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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Markets in Crypto-assets (MiCA)

(Text with EEA relevance)

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 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, a proposal for digital operational resilience, and a proposal to clarify or amend certain related EU financial services rules.

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 plan¹, 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 advice², 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 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 stability³, this may change with the advent of 'stablecoins', as they seek wider adoption by incorporating features aimed at stabilising their value and by exploiting the network effects stemming from the firms promoting these assets⁴.

¹ European Commission, FinTech Action plan, COM/2018/109 final

² ESMA, Advice on 'Initial Coin Offerings and Crypto-Assets', 2019; EBA report with advice on crypto-assets, 2019.

³ FSB Chair's letter to G20 Finance Ministers and Central Bank Governors, 2018.

⁴ G7 Working Group on Stablecoins, Report on 'Investigating the impact of global stablecoins', 2019.

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"*⁵. 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"*⁶.

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 existing financial services legislation that present clear obstacles to the use of DLT in the financial sector and is proposing a pilot regime on DLT market infrastructures that will allow for experimentation within a safe environment and provide evidence for possible further amendments.

This proposal, which covers crypto-assets 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 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 2018⁷, the Commission mandated the European Supervisory Authorities (ESAs) to produce advice on the applicability and suitability

⁵ Mission letter of President-elect Von der Leyen to Vice-President Dombrovskis, 10 September 2019.

⁶ Joint Statement of the European Commission and Council on 'stablecoins', 5 December 2019.

⁷ European Commission, FinTech Action plan, COM/2018/109 final

of the existing EU financial services regulatory framework on crypto-assets. This proposal builds on the advice received from the EBA and ESMA.⁸

- **Consistency with other Union policies**

As stated by President von der Leyen in her Political Guidelines,⁹ and set out in the Communication ‘Shaping Europe’s digital future’,¹⁰ 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

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

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 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 Lastly, 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

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 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.

⁸ 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.

¹⁰ 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.

¹¹ Mission letter from President-elect of the European Commission, Ms. von der Leyen to Executive Vice-President-designate for an Economy that Works for People, Mr. Dombrovskis
<https://ec.europa.eu/digital-single-market/en/blockchain-technologies>

¹² 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/200610-cmu-high-level-forum-final-report_en.pdf.

¹⁴ An SME Strategy for a sustainable and digital Europe,
https://ec.europa.eu/info/sites/info/files/communication-sme-strategy-march-2020_en.pdf

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

¹⁵ [Add reference] public consultation and the IIA

¹⁶ [Add reference] IA

¹⁷ [Add reference] minutes published on the webpage

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 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 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*

¹⁸ [cross reference] to the IA quoted above

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:

- *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 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. 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 Board¹⁹, 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.

- **Regulatory fitness and simplification**

This Regulation imposes an obligation on issuers of crypto-assets to publish an information document (called *whitepaper*) 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 costs estimated at €450.000. However, these costs would be fully covered by the fees levied on issuers of significant asset-referenced tokens.

¹⁹ Financial Stability Board, ‘Addressing the regulatory, supervisory and oversight challenges raised by “global stablecoin” arrangements.’

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.

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 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 ‘stablecoins’ including when these are e-money. The proposed Regulation is divided into seven 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 of crypto-assets to the public. Article 4 indicates that an issuer shall be entitled to offer crypto-assets to the public in the Union or seek an admission to trading on a trading platform for crypto-assets if it complies with the requirements of Article 5 (such as the obligation to be established in the form of a legal person), it draws up a *whitepaper* in accordance with Article 6 and notifies such a whitepaper to the competent authorities. Article 4 also includes some exemptions, 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 and Annex I of the proposal set out the information requirements regarding the whitepaper accompanying an issuance of crypto-assets, while Article 7 imposes some requirements related to the marketing materials produced by the crypto-asset issuers. The whitepaper will not be subject to a pre-approval process by the national competent authorities (Article 8). It will be

notified to the national competent authorities that will be in charge of assessing 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. After the notification of the whitepaper, competent authorities will have the power to suspend or prohibit the offering, require the inclusion of additional information in the whitepaper or make public the fact that the issuer is not complying with the Regulation (Article 8). Title II also includes provisions on the amendments of an initial whitepaper (Article 10), the cancellation of an offering of crypto-assets (Article 11) and on the issuers' liability attached to the whitepaper (Article 11).

Title III, Chapter 1 sets out the requirements for issuers of asset-referenced tokens (often described as 'stablecoins'). Article 13 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 approved by its competent authority. Article 13 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, issuers of asset-referenced tokens shall be incorporated in the form of a legal entity established in the EU and shall act honestly, fairly and professionally (Article 14). They shall also comply with other requirements, such as capital requirements (Article 16), governance requirements (Article 17), rules on conflicts of interest (Article 18), rules on the stabilisation mechanism and the reserve of assets backing the asset-referenced tokens (Article 19) and requirements for the custody of the reserve assets (Article 20). Article 21 provides 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 also imposes on issuers of asset-referenced tokens to disclose 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, Article 22 provides holders of asset-referenced tokens with minimum rights. Article 23 also prevents issuers of asset-referenced tokens and crypto-asset service providers from granting any interests to holders of asset-referenced tokens. Article 25 and Annex 2 of the proposed Regulation set out the additional disclosures that 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 asset-referenced tokens. The Commission will be empowered to adopt a delegated act in order to specify the circumstances under which and thresholds above which an issuer of asset-referenced tokens will be considered significant. The issuers of such significant asset-referenced tokens will be subject to additional 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)).

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).

Title IV, Chapter 1 sets out the requirements for issuers of e-money tokens (often described as ‘stablecoins’). Article 37 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 37 also states that ‘e-money tokens’ are deemed electronic money. Article 38 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 40 sets out the requirements for the whitepaper 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.

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 e-money token as significant. The college shall consist of, among others; the competent authority of the home Member State where the issuer of the significant e-money tokens has been authorised, the EBA, ESMA, the competent authorities with supervision of the most relevant payments institutions, trading platforms and custodians providing services in relation to the significant e-money token, the ECB if the significant e-money token is referencing euro and the national central bank in case the significant e-money token is referencing an EU currency which is not the euro. Competent authorities not belonging to the college may request from the college all information relevant to perform their supervisory duties. Article 44 also describes how 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 conferred to the college in Article 45. These opinions can be related to require an issuer to hold a higher amount of own funds, an amended whitepaper, 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 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 EBA's powers and competences related to the supervision of issuers of significant asset-referenced tokens and significant e-money tokens, including legal privilege (Article 91), request for information (Article 92), general investigations (Article 93), on-site inspections (Article 94), exchange of information (Article 95), professional secrecy (Article 99), and supervisory measures by EBA (Article 100). Administrative sanctions and other measures, in particular, fines are detailed in Article 101, with the consequent Articles regulating periodic penalty payments (Article 102), the disclosure, nature and enforcement of fines (Article 103) and the corresponding procedural rules for taking supervisory measures and imposing fines (Article 104). Articles 105 and 106 set out the requirements on the hearing of persons concerned and the unlimited jurisdiction of the Court of Justice over EBA's decisions, respectively. In accordance with Article 107, EBA should be able to charge fees to the issuers of significant asset-referenced tokens and significant e-money tokens based on a delegated act adopted pursuant to the Regulation.

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).

Title IX includes the transitional and final provisions, including the obligation for the Commission to produce a report evaluating the impact of the regulation (Article 110). 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. Article 114 indicates that this Regulation shall enter into application 18 months after its entry into force, except for the provisions related to e-money tokens that shall enter into application on the date of entry into force of this Regulation.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Markets in Crypto-assets (MiCA)

(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 Bank²⁰,

Having regard to the opinion of the European Economic and Social Committee²¹,

Having regard to the opinion of the Committee of the Regions²²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Commission's communication on Digital Finance Strategy aims among other things to ensure that the EU financial services legislation is fit for the digital age, including by enabling the use of innovative technologies **[to be revised once the Strategy is available]**. The EU has a stated and confirmed policy interest in developing and promoting the uptake of this transformative technology in the financial sector, such as blockchain and distributed ledger technology ('DLT').
- (2) 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, 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. When used as a means of payments, payment tokens could also present opportunities in terms of cheaper, faster and more efficient payments, especially on a cross-border basis, by limiting the number of intermediaries.
- (3) While 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/EC²³) or as financial instruments within the meaning of

²⁰ OJ C [...], [...], p. [...].

²¹ OJ C , , p. .

²² OJ C , , p. .

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).

Markets in Financial Instruments Directive (Directive 2014/65/EU²⁴), the majority of them currently fall outside of the scope of EU legislation. Where crypto-assets are not covered by EU financial services legislation, the absence of applicable rules to services related to such assets (such as 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) leaves holders of crypto-assets exposed to risks, in particular in areas not covered by the protection consumer rules. There are also substantial risks to market integrity, such as market manipulation, in the secondary market of crypto-assets. To address these 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 financial services legislation and other Member States are considering a legislation in this area.

- (4) In the absence of an EU framework for crypto-assets, the lack of users' confidence in crypto-assets will hinder the development of this market, leading to missed opportunities in terms of innovative digital services, alternative payment instruments or new funding sources for EU companies. In the absence of legislation at EU level, companies using crypto-assets have no legal certainty on how their crypto-assets are treated in the different EU Member States, which undermines their efforts to use crypto-assets for digital innovation. The absence of an EU framework on crypto-assets could also lead to regulatory fragmentation, which distorts competition in the Single Market, makes it more difficult for crypto-asset service providers to scale up their activities on a cross-border basis and gives rise to regulatory arbitrage. While the crypto-asset market remains modest in size and does not currently pose a threat to financial stability, a subset of crypto-assets that have features 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 a result, could raise additional challenges to financial stability, monetary policy transmission or monetary sovereignty.
- (5) The overall objective of this Regulation is to provide an EU harmonised framework for the issuance, and provision of services related to crypto-assets (such as custodial wallet providers, exchanges and trading platforms) which are not currently captured by EU financial service legislation. This Regulation should support innovation and fair competition while ensuring a high level of consumer protection and market integrity in the crypto-asset markets. It should also address financial stability and monetary policy risks that could arise from some crypto-assets that aim at stabilising their price by reference to 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 legislation should not give a particular technology an advantage over another. Crypto-assets that qualify as 'financial instruments' or 'electronic money' should remain regulated under existing EU legislation, such as the Markets in Financial Instruments Directive ((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 acting in their monetary authority capacity and other public authorities which would issue crypto-assets or provide services related to crypto-assets should not be subject to this Regulation.

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.

- (8) This Regulation should include definitions of ‘crypto-asset’ and of ‘distributed ledger technology’ which are as wide as possible to capture all types of crypto-assets which currently fall outside the scope of EU financial services 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 contribute to this objective. Therefore, the definition of ‘crypto-assets’ set out in this Regulation should correspond to the definition of ‘virtual assets’, set out in the recommendations of the Financial Action Task Force. The list of crypto-asset services in the scope of this Regulation should also encompass the virtual asset services likely to raise money laundering concerns and identified by the Financial Action Task Force.
- (9) Beyond the general definition of crypto-assets, this Regulation should also distinguish between three sub-categories of ‘crypto-assets’ that should be subject to specific requirements. First, there are some crypto-assets whose primary function is to provide access digitally to an application, services or resources available on a DLT. These ‘utility tokens’ which in many cases have non-financial purpose related to the operation of 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 asset-referenced tokens with a payment functionality and which aim at maintaining a stable value by referencing several currencies, one or several commodities, one or several crypto-assets, or a basket of such assets. By stabilising their value, these asset-referenced tokens 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 crypto-assets are used as a means of payment and aims at stabilising their value by referencing only one fiat currency that is legal tender. This type of crypto-assets have a function which is very close to electronic money, under the electronic money directive (Directive 2009/110/EC²⁵), 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 under Directive 2009/110/EC and 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.
- (12) Despite their similarities, some differences exist between electronic money under Directive 2009/110/EC and crypto-assets referencing a single fiat currency. Holders of electronic money institutions under 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 against fiat currency at par value with the fiat currency and at any moment. By contrast, some of the crypto-assets referencing only one fiat currency do not provide their holders with such a claim on their issuers and could fall outside the scope of Directive 2009/110/EC. Other crypto-asset referencing one single 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 at par

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)

value and at any moment, the confidence of users in crypto-assets referencing only one currency could be undermined. To avoid the circumvention of existing rules set out by 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 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. 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, including the obligation for these e-money tokens to be issued either by a credit institution authorised under Regulation (EU) 2013/575 or by an electronic money institution under Directive 2009/110/EC. The issuers of these e-money tokens should also grant their users with a claim at any moment and at par value with the fiat currency referenced. At the same time, due to the novelty of the technology used, e-money tokens can also raise new challenges in terms of consumer protection and market integrity, compared to traditional electronic money. This regulation should also aim at addressing 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 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 should be considered as any person offering crypto-assets to third parties.
- (15) This Regulation should also aims at regulating entities which provide services and activities related to crypto-assets. These main ‘crypto-asset services’ consist in ensuring the operation of a trading platform for crypto-assets, in exchanging crypto-assets against fiat currencies or other crypto-assets by dealing on own account, and finally the activity consisting in ensuring the custody and administration of crypto-assets or the control of means to access such crypto-assets, on behalf of third parties. Other services related to crypto-assets, such as the placement of crypto-assets, the reception or transmission of orders for crypto-assets, the execution of orders for crypto-assets, the advice on crypto-assets and the payment transactions in asset-referenced tokens should also be in the scope of this Regulation. Any person which provides any crypto-asset service, on a professional basis, should be considered as a ‘crypto-asset service provider’ and should be subject to this Regulation.
- (16) In order to ensure consumer protection, users of crypto-assets should be informed about the characteristics, functions as well as risks related to crypto-assets they are purchasing. When making a public offering of crypto-assets in the EU 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 and publish an information document (a *whitepaper*) containing mandatory disclosures. The whitepaper should include general information on the issuer, on the project to be carried out, on the offering of crypto-assets or their admission to trading, the rights and obligations attached to the crypto-assets, information on the underlying technology used and on the related risks. The information included in the whitepaper, and to the marketing communications related to the offering, 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.

- (17) Beyond the obligation to draw up a prospectus, issuers of crypto-assets should be subject to other requirements, such as the obligation to act honestly, fairly and professionally, to communicate with the holders of crypto-assets in a fair, clear and not misleading manner, to identify, prevent, manage and disclose conflicts of interest, to have effective administrative arrangements and to ensure that their systems and security protocols meet appropriate EU standards. In order to assist competent authorities, the European Banking Authority (EBA) should be mandated to publish guidelines in order to further specify these EU 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 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 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.
- (22) Issuers of asset-referenced tokens should be subject to more stringent requirements, compared to other issuers of crypto-assets. As asset-referenced tokens aim at stabilising their value by reference to several fiat currencies, one or more commodities, one or several other crypto-assets, or a basket of such assets, they could be widely adopted by users to transfer value or as a means of payments. Therefore, they could pose increased risks in terms of consumer protection and market integrity compared to other crypto-assets.
- (23) Before issuing asset-referenced tokens in the EU or seeking admission of such 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. 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 they do not aim at stabilising their value by referencing one or several other assets.
- (24) To be granted an authorisation by a competent authority, issuers of asset-referenced tokens should have a registered office in the EU. They 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 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.
- (25) Issuers of asset-referenced tokens should also have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility. They should also have effective processes to identify, manage, monitor and report the risks to which it is 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 their shareholders should have good repute and sufficient expertise. They should also 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 to the scale of their activities. Issuers of asset-referenced tokens should always ensure continuity and regularity in the performance of their activities. For that purpose, they 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 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.

- (26) Issuers of 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. Issuers of asset-referenced tokens should be required to establish and maintain appropriate contractual arrangements with these third-party entities that ensure 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.
- (29) In order to stabilise the value of their asset-referenced tokens, issuers of such crypto-assets should constitute and maintain a reserve of assets at all times. Issuers of asset-referenced tokens should ensure the prudent management of such 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 should establish, maintain and detail policies that describe, inter alia, the composition of the reserve assets and the allocation of assets, 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.
- (31) Issuers of 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. This policy should ensure at all times that the reserve assets are entirely segregated from the issuer's own assets, that the reserve assets are not encumbered or pledged as collateral and that the issuer of asset-referenced tokens

have prompt access to these reserve assets, where needed to perform their functions. In any case, depending on their nature, the reserve assets should be kept in custody either by a credit institution within the meaning of Regulation (EU) No 575/2013²⁶ or by a crypto-asset service provider authorised under this regulation for the service of custody of crypto-assets on behalf of third parties. The 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.

- (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 not grant such rights to all their holders and limit the right of redemption to specific holders. This Regulation should be flexible enough to capture all these situations. Therefore, issuers of asset-referenced tokens should be required to indicate the holders of asset-referenced tokens who are provided with a direct claim on the issuer or redemption rights. Where issuers of asset-referenced tokens grant direct rights on the issuer or on the reserve assets to all the holders, the issuers should be required to precisely define the conditions for exercising such rights. Where they 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 offer minimum rights to all the holders of asset-referenced tokens. First, they should ensure the liquidity of the asset-referenced tokens, by concluding and maintaining adequate liquidity arrangements with crypto-asset service providers in charge of posting firm quotes on a predictable basis to buy and sell the asset-referenced tokens against fiat currency. Secondly, 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 of asset-referenced tokens voluntarily stop their operations or when they are 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.
- (33) Issuers of asset-referenced tokens, and any crypto-asset service providers, should be prohibited from granting interests to users of asset-referenced tokens for the length of time such users are holding the asset-referenced tokens.
- (34) Issuers of asset-referenced 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

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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)

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 of the reserve 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 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.
- (37) Due to their large scale, issuance of significant asset-referenced tokens could amplify the risks to financial stability, compared to other crypto-assets and asset-referenced tokens with more limited issuance. Issuers of significant amounts of asset-referenced tokens should be subject to more stringent requirements compared to other issuers of asset-referenced tokens. They should notably subject to higher capital requirements, to the obligation to 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.
- (41) Before issuing e-money tokens, its issuers should be authorised either as a credit institution or as an electronic money institution under Directive 2009/110/EC and to comply with the relevant provisions of that Directive. It should also be required to produce a whitepaper notified to its competent authority. Where the issuance of e-money tokens is below a numerical threshold set out in this Regulation or where they 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 and to notify it to their competent authority.
- (42) All the holders of e-money tokens should be provided with a claim on the issuer of the e-money tokens concerned. They 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. Issuers of asset-referenced tokens should be allowed to apply a fee, where the e-money token holders are asking for the redemptions of their tokens for fiat currency, such a fee is proportionate and commensurate with the actual costs incurred by the issuer of electronic money tokens.
- (43) Issuers of e-money tokens, and any crypto-asset service providers, should be prohibited from granting interests to holders of e-money tokens for the length of time such holders are holding the e-money tokens.
- (44) The whitepaper produced by an e-money token issuer should contain all the 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. The whitepaper should also explicitly indicate that the e-money token holders are provided with a claim and a right to redeem their tokens against fiat currency at any moment and at par value.
- (45) In order to avoid cross-currency risks, where an issuer of e-money token invests the funds received in exchange for e-money tokens, it should be required to invest such funds in assets denominated in the same currency as the one that the e-money token is referencing.
- (46) As significant e-money tokens can raise additional challenges in terms of financial stability compared to other e-money tokens and traditional electronic money, issuers of such significant e-money tokens shall be subject to additional requirements set out under this Regulation. Issuers of e-money tokens should notably subject to higher capital

requirements compared to those applicable to other e-money token issuers, to the obligation to establish a liquidity management policy and to interoperability requirements. Issuers of e-money tokens should also be required to apply some 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.
- (49) Crypto-asset services should only be provided by a legal entity that has a registered office in a Member State and that has been authorised as 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.
- (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.
- (51) Some firms subject to high regulatory standards under Union financial services regulation should be allowed to provide crypto-asset services without authorisation under this Regulation. For instance, 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 to provide one or several investment services as defined under Directive (EU) 2014/65 which is or are similar to the crypto-asset services they intend to provide. Payment institutions authorised under Directive (EU) 2015/2366²⁷ should be allowed to provide the service of payment transactions in asset-referenced tokens, without prior authorisation under this Regulation. While those firms should be allowed to provide crypto-asset services without prior authorisation, they should be subject to the operational requirements set out in this Regulation.

- (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 service providers should also be required to comply with some prudential requirements. These prudential requirements should be set as a fixed amount or in proportion to their fixed overheads of the preceding year, depending on the type of services they provide.
- (53) Crypto-asset service providers should be subject to strong organisational requirements. Their managers and main shareholders should be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. Crypto-asset service providers should employ management and staff with 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. 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 services²⁸. 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) In order to ensure consumer protection, crypto-asset service providers shall also have adequate arrangements to safeguard the ownership rights of clients as regards crypto-assets. Where their business model requires holding funds, as defined under the Payment Services Directive (Directive (EU) 2015/2366) 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

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

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)

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

- (56) Depending on the specific services they provide, crypto-asset service providers shall also be subject to specific requirements. For instance, 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 contractual provisions and they should establish and implement a custody policy. Those crypto-asset service providers should also be held liable for any loss resulting from an ICT-related incident, whether resulting from malicious activity like a cyber-attack, theft or any malfunctions.
- (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 rules and should ensure that their system and procedures are sufficiently resilient. They should also be subject to pre-trade and post-trade transparency requirements adapted to the crypto-asset market. They should ensure that the trades executed on their trading platform for crypto-assets are settled and recorded on the DLT without undue delay. Crypto-asset operating a trading platform for crypto-assets should also have a transparent fee structure to avoid the placing of orders that could contribute to market abuse or disorderly trading conditions.
- (58) Crypto-asset service providers which exchange crypto-assets against fiat currencies or other crypto-assets, by using their proprietary capital, should establish a non-discriminatory commercial policy. They should be obliged to publish firm quotes or at least a method for determining the price of crypto-assets they offer for buying or selling. 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 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 crypto-asset service provider should implement procedures for the prompt and proper sending of clients' orders. They should be prevented from receiving any monetary or non-monetary benefits for transmitting these orders to any particular trading platform for crypto-assets or any other crypto-asset service providers.
- (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 communicate 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) Crypto-asset service providers which 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's experience, knowledge, objectives and ability to bear losses. If the client does not provide information or he/she does not have sufficient knowledge, the crypto-asset service provider should warn the clients that the crypto-asset or the crypto-asset services may not be adapted to them. When providing advice, crypto-asset service providers should establish a report, summarising the client'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 ensure users' confidence in the crypto-asset market and market integrity, 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, it could be disproportionate to apply all the provisions of the Regulation (EU) No 596/2014²⁹ (Market Abuse Regulation) to them. Therefore, this Regulation should include some bespoke provisions on market abuse that would prohibit some behaviours, such as 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.
- (65) Competent authorities should be conferred with sufficient powers to supervise the issuance of crypto-assets 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 to investigate infringements to 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. Competent authorities should also have the power to impose sanctions on issuers of crypto-assets, including asset-referenced tokens or e-money tokens and crypto-asset service providers.
- (66) The European Banking Authority (EBA) should also be provided with specific powers to supervise the issuers of asset-referenced tokens that have been designated as

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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 L 173, 12.6.2014, p. 1–61

significant. EBA should have the powers, among others, to carry out on-site inspections, take supervisory measures and impose fines. EBA should also have powers to supervise the additional requirements set out in this Regulation applying to issuers of significant e-money tokens.

- (67) EBA should charge fees on issuers of significant asset-referenced tokens or 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 of funds received in exchange of the significant e-money tokens. The Commission should be empowered to take a delegated act to specify how these fees should be calculated.
- (68) The Regulation should also include the transitional provisions. 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 of this Regulation, it would be justified to exempt the issuers of crypto-assets from the obligation to publish a whitepaper and other requirements applicable set out by this Regulation. However, these 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 this Regulation.
- (69) The entry into 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:

TITLE I: Subject Matter, Scope and Definitions

Article 1

Subject Matter

This Regulation establishes uniform requirements 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 electronic money tokens;
- (c) the operation, organisation and governance of issuers of asset-referenced tokens, issuer 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 engaged in the issuance of crypto-assets and services related to crypto-assets in the Union.
2. This Regulation shall not apply to crypto-assets that qualify as:
 - (a) financial instruments within the meaning of Article 4(1)(15) of Directive 2014/65/EU³⁰;
 - (b) electronic money within the meaning of Article 2(2) of Directive 2009/110/EC³¹, except if they qualify as an electronic money token under this Regulation;
 - (c) deposits within the meaning of Article 2(1)(3) of Directive 2014/49/EU³²;
 - (d) structured deposits within the meaning of Article 4(1)(43) of Directive 2014/65/EU.
 - (e) securitisation within the meaning of Article 2(1) of Regulation (EU) 2017/2402³³.
3. This regulation shall not apply to the following entities and persons:

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 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 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)

- (a) the European Central Bank and national central banks 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 in Directive 2009/138/EC³⁴ when carrying out the activities referred to in that Directive;
 - (c) a liquidator or an administrator acting in the course of insolvency procedure, except for the purpose of Article 29;
 - (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 the application of Article 15, Article 16(1) to 16(4), Article 23 and Chapter 2 of Title III, except Article 30.
 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 Articles 46(1), 47, 48(1) to 48(4), 49, 50, 51 and Chapter III of Title V.
 6. Investment firms authorised under Directive 2014/65/EU shall not be subject to the application of Articles 46(1), 47, 48(1) to 48(4), 49, 50, 51 and Chapter III of Title V, 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 in Article 3(1)(q) of this Regulation is deemed to be equivalent to the investment activities referred to in points (8) and (9) of Section A of Annex I of Directive 2014/65/EU;
 - (b) the crypto-asset services referred to in Article 3(1)(r) and (s) of this Regulation is equivalent to the investment service referred to in point (3) of Section A of Annex I of Directive 2014/65/EU;
 - (c) the crypto-asset services referred to in Article 3(1)(t) of this Regulation is equivalent to the investment service referred to in point (2) of Section A of Annex I of Directive 2014/65/EU;
 - (d) the crypto-asset services referred to in Article 3(1)(u) of this Regulation is equivalent to the investment services referred to in points (6) and (7) of Section A of Annex I of Directive 2014/65/EU;
 - (e) the crypto-asset services referred to in Article 3(1)(v) of this Regulation is equivalent to the investment service referred to in point (1) of Section A of Annex I of Directive 2014/65/EU.

³⁴ 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

(f) the crypto-asset services referred to in Article 3(1)(w) of this Regulation is equivalent to the investment services referred to in points (5) of Section A of Annex I of 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 of this Regulation, the following definitions apply:
- (a) ‘distributed ledger technology’ or ‘DLT’ means a class of technologies which support the distributed recording of encrypted data;
 - (b) ‘crypto-asset’ means a digital representation of value or rights, which may be transferred and stored electronically, using distributed ledger or similar technology;
 - (c) ‘asset-referenced tokens’ means a type of crypto-assets whose main purpose is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of several fiat currencies, one or several commodities or one or several crypto-assets, or a combination of such assets;
 - (d) ‘electronic money token’ or ‘e-money token’ means a type of crypto-assets whose main purpose is to be used as a means of exchange and that purports to maintain a stable value by being denominated in (units 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;
 - (g) ‘utility token’ means a type of crypto-assets which are intended to provide access digitally to an application, services or resources available on a distributed ledger and that are accepted only by the issuer of that token to grant access to such application, services or resources available;
 - (h) ‘issuer of crypto-assets’ means a person who offers 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 to the public’ means an offering to acquire a crypto-asset in exchange for fiat currency or other crypto-assets;

- (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;
- (o) ‘crypto-asset service’ means any of the services and activities listed below relating to any crypto-assets:
 - (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;
 - (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 of crypto-assets;
 - (g) the reception and transmission of orders for crypto-assets on behalf of third parties;
 - (h) the advice on crypto-assets;
 - (i) the execution of payment transactions in asset-referenced tokens.
- (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;
- (q) ‘the operation of a trading platform for crypto-assets’ means managing one or more crypto-assets trading platforms, 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 currency that is legal tender;
- (r) ‘the exchange of crypto-assets for fiat currency’ means concluding purchase or sale contracts concerning crypto-assets with third parties against currency that is legal tender, by using proprietary capital;
- (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;
- (t) ‘the execution of orders for crypto-assets on behalf of third parties’ means concluding agreements to buy, sell or subscribe for one or more crypto-assets on behalf of third parties;
- (u) ‘the placement of crypto-assets’ means the marketing of newly-issued crypto-assets or of crypto-assets that are already issued, but not admitted to trading on a trading platform for crypto-assets, to specified purchasers and which does not involve an offering to the public or an offering to existing holders of the issuer’s crypto-assets;
- (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, sell or subscribe for crypto-assets and the transmission of that order to a third party for execution;
- (w) ‘the 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;
- (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, or of a crypto-asset provider, which are appointed in accordance with national law, and which are empowered to set the entity's strategy, objectives, the overall direction and which oversee and monitor management decision-making and include persons who directly direct the business of the entity.
- (z) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013³⁵;
- (aa) 'qualified investors' means 'qualified investors' within the meaning of Article 2(e) of Regulation (EU) 2017/1129³⁶.
- (bb) 'reserve assets' means the basket of fiat currencies, commodities or crypto-assets, backing the value of an asset-referenced tokens, or the investment of such assets.
- (cc) 'home Member States' means:
 - (a) where the issuer of crypto-assets has its registered office or a branch in the EU, the Member States where the issuer of crypto-assets has its registered office or a branch;
 - (b) where the issuer of crypto-assets with no registered office in the EU has two or more branches in the EU, the home Member State is determined at the choice of the issuer among those of the Member States where the issuer has branches. This choice is definitive.
 - (c) for issuers of crypto-assets established in a third country with no branch in the EU, the Member State where the crypto-assets are intended to be offered to the public for the first time or 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 of asset-referenced tokens, the Member States where the issuer of crypto-assets has its registered office;

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)

- (e) for issuers of electronic money tokens, the Member States where such an issuer of electronic money tokens is authorised as a credit institutions or as a e-money institution under Directive 2009/110/EC;
 - (f) for crypto-asset service providers, the Member States where the issuer of crypto-assets has its registered office;
 - (dd) ‘host Member States’ means the Member State where an offering of crypto-assets to the public is made or an admission to trading on a trading platform on a trading platform for crypto-assets is sought, or where a crypto-asset service is provided, when different from the home Member State;
 - (ee) ‘competent authority’ means:
 - the authority, designated by each Member State in accordance with Article 74 for issuers of crypto-assets, issuers of asset-referenced crypto-assets and crypto-asset service providers;
 - the authority, designated by each Member State, for the application of Directive 2009/110/EC.
 - (ff) ‘commodity’ means ‘commodity’ under Article 2(6) of the Commission Delegated Regulation (EU) 2017/565³⁷;
 - (gg) ‘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 Council³⁸, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) 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.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 109 to specify technical elements of the definitions laid down in paragraph 1, to adjust them to market developments, technological developments and experience of behaviour that is prohibited under Title V and to ensure the uniform application of this Regulation.

³⁷ 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 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)

TITLE II: Offering and Marketing of Crypto-Assets

Article 4

Obligation to publish a whitepaper and exemptions

1. An issuer shall be entitled to offer a crypto-asset, other than an asset-referenced tokens or e-money tokens, to the public in the Union or to request an admission of crypto-assets, other than asset-referenced tokens or e-money tokens, to trading on a trading platform for crypto-assets, provided that such an issuer:
 - (a) complies with the requirements of Article 5; and
 - (b) draws up and publishes a whitepaper which complies with requirements of Article 6; and
 - (c) notifies the whitepaper to a competent authority in accordance with Article 8.
2. Paragraph 1 shall not apply for public offerings of crypto-assets if:
 - (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 or validation of transactions on a or similar technology; or
 - (c) the crypto-asset is unique and not fungible with other crypto-assets; or
 - (d) the offering of crypto-assets is addressed to fewer than 150 natural or legal persons per Member State acting on their own account; or
 - (e) the total consideration of such an offering in the Union does not exceed EUR 1,000,000, or the corresponding equivalent in another currency or in crypto-assets, over a period of 12 months; or
 - (f) the offering of 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 offered for free, where the prospective holders of crypto-assets provide or undertake to provide personal data to the issuer, in exchange for the crypto-assets. The crypto-assets shall not be considered as offered for free where the issuer of crypto-assets receive any fees, commissions, monetary benefits or non-monetary benefits in exchange of the crypto-assets from the prospective holders of crypto-assets or any third party.

3. Where an issuer 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.

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 of the whitepaper

1. The whitepaper 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 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 crypto-asset offering or admission to trading, the reasons for the offering and the planned use of the fiat currency or other crypto-assets collected via the offering;
 - (c) a detailed description of the characteristics of the offering, in particular the number of crypto-assets to be issued or admitted to trading, the issue price of the crypto-assets, 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 rights;
 - (e) the information on the underlying technology and standards met by the crypto-asset issuer allowing for the holding, storing and transfer of such crypto-assets;
 - (f) the risks relating to the crypto-asset issuer, the crypto-assets, the crypto-asset offering and the implementation of the project.
2. The whitepaper shall contain the minimum disclosure items specified in Annex 1. All such information shall be fair, clear and not misleading. The whitepaper shall not contain material omissions and it shall be presented in a concise and comprehensible form.
3. The whitepaper shall include the following statement: *“The issuer of crypto-assets is responsible for the preparation of this whitepaper. This document has not been reviewed or approved by any competent authority in any Member State of the European Union”*.
4. The whitepaper shall not contain assertions on the future value of the crypto-assets, unless the issuer can guarantee this future value. 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 shall also include a clear and unambiguous statement that the crypto-assets may lose their value in part or in full. The white paper shall also state that:
- (a) crypto-assets may not always be transferable;
 - (b) crypto-assets may not be liquid;
 - (c) where the offering concerns utility tokens, such utility tokens may not be exchangeable against the application, service, or resources promised in the whitepaper, especially in case of failure or discontinuation of the project.
5. The whitepaper shall include a summary. The summary shall, in brief and non-technical language, provide key information in relation to the offer or admission to trading of crypto-assets. The format and content of the summary of the whitepaper shall provide, in conjunction with the whitepaper, 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 a warning that:
- (a) it should be read as an introduction to the whitepaper;
 - (b) any decision to purchase a crypto-asset should be based on consideration of the whitepaper as a whole by the prospective purchaser;
 - (c) the offering of crypto-assets does not constitute an offering or solicitation to sell financial instruments and that any such solicitation of financial instruments will be made only by means of a prospectus or other offering documents pursuant to national laws.
 - (d) the whitepaper does not constitute a prospectus under Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 or another offering document pursuant to Union or national laws.
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.

7. The whitepaper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance.
8. The whitepaper shall be made available in machine readable formats.
9. ESMA, after consultation of EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 8.

ESMA shall submit those draft implementing technical standards to the Commission by **[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 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 marketing communications to the competent authority

1. Competent authorities shall not require an *ex ante* approval of a whitepaper, nor of any marketing communications relating to it before their publication.
2. A whitepaper shall be notified to the competent authority at least twenty working days before its date of its publication.
3. When notifying the whitepaper, the issuer of crypto-assets shall provide its competent authority with an assessment explaining the reasons why the crypto-asset described in the whitepaper does not represent a financial instrument under Directive 2014/65/EU, electronic money under Directive 2009/110/EC, a deposit under Directive 2(1)(3) and a structured deposit under Directive 2014/65/EU.
4. 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 provide the competent authority of its home Member State with a list of the Member States where the crypto-assets are to be offered or admitted to trading on a trading platform for crypto-assets and the starting date of the intended offering of crypto-assets or admission to trading on 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 subparagraph, 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 the public offering as described in the whitepaper shall not exceed twelve months.
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.

Article 9

Publication of the whitepaper following its notification

1. The whitepaper shall be made available to the public by the issuer of crypto-assets no later than the starting date of the offering of crypto-assets or the admission of crypto-assets to trading. The whitepaper must be effectively disseminated by online posting on the issuer's website. It 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, shall be identical to the version notified to the relevant competent authority.
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.
4. Where the issuer sets a time limit for its offering of crypto-assets to the public, the issuer shall publish on its website the result of the offering within two 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:
 - (a) the application of Directive 2000/31/EC³⁹;
 - (b) the application of Articles 6 to 8 of Directive 2011/83/EU⁴⁰;
 - (c) the application of Articles 3 and 5 of Directive 2002/65/EU⁴¹.
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.

Article 10

Modification of the whitepaper or marketing communications following their publication

1. 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 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 with the competent authority of its home Member State and

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)

shall provide a summary of the reasons for which it has notified an amended whitepaper.

3. The crypto-asset issuer that produces an amended whitepaper shall ensure that the order of the information appearing in the amended whitepaper is consistent with that of the original whitepaper.
4. The amended whitepaper shall be notified to the competent authority of the issuer's home Member State at least seven working days before the date of its publication. The competent authority has the same power as under Article 8(7).

Within two working days after the receipt of the draft amended whitepaper, the competent authority of the home Member State shall notify it to the competent authority of the host Member State as referred to in Article 8(5).
5. The amended whitepaper shall be time-stamped. It shall be published and disseminated in the same conditions as the original whitepaper. All the amended whitepapers 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.
6. Where the offering of crypto-assets concerns utility tokens, the changes made in the amended whitepaper shall not extend the twelve-month time limit referred to in Article 8(6).
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).

Article 11

Liability of crypto-asset issuers

1. Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to 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 to trading on a trading platform for crypto-assets.
2. However, Member States shall ensure that no civil liability shall attach to the issuer of crypto-assets or its management body on the basis of the summary pursuant to Article 6(5), including the translation thereof, except when:
 - (a) the summary is misleading, inaccurate and inconsistent when read together with the other parts of the whitepaper;
 - (b) the summary does not provide, when read together with the other parts of the whitepaper, key information in order to aid consumers and investors when considering whether to purchase such crypto-assets.
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.

TITLE III: issuance of asset-referenced tokens

Chapter 1: requirements on issuers of asset-referenced token

Article 12

Requirement for authorisation of issuers of asset-referenced tokens

1. No asset-referenced 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 asset-referenced tokens:
 - (a) complies with requirements set out in this Chapter; and
 - (b) is authorised by its competent authority in accordance with Article 30; and
 - (c) publishes a whitepaper approved by the competent authority, in accordance with Article 26 and 29.
2. Paragraph 1 shall not apply to asset-referenced token:
 - (a) if the asset-referenced tokens are marketed and distributed exclusively to qualified investors and that can only be held by qualified investors; or
 - (b) if the average outstanding amount of asset-referenced tokens does not exceed EUR 5.000.000, or the corresponding equivalent in another currency, over a period of 12 months, calculated at the end of each calendar day.

In the case referred to in points (a) and (b), the issuers of such asset-referenced tokens shall 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 by the competent authority in accordance with Article 30 (10).
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’).

In that case, the issuer of such crypto-assets shall produce a whitepaper including the disclosure requirements set out in Article 6 and notify such whitepaper to the competent authority in accordance with Article 8. The issuer of such 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 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 in accordance with Article 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 an 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 assets.

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 575/2013⁴² 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

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).

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.
4. EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards further specifying:
- (a) the methodology for the calculation of the own funds requirements set out in paragraph 1;
 - (b) the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 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 of asset-referenced tokens to adjust to such changes in own funds requirements.

EBA shall submit those draft regulatory technical standards to the Commission by **[one year after 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

Governance arrangements

1. An issuer of asset-referenced tokens shall have 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.
2. The members of the management body of the asset-referenced token issuers shall 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. They shall also demonstrate that they are capable of committing sufficient time to effectively carry out their functions.

3. The natural persons who either own, directly or indirectly, more than 20% of the asset-referenced token issuer's share capital or voting rights, or who exercise, by any other means, a power of control over the said issuer 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 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. In particular, issuers of asset-referenced tokens shall establish, maintain and implement policies and procedures on:
 - (a) the stabilisation mechanism, as specified in Article 20;
 - (b) the custody of the reserve assets, as specified in Article 21;
 - (c) the rights or the absence of rights granted to the users of asset-referenced tokens, as specified in Article 23;
 - (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' 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;
 - (h) the arrangements with third party entities, including for operating the stabilisation mechanism and the investment of the reserve assets, the custody of reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public;
 - (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).

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

6. Unless it has initiated its plan as referred in Article 29, 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 and regularity in the performance of its services and activities. To that end, an issuer of asset-referenced tokens shall maintain all its systems and security access protocols to appropriate EU standards.

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

7. Issuers of asset-referenced tokens shall also establish 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.
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 Regulation (EU) 2021/xx [DORA]. The procedures shall also provide for a comprehensive assessment relating to the reliance on third party entities as referred in point (h) of paragraph 5. Issuers of asset-referenced tokens 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.
9. Issuers of asset-backed crypto-assets shall have 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]. These systems shall record and safeguard relevant data and information collected and produced in the course of the issuer'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.
10. Issuers of asset-referenced tokens shall be subject to regular and independent audits. The results of these audits shall be communicated to the management body 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, EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards specifying the minimum content of the rules and governance arrangements on:
 - 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;
 - b) the internal control mechanism referred to in paragraphs 1 and 8;
 - c) the business continuity plan referred to in paragraph 7;
 - d) the audit methods referred to in paragraph 10;
 - e) the remuneration policy referred to in paragraph 11;

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

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.
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.

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/EC⁴³ is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

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)

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.

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 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);
 - (e) the holders of 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
 - (b) include sufficient detail to enable the users of the asset-referenced tokens to take an informed decision about the service in the context of which the conflict of interest arises.
4. EBA shall develop draft regulatory technical standards to specify:

- (a) the requirements for the policies and procedures and steps referred to in paragraph 1;
- (b) the arrangements for the disclosure referred to in paragraphs 3 and 4.

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 20

Stabilisation mechanism and reserve of assets

1. For the purpose of stabilising the value of an asset-referenced token, its issuer shall constitute and maintain a reserve of assets, at all times.
2. Where the issuer has issued two or more categories of asset-referenced tokens, it shall operate and maintain a separate reserve of assets for each category of asset-referenced tokens. Each reserve of assets shall be managed independently.

Where several issuers have issued the same asset-referenced tokens, they shall operate and maintain only one reserve of assets.
3. The management body of the 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 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 of asset-referenced tokens shall have a clear and detailed policy and procedure describing the stabilisation mechanism of such crypto-assets. This policy shall include in particular:
 - (a) the reference assets to which the asset-referenced token aim at stabilising its value and the composition of such reference assets;
 - (b) the type of assets and the precise allocation of assets that are included in the reserve of assets;
 - (c) a detailed assessment of the risks, including credit risk, market risk, liquidity risk resulting from the reserve assets;
 - (d) the procedure by which the asset-referenced tokens are created and destroyed, and the consequence on the increase and decrease in the reserve assets
 - (e) whether the reserve assets are invested;
 - (f) where the issuer of asset-referenced tokens invests a part of the reserve assets, a detailed description of the investment policy and an assessment of how this investment policy can affect the value of the reserve assets;
 - (g) the procedure and persons who are entitled to purchase asset-referenced tokens and to redeem the asset-referenced tokens against the reserve assets.
5. The issuer 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.

Article 21
Custody of the reserve assets

1. Issuers of asset-referenced tokens shall establish, maintain and implement a custody policy and procedures and contractual arrangements that ensure at all times that:
 - (a) the reserve assets are segregated from the issuer'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)(a), (b) and (c) of Directive 2002/47/EC⁴⁴;
 - (c) the reserve assets are held in custody in accordance with paragraph 5;
 - (d) the issuer of asset-referenced tokens has a prompt access to the reserve assets, where needed.

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

2. The reserve assets received in exchange of asset-referenced tokens shall be held in custody by no later than five 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 for the service mentioned in Article 3 (1)(p), when the reserve assets take the form of crypto-assets;
 - (b) a credit institution for all other types of reserve assets.

3. The issuer 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.

The issuer of asset-referenced tokens shall ensure the expertise and market reputation of the credit institutions and crypto-asset service providers appointed as custodians of the reserve assets, including their accounting practices, safekeeping procedures, and internal control mechanisms. The reserve assets held in custody shall be protected against claims of the custodian's creditors.

The selection criteria for 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.

⁴⁴ 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).

4. The reserve assets held on behalf of the issuer of asset-referenced tokens shall be entrusted to the credit institutions or crypto-asset service providers as referred in paragraph 3, as follows:
- (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's books and all financial instruments that can be physically delivered to the 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/EC⁴⁵. 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;
 - (b) for crypto-assets that can be held in custody:
 - (i) the crypto-asset service 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;
 - (c) for other assets:
 - (a) the credit institutions, as referred in paragraph 2(b) shall verify the ownership of the issuer of asset-referenced tokens and shall maintain a record of those assets for which they are satisfied that the issuers of asset-referenced tokens holds the ownership of such assets;
 - (ii) the assessment whether the issuer of asset-referenced tokens holds the ownership shall be based on information or documents provided by the issuer of 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 of the reserve assets shall be evidenced by a written contract, as referred to in Article 16(5). The contracts shall, inter alia, regulate the flow of information deemed necessary to allow the credit institutions and or the crypto-assets service providers to

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)

perform their functions for the issuer of asset-referenced tokens for which they have been appointed custodians, as set out in this Regulation.

6. The credit institutions and crypto-asset service providers, as referred to in paragraph 2 shall act honestly, fairly, professionally, independently and in the interest of the issuer of asset-referenced tokens and the holders of asset-referenced tokens.
7. The credit institutions and crypto-asset service providers, as referred to in paragraph 2 shall not carry out activities with regard to the issuer that may create conflicts of interest between the issuer of asset-referenced tokens, the holders of asset-referenced tokens, and themselves unless:
 - (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 properly identified, managed, monitored and disclosed to the holder of the asset-referenced tokens, in accordance with Article 19.
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 shall return a financial instrument or a crypto-asset of identical type or the corresponding value to the issuer of asset-referenced tokens without undue delay. The custodians of the reserve assets shall not be liable if 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

Investment of the reserve assets

1. Where the issuer of asset-referenced tokens invests a part of the reserve assets, it shall invest them 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 Article 21.
3. All profits or losses, including fluctuations in the value of financial instruments, counterparty or operational risks, resulting 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, 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, bearing minimal credit and market risk as referred to in paragraph 1. When determining the financial assets referred to in paragraph 1, EBA shall take into account:

- (a) the various types of reserve assets that can back an asset-reference payment token;
- (b) the correlation between these reference assets and the highly liquid financial instruments the issuers may invest in;
- (c) the conditions for recognition as high quality liquid assets under Articles 412 and 460 of Regulation 575/2013 and the relevant delegated acts.

EBA shall submit those draft regulatory technical standards to the Commission by **[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 23

Rights on the reserve assets

1. The issuer of asset-referenced tokens shall establish, maintain and implement 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.
2. Where the holders of asset-referenced tokens are granted rights as referred to in paragraph 1, the issuer of asset-reference payment tokens shall establish a policy defining:
 - (a) the conditions, including thresholds, periods and timeframes, for holders of asset-referenced tokens to exercise such rights;
 - (b) the mechanisms and procedures to ensure the redemption of the asset-referenced tokens, including in stressed market circumstances or in case of orderly wind-down of, or cessation of activities by, the issuer of asset-referenced tokens;
 - (c) the valuation, or the principles of valuation, of the asset-referenced tokens and the reserve assets when the rights are exercised by the holder of asset-referenced tokens;
 - (d) the settlement conditions (physical or cash) when such rights are exercised;
 - (e) the fees applied by the issuer of asset-referenced tokens when the holders exercise such rights.

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

3. Where the issuer of asset-referenced tokens does not grant rights as those referred to in paragraph 1 to all the holders of asset-referenced tokens, the procedure shall specify the natural or legal persons that are provided with a claim or a redemption rights on the issuer or the reserve assets. The procedure 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 natural or legal persons who are provided with a claim or a redemption rights on the issuer or the reserve assets. These contractual arrangements shall precisely set out the roles, responsibilities, rights and obligations of the issuer of asset-referenced tokens and each of these third party entities. A contractual

arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law.

4. Where the issuer of asset-referenced tokens does not grant rights as those referred to in paragraph 1 to all the holders of asset-referenced tokens, the issuer of asset-referenced tokens shall put in place mechanisms to ensure the liquidity of the asset-referenced tokens. For that purpose, it shall establish and maintain written agreements with crypto-asset service providers authorised for the service of exchanging crypto-assets against legal tender. 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, 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.

Article 24

Prohibition of interests

No issuer of asset-referenced tokens or crypto-asset service provider shall grant interests or any other benefit related to the length of time during which a holder of asset-referenced tokens holds such crypto-assets.

Article 25

Interoperability of significant asset-referenced tokens

Issuers of significant asset-referenced tokens shall ensure that such assets 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/EU⁴⁶, on a fair, reasonable and non-discriminatory basis.

⁴⁶ 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

Article 26

Additional content of the whitepaper for 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.
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-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.
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, in close cooperation with ESMA, develop draft regulatory technical standards to specify:

- (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 referred to in paragraph 2;
- (b) the procedure for the approval of a whitepaper concerning an asset-referenced token when its issuer is authorised as a credit institution.

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

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 third-party entity 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 financing.
3. Competent authorities shall withdraw 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 body 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 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 1093/2010⁴⁷.

Article 36

Non-binding opinions of the college

1. The college for issuers of significant 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.

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

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 (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.

TITLE IV: Issuance of electronic money tokens

Chapter 1: requirements on issuers of electronic money tokens

Article 37

Requirement for authorisation of issuers of electronic money tokens

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 whitepaper notified to the competent authority, in accordance with Article 40.

For the purpose of point (a), an ‘electronic money institution’ within the meaning of Article 2(1) of Directive 2009/110/EC shall be authorised to issue ‘e-money tokens’ and electronic money tokens shall be deemed to be electronic money.

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) electronic payment token if the electronic payment tokens are marketed, distributed and held by qualified investors and they can only be held by qualified investors;
 - (b) if the average outstanding amount of electronic money tokens does not exceed EUR 5.000.000, or the corresponding equivalent in another currency, over a period of 12 months, calculated at the end of each calendar day.

For the purpose of point (b), where the Member State has set a threshold lower than EUR 5.000.000 in accordance with Article 9 (1)(a) of Directive 2009/110/EC, such a threshold shall apply.

In the case referred to in points (a) and (b), the issuers of electronic money tokens shall produce a whitepaper and notify such whitepaper to the competent authority in accordance with Article 40.

Article 38

Issuance and redeemability of electronic money tokens

1. By derogation of Article 11 of Directive 2009/110/EC, the following requirements shall apply to issuers of e-money tokens.
2. Holders of e-money 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 of e-money tokens shall prominently state the conditions of redemption, including any fees relating thereto, in the whitepaper as referred to in Article 40(1)(c).

Redemption may be subject to a fee only if stated in the whitepaper. Any such fee shall be proportionate and commensurate with the actual costs incurred by the issuer of electronic money token.

6. If the issuer of e-money tokens does not fulfil legitimate redemption requests from holders of e-money tokens within the time period specified in the whitepaper 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 of electronic money issuers:
 - (a) entities ensuring the safeguarding of funds received by the issuer 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 e-money token issuers.

Article 39

Prohibition of interests

By derogation to Article 12 of Directive 2009/110/EC, no issuer of e-money tokens or crypto-asset service provider shall grant interests or any other benefit related to the length of time during which a holder of e-money tokens holds such crypto-assets.

Article 40

Whitepaper 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 shall produce a whitepaper.
2. The whitepaper 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;
 - (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 concerns an offering of e-money tokens to the public 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 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.
3. The whitepaper shall contain the minimum disclosure items specified in Annex 3. All such information shall be fair, clear and not misleading. The whitepaper shall not contain material omissions and it shall be presented in a concise and comprehensible form.
 4. The whitepaper shall include a summary. The summary shall, in brief and non-technical language, provide key information in relation to the offering of e-money tokens or admission to trading of such 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.
 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.
 6. The whitepaper 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.
 7. The whitepaper shall be made available in machine readable formats, in accordance with Article 6.
 8. A whitepaper shall be notified to the relevant competent authority as referred to in Article 3(ee) at least twenty working days before its date of its publication.
 After the notification and without prejudice of the powers set out in Directive 2009/110/EC or the national laws implementing 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.
 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 to sell or exchange

such e-money token issuer 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, in accordance with paragraph 8.

10. Marketing communications on e-money tokens are subject to the requirements set out in Article 7.

Article 41

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

Article 43

Authorisation and supervision of issuers of electronic 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 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 e-money tokens shall also be supervised by that competent authority.
2. Where an e-money token has been 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;
 - (c) 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 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 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 authority 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.

5. The competent authority 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 the competent authority or EBA. Where the competent authority 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 the issuer of asset-referenced token, by the competent authority or EBA, their decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations.

TITLE V: Authorisation and operating conditions for Crypto-Asset Service providers

Chapter 1: Provisions for all crypto-asset service providers

Article 46

General provisions on crypto-asset service providers

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.
2. Crypto-asset service providers shall act honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients.
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.

Article 47

Prudential requirements

1. Crypto-asset service providers shall, at all times, have in place prudential requirements equal to an amount of at least the higher of the following:
 - (a) The amount of permanent minimum capital requirements indicated in Annex IV, depending on the nature of the crypto-asset services provided;
 - (b) one quarter of the fixed overheads of the preceding year, reviewed annually;
2. The prudential requirements referred to in paragraph 1 of this Article shall take 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 Council⁴⁸ 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 or a comparable guarantee.
3. Where a crypto-asset service provider has not been in business for one year from the date on which it started providing services or performing activities, it shall use, for the purpose of calculation referred to in paragraph 1 (b), the projected fixed overheads included in its projections for the first 12 months' of service provision, as submitted with its application for authorisation.

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).

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 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) legal and regulatory obligations;
 - (ii) duty of skill and care towards clients;
 - (iii) obligations of confidentiality;
 - (d) failure to establish, implement and maintain appropriate procedures to prevent conflicts of interest;
 - (e) losses arising from business disruption or system failures;
 - (f) where applicable to the business model, gross negligence in safeguarding of clients' crypto-assets and funds.
6. For the purposes of point (b) of paragraph 1, 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 depend on a net profit of the crypto-asset service provider in the relevant year;
 - (b) employees', directors' and partners' shares in profits;
 - (c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;
 - (d) non-recurring expenses from non-ordinary activities.

Article 48

Organisational requirements

1. The 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 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 and 2 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 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].

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], aimed at ensuring, in the case of an interruption to their (ICT) systems and procedures, the preservation of essential data and functions and the maintenance of crypto-asset services, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of crypto-asset services.

7. Crypto-asset service providers shall have 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 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].

8. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, orders and transactions undertaken by it which shall be sufficient to enable the competent authority to fulfil its supervisory tasks and to perform the enforcement actions, including under Title VI, and in particular to ascertain that 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, when holding crypto-assets belonging to clients, 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 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/EC⁴⁹ 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*

1. Where their business models or the crypto-asset services require holding funds belonging to clients, crypto-asset service providers shall make adequate arrangements to safeguard the rights of clients and prevent the use of client's funds, as defined under Article 4(25) of Directive 2015/2366⁵⁰, for their own account.
2. Crypto-asset service providers shall, on receiving any client's funds, promptly place such funds with a central bank or a credit institution.

Crypto-asset service providers shall take any necessary steps to ensure that the funds belonging to the clients 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.
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 in accordance with Directive (EU) 2015/2366.
7. Paragraphs 1 and 2 of this Article do not apply to crypto-asset service providers that are electronic money institutions in accordance with Directive 2009/110/EC or payment institutions in accordance with 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)

⁵⁰ 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

Article 52

Information to clients

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 measures taken.
4. Crypto-assets service providers shall investigate all complaints in a timely and fair manner, and communicate the outcome within a reasonable period of time to their clients.

Article 54

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, their shareholders, their managers and employees, or any person directly or indirectly linked to them by control, and 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.
4. The disclosure referred to in paragraph 3 shall:
 - (a) be made in a durable medium;
 - (b) include sufficient detail, taking into account the nature of each client, to enable each client to take an informed decision about the service in the context of which the conflicts of interest arises.

8. Crypto-asset service providers shall assess and periodically review, at least annually, their policy on conflicts of interest and take all appropriate measures to address any deficiencies.

Article 55
Outsourcing

1. Crypto-asset service providers shall, when relying on a third party 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 obligations under this Regulation and shall comply at all times with the following conditions:
 - (a) outsourcing does not result in the delegation of its responsibility;
 - (b) the relationship and obligations of the crypto-asset service provider towards its clients are not altered;
 - (c) the conditions for the authorisation of the crypto-asset service provider do not effectively change;
 - (d) the service provider cooperates with the competent authority of the crypto-asset service provider and outsourcing does not prevent the exercise of supervisory functions by its competent authority, including on-site access to acquire any relevant information needed to fulfil those functions;
 - (e) the crypto-asset service provider retains 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 direct access to the relevant information of the outsourced services;
 - (g) the crypto-asset service provider ensures that the service provider meets the standards set down by the relevant data protection law which would apply if the service provider were established in the Union. The crypto-asset service provider is responsible for ensuring that those standards 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 a written agreement their rights and obligations and those of the service provider. The outsourcing agreement shall allow the crypto-asset service provider to terminate the agreement.
4. Crypto-asset service provider and a service provider shall make available upon request to the competent authority and the relevant authorities all information necessary to enable them to assess the compliance of the outsourced activities with the requirements of this Regulation.

Chapter 2: Requirements on specific crypto-asset services

Article 56

Custody on behalf of third parties of crypto-assets or access to crypto-assets

1. Crypto-asset service providers 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 shall enter into an agreement with their clients defining their duties and their responsibilities. Such agreement shall include at least the following content:
 - (a) identity of the parties;
 - (b) nature and description of the service provided;
 - (c) 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.
3. Crypto-asset service providers shall keep a register of positions, opened in the name of each client, corresponding to each clients' rights to the crypto-assets. Crypto-asset service providers shall record as soon as possible movements following instructions from the client in his/her position register and shall organise their internal procedures in such a way as to ensure that any movement affecting the registration of the crypto-assets is evidenced by a transaction regularly registered in the client's position register.
4. Crypto-asset service providers shall establish a custody policy. The custody policy shall include 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 rules and procedures shall ensure that the crypto-asset service provider cannot lose clients' crypto-assets or the rights related to these assets due to frauds, cyber threats or negligence.
5. Where applicable, crypto-asset service providers 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.

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6. Crypto-asset providers shall communicate on a durable medium, at least once every three months and at each request of their client, a statement of position of the crypto-assets recorded in the name of the client. The statement mentions the crypto-assets concerned, their balance, their value and the transfer of crypto-assets made during the period. Crypto-asset service providers shall also communicate, as soon as possible, information relating to operations on crypto-assets requiring a response from the client. 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 crypto-assets held on behalf of their clients.

7. Crypto-asset service providers shall segregate holdings on behalf of their clients from their own holdings. They shall ensure that, on the DLT, its clients' crypto-assets are held on separate addresses from those on which their own crypto-assets are held.

Crypto-asset service providers shall refrain from using the 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 shall be liable to their clients for loss of crypto-assets as a result of malfunction or hacks up to the market value of the crypto-assets lost.

Article 57

Operation of a trading platform for crypto-assets

1. Crypto-asset service providers authorised for the provision of the service referred to in Article 3(q) shall comply with the following requirements.
2. They 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. the types of crypto-assets that will not be admitted to trading on the trading platform, if any.
- (c) set the policies and procedures around the levels of compensation, if any, for the admission of trading of crypto-assets to the trading platform;
- (d) set objective and proportionate criteria for participation, which promote fair and open access for customers 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 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 transactions.

3. For the purpose of point (a), the operating rules shall clearly state that a crypto-asset cannot be admitted to trading on the trading platform, where a whitepaper notified or approved has not been published, unless such a crypto-asset benefits from the transitional measures set out in Article 111.

When assessing the quality of the 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 set out in Article 111.

The operating rules shall prevent the admission to trading of a crypto-asset which has an inbuilt anonymisation function unless the holder and transaction history of the crypto-asset can be identified.

4. These operating rules 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 operating rules shall be made public on the crypto-asset service provider's website.

5. Crypto-asset service providers shall not deal on own account on the trading platform for crypto-assets they operate, even where they are authorised for the services referred to in Article 3(1)(r) or 3(1)(s).
6. Crypto-asset service providers shall have in place effective systems, procedures and arrangements to ensure its trading system:
 - (a) is resilient;
 - (b) has sufficient capacity to ensure orderly trading under conditions of severe market stress;
 - (c) is able to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;
 - (d) is fully tested to ensure that conditions under (a), (b) and (c) are met;
 - (e) is subject to effective business continuity arrangements to ensure continuity of their services if there is any failure of the trading system.
7. Crypto-asset service providers shall make public current 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 shall make this information available to the public on a continuous basis during the trading hours.
8. Crypto-asset service providers 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.
9. Crypto-asset service providers shall offer the information published in accordance with paragraphs 6 and 7 available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information. Such 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.
10. Crypto-asset service providers 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.
11. Crypto-asset service providers 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.
12. Crypto-asset service providers shall keep at the disposal 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 shall maintain resources and have back-up facilities in place to be capable of reporting to their competent authority at all times.

Article 58

Exchange of crypto-assets against fiat currency or exchange of crypto-assets against other crypto-assets

1. Crypto-asset service providers 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 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.
3. They 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.
4. They shall execute the clients' orders at the prices displayed at the time of their receipt.
5. They shall publish the details of the orders and the transactions concluded on their exchange platform, including transaction volumes and prices.

Article 59

Execution of orders for crypto-assets on behalf of third parties

1. Crypto-asset service providers authorised for the provision of the service referred to in Articles 3(1)(t) shall comply with the following requirements.
2. Crypto-asset service providers shall take all sufficient 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.
3. To ensure compliance with paragraph 2, a crypto-asset service provider shall establish and implement effective execution arrangements. In particular, it shall establish and implement an order execution policy to allow it to obtain, for its 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.
4. Crypto-asset service providers 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 of crypto-assets

1. Crypto-asset service providers 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 shall communicate the following information to the issuer or any third party acting on its 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 shall obtain the agreement of the issuer or any third party acting on its behalf as regards points (a), (b), (c) and (d) before carrying out the placement of crypto-assets.

3. The internal rules on conflicts of interest as referred to in Article 54 shall have specific and adequate procedure in place to prevent, monitor, manage and potentially disclose any conflicts of interest arising from the following situations:
 - (a) crypto-asset service providers place the crypto-asset with their own clients;
 - (b) the proposed price for the placement of crypto-assets has been overestimated or underestimated.

Article 61

Reception and transmission of orders related to crypto-assets

1. Crypto-asset service providers 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 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.
3. Crypto-asset service providers 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.
4. 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 62

Advice on crypto-assets

1. Crypto-asset service providers 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 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.
3. Crypto-asset service providers 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 their obligations.
4. For the purposes of the assessment referred to in paragraph 2, crypto-asset service providers shall request information about the client or prospective client's knowledge of, and experience in crypto-assets, objectives, financial situation including ability to bear losses and basic understanding of risks involved in purchasing crypto-assets.

Crypto-asset service providers shall warn clients that, due to their tradability, the value of crypto-assets may fluctuate.

Crypto-asset service providers 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 consider, on the basis of the information received under paragraph 3, that the prospective clients or clients have insufficient knowledge, crypto-asset service providers 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 shall expressly acknowledge that they have received and understood the warning issued by the crypto-asset service provider.
6. Crypto-asset service providers shall for each client review the assessment referred to in paragraph 2 every two years after the initial assessment made in accordance with that paragraph.
7. Once the assessment referred to in paragraph 2 has been done, crypto-asset service providers shall provide the client with a report summarising the advice given to the client. This report shall be made in a durable medium. This report shall, as a minimum:
 - (a) specify the client's demands and needs;
 - (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) 2015/2366⁵¹, 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 3: Authorisation and Supervision of Crypto-Asset Service Providers

Article 64

Authorisation as a crypto-asset service provider

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:

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)

- (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;
- (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;
- (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.
- (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, within 25 working days of receipt of the application referred to in 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 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 referred to in paragraph 1 is complete, the competent authority shall immediately notify the prospective crypto-asset service provider thereof.
 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 decision within three working days of the date of that decision.
 10. A crypto-asset service provider authorised in accordance with this Article shall, at all times, meet the conditions for its authorisation.

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.
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*

1. The competent authorities that granted an authorisation under Article 64 shall ensure that such authorisation specifies the crypto-asset services that 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 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 authorisation of a crypto-asset service provider in accordance with Article 67 shall remain published in the register for five years.

Article 67

Withdrawal 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.
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) 2015/849⁵² 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.
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.

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)

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.
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 authorisation as referred to in paragraph 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:
 - (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.

TITLE VI: Prevention of Market Abuse involving crypto-assets

Article 69

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 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

Disclosure of inside information

1. 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 shall inform the public as soon as possible of inside information which concerns that issuer, in a manner that enables easy and widespread access to that information and its complete, correct and timely assessment by the public.
3. A crypto-asset issuer may, on its 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;
 - (b) delay of disclosure is not likely to mislead the public;
 - (c) the issuer is able to ensure the confidentiality of that information.

Article 71

Prohibition of insider dealing

1. For the purpose of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, crypto-assets to which that information relates.
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 person possesses inside information and:
 - (a) recommends, on the basis of that information, that another person acquire or dispose of crypto-assets to which that information relates, or induces that person to make such an acquisition or disposal; or
 - (b) recommends, on the basis of that information, that another person cancels or amends an order concerning a crypto-asset to which that information relates, or induces 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

Prohibition of unlawful disclosure of inside information

1. For the purpose of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information as described in Article 70(1) and discloses that information to any other person, except where the 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

Prohibition of market manipulation

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:
 - (a) 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 employs 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 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, including any cancellation or modification thereof, by any available means of trading, and which has one of the effects referred to in paragraph 1(a), by:
 - (i) disrupting or delaying the functioning of the trading platform or being likely to do so;

- (ii) making it more difficult for other persons to identify genuine orders on the trading platform for crypto-assets or being likely to do so, including by entering orders which result in the destabilisation of the normal functioning of the trading platform;
 - (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;
 - (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 and EBA

Chapter 1: Powers of competent authorities and cooperation between competent authorities, ESMA and EBA

Article 74

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 and EBA 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 and EBA.
3. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.

Article 75

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 service 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, 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 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, where necessary for consumer protection or financial stability;
- (o) to suspend an offering of crypto-assets, including an offering of asset-referenced tokens or e-money tokens, or 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 of crypto-assets, including an offering of asset-referenced tokens or e-money tokens, to the public or 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 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 without authorisation or a person is issuing crypto-assets without a whitepaper notified in accordance with Article 8, 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 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, 71, 72 and 73;
- (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 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

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), 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 and EBA, 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 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, 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, ESMA and EBA shall fulfil a coordination role between competent authorities and across colleges as referred to in Articles 35 and 44 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 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 ... [12 months after the date of entry into force of this Regulation].

10. ESMA, after consultation of 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 ... [12 months after the date of entry into force of this Regulation].

Article 77 *Cooperation with ESMA and EBA*

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 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 Title VII.
2. A requesting competent authority shall inform ESMA and EBA of any request referred to in the Article 75(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, 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 ESMA and EBA with all information necessary to carry out their duties, in accordance with Article 35 of Regulation (EU) No 1095/2010 and Article 35 of Regulation (EU) No 1093/2010 respectively.
4. In order to ensure uniform conditions of application of this Article, ESMA, in close cooperation with 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 ESMA.

ESMA shall submit those draft implementing technical standards to the Commission by ... [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

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

Notification duties

Member States shall notify the laws, regulations and administrative provisions implementing this Title, including any relevant criminal law provisions, to the Commission, ESMA and to EBA by... [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

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. 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

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) 2016/679⁵³.

With regard to the processing of personal data by ESMA and EBA within the scope of this Regulation, it shall comply with Regulation (EU) 2018/1725⁵⁴.

⁵³ 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 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

Article 82
Precautionary measures

1. Where the competent authority of a host Member States 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 the home Member States 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 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 EBA, shall take all appropriate measures in order to protect consumers and shall inform the Commission, ESMA and where appropriate 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 EBA. EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

Article 83
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 ESMA, EBA and the other competent authorities where it proposes to enter into such an arrangement.

2. ESMA, in close cooperation with 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 EBA, shall develop draft regulatory technical standards containing a template document for cooperation arrangements that are to be used by competent authorities of Member States where possible.

ESMA shall submit those draft regulatory technical standards to the Commission by **[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. Such exchange of information shall be intended for the performance of the tasks of those competent authorities.

Article 84

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 and EBA. ESMA shall publish the references to the complaints procedures related sections of the websites of the competent authorities on its crypto-asset register referred to in Article 66.

Chapter 2: administrative measures and sanctions by competent authorities

Article 85

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**, 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;
 - (b) infringements of Articles 12 to 29;
 - (c) infringements of Articles 37 to 42;

- (d) infringements of Articles 46 to 63;
- (e) infringements of Articles 70 to 73;
- (f) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 75(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 [date]. 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 [date 20XX], Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission, ESMA and to EBA. 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 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 EUR 5 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on **[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/EU⁵⁵, 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 **[date of entry into force of this Regulation]**.

⁵⁵

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).

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 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 ... [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 ... [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 crypto-asset service provider;
- (f) in the event of repeated infringements of Articles 71, 72 or 73, 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 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 [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 [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

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, 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, 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
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
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

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. ESMA shall publish that information in an annual report.

Where Member States have chosen, in accordance with Article 85(1), to lay down criminal penalties for the infringements of the provisions referred to in that paragraph, their competent authorities shall provide ESMA and EBA 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 and EBA 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 and EBA. 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 ESMA, EBA, and the competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

Article 90

Reporting of breaches and protection of reporting persons

Directive (EU) 2019/1937⁵⁶ shall apply to the reporting of breaches of this Regulation and the protection of persons reporting such breaches.

Chapter 3: EBA's powers and competences on issuers of significant asset-referenced tokens and issuers of significant e-money tokens

⁵⁶ 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

Article 91

Exercise of powers referred to in Articles 92 to 95

The powers conferred on EBA by Articles 92 to 94, or on any official or other person authorised by EBA, shall not be used to require the disclosure of information which is subject to legal privilege.

Article 92

Request for information

1. In order to carry out its duties under Articles 34 and 43(2) of this Regulation, EBA may by simple request or by decision require the following persons to provide all information necessary to enable 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)(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) 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;
 - (f) an issuer of e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;
- 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;
- 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;
- 3.4. any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1)(p) in relation with significant asset-referenced tokens or e-money tokens;
- 3.5. any trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;
- 3.6. the management body of the persons referred to in point (a) to (f).
- 3.7. the management body of the persons referred to in point (a) to (k).
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 where the information provided is incorrect or misleading.

2. When requiring to supply information under paragraph 1 by decision, 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 where the production of information is required.
 - (f) indicate the fine provided for in Article 101, where the answers to questions asked are incorrect or misleading;
 - (g) indicate the right to appeal the decision before 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. 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

General investigative powers

1. In order to carry out its duties under Article 34 and 43(2) 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 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 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 or the college for issuers of significant e-money tokens as referred to in Article 44

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 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 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 are not provided or are incomplete, and the fines provided for in Article 101, 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 asset-referenced tokens and issuers of e-money tokens are required to submit to investigations launched on the basis of a decision of EBA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 102, 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, 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 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 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 EBA for detailed explanations, in particular relating to the grounds 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 EBA's file. The lawfulness of 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.

On-site inspections

1. In order to carry out its duties under Articles 34 and 43(2) of this Regulation, 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 or the college for issuers of significant e-money tokens as referred to in Article 44 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 EBA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by EBA and shall have all the powers stipulated in Article 93(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, 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, 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 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 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 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, 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 EBA, actively assist the officials and other persons authorised by EBA. Officials of the competent authority of the Member State concerned may also attend the onsite inspections.
7. 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) on its behalf.
8. Where the officials and other accompanying persons authorised by 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 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(b), the national judicial authority may ask EBA for detailed explanations, in particular relating to the grounds 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 EBA's file. The lawfulness of 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

Exchange of information

In order to carry out its duties under Articles 34 and 43(2) and without prejudice of Article 77, 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 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)(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) 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;
 - (f) an issuer of e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;
- 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;
 - 11.2. any natural or legal persons in charge of distributing e-money tokens on behalf of the issuer of e-money tokens;
 - 11.3. any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1)(p) in relation with significant asset-referenced tokens or e-money tokens;

- 11.4. any trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;
- 11.5. the management body of the persons referred to in point (a) to (f).
- 11.6. the management body of the persons referred to in point (a) to (k).

Article 96

Agreement on exchange of information between EBA and third countries

1. In order to carry out its duties under Article 34 and 43(2), EBA may conclude agreements on exchange of information with the supervisory authorities only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 99.
2. Such exchange of information shall be intended for the performance of the tasks of EBA or those supervisory authorities.
3. With regard to transfer of personal data to a third country, EBA shall apply Regulation (EU) No 2018/1725.

Article 97

Disclosure of information from third countries

EBA may disclose the information received from supervisory authorities of third countries only if 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

Cooperation with other authorities

Where an issuer of significant asset-backed crypto-assets or an issuer of e-money tokens 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 99

Professional secrecy

The obligation of professional secrecy shall apply to EBA and all persons who work or who have worked for EBA or for any other person to whom EBA has delegated tasks, including auditors and experts contracted by EBA.

Supervisory measures by EBA

1. Where EBA finds that an issuer of a significant asset-referenced tokens has committed one of the infringements to a provision of Title III, 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 and 102;
 - (c) adopt a decision requiring issuers of significant asset-referenced tokens supplementary information, where necessary for consumer protection;
 - (d) adopt a decision requiring issuers of significant asset-referenced tokens to suspend an offering 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 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 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 EBA finds that an issuer of a significant e-money tokens has committed one of the infringements to a provision of Article 42, 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 and 102;

- (c) issuing 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, 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 asset-referenced 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 asset-referenced tokens responsible for the infringement;
 - (f) the financial strength of the issuer of significant asset-referenced 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 holders of asset-referenced tokens' interests;
 - (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 for the infringement with 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 responsible for the infringement;
 - (k) measures taken after the infringement by the issuer of significant asset-referenced tokens for the infringement to prevent its repetition.
4. Before taking the actions referred in points (d), (e), (f), (g), (j) of paragraph 1, 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 (c) of paragraph 2, 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. 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. 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 shall include the following:
- (a) a statement affirming the right of the person responsible for the infringement to appeal the decision;

- (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

Fines

1. EBA shall adopt a decision imposing a fine in accordance with paragraph 3 or 4, where in accordance with Article 104(5), 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;
 - (b) an issuer of significant e-money tokens has, intentionally or negligently, committed one of the infringements of a provision referred to in Article 42.

An infringement shall be considered to have been committed intentionally if EBA finds objective factors which demonstrates 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 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' 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 responsible for the infringement;
 - (f) the financial strength of the issuer of significant asset-referenced 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 holders of significant asset-referenced tokens' interests;
 - (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 for the infringement with 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 responsible for the infringement;

- (k) measures taken after the infringement by the issuer of significant asset-referenced tokens for the infringement to prevent its repetition.
- 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

Periodic penalty payments

1. 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;
 - (b) a person referred to in Article 92(1):
 - (i) to supply complete information which has been requested by a decision pursuant to Article 92;
 - (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;
 - (iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 94.
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 EBA's decision. Following the end of the period, EBA shall review the measure.

Article 103

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. EBA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 101 and 102 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) 2016/679⁵⁷.

2. Fines and periodic penalty payments imposed pursuant to Articles 101 and 102 shall be of an administrative nature.
3. Where 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 and 102 shall be enforceable.
5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.
6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 104

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under Articles 34 or 43(2), 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 or 42, EBA shall appoint an independent investigation officer within 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 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 and to conduct investigations and on-site inspections in accordance with Articles 93 and 94. When using those powers, the investigation officer shall comply with Article 91.
4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by EBA in its supervisory activities.
5. Upon completion of his or her investigation and before submitting the file with his findings to 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 EBA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the

⁵⁷ 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).

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 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, EBA shall decide if one or more of the infringements of provisions under Title III or Article 42 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 and/or impose a fine in accordance with Article 101.
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 adopt delegated acts in accordance with Article 109 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. 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, 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 *Hearing of persons concerned*

1. Before taking any decision pursuant to Articles 100, 101 and 102, EBA shall give the persons subject to the proceedings the opportunity to be heard on its findings. 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 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 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 EBA's internal preparatory documents.

Article 106 *Review by the Court of Justice*

The Court of Justice shall have unlimited jurisdiction to review decisions whereby 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

Supervisory fees

1. 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 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), 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.
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 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 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 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 EBA.

Article 108

Delegation of tasks by EBA to competent authorities

1. Where necessary for the proper performance of a supervisory task for issuers of significant asset-referenced tokens or e-money tokens, 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 and to conduct investigations and on-site inspections in accordance with Article 93 and Article 94.
2. Prior to delegation of a task, 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 EBA.
3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 107(3), EBA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.

4. 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

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), 104(10) and 107(3) shall be conferred on the Commission for a period of 36 months from ... [date of entry into force of this Regulation].
3. The delegation of powers referred to in Articles 3(2), 14(8), 104(10) and 107(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), 104(10) and 107(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

Article 110

Report

1. Before ... [36 months after the date of entry into force of this Regulation] the Commission shall, after consulting ESMA and the EBA, present a report to the European Parliament and the Council on the application of this Regulation, accompanied where appropriate by a legislative proposal.
2. The report shall assess the following:
 - (a) the number of issuances of crypto-assets in the EU, the number of whitepapers registered with 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;
 - (c) the number and value of fraud, hacks and thefts of crypto-assets in the EU, types and trends of fraudulent behaviour, the number of complaints received by crypto-asset service providers and by competent authorities and the type of complaints received;
 - (d) the number of issuers of asset-referenced tokens authorised under this Regulation, and an analysis of the type of assets included in the reserve, the size of the reserve, 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 of assets included in the reserve, the size of the reserve, the volume of payments in significant asset-referenced tokens;
 - (f) the number of issuers of e-money tokens authorised under this Regulation and Directive 2009/110/EC, and an analysis of the currencies backing the e-money tokens, the size of the reserve, the volume of payments in e-money tokens;
 - (g) the number of issuers of significant e-money tokens authorised under this Regulation and Directive 2009/110/EC, and an analysis of the currencies backing the significant e-money tokens, the size of the reserve, the volume of payments in significant e-money tokens;
 - (h) the functioning of the market for crypto-asset service providers in the Union, including market development and trends, taking into account supervisory experience, the number of crypto-asset service providers authorised and their market share;
 - (i) an assessment of the level of consumer protection, including operational resilience of issuers of crypto-assets and crypto-asset service providers, market integrity and financial stability provided by this regulation;
 - (j) whether the scope of crypto-asset services covered by this Regulation remains appropriate;
 - (k) whether an equivalence regime should be established for third-country crypto-asset service providers;
 - (l) whether the exemptions under Articles 5 and 12 remains appropriate;

- (m) whether any adjustments to the definitions set out in this Regulation are needed;
- (n) the impact of this Regulation on the proper functioning of the Union's internal market for crypto-assets, including the impact on access to finance by small and medium-sized enterprises and the development of new means of payment instruments;
- (o) the development of new business models and technologies in the crypto-asset market;
- (p) whether any changes are needed to the measures set out in this Regulation to ensure consumer protection, market integrity and financial stability;
- (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) the cooperation between competent authorities, ESMA and EBA, and the appropriateness of competent authorities and EBA as the supervisors under this Regulation;
- (t) the costs of complying with this Regulation for issuers of crypto-assets as a percentage of the amount raised through crypto-asset issuances;
- (u) the costs of complying with this Regulation for crypto-asset service providers and issuers of asset-referenced tokens, issuers of e-money tokens as a percentage of operational costs;
- (v) the number and amount of administrative fines and criminal penalties imposed according to or in relation with this Regulation classified by Member States.

Article 111

Transitional measures

1. Crypto-assets, other than asset-referenced tokens and e-money tokens, offered in the EU before **[please insert 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-asset service providers may continue in accordance with the applicable national law to provide crypto-asset services which are included within the scope of this Regulation until **[18 months after the date of entry into application]** or until they are granted an authorisation referred to in Article 64, whichever is sooner.
3. For the duration of the transitional period referred to in paragraph 2 of this Article, Member States may have in place simplified authorisation procedures for entities that, at the time of entry into force of this Regulation, are authorised under national law to provide crypto-asset services. The competent authorities shall ensure that the requirements laid down in Chapter 2 and 3 of Title IV are complied with before granting authorisation pursuant to such simplified procedures.
4. EBA shall not exercise its powers pursuant to Article 33 and Article 43(2) until the date of the entry into force of the delegated acts referred to in Article 14(8).

Article 112
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 and Directive (EU) 2019/1937 (OJ L ...) ⁺⁺."

Article 113
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. 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, ESMA and to EBA the text of the main provisions of national law which they adopt in the field covered by Article 90.

Article 114
Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

The Regulation shall apply from **[18 months after the date of entry into force]**, except the provisions applicable to e-money tokens and their issuers that shall enter into application on the date of the entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President



++ OJ: Please insert in the text the number, date and OJ reference of this Regulation.

LEGISLATIVE FINANCIAL STATEMENT

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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 action⁵⁸

☐ 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)

The specific objectives of this initiative are as follows:

Removing regulatory obstacles to the issuance, trading and post-trading 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.

⁵⁸

As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

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 expected to provide a fully harmonised framework for crypto-assets that currently falls 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 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, bespoke regime will introduce specific requirements on 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 pilot regime, which is also part of the proposal new proposed framework on crypto assets, will allow for experimentation with DLT market infrastructures. It is expected to allow for 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 experience and evidence necessary to further explore the limits and possible need 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

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 that while some crypto-assets may fit the definition of a financial instrument under MiFID or e-money, respectively, most of them, do not. In addition, they highlight that most of the crypto-assets outside the EU 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.

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

and ESMA advises that the Commission should carry out a cost benefit analysis on a holistic basis to determine whether a bespoke EU regime is appropriate for crypto-assets outside the scope of the EU financial services regulatory framework.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. 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 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.

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 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 in mind, NCAs face challenges in interpreting and applying the various requirements under EU law. 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 not be covered by EU rules

For crypto-assets that would 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 also consider 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 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 could facilitate the take-up of primary and secondary markets for ‘security tokens’ 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.

1.5.3. *Lessons learned from similar experiences in the past*

N/A

1.5.4. *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 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”. 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 framework that will harness the potential opportunities that some crypto-assets may offer”*.

1.5.5. *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) planned⁵⁹

☐ **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

⁵⁹

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. The actions to be carried out in the context of this proposal will start in 2022, and will further continue.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

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

Costs of controls - Supervision of ESAs

For EBA, we estimate a need for 15 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 category of significant asset-referenced tokens that is subject to EBA supervision).

All of these costs would be covered by fees levied from significant asset-backed crypto assets issuers.

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.

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 explicitly 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. ⁶⁰	from EFTA countries ⁶¹	from candidate countries ⁶²	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

⁶⁰ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

⁶¹ EFTA: European Free Trade Association.

⁶² Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework		Number	Heading 1 : Single Market, Innovation & Digital						
ESMA: <03.10.04>			2022 ⁶³	2023	2024	2025	2026	2027	TOTAL
Title 1:	Commitments	(1)	0,059	0,118	0,118	0,118	0,118	0,118	0,649
	Payments	(2)	0,059	0,118	0,118	0,118	0,118	0,118	0,649
Title 2:	Commitments	(1a)	0,010	0,020	0,020	0,020	0,020	0,020	0,110
	Payments	(2a)	0,010	0,020	0,020	0,020	0,020	0,020	0,110
Title 3:	Commitments	(3a)							
	Payments	(3b)							
TOTAL for ESMA: <03.10.04>	Commitments	=1+1a +3a	0,069	0,138	0,138	0,138	0,138	0,138	0,759
	Payments	=2+2a +3b	0,069	0,138	0,138	0,138	0,138	0,138	0,759

⁶³ 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.

Heading of multiannual financial framework	7	'European public administration'
---	----------	----------------------------------

EUR million (to three decimal places)

		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)			TOTAL
DG: <.....>									
• Human Resources									
• Other administrative expenditure									
TOTAL DG <.....>	Appropriations								

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)								
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EUR million (to three decimal places)

		Year N ⁶⁴	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)			TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments								
	Payments								

⁶⁴ 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. Estimated impact on [body]'s appropriations

- ☒ The proposal/initiative does not require the use of operational appropriations
- ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			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)						TOTAL	
	OUTPUTS																	
	Type ⁶⁵	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 ⁶⁶ ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

⁶⁵ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

⁶⁶ As described in point 1.4.2. 'Specific objective(s)...

3.2.3. Estimated impact on EBA and ESMA's human resources

3.2.3.1. Summary

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2022	2023	2024	2025	2026	2027	TOTAL
--	------	------	------	------	------	------	-------

Temporary agents (AD Grades) EBA and ESMA ⁶⁷	1,346	2,694	2,694	2,694	2,694	2,694	14,816
Temporary agents (AST grades)							
Contract staff							
Seconded National Experts							

TOTAL	1,346	2,694	2,694	2,694	2,694	2,694	14,816
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Staff requirements (FTE):

	2022	2023	2024	2025	2026	2027	TOTAL
--	------	------	------	------	------	------	-------

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 that:

⁶⁷ The costs for EBA include 100% employer's pension contribution and the costs for ESMA include the pension contribution corresponding to the 60% National Competent Authorities share.

- Full staffing will be achieved in 2023 and approximately 50% of the required staff will be recruited in 2022;

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)⁶⁸								
XX 01 02 01 (AC, END, INT from the 'global envelope')								
XX 01 02 02 (AC, AL, END, INT and JPD in the Delegations)								
XX 01 04 yy ⁶⁹	- at Headquarters ⁷⁰							
	- 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 the action and/or have been redeployed within the DG, together if necessary

⁶⁸ AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations .

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 Fisheries Fund (EFF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of 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.

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 framework⁷¹.

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 EBA	2,234	3,669	3,469	3,469	3,469	3,469	19,779
TOTAL appropriations co-financed	2,234	3,669	3,469	3,469	3,469	3,469	19,779

EUR million (to three decimal places)

⁷¹ See Articles and of Council Regulation (EU, Euratom) No /2020 laying down the multiannual financial framework for the years 2021-2027.

⁷² 100% 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	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 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						
		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.

⁷⁴

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.

ANNEX

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 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;
- 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 EBA.

- The one-off IT costs of EUR 500 000 for EBA are assumed to be implemented over the two years 2022 and 2023 on the basis of a 50% - 50% split. Yearly maintenance costs for EBA are estimated at EUR 50 000.
- On-site yearly supervision costs for EBA are estimated at EUR 200.000.

The estimations presented here above result in the following costs per year:

Heading of multiannual financial framework	Number	Heading 1: Single Market, Innovation & Digital
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EBA: <03.10.02>			2022	2023	2024	2025	2026	2027	TOTAL	Constant Prices
Title 1:	Commitments	(1)	1,246	2,494	2,494	2,494	2,494	2,494	13,716	
	Payments	(2)	1,246	2,494	2,494	2,494	2,494	2,494	13,716	
Title 2:	Commitments	(1a)	0,188	0,375	0,375	0,375	0,375	0,375	2,063	
	Payments	(2a)	0,188	0,375	0,375	0,375	0,375	0,375	2,063	
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	
TOTAL appropriations for EBA <03.10.02>	Commitments	=1+1a +3a	2,234	3,669	3,469	3,469	3,469	3,469	19,779	
	Payments	=2+2a +3b	2,234	3,669	3,469	3,469	3,469	3,469	19,779	

The proposal requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places) in constant prices

EBA

Indicate objectives and outputs ↓			2022		2023		2024		2025		2026		2027			
	OUTPUTS															
	Type ⁷⁵	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 ⁷⁶ Direct supervision of significant asset-backed crypto-asset issuers																
- Output				0,800		0,800		0,600		0,600		0,600		0,600		4,000
Subtotal for specific objective No 1																
SPECIFIC OBJECTIVE No 2 approval of amended whitepaper submitted by issuer of significant asset-referenced token																
- Output																
Subtotal for specific objective No 2																
TOTAL COST				0,800		0,800		0,600		0,600		0,600		0,600		4,000

The direct supervisory activities of EBA shall be fully funded by fees levied from the supervised entities as follows:

⁷⁵ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).
⁷⁶ As described in point 1.4.2. 'Specific objective(s)...'

EBA

	2022	2023	2024	2025	2026	2027	Total
The costs shall be covered 100% by fees levied from the supervised entities	2,234	3,669	3,469	3,469	3,469	3,469	19,779
TOTAL appropriations co-financed	2,234	3,669	3,469	3,469	3,469	3,469	19,779

The coordination activities of ESMA under the DLT pilot regime 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 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 EBA.

Specifically, 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.

I. Infringements 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).
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 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 reputation 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 reputation 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 reserve 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.