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From:	Mr Wojciech Rafal WIEWIOROWSKI, European Data Protection Supervisor (EDPS)
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Data Protection Supervisor on the Proposal for Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937

Delegations will find attached the document mentioned above.

Encl.: EDPS Opinion 9/2021

EDPS

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SUPERVISOR

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Brussels, 24 June 2021
WRW/MG/mt/D(2021)1344 **C2021-0481**
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Subject: Opinion of the European Data Protection Supervisor on the Proposal for Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937]

Your Excellency,
Mr Secretary-General,

Having regard to Article 42(1) of 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, please find enclosed our Opinion on the Proposal for Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937.

We have sent a copy of this Opinion to the President of the European Commission and the President of the European Parliament.

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI
(e-signed)

Encl.: Opinion

Cc: Mr Serge DE BIOLLEY, Director for Justice, Secretariat General of the Council

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EDPS
EUROPEAN
DATA
PROTECTION
SUPERVISOR
The EU's independent data protection authority
24 June 2021
Opinion 9/2021
on the Proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937
edps.europa.eu

The European Data Protection Supervisor (EDPS) is an independent EU authority, responsible under under Article 52(2) of Regulation (EU) No 2018/1725 '[w]ith respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies', and under Article 52(3) thereof '...for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data'. Under Article 58(3)(c) of Regulation 2018/1725, the EDPS shall have the power 'to issue on his or her own initiative or on request, opinions to Union institutions and bodies and to the public on any issue related to the protection of personal data'.

Wojciech Wiewiorówski was appointed as Supervisor on 5 December 2019 for a term of five years.

*Under **Article 42(1)** of Regulation (EU) No 2018/1725, the Commission shall 'following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data' and under Article 57(1)(g), the EDPS shall 'advise on his or her own initiative or on request, all Union institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data'.*

This Opinion relates to the EDPS' mission to advise the EU institutions on coherently and consistently applying the EU data protection principles. This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of Regulation (EU) 2018/1725.

Executive Summary

The European Commission adopted on 24 September 2020 a Proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (the "Proposal"). The Proposal establishes transparency and disclosure requirements for the issuance and admission to trading of crypto-assets; rules on the authorisation and supervision of crypto-asset service providers and issuers of asset-referenced tokens and issuers of electronic money tokens; regulates the operation, organisation and governance of issuers of asset-referenced tokens, issuers of electronic money tokens and crypto-asset service providers; and provides consumer protection rules for the issuance, trading, exchange and custody of crypto-assets, as well as measures to prevent market abuse to ensure the integrity of crypto-asset markets.

The EDPS recalls the need for a broader reflection on how to better ensure that **the underlying technology of crypto-assets**, namely blockchain and distributed ledgers respect data protection rules and principles, and refers in this regard to the general comments made in his Opinion on the Proposal for a pilot regime **on distributed ledger technology (DLT) market infrastructures and reiterates the need that such a discussion takes place before the relevant proposal(s) enter into force.**

At the same time, the EDPS stresses the responsibility of the EU legislature to ensure that the processing implied in the Proposal can be implemented in a data protection-compliant manner, as well as the responsibility of controllers to ensure compliance in accordance with the principle of accountability.

The EDPS considers that the issuers of crypto-assets would typically be controllers under the GDPR, having regard to the issuers' project and insofar as the latter involves the processing of personal data. To increase legal certainty, the EDPS invites the legislature to **explicitly designate the issuers as controllers** in the Proposal. In addition, the processing of personal data may meet two or more of the criteria that indicate that the processing is likely to result in a high risk within the meaning of data protection law. As a result, the issuer of crypto-assets may fall under the obligation pursuant to Article 35 of the GDPR to perform a **Data Protection Impact Assessment (DPIA)**, prior to the envisaged processing of personal data.

The EDPS welcomes the objective of the Proposal to enhance the protection of consumers as purchasers of crypto-assets (investors). At the same time, the EDPS considers that **the Proposal should also include the obligation for issuers to make particularly prominent certain guarantees regarding data protection in order to better protect data subjects**. The EDPS recommends including in the Proposal, as part of the information to be provided as content of the crypto-assets white paper, information regarding foreseen processing operations involving personal data, as well as the main risks envisaged and mitigation strategies for what concerns data protection.

Regarding **the publication of administrative penalties**, the EDPS recommends including, among the criteria for consideration of the competent authority, the impact on the protection of the personal data of the individuals. Moreover, the EDPS recalls that the principle of storage limitation requires that personal data is stored for no longer than is necessary for the purposes for which the personal data are processed, and recommends laying down a maximum instead of a minimum data retention period under Article 95(4) of the Proposal.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to 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 (the General Data Protection Regulation)[1],

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data[2], and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1 BACKGROUND

1. The European Commission adopted on 24 September 2020 a Proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (the "Proposal")[3]. The Proposal is a regulatory framework developed to **regulate currently out-of-scope crypto-assets and their service providers in the EU** and to provide **a single licensing regime** across all Member States by 2024. The Proposal aims to harmonise the European framework for the issuance and trading of various types of crypto token as part of Europe's Digital Finance Strategy.

2. The 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. The digital finance package includes a new **Strategy on digital finance for the EU financial sector**[4] with the aim of ensuring that the EU makes 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** (the "Proposal for a pilot regime')[5], a **Proposal on digital operational resilience** ("DORA")[6], and a **Proposal to clarify or amend certain related EU financial services rules**[7].

3. The EDPS was consulted on the Proposal on the pilot regime and delivered his Opinion on 23 April 2021[8]. He was also consulted on the Proposal for digital operational resilience on 29 April 2021 and delivered his Opinion on 10 May 2021[9].

4. On 29 April 2021, the European Commission requested the EDPS to issue an opinion on the Proposal, in accordance with Article 42(1) of Regulation (EU) 2018/1725. These comments are limited to the provisions of the Proposal that are relevant from a data protection perspective.

2 GENERAL COMMENTS

5. The EDPS notes that the Proposal, which covers **crypto-assets falling outside existing EU financial services** legislation, as well as e-money tokens has four general and related objectives: (i) ensuring legal certainty, providing a sound legal framework and clearly defining the regulatory treatment of all crypto-assets that are not covered by existing financial services legislation; (ii) supporting innovation, promoting the development of crypto-assets and the wider use of distributed ledger technology (DLT); (iii) ensuring appropriate levels of consumer and investor protection and market integrity and addressing or mitigating risks with relate to financial instruments; (iv) ensuring financial stability, including safeguards to address potential risks to financial stability and orderly monetary policy stemming from a possible wide-spread use of 'stable-coins'[10].

6. The EDPS acknowledges the importance of **establishing clear rules** on: (a) **transparency and disclosure requirements for the issuance and admission to trading** of crypto-assets; (b) the **authorisation and supervision of crypto-asset service providers and issuers** of asset-referenced tokens and issuers of electronic money tokens; (c) the **operation, organisation and governance of issuers** of asset-referenced tokens, issuers of electronic money tokens and crypto-asset service providers; (d) **consumer protection rules** for the issuance, trading, exchange and custody of crypto-assets; (e) measures to **prevent market abuse** to ensure the integrity of crypto-asset markets.

7. The EDPS also notes that the Proposal regulates **the following types of crypto-assets**[11]:

   - Crypto-assets, other than **asset-referenced tokens** or **electronic money tokens** (under Title II of the Proposal);

   - Asset-referenced tokens (under Title III of the Proposal);

   - Electronic money tokens (under Title IV of the Proposal).

   Cryptocurrency is **a digital asset** designed to work as a medium of exchange wherein individual coin ownership records are stored in **a ledger** existing in a form of a computerized database **using cryptography to secure transaction records**, to **control the creation of additional coins**, and to **verify the transfer of coin ownership**. When implemented with decentralized control, each cryptocurrency works through distributed ledger technology, typically a blockchain, that serves as a public financial transaction database. For use as a distributed ledger, a blockchain is typically managed by a peer-to-peer network collectively adhering to a protocol for validating new blocks. Once recorded, the data in any given block cannot be altered retroactively without the alteration of all subsequent blocks, which requires collusion of the network majority[12].

8. In his Opinion on the Proposal for a pilot regime, the EDPS made the following observations[13], **which are also relevant having regard to the regulatory regime for the crypto-assets** falling within the scope of the Proposal:

- data categories stored through DLT systems may vary significantly from one to another, depending for example, on whether they are permissioned or permission-less, the specific technical and organisational measures applied, *etc.*;

- depending on the DLT's configuration, the meta- or transactional data stored therein may be considered personal data, if it relates to an identified or identifiable natural person;

- certain DLT systems may opt for a design that stores data off-chain where the DLT merely holds validity proofs.

9. In the light of the above, the EDPS highlights that issuers should carefully analyse and document - within the broader issuer's project related to the crypto-asset at stake - the DLT's configuration from a data protection perspective, assessing the categories of personal data stored and the modalities for such storage.

10. The EDPS also highlights the importance for both issuers of crypto-assets and crypto assets service providers of embedding within their risk management framework a **strong data protection governance mechanism**, which clearly identifies the processing activities that will take place and the respective risks, define roles and responsibilities, ensure appropriate documentation and take all other steps required under the GDPR, in accordance with the principle of accountability. This in particular to ensure compliance with their obligations regarding the security of personal data (*i.e.*, implementation of appropriate security technical and organizational measures, notification of personal data breaches to the supervisory authority and to the data subjects in due time, carry out of data protection impact assessments where relevant, *etc.*).

3 SPECIFIC COMMENTS

3.1 The roles and responsibilities of issuers under the GDPR

11. In order to ensure the correct application of the GDPR, it is necessary to identify the role and responsibility of the issuers of crypto-assets, defined by the Proposal as "*any legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets*"[14].

12. The EDPS recalls that **the Proposal refers to specific obligations** for **issuers of crypto-assets** in particular under Article 4; under Article 5(1)(b), referring to the obligation for the issuer to provide a crypto-asset white paper containing "*a **detailed description of the issuer's project**, the **type of crypto-asset** that will be offered to the public or for which admission to trading is sought [..]*", as well as, under letter (f), "*a detailed description of the risks relating to the issuer of the crypto-assets, the crypto-assets, the offer to the public of the crypto-asset and **the implementation of the project***"; and under Article 13, referring in particular, under letter (d), to the obligation to "*maintain all of their systems and security access protocols to appropriate Union standards*".

    Similar provisions are laid down in the Proposal having regard to **issuers of asset-referenced tokens** in Chapter III (see Articles 15, 16, and in particular Article 16(2)(d); Article 17, Article 30[15]); and to **issuers of electronic money tokens** in Chapter IV (see Articles 43; 46).

13. **The EDPS considers that the issuers of crypto-assets would typically be controllers under the GDPR**, given their role as overall 'architect' of the offer of crypto-assets, insofar as the issuer's project involves processing personal data. A clear designation of the issuers as

controllers also appears appropriate having regard to the legal obligations that would incumbent upon issuers under the Proposal. To increase legal certainty, the EDPS invites the legislature to **explicitly designate** the issuers as such in the Proposal. The EDPS recommends identifying the controller of specific processing operation(s) already in the basic legislative act, in order for the determination of the controller to be clarified from the beginning and to avoid any possible problem of interpretation in assessing the role, in particular having regard to the complexity of the subject matter of the Proposal and the relationships between the relevant actors[16].

14. The EDPS also considers that in practice the issuer's project may meet two or more of the criteria that indicate that the processing is likely to result in a high risk (i.e., data processed on a large scale; datasets that have been matched or combined; innovative use or application of technological or organisational solutions; data transfer outside the EU/EEA)[17].

15. As a result, pursuant to Article 35 of the GDPR, the issuer may fall under the obligation to carry out a **Data Protection Impact Assessment** (DPIA) for the envisaged processing operations. Moreover, the EDPS notes that should the processing fulfil the criteria for a high-risk processing, **prior approval from the competent data protection authority may be required** in the situation envisaged by Article 36(1) GDPR.

3.2 Regarding the content of the crypto-asset white paper

16. The EDPS notes that Articles 5, 17 and 46 of the Proposal require that issuers must provide, together with its application, a number of documents, including the detailed description of the issuer's project.

17. The EDPS recommends including under Articles 5, 17, and 46 of the Proposal, **as part of the information to be provided as content of the crypto-assets white paper**, the following: "*where applicable, the list of the foreseen processing operations involving personal data, as well as the main risks envisaged and mitigation strategies for what concerns data protection*". Doing so would increase the accountability of the controller as regards the obligation of the controller to clearly document its processing activities and appropriately manage the risks for the rights and freedoms of individuals. Moreover the specification of the processing by the issuer would make clear, in a prominent manner, the processing of personal data implied by the participation by the purchaser to the crypto-assets' project at stake.

18. In this regard, the EDPS recalls that pursuant to Article 4(1) of the GDPR "personal data" means any information relating to an identified or identifiable natural person, for example, the name, identification number, location data, an online identifier, a private or public key, or dynamic IP addresses. The EDPS also recalls the obligation, under the GDPR, to provide the data subjects the **privacy notice** containing, in case of information collected directly from the data subject, the information listed under Article 13 of the GDPR. Having regard to **the legal basis for the processing of personal data** under the GDPR, the EDPS highlights that when the activities relating to the issuance of and transactions of crypto-assets' involve the processing of personal data, Article 6(1)(b), "processing necessary for the **performance of a contract** to which the data subject is party", or Article 6(1)(c), "processing necessary for **compliance with a legal obligation**", respectively appear as the most appropriate legal basis for such processing activities.

3.3 Publications of decisions imposing administrative penalties

19. The EDPS notes that Article 95 of the Proposal allows competent authorities to adopt, in certain cases, **alternative measures to the publication of the identity and personal data** of the natural and legal persons on which it imposes an administrative sanction, including to defer its publication until the moment where all reasons for non-publication cease to exist (Article 95(2)(a)); to publish it on an anonymous basis, in accordance with national law (Article 95(2)(b)); or refrain from publishing it, where the aforesaid two options are deemed either insufficient to guarantee a lack of any danger for the stability of financial markets, or where such a publication would not be proportional with the leniency of the imposed sanction (Article 95(2)(c)). These alternative measures may be taken in the cases where the competent authority, following a **case-by-case assessment**, considers that the publication would be disproportionate, jeopardise the stability of financial markets or the pursuit of an on-going criminal investigation, or cause disproportionate damages to the person involved.

20. The EDPS recommends **including, among the criteria for consideration of the competent authority, the risks to the protection of the personal data** of the individuals.

21. Furthermore, the EDPS notes that Article 95(4) of the Proposal establishes that [emphasis added] "*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*".

22. The EDPS recalls that the principle of storage limitation under Article 5(1)(c) of the GDPR requires that personal data is stored for no longer than is necessary for the purposes for which the personal data are processed. Therefore, competent authorities should adopt measures to ensure that the information on the administrative fines is **deleted from their website after the five years have elapsed, or earlier, if it is no longer necessary**. In other words, the Proposal should contain a maximum, not a minimum, data retention period.

3.4 Administrative cooperation between competent authorities, the EBA and ESMA, as well as cooperation with oversight authorities in third countries

23. The EDPS welcomes Article 88 of the Proposal, specifying the applicability of the GDPR and of the EUDPR[18] to the competent authorities and the EBA and ESMA respectively. Having regard to the cooperation with third countries, pursuant to Article 90 of the Proposal, the EDPS recalls that the transfers of personal data to third countries or international organizations are subject to the provisions of Chapter V of the GDPR and Chapter v of the EUDPR. In particular, in case of transfers to third Countries in relation to which an adequacy decision has not been issued, appropriate safeguards can be provided by legally binding and enforceable instruments between public authorities and bodies or, subject to the authorization from the data protection authority, by provisions inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights[19].

24. The issue of administrative cooperation with oversight competent authorities of third countries is referred to under Article 108 of the Proposal, laying down provisions on administrative agreements on exchange of information between EBA and third countries. Article 108(3) specifies, "*With regard to transfer of personal data to a third country, the EBA shall apply Regulation (EU) No 2018/1725.*" The EDPS considers that this reference is correct, though

redundant, given the 'horizontal' reference to the applicability of the EUDPR made under Article 88(2) of the Proposal.

4 CONCLUSIONS

In light of the above, the EDPS:

- recalls the need for a broader reflection and discussion, not only related to crypto-assets, into the issue of how to ensure that **the underlying technology of crypto-assets**, namely blockchain and distributed ledgers, respect in the most effective way, data protection rules and principles **and reiterates the need that such a discussion takes place before the relevant proposal(s) enter into force**;

- recommends to **explicitly designate the issuers as controllers** in order to avoid any possible problem of interpretation in assessing the role, in particular having regard to the complexity of the subject matter of the Proposal and the relationships between the relevant actors;

- recommends **including under Articles 5, 17, and 46 of the Proposal, as part of the information to be provided as content of the crypto-assets white paper**, the following: "*where applicable, the list of the foreseen processing operations involving personal data, as well as the main risks envisaged and mitigation strategies for what concerns data protection*";

- regarding the **publication of administrative sanctions**, the EDPS recommends including, among the criteria for consideration of the competent authority, **the risks to the protection of personal data of the individuals**, and **replacing the minimum data retention period under Article 95(4) "*at least five years*" by a specified maximum** data retention period;

- regarding **the administrative cooperation between competent authorities, the EBA and ESMA, as well as cooperation with the oversight authorities of third countries**, the EDPS recommends **considering the deletion of the reference to the EUDPR under Article 108(3)**, given the 'horizontal' reference to the applicability of the EUDPR made under Article 88(2) of the Proposal.

Brussels, 24 June 2021

Wojciech Rafał WIEWIÓROWSKI

(e-signed)

Notes

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[1] *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), L119 of 4.5.2016*

[2] *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, L 295, 21.11.2018*

[3] *Proposal for a regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, 24.9.2020, 2020/0265 (COD).*
[4] *Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on a Digital Finance Strategy for the EU, 23 September 2020, COM(2020)591.*
[5] *Proposal for a Regulation of the European Parliament and of the Council on a Pilot Regime for market infrastructures based on distributed ledger technology - COM(2020)594.*
[6] *Proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 - COM(2020)595.*
[7] *Proposal for a Directive of the European Parliament and of The Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU//2016/2341 - COM(2020)596.*

[8] *Opinion 6/2021 on the Proposal for a Pilot Regime for Market Infrastructures based on Distributed Ledger Technology, available at* https://edps.europa.eu/system/files/2021-06/2021-0219_d0912_opinion_on_pilot_regime_for_market_infrastructures_en.pdf.

[9] *Opinion 7/2021 on the Proposal for a Regulation on digital operational resilience for the financial sector and amending Regulations (EC) 1060/2009, (EU) 648/2012, (EU) 600/2014 and (EU) 909/2014, available at* https://edps.europa.eu/system/files/2021-05/2021-0203_d0943_opinion_digital_operational_resilience_for_the_financial_sector_en.pdf
[10] *Explanatory Memorandum, p. 2.*
[11] *As specified under Recital (9) of the Proposal.*
[12] *See, among others, the Study by EPRS "Blockchain and the General Data Protection Regulation", July 2019, available at* https://www.europarl.europa.eu/RegData/etudes/STUD/2019/634445/EPRS_STU(2019)634445_EN.pdf
See also the Study "Cryptocurrencies and blockchain", July 2018, available at https://www.europarl.europa.eu/cmsdata/150761/TAX3%20Study%20on%20cryptocurrencies%20and%20blockchain.pdf
[13] *See at pages 7 and 8 of the EDPS Opinion on the Proposal for a pilot regime.*
[14] *See recital (11) of the Proposal.*
[15] *See in particular Article 30(5) of the Proposal [emphasis added]: "Issuers of asset-referenced tokens shall adopt policies and procedures that are sufficiently effective to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Title. In particular, issuers of asset-referenced tokens shall establish, maintain and implement policies and procedures on:*
(a) the reserve of assets referred to in Article 32;
(b) the custody of the reserve assets, as specified in Article 33;
(c) the rights or the absence of rights granted to the holders of asset-referenced tokens, as specified in Article 35;
(d) ***the mechanism through which asset-referenced tokens are issued, created and destroyed;***
(e) ***the protocols for validating transactions in asset-referenced tokens;***
(f) ***the functioning of the issuer's proprietary DLT, where the asset-referenced tokens are issued, transferred and stored on such DLT or similar technology that is operated by the issuer or a third party acting on its behalf;***
(g) the mechanisms to ensure the redemption of asset-referenced tokens or to ensure their liquidity, as specified in Article 35(4);
(h) arrangements with third-party entities for operating the reserve of assets, and for the investment of the reserve assets, the custody of the reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public;
(i) complaint handling, as specified in Article 27;
(j) conflicts of interests, as specified in Article 28;
(k) a liquidity management policy for issuers of significant asset-referenced tokens, as specified in Article 41(3).
Issuers of asset-referenced tokens that use third-party entities to perform the functions set out in point (h), shall establish and maintain contractual arrangements with those third-party entities that precisely set out the roles, responsibilities, rights

and obligations of both the issuers of asset-referenced tokens and of each of those third-party entities. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law."

[16] See the EDPS Guidelines on the concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725, available at:
https://edps.europa.eu/sites/default/files/publication/19-11-07_edps_guidelines_on_controller_processor_and_jc_reg_2018_1725_en.pdf. See also the EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR Version 1.0 Adopted on 02 September 2020, available at:
https://edpb.europa.eu/sites/default/files/consultation/edpb_guidelines_202007_controllerprocessor_en.pdf.

[17] See Article 29 Data Protection Working Party, Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679, WP248 rev.01.

[18] Article 88 (Data protection) of the Proposal: *"With regard to the processing of personal data within the scope of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with Regulation (EU) 2016/679. With regard to the processing of personal data by the EBA and ESMA within the scope of this Regulation, it shall comply with Regulation (EU) 2018/1725."*

[19] See EDPB Guidelines 2/2020 on articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies, available at:
https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202002_art46guidelines_internationaltransferspublicbodies_v2_en.pdf.