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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

{SWD(2020) 380} - {SWD(2020) 381}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal is part of the Digital Finance package, a package of measures to further enable and support the potential of digital finance in terms of innovation and competition while mitigating the risks. It is in line with the Commission priorities to make Europe fit for the digital age and to build a future-ready economy that works for the people. The digital finance package includes a new Strategy on digital finance for the EU financial[1] sector with the aim to ensure that the EU embraces the digital revolution and drives it with innovative European firms in the lead, making the benefits of digital finance available to European consumers and businesses. In addition to this proposal, the package also includes a proposal for a pilot regime on distributed ledger technology (DLT) market infrastructures[2], a proposal for digital operational resilience[3], and a proposal to clarify or amend certain related EU financial services rules[4].

One of the strategy's identified priority areas is ensuring that the EU financial services regulatory framework is innovation-friendly and does not pose obstacles to the application of new technologies. This proposal, together with the proposal on a DLT pilot regime, represents the first concrete action within this area.

Crypto-assets are one of the major applications of blockchain technology in finance. Since the publication of the Commission's Fintech Action plan[15], in March 2018, the Commission has been examining the opportunities and challenges raised by crypto-assets. Following a big surge in the market capitalisation of crypto-assets during 2017, in December 2017, Executive Vice- President Dombrovskis, in a letter addressed to the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA), urged them to reiterate their warnings to investors. In the 2018 FinTech Action plan, the Commission mandated the EBA and ESMA to assess the applicability and suitability of the existing EU financial services regulatory framework to crypto-assets. The advice[26], issued in January 2019, argued that while some crypto-assets could fall within the scope of EU legislation, effectively applying it to these assets is not always straightforward. Moreover, the advice noted that provisions in existing EU legislation may inhibit the use of DLT. At the same time, the EBA and ESMA underlined that – beyond EU legislation aimed at combating money laundering and terrorism financing – most crypto-assets fall outside the scope of EU financial services legislation and therefore are not subject to provisions on consumer and investor protection and market integrity, among others, although they give rise to these risks. In addition, a number of

Member States have recently legislated on issues related to crypto-assets leading to market

[1] Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on a Digital Finance Strategy for the EU, 23 September 2020, COM(2020)591.

[2] Proposal for a Regulation of the European Parliament and of the Council on a Pilot Regime for market infrastructures based on distributed ledger technology - COM(2020)594.

[3] Proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

[4] Proposal for a Directive of the European Parliament and of The Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - COM(2020)596.

[15] European Commission, FinTech Action plan, COM/2018/109 final.

[26] ESMA, Advice on 'Initial Coin Offerings and Crypto-Assets', 2019; EBA report with advice on crypto- assets, 2019.

fragmentation.

A relatively new subset of crypto-assets – the so-called 'stablecoins' – has recently emerged and attracted the attention of both the public and regulators around the world. While the crypto- asset market remains modest in size and does not currently pose a threat to financial stability[37], this may change with the advent of 'global stablecoins', ~~as they~~which seek wider adoption by incorporating features aimed at stabilising their value and by exploiting the network effects stemming from the firms promoting these assets[48].

Given these developments and as part of the Commission's broader digital agenda, President Ursula von der Leyen has stressed the need for *"a common approach with Member States on cryptocurrencies to ensure we understand how to make the most of the opportunities they create and address the new risks they may pose"*[59]. ~~Executive Vice-President Valdis Dombrovskis has also indicated his intention to propose new legislation for a common EU approach on crypto- assets, including 'stablecoins'.~~ While acknowledging the risks they may present, the Commission and the Council also jointly declared in December 2019 that they *"are committed to put in place a framework that will harness the potential opportunities that some crypto-assets may offer"*[610]. More recently, the European Parliament is working on a report on digital finance, which has a particular focus on crypto assets.[11]

To respond to all of these issues and create an EU framework that both enables markets in crypto-assets as well as the tokenisation of traditional financial assets and wider use of DLT in financial services, this Regulation will be accompanied by other legislative proposals: the Commission is also proposing ~~amendments to~~a clarification that the existing definition of 'financial ~~services legislation that present clear obstacles to~~instruments' - which defines the ~~use~~scope of ~~DLT~~the Markets in ~~the financial sector and is proposing~~Financial Instruments Directive (MiFID II)[12] - includes financial instruments based on DLT,[13] as well as a pilot regime on DLT market infrastructures ~~that~~for these instruments[14]. The pilot regime will allow for experimentation within a safe environment and provide evidence for possible further amendments.

This proposal, which covers crypto-assets falling outside existing EU financial services legislation, as well as e-money tokens, has four general and related objectives. The first objective is one of legal certainty. For crypto-asset markets to develop within the EU, there is a need for a sound legal framework, clearly defining the regulatory treatment of all crypto-assets that are not covered by existing financial services legislation. The second objective is to support innovation. To promote the development of crypto-assets and the wider use of DLT, it is necessary to put in place a safe and proportionate framework to support innovation and fair competition. The third objective is to instil appropriate levels of consumer and investor protection and market integrity given that crypto-assets not covered by existing financial services legislation present many of the same risks as more familiar financial instruments. The

[37] FSB Chair's letter to G20 Finance Ministers and Central Bank Governors, 2018.
[48] G7 Working Group on Stablecoins, Report on 'Investigating the impact of global stablecoins', 2019.
[59] Mission letter of President-elect Von der Leyen to Vice-President Dombrovskis, 10 September 2019.
[610] Joint Statement of the European Commission and Council on 'stablecoins', 5 December 2019.
[11] "Report with recommendations to the Commission on Digital Finance: emerging risks in crypto-assets - regulatory and supervisory challenges in the area of financial services, institutions and markets" (2020/2034(INL) https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2034(INL)&l=en.
[12] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
[13] Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - COM(2020)596
[14] Proposal for a Regulation of the European Parliament and of the Council on a Pilot Regime for market infrastructures based on distributed ledger technology - COM(2020)594

fourth objective is to ensure financial stability. Crypto-assets are continuously evolving. While some have a quite limited scope and use, others, such as the emerging category of 'stablecoins', have the potential to become widely accepted and potentially systemic. This proposal includes safeguards to address potential risks to financial stability and orderly monetary policy that could arise from 'stablecoins'.

- **Consistency with existing policy provisions in the policy area**

This proposal is part of a broader framework on crypto-assets and distributed ledger technology (DLT), as it is accompanied by proposals ensuring that existing legislation does not present obstacles to the uptake of new technologies while still reaching the relevant regulatory objectives.

The proposal builds on extensive and long-standing market monitoring and participation in international policy work, for example, in such fora as the Financial Stability Board, the Financial Action Task Force and the G7.

As part of the FinTech Action plan adopted in March 2018[7][15], the Commission mandated the European Supervisory Authorities (ESAs) to produce advice on the applicability and suitability of the existing EU financial services regulatory framework on crypto-assets. This proposal builds on the advice received from the EBA and ESMA.[8][16]

- **Consistency with other Union policies**

As stated by President von der Leyen in her Political Guidelines,[9][17] and set out in the Communication 'Shaping Europe's digital future',[10][18] it is crucial for Europe to reap all the benefits of the digital age and to strengthen its industrial and innovation capacity within safe and ethical boundaries. In addition, the mission letter provided to Executive Vice-President Dombrovskis, calls for a common approach with Member States on cryptocurrencies to ensure Europe can make the most of the opportunities they create and address the new risks they may pose.[11][19]

This proposal is closely linked with wider Commission policies on blockchain technology, since crypto-assets, as the main application of blockchain technologies, are inextricably linked to the promotion of blockchain technology throughout Europe. This proposal supports a holistic approach to blockchain and DLT, which aims at positioning Europe at the forefront of blockchain innovation and uptake. Policy work in this area has included the creation of the European Blockchain Observatory and Forum, and the European Blockchain Partnership, which unites all Member States at political level, as well as the public-private partnerships envisaged with the International Association for Trusted Blockchain Applications.[12][20]

This proposal is also consistent with the Union policies aimed at creating a Capital Markets Union (CMU). It notably responds to the High-level Forum's final report, which stressed the

[7] European[15] Communication from the Commission, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region on a FinTech Action plan, COM/2018/109(2018)109, final08.03.2018

[8][16] ESMA, Advice on 'Initial Coin Offerings and Crypto-Assets', 2019; EBA report with advice on crypto- assets, 2019.

[9] [*add reference*] President Ursula von der Leyen, Political Guidelines for the next European Commission, 2019-2024.[17] https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

[10][18] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region, Shaping Europe's Digital Future, COM(2020) 67 final.2020)67, 19.02.2020

[11][19] Mission letter fromof President-elect of the European Commission, Ms. vonVon der Leyen to Executive Vice-President designate forn An Economy that Works for People, Mr. Dombrovskis, 10 September 2019.

[12][20] https://ec.europa.eu/digital-single-market/en/blockchain-technologies

underused potential of crypto-assets and called on the Commission to bring legal certainty and

establish clear rules for the use of crypto-assets.[13][21] ~~Lastly, this~~This proposal is consistent with the SME strategy adopted on 10 March 2020, which also highlights DLT and crypto-assets as innovations that can enable SMEs to engage directly with investors.[14][22]

Finally, the proposal is fully in line with the recommendation in the Security Union Strategy for the development of a legislative framework in crypto-assets given the growing effect of these new technologies on how financial assets are issued, exchanged, shared and accessed.[23]

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 114 TFEU, which confers on the European institutions the competence to lay down appropriate provisions for the approximation of laws of the Member States that have as their objective the establishment and functioning of the internal market. The proposal aims to remove obstacles to establishment and improve the functioning of the internal market for financial services by ensuring that the applicable rules are fully harmonised.

Today, crypto-asset issuers and service providers cannot fully reap the benefits of the internal market, due to a lack of both legal certainty about the regulatory treatment of crypto-assets as well as the absence of a dedicated and coherent regulatory and supervisory regime at EU level. While a few Member States have already implemented a bespoke regime to cover some crypto- asset service providers or parts of their activity, in most Member States they operate outside any regulatory regime. In addition, an increasing number of Member States are ~~implementing~~considering bespoke national frameworks to cater specifically for crypto-assets and crypto- asset service providers.

The divergent frameworks, rules and interpretations of both crypto-assets and crypto-asset services throughout the Union ~~hinders~~hinder the service providers' ability to scale up their activity at EU level. This means that service providers of these inherently cross-border products and services are forced to familiarise themselves with several Member States' legislations, obtain multiple national authorisations or registrations and comply with often divergent national laws, sometimes adjusting their business model throughout the Union. This results in high costs, legal complexity and uncertainty for service providers operating in the crypto-assets space, limiting the development and scaling up of crypto-asset activities in the Union. Additionally, the lack of applicable regimes to crypto-asset service providers in many Member States limits the availability of funding and sometimes even wider access to necessary financial services, such as banking services, due to the regulatory uncertainty associated with crypto-assets and therefore crypto-asset service providers.

These divergences also create an uneven playing field for crypto-asset service providers depending on their location, creating further barriers to the smooth functioning of the internal

[13][21] Recommendation 7 of the High-Level forum on the Capital Markets Union's final report. (https://ec.europa.eu/info/sites/info/files/business_economy_euro/growth_and_investment/documents/2 00610-cmu-high-level-forum-final-report_en.pdf).

[14][22] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on An SME Strategy for a sustainable and digital Europe, ~~https://ec.europa.eu/info/sites/info/files/communication-sme-strategy-march-2020_en.pdf~~COM (2020)203, 10.03.2020

[23] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy, COM(2020)605 final of 24.07.2020

market. Finally, this adds to the lack of legal certainty, which, combined with the absence of a common EU framework, leaves consumers and investors exposed to substantial risks.

Through the introduction of a common EU framework, uniform conditions of operation for firms within the EU can be set, overcoming the differences in national frameworks, which is leading to market fragmentation and reducing the complexity and costs for firms operating in this space. At the same time, it will offer firms full access to the internal market and provide the legal certainty necessary to promote innovation within the crypto-asset market. Lastly, it will cater for market integrity and provide consumers and investors with appropriate levels of protection and a clear understanding of their rights as well as ensuring financial stability.

- **Subsidiarity**

The different approaches taken by Member States makes cross-border provision of services in relation to crypto-assets difficult. Proliferation of national approaches also poses risks to level playing field in the single market in terms of consumer and investor protection, market integrity and competition. Furthermore, while some risks are mitigated in the Member States that have introduced bespoke regimes on crypto-assets, consumers, investors and market participants in other Member States remain unprotected against some of the most significant risks posed by crypto-assets (e.g. fraud, cyber-attacks, market manipulation).

Action at EU level, such as this proposal for a Regulation, would create an environment in which a larger cross-border market for crypto-assets and crypto-asset service providers could develop, thereby reaping the full benefits of the internal market. An EU framework would significantly reduce the complexity as well as the financial and administrative burdens for all stakeholders, such as service providers, issuers and consumers and investors. Harmonising operational requirements for service providers as well as the disclosure requirements imposed on issuers could also bring clear benefits in terms of consumer and investor protection and financial stability.

- **Proportionality**

Under the principle of proportionality, the content and form of EU action should not exceed what is necessary to achieve the objectives of the Treaties. The proposed rules will not go beyond what is necessary in order to achieve the objectives of the proposal. They will cover only the aspects that Member States cannot achieve on their own and where the administrative burden and costs are commensurate with the specific and general objectives to be achieved.

The proposed Regulation will ensure proportionality by design, differentiating clearly between each type of services and activities in accordance with the associated risks, so that the applicable administrative burden is commensurate with the risks involved. Notably, the requirements set out in this regulation are proportionate to the limited associated risks, given the relatively small market size to date. At the same time, the proposal imposes more stringent requirements on ‘stablecoins’, which are more likely to grow quickly in scale and possibly result in higher levels of risk to investors, counterparties and the financial system.

- **Choice of the instrument**

Article 114 TFEU allows the adoption of acts in the form of a Regulation or Directive. For this proposal, a Regulation was chosen in order to lay down a single set of immediately applicable rules throughout the Single Market.

The proposed Regulation establishes harmonised requirements for issuers that seek to offer their crypto-assets across the Union and crypto-asset service providers wishing to apply for an authorisation to provide their services in the Single Market. These issuers and service providers must not be subject to specific national rules. Therefore, a Regulation is more appropriate than a Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

- **Stakeholder consultations**

The Commission has consulted stakeholders throughout the process of preparing this proposal. In particular:

i) The Commission carried out a dedicated open public consultation (19 December 2019 - 19 March 2020)~~15~~[24]

ii) The Commission consulted the public on an inception impact assessment (19 December 2019 - 16 January 2020)~~16~~[25]

iii) The Commission services consulted Member State experts in the Expert Group on Banking, Payments and Insurance (EGBPI) on two occasions (18 May 2020 and 16 July 2020)~~17~~[26].

iv) The Commission services held a dedicated webinar on an EU framework for crypto-assets, as part of the Digital Finance Outreach 2020 ("DFO") series of events (19 May 2020)

The purpose of the public consultation was to inform the Commission on the development of a potential EU framework for crypto-assets. It covered both questions on crypto-assets not covered by the existing EU financial services legislation, crypto-assets covered by the existing EU financial services legislation (e.g. qualifying as transferable securities or electronic money/e-money), specific questions on so-called 'stablecoins' as well as more general questions on the application of DLT in financial services.

Most respondents stressed that the creation of a bespoke regime for crypto-assets not currently covered by the EU financial services legislation, including non-regulated 'stablecoins', would be beneficial for the establishment of a sustainable crypto-asset ecosystem in the EU. The majority of respondents confirmed that there is a need for legal certainty and harmonisation across national legislations, and many stakeholders were in favour of the bulk of the exemplified requirements that could be set for crypto-asset service providers.

Member State representatives in the EGBPI expressed overall support for the approach chosen, to create an appropriate bespoke regulatory framework for unregulated crypto-assets. They highlighted the need to avoid regulatory arbitrage, avoid circumvention of rules by crypto-asset issuers, and to ensure that all relevant rules from existing legislation on payments and e-money is also present in a bespoke regime for the so-called 'stablecoins'. The need to provide a redemption right for 'stablecoins' was also mentioned whilst there were differing opinions about the preferred solution in relation to supervision.

As part of a series of outreach events, the Commission hosted a webinar specifically on crypto- assets. A wide range of industry stakeholders and public authorities participated in the

[24] https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/docume

~~15 [*Add reference*] public consultation and the IIA~~

~~16 [*Add reference*] IA~~[25] Impact Assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets (MiCA) SWD(2020)380

~~17 [*Add reference*] minutes published on the webpage~~[26] https://ec.europa.eu/info/publications/egbpi-meetings-2020_en

nts/2019-crypto-assets-consultation-document_en.pdf

webinar, providing additional input from the sector on the interaction with the financial services legislation.

The proposal also builds on and integrates feedback received through meetings with stakeholders and EU authorities. Most stakeholders, including crypto-asset service providers, have been overall supportive, underlining once again that the sector is very much looking for legal certainty in order to develop further.

- **Collection and use of expertise**

In preparing this proposal, the Commission has relied on qualitative and quantitative evidence collected from recognised sources, including the two reports from the EBA and ESMA. This has been complemented with publicly available reports from supervisory authorities, international standard setting bodies and leading research institutes, as well as quantitative and qualitative input from identified stakeholders across the global financial sector.

- **Impact assessment**

This proposal is accompanied by an impact assessment, which was submitted to the Regulatory Scrutiny Board (RSB) on 29 April 2020 and approved on 29 May 2020.[~~18~~27] The RSB recommended improvements in some areas with a view to: (i) put the initiative in the context of ongoing EU and international regulatory efforts; (ii) provide more clarity as to how the initiative will mitigate the risks of fraud, hacking and market abuse and also explain the coherence with the upcoming revision of the anti-money laundering legislation; and (iii) explain better the financial stability concerns relating to 'stablecoins' and clarify how supervisory bodies will ensure investor and consumer protection. The impact assessment has been amended accordingly, also addressing the more detailed comments made by the RSB.

First, the Commission considered two policy options for developing a crypto-asset framework for crypto-assets not covered by existing EU financial services legislation (except 'stablecoins' for which a different set of options was considered – see below):

- *Option 1 - 'Opt-in' regime for unregulated crypto-assets*

Under Option 1, issuers and service providers that opt in to the EU regime would benefit from an EU passport to expand their activities across borders. Service providers, which decide not to opt in, would remain unregulated or would be subject to national bespoke regimes without being granted the EU passport.

- *Option 2 - Full harmonisation*

Under Option 2, all issuers (except those making small offerings) and service providers would be subject to EU law and would benefit from an EU passport. The national bespoke regimes on crypto-assets would no longer be applicable.

While ~~the~~ Option 1 could be less burdensome for small issuers and service providers that can decide not to opt in, ~~the~~ Option 2 would ensure a higher level of legal certainty, investor protection, market integrity and financial stability, and would reduce market fragmentation across the Single Market. Full harmonisation represents a more coherent approach compared to an opt-in regime. Therefore, Option 2 was the preferred option.

In addition, the Commission also assessed specific options for the so-called 'stablecoins' where these would also be considered crypto-assets not covered by existing EU financial services legislation:

~~[18] [*cross reference*] to the IA quoted above~~[27] Impact Assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets (MiCA) SWD(2020)380.

- *Option 1 – bespoke legislative regime aimed at addressing the risks posed by 'stablecoins' and 'global stablecoins'*

By following a strict risk-based approach and building on recommendations currently being developed by, for example, the FSB, this option would address vulnerabilities to financial stability posed by stablecoins, while allowing for the development of different types of 'stablecoin' business models. These would include specific disclosure requirements for 'stablecoin' issuers as well as requirements imposed on the reserve backing the 'stablecoin'.

- *Option 2 – regulating 'stablecoins' under the Electronic Money Directive*

'Stablecoins' whose value is backed by ~~funds or assets~~one single currency that is legal tender are close to the definition of e-money under the Electronic Money Directive. The aim of many 'stablecoins' is to create a "means of payments" and, when backed by a reserve of assets, some 'stablecoins' could become a credible means of exchange and store of value. In that sense, 'stablecoins' can arguably have common features with e-money. However, this option would require 'stablecoin' issuers to comply with existing legislation that may not be fit for purpose. Although the Electronic Money Directive and, by extension the Payment Services Directive, could cover some 'stablecoin' service providers , it might not mitigate adequately the most significant risks to consumer protection, for example, those raised by wallet providers. In addition, the Electronic Money Directive does not set specific provisions for an entity that would be systemic, which is what 'global stablecoins' could potentially become.

- *Option 3 – measures aimed at limiting the use of 'stablecoins' within the EU'*

Option 3 would be to restrict the issuance of 'stablecoins' and the provision of services related to this type of crypto-~~assets~~asset. This approach could potentially be justified, as the risks posed by 'stablecoins' and in particular those that could reach global scale (including risks to financial stability, monetary policy and monetary sovereignty) would exceed the benefits offered to EU consumers in terms of fast, cheap, efficient and inclusive means of payment. However, Option 3 would not only create costs for 'stablecoins' already in operation, but it would also prevent the reaping of any benefits related to this new type of crypto-assets. Option 3 would not be consistent with the objectives set at EU level to promote innovation in the financial sector. Furthermore, Option 3 could leave some financial stability risks unaddressed, should EU consumers widely use 'stablecoins' issued in third countries.

The Commission considered that Option 1 was the preferred option for 'stablecoins' in combination with Option 2, to avoid regulatory arbitrage between 'stablecoins' that are indistinguishable from e-money and the treatment of e-money issued on a distributed ledger. Together with Option 2 (full harmonisation as described above) for other types of crypto-assets not covered by existing EU financial services legislation, these would create a comprehensive and holistic EU framework on 'stablecoins', capable of mitigating the risks identified by the Financial Stability Board[~~19~~28], in particular financial stability risks. The structure of 'stablecoins' is complex and comprises many interdependent functions and legal entities. The regulatory approach under Option 1 (in combination with Option 2 for hitherto unregulated crypto-assets) would cover the different functions usually present in 'stablecoin' structures (governance body, asset management, payment and customer-interface functions) and would also capture those interactions between entities that can amplify the risk to financial stability.

[~~19~~28] Financial Stability Board, 'Addressing the regulatory, supervisory and oversight challenges raised by ~~"~~"global stablecoin" arrangements'.

- **Regulatory fitness and simplification**

This Regulation imposes an obligation on issuers of crypto-assets to publish an information document (called ~~*whitepaper*~~*white paper*) with mandatory disclosure requirements. In order to avoid the creation of administrative burden, small and medium-sized enterprises (SMEs) will be exempted from the publication of such an information document where the total consideration of the offering of crypto-assets is less than €1,000,000 over a period of 12 months. Issuers of 'stablecoins' will not be subject to authorisation by a national competent authority (NCA) if the outstanding amount of 'stablecoins' is below €5,000,000. Furthermore, the requirements imposed on crypto-asset service providers are proportionate to the risks created by the services provided.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal is not likely to have a direct impact on these rights, as listed in the main UN conventions on human rights, the Charter of Fundamental Rights of the European Union, which is an integral part of the EU Treaties, and the European Convention on Human Rights (ECHR).

4. BUDGETARY IMPLICATIONS

This proposal holds implications in terms of costs and administrative burden for NCAs, the EBA and ESMA. The magnitude and distribution of these costs will depend on the precise requirements placed on crypto-asset issuers and service providers and the related supervisory and monitoring tasks.

The estimated supervisory costs for each Member State (including staff, training, IT infrastructure and dedicated investigative tools) can range from €350.000 to €500.000 per year, with one-off costs estimated at €140.000. However, this would be partially offset by the supervisory fees that NCAs would levy on crypto-asset service providers and issuers.

For the EBA, ~~the estimated supervisory costs (including staff, training, IT infrastructure and dedicated investigative tools) can range from €2.000.000 to €2.300.000 per year, with one-off~~it will require over time a total of 18 full-time employees (FTE) to take on the supervision of issuers of significant asset-referenced tokens or e-money tokens. The EBA will also incur additional IT costs, mission expenses for the on-site inspections and translation costs ~~estimated at €450.000~~. However, all of these costs would be fully covered by the fees levied on the issuers of significant asset-referenced tokens and issuers of significant e-money tokens.

For ESMA, the estimated costs of establishing a register of all crypto-asset service providers and maintaining this with the information received from NCAs and the EBA is ~~estimated at €50.000 per year,~~ to be covered ~~from~~ within their operating budget.

The financial and budgetary impacts of this proposal are explained in detail in the legislative financial statement annexed to this proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the regulatory actions undertaken are effective in achieving their respective objectives. The Commission has therefore established a programme for monitoring the outputs and impacts of this Regulation. The Commission will be in charge of monitoring the effects of the preferred policy options on the basis of the non-exhaustive list of indicators indicated in the impact

assessment (p.64-65). The Commission will also be in charge of assessing the impact of this Regulation and will be tasked with preparing a report to the Council and Parliament (Article ~~92~~122 of the proposal).

- **Detailed explanation of the specific provisions of the proposal**

This proposal seeks to provide legal certainty for crypto-assets not covered by existing EU financial services legislation and establish uniform rules for crypto-asset service providers and issuers at EU level. The proposed Regulation will replace existing national frameworks applicable to crypto-assets not covered by existing EU financial services legislation and also establish specific rules for so-called 'stablecoins', including when these are e-money. The proposed Regulation is divided into ~~seven~~nine Titles.

Title I sets the subject matter, the scope and the definitions. Article 1 sets out that the Regulation applies to crypto-asset service providers and issuers, and establishes uniform requirements for transparency and disclosure in relation to issuance, operation, organisation and governance of crypto-asset service providers, as well as establishes consumer protection rules and measures to prevent market abuse. Article 2 limits the scope of the Regulation to crypto-assets that do not qualify as financial instruments, deposits or structured deposits under EU financial services legislation. Article 3 sets out the terms and definitions that are used for the purposes of this Regulation, including 'crypto-asset', 'issuer of crypto-assets', 'asset-referenced token' (often described as 'stablecoin')~~, 'significant asset-referenced token'~~, 'e-money token' (often described as 'stablecoin'), ~~'significant e-money token',~~ 'crypto-asset service provider', 'utility token' and others. Article 3 also defines the various crypto-asset services. Importantly, the Commission may adopt delegated acts to specify some technical elements of the definitions, to adjust them to market and technological developments.

Title II regulates the offerings and marketing to the public of crypto-assets ~~to the public. Article 4~~other than asset- referenced tokens and e-money tokens. It indicates that an issuer shall be entitled to offer such crypto-assets to the public in the Union or seek an admission to trading on a trading platform for such crypto-assets if it complies with the requirements of Article ~~5 (~~4, such as the obligation to be established in the form of a legal person~~), it draws up a *whitepaper*~~ or the obligation to draw up a *crypto-asset white paper* in accordance with Article ~~6~~5 (with Annex I) and ~~notifies~~the notification of such a ~~whitepaper~~crypto- asset white paper to the competent authorities (Article 7) and its publication (Article 8). Once a whitepaper has been published, the issuer of crypto-assets can offer its crypto-assets in the EU or seeks an admission of such crypto-assets to trading on a trading platform (Article 10). Article 4 also includes some exemptions from the publication of a whitepaper, including for small offerings of crypto- assets (below €1 million within a twelve-month period) and offerings targeting qualified investors as defined by the Prospectus Regulation (Regulation EU 2017/1129). Article ~~6~~5 and Annex I of the proposal set out the information requirements regarding the ~~whitepaper~~crypto-asset white paper accompanying an ~~issuance of~~offer to the public of crypto-assets or an admission of crypto-assets to a trading platform for crypto-assets, while Article ~~7~~6 imposes some requirements related to the marketing materials produced by the ~~crypto-asset~~ issuers~~. The whitepaper~~ of crypto-assets, other than asset-referenced tokens or e-money tokens. The crypto-asset white paper will not be subject to a pre-approval process by the national competent authorities (Article ~~8~~7). It will be notified to the national competent authorities ~~that will be in charge of assessing~~with an assessment whether the crypto-asset at stake constitutes a financial instrument under the Markets in Financial Instruments Directive (Directive 2014/65/EU)~~ or electronic money under Directive 2009/110/EU~~, in particular. After the notification of the ~~whitepaper~~crypto-asset white paper, competent authorities will have the power to suspend or prohibit the offering, require the inclusion of additional information in the ~~whitepaper~~crypto-asset white paper or make public the fact that the issuer is not complying with the Regulation (Article ~~8~~7). Title II also includes specific provisions on the offers of

crypto-assets that are limited in time (Article 9), the amendments of an initial ~~whitepaper (Article 10), the cancellation of an offering of~~ crypto-~~assets~~asset white paper (Article 11), the right of withdrawal granted to acquirers of crypto-assets (Article 12), the obligations imposed on all issuers of crypto-assets (Article 13) and on the issuers' liability attached to the ~~whitepaper~~crypto-asset white paper (Article ~~11~~14).

Title III, Chapter 1 ~~sets out~~describes the ~~requirements for~~procedure for authorisation of asset-referenced token issuers and the approval of their crypto-asset white paper by national competent authorities (Articles 16 to 19 and Annexes I and II). To be authorised to operate in the Union, issuers of asset- referenced tokens ~~(often described as 'stablecoins'~~shall be incorporated in the form of a legal entity established in the EU (Article 15). Article ~~13~~15 also indicates that no asset-referenced tokens can be offered to the public in the Union or admitted to trading on a trading platform for crypto-assets if the issuer is not authorised in the Union and it does not publish a ~~whitepaper~~crypto-asset white paper approved by its competent authority. Article ~~13~~15 also includes exemptions for small-scale asset-referenced tokens and for asset-referenced tokens that are marketed, distributed and exclusively held by qualified investors. ~~To be authorised to operate in the Union~~Withdrawal of an authorisation is detailed in Article 20 and Article 21 sets out the procedure for modifying the crypto-asset white paper.

Title III, Chapter 2 sets out the obligations for issuers of asset-referenced tokens ~~shall be incorporated in the form of a legal entity established in the EU and~~. It states they shall act honestly, fairly and professionally (Article ~~14~~23). It lays down the rules for the publication of the crypto-asset white paper and potential marketing communications (Article 24) and the requirements for these communications (Article 25). Further, issuers are subject to ongoing information obligations (Article 26) and they are required to establish a complaint handling procedure (Article 27).

They shall also comply with other requirements, such as ~~capital requirements (Article 16), governance requirements (Article 17),~~ rules on conflicts of interest (Article ~~18~~28), notification on changes to their management body to its competent authority (Article 29), governance arrangements (Article 30), own funds (Article 31), rules on ~~the stabilisation mechanism and~~ the reserve of assets backing the asset-referenced tokens (Article ~~19~~32) and requirements for the custody of the reserve assets (Article ~~20~~33). Article ~~21 provides~~34 explains that an issuer shall only invest the reserve assets in assets that are secure, low risk assets ~~(as described by the electronic money directive) and that meets the definition of high quality liquid assets under the Capital Requirements Regulation (Regulation EU 575/2013)~~. Article ~~22~~35 also imposes on issuers of asset- referenced tokens ~~to disclose~~the disclosure of the rights attached to the asset-referenced tokens, including any direct claim on the issuer or on the reserve of assets. Where the issuer of asset- referenced tokens does not offer direct redemption rights or claims on the issuer or on the reserve assets to all holders of asset-reference tokens, Article ~~22~~35 provides holders of asset- referenced tokens with minimum rights. Article ~~23 also~~36 prevents issuers of asset-referenced tokens and crypto-asset service providers from granting any ~~interests~~interest to holders of asset- referenced tokens. ~~Article 25 and Annex 2 of the proposed Regulation set~~

Title III, Chapter 4, sets out the rules for the acquisition of issuers of asset-referenced tokens, with Article 37 detailing the assessment of an intended acquisition, and Article 38 the content of such an assessment.

Title III, Chapter 5, Article 39 sets out the ~~additional disclosures~~criteria that EBA shall use when determining whether an asset-referenced token ~~issuer~~ is ~~required to include in its whitepaper (Article 25). Issuers of asset-referenced tokens are also subject to ongoing information obligations (Article 26). They are required to establish a complaint handling procedure (Article 27) and have a procedure in place for an orderly wind-down (Article 28).~~

~~Title III, Chapter 1 (Article 15) also distinguishes between asset-referenced tokens and~~

significant. These criteria are: the size of the customer base of the promoters of the asset-referenced tokens. The, the value of the asset-referenced tokens or their market capitalisation, the number and value of transactions, size of the reserve of assets, significance of the issuers' cross-border activities and the interconnectedness with the financial system. Article 39 also includes an empowerment for the Commission will be empowered to adopt a delegated act in order to specify further the circumstances under which and thresholds above which an issuer of asset-referenced tokens will be considered significant. TheArticle 39 includes some minimum thresholds that the delegated act shall in any case respect. Article 40 details the possibility for an issuer of an asset-referenced token to classify as significant at the time of applying for an authorisation on their own initiative. Article 41 lists the additional obligations applicable to issuers of such significant asset- referenced tokens will be subject to, such as additional own funds requirements, in terms of capital requirements (Article 16), interoperability (Article 24) and liquidity management policy (Article 19). To avoid any regulatory arbitrage between the status of e-money issuer under the e-money directive and the status of significant issuer of asset-referenced tokens, this proposal indicates that e- money issuers that meet the conditions and criteria defining an asset-referenced token issuer shall be subject to some requirements set out in this Regulation (Article 15(6)).and interoperability.

Title III, Chapter 2 describes the procedure for authorisation of the asset-referenced token issuers and the approval of their whitepaper by national competent authorities (Article 29). National competent authorities are in charge of the supervision of the asset-referenced token issuers (Article 31) and can withdraw their authorisation (Article 32). However, the supervision of issuers of significant asset-referenced tokens is conferred to EBA (Article 33). E-money issuers that meet the criteria of significance (Article 15) will also be subject to EBA supervision (Article 33)Tittle III, Chapter 6, Article 42 obliges the issuer to have a procedure in place for an orderly wind-down of their activities.

Title IV, Chapter 1 sets outdescribes the requirementsprocedure for issuersauthorisation as an issuer of e-money tokens (often described as 'stablecoins'). Article 3743 describes that no e-money tokens shall be offered to the public in the Union or admitted to trading on a crypto-asset trading platform unless the issuer is authorised as a credit institution or as an 'electronic money institution' within the meaning of Article 2(1) of Directive 2009/110/EC. Article 3743 also states that 'e-money tokens' are deemed electronic money for the purpose of Directive 2009/110/EC.

Article 3844 describes how holders of e-money tokens shall be provided with a claim on the issuer: e-money tokens shall be issued at par value and on the receipt of funds, and upon request by the holder of e-money tokens, the issuers must redeem them at any moment and at par value. Article 4045 prevents issuers of e-money tokens and crypto-asset service providers from granting any interest to holders of e-money tokens. Article 46 and Annex III sets out the requirements for the whitepapercrypto-asset white paper accompanying the issuance of e-money tokens, for example: description of the key characteristics of the issuer, detailed description of the issuer's project, indication of whether it concerns an offering of e-money tokens to the public or admission of these to a trading platform, as well as information on the risks relating to the e-money issuer, the e- money tokens and the implementation of any potential project. Article 47 includes provision on the liability attached to such crypto-asset white paper related to e-money tokens. Article 48 sets requirements for potential marketing communications produced in relation to an offer of e-money tokens and Article 49 states that any funds received by an issuer in exchange for e- money tokens, shall be invested in assets denominated in the same currency as the one referenced by the e-money token.

Title IV, Chapter 2 describes the procedure for authorisation and supervision of e-money token issuers. National competent authorities are in charge of supervising e-money issuers (Article 43), however, when these have been deemed significant in accordance with Article

~~15, the supervision of such e-money token issuers is conferred to the EBA. Article 44 details the composition of the College that must be set up within 30 calendar days after a decision to classify an~~, Article 50 states that the EBA shall classify e-money tokens as significant on the basis of the criteria listed in Article 39. Article 51 details the possibility of an issuer of an e-money token to classify as significant at the time of applying for an authorisation on their own initiative. Article 52 contains the additional obligations applicable to issuers of significant e-money tokens. Issuers of significant e-money tokens must apply Article 33 on the custody of the reserve assets and Article 34 on the investment of these assets instead of Article 7 of Directive 2009/110/EC, Article 41, paragraphs 1, 2, and 3 on remuneration, interoperability and liquidity management, Article 41, paragraph 4 instead of Article 5 of Directive 2009/110/EC and Article 42 on an orderly wind-down of their activities.

Title V sets out the provisions on authorisation and operating conditions of crypto-asset service providers. Chapter 1 defines the provisions on authorisation (Article 53), detailing the content of such an application (Article 54), the assessment of the application (Article 55) and the rights granted to competent authorities to withdraw an authorisation (Article 56). The chapter also includes a mandate for ESMA to establish a register of all crypto-asset service providers (Article 57), which will also include information on the crypto-asset white papers notified by competent authorities. For the cross-border provision of crypto-asset services, Article 58 sets out the details and the way information about cross-border activities of crypto-assets should be communicated from the competent authority of the home Member State to that of the host Member State.

Chapter 2 imposes requirements on all crypto-asset service providers, such as the obligation to act honestly, fairly and professionally (Article 59) prudential safeguards (Article 60 and Annex IV), organisational requirements (Article 61), rules on the safekeeping of clients' crypto-assets and funds (Article 63) the obligation to establish a complaint handling procedure (Article 64), rules on conflict of interests (Article 65) and rules on outsourcing (66). Title V, Chapter 3 sets out requirements for specific services: custody of crypto-assets (Article 67), trading platforms for crypto-assets (Article 68), exchange of crypto-assets for fiat currency or for other crypto-assets (Article 69), execution of orders (Article 70), placing of crypto-assets (Article 71), reception and transmission of orders on behalf of third parties (Article 72) and advice on crypto-assets (Article 73). Chapter 4 specifies the rules on acquisition of crypto-assets service providers.

Title VI puts in place prohibitions and requirements to prevent market abuse involving crypto-assets. Article 76 defines the scope of market abuse rules. Article 77 defines the notion of inside information and indicates that an issuer whose crypto-assets are admitted to trading on a trading platform for crypto-assets shall disclose inside information. Other provisions of the title ban insider dealing (Article 78), unlawful disclosure of inside information (Article 79) and market manipulation (Article 80).

Title VII provides details on the powers of national competent authorities, the EBA and ESMA. Title VII, Chapter 1 imposes on Member States the obligation to designate one or several competent authorities for the purpose of this regulation, including one competent authority designated as a single point of contact (Article 81). Chapter 1 also sets out detailed provisions on the powers of national competent authorities (Article 82), cooperation between competent authorities (Article 83), with the EBA and ESMA (Article 84) or with other authorities (Article 85). It also details the notification duties of Member States (Article 86), rules on professional secrecy (Article 87), data protection (Article 88) and on precautionary measures that can be taken by national competent authorities of host Member States (Article 89). Article 90 sets out rules on cooperation with third countries and Article 91 specifies complaint handling by competent authorities.

Title VII, Chapter 2 details the administrative sanctions and measures that can be imposed by

competent authorities (Article 92), the exercise of their supervisory powers and powers to impose penalties (Article 93), the right of appeal (Article 94), the publication of decisions (Article 95), the reporting of penalties to the EBA and ESMA (Article 96) and the reporting of breaches and protection of persons reporting such breaches (Article 97).

Title VII, Chapter 3 sets out detailed provisions on the EBA's powers and competences related to the supervision of issuers of significant asset-referenced tokens and significant e- money ~~token as~~tokens, including supervisory responsibilities (Article 98) and rules on supervisory colleges for issuers of significant asset-referenced tokens are mentioned in Article 99. The college shall consist of, among others~~;~~, the competent authority of the home Member State where the issuer of the ~~significant e-money~~asset-referenced tokens has been authorised, the EBA, ESMA, the competent authorities with supervision of the most relevant ~~payments institutions,~~crypto-asset trading platforms ~~and~~, custodians, credit institutions etc. providing services in relation to the significant ~~e-money~~asset- referenced token~~,~~ and the ECB ~~if~~. Where the issuer of significant ~~e-money token is referencing euro and~~asset-referenced tokens is established in a Member State the currency of which is not the euro, or where a currency that is not euro is included in the reserve assets, the national central bank ~~in case the significant e-money token is referencing an EU currency which is not~~of that Member State is part of the ~~euro~~college. Competent authorities not belonging to the college may request from the college all information relevant to perform their supervisory duties. Article ~~44~~99 also describes how the EBA, in cooperation with ESMA and the European System of Central Banks, must develop draft regulatory standards to determine the most relevant ~~payments institutions,~~ trading platforms and custodians and the details of the practical arrangements of the college. ~~These regulatory standards must be submitted to the Commission 12 months after the entry into force.~~

Powers to issue non-binding opinions ~~is~~are conferred to the college in Article ~~45~~100. These opinions can be related to require an issuer to hold a higher amount of own funds, an amended ~~whitepaper~~crypto-asset white paper, envisaged withdrawal of authorisation, envisaged agreement of exchange of information with a third-country supervisory authority etc. ~~The competent authority of the significant e-money token issuer or~~Competent authorities or the EBA shall duly consider the opinions of the college and where they do not agree with the opinion, including any recommendations, their final decision shall contain explanations for any significant deviation from the opinion or recommendations.

~~Title V sets out the provisions on authorisation and operating conditions of crypto-asset service providers. Title IV Chapter 1, imposes requirements on all crypto-asset service providers, such as prudential safeguards (Article 47 and Annex III), organisational requirements (Article 48), rules on the safekeeping of clients' funds (Article 51), rules on the information provided to clients (Article 52), the obligation to establish a complaint handling procedure (Article 53), rules on conflict of interests (Article 54). Title V, Chapter 2 sets out requirements for specific services: custody of crypto-assets (Article 56), trading platforms for crypto-assets (Article 57), exchange of crypto-assets for fiat currency or for other crypto-assets (Article 58), execution of orders (Article 59), placement of crypto-assets (Article 60), reception and transmission of orders (Article 61), advice (Article 62). As asset-referenced tokens can be used as a means of payment, the payment transactions in asset-referenced tokens are also regulated, by reference to the provisions of the Payment Services Directive II (Directive 2015/2366) (Article 63).~~

~~Title V, Chapter 3 defines the provisions on authorisation and supervision of crypto-assets service providers. These requirements highlight the required content of an application (Article 64), the scope of the authorisation, including the EU passport of crypto-asset service providers (Article 65), and the rights granted to competent authorities to withdraw an authorisation (Article 67). The chapter also includes a mandate for ESMA to establish a~~

~~register of all crypto- asset service providers (Article 66), which will also include information on the whitepapers notified by competent authorities. For the cross-border provision of crypto-asset services, Article 68 sets out the details and the way information about cross-border activities of crypto- assets should be communicated from the competent authority of the home Member State to that of the host Member State.~~

~~Title VI puts in place prohibitions and requirements to prevent market abuse involving crypto- assets. Article 69 defines the scope of market abuse rules. Article 70 defines the notion of inside information and indicates that an issuer whose crypto-assets are admitted to trading on a trading platform for crypto-assets shall disclose inside information. Other provisions of the title ban insider dealing (Article 71), unlawful disclosure of inside information (Article 72) and market manipulation (Article 73).~~

~~Title VII provides details on the power of national competent authorities, ESMA and EBA. Title VII, Chapter 1 imposes on Member States the obligation to designate one or several competent authorities for the purpose of this regulation, including one competent authority designated as a single point of contact (Article 74). Chapter 1 also sets out detailed provisions on the powers of national competent authorities (Article 75), cooperation between competent authorities (Article 76) or with ESMA and EBA (Article 77), and on precautionary measures that can be taken by national competent authorities of host Member States (Article 82). Title VII, Chapter 2 details the administrative measures and sanctions that can be imposed by competent authorities (Article 85), including the publication of decisions (Article 88) and the reporting of penalties to ESMA and EBA (Article 89). Title VII, Chapter 3 sets out detailed provisions on~~Article 101 sets out the rules for supervisory colleges for issuers of significant e-money tokens, which functions in the same way as the colleges for asset-referenced tokens (additional participants include competent authorities of most relevant payment institutions providing payment services in relation to the significant e-money tokens) and Article 102 the powers to issues non-binding opinions of such a college.

Chapter 4 specifies the EBA~~'~~'s powers and competences ~~related to the supervision of~~on issuers of significant asset- referenced tokens and issuers of significant e-money tokens~~, including legal~~. Legal privilege (Article ~~91~~103), request for information (Article ~~92~~104), general ~~investigations~~investigative powers (Article ~~93~~105), on-site inspections (Article ~~94~~106), exchange of information (Article ~~95~~107), agreement on exchange of information with third countries (Article 108), disclosure of information from third countries (Article 109) and cooperation with other authorities (Article 110). The obligation of professional secrecy ~~(~~is mentioned in Article ~~99),~~111 and supervisory measures by the EBA ~~(~~, in Article ~~100)~~112. Administrative sanctions and other measures, in particular, fines are detailed in Article ~~101~~113, with the consequent Articles regulating periodic penalty payments (Article ~~102~~114), the disclosure, nature and enforcement of fines (Article ~~103~~115) and the corresponding procedural rules for taking supervisory measures and imposing fines (Article ~~104~~116). ~~Articles 105~~Article 117 and ~~106~~Article 118 set out the requirements on the hearing of persons concerned and the unlimited jurisdiction of the Court of Justice over the EBA's decisions, respectively. In accordance with Article ~~107~~119, the EBA should be able to charge fees to the issuers of significant asset-referenced tokens and the issuers of significant e-money tokens based on a delegated act adopted pursuant to the Regulation. Article 120 gives powers to the EBA to delegate specific supervisory tasks to competent authorities where necessary for the proper supervision of an issuer of a significant asset-referenced token or an issuer of a significant e- money token.

The exercise of the delegation with a view to adopt Commission's delegated acts is covered in Title VIII. The proposal for a Regulation contains empowerments for the Commission to adopt delegated acts specifying certain details, requirements and arrangements as set out in the

Regulation (Article ~~109~~121).

Title IX includes the transitional and final provisions, including the obligation for the Commission to produce a report evaluating the impact of the ~~regulation~~Regulation (Article ~~110~~122). Transitional measures include a grandfathering clause for crypto-assets issued before the entry into force of this Regulation, with the exception of asset-referenced tokens and e-money tokens~~.~~, are listed in Article ~~114~~123. Article 124 amends the directive on the protection of persons who report breaches of Union law (Directive (EU) 2019/1937[29]) by adding this Regulation to it and Article 125 specifies that this amendment must be transposed into national law 12 months after the entry into force of this Regulation. Article 126 indicates that this Regulation shall enter into application 18 months after its entry into force, except for the provisions related to e-money tokens and asset-referenced tokens that shall enter into application on the date of entry into force of this Regulation.

2020/0265 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Markets in Crypto-assets, and amending Directive (~~MiCA)~~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~~20~~30,

Having regard to the opinion of the European Economic and Social Committee~~21~~31, ~~Having regard to the opinion of the Committee of the Regions[22]~~

~~,~~Acting in accordance with the ordinary legislative procedure, Whereas:

(1) The ~~European~~ Commission's communication on a Digital Finance Strategy[32] aims ~~among other things~~ to ensure that the ~~EU~~Union's financial services legislation is fit for the digital age, and contributes to a future-ready economy that works for the people,

[29] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

~~20~~30 OJ C […], […], p. […].

~~21~~31 OJ C , , p. .

~~22 OJ C , , p. .~~

[32] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on a Digital Finance Strategy for EU COM(2020)591.

including by enabling the use of innovative technologies ~~[to be revised once the Strategy is available]~~. The ~~EU~~Union has a stated and confirmed policy interest in developing and promoting the uptake of ~~this~~ transformative ~~technology~~technologies in the financial sector, ~~such as~~including blockchain and distributed ledger technology (~~'~~DLT~~'~~).

(2) ~~Crypto~~In finance, crypto-assets are one of the major DLT applications ~~for finance~~. Crypto-assets are digital representations of value or rights that have the potential to bring significant benefits to both market participants and consumers. ~~For instance~~By streamlining capital-raising processes and enhancing competition, issuances of crypto-assets can allow for a cheaper, less burdensome and more inclusive way of financing ~~for~~ small and medium- sized ~~companies, by streamlining capital-raising processes and enhancing competition~~enterprises (SMEs). When used as a means of ~~payments~~payment, payment tokens ~~could also~~can present opportunities in terms of cheaper, faster and more efficient payments, ~~especially~~in particular on a cross-border basis, by limiting the number of intermediaries.

(3) ~~While some~~Some crypto-assets ~~could fall within existing EU financial services legislation and could qualify as electronic money within the meaning of the electronic money directive (Directive 2009/110/EC[23]) or~~qualify as financial instruments ~~within the meaning of~~

~~Markets in Financial Instruments Directive~~as defined in Article 4(1), point (15), of Directive 2014/65/EU[24]~~),~~ of the European Parliament and of the Council[33]. The majority of ~~them currently~~crypto-assets, however, fall outside of the scope of ~~EU~~Union legislation~~. Where crypto-assets are not covered by EU~~

on financial services ~~legislation, the absence of applicable~~. There are no rules ~~to~~for services related to ~~such~~ crypto-assets ~~(such as~~, including for the operation of trading platforms for crypto-assets, the service of exchanging crypto-assets against fiat currency 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 ~~the~~consumer protection ~~consumer~~ rules. ~~There are~~The lack of such rules can also lead to substantial risks to market integrity~~, such as market manipulation,~~ in the secondary market of crypto- assets, including market manipulation. To address ~~these~~those risks, some Member States have put in place specific rules ~~at national level~~ for all – or a subset of – crypto-assets that fall outside ~~current EU~~Union legislation on financial services ~~legislation and other~~. Other Member States are considering ~~a legislation~~to legislate in this area.

(4) ~~In the absence~~The lack of an ~~EU~~overall Union framework for crypto-assets~~, the~~ can lead to a lack of users' confidence in ~~crypto~~ those assets, which will hinder the development of ~~this~~a market~~, leading~~ in those assets and can lead to missed opportunities in terms of innovative digital services, alternative payment instruments or new funding sources for ~~EU~~Union companies. In ~~the absence of legislation at EU~~

~~[23] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p.7).~~

~~[24] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance, OJ L 173, 12.6.2014, p. 349–496.~~

[33] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

~~level~~addition, companies using crypto-assets will have no legal certainty on how their crypto-assets ~~are~~will be treated in the different ~~EU~~ Member States, which ~~undermines~~will undermine their efforts to use crypto- assets for digital innovation. The ~~absence~~lack of an ~~EU~~overall Union framework on crypto-assets could also lead to regulatory fragmentation, which ~~distorts~~will distort competition in the Single Market, ~~makes~~make it more difficult for crypto-asset service providers to scale up their activities on a cross-border basis and ~~gives~~will give rise to regulatory arbitrage. ~~While the~~The crypto-asset market ~~remains~~is still modest in size and does not ~~currently~~yet pose a threat to financial stability~~,~~. It is, however, likely that a subset of crypto-assets ~~that have features~~which aim to stabilise their price by linking their value to a specific asset or a basket of assets could be widely adopted by consumers ~~and, as~~. Such a ~~result,~~development could raise additional challenges to financial stability, monetary policy transmission or monetary sovereignty.

(5) ~~The overall objective of this Regulation is~~A dedicated and harmonised framework is therefore necessary at Union level to provide ~~an EU~~specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework. Such harmonised framework ~~for the issuance, and provision of~~should also cover services related to crypto-assets ~~(such as custodial wallet providers, exchanges and trading platforms) which~~where these services are not ~~currently captured by EU financial service~~yet covered by Union legislation~~. This Regulation~~ on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of consumer protection and market integrity in ~~the~~ 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 ~~address~~ensure financial stability and address monetary policy risks that could arise from ~~some~~ crypto- assets that aim at stabilising their price by ~~reference to~~referencing a currency, an asset or a basket of ~~assets.~~

~~(6)This Regulation should exclude from its scope crypto-assets that qualify as financial instruments. The EU financial service~~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.

(6) Union legislation on financial services should not ~~give a~~favour one particular technology ~~an advantage over another~~. Crypto-assets that qualify as 'financial instruments' ~~or 'electronic money'~~as defined in Article 4(1), point (15), of Directive 2014/65/EU should therefore remain regulated under the general existing ~~EU~~Union legislation, ~~such as the Markets in Financial Instruments Directive ((~~including Directive 2014/65/EU~~) and the Electronic Money Directive (Directive 2009/110/EC)~~, regardless of the technology used for their issuance or their transfer.

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

(8) ~~This Regulation should include definitions~~Any legislation adopted in the field of ~~'~~crypto-~~asset~~assets should be specific, future-proof and be able to keep pace with innovation and technological developments. 'Crypto- assets' and ~~of~~ 'distributed ledger technology' ~~which are~~should therefore be defined as ~~wide~~widely as possible to capture all types of crypto-assets which currently fall outside the scope of ~~EU~~Union legislation on financial services. Such legislation~~. This~~ should ~~ensure that the Regulation is future-proof and keep pace with innovation and technology developments in the sector. While the purpose of this Regulation is not to address anti- money laundering and combatting issues raised by crypto-assets, this Regulation should~~also contribute to ~~this~~the objective~~. Therefore, the~~ of combating money laundering and the financing of terrorism. Any definition of 'crypto-assets' ~~set out in this Regulation~~ should therefore correspond to the definition of 'virtual assets'~~,~~ set out in the recommendations of the Financial Action Task Force (FATF)[34]. ~~The~~For the same reason, any list of crypto-asset services ~~in the scope of this Regulation~~ should also encompass ~~the~~ virtual asset services that are likely to raise money -laundering concerns and that are identified as such by the ~~Financial Action Task Force~~FATF.

(9) ~~Beyond the general definition of crypto-assets, this Regulation~~A distinction should ~~also distinguish~~be made between three sub-categories of ~~'~~crypto-assets~~' that~~, which should be subject to more specific requirements. ~~First, there are some crypto-assets whose primary function~~The first sub-category consists of a type of crypto-asset which is intended to provide digital access ~~digitally~~ to ~~an application, services~~a good or ~~resources~~service, available on ~~a~~ DLT, and that is only accepted by the issuer of that token ('utility tokens'). ~~These~~Such 'utility tokens'~~ which in many cases~~ have non-financial ~~purpose~~purposes related to the operation of a digital platform and digital services and should be considered as a specific type of crypto-assets.

~~(10)Second, this Regulation should provide for specific rules on~~ A second sub-category of crypto-assets are 'asset-referenced tokens'. Such asset-referenced tokens~~ with a payment functionality and which~~ aim at maintaining a stable value by referencing several currencies that are legal tender, one or several commodities, one or several crypto- assets, or a basket of such assets. By stabilising their value, ~~these~~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. ~~Due to their payment functions, these asset-referenced tokens should be subject to specific rules.~~

~~(11)Third, some~~A third sub-category of crypto-assets are ~~used~~crypto- assets that are intended primarily as a means of payment ~~and aims~~aim at stabilising their value by referencing only one fiat currency~~ that is legal tender. This type~~. The function of such crypto-assets~~ have a function which~~ is very ~~close~~similar to ~~electronic money, under~~ the function of electronic money~~ directive (~~, as defined in in Article 2, point 2, of Directive 2009/110/EC[25]~~), which is defined as 'electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions [...], and which is accepted by a natural or legal person other than the electronic money issuer'. Electronic money~~

[34] FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France (www.fatf-gafi.org/recommendations.html).

[25] ~~Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p.7)~~

~~under Directive 2009/110/EC and~~ of the European Parliament and of the Council[35]. Like electronic money, such crypto-assets ~~referencing a single fiat currency have similar purposes, as both of them~~ are electronic surrogates for coins and banknotes and are used for making payments. These crypto-assets are defined as 'electronic money tokens' or 'e-money tokens'.

(10) ~~(12)~~Despite their similarities, ~~some differences exist between~~ electronic money ~~under Directive 200/110/EC~~ and crypto-assets referencing a single fiat currency differ in some important aspects. Holders of electronic money ~~institutions under~~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 fiat currency that is legal tender at par value with ~~the fiat~~that currency ~~and at any moment~~. By contrast, some of the crypto-assets referencing ~~only~~ one fiat currency which is legal tender do not provide their holders with such a claim on ~~their~~the issuers of such assets and could fall outside the scope of Directive 2009/110/EC. Other crypto-asset referencing one ~~single~~fiat currency do not provide a claim at par with the ~~fiat~~ currency they are referencing or limit the redemption period. ~~In the absence of claim on the issuer and a right of redemption~~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

[35] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

~~value and at any moment,~~the currency those crypto-assets are referencing, could undermine the confidence of users ~~in~~of those crypto-assets ~~referencing only one currency could be undermined~~. To avoid ~~the~~ circumvention of ~~existing~~the rules ~~set out by~~laid down in Directive 2009/110/EC, ~~it should be adequate to create in this Regulation a new category of 'electronic money tokens' or 'e-money tokens' for these crypto-assets referencing only one fiat currency and used as a means of exchange. The~~any definition of ~~an~~ 'e-money tokens' should be as wide as possible to capture all the types of crypto-assets referencing one single fiat currency ~~on the crypto-asset market~~that is legal tender. To avoid regulatory arbitrage ~~with the provisions of Directive 2009/110/EC or the circumvention of EU rules, this Regulation should impose~~, strict conditions on the issuance of e-money tokens should be laid down, including the obligation for ~~these~~such e-money tokens to be issued either by a credit institution ~~authorised under~~as defined in Regulation (EU) ~~2013/575~~No 575/2013 of the European Parliament and of the Council[36], or by an electronic money institution authorised under Directive 2009/110/EC. ~~The~~For the same reason, issuers of ~~these~~such e-money tokens should also grant ~~their~~the users of such tokens with a claim to redeem their tokens at any moment and at par value ~~with~~against the ~~fiat~~ currency ~~referenced. At the same time, due to the novelty of the technology used,~~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~~, compared~~ specific to ~~traditional electronic money. This regulation should also aim at addressing~~crypto- assets, they should also be subject to rules laid down in this Regulation to address these challenges~~.~~

~~(13)Some of these asset-referenced tokens and e-money tokens should be considered as significant, due to their large customer base of their promoters and shareholders, their high market capitalisation, the size of the reserve of assets backing the value of asset-referenced tokens, the high number of transactions, the interconnectedness with the financial system or the cross-border use of such crypto-assets. These significant asset- referenced tokens or significant e-money tokens that could be used by a large number of holders and which raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty, should be subject to more stringent requirements under this Regulation, compared to other asset-referenced tokens or e- money tokens. The Commission should be empowered to take delegated acts in order to specify the circumstances under which and the numerical thresholds above which an asset-referenced token or e-money tokens should be classified as significant.~~

~~(14)This Regulation should aim at regulating the~~ 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 of crypto-assets~~, including the issuance of utility tokens, asset-referenced tokens and e-money tokens. Under this Regulation, an issuer of crypto-assets~~ that should be ~~considered as~~ any legal person ~~offering~~who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to ~~third parties~~a trading platform for crypto-assets.

(12) ~~(15)This Regulation should also aims at regulating~~It is necessary to lay down specific rules for entities ~~which~~that provide services ~~and activities~~ related to crypto-assets. ~~These main 'crypto-asset~~A first category of such services~~'~~ consist ~~in~~of ensuring the operation of a trading platform for crypto-assets, ~~in~~ exchanging crypto-assets against fiat currencies that are legal tender or other crypto-assets by dealing on own account, and ~~finally~~ the ~~activity consisting in~~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~~, on behalf of third parties. Other~~. A second category of such

[36] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

services ~~related to crypto-assets, such as~~are the ~~placement~~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 the payment transactions in asset-referenced tokens should also be in the scope of this Regulation~~. Any person ~~which~~that provides ~~any~~such crypto-asset ~~service,~~services on a professional basis~~,~~ should be considered as a 'crypto-asset service provider'~~ and~~.

(13) To ensure that all offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, 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 of crypto-assets should be ~~subject to this Regulation~~legal entities.

(14) ~~(16)~~In order to ensure consumer protection, ~~users~~prospective purchasers of crypto-assets should be informed about the characteristics, functions ~~as well as~~and risks ~~related to~~of crypto-assets they ~~are purchasing~~intend to purchase. When making a public ~~offering~~offer of crypto-assets in the ~~EU~~Union or when seeking ~~an~~ admission of ~~these~~ crypto-assets to trading on a trading platform for crypto-assets, issuers of crypto-assets should ~~therefore be required to~~ produce, notify to their competent authority and publish an information document ('a ~~*whitepaper*~~crypto-asset white paper') containing mandatory disclosures. ~~The whitepaper~~Such crypto-asset white paper should ~~include~~contain general information on the issuer, on the project to be carried out with the capital raised, on the ~~offering~~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, ~~information~~ on the underlying technology used for such assets and on the related risks. ~~The~~To ensure fair and non-discriminatory treatment of holders of crypto-assets, the information ~~included~~ in the ~~whitepaper~~crypto- asset white paper, and ~~to the~~where applicable in any marketing communications related to the ~~offering~~public offer, shall be fair, clear and not misleading. ~~To ensure that these issuances of crypto-assets can be monitored and supervised effectively by the national competent authorities, designated by the Member States, the issuers of crypto-assets should also be required to be established as legal entities, either in the EU or in a third country.~~

(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[37] 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.

(16) Small and medium-sized enterprises and start-ups should not be subject to excessive administrative burdens. Offers to the public of crypto-assets 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. However, EU horizontal legislation ensuring consumer protection, such as Directive 2011/83/EU of

[37] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

the European Parliament and of the Council[38], Directive 2005/29/EC of the European Parliament and of the Council[39] or the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts[40], including any information obligations contained therein, remain applicable to these offers to the public of crypto-assets where involving business-to-consumer relations.

(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 of crypto-assets 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 should be able to suspend or prohibit a public offer of crypto-assets 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. 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.

(21) Crypto-asset white papers and, where applicable, marketing communications that have been duly notified to a competent authority should be published, after which issuers of crypto-assets 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.

(22) In order to further ensure consumer protection, the consumers 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

[38] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

[39] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22)

[40] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (*OJ L 95, 21.4.1993, p. 29).*

after their acquisition. In order to ensure the smooth completion of an offer to the public of crypto-assets for which the issuer has set a time limit, this right of withdrawal should not be exercised by the consumer after the end of the subscription period. 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) ~~(17)Beyond~~Even where exempted from the obligation to ~~draw up~~publish a ~~prospectus~~crypto-asset white paper, all issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, should ~~be subject to other requirements, such as the obligation to~~ act honestly, fairly and professionally, ~~to~~should communicate with ~~the~~ holders of crypto- assets in a fair, clear and ~~not misleading~~truthful manner, ~~to~~should identify, prevent, manage and disclose conflicts of interest, ~~to~~should have effective administrative arrangements ~~and~~ to ensure that their systems and security protocols meet ~~appropriate EU~~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 ~~EU~~Union standards.

~~(18)Issuers of crypto-assets should be required to notify its whitepaper and marketing communications related to the offering of crypto-assets to the competent authority of the Member States where it has its registered office or a branch, before starting its public offering of crypto-assets in the EU or an admission of crypto-assets to trading on a trading platform for crypto-assets. Where the issuer is established in a third country, it should notify its whitepaper, and the marketing communication, to the competent authority of the Member States, where the crypto-assets is intended to be made or where the admission to trading on a trading platform for crypto-assets is sought in the first place.~~

~~(19)Given the novelty of the crypto-asset sector and to avoid an undue administrative burden on financial supervisors, competent authorities should not have the duty to review a *whitepaper* for approval before its publication. However, once published, competent authorities should have the power to suspend or prohibit an offering of crypto-assets that would not comply with the provisions of this Regulation. Competent authorities should also have the power to request further information to be included in the whitepaper and to publish a warning that the issuer fails in meeting the requirements set out in this Regulation.~~

~~(20)Some offerings of crypto-assets should be exempted from the requirements of this Regulation, in particular when these crypto-assets are offered for free, when they are exclusively offered and can be exclusively to qualified investors, or when they are made to a small number of persons per Member States. Crypto-assets that are unique and not fungible with other crypto-assets should also be exempted from the obligations imposed on crypto-asset issuers. To ensure proportionality of the requirements set out in this Regulation and to make sure that small and medium-sized enterprises (SMEs) and start- ups are not subject to excessive administrative burden, the offering of crypto-assets in the Union that do not exceed an adequate aggregate threshold over a period of twelve months, should be exempted from the obligations to publish a *whitepaper* and from the other obligations applicable to issuers.~~

~~(21)Where a *whitepaper* produced by an issuer~~To further protect holders of crypto-assets ~~complies with the requirements of this Regulation and has been notified to a~~

~~competent authority, it should be published. Once the publication made, the issuer of crypto-assets should be allowed to offer its crypto-assets in the entire Union and to seek an admission for trading on a trading platform for crypto-assets. Member States should ensure that~~, civil liability rules should apply to crypto- asset issuers and their management body for the information provided to the public through the ~~*whitepaper*~~. ~~The rules on civil liability should also apply to whitepapers related to all~~ crypto-~~assets, including~~ asset~~-referenced tokens and e-money tokens~~ white paper.

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

~~(23)Before issuing~~ Issuers of asset- referenced tokens ~~in the EU or seeking admission~~should therefore be subject to more stringent requirements than issuers of ~~such~~other crypto-assets ~~on a trading platform for crypto-assets, the issuer of such crypto-assets should be authorised by a competent authority and the whitepaper regarding such crypto-assets should also be approved by the same competent authority. These requirements should not apply where the asset-referenced tokens are only offered to qualified investors or when the offering of asset-referenced tokens is below an appropriate threshold. In those latter cases, the issuer of such asset-referenced tokens should be still required to produce a *whitepaper* in order to inform buyers about the characteristics and risks of such asset- referenced tokens~~.

(25) So-called algorithmic 'stablecoins' that aim at maintaining a stable value, 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 as asset- referenced tokens, ~~as long as~~provided that they do not aim at stabilising their value by referencing one or several other assets.

(26) ~~(24)To be granted an authorisation by a competent authority, issuers of asset-referenced tokens should have a registered office in the EU. They~~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.

(27) 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. Credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council[41] should not need another authorisation under this Regulation in order to issue asset-referenced tokens. In those cases, the issuer of such asset-referenced tokens 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 notify it to the relevant competent authority, before publication.

[41] 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).

(28) 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. 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 non-binding opinion on the prospective issuer's application. 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.

(29) 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.

(30) 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 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.

(31) To ensure consumer protection, issuers of asset-referenced tokens should always act honestly, fairly and professionally and ~~act~~ in the best interest of the holders of asset-referenced tokens. ~~To address the risks to financial stability of the wider financial system, issuers~~Issuers of asset- referenced tokens should ~~be subject to capital requirements. In order to make this requirement proportionate to the issuance size of the asset-referenced tokens, these requirements should be calculated as a percentage of the reserve of assets that back the value of the asset-referenced tokens. Competent authorities should also have the power 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~~also put in place a clear procedure for handling the complaints received from the holders of crypto-assets.

(32) ~~(25)~~Issuers of asset-referenced tokens should ~~also~~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.

(33) Issuers of asset-referenced tokens should have robust governance arrangements, ~~which include~~including a clear organisational structure with well-defined, transparent and consistent lines of responsibility~~. They should also have~~ and effective processes to identify, manage, monitor and report the risks to which ~~it is~~they are or might be exposed~~ and it should also put in place adequate internal control mechanisms, including sound administrative and accounting procedures~~. The management body of such issuers ~~as well as~~and their shareholders should have good repute and sufficient expertise~~. They should also~~ 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 ~~commensurate~~proportionate to the scale of their activities~~. Issuers of asset-referenced tokens~~ and should always ensure continuity and regularity in the performance of their activities. For that purpose, ~~they~~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. ~~They~~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.

(34) ~~(26)~~Issuers of asset-referenced tokens are usually at the centre of a network of entities ~~which~~that ensure the issuance of such crypto-assets, their transfer~~, as well as~~ and their distribution to holders. Issuers of asset-referenced tokens should therefore be required to establish and maintain appropriate contractual arrangements with ~~these~~those third-party entities ~~that ensure~~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 ~~payment~~ tokens to the public.

~~(27)Issuers of asset-referenced tokens should also put in place a policy to identify, manage and potentially disclose conflicts of interest which would arise from their relations with their managers, shareholders, clients or third-party service providers.~~

~~(28)Competent authorities should be informed of the projects of acquisition of a qualifying holding in the capital of an issuer of asset-referenced tokens. Competent authorities should have the right to oppose to such an acquisition on the basis of objective criteria, such as the acquirer's reputation and financial soundness, the skills of the person proposed to manage the issuer's business, the ability of the issuer to comply with that regulation or the infringement of anti-money laundering or combatting the financing of terrorism.~~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.

(35) ~~(29)~~In order to stabilise the value of their asset-referenced tokens, issuers of ~~such crypto- assets~~asset- referenced tokens should constitute and maintain a reserve of assets backing those crypto-assets at all times. Issuers of asset- referenced tokens should ensure the prudent management of such a reserve of assets and should in

particular ensure that the creation and destruction 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. ~~Such issuers~~Issuers of asset-backed crypto-assets should therefore establish, maintain and detail policies that describe, *inter alia*, the composition of the reserve assets ~~and~~, the allocation of assets, the comprehensive assessment of the risks raised by the reserve assets, the procedure for the creation and destruction of the asset-referenced tokens ~~as well as~~, the procedure to 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.

~~(30)Where the issuer of asset-referenced tokens invests the reserve assets, the investments should be made in secure, low risks assets with minimal market and credit risk, to protect holders of asset-referenced tokens against a decrease in value of the assets backing the value of the tokens. As the asset-referenced tokens can be used as a means of exchange for payment purposes, all profits or losses, resulting from the investment of the reserve assets should be borne by the issuer of the asset-referenced tokens.~~

(36) ~~(31)Issuers of~~To prevent the risk of loss for asset-referenced tokens ~~should also ensure that they have an adequate custody policy for such reserve assets to prevent the risks of loss of such assets and to preserve the value of the 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. ~~This~~That policy should ensure ~~at all times~~ 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 ~~have~~has prompt access to ~~these~~those reserve assets~~, where needed to perform their functions. In any case~~. The reserve assets should, depending on their nature, ~~the reserve assets should~~ be kept in custody either by a credit institution within the meaning of Regulation (EU) No 575/2013[26] or by ~~a~~an authorised crypto-asset service provider ~~authorised under this regulation for the service of custody of crypto-assets on behalf of third parties. The credit~~. Credit institutions or ~~the~~ 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 ~~that~~ such loss has arisen from an external event beyond reasonable control.

(37) 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.

(38) ~~(32)~~Some asset-referenced tokens may offer all their holders rights, such as redemption rights or claims on the reserve assets or on the issuer, while other asset-referenced tokens ~~do~~may not grant such rights to all their holders and may limit the right of redemption to specific holders. ~~This Regulation~~Any rules regarding asset-referenced tokens should be flexible enough to capture all ~~these~~those situations. ~~Therefore, issuers~~Issuers of asset-referenced tokens should ~~be required to indicate~~therefore inform the holders of asset-referenced tokens ~~who~~on whether they are provided with a direct claim on the issuer or redemption rights. Where issuers of asset- referenced tokens

[26] ~~Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1–337)~~

grant direct rights on the issuer or on the reserve assets to all the holders, the issuers should ~~be required to~~ precisely ~~define~~set out the conditions ~~for exercising~~under which such rights can be exercised. Where ~~they~~issuers of asset-referenced tokens restrict such direct rights on the issuer or on the reserve assets to a limited number of holders of asset- referenced tokens, the issuers should ~~in any case be required to~~still offer minimum rights to all the holders of asset- referenced tokens. ~~First, they~~Issuers of asset-referenced tokens should ensure the liquidity of ~~the asset-referenced~~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 fiat currency. ~~Secondly, where~~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. ~~Finally, when the issuers~~Issuers of asset-referenced tokens that voluntarily stop their operations or ~~when they~~that are orderly wound-down ~~in an orderly fashion, they~~ should have contractual arrangements in place to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens.

(39) ~~(33)Issuers~~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 ~~be prohibited from granting~~not grant interests to users of asset-referenced tokens for ~~the length of~~ time such users are holding ~~the~~those asset-referenced tokens.

~~(34)Issuers of~~ Some asset-referenced tokens and e- money tokens should ~~also~~ be ~~required to provide holders of asset- referenced tokens with clear, accurate and not misleading information. They should notably be required to produce a *whitepaper* at the time of the authorisation of the issuers of asset-referenced tokens, with additional disclosure items compared to other issuers of crypto-assets, including 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, the whitepaper should contain a clear and unambiguous warning in this respect. Marketing~~

~~communications of an asset-referenced token issuer should also include the same statement, where the issuers do not offer such direct rights to its holders.~~

~~(35)Beyond information included in the *whitepaper*, issuers should also provide holders of asset-referenced tokens with information on a continuous basis. In particular, they should disclose the amount of asset-referenced tokens and the value and the composition~~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~~, at least on a monthly basis. They should also be required to disclose any event that is likely to have a significant impact on the value of the asset-referenced tokens or on the reserve assets, irrespectively~~ 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 ~~whether~~ such ~~crypto-assets are admitted to trading on a trading platform for~~ crypto-assets ~~or not.~~

(36)When they stop their operations or when they are orderly winding down their activities according to national insolvency laws, issuers of asset-referenced tokens should also have an orderly wind-down plan to make sure that the rights of the holders of the asset-referenced tokens are protected. 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.

(40) (37)Due to their large scale, issuance of significant asset-referenced tokens could amplify thecan pose greater risks to financial stability, compared to than other crypto-assets and asset-referenced tokens with more limited issuance. Issuers of significant amounts of asset-referenced tokens should therefore be subject to more stringent requirements compared to otherthan issuers of other crypto-assets or asset-referenced tokens with more limited issuance. They should notablyin particular be subject to higher capital requirements, to the obligation tointeroperability requirements and they should establish a liquidity management policy and to interoperability requirements.

(38)National competent authorities should be in charge of the authorisation of asset-referenced tokens issuers. They should authorise the prospective issuers of asset-referenced tokens when that issuers would meet the requirements set out in this Regulation. A competent authority should be empowered to refuse to grant such authorisation when, in particular, the prospective issuer's business model may pose a serious threat to financial stability. Before granting an authorisation or refusing to grant an authorisation, the competent authority should consult EBA, European Securities and Markets Authority (ESMA) and where the asset-referenced tokens is referencing Union currencies, the competent authority shall also consult the European Central Bank (ECB) and the national central bank of issue of such currencies. EBA, ESMA, ECB and the national central banks should provide the competent authority with a non-binding opinion on the prospective issuer's application. Where authorising the prospective issuer of asset-referenced tokens, the competent authority should also approve the whitepaper produced by that entity. The authorisation granted by the competent authority should be valid in the entire 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. By the same token, the whitepaper should also be valid for the entire Union, without possibility for Member States to impose additional requirements. Credit institutions that are authorised under Directive 2013/36/EU should not need another authorisation under this Directive in order to issue asset-referenced tokens.

(39)While the ongoing supervision of asset-referenced tokens issuers should be ensured by national competent authorities, it would be justified to confer to the EBA (EBA) the power to supervise the issuers of significant asset-referenced tokens. Such crypto-assets could be used to make large volumes of payment transactions on a cross-border basis and they would require supervision at EU level, in order to avoid supervisory arbitrage across Member States. The supervision of EBA is also justified, as the asset-referenced tokens can be used as a means of exchange.

(40)Where an asset-referenced token is classified as significant in accordance with that regulation and the supervision of its issuer is transferred to EBA, that authority should establish a college of supervisors. Issuers of significant asset-referenced tokens are usually at the centre of a network of entities which ensure the issuance of such crypto- assets, their transfer, as well as their distribution to holders. Therefore,

~~the members of the college for issuers of significant asset-referenced tokens should include all the competent authorities of the relevant entities and crypto-asset service providers which ensure, among others, the custody of the reserve assets, the trading platforms for crypto- assets where the significant asset reference tokens is 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 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.~~Issuers of asset-referenced tokens should have an orderly wind-down plan to ensure that the rights of the holders of the asset-referenced tokens are protected where issuers of asset-referenced tokens stop their operations or when they are orderly winding down their activities according to national insolvency laws.

(41) ~~(41)Before issuing~~Issuers of e-money tokens~~, its issuers~~ 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 ~~to~~they should comply with the relevant ~~provisions~~operational requirements of ~~that~~ Directive~~. It~~ 2009/110/EC, unless specified otherwise in this Regulation. Issuers of e- money tokens should ~~also be required to~~ produce a ~~whitepaper notified~~crypto-asset white paper and notify it to ~~its~~their competent authority. Where the issuance of e-money tokens is below a ~~numerical~~certain threshold ~~set out in this Regulation~~ or where ~~they~~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 ~~be subject to the obligation to~~ draw up a ~~whitepaper~~crypto-asset white paper and ~~to~~ notify it to their competent authority.

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

(43) ~~(43)~~Issuers of e-money tokens, and any crypto-asset service providers, should ~~be prohibited from granting~~not grant interests to holders of e-money tokens for the ~~length of~~ time such holders are holdings ~~the~~those e- money tokens.

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

(45) ~~(45)In order to avoid cross-currency risks, where~~Where an issuer of e-money ~~token~~tokens invests the funds received in exchange for e- money tokens, ~~it should be required to invest~~ 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.

(46) ~~(46)As significant~~Significant e-money tokens can ~~raise additional challenges in terms of~~pose greater risks to financial stability ~~compared to other~~than non- significant e-money tokens and traditional electronic money~~, issuers~~. Issuers of such significant e-money tokens ~~shall~~should therefore be subject to additional requirements ~~set out under this Regulation~~. Issuers of e-money tokens should ~~notably~~in particular be subject to higher capital requirements ~~compared to those applicable to~~than other e-money token issuers, to ~~the obligation to~~interoperability requirements and they should establish a liquidity management policy ~~and to interoperability requirements~~. Issuers of e-money tokens should also ~~be required to apply some~~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.

~~(47)E-money tokens issuers should be supervised by the national competent authorities that are in charge of supervising the application of Directive 2009/110/EC. However, given the scale of significant e-money token and the challenges that they could raise in terms of financial stability, it would be justify to establish a dual supervision by both the national competent authority and EBA on these issuers of significant e-money tokens. EBA should be in charge of the supervision of the additional requirements set out in this Regulation and applying to issuers of e-money tokens that are classified as significant. The national competent authority should remain responsible for the other provisions applying to such an issuer of e-money tokens.~~

~~(48)Where an e-money token is classified in accordance with that regulation as significant, EBA should establish a college of supervisors. Like issuers of asset-referenced payment tokens, issuers of significant e-money tokens are usually at the centre of a network of entities which ensure the issuance of such crypto-assets, their transfer, as well as their distribution to holders. Therefore, the members of the college for issuers of significant asset-referenced tokens should include all the competent authorities of the relevant entities and crypto-asset service providers which ensure, among others, the trading platforms for crypto-assets where the significant e-money tokens is admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant e-money tokens on behalf of holders. The college 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 e-money tokens or on the relevant entities providing services or activities in relation to these significant e-money crypto-assets.~~

(47) ~~(49)~~Crypto-asset services should only be provided by ~~a~~ legal ~~entity~~entities that ~~has~~have a registered office in a Member State and that ~~has~~have been authorised as a crypto-asset service provider by the competent authority of the Member State where its registered office is located. ~~Any person, either legal or natural, who has not been authorised under this Regulation should be prohibited from providing any crypto-asset service.~~

(48) ~~(50)~~This Regulation ~~regulates the provision of crypto-asset services in the Union. It~~ should not affect the possibility for persons established in the Union to receive crypto-asset services by a third-country firm at their own ~~exclusive~~ initiative. Where a third-country firm provides crypto-asset services at the own ~~exclusive~~ initiative of a person established in the Union, the crypto-asset services should not be deemed as provided in ~~the territory of~~ 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 ~~exclusive~~ initiative of the client. In such a case, the third -country firm should be authorised as a crypto-asset service provider ~~under this Regulation~~.

(49) 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.

(50) 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.

(51) ~~(51)~~Some firms subject to ~~high regulatory standards under~~ Union legislation on financial services ~~regulation~~ should be allowed to provide crypto-asset services without prior authorisation ~~under this Regulation. For instance, credit~~. Credit institutions ~~that are~~ authorised under Directive 2013/36/EU should not need another authorisation ~~under this Regulation in order~~ to provide crypto- asset services. Investment firms authorised under Directive ~~(EU)~~ 2014/65 ~~should also be allowed to provide crypto-asset services across the EU, where they are authorised~~/EU to provide one or several investment services as defined under that Directive ~~(EU) 2014/65 which is or are~~ similar to the crypto- asset services they intend to provide~~. Payment institutions authorised under Directive (EU) 2015/2366[27] should be allowed to provide the service of payment transactions in asset-referenced tokens, without prior authorisation under this Regulation. While those firms should~~ should also be allowed to provide crypto-asset services across the Union without ~~prior~~another authorisation~~, they should be subject to the operational requirements set out in this Regulation~~.

(52) ~~(52)~~In order to ensure consumer protection, market integrity and financial stability, crypto- asset service providers~~, whatever the service they provide, should be subject to a set of general requirements. They~~ 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[42]. Where marketed at distance, the contracts between crypto-asset service providers and consumers should ~~also~~ be ~~required to~~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.

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

(54) ~~(53)~~Crypto-asset service providers should be subject to strong organisational

~~[27] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC~~

[42] Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).

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 ~~provided~~that they provide. They should also have systems in place to detect potential market abuse committed by clients.

~~(54)Crypto-asset service providers should also have clear contractual arrangements with their clients. A crypto-asset services should be considered 'financial services' for the purpose of Directive 2002/65/EC concerning the distance marketing of consumer financial services[28]. When marketed at distance, the contracts between crypto-asset service providers and their clients should be subject to the provisions of that Directive. They should also provide their clients with clear, accurate and non-misleading information. They should warn their clients about the risks associated with crypto-assets and they should make their pricing policies public. Crypto-asset service providers should also establish a complaint handling procedure and have a robust policy to identify, prevent, manage and disclose conflicts of interest.~~

(55) ~~(55)~~In order to ensure consumer protection, crypto-asset service providers ~~shall also~~should have adequate arrangements to safeguard the ownership rights of clients~~ as regards~~' holdings of crypto- assets. Where their business model requires ~~holding~~them to hold funds~~,~~ as defined ~~under the Payment Services Directive~~in Article 4, point (25), of Directive (EU) 2015/2366~~)~~ of the European Parliament and of the Council[43] in the form of banknotes, coins, scriptural money or electronic money belonging to their clients, crypto-asset service providers should ~~have the obligation to~~ place such funds with

a credit institution or a central bank. Crypto-assets service providers should be authorised to make payment transactions ~~related to~~in connection with the crypto-asset ~~service~~services they offer, only ~~if~~where they are authorised as payment institutions in accordance with Directive (EU) 2015/2366.

(56) ~~(56)~~Depending on the ~~specific~~ services they provide and due to the specific risks raised by each type of services, crypto-asset service providers ~~shall also~~should be subject to ~~specific~~ requirements~~. For instance, crypto~~ 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 ~~specific~~mandatory contractual provisions and ~~they~~ should establish and implement a custody policy. Those crypto- asset service providers should also be held liable for any ~~loss~~damages resulting from an ICT- related incident, ~~whether~~including an incident resulting from ~~malicious activity like~~ a cyber-attack, theft or any malfunctions.

(57) ~~(57)~~To ensure an orderly functioning of crypto-asset markets, crypto-asset service providers operating a trading platform for crypto-assets should have detailed operating

~~[28] Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16–24)~~

[43] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

rules ~~and~~, should ensure that their ~~system~~systems and procedures are sufficiently resilient~~. They~~ and should ~~also~~ be subject to pre-trade and post-trade transparency requirements adapted to the crypto-asset market. ~~They~~Crypto-asset service providers should ensure that the trades executed on their trading platform for crypto-assets are settled and recorded on the DLT ~~without undue delay~~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.

(58) ~~(58)Crypto~~To ensure consumer protection, crypto-asset service providers ~~which~~that exchange crypto- assets against fiat currencies or other crypto-assets~~,~~ by using their ~~proprietary~~own capital~~,~~ should establish a non- discriminatory commercial policy. They should ~~be obliged to~~ publish either firm quotes or ~~at least a~~the method they are using for determining the price of crypto-assets they ~~offer for buying~~wish to buy or ~~selling~~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 ~~reasonable~~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 ~~another~~other crypto-asset service ~~provider~~providers should implement procedures for the prompt and proper sending of ~~clients'~~those orders. ~~They~~Crypto-assets service providers should ~~be prevented from receiving~~not receive any monetary or non-monetary benefits for transmitting ~~these~~those orders to any particular trading platform for crypto-assets or any other crypto-asset service providers.

(59) ~~(59)The activity consisting in placing crypto-assets to potential consumers should also be subject to specific requirements.~~ Crypto-asset service providers ~~providing~~ that ~~service should have arrangements to~~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 ~~be required to~~ put in place specific measures to prevent conflicts of interest arising from that activity.

(60) ~~(60)Crypto~~To ensure consumer protection, crypto-asset service providers ~~which~~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 ~~client~~clients'~~s~~ experience, knowledge, objectives and ability to bear losses. ~~If~~Where the ~~client does~~clients do not provide information ~~or he/she does~~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 ~~provider~~providers should warn ~~the~~those clients that the crypto-asset or the crypto-asset services may not be ~~adapted to~~suitable for them. When providing advice, crypto-asset service providers should establish a report, summarising the ~~client~~clients'~~s~~ needs and demands and the advice given.

~~(61)Asset-referenced tokens can be used as a means of payment. To ensure consumer protection, crypto-asset service providers that carry out payment transactions in asset-referenced tokens should be subject to some provisions applicable to payment institutions under Directive (EU) 2015/2366.~~

~~(62)Given the relatively small size 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 or refused by the authority where the entity has its registered office. That authorisation should indicate the~~

~~crypto- asset services for which the crypto-asset service provider is authorised. Such an authorisation should be valid for the entire Union. It could be withdrawn by the same authority that granted it in the first place.~~

~~(63)The European Securities and Markets Authority (ESMA) should also establish a register of crypto-asset service providers, which would include information on the entities authorised to provide these services across the Single Market. This register should also include the whitepapers notified to national competent authorities and published by issuers of crypto-assets, including whitepapers concerning asset-referenced tokens or e- money tokens.~~

~~(64)To~~It is necessary to ensure users' confidence in ~~the~~ crypto-asset ~~market~~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 ~~should be subject to provisions to deter market abuse~~. However, as ~~the~~ issuers of crypto-assets and crypto-asset service providers are very often ~~small and medium-sized enterprises~~SMEs, it ~~could~~would be disproportionate to apply all the provisions of ~~the~~ Regulation (EU) No 596/2014[29] of the European Parliament and of the Council[44] ~~(Market Abuse Regulation)~~ to them. ~~Therefore, this Regulation should include some bespoke provisions on market abuse that would prohibit some behaviours, such as~~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~~, as these behaviours are likely to undermine users' confidence in the integrity of crypto-asset markets~~. 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. ~~The provisions on market abuse should be applied taking into account the specificities of the DLT market structure on which crypto-assets are traded as well as the role of different actors in the crypto-asset market which may enable them to commit market abuse.~~

(61) 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~~. Competent authorities should be equipped with additional powers~~, and to investigate infringements ~~to~~of the rules on market abuse. Given the cross-border nature of ~~the~~ crypto- asset markets, competent authorities should ~~have the obligation to~~ cooperate with each other to detect and deter any infringements of the ~~Regulation~~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.

(62) ~~The European Banking Authority (EBA) should also be provided with specific powers to~~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.

~~29~~44 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ~~Text with EEA relevance~~OJ(OJ L 173, 12.6.2014, p. 1~~–61~~).

(63) 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.

(64) 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.

(65) The EBA should establish a college of supervisors for issuers of significant e-money tokens. Issuers of significant 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. The members of the college of supervisors for issuers of significant 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 e-money tokens are admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant e-money tokens on behalf of holders. The college of supervisors for issuers of significant 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 e-money tokens or on the relevant entities providing services or activities in relation to those significant e-money tokens.

(66) To supervise the issuers of significant asset-referenced tokens ~~that have been designated as~~

~~significant.~~, 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 ~~applying to issuers of significant e-money tokens~~.

(67) ~~(67)~~The EBA should charge fees on issuers of significant asset-referenced tokens ~~or~~and issuers of significant e-money tokens to cover its costs, including overheads. For issuers of significant asset-referenced tokens, the ~~level of the~~ fee should be proportionate to ~~the size of~~ the size of their reserve assets. For issuers of significant e-money tokens, the ~~level of the~~ fee should be proportionate to the ~~amounts~~amount of funds received in exchange ~~of~~for the significant e-money tokens. ~~The Commission~~

~~should be empowered to take a delegated act to specify how these fees should be calculated.~~

(68) 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[45]. 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.

(69) In order to promote the consistent application of this Regulation, including adequate protection of investors 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.

(70) ~~(68)The Regulation should also include the transitional provisions.~~ 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 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[46] and Regulation (EU) No 1095/2010 of

[45] OJ L 123, 12.5.2016, p. 1.

[46] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

the European Parliament and of the Council[47].

(71) 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.

(72) 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, 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.

(73) 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 ~~application~~force of this Regulation, ~~it would be justified to exempt the~~ issuers of such crypto-assets should be exempted from the obligation to publish a ~~white paper~~crypto-asset white paper and other ~~requirements~~ applicable ~~set out by this Regulation~~requirements. However, ~~these~~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 ~~under~~as soon as this Regulation~~.~~

~~(69)The entry~~ enters into application.

(74) 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[48] in order to make it applicable to breaches of this Regulation.

(75) 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~~.~~.

HAVE ADOPTED THIS REGULATION:

[47] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

[48] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

TITLE I~~:~~
Subject Matter, Scope and Definitions

Article 1

Subject ~~*Matter*~~matter

This Regulation ~~establishes~~lays down uniform ~~requirements~~rules for the following:

(a) transparency and disclosure requirements for the issuance and 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, ~~issuer~~issuers of electronic money tokens and crypto-asset service providers;

(d) consumer protection rules for the issuance, trading, exchange and custody of crypto-assets;

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

Article 2

Scope ~~*and exemptions*~~

1. This Regulation applies to ~~entities~~persons that are engaged in the issuance of crypto-assets ~~and~~or provide services related to crypto-assets in the Union.

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

   (a) financial instruments ~~within the meaning of~~as defined in Article 4(1), point (15), of Directive 2014/65/EU[30];

   (b) electronic money ~~within the meaning of~~as defined in Article ~~2(2~~2, point (2), of Directive 2009/110/EC[31], except ~~if~~where they qualify as ~~an~~ electronic money ~~token~~tokens under this Regulation;

   (c) deposits ~~within the meaning of~~as defined in Article 2(1), point (3), of Directive 2014/49/EU[32] of the European Parliament and of the Council[49];

   (d) structured deposits ~~within the meaning of~~as defined in Article 4(1), point (43), of Directive 2014/65/EU~~.~~;

   (e) securitisation ~~within the meaning of~~as defined in Article ~~2(1~~2, point (1), of Regulation (EU) 2017/2402[33] of the European Parliament and of the Council[50].

~~[30] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance, OJ L 173, 12.6.2014, p. 349–496.~~

~~[31] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p.7).~~

[32][49] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes ~~Text with EEA relevance~~ (OJ L 173, 12.6.2014, p. 149–~~178~~).

[33][50] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35–~~80~~).

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

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

(b) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities ~~referred to~~as defined in Directive 2009/138/EC[34] of the European Parliament and of the Council[51] when carrying out the activities referred to in that Directive;

(c) a liquidator or an administrator acting in the course of an insolvency procedure, except for the purpose of Article ~~29~~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 ~~application of Article 15, Article 16(1) to 16(4), Article 23 and Chapter 2~~provisions of chapter I of Title III, except Articles 21 and 22;

(b) Article ~~30~~31.

5. Where providing one or more crypto-asset services, credit institutions authorised under Directive 2013/36/EU shall not be subject to the ~~application of~~provisions of chapter I of Title V, except Articles ~~46(1), 47, 48(1) to 48(4), 49, 50, 51~~57 and ~~Chapter III of Title V~~58.

6. Investment firms authorised under Directive 2014/65/EU shall not be subject to the ~~application of~~provisions of chapter I of Title V, except Articles ~~46(1)~~57, ~~47~~58, ~~48(1) to 48(4), 49, 50, 51~~60 and ~~Chapter III of Title V~~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 ~~service referred to~~services defined in Article 3(1), point (~~q~~11), of this Regulation ~~is~~are deemed to be equivalent to the investment activities referred to in points (8) and (9) of Section A of Annex I ~~of~~to Directive 2014/65/EU;

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

(c) the crypto-asset services ~~referred to~~defined in Article 3(1), point (~~t~~14), of this Regulation ~~is~~are deemed to be equivalent to the investment ~~service~~services

[34][51] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (~~Text with EEA relevance)~~ OJ L 335, 17.12.2009, p. 1~~–155~~).

referred to in point (2) of Section A of Annex I ~~of~~to Directive 2014/65/EU;

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

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

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

~~7.Without prejudice of Article 11(5) of Directive (EU) 2015/2366, payment institutions authorised under Article 11 of Directive (EU) 2015/2366 are not subject to the provisions of Articles 46(1), 47, 48(1) to 48(4), 49, 50, 51 and Chapter III of Title V, where they only provide the crypto-asset services referred to in Article 3(1)(x).~~

Article 3

Definitions

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

(1) ~~(a)~~'distributed ledger technology' or 'DLT' means a ~~class~~type of ~~technologies which~~technology that support the distributed recording of encrypted data;

(2) ~~(b)~~'crypto-asset' means a digital representation of value or rights~~,~~ which may be transferred and stored electronically, using distributed ledger technology or similar technology;

(3) ~~(c)~~'asset-referenced ~~tokens~~token' means a type of crypto-~~assets whose main purpose is to be used as a means of exchange and~~asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets;

(4) ~~(d)~~'electronic money token' or 'e-money token' means a type of crypto-~~assets whose~~asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by ~~being denominated in (units~~referring to the value of~~)~~ a fiat currency~~.~~

~~(e)'significant electronic money token' means a type of electronic money tokens that has been classified as significant in accordance with Article XX;~~

~~(f)'significant asset-referenced token' means a type of asset-referenced tokens that has been classified as significant in accordance with Article 14~~ that is legal tender;

(5) ~~(g)~~'utility token' means a type of crypto-~~assets~~asset which ~~are~~is intended to provide digital access ~~digitally~~ to ~~an application, services~~a good or ~~resources~~service, available on ~~a distributed ledger~~DLT, and ~~that are~~is only accepted ~~only~~ by the issuer of that token ~~to grant access to such application, services or resources available~~;

(6) ~~(h)~~'issuer of 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 ~~to third parties~~;

~~(i)'issuer of asset-referenced tokens' means a person who offers asset-referenced tokens to third parties;~~

~~(j)'issuer of significant asset-referenced tokens' means a person who offers significant asset-referenced tokens to third parties;~~

~~(k)"issuer of electronic money tokens' means a person who publicly offers electronic money tokens to third parties;~~

~~(l)'issuer of significant electronic money tokens' means a persons who publicly offers significant electronic money tokens to third parties;~~

~~(m)'offering~~'offer to the public' means an ~~offering~~offer to third parties to acquire a crypto-asset in exchange for fiat currency or other crypto-assets;

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

(8) ~~(o)~~'crypto-asset service' means any of the services and activities listed below relating to any crypto-~~assets~~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 fiat currency that is legal tender;

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

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

(f) ~~the placement~~placing of crypto-assets;

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

(h) ~~the~~providing advice on crypto-assets;

~~(i)the execution of payment transactions in asset-referenced tokens.~~

(9) ~~(p)~~'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;

(10) ~~(q)~~'the operation of a trading platform for crypto-assets' means managing one or more ~~crypto-assets~~ trading platforms for crypto-assets, within which multiple third-party buying and selling interests for crypto-assets can interact in a manner that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for fiat currency that is legal tender;

(11) ~~(r)~~'the exchange of crypto-assets for fiat currency' means concluding purchase or sale contracts concerning crypto-assets with third parties against fiat currency that is legal tender~~,~~ by using proprietary capital;

(12) ~~(s)~~'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;

(13) ~~(t)~~'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;

(14) ~~(u)~~'~~the placement~~placing of crypto-assets' means the marketing of newly-issued crypto- assets or of crypto-assets that are already issued~~,~~ but that are not admitted to trading on a trading platform for crypto-assets, to specified purchasers and which does not involve an ~~offering~~offer to the public or an ~~offering~~offer to existing holders of the issuer's crypto-assets;

(15) ~~(v)~~'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;

(16) ~~(w)~~'~~the~~providing advice on crypto-assets' means ~~'the act of~~ 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, concerning the acquisition or the sale of one or more crypto-assets, or the use of crypto-asset services;

~~(x)'payment transactions in asset-referenced tokens' means the activity, conducted on behalf of one or several natural or legal persons, of transferring an asset-referenced token from one address or registered position used to receive crypto- assets to another, irrespective of any underlying obligations between the sender and the recipient;~~

(17) ~~(y)~~'management body' means the body ~~or the bodies~~ of an issuer of ~~asset-referenced tokens or significant asset-referenced tokens, of an issuer of e-money tokens or significant e-money tokens~~crypto-assets, or of a crypto-asset provider, which ~~are~~is appointed in accordance with national law, and which ~~are~~is empowered to set the entity's strategy, objectives, the overall direction and which ~~oversee~~oversees and ~~monitor~~monitors management decision-making and ~~include~~which includes persons who ~~directly~~ direct the business of the entity~~.~~;

(18) ~~(z)~~'credit institution' means a credit institution as defined in ~~point (1) of~~ Article 4(1), point (1), of Regulation (EU) No 575/2013~~[35]~~;

(19) ~~(αα)~~ 'qualified investors' means 'qualified investors' ~~within the meaning of~~as defined in Article 2, point (e), of Regulation (EU) 2017/1129~~[36]~~.;

(20) ~~(ββ)~~ 'reserve assets' means the basket of fiat currencies that are legal tender, commodities or crypto- assets, backing the value of an asset-referenced tokens, or the investment of such assets~~.~~;

(21) ~~(χχ)~~ 'home Member ~~States~~State' means:

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

(b) where the issuer of crypto-assets ~~with~~, other than asset-referenced tokens

~~[35] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1–337)~~

~~[36] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12)~~

or electronic money tokens, has no registered office in the ~~EU~~Union but has two or more branches in the ~~EU~~Union, the ~~home~~ Member State ~~is determined at the choice of~~chosen by the issuer among those ~~of the~~ Member States where the issuer has branches~~. This choice is definitive.~~;

(c) ~~for issuers~~where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, is established in a third country ~~with~~and has no branch in the ~~EU,~~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~~, at the choice of the issuer. This choice is definitive.~~;

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

(e) for issuers of electronic money tokens, the Member States where ~~such an~~the issuer of electronic money tokens is authorised as a credit ~~institutions~~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 ~~States~~State where the ~~issuer of~~ crypto-~~assets~~ asset service provider has its registered office;

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

(23) ~~(εε)~~ 'competent authority' means:

(a) the authority, designated by each Member State in accordance with Article ~~74~~81 for issuers of crypto-assets, issuers of asset-referenced ~~crypto-assets~~tokens and 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;

(24) ~~(φφ)~~ 'commodity' means 'commodity' under Article 2(6) of ~~the~~ Commission Delegated Regulation (EU) 2017/565[~~37~~52];

(25) ~~(γγ)~~ '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[~~38~~53], taking

[~~37~~52] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1~~–83~~).

[~~38~~53] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are ~~admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38–57)~~

into account the conditions regarding aggregation thereof laid down in paragraphs 4 and 5 of Article ~~12(4) and (5)~~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.

(26) '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;

(27) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession.

2. The Commission ~~shall be~~is empowered to adopt delegated acts in accordance with Article ~~109~~121 to specify technical elements of the definitions laid down in paragraph 1, and to adjust ~~them~~those definitions to market developments~~,~~ and technological developments ~~and experience of behaviour that is prohibited under Title V and to ensure the uniform application of this Regulation~~.

admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

TITLE II~~: Offering and Marketing of~~ Crypto-Assets, other than asset-referenced tokens or e-money tokens

Article 4

~~*Obligation to publish a whitepaper and exemptions*~~*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. ~~An~~No issuer ~~shall be entitled to offer a~~of crypto-~~asset~~assets, other than ~~an~~ asset-referenced tokens or e-money tokens, shall, in the Union, offer such crypto-assets to the public ~~in the Union~~, or ~~to request~~seek an admission of such crypto- assets~~, other than asset-referenced tokens or e-money tokens,~~ to trading on a trading platform for crypto-assets, ~~provided~~unless that ~~such an~~ issuer:

   (a) is a legal entity;

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

   ~~(b)draws up and publishes a whitepaper which complies with requirements of Article 6; and~~

   ~~(c)notifies~~has notified that crypto-asset white paper in accordance with Article 7;

   (c) has published the ~~whitepaper to a competent authority~~crypto-asset white paper in accordance with Article 8;

   (d) complies with the requirements laid down in Article 13.

2. Paragraph 1, points (b) to (d) shall not apply ~~for public offerings of crypto-assets if~~where:

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

   (b) the crypto-assets are automatically created through mining as a reward for the maintenance of the DLT or the validation of transactions ~~on a or similar technology~~; ~~or~~

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

   (d) the ~~offering of~~ crypto-assets ~~is addressed~~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, ~~or(e)~~the total consideration of ~~such~~ an ~~offering~~offer to the public of crypto-assets in the Union does not exceed EUR ~~1,000,000~~1 000 000, or the ~~corresponding~~ equivalent amount in another currency or in crypto- assets~~, over a period of 12 months~~; ~~or~~

   (f) the offer to the ~~offering~~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) ~~of the sub-paragraph 1~~, ~~the~~ crypto-assets shall not be considered ~~as~~to be offered for free~~,~~ where ~~the prospective holders of crypto-assets~~purchasers are required to provide or to undertake to provide personal

data to the issuer, in exchange for thethose crypto-assets. The crypto-assets shall not be considered as offered for free, or where the issuer of those crypto-assets receivereceives from the prospective holders of those crypto-assets any third party fees, commissions, monetary benefits or non-monetary benefits in exchange of thefor those crypto-assets from the prospective holders of crypto- assets or any third party.

3. Where an issuerthe offer to the public of crypto-assets intends to offer one or several crypto-asset services, it shall be authorised as a crypto-asset service provider in accordance with Article 64, other than asset-referenced tokens or e-money tokens, 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 12 months.

Article 5

Requirements on issuers of crypto-assets

1.The issuer of crypto-assets that are offered to the public or admitted to trading on a trading platform for crypto-assets in the EU shall be incorporated in the form of a legal entity.

2.The issuer of crypto-assets shall:

(a)act honestly, fairly and professionally;

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

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

(d)have effective administrative arrangements;

(e)maintain all of its systems and security access protocols to appropriate EU standards.

In order to assist competent authorities and issuers of crypto-assets, ESMA, in cooperation with EBA, shall develop guidelines pursuant to Article 16 of Regulation (EU) No 1095/2010 to specify the appropriateness of systems and security protocols as referred to in point (e) of the first sub-paragraph.

3.Issuers of crypto-assets shall act in the best interests of the holders of crypto-assets. No holder of crypto-assets shall obtain preferential treatment as regards one another, unless such preferential treatment is disclosed in the whitepaper published by the issuer of crypto-assets.

4.Where the issuer sets a time limit for its offering of crypto-assets to the public, it shall also have effective arrangements in place to monitor and safeguard the funds, including other crypto-assets, raised during the offering. For that purpose, the issuer of crypto-assets shall ensure that the funds or other crypto-assets collected during the offering are kept in custody by:

(a)a credit institution, where the funds raised during the offering takes the form of fiat currency; and/or

(b)a crypto-asset service provider authorised for the crypto-asset service as referred to in Article 3 (1)(p).

Where an offering of crypto-assets is cancelled for any reason, the issuer shall ensure that any funds collected from the purchasers are duly returned to them as soon as possible.

~~*Article 6*~~

Content and form of the ~~whitepaper~~crypto-asset white paper

1. The ~~whitepaper~~crypto-asset white paper referred to in Article 4(1), point (b), shall contain all the following ~~relevant~~ information ~~concerning the crypto-asset issuer and the planned crypto-asset offering or admission to trading on a trading platform for crypto-assets which is necessary to enable potential buyers to make an informed purchase decision and understand the risks relating to the offering~~:

   (a) a detailed description of the ~~key characteristics of the~~ issuer ~~of crypto-assets~~ and a presentation of the main participants involved in the project's design and development;

   (b) a detailed description of the issuer's project, the type of crypto-asset ~~offering~~that will be offered to the public or for which admission to trading is sought, the reasons ~~for~~why the ~~offering~~crypto-assets will be offered to the public or why admission to trading is sought and the planned use of the fiat currency or other crypto-assets collected via the ~~offering~~offer to the public;

   (c) a detailed description of the characteristics of the ~~offering~~offer to the public, in particular the number of crypto-assets ~~to~~that will be issued or ~~admitted~~for which admission to trading is sought, the issue price of the crypto-assets~~,~~ and the subscription terms and conditions;

   (d) a detailed description of the rights and obligations attached to the crypto-assets and the procedures and conditions ~~of exercise of these~~for exercising those rights;

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

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

   (g) ~~2The whitepaper shall contain~~ the ~~minimum~~ disclosure items specified in Annex ~~I~~I.

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

3. The ~~whitepaper~~crypto-asset white paper shall ~~include~~contain the following statement: "The issuer of the crypto-assets is solely responsible for the ~~*preparation*~~content of this ~~*whitepaper*~~crypto-asset white paper. This ~~*document*~~crypto-asset white paper has not been reviewed or approved by any competent authority in any Member State of the European Union".

4. The ~~whitepaper~~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, unless the issuer of those crypto-assets can guarantee ~~this~~such future value.

5. The ~~whitepaper shall not use information on the value of other crypto-assets to provide projections on the potential future value of crypto-assets described in the whitepaper.~~

~~The whitepaper~~crypto-asset white paper shall ~~also include~~contain a clear and unambiguous statement that :

   (a) the crypto- assets may lose their value in part or in full~~. The white paper shall~~

~~also state that:~~;

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

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

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

6. ~~5.The whitepaper shall include a summary.~~ Every crypto-asset white paper shall contain a statement from the management body of the issuer 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 ~~in relation to~~about the offer ~~or~~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 format and content of the summary of the ~~whitepaper~~crypto-asset white paper shall provide, in conjunction with the ~~whitepaper~~crypto-asset white paper, appropriate information about essential elements of the crypto-assets concerned in order to help potential purchasers of the crypto-assets to make an informed decision. The summary shall ~~include~~contain a warning that:

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

(b) the prospective purchaser should base any decision to purchase a crypto-asset ~~should be based on consideration~~on the content of the ~~whitepaper as a~~ whole ~~by the prospective purchaser~~crypto-asset white paper;

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

(d) the ~~whitepaper~~crypto-asset white paper does not constitute a prospectus ~~under~~as referred to in Regulation (EU) 2017/1129 ~~of the European Parliament and of the Council of 14 June 2017~~ or another offering document pursuant to Union legislation or national laws.

8. ~~6.Every whitepaper shall be dated. It shall also include a statement from the management body of the crypto-asset issuer confirming that the whitepaper complies with the requirements of this Title and specifying that, to their best knowledge, the information presented in this document is correct and that there is no significant omission making the whitepaper misleading.~~Every crypto-asset white paper shall be dated.

9. ~~7.~~The ~~whitepaper~~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.

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

11. ~~9.~~ESMA, after consultation of the EBA, shall develop draft implementing technical

standards to establish standard forms, formats and templates for the purposes of paragraph ~~8~~10.

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

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

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;

(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;

(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 concerned.

Article 7

~~*Requirements regarding marketing communications*~~

~~Any type of marketing communications relating to an offering of crypto-assets or the admission of such crypto-assets to trading on a trading platform for crypto-assets shall satisfy the following requirements:~~

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

~~(b)the information contained in the advertisement shall be fair, clear and not misleading.~~

~~(c)the information contained in the marketing communications shall be consistent with the information contained in the whitepaper, where such a whitepaper is required in accordance with Article 4 and published in accordance with Article 9.~~

~~(d)the marketing communications shall contain a statement that a whitepaper has been published and indicate the address of the issuer's website.~~

~~*Article 8*~~

Notification of the ~~whitepaper and~~crypto-asset white paper, and, where applicable, of the marketing communications~~ to the competent authority

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

2. ~~A whitepaper shall be notified~~Issuers 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 at least ~~twenty~~20 working days before ~~its date of its~~ publication~~.~~

~~3.When notifying the whitepaper,~~ of the ~~issuer of~~ crypto-~~assets shall provide its~~asset white paper. That competent authority ~~with an assessment explaining the reasons~~may exercise the powers laid down in Article 82(1).

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

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

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

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

(d) a structured deposit ~~under~~as defined in Article 4(1), point (43), of Directive 2014/65/EU.

~~Upon the receipt of the whitepaper and the assessment as referred to in paragraph 3, the competent authority shall assess the compliance of the issuer with this Title. Where the competent authority concludes that the crypto-asset issuer does not comply with the requirements under Title II, it shall exercise its powers pursuant to paragraph 7 of this Article or Article 74.~~

~~5.Where an issuer of crypto-assets intends to offer its crypto-assets in several Member States or seeks an admission of the crypto-assets to trading on a trading platform which is not authorised in its home Member State, it shall~~Issuers 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 ~~its~~their home Member State with a list of ~~the~~host Member States, if any, where ~~the~~they intend to offer their crypto-assets ~~are~~ to ~~be offered or admitted~~the public or intend to seek admission to trading on a trading platform for crypto-assets ~~and~~. They shall also inform their home Member State of the starting date of the intended ~~offering of crypto-assets~~offer to the public or intended admission to trading on such a trading platform for crypto-assets ~~in those Member States~~.

~~Within two working days following the receipt of the list referred to in the first sub-paragraph, the~~The competent authority of the home Member State shall notify the competent authority of the host Member State ~~with the whitepaper.~~

~~6.Where the offering of crypto-assets concerns utility tokens for a service that is not already in operation, the duration of~~of the intended offer to the public ~~offering as described in the whitepaper shall not exceed twelve months~~or the intended admission to trading on a trading platform for crypto-assets within 2 working days following the receipt of the list referred to in the first subparagraph.

~~7.After the notification and without prejudice of the powers set out in Articles 75 and 82, the competent authority of the home Member State shall have the power to:~~

~~(a)require the inclusion in the whitepaper, the marketing communications or the issuer's website of supplementary information or amendment as the competent authority may specify;~~

~~(b)suspend or prohibit an offering of crypto-assets, their admission to trading on a trading platform for crypto-assets, or any marketing communications relating~~

~~to them, if the competent authority suspects that a provision of this Title has been infringed;(c)make public the fact that an issuer is failing to comply with its obligations under any provision of this Title.~~

4. Competent authorities shall communicate to ESMA the crypto-asset white papers that have been notified to them and the date of their notification. ESMA shall make the notified crypto-asset white papers available in the register referred to in Article 57.

Article ~~9~~8

Publication of the ~~whitepaper following its notification~~

~~1.The whitepaper shall be made available to the public by the issuer~~***crypto-asset white paper, and, where applicable, of the marketing communications***

1. Issuers 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 ~~offering~~offer to the public of those crypto-assets or the admission of those crypto- assets ~~to trading. The whitepaper must be effectively disseminated by online posting on the issuer's website. It~~ 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 issuer's website for as long as the crypto-assets are held by the public.

2. The ~~whitepaper or the amended whitepaper pursuant to Article 10, as disseminated and made available to the public by the issuer of crypto-assets~~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

~~3.After publication of the whitepaper, the issuer of crypto-assets shall be authorised to offer its crypto-assets in the entire Union or to seek an admission to trading on a trading platform for crypto-assets.~~

5.

~~4.Where the issuer sets~~***Offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, that are limited in time***

1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit ~~for its offering~~on their offer to the public of those crypto-assets ~~to the public, the issuer~~ shall publish on ~~its~~their website the result of the ~~offering~~offer within ~~two~~16 working days ~~at the latest~~ from ~~the close of this offering. The close of the offering shall be defined as the earlier of the date on which the maximum targeted amount of the offering is reached and the date corresponding to~~ the end of the subscription period.

~~5.The competent authority shall communicate to ESMA the whitepapers having been notified and the date of their notification. ESMA shall make the notified whitepapers available in the register as referred to in Article 66.~~

~~6.Where an issuer of crypto-assets has published a whitepaper complying with the disclosure requirements under Article 6, the offering of crypto-assets shall be exempted from:~~Issuers 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 issuers shall ensure that the funds or

other crypto-assets collected during the offer to the public are kept in custody by either of the following:

~~(a)the application of Directive 2000/31/EC[39];~~

(a) ~~(b)the application of Articles 6 to 8 of Directive 2011/83/EU[40];~~a credit institution, where the funds raised during the offer to the public takes the form of fiat currency;

~~(c)the application of Articles 3 and 5 of Directive 2002/65/EU[41].~~

~~7.An issuer of crypto-assets, except those referred to in paragraph 8, shall offer a right of withdrawal, in accordance with Article 6 of Directive 2002/65/EU, to the acquirers who buys such utility tokens directly from the issuer or from a crypto-asset service provider providing the service referred to in Article 3(1)(u) on behalf of the issuer. However, the issuer of such crypto-assets may not provide the acquirers with a withdrawal right, where the utility token is admitted to trading on a trading platform for crypto-assets.~~

~~8.Where a utility token gives access to an application, services or resources which is available on the DLT when the whitepaper is published, its issuer shall offer a right of withdrawal, in accordance with Article 9 of Directive 2011/83/EU, to the acquirers who buys such utility tokens directly from the issuer or from a crypto-asset service provider providing the service referred to in Article 3(1)(u) on behalf of the issuer. However, the issuer of such utility tokens may not provide the acquirers with a withdrawal right, where the utility token is admitted to trading on a trading platform for crypto-assets.~~a crypto-asset service provider authorised for the custody and administration of crypto-assets on behalf of third parties.

Article 10

Permission 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 8, and, where applicable, Article 11, issuers of crypto-assets may offer their crypto-assets, other than asset-referenced tokens or e-money tokens, throughout the Union and seek admission to trading of such crypto-assets on a trading platform for crypto-assets.

2. Issuers 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.

~~[39] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, p. 1–16.~~

~~[40] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance (*OJ L 304, 22.11.2011, p. 64–88)*~~

~~[41] Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16–24)~~

Article 11

Modification of ~~the whitepaper or~~published crypto-asset white papers and, where applicable, published marketing communications ~~following~~after their publication

1. ~~Any~~Issuers 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, to describe any change or new fact that is likely to have a significant influence on the purchase decision of any potential purchaser of such crypto-assets, or on the decision of holders of such crypto-assets to sell or exchange such crypto-assets ~~which occurs after the publication of the initial whitepaper offering shall be described in an amended whitepaper produced by the issuer and notified to the relevant competent authority~~.

2. The issuer shall immediately inform the public on its website of the notification of a ~~draft amended whitepaper~~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 ~~an amended whitepaper.~~

~~3.The~~a modified crypto-asset ~~issuer that produces an amended whitepaper shall ensure that the~~white paper.

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

4. ~~The amended whitepaper shall be notified~~Issuers 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 ~~the issuer's~~their home Member State, including the reasons for such modification, at least seven working days before ~~the date of its~~their publication. ~~The~~That competent authority ~~has~~may exercise the ~~same power as under~~powers laid down in Article ~~8(7~~82(1).

5. Within ~~two~~2 working days ~~after~~of the receipt of ~~the~~a draft ~~amended whitepaper~~modified crypto-asset white paper, and, where applicable, the modified marketing communications, the competent authority of the home Member State shall notify ~~it~~the modified crypto-asset white paper and, where applicable, the modified marketing communications, to the competent authority of the host Member State ~~as~~ referred to in Article ~~8(5~~7(4).

6. Issuers 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. ~~5.~~The ~~amended whitepaper~~modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall be time-stamped. ~~It shall be published and disseminated in the same conditions~~The latest modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall be marked as the ~~original whitepaper~~applicable version. All the ~~amended whitepapers~~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. ~~The last amended whitepaper shall be marked as the current version of the whitepaper.~~

8. ~~6.~~Where the ~~offering of crypto-assets~~offer to the public concerns utility tokens, the

changes made in the ~~amended whitepaper~~modified crypto-asset white paper, and, where applicable, the modified marketing communications, shall not extend the ~~twelve-month~~ time limit of 12 months referred to in Article ~~8(6~~4(3).

Article 12

Right of withdrawal

1. ~~7.If the crypto-asset issuer envisages to publish any marketing communications whose content is substantially different from the marketing communications previously notified to the relevant competent authority, it shall submit to the relevant competent authority the draft modified marketing communications at least five working days before their publication. The competent authority has the same power as under Article 8(7).~~Issuers of crypto-assets, other than asset-referenced tokens and e-money tokens, shall offer a right of withdrawal to any consumer who buys such crypto-assets directly from the issuer or from a crypto-asset service provider placing crypto-assets on behalf of that issuer.

   Consumers 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' agreement to purchase those crypto-assets.

2. All payments received from a consumer, 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 of crypto-assets or a crypto-asset service provider placing crypto-assets on behalf of that issuer is informed of the consumer's decision to withdraw from the agreement.

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

~~*Article 11*~~

~~*Liability of crypto-asset issuers*~~

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

4. ~~1.Member States~~The right of withdrawal shall ~~ensure that their laws, regulations and administrative provisions on civil liability~~not apply ~~to~~where the ~~issuer of~~ crypto-assets ~~and its management body for the information given in a whitepaper or an amended whitepaper relating to the offering of crypto-assets or an admission of such crypto-assets~~are admitted to trading on a trading platform for crypto-assets.

5. ~~2.However, Member States shall ensure that no~~Where issuers of crypto-assets have set a time limit on their offer to the public of such crypto-assets in accordance with Article 9, the right of withdrawal shall not be exercised after the end of the subscription period.

Article 13

Obligations of issuers of crypto-assets, other than asset-referenced tokens or e-money tokens

1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall:

   (a) act honestly, fairly and professionally;

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

(c) prevent, identify, 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. Issuers 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 is 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 for any reason, issuers of such crypto-assets shall ensure that any funds collected from purchasers or potential purchasers are duly returned to them as soon as possible.

Article 14

Liability of issuers of crypto-assets, other than asset-referenced tokens or e-money tokens for the information given in a crypto-asset white paper

1. Where an issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body has infringed Article 5, 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 crypto-assets may claim damages from that issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body for damage caused to her or him due to that infringement.

Any exclusion of civil liability shall ~~attach to~~be deprived of any legal effect.

2. It shall be the responsibility of the holders of crypto-assets to present evidence indicating that the issuer of crypto-assets ~~or its management body on the basis of the~~, other than asset-referenced tokens or e- money tokens, has infringed Article 5 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said crypto-assets.

3. A holder of crypto-assets shall not be able to claim damages for the information provided in a summary ~~pursuant~~as referred to in Article ~~6(5~~5(7), including the translation thereof, except ~~when~~where:

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

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

4. ~~3.Member States shall ensure that equivalent provisions to those referred to in paragraphs 1 and 2 apply to whitepapers and amended whitepapers, drafted in accordance with Articles 25, 29 and 40~~This Article does not exclude further civil liability claims in accordance with national law.

TITLE III~~: issuance of asset~~

Asset-referenced tokens

Chapter 1: requirements on issuers of

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

Article 1215

Requirement for authorisation of issuers of asset-referenced tokens
Authorisation

1. No asset-referencedissuer of asset-referenced tokens shall, within the Union, offer such tokens shall be offered to the public in the Union, or shall be admittedseek an admission of such assets to trading on a trading platform for crypto-assets, unless the issuer of such asset-referenced tokens:

(a)complies with requirements set out in this Chapter; and

(b)issuch issuers have been authorised by its competent authorityto do so in accordance with Article 30; and

(c)publishes a whitepaper approved19 by the competent authority, in accordance with Article 26 and 29 of their home Member State.

2. Only legal entities that are established in the Union shall be granted an authorisation as referred to in paragraph 1.

3. 2Paragraph 1 shall not apply to asset-referenced tokenwhere:

(a) if the asset-referenced tokens are marketed and distributed exclusively to qualified investors and that can only be held by qualified investors; or

(a) (b)ifover a period of 12 months, calculated at the end of each calendar day, the average outstanding amount of asset-referenced tokens does not exceed EUR 5.000.0005 000 000, or the corresponding equivalent amount in another currency, over a period of 12 months, calculated at the end of each calendar day.;

(b) In the case referredoffer to in points (a) and (b), the issuerspublic of suchthe asset-referenced tokens is solely addressed to qualified investors and the asset-referenced tokens can only be held by such qualified investors.

Issuers of such asset-referenced tokens shall, however, produce a whitepaper including the disclosure requirements set out in Articles 6 and 26 and notify such whitepaper to the competent authority in accordance with Article 8.

3.Where the issuer of asset-referenced tokens is authorised as a credit institution under Directive 2013/36/EU, the credit institution shall not require an authorisation under Article 30. It shall produce a whitepaper including the disclosure requirements set out in Articles 6 and 26 and such whitepaper shall be approved bycrypto-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 30 (10)7.

4. Paragraph 1 shall not apply ~~to crypto-assets that:~~

~~(a)do not reference one or several fiat currencies, one or several commodities, or one or several crypto-assets, or a basket of such assets; and~~

~~(b)aims at maintaining a stable value, via protocols, that provide for the increase or decrease of the supply of such crypto-assets in response to changes in demand (algorithmic 'stablecoins').~~where the issuers of asset-referenced tokens are authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU.

~~In that case, the issuer of such crypto-assets~~Such issuers shall, however, produce a ~~whitepaper including the disclosure requirements set out~~crypto-asset white paper as referred to in Article ~~6~~17, and ~~notify such whitepaper to the competent authority in accordance with Article 8. The issuer of such~~submit that crypto-~~assets shall not market its crypto-asset as 'stable'.~~

~~5.Where an issuer offers different categories of asset-referenced tokens in the EU, it shall publish a whitepaper approved~~asset white paper for approval by the competent authority ~~for each category of asset- referenced tokens. Each whitepaper shall be approved in accordance with Article 30.~~

~~6.Where several issuers offer the same asset-referenced tokens in the EU, all these issuers should be authorised by their competent authority~~of their home Member State in accordance with ~~Article~~paragraph 7.

~~30. In that case, only one whitepaper shall be published by these issuers of asset-referenced tokens.~~

~~7.Where an issuer of asset-referenced tokens intends to offer one or several crypto-asset services, it shall be authorised as a crypto-asset service provider in accordance with Article 64.~~

~~*Article 13*~~

~~*General*~~

~~*principles*~~

~~1.Issuers of asset-referenced tokens shall be incorporated in the form of a legal entity established in the EU.~~

~~2.Issuers of asset-referenced tokens shall act honestly, fairly and professionally.~~

~~3.Issuers of asset-referenced tokens shall act in the best interests of the holders of asset-referenced tokens. No holder of asset-referenced tokens shall obtain preferential treatment as regards one another, unless such preferential treatment is disclosed in the relevant policies and in the whitepaper published by the issuer of asset-referenced tokens.~~

~~*Article 14*~~

~~*Issuers of significant asset-referenced tokens*~~

~~1.Issuers of asset-referenced tokens that are classified as significant shall be subject to additional requirements set out in this Regulation.~~

~~Where several issuers offer the same asset-referenced token that is classified as significant, all these issuers shall be subject to additional requirements set out in~~

this regulation.

Where an issuer offers different categories of asset-referenced tokens in the EU and at least one of those asset-referenced tokens is classified as significant, such an issuer shall be subject to additional requirements set out in this regulation.

2.An asset-referenced token shall be deemed significant if at least three of the following criteria are met:

(a) size of the customer base of the promoters of the asset-referenced tokens, the shareholders of the issuer of asset-referenced tokens or any of the third parties referred to in Article 16(5)(h);

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

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

(d)size of the reserve of assets;

(e)significance of the issuer's cross-border activities, 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 parties as referred to in Article 16(5) (h) are established;

(f)interconnectedness with the financial system.

3.Asset-referenced tokens that purport to maintain a stable value by only referencing one or several other crypto-assets shall not be considered as significant.

4.The competent authority that granted the authorisation to the issuer of asset-referenced tokens in accordance with Article 30 shall provide at least each year information to the EBA on the criteria as referred to in paragraph 2 and specified in accordance with paragraph 8.

If on that basis the criteria are met, the EBA shall prepare a draft decision that an asset- referenced token is significant. EBA shall give the issuer of such asset-backed payment token and its competent authority the opportunity to provide observations and comments in writing prior the adoption of the decision, and these shall be duly considered by EBA.

The decision that an asset-referenced token is significant shall be immediately notified to its issuer and to its competent authority. An asset-referenced token shall be classified as significant three months after the notification and the supervisory responsibilities as referred to in Article 34 shall be transferred to EBA on that date.

EBA and the competent authority shall cooperate in order to ensure the smooth transition of supervisory competences.

5.Where applying for an authorisation as an issuer of asset-referenced tokens in accordance with Article 30, a prospective issuer of asset-referenced tokens shall be entitled to voluntarily request to be subject to the requirements applicable to issuers of significant asset-referenced tokens. In that case, the competent authority shall immediately notify the request from the prospective issuer to EBA.

For the asset-referenced tokens to be classified as significant at the time of authorisation, the issuer shall demonstrate, through its programme of operations as referred in Article 30(2) that it is likely to meet the criteria referred to in paragraph 2 and specified in accordance with paragraph 8.

If on that basis the criteria are likely to be met, EBA shall prepare a draft decision that the asset-referenced token is significant. EBA shall give the competent authority the opportunity to provide observations and comments in writing prior the adoption of the decision, and these shall be duly considered by EBA. The decision that an asset- referenced token is significant shall be immediately notified to the prospective issuer and to its competent authority. In that case, the supervisory responsibilities as referred to in Article 34 shall be transferred to EBA on the date of the decision by which the competent authority grants the authorisation referred to in Article 30(8).

If on the basis of the information provided the criteria of significance are not likely to be met, EBA shall prepare a draft decision that the asset-referenced token is not significant. EBA shall give the competent authority and the prospective issuer the opportunity to provide observations and comments in writing prior the adoption of the decision, and these shall be duly considered by EBA. The decision that an asset-referenced token is not significant shall be immediately notified to the prospective issuer and its competent authority.

6.Where an e-money tokens meets the criteria as referred to in paragraph 2 and specified in accordance with paragraph 8, such an e-money token shall be classified as significant.

The competent authority that granted the authorisation to the issuer of e-money tokens in accordance with Article 42 shall provide at least each year information to the EBA on the criteria as referred to in paragraph 2 and specified in accordance with paragraph 8.

If on that basis the criteria are met, the EBA shall prepare a draft decision that an e-money token is significant. EBA shall give the issuer of such e-money tokens and its competent authority the opportunity to provide observations and comments in writing prior the adoption of the decision, and these shall be duly considered by EBA.

The decision that an e-money token is significant shall be immediately notified to its issuer and its competent authority. An e-money token shall be deemed as significant three months after the notification and the supervisory responsibilities under Article 42(2) shall be conferred to EBA on that date.

7.Where applying for an authorisation as an issuer of e-money tokens in accordance with Article 42, a prospective issuer of e-money tokens shall be entitled to voluntarily request to be subject to the requirements applicable to issuers of significant e-money tokens. In that case, the competent authority shall immediately notify the request from the prospective issuer to EBA.

For the e-money tokens to be classified as significant at the time of authorisation, the issuer shall demonstrate that it is likely to meet the criteria referred to in paragraph 2 and specified in accordance with paragraph 8.

If on that basis the criteria are likely to be met, EBA shall prepare a draft decision that the e-money token is significant. EBA shall give the competent authority the opportunity to provide observations and comments in writing prior the adoption of the decision, and these shall be duly considered by EBA. The decision that an e-money token is significant shall be immediately notified to the prospective issuer and to its competent authority. In that case, the supervisory responsibilities as referred to in Article 42(2) shall be conferred to EBA on the date of the decision by which the competent authority grants the authorisation referred to in Article 42(1).

If on the basis of the information provided the criteria of significance are not likely to be met, EBA shall prepare a draft decision that the e-money token is not significant. EBA shall give the competent authority and the prospective issuer the opportunity to provide observations and comments in writing prior the adoption of the decision, and these shall be duly considered by EBA.

8.The Commission shall be empowered to adopt delegated acts in accordance with Article 109 to further specify the criteria set out in paragraph 2 and determine:

(a)the thresholds for the criteria as referred to in points (a), (b), (c) (d) (e) of paragraphs 2, subject to the following:

(i)the threshold for the customer base shall not be lower than 2 million of natural or legal persons;

(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 2 billion;

(iii)the threshold for the number and value of transactions in these asset-reference payment tokens shall not be lower than 1 million transactions per day or EUR 1 billion 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 2 billion;

(v)the threshold for the number of Member States where the asset referenced tokens is used, including for cross-border payments and remittances, or where the third party as referred to in Article 16(5) (h) are established shall not be lower than seven;

(b)the circumstances under which anThe authorisation 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 and its issuer shall be considered as interconnected with the financial system;

(c)the procedure and timeframe for the decisions taken by EBA under paragraphs 4 to 7 of this Article.

Article 15

Capital

requirements

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

(a)EUR 350 000; or

(b)2% of the average amount of the reserve to trading on a trading platform for crypto-assets.

5. The amount in point (b) is set at 3% of the average amount of the reserve assets for issuers of significant asset-referenced tokens.

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

Where an issuer offers more than one category of crypto-assets, the amount of

prudential requirements in accordance with points (b) should be the addition of the average amount of the reserve assets backing each category of asset-referenced tokens.

2.The prudential requirements referred to in paragraph 1 of this Article shall take the form of own funds, consisting of Common Equity Tier 1 items referred to in Articles 26 to 30 of Regulation (EU) No 575/2013[42] 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.

3.The competent authority may require the issuer of asset-referenced tokens, to hold an amount of own funds which is up to 20 % higher than the amount which would result from the application of the method set out in paragraph 1 (b), or permit the issuer to hold an amount of own funds which is up to 20 % lower than the amount which would

result from the application of the method set out in paragraph 1 (b), where an assessment of the following parameters indicates a higher or a lower degree of risk:

(a)the evaluation of the risk-management processes and internal control mechanisms of the issuer of asset-referenced tokens as referred to in Article 16;

(b)the quality and volatility of the reserve assets;

(c)the types of rights granted by the issuer to holders of asset-referenced tokens in accordance with Article 23;

(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 where the asset-referenced tokens are offered and marketed;

(g)where applicable, the market capitalisation of asset-referenced tokens or significant asset-referenced tokens.approval granted by the competent authority of the issuers' crypto-asset white paper under Article 19 or on a modified crypto-asset white paper under Article 21 shall be valid for the entire Union.

6. 4.The EBA, in close cooperation with ESMA, shall, in close cooperation with ESMA, develop draft regulatory technical standards further specifying:

(a)the methodology for the calculation of the own funds requirements set out in paragraph 1;(b)to specify the procedure and timeframe for an issuer of significant the approval of a crypto-asset referenced tokens to adjust to higher own funds requirements as set out white paper referred to in paragraph 1;

(c)the criteria for requiring higher own funds requirements or allowing lower own funds requirements, as set out in paragraph 3, and the procedure and timeframe for issuers

[42] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

~~of asset-referenced tokens to adjust to such changes in own funds requirements~~4.

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

~~5.~~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) a legal opinion that the asset-referenced tokens do not qualify as financial instruments, electronic money, deposits or structured deposits;

   (e) a detailed description of the applicant issuer's governance arrangements;

   (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 natural persons who either own, directly or indirectly, more than 20% of the applicant issuer's share capital or voting rights, or who exercise, by any other means, control over the said applicant issuer, have good repute and competence;

   (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.

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, 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, counter-terrorism legislation, 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, develop draft regulatory technical standards to specify the information that an application shall contain, in addition to the information referred to in 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 ~~16~~ 17

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

1. The crypto-asset white paper referred to in Article 16(2), point (i), shall comply with all the requirements laid down in Article 4. In addition to the information referred to in Article 4, however, the crypto-asset white paper shall contain all of the following information:

(a) a detailed description of the issuer's governance arrangements, including a description of the 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 any direct redemption right or any claims, that holders of asset-referenced tokens and any legal or natural person as referred in Article 35(3), may have on the reserve assets or against the issuer, including how such rights may be treated in insolvency procedures.

(f) where the issuer does not offer a direct right on the reserve assets, 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 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 do not have a claim on the reserve assets, or cannot redeem those reserve assets with the issuer at any time.

2. 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 asset-referenced tokens or about the intended admission of asset-referenced tokens to trading on a trading platform for crypto-assets, and in particular about the essential elements of the asset-referenced tokens concerned. 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 asset-referenced tokens concerned in order to help potential purchasers of the asset-referenced tokens to make an informed decision. The summary shall contain a warning that:

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

(j) the prospective purchaser should base any decision to purchase an asset-referenced token on the content of the whole crypto-asset white paper;

(k) the offer to the public of asset-referenced tokens does not constitute an offer or solicitation to sell financial instruments and that any such offer or solicitation to sell financial instruments can be made only by means of a prospectus or other offering documents pursuant to national laws;

(l) 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.

3. Every crypto-asset white paper shall be dated.

4. 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.

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

6. 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 18

Assessment of the application for authorisation

1. Competent authorities receiving an application for authorisation as referred to in

Article 16 shall, within 20 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.

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).

3. Competent authorities shall, after the three months referred to in paragraph 2, transmit their draft decision to the applicant issuer, and 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 consult the central bank of that Member State. Applicant issuers shall have the right to provide their competent authority with observations and comments on their draft decisions.

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. That competent authority shall duly consider those non-binding opinions and the observations and comments of the applicant issuer.

Article 19

Grant or refusal of the authorisation

1. Competent authorities shall, within one month after having received the non-binding opinion referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and, 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.

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;

(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, monetary policy transmission or monetary sovereignty.

3. Competent authorities shall 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 include the following information in the register of crypto-assets and crypto-asset service providers referred to in Article 57:

(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.

Article 20

Withdrawal of the authorisation

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

(a) the issuer has not used its authorisation within 6 months after the authorisation has been granted;

(b) the issuer has not used its authorisation 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) has been put under an orderly wind-down plan, in accordance with applicable national insolvency laws;

(g) has expressly renounced its authorisation or has decided to stop its operations.

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 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[54] 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

[54] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

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. 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.

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 20 working days following acknowledgement of receipt of the application. During the examination of the draft amended crypto-asset white paper, the competent authority may also request any additional information, explanations or justifications on the draft amended crypto-asset white paper. When the competent authority requests such additional information, the time limit of 20 working days shall commence only when the competent authority has received the additional information requested.

   The competent authority may also consult the EBA, ESMA and the ECB, and, where applicable, the central banks of Member States the currency of which is not euro.

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) take any appropriate corrective measures to ensure financial stability.

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.

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 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 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 direct claim or 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.

Article 26

Ongoing information to holders of asset-referenced tokens

1. Issuers of asset-referenced tokens shall at least every month and in a clear, accurate and transparent manner disclose 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 their website the outcome of the audit of the reserve assets referred to in Article 32.

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.

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

Prevention, identification, management and disclosure of conflicts of interest

1. Issuers of asset-referenced tokens shall maintain and implement effective policies and procedures to prevent, identify, 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 persons who either own, directly or indirectly, more than 20% of the asset-backed crypto-asset 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 persons referred to in Article 35(3).

Issuers of asset-referenced tokens shall, in particular, take all appropriate steps to prevent, identify, 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. ~~An issuer~~Issuers of asset-referenced tokens shall have robust governance arrangements, ~~which include~~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. ~~The members~~Members of the management body of ~~the~~issuers of asset-referenced ~~token issuers~~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 ~~the issuer~~such issuers. They shall also demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

3. ~~The natural~~Natural persons who either own, directly or indirectly, more than 20% of the ~~asset- referenced token issuer's~~ share capital or voting rights of issuers of asset-referenced tokens, or who exercise, by any other means, a power of control over ~~the said issuer~~such issuers shall have the necessary good repute and competence.

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

   (a) the ~~stabilisation mechanism, as specified~~reserve of assets referred to in Article ~~20~~32;

   (b) the custody of the reserve assets, as specified in Article ~~21~~33;

   (c) the rights or the absence of rights granted to the ~~users~~holders of asset-referenced tokens, as specified in Article ~~23~~35;

   (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 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 ~~the~~ asset-referenced tokens or to ensure their liquidity, as specified in Article ~~23~~35(4);

   (h) ~~the~~ arrangements with third -party entities~~, including~~ for operating the ~~stabilisation mechanism~~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) ~~(i)~~conflicts of interests, as specified in Article ~~19;~~

   ~~(j)complaint handling, as specified in article~~ 28;

   (k) a liquidity management policy for issuers of significant asset-referenced tokens, as specified in Article ~~20(5~~41(3).

   ~~Where issuers~~Issuers of asset-referenced tokens that use third -party entities to perform the functions set out in ~~paragraph 5~~point (h), ~~they~~ shall establish and maintain ~~appropriate~~ contractual arrangements with ~~these~~those third -party entities~~. These contractual arrangements shall~~ that precisely set out the roles, responsibilities, rights and obligations of both the ~~issuer~~issuers of asset-referenced tokens and of each of ~~these~~those third -party entities. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.

6. Unless ~~it has~~they have initiated ~~its~~a plan as referred to in Article ~~29~~42, ~~an~~ issuers of asset- referenced tokens shall ~~maintain and operate an adequate organisational structure and they shall~~ employ appropriate and proportionate systems, resources and procedures to ensure the ~~proper continuity~~continued and ~~regularity in the~~regular performance of ~~its~~their services and activities. To that end, ~~an issuer~~issuers of asset-referenced tokens shall maintain all ~~its~~their systems and security access protocols to appropriate ~~EU~~Union standards.

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

8. ~~7.~~Issuers of asset-referenced tokens shall ~~also~~ establish a business continuity policy ~~aimed at ensuring~~that ensures, in ~~the~~ case of an interruption ~~to its~~of their systems and procedures, the preservation of essential data and functions and the maintenance of ~~its~~their activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of ~~its~~their activities.

9. ~~8.~~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 ~~in accordance with the provisions laid down in~~as required by Regulation (EU) 2021/xx ~~[DORA]~~of the European Parliament and of the Council.[55] The procedures shall ~~also~~ provide for a comprehensive assessment relating to the reliance on third ~~-~~party entities as referred to in ~~point (h) of~~ paragraph 5, point (h). Issuers of asset-referenced tokens shall monitor and~~,~~ evaluate on a regular basis~~, evaluate~~ the adequacy and effectiveness of the internal control mechanisms and procedures for risk assessment and take appropriate measures to address any deficiencies.

10. ~~9.~~Issuers of asset-backed crypto-assets shall have systems and procedures in place that are adequate to safeguard the security, integrity and confidentiality of information ~~in accordance with the provisions laid down in~~as required by Regulation (EU) 2021/xx ~~[DORA]. These~~of the European parliament and of the Council[56]. Those systems shall record and safeguard relevant data and information collected and produced in the course of the ~~issuer~~issuers' ~~s~~ activities~~, to ascertain that the issuer has complied with all its obligations this Regulation, to enable competent authorities to fulfil their supervisory tasks and perform enforcement actions~~.

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

~~11.An issuer of significant asset referenced token shall adopt, implement and maintain a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards.~~

12. ~~In order to ensure consistent application of this Article,~~The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards specifying the minimum content of the ~~rules and~~ governance arrangements on:

[55] Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595

[56] Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595

(a) ~~a)~~the monitoring tools for the risks ~~of the issuer of asset-reference payment tokens~~ referred to in paragraph 1 and in the ~~second subparagraph of~~ paragraph ~~6~~7;

(b) ~~b)~~the internal control mechanism referred to in paragraphs 1 and ~~8~~9;

(c) ~~c)~~the business continuity plan referred to in paragraph ~~7~~8;

~~d)the audit methods referred to in paragraph 10;~~

~~e)the remuneration policy~~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 ~~17~~31

~~*Information to competent authorities*~~

~~1.An issuer of asset-referenced token shall notify its competent authority of any changes to its management body and shall provide the competent authority with all the necessary information to assess compliance with Article 17(2).~~

~~2.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 an issuer of asset-referenced tokens or to further increase, directly or indirectly, such a qualifying holding in an issuer of asset-referenced tokens as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or so that the issuer of asset-referenced tokens would become its subsidiary (the 'proposed acquisition'), shall first notify in writing the competent authority of the issuer of asset-referenced tokens in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 18(4).~~

~~3.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.~~

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.

4.The competent authority shall, promptly and in any event within two working days following receipt of the notification required under paragraph 2, as well as following the possible subsequent receipt of the information referred to in paragraph 6, acknowledge receipt thereof in writing to the proposed acquirer.

5.The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in 18(4) (the 'assessment period'), to carry out the assessment.

The competent authority shall inform the proposed acquirer or vendor of the date of the expiry of the assessment period at the time of acknowledging receipt.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.

6.The competent authority may, during the assessment period, where necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.

The competent authority may extend the interruption referred to in the second subparagraph up to 30 working days if the proposed acquirer is a natural or legal person situated or regulated outside the Union.

7.If the competent authority, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision.

8.Where the competent authority does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

9.The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

Article 18

Assessment period

1.In assessing the notification provided for in Article 17(2) and the information referred to in paragraph 4, the competent authority shall, in order to ensure the sound and prudent management of the issuer of asset-referenced tokens in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the issuer of asset-referenced tokens, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a)the reputation of the proposed acquirer;

(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 proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the issuer of asset-referenced tokens in which the acquisition is proposed;

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

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC[43] is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authority may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authority to examine the proposed acquisition in terms of the economic needs of the market.

4. 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 and that shall be provided to the competent authority at the time of the notification referred to in paragraph 17(2). The information required shall be relevant for a prudential assessment and proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition.

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.

2. 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:

EBA shall submit those draft regulatory technical standards to the Commission by **[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.

(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;

[43] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)

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

~~*Article 19*~~

~~*Conflicts of interest*~~

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

~~(a)their shareholders;~~

~~(b)the members of their management body;~~

~~(c)their employees;~~

(d) ~~any person as referred in Article 17(3);~~where the reserve assets are invested, the risks posed by the investment policy on the reserve assets;

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

~~(f)any third party providing one of the functions as referred in Article 16(5)(h).~~

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

~~2.Issuers of asset-referenced tokens shall disclose to their holders the general nature and sources of conflicts of interest and the steps taken to mitigate those risks when they consider that this is necessary for the measures taken in accordance with the internal rules referred to in paragraph 1 to be effective.~~

~~3.The disclosure referred to in paragraph 3 shall:~~

~~(a)be made in a durable medium; and~~the importance of the markets on which the asset-referenced tokens are offered and marketed;

(f) ~~(b)include sufficient detail to enable the users~~where applicable, the market capitalisation of the asset-referenced tokens ~~to take an informed decision about the service in the context of which the conflict of interest arises~~.

3. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards ~~to specify:~~further specifying:

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

(b) ~~(a)~~the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements ~~for the policies and procedures and steps referred to~~as set out in paragraph ~~1~~3;

(c) ~~(b)the arrangements for the disclosure referred to in paragraphs 3 and 4.~~the criteria for requiring higher own funds or for allowing lower own funds, as set out in paragraph 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~~1093/2010.

CHAPTER 3 RESERVE OF ASSETS

Article ~~20 Stabilisation mechanism and~~32

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

1. ~~For the purpose of stabilising the value of an~~Issuers of asset-~~referenced token, its issuer~~references tokens shall at all times constitute and maintain a reserve of assets~~, at all times~~.

2. ~~Where the issuer has issued~~Issuers that offers two or more categories of asset-referenced tokens~~, it~~ to the public shall operate and maintain ~~a~~ separate reserve of assets for each category of asset- referenced tokens~~. Each reserve of assets~~ which shall be managed ~~independently~~separately.

   ~~Where several issuers have issued~~Issuers of asset-referenced tokens that offer the same asset-referenced tokens~~, they~~ to the public shall operate and maintain only one reserve of assets for that category of asset-referenced tokens.

3. The management ~~body~~bodies of ~~the~~issuers of asset-referenced tokens ~~issuer~~ shall ensure effective and prudent management of the reserve assets. The issuers shall ensure that the creation and destruction of asset-referenced tokens is always matched by a corresponding increase or decrease in the reserve of assets and that such increase or decrease is adequately managed to avoid any adverse impacts on the market of the reserve assets.

4. ~~The issuer~~Issuers of asset-referenced tokens shall have a clear and detailed policy ~~and procedure~~ describing the stabilisation mechanism of such ~~crypto-assets~~tokens. ~~This~~That policy and procedure shall ~~include~~ in particular:

   (a) list the reference assets to which the asset-referenced ~~token~~tokens aim at stabilising ~~its~~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 consequence of such creation or destruction on the increase and decrease ~~in~~of the reserve assets;

   (e) mention whether the reserve assets are invested;

   (f) where ~~the issuer~~issuers of asset-referenced tokens ~~invests~~invest a part of the reserve assets, ~~a detailed description of~~describe in detail the investment policy and contain an assessment of how ~~this~~that investment policy can affect the value of the reserve assets;

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

5. ~~The issuer~~Without prejudice to Article 30(11), issuers of ~~significant~~ asset-referenced tokens shall ~~assess and monitor the liquidity needs to meet redemption requests or the exercise of rights by the holders of asset- referenced tokens or by any third party provided with such rights, in accordance with~~

~~Article 23(3) and (4). For that purpose, the issuer of significant asset-referenced tokens shall establish, maintain and implement a liquidity management policy and procedures. The policy and procedure should ensure that the reserve assets have a resilient liquidity profile that enable the issuer of asset-referenced tokens to continue operating normally, including under liquidity stressed scenarios.~~

mandate an independent audit of the reserve assets every six months, as of the date of its authorisation as referred to in Article ~~21~~ 19.

Article 33

Custody of ~~the~~ reserve assets

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

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

   (b) the reserve assets are not encumbered nor pledged as a 'financial collateral arrangement', a 'title transfer financial collateral arrangement' or as a 'security financial collateral arrangement' within the meaning of Article 2(1), points (a), (b) and (~~b~~c) ~~and(c)~~of Directive 2002/47/EC[44] of the European Parliament and of the Council[57];

   (c) the reserve assets are held in custody in accordance with paragraph ~~5~~4;

   (d) the ~~issuer~~issuers of asset-referenced tokens ~~has a~~have prompt access to the reserve assets~~, where needed~~ to meet any redemption requests from the holders of asset-referenced tokens.

   ~~Where an issuer offers~~Issuers of asset-referenced tokens that issue two or more categories of asset- referenced tokens in the ~~EU, it~~Union shall have a custody policy for each reserve of assets. ~~Where several issuers~~Issuers of asset-referenced tokens that have issued the same category of asset- referenced tokens~~, they~~ shall operate and maintain only one custody policy.

2. The reserve assets received in exchange ~~of~~for the asset-referenced tokens shall be held in custody by no later than ~~five~~5 business days~~,~~ after the issuance of the asset-referenced tokens~~. The issuer of asset-referenced tokens shall then ensure that the reserve assets are held in custody at all times~~ by:

   (a) a crypto-asset service provider authorised under Article ~~64~~53 for the service mentioned in Article ~~3 (1)~~3(1), point (~~p~~10), ~~when~~where the reserve assets take the form of crypto- assets;

   (b) a credit institution for all other types of reserve assets.

[44]~~57~~ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43–~~50~~).

3. ~~The issuer~~Issuers of ~~an~~ 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 issuer~~Issuers of asset-referenced tokens shall ensure that the ~~expertise and market reputation of the credit institutions and crypto-~~ credit institutions and crypto-asset service providers appointed as custodians of the reserve assets have the necessary expertise and market reputation to act as custodians of ~~the~~such reserve assets, ~~including their~~taking into account the accounting practices, safekeeping procedures~~,~~ and internal control mechanisms~~. The~~ of those credit institutions and crypto-asset service providers. The contractual arrangements between the issuers of asset-referenced tokens and the custodians shall ensure that the reserve assets held in custody ~~shall be~~are protected against claims of the ~~custodian~~custodians'~~s~~ 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 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 as custodians of the reserve assets ~~shall be set out in the custody policy and procedure as referred to in paragraph 1~~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 ~~the issuer~~issuers of asset-referenced tokens shall be entrusted to ~~the~~ credit institutions or crypto-asset service providers ~~as referred in~~appointed in accordance with paragraph 3~~, as follows~~ in the following manner:

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

(b) ~~(a)~~for financial instruments that can be held in custody~~:~~

~~(a)the~~, credit institutions~~, as referred to in paragraph 2(b)~~ shall hold in custody all financial instruments that can be registered in a financial instruments account opened in the credit ~~institution~~institutions'~~s~~ books and all financial instruments that can be physically delivered to ~~the~~such credit ~~institution;~~

~~(b)for that purpose, the credit institution 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' books within segregated accounts in accordance with the principles set out in Article 16 of Commission Directive 2006/73/EC[45]. The financial instruments account shall be opened in the name of the issuers of 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 in accordance with the applicable law at all times~~institutions;

(c) ~~(b)~~for crypto-assets that can be held in custody~~:(i),~~ the crypto-asset service

~~[45] Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26–58)~~

providers ~~as referred in paragraph 2(a)~~ shall hold the crypto-assets included in the reserve ~~of~~ assets or the means of access to such crypto-assets, where applicable, in the form of private cryptographic keys;

~~(ii)for that purpose, the crypto-asset service provider shall open a register of positions in the name of the issuer of 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 in accordance with the applicable law at all times;~~

(d) ~~(c)~~for other assets~~:(a),~~ the credit institutions~~, as referred in paragraph 2(b)~~ shall verify the ownership of the ~~issuer~~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 ~~holds the ownership of such assets;~~own those reserve assets.

For the purpose of point (a), credit institutions shall ensure that fiat currencies are registered in the credit institutions' books within segregated account in accordance with national provisions transposing Article 16 of Commission Directive 2006/73/EC[58] into the legal order of the Member States. The account shall be opened

[58] Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating

in the name of the issuers of the asset-referenced tokens for the purpose of managing the reserve assets, so that the fiat currencies held in custody can be clearly identified as belonging to the reserve of assets.

For the purposes of point (b), credit institutions 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' books within segregated accounts in accordance with national provisions transposing Article 16 of Commission Directive 2006/73/EC[59] 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 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.

~~(3)~~ For the purposes of point (d), the assessment whether ~~the issuer~~issuers of asset-referenced tokens ~~holds~~own the ~~ownership~~reserve assets shall be based on information or documents provided by the ~~issuer~~issuers of the asset-referenced tokens and, where available, on external evidence.

5. The appointment of a credit institution ~~and/~~or a crypto-asset service provider as ~~custodians~~custodian of the reserve assets in accordance with paragraph 3 shall be evidenced by a written contract~~,~~ as referred to in Article ~~16(5)~~30(5), second subparagraph. ~~The~~Those contracts shall, ~~inter alia~~amongst others, regulate the flow of information deemed necessary to ~~allow~~enable the issuers of asset-referenced tokens and the credit institutions and ~~or~~ the crypto-assets service providers to perform their functions ~~for the issuer of asset-referenced tokens for which they have been appointed custodians, as set out in this Regulation~~.

~~6.~~

6. The credit institutions and crypto-asset service providers~~, as referred to in~~ that have been appointed as custodians in accordance with paragraph ~~2~~3 shall act honestly, fairly, professionally, independently and in the interest of the issuer of the asset-referenced tokens and the holders of ~~asset-referenced~~such tokens.

7. The credit institutions and crypto-asset service providers~~, as referred to~~ that have been appointed as custodians in accordance with paragraph ~~2~~3 shall not carry out activities with regard to ~~the issuer~~issuers of asset-referenced tokens that may create conflicts of interest between ~~the issuer of asset-referenced tokens~~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 have functionally and hierarchically separated the performance of their custody tasks from their ~~other~~ potentially conflicting tasks; ~~and~~

(b) the potential conflicts of interest ~~are~~have been properly identified, managed, monitored and disclosed by the issuer of the asset-referenced tokens to the ~~holder~~holders of the asset-referenced tokens, in accordance with Article ~~19~~28.

[59] Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).

conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).

8. In ~~the~~ case of a loss of a financial instrument or a crypto-asset held in custody as referred to in paragraph 4 ~~(a) and (b)~~, the credit institution or the crypto-asset service provider 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 ~~to the issuer of asset-referenced tokens~~ without undue delay. The ~~custodians of the reserve assets~~credit institution or the crypto-asset service provider concerned shall not be liable ~~if~~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.

~~9.An issuer of asset-referenced tokens shall evaluate on a regular basis its custody policy and procedure, including its exposures to the credit institutions and crypto-asset service providers that ensure the custody of the reserve assets, taking into account the full scope of its relationships with them.~~

Article ~~22~~ 34

Investment of the reserve assets

1. ~~Where the issuer~~Issuers of asset-referenced tokens ~~invests~~that invest a part of the reserve assets~~, it~~ shall invest ~~them~~those reserve assets only in highly liquid financial instruments with minimal market and credit risk. The ~~issuer's~~ 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 ~~the conditions set out in~~accordance with Article ~~21~~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~~, resulting~~ that result from the investment of the reserve assets shall be borne by the issuer of the asset- referenced tokens.

4. ~~In order to ensure consistent application of this Article,~~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 ~~determining~~specifying the financial ~~assets~~instruments referred to in paragraph 1, the EBA shall take into account:

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

   (b) the correlation between ~~these reference~~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 ~~Articles~~Article 412 ~~and 460~~ of Regulation (EU) No 575/2013 and ~~the relevant delegated acts~~Commission Delegated Regulation (EU) 2015/61[60].

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

[60] Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 011 17.1.2015, p. 1).

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 ~~23~~ 35

Rights on issuers of asset-referenced tokens or on the reserve assets

1. ~~The issuer~~Issuers of asset-referenced tokens shall establish, maintain and implement ~~a~~ clear and detailed ~~policy~~policies and ~~procedure~~procedures on the rights granted to ~~the~~ 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.

2. Where ~~the~~ holders of asset-referenced tokens are granted rights as referred to in paragraph 1, ~~the issuer~~issuers of asset-~~reference payment~~referenced tokens shall establish a policy ~~defining~~setting out:

   (a) the conditions, including thresholds, periods and timeframes, for holders of asset-referenced tokens to exercise ~~such~~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 wind- down of the issuer of asset-referenced tokens as referred to in Article 42, or in case of a cessation of activities by~~, the~~ such issuer ~~of asset-referenced tokens~~;

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

   (d) the settlement conditions ~~(physical or cash)~~ when ~~such~~those rights are exercised;

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

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

3. Where ~~the issuer~~issuers of asset-referenced tokens ~~does~~do not grant rights as ~~those~~ referred to in paragraph 1 to all the holders of asset-referenced tokens, the ~~procedure~~detailed policies and procedures shall specify the natural or legal persons that are provided with ~~a claim or a redemption~~such rights ~~on the issuer or the reserve assets. The procedure~~. 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 ~~these~~those natural or legal persons who are ~~provided with a claim or a redemption rights on the issuer or the reserve assets. These~~granted such rights. Those contractual arrangements shall precisely set out the roles, responsibilities, rights and obligations of the ~~issuer~~issuers of asset-referenced tokens and each of ~~these third party entities~~those natural or legal persons. A contractual arrangement with cross- jurisdictional implications shall provide for an unambiguous choice of

law.

4. ~~Where the issuer~~Issuers of asset-referenced tokens ~~does~~that do not grant rights as ~~those~~ referred to in paragraph 1 to all the holders of ~~asset-referenced tokens, the issuer of~~such asset- referenced tokens shall put in place mechanisms to ensure the liquidity of the asset- referenced tokens. For that purpose, ~~it~~they shall establish and maintain written agreements with crypto-asset service providers authorised for the crypto-asset service ~~of exchanging crypto- assets against legal tender~~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 significantly from the value of the reference assets or the reserve assets, the holders of asset-referenced tokens shall have the right to redeem the crypto-assets 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.

5. ~~In order to ensure consistent application of this Article,~~The EBA shall, in close cooperation with ESMA, develop draft regulatory technical standards specifying:

(a) the obligations imposed on the 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 ~~24~~ 36

Prohibition of ~~interests~~interest

~~No issuer~~Issuers of asset-referenced tokens or crypto-asset service ~~provider~~providers shall ~~grant interests~~not provide for interest or any other benefit related to the length of time during which a holder of asset- referenced tokens holds ~~such crypto-~~asset-referenced assets.

CHAPTER 4

ACQUISITIONS OF ISSUERS OF ASSET-REFERENCED TOKENS

Article ~~25~~37

~~Interoperability of significant asset-referenced tokens~~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 10 %, 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).

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 on which the assessment will be finalised.

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 authority 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;

(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;

(f) the interconnectedness with the financial system.

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

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. 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 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 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 million of natural or legal persons;

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;

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;

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;

(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 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 prepare a draft decision to that effect and notify that draft decision to the competent authority of the applicant issuer's home Member State.

The EBA shall give competent authority of the 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 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 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.

The EBA shall give the 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 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 ~~assets~~tokens can be held in custody by different crypto-asset service providers authorised for the service referred to in Article 3(1) point (~~1~~10), including by crypto-asset service providers that do not belong to the same group, as defined ~~by~~in Article 2(11) of Directive 2013/34/EU[46] of the European Parliament and of the Council[61], on a fair, reasonable and non- discriminatory basis.

[4661] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Article 26

Additional content

3. Issuers of *the whitepaper for* significant asset-referenced tokens

1. In addition to the disclosure requirements under Article 6, the whitepaper concerning the offering of asset-referenced tokens to the public or their admission to trading on a trading platform for crypto-assets shall also contain the following information:

(a) a detailed description of the issuer's governance, including a description of the role, responsibilities and accountability of the third party entities as described in Article 16(5)(h);

(b) a detailed description of the mechanism aimed at stabilising the value of the asset-referenced tokens;

(c) where the reserve assets are invested, a detailed description of the investment policy for the reserve assets;

(d) a detailed description of the custody arrangements for the reserve assets, including the segregation of the assets;

(e) detailed information on the nature and enforceability of rights, including any direct redemption right or any claims that holders of asset-referenced tokens and any legal or natural person as referred in Article 23(3), may or may not have on the reserve assets or against the issuer, including how such rights may be treated in insolvency procedures. In the absence of a direct claim or redemption right for all the holder of asset-referenced tokens, the whitepaper shall contain a clear and unambiguous statement in the white paper and its summary that all the holders of the crypto-assets do not have a direct claim on the reserve assets and cannot redeem these assets with the issuer at any time.

(f) where the issuer does not offer a direct right on the reserve assets, a detailed information on the arrangements put in place by the issuer to ensure the liquidity of the asset-referenced tokens in accordance with Article 23(4);

(g) a detailed description of the complaint handling procedure and any dispute resolution mechanism, and redress procedure, established by the asset-referenced token issuer.

2. The whitepaper shall contain the minimum disclosure items specified in Annexes 1 and 2. All such information shall be fair, clear and not misleading. The whitepaper may not contain material omissions and it shall be presented in a concise and comprehensible form.

Article 27

Ongoing information to holders of asset-referenced tokens

1. Issuers of asset-referenced tokens shall maintain a website containing their whitepapers and amended whitepapers approved by the competent authority in accordance with Articles 32 and 34, for as long as the crypto-assets are held by the public.

undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19–76)

2.Marketing communications by issuers of asset-referenced tokens are subject to the requirements of Article 7. In the absence of a direct claim or redemption right granted to all the holders of asset-referenced tokens, the marketing communications shall contain a clear and unambiguous statement that the holders of the crypto-assets do not have a claim on the reserve assets or cannot redeem these assets with the issuer at any time.

3.Issuers of asset-referenced tokens shall at least every month disclose the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets to the public.

4.Without prejudice of Article 16(10), issuers of asset-referenced tokens shall mandate an independent audit of the reserve assets, every six months, and inform the public as soon as possible about the outcome of such an audit.

5.Issuers of asset-referenced tokens shall also disclose as soon as possible to the public any event which has or is likely to have a significant effect on the value of the asset-referenced tokens or the reserve assets. Such information shall be disclosed in a clear, accurate and transparent manner. shall assess and monitor the liquidity needs to meet redemption requests or the exercise of rights, as referred to in Article 34, 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.

6.Information mentioned in paragraphs 3, 4 and 5 shall be effectively disseminated by online posting on the issuer's website. Such information shall be disclosed in a clear, accurate and transparent manner.

Article 28

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 in Article 16(5)(h), the issuer of

asset-referenced tokens shall establish procedures to facilitate the resolution of such complaints between users and third party entities.

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

3. Issuers of asset-referenced tokens shall develop and make available to clients a standard template for complaints and shall keep a record of all complaints received and the measures taken.

4. Issuers of asset-referenced tokens shall investigate all complaints in a timely and fair manner, and communicate the outcome within a reasonable period of time to the holders of asset-referenced tokens.

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

EBA shall submit those draft regulatory technical standards to the Commission by ... **[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

Orderly wind-down

1. Issuers of asset-referenced tokens shall have in place an appropriate planning to support an orderly wind-down of their activities under the applicable national law, including continuity or recovery of any critical activities performed by the issuer or by any third party entities referred in Article 16(5)(h). This 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. This plan 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. This plan shall be reviewed and updated regularly.

Chapter 2: authorisation and supervision of asset-referenced token issuers

Article 30 Authorisation as an issuer of asset-referenced tokens and approval of the initial whitepaper

1. A legal person which intends to offer asset-referenced tokens in the

~~EU or seek their admission to trading on a trading platform for crypto-assets shall apply to the competent authority of its home Member State for authorisation as an issuer of asset~~ 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.

~~2.The application referred to in paragraph 1 shall include, in particular, the following information:~~

~~(a)the address of the prospective issuer of asset-referenced tokens;~~

~~(b)the legal status of the prospective issuer of asset-referenced tokens;~~

~~(c)the articles of association of the prospective issuer of asset-referenced tokens;~~

~~(d)a programme of operations setting out the business model that the issuer of asset-referenced tokens intends to carry out;~~

~~(e)a legal opinion that the proposed activity does not fall within the scope of other financial services legislation, such as those specified in Article 2(2);~~

~~(f)a description of the prospective issuer's governance arrangements;~~

~~(g)the identity of the members of the management body of the prospective issuer of asset-referenced tokens;~~

~~(h)proof that the persons referred to in point (g) are of good repute and possess appropriate knowledge and experience to manage the prospective issuer of asset-referenced tokens;~~

~~(i)where applicable, proof that natural persons who either own, directly or indirectly, more than 20% of the issuer's share capital or voting rights, or who exercise, by any other means, a power of control over the said issuer have good repute and competence.~~

~~(j)a draft whitepaper which includes the information required in Articles 6 and in Article 26;~~

~~(k)the policies and procedures, described as referred in points (a) to (k) of Article 16(5);~~

~~(l) a description of the contractual arrangements with the third parties as referred to in Article 16(5);~~

~~(m)a description of the prospective issuer's business continuity arrangements;~~

(n)a description of internal control mechanisms and risk management procedures;

(o)a description of the procedures and systems to safeguard the security (including cyber security), integrity and confidentiality of information;

(p)a description of the prospective issuer's procedures to deal with complaints from clients;

3.For the purposes of paragraphs 2(g) and (h), prospective issuers of asset-referenced tokens shall provide proof of the following:

(a)absence of 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, counter-terrorism legislation, fraud or professional liability for all the persons involved in the management of the prospective issuer of asset-referenced tokens;

(b)proof that the persons belonging to the management body of the prospective 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 competent authority shall, within 20 working days of receipt of the application referred to in paragraph 1, assess whether that application is complete. Where the application is not complete, the competent authority shall set a deadline by which the prospective issuer of asset-referenced tokens is to provide the missing information. Within that assessment period of 20 working days, the competent authority may also indicate that the draft whitepaper referred in paragraph 2(j) is incomplete or that additional information shall be included in the draft whitepaper.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.

5.Where an application as referred to in paragraph 1 is complete, the competent authority shall immediately notify the prospective issuer of asset-referenced tokens thereof.

6.The competent authority shall, within three months from the receipt of a complete application, assess whether the prospective issuer of asset-referenced tokens complies with the requirements set out in this Regulation and shall take a fully reasoned draft decision granting or refusing authorisation as an issuer of asset-referenced tokens. During the examination of the application, the competent authority may also request any explanations or justifications, including on the draft whitepaper referred in paragraph 2(j).

The competent authority shall notify its draft decision and the application file to EBA, ESMA, the ECB and, where the prospective issuer of 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, it shall also consult the national central bank of that Member State. The competent authority shall give the prospective issuer of such asset-backed payment token the opportunity to provide observations and comments in writing on its draft decision.

Within a maximum period of two months after the notification, EBA, ESMA the ECB and, where applicable, the national central bank shall issue a formal non-binding opinion on the application. EBA, ESMA, the ECB and the national central bank shall notify their non-binding opinions to the competent authority. The

~~concerned competent authority shall duly consider the EBA, ESMA, the ECB and the national central bank's non-binding opinion and the prospective issuer's observations prior to proceeding with the decision as appropriate.~~

~~Within one month after the notification of the non-binding opinion by EBA, ESMA the ECB and, where applicable, the national central bank, the competent authority shall take a fully reasoned decision granting or refusing authorisation as an issuer of asset- referenced tokens.~~

~~7.The competent authority shall have the right to refuse authorisation if there are objective and demonstrable grounds for believing that:~~

~~(a)the management body of the prospective issuer of asset-referenced tokens 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;~~

~~(b)the prospective issuer of asset-referenced tokens fails to meet or is likely to fail to meet any of the requirements applicable to issuers of asset-referenced tokens;~~

~~(c)the prospective issuer's business model may pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty.~~

~~8.The competent authority shall notify the prospective issuer of its decision on whether it authorises the issuer or refuses to authorise the prospective issuer of asset-referenced tokens within five working days after having taken that decision. When the competent authority grants an authorisation as an asset-referenced token issuer, the issuer's draft whitepaper shall be deemed to be approved.~~

~~9.The competent authority shall inform EBA, ESMA and the ECB and, where applicable, the national central banks of Member States the currency of which is not euro, of all authorisations granted under this Article. ESMA shall include the following information in the register of crypto-assets and crypto-asset service providers referred to in Article 66:~~

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

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

~~(c)the whitepapers or the amended whitepapers concerning the asset-referenced tokens;~~

~~(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.~~

~~10.EBA shall~~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.

4. The EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards ~~to specify~~specifying:

(a) the ~~information that the prospective issuer of asset-referenced tokens is to provide to the competent authority in the application for authorisation, in addition to the information~~minimum content of the governance arrangements on the remuneration policy referred to in paragraph ~~2~~1;

(b) the procedure and timeframe for ~~the approval of a whitepaper concerning an~~

~~asset- referenced token when its~~ an issuer ~~is authorised as a credit institution~~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 ~~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.

~~11.EBA shall, in close cooperation with ESMA, develop draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.~~

~~EBA shall submit those draft implementing technical standards to the Commission by **[please insert 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.~~

Chapter 6

Orderly wind-down

Article ~~31 Scope of the authorisation~~

~~1.The authorisation granted by the competent authority under Article 30 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-backed crypto-assets to trading on a trading platform for crypto-assets.~~

~~2.The approval granted by the competent authority on the issuers' whitepaper under Article 30 or on an amended whitepaper under Article 32 shall be valid for the entire Union.~~

~~*Article 32 Supervision of issuers of asset-referenced tokens*~~

~~1.Issuers of asset-referenced tokens shall provide their services under the supervision of the competent authority of its home Member State.~~

~~2.Issuers of asset-referenced tokens shall comply at all times with the conditions for authorisation.~~

~~3.Competent authorities shall assess compliance of issuers of asset-referenced tokens with the obligations provided for in this Regulation. To that end, competent authorities shall have the right to access relevant data and information.~~

~~4.An issuer of asset-referenced tokens shall notify its competent authority of any material changes to the conditions for authorisation without undue delay and, upon request, they shall provide the information needed to assess their compliance with this Regulation.~~

~~5.An Issuer of asset-referenced tokens shall also notify its competent authority of any 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 30. Such changes include, among~~

others, any material modifications to:

(a)the governance arrangements;

(b)the stabilisation mechanism;

(c)the custody of the reserve assets;

(d)the rights or the absence of rights granted to the holders of asset-referenced tokens;

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

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

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

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

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

(j)a liquidity management policy for issuers of significant asset-referenced tokens;

(k)the complaint handling procedure.

6.When any change as referred in paragraph 5 has been notified to the competent authority, it shall be described in an amended whitepaper produced by the asset- referenced token issuer. The asset-referenced token issuer that produces an amended whitepaper shall ensure that the order of the information appearing there is consistent with that of the original whitepaper.

The competent authority shall electronically acknowledge receipt of the amended whitepaper as soon as possible, and within two working days after receiving the application.

The competent authority shall grant its approval or refuse to approve the amended whitepaper within twenty working days following acknowledgement of receipt of the application. During the examination of the amended whitepaper, the competent authority may also request any additional information, explanations or justifications on the draft amended whitepaper. When the competent authority requests such additional information, the time limit of twenty working days shall commence only when the competent authority has received the additional information requested. The competent authority may also consult EBA, ESMA and the ECB, and, where applicable, the national central banks of Member States the currency of which is not euro.

7.During the assessment period referred in paragraph 6, the competent authority may request the issuer of asset-referenced tokens:

(a)to put in place mechanisms to ensure the protection of users, 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)take any appropriate corrective measures to ensure financial stability.

Article 33 Withdrawal of authorisation for issuers of asset-referenced tokens

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

(a)has not used its authorisation within 6 months after the authorisation has been granted;

(b)has not made use of its authorisation for six successive months;

(c)has obtained its authorisation by irregular means, including making false statements in its application for authorisation or in its initial whitepaper or any subsequent amended whitepaper;

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

(e)has seriously infringed the provisions of this Regulation;

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

(g)has expressly renounced to its authorisation or has decided to stop its operations.

The issuer of asset-referenced tokens shall notify the competent authority without undue delay, when it is under the situations envisaged under (f) and (g) of the first subparagraph.

2.A competent authority shall notify the competent authority of an issuer of asset- referenced tokens of the following without delay:

(a)the fact that a*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 entityentities as referred to in Article 16(5)(h) has lost its authorisation as a credit institution, as a crypto-asset service provider or as a payment institution in accordance with Directive 2015/2366/EU or as an electronic money institution in accordance with 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 implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing30(5), point (h).

3.Competent authorities That plan shall withdrawdemonstrate the authorisation to an issuer of asset-referenced tokens where the competent authority is of the opinion that the facts referred to in points (a) and (b) of paragraph 2 affect the good repute of the management bodyability of the issuer of asset-referenced tokens, or indicate a failure of the governance arrangements or internal control mechanisms.

When the authorisation is withdrawn, the issuer of asset-referenced tokens shall implement the procedure under Article 29.

Article 34

Supervision of significant issuers of asset-referenced tokens

1.Where an asset-referenced tokens has been designated as significant in accordance with Article 14, its issuer shall be deemed to be authorised by EBA and shall carry out their activities under the supervision of EBA.

2.For the purpose of carrying out the tasks referred to in Articles 31 to 33 and 83, EBA shall

be considered as the competent authority for significant issuers of asset- referenced tokens and shall have the powers set out in Chapters 3 and 4 of Title VI.

Where an asset-referenced tokens has been classified as significant in accordance with Article 14, EBA shall conduct a supervisory reassessment to ensure that the issuers of asset-referenced tokens comply with the requirements under Chapter 1 of Title VI, including the requirements applying to issuers of significant asset-referenced tokens under Article 15(1), 16(11), 20(5) and 25.

3.Where an issuer of asset-reference payment tokens provide crypto-asset services or issue crypto-assets that are not significant asset-reference crypto-assets, such service and activities shall remain supervised by the competent authority of the home Member State.

Article 35

College for issuers of significant asset-referenced tokens

1.Within 30 calendar days of a decision to classify an asset-referenced token as significant, EBA shall establish, manage and chair a consultative supervisory college for each issuer of significant asset-referenced tokens to facilitate the exercise of its supervisory tasks under this Regulation.

2.The College shall consist of:

(a)EBA, as the chair of the college;

(b)ESMA;

(c)the competent authority of the home Member State where the issuer of asset-backed crypto-assets is established;

(d) the competent authorities of the most relevant credit institutions or crypto- asset service providers ensuring the custody 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 in accordance with Article 21;.

(e)the competent authorities of the most relevant crypto-asset service providers providing the service of payment transactions in asset-referenced tokens;

(f)where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens is admitted to trading;

(g)where applicable, the competent authorities of the most relevant crypto-asset service providers in charge of ensuring the liquidity of the significant asset-referenced crypto-assets in accordance with the first paragraph of Article 23(4);

(h)where applicable, the competent authorities of the entities ensuring the functions as referred to in Article 16(5)(h);

(i)where applicable, the competent authorities of the most relevant crypto-asset service providers providing the service of custody and administration of crypto-assets on behalf of third parties for the holders of the significant asset-referenced tokens;

(j)the ECB;

(k)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, the national central bank of that Member State.

4.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.

5.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 36;

(b)the exchange of information in accordance with Article 96, including requests for information pursuant to Article 16 and 17;

(c)agreement on the voluntary entrustment of tasks among its members, including delegation of tasks under Article 108;

(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 16(8).

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.

6.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 35(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 16(8);

(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 EBA or another member of the college.

7.In order to ensure the consistent and coherent functioning of colleges, 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), (e), (f), (g) and (i) of paragraph 2 are to be considered as the most relevant and the details of the practical arrangements referred to in paragraph 5.

EBA shall submit those draft regulatory standards to the Commission by **[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[47].~~

~~*Article 36*~~

~~*Non-binding opinions of the college*~~

~~1.The college for issuers of significant~~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~~ may issue a non-binding opinion on the following:~~.

~~(a)the supervisory reassessment envisaged in accordance with Article 34(2);~~

~~(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 16(3);~~

~~(c)any update of the orderly wind-down plan of an issuer of significant asset-referenced tokens pursuant to Article 29;~~

~~(d)any change to the issuer of significant asset-referenced tokens' business model pursuant to Article 32(5);~~

~~(e)a draft amended whitepaper in accordance with Article 32(6);~~

~~(f)any measures envisaged in accordance with Article 32(7);~~

~~(g)any envisaged withdrawal of authorisation for an issuer of significant asset-referenced tokens pursuant to Article 33 and 101;~~

~~(h)any envisaged supervisory measures pursuant to Article 101;~~

~~(i)any envisaged agreement of exchange of information with a third country supervisory authority with Article 96;~~

~~(j)any delegation of supervisory tasks from EBA to a competent authority pursuant to Article 108;~~

~~(k)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), (e), (f), (g), (h) and (i) of Article 35(2).~~

~~2.Where the college gives an opinion pursuant to 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 of this Article, the opinion may include any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the issuer of asset-referenced token or by EBA.~~

~~3.EBA shall facilitate the adoption of the opinion in accordance with its general coordination function under Article 31 of Regulation (EU) No1093/2010.~~

~~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~~

~~[47] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12–47~~

~~member shall have one vote.~~

~~Where the ECB is a member of the college pursuant to point (j) of Article (35)(2), it shall have two votes.~~

~~EBA shall have no voting right on the opinion of the college.~~

~~5.EBA 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 measure envisaged by the issuer of asset-referenced tokens or by EBA. Where EBA does not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the issuer of asset-referenced tokens or by EBA, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations~~The plan referred to in paragraph 1 shall be reviewed and updated regularly.

TITLE IV: ~~Issuance of electronic~~Electronic money tokens

Chapter 1~~: requirements on~~

Requirements to be fulfilled by all issuers of electronic money tokens

Article ~~37~~43

~~*Requirement for authorisation of issuers of electronic money tokens*~~
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 authorised as a credit institution or as an 'electronic money institution' within the meaning of Article 2(1) of Directive 2009/110/EC;

   (b) complies with requirements applying to electronic money institution set out in ~~this~~ Titles II and III of Directive 2009/110/EC, unless stated otherwise in this Title;

   (c) publishes a ~~white paper~~crypto-asset white paper notified to the competent authority, in accordance with Article ~~40~~46.

   For the purpose of point (a), an 'electronic money institution' ~~within the meaning of~~as defined in Article 2(1) of Directive 2009/110/EC shall be authorised to issue 'e-money tokens' and e~~lectronic~~- money tokens shall be deemed to be 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC.

   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 to:

   (a) e~~lectronic payment token if the electronic payment~~-money tokens that are marketed, distributed and held by qualified investors and ~~they~~ can only be held by qualified investors;

   (b) if the average outstanding amount of e~~lectronic~~ -money tokens does not exceed EUR ~~5.000.000~~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~~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 ~~white paper~~crypto-asset white paper and notify such ~~white paper~~crypto-asset white paper to the competent authority in accordance with Article ~~40~~46.

Article ~~38~~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. ~~The issuer~~Issuers of e-money tokens shall prominently state the conditions of redemption, including any fees relating thereto, in the ~~whitepaper~~crypto-asset white paper as referred to in Article ~~40(1)(e)~~46.

6. Redemption may be subject to a fee only if stated in the ~~whitepaper~~crypto-asset white paper. Any such fee shall be proportionate and commensurate with the actual costs incurred by ~~the issuer~~issuers of e~~lectronic -~~money ~~token~~tokens.

7. ~~6.If the issuer~~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 ~~whitepaper~~crypto-asset white paper and which shall not exceed 30 days, the obligation set out in paragraph 3 applies to any following third party entities that has been in contractual arrangements with ~~the issuer~~issuers of e~~lectronic -~~money ~~issuers~~tokens:

   (a) entities ensuring the safeguarding of funds received by ~~the issuer~~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 ~~the~~issuers of e-money ~~token issuers~~tokens.

Article ~~39~~ 45

Prohibition of interests

By derogation to Article 12 of Directive 2009/110/EC, no issuer of e-money tokens or crypto-asset service ~~provider~~providers shall grant ~~interests~~interest or any other benefit related to the length of time during which a holder of e-money tokens holds such ~~crypto-assets~~e-money tokens.

Article ~~40~~46

~~Whitepaper~~Content and form of the crypto-asset white paper for electronic money tokens~~ and marketing communications

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 ~~token~~tokens shall ~~produce~~publish a ~~whitepaper~~crypto-asset white paper on its website.

2. The ~~whitepaper~~crypto-asset white paper referred to in paragraph 1 shall contain all the following relevant information~~ concerning the issuer of e-money tokens and the offering of e-money tokens or their admission to trading on a trading platform for crypto-assets which is necessary to enable potential buyers to make an informed purchase decision and understand the risks relating to the offering~~:

(a) a description ~~of the key characteristics~~ of the issuer of ~~crypto-assets~~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 ~~whitepaper~~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 ~~38~~44 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 issuer, the e-money tokens and the implementation of the project, including the technology~~.~~;

(g) ~~3.The whitepaper shall contain~~ the ~~minimum~~ disclosure items specified in Annex ~~3~~III.

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

4. ~~The whitepaper shall include a summary.~~ 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 ~~offering~~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 ~~such~~the e-money tokens. The summary shall indicate that:

(a) ~~that~~ 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. ~~5.Every whitepaper shall be dated. It shall also include a statement from the management body of the issuer of e-money confirming that the whitepaper complies with the requirements of this Title and specifying that, to their best knowledge, the information presented in this document is correct and that there is no significant omission making the whitepaper misleading.~~Every crypto-asset white paper shall be dated.

7. ~~6.~~The ~~whitepaper~~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. ~~7.~~The ~~whitepaper~~crypto-asset white paper shall be made available in machine readable formats, in accordance with Article ~~6~~5.

9. ~~8.A whitepaper~~The issuer of e-money tokens shall ~~be notified~~notify its draft

crypto-asset white paper, and where applicable their marketing communications, to the relevant competent authority as referred to in Article ~~3(ee~~3(1) point (24)(b) at least ~~twenty~~20 working days before its date of its publication.

After the notification and without prejudice of the powers ~~set out~~laid down in Directive 2009/110/EC or the national laws ~~implementing~~transposing it, the competent authority of the home Member State ~~shall have the power to:~~

~~(a)require the inclusion in the whitepaper, the marketing communications or the issuer's website of supplementary information or amendment as the competent authority may specify;~~

~~(b)suspend or prohibit the offering of e-money tokens, their admission to trading on a trading platform for crypto-assets, or any marketing communications relating to them, if the competent authority suspects that a provision of this Title or under Directive 2009/110/EC has been infringed;~~

~~(c)make public the fact that an issuer is failing to comply with its obligations under any provision of this Title or under Directive 2009/110/EC.~~may exercise the powers laid down in Article 82(1) of this Regulation.

10. ~~9.~~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 ~~token~~tokens to the issuer which occurs after the publication of the initial ~~whitepaper offering~~crypto-asset white paper shall be described in ~~an amended whitepaper produced~~a modified crypto-asset white paper prepared by the issuer and notified to the relevant competent authority, in accordance with paragraph ~~8~~9.

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

10.Marketing communications ~~on e-money tokens are subject to the requirements set out in Article 7.~~

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 ~~41~~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.

~~*Article 42*~~

~~*Issuers of significant electronic money tokens*~~

~~Where an electronic money token has been classified as significant in accordance with Article 15, its issuer shall apply the following additional requirements:~~

~~(a)Article 15(1) instead of Article 5 of Directive 2009/110/EC;~~

~~(b)Article 16(11);~~

~~(c)Article 20(5);~~

~~(d)Article 21 and 22 instead of Article 7 of Directive 2009/110/EC;~~

~~(e)Article 25;~~

~~(f)Article 29.~~

Chapter 2~~:~~

~~authorisation and~~

~~supervision of e-money~~

~~token issuers~~ 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 ~~43~~51

~~*Authorisation and supervision of issuers of electronic*~~ ***Voluntary classification of e-money tokens as significant e-money tokens***

1. An issuer of e-money tokens ~~shall be~~, authorised as a credit institution or as an 'electronic money institution ~~within the meaning of~~' as defined in Article 2(1) of Directive 2009/110/EC ~~by the competent authority the authority, designated by each Member State, for the application of Directive 2009/110/EC. The issuer of~~or applying for such authorisation, may indicate that they wish to classify their e-money tokens ~~shall also be supervised by~~as significant e-money tokens. In that case, the competent authority shall immediately notify the request from the issuer or applicant issuer to EBA.

~~2.Where an~~For the e-money ~~token has been~~tokens to be classified as significant ~~in accordance with Article 15, EBA shall be responsible for the supervision of provisions referred to in Article 42.~~

~~*Article 44*~~

~~*College for issuers of significant electronic money tokens*~~

~~1.Within 30 calendar days of a decision to classify an e-money token as significant, 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)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;

(e)ESMA;

(d)the competent authorities of the most relevant credit institutions ensuring the custody of the funds received in exchange of the 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 is admitted to trading;

(g)where applicable, the competent authorities of the most relevant crypto-asset service providers providing the service of custody and administration of crypto-assets on behalf of third parties for the holders of the 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.

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 45;

(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 108;

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 45;

(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, 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), (e), (f) and (g) of paragraph 2 are to be considered as the most relevant and the details of the practical arrangements referred to in paragraph 5.

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

Power is delegated, the issuer or applicant issuer of e-money tokens shall demonstrate, through a detailed programme of operations, that it is likely to the Commission to adopt the regulatory technical standardsmeet at least three criteria referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.

Article 45

Non-binding opinions of the college

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 Article 5(5) of Directive 2009/110/EC;

(b)any update of the orderly wind-down plan of an issuer of significant e-money tokens pursuant to Article 29;

(c)a draft amended whitepaper in accordance with Article 41;

(d)any envisaged withdrawal of authorisation for an issuer of significant e-money tokens pursuant to Directive 2009/110/EC;

(e)any envisaged supervisory measures pursuant to Article 100;

(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 EBA or another competent authority, or from EBA to the competent authority39(1), as specified in accordance with Article 127;

(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), (e), (f) and (g) of Article 44(2).

2.Where the college gives an opinion pursuant to 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 of this Article, the opinion may include any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the issuer of significant e- money tokens, by its competent authority or by EBA.

3.EBA shall facilitate the adoption of the opinion in accordance with its general

~~coordination function under Article 31 of Regulation (EU) No1093/2010.~~

~~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 45(2), it shall have two votes.~~39(6).

2. ~~5.The competent authority~~Where, on the basis of the ~~significant e-money token issuer or EBA 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 measure envisaged by the issuer of asset-referenced token or by~~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 ~~or EBA. Where the~~of the issuer or applicant issuer's home Member State.

The EBA shall give competent authority of the issuer or ~~EBA do not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by~~ 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 ~~of asset-referenced token, by~~or applicant issuer and the competent authority of the issuer or applicant issuer's home Member State.

The EBA~~, their decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations~~ 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: ~~Provisions for all~~Authorisation of crypto-asset service providers

Article ~~46 General provisions on crypto-asset service providers~~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 and that have been authorised as crypto-asset service providers in accordance with Article ~~64 of this Regulation.~~55

   Crypto-asset service providers shall, at all times, meet the conditions for their authorisation.

   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. An authorisation as a crypto-asset service provider 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 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 status 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) for all natural persons involved in the management body of the applicant crypto-asset service provider, and for all natural persons who, directly or indirectly, hold 20% or more of the share capital or voting rights, proof of the absence of a criminal record in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, counter-terrorism legislation, and professional liability obligations;

(g) proof that the natural persons involved in the management body of the applicant crypto-asset service provider collectively possess sufficient knowledge, skills and experience to manage that provider and that those natural persons are required to commit sufficient time to the performance of their duties;

(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) 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 fiat currency or crypto-assets for other crypto-assets, a description of the non-discriminatory commercial policy;

(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 intends to receive and transmit orders for crypto-assets on behalf of third parties, 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.

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 to 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.

   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;

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

6. Competent authorities shall inform ESMA of all authorisations granted under this Article. ESMA shall add all the information submitted in successful applications to the register of authorised crypto-asset service providers provided for in Article57. ESMA may request information in order to ensure that competent authorities grant authorisations under this Article in a consistent manner.

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 withdraw the authorisations in any of the following situations the crypto-asset service provider:

   (a) has not used its authorisation within 18 months of the date of granting of the authorisation;

   (b) has expressly renounced to its authorisation;

   (c) has not provided crypto-asset services for nine successive months;

   (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 have infringed national law implementing Directive (EU) 2015/849[62] 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 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 an 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

[62] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117)

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.

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;

(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 shall register that information in the register referred to in Article 57.

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. ~~2.~~Crypto-asset service providers shall act honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients.

2. ~~3.Any person who is not a crypto-asset service provider shall be prohibited to use a name, a corporate name, or issue marketing communications or use any other process suggesting that it is authorised in that capacity or likely to create confusion in that respect~~Crypto-asset service providers shall provide their clients with fair, clear and not misleading information, in particular 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 purchasing crypto-assets.

4. Crypto-asset service providers shall make their pricing policies publicly available, by online posting with a prominent place on their website.

Article ~~47~~ 60

Prudential requirements

1. Crypto-asset service providers shall, at all times, have in place prudential ~~requirements~~safeguards equal to an amount of at least the higher of the following:

   (a) ~~The~~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 ~~requirements~~safeguards referred to in paragraph 1 ~~of this Article~~ 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 ~~of the European Parliament and of the~~

~~Council~~[48] 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; ~~and/or~~

(b) an insurance policy covering the territories of the Union where crypto-asset services are actively ~~marketed~~provided or a comparable guarantee.

3. ~~Where a crypto~~Crypto-asset service ~~provider has~~providers that have not been in business for one year from the date on which ~~it~~they started providing services ~~or performing activities, it~~ shall use, for the ~~purpose of~~ calculation referred to in paragraph 1, point (b), the projected fixed overheads included in ~~its~~their projections for the first 12 months' of service provision, as submitted with ~~its~~their application for authorisation.

4. The insurance policy referred to in paragraph 2 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 ~~point (b) of~~ paragraph 2, point (b) shall include~~, without being limited to~~, 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) ~~(i)~~legal and regulatory obligations;

ii) ~~(ii)~~the duty ~~of skill~~to act honestly, fairly and ~~care~~professionally towards clients;

iii) ~~(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 point (b)~~ 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 ~~they~~those bonuses and that remuneration depend on a net profit of the crypto-asset service ~~provider~~providers in the relevant year;

~~[48] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).~~

(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 ~~48~~ 61

Organisational requirements

1. ~~The members~~Members of the management body of ~~the~~ 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 ~~also~~ demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

2. ~~The natural~~Natural persons who either own, directly or indirectly, more than 20% of the crypto- asset service provider's share capital or voting rights, or who exercise, by any other means, a power of control over the said crypto-asset service provider 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 financial crimes.

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 ~~1~~2 and ~~2~~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 ~~the provisions laid down in~~ Regulation (EU) 2021/xx [~~DORA~~]of the European Parliament and of the Council.[63]

They shall establish a business continuity policy, which shall include ICT business continuity as well as disaster recovery plans set-up in accordance with ~~the provisions laid down in~~ Regulation (EU) 2021/xx [~~DORA~~],of the European Parliament and of the Council[64] 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

[63] Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

[64] Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

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 internal control mechanisms and effective procedures for risk assessment, including effective control and safeguard arrangements for managing ICT systems in accordance with ~~the provisions laid down in~~ Regulation (EU) 2021/xx ~~[DORA]. Crypto-asset service providers~~of the European Parliament and of the Council.[65] 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 ~~the provisions laid down in~~ Regulation (EU) 2021/xx ~~[DORA]~~of the European Parliament and of the Council.[66]

8. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, orders and transactions undertaken by ~~it which~~them. Those records shall be sufficient to enable ~~the~~ competent ~~authority~~authorities to fulfil ~~its~~their supervisory tasks and to perform the enforcement actions, ~~including under Title VI,~~ and in particular to ascertain ~~that~~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.

9. Crypto-asset service providers shall have in place systems, procedures and arrangements to monitor and detect market abuse as referred in Title VI. They shall immediately report to their competent authority any suspicion that there may exist circumstances that indicate that any market abuse has been committed, is being committed or is likely to be committed.

Article 62

Information to competent authorities

Crypto-asset service providers shall notify their competent authority of any changes to their management body 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. ~~9.~~Crypto-asset service providers~~, when holding~~ that hold crypto-assets belonging to clients~~,~~ or the means of access to such crypto-assets shall make adequate arrangements ~~so as~~ 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 except with the client's express consent.

~~10.Crypto-asset service providers shall have in place systems, procedures and arrangements to monitor and detect market abuse as referred to under Title VI and where they suspect that there may exist circumstances to indicate that any market abuse may have been committed, is being committed or is likely to be committed, they shall~~

[65] Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

[66] Proposal for a Regulation of the European Parliament and the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.

immediately report such suspicion to their competent authority.

Article 49

Information to competent authorities

1.Crypto-asset service provider shall notify its competent authority of any changes to its management body and shall provide the competent authority with all the necessary information to assess compliance with Article 48.

2.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 as a result of which 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 first notify in writing the competent authority of the crypto-asset service provider in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 50(4).

3.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.

4.The competent authority shall, promptly and in any event within two working days following receipt of the notification required under paragraph 2, as well as following the possible subsequent receipt of the information referred to in paragraph 6, acknowledge receipt thereof in writing to the proposed acquirer.

5.The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in 50(4) (the 'assessment period'), to carry out the assessment.

The competent authority shall inform the proposed acquirer or vendor of the date of the expiry of the assessment period at the time of acknowledging receipt.

6.The competent authority may, during the assessment period, where necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the competent authority and the receipt of a response thereto by the proposed acquirer, the

assessment period shall be interrupted. The interruption 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 may not result in an interruption of the assessment period.

The competent authorities may extend the interruption referred to in the second subparagraph up to 30 working days if the proposed acquirer is a natural or legal person situated or regulated outside the Union.

7.If the competent authority, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision.

8.Where the competent authority does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

9.The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

Article 50

Assessment period

1.Where assessing the notification provided for in Article 49(2) and the information referred to in paragraph 4, the competent authority shall, in order to ensure the sound and prudent management of the crypto-asset service provider in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the crypto-asset service provider, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a)the reputation of the proposed acquirer;

(b)the reputation and experience of any person who will direct the business of the crypto-asset service provider as a result of the proposed acquisition;

(c)the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the crypto-asset service provider in which the acquisition is proposed;

(d)whether the crypto-asset service provider will be able to comply and continue to comply with this Regulation;

(e)whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC[49] is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

[49] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive

~~2.The competent authority may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.~~

~~3.Member States shall neither 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.EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards to establish an exhaustive list of information to carry out the assessment and that shall be provided to the competent authority at the time of the notification referred to in paragraph 49(2). The information required shall be relevant for a prudential assessment, proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition.~~

~~EBA shall submit those draft regulatory technical standards to the Commission by **[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 51*~~
~~*Safekeeping of clients' funds*~~

2. ~~1.~~Where their business models or the crypto-asset services require holding ~~funds belonging to~~ clients' funds, crypto-asset service providers shall ~~make~~have adequate arrangements in place to

safeguard the rights of clients and prevent the use of ~~client~~clients'~~s~~ funds, as defined under Article 4(25) of Directive (EU) 2015/2366[~~50~~67], for their own account.

3. ~~2.~~Crypto-asset service providers shall, ~~on receiving~~promptly place any client's funds, ~~promptly place such funds~~ with a central bank or a credit institution.

Crypto-asset service providers shall take ~~any~~all necessary steps to ensure that the ~~funds belonging to the~~ clients' funds 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. ~~3.~~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 a payment institution as defined in ~~accordance with~~Article 4, point (4), of Directive (EU) 2015/2366.

5. ~~7.~~ Paragraphs ~~1~~2 and ~~2~~3 of this Article ~~do~~shall not apply to crypto-asset service providers that are electronic money institutions as defined in ~~accordance with~~Article 2, point 1 of Directive 2009/110/EC or payment institutions as defined in ~~accordance with~~Article 4, point (4), of Directive (EU) 2015/2366.

~~2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)~~

Article ~~52 Information to clients~~64

~~1.Crypto-asset service providers shall provide their clients with clear, accurate and non-misleading information, in particular 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.~~

~~2.Crypto-asset service providers shall warn clients of the risks associated with purchasing crypto-assets.~~

~~3.Crypto-asset service providers shall make their pricing policies publicly available, by online posting with a prominent place on their website.~~

~~*Article 53*~~

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 ~~standard~~ template for complaints and shall keep a record of all complaints received and ~~the~~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 ~~to their clients~~.

Article ~~54 Conflicts~~65

[~~50~~67] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC *(OJL 33, 23.12.2015, p.35)*

Prevention, identification, management and disclosure of conflicts of interest

1. Crypto-asset service providers shall maintain and operate an effective policy ~~to prevent conflicts of interest.~~

~~2.Crypto-asset service providers shall take all appropriate steps~~ to prevent, identify, manage and disclose conflicts of interest between ~~the crypto-asset service providers~~ themselves~~,~~ and:

(a) their shareholders~~, their managers and employees,~~ 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.

~~3.~~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 ~~those risks when they consider that this is necessary for the measures taken in accordance with the internal rules referred to in paragraph 1 to be effective~~them.

Crypto-asset service providers shall make such disclosures on their website in a prominent place.

2. ~~4.~~The disclosure referred to in paragraph ~~3~~2 shall~~:(a)~~ be ~~made in a durable medium;~~

~~(b)include sufficient detail~~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.

3. ~~8.~~Crypto-asset service providers shall assess and ~~periodically review,~~ at least annually review, their policy on conflicts of interest and take all appropriate measures to address any deficiencies.

Article ~~55~~ 66

Outsourcing

1. Crypto-asset service providers ~~shall~~, ~~when relying~~that rely on ~~a~~ third ~~party~~parties for the performance of operational functions, take all reasonable steps to avoid additional operational risk. They shall remain fully responsible for discharging all of ~~its~~their obligations under this ~~Regulation~~Title and shall ~~comply~~ensure at all times ~~with~~that all the following conditions are complied with:

(a) outsourcing does not result in the delegation of ~~its~~the responsibility of the crypto-asset service providers;

(b) outsourcing does not alter the relationship ~~and~~between the crypto-asset service providers and their clients, nor the obligations of the crypto-asset service ~~provider~~providers towards ~~its~~their clients ~~are~~;

(c) outsourcing does not ~~altered;(c)~~change the conditions for the authorisation of the crypto- asset service ~~provider do not effectively change~~providers;

(d) ~~the service provider cooperates~~third parties involved in the outsourcing cooperate with the competent authority of the crypto-asset service ~~provider~~providers' home Member State and the outsourcing does not prevent the exercise of supervisory functions by ~~its~~those competent ~~authority~~authorities, including on-site access to acquire any relevant information needed to fulfil those functions;

(e) ~~the~~ crypto-asset service ~~provider retains~~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) ~~the~~ crypto-asset service ~~provider has~~providers have direct access to the relevant information of the outsourced services;

(g) ~~the~~ crypto-asset service ~~provider ensures that the service provider meets~~providers ensure that third parties involved in the outsourcing meet the standards ~~set~~laid down ~~by~~in the relevant data protection law which would apply if the ~~service provider~~third parties were established in the Union. ~~The~~

For the purposes of point (g), crypto-asset service ~~provider is~~providers are responsible for ensuring that ~~those~~the standards laid down in the relevant data protection legislation are set out in the contract referred to in paragraph 3 ~~between the parties and that those standards are maintained~~.

2. Crypto-asset service providers shall have a policy on their ~~approach to~~ outsourcing, including on contingency plans and exit strategies.

3. Crypto-asset service providers shall ~~define in~~enter into a written agreement ~~their~~with any third parties involved in outsourcing. That written agreement shall specify the rights and obligations ~~and those~~ of both the crypto-asset service ~~provider. The outsourcing agreement~~providers and of the third parties concerned, and shall allow the crypto-asset service ~~provider~~providers concerned to terminate ~~the~~that agreement.

4. Crypto-asset service ~~provider~~providers and ~~a service provider~~third parties shall, upon request, make available ~~upon request~~ to the competent ~~authority~~authorities and the relevant authorities all information necessary to enable ~~them~~those authorities to assess ~~the~~ compliance of the outsourced activities with the requirements of this ~~Regulation~~Title.

5.

Chapter ~~2~~3: ~~Requirements on~~Obligations for the provision of specific crypto-asset services

Article ~~56~~67

Custody and administration of crypto-assets on behalf of third parties ~~*of crypto-assets or access to crypto-assets*~~

1. Crypto-asset service providers that are authorised for the ~~provision of the service referred to in Article 3(1)(p) shall comply with the following requirements.~~

~~2.Crypto-asset service providers~~custody and administration on behalf of third parties shall enter into an agreement with their clients ~~defining~~to specify their duties and their responsibilities. Such agreement shall include at least all the following ~~content~~:

(a) the identity of the parties to the agreement;

(b) the nature ~~and description~~ 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 applied by the crypto-asset service provider;

(f) the law applicable to the agreement.

2. ~~3.~~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 ~~clients~~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 ~~the client in his/her position register and shall organise~~ their clients. Their internal procedures ~~in such a way as to~~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. ~~4.~~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~~. The custody policy shall include~~ 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.

~~These~~Those rules and procedures shall ensure that the crypto-asset service provider cannot lose clients' crypto-assets or the rights related to ~~these~~those assets due to frauds, cyber threats or negligence.

4. ~~5.~~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.

5. ~~6.~~Crypto-asset providers ~~shall communicate on a durable medium~~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 ~~their~~the client concerned, with a statement of position of the crypto- assets recorded in the

name of ~~the client~~those clients. That statement of position shall be made in a durable medium. The statement ~~mentions~~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 ~~shall also communicate,~~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 ~~relating to~~about operations on crypto-assets ~~requiring~~that require a response from ~~the client~~Crypto~~to~~those clients.

6. Crypto-asset service providers ~~shall ensure the establishment of the necessary means to return as soon as possible the crypto-assets or the means of access to the~~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 on behalf of their clients from their own holdings. They shall ensure that, on the DLT, ~~its~~their clients' crypto-assets are held on separate addresses from those on which their own crypto-assets are held.

8. Crypto-asset service providers ~~shall refrain from using the~~that are authorised for the custody and administration of crypto-assets ~~or the cryptographic keys stored~~ on behalf of ~~their clients, except with the express prior consent of the clients.~~

~~8.Crypto-asset service providers~~third parties shall be liable to their clients for loss of crypto-assets as a ~~result of~~resulting from a malfunction or hacks up to the market value of the crypto-assets lost.

Article ~~57~~ 68

Operation of a trading platform for crypto-assets

1. Crypto-asset service providers that are authorised for the ~~provision~~operation of ~~the service referred to in Article 3(q) shall comply with the following requirements.~~

~~2.They~~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, ~~i.e.~~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 ~~and~~, procedures ~~around~~and the ~~levels~~level of ~~compensation~~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 ~~customers~~clients willing to trade;

(e) set requirements to ensure fair and orderly trading;

(f) set conditions for crypto-assets to remain accessible for trading, ~~such as~~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 transactions and fiat currency transactions.

~~3~~For the ~~purpose~~purposes of point (a), the operating rules shall clearly state that a crypto-asset ~~cannot~~shall not be admitted to trading on the trading platform, where a ~~whitepaper notified or approved~~crypto-asset white paper has ~~not~~ been published, unless such a crypto-asset benefits from the ~~transitional measures~~exemption set out in ~~Article 111~~Articles 4(2).

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 ~~the~~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 ~~transitional measures~~exemption set out in ~~Article 111~~Articles 4(2).

The operating rules of the trading platform for crypto-assets shall prevent the admission to trading of ~~a~~ crypto-~~asset~~assets which ~~has an~~have inbuilt anonymisation function unless the ~~holder~~holders of the crypto-assets and their transaction history ~~of the crypto-asset~~ can be identified by the crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets or by competent authorities.

2. ~~4~~These operating rules referred to in paragraph 1 shall be drafted in one of the official languages of the home Member States or in another language that is customary in the sphere of finance. ~~These~~Those operating rules shall be made public on the website of the crypto-asset service provider~~'s website~~ concerned.

3. ~~5~~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 ~~where~~when they are authorised for the ~~services referred to in Article 3(1)(r) or 3(1)(s)~~exchange of crypto- assets for fiat currency or for the exchange of crypto-assets for other crypto-assets.

4. ~~6~~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 ~~its~~that their trading ~~system~~systems:

(a) ~~is~~are resilient;

(b) ~~has~~have sufficient capacity to ensure orderly trading under conditions of severe market stress;

(c) ~~is~~are able to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;

(d) ~~is~~are fully tested to ensure that conditions under points (a), (b) and (c) are met;

(e) ~~is~~are subject to effective business continuity arrangements to ensure continuity of their services if there is any failure of the trading system.

5. ~~7~~Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public ~~current~~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 ~~provider~~providers concerns shall make ~~this~~that information available to the public ~~on a continuous basis~~ during the trading hours on a continuous basis.

6. ~~8~~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. ~~9~~Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ~~offer~~make the information published in accordance with paragraphs ~~6~~5 and ~~7~~6 available to the public on a reasonable commercial basis and ensure non-discriminatory access to ~~the~~that information. ~~Such~~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. ~~10~~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. ~~11~~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. ~~12~~Crypto-asset service providers ~~shall keep at~~that are authorised for the ~~disposal~~operation of ~~the competent authority, for at least five years, the relevant data relating to all orders and all transactions in crypto-assets which are carried out through their trading platforms. Crypto-asset service providers~~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 ~~58~~ 69

Exchange of crypto-assets against fiat currency or exchange of crypto-assets against other crypto-assets

1. Crypto-asset ~~service~~ providers that are authorised for ~~the provision of the service referred to in Articles 3(1)(r) and 3(1)(s) shall comply with the following requirements.~~

~~2.The crypto-asset service providers~~exchanging crypto-assets against fiat currency 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. ~~3.They~~Crypto-asset service providers that are authorised for exchanging crypto-assets against fiat currency 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 fiat currency or other crypto-assets.

3. ~~4.They~~Crypto-asset service providers that are authorised for exchanging crypto-assets against fiat currency or other crypto-assets shall execute the clients' orders at the prices displayed at the time of their receipt.

4. ~~5.They~~Crypto-asset service providers that are authorised for exchanging crypto-assets against fiat currency or other crypto-assets shall publish the details of the orders and the transactions concluded ~~on their exchange platform~~by them, including transaction

volumes and prices.

Article ~~59~~70

Execution of orders for crypto-assets on behalf of third parties

1. Crypto-asset service providers that are authorised to execute orders for ~~the provision of the service referred to in Articles 3(1)(t) shall comply with the following requirements.~~

~~2.Crypto-asset service providers~~crypto-assets on behalf of third parties shall take all ~~sufficient~~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 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. ~~3.~~To ensure compliance with paragraph 2, a crypto-asset service provider that are authorised to execute orders for crypto-assets on behalf of third parties shall establish and implement effective execution arrangements. In particular, ~~it~~they shall establish and implement an order execution policy to allow ~~it~~them to obtain, for ~~its~~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. ~~4.~~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.

~~5.The requirement in paragraph 2 does not apply when the crypto-asset service provider executes orders for crypto-assets, following specific instructions given by its client.~~

~~6.Crypto-asset service providers 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 ~~60 Placement~~71

Placing of crypto-assets

1. Crypto-asset service providers that are authorised for ~~the provision of the service referred to in Articles 3(1)(v) shall comply with the following requirements.~~

~~2.Crypto-asset service providers~~placing crypto-assets shall communicate the following information to the issuer or any third party acting on ~~its~~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 shall obtain the agreement of the

~~issuer~~issuers or any third party acting on ~~its~~their behalf as regards points (a)~~, (b), (c) and~~ to (d) ~~before carrying out the placement of crypto-assets~~.

2. ~~3.~~The ~~internal~~ rules on conflicts of interest ~~as~~ referred to in Article ~~54~~65 shall have specific and adequate ~~procedure~~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-~~asset~~assets with their own clients;

(b) the proposed price for ~~the placement of~~placing crypto-assets has been overestimated or underestimated.

Article ~~61~~72

Reception and transmission of orders ~~*related to crypto-assets*~~on behalf of third parties

1. Crypto-asset service providers that are authorised for the provision of the ~~service referred to in Articles 3(1)(v) shall comply with the following requirements.~~

~~2.Crypto-asset service providers~~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. ~~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 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. ~~4.~~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 ~~62~~ 73

Advice on crypto-assets

1. Crypto-asset service providers that are authorised ~~for the provision of the service referred to in Article 3(1)(w) shall comply with the following requirements.~~

~~2.Crypto-asset service providers~~to provide advice on crypto-assets shall assess the compatibility of such crypto-assets with the needs of the clients and recommend them only when this is in the interest of the clients.

2. ~~3.~~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 ~~fulfill~~fulfil their obligations.

3. ~~4.~~For the purposes of the assessment referred to in paragraph ~~2~~1, crypto-asset service providers that are authorised to provide advice on crypto-assets shall request information about the client or prospective client's knowledge of, and experience in crypto-assets, objectives, financial situation including the ability to bear losses and a 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 tradability, 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 ~~3~~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. ~~The client~~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 ~~2~~1 every two years after the initial assessment made in accordance with that paragraph.

7. Once the assessment referred to in paragraph ~~2~~1 has been ~~done~~performed, crypto-asset service providers that are authorised to provide advice on crypto-assets shall provide ~~the client~~clients with a report summarising the advice given to ~~the client~~those clients. ~~This~~That report shall be made and communicated to the clients in a durable medium. ~~This~~That report shall, as a minimum:

(a) specify the ~~client~~clients'~~s~~ demands and needs;

(b) ~~(c)~~provide an outline of the advice given.

~~*Article 63*~~

~~*Payment transactions in asset-referenced tokens*~~

~~Without prejudice to this Regulation, Title III, with the exception of Article 46, Article 47, and Title IV, with the exception of Articles 65 to 67, Article 68(5) and (6), 97(4) and (5) of Directive (EU) 2015/2366[51], including the delegated act adopted under Article 98(4) thereof, shall apply *mutatis mutandis* to crypto-asset service providers authorised for the provision of the service referred to in Article 3(1)(x).~~

Chapter 4: Acquisition of crypto-asset service providers

~~Chapter 3: Authorisation and Supervision of Crypto-Asset Service Providers~~

Article ~~64~~74

~~Authorisation as a~~Assessment of intended acquisitions of crypto-asset service ~~provider~~providers

~~[51] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market and amending Directives 2002/65/EC, 2009/110/EC, 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35)~~

~~1.A legal person who intends to provide crypto-asset services shall apply to the competent authority of the Member State where it has its registered office for authorisation as a crypto-asset service provider.~~

~~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) and the legal identifier of the prospective crypto-asset service provider, the internet address of the website operated by that provider, and its physical address;~~

~~(b)the legal status of the prospective crypto-asset service provider;~~

~~(c)the articles of association of the prospective crypto-asset service provider;~~

1. ~~(d)a programme of operations setting out the types of crypto-asset services that the prospective crypto-asset service provider wishes to provide, including where and how offerings are to be marketed;~~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).

~~(e)a description of the prospective crypto-asset service provider's governance arrangements;~~

~~(f)absence of a criminal record in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, counter-terrorism legislation, professional liability obligations for all the natural persons involved in the management body of the prospective crypto-asset service provider and for natural persons who, directly or indirectly, hold 20% or more of the share capital or voting rights;~~

~~(g)proof that the natural persons involved in the management body of the prospective crypto-asset service provider collectively possess sufficient knowledge, skills and experience to manage the prospective crypto-asset service provider and that those natural persons are required to commit sufficient time to the performance of their duties;~~

~~(h)a description of the prospective 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 its IT systems and security arrangements;~~

~~(j)proof that the prospective crypto-asset service provider meets the prudential safeguards in accordance with Article 47;~~

~~(k)a description of the prospective crypto-asset service provider's procedures to handle complaints from clients;~~

~~(l)a description of the procedure for the segregation of client's assets and funds;~~

~~(m)a description of the procedure and system to detect market abuse.~~

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.

~~(n)where prospective crypto-asset service provider intends to provide the service referred to in Article 3(1)(p), the application shall contain the custody policy;~~

~~(o)where the prospective crypto-asset service provider intends to operate a trading platform for crypto-assets in accordance with Article 3(1)(q), the application shall contain operating rules of the trading platform;~~

~~(p)where the prospective crypto-asset service provider intends to provide one of the service referred to in Articles 3(1)(r) and (s), the application shall contain the non-discriminatory commercial policy;~~

~~(q)where the prospective crypto-asset service provider intends to provide the service referred to in Article 3(1)(t), the application shall contain the execution policy;~~

~~(r)Where the prospective crypto-asset service provider intends to provide the service referred to in Article 3(1)(w), the application shall contain the proof that natural persons giving advice on behalf of the prospective crypto-asset service provider have the necessary knowledge and expertise to fulfil their obligations.~~

~~3.The competent authority shall,~~Competent authorities shall, promptly and in any event within ~~25~~two working days ~~of~~following receipt of the ~~application referred to in~~notification required under paragraph 1~~, assess whether that application is complete by checking that the information listed in paragraph 2 has been submitted. Where the application is not complete, the competent authority shall set a deadline by which the prospective crypto- asset service provider is to provide the missing information.~~

~~4.Where an application~~ acknowledge receipt thereof in writing to the proposed acquirer.

3. Competent authorities shall assess the intended acquisition referred to in paragraph 1 ~~remains incomplete after the deadline referred to in paragraph 3, the competent authority may refuse to review the application.~~

~~5.Where an application~~and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4), within sixty working days from the date of the written acknowledgement of receipt referred to in paragraph ~~1 is complete, the competent authority shall immediately notify the prospective crypto-asset service provider thereof~~3.

~~6.Before adopting a decision on the granting or refusing to grant authorisation as a crypto-asset service provider, the competent authority shall consult the competent authority of another Member State in the following cases:~~

~~(a)the prospective crypto-asset provider is a subsidiary of a crypto-asset service provider authorised in that other Member State;~~

(b)the prospective 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 prospective 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.

7.The competent authority shall, within three months from the date of receipt of a complete application, assess whether the prospective crypto-asset service provider complies with the requirements set out in this Regulation and shall adopt a fully reasoned decision granting or refusing to grant 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 prospective crypto-asset service provider wishes to provide. The competent authority may refuse authorisation if there are objective and demonstrable grounds for believing that the management body of the prospective 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.

8.The competent authority shall inform ESMA of all authorisations granted under this Article. ESMA shall add all the information submitted in the successful applications to the register of authorised crypto-asset service providers provided for in Article 66. ESMA may request information in order to ensure that competent authorities grant authorisations under this Article in a consistent manner.

9.The competent authority shall notify the prospective crypto-asset service provider of its decisionWhen acknowledging receipt of the notification, competent authorities shall inform the persons referred to in paragraph 1 of the date on which the assessment will be finalised.

4. 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.

5. 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 threetwo working days of, but before the date of that decision.

10.A crypto-asset service provider authorisedreferred to in paragraph 4, second subparagraph, extended, where applicable, in accordance with this Articleparagraph 5, second and

third subparagraph. That notification shall~~, at all times, meet~~ provide the ~~conditions~~reasons for ~~its authorisation.~~that decision.

6. ~~11.Crypto-asset service providers authorised under this Regulation may also engage in activities other than those covered by the authorisation referred to in this Article in accordance with the relevant applicable Union or national law.~~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.

~~12.Where an entity authorised 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, and where such an entity is not exempted from authorisation under Article 2(6) or 2(7) applies for authorisation as a crypto-asset service provider under this Regulation, the competent authority shall not require that entity to provide information or documents which it has already submitted when applying for authorisation pursuant to that Regulation, those Directives or national law, provided that such information or documents remain up-to-date and are accessible to the competent authority.~~*~~Article 65 Scope of Authorisation~~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) ~~1.The competent authorities that granted an authorisation under Article 64 shall ensure that such authorisation specifies the crypto-asset services that~~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 ~~is authorised to provide.~~

~~2.The authorisation granted under Article 64 shall be valid for the entire Union and shall allow a crypto-asset service provider to provide the services for which it has been authorised, throughout the Union, either through the right of establishment, including through a branch, or through the freedom to provide services.~~

~~3.A crypto-asset service provider that provides 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.A crypto-asset service provider seeking authorisation to extend its business to additional crypto-asset services not envisaged at the time of the authorisation granted under Article 64 shall submit a request for extension of its authorisation to the competent authorities that granted the crypto-asset service provider its authorisation by complementing and updating the information referred to in Article 64. The request for extension shall be processed in accordance with Article 64(4) to (12).~~

~~*Article 66 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 internet address 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 68;

(f)any other services provided byas 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 not covered by this Regulation with a reference to the relevant Union or national lawin which the acquisition is intended;

(d) 3.Any withdrawal of authorisation of awhether the crypto-asset service provider in accordance with Article 67 shall remain published in the register for five years.

*Article 67 Withdrawal*will be able to comply and continue to comply with the provisions of *authorisation*

1.The competent authority which granted authorisation shall withdraw the authorisation in any of the following situations where the crypto-asset service provider:

(a)has not used its authorisation within 18 months of the date of granting of the authorisation;

(b)has expressly renounced its authorisation;

(c)has not provided crypto-asset services for nine successive months;

(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.Title;

2.The competent authority which granted authorisation shall also have the power to withdraw the authorisation in any of the following situations:

(a)where the crypto-asset service provider or the members of its management body

have infringed national law implementing Directive (EU) 2015/849[52] in respect of money laundering or terrorist financing;

(b)where the crypto-asset service provider has lost the authorisation allowing the provision of payment services in accordance with Directive (EU) 2015/2366 or Directive 2009/110/EC and that crypto-asset service provider has failed to remedy the situation within 40 calendar days.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. 3.Where a competent authority in a Member State withdraws an authorisation, the competent authority designated as a single point of contact in that Member State in accordance with Article 74 shall without undue delay notify ESMA and the competent authorities of the host Member States. ESMA shall introduce information on the withdrawal of the authorisation in the register referred to in Article 66.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.

The competent authority may limit the withdrawal of authorisation to a particular service.

4.Before making a decision to withdraw the authorisation, the competent authority that granted authorisation shall consult the competent authority of another Member State in cases where the crypto-asset service provider 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; or

(c)controlled by the same natural or legal persons who control a crypto-asset service provider authorised in that other Member State.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.

5.ESMA, EBA and any relevant competent authority 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.

6.Crypto-asset service provider shall establish, implement and maintain adequate procedures ensuring the timely and orderly transfer of the client's crypto-assets and funds to another crypto-asset service provider in the event of a withdrawal of

[52] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117)

~~authorisation as referred to in paragraph 1.~~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).

~~*Article 68 Cross-border provision of crypto-asset services*~~

~~1.Where a crypto-asset service provider authorised in accordance with Article 64 intends to provide crypto-asset services in more than one Member States, it shall submit to the competent authority designated as a single point of contact in accordance with Article 74, the following information:~~ESMA shall submit those draft regulatory technical standards to the Commission by

~~(a)~~~~a list of the Member States in which the crypto-asset service provider intends to provide crypto-asset services;~~

~~(b)~~~~the starting date of the intended provision of the crypto-asset services by the crypto-asset service provider;~~

~~1.1.1.1.~~ ~~a list of any 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 of this Article, communicate that information to the competent authorities of the Member States in which the crypto-asset service provider intends to provide crypto-asset services as referred to in paragraph 1 of this Article, to ESMA and EBA. ESMA shall introduce that information in the register referred to in Article 66.~~

~~3.The single point of contact of the Member State which granted authorisation shall thereafter inform without delay the crypto-asset service provider of the communication referred to in paragraph 2.~~

~~4.The crypto-asset service provider may start to provide crypto-asset services in a Member State other than the one whose competent authority granted authorisation from the date of the receipt of the communication referred to in paragraph 3 or at the latest 15 calendar days after submitting the information referred to in paragraph 1.~~*[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 of Market Abuse involving crypto-assets

Article ~~69~~ 76

Scope of the rules on market abuse

The prohibitions and requirements laid down in this Title shall apply to acts carried out by any person and that ~~concerns~~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.

Article ~~70~~ 77

Disclosure of inside information

~~Inside information is information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more crypto-asset issuers 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.A crypto-asset issuer~~Issuers of crypto-assets shall inform the public as soon as possible of inside information which concerns ~~that issuer~~them, in a manner that enables ~~easy and widespread~~the public to access ~~to~~ that information in an easy manner and ~~its~~to assess that information in a complete, correct and timely ~~assessment by the public~~manner.

1. ~~3.A~~Issuers of crypto-~~asset issuer~~assets may, on ~~its~~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 ~~issuer~~issuers;

   (b) delay of disclosure is not likely to mislead the public;

   (c) the ~~issuer is~~issuers are able to ensure the confidentiality of that information.

Article ~~71~~ 78

Prohibition of insider dealing

1. ~~For the purpose of this Regulation, insider dealing arises where a~~No person

possessesshall use inside information and uses that information by acquiring or disposing of,about crypto-assets to acquire those crypto- assets, or to dispose of those crypto-assets, either directly or indirectly and either for itshis or her own account or for the account of a third party, directly or indirectly, crypto-assets to which that information relates.

2. For the purpose of this Regulation, recommending that another person engages in insider dealing, or inducing another person to engage in insider dealing, arises where the personNo person that possesses inside information andabout crypto-assets shall:

(a) recommendsrecommend, on the basis of that inside information, that another person acquireacquires those crypto-assets or disposedisposes of those crypto-assets to which that information relates, or inducesinduce that person to make such an acquisition or disposal; or

(b) recommendsrecommend, on the basis of that inside information, that another person cancels or amends an order concerning athose crypto-asset to which that information relatesassets, or inducesinduce that person to make such a cancellation or amendment.

3.A person shall not:

(a)engage or attempt to engage in insider dealing;

(b)recommend that another person engage in insider dealing or induce another person to engage in insider dealing.

Article 72 79

Prohibition of unlawful disclosure of inside information

1.For the purpose of this Regulation, unlawful disclosure of inside information arises where aNo person that possesses inside information as described in Article 70(1) and discloses thatshall disclose such information to any other person, except where thesuch disclosure is made in the normal exercise of an employment, a profession or duties.

2.A person shall not unlawfully disclose inside information.

Article 73 80

Prohibition of market manipulation

1. For the purposes of this Regulation,No person shall engage into market manipulation which shall comprise include 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) sets, or is likely to set, the price of one or several crypto-assets at an abnormal or artificial level.

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 have been carried out for legitimate reasons.

(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, which employswhile 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 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) ~~the conduct by a person, or persons acting in collaboration, to secure~~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) ~~(i)~~disrupting or delaying the functioning of the trading platform ~~or being~~for crypto- assets or engaging into any activities that are likely to ~~do so~~have that effect;

ii) ~~(ii)~~making it more difficult for other persons to identify genuine orders on the trading platform for crypto-assets or ~~being~~engaging into any activities that are likely to ~~do so~~have that effect, including by entering orders which result in the destabilisation of the normal functioning of the trading platform for crypto-assets;

iii) ~~(iii)~~creating ~~or being likely to create~~ 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) ~~the~~ 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.

~~3.A person shall not engage in or attempt to engage in market manipulation.~~

Title VII: competent Authorities, ~~ESMA~~the EBA and ~~EBA~~ESMA

Chapter 1: Powers of competent authorities and cooperation between competent authorities, ~~ESMA~~the EBA and ~~EBA~~ESMA

Article ~~74~~ 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 ~~ESMA~~the EBA and ~~EBA~~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 of them as a single point of contact for cross-border administrative cooperation between competent authorities as well as with ~~ESMA~~the EBA and ~~EBA~~ESMA.

3. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.

Article ~~75~~82

Powers of competent authorities

1. In order to fulfil their duties under Titles II, III, IV and V 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 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;

   (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 protection 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' interests;

   (h) to transfer existing contracts to another crypto-asset service provider in cases

where a crypto-asset service provider's authorisation is withdrawn in accordance with Article ~~67~~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 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 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;

(n) to require issuers of crypto-assets, including asset-referenced tokens and e-money tokens, to include additional information in their ~~whitepapers~~crypto-asset white papers, where necessary for consumer protection or financial stability;

(o) to suspend an ~~offering~~offer to the public of crypto-assets, including ~~an offering of~~ asset-referenced tokens or e-money tokens, or an admission to trading on a trading platform for crypto-assets for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(p) to prohibit an ~~offering~~offer to the public of crypto-assets, including ~~an offering of~~ asset-referenced tokens or e-money tokens, ~~to the public~~ 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 ~~the relevant~~a trading platform for crypto-assets to suspend trading of the crypto-assets, including ~~of~~ asset-referenced tokens or e-money 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;

(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;

(s) to make public the fact that an issuer 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 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 protection 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 issuer's situation is such that trading would be detrimental to consumers' interests;

(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 crypto-assets without a ~~white paper~~crypto-asset white paper notified in accordance with Article ~~8~~7, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(w) to require the temporary cessation of any practice that the competent authority considers contrary to this Regulation;

(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, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove an infringement of this Regulation.

Supervisory and investigative powers exercised in relation to e-money token issuers are without prejudice to powers granted to relevant competent authorities under national laws ~~implementing~~transposing Directive 2009/110/EC.

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 investigation;

(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 ~~70~~77, ~~71~~78, ~~72~~79 and ~~73~~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 ~~76~~ 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 ~~85(1~~92(1), 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 ~~ESMA~~the EBA and ~~EBA~~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.

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 ~~and EBA~~ shall fulfil a coordination role between competent authorities and across colleges as referred to in Articles ~~35~~99 and ~~44~~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 ~~the date of~~ entry into force ~~of this Regulation~~]*.

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.

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 ~~of this Regulation~~]*.

Article ~~77~~ 84

Cooperation with ~~*ESMA*~~the EBA and ~~*EBA*~~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 2 of this Title ~~VII~~.

2. A requesting competent authority shall inform the EBA and ESMA ~~and EBA~~ of any request referred to in the Article ~~75(4~~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.

3. The competent authorities shall without delay provide the EBA and ESMA ~~and EBA~~ with all information necessary to carry out their duties, in accordance with Article 35 of Regulation (EU) No ~~1095/2010~~1093/2010 and Article 35 of Regulation (EU) No~~1093/2010~~ 1095/2010 respectively.

4. In order to ensure uniform conditions of application of this Article, 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.

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

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 ~~78~~ 85

Cooperation with other authorities

Where an issuer of crypto-assets, including ~~of~~ 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.

Article ~~79~~ 86

Notification duties

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 ~~and to EBA~~ by… *[please insert date 12 months after the date of entry into force ~~of this Regulation~~]*. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

Article ~~80~~ 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 ~~authority~~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 ~~81~~ 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~~[53]~~[68].

With regard to the processing of personal data by ~~ESMA~~the EBA and ~~EBA~~ESMA within the scope of this Regulation, it shall comply with Regulation (EU) 2018/1725~~[54]~~[69].

Article ~~82~~ 89

Precautionary measures

1. Where the competent authority of a host Member ~~States~~State has clear and demonstrable grounds for believing that irregularities have been committed by a crypto-asset service provider or by an issuer of crypto-assets, including asset-referenced tokens or e-money tokens, it shall notify the competent authority of

~~[53]~~[68] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (~~Text with EEA relevance)~~ (*OJ L 119, 4.5.2016, ~~p.~~ // 1–~~88~~)*)

~~[54]~~[69] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, ~~bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance) OJ L 295, 21.11.2018, p. 39–98~~

the home Member ~~States~~State and ESMA thereof.

Where the irregularities concerns 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 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 and shall inform the Commission, ESMA and where appropriate the EBA, thereof without undue delay.

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 concerns 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 ~~83~~ 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~~, EBA~~ 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.

~~In order to ensure consistent harmonisation of this Article,~~ 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.

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bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance) OJ L 295, 21.11.2018, p. 39–98

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 ~~80~~87. Such exchange of information shall be intended for the performance of the tasks of those competent authorities.

Article ~~84~~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 of crypto-assets, including ~~issuers of~~ 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 procedures referred to in paragraph 1 shall be made available on the website of each competent authority and communicated to ~~ESMA~~the EBA and ~~EBA~~ESMA. ESMA shall publish the references to the complaints procedures related sections of the websites of the competent authorities ~~on~~in its crypto-asset register referred to in Article ~~66~~57.

Chapter 2: administrative measures and sanctions by competent authorities

Article ~~85~~92

Administrative sanctions and other administrative measures

1. Without prejudice to any criminal sanctions and without prejudice to the supervisory powers of competent authorities under Article ~~75~~82, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:

(a) infringements of Articles 4 to ~~10~~14;

(b) infringements of Articles ~~12 to 29;~~

~~(c)infringements of~~17 and 21, Articles ~~37~~23 to 36 and Article 42;

(c) ~~(d)~~infringements of Articles ~~46~~43 to ~~63~~49, except Article 47;

(d) ~~(e)~~infringements of Article 56 and Articles ~~70~~58 to 73;

(e) infringements of Articles 76 to 80;

(f) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article ~~75(2~~82(2).

Member States may decide not to lay down rules for administrative sanctions 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 12 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 20XX12 months after entry into force]*, Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission, ESMAthe EBA and to EBAESMA. They shall notify the Commission, ESMA and EBA without delay of any subsequent amendment thereto.

2. 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 (a) 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 7582;

(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 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/EU5570, 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 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]*.

3. 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 (b) 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 75;

(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

5570 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

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.

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 ~~in accordance with Article 75~~;

(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. 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 ~~in accordance with Article 75~~;

(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]*.

6. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions 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 person responsible for the infringement 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 which indicates the person responsible for 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 ~~71~~78, ~~72~~79 or ~~73~~80, a permanent 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 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 of at least ~~three~~3 times the amount of the profits gained or losses avoided because of the infringement, where those can be determined;

(i) in respect of a natural person, maximum administrative pecuniary sanctions 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]*;

(j) in respect of legal persons, maximum administrative pecuniary sanctions of at least EUR 15 000 000 or 15 % 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 than those established in those paragraphs, in respect of both natural and legal persons responsible for the infringement.

Article ~~86~~ 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 ~~85~~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;

   (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 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 consumers or investors' interests.

2. In the exercise of their powers to impose administrative penalties and other administrative measures under Article ~~85~~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 ~~87~~ 94

Right of appeal

Member States shall ensure that any decision taken under this Regulation is 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.

Article ~~88~~ 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 ~~89~~ 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 ~~85~~92. ESMA shall publish that information in an annual report.

   Where Member States have chosen, in accordance with Article ~~85(1~~92(1), to lay

down criminal penalties for the infringements of the provisions referred to in that paragraph, their competent authorities shall provide ~~ESMA~~the EBA and ~~EBA~~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 ~~ESMA~~the EBA and ~~EBA~~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 ~~ESMA~~the EBA and ~~EBA~~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~~, EBA~~, and the competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

Article ~~90~~97

Reporting of breaches and protection of reporting persons

Directive (EU) 2019/1937~~56~~[71] shall apply to the reporting of breaches of this Regulation and the protection of persons reporting such breaches.

~~Chapter 3:~~

~~56~~[71] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law OJ L 305, 26.11.2019, p. 17~~–56~~.

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.

   The EBA shall exercise the powers of competent authorities conferred by Articles 21, 37 and 38 as regards issuers of significant asset-referenced tokens.

2. Where an issuer of significant asset-referenced tokens provide crypto-asset services or issue 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 issuers of significant asset-referenced tokens comply 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 asset-significant e-money tokens with the requirements laid down in Article 52.

Article 99

Colleges for issuers of significant asset-referenced tokens

1. Within 30 calendar days of a decision to classify an asset-referenced token as significant, the EBA shall establish, manage and chair a consultative supervisory college for each issuer of significant asset-referenced 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 authority of the home Member State where the issuer of significant asset-referenced 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;

   (e) where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens are admitted to trading;

   (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;

(i) the ECB;

(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, 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.

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;

(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);

(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 EBA 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 (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

1. The college for issuers of significant asset-referenced 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 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 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).

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.

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 Article 99(2), point (i), it shall have two votes.

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 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 ~~91~~103

Exercise of powers referred to in Articles ~~92~~104 to ~~95~~107

The powers conferred on the EBA by Articles ~~92~~104 to ~~94~~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 ~~92~~ 104

Request for information

1. In order to carry out its duties under ~~Articles 34 and 43(2) of this Regulation~~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 ~~16(5)~~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 ~~23(4~~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 ~~21, or any credit institutions ensuring the custody of the funds received in exchange of the significant e-money tokens;~~

   ~~(e)any crypto-asset service provider providing the service of payment transactions in significant asset-referenced tokens~~33;

   (e) ~~(f)~~an issuer of significant e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant ~~asset-referenced~~e-money tokens;

   (f) ~~3.2.~~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) ~~3.3.~~any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

   (h) ~~3.4.~~any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1) point (~~p~~10) in relation with significant asset-referenced tokens or significant e-money tokens;

   (i) ~~3.5.~~any trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;

   (j) ~~3.6.~~the management body of the persons referred to in ~~point~~points (a) to (~~f~~).

   ~~3.7.the management body of the persons referred to in point (a) to (k~~i).

2. ~~1.~~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;

(e) indicate the amount of the fine to be issued in accordance with Article ~~101~~113 where the information provided is incorrect or misleading.

3. ~~2.~~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 ~~102~~114 where the production of information is required.

(f) indicate the fine provided for in Article ~~101~~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 ~~93~~105

General investigative powers

1. In order to carry out its duties under Article ~~34 and 43(2)~~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 as referred to in Article ~~35~~99 or the college for issuers of significant e-money tokens as referred to in Article ~~44~~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 ~~102~~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 ~~101~~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 ~~102~~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:

(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 ~~94~~106

On-site inspections

1. In order to carry out its duties under ~~Articles 34 and 43(2)~~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.

   The college for issuers of significant asset-referenced tokens as referred to in Article ~~35~~99 or the college for issuers of significant e-money tokens as referred to in Article ~~44~~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 ~~93(1~~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 ~~102~~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 ~~102~~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 ~~93(1~~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:

(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 ~~95~~ 107

Exchange of information

In order to carry out its duties under ~~Articles 34 and 43(2)~~Article 98 and without prejudice ~~of~~to Article ~~77~~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 shall exchange with the EBA any information related to:

(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 ~~16(5)~~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 ~~23(4~~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 ~~21, or any credit institutions ensuring the custody of the funds received in exchange of the significant e-money tokens;~~

~~(e)any crypto-asset service provider providing the service of payment transactions in asset-referenced tokens~~33;

(e) ~~(f)~~an issuer of significant e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant ~~asset-referenced~~e-money tokens;

(f) ~~11.1.~~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) ~~11.2.~~any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

(h) ~~11.3.~~any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1), point (~~p~~10), in relation with significant asset-referenced tokens or significant e-money tokens;

(i) ~~11.4.~~any trading platform for crypto-assets that has admitted a significant

asset-referenced token or a significant e-money token to trading;

(j) ~~11.5.~~the management body of the persons referred to in point (a) to (~~f~~i).

~~11.6.the management body of the persons referred to in point (a) to (k).~~

Article ~~96~~108

~~Agreement~~Administrative agreements on exchange of information between the EBA and third countries

1. In order to carry out its duties under Article ~~34 and 43(2)~~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 ~~99~~111.

2. ~~Such exchange~~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 ~~97~~109

Disclosure of information from third countries

The EBA may disclose the information received from supervisory authorities of third countries only ~~if~~where the EBA or a competent authority 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 ~~98~~ 110

Cooperation with other authorities

Where an issuer of significant asset-~~backed crypto-assets~~referenced tokens or an issuer of significant e-money tokens engages in activities other than those covered by this Regulation, the ~~competent authorities~~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.

Article ~~99~~ 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 ~~100~~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 ~~to a provision of Title III~~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 ~~101~~113 and ~~102~~114;

   (c) adopt a decision requiring ~~issuers~~the issuer of significant asset-referenced

tokens supplementary information, where necessary for consumer protection;

(d) adopt a decision requiring ~~issuers~~the issuer of significant asset-referenced tokens to suspend an ~~offering~~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 ~~offering of significant asset-referenced tokens~~offer to the public ~~issuers~~ 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 find 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) ~~issuing~~issue warnings on the fact ~~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~~, subject to the conditions set out in Article 33~~.

2. Where the EBA finds that an issuer of a significant e-money tokens has committed one of the infringements ~~to a provision of Article 42~~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 ~~101~~113 and ~~102~~114;

(c) ~~issuing~~issue warnings on ~~the fact~~ 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 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' ~~interests~~ 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 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 ~~for~~or by the ~~infringement~~issuer of significant e-money tokens to prevent ~~its~~the repetition of such an infringement.

4. Before taking the actions referred in points (d)~~, (e), (f),~~ to (g)~~,~~ and point (j) of paragraph 1, the EBA shall inform ESMA and, where the significant asset-referenced tokens refers Union currencies, the central banks of issues of those currencies.

5. Before taking the actions referred in points (a)~~, (b) and~~ to (c) 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 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 ~~4~~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 appeal has been lodged and specifying 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 ~~101~~ 113

Fines

1. The EBA shall adopt a decision imposing a fine in accordance with paragraph 3 or 4, where in accordance with ~~Artice 104(5~~Article 116(8), it finds that:

(a) an issuer of significant asset-referenced tokens has, intentionally or negligently, committed one of the infringements ~~of a provision of Title III~~listed in Annex V;

(b) an issuer of significant e-money tokens has, intentionally or negligently, committed one of the infringements ~~of a provision referred to~~listed in ~~Article 42~~Annex VI.

An infringement shall be considered to have been committed intentionally if the EBA finds objective factors which ~~demonstrates~~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, ~~ESMA~~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 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' ~~interests~~ or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced 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 the issuer of significant e-money tokens, 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 ~~for~~or by the ~~infringement~~issuer of significant e-money tokens to prevent ~~its~~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 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 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 ~~102~~ 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 ~~100~~112;

   (b) a person referred to in Article ~~92(1~~104(1):

      i) ~~(i)~~to supply complete information which has been requested by a decision pursuant to Article ~~92~~104;

      ii) ~~(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 ~~93~~105;

      iii) ~~(iii)~~to submit to an on-site inspection ordered by a decision taken pursuant to Article ~~94~~106.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, 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 ~~103~~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 ~~101~~113 and ~~102~~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[~~57~~72].

2. Fines and periodic penalty payments imposed pursuant to Articles ~~101~~113 and ~~102~~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 ~~101~~113 and ~~102~~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.

[~~57~~72] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article ~~104~~116

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under Articles ~~34 or 43(2)~~98, the EBA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements ~~of the provisions under Title III~~listed in Annexes V or ~~42~~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 ~~92~~104 and to conduct investigations and on-site inspections in accordance with Articles ~~93~~105 and ~~94~~106. When using those powers, the investigation officer shall comply with Article ~~91~~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 ~~105~~117, the EBA shall decide if one or more of the infringements of provisions ~~under Title III~~listed in Annex V or ~~Article 42~~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 ~~100~~112 and/or impose a fine in accordance with Article ~~101~~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 ~~may~~shall adopt delegated acts in accordance with Article ~~109~~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 ~~105~~ 117

Hearing of persons concerned

1. Before taking any decision pursuant to Articles ~~100~~112, ~~101~~113 and ~~102~~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 protection. 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 ~~106~~ 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 or administrative measure in accordance with this Regulation. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article ~~107~~ 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 ~~in accordance with Article 34,~~ and the supervision of issuers of significant e-money token issuers in accordance with Article ~~43(2)~~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 ~~108~~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 ~~109~~121 by *[~~Publications Office:~~ please insert date 12 months after entry into force]* to specify 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 ~~108~~120

Delegation of tasks by the EBA to competent authorities

1. Where necessary for the proper performance of a supervisory task for 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 ~~92~~104 and to conduct investigations and on-site inspections in accordance with Article ~~93~~105 and Article ~~94~~106.

2. Prior to 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 on fees adopted by the Commission pursuant to Article ~~107(3~~119(3), the EBA shall reimburse a competent authority for 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 ~~109~~ 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), ~~14(8~~39(6), ~~104(10~~116(10) and ~~107(3~~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), ~~14(8~~39(6), ~~104(10~~116(10) and ~~107(3~~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), ~~14(8~~39(6), ~~104(10~~116(10) and ~~107(3~~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 ~~provision~~provisions

Article ~~110~~ 122

Report

1. ~~Before~~By … *[36 months after the date of entry into force of this Regulation]* ~~the Commission shall,~~ after consulting ~~ESMA and~~ the EBA~~,~~ and ESMA, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, ~~accompanied~~ where appropriate accompanied by a legislative proposal.

2. The report shall ~~assess~~contain the following:

   (a) the number of issuances of crypto-assets in the EU, the number of ~~whitepapers~~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;

   (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 ~~and trends~~ 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 ~~type~~subjects of the complaints received;

   (d) the number of issuers of asset-referenced tokens authorised under this Regulation, and an analysis of the ~~type~~categories of assets included in the ~~reserve~~reserves, the size of the ~~reserve,~~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 ~~type~~categories of assets included in the ~~reserve~~reserves, the size of the ~~reserve,~~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 ~~reserve,~~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 ~~reserve,~~reserves and the volume of payments in significant e-money tokens;

   (h) an assessment of the functioning of the market for crypto-asset ~~service providers~~services in the Union, including of market development and trends, taking into account the experience of the supervisory ~~experience~~authorities, the number of crypto-asset service providers authorised and their respective average market share;

   (i) an assessment of the level of consumer protection, including from the point of view of the operational resilience of issuers of crypto-assets and crypto-asset service providers, market integrity and financial stability provided by this ~~regulation~~Regulation;

(j) an assessment of whether the scope of crypto-asset services covered by this Regulation ~~remains~~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 ~~5~~4 and ~~12 remains appropriate;~~

~~(m)whether any adjustments to the definitions set out in this Regulation~~15 are ~~needed~~appropriate;

(m) ~~(n)~~an assessment of the impact of this Regulation on the proper functioning of the ~~Union's~~ internal market for crypto-assets, including ~~the~~any impact on the access to finance ~~by~~for small and medium-sized enterprises and on the development of new means of payment instruments;

(n) ~~(o)the development~~a description of ~~new~~developments in business models and technologies in the crypto-asset market;

(o) ~~(p)~~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) ~~(q)~~the application of administrative penalties and other administrative measures;

~~(r)the appropriateness of allowing entities established in third countries to be authorised as crypto-asset service providers or issuers of asset-referenced tokens or issuers of e-money tokens under this Regulation and the appropriateness of introducing an equivalence regime for crypto-asset services providers;(s)~~an evaluation of the cooperation between the competent authorities, the EBA and ESMA ~~and EBA~~, and an assessment of advantages and disadvantages of the ~~appropriateness of~~ competent authorities and ~~EBA as~~ the ~~supervisors~~EBA being responsible for supervision under this Regulation;

(q) ~~(t)~~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;

(r) ~~(u)~~the costs ~~of complying with this Regulation~~ for crypto-asset service providers ~~and~~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) ~~(v)~~ the number and amount of administrative fines and criminal penalties imposed ~~according to or in relation with~~for infringements of this Regulation ~~classified~~ by ~~Member States~~competent authorities and the EBA.

Article ~~111~~ 123

Transitional measures

1. ~~Crypto~~Articles 4 to 14 shall not apply to crypto-assets, other than asset-referenced tokens and e-money tokens, which were offered ~~in~~to the ~~EU~~public in the Union or admitted to trading on a trading platform for crypto-assets before *[please insert date*

of entry into application] ~~are not subject to the requirements set out in Title 2 of this Regulation, but may continue to be referred to as crypto-assets in accordance with this Regulation~~.

2. ~~Crypto~~By way of derogation from this Regulation, crypto-asset service providers ~~may continue~~which provided their services in accordance with ~~the~~ applicable ~~national~~ law ~~to provide crypto-asset services which are included within~~before *[please insert the ~~scope~~date of ~~this Regulation~~entry into application]*, may continue to do so until *[please insert the date 18 months after the date of ~~entry into~~ application]* or until they are granted an authorisation ~~referred~~pursuant to ~~in~~ Article ~~64~~55, whichever is sooner.

3. ~~For the duration~~By way of ~~the transitional period referred to in paragraph 2 of this Article~~derogation from Articles 54 and 55, Member States may ~~have in place~~apply a simplified procedure for applications for an authorisation ~~procedures for~~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, ~~are~~were authorised under national law to provide crypto-asset services. The competent authorities shall ensure that the requirements laid down in ~~Chapter~~Chapters 2 and 3 of Title IV are complied with before granting authorisation pursuant to such simplified procedures.

4. The EBA shall ~~not~~ exercise its ~~powers~~supervisory responsibilities pursuant to Article ~~33 and Article 43(2) until~~98 from the date of the entry into ~~force~~application of the delegated acts referred to in Article ~~14(8~~39(6).

Article ~~112~~ 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) ~~2017/1129~~2021/XXX, and amending Directive (EU) ~~2019/1937~~2019/37 (OJ L …)~~++~~[73]."

Article ~~113~~125

Transposition of amendment of Directive (EU) 2019/1937

1. Member States shall adopt, publish and apply, by … *[12 months after the date of entry into force of this Regulation]*, the laws, regulations and administrative provisions necessary to comply with Article ~~90~~97. 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.

2. Member States shall communicate to the Commission, the EBA and ESMA ~~and to EBA~~ the text of the main provisions of national law which they adopt in the field covered by Article ~~90~~97.

Article ~~114~~ 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.

[73] OJ: Please insert in the text the number, date and OJ reference of this Regulation.

2. ~~The~~This Regulation shall apply from *[please insert date 18 months after the date of entry into force]*.

3. However, ~~except~~ the provisions ~~applicable to e-money tokens and their issuers that shall enter into application on~~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*

~~OJ: Please insert in the text the number, date and OJ reference of this Regulation.~~

LEGISLATIVE FINANCIAL STATEMENT

Contents

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

EU Framework for crypto -assets

1.2. Policy area(s) concerned

Policy area: Internal Market Activity: Financial markets

1.3. The proposal relates to

☒ **a new action**

☐ **a new action following a pilot project/preparatory action**[~~58~~74]

☐ **the extension of an existing action**

☐ **a merger of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

This initiative has four general objectives. The first is to provide legal clarity and certainty to promote the safe development of crypto-assets and use of DLT in financial services. Secondly, the initiative should support innovation and fair competition by creating an enabling framework for the issuance and provision of services related to crypto-assets. The third objective is to ensure a high level of consumer and investor protection and market integrity, and the fourth is to address potential financial stability and monetary policy risks that could arise from an increased use of crypto-assets and DLT.

1.4.2. Specific objective(s)

[~~58~~74] **As referred to in Article 58(2)(a) or (b) of the Financial Regulation.**

The specific objectives of this initiative are as follows:

Removing regulatory obstacles to the issuance, trading and post-trading of crypto-assets that qualify as financial instruments, while respecting the principle of technological neutrality;

Increasing the sources of funding for companies through increased Initial Coin Offerings and Securities Token Offerings;

Limiting the risks of fraud~~, money laundering~~ and illicit practices in the crypto-asset markets;

Allowing EU consumers and investors to access new investment opportunities or new types of payment instruments~~, competing with existing ones, to deliver fast, cheap, and efficient payments,~~ in particular for cross-border situations.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The ~~proposal is~~proposals are expected to provide a fully harmonised framework for crypto-assets that currently ~~falls~~fall outside existing financial services legislation and allow for experimentation with the use of DLT and financial instruments in crypto-asset form.

The bespoke regime for crypto-assets will ensure a high level of consumer and investor protection and market integrity, by regulating the main activities related to crypto-assets (such as crypto-assets issuance, wallet provision, exchange and trading platforms). By imposing requirements (such as governance, operational requirements) on ~~all~~the main crypto-asset service providers and issuers operating in the EU, the proposal is likely to reduce the amounts of fraud and theft of crypto-assets.

In addition, the bespoke regime will introduce specific requirements on e-money tokens, significant e-money tokens, asset-referenced tokens and significant asset-referenced tokens in order to address the potential risks to financial stability and monetary policy transmission these can present. Finally, it will address market fragmentation issues arising from the different national approaches across the EU.

The accompanying proposal for a regulation on a pilot regime~~, which is also part of thproposal new proposed framework on crypto assets,~~ on DLT market infrastructures will allow for experimentation ~~with DLT market infrastructures. It is expected to allow for~~. It will enable the development of a secondary market for financial instruments in crypto-asset form, further reaping the potential benefits offered by the technology. ~~At the same time, the pilot regime is aimed at obtaining~~Additionally, this experimentation will generate further experience and evidence necessary to ~~further explore the limits~~assess whether and ~~possible need~~how to amend ~~the~~ existing financial services legislation to ensure it is technology neutral ~~and ensure market participants in the EU can gain experience with new technologies to retain global competitiveness~~.

1.4.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

Non-exhaustive list of potential indicators:

- Number and volumes of crypto-asset issuances in the EU
- Number of entities authorised in the EU as crypto-asset services providers
- Number of entities authorised in the EU as asset backed-crypto-asset or significant asset-referenced token issuers
- Number and value of fraud and thefts of crypto-assets in the EU
- Number of entities authorised by a NCA as a DLT market infrastructure under the pilot/ regime
- Volume of transactions traded and settled by DLT market infrastructure
- Number of market abuse cases involving crypto-assets reported to NCAs and investigated by NCAs
- Market capitalisation of asset backed crypto-assets and significant asset-referenced tokens
- Volume of payments through the use of asset-referenced tokens and significant asset-referenced tokens

- Assessment if other crypto-assets/infrastructures or market participants using DLT and/or dealing with crypto-assets have reached a systemically relevant level
- Number and volume of financial instruments issued as crypto-assets in the EU
- Number of prospectuses of financial instruments as crypto-assets approved by NCAs
- Number of entities authorised by NCAs to provide services under existing EU legislation (e.g. MiFID II/MiFIR, CSDR, SFD) and using a DLT/financial instruments in crypto-asset form
- Volume of transactions traded and settled by service providers authorised under existing EU legislation (e.g. MiFID II/MiFIR, CSDR, SFD) and using a DLT/financial instruments in crypto-asset form

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll- out of the implementation of the initiative

These proposals should address the following challenges:

1) Consumer protection and removing obstacles to innovation: Crypto-assets are one of the major applications of blockchain technology in finance. Since the publication of the Commission's FinTech Action Plan, in March 2018, the Commission has been examining the opportunities and challenges raised by crypto-assets.

On 9 January 2019, the EBA and ESMA published reports with advice to the European Commission on the applicability and suitability of the EU financial services regulatory framework on crypto-assets. These reports were based on the mandate given to them under the Commission's FinTech action plan, published in March 2018.

Both the EBA and ESMA ~~come to the overall conclusion~~argues that while some crypto-assets ~~may fit~~could fall within the ~~definition~~scope of ~~a~~EU financial ~~instrument under MiFID or e-money, respectively~~services legislation, most of them, do not. ~~In addition, they highlight that most of the~~Further, even where crypto-assets ~~outside~~are within the ~~EU~~scope of financial services ~~regulatory framework, present very much the same risks to consumers and investors as the ones within. ESMA further highlights that crypto-assets may qualify as financial instruments under MiFID, or as alternative investment funds. Whether they qualify as financial instruments depends on the precise facts and circumstances of the crypto-asset (its nature, rights attached to it, negotiable on the capital market, etc.) and national law.~~legislation, effectively applying the legislation to these assets is not always straightforward, and some provisions may inhibit the use of DLT.

~~The definitions in EU law rely on notions in national law to define what constitutes a financial instrument. Member State legislation varies on this. If a crypto-asset qualifies as a financial instrument, then in principle, the corresponding EU legislation applies (MiFID, MAR, Prospectus...). Applying this legislation in practice to assets recorded, held and transacted on distributed ledgers and blockchains, presents a number of complex legal and practical questions as to *how* the legislation can actually be applied to them. This is largely due to the fact that distributed ledger implementation were not considered at the time the relevant legislation was adopted by the co-legislators.~~

~~The EBA details how crypto-assets do not meet the definition of funds under PSD2 and therefore PSD2 does not directly apply to payment services based on crypto-assets. A small number of crypto-assets may be covered by EMD2, provided they meet the definition set out in the directive. Where crypto-assets meet the definition of EMD2, placing them on the market in the EU requires an e-money license. Such license allows the service provider to passport e-money services throughout the European Economic Area.~~

~~Where crypto-assets qualify as e-money, payment services provided in relation to them would also be covered by PSD2. Whereas crypto-assets are mainly not repayable at par value and therefore unlikely to meet the definition of a deposit pursuant to the Deposit Guarantee Scheme Directive, further analysis of the DGS treatment of client funds safeguarded by (non-bank) financial institutions on bank accounts would be required.In their conclusions, both the EBA~~**Fragmentation:** Several Member States are considering or have already implemented bespoke measures related to crypto-assets, leading to fragmentation across the Union.

2) Financial stability: The emerging category of so-called 'stablecoins' have attracted much attention, due to their potential to achieve widespread adoption. Like other crypto-assets, these come in many forms, some of which may fall outside the current regulatory framework.

~~and ESMA advises that the Commission should carry out a cost benefit analysis on a holistic~~

~~1.5.3. Added value of Union involvement~~

~~Added value of Union involvement (it may result from different factors, eg. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante):

Lack of certainty as to whether and how existing EU rules apply (for crypto-assets that ~~could be~~are covered by EU rules~~)~~

~~MiFID II is the central piece of EU securities legislation, providing essential definitions, such as 'financial instruments', 'transferable securities' or 'units of collective investment undertaking A broader set of rules mentioned above (namely the Prospectus Regulation, MAR, EMIR, SFD, CSDR…) also applies to financial instruments and firms that provide investment services and activities in relation to them.~~ ***and obstacles to applying DLT in market infrastructures)***

~~However, the actual classification of a crypto-asset as a financial instrument under MiFID II requires a complex case-by-case analysis and varies depending on how the notion of 'transferable security' has been implemented by Member States. Thus, it is possible that the same crypto-asset could be considered as a 'transferable security' or another financial instrument in one jurisdiction and not in another, which gives rise to **market fragmentation of the EU single market**.~~

~~Even where a crypto-asset would~~

Where a crypto-asset qualify as a MiFID II financial ~~instrument (the so-called 'security tokens'),~~ there is a lack of clarity on how the existing regulatory framework for financial services applies to such assets and services related to them. As the existing regulatory framework was not designed with crypto-assets and DLT in mind, NCAs face challenges in interpreting and applying the various requirements under EU law, which can hamper innovation. Those NCAs may therefore diverge in their approach to interpreting and applying existing EU rules. This diverging approach by NCAs creates fragmentation of the market ~~and opportunities for regulatory arbitrage~~.

Absence of rules at EU level and diverging national rules for crypto-assets that ~~would~~are not ~~be~~ covered by EU rules

For crypto-assets that ~~would~~are not ~~be~~ covered by EU financial services legislation, the absence of rules exposes consumers and investors to substantial risks. In the absence of rules at EU level, three Member States (France, Germany and Malta) have already put in place national regimes that regulate certain aspects of crypto-assets that neither qualify as financial instruments under MIFID II nor as electronic money under EMD2. These regimes differ: (i) rules are optional in France while they are mandatory in Malta and Germany; (ii) the scope of crypto-assets and activities covered differ; (iii) the requirements imposed on issuers or services providers are not the same; and (iv) the measures to ensure market integrity are not equivalent.

Other Member States ~~could~~are also ~~consider~~considering legislating on crypto-assets and related activities. Expected generated Union added value (ex-post): Action at EU level would present more advantages compared to actions at national level.

For crypto-assets that are covered by EU regulation (i.e. those that could qualify as 'financial instruments' under MiFID II ~~or as 'e-money' under EMD2~~), ~~an~~regulatory action at EU level ~~(either by~~

~~soft-law measures or regulatory action) would provide clarity on whether and how the EU framework on financial services applies. Enhanced legal certainty by legislation and/or guidance at EU level~~in the form of a pilot regime that would allow market infrastructures to test out the application of DLT in the issuance, trading and settlement of financial instruments, could facilitate the take-up of primary and secondary markets for ~~'security tokens'~~crypto-assets that qualify as financial instruments across the single market, while ensuring financial stability and a high level of investor protection. ~~By contrast, the proliferation of guidance and interpretations at national level could lead to a fragmentation of the internal market and a distortion of competition.~~

For crypto-assets that are not currently covered by EU legislation, an action at EU level, such as the creation of an EU regulatory framework~~, completing also the anti-money laundering existing rules~~, would set the ground on which a larger cross- border market for crypto-assets and crypto-asset service providers could develop, thereby reaping the full benefits of the single market. An EU regime would significantly reduce the complexity as well as the financial and administrative burdens for all stakeholders, such as the service providers, issuers and investors/users. Harmonising operational requirements on service providers as well as the disclosure requirements imposed on issuers could also bring clear benefits in terms of investor protection and financial stability.

1.5.2. Lessons learned from similar experiences in the past

N/A

1.5.3. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The objectives of the initiative are consistent with a number of other EU policies and ongoing initiatives.

~~As part of the Commission's overarching agenda of making **Europe ready for the digital age**, the Commission is undertaking considerable work in the area of digital finance in an effort to both enable the financing of the digital transformation and ensuring that the financial sector can make the most of the opportunities the digital age presents and become competitive globally. The digital finance strategy will set out the direction of travel for digital finance in the EU, focussing for example on access to data, artificial intelligence and digital identities. Additionally, as part of the digital finance strategy, the Commission will publish underpinning proposals on crypto-assets, as part of the work on ensuring the EU framework allows for innovation while mitigating the risks, and digital operational resilience, as increased digitalisation means increased cyber threats. As regards blockchain and distributed ledger technology (DLT), the Commission has a stated and confirmed policy interest in developing and promoting the uptake of this transformative technology across sectors, including the financial sector.~~

~~Crypto-assets are one of the major blockchain applications for finance. Since the publication of the **FinTech Action Plan**, the Commission has been examining the opportunities and challenges raised by crypto-assets. In that Action Plan, the Commission mandated the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) to assess the applicability and suitability of the existing financial services regulatory framework to crypto- assets. The advice issued in January 2019 clearly pointed out that while some crypto-assets could fall within the scope of EU legislation, effectively applying it to these assets is not always straightforward. Moreover, the advice noted that provisions in~~

~~existing EU legislation that may inhibit the use of DLT. At the same time, EBA and ESMA underlined that – beyond EU legislation aimed at combating money laundering and terrorism financing - most crypto-assets~~

~~fall outside the scope of EU financial services legislation and therefore are not subject to provisions on consumer and investor protection and market integrity, among others. In addition, a number of Member States have recently legislated on issues related to crypto-assets leading to market fragmentation.The inherent cross-border nature of internet-based products and applications and in particular those leveraging distributed networks, such as crypto-assets, require strong **international cooperation** in order to be regulated properly. The Commission has consistently participated actively in all relevant fora working on crypto-assets over the past years to promote cooperation and a common approach. The Commission continues to follow and participate in the relevant work, done in particular by the FSB and FATF on 'stablecoins'. The current development of high-level principles by FSB, will form a solid basis for jurisdictions to build potential regulation on and will be taken into account in the EU framework.~~

~~Given the developments in the crypto-asset market in 2019, President Ursula von der Leyen has stressed the need for *"a common approach with Member States on cryptocurrencies to ensure we understand how to make the most of the opportunities*~~

As set out in the Communication 'Shaping Europe's digital future', it is crucial for Europe to reap all the benefits of the digital age and to strengthen its industrial and innovation capacity within safe and ethical boundaries.

President Ursula von der Leyen has stressed the need for "*a common approach with Member States on cryptocurrencies to ensure we understand how to make the most of the opportunities they create and address the new risks they may pose*". ~~Executive Vice-President Valdis Dombrovskis has also indicated his intention to propose new legislation for a common EU approach on crypto-assets, including "stablecoins".~~ Executive Vice-President Valdis Dombrovskis has also indicated his intention to propose new legislation for a common EU approach on crypto-assets, including 'stablecoins'. While acknowledging the risks they may present~~, the Commission and the Council also jointly declared in December 2019 that they "*are committed to put in place the*~~, the Commission and the Council also jointly declared in December 2019 that they "*are committed to put in place a framework that will harness the potential opportunities that some crypto-assets may offer*".

This initiative is closely linked with wider Commission policies on blockchain technology, since crypto-assets, as the main application of blockchain technologies, are inextricably linked to the promotion of blockchain technology throughout Europe. This proposal supports a holistic approach to blockchain and DLT, which aims at positioning Europe at the forefront of blockchain innovation and uptake. Policy work in this area has included the creation of the European Blockchain Observatory and Forum, and the European Blockchain Partnership, which unites all Member States at political level, as well as the public-private partnerships envisaged with the International Association for Trusted Blockchain Applications.

It is also consistent with the Union policies aimed at creating a Capital Markets Union (CMU). It notably responds to the High-level Forum's final report, which stressed the underused potential of crypto-assets and called on the Commission to bring legal certainty and establish clear rules for the use of crypto-assets. Lastly, this initiative is consistent with the SME strategy adopted on 10 March 2020, which also highlights DLT and crypto-assets as innovations that can enable SMEs to engage directly with investors.

The legislative proposal would have a very limited impact on the MFF, as it foresees additional Union contribution to ESMA stemming from the additional 2 FTEs that the Authority would receive to implement the additional tasks conferred by the legislators. The new activities to be undertaken by the EBA would be fully fee funded.

This will translate into a proposal to increase the authorised staff of the agency during the future annual budgetary procedure. The agency will continue to work towards maximising synergies and efficiency gains (*inter alia* via IT systems), and closely monitor the additional workload associated with this proposal, which would be reflected in the level of authorised staff requested by the agency in the annual budgetary procedure.

1.5.4. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ Financial impact from YYYY to YYYY

☒ **unlimited duration**

Implementation with a start-up period from YYYY to YYYY,

followed by full-scale operation.

1.7. Management mode(s) planned[5975]

☐ **Direct management** by the Commission through

– ☐ executive agencies

☐ **Shared management** with the Member States

☒ **Indirect management** by entrusting budget implementation tasks to:

☐ international organisations and their agencies (to be specified);

☐the EIB and the European Investment Fund;

☒ bodies referred to in Articles 70 and 71;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

[5975] **Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx.**

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the regulatory actions undertaken are effective in achieving their respective objectives. The Commission would establish a detailed programme for monitoring the outputs and impacts of this initiative. The Commission will be in charge of monitoring the effects of the new requirements. Beyond those indicators, the Commission would have to produce a report, in cooperation with ESMA, on the pilot programme for DLT market infrastructures, after a three-year period. On the basis of this report, the Commission would inform the Parliament and Council on the appropriate way forward (e.g. continuing the experimentation, extending its scope, modifying existing legislation…).

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

Management will take place through the three European Supervisory Authorities (ESAs).

As regards the control strategy, the three ESAs work closely with the Commission's Internal Audit Service to ensure that appropriate standards are met in all areas of internal control framework. Those arrangements will also apply to the role of the Agencies in respect of the current proposal.

In addition, every financial year, the European parliament, following a recommendation from the Council, and taking into account the findings of the European Court of Auditors, considers whether to grant discharge to the Agencies for their implementation of the budget.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

In relation to the legal, economic, efficient and effective use of appropriations resulting from the actions to be carried out by the ESAs in the context of this proposal, this initiative does not bring about new significant risks that would not be covered by an existing internal control framework.

~~2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control cost ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*~~

The actions to be carried out in the context of this proposal will start in 2022, and will further continue.

~~Management and control systems are provided in the Regulations currently governing the functioning of the ESAs. These bodies work closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are observed in all areas of the internal control framework.~~

~~Every year, the European Parliament, following a recommendation from the Council, grants discharge to each ESA and the EEA for the implementation of their budget~~

~~On the ESMA role for the pilot regime for DLT market infrastructures. ESMA will have to provide an initial opinion on the permission given by an NCA and then monitor on an ongoing basis, however national supervisors would do the direct supervision. These activities will be covered fully by their operating budget, which will be increased accordingly.~~

For the EBA, we estimate a need for ~~15~~18 FTEs (~~5 per significant asset-referenced tokens –~~ currently there are 24 asset-referenced tokens in operation, but only few of them would be covered by ~~our~~the category of significant asset- referenced tokens or e-money tokens that ~~is~~are subject to the EBA supervision). These staff resources will be built up over time.

All of these costs would be covered by fees levied from ~~significant asset backed crypto assets~~ issuers of significant asset-referenced or e-money tokens. The EBA will need to prepare for taking on these responsibilities.

Costs of controls - Supervision of ESAs

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to ESMA without any restrictions.

ESMA shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all ESMA staff.

The funding decisions and the agreements and the implementing instruments resulting from them shall explicitely stipulate that the Court of Auditors and OLAF may, if need be, carry out on the spot checks on the beneficiaries of monies disbursed by ESMA as well as on the staff responsible for allocating these monies.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[6076]	from EFTA countries [6177]	from candidate countries[6278]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1	ESMA: <03.10.04>	Diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

[6076] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[6177] EFTA: European Free Trade Association.

[6278] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. ~~3.*.1.Summat of estimaterl impoct on zxpenrlitw e~~Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial ~~fi•amework~~framework	Number	~~Heeding I~~Heading 1 : Single Market, ~~liiuovation~~Innovation & Digital

ESMA: <03.10.04>			2022[6] ~~3~~79	2023	2024	2025	2026	2027	**TOTAL**
Title ~~I~~ 1:	~~Conmiitmeots~~Commitments	~~(-)~~(1)	0,059	0,118	0,118	0,118	0,118	0,118	0,649
	~~Paymeots~~Payments	(2)	0,059	0,118	0,118	0,118	0,118	0,118	0,649
Title 2:	~~Conmiitmeots~~Commitments	~~(1a)~~(1a)	0,010	0,020	0,020	0,020	0,020	0,020	0,110
	~~Paymeots~~Payments	~~m)~~(2a)	0,010	0,020	0,020	0,020	0,020	0,020	0,110
Title 3:	~~Conmiitmeots~~Commitments	(3a)							
	Payments	~~y b)~~ (3b)							
TOTAL ~~appi'opiJations~~ appropriations for ESMA: <03.10.04>	~~Conmiitmeots~~Commitments	~~i i~~ =1+1a +3a	0,069	0,138	0,138	0,138	0,138	0,138	0,759
	Payments	=2+2a ~~+3b~~ +3b	0,069	0,138	0,138	0,138	0,138	0,138	0,759

~~6~~
~~3~~ ~~Year N is the year in which implementation of the proposal/initiatixe starts. Please replace "N" by the expected first year of implementation (for instance: 0 1). The same~~

79 ~~for the followfiip years.~~Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

headingHeading of niultiannualmultiannual financial fi•amework framework	7	!'European public adininistartionadministartion'

EUR million (to three decimal places)

		Year N	Year N+1	Year hN+2	Year hN+3	Enter as many years as necessary to show the diMationduration of the impact (see point 1.6)			TOTAL
DG: <……>									
DG: <……>									
• Human ResoiucesResources									
• Other administrative expenditure									
TOTAL DG <……>	Appropriations								
TOTAL appi•opi•iations under nndei H EADINGappropriations under HEADING 7 of the miiltiannualmultiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

	Year N	Year N+1	Year hN+2	Year hN+3	Enter as many years as necessary to show the diMationduration of the impact (see point 1.6)	TOTAL

for the followfiip years.Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	~~Cooiinitinents~~Commitments								
	Payments								
	~~payillents~~								

~~Year N is the year in which implementation of the proposal/initiatixe starts. Please replace "N" by the expected first year of implementation (for iostnice: 0 1). The same~~

~~for the followfiip years.~~Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.2.2. ~~Estimaterl~~Estimated impact on [body]'s appropriations

~~if~~☑ The proposal/initiative does not require the ~~rise~~use of operational appropriations

~~O~~☐ The proposal/initiative requires the ~~rise~~use of operational appropriations, as explained below:

Commitment ~~appropi iations~~appropriations in EUR million (to ~~tlace~~three decimal places)

Indicate objectives ~~anal~~and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the ~~donation~~duration of the impact (see point 1.6)						**TOTAL**	
			OUTPUTS															
	Type[65] Type[81]	ge. Avera cost Aver a ge cost	No	Cost		~~No~~Co st	No	Cost Cost		Cost	No	Cost	No	~~IOSt~~C ost	No	Cost	Total ~~I~~No Total ~~No~~ cost	
SPECIFIC OBJECTIVE No ~~1~~[66]1[82] ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		

[81] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[82] As described in point 1.4.2. 'Specific objective(s)…'

TOTAL COST																
~~TOTALCOST~~																

~~[5]Outputs are pioducts and see ices to be supplied (e. p.: number of strident exchanges hnanced. numbe1 of km of roads built. etc.).~~
~~As desci ited in point 1.4.2. 'Specific objective(s). . .'~~

3.2.3. ~~Estimaterl~~Estimated impact on EBA ~~curl~~and ESMA's ~~humon~~human resources

3.2.3.1. Summary

~~—O~~☐ The ~~pioposol~~proposal/initiative does not require the use of appropriations of ~~on~~an adminis

~~—if~~☑ The proposal/initiative requires the use of ~~appropi'iations~~appropriations of an administrativ below:

EUR million (to three decimal places)

	2022	2023	2024	~~202f~~2025	2026	2027	TOTAL
~~Tmnporary~~Temporary agents (AD Grades) EBA and ESMA~~6~~ ESMA[83]	~~1,346~~1,404	~~2,694~~3,061	~~2,694~~3,309	~~2,694~~3,309	~~2,694~~3,309	~~2,694~~3,309	~~14,816~~17,701
Temporary agents (AST grades)							
Contract staff							
Seconded National Experts							
TOTAL	~~1,346~~1,404	~~2,694~~3,061	~~2,694~~3,309	~~2,694~~3,309	~~2,694~~3,309	~~2,694~~3,309	~~14,816~~17,701

Staff requirements (FTE):

	2022	2023	2024	2025	2026	2027	TOTAL
Temporary agents (AD Grades) EBA=15 for 2022 and 18 as of 2023, ESMA=2	17	20	20	20	20	20	**20**
Temporary agents (AST grades)							

[83] The costs for EBA include 100% employer's pension contribution and the costs for ESMA include the pension contribution corresponding Authorities share.

Contract staff							
Seconded National Experts							
TOTAL	**17**	**20**	**20**	**20**	**20**	**20**	**20**

Temporary agents (AD Grades) EBA=15, ESMA=2	~~8,5~~	17	17	17	17	17	**17**
Temporary agents (AST grades)							
Contract staff							
Seconded National Experts							

~~TOTAL~~	~~8,5~~	~~17~~	~~17~~	~~17~~	~~17~~	~~17~~	~~17~~

It is forecast ~~thot~~that:

~~67~~ ~~The costs for EBA include I 00% employer's pension contribution and the costs for ESMA include the pension contributi~~
~~National Competent Authorities share.~~

- ~~Full staffing will be achieved in 2023 and approximatively~~Approximatively 50% of the required st be recruited in that year, approximatively 50% of the additional 3 posts required for 2023 will be r and full staffing will be achieved in 2024.

3.2.3.2. Estimated requirements of human resources for the parent DG

☑ The proposal/initiative does not require the use of human resources.

☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• **Establishment plan posts (officials and temporary staff)**							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• **External staff (in Full Time Equivalent unit: FTE)**[6884]							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JPD in the Delegations)							
- at							

[6884] **AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in De**

[85] **Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).**

XX 01 04 *yy*~~69~~[85]	Headquarters ~~70~~[86]							
	- in Delegations							
XX 01 05 02 (AC, END, INT – Indirect research)								
10 01 05 02 (AC, END, INT – Direct research)								
Other budget lines (specify)								
TOTAL								

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of t
within the DG, together if necessary

~~69~~ ~~Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).~~

~~70~~ ~~Mainly for the Structural Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Fisher~~

with any additional allocation which may be granted to the managing DG under the annual allocation procedu
budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

[86] Mainly for the Structural Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF

3.2.4. Compatibility with the current multiannual financial framework

☑ The proposal/initiative is compatible the current multiannual financial framework.

☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework~~71~~87.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

The proposal/initiative does not provide for co-financing by third parties.

The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	2022	2023	2024	2025	2026	2027	Total
Industry fees~~72~~88 EBA	2,234	~~3,669~~ 3,957	~~3,469~~ 4,042	~~3,469~~ 4,042	~~3,469~~ 4,042	~~3,469~~ 4,042	~~19,779~~ 22,359
TOTAL appropriations co-financed	2,234	~~3,669~~ 3,957	~~3,469~~ 4,042	~~3,469~~ 4,042	~~3,469~~ 4,042	~~3,469~~ 4,042	~~19,779~~ 22,359

EUR million (to three decimal places)

~~71~~87 See Articles and of Council Regulation (EU, Euratom) No /2020 laying down the multiannual financial framework for the years 2021-2027.

~~72~~88 100% of the cost of implementing the proposal will be covered by fees.

	2022	2023	2024	2025	2026	2027	Total
National Competent Authorities contribution to ESMA[~~73~~89]	0,115	0,230	0,230	0,230	0,230	0,230	1,265
TOTAL appropriations co-financed	0,115	0,230	0,230	0,230	0,230	0,230	1,265

[~~73~~89] 60% of the total estimated cost (the EU contribution having been estimated at 40%) plus a 60% share of the employer's pension contributions

3.3. Estimated impact on revenue

☑ The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

☐ please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[74~~90~~]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

ANNEX

[74~~90~~] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

General Assumptions

Title I – Staff Expenditure

The following specific assumptions have been applied in the calculation of the staff expenditure based upon the identified staffing needs explained below:

- ~~Full staffing will be achieved in 2023 and approximatively 50% of the required staff will be recruited in 2022;~~
- Additional staff hired in 2022 are costed for 6 months given the assumed time needed to recruit the additional staff~~;~~. The 3 additional staff required for 2023 (over and above the staff required for 2022) are costed for 6 months given the assumed time needed to recruit the additional staff. Full staffing will be achieved in 2024.
- The average annual cost of a Temporary Agent is EUR 150 000, of a Contract Agent is EUR 85 000 and for a seconded national expert is EUR 80 000, all of which including EUR 25 000 of 'habillage' costs (Buildings, IT, etc.);
- The correction coefficients applicable to staff salaries in Paris (EBA and ESMA) is 117.7;
- Employer's pension contributions for Temporary ~~Agents and Contract~~ Agents have been based upon the standard basic salaries included in the standard average annual costs, i.e. EUR ~~93 790 and EUR 50 459 respectively~~95 660;
- All additional Temporary Agents are AD5s.

Title II – Infrastructure and operating expenditure

Costs are based upon multiplying the number of staff by the proportion of the year employed by the standard cost for 'habillage', i.e. EUR 25 000.

Title III – Operational expenditure

Costs are estimated subject to the following assumptions:

- Translation cost are set at EUR 350 000 per year for the EBA.
- The one-off IT costs of EUR ~~500.000~~500 000 for the EBA ~~me~~are assumed to be implemented over the two ~~yens~~years 2022 ~~end~~and 2023 on the basis of a 50% - 50% split. Yearly maintenance costs ~~foi~~for the EBA are estimated ~~et~~at EUR ~~50.000~~50 000.
- On-site yearly supervision costs for the EBA ~~me~~are estimated at EUR 200.000.

The estimations presented ~~heic obovehere above~~ result in the following costs ~~peiper~~ year:

~~headingHeading~~ of multiannual ~~financiRl~~ framework~~financial framework~~	~~Niiinbei~~ Number	~~Heading 1: Sinple Moiket, Innovation & Digital~~

~~EBA: <03.10.02>~~			~~2022~~	~~2023~~	~~2024~~	~~2025~~	~~2026~~	~~2027~~	~~TOTAL~~
~~Title 1:~~	~~Coouiiitments~~	~~()~~	~~1,246~~	~~2,494~~	~~2,494~~	~~2,494~~	~~2,494~~	~~2,494~~	~~13,716~~
	~~Payments~~	~~ü)~~	~~1,246~~	~~2,494~~	~~2,494~~	~~2,494~~	~~2,494~~	~~2,494~~	~~13,716~~
~~Title 2:~~	~~Coouiiitments~~	~~(•)~~	~~0,188~~	~~0,375~~	~~0,375~~	~~0,375~~	~~0,375~~	~~0,375~~	~~2,063~~
	~~Payments~~	~~C•)~~	~~0,188~~	~~0,375~~	~~0,375~~	~~0,375~~	~~0,375~~	~~0,375~~	~~2,063~~
~~Title 3:~~	~~Coouiiitments~~	~~G•)~~	~~0,800~~	~~0,800~~	~~0,600~~	~~0,600~~	~~0,600~~	~~0,600~~	~~4,000~~
	~~Payments~~	~~(**)~~	~~0,800~~	~~0,800~~	~~0,600~~	~~0,600~~	~~0,600~~	~~0,600~~	~~4,000~~
~~TOTAL appi opiJafions for EBA 03.10.02>~~	~~Coouiiitments~~	~~=!*la Fda~~	~~2,234~~	~~3,669~~	~~3,469~~	~~3,469~~	~~3,469~~	~~3,469~~	~~19,779~~
	~~Payments~~	~~=2 2a~~	~~2,234~~	~~3,669~~	~~3,469~~	~~3,469~~	~~3,469~~	~~3,469~~	~~19,779~~

~~Constant Prices~~

Constant Prices

EBA: <>			2022	2023	2024	2025	2026	2027	**TOTAL**
Title 1:	Commitments	(1)	1,246	2,744	2,992	2,992	2,992	2,992	15,958
	Payments	(2)	1,246	2,744	2,992	2,992	2,992	2,992	15,958
Title 2:	Commitments	(1a)	0,188	0,413	0,450	0,450	0,450	0,450	2,401
	Payments	(2a)	0,188	0,413	0,450	0,450	0,450	0,450	2,401
Title 3:	Commitments	(3a)	0,800	0,800	0,600	0,600	0,600	0,600	4,000
	Payments	(3b)	0,800	0,800	0,600	0,600	0,600	0,600	4,000
	Commitments	=1+1a +3a	2,234	3,957	4,042	4,042	4,042	4,042	22,359

The ~~pioposol~~proposal requires the use of operational ~~appropi'iations~~appropriations, as explained below:

~~C'ouunituieiit appropliations~~Commitment appropriations in EUR million (to ~~thee~~three decimal places) in constant prices

EBA

Indicate ~~objectix'es anal~~objectives and outputs			2022	~~20 3~~2023	2024	~~0252~~025	~~20 6~~2026	2027	
	OUTPUTS								
	~~OL*TPL*TS~~								
⇩	Type[75][91]	Average cost	Cost / No	Cost / No	Cost / No	Cost / No	Cost / No	Cost / No	Total No / Total cost
SPECIFIC OBJECTIVE No ~~76~~[92] Direct supervision of significant asset-~~bacYet~~backet crypto-asset issuers									
- Output			~~0.800~~	~~0.800~~ 0,800	~~0.600~~ 0,800	~~0.600~~ 0,600	~~0.600~~ 0,600	0,600	~~4.000~~4,000
Subtotal for specific objective No 1									
SPECIFIC OBJECTIVE No 2 approval of amended ~~wliitepaper~~crypto-asset white paper submitted by issuer of significant asset-~~i efs enced~~referenced token									
- Output									

[92] As described in point 1.4.2. 'Specific objective(s)…'

Output																
Subtotal for specific objective No 2																
~~TOTALCOST~~TOTAL COST		**0,800**		**0,800**		**0,600**		**0,600**		**0,600**		**0,600**		**4,000**		

[91] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

The direct supervisory activities of the EBA shall be ~~fhlly fimded~~fully funded by fees levied from the supervised entities as follows:

~~[25] Outputs are products and semfices to be supplied (e.g.: number of student exchanges fumiiced. iiimiber of kin of ioads built. etc.). "~~
~~As described in point 1.4.2. Specific objectire(s). . .~~

EBA

	2022	2023	2024	2025	2026	2027	Total
The costs shall be covered 100% by fees levied from the supervised entities	2,234	~~3,6693~~ ,957	~~3,4694~~ ,042	~~3,4694~~ ,042	~~3,4694~~ ,042	~~3,4694~~ ,042	~~19,779~~ 22,359
TOTAL appropriations co-financed	2,234	~~3,6693~~ ,957	~~3,4694~~ ,042	~~3,4694~~ ,042	~~3,4694~~ ,042	~~3,4694~~ ,042	~~19,779~~ 22,359

The coordination activities of ESMA under the DLT pilot regime set out in the related Proposal for a Regulation on DLT market infrastructures shall be funded by their operating budget with EU contributions corresponding to 40% (amounts indicated in table 3.2.1 Summary of estimated impact on expenditure) and National Competent Authorities corresponding to 60% (amounts indicated in table 3.2.5 Third countries contribution) of the total cost.

SPECIFIC INFORMATION

Direct Supervisory powers

The European Banking ~~and Markets~~ Authority (EBA) is a special Union body, which was established to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system for the Union economy, its citizens and businesses.

While the EBA will need to recruit specialist personnel, the duties and functions to be undertaken to implement the proposed legislation are in line with the remit and tasks of the EBA.

Specifically, the EBA will need to train and hire specialist to fulfil the duties of the direct supervision as envisaged in this proposal for the supervision of issuers of significant asset-referenced tokens.

~~ANNEX IV~~

~~List of infringements referred to in Articles 12-29.~~

~~IInfringements related to the issuance of asset-referenced tokens~~

~~1.The issuer infringes Article 12(1) by not complying with the requirements set out in Chapter 1, not being authorised by its competent authority in accordance with Article 30, or not publishing a whitepaper approved by the competent authority, in accordance with Articles 26 and 20, unless exempted under Article 12(2).~~*Other proposals covered under this Legislative Financial Statement*

~~2.The issuer of exempted asset-referenced tokens infringes Article 12(2) by not producing a whitepaper including the disclosure requirements set out in Articles 6 and 26 and notifying such whitepaper to the competent authority in accordance with Article 8.~~

~~3.The issuer authorised as a credit institution under Directive 2013/36/EU infringes Article 12(3) by not publishing a whitepaper including the disclosure requirements set out in Articles 6 and 26 and approved by the competent authority for each different category of asset-referenced tokens in accordance with Article 30(10).~~

~~4.The issuer of exempted asset-referenced tokens infringes Article 12(4) by not producing a whitepaper including the disclosure requirements set out in Article 6 and notifying such whitepaper to the competent authority in accordance with Article 8, or by marketing its token as 'stable'.~~

~~5.The issuer infringes Article 12(5) by not publishing a whitepaper approved by the competent authority for each different category of asset-referenced tokens in accordance with Article 30.~~

~~6.Several issuer offering the same asset-referenced tokens s in the EU infringe Article 12(6) by not being all authorised by their competent authority in accordance with Article 30 or by publishing more than one whitepaper.~~

~~7.The issuer of asset-referenced tokens offering one or several crypto-asset services infringes Article 12(7) by not being authorised as a crypto-asset service provider in accordance with Article 64.~~

~~8.The issuer infringes Article 13(1) by not incorporating in the form of a legal entity established in the EU.~~

~~9.The issuer infringes Article 13(2) by not acting honestly, fairly and professionally.~~

~~10.The issuer infringes Article 13(3) by not acting in the best interests of the holders of asset-referenced tokens, or giving preferential treatment to specific holders, unless such preferential treatment is disclosed in the relevant policies and in the whitepaper.~~

~~11.The issuer infringes Article 15 by not abiding , at all times, to the required capital and prudential requirements.~~

~~12.The issuer infringes Article 16(1) by not having robust governance arrangements, which include 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.

13. The issuer infringes Article 16(2) by not having members in the management body that have the necessary good repute and competence, in terms of qualifications, experience and skills to perform their duties and ensure the sound and prudent management of the issuer, and that demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

14. The issuer infringes Article 16(3) by not having natural persons who either own, directly or indirectly, more than 20% of the asset-backed crypto-asset issuer's share capital or voting rights, or who exercise, by any other means, a power of control over the said issuer that have the necessary good repute and competence.

15. The issuer infringes Article 16(4) by having persons referred to in Articles 16(2) or 16(3) that have been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

16. The issuer infringes Article 16(5) by not establishing, maintaining and implementing the listed policies and procedures.

17. The issuer infringes Article 16(5) by not establishing and maintaining contractual arrangements with third party entities, that precisely define the roles, responsibilities, rights and obligations of each of the third party entities and the issuer

18. Unless the issuer had initiated its plan as referred in Article 29, it infringes Article 16(6) by not maintaining and operating an adequate organisational structure and not employing appropriate and proportionate systems resources and procedures to ensure the proper continuity and regularity in the performance of its services and activities

19. The issuer infringes article 16(7) by not establishing a business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions and the maintenance of its activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its activities.

20. The issuer infringes Article 16(8) by not having internal control mechanisms and effective procedures for risk assessment and risk management, including effective control and safeguard arrangements for managing ICT systems in accordance with the provisions laid down in Regulation (EU) 2021/xx [DORA], that are monitored on a regular basis and evaluated for adequacy and effectiveness and resolved with appropriate measures in case of any deficiencies.

21. The issuer infringes Article 16(9) by not having systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information in accordance with the provisions laid down in Regulation (EU) 2021/xx [DORA].

22.The issuer infringes Article 16(10) by not being subject to regular and independent audits that are communicated to the management body and made available to the competent authority.

23.The issuer infringes Article 16(11) by not adopting, implementing and maintaining a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards.

24.The issuer infringes Article 17(1) by not notifying its competent authority of any changes to its management body or not providing the competent authority with all the necessary information to assess compliance with Article 17(2).

25.The issuer infringes Article 19(1) by not maintaining and operating effective policies and procedures to prevent conflicts of interest.

26.The issuer infringes Article 19(1) by not taking all appropriate steps to prevent, identify, manage and disclose conflicts of interest arising from the management and investment of the reserve assets.

27.The issuer infringes Article 19(2) and Article 19(3) by not disclosing to their holders the general nature and sources of conflicts of interest and the steps taken to mitigate those risks, in a durable medium and including sufficient detail to enable the users of the asset-referenced tokens to take an informed decision.

28.The issuer infringes Article 20(1) by not constitute and maintain a reserve of assets, at all times, for the purpose of stabilising the value of an asset-referenced token.

29.The issuer infringes Article 20(2) by not operating and maintaining a separate reserve of assets for each category of issued asset-referenced tokens, that are managed independently.

30.The management body of the issuer infringes Article 20(3) by not ensuring effective and prudent management of the reserve of assets, namely that the creation and destruction of asset-referenced tokens is always matched by a corresponding increase or decrease in the reserve assets and that such increase or decrease is adequately managed to avoid any adverse impacts on the market of the reserve assets.

31.The issuer infringes Article 20(4) by not having a clear and detailed policy and procedure describing the stabilisation mechanism of such tokens, including the required information.

32.The issuer infringes Article 20(5) by not assessing and monitoring the liquidity needs to meet redemption requests or the exercise of rights by the holders of asset-referenced tokens or by any third party provided with such rights, in accordance with Article 23(3) and

(4), and not establishing, maintaining and implementing a liquidity management policy and procedures.

33. The issuer infringes Article 21(1) by not establish, maintaining and implementing a custody policy and procedure ensuring the reserve assets are segregated from the issuer's own assets, are not encumbered or pledged, are held in custody according to Article 21(5), and the issuer has prompt access to them.

34. The issuer infringes Article 21(2) by not holding in custody the serve assets earlier than five business days after the issuance, or not ensuring that the reserve assets are held in custody at all times by a crypto-asset service provider authorised under Article 64 when the reserve assets take the form of crypto-assets or a credit institution for all other types of reserve assets.

35. The issuer infringes Article 21(3) by not exercising 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.

36. The issuer infringes Article 20(5) by not evidencing the appointment of a credit institution and/or a crypto-asset service provider as custodians of the reserve assets by a written contract.

37. The issuer infringes Article 20(9) by not evalutating on a regular basis its custody policy and procedure, including its exposures to the credit institutions and crypto-asset service providers that ensure the custody of the reserve assets, taking into account the full scope of its relationships with them.

38. The issuer investing a part of the reserve assets infringes Article 22(1) by not investing them in highly liquid financial instruments with minimal market and credit risk, capable of being liquidated rapidly with minimal adverse price effect.

39. The issuer infringes Article 22(3) by not holding the financial instruments in which the reserve assets are invested in custody following the conditions set out in Article 21.

40. The issuer infringes Article 23(1) by not establishing, maintaining and implementing a clear and detailed policy and procedure on the rights granted to the holders of asset-referenced tokens, including any direct claim or redemption rights on the issuer or on the reserve assets.

41. The issuer infringes Article 23(2) by not including the required definitions in the investment policy, when the holders of asset-referenced crypto-assets are granted rights as referred to in Article 22(1).

42. The issuer infringes Article 23(3) by not specifying in the procedure the natural or legal persons that are provided with a claim or a redemption rights on the issuer or the reserve assets and the conditions for exercising such rights and the obligations imposed on those

persons, when the holders of asset-referenced crypto-assets are not granted rights as referred to in Article 23(1).

43. The issuer infringes Article 23(3) by not establishing and maintaining appropriate contractual arrangements with these natural or legal persons who are provided with a claim or a redemption rights on the issuer or the reserve assets.

44. The issuer infringes Article 23(4) by not putting in place mechanisms to ensure the liquidity of the asset-referenced tokens issuers, when the holders of asset-referenced tokens are not granted rights as referred to in Article 23(1).

45. The issuer infringes Article 23(4) by not establishing and maintaining written agreements with crypto-asset service providers authorised for the service of exchanging crypto-assets against legal tender or not ensuring that a sufficient number of crypto-asset service providers are required to post firm quotes at competitive prices on a regular and predictable basis.

46. The issuer infringes Article 23(4) by not ensuring that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens, where the issuer of asset-referenced crypto-assets has decided to stop operating or has been placed under an orderly wind-down, or when its authorisation has been withdrawn.

47. The issuer infringes Article 24 by grant interests or any other benefit related to the length of time during which a holder of asset-referenced tokens holds such crypto-assets.

48. The issuer infringes Article 25 by not ensuring that significant asset-referenced tokens can be held in custody by different crypto-asset service providers authorised for the service referred to in Article 3(1)(l), including by crypto-asset service providers that do not belong to the same group, as defined by Article 2(11) of Directive 2013/34/EU.

49. The issuer infringes Article 26(1) by not including in the whitepaper the listed additional content.

50. The issuer infringes Article 26(2) by not including in the whitepaper the minimum disclosure items specified in Annexes 1 and 2, in a fair, clear and not misleading way, containing no material omissions and presented in a concise and comprehensible form.

51. The issuer infringes Article 27(1) by not maintaining a website containing their whitepapers and amended whitepapers approved by the competent authority in accordance with Articles 32 and 34, for as long as the crypto-assets are held by the public.

52. The issuer infringes Article 27(2) by not subjecting marketing communications to the requirements of Article 7, and not including a clear and unambiguous statement that the holders of the crypto-assets do not have a claim on the reserve assets or cannot redeem these assets with the issuer at any time, in the absence of a direct claim or redemption right

53. The issuer infringes Article 27(3) by not disclosing at least every month the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets to the public

54. The issuer infringes Article 27(4) by not mandating an independent audit of the reserve assets, every six months, and informing the public as soon as possible about the outcome of such an audit.

55. The issuer infringes Article 27(5) by not disclosing as soon as possible to the public any event which has or is likely to have a significant effect on the value of the asset-referenced tokens or the reserve assets, and in a clear, accurate and transparent manner.

56. The issuer infringes Article 27(6) by not effectively disseminated the information mentioned in paragraphs 3, 4 and 5 by online posting on the issuer's website, in a clear, accurate and transparent manner.

57. The issuer infringes Article 28(1) and Article 28(2) by not establishing and maintaining effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of asset-referenced tokens, free of charge.

58. The issuer infringes Article 28(3) by not developing and making available to clients a standard template for complaints and keeping a record of all complaints received and the measures taken.

59. The issuer infringes Article 28(4) by not investigating all complaints in a timely and fair manner, and communicating the outcome within a reasonable period of time to the holders of asset-referenced tokens.

60. The issuer infringes Article 29(1) by not having in place an appropriate planning to support an orderly wind-down of its activities under the applicable national law, including continuity or recovery of any critical activities performed by the issuer or by any third party entities referred in Article 16(5)(h), and demonstrating its ability to carry out an orderly wind-down without causing undue economic harm to the holders of asset-referenced crypto-assets or to the stability of the markets of the reserve assets.

61. The issuer infringes Article 29(2) by not including 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.

62. The issuer infringes Article 29(3) by not reviewing and updating the plan regularly.

List of infringements referred to in Article 42.

I.Infringements related to the issuance of significant electronic money tokens

1.The issuer infringes Article 42 by violating the Articles referenced therein and listed below.

2.The issuer infringes Article 15 by not abiding, at all times, to the required capital and prudential requirements.

3.The issuer infringes Article 16(11) by not adopting, implementing and maintaining a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards.

4.The issuer infringes Article 20(5) by not assessing and monitoring the liquidity needs to meet redemption requests or the exercise of rights by the holders of asset-referenced tokens or by any third party provided with such rights, in accordance with Article 23(3) and (4), and not establishing, maintaining and implementing a liquidity management policy and procedures.

5.The issuer infringes Article 21(1) by not establish, maintaining and implementing a custody policy and procedure ensuring the reserve assets are segregated from the issuer's own assets, are not encumbered or pledged, are held in custody according to Article 21(5), and the issuer has prompt access to them.

6.The issuer infringes Article 21(2) by not holding in custody the serve assets earlier than five business days after the issuance, or not ensuring that the reserve assets are held in custody at all times by a crypto-asset service provider authorised under Article 64 when the reserve assets take the form of crypto-assets or a credit institution for all other types of reserve assets.

7.The issuer infringes Article 21(3) by not exercising 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.

8.The issuer investing a part of the reserve assets infringes Article 22(1) by not investing them in highly liquid financial instruments with minimal market and credit risk, capable of being liquidated rapidly with minimal adverse price effect.

9.The issuer infringes Article 22(3) by not holding the financial instruments in which the reserve assets are invested in custody following the conditions set out in Article 21.

10.The issuer infringes Article 25 by not ensuring that significant asset-referenced tokens can be held in custody by different crypto-asset service providers authorised for the service referred to in Article 3(1)(l), including by crypto-asset service providers that do not belong to the same group, as defined by Article 2(11) of Directive 2013/34/EU.

11.The issuer infringes Article 29(1) by not having in place an appropriate planning to support an orderly wind-down of its activities under

~~the applicable national law, including continuity or recovery of any critical activities performed by the issuer or by any third party entities referred in Article 16(5)(h), and demonstrating its ability to carry out an orderly wind-down without causing undue economic harm to the holders of asset-referenced crypto-assets or to the stability of the markets of the reserve assets.~~

~~12. The issuer infringes Article 29(2) by not including 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.~~

~~13. The issuer infringes Article 29(3) by not reviewing and updating the plan regularly.~~*This Legislative Financial Statement also covers the financial impact stemming from the Proposal for a Regulation on DLT market infrastructures, which accounts for the increase in the funding for ESMA.*

Document comparison by Workshare 10.0 on Donnerstag, 24. September 2020 15:10:28

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Description	Draft-Regulation-Markets-in-Crypto-Assets
Document 2 ID	file://C:\Users\LeibeltM\AppData\Local\Temp\Workshare\wmtemp2ccc\Regulation_on_Markets_in_Crypto_Assets_1600952554.pdf
Description	Regulation_on_Markets_in_Crypto_Assets_1600952554
Rendering set	Standard

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Padding cell	

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Moved to	387
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Format changed	0
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