

1. Issuers of asset-referenced tokens shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of asset-referenced tokens. Where the asset-referenced tokens are distributed, totally or partially, by third-party entities as referred to in Article 30(5) point (h), issuers of asset-referenced tokens shall establish procedures to facilitate the handling of such complaints between holders of asset-referenced tokens and such third-party entities.

2. Holders of asset-referenced tokens shall be able to file complaints with the issuers of their asset-referenced tokens free of charge.

3. Issuers of asset-referenced tokens shall develop and make available to clients a template for filing complaints and shall keep a record of all complaints received and any measures taken in response thereof.

4. Issuers of asset-referenced tokens shall investigate all complaints in a timely and fair manner and communicate the outcome of such investigations to the holders of their asset-referenced tokens within a reasonable period of time and in accordance with the regulatory technical standards pursuant to paragraph 5.

5. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards to specify the requirements, templates and procedures for complaint handling.

The EBA shall submit those draft regulatory technical standards to the Commission by ... [please insert date 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 28

Identification, prevention, management and disclosure of conflicts of interest

1. Issuers of asset-referenced tokens shall implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interest between themselves and:

(a) their shareholders;

(b) the members of their management body;

(c) their employees;

(d) any natural or legal persons with qualifying holdings of the asset-referenced token issuer's share capital or voting rights, or who exercise, by any other means, a power of control over the said issuer;

(e) the holders of asset-referenced tokens;

(f) any third party providing one of the functions as referred in Article 30(5), point (h);

(g) where applicable, any ~~legal or~~ natural **or legal** persons referred to in Article 35(3).

Issuers of asset-referenced tokens shall, in particular, take all appropriate steps to identify, prevent, manage and disclose conflicts of interest arising from the management and investment of the reserve assets referred to in Article 32.

2. Issuers of asset-referenced tokens shall disclose to the holders of their asset-referenced tokens the general nature and sources of conflicts of interest and the steps taken to mitigate them.

3. Such disclosure shall be made on the website of the issuer of asset-referenced tokens in a prominent place.

4. The disclosure referred to in paragraph 3 shall be sufficiently precise to enable holders of their asset-referenced tokens to take an informed purchasing decision about the asset-referenced tokens.

5. The EBA shall develop draft regulatory technical standards to specify:

(a) the requirements for the policies and procedures referred to in paragraph 1;

(b) the arrangements for the disclosure referred to in paragraphs 3.

The EBA shall submit those draft regulatory technical standards to the Commission by ... [please insert date 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 29

Information to competent authorities

Issuers of asset-referenced tokens shall notify their competent authorities of any changes to their management body.

Article 30

Governance arrangements

1. Issuers of asset-referenced tokens shall have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures.

2. Members of the management body of issuers of asset-referenced tokens shall have the necessary good repute and competence, in terms of qualifications, experience and skills, to perform their duties and to ensure the sound and prudent management of such issuers. They shall also demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

3. Natural persons who either own, directly or indirectly, more than 10 % of the share capital or voting rights of issuers of asset-referenced tokens, or who exercise, by any other means, a power of control over such issuers shall have the necessary good repute ~~and competence~~.

Explanation

- **The Presidency would like to clarify that the aim of the amendment from 20% to 10% (as presented in WK 3406/2021) was to ensure consistency with the authorisation and definition of qualified holding. It is not a change of substance.**
- **Alignment with Art 16(2)(h).**

4. None of the persons referred to in paragraphs 2 or 3 shall have been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

5. Issuers of asset-referenced tokens shall adopt policies and procedures that are sufficiently effective to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Title. In particular, issuers of asset-referenced tokens shall establish, maintain and implement policies and procedures on:

(a) the reserve of assets referred to in Article 32;

(b) the custody of the reserve assets, including asset segregation, as specified in Article 33;

(c) the rights or the absence of rights granted to the holders of asset-referenced tokens, as specified in Article 35;

(d) the mechanism through which asset-referenced tokens are issued, created and destroyed;

(e) the protocols for validating transactions in asset-referenced tokens;

(f) the functioning of the issuer's proprietary DLT, where the asset-referenced tokens are issued, transferred and stored on such DLT or similar technology that is operated by the issuer or a third party acting on its behalf;

(g) the mechanisms to ensure the redemption of asset-referenced tokens or to ensure their liquidity, as specified in Article 35(4);

(h) arrangements with third-party entities for operating the reserve of assets, and for the investment of the reserve assets, the custody of the reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public;

(i) complaint handling, as specified in Article 27;

(j) conflicts of interests, as specified in Article 28;

(k) a liquidity management policy for issuers of significant asset-referenced tokens, as specified in Article 41(3).

Issuers of asset-referenced tokens that use third-party entities to perform the functions set out in point (h), shall establish and maintain contractual arrangements with those third-party entities that precisely set out the roles, responsibilities, rights and obligations of both the issuers of asset-referenced tokens and of each of those third-party entities. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.

6. Unless they have initiated a plan as referred to in Article 42, issuers of asset-referenced tokens shall employ appropriate and proportionate systems, resources and procedures to ensure the continued and regular performance of their services and activities. To that end, issuers of asset-referenced tokens shall maintain all their systems and security access protocols to appropriate Union standards.

7. Issuers of asset-referenced tokens shall identify sources of operational risk and minimise those risks through the development of appropriate systems, controls and procedures.

8. Issuers of asset-referenced tokens shall establish a business continuity policy **and plans** that ensure~~s~~, in case of an interruption of their systems and procedures, the preservation of essential data and functions and the maintenance of their activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their activities.

Explanation

- **Ensure consistency with paragraph 12(c)**

9. Issuers of asset-referenced tokens shall have internal control mechanisms and effective procedures for ~~risk assessment and~~ risk management, including effective control and safeguard arrangements for managing ICT systems as required by Regulation (EU) 2021/xx of the European Parliament and of the Council. The procedures shall provide for a comprehensive assessment relating to the reliance on third-party entities as referred to in paragraph 5, point (h). Issuers of asset-referenced tokens shall monitor and evaluate on a regular basis the adequacy and effectiveness of the internal control mechanisms and procedures for risk assessment and take appropriate measures to address any deficiencies.

Explanation

- **"risk assessment" is already included in risk management in the same way as risk identification, risk monitoring and risk mitigation**

10. Issuers of asset-referenced tokens shall have systems and procedures in place that are adequate to safeguard the security, integrity and confidentiality of information as required by Regulation (EU) 2021/xx of the European parliament and of the Council on digital operational resilience and in line with Regulation (EU) 2016/679 of the European parliament and of the Council (General Data Protection Regulation). Those systems shall record and safeguard relevant data and information collected and produced in the course of the issuers' activities.

11. Issuers of asset-referenced tokens shall ensure that they are regularly audited by independent auditors. The results of those audits shall be communicated to the management body of the issuer concerned and made available to the competent authority.

12. The EBA, in close cooperation with ESMA **and the ESCB**, shall develop draft regulatory technical standards specifying the minimum content of the governance arrangements on:

(a) the monitoring tools for the risks referred to in paragraph 1 and in the paragraph 7;

(b) the internal control mechanism referred to in paragraphs 1 and 9;

(c) the business continuity **policy and** plan referred to in paragraph 8;

(d) the audits referred to in paragraph 11;

The EBA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 31

Own funds requirements

1. Issuers of asset-referenced tokens shall, at all times, have in place own funds equal to an amount of at least the higher of the following:

(a) EUR 350 000;

(b) 2% of the average amount of the reserve assets referred to in Article 32.

For the purpose of points (b), the average amount of the reserve assets shall mean the average amount of the reserve assets at the end of each calendar day, calculated over the preceding 6 months.

Where an issuer offers more than one category of asset-referenced tokens, the amount referred to in point (b) shall be the sum of the average amount of the reserve assets backing each category of asset-referenced tokens.

2. The own funds referred to in paragraph 1 shall consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions referred to in Articles 46 and 48 of that Regulation.

3. Competent authorities of the home Member States may require issuers of asset-referenced tokens to hold an amount of own funds which is up to 20 % higher than the amount resulting from the application of paragraph 1, point (b)~~, or permit such issuers to hold an amount of own funds which is up to 20 % lower than the amount resulting from the application of paragraph 1, point (b),~~ where an assessment of the following indicates a higher ~~or a lower~~ degree of risk:

Explanation

- **Following several requests from MS the Presidency proposes to eliminate the flexibility to decrease own funds requirements**

(a) the evaluation of the risk-management processes and internal control mechanisms of the issuer of asset-referenced tokens as referred to in Article 30, paragraphs 1, 7 and 9;

(b) the quality and volatility of the reserve assets referred to in Article 32;

(c) the types of rights granted by the issuer of asset-referenced tokens to holders of asset-referenced tokens in accordance with Article 35;

(d) where the reserve assets are invested, the risks posed by the investment policy on the reserve assets;

(e) the aggregate value and number of transactions carried out in asset-referenced tokens;

(f) the importance of the markets on which the asset-referenced tokens are offered and marketed;

(g) where applicable, the market capitalisation of the asset-referenced tokens**;**

(h) the outcome of the stress test referred to in paragraph 2a.

4. The EBA, in close cooperation with ESMA **and the ESCB**, shall develop draft regulatory technical standards further specifying:

(a) the methodology for the calculation of the own funds set out in paragraph 1;

(b) ~~the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 3;~~

(c) the criteria for requiring higher own funds ~~or for allowing lower own funds~~, as set out in paragraph 3**;**

(d) The minimum periodicity of the stress tests and the common reference parameters of the stress test scenarios, in accordance with paragraph 2a, taking into account the average amount of the reserve assets.

Explanation

- **The timing and procedure to adjust to higher own funds requirements is a matter for the supervisor to determine**
- **Following ECB opinion (amendment 10) but allowing for the introduction of proportionality in the exercise**

The EBA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after entry into force].

The draft regulatory technical standards shall be updated periodically taking into account the latest market developments.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 32

Obligation to have a reserve of assets, and composition and management of such reserve of assets

1. Issuers of asset-referenced tokens shall at all times constitute and maintain a reserve of assets.

1a The reserve shall be insulated in accordance with national law in the interest of the holders of the asset-referenced token against the claims of other creditors on the issuer, in particular in the event of insolvency.

Explanation

- **This drafting (presented in WK 3403/2021) was broadly supported; some MS proposed to be more prescriptive than PSD II (harmonising the meaning of insolvency) or to allow for the two options of PSD II (a guarantee/insurance instead of a reserve); the Presidency considers that any of those possibilities would be a significant departure from the current approach and did not considered them**

1b The reserve shall be composed and managed so as to cover at all times the risks associated to the claims on the issuer from holders of the asset-referred token.

2. Issuers that offer two or more categories of asset-referenced tokens to the public shall operate and maintain segregated pools of reserves of assets for each category of asset-referenced tokens. Each of these pools of reserve of assets shall be managed separately.

Issuers of asset-referenced tokens that offer the same asset-referenced tokens to the public shall operate and maintain only one reserve of assets for that category of asset-referenced tokens.

3. The management bodies of issuers of asset-referenced tokens shall ensure effective and prudent management of the reserve **of** assets. The issuers shall ensure that ~~each~~ **issuance** ~~creation~~ and **redemption** ~~destruction~~ of asset-referenced tokens is always matched by a corresponding increase or decrease of the reserve of assets ~~in a value equal to the face value of the asset-referenced tokens created or destroyed~~.

~~Such increase or decrease shall be adequately managed to avoid any adverse impacts on the market of the reserve assets.~~

The aggregate value of reserve assets shall ~~always~~ be at least equal to the aggregate face value of **the claims on the issuer from holders of** asset-referenced tokens in circulation.

Explanation

- **The Presidency introduced some changes to the proposals made in the discussion note (WK 3403/2021);**
- **The face value was removed due to the doubts it created for MS as the value of the ART fluctuates according to the value of the basked of assets**

4. Issuers of asset-referenced tokens shall have a clear and detailed policy describing the stabilisation mechanism of such tokens. That policy and procedure shall in particular:

(a) list the reference assets to which the asset-referenced tokens aim at stabilising their value and the composition of such reference assets;

(b) describe the type of assets and the precise allocation of assets that are included in the reserve of assets;

(c) contain a detailed assessment of the risks, including credit risk, market risk and liquidity risk resulting from the reserve assets;

(d) describe the procedure by which the asset-referenced tokens are created and destroyed, and the procedure by which such creation or destruction will result in a corresponding increase and decrease of the reserve **of** assets;

(e) mention whether **a part of** the reserve **of** assets ~~are~~ **is** invested **as provided in Article 34**;

(f) where issuers of asset-referenced tokens invest a part of the reserve **of** assets **as provided in Article 34**, describe in detail the investment policy and contain an assessment of how that investment policy can affect the value of the reserve **of** assets;

(g) describe the procedure to purchase asset-referenced tokens and to redeem such tokens against the reserve **of** assets, and list the persons or categories of persons who are entitled to do so.

5. Without prejudice to Article 30(11), issuers of asset-referenced tokens shall mandate an independent audit of the reserve assets every six months, assessing the compliance with the rules of this Chapter, as of the date of its authorisation as referred to in Article 19.

Article 33

Custody of reserve assets

1. Issuers of asset-referenced tokens shall establish, maintain and implement custody policies, procedures and contractual arrangements that ensure at all times that:

(a) the reserve assets are segregated from the issuers' own assets;

(b) the reserve assets are not encumbered nor pledged as a 'financial collateral arrangement' within the meaning of Article 2(1), points (a),of Directive 2002/47/EC of the European Parliament and of the Council;

(c) the reserve assets are held in custody in accordance with paragraph 4;

(d) the issuers of asset-referenced tokens have prompt access to the reserve assets to meet any redemption requests from the holders of asset-referenced tokens**;**

(e) concentration risks in the custody of reserve assets are avoided.

Explanation

- **Following ECB opinion (amendment 11)**

Issuers of asset-referenced tokens that issue two or more categories of asset-referenced tokens in the Union shall have a custody policy for each reserve of assets. Issuers of asset-referenced tokens that have issued the same category of asset-referenced tokens shall operate and maintain only one custody policy.

2. The reserve assets shall be held in custody by no later than 5 working days after the issuance of the asset-referenced tokens by:

(a) a crypto-asset service provider authorised under Article 53 for the service mentioned in Article 3(1), point (10), where the reserve assets take the form of crypto-assets;

(b) a credit institution authorised under Directive 2013/36/EU of the European Parliament and of the Council for all ~~other~~ types of reserve assets**, subject to the relevant notification foreseen in Article 53a for the crypto-assets**;

(c) an investment firm having its registered office in the Union, **where the reserve assets take the form of financial instruments or crypto-assets,** subject **the relevant notification foreseen in Article 53a for crypto-assets and** to capital adequacy requirements in accordance with Directive (EU) 2019/2034 and Regulation (EU) No 2019/2033 including capital requirements for operational risks and authorised in accordance with Directive 2014/65/EC and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I to Directive 2014/65/EC**, for**

financial instruments; such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9(1) of Directive (EU) 2019/2034;

Explanation

- **Inclusion of references to the relevant (for the service custody) notification foreseen in Art 53a**

3. Issuers of asset-referenced tokens shall exercise all due skill, care and diligence in the selection, appointment and review of credit institutions and crypto-asset providers appointed as custodians of the reserve assets in accordance with paragraph 2. **The custodian shall be a person different from the issuer.**

Issuers of asset-referenced tokens shall ensure that the credit institutions ~~and~~, crypto-asset service providers **and investment firms** appointed as custodians of the reserve assets have the necessary expertise and market reputation to act as custodians of such reserve assets, taking into account the accounting practices, safekeeping procedures and internal control mechanisms of those credit institutions ~~and~~, crypto-asset service providers **and investment firms**. The contractual arrangements between the issuers of asset-referenced tokens and the custodians shall ensure that the reserve assets held in custody are protected against claims of the custodians' creditors.

The custody policies and procedures referred to in paragraph 1 shall set out the selection criteria for the appointments of credit institutions ~~or~~, crypto-asset service providers **or investment firms** as custodians of the reserve assets and the procedure to review such appointments.

Issuers of asset-referenced tokens shall review the appointment of credit institutions ~~or~~, crypto-asset service providers **or investment firms** as custodians of the reserve assets on a regular basis. For that purpose, the issuer of asset-referenced tokens shall evaluate its exposures to such custodians, taking into account the full scope of its relationship with them, and monitor the financial conditions of such custodians on an ongoing basis.

4. The reserve assets held on behalf of issuers of asset-referenced tokens shall be entrusted to credit institutions ~~or~~, crypto-asset service providers **or investment firms** appointed in accordance with paragraph 3 in the following manner:

(a) credit institutions shall hold in custody funds in an account opened in the credit institutions' books;

(b) for financial instruments that can be held in custody, credit institutions **or investment firms** shall hold in custody all financial instruments that can be registered in a financial instruments account opened in the credit institutions' **or investments firms'** books and all financial instruments that can be physically delivered to such credit institutions **or investment firms**;

(c) for crypto-assets that can be held in custody, the crypto-asset service providers**, credit institutions and investment firms,** shall hold the crypto-assets included in the reserve assets or the means of access to such crypto-assets, where applicable, in the form of private cryptographic keys;

(d) for other assets, the credit institutions shall verify the ownership of the issuers of the asset-referenced tokens and shall maintain a record of those reserve assets for which they are satisfied that the issuers of the asset-referenced tokens own those reserve assets.

For the purpose of point (a), credit institutions shall ensure that funds are registered in the credit institutions' books within segregated account in accordance with national provisions transposing Article 16 of Commission Directive 2006/73/EC into the legal order of the Member States. The account shall be opened in the name of the issuers of the asset-referenced tokens for the purpose of managing the reserve assets, so that the funds held in custody can be clearly identified as belonging to the reserve of assets.

For the purposes of point (b), credit institutions **and investment firms** shall ensure that all those financial instruments that can be registered in a financial instruments account opened in

the credit institution's books are registered in the credit institutions' **and investment firms'** books within segregated accounts in accordance with national provisions transposing Article 16 of Commission Directive 2006/73/EC into the legal order of the Member States. The financial instruments account shall be opened in the name of the issuers of the asset-referenced tokens for the purpose of managing the reserve assets, so that the financial instruments held in custody can be clearly identified as belonging to the reserve of assets.

For the purposes of point (c), crypto-asset service providers**, credit institutions and investment firms** shall open a register of positions in the name of the issuers of the asset-referenced tokens for the purpose of managing the reserve assets, so that the crypto-assets held in custody can be clearly identified as belonging to the reserve of assets.

For the purposes of point (d), the assessment whether issuers of asset-referenced tokens own the reserve assets shall be based on information or documents provided by the issuers of the asset-referenced tokens and, where available, on external evidence.

5. The appointment of a credit institution ~~or~~**,** a crypto-asset service provider **or a investment firm** as custodian of the reserve assets in accordance with paragraph 3 shall be evidenced by a written contract as referred to in Article 30(5), second subparagraph. Those contracts shall, amongst others, regulate the flow of information deemed necessary to enable the issuers of asset-referenced tokens and the credit institutions ~~and~~**,** the crypto-assets service providers **and the investment firms** to perform their functions.

6. The credit institutions ~~and~~**,** crypto-asset service providers **and investment firms** that have been appointed as custodians in accordance with paragraph 3 shall act honestly, fairly, professionally, independently and in the interest of the issuer of the asset-referenced tokens and the holders of such tokens.

7. The credit institutions**,** ~~and~~ crypto-asset service providers **and investment firms** that have been appointed as custodians in accordance with paragraph 3 shall not carry out activities with regard to issuers of asset-referenced tokens that may create conflicts of interest between

those issuers, the holders of the asset-referenced tokens, and themselves unless all of the following conditions have been complied with:

(a) the credit institutions ~~or,~~ the crypto-asset service providers **or the investment firms** have functionally and hierarchically separated the performance of their custody tasks from their potentially conflicting tasks;

(b) the potential conflicts of interest have been properly identified, **prevented,** managed~~,~~ ~~monitored~~ and disclosed by the issuer of the asset-referenced tokens to the holders of the asset-referenced tokens, in accordance with Article 28.

8. In case of a loss of a financial instrument or a crypto-asset held in custody as referred to in paragraph 4, the credit institution**,** ~~or~~ the crypto-asset service provider **or the investment firm** that lost that financial instrument or crypto-asset shall return to the issuer of the asset-referenced tokens a financial instrument or a crypto-asset of an identical type or the corresponding value without undue delay. The credit institution ~~or,~~ the crypto-asset service provider **or the investment firm** concerned shall not be liable where it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

Article 34

Investment of the reserve assets

1. Issuers of asset-referenced tokens that invest a part of the reserve assets shall invest those reserve assets only in highly liquid financial instruments with minimal market**,** ~~and~~ credit risk **and concentration risk**. The investments shall be capable of being liquidated rapidly with minimal adverse price effect.

2. The financial instruments in which the reserve assets are invested shall be held in custody in accordance with Article 33.

3. All profits or losses, including fluctuations in the value of the financial instruments referred to in paragraph 1, and any counterparty or operational risks that result from the investment of the reserve assets shall be borne by the issuer of the asset-referenced tokens.

4. The EBA shall, after consulting ESMA and the European System of Central Banks, develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid and bearing minimal credit and market risk as referred to in paragraph 1. When specifying the financial instruments referred to in paragraph 1, the EBA shall take into account:

(a) the various types of reserve assets that can back an asset-referenced token;

(b) the correlation between those reserve assets and the highly liquid financial instruments the issuers may invest in;

(c) the conditions for recognition as high quality liquid assets under Article 412 of Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 2015/61**;**

(d) liquidity requirements establishing which percentage of the reserve assets should be comprised of daily maturing assets, reverse repurchase agreements which are able to be terminated by giving one working day's prior notice or cash which is able to be withdrawn by giving one working day's prior notice;

(e) liquidity requirements establishing which percentage of the reserve assets should be comprised of weekly maturing assets, reverse repurchase agreements which are able to be terminated by giving five working days' prior notice, or cash which is able to be withdrawn by giving five working days' prior notice;

(f) concentration requirements preventing the issuer from investing more than a certain percentage of assets issued by a single body;

(g) concentration requirements preventing the issuer from keeping in custody more than a certain percentage of crypto-assets or assets with crypto-asset service providers or credit institutions which belong to the same group, as defined in Article 2(11) of Directive 2013/34/EU.

Explanation

- **Following ECB opinion (amendment 12)**

For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph.

EBA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 35

Rights on issuers of asset-referenced tokens

1. Issuers of asset-referenced tokens shall establish, maintain and implement clear and detailed policies and procedures on the rights granted to holders of asset-referenced tokens~~, including any direct claim or redemption rights~~ on the issuer of those asset-referenced tokens ~~or on the reserve assets~~.

Explanation

- **As noted by some MS, keeping the reference to redemption right (differently of what was proposed in the discussion note, WK 3403/2021) is more consistent with the other Presidency proposals;**

- **It was referred that a right on the reserve should be kept for the case where the issuer is no longer in control; the Presidency considers that those issues should be dealt in the context of Art 42 and that direct rights over the reserve on a going concern would not be appropriate**

2. Where holders of asset-referenced tokens are granted **permanent redemption** rights ~~as referred to in paragraph 1~~, issuers of asset-referenced tokens shall establish a policy setting out:

(a) the conditions, including thresholds, periods and timeframes, for holders of asset-referenced tokens to exercise those rights;

(b) the mechanisms and procedures to ensure the redemption of the asset-referenced tokens, including in stressed market circumstances, **or** in case of an orderly **redemption** ~~wind-down of the issuer~~ of asset-referenced tokens as referred to in Article 42~~, or in case of a cessation of activities by such issuer~~;

Explanation

- **In the case of cessation of activities Art 42 will apply**

(c) the valuation, or the principles of valuation, of the asset-referenced tokens and of the reserve assets when those rights are exercised by the holder of asset-referenced tokens;

(d) the settlement conditions when those rights are exercised;

(e) the fees applied by the issuers of asset-referenced tokens when the holders exercise those rights.

The fees referred to in point (e) shall be proportionate and commensurate with the actual costs incurred by the issuers of asset-referenced tokens.

Explanation

- **The Presidency will not amend rules on fees at the current stage; if MS support a prohibition of redemption fees in EMT the Presidency will include the same prohibition here**

3. Where issuers of asset-referenced tokens do not grant rights as referred to in paragraph ~~1~~ **2** to all the holders of asset-referenced tokens, the detailed policies and procedures shall specify the natural or legal persons that are provided with such rights. The detailed policies and procedures shall also specify the conditions for exercising such rights and the obligations imposed on those persons.

   Issuers of asset-referenced tokens shall establish and maintain appropriate contractual arrangements with those natural or legal persons who are granted such rights. Those contractual arrangements shall precisely set out the roles, responsibilities, rights and obligations of the issuers of asset-referenced tokens and each of those natural or legal persons. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.

4. Issuers of asset-referenced tokens that do not grant rights as referred to in paragraph ~~1~~ **2** to all the holders of such asset-referenced tokens shall put in place mechanisms to ensure the liquidity of the asset-referenced tokens. For that purpose, they shall establish and maintain written agreements with crypto-asset service providers authorised for the crypto-asset service referred to in Article 3(1) point (12). The issuer of asset-referenced tokens shall ensure that a sufficient number of crypto-asset service providers are required to post firm quotes at competitive prices on a regular and predictable basis.

   Where the market value of asset-referenced tokens ~~varies~~ **diverges** significantly from the value of the reference assets ~~or the reserve assets~~ or in the 14 days following the publication of the modification of the white paper in accordance with Article 24, the holders of asset-referenced tokens shall have the right to redeem the crypto-assets **directly** from the issuer of crypto-assets ~~directly~~. In that case, any fee applied for such redemption shall be proportionate and commensurate with the actual costs incurred by the issuer of asset-referenced tokens.

The issuer shall establish and maintain contractual arrangements to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens, where the issuer decides to stop operating or where it has been placed under an orderly wind-down, or when its authorisation has been withdrawn.

Explanation

- **To be updated (possibly deleted) in the context of the review of Art 42**

4a. Issuers of asset-referenced tokens shall clearly state the conditions of redemption, referred to in paragraph 1 and 4, including any fees relating thereto.

If issuers offer holders the possibility to acquire and redeem the token by paying in funds the sum equivalent to the market value of the assets referenced by the token, the issuer shall establish policies and procedures to:

(a) Ensure a fair and transparent valuation of the assets referenced by the assets referenced tokens;

(b) adequately manage increase or decreases of the reserve to avoid any adverse impacts on the market of the assets included in the reserve.

If issuers, when selling an asset -reference token, accept a payment in funds denominated in a given official currency of a country, they shall always provide the option to redeem the token in funds denominated in the same official currency.

5. The EBA shall, in close cooperation with ESMA **and the ESCB**, develop draft regulatory technical standards specifying:

(a) the obligations to be set out in an agreement between the issuers and crypto-asset service providers ensuring the liquidity of asset-referenced tokens as set out in the first subparagraph of paragraph 4;

(b) the variations of value triggering a direct right of redemption from the issuer of asset-referenced tokens as set out in the second subparagraph of paragraph 4, and the conditions for exercising such a right.

EBA shall submit those draft regulatory technical standards to the Commission by ... [please insert 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 36

Prohibition of interest

Issuers of asset-referenced tokens or crypto-asset service providers shall not provide for interest or any other benefit related to the length of time during which a holder of asset-referenced tokens holds asset-referenced tokens.

Explanation

- **The Presidency will align Art 36 with the outcome of the discussion of Art 45**

CHAPTER 4
ACQUISITIONS OF ISSUERS OF ASSET-REFERENCED TOKENS

Article 37

Assessment of intended acquisitions of issuers of asset-referenced tokens

1. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who intends to acquire, directly or indirectly, a qualifying holding in an issuer of asset-referenced tokens or to further increase, directly or indirectly, such a qualifying holding so that the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 %, or so that the issuer of asset-referenced tokens would become its subsidiary (the 'proposed

acquisition'), shall notify the competent authority of that issuer thereof in writing, indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 38(4).

Explanation

- **Following some MS doubts concerning the deletion of the 10% (as presented in WK 3406/2021), the Presidency notes that the 10% is already included in the definition of qualified holding and that the notification is required when a qualified holding is intended to be acquired or to be further increased**

2. Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an issuer of asset-referenced tokens (the 'proposed vendor') shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the issuer of asset-referenced tokens would cease to be that person's subsidiary.

3. Competent authorities shall promptly and in any event within two working days following receipt of the notification required under paragraph 1 acknowledge receipt thereof in writing.

4. Competent authorities shall assess the intended acquisition referred to in paragraph 1 and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 38(4), within 60 working days from the date of the written acknowledgement of receipt referred to in paragraph 3.

   When acknowledging receipt of the notification, competent authorities shall inform the persons referred to in paragraph 1 of the date of the expiry of the assessment period.

5. When performing the assessment referred to in paragraph 4, first subparagraph, competent authorities may request from the persons referred to in paragraph 1 any additional information that is necessary to complete that assessment. Such request shall be made before the

assessment is finalised, and in any case no later than on the 50th working day from the date of the written acknowledgement of receipt referred to in paragraph 3. Such requests shall be made in writing and shall specify the additional information needed.

Competent authorities shall halt the assessment referred to in paragraph 4, first subparagraph, until they have received the additional information referred to in the first subparagraph of this paragraph, but for no longer than 20 working days. Any further requests by competent authorities for additional information or for clarification of the information received shall not result in an additional interruption of the assessment.

Competent authority may extend the interruption referred to in the second subparagraph of this paragraph up to 30 working days where the persons referred to in paragraph 1 are situated or regulated outside the Union.

6. Competent authorities that, upon completion of the assessment, decide to oppose the intended acquisition referred to in paragraph 1 shall notify the persons referred to in paragraph 1 thereof within two working days, but before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph. That notification shall provide the reasons for that decision.

7. Where competent authorities do not oppose the intended acquisition referred to in paragraph 1 before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph, the intended acquisition or intended disposal shall be deemed to be approved.

8. Competent authorities may set a maximum period for concluding the intended acquisition referred to in paragraph 1, and extend that maximum period where appropriate.

Article 38

Content of the assessment of intended acquisitions of issuers of asset-referenced tokens

1. When performing the assessment referred to in Article 37(4), competent authorities shall appraise the suitability of the persons referred to in Article 37(1) and the financial soundness of intended acquisition against all of the following criteria:

(a) the reputation of the persons referred to in Article 37(1);

(b) the reputation and experience of any person who will direct the business of the issuer of asset-referenced tokens as a result of the intended acquisition or disposal;

(c) the financial soundness of the persons referred to in Article 37(1), in particular in relation to the type of business pursued and envisaged in the issuer of asset-referenced tokens in which the acquisition is intended;

(d) whether the issuer of asset-referenced tokens will be able to comply and continue to comply with the provisions of this Title;

(e) whether there are reasonable grounds to suspect that, in connection with the intended acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849/EC is being or has been committed or attempted, or that the intended acquisition could increase the risk thereof.

2. Competent authorities may oppose the intended acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided in accordance with Article 37(4) is incomplete or false.

3. Member States shall not impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards to establish an exhaustive list of information that is necessary to carry out the assessment referred to in Article 37(4), first subparagraph and that shall be provided to the competent

authorities at the time of the notification referred to in paragraph 37(1). The information required shall be relevant for a prudential assessment, be proportionate and be adapted to the nature of the persons and the intended acquisition referred to in Article 37(1).

The EBA shall submit those draft regulatory technical standards to the Commission by [please insert 12 months after the entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

CHAPTER 5
SIGNIFICANT ASSET-REFERENCED TOKENS

Article 39
Classification of asset-referenced tokens as significant asset-referenced tokens

1. The EBA shall classify asset-referenced tokens as significant asset-referenced tokens on the basis of the following criteria, as specified in accordance with paragraph 6 and where at least three of the following criteria are met:

(a) the size of the customer base of the promoters of the asset-referenced tokens, the shareholders of the issuer of asset-referenced tokens or of any of the third-party entities referred to in Article 30(5), point (h);

(b) the value of the asset-referenced tokens issued or, where applicable, their market capitalisation;

(c) the number and value of transactions in those asset-referenced tokens;

(d) ~~the size of the reserve of assets of the issuer of the asset-referenced tokens~~;

Explanation

- **b) and d) are extremely correlated / almost not distinguishable; therefore, if the threshold of one is reached the other threshold is automatically reached too**

(e) ~~the significance of the cross-border activities of the issuer of the asset-referenced tokens, including the number of Member States where the asset-referenced tokens are used, the use of the asset-referenced tokens for cross-border payments and remittances and the number of Member States where the third-party entities referred to in Article 30(5), point (h), are established;~~

Explanation

- **As noted by MS to link higher prudential requirements to cross border activity would be a hurdle for the internal market**

(f) the interconnectedness with the financial system**;**

(g) the same legal entity or related group entities issue several e-money tokens, asset-referenced tokens and provide crypto-asset provider services.

Explanation

- **As proposed by the ECB (amendment 14)**

2. Competent authorities **of the issuer's home Member State** ~~that authorised an issuer of asset-referenced tokens in accordance with Article 19~~ shall provide the EBA **and the ECB** with information on the criteria referred to in paragraph 1 and specified in accordance with paragraph 6 on at least a yearly basis.

Where the issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, competent authorities shall transmit the information referred to in the previous sub paragraph to the central bank of that Member State.

3. Where the EBA is of the opinion that asset-referenced tokens meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of the issuer's home Member State**, to the ECB and to central bank as referred to in paragraph 2**.

Explanation

- **In line with ECB proposal (amendment 14)**

The EBA shall give issuers of such asset-referenced tokens and their competent authorities the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within ~~three months~~ **60 working days** after the notification referred to in paragraph 3 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5. The supervisory responsibilities on issuers of significant asset-referenced tokens shall be transferred to the EBA ~~one month~~ **20 working days** after the notification of the decision referred to in paragraph 4.

The EBA and the competent authority concerned shall cooperate in order to ensure the smooth transition of supervisory competences.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 121 to further specify the criteria set out in paragraph 1 for an asset-referenced token to be deemed significant and determine:

(a) the thresholds for the criteria referred to in points (a) to (e) of paragraph 1, subject to the following:

i) the threshold for the customer base shall not be lower than ~~two~~ **2** million of natural or legal persons **nor higher than [10]/[20] million**;

ii) the threshold for the value of the asset-referenced token issued or, where applicable, the market capitalisation of such an asset-referenced token shall not be lower than EUR 1 billion **nor higher than EUR [5]/[10] billion**;

iii) the threshold for the number and value of transactions in those asset-referenced tokens shall not be lower than 500 000 transactions per day or EUR 100 million per day respectively **nor be higher than [5]/[10] 00 000 transactions per day or EUR [5]/[10] 00 million per day respectively**;

iv) ~~the threshold for the size of the reserve assets as referred to in point (d) shall not be lower than EUR 1 billion~~;

v) ~~the threshold for the number of Member States where the asset referenced tokens are used, including for cross-border payments and remittances, or where the third parties as referred to in Article 30(5), point (h), are established shall not be lower than seven~~;

(b) the circumstances under which asset-referenced tokens and their issuers shall be considered as interconnected with the financial system;

(ba) the circumstances under which the issuance of other e-money tokens and asset-referenced tokens and provision of crypto-asset provider services should be considered for the purposes of identification of an asset reference token as significant;

(c) the content and format of information provided by competent authorities to EBA under paragraph 2**;** ~~.~~

(d) the procedure and timeframe for the decisions taken by the EBA under paragraphs 3 to 5.

Article 40

Voluntary classification of asset-referenced tokens as significant asset-referenced tokens

1. Applicant issuers of asset-referenced tokens that apply for an authorisation as referred to in Article**s 15a and** 16, may indicate in their application for authorisation that they wish to classify their asset-referenced tokens as significant asset-referenced tokens. In that case, the competent authority shall immediately notify the request from the prospective issuer to the EBA.

   For the asset-referenced tokens to be classified as significant at the time of authorisation, applicant issuers of asset-referenced tokens shall demonstrate, through its programme of operations as referred to in Article 16(2), point (c) that it is likely to meet at least three criteria referred to in Article 39(1), as specified in accordance with Article 39(6).

2. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall within ~~1 month~~ **20 working days** from receipt of the request mentioned in paragraph 1 prepare a draft decision to that effect and notify that draft decision to the competent authority of the applicant issuer's home Member State**, to the ECB and to central bank as referred to in Article 39(2)**.

   The EBA shall give ~~competent authority of the applicant issuer's home Member State~~ **the entities referred in the first sub paragraph** the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

3. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall within ~~1 month~~ **20 working days** from receipt

of the request mentioned in paragraph 1 prepare a draft decision to that effect and notify that draft decision to the applicant issuer and the competent authority of the applicant issuer's home Member State**, to the ECB and to central bank as referred to in Article 39(2)**.

The EBA shall give the **entities referred in the first sub paragraph** ~~applicant issuer and the competent authority of its home Member State~~ the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within ~~three months~~ **60 working days** after the notification referred to in paragraph 1 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5. Where asset-referenced tokens have been classified as significant in accordance with a decision referred to in paragraph 4, the supervisory responsibilities shall be transferred to the EBA on the date of the decision by which the competent authority grants the authorisation referred to in Article 19(1).

Article 41

Specific additional obligations for issuers of significant asset-referenced tokens

1. Issuers of significant asset-referenced tokens shall adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards.

2. Issuers of significant asset-referenced tokens shall ensure that such tokens can be held in custody by different crypto-asset service providers authorised for the service referred to in Article 3(1) point (10), including by crypto-asset service providers that do not belong to the same group, as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council , on a fair, reasonable and non-discriminatory basis.

3. Issuers of significant asset-referenced tokens shall assess and monitor the liquidity needs to meet redemption requests or the exercise of rights, as referred to in Article 35, by holders of asset-referenced tokens. For that purpose, issuers of significant asset-referenced tokens shall establish, maintain and implement a liquidity management policy and procedures. That policy and those procedures shall ensure that the reserve assets have a resilient liquidity profile that enable issuer of significant asset-referenced tokens to continue operating normally, including under liquidity stressed scenarios.

3a. Issuers of significant asset-referenced tokens shall conduct liquidity stress testing, on a regular basis, and depending on the outcome of such tests, the EBA may decide to strengthen liquidity risk requirements.

Where an issuer of significant asset-referenced tokens offers two or more categories of crypto-asset tokens and/or provides crypto-asset services, these stress tests shall cover all of these activities in a comprehensive and holistic manner.

Explanation

- **ECB proposal (amendment 16)**

4. The percentage referred to in Article 31(1), point (b), shall be set at 3% of the average amount of the reserve assets for issuers of significant asset-referenced tokens.

5. Where several issuers offer the same asset-referenced token that is classified as significant, each of those issuers shall be subject to the requirements set out in the paragraphs 1 to 4.

Where an issuer offers two or more categories of asset-referenced tokens in the Union and at least one of those asset-referenced tokens is classified as significant, such an issuer shall be subject to the requirements set out in paragraphs 1 to 4.

6. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards specifying:

(a) the minimum content of the governance arrangements on the remuneration policy referred to in paragraph 1;

(aa) liquidity requirements and the minimum contents of the liquidity management policy as set out in paragraph 3;

(b) the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 4.

The EBA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

6a. The EBA, in close cooperation with ESMA, shall issue guidelines with a view to establishing the common reference parameters of the stress test scenarios to be included in the stress tests in accordance with paragraph 3a. The guidelines should be updated periodically taking into account the latest market developments.

Explanation

- **ECB proposal (amendment 16)**

Chapter 6

Recovery and ~~Orderly~~ orderly ~~wind-down~~ redemption

Article 41a

Recovery

1. An issuer of asset-referenced tokens shall draw up and maintain a recovery plan providing for measures to be taken by the issuer to restore the compliance with the

requirements applicable to the reserve of assets when the issuer fails to comply with those requirements. It shall include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.

2. The issuer of asset-referenced tokens shall notify the recovery plan to the competent authority 6 months after the authorisation. The recovery plan shall be reviewed and updated regularly.

3. Where the issuer fails to comply with requirements applicable to the reserve of assets or, due to a rapidly deteriorating financial condition, is likely in the near future to not to comply with requirements applicable to the reserve of assets, the competent authority shall require the issuer to implement one or more of the arrangements or measures set out in the recovery plan or to update such a recovery plan when the circumstances are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure compliance with applicable requirements.

4. In the circumstances under paragraph 3, the competent authority shall temporarily suspend redemption of asset-referenced holders, provided suspension is justified having regard to the interests of the holders of asset-referenced tokens.

5. EBA, after consultation of the ESMA, shall develop draft implementing technical standards to specify the format and the information to be contained in the recovery plan.

EBA shall submit those draft implementing technical standards to the Commission by [please insert date 12 months after entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 42

Orderly wind-down

1. Issuers of asset-referenced tokens shall have in place a plan that is appropriate to support an orderly wind-down of their activities under applicable national law, including continuity or recovery of any critical activities performed by those issuers or by any third-party entities as referred in Article 30(5), point (h). That plan shall demonstrate the ability of the issuer of asset-referenced tokens to carry out an orderly wind-down without causing undue economic harm to the holders of asset-referenced tokens or to the stability of the markets of the reserve assets.

2. The plan referred to in paragraph 1 shall include contractual arrangements, procedures and systems to ensure that the proceeds from the sale of the remaining reserve assets are paid to the holders of the asset-referenced tokens.

3. The plan referred to in paragraph 1 shall be reviewed and updated regularly.

Explanation

- **The Presidency is waiting for MS feedback on the proposal made in the 09/04 meeting**

TITLE IV: Electronic money tokens

Chapter 1

Requirements to be fulfilled by all issuers of electronic money tokens

Article 43

Authorisation

1. No electronic money tokens shall be offered to the public in the Union or shall be admitted to trading on a trading platform for crypto-assets unless the issuer of such electronic money tokens:

[(a) is licensed as a credit institution under Directive 2013/36/EU or as an 'electronic money institution' under Directive 2009/110/EC;]

(b)

(c) publishes a crypto-asset white paper notified to the competent authority, in accordance with Article 46.

1a. E-money tokens shall be deemed to be 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC and shall be issued in accordance with the rules laid down in Directive 2009/110/EC unless otherwise stated in this Title.

An e-money token which references a Union currency shall be deemed to be offered to the public in the Union.

2. Paragraph 1 shall not apply:

(a) to e-money tokens that are marketed, distributed and held by qualified investors and can only be held by qualified investors; or

(b) if the average outstanding amount of e-money tokens issued by an issuer of e-money tokens does not exceed EUR 5 000 000, or the corresponding equivalent in another currency, over a period of 12 months, calculated at the end of each calendar day.

For the purpose of point (b), where the Member State has set a threshold lower than EUR 5 000 000 in accordance with Article 9 (1)(a) of Directive 2009/110/EC, such a threshold shall apply.

In the case referred to in points (a) and (b), the issuers of electronic money tokens shall produce a crypto-asset white paper and notify such crypto-asset white paper to the competent authority in accordance with Article 46.

Article 44

Issuance and redeemability of electronic money tokens

1. By derogation of Article 11 of Directive 2009/110/EC, only the following requirements regarding the issuance and redeemability of e-money tokens shall apply to issuers of e-money tokens.

2. Holders of e-money tokens shall be provided with a claim on the issuer of such e-money tokens. Any e-money token that does not provide all holders with a claim shall be prohibited.

3. Issuers of such e-money tokens shall issue e-money tokens at par value and on the receipt of funds within the meaning of Article 4(25) of Directive 2015/2366.

4. Upon request by the holder of e-money tokens, the respective issuer must redeem, at any moment and at par value, the monetary value of the e-money tokens held to the holders of e-money tokens, either in cash or by credit transfer.

5. Issuers of e-money tokens shall prominently state the conditions of redemption, including any fees relating thereto, in the crypto-asset white paper as referred to in Article 46 paragraph 2 subparagraph (d).

6. Redemption may be subject to a fee only if stated in the crypto-asset white paper. Any such fee shall be proportionate and commensurate with the actual costs incurred by issuers of e-money tokens.

7. Where issuers of e-money tokens does not fulfil legitimate redemption requests from holders of e-money tokens within the time period specified in the crypto-asset white paper and which shall not exceed 30 days, the obligation set out in paragraph 4 applies to any following third party entities that has been in contractual arrangements with issuers of e-money tokens:

   (a) entities ensuring the safeguarding of funds received by issuers of e-money tokens in exchange for e-money tokens in accordance with Article 7 of Directive 2009/110/EC;

(b) any natural or legal persons in charge of distributing e-money tokens on behalf of issuers of e-money tokens.

Article 45

Prohibition of interests

No issuer of e-money tokens or crypto-asset service providers shall grant interest or any other benefit related to the length of time during which a holder of e-money tokens holds such e-money tokens.

Article 46

Content and form of the crypto-asset white paper for electronic money tokens

1. Before offering e-money tokens to the public in the EU or seeking an admission of such e-money tokens to trading on a trading platform, the issuer of e-money tokens shall publish a crypto-asset white paper on its website.

2. The crypto-asset white paper referred to in paragraph 1 shall contain all the following relevant information:

(a) a description of the issuer of e-money tokens;

(b) a detailed description of the issuer's project, and a presentation of the main participants involved in the project's design and development;

(c) an indication on whether the crypto-asset white paper concerns an offering of e-money tokens to the public and/or an admission of such e-money tokens to trading on a trading platform for crypto-assets;

(d) a detailed description of the rights and obligations attached to the e-money tokens, including the redemption right at par value as referred to in Article 44 and the fees relating thereto and the procedures and conditions of exercise of these rights;

(e) the information on the underlying technology and standards met by the issuer of e-money tokens allowing for the holding, storing and transfer of such e-money tokens;

(f) the risks relating to the issuer of e-money token, the e-money tokens and the implementation of the project, including the technology;

(g) the disclosure items specified in Annex III.

3. All such information referred to in paragraph 2 shall be fair, clear and not misleading. The crypto-asset white paper shall not contain material omissions and it shall be presented in a concise and comprehensible form.

4. Every crypto-asset white paper shall also include a statement from the management body of the issuer of e-money confirming that the crypto-asset white paper complies with the requirements of this Title and specifying that, to their best knowledge, the information presented in the crypto-asset white paper is correct and that there is no significant omission.

5. The crypto-asset white paper shall include a summary which shall, in brief and non-technical language, provide key information in relation to the offer to the public of e-money tokens or admission of such e-money tokens to trading, and in particular about the essential elements of the e-money tokens. The summary shall indicate that:

(a) the holders of e-money tokens have a redemption right at any moment and at par value;

(b) the conditions of redemption, including any fees relating thereto.

6. Every crypto-asset white paper shall be dated.

7. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance.

8. The crypto-asset white paper shall be made available in machine readable formats, in accordance with Article 5.

9. The issuer of e-money tokens shall notify its draft crypto-asset white paper, and where applicable their marketing communications, to the relevant competent authority as referred to in Article 3(1) point (24)(b) at least 20 working days before its date of its publication.

After the notification and without prejudice of the powers laid down in Directive 2009/110/EC or the national laws transposing it, the competent authority of the home Member State may exercise the powers laid down in Article 82(1) of this Regulation.

10. Any change or new fact likely to have a significant influence on the purchase decision of any potential purchaser or on the decision of holders of e-money tokens to sell or exchange such e-money tokens to the issuer which occurs after the publication of the initial crypto-asset white paper shall be described in a modified crypto-asset white paper prepared by the issuer and notified to the relevant competent authority, in accordance with paragraph 9.

10a. The relevant competent authority as referred to in Article 3(1) point (24)(b) shall communicate to ESMA, within two working days after receiving the information from the issuer, the information referred to in Article 91a(4) and the starting date of the intended offer to the public or intended admission to trading and of any change thereof.

ESMA shall make such information available in the register referred to in Article 91a on the starting date of the offer to the public or admission to trading or in the case of a modified crypto-asset white paper as soon as it is published.

10b. The relevant competent authority as referred to in Article 3(1) point (24)(b) shall communicate to ESMA the withdrawal of authorisation of the e-money issuer.

Article 47

Liability of issuers of e-money tokens for the information given in a crypto-asset white paper

1. Where an issuer of e-money tokens or its management body has infringed Article 46, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of such e-money tokens may claim damages from that issuer of e-money tokens or its management body for damage caused to her or him due to that infringement.

   Any exclusion of civil liability shall be deprived of any legal effect.

2. It shall be the responsibility of the holders of e-money tokens to present evidence indicating that the issuer of e-money tokens has infringed Article 46 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said e-money tokens.

3. A holder of e-money tokens shall not be able to claim damages for the information provided in a summary as referred to in Article 46(5), including the translation thereof, except where:

   (a) the summary is misleading, inaccurate or inconsistent when read together with the other parts of the crypto-asset white paper;

   (b) the summary does not provide, when read together with the other parts of the crypto-asset white paper, key information in order to aid consumers and investors when considering whether to purchase such e-money tokens.

4. This Article does not exclude further civil liability claims in accordance with national law.

Article 48

Marketing communications

1. Any marketing communications relating to an offer of e-money tokens to the public, or to the admission of such e-money tokens to trading on a trading platform for crypto-assets, shall comply with all of the following:

(a) the marketing communications shall be clearly identifiable as such;

(b) the information in the marketing communications shall be fair, clear and not misleading;

(c) the information in the marketing communications shall be consistent with the information in the crypto-asset white paper;

(d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the e-money tokens.

2. The marketing communications shall contain a clear and unambiguous statement that all the holders of the e-money tokens have a redemption right at any time and at par value on the issuer.

Article 49

Investment of funds received in exchange of e-money token issuers

Funds received by issuers of e-money tokens in exchange of e-money tokens and that are invested in secure, low-risk assets in accordance with Article 7(2) of Directive 2009/110/EC shall be invested in assets denominated in the same currency as the one referenced by the e-money token.

Chapter 2

Significant e-money tokens

Article 50

Classification of e-money tokens as significant e-money tokens

1. The EBA shall classify e-money tokens as significant e-money tokens on the basis of the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), and where at least three of those criteria are met.

2. Competent authorities of the issuer's home Member State shall provide the EBA with information on the criteria referred to in Article 39(1) of this Article and specified in accordance with Article 39(6) on at least a yearly basis.

3. Where the EBA is of the opinion that e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those e-money tokens and the competent authority of the issuer's home Member State. The EBA shall give issuers of such e-money tokens and their competent authorities the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an e-money token is a significant e-money token within three months after the notification referred to in paragraph 3 and immediately notify the issuers of such e-money tokens and their competent authorities thereof.

Article 51

Voluntary classification of e-money tokens as significant e-money tokens

1. An issuer of e-money tokens, authorised as a credit institution or as an 'electronic money institution' as defined in Article 2(1) of Directive 2009/110/EC or applying for such authorisation, may indicate that they wish to classify their e-money tokens as significant e-money tokens. In that case, the competent authority shall immediately notify the request from the issuer or applicant issuer to EBA.

   For the e-money tokens to be classified as significant, the issuer or applicant issuer of e-money tokens shall demonstrate, through a detailed programme of operations, that it is likely

to meet at least three criteria referred to in Article 39(1), as specified in accordance with Article 39(6).

2. Where, on the basis of the programme of operation, the EBA is of the opinion that the e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the issuer or applicant issuer's home Member State.

The EBA shall give competent authority of the issuer or applicant issuer's home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

3. Where, on the basis of the programme of operation, the EBA is of the opinion that the e-money tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuer or applicant issuer and the competent authority of the issuer or applicant issuer's home Member State.

The EBA shall give the issuer or applicant issuer and the competent authority of its home Member State the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an e-money token is a significant e-money token within three months after the notification referred to in paragraph 1 and immediately notify the issuers or applicant issuer of such e-money tokens and their competent authorities thereof. The decision shall be immediately notified to the issuer or applicant issuer of e-money tokens and to the competent authority of its home Member State.

Article 52

Specific additional obligations for issuers of significant e-money tokens

Issuers of at least one category of e-money tokens shall apply the following requirements applying to issuers of asset-referenced tokens or significant asset-referenced tokens:

(a) Articles 33 and 34 of this Regulation, instead of Article 7 of Directive 2009/110/EC;

(b) Article 41, paragraphs 1, 2, and 3 of this Regulation;

(c) Article 41 paragraph 4 of this Regulation, instead of Article 5 of Directive 2009/110/EC;

(d) Article 42 of this Regulation.

TITLE V: Authorisation and operating conditions for Crypto-Asset Service providers

Chapter 1: Authorisation of crypto-asset service providers

Article 53

Authorisation

1. Crypto-asset services shall only be provided by legal persons that have a registered office in a Member State of the Union where they intend to carry out at least part of their crypto-assets services and that have been authorised as crypto-asset service providers in accordance with Article 55 or that have an existing authorisation which allows them to provide those services in accordance with Article 53a.

   Crypto-asset service providers shall, at all times, meet the conditions for their authorisation. Such authorisation shall be granted by the competent authority of the home Member State, designated in accordance with Article 81.

   No person who is not a crypto-asset service provider shall use a name, or a corporate name, or issue marketing communications or use any other process suggesting that he or she is authorised as a crypto-asset service provider or that is likely to create confusion in that respect.

2. Competent authorities that grant an authorisation under Article 55 shall ensure that such authorisation specifies the crypto-asset services that crypto-asset service providers are authorised to provide.

3. The authorisation as a crypto-asset service provider referred to in Article 55 shall be valid for the entire Union and shall allow crypto-asset service providers to provide throughout the Union the services for which they have been authorised, either through the right of establishment, including through a branch, or through the freedom to provide services.

Crypto-asset service providers that provide crypto-asset services on a cross-border basis shall not be required to have a physical presence in the territory of a host Member State.

4. Crypto-asset service providers seeking to add crypto-asset services to their authorisation shall request the competent authorities that granted the authorisation for an extension of their authorisation by complementing and updating the information referred to in Article 54. The request for extension shall be processed in accordance with Article 55.

Article 53a

Provision of services by authorised credit institutions, investment firms, market operators, xx, and management companies

1. A credit institution authorised under Directive 2013/36/UE may provide crypto asset services if it notifies the respective competent authority, at least four months before providing those services for the first time, with the information specified in paragraph 6.

The first subparagraph is without prejudice to the national provisions transposing Directive 2013/36/UE that set out procedures for authorisation of credit institutions to provide services listed in Annex I of Directive 2013/36/UE.

2. An investment firm may provide crypto-asset services in the EU equivalent to the investment services and activities for which it is specifically authorised under Directive 2014/65/EU if it

notifies the respective competent authority, at least four months before providing those services for the first time, with the information specified in paragraph 6.

For the purpose of the above subparagraph:

(a) the crypto-asset services defined in Article 3(1), point (11), of this Regulation are deemed to be equivalent to the investment activities referred to in points (8) and (9) of Section A of Annex I to Directive 2014/65/EU;

(b) the crypto-asset services defined in Article 3(1), points (12) and (13), of this Regulation are deemed to be equivalent to the investment services referred to in point (3) of Section A of Annex I to Directive 2014/65/EU;

(c) the crypto-asset services defined in Article 3(1), point (14), of this Regulation are deemed to be equivalent to the investment services referred to in point (2) of Section A of Annex I to Directive 2014/65/EU;

(d) the crypto-asset services defined in Article 3(1), point (15), of this Regulation are deemed to be equivalent to the investment services referred to in points (6) and (7) of Section A of Annex I to Directive 2014/65/EU;

(e) the crypto-asset services defined in Article 3(1), point (16), of this Regulation are deemed to be equivalent to the investment services referred to in point (1) of Section A of Annex I to Directive 2014/65/EU;

(f) the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be equivalent to the investment services referred to in points (5) of Section A of Annex I to Directive 2014/65/EU.

3. An electronic money institution authorised under Directive 2009/110/EC may only provide the service of "custody and administration of crypto-assets on behalf of third parties" on the e-money tokens it issued, if it notifies the respective competent authority, at least four months before providing those services for the first time, with the information specified in paragraph 5.

4. A management company may provide crypto-asset services in the EU equivalent to the management of portfolios of investment and non-core services for which it is specifically authorised under Directive 2009/65/EC or Directive 2011/61/EU if it notifies the respective competent authority, at least four months before providing those services for the first time, with the information specified in paragraph 6.

For the purpose of the above subparagraph:

(a) the crypto-asset services defined in Article 3(1), point (16), of this Regulation are deemed to be equivalent to the non-core service referred in Article 6(4), point (b) subpoint (iii) of Directive 2011/61/EU;

(b) the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be equivalent to the to the non-core service referred in Article 6(4), point (b) sub-point (i) of Directive 2011/61/EU and Article 6(3), point (b) sub-point (i) of Directive 2009/65/EC;

(c) the crypto-asset services defined in Article 3(1), point (17a), of this Regulation are deemed to be equivalent to the service referred in Article 6(4), point (a) of Directive 2011/61/EU and Article 6(3), point (a) of Directive 2009/65/EC.

5. Market Operators authorised under Directive 2014/65/EU may operate a trading platform for crypto-assets defined in Article 3(1), point (11), if it notifies the respective competent authority, at least four months before providing that service for the first time, with the information specified in paragraph 6.

6. For the purpose of paragraphs 1 to 4 the following information should be notified:

(a) a programme of operations setting out the types of crypto-asset services that the applicant crypto-asset service provider wishes to provide, including where and how these services are to be marketed;

(b) a description of the internal control mechanism, procedure for risk assessment and business continuity plan;

(c) descriptions both in technical and non-technical language of the IT systems and security arrangements;

(d) a description of the procedure for the segregation of client's crypto-assets and funds;

(e) a description of the custody policy, when there is the intention to ensure the custody and administration of crypto-assets on behalf of third parties, a description of the custody policy;

(f) a description of the operating rules of the trading platform and of the procedures and system to detect market abuse; when there is the intention to operate a trading platform for crypto-assets;

(g) a description of the non-discriminatory commercial policy, when there is intention to exchange crypto-assets for an official currency of a country or crypto-assets for other crypto-assets, a description of the non-discriminatory commercial policy;

(h) a description of the execution policy, when there is intention to execute orders for crypto-assets on behalf of third parties;

(i) proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider have the necessary knowledge and expertise to fulfil their obligations,

when there is intention to receive and transmit orders for crypto-assets on behalf of third parties;

(j) proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider have the necessary knowledge and expertise to fulfil their obligations, when there is intention to provide advice on crypto-assets;

(k) when there is intention to provide payment services related to crypto-assets service it offers, information on the manner in which such associated payment services are provided by the notifying entity or by a third party;

(l) the commercial policy established governing the relationship with clients as well as a description of the methodology for determining the price of the crypto-assets they propose for exchange against an official currency of a country or other crypto-assets, when there is intention to exchange crypto-assets against an official currency of a country or other crypto-assets in accordance with article 69 paragraph 1;

(m) the type of crypto--assets (asset-references tokens, e-money tokens and/or other crypto-assets) to which the crypto-asset service will relate.

6. Where providing crypto asset services credit institutions, investment firms, market operators, electronic money institution, management companies referred to in paragraphs 1 to 5 shall not be subject to Articles 54, 55, 56, 60, 74 and 75 of this Title.

7. Following the 4 month notification period foreseen in this article the credit institution, investment firm, management company and market operator shall be allowed to provide throughout the Union the services which they have notified, either through the right of establishment, including through a branch, or through the freedom to provide services.

8. The right referred to in paragraph 7 shall be withdrawn upon the withdrawn of the authorisation which enabled the credit institution, investment firm, management company and market operator to provide crypto asset services without an authorisation pursuant Article 53.

Article 54

Application for authorisation

1. Legal persons that intend to provide crypto-asset services shall apply for authorisation as a crypto-asset service provider to the competent authority of the Member State where they have their registered office.

2. The application referred to in paragraph 1 shall contain all of the following:

(a) the name, including the legal name and any other commercial name to be used, the legal entity identifier of the applicant crypto-asset service provider, the website operated by that provider, and its physical address;

(b) the legal form of the applicant crypto-asset service provider;

(c) the articles of association of the applicant crypto-asset service provider;

(d) a programme of operations setting out the types of crypto-asset services that the applicant crypto-asset service provider wishes to provide, including where and how these services are to be marketed;

(e) a description of the applicant crypto-asset service provider's governance arrangements;

(f) where applicable, proof that any natural or legal persons with a qualifying holding have good repute, ;

(g) proof that the natural persons involved in the management body of the applicant crypto-asset service provider are of good repute and possess appropriate knowledge and experience to manage that provider;

(h) a description of the applicant crypto-asset service provider's internal control mechanism, procedure for risk assessment and business continuity plan;

(i) descriptions both in technical and non-technical language of applicant crypto-asset service provider's IT systems and security arrangements;

(j) proof that the applicant crypto-asset service provider meets the prudential safeguards in accordance with Article 60;

(k) a description of the applicant crypto-asset service provider's procedures to handle complaints from clients;

(l) a description of the procedure for the segregation of client's crypto-assets and funds;

(m) where the applicant crypto-asset service provider intends to operate a trading platform for crypto-assets, a description of the procedure and system to detect market abuse;

(n) where the applicant crypto-asset service provider intends to ensure the custody and administration of crypto-assets on behalf of third parties, a description of the custody policy;

(o) where the applicant crypto-asset service provider intends to operate a trading platform for crypto-assets, a description of the operating rules of the trading platform;

(p) where the applicant crypto-asset service provider intends to exchange crypto-assets for funds or crypto-assets for other crypto-assets, a description of the commercial policy governing the relationship with clients as well as a description of the methodology for determining the price of the crypto-assets they propose for exchange against funds or other crypto-assets;

(q) where the applicant crypto-asset service provider intends to execute orders for crypto-assets on behalf of third parties, a description of the execution policy;

(r) where the applicant crypto-asset service provider intends to provide advice or portfolio management, proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider or managing portfolios on behalf of the applicant crypto-asset provider have the necessary knowledge and expertise to fulfil their obligations;

(s)

(t) where the applicant crypto-asset service provider intends to provide payment services related to crypto-assets service it offers, information on the manner in which such associated payment services are provided by the applicant or by a third party;

(u)

(v) the type of crypto--assets to which the crypto-asset service will relate;

(y) a description of the applicant crypto-asset service provider's internal control mechanisms and procedures for risk assessment to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849 of the European Parliament and of the Council, procedure for risk assessment and business continuity plan.

2a. For the purposes of paragraph 2, point (g) and (f), applicant crypto-asset service provider shall provide proof of all of the following:

(a) for all the persons involved in the management of the applicant crypto-asset service provider, its shareholders or members that have qualifying holdings, the absence of a criminal record in respect of convictions or penalties under national rules in force in the fields of commercial law, insolvency law, financial services legislation, anti-money laundering legislation, legislation countering the financing of terrorism, fraud, or professional liability;

(b) that the members of the management body of the applicant crypto-asset service provider collectively possess sufficient knowledge, skills and experience to manage the crypto-asset service provider and that those persons are required to commit sufficient time to perform their duties.

3. Competent authorities shall not require an applicant crypto-asset service provider to provide any information they have already received pursuant to Directive 2009/110/EC, Directive 2014/65/EU, Directive 2015/2366/EU or national law applicable to crypto-asset services prior to the entry into force of this Regulation, provided that such information or documents are still up-to-date and are accessible to the competent authorities.

Article 55

Assessment of the application for authorisation and grant or refusal of authorisation

1. Competent authorities shall, within 25 working days of receipt of the application referred to in Article 54(1), assess whether that application is complete by checking that the information listed in Article 54(2) has been submitted. Where the application is not complete, the authorities shall set a deadline by which the applicant crypto-asset service providers are to provide the missing information.

2. Competent authorities may refuse to review applications where such applications remain incomplete after the deadline referred to in paragraph 1.

3. Competent authorities shall immediately notify applicant crypto-asset service providers of the fact that an application is complete.

4. Before granting or refusing an authorisation as a crypto-asset service provider, competent authorities shall consult the competent authorities of another Member State in any of the following cases:

(a) the applicant crypto-asset service provider is a subsidiary of a crypto-asset service provider authorised in that other Member State;

(b) the applicant crypto-asset service provider is a subsidiary of the parent undertaking of a crypto-asset service provider authorised in that other Member State;

(c) the applicant crypto-asset service provider is controlled by the same natural or legal persons who control a crypto-asset service provider authorised in that other Member State.

5. Competent authorities shall, within three months from the date of receipt of a complete application, assess whether the applicant crypto-asset service provider complies with the requirements of this Title and shall adopt a fully reasoned decision granting or refusing an authorisation as a crypto-asset service provider. That assessment shall take into account the nature, scale and complexity of the crypto-asset services that the applicant crypto-asset service provider intends to provide.

Where the competent authority fails to take a decision within the time limits laid down in this regulation, it shall not be deemed to constitute approval of the application.

Competent authorities may refuse authorisation where there are objective and demonstrable grounds for believing that:

(a) the management body of the applicant crypto-asset service provider poses a threat to its effective, sound and prudent management and business continuity, and to the adequate consideration of the interest of its clients and the integrity of the market;

(aa) the shareholders or members that have qualifying holdings are not deemed suitable, taking into account the need to ensure the sound and prudent management of the crypto-asset service provider;

(b) the applicant fails to meet or is likely to fail to meet any requirements of this Title.

5a. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the applicant crypto asset service provider, the assessment period under paragraphs 1 and 5 shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

6. Competent authorities shall inform ESMA of all authorisations granted under this Article and all refusals regarding authorisations. ESMA shall **make available in the register referred to in Article 91** ~~add the~~ information **on** ~~of~~ the successful applications ~~to the register of authorised crypto-asset service providers in accordance with Article 57~~.

7. Competent authorities shall notify applicant crypto-asset service providers of their decisions to grant or to refuse authorisation within three working days of the date of that decision.

Article 56

Withdrawal of authorisation

1. Competent authorities shall have the power to withdraw the crypto-asset service provider's authorisations if it:

(a) has not used its authorisation within 12 months of the date of granting of the authorisation;

(b) has expressly renounced to its authorisation;

(c) has not provided crypto-asset services for six successive months unless the Member State concerned has provided for authorisation to lapse in such cases;

(d) has obtained its authorisation by irregular means, including making false statements in its application for authorisation;

(e) no longer meets the conditions under which the authorisation was granted and has not taken the remedial actions requested by the competent authority within a set-time frame;

(f) has seriously infringed this Regulation.

2. Competent authorities shall also have the power to withdraw authorisations in any of the following situations:

(a) the crypto-asset service provider or the members of its management body, the shareholders or members that have qualifying holdings in the crypto-asset service provider have infringed national law implementing Directive (EU) 2015/849 in respect of money laundering or terrorist financing;

(b) the crypto-asset service provider has lost its authorisation as a payment institution in accordance with Article 13 of Directive (EU) 2015/2366 or its authorisation as an electronic money institution granted in accordance with Title II of Directive 2009/110/EC and that crypto-asset service provider has failed to remedy the situation within 40 calendar days.

3. Where a competent authority withdraws an authorisation, the competent authority designated as a single point of contact in that Member State in accordance with Article 81 shall notify ESMA ~~and the competent authorities of the host Member States thereof without undue delay~~. ESMA shall **notify the competent authorities of the host Member States without undue delay and make such information available** ~~register the information on the withdrawal of the authorisation~~ in the register referred to in Article 57.

4. Competent authorities may limit the withdrawal of authorisation to a particular service.

5. Before withdrawing the authorisation, competent authorities shall consult the competent authority of another Member State where the crypto-asset service provider concerned is:

(a) a subsidiary of a crypto-asset service provider authorised in that other Member State;

(b) a subsidiary of the parent undertaking of a crypto-asset service provider authorised in that other Member State;

(c) controlled by the same natural or legal persons who control a crypto-asset service provider authorised in that other Member State.

6. The EBA, ESMA and any competent authority of a host Member State may at any time request that the competent authority of the home Member State examines whether the crypto-asset service provider still complies with the conditions under which the authorisation was granted.

7. Crypto-asset service providers shall establish, implement and maintain adequate procedures ensuring the timely and orderly transfer of the clients' crypto-assets and funds to another crypto-asset service provider when an authorisation is withdrawn.

Article 57

Register of crypto-asset service providers

1. ~~ESMA shall establish a register of all crypto-asset service providers. That register shall be publicly available on its website and shall be updated on a regular basis.~~

2. ~~The register referred to in paragraph 1 shall contain the following data:~~

(a) ~~the name, legal form and the legal entity identifier and the branches of the crypto-asset service provider;~~

(b) ~~the commercial name, physical address and website of the crypto-asset service provider or the trading platform for crypto-assets operated by the crypto-asset service provider;~~

(c) ~~the name and address of the competent authority which granted authorisation and its contact details;~~

(d) ~~the list of crypto-asset services for which the crypto-asset service provider is authorised;~~

(e) ~~the list of Member States in which the crypto-asset service provider has notified its intention to provide crypto-asset services in accordance with Article 58;~~

(f) ~~any other services provided by the crypto-asset service provider not covered by this Regulation with a reference to the relevant Union or national law;~~

(g) ~~the date of entering and leaving the market.~~

3. ~~Any withdrawal of an authorisation of a crypto-asset service provider in accordance with Article 56 shall remain published in the register for five years.~~

Article 58

Cross-border provision of crypto-asset services

1. Crypto-asset service providers that intend to provide crypto-asset services in more than one Member State, shall submit the following information to the competent authority designated as a single point of contact in accordance with Article 81.

(a) a list of the Member States in which the crypto-asset service provider intends to provide crypto-asset services and of the crypto-asset services that it intends to provide on a cross-border basis;

(b) the starting date of the intended provision of the crypto-asset services;

(c) a list of all other activities provided by the crypto-asset service provider not covered by this Regulation.

2. The single point of contact of the Member State where authorisation was granted shall, within 10 working days of receipt of the information referred to in paragraph 1 communicate that

information to ~~the competent authorities of the host Member States, to~~ ESMA ~~and to the EBA~~. ESMA **notify such information to EBA and the competent authorities of the host Member States without undue delay and make it available** ~~shall register that information~~ in the register referred to in Article ~~57~~ **91a**.

3. The single point of contact of the Member State which granted authorisation shall inform the crypto-asset service provider concerned of the communication referred to in paragraph 2 without delay.

4. Crypto-asset service providers may start to provide crypto-asset services in a Member State other than their home Member State from the date of the receipt of the communication referred to in paragraph 3 or at the latest 15 calendar days after having submitted the information referred to in paragraph 1.

Chapter 2: Obligation for all crypto-asset service providers

Article 59

Obligation to act honestly, fairly and professionally in the best interest of clients and information to clients

1. Crypto-asset service providers shall act honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients.

2. Crypto-asset service providers shall provide their clients with fair, clear and not misleading information, including in marketing communications, which shall be identified as such. Crypto-asset service providers shall not, deliberately or negligently, mislead a client in relation to the real or perceived advantages of any crypto-assets.

3. Crypto-asset service providers shall warn clients of risks associated with transactions in crypto-assets.

4. Crypto-asset service providers shall make their pricing, costs and fee policies publicly available, in a prominent place on their website.

Article 60

Prudential requirements

1. Crypto-asset service providers shall, at all times, have in place prudential safeguards equal to an amount of at least the higher of the following:

   (a) the amount of permanent minimum capital requirements indicated in Annex IV, depending on the nature of the crypto-asset services provided;

   (b) one quarter of the fixed overheads of the preceding year, reviewed annually;

2. The prudential safeguards referred to in paragraph 1 shall take any of the following forms:

   (a) own funds, consisting of Common Equity Tier 1 items referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions pursuant to Articles 46 and 48 of that Regulation;

   (b) an insurance policy covering the territories of the Union where crypto-asset services are provided or a comparable guarantee.

3. Crypto-asset service providers that have not been in business for one year from the date on which they started providing services shall use, for the calculation referred to in paragraph 1, point (b), the projected fixed overheads included in their projections for the first 12 months' of service provision, as submitted with their application for authorisation.

4. The insurance policy referred to in paragraph 2 shall be disclosed to the public through the crypto-asset service provider's website and shall have at least all of the following characteristics:

(a) it has an initial term of no less than one year;

(b) the notice period for its cancellation is at least 90 days;

(c) it is taken out from an undertaking authorised to provide insurance, in accordance with Union law or national law;

(d) it is provided by a third-party entity.

5. The insurance policy referred to in paragraph 2, point (b) shall include, coverage against the risk of:

(a) loss of documents;

(b) misrepresentations or misleading statements made;

(c) acts, errors or omissions resulting in a breach of:

i) legal and regulatory obligations;

ii) the duty to act honestly, fairly and professionally towards clients;

iii) obligations of confidentiality;

(d) failure to establish, implement and maintain appropriate procedures to prevent conflicts of interest;

(e) losses arising from business disruption or system failures;

(f) where applicable to the business model, gross negligence in safeguarding of clients' crypto-assets and funds.

6. For the purposes of paragraph 1 point (b), crypto-asset service providers shall calculate their fixed overheads for the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders in their most recently audited annual financial statements or, where audited statements are not available, in annual financial statements validated by national supervisors:

(a) staff bonuses and other remuneration, to the extent that those bonuses and that remuneration depend on a net profit of the crypto-asset service providers in the relevant year;

(b) employees', directors' and partners' shares in profits;

(c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;

(d) non-recurring expenses from non-ordinary activities.

Article 61

Organisational requirements

1. Members of the management body of crypto-asset service providers shall have the necessary good repute and competence, in terms of qualifications, experience and skills to perform their duties. They shall demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

2. Natural or legal persons with a qualifying holding shall provide evidence that they have the necessary good repute and competence.

3. None of the persons referred to in paragraphs 1 or 2 shall have been convicted of offences relating to money laundering or terrorist financing or other crimes that would question the person's good repute and competence as a member of the management board.

4. Crypto-asset service providers shall employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them, and taking into account the scale, the nature and range of crypto-asset services provided.

5. The management body shall assess and periodically review the effectiveness of the policies arrangements and procedures put in place to comply with the obligations set out in Chapters 2 and 3 of this Title and take appropriate measures to address any deficiencies.

6. Crypto-asset service providers shall take all reasonable steps to ensure continuity and regularity in the performance of their crypto-asset services. To that end, crypto-asset service providers shall employ appropriate and proportionate resources and procedures, including resilient and secure ICT systems in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council.

They shall establish a business continuity policy, which shall include ICT business continuity as well as disaster recovery plans set-up in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council aimed at ensuring, in the case of an interruption to their ICT systems and procedures, the preservation of essential data and functions and the maintenance of crypto-asset services, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of crypto-asset services.

7. Crypto-asset service providers shall have mechanisms, systems and procedures for in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council as well as effective procedures for risk assessment to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849 of the European Parliament and of the Council. They shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of internal control mechanisms and procedures for risk assessment and take appropriate measures to address any deficiencies.

Crypto-asset service providers shall have systems and procedures to safeguard the security, integrity and confidentiality of information in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council.

8. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them. Those records shall be sufficient to enable competent authorities to fulfil their supervisory tasks and to perform the enforcement actions, and in particular to ascertain whether the crypto-asset service provider has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.

The records kept in accordance with this paragraph shall be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years.

9. Crypto-asset service providers shall have in place effective systems, procedures and arrangements to monitor and detect market abuse as referred to in Title VI. They shall without delay immediately report to their competent authority any reasonable suspicion that an order or transaction, including any cancellation or modification thereof, whether placed or executed on or outside a trading platform, could constitute insider dealing or market manipulation or attempted insider dealing or market manipulation.

Article 62

Information to competent authorities

Crypto-asset service providers shall notify without any delay their competent authority of any changes to their management body, before initiating functions, and shall provide their competent authority with all the necessary information to assess compliance with Article 61.

Article 63

Safekeeping of clients' crypto-assets and funds

1. Crypto-asset service providers that hold crypto-assets belonging to clients or the means of access to such crypto-assets shall make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the crypto-asset service provider's insolvency, and to prevent the use of a client's crypto-assets on own account.

2. Where their business models or the crypto-asset services require holding clients' funds other than e-money tokens, crypto-asset service providers shall have adequate arrangements in place to safeguard the rights of clients and prevent the use of clients' funds for their own account.

3. Crypto-asset service providers shall, by the end of the business day following the day the funds other than e-money tokens have been received, place such client's funds, with a central bank, where available, or a credit institution.

   Crypto-asset service providers shall take all necessary steps to ensure that the clients' funds other than e-money tokens held with a central bank or a credit institution are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.

4. Crypto-asset service providers may themselves, or through a third party, provide payment services related to the crypto-asset service they offer, provided that the crypto-asset service provider itself, or the third-party, is authorised to provide those services.

5. Paragraphs 2 and 3 of this Article shall not apply to crypto-asset service providers that are electronic money institutions as defined in Article 2, point 1 of Directive 2009/110/EC , payment institutions as defined in Article 4, point (4), of Directive (EU) 2015/2366 or credit institutions.

Article 64

Complaint handling procedure

1. Crypto-asset service providers shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients.

2. Clients shall be able to file complaints with crypto-asset service providers free of charge.

3. Crypto-asset service providers shall develop and make available to clients a template for complaints and shall keep a record of all complaints received and any measures taken in response thereof.

4. Crypto-assets service providers shall investigate all complaints in a timely and fair manner, and communicate the outcome of such investigations to their clients within a reasonable period of time.

Article 65

Identification, prevention, management and disclosure of conflicts of interest

1. Crypto-asset service providers shall maintain and operate an effective policy to identify, prevent, manage and disclose conflicts of interest between themselves and:

   (a) their shareholders or any person directly or indirectly linked to them by control;

   (b) their managers and employees,

   (c) their clients, or between one client and another client.

2. Crypto-asset service providers shall disclose to their clients and potential clients the general nature and sources of conflicts of interest and the steps taken to mitigate them.

   Crypto-asset service providers shall make such disclosures on their website in a prominent place.

3. The disclosure referred to in paragraph 2 shall be sufficiently precise, taking into account the nature of each client and to enable each client to take an informed decision about the service in the context of which the conflicts of interest arises.

4. Crypto-asset service providers shall assess and at least annually review, their policy on conflicts of interest and take all appropriate measures to address any deficiencies.

Article 66

Outsourcing

1. Crypto-asset service providers, that rely on third parties for the performance of operational functions, shall take all reasonable steps to avoid additional operational risk. They shall remain fully responsible for discharging all of their obligations under this Title and shall ensure at all times that all the following conditions are complied with:

(a) outsourcing does not result in the delegation of the responsibility of the crypto-asset service providers;

(b) outsourcing does not alter the relationship between the crypto-asset service providers and their clients, nor the obligations of the crypto-asset service providers towards their clients;

(c) outsourcing does not change the conditions for the authorisation of the crypto-asset service providers;

(d) third parties involved in the outsourcing cooperate with the competent authority of the crypto-asset service providers' home Member State and the outsourcing does not prevent the exercise of supervisory functions by those competent authorities, including on-site access to acquire any relevant information needed to fulfil those functions;

(e) crypto-asset service providers retain the expertise and resources necessary for evaluating the quality of the services provided, for supervising the outsourced services

effectively and for managing the risks associated with the outsourcing on an ongoing basis;

(f) crypto-asset service providers have direct access to the relevant information of the outsourced services;

(g) crypto-asset service providers ensure that third parties involved in the outsourcing meet the standards laid down in the relevant data protection law which would apply if the third parties were established in the Union.

For the purposes of point (g), crypto-asset service providers are responsible for ensuring that the standards laid down in the relevant data protection legislation are set out in the contract referred to in paragraph 3.

2. Crypto-asset service providers shall have a policy on their outsourcing, including on contingency plans and exit strategies.

3. Crypto-asset service providers shall enter into a written agreement with any third parties involved in outsourcing. That written agreement shall specify the rights and obligations of both the crypto-asset service providers and of the third parties concerned, and shall allow the crypto-asset service providers concerned to terminate that agreement.

4. Crypto-asset service providers and third parties shall, upon request, make available to the competent authorities and the relevant authorities all information necessary to enable those authorities to assess compliance of the outsourced activities with the requirements of this Title.

Chapter 3: Obligations for the provision of specific crypto-asset services

Article 67

Custody and administration of crypto-assets on behalf of third parties

1. Crypto-asset service providers that are authorised for the custody and administration on behalf of third parties shall enter into an agreement with their clients to specify their duties and their responsibilities. Such agreement shall include at least all the following:

(a) the identity of the parties to the agreement;

(b) the nature of the service provided and a description of that service;

(c) the means of communication between the crypto-asset service provider and the client, including the client's authentication system;

(d) a description of the security systems used by the crypto-assets service provider;

(e) fees, costs and charges applied by the crypto-asset service provider;

(f) the law applicable to the agreement.

2. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall keep a register of positions, opened in the name of each client, corresponding to each client's rights to the crypto-assets. Crypto-asset service providers shall record as soon as possible, in that register any movements following instructions from their clients. Their internal procedures shall ensure that any movement affecting the registration of the crypto-assets is evidenced by a transaction regularly registered in the client's position register.

3. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall establish a custody policy with internal rules and procedures to ensure the safekeeping or the control of such crypto-assets, or the means of access to the crypto-assets, such as cryptographic keys.

Those rules and procedures shall minimise the risk of a loss of clients' crypto-assets or the rights related to those assets or the means of access to the crypto-assets due to frauds, cyber threats or negligence.

The custody policy and a summary must be made available to clients on their request in a durable medium.

4. Where applicable, crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall facilitate the exercise of the rights attached to the crypto-assets. Any event likely to create or modify the client's rights shall be recorded in the client's position register as soon as possible.

In case of changes to the underlying distributed ledger technology or any other event likely to create or modify the client's rights, the client shall be entitled to any crypto-assets or any rights newly created on the basis and to the extent of the client's positions at the time of the event's occurrence by such change, except when a valid agreement signed with the custodian pursuant to paragraph 1 prior to the event explicitly provides otherwise.

5. Crypto-asset providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall provide their clients, at least once every three months and at each request of the client concerned, with a statement of position of the crypto-assets recorded in the name of those clients. That statement of position shall be made in a durable medium. The statement of position shall mention the crypto-assets concerned, their balance, their value and the transfer of crypto-assets made during the period concerned.

Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall provide their clients as soon as possible with any information about operations on crypto-assets that require a response from those clients.

6. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall ensure that crypto-assets held on behalf of their

clients or the means of access to those crypto-assets are returned as soon as possible to those clients.

7. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall segregate holdings of crypto-assets on behalf of their clients from their own holdings and ensure that the means of access to crypto-assets from their clients are clearly identified as such. They shall ensure that, on the DLT, their clients' crypto-assets are held on separate addresses from those on which their own crypto-assets are held.

8. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall be held liable to their clients for the loss of any crypto-assets or of the means of access to the crypto-assets as a result from an incident that are attributed to the provision of the relevant service and the operation of the service provider. The liability of the crypto-asset service provider shall be up to the market value of the crypto-asset lost at the time the crypto-asset service provider's liability is invoked.

Events not attributable to the digital assets custodian include, in particular, any event for which it could demonstrate that it occurred independently of its operations, in particular a problem inherent in the operation of the distributed ledger that the Crypto-asset service provider does not control.

9. If crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties make use of other providers for the custody and administration of the crypto-assets they hold on behalf of third parties, they shall only make use of crypto-asset service providers authorised in accordance with Art 53. Crypto-asset service providers that are authorised to hold and administer crypto-assets on behalf of third parties and that make use of other providers for the custody and administration of crypto-assets shall inform their customers thereof.

Article 68

Operation of a trading platform for crypto-assets

1. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall lay down operating rules for the trading platform. These operating rules shall at least:

(a) set the requirements, due diligence and approval processes that are applied before admitting crypto-assets to the trading platform;

(b) define exclusion categories, if any, which are the types of crypto-assets that will not be admitted to trading on the trading platform, if any;

(c) set out the policies, procedures and the level of fees, if any, for the admission of trading of crypto-assets to the trading platform;

(d) set objective and proportionate criteria for participation in the trading activities, which promote fair and open access to the trading platform for clients willing to trade;

(e) set rules and procedures to ensure fair and orderly trading and objective criteria for the efficient execution of orders;

(f) set conditions for crypto-assets to remain accessible for trading, including liquidity thresholds and periodic disclosure requirements;

(g) set conditions under which trading of crypto-assets can be suspended;

(h) set procedures to ensure efficient settlement of both crypto-asset and funds;

(i) set transparent and non-discriminatory rules, based on objective criteria, governing access to its facility.

For the purposes of point (a), the operating rules shall clearly state that a crypto-asset shall not be admitted to trading on the trading platform, where a crypto-asset white paper has not been published.

Before admitting a crypto-asset to trading, crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that the crypto-asset complies the operating rules of the trading platform and assess the quality of the crypto-asset concerned. When assessing the quality of a crypto-asset, the trading platform shall take into account the experience, track record and reputation of the issuer and its development team. The trading platform shall also assess the quality of the crypto-assets benefiting from the exemption set out in Articles 4(2).

The operating rules of the trading platform for crypto-assets shall prevent the admission to trading of crypto-assets which have inbuilt anonymisation function unless the holders of the crypto-assets and their transaction history can be identified by the crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets.

2. These operating rules referred to in paragraph 1 shall be drafted in one of the official languages of the home Member States and in another language that is customary in the sphere of finance were services are provided in another Member States. Those operating rules shall be made public on the website of the crypto-asset service provider concerned.

3. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall not deal on own account on the trading platform for crypto-assets they operate, even when they are authorised for the exchange of crypto-assets for funds or for the exchange of crypto-assets for other crypto-assets.

[This prohibition is without prejudice to transactions that operators of trading platforms conduct on own account for their own demonstrated and documented hedging and liquidity purposes/needs. Operators of trading platforms shall demonstrate and document that they were not benefited in the execution of the transactions to the detriment of other users of the

platform. Operators of trading platforms shall report such trades along with the hedging and liquidity needs requiring the trade to the competent authority on a [monthly/quarterly] basis]

4. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall have in place effective systems, procedures and arrangements to ensure that their trading systems:

(a) are resilient;

(b) have sufficient capacity to ensure orderly trading under conditions of severe market stress;

(c) are able to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;

(d) are fully tested to ensure that conditions under points (a), (b) and (c) are met;

(e) are subject to effective business continuity arrangements to ensure continuity of their services if there is any failure of the trading system;

(f) prevent and detect insider dealing, market manipulation and attempted insider dealing and market manipulation.

5. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public any bid and ask prices and the depth of trading interests at those prices which are advertised for crypto-assets through the systems of the trading platform for crypto-assets. The crypto-asset service providers concerned shall make that information available to the public during the trading hours on a continuous basis.

6. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public the price, volume and time of the transactions executed in

respect of crypto-assets traded on their trading platforms. They shall make details of all such transactions public as close to real-time as is technically possible.

7. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make the information published in accordance with paragraphs 5 and 6 available to the public on a reasonable commercial basis and ensure non-discriminatory access to that information. That information shall be made available free of charge 15 minutes after publication in a machine readable format and remain published for at least 2 years.

8. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall complete the final settlement of a crypto-asset transaction on the DLT on the same date as the transactions has been executed on the trading platform.

9. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that their fee structures are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse as referred to in Title VI.

10. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall maintain resources and have back-up facilities in place to be capable of reporting to their competent authority at all times.

Article 69

Exchange of crypto-assets against funds *or exchange of crypto-assets against other crypto-assets*

1. Crypto-asset providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall establish a non-discriminatory commercial policy that indicates, in particular, the type of clients they accept to transact with and the conditions that shall be met by clients.

2. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall publish a firm price of the crypto-assets or a method for determining the price of the crypto-assets they propose for exchange against an official currency of a country or other crypto-assets, and any applicable cap to the amount to be exchanged.

3. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds of a country or other crypto-assets shall execute the clients' orders at the prices displayed at the time of their receipt.

4. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds of a country or other crypto-assets shall publish the details of the orders and the transactions concluded by them, including transaction volumes and prices.

Article 70

Execution of orders for crypto-assets on behalf of third parties

1. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall take all necessary steps to obtain, when executing orders, the best possible result for their clients taking into account the best execution factors of price, costs, speed, likelihood of execution and settlement, size, nature, conditions of custody of the crypto-assets or any other consideration relevant to the execution of the order, unless the crypto-asset service provider concerned executes orders for crypto-assets following specific instructions given by its clients.

2. To ensure compliance with paragraph 1, a crypto-asset service provider that is authorised to execute orders for crypto-assets on behalf of third parties shall establish and implement effective execution arrangements. In particular, they shall establish and implement an order execution policy to allow them to obtain, for their clients' orders, the best possible result. In particular, this order execution policy shall provide for the prompt, fair and expeditious execution of clients' orders and prevent the misuse by the crypto-asset service providers' employees of any information relating to clients' orders.

3. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall provide appropriate and clear information to their clients on their order execution policy and any significant change to it. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the crypto-asset service provider for the client. Crypto-asset service providers shall obtain prior consent from their clients regarding the order execution policy.

4. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the execution policy and to demonstrate to the competent authority, at its request, their compliance with this Article.

5. Where the order execution policy provides for the possibility that the crypto-asset service provider might be the client counterparty when executing a client order, the crypto-asset service provider shall inform its clients about that possibility and obtain the prior express consent of their clients before proceeding to execute such orders. Crypto-asset service providers may obtain such consent either in the form of a general agreement or in respect to individual transactions.

6. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements, taking account of, inter alia, the information published under paragraph 2. Member States shall require crypto-asset service providers to notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.

Article 71

Placing of crypto-assets

1. Crypto-asset service providers that are authorised for placing crypto-assets shall communicate the following information to the issuer or any third party acting on their behalf, before concluding a contract with them:

(a) the type of placement considered, including whether a minimum amount of purchase is guaranteed or not;

(b) an indication of the amount of transaction fees associated with the service for the proposed operation;

(c) the considered timing, process and price for the proposed operation;

(d) information about the targeted purchasers.

Crypto-asset service providers that are authorised for placing crypto-assets shall, before placing the crypto-assets concerned, obtain the agreement of the issuers or any third party acting on their behalf as regards points (a) to (d).

2. The rules on conflicts of interest referred to in Article 65 shall have specific and adequate procedures in place to prevent, monitor, manage and potentially disclose any conflicts of interest arising from the following situations:

(a) the crypto-asset service providers place the crypto-assets with their own clients;

(b) the proposed price for placing crypto-assets has been overestimated or underestimated;

(c) incentives paid by the issuer to the crypto-asset service provider.

Article 72

Reception and transmission of orders on behalf of third parties

1. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall establish and implement procedures and arrangements which provide for the prompt and proper transmission of client's orders for execution on a trading platform for crypto-assets or to another crypto-asset service provider.

2. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall not receive any remuneration, discount or non-monetary benefit for routing clients' orders received from clients to a particular trading platform for crypto-assets or to another crypto-asset service provider.

3. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall not misuse information relating to pending clients' orders, and shall take all reasonable steps to prevent the misuse of such information by any of their employees.

Article 73

Advice on crypto-assets

1. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall assess the compatibility of such crypto-assets with the demands and needs of the clients and recommend them only when this is in the interest of the clients.

2. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall ensure that natural persons giving advice or information about crypto-assets or a crypto-asset service on their behalf possess the necessary knowledge and experience to fulfil their obligations. Member States shall publish the criteria to be used for assessing such knowledge and experience.

3. For the purposes of the assessment referred to in paragraph 1, crypto-asset service providers that are authorised to provide advice on crypto-assets shall obtain the necessary information regarding the client or prospective client's knowledge of, and experience in crypto-assets,

objectives, including its risk tolerance, financial situation including its ability to bear losses and its basic understanding of risks involved in purchasing crypto-assets.

Crypto-asset service providers that are authorised to provide advice on crypto-assets shall warn clients that, due to their nature, the value of crypto-assets may fluctuate.

4. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall establish, maintain and implement policies and procedures to enable them to collect and assess all information necessary to conduct this assessment for each client. They shall take reasonable steps to ensure that the information collected about their clients or prospective clients is reliable.

5. Where clients do not provide the information required pursuant to paragraph 4, or where crypto-asset service providers that are authorised to provide advice on crypto-assets consider, on the basis of the information received under paragraph 4, that the prospective clients or clients have insufficient knowledge, crypto-asset service providers that are authorised to provide advice on crypto-assets shall inform those clients or prospective clients that the crypto-assets or crypto-asset services may be inappropriate for them and issue them a warning on the risks associated with crypto-assets. That risk warning shall clearly state the risk of losing the entirety of the money invested or converted into crypto-assets. Clients shall expressly acknowledge that they have received and understood the warning issued by the crypto-asset service provider concerned.

6. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall for each client review the assessment referred to in paragraph 1 at least every year after the initial assessment made in accordance with that paragraph.

7. Once the assessment referred to in paragraph 1 has been performed, crypto-asset service providers that are authorised to provide advice on crypto-assets shall provide clients with a report summarising the advice given to those clients. That report shall be made and communicated to the clients in a durable medium. That report shall, as a minimum:

(a) specify the clients' demands and needs;

(b) provide an outline of the advice given.

Chapter 4: Acquisition of crypto-asset service providers

Article 74

Assessment of intended acquisitions of crypto-asset service providers

1. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a crypto-asset service provider or to further increase, directly or indirectly, such a qualifying holding in a crypto-asset service provider so that the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or so that the crypto-asset service provider would become its subsidiary (the 'proposed acquisition'), shall notify the competent authority of that crypto-asset service provider thereof in writing indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4).

2. Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a crypto-asset service provider (the 'proposed vendor') shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the crypto-asset service provider would cease to be that person's subsidiary.

3. Competent authorities shall, promptly and in any event within two working days following receipt of the notification required under paragraph 1 acknowledge receipt thereof in writing to the proposed acquirer.

4. Competent authorities shall assess the intended acquisition referred to in paragraph 1 and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4), within 60 working days from the date of the written acknowledgement of receipt referred to in paragraph 3.

When acknowledging receipt of the notification, competent authorities shall inform the persons referred to in paragraph 1 of the date of the expiry of the assessment period.

5. When performing the assessment referred to in paragraph 4, first subparagraph, competent authorities may request from the persons referred to in paragraph 1 any additional information that is necessary to complete that assessment. Such request shall be made before the assessment is finalised, and in any case no later than on the 50th working day from the date of the written acknowledgement of receipt referred to in paragraph 3. Such requests shall be made in writing and shall specify the additional information needed.

Competent authorities shall halt the assessment referred to in paragraph 4, first subparagraph, until they have received the additional information referred to in the first subparagraph of this paragraph, but for no longer than 20 working days. Any further requests by competent authorities for additional information or for clarification of the information received shall not result in an additional interruption of the assessment.

Competent authority may extend the interruption referred to in the second subparagraph of this paragraph up to 30 working days where the persons referred to in paragraph 1 are situated or regulated outside the Union.

6. Competent authorities that, upon completion of the assessment, decide to oppose the intended acquisition referred to in paragraph 1 shall notify the persons referred to in paragraph 1 thereof within two working days, but before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph. That notification shall provide the reasons for that decision.

7. Where competent authorities do not oppose the intended acquisition referred to in paragraph 1 before the date referred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with paragraph 5, second and third subparagraph, the intended acquisition or intended disposal shall be deemed to be approved.

8. The competent authority may set a maximum period for concluding the intended acquisition referred to in paragraph 1, and extend that maximum period where appropriate.

Article 75

Content of the assessment of intended acquisitions of crypto-asset service providers

1. When performing the assessment referred to in Article 74(4), competent authorities shall appraise the suitability of the persons referred to in Article 74(1) and the financial soundness of intended acquisition against all of the following criteria:

(a) the reputation of the persons referred to in Article 74(1);

(b) the reputation and experience of any person who will direct the business of the crypto-asset service provider as a result of the intended acquisition or disposal;

(c) the financial soundness of the persons referred to in Article 74(1), in particular in relation to the type of business pursued and envisaged in the crypto-asset service provider in which the acquisition is intended;

(d) whether the crypto-asset service provider will be able to comply and continue to comply with the provisions of this Title;

(e) whether there are reasonable grounds to suspect that, in connection with the intended acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849/EC is being or has been committed or attempted, or that the intended acquisition could increase the risk thereof.

2. Competent authorities may oppose the intended acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided in accordance with Article 74(4) is incomplete or false.

3. Member States shall not impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. ESMA, in close cooperation with the EBA, shall develop draft regulatory technical standards to establish an exhaustive list of information that is necessary to carry out the assessment referred to in Article 74(4), first subparagraph and that shall be provided to the competent authorities at the time of the notification referred to in Article 74(1). The information required shall be relevant for a prudential assessment, be proportionate and be adapted to the nature of the persons and the intended acquisition referred to in Article 74(1).

ESMA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after the entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

TITLE VI: Prevention and Prohibition of Market Abuse involving crypto-assets

Article 76

Scope of the rules on market abuse

1. The prohibitions and requirements laid down in this Title shall apply to acts carried out by any person and that concern crypto-assets that are admitted to trading on a trading platform for crypto-assets operated by an authorised crypto-asset service provider, or for which a request for admission to trading on such a trading platform has been made.

2. The prohibitions and requirements laid down in this Title shall also apply to any transaction, order or behaviour concerning any crypto-asset as referred to in paragraph 1, irrespective of whether or not such transaction, order or behaviour takes place on a trading platform.

3. The prohibitions and requirements laid down in this Title shall apply to actions and omissions, in the Union and in a third country, concerning the crypto-assets referred to in paragraph 1.

Article 76a

Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:

(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers, offerors or persons seeking admission to trading or to one or more crypto-assets, and which, if it were made public, would be likely to have a significant effect on the prices of those crypto-assets;

(b) for persons charged with the execution of orders concerning crypto-assets, it also means information conveyed by a client and relating to the client's pending orders in crypto-assets, which is of a precise nature, relating, directly or indirectly, to one or more issuers, offerors or persons seeking admission to trading or to one or more crypto-assets, and which, if it were made public, would be likely to have a significant effect on the prices of those crypto-assets.

2. For the purpose of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the crypto-assets. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances

or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of crypto-assets shall mean information a reasonable holder of crypto-assets would be likely to use as part of the basis of his or her purchase decisions.

Article 77

Disclosure of inside information

1. Issuers of crypto-assets who have approved trading of their crypto-assets on a trading platform or have requested admission to trading of their crypto-assets on a trading platform in a Member State shall inform the public as soon as possible of inside information which directly concerns them, in a manner that enables fast access and complete, correct and timely assessment of the information by the public. The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

2. Issuers of crypto-assets may, on their own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

(a) immediate disclosure is likely to prejudice the legitimate interests of the issuers;

(b) delay of disclosure is not likely to mislead the public;

(c) the issuers are able to ensure the confidentiality of that information.

3. Where an issuer of crypto-assets has delayed the disclosure of inside information under paragraph 2, it shall inform the competent authority that disclosure of the information was delayed and shall provide a written explanation of how the conditions set out in paragraph 2 were met, immediately after the information is disclosed to the public. Alternatively, Member States may provide that a record of such an explanation is to be provided only upon the request of the competent authority.

Article 78

Prohibition of insider dealing

0. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, crypto-assets to which that information relates. The use of inside information by cancelling or amending an order concerning a crypto-asset to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. The use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

1. No person shall engage or attempt to engage in insider information or use inside information about crypto-assets to acquire those crypto-assets, or to dispose of those crypto-assets, either directly or indirectly and either for his or her own account or for the account of a third party.

No person shall recommend that another person engage in insider dealing or induce another person to engage in insider dealing.

2. No person that possesses inside information about crypto-assets shall:

(a) recommend, on the basis of that inside information, that another person acquires those crypto-assets or disposes of those crypto-assets to which that information relates, or induce that person to make such an acquisition or disposal; or

(b) recommend, on the basis of that inside information, that another person cancels or amends an order concerning those crypto-assets, or induce that person make such a cancellation or amendment.

3. The use of the recommendations or inducements referred to in paragraph 3 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.

4. This Article applies in particular to any person who possesses inside information as a result of:

a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;

b) having a holding in the capital of the issuer or emission allowance market participant;

c) having access to the information through the exercise of an employment, profession or duties; or

d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Article 79

Prohibition of unlawful disclosure of inside information

1. No person that possesses inside information shall unlawfully disclose such information to any other person, except where such disclosure is made in the normal exercise of an employment, a profession or duties.

This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 78 (5).

2. The onward disclosure of recommendations or inducements referred to in Article 78 (3) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

Article 80

Prohibition of market manipulation

1. No person shall engage in or attempt to engage in market manipulation which shall comprise any of the following activities:

(a) unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour has been carried out for legitimate reasons, entering into a transaction, placing an order to trade or any other behaviour which:

i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a crypto-asset;

ii) secures, or is likely to secure, the price of one or several crypto-assets at an abnormal or artificial level.

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several crypto-assets, while employing a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a crypto-asset, or secures or is likely to secure, the price of one or several crypto-assets, at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

2. The following behaviour shall, inter alia, be considered as market manipulation:

(a) securing a dominant position over the supply of or demand for a crypto-asset, which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;

(b) the placing of orders to a trading platform for crypto-assets, including any cancellation or modification thereof, by any available means of trading, and which has one of the effects referred to in paragraph 1(a), by:

i) disrupting or delaying the functioning of the trading platform for crypto-assets or engaging into any activities that are likely to have that effect;

ii) making it more difficult for other persons to identify genuine orders on the trading platform for crypto-assets or engaging into any activities that are likely to have that effect, including by entering orders which result in the destabilisation of the normal functioning of the trading platform for crypto-assets;

iii) creating a false or misleading signal about the supply of, or demand for, or price of, a crypto-asset, in particular by entering orders to initiate or exacerbate a trend, or engaging into any activities that are likely to have that effect;

(c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a crypto-asset, while having previously taken positions on that

crypto-asset, and profiting subsequently from the impact of the opinions voiced on the price of that crypto-asset, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

Title VII: competent Authorities, the EBA and ESMA

Horizontal replacements

- **The Presidency replaced "administrative sanctions" for "administrative penalties" and "pecuniary sanctions" for "pecuniary fines", in line with the most recent agreements**

Question to MS

- **According to the Commission proposal EBA powers to apply pecuniary fines are limited to legal persons (Art 113); also both in Title III and IV all requirements are addressed to issuers, contrary to Title V which also sets requirements for the management body [Art 61(5)]; in other EU legislation it is also common to have obligations addressed to the management body**
- **Do MS agree with the Commission proposal to not include obligations addressing directly the management body in Title III and IV? Should they be introduced EBA should also be able to sanction natural persons.**

Chapter 1: Powers of competent authorities and cooperation between competent authorities, the EBA and ESMA

Article 81

Competent authorities

1. Member States shall designate the competent authorities responsible for carrying out the functions and duties provided for in this Regulation and shall inform the EBA and ESMA thereof.

2. Where Member States designate more than one competent authority pursuant to paragraph 1, they shall determine their respective tasks and designate one **competent authority** ~~or, if~~

~~necessary, more of them~~ as **a single** point~~s~~ of contact **with respect to each relevant Title of this Regulation** for cross-border administrative cooperation between competent authorities as well as with the EBA and ESMA.

3. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1 **and 2**.

Explanation

- **As Titles II to VII can almost be seen as autonomous pieces of legislation we propose to have a contact point for each of them**

Article 82

Powers of competent authorities

1. In order to fulfil their duties under Titles II, III, IV**,** ~~and~~ V **and VI** of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigative powers:

(a) to require crypto-asset service providers and the natural or legal persons that control them or are controlled by them, to provide information and documents;

(b) to require members of the management body of the crypto-asset service providers to provide information;

(c) to suspend, or to require a crypto-asset service provider to suspend, the provision of crypto-asset service**s** for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(d) to prohibit the provision of crypto-asset services where they find that this Regulation has been infringed;

(e) to disclose, or to require a crypto-asset servicer provider to disclose, all material information which may have an effect on the provision of the crypto-asset services in order to ensure ~~consumer~~ **the** protection **of the interests of its clients, in particular consumers,** or the smooth operation of the market;

(f) to make public the fact that a crypto-asset service provider is failing to comply with its obligations;

(g) to suspend, or to require a crypto-asset service provider to suspend**,** the provision of crypto-asset services where the competent authorities consider that the crypto-asset service provider's situation is such that the provision of the crypto-asset service would be detrimental to ~~consumers'~~ **clients'** interests**, in particular consumers**;

(h) **to** require ~~to~~ **the** transfer **of** existing contracts to another crypto-asset service provider in cases where a crypto-asset service provider's authorisation is withdrawn in accordance with Article 56, subject to the agreement of the clients and the receiving crypto-asset service provider;

(i) where there is a reason to assume that a person is providing a crypto-asset service without authorisation, to require information and documents from that person;

(j) where there is a reason to assume that a person is issuing asset-referenced tokens or e-money tokens without authorisation, to require information and documents from that person;

(k) ~~in urgent cases,~~ where there is a reason to assume that a person is providing crypto-asset services without authorisation, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(l) to require issuers**, offerors or persons seeking admission to trading** of crypto-assets, including asset-referenced tokens and e-money tokens, ~~or persons asking for admission~~

~~to trading on a trading platform for crypto-assets~~, and the persons that control them or are controlled by them, to provide information and documents;

(m) to require members of the management body of the issuer**, offerors or persons seeking admission to trading** of crypto-assets, including asset-referenced tokens and e-money tokens, ~~or person asking for admission of such crypto-assets to trading on a trading platform for crypto-assets~~ to provide information and documents;

(n) to require issuers**, offerors or persons seeking admission to trading** of crypto-assets, including asset-referenced tokens and e-money tokens, to include additional information in their crypto-asset white papers, where necessary for ~~consumer~~ **the** protection **of the interests of the holders of crypto-assets, in particular consumers,** or financial stability;

(o) to suspend an offer to the public **or an admission to trading** of crypto-assets, including asset-referenced tokens or e-money tokens, ~~or an admission to trading on a trading platform for crypto-assets~~ for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(p) to prohibit an offer to the public **or an admission to trading** of crypto-assets, including asset-referenced tokens or e-money tokens, ~~or an admission to trading on a trading platform for crypto-assets~~ where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;

(q) to suspend**,** or require a trading platform for crypto-assets to suspend**,** trading of the crypto-assets, including asset-referenced tokens or e-money tokens, for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(r) to prohibit trading of crypto-assets, including asset-referenced tokens or e-money tokens, on a trading platform for crypto-assets where they find that this Regulation has

been infringed **or where there are reasonable grounds for suspecting that it would be infringed**;

(s) to make public the fact that an issuer**, offeror or person seeking admission to trading** of crypto-assets, including ~~an issuer of~~ asset-referenced tokens or e-money tokens, ~~or a person asking for admission to trading on a trading platform for crypto-assets~~ is failing to comply with its obligations;

(t) to disclose, or to require the issuer**, offeror or person seeking admission to trading** of crypto-assets, including ~~an issuer of~~ asset-referenced tokens or e-money tokens, to disclose~~,~~ all material information which may have an effect on the assessment of the crypto-assets offered to the public or admitted to trading on a trading platform for crypto-assets in order to ensure ~~consumer~~ **the** protection **of the interests of the holders of crypto-assets, in particular consumers,** or the smooth operation of the market;

(u) to suspend**,** or require the relevant trading platform for crypto-assets to suspend**,** the crypto-assets, including asset-referenced tokens or e-money tokens, from trading where it considers that **the situation of** the issuer**, offeror or person seeking admission to trading** ~~situation~~ is such that trading would be detrimental to ~~consumers'~~ **the interests of the holders** ~~interests~~ **of crypto-assets, in particular consumers**;

(v) ~~in urgent cases,~~ where there is a reason to assume that a person is issuing asset-referenced tokens or e-money tokens without authorisation or a person is ~~issuing~~ **offering or seeking admission to trading on a trading platform for crypto-assets of** crypto-assets **other than asset-referenced tokens or e-money tokens** without a crypto-asset white paper notified in accordance with Article 7, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(w) **to take any type of measure to ensure that a crypto-assets service provider and issuer, offeror or person seeking admission to trading of crypto-assets comply with this Regulation including** to require the ~~temporary~~ cessation of any practice **or conduct** that the competent authority considers contrary to this Regulation;

Explanation

- **Alignment with MIFID as proposed by MS**

(x) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form;

(y) **to** require**,** where relevant**,** the auditors of crypto-asset service providers or of an issuer**,** **offeror or person seeking admission to trading** of crypto-assets to provide information **and documents**;

(z) **to** allow auditors or experts to carry out verifications or investigations;

(aa) **to** require the removal of a natural person from the management ~~board~~ **body** of a crypto-asset service provider or of an issuer of **asset-referenced tokens** ~~crypto-assets~~;

(ab) **to** request any person to take steps to reduce the size of ~~the~~ **its** position or exposure **to crypto-assets;** ~~.~~

(ac) where no other effective means are available to bring about the cessation of the infringement to this Regulation and in order to avoid the risk of serious harm to the interests of clients and holders of crypto-assets:

(i) to remove content or to restrict access to an online interface or to order the explicit display of a warning to clients and holders of crypto-assets when they access an online interface;

(ii) to order a hosting service provider to remove, disable or restrict access to an online interface; or

(iii) to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it, including by requesting a third party or other public authority to implement such measures;

Explanation

- **New powers inspired in Art 9(4)(g) of Regulation 2017/2394 as proposed by a MS**
- **Restrict removal of management to issuers of ART where competent authorities have powers**
- **It will allow NCAs more easily to enforce MICA in an online context, including vis-à-vis third country players**

Supervisory and investigative powers exercised in relation to **crypto-assets issuers and crypto-assets service providers** ~~e-money token issuers~~ are without prejudice to powers granted to **other supervisory authorities as regards those entities, including powers granted to** relevant competent authorities under national laws transposing Directive 2009/110/EC **and prudential supervisory powers granted to the ECB under Council Regulation (EU) 1024/2013**.

Explanation

- **ECB amendment 22 with adaptations**

2. In order to fulfil their duties under Title VI of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers in addition to powers referred to in paragraph 1:

(a) to access any document and data in any form, and to receive or take a copy thereof;

(b) to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;

(c) to enter the premises of natural and legal persons in order to seize documents and data in any form where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation may be relevant to prove a case of insider dealing or market manipulation infringing this Regulation;

(d) to refer matters for criminal prosecution;

(e) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to the investigation of an infringement of Articles 77, 78, 79 and 80;

(f) to request the freezing or sequestration of assets, or both;

(g) to impose a temporary prohibition on the exercise of professional activity;

(h) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring an issuer of crypto-assets or other person who has published or disseminated false or misleading information to publish a corrective statement.

3. Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in paragraphs 1 and 2.

4. Competent authorities shall exercise their functions and powers referred to in paragraphs 1 and 2 in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such authorities;

(d) by application to the competent judicial authorities.

5. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

6. A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.

Article 83

Cooperation between competent authorities

1. Competent authorities shall cooperate with each other for the purposes of this Regulation. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

Where Member States have chosen, in accordance with Article 92(1), second subparagraph, to lay down criminal penalties for an infringement of this Regulation, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for infringements of this Regulation and to provide the same information to other competent authorities as well as to the EBA and ESMA, in order to fulfil their obligation to cooperate for the purposes of this Regulation.

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:

(a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;

(b) where judicial proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the authorities of the Member State addressed;

(c) where a final judgment has already been delivered in relation to such natural or legal persons for the same actions in the Member State addressed.

3. Competent authorities shall, on request, without undue delay supply any information required for the purposes of this Regulation.

4. A competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may take any of the following actions:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) share specific tasks related to supervisory activities with the other competent authorities.

A requesting competent authority shall inform the EBA and ESMA of any request.

4a. In the case of an on-site inspection or investigation referred to in paragraph 4, ESMA shall coordinate the inspection or investigation, where requested to do so by one of the competent authorities.

Where the on-site inspection or investigation referred to in paragraph 4 concerns an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, the EBA shall, where requested to do so by one of the competent authorities, coordinate the inspection or investigation.

Explanation

- **Moved from Art 84(2) with additional changes**

5. The competent authorities may refer to ESMA in situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

   Without prejudice to Article 258 TFEU, ESMA may, in such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. By derogation to paragraph 5, the competent authorities may refer to the EBA in situations where a request for cooperation, in particular to exchange information, concerning an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, has been rejected or has not been acted upon within a reasonable time.

   Without prejudice to Article 258 TFEU, the EBA may, in such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1093/2010.

7. Competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation, and provide cross-jurisdictional assessments in the event of any disagreements.

For the purpose of the first sub-paragraph, the EBA and ESMA shall fulfil a coordination role between competent authorities and across colleges as referred to in Articles 99 ~~and 101~~ with a view of building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes, especially with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact.

8. Where a competent authority finds that any of the requirements under this Regulation has not been met or has reason to believe that to be the case, it shall inform the competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner.

9. ESMA, after consultation of the EBA, shall develop draft regulatory technical standards to specify the information to be exchanged between competent authorities in accordance with paragraph 1.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

ESMA shall submit those draft regulatory technical standards to the Commission by … [please insert date 12 months after entry into force].

10. ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

ESMA shall submit those draft implementing technical standards to the Commission by … [please insert date 12 months after the date of entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

~~ESMA shall submit those draft implementing technical standards to the Commission by … [please insert date 12 months after the date of entry into force].~~

Article 84

Cooperation with the EBA and ESMA

1. For the purpose of this Regulation, the competent authorities shall cooperate closely with ESMA in accordance with Regulation (EU) No 1095/2010 and with the EBA in accordance with Regulation (EU) No 1093/2010. They shall exchange information in order to carry out their duties under this Chapter and Chapter**s 1a and** 2 of this Title.

2. ~~A requesting competent authority shall inform the EBA and ESMA of any request referred to in the Article 83(4).~~

~~In the case of an on-site inspection or investigation with cross-border effect, ESMA shall, where requested to do so by one of the competent authorities, coordinate the inspection or investigation. Where the on-site inspection or investigation with cross-border effects concerns an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, the EBA where requested to do so by one of the competent authorities, coordinate the inspection or investigation.~~

Explanation

- **Moved to Art 83**

3. The competent authorities shall without delay provide the EBA and ESMA with all information necessary to carry out their duties, in accordance with Article 35 of Regulation (EU) No 1093/2010 and Article 35 of Regulation (EU) No 1095/2010 respectively.

4. In order to ensure uniform conditions of application of this Article **and Article 83**, ESMA, in close cooperation with the EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ~~with~~ the EBA and ESMA.

Explanation

- **There is also exchange of information between NCA and ESAs in Art 83**

ESMA shall submit those draft implementing technical standards to the Commission by ... [please insert date 12 months after the date of entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 84a

Promotion of convergence on the classification of crypto-assets

1. ESMA and EBA shall jointly develop by [18 months after date of entry into force] guidelines to specify the content and form of the explanation referred to in Article 7(3) and of the legal opinions referred to in Articles 15a(1)(b)(b) and 16(2)(d), which shall include a template for the explanation or opinion and a standardised test for the classification of crypto-assets.

2. ESMA and EBA shall, in accordance with Article 29 of Regulation (EU) No 1093/2010 and Regulation (EU) No 1095/2010, where relevant, promote the discussion among competent authorities on the classification of the crypto-assets notified under Article 91a(3) and (4), identify sources of potential divergences in the approaches of the competent authorities and, to the extent possible, promote a common approach.

3. National competent authorities may request an opinion from ESMA or EBA, as appropriate, on the classification of crypto-assets. ESMA and EBA shall provide such

opinion in accordance with Article 29 of Regulation (EU) No 1093/2010 and Regulation (EU) No 1095/2010.

4. ESMA and EBA shall jointly draw up an annual report based on the notifications received under Article 91a and on their work referred to in paragraphs 2 and 3 identifying difficulties in the classification of crypto-assets and divergences in the approaches from national competent authorities.

Article 85

Cooperation with other authorities

Where an issuer**, offeror or person seeking admission to trading** of crypto-assets, including asset-referenced tokens or e-money tokens, or a crypto-asset service provider engages in activities other than those covered by this Regulation, the competent authorities shall cooperate with the authorities responsible for the supervision or oversight of such other activities as provided for in the relevant Union or national law, including tax authorities and relevant supervisory authorities from third countries.

Article 86

Notification duties

1. Member States shall notify the laws, regulations and administrative provisions implementing this Title, including any relevant criminal law provisions, to the Commission~~, the EBA and ESMA~~ by… [please insert date 18 months after the date of entry into force]. Member States shall notify the Commission ~~and ESMA~~ without undue delay of any subsequent amendments thereto.

2. The Commission shall communicate the information received from MS pursuant to the previous paragraph to EBA and ESMA.

Explanation

- **To minimise MS notifications**

Article 87

Professional secrecy

1. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information is permitted to be disclosed or such disclosure is necessary for legal proceedings.

2. The obligation of professional secrecy shall apply to all natural or legal persons who work or who have worked for the competent authorities. Information covered by professional secrecy may not be disclosed to any other natural or legal person or authority except by virtue of provisions laid down by Union or national law.

Article 88

Data protection

With regard to the processing of personal data within the scope of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with Regulation (EU) 2016/679.

With regard to the processing of personal data by the EBA and ESMA within the scope of this Regulation, it shall comply with Regulation (EU) 2018/1725.

Article 89

Precautionary measures

1. Where the competent authority of a host Member State has clear and demonstrable grounds for believing that irregularities have been committed by a crypto-asset service provider or by an issuer**, offeror or person seeking admission to trading** of crypto-assets, including asset-

referenced tokens or e-money tokens**, within its territory**, it shall notify the competent authority of the home Member State and ESMA thereof.

Where the irregularities concern~~s~~ an issuer of asset-referenced tokens or e-money tokens, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authorities of the host Member States shall ~~also~~ notify the EBA.

2. Where, despite the measures taken by the competent authority of the home Member State, the crypto-asset service provider or the issuer**, offeror or person seeking admission to trading** of crypto-assets persists in infringing this Regulation, the competent authority of the host Member State, after informing the competent authority of the home Member State, ESMA and where appropriate the EBA, shall take all appropriate measures in order to protect ~~consumers~~ **clients of crypto asset service providers and holders of crypto-assets, in particular consumers, including the possibility of preventing the crypto asset service provider, issuer , offeror or person seeking admission to trading from conducting further activities in the host Member State,** and shall inform ESMA and where appropriate the EBA~~,~~ thereof without undue delay. ESMA, and where relevant~~,~~ the EBA, shall inform the Commission accordingly without undue delay.

Explanation

- **Replacing consumers with a more appropriate expression**
- **Making it explicit what are the powers of the host taking inspiration from Art 86(1)(a) MIFID**

3. Where a competent authority disagrees with any of the measures taken by another competent authority pursuant to paragraph 2 of this Article, it may bring the matter to the attention of ESMA. ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

By derogation to the first subparagraph, where the measures concern~~s~~ an issuer of asset-referenced tokens or e-money tokens, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authority may bring the matter to the attention of the

EBA. The EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

Article 90

Cooperation with third countries

1. The competent authorities of Member States shall, where necessary, conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. Those cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.

   A competent authority shall inform the EBA, ESMA and the other competent authorities where it proposes to enter into such an arrangement.

2. ESMA, in close cooperation with the EBA, shall, where possible, facilitate and coordinate the development of cooperation arrangements between the competent authorities and the relevant supervisory authorities of third countries.

   ESMA, in close cooperation with the EBA, shall develop draft regulatory technical standards containing a template document for cooperation arrangements that are to be used by competent authorities of Member States where possible.

   ESMA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after entry into force].

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. ESMA, in close cooperation with EBA, shall also, where possible, facilitate and coordinate the exchange between competent authorities of information obtained from supervisory authorities of third countries that may be relevant to the taking of measures under Chapter 2.

4. The competent authorities shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 87. Such exchange of information shall be intended for the performance of the tasks of those competent authorities.

Article 91

Complaint handling by competent authorities

1. Competent authorities shall set up procedures which allow clients and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to issuer**s, offerors and persons seeking admission to trading** of crypto-assets, including asset-referenced tokens or e-money tokens, and crypto-asset service providers' alleged infringements of this Regulation. In all cases, complaints should be accepted in written or electronic form and in an official language of the Member State in which the complaint is submitted or in a language accepted by the competent authorities of that Member State.

2. Information on the complaints**' handling** procedures referred to in paragraph 1 shall be made available on the website of each competent authority and communicated to the EBA and ESMA. ESMA shall publish the references to the complaints**' handling** procedures related sections of the websites of the competent authorities ~~in its crypto-asset register referred to in Article 57~~.

Explanation

- **This information does not seem to be of the same nature of the information to be included in the register**

Chapter 1a: ESMA register

Article 91a

Register of crypto-asset white papers of crypto-assets other than asset-referenced tokens and e-money tokens, issuers of asset-referenced tokens, issuers of e-money tokens and crypto-asset service providers

Explanation:

- **New article, replacing Art. 57.**

1. ESMA shall establish a register of:

a) notified crypto-asset white papers with respect to crypto-assets other than asset-referenced tokens and e-money tokens;

b) issuers of asset-referenced tokens;

c) issuers of e-money tokens;

d) crypto-asset service providers.

That register shall be publicly available on its website and shall be updated on a regular basis.

2. As regards crypto-asset white papers of crypto-assets other than asset-referenced tokens or e-money tokens, the register referred to in paragraph 1 shall contain the following information:

(a) the crypto-asset white papers and the modified white papers, where applicable;

[(b) the explanation referred to in Article 7(3).]

Question to MS

- **Do MS agree to include in the public register the explanation referred to in Art 7(3)?**

3. As regards issuers of asset-referenced tokens, the register referred to in paragraph 1 shall contain the following information:

(a) the name, legal form and the legal entity identifier of the issuer of asset-referenced tokens;

(b) the commercial name, physical address and website of the issuer of the asset-referenced tokens;

(c) the crypto-asset white papers and the modified white papers, where applicable;

(ca) the legal opinion referred to in Articles 15a(1) and 16(2);

(d) any other services provided by the issuer of asset-referenced tokens not covered by this Regulation, with a reference to the relevant Union or national law.

4. As regards issuers of e-money tokens, the register referred to in paragraph 1 shall contain the following information:

(a) the name, legal form and the legal entity identifier of the issuer of e-money tokens;

(b) the commercial name, physical address and website of the issuer of the e-money tokens;

(c) the crypto-asset white papers and the modified white papers, where applicable;

(d) any other services provided by the issuer of e-money tokens not covered by this Regulation, with a reference to the relevant Union or national law.

5. As regards crypto-assets service providers, the register referred to in paragraph 1 shall contain the following information:

(a) the name, legal form and the legal entity identifier and the branches of the crypto-asset service provider;

(b) the commercial name, physical address and website of the crypto-asset service provider or the trading platform for crypto-assets operated by the crypto-asset service provider;

(c) the name and address of the competent authority which granted authorisation and its contact details;

(d) the list of crypto-asset services for which the crypto-asset service provider is authorised;

(e) the list of Member States in which the crypto-asset service provider has notified its intention to provide crypto-asset services in accordance with Article 58;

(f) any other services provided by the crypto-asset service provider not covered by this Regulation with a reference to the relevant Union or national law;

(g) the date of authorisation and, where applicable, of withdrawal of authorisation.

6. Competent authorities shall notify without delay ESMA of measures taken pursuant to Article 82(1)(c), (d), (g), (o), (p), (q), (r) or (u) and preacautionary measures taken pursuant to Article 89 affecting the provision of crypto asset services or the issuance, the offering or the use of crypto-assets. ESMA shall include such information in the register.

7. Any withdrawal of an authorisation of an issuer of asset-reference tokens in accordance with Article 20, of an issuer of e-money tokens or of a crypto-asset service provider in

accordance with Article 56, and any measure notified in accordance with paragraph 6, shall remain published in the register for five years.

Chapter 2: administrative measures and ~~sanctions~~ penalties by competent authorities

Article 92

*Administrative ~~sanctions~~ **penalties** and other administrative measures*

1. Without prejudice to any criminal sanctions and without prejudice to the supervisory **and investigative** powers of competent authorities under Article 82, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative ~~sanctions~~ **penalties** and other administrative measures in relation to at least the following infringements:

(a) infringements of Articles 4 to ~~14~~ **13**;

(b) infringements of Articles **15, 15a,** 17 and 21, Articles 23 to ~~36~~ **37** and Article ~~42~~;

(c) infringements of Articles 43 to 49, except Article 47;

(d) infringements of Article **53, 53a,** 56 and Articles 58 to ~~73~~ **74**;

(e) infringements of Articles 7~~6~~ **7** to 80;

(f) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 82(2).

Member States may decide not to lay down rules for administrative ~~sanctions~~ **penalties** as referred to in the first subparagraph where the infringements referred to in points (a), (b), (c), (d) or (e) of that subparagraph are already subject to criminal sanctions in their national law ~~by [please insert date 18 months after entry into force]~~. Where they so decide, Member States

shall notify, in detail, to the Commission~~, ESMA and to EBA,~~ the relevant parts of their criminal law.

~~By [please insert date 18 months after entry into force],~~ Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission~~, the EBA and ESMA~~ **by [please insert date 18 months after entry into force]**. They shall notify the Commission~~, ESMA and EBA~~ without delay of any subsequent amendment thereto.

The Commission shall communicate the information received from MS pursuant the previous sub-paragraphs to EBA and ESMA.

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative ~~sanctions~~ **penalties** and other administrative measures in relation to the infringements listed in point**s** (a) **to (d)** of paragraph 1:

(a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement ~~in accordance with Article 82~~;

(b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;

(c) maximum administrative pecuniary ~~sanctions~~ **fines** of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined**, even if it exceeds the maximum amounts set out in points (d) and (e)**;

(d) in the case of a legal person, maximum administrative pecuniary ~~sanctions~~ **fines** of at least EUR 5 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation], or 3 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required

to prepare consolidated financial accounts in accordance with Directive 2013/34/EU-, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(e) in the case of a natural person, maximum administrative pecuniary ~~sanctions~~ **fines** of at least EUR 700 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation].

Explanation

- **Differently from the Commission proposal the Presidency proposes that letter e) above apply to all Titles rather than only to Title II as sanctions may also be applicable to natural persons**

3. **By derogation to point (d) of paragraph 2, in the case of a legal person, the maximum administrative pecuniary fines shall be of at least 15% of the total annual turnover of that legal person according to the last available financial statements approved by the management body** ~~Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and other administrative measures,~~ in relation to the infringements listed in point**s** (b) **and (c)** of paragraph 1~~:~~**.**

(a) ~~a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;~~

(b) ~~an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;~~

(c) ~~maximum administrative pecuniary sanctions of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;~~

(d) ~~in the case of a legal person, maximum administrative pecuniary sanctions of at least 15% of the total annual turnover of that legal person according to the last available financial statements approved by the management body~~.

Question to MS

- **Do MS agree that, in the case of Titles III and IV the maximum administrative pecuniary fines shall be of at least 15% of the total annual turnover, differently from the usual 5% in financial services legislation (with exception of MAR where it is 15%)? Or should it be 5%?**

4. ~~Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and other administrative measures in relation to the infringements listed in point (c) of paragraph 1:~~

(a) ~~a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;~~

(b) ~~an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;~~

(c) ~~maximum administrative pecuniary sanctions of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;~~

(d) ~~in the case of a legal person, maximum administrative pecuniary sanctions of at least 15% of the total annual turnover of that legal person according to the last available financial statements approved by the management body.~~

5. **By derogation to point (d) of paragraph 2, in the case of a legal person, the maximum administrative pecuniary fines shall be of at least 5% of the total annual turnover of that legal person according to the last available financial statements approved by the management body,** ~~Member States shall, in accordance with their national law, ensure that~~

~~competent authorities have the power to impose at least the following administrative penalties and other administrative measures~~ in relation to the infringements listed in point (d) of the first subparagraph of paragraph 1~~:~~.

(a) ~~a public statement indicating the natural or legal person responsible for, and the nature of, the infringement;~~

(b) ~~an order requiring the natural or legal person to cease the infringing conduct and to desist from a repetition of that conduct;~~

(c) ~~a ban preventing any member of the management body of the legal person responsible for the infringement, or any other natural person held responsible for the infringement, from exercising management functions in such undertakings;~~

(d) ~~maximum administrative fines of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if it exceeds the maximum amounts set out in point (e);~~

(e) ~~in the case of a legal person, maximum administrative fines of at least EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on ... [please insert date of entry into force of this Regulation] or of up to 5% of the total annual turnover of that legal person according to the last available financial statements approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;~~

(f) ~~in the case of a natural person, maximum administrative fines of at least EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on ... [please insert date of entry into force of this Regulation].~~

In addition to the administrative penalties and other administrative measures in relation to the infringements listed in paragraph 2, Member States shall, in accordance with national law, ensure that competent authorities have the power to impose, in the event of the infringements referred to in point (d) of the first subparagraph of paragraph 1, a temporary ban preventing any member of the management body of the crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in crypto-asset service providers.

6. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative ~~sanctions~~ **penalties** and to take at least the following administrative measures in the event of the infringements referred to in point (e) of the first subparagraph of paragraph 1:

(a) an order requiring the **natural or legal** person ~~responsible for~~ **to cease** the infring**ingement to cease the** conduct and to desist from a repetition of that conduct;

(b) the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;

(c) a public ~~warning~~ **statement** ~~which indicates~~ **indicating** the **natural person or the legal** ~~person~~ **entity** responsible ~~for~~ **and the nature of** the infringement ~~and the nature of the infringement~~;

(d) withdrawal or suspension of the authorisation of a crypto-asset service provider;

(e) a temporary ban of any member of the management body of the crypto-asset service provider**,** or any other natural person~~,~~ who is held responsible for the infringement, from exercising management functions in the crypto-asset service provider;

(f) in the event of repeated infringements of Articles 78, 79 or 80, a ban of at least 10 years of any member of the management body of a crypto-asset service provider**,** or any other natural person who is held responsible for the infringement, from exercising management functions in the crypto-asset service provider;

(g) a temporary ban of any member of the management body of a crypto-asset service provider or any other natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative pecuniary ~~sanctions~~ **fines** of at least 3 times the amount of the profits gained or losses avoided because of the infringement, where those can be determined**, even if it exceeds the maximum amounts set out in points (i) and (j)**;

(i) in respect of a natural person, maximum administrative pecuniary ~~sanctions~~ **fines** of at least EUR 1 000 000 for infringements ~~on~~ **of** Article77 and EUR 5 000 000 for infringements ~~on~~ **of** Articles 78 to 80 or in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation];

(j) in respect of legal persons, maximum administrative pecuniary ~~sanctions~~ **fines** of at least EUR 2 500 000 for infringements **of** ~~on~~ Article 77 and EUR 15 000 000 for infringements **of** ~~on~~ Articles 78 to 80, or 2% for infringements **of** ~~on~~ Article 77 and 15 % for infringements **of** ~~on~~ Articles 78 to 80 of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation]. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last

available consolidated accounts approved by the management body of the ultimate parent undertaking.

7. Member States may provide that competent authorities have powers in addition to those referred to in paragraphs 2 to 6 and may provide for higher levels of ~~sanctions~~ **penalties** than those established in those paragraphs, in respect of both natural and legal persons responsible for the infringement.

Article 93

Exercise of supervisory powers and powers to impose penalties

1. Competent authorities, when determining the type and level of an administrative penalty or other administrative measures to be imposed in accordance with Article 92, shall take into account ~~the extent to which the infringement is intentional or results from negligence and~~ all ~~other~~ relevant circumstances, including, where appropriate:

(a) the gravity and the duration of the infringement;

(aa) whether the infringement has been committed intentionally or negligently;

Explanation

- **Alignment with Art 112(3)(d)**

(b) the degree of responsibility of the natural or legal person responsible for the infringement;

(c) the financial strength of the natural or legal person responsible for the infringement, as indicated, for example, by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(d) the importance of profits gained or losses avoided by the natural or legal person responsible for the infringement, insofar as those can be determined;

(e) the losses for third parties caused by the infringement, insofar as those can be determined;

(f) the level of cooperation of the natural or legal person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(g) previous infringements by the natural or legal person responsible for the infringement;

(h) measures taken by the person responsible for the infringement to prevent its repetition;

(i) the impact of the infringement on **the interests of holders of crypto-assets and clients of crypto-assets service providers, in particular** consumers ~~or investors' interests~~.

2. In the exercise of their powers to impose administrative penalties and other administrative measures under Article 92, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative penalties and other administrative measures that they impose, are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative penalties and other administrative measures in cross-border cases.

Article 94

Right of appeal

Member States shall ensure that ~~any~~ decision**s** taken under this Regulation ~~is~~ **are** properly reasoned and ~~is~~ subject to the right of appeal before a tribunal. The right of appeal before a tribunal shall also apply where, in respect of an application for authorisation as a crypto-asset service provider which provides all the information required, no decision is taken within six months of its submission.

Explanation

- **Alignment with MiFID**

Article 95

Publication of decisions

1. A decision imposing administrative penalties and other administrative measures for infringement of this Regulation shall be published by competent authorities on their official websites immediately after the natural or legal person subject to that decision has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the natural or legal persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

2. Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise an ongoing investigation, competent authorities shall take one of the following actions:

   (a) defer the publication of the decision to impose a penalty or a measure until the moment where the reasons for non-publication cease to exist;

   (b) publish the decision to impose a penalty or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned;

   (c) not publish the decision to impose a penalty or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:

      i) that the stability of financial markets is not jeopardised;

      ii) the proportionality of the publication of such a decision with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a penalty or measure on an anonymous basis, as referred to in point (b) of the first subparagraph, the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication shall cease to exist.

3. Where the decision to impose a penalty or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a penalty or a measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article remains on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

Article 96

Reporting of penalties and administrative measures to ESMA and EBA

1. The competent authority shall, on an annual basis, provide ESMA and EBA with aggregate information regarding all administrative penalties and other administrative measures imposed in accordance with Article 92. ESMA shall publish that information in an annual report.

Where Member States have chosen, in accordance with Article 92(1), second subparagraph, to lay down criminal penalties for the infringements of the provisions referred to in that paragraph, their competent authorities shall provide the EBA and ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal penalties imposed in an annual report.

2. Where the competent authority has disclosed administrative penalties, other administrative measures or criminal penalties to the public, it shall simultaneously report them to ESMA.

3. Competent authorities shall inform the EBA and ESMA of all administrative penalties or other administrative measures imposed but not published, including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgment in relation to any criminal penalty imposed and submit it to the EBA and ESMA. ESMA shall maintain a central database of penalties and administrative measures communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be only accessible to the EBA, ~~and~~ ESMA~~,~~ and the competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

Article 97

Reporting of breaches and protection of reporting persons

Directive (EU) 2019/1937 shall apply to the reporting of breaches of this Regulation and the protection of persons reporting such breaches.

Chapter 3: Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and significant e-money tokens and colleges of supervisors

Article 98

Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens

1. Where an asset-referenced token has been classified as significant in accordance with Article 39 or Article 40, the issuer of such asset-referenced tokens shall carry out their activities under the supervision of the EBA.

Without prejudice of the powers of national competent authorities as regards issuers non-significant asset-referenced tokens which also issue significant asset-referenced

tokens, ~~T~~the EBA shall exercise the powers of competent authorities conferred by Articles 21, 37 and 38 as regards issuers of significant asset-referenced tokens.

Explanation

- **Clarification that NCA powers on non-sART remain applicable; this means that in Art 37 and 38 the issuer must notify both NCA and EBA and that both have powers**

2. Where an issuer of significant asset-referenced tokens provide**s** crypto-asset services or issue**s** crypto-assets that are not significant asset-referenced tokens, such services and activities shall remain supervised by the competent authority of the home Member State.

3. Where an asset-referenced token has been classified as significant in accordance with Article 39, the EBA shall conduct a supervisory reassessment to ensure that **its** issuer~~s of significant asset-referenced tokens~~ compl~~y~~**ies** with the requirements under Title III.

4. Where an e-money token has been classified as significant in accordance with Articles 50 or 51, the EBA shall be responsible of the compliance of the issuer of such significant e-money tokens with the requirements laid down in Article 52.

5. EBA shall exercise its supervisory powers foreseen in paragraphs 1 to 4 in close cooperation with other supervisory authorities of the issuer, in particular:

a) the prudential supervisory authority, including the ECB under Council Regulation (EU) 1024/2013;

b) the competent authority which supervises non-significant asset-referenced tokens;

c) relevant competent authorities under national laws transposing Directive 2009/110/EC.

Explanation

- **To implement amendment 23 from the ECB**

- **To ensure coordination with all other issuer supervisors, beyond the ECB**

Article 98a

EBA crypto-assets committee

EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for the purpose of preparing EBA decisions to be taken in accordance with Article 44 thereof, including decisions to be taken under Article 98 of this Regulation and decisions relating to draft regulatory technical standards and draft implementing technical standards, relating to tasks that have been conferred on EBA as provided for in this Regulation. That internal committee shall be composed of the competent authorities referred to in Article 81 of this Regulation responsible for the supervision of issuers of asset-referenced tokens and of issuers of e-money tokens.

Explanation

- **As proposed in the 18/03 meeting following Art 127 of BRRD**

Article 99

*Colleges for issuers of significant asset-referenced tokens **and significant e-money tokens***

1. Within 30 calendar days of a decision to classify an asset-referenced token **or e-money token** as significant, the EBA shall establish, manage and chair a consultative supervisory college for each issuer of significant asset-referenced tokens **or of significant e-money tokens** to facilitate the exercise of its supervisory tasks under this Regulation.

2. The college shall consist of:

   (a) the EBA, as the chair of the college;

   (b) ESMA;

(c) the competent authorities of the home Member State where the issuer of significant asset-referenced tokens **or of significant e-money tokens** is established;

(d) the competent authorities of the most relevant credit institutions or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33 **or of the funds received in exchange of the significant e-money tokens**;

(e) where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens **or the significant e-money tokens** are admitted to trading;

(ea) the competent authorities of the most relevant payment institutions authorised in accordance with Article 11 of Directive (EU) 2015/2366 and providing payment services in relation to the significant e-money tokens;

(f) where applicable, the competent authorities of the most relevant crypto-asset service providers in charge of ensuring the liquidity of the significant asset-referenced tokens in accordance with the first paragraph of Article 35(4);

(g) where applicable, the competent authorities of the entities ensuring the functions as referred to in Article 30(5), point (h);

(h) where applicable, the competent authorities of the most relevant crypto-asset service providers providing the crypto-asset service referred to in Article 3(1) point (10) in relation with the significant asset-referenced tokens **or with the significant e-money tokens**;

(i) the ECB;

(ia) where the issuer of significant e-money tokens is established in a Member State the currency of which is not euro, or where the significant e-money token is

referencing a currency which is not the euro, the national central bank of that Member State;

(j) where the issuer of significant asset-referenced tokens is established in a Member State the currency of which is not euro, or where a currency that is not euro is included in the reserve assets, **or when the asset-referenced tokens are used as a means of payment in a Member State the currency of which is not euro,** the national central bank of that Member State;

(k) relevant supervisory authorities of third countries with which the EBA has concluded an administrative agreement in accordance with Article 108**;** ~~.~~

(ka) competent authorities of Member States where the asset-referenced token or the e-money token is used, upon their request.

2a. EBA may invite other authorities to be members of the college where the entities they supervise are relevant to the work of the college.

3. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

4. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the preparation of the non-binding opinion referred to in Article 100;

(b) the exchange of information in accordance with ~~Article 107~~ **this Regulation**;

(c) agreement on the voluntary entrustment of tasks among its members, including delegation of tasks under Article 120;

(d) the coordination of supervisory examination programmes based on the risk assessment carried out by the issuer of significant asset-referenced tokens in accordance with Article 30(9).

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting.

5. The establishment and functioning of the college shall be based on a written agreement between all its members.

The agreement shall determine the practical arrangements for the functioning of the college, including detailed rules on:

(a) voting procedures as referred in Article 100(4);

(b) the procedures for setting the agenda of college meetings;

(c) the frequency of the college meetings;

(d) the format and scope of the information to be provided by the EBA to the college members, especially with regard to the information to the risk assessment as referred to in Article 30(9);

(da) the format and scope of the information to be provided by the competent authority of the issuer of significant e-money tokens to the college members;

(e) the appropriate minimum timeframes for the assessment of the relevant documentation by the college members;

(f) the modalities of communication between college members**;**

(g) the creation of sub-groups to discuss specific topics;

(h) the creation of several formations of the college, one for each specific crypto asset or group of crypto-assets.

The agreement may also determine tasks to be entrusted to the EBA**, to the competent authority of the issuer of significant e-money tokens** or another member of the college.

6. In order to ensure the consistent and coherent functioning of colleges, the EBA shall, in cooperation with ESMA and the European System of Central Banks, develop draft regulatory standards specifying the conditions under which the entities referred to in points (d) to **(f) and** (h) of paragraph 2 are to be considered as the most relevant and the details of the practical arrangements referred to in paragraph 5.

The EBA shall submit those draft regulatory standards to the Commission by [please insert date 12 months after the entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.

Article 100

*Non-binding opinions of the colleges for issuers of significant asset-referenced tokens **and significant e-money tokens***

1. The college for issuers of significant asset-referenced tokens **and significant e-money tokens** may issue a non-binding opinion on the following:

(a) the supervisory reassessment as referred to in Article 98(3);

(b) any decision to require an issuer of significant asset-referenced tokens to hold a higher amount of own funds or to permit such an issuer to hold a lower amount of own funds in accordance with Article 41(4);

(c) any update of the orderly wind-down plan of an issuer of significant asset-referenced tokens **or an issuer of significant e-money tokens** pursuant to Article 42;

(d) any change to the issuer of significant asset-referenced tokens' business model pursuant to Article 21(1);

(e) a draft amended crypto-asset white paper in accordance with Article 21(2);

(f) any measures envisaged in accordance with Article 21(3);

(g) any envisaged supervisory measures pursuant to Article 112;

(h) any envisaged agreement of exchange of information with a third-country supervisory authority **in accordance** with Article 108;

(i) any delegation of supervisory tasks from the EBA to a competent authority pursuant to Article 120;

(j) any envisaged change in the authorisation of, or any envisaged supervisory measure on, the entities and crypto-asset service providers referred to in Article 99(2), points (d) to (h)**;**

(k) any decision to require an issuer of significant e-money tokens to hold a higher amount of own funds or to permit such an issuer to hold a lower amount of own funds in accordance with Articles 31 and 41(4);

(l) a draft amended crypto-asset white paper in accordance with Article 46(10);

(n) any envisaged withdrawal of authorisation for an issuer of significant e-money tokens as a credit institution or pursuant to Directive 2009/110/EC;

(m) any delegation of supervisory tasks from the competent authority of the issuer of significant e-money tokens to the EBA or another competent authority, in accordance with Article 120.

2. Where the college issues an opinion accordance with paragraph 1, at the request of any member of the college and upon adoption by a majority of the college in accordance with paragraph 4, the opinion may include any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the EBA or the competent authorities.

3. ~~The EBA shall facilitate the adoption of the opinion in accordance with its general coordination function under Article 31 of Regulation (EU) No 1093/2010.~~

Explanation

- **It is not clear how such role is compatible with the fact that opinions are addressed to EBA**

4. A majority opinion of the college shall be based on the basis of a simple majority of its members.

Where there are several college members per Member State, only one shall have a vote. Where the ECB is a member of the college in several capacities, it shall have only one vote. ~~For colleges up to and including 12 members, a maximum of two college members belonging to the same Member State shall have a vote and each voting member, shall have one vote. For colleges with more than 12 members, a maximum of three members belonging to the same Member State shall have a vote and each voting member shall have one vote.~~

~~Where the ECB is a member of the college pursuant to Article 99(2), point (i), it shall have two votes.~~

Explanation

- **Several Members asked for a more balanced distribution of votes among members**

Supervisory authorities of third countries referred to in Article 99(2), point (k), shall have no voting right on the opinion of the college.

5. The EBA and competent authorities shall duly consider the opinion of the college reached in accordance with paragraph 1, including any recommendations aimed at addressing shortcomings of the ~~envisaged~~ action or supervisory measure envisaged on an issuer of significant asset-referenced tokens**, on an issuer of significant e-money tokens** or on the entities and crypto-asset service providers referred to in points (d) to (h) of Article 99(2). Where the EBA or a competent authority does not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the ~~envisaged~~ action or supervisory measure envisaged, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations.

Article 101

~~*College for issuers of significant electronic money tokens*~~

1. ~~Within 30 calendar days of a decision to classify an e-money token as significant, the EBA shall establish, manage and chair a consultative supervisory college for each issuer of significant e-money tokens to facilitate the exercise of supervisory tasks under this Regulation.~~

2. ~~The college shall consist of:~~

(a) ~~the EBA, as the Chair;~~

(b) ~~the competent authority of the home Member State where the issuer of e-money token has been authorised either as a credit institution or as an electronic money institution;~~

(c) ~~ESMA;~~

(d) ~~the competent authorities of the most relevant credit institutions ensuring the custody of the funds received in exchange of the significant e-money tokens;~~

(e) ~~the competent authorities of the most relevant payment institutions authorised in accordance with Article 11 of Directive (EU) 2015/2366 and providing payment services in relation to the significant e-money tokens;~~

(f) ~~where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant e-money tokens are admitted to trading;~~

(g) ~~where applicable, the competent authorities of the most relevant crypto-asset service providers providing the crypto-asset service referred to in Article 3(1) point (10) in relation to significant e-money tokens;~~

(h) ~~where the issuer of significant e-money tokens is established in a Member State the currency of which is euro, or where the significant e-money token is referencing euro, the ECB;~~

(i) ~~where the issuer of significant e-money tokens is established in a Member State the currency of which is not euro, or where the significant e-money token is referencing a currency which is not the euro, the national central bank of that Member State;~~

(j) ~~relevant supervisory authorities of third countries with which the EBA has concluded an administrative agreement in accordance with Article 108.~~

3. ~~The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.~~

4. ~~The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:~~

(a) ~~the preparation of the non-binding opinion referred to in Article 102;~~

(b) ~~the exchange of information in accordance with this Regulation;~~

(c) ~~agreement on the voluntary entrustment of tasks among its members, including delegation of tasks under Article 120.~~

~~In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting.~~

5. ~~The establishment and functioning of the college shall be based on a written agreement between all its members.~~

~~The agreement shall determine the practical arrangements for the functioning of the college, including detailed rules on:~~

(a) ~~voting procedures as referred to in Article 102;~~

(b) ~~the procedures for setting the agenda of college meetings;~~

(c) ~~the frequency of the college meetings;~~

(d) ~~the format and scope of the information to be provided by the competent authority of the issuer of significant e-money tokens to the college members;~~

(e) ~~the appropriate minimum timeframes for the assessment of the relevant documentation by the college members;~~

(f) ~~the modalities of communication between college members.~~

The agreement may also determine tasks to be entrusted to the competent authority of the issuer of significant e-money tokens or another member of the college.

6. In order to ensure the consistent and coherent functioning of colleges, the EBA shall, in cooperation with ESMA and the European System of Central Banks, develop draft regulatory standards specifying the conditions under which the entities referred to in points (d) to (g) of paragraph 2 are to be considered as the most relevant and the details of the practical arrangements referred to in paragraph 5.

The EBA shall submit those draft regulatory standards to the Commission by [please insert date 12 months after the entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.

Article 102

Non-binding opinions of the college for issuers of significant electronic money tokens

1. The college for issuers of significant e-money tokens may issue a non-binding opinion on the following:

(a) any decision to require an issuer of significant e-money tokens to hold a higher amount of own funds or to permit such an issuer to hold a lower amount of own funds in accordance with Articles 31 and 41(4);

(b) any update of the orderly wind-down plan of an issuer of significant e-money tokens pursuant to Article 42;

(c) a draft amended crypto-asset white paper in accordance with Article 46(10);

(d) ~~any envisaged withdrawal of authorisation for an issuer of significant e-money tokens as a credit institution or pursuant to Directive 2009/110/EC;~~

(e) ~~any envisaged supervisory measures pursuant to Article 112;~~

(f) ~~any envisaged agreement of exchange of information with a third-country supervisory authority;~~

(g) ~~any delegation of supervisory tasks from the competent authority of the issuer of significant e-money tokens to the EBA or another competent authority, or from the EBA to the competent authority in accordance with Article 120;~~

(h) ~~any envisaged change in the authorisation of, or any envisaged supervisory measure on, the entities and crypto-asset service providers referred to in points (d) to (g) of Article 101(2).~~

2. ~~Where the college issues an opinion in accordance with paragraph 1, at the request of any member of the college and upon adoption by a majority of the college in accordance with paragraph 4, the opinion may include any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the competent authorities or by the EBA.~~

3. ~~The EBA shall facilitate the adoption of the opinion in accordance with its general coordination function under Article 31 of Regulation (EU) No 1093/2010.~~

4. ~~A majority opinion of the college shall be based on the basis of a simple majority of its members.~~

~~For colleges up to and including 12 members, a maximum of two college members belonging to the same Member State shall have a vote and each voting member, shall have one vote. For colleges with more than 12 members, a maximum of three members belonging to the same Member State shall have a vote and each voting member shall have one vote.~~

~~Where the ECB is a member of the college pursuant to point (h) of Article 101(2), it shall have 2 votes.~~

~~Supervisory authorities of third countries referred to in Article 101(2) point (j) shall have no voting right on the opinion of the college.~~

5. ~~The competent authority of the issuer of significant e-money tokens, EBA or any competent authority for the entities and crypto-asset service providers referred to in points (d) to (g) of Article 101(2) shall duly consider the opinion of the college reached in accordance with paragraph 1, including any recommendations aimed at addressing shortcomings of any envisaged action or supervisory measure. Where the EBA or a competent authority do not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the envisaged action or supervisory measure, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations.~~

Chapter 4: the EBA's powers and competences on issuers of significant asset-referenced tokens and issuers of significant e-money tokens

Article 103

Legal Privilege ~~*Exercise of powers referred to in Articles 104 to 107*~~

The powers conferred on the EBA by Articles 104 to 107, or on any official or other person authorised by the EBA, shall not be used to require the disclosure of information which is subject to legal privilege.

Article 104

Request for information

1. In order to carry out its duties under Article 98, the EBA may by simple request or by decision require the following persons to provide all information necessary to enable the EBA to carry out its duties under this Regulation:

(a) an issuer of significant asset-referenced tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;

(b) any third parties as referred to in Article 30(5), point (h) with which the issuer~~s~~ of significant asset-referenced tokens has a contractual arrangement;

(c) any crypto-assets service provider as referred to in Article 35(4) which provide liquidity for significant asset-referenced tokens;

(d) credit institutions or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33;

(e) an issuer of significant e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant e-money tokens;

(f) any payment institutions authorised in accordance with Article 11 of Directive (EU) 2015/2366 and providing payment services in relation to significant e-money tokens;

(g) any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

(h) any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1) point (10) in relation with significant asset-referenced tokens or significant e-money tokens;

(i) any **operator of a** trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;

(j) the management body of the persons referred to in points (a) to (i).

2. Any simple request for information as referred to in paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

(da) inform the person from whom the information is requested that it is not obliged to provide the information but that in case of a voluntary reply to the request the information provided must not be incorrect or misleading; and

Explanation

- **Alignment with EMIR**

(e) indicate the ~~amount of the~~ fine ~~to be issued in accordance with~~ **provided for in** Article 113**,** where the ~~information provided is~~ **answers to questions asked are** incorrect or misleading.

Explanation

- **Alignment with 104(3)(e) and 105(2)**

3. When requiring to supply information under paragraph 1 by decision, the EBA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 114 where the production of information is required.

(f) indicate the fine provided for in Article 113, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before the EBA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1093/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. The EBA shall without delay send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 105

General investigative powers

1. In order to carry out its duties under Article 98 of this Regulation, EBA may conduct investigations on issuers of significant asset-referenced tokens and issuers of significant e-money tokens. To that end, the officials and other persons authorised by the EBA shall be empowered to:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(c) summon and ask any issuer of significant asset-referenced tokens or issuer of significant of e-money tokens, or their management body or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

The college for issuers of significant asset-referenced tokens **and for issuers of significant e-money tokens** as referred to in Article 99 ~~or the college for issuers of significant e-money tokens as referred to in Article 101~~ shall be informed without undue delay of any findings that may be relevant for the execution of its tasks.

2. The officials and other persons authorised by the EBA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 114 where the production of the required records, data, procedures or any other material, or the answers to questions asked to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are not provided or are incomplete, and the fines provided for in Article 113, where the answers to questions asked to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are incorrect or misleading.

3. The issuers of significant asset-referenced tokens and issuers of significant e-money tokens are required to submit to investigations launched on the basis of a decision of the EBA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 114, the legal remedies available under Regulation (EU) No 1093/2010 and the right to have the decision reviewed by the Court of Justice.

4. In due time before an investigation referred to in paragraph 1, the EBA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of the EBA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify ~~the following~~ **whether**:

   (a) the decision adopted by the EBA referred to in paragraph 3 is authentic;

   (b) any measures to be taken are proportionate and not arbitrary or excessive.

7. For the purposes of point (b) paragraph 6, the national judicial authority may ask the EBA for detailed explanations, in particular relating to the grounds the EBA has for suspecting that an infringement of this Regulation has taken place**,** ~~and~~ the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on the EBA's file. The lawfulness of the

EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

Article 106

On-site inspections

1. In order to carry out its duties under Article 98 of this Regulation, the EBA may conduct all necessary on-site inspections at any business premises of the issuers of significant asset-referenced tokens and issuers of significant e-money tokens. **Where the proper conduct and efficiency of the inspection so require, EBA may conduct the on-site inspection without prior announcement.**

Explanation

- **Alignment with EMIR**

The college for issuers of significant asset-referenced tokens **and for issuers of significant e-money tokens** as referred to in Article 99 ~~or the college for issuers of significant e-money tokens as referred to in Article 101~~ shall be informed without undue delay of any findings that may be relevant for the execution of its tasks.

2. The officials and other persons authorised by the EBA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by the EBA and shall have all the powers stipulated in Article 105(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In due time before the inspection, the EBA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, the EBA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice to the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens.

4. The officials and other persons authorised by the EBA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 114 where the persons concerned do not submit to the inspection.

5. The issuer of significant asset-referenced tokens or the issuer of significant e-money tokens shall submit to on-site inspections ordered by decision of the EBA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 114, the legal remedies available under Regulation (EU) No 1093/2010 as well as the right to have the decision reviewed by the Court of Justice .

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of the EBA, actively assist the officials and other persons authorised by the EBA. Officials of the competent authority of the Member State concerned may also attend the onsite inspections.

7. The EBA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 105(1) on its behalf.

8. Where the officials and other accompanying persons authorised by the EBA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify ~~the following~~ **whether**:

(a) the decision adopted by the EBA referred to in paragraph 4 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

11. For the purposes of paragraph 10, point (b), the national judicial authority may ask the EBA for detailed explanations, in particular relating to the grounds the EBA has for suspecting that an infringement of this Regulation has taken place**,** ~~and~~ the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on the EBA's file. The lawfulness of the EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

Article 107

Exchange of information

1. In **the exercise of** ~~order to carry out its~~ **EBA** ~~duties~~ **supervisory responsibilities** under Article 98 and without prejudice to Article 84, the EBA and the competent authorities shall provide each other with the information required for the purposes of carrying out their duties under this Regulation without undue delay. For that purpose, ~~competent authorities~~ **they** shall exchange ~~with the EBA~~ any information related to:

Explanation

- **Clarification: the beginning of the first sentence is in contradiction with the end**
- **It should be a two way exchange of information**

(a) an issuer of significant asset-referenced tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;

(b) any third parties as referred to in Article 30(5), point (h) with which the issuers of significant asset-referenced tokens has a contractual arrangement;

(c) any crypto-assets service provider as referred to in Article 35(4) which provide liquidity for significant asset-referenced tokens;

(d) credit institutions or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33;

(e) an issuer of significant e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant e-money tokens;

(f) any payment institutions authorised in accordance with Article 11 of Directive (EU) 2015/2366 and providing payment services in relation to significant e-money tokens;

(g) any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

(h) any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1), point (10), in relation with significant asset-referenced tokens or significant e-money tokens;

(i) any trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;

(j) the management body of the persons referred to in point (a) to (i).

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:

(a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;

(b) where judicial proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the authorities of the Member State addressed;

(c) where a final judgment has already been delivered in relation to such natural or legal persons for the same actions in the Member State addressed.

Explanation

- **Alignment with Art 83(2)**

Article 108

Administrative agreements on exchange of information between the EBA and third countries

1. In order to carry out its duties under Article 98, the EBA may conclude administrative agreements on exchange of information with the supervisory authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 111.

2. **The** ~~E~~exchange of information referred to in paragraph 1 shall be intended for the performance of the tasks of the EBA or those supervisory authorities.

3. With regard to transfer of personal data to a third country, the EBA shall apply Regulation (EU) No 2018/1725.

Article 109

Disclosure of information from third countries

The EBA may disclose the information received from supervisory authorities of third countries only where the EBA or ~~a~~ **the** competent authority **which provided the information to the EBA** has

obtained the express agreement of the supervisory authority that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that supervisory authority gave its agreement or where such disclosure is necessary for legal proceedings.

Article 110

Cooperation with other authorities

Where an issuer of significant asset-referenced tokens or an issuer of significant e-money tokens engages in activities other than those covered by this Regulation, the EBA shall cooperate with the authorities responsible for the supervision or oversight of such other activities as provided for in the relevant Union or national law, including tax authorities and relevant supervisory authorities from third countries that are not ~~M~~**m**embers of the ~~C~~**c**olleges in accordance with Article 99(2)(k) ~~or Article 101(2)(j)~~.

Article 111

Professional secrecy

The obligation of professional secrecy shall apply to the EBA and all persons who work or who have worked for the EBA or for any other person to whom the EBA has delegated tasks, including auditors and experts contracted by the EBA.

Article 112

Supervisory measures by the EBA

1. Where the EBA finds that an issuer of a significant asset-referenced tokens has committed one of the infringements listed in Annex V, it may take one or more of the following actions:

   (a) adopt a decision requiring the issuer of significant asset-referenced tokens to bring the infringement to an end;

   (b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 113 and 114;

(c) adopt a decision requiring the issuer of significant asset-referenced tokens **to transmit** supplementary information, where necessary for ~~consumer~~ **the** protection **of holders of asset-referenced tokens, in particular consumers**;

(d) adopt a decision requiring the issuer of significant asset-referenced tokens to suspend an offer to the public of crypto-assets for a maximum period of 10 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(e) adopt a decision prohibiting an offer to the public of significant asset-referenced tokens where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;

(f) adopt a decision requiring the relevant trading platform for crypto-assets that has admitted to trading significant asset-referenced tokens, for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(g) adopt a decision prohibiting trading of significant asset-referenced tokens~~,~~ on a trading platform for crypto-assets where ~~they~~ **it** find**s** that this Regulation has been infringed;

(h) adopt a decision requiring the issuer of significant asset-referenced tokens to disclose~~,~~ all material information which may have an effect on the assessment of the significant asset-referenced tokens offered to the public or admitted to trading on a trading platform for crypto-assets in order to ensure consumer protection or the smooth operation of the market;

(i) issue warnings on the fact that an issuer of significant asset-referenced tokens is failing to comply with its obligations;

(j) withdraw the authorisation of the issuer of significant asset-referenced tokens.

2. Where the EBA finds that an issuer of a significant e-money tokens has committed one of the infringements listed in Annex VI, it may take one or more of the following actions:

(a) adopt a decision requiring the issuer of significant e-money tokens to bring the infringement to an end;

(b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 113 and 114;

(c) issue warnings on the fact that an issuer of significant e-money tokens is failing to comply with its obligations.

3. When taking the actions referred to in paragraphs 1 and 2, the EBA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or **is** otherwise attributable to the infringement;

(c) whether the infringement has revealed serious or systemic weaknesses in the issuer of significant asset-referenced tokens' or in the issuer of significant e-money tokens' procedures, policies and risk management measures;

(d) whether the infringement has been committed intentionally or negligently;

(e) the degree of responsibility of the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens ~~responsible~~ for the infringement;

(f) the financial strength of the issuer of significant asset-referenced tokens, or of the issuer of significant e-money tokens, responsible for the infringement, as indicated by the total

turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced tokens or significant e-money tokens responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(i) the level of cooperation of the issuer of significant asset-referenced tokens~~,~~ or ~~for~~ **of** the issuer of significant e-money tokens responsible for the infringement with the EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements by the issuer of significant asset-referenced tokens or by the issuer of e-money tokens responsible for the infringement;

(k) measures taken after the infringement by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens to prevent the repetition of such an infringement.

4. Before taking the actions referred in points (d) to (g) and point (j) of paragraph 1, the EBA shall inform ESMA and, where the significant asset-referenced tokens refer~~s~~ Union currencies, the central banks of issue~~s~~ of those currencies.

5. Before taking the actions referred in ~~points (a) to (e) of~~ paragraph 2, the EBA shall inform the competent authority of the issuer of significant e-money tokens and the central bank of issue of the currency that the significant e-money token is referencing.

6. The EBA shall notify any action taken pursuant to paragraph 1 ~~and~~ **or** 2 to the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for

the infringement without undue delay and shall communicate that action to the competent authorities ~~of the Member States~~ concerned and the Commission. The EBA shall publicly disclose any such decision on its website within 10 working days from the date when that decision was adopted.

7. The disclosure to the public referred to in paragraph 6 shall include the following:

(a) a statement affirming the right of the person responsible for the infringement to appeal the decision before the Court of Justice;

(b) where relevant, a statement affirming ~~that an~~ that such an appeal does not have suspensive effect;

(c) a statement asserting that it is possible for EBA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1093/2010.

Article 113

Fines

1. The EBA shall adopt a decision imposing a fine in accordance with paragraph 3 or 4, where in accordance with Article 116(8), it finds that:

(a) an issuer of significant asset-referenced tokens has, intentionally or negligently, committed one of the infringements listed in Annex V;

(b) an issuer of significant e-money tokens has, intentionally or negligently, committed one of the infringements listed in Annex VI.

An infringement shall be considered to have been committed intentionally if the EBA finds objective factors which demonstrate that such an issuer or its management body acted deliberately to commit the infringement.

2. When taking the actions referred to in paragraph 1, the EBA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or **is** otherwise attributable to the infringement;

(c) whether the infringement has revealed serious or systemic weaknesses in the issuer of significant asset-referenced tokens' or in the issuer of significant e-money tokens' procedures, policies and risk management measures;

(d) whether the infringement has been committed intentionally or negligently;

(e) the degree of responsibility of the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement;

(f) the financial strength of the issuer of significant asset-referenced tokens, or of the issuer of significant e-money tokens, responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced tokens **or significant e-money tokens** responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(i) the level of cooperation of the issuer of significant asset-referenced tokens~~,~~ or ~~for~~ **of** the issuer of significant e-money tokens~~,~~ **responsible** for the infringement with the EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens responsible for the infringement;

(k) measures taken after the infringement by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens to prevent the repetition of such an infringement.

3. For issuers of significant asset-referenced tokens, the maximum amount of the fine referred to in paragraph 1 shall **be** up to 15% of the annual turnover**,** as defined under relevant Union law, in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.

4. For issuers of significant e-money tokens, the maximum amount of the fine referred to in paragraph 1 shall **be** up to 5% of the annual turnover, as defined under relevant Union law, in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.

Article 114

Periodic penalty payments

1. The EBA shall, by decision, impose periodic penalty payments in order to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 112;

(b) a person referred to in Article 104(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 104;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 105;

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 106.

2. ~~A periodic penalty payment shall be effective and proportionate.~~ The periodic penalty payment shall be imposed for each day of delay.

Explanation

- **There is not discretion**

3. ~~Notwithstanding paragraph 2, t~~The amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of the EBA's decision. Following the end of the period, the EBA shall review the measure.

Article 115

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. The EBA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 113 and 114, unless such disclosure to the public would seriously jeopardise ~~the~~ financial stability or cause disproportionate damage to the parties

involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2016/6791.

2. Fines and periodic penalty payments imposed pursuant to Articles 113 and 114 shall be of ~~an~~ administrative nature.

3. Where the EBA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 113 and 114 shall be enforceable.

5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 116

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under Article~~s~~ 98, the EBA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annexes V or VI, the EBA shall appoint an independent investigation officer within the EBA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the issuers of significant asset-referenced tokens or issuers of significant e-money tokens and shall perform its functions independently from the EBA.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to EBA.

3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 104 and to conduct investigations and on-site inspections in accordance with Articles 105 and 106. When using those powers, the investigation officer shall comply with Article 103.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by the EBA in its supervisory activities.

5. Upon completion of his or her investigation and before submitting the file with his findings to the EBA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his or her findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.

7. When submitting the file with his findings to the EBA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties or the EBA's internal preparatory documents.

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 117, the EBA shall decide if one or more of the infringements of provisions listed in Annex V or VI have been committed by the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens subject to the investigations and, in such a case, shall

take a supervisory measure in accordance with Article 112 and/or impose a fine in accordance with Article 113.

9. The investigation officer shall not participate in EBA's deliberations or in any other way intervene in EBA's decision-making process.

10. The Commission shall adopt delegated acts in accordance with Article 121 by [please insert date 12 months after entry into force] specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. The EBA shall refer matters to the appropriate national authorities for investigation and possible criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, the EBA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 117

Hearing of persons concerned

1. Before taking any decision pursuant to Articles 112, 113 and 114, the EBA shall give the persons subject to the proceedings the opportunity to be heard on its findings. The EBA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

2. Paragraph 1 shall not apply if urgent action is needed in order to prevent significant and imminent damage to ~~the~~ financial stability or ~~consumer~~ **to the holders of crypto-assets** ~~protection~~**, in particular consumers**. In such a case the EBA may adopt an interim decision

and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

3. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to the EBA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or the EBA's internal preparatory documents.

Article 118

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby the EBA has imposed a fine**,** ~~or~~ a periodic penalty payment or ~~imposed~~ any other ~~sanction~~ **penalty** or administrative measure in accordance with this Regulation. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 119

Supervisory fees

1. The EBA shall charge fees to the issuers of significant asset-referenced tokens and the issuers of significant e-money tokens in accordance with this Regulation and ~~in accordance with~~ the delegated acts adopted pursuant to paragraph 3. Those fees shall cover the EBA's expenditure relating to the supervision of issuers of significant asset-referenced tokens and ~~the supervision~~ of issuers of significant e-money token**s** ~~issuers~~ in accordance with Article 98, as well as the reimbursement of costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 120.

2. The amount of the fee charged to an individual issuer of significant asset-referenced tokens shall be proportionate to the size of its reserve assets and shall cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.

The amount of the fee charged to an individual issuer of significant e-money tokens shall be proportionate to the size of the e-money issued in exchanged of funds and shall cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.

3. The Commission shall adopt a delegated act in accordance with Article 121 by [please insert date 12 months after entry into force] to specify **further** the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity under paragraph 2 that can be charged by the EBA.

Article 120

Delegation of tasks by the EBA to competent authorities

1. Where necessary for the proper performance of a supervisory task ~~for~~ **as regards** issuers of significant asset-referenced tokens or significant e-money tokens, the EBA may delegate specific supervisory tasks to the competent authority of a Member State. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 104 and to conduct investigations and on-site inspections in accordance with Article 105 and Article 106.

2. Prior to **the** delegation of a task, the EBA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) the transmission of necessary information by and to the EBA.

3. In accordance with the ~~regulation~~ **delegated act** on fees adopted by the Commission pursuant to Article 119(3), the EBA shall reimburse a competent authority for **the** costs incurred as a result of carrying out delegated tasks.

4. The EBA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

Title VIII: Delegated acts and implementing acts

Article 121

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3(2), 39(6), 116(10) and 119(3) shall be conferred on the Commission for a period of 36 months from … [please insert date of entry into force of this Regulation].

3. The delegation of powers referred to in Articles 3(2), 39(6), 116(10) and 119(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3(2), 39(6), 116(10) and 119(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Title IX Transitional and final provisions

Article 122

Report ***on the application of the Regulation***

1. By … [~~36~~ **48** months after the date of entry into force of this Regulation] after consulting the EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, where appropriate accompanied by a legislative proposal. **An interim report shall be presented by [30 months after the date of entry into force of this regulation], where appropriate accompanied by a legislative proposal.**

Explanation

- **Due to the different timelines for application of the different provisions (for instance Title III and IV apply since the date of entry into force) and different transitory measures (for CASPs up to 42 months after the date of entry into force) it could be useful to have two reports**

2. The report shall contain the following:

   (a) the number of issuances of crypto-assets in the EU, the number of crypto-asset white papers registered with the competent authorities, the type of crypto-assets issued and their market capitalisation, the number of crypto-assets admitted to trading on a trading platform for crypto-assets;

(aa) experience with the classification of crypto-assets including possible divergences in approaches by national competent authorities;

(b) an estimation of the number of EU residents using or investing in crypto-assets issued in the EU;

(c) the number and value of fraud, hacks and thefts of crypto-assets reported in the EU, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;

(d) the number of issuers of asset-referenced tokens authorised under this Regulation, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of payments in asset-referenced tokens;

(e) the number of issuers of significant asset-referenced tokens authorised under this Regulation, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of payments in significant asset-referenced tokens;

(f) the number of issuers of e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the e-money tokens, the size of the reserves and the volume of payments in e-money tokens;

(g) the number of issuers of significant e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the significant e-money tokens, the size of the reserves and the volume of payments in significant e-money tokens;

(h) an assessment of the functioning of the market for crypto-asset services in the Union, including of market development and trends, taking into account the experience of the supervisory authorities, the number of crypto-asset service providers authorised and their respective average market share;

(i) an assessment of the level of ~~consumer~~ protection **of holders of crypto-assets and clients of crypto-assets service providers, in particular consumers;**

(ia) an assessment of the level of requirements applicable to~~, operational resilience of~~ issuers of crypto-assets and crypto-asset service providers **and its impact on operational resilience**, market integrity and financial stability ~~provided by this Regulation~~;

(ib) an evaluation of the application of the assessment from Article 73 and of the possibility of introducing appropriateness tests in Articles 70 to 72;

(j) an assessment of whether the scope of crypto-asset services covered by this Regulation is appropriate and whether any adjustment to the definitions set out in this Regulation is needed;

(k) an assessment of whether an equivalence regime should be established for third-country crypto-asset service providers, issuers of asset-referenced tokens or issuers of e-money tokens under this Regulation;

(l) an assessment of whether the exemptions under Articles 4 and 15 are appropriate;

(m) an assessment of the impact of this Regulation on the proper functioning of the internal market for crypto-assets, including any impact on the access to finance for small and medium-sized enterprises and on the development of new means of payment, including payment instruments;

(n) a description of developments in business models and technologies in the crypto-asset market;

(o) an appraisal of whether any changes are needed to the measures set out in this Regulation to ensure consumer protection, market integrity and financial stability;

(p) the application of administrative penalties and other administrative measures;

(q) an evaluation of the cooperation between the competent authorities, the EBA and ESMA, **central banks,** as well as other relevant authorities, and an assessment of advantages and disadvantages of the competent authorities and the EBA being responsible for supervision under this Regulation;

(r) the costs of complying with this Regulation for issuers of crypto-assets, other than asset-referenced tokens and e-money tokens as a percentage of the amount raised through crypto-asset issuances;

(s) the costs for crypto-asset service providers to comply with this Regulation as a percentage of their operational costs;

(t) the costs for issuers of issuers of asset-referenced tokens and issuers of e-money tokens to comply with this Regulation as a percentage of their operational costs;

(u) the number and amount of administrative fines and criminal penalties imposed for infringements of this Regulation by competent authorities and the EBA.

3. Where applicable, the report shall also follow up on the topics addressed in the Report from Article 122a.

Article 122a

Report on

1. By … [18 months after the date of entry into force of this regulation] after consulting the EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the latest developments on crypto-assets, in particular on areas which were not addressed in this Regulation, where appropriate accompanied by a legislative proposal

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2. The report shall contain at least the following:

(a) an assessment of the feasibility of regulating decentralised crypto-asset systems without an identifiable issuer or service provider;

(b) an assessment of the feasibility of regulating lending and borrowing of crypto-assets;

(c) an assessment of the feasibility of regulating services similar to payment services associated to crypto-assets, if not addressed in the context of the review of the Directive (EU) 2015/2366 on payment services;

(d) an assessment of the treatment of services associated to the transfer of e-money tokens, if not addressed in the context of the review of the Directive (EU) 2015/2366 on payment services.

Explanation

- **The matters which are not addressed in this Regulation could be subject of a report even earlier than the other reports**

Article 123

Transitional measures

1. Articles 4 to 14 shall not apply to crypto-assets, other than asset-referenced tokens and e-money tokens, which were offered to the public in the Union or admitted to trading on a trading platform for crypto-assets before [please insert date of entry into application].

2. By way of derogation from this Regulation, crypto-asset service providers which provided their services in accordance with applicable law before [please insert the date of entry into application], may continue to do so until [please insert the date 24 months after the date of

application] or until they are granted an authorisation pursuant to Article 55, whichever is sooner.

3. By way of derogation from Articles 54 and 55, Member States may apply a simplified procedure for applications for an authorisation which are submitted between the [please insert the date of application of this Regulation] and [please insert the date 18 months after the date of application] by entities that, at the time of entry into force of this Regulation, were authorised under national law to provide crypto-asset services. The competent authorities shall ensure that the requirements laid down in Chapters 2 and 3 of Title ~~I~~V are complied with before granting authorisation pursuant to such simplified procedures.

4. The EBA shall exercise its supervisory responsibilities pursuant to Article 98 from the date of the entry into application of the delegated acts referred to in Article 39(6).

Article 123a

Amendments to Directive 2013/36/EU

In Annex I of Directive 2013/36/EU the following activities are added:

16. Issuance of Asset-Referenced Tokens as defined in point (3) of Article 3 of Regulation (EU) No xxx/xxx of the European Parliament and of the Council.

17. Crypto asset services as defined in point (9) of Article 3 of Regulation (EU) No xxx/xxx of the European Parliament and of the Council.

Article 124

Amendment of Directive (EU) 2019/1937

In Part I.B of the Annex to Directive (EU) 2019/1937, the following point is added:

"(xxi) Regulation (EU) …./… of the European Parliament and of the Council of … on Markets in Crypto-Assets (EU) 2021/XXX, and amending Directive (EU) 2019/37 (OJ L …) ."

Article 125

*Transposition of amendments of **Directive** 2013/36/EU **and** Directive (EU) 2019/1937*

1. Member States shall adopt, publish and apply, by … [~~18~~ **24** months after the date of entry into force of this Regulation], the laws, regulations and administrative provisions necessary to comply with Articles ~~97~~ **123a and 124**. ~~However, if that date precedes the date of transposition referred to in Article 26(1) of Directive (EU) 2019/1937, the application of such laws, regulations and administrative provisions shall be postponed until the date of transposition referred to in Article 26(1) of Directive (EU) 2019/1937.~~

Explanation

- **The date of transposition referred to in Article 26(1) of Directive (EU) 2019/1937 is 17 December 2021**

2. Member States shall communicate to the Commission, the EBA and ESMA the text of the main provisions of national law which they adopt in the field covered by Article 97.

Article 126

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. This Regulation shall apply from [please insert date 18 months after the date of entry into force].

3. However, the provisions laid down in Title III and Title IV shall apply from [please insert the date of the entry into force].

4. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament For the Council

The President The President