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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCA) - Letter to the Chair of the European Parliament Committee on Economic and Monetary Affairs

Following the Permanent Representatives' Committee meeting of 5 October 2022 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency has sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on Economic and Monetary Affairs.

Council of the European Union
General Secretariat

SGS 22 / 04402

Ms Irene TINAGLI
Chair of the Committee on Economic and Monetary Affairs
European Parliament
Rue Wiertz 60
B-1047 Brussels

Brussels, 05. 10. 2022

Subject: Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCA) - 2020/0265 (COD)

Dear Ms TINAGLI,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Edita HRDÁ
Chair of the
Permanent Representatives Committee

Copy: Ms Mairead McGUINNESS, Commissioner
Mr Stefan BERGER, European Parliament Rapporteur

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ANNEX

2020/0265 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure,

1 OJ C […], […], p. […].

2 OJ C […], […], p. […].

Whereas:

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

(2) Crypto-assets are one of the major DLT applications. Crypto-assets are digital representations of value or rights that have the potential to bring significant benefits to both market participants and retail holders of crypto-assets. Representation of value also includes external, non-intrinsic value attributed to a crypto-asset by parties concerned or market participants, meaning the value can be subjective and can be attributed only to the interest of someone purchasing the crypto-asset. By streamlining capital-raising processes and enhancing competition, offers of crypto-assets can allow for a innovative and inclusive way of financing, including for small and medium-sized enterprises (SMEs). When used as a means of payment, payment tokens can present opportunities in terms of cheaper, faster and more efficient payments, in particular on a cross-border basis, by limiting the number of intermediaries.

It is expected that many applications of DLT, including blockchain technology, that have not yet been fully studied will go on to create new types of business activity and business models which, together with the crypto-asset sector itself, will lead to economic growth and new employment opportunities for Union citizens.

(3) Some crypto-assets[4] fall within the scope of existing EU financial services legislation, in particular those that qualify as financial instruments within the meaning of Directive 2014/65/EU of the European Parliament and of the Council. A full set of Union rules apply to issuers of such crypto-assets and to firms conducting activities related to such crypto-assets.

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

(3a) Other crypto-assets, however, fall outside of the scope of Union financial services legislation. There are no rules, other than AML rules, for services related to these unregulated crypto-assets, including for the operation of trading platforms for crypto-assets, the service of exchanging crypto-assets for funds or other crypto-assets, or the custody of crypto-assets. The lack of such rules leaves holders of crypto-assets exposed to risks, in particular in areas not covered by consumer protection rules. The lack of such rules can also lead to substantial risks to market integrity, including market manipulation, and financial crime. To address those risks, some Member States have put in place specific rules for all – or a subset of – crypto-assets that fall outside Union legislation on financial services. Other Member States are considering to legislate in this area.

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

(5) A dedicated and harmonised framework is therefore necessary at Union level to provide specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework. Such harmonised framework should also cover services related to crypto-assets where these services are not yet covered by Union legislation on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of protection of retail holders and market integrity in crypto-asset markets. A clear framework should enable crypto-asset service providers to scale up their business on a cross-border basis and should facilitate their access to banking services to run their activities smoothly. A Union framework should provide for proportionate treatment of issuers of crypto-assets and crypto-asset service providers, thus allowing equal opportunities for market entry and ongoing and future development. It should also promote financial stability, the smooth operation of payment systems, and address monetary policy risks that could arise from crypto-assets that aim at stabilising their price in relation to a currency, an asset or a basket of such. While increasing protection of retail holders, market integrity and financial stability through the regulation of offers to the public of crypto-assets or services related to such crypto-assets, a Union framework on markets in crypto-assets should not regulate the underlying technology. Union legislation avoids imposing unnecessary and disproportionate regulatory burdens on the use of technology, since the Union and the Member States seek to maintain competitiveness on a global market. Proper regulation maintains the competitiveness of the Member States on international financial and technological markets and provides clients with significant benefits in terms of access to cheaper, faster and safer financial services and asset management.

(5a) The consensus mechanisms used for the validation of transactions in crypto-assets might have principal adverse impacts on the climate and other environment-related impacts. Such consensus mechanisms should therefore deploy more environmentally-friendly solutions and ensure that any principal adverse impact that they might have on the climate and any other environment-related adverse impact is adequately identified and disclosed by issuers and crypto-asset service providers. When determining whether adverse effects are principal, account should be taken of the principle of proportionality and the size and volume of the crypto-asset issued. ESMA, in cooperation with EBA, should therefore be mandated to develop draft regulatory technical standards to further specify the content, methodologies and presentation of information in relation to sustainability indicators with regard to climate and other environment- related adverse impacts, and to outline key energy indicators. The draft regulatory technical standards should also ensure coherence of disclosures by issuers and crypto-asset service providers.

When developing the draft regulatory technical standards, ESMA should take into account the various types of consensus mechanisms used for the validation of transactions in crypto-asset, their characteristics and the differences between them. ESMA should also take into account existing disclosure requirements, ensure complementarity and consistency, and avoid double burden on companies.

(5c) Crypto-assets markets are global and go beyond borders. Therefore, the Union should continue to support international efforts to promote convergence in the treatment of crypto-assets and crypto-asset services through international organisations or bodies such as the Financial Stability Board, the Basel Committee and the Financial Action Task Force.

(6) Union legislation on financial services should be guided by the principles of 'same activities, same risks, same rules' and of technology neutrality.

Therefore, crypto-assets that fall under existing EU financial services legislation should remain regulated under the existing regulatory framework regardless of the technology used for their issuance or their transfer, rather than this Regulation. Thus, the Regulation explicitly excludes crypto-assets that qualify as financial instruments as defined under Directive 2014/65/EU[1]of the European Parliament and of the Council, as deposits as defined under Directive 2014/49/EU[2] of the European Parliament and of the Council, including structured deposits as defined under Directive 2014/65/EU, as funds as defined under Directive 2015/2366/EU[3] of the European Parliament and of the Council, other than e-money tokens, as securitisation positions in the context of a securitisation as defined under Regulation (EU) 2017/2402[4] of the European Parliament and of the Council, and as non-life or life insurance contracts, pensions products or schemes and social security schemes. Having regard to the fact that electronic money and funds received in exchange for electronic money should not be treated as deposits in accordance with Directive 2014/49/EU, electronic money tokens cannot be considered as deposits that are exempted from this Regulation.

(6a) For the purpose of ensuring a clear delineation between crypto-assets covered under this Regulation and financial instruments, ESMA should be mandated to publish guidelines on criteria and conditions for the qualification of crypto-assets as financial instruments. The guidelines should also help to better understand cases in which crypto-assets that are otherwise considered to be unique and not fungible with other crypto-assets might be qualified as financial instruments. In order to promote a common approach on the classification of crypto-assets, the ESAs should promote discussions on the classification of crypto-assets. Competent authorities should be able to request opinions from ESAs on the classification of crypto-assets, including classifications that were proposed by the offerors or persons seeking admission to trading.

Offerors or persons seeking admission to trading are primarily responsible for the correct classification of the crypto-assets, which might be challenged by the competent authorities, both before the date of publication of the offer and at any moment afterwards. Where the classification of a crypto-asset appears to be inconsistent with this regulation or Directive 2014/65/EU, the ESAs should make use of their powers under ESAs Regulations in order to ensure a consistent and coherent approach to such classification.

(6b) This Regulation should not apply to crypto-assets that are unique and not fungible with other crypto-assets, including digital art and collectibles, whose value is attributable to each crypto-asset's unique characteristics and the utility it gives to the token holder. Similarly, it also does not apply to crypto-assets representing services or physical assets that are unique and not fungible, such as product guarantees or real estate. While these crypto-assets might be traded in market places and be accumulated speculatively, they are not readily interchangeable and the relative value of one crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset. Such features limit the extent to which these crypto-assets can have a financial use, thus limiting risks to users and the system, and justifying the exemption.

(6c) The fractional parts of a unique and non-fungible crypto-asset should not be considered unique and not fungible. The issuance of crypto-assets as non-fungible tokens in a large series or collection should be considered as an indicator of their fungibility. The sole attribution of a unique identifier to a crypto-asset is not sufficient to classify it as a unique or not fungible. The assets or rights represented should also be unique and not fungible for the crypto-asset to be considered unique and not fungible. The exclusion of crypto-assets that are unique and not fungible from this Regulation is without prejudice to qualification of such crypto-assets as financial instruments.

This Regulation should also apply to crypto-assets that appear unique and not fungible, but whose de facto features or features linked to de facto uses would make them either fungible or not unique. In this regard, when assessing and classifying crypto-assets, competent authorities should adopt a substance over form approach, under which the features of the asset in question should determine the qualification, not its designation by the issuer.

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

(7) Digital assets issued by central banks acting in their monetary authority capacity, including central bank money in digital form, or crypto-assets issued by other public authorities, including central, regional and local administration, should not be subject to the Union framework covering crypto-assets, and neither should related services - that are provided by such central banks when acting in their monetary authority capacity or other public authorities.

(7a) Pursuant to the fourth indent of Article 127(2), of the Treaty on the Functioning of the European Union (TFEU), one of the basic tasks to be carried out through the European System of Central Banks (ESCB) is to promote the smooth operation of payment systems. The European Central Bank (ECB) may, pursuant to Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), make regulations to ensure efficient and sound clearing and payment systems within the Union and with other countries. In this respect, the ECB has adopted regulations on requirements for systemically important payment systems. This Regulation is without prejudice to the responsibilities of the ECB and the national central banks (NCBs) in the ESCB to ensure efficient and sound clearing and payment systems within the Union and with third countries.

Consequently, and in order to prevent the possible creation of parallel sets of rules, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the ECB should cooperate closely when preparing the relevant draft technical standards. Further, the access to information by the ECB and the NCBs is crucial when fulfilling their tasks relating to the oversight of payment systems, including clearing of payment instructions.

In addition, with respect to 127(6) of the Treaty on the Functioning of the European Union (TFEU), this Regulation shall be without prejudice to Regulation (EC) 1024/2013 and shall be interpreted in such a way that it shall not be in conflict with Regulation (EC) 1024/2013.

(8) Any legislation adopted in the field of crypto-assets should be specific, future-proof and be able to keep pace with innovation and technological developments and be founded on an incentive-based approach. 'Crypto-assets' and 'distributed ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets which currently fall outside the scope of Union legislation on financial services. Such legislation should also contribute to the objective of combating money laundering and the financing of terrorism. For this reason, entities offering services within the scope of this Regulation will be required to follow applicable rules on AML in the EU, which integrate international standards.

(8a) Digital assets that cannot be transferred to other holders do not fall within the definition of crypto-assets. Therefore, digital assets which are only accepted by the issuer or the offeror, being technically impossible to transfer them directly to other holders are excluded from the scope of this Regulation. Examples of such assets include some loyalty schemes, where the loyalty points can be exchanged for benefits only with the issuer or offeror of these points.

(9) This Regulation introduces three sub-categories of crypto-assets that should be distinguished and subject to different requirements depending on the risks they entail. The classification is based on whether crypto-assets seek to stabilise their value by reference to other assets. The first sub-category consists of crypto-assets that aim at stabilising their value by referencing only one official currency. The function of such crypto-assets is very similar to the function of electronic money, as defined in Article 2, point 2, of Directive 2009/110/EC of the European Parliament and of the Council[1]. Like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are likely to be used for making payments. These crypto-assets are defined as 'electronic money tokens' or 'e-money tokens'.

In the second sub-category of crypto-assets are 'asset-referenced tokens'. They aim at maintaining a stable value by referencing to any other value or right, or combination thereof, including one or several official currencies. This sub-category covers all other crypto-assets than e-money tokens whose value is backed by assets, so to avoid circumvention and to make this Regulation future proof.

Finally, the third sub-category are all other crypto-assets that are not 'asset-referenced tokens' or 'e-money tokens', which cover a wide variety of crypto-assets, including utility tokens.

(10) Currently, despite their similarities, electronic money and crypto-assets referencing a single official currency of a country differ in some important aspects. Holders of electronic money as defined in Article 2, point 2, of Directive 2009/110/EC are always provided with a claim on the electronic money institution and have a contractual right to redeem their electronic money at any moment against an official currency of a country at par value with that currency. By contrast, some of the crypto-assets referencing one official currency of a country do not provide their holders with such a claim on the issuers of such assets and could fall outside the scope of Directive 2009/110/EC. Other crypto-asset referencing one official currency of a country do not provide a claim at par with the currency they are referencing or limit the redemption period. The fact that holders of such crypto-assets do not have a claim on the issuers of such assets, or that such claim is not at par with the currency those crypto-assets are referencing, could undermine the confidence of users of those crypto-assets. To avoid circumvention of the rules laid down in Directive 2009/110/EC, any definition of 'e-money tokens' should be as wide as possible to capture all the types of crypto-assets referencing one single official currency of a country and strict conditions on the issuance of e-money tokens should be laid down, including the obligation for such e-money tokens to be issued either by a credit institution [authorised under CRD], or by an electronic money institution authorised under Directive 2009/110/EC. For the same reason, issuers of such e-money tokens should also grant the users of such tokens with a right to redeem their tokens at any moment and at par value against the currency referencing those tokens. Because e-money tokens are also crypto-assets and can also raise new challenges in terms of protection of retail holders and market integrity specific to crypto-assets, they should also be subject to rules laid down in this Regulation to address these challenges to protection of retail holders and market integrity.

(11) Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for offerors and persons seeking admission to trading of crypto-assets other than asset-referenced tokens and e-money tokens as well as issuers of asset-referenced tokens and e-money tokens. Issuers of crypto-assets are entities which have control over the creation of crypto-assets.

(12) It is necessary to lay down specific rules for entities that provide services related to crypto-assets. A first category of such services consist of ensuring the operation of a trading platform for crypto-assets, exchanging crypto-assets for funds or other crypto-assets by dealing on own account, the service on behalf of third parties of ensuring the custody and administration of crypto-assets, and the transfer of crypto-assets. A second category of such services are the placing of crypto-assets, the reception or transmission of orders for crypto-assets, the execution of orders for crypto-assets on behalf of clients, the provision of advice on crypto-assets and portfolio management of crypto-assets. Any person that provides such crypto-asset services on a professional basis should be considered as a 'crypto-asset service provider'.

(12a) This Regulation applies to natural, legal persons and other undertakings and the activities and services performed, provided or controlled, directly or indirectly, by them, including when part of such activity or services is performed in a decentralized way. Where crypto-asset services as defined in this Regulation are provided in a fully decentralised manner without any intermediary they do not fall within the scope of this Regulation. This Regulation covers the rights and obligations applicable to issuers, offerors and persons seeking admission to trading of crypto-assets and to crypto-asset service providers. Where crypto-assets have no identifiable issuer, they do not fall within Title II, III or IV of this Regulation. Crypto-asset service providers providing services to such crypto-assets are, however, fully covered by this Regulation.

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

(14) In order to ensure protection of retail holders of crypto-assets, potential holders of crypto-assets should be informed about the characteristics, functions and risks of crypto-assets they intend to purchase. When making a public offer of crypto-assets, other than asset-referenced tokens or e-money tokens, in the Union or when seeking admission of crypto-assets to trading on a trading platform for such crypto-assets, offerors or persons seeking admission to trading should produce, notify to their competent authority and publish an information document ('a crypto-asset white paper') containing mandatory disclosures. Such crypto-asset white paper should contain general information on the issuer, offeror or person seeking admission to trading, on the project to be carried out with the capital raised, on the public offer of crypto-assets or on their admission to trading on a trading platform for crypto-assets, on the rights and obligations attached to the crypto-assets, on the underlying technology used for such assets and on the related risks.

However, it is not expected that the whitepaper will contain a description of risks which are unforeseeable and very unlikely to materialise.

The information contained in the crypto-asset white paper and marketing communication, including advertising messages and marketing material, also through new channels such as social media platforms, should be fair, clear and not misleading. Advertising messages and marketing material should be consistent with the information provided in the crypto-asset white paper.

(14a) Crypto-asset white papers, including summaries, and operating rules of trading platforms for crypto-assets should be drawn up in at least one of the official languages of the home Member State and of any host Member State, or, alternatively, in a language customary in the sphere of international finance. At the time of adoption of this act, the English language was the language customary in the sphere of international finance but this can evolve in the future.

(14b) In order to ensure a proportionate approach, no requirements of this Regulation should apply to the offering of crypto-assets, other than asset-referenced tokens or e-money tokens, that are offered for free or that are automatically created as a reward for the maintenance of the DLT or the validation of transactions in the context of a consensus mechanism. Also, no requirements of this Regulation should apply when a utility token represents the purchase of an existing good or service, enabling the holder to collect the good or use the service, and when the holder of the crypto-assets has the right to use them in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror. Such exceptions do not include crypto-assets representing stored goods which are not meant to be collected by the purchaser following the purchase. The limited network exemption does not apply for crypto-assets which are typically designed for a network of service providers which is continuously growing. When the offer or offers exceed a certain threshold, the limited network exemption is evaluated by the competent authority each time an offer is made, meaning that offers made after an offer which benefited from an exemption do not automatically benefit from such exemption. These exemptions cease to apply when the offeror or another person on his behalf communicates its intention of seeking admission to trading in any communication or the exempted crypto-assets are admitted to trading on a trading platform.

(15) In order to ensure a proportionate approach, the requirements to draw up and publish a crypto-asset white paper should not apply to offers of crypto-assets other than asset-referenced tokens or e-money tokens that are exclusively offered to qualified investors and can be exclusively held by such qualified investors, or that, per Member State, are made to a small number of persons. However, some requirements related to the conduct and organisation of the offeror remain applicable.

(15a) The mere admission of crypto-assets to trading on a trading platform or the publication of bid and offer prices is not to be regarded in itself as an offer of crypto-assets to the public. Such publication only constitutes an offer of crypto-assets to the public where it includes a communication constituting the offer to the public under this Regulation.

(16) Small and medium-sized enterprises and start-ups should not be subject to excessive and disproportionate administrative burdens. Offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, in the Union that do not exceed an adequate aggregate threshold over a period of 12 months should therefore be exempted from the obligation to draw up a crypto-asset white paper. Some requirements related to the conduct and organisation of the offeror remain, however, applicable.

(16a) Even though some offers of crypto-assets other than asset-referenced tokens or e-money tokens are exempted from several or all obligations under this Regulation, where applicable, EU horizontal legislation ensuring consumer protection, such as Directive 2005/29/EC[9] of the European Parliament and of the Council or the Council Directive 93/13/EEC[10] of 5 April 1993 on unfair terms in consumer contracts, including any information obligations contained therein, remain applicable to these offers to the public of crypto-assets where involving business-to-consumer relations.

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

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

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

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

(18a) Offerors that are established in a third country should notify their crypto-asset white paper, and, upon request of the competent authority, their marketing communication, to the competent authority of the Member State where the crypto-assets are intended to be offered.

(18b) The operator of the trading platform becomes responsible for complying with the requirements of Title II when the crypto-assets are admitted to trading on its own initiative and the white paper has not been prepared in cases required by this Regulation, or upon agreement with the person seeking admission to trading. The person seeking admission to trading should remain responsible when it provides false or misleading information to the operator of the trading platform. The person seeking admission to trading should also remain responsible for matters not delegated to the operator of the trading platform.

(19) Undue administrative burdens should be avoided. Competent authorities should therefore not be required to approve a crypto-asset white paper before its publication. Competent authorities should, however, have the power to request amendments to the white paper and any marketing communication, and where necessary, to request the inclusion of additional information in the crypto-asset white paper.

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

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

(21a) Offerors of crypto-assets, other than asset-referenced tokens or e-money tokens, shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets raised. These arrangements shall also ensure that any funds or other crypto-assets collected from holders or potential holders are duly returned as soon as possible, where an offer to the public that is time limited is cancelled for any reason. The offeror shall contract a third party to safeguard those funds or other crypto-assets.

(22) In order to further ensure protection of retail holders of crypto-assets, the retail holders who are acquiring crypto-assets, other than asset-referenced tokens or e-money tokens, directly from the offeror, or from a crypto-asset service provider placing the crypto-assets on behalf of the offeror, should be provided with a right of withdrawal during a limited period of time after their acquisition. In order to ensure the smooth completion of an offer to the public of crypto-assets for which the issuer has set a time limit, this right of withdrawal should not be exercised by the consumer after the end of the subscription period. Furthermore, the right of withdrawal should not apply where the crypto-assets, other than asset-referenced tokens or e-money tokens, are admitted to trading on a trading platform for crypto-assets, as, in such a case, the price of such crypto-assets would depend on the fluctuations of crypto-asset markets.

Where the retail holder has a right of withdrawal under this Regulation, the right of withdrawal under Directive 2002/65/EC should not apply.

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

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

(25) Asset-referenced tokens aim at stabilising their value by referencing to any other value or right or a combination thereof, including one or several official currencies. They could therefore be widely adopted by users to transfer value or as a means of exchange and thus pose increased risks in terms of protection of holders of crypto-assets, in particular retail holders and market integrity compared to other crypto-assets. Issuers of asset-referenced tokens should therefore be subject to more stringent requirements than issuers of other crypto-assets.

(26) When a crypto-asset falls within the definition of an asset-referenced token or e-money token, it should comply with Title III or Title IV of this Regulation, irrespective of how the issuer intends to design the crypto-asset, including the mechanism to maintain a stable value. This also concerns so-called algorithmic 'stablecoins' that aim at maintaining a stable value in relation to an official currency of a country or to one or several assets, via protocols, that provide for the increase or decrease of the supply of such crypto-assets in response to changes in demand.

Offerors or persons seeking admission to trading of algorithmic crypto-assets that do not aim at stabilising the value of the crypto-assets by referencing one or several assets should in any event comply with Title II of this Regulation.

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

(28) Offers to the public of asset-referenced tokens in the Union or seeking an admission of such crypto-assets to trading on a trading platform for crypto-assets should be possible only where the competent authority has authorised the issuer of such crypto-assets and approved the crypto-asset white paper regarding such crypto-assets. The authorisation requirement should however not apply where the asset-referenced tokens are only offered to qualified investors, or when the offer to the public of asset-referenced tokens is below a certain threshold. In those cases, the issuer of such asset-referenced tokens should be still required to produce a crypto-asset white paper to inform buyers about the characteristics and risks of such asset-referenced tokens and to notify it to the relevant competent authority, before publication.

(28a) Credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council should not need another authorisation under this Regulation in order to issue asset-referenced tokens. National procedures established under Directive 2013/36/EU apply and are complemented by a requirement to notify the home competent authority designated under this Regulation with elements enabling it to verify the issuer's ability to issue asset-referenced tokens. A credit institution, which is the issuer of asset-referenced tokens should be subject to all requirements applying to issuers of ARTs with the exception of authorisation requirements, own funds requirements and the approval procedure regarding qualifying shareholders, as these matters are covered by Directive 2013/36/EU and Regulation (EU) 575/2013. A crypto-asset white paper produced by such credit institution to inform buyers about the characteristics and risks of asset-referenced tokens should be approved by the relevant competent authority, before publication. The relevant administrative powers provided under Directive 2013/36/EU, as transposed in national law, and under this Regulation, including the power to restrict or limit a credit institution's business and the powers to suspend or prohibit an offer to the public, would apply with respect to such credit institutions.

In case the obligations applying to such credit institutions under this Regulation overlap with those of Directive 2013/36/EU, the credit institutions should ensure compliance with more specific or stricter requirements, thus ensuring compliance with both set of rules.

The notification procedure for credit institutions intending to issue asset-referenced tokens under this Regulation is without prejudice to the national provisions transposing Directive 2013/36/EU that set out procedures for authorisation of credit institutions to provide the services listed in Annex I of Directive 2013/36/EU.

(29) A competent authority should refuse authorisation on objective and demonstrable grounds, where the prospective issuer of asset-referenced tokens' business model may pose a serious threat to financial stability, smooth operation of payment systems, or market integrity. The competent authority should consult the EBA, ESMA, the ECB and, where the asset-referenced tokens is referencing a Union currency which is not the euro and the national central bank of issue of such currency before granting an authorisation or refusing an authorisation. The EBA and ESMA non-binding options should address the classification of the crypto-asset, while the ECB and the national central banks should provide the competent authority with an opinion on the risks for the smooth operation of payment systems, monetary policy transmission or monetary sovereignty. The competent authorities should also refuse authorisation when the ECB or a national central bank gives a negative opinion on grounds of smooth operation of payment systems, monetary policy transmission, or monetary sovereignty. Where authorising a prospective issuer of asset-referenced tokens, the competent authority should also approve the crypto-asset white paper produced by that person. The authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer such crypto-assets in the Single Market and to seek an admission to trading on a trading platform for crypto-assets. In the same way, the crypto-asset white paper should also be valid for the entire Union, without possibility for Member States to impose additional requirements.

(29a) In several cases where the ECB is consulted, its opinion is binding in that it obliges a competent authority to refuse, withdraw or limit an authorization to issue asset-referenced tokens or to impose specific measures on an asset-referenced tokens' issuer. While Article 263, first subparagraph TFEU, provides that the Court of Justice shall review the legality of acts of the ECB other than recommendations or opinions, it is recalled that it is up to the Court of Justice to interpret this provision, in light of the substance and effects of the opinions of the ECB.

(30) To ensure protection of retail holders, issuers of asset-referenced tokens should always provide holders of asset-referenced tokens with clear, fair and not misleading information. The crypto-asset white paper on asset-referenced tokens should include information on the stabilisation mechanism, on the investment policy of the reserve assets, on the custody arrangements for the reserve assets, and on the rights provided to holders.

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

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

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

(34) Issuers of asset-referenced tokens should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or might be exposed. The members of the management body of such issuers and their shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings in such issuers, should be of good repute and be fit and proper, including for the purpose of anti-money laundering and combatting the financing of terrorism. Issuers of asset-referenced tokens should also employ resources proportionate to the scale of their activities and should always ensure continuity and regularity in the performance of their activities. For that purpose, issuers of asset-referenced tokens should establish a business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the performance of their core activities related to the asset-referenced tokens. Issuers of asset-referenced tokens should also have a strong internal control and risk assessment mechanism, as well as a system that guarantees the integrity and confidentiality of information received. Those obligations aim to ensure the protection of the holders of asset-referenced tokens, in particular retail holders, while not creating unnecessary barriers.

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

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

(37) In order to cover their liability, issuers of asset-referenced tokens should constitute and maintain a reserve of assets matching the risks reflected in such liability. Such reserve of assets serves the function of covering the issuer's liabilities against holders of asset-referenced tokens. The reserve of assets should be used for the benefit of the holders of the asset-referenced token when the issuer is not able to comply with its obligations towards the holders, such as in insolvency. The reserve of assets shall be composed and managed in such a way that the issuer of asset-referenced tokens does not face market and currencies risks. Issuers of asset-referenced tokens should ensure the prudent management of such a reserve of assets and should in particular ensure that the reserve amounts at least to the corresponding value of tokens in circulation and that changes in the reserve are adequately managed to avoid adverse impacts on the market of the reserve assets. Issuers of asset-referenced tokens should therefore establish, maintain and detail policies that describe, inter alia, the composition of the reserve of assets, the allocation of assets, the comprehensive assessment of the risks raised by the reserve assets, the procedure for the issuance and redemption of the asset-referenced tokens, the procedure to increase and decrease the reserve assets and, where the reserve assets are invested, the investment policy that is followed by the issuer. For asset-referenced tokens which are marketed both in the Union and in third countries, their issuers should ensure that the reserve of assets is available to cover the issuers' liability towards Union customers. The requirement to hold the reserve of assets with firms subject to EU legislation should therefore apply in proportion to the share of tokens which are expected to be marketed in the Union.

(38) To prevent the risk of loss for asset-referenced tokens and to preserve the value of those assets issuers of asset-referenced tokens should have an adequate custody policy for reserve assets. That policy should ensure that the reserve assets are entirely segregated from the issuer's own assets at all times, that the reserve assets are not encumbered or pledged as collateral, and that the issuer of asset-referenced tokens has prompt access to those reserve assets. The reserve assets should, depending on their nature, be kept in custody either by a credit institution authorised under Directive No 2013/36/EU, an investment firm authorised under Directive 2014/65/EU or by a crypto-asset service provider. This should not exclude that for physical assets the physical holding of the assets is delegated to another entity. Credit institutions, investment firms or crypto-asset service providers that keep in custody the reserve assets that back the asset-referenced tokens should be responsible for the loss of such reserve assets vis-à-vis the issuer or the holders of asset-referenced tokens, unless they prove that such loss has arisen from an external event beyond reasonable control.

A concentration in the custodians of reserve assets should be avoided. However, in certain situations, this might not be possible due to a lack of suitable alternatives. In such cases, a temporal concentration should be considered acceptable.

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

(40) The issuer of asset-referenced tokens should provide a permanent redemption right to the holders of the asset-referenced tokens, in the sense that holders are entitled to request from the issuer the redemption of the asset-referenced token at any moment. The issuer has the possibility to redeem either by paying an amount of funds other than e-money equivalent to the market value of the assets referenced by the asset-referenced token, or by delivering the assets referenced by the token.

It should, however, always provide an option to the holder to redeem the token in funds other than e-money that the issuer accepted when selling the token.

The issuer should provide sufficiently detailed and easily understandable information to disclose the different forms of redemption available.

(41) To reduce the risks that asset-referenced tokens are used as a store of value, issuers of asset-referenced tokens, and any crypto-asset service providers, when providing crypto-asset services should not grant interests to users of asset-referenced tokens for the time such users are holding those asset-referenced tokens.

(41b) Some asset-referenced tokens and e-money tokens should be considered significant when they meet, or are likely to meet, certain criteria, including a large customer base, a high market capitalisation, or a high number of transactions. Significant asset-referenced tokens or significant e-money tokens that could be used by a large number of holders and which could raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty should be subject to more stringent requirements than other asset-referenced tokens or e-money tokens.

The appropriateness of the thresholds between significant tokens and non-significant tokens should be reviewed by the Commission. The review should, where appropriate, be accompanied by a legislative proposal.

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

(42a) A comprehensive monitoring over the whole ecosystem of asset-referenced tokens issuers is important to determine the true size and impact of an asset-referenced tokens. To capture all transactions that are conducted with any given asset-referenced tokens, monitoring of asset-referenced tokens therefore includes the monitoring of transactions that are settled on-chain and off-chain to capture all transactions, including those between clients of the same crypto-asset service provider.

(42b) It is particularly important to estimate those transactions associated to uses as means of exchange within a single currency area, namely those associated to payments of debts including those in the context of transactions with merchants. Those transactions should not include transactions which are associated with investments functions and services such as the exchange with other crypto-assets or funds, unless there is evidence that the asset-referenced token is used for settlement of transactions in other crypto-assets. A use for settlement of transactions in other crypto-assets would be present in case a transaction involving two legs of crypto-assets, which are different from the ART, would be settled in the ART.

(42c) Asset-referenced tokens can also pose threats to monetary sovereignty and monetary policy. In the case of a threat to monetary sovereignty and monetary policy, central banks should be able to request the competent authority to withdraw the authorisation to issue asset-referenced tokens in the case of serious threats, or, to limit the amount issued, or to introduce a minimum denomination.

(42d) Moreover, if widely used as a means of exchange within a single currency area, issuers should be required to reduce the level of activity. An asset-referenced token should be considered to be widely used as a means of exchange when number and value of transactions per day associated to uses as means of exchange is higher than 1 000 000 and EUR 200 million respectively, within a single currency area.

(42e) This Regulation is without prejudice to national legislation regulating the use of domestic and foreign currencies in operations between residents, adopted by non-euro area Member States in exercising their prerogative of monetary sovereignty.

(42c) Issuers of asset-referenced tokens should prepare a recovery plan providing for measures to be taken by the issuer to restore compliance with the requirements applicable to the reserve of assets, including for cases where the fulfilment of redemptions requests create temporary unbalances in the reserve of assets. The competent authority should have the power to temporarily suspend the redemption of asset-referenced tokens to protect the interests of the holders of asset-referenced tokens.

(43) Issuers of asset-referenced tokens should have a plan for the orderly redemption of the tokens to ensure that the rights of the holders of the asset-referenced tokens are protected where issuers of asset-referenced tokens are not able to comply with their obligations. Where the issuer of asset-referenced tokens is a credit institution or entity referred to in Article 1(1) of Directive [BRRD], the competent authority should consult the resolution authority.

The resolution authority could examine the redemption plan with a view to identifying any elements in the redemption plan which may adversely affect the resolvability of the issuer, the resolution strategy of the issuer, or any actions foreseen in the resolution plan of the issuer, and make recommendations to the competent authority with regard to those matters. In doing so, the resolution authority may also consider if any changes are required to the resolution plan or the resolution strategy, in accordance with the respective provisions in [BRRD and SRMR, as applicable]. This examination by the resolution authority does not affect the powers of the prudential supervisory authority or of the resolution authority, as applicable, to take a crisis prevention measure or a crisis management measure.

(44) Issuers of e-money tokens should be authorised either as a credit institution under Directive 2013/36/EU or as an electronic money institution under Directive 2009/110/EC. E-money tokens should be deemed to be 'electronic money' as defined under Directive 2009/110/EC and they should comply with the relevant operational requirements of Directive 2009/110/EC, including the requirements for the taking up, pursuit and prudential supervision of the business of e-money institutions and the requirements on issuance and redeemability of e-money tokens, unless specified otherwise in this Regulation. Issuers of e-money tokens should produce a crypto-asset white paper and notify it to their competent authority. Exemptions regarding limited networks, regarding certain transactions by providers of electronic communications networks, and regarding electronic money institutions issuing only a limited maximum amount of electronic money, based on the optional exemption as specified in Directive 2009/110/EC, should remain applicable to e-money tokens. However, issuers should always draw up a crypto-asset white paper and notify it to their competent authority.

(45) Holders of e-money tokens should be provided with a claim on the issuer of the e-money tokens concerned. Holders of e-money tokens should always be granted with a redemption right at par value with funds denominated in the official currency that the e-money token is referencing. The provisions of Directive 2009/110/EC on the possibility of applying a fee in relation to redemption are not relevant in the context of e-money tokens.

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

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

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

(49) Significant e-money tokens can pose greater risks to financial stability than non-significant e-money tokens and traditional electronic money. Issuers of such significant e-money tokens should therefore be subject to additional requirements. Issuers of significant e-money tokens should in particular be subject to higher capital requirements than other e-money token issuers, to interoperability requirements and they should establish a liquidity management policy. Issuers of significant e-money tokens should also comply with certain requirements applying to issuers of asset-referenced tokens, such as increased own funds requirements, custody requirements for the reserve assets, investment rules for the reserve assets, which should apply instead of Article 5 and 7 of Directive 2009/110/EC. As Article 5 and 7 of Directive 2009/110/EC do not apply to credit institutions when issuing e-money, those requirements should not apply to credit institutions when they issue e-money tokens.

(48a) Issuers of e-money tokens should have in place recovery and redemption plans to ensure that the rights of the holders of the e-money tokens are protected when issuers are not able to comply with their obligations.

(50) In most Member States, the provision of crypto-asset services is not yet regulated in spite of the potential risks that they pose to investor protection, market integrity and financial stability. To address such risks, this Regulation provides operational, organisational and prudential requirements at EU level applicable to crypto-asset service providers.

In order to enable effective supervision and to eliminate the possibility to evade or circumvent such supervision, crypto-asset services should only be provided by legal persons that have a registered office in a Member State in which they have substantive business activities, which includes the supply of crypto-assets services. Undertakings that are not legal person, such as commercial partnerships, might also provide crypto-asset services when they meet certain conditions.

It is essential that the providers of crypto-asset services maintain effective management of their activities in the Union, in order to avoid undermining effective prudential supervision, and to ensure the enforcement of requirements under this Regulation, which sets out conditions for the provisions of crypto-asset services intended to ensure investor protection, market integrity and financial stability. Regular close direct contact between the supervisors and the responsible management of crypto-asset providers is an essential element of such supervision.

Hence crypto-asset service providers should have their place of effective management in the EU, and at least one of the directors should be resident in the EU. The place of effective management means the place where the key management and commercial decisions that are necessary for the conduct of business are taken.

(51) This Regulation should not affect the possibility for persons established in the Union to receive crypto-asset services by a third-country firm at their own initiative. Where a third-country firm provides crypto-asset services at the own initiative of a person established in the Union, the crypto-asset services should not be deemed as provided in the Union. Where a third-country firm solicits clients or potential clients in the Union or promotes or advertises crypto-asset services or activities in the Union, it should not be deemed as a crypto-asset service provided at the own initiative of the client. In such a case, the third-country firm should be authorised as a crypto-asset service provider.

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

(53) [deleted]

(53a) In order to ensure continued protection of EU financial system against money laundering and terrorist financing risks, it is necessary to ensure CASPs authorised in the EU will apply increased checks on financial operations involving customers and financial institutions from third countries listed as a high-risk third country, that have strategic deficiencies in their regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council.

(54) Some firms subject to Union legislation on financial services should be allowed to provide all or some crypto-asset services without an authorisation as a crypto-asset service provider under this Regulation, if they notify their respective competent authorities with certain information before providing those services for the first time. In such cases, those firms should be considered as crypto-asset service providers and the relevant administrative powers provided in this Regulation, including the power to suspend or prohibit certain crypto-asset services, apply with respect to them They should be subject to all requirements on crypto-asset service providers under this Regulation with the exception of authorisation requirements, own funds requirements and the approval procedure regarding qualifying shareholders, as these matters are covered by the respective acts under which they were authorised.

The notification procedure for credit institutions intending to provide crypto-asset services under this Regulation is without prejudice to the national provisions transposing Directive 2013/36/EU that set out procedures for authorisation of credit institutions to provide the services listed in Annex I of Directive 2013/36/EU.

(55) In order to ensure consumer protection, market integrity and financial stability, crypto-asset service providers should always act honestly, fairly and professionally in the best interest of their clients. Crypto-asset services should be considered 'financial services' as defined in Directive 2002/65/EC[13] of the European Parliament and of the Council, in case the criteria of that Directive are met. Where marketed at distance, the contracts between crypto-asset service providers and consumers should be subject to that Directive as well, unless this Regulation expressly states otherwise. Crypto-asset service providers should provide their clients with clear, fair and not misleading information and warn them about the risks associated with crypto-assets. Crypto-asset service providers should make their pricing policies public, should establish a complaint handling procedure and should have a robust policy to identify, prevent, manage and disclose conflicts of interest.

[13] 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).

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

(57) Crypto-asset service providers should be subject to strong organisational requirements. The members of the management body of crypto-asset service providers and their shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings in crypto-asset service providers should have good repute and be fit and proper, including for the purpose of anti-money laundering and combatting the financing of terrorism. In addition, where the influence exercised by the persons holding qualifying shareholdings in crypto-asset service providers is likely to be prejudicial to the sound and prudent management of the crypto-asset service provider, taking into account among others their previous activities, risk of engaging in illicit activities or influence or control by a government of a third country, competent authorities should have the power to put an end to that situation.

Crypto-asset service providers should employ management and staff with adequate skills, knowledge and expertise and should take all reasonable steps to perform their functions, including through the preparation of a business continuity plan. They should have sound internal control and risk assessment mechanisms as well as adequate systems and procedures to ensure integrity and confidentiality of information received. Crypto-asset service providers should have appropriate arrangements to keep records of all transactions, orders and services related to crypto-assets that they provide. They should also have systems in place to detect potential market abuse committed by clients.

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

(59) Depending on the services they provide and due to the specific risks raised by each type of services, crypto-asset service providers should be subject to requirements specific to those services. Crypto-asset service providers providing the service of custody and administration of crypto-assets on behalf of third parties should have a contractual relation with their clients with mandatory contractual provisions and should establish and implement a custody policy that must be made available to clients on their request in an electronic format. Such agreement should inter alia specify the nature of the service provided, which may include holding of the crypto-assets or the means of access to such crypto-assets, in which case the client might keep control over the crypto-assets in custody, or the crypto-assets or the means of access to such crypto-assets may be transferred in full control of the service provider. Crypto-asset service providers offering custody and administration of crypto-assets are not allowed to actively use the customers' crypto-assets on their own account. The service providers have to ensure that all held crypto-assets are always unencumbered. Those crypto-asset service providers should also be held liable for any damages resulting from an ICT-related incident, including an incident resulting from a cyber-attack, theft or any malfunctions.

Hardware or software providers of non-custodial wallets do not fall within the scope of this Regulation.

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

Crypto-asset service providers operating a trading platform for crypto-assets should have the possibility to settle transactions on and off chain and should aim at ensuring a timely settlement. The settlement of transactions shall be initiated within 24 hours. In the case of off-chain settlement, the settlement should be initiated on the same business day while in the case of on-chain settlement, the settlement may take longer as it is not controlled by the crypto-asset service providers operating the trading platform.

(61) To ensure consumer protection, crypto-asset service providers that exchange crypto-assets against funds or crypto-assets by using their own capital should establish a non-discriminatory commercial policy. They should publish either firm quotes or the method they are using for determining the price of crypto-assets they wish to buy or sell and they should publish any limits they wish to establish to the amount to be exchanged. They should also be subject to post-trade transparency requirements.

(61a) 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, including when they act as the clients counterparty. They should take all necessary steps to avoid the misuse of information related to clients' orders by their employees. Crypto-assets service providers that receive orders and transmit those orders to other crypto-asset service providers should implement procedures for the prompt and proper sending of those orders. Crypto-assets service providers should not receive any monetary or non-monetary benefits for transmitting those orders to any particular trading platform for crypto-assets or any other crypto-asset service providers. They should monitor the effectiveness of their order execution arrangements and execution policy, assessing whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements, and should notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.

(61b) When a crypto-asset service provider that is authorised to execute orders for crypto-assets on behalf of third parties is the client counterparty, there may be similarities with the services of exchange of crypto-assets against funds or exchange of crypto-assets against other crypto-assets. However, in the services of exchange of crypto-assets against funds or exchange of crypto-assets against other crypto-assets the price for exchanging crypto-assets against funds or other crypto-assets is freely determined by the crypto-asset service provider as a currency exchange. Yet in the service of execution of orders for crypto-assets on behalf of third parties the crypto-asset service provider shall always ensure that it obtains the best possible result for its client, including when it acts as client's counterparty, in line with its best execution policy.

(61c) The exchange of crypto-assets for funds or exchange of crypto-assets for other crypto-assets when made by the issuer or offeror is not a crypto-asset service.

(62) Crypto-asset service providers that place crypto-assets for potential users should communicate to those persons information on how they intend to perform their service before the conclusion of a contract.

To ensure protection of their clients, crypto-asset service providers that are authorised for placing crypto-assets should have specific and adequate procedures in place to prevent, monitor, manage and disclose any conflicts of interest when they place the crypto-assets with their own clients and when the proposed price for placing crypto-assets has been overestimated or underestimated. The placing of crypto-assets on behalf of an offeror is not considered to be a separate offer.

(63) To ensure consumer protection, crypto-asset service providers that provide advice on crypto-assets, either at the request of a third party or at their own initiative, or portfolio management of crypto-assets should make an assessment whether crypto-asset services or crypto-assets are suitable for the clients, considering of their clients' experience, knowledge, objectives and ability to bear losses. Where the clients do not provide information to the crypto-asset service providers on their experience, knowledge, objectives and ability to bear losses, or it is clear that the crypto-assets are not suitable for the clients, they should not recommend such crypto-asset services or crypto-assets to the clients, or begin the provision of portfolio management services.

When providing advice, crypto-asset service providers should establish a report, including an updated information on suitability assessment and the advice given. When providing portfolio management of crypto-assets, crypto-asset service providers should provide periodic statements to their clients, which include a review of their activities, performance of the portfolio and an updated information on suitability assessment.

(63a) Some of the crypto-asset services may overlap with payment services, in particular custody services, placing of crypto-assets and services from custodians associated to the transfer of crypto-assets.

(63b) The tools provided by e-money issuers to their clients to manage an e-money token may not be distinguishable from custody services as regulated by this Regulation. Electronic money institutions should be able to provide custody services without prior authorisation under this Regulation to provide crypto-asset services only in relation to the e-money tokens issued by them.

(63c) The activity of traditional e-money distributors, distributing e-money on behalf of issuers would amount to the activity of placing of crypto-assets in the context of this Regulation. However, any natural or legal persons registered to distribute e-money under Directive 2009/110/EC, should also be able to distribute e-money tokens on behalf of issuers of e-money tokens without prior authorisation to provide crypto-asset services. Such distributors are therefore exempted from the requirement to seek authorisation as a crypto-asset service provider for the activity of placing of crypto-assets.

(63d) A provider of crypto-asset transfer services is the entity that provides for the transfer of crypto-assets from distributed ledger address to another on behalf of a third party. This does not include the validators, nodes or miners that may be part of confirming a transaction and updating the state of the underlying blockchain.

Many crypto-asset service providers also offer some kind of crypto-asset transfer service, for example custody and administration of crypto-assets, exchange of crypto-assets for other crypto-asset or funds or execution of orders.

Depending of the precise features the services associated to the transfer of e-money tokens, such services can amount to a payment service as defined in Directive (EU) 2015/2366. In such case these transfers should be provided by an entity authorised to provide payment services in accordance with Directive (EU) 2015/2366. EBA should draft guidelines on those services, which should also help to better understand which of those services are considered payment services.

(63e) This regulation does not address lending and borrowing in crypto-assets, including e-money tokens, and therefore does not prejudice applicable national law. The feasibility and necessity of regulating such activities should be further assessed.

(64) It is important to ensure confidence in crypto-asset markets and market integrity. It is therefore necessary to lay down rules to deter market abuse for crypto-assets that are admitted to trading on a trading platform for crypto-assets. However, as issuers of crypto-assets and crypto-asset service providers are very often SMEs, it would be disproportionate to apply all the provisions of Regulation (EU) No 596/2014[15] of the European Parliament and of the Council to them. It is therefore necessary to lay down specific rules prohibiting certain behaviours that are likely to undermine users' confidence in crypto-asset markets and the integrity of crypto-asset markets, including insider dealings, unlawful disclosure of inside information and market manipulation related to crypto-assets. These bespoke rules on market abuse committed in relation to crypto-assets should be applied, where crypto-assets are admitted to trading on a trading platform for crypto-assets.

(64a) Legal certainty for crypto-asset market participants should be enhanced through a characterisation of two elements essential to the specification of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the crypto-assets. These elements should also be considered for the prevention of market abuse in the context of the crypto-assets' market and its functioning, taking into account, for instance, the use of social media, the use of smart contracts for order executions and the concentration of mining pools.

[15] 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 (OJ L 173, 12.6.2014, p. 1).

(64b) Derivatives which are financial instruments under Directive 2014/65/EU, whose underlying asset is a crypto-asset, are subject to Regulation (EU) No 596/2014 on market abuse when traded in a regulated market, multilateral trading facility or organized trading facility. Crypto-assets in the scope of this Regulation, which are the underlying assets of those derivatives, will be subject to the market abuse provisions of this Regulation.

(65) Competent authorities should be conferred with sufficient powers to supervise the issuance, offer to the public and admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, as well as crypto-asset service providers, including the power to suspend or prohibit an issuance of crypto-assets or the provision of a crypto-asset service, and to investigate infringements of the rules on market abuse. The issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, is not subject to supervision within this Regulation when it is not an offeror or a person seeking admission to trading. Competent authorities should be able to suspend a public offer or admission to trading of crypto-assets, when identifying difficulties in the classification of crypto-assets.

(65a) Competent authorities should also have the power to impose penalties on issuers, offerors or persons seeking admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, and crypto-asset service providers. Competent authorities, when determining the type and level of an administrative penalty or other administrative measures to be imposed, shall take into account all relevant circumstances.

(65b) Given the cross-border nature of crypto-asset markets, competent authorities should cooperate with each other to detect and deter any infringements of the legal framework governing crypto-assets and markets for crypto-assets.

(65c) To facilitate transparency regarding crypto-assets and of crypto-asset service providers ESMA should establish a register of crypto-assets white papers, issuers of asset-referenced tokens, issuers of e-money tokens, and of crypto-asset service providers.

(66) Significant asset-referenced tokens can be used as a means of exchange and to make large volumes of payment transactions. Since such large volumes can pose specific risks to monetary sovereignty and monetary transmission channels, it is appropriate to assign to the EBA the task of supervising the issuers of asset-referenced tokens, once such asset-referenced tokens have been classified as significant. Such assignment is to be considered as addressing the very specific nature of risks posed by asset-referenced tokens, and not as setting a precedent for any other areas of financial services legislation.

(67) [merged with Recital 69]

(68) Competent authorities in charge of supervision under Directive 2009/110/EC should supervise issuers of e-money tokens. However, given the potential widespread use of significant e-money tokens as a means of payment and the risks they can pose to financial stability, a dual supervision by both competent authorities and the EBA of issuers of significant e-money tokens is necessary. The EBA should supervise the compliance by issuers of significant e-money tokens with the specific additional requirements set out in this Regulation for significant e-money tokens. Since the specific additional requirements apply only to e-money institutions issuing significant e-money tokens, credit institutions issuing significant e-money tokens, to which such requirements do not apply, will remain supervised by competent authorities.

The dual supervision is to be considered as addressing the very specific risks arising from e-money tokens, and not as setting a precedent for any other areas of financial services legislation.

(68a) Significant e-money tokens denominated in an official currency of the EU other than the euro, which are used as a means of exchange and make large volumes of payment transactions, although unlikely to occur, can pose specific risks to the monetary sovereignty of the member states whose currency they denominate. Where at least 80% of the number of holders and of the volume of transactions of these significant e-money tokens are concentrated in the home Member State of that currency, it is appropriate that the supervisory responsibilities are not transferred to the EBA.

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

(70) To supervise the issuers of significant asset-referenced tokens and e-money tokens, the EBA should have the powers, among others, to carry out on-site inspections, take supervisory measures and impose fines.

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

(72) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of adjusting the content of the definitions set out in this Regulation to market and technological developments, to specify some criteria to determine whether an asset-referenced token or an e-money token should be classified as significant and to specify the type and amount of fees that can be levied by EBA for the supervision of issuers of significant asset-referenced tokens or significant e-money tokens.

It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[16]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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

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

(74) The Commission should be empowered to adopt regulatory technical standards developed by the EBA and ESMA with regard to the procedure for approving crypto-asset white papers produced by credit institutions when issuing asset-referenced tokens, the information to be provided in an application for authorisation as an issuer of asset-referenced tokens, the methodology for the calculation of capital requirements for issuers of asset-referenced tokens, governance arrangements for issuers of asset-referenced tokens, the information necessary for the assessment of a qualifying holdings in an asset-referenced token issuer's capital, the procedure of conflicts of interest established by issuers of asset-referenced tokens, the type of assets which the issuers of asset-referenced token can invest in, the obligations imposed on crypto-asset service providers ensuring the liquidity of asset-referenced tokens, the complaint handling procedure for issuers of asset-referenced tokens, the pre-trade and post-trade transparency requirements on trading platforms, the functioning of the college of supervisors for issuers of significant asset-referenced tokens and issuers of significant e-money tokens, the information necessary for the assessment of qualifying holdings in the crypto-asset service provider's capital, the exchange of information between competent authorities, the EBA and ESMA under this Regulation and the cooperation between the competent authorities and third countries. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010[17] of the European Parliament and of the Council and Regulation (EU) No 1095/2010[18] of the European Parliament and of the Council.

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17 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).

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

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

(76) Since the objectives of this Regulation, namely to address the fragmentation of the legal framework applying to offerors of crypto-assets, persons seeking admission to trading of crypto-assets issuers of asset-referenced tokens and e-money tokens and crypto-asset service providers and to ensure the proper functioning of crypto-asset markets while ensuring protection of holders of crypto-assets and clients of crypto-assets service providers, in particular retail holders, market integrity and financial stability cannot be sufficiently achieved by the Member States but can rather, be better achieved at Union level by creating a framework on which a larger cross-border market for crypto-assets and crypto-asset service providers could develop, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(77) In order to avoid disrupting market participants that provide services and activities in relation to crypto-assets, other than asset-referenced tokens and e-money tokens, that have been issued before the entry into application of this Regulation, issuers of such crypto-assets should be exempted from the obligation to publish a crypto-asset white paper and other applicable requirements set in Title II. However, certain obligations will apply when such crypto-assets were admitted to trading on a trading platform for crypto-assets before the date of application of this Regulation. In order to avoid disruption to existing market participants, transitional provisions are necessary for issuers of asset referenced tokens that operated before the entry into application of this Regulation.

(77a) Since the national regulatory frameworks applicable to crypto-asset service providers before the entry into application of this Regulation differ among Member States, it is essential that Member States that have not in place strong prudential requirements for crypto-asset service providers that currently operate under their regulatory frameworks, have the possibility to require such crypto-asset service providers to be subject to stricter requirements than those under the national regulatory frameworks. In such a case, Member States might not apply or might reduce the 18-month transitional period allowing crypto-asset service providers to provide services on the basis of their national framework. Such an option for Member States is not to be considered as setting a precedent in any other areas of financial services legislation.

(78) Whistleblowers can bring new information to the attention of competent authorities which helps them in detecting infringements of this Regulation and imposing penalties. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to actual or potential infringements of this Regulation and to protect them from retaliation. This should be done by amending Directive (EU) 2019/1937[19] of the European Parliament and of the Council in order to make it applicable to breaches of this Regulation.

[19] 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).

(78b) Given that EBA should be mandated with the direct supervision of issuers of significant asset referenced tokens and significant e-money tokens, and ESMA should be mandated to make use of its powers in relation to significant crypto-asset service providers, it is necessary to ensure that EBA and ESMA may exercise all their powers and tasks in order to fulfil their objectives 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 and that issuers of crypto-assets and crypto-asset service providers are covered by Regulations (EU) No 1093/2010 of the European Parliament and of the Council[20] and Regulation (EU) No 1095/2010 of the European Parliament and of the Council[21]. Those Regulations should therefore be amended accordingly.

(79) The date of application of this Regulation should be deferred 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.

(80) The issuing, offering, or seeking admission to trading of crypto-assets and the provision of crypto-asset services could involve the processing of personal data. Any processing of personal data under this Regulation should be carried out in accordance with applicable Union law on the protection of personal data. This Regulation is without prejudice to the rights and obligations under Regulations (EU) 2016/679[22] and (EU) 2018/1725[23].

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20 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).

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

22 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).

23 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 (OJ L 295, 21.11.2018, p. 39).

HAVE ADOPTED THIS REGULATION:

TITLE I

Subject Matter, Scope and Definitions

Article 1

Subject matter

This Regulation lays down uniform requirements for the offering and placing on the market of crypto-assets other than asset-referenced tokens and e-money tokens, asset-referenced tokens and e-money tokens, and requirements for crypto-asset service providers. In particular, this Regulation lays down the following:

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

(b) the authorisation and supervision of crypto-asset service providers, 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) protection of holders of crypto-assets in the issuance, offering to the public and admission to trading;

(da) protection of clients of crypto-assets service providers;

(e) measures to prevent insider dealing, unlawful disclosure of inside information and market manipulation related to crypto-assets, in order to ensure the integrity of crypto-asset markets.

Article 2

Scope

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

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

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

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

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

   (d) the European Investment Bank including its subsidiaries;

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

   (f) public international organisations.

2a. This Regulation does not apply to crypto-assets that are unique and not fungible with other crypto-assets.

3. This Regulation does not apply to crypto-assets that qualify as one or more of the following:

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

(b) [deleted]

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

(ca) funds, as defined in Article 4 (25) of Directive 2015/2366/EU, other than e-money tokens;

(d) [deleted]

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

(f) non-life or life insurance products falling within the classes of insurance listed in Annexes I and II to Directive 2009/138/EC26 or reinsurance and retrocession contracts pursuant to the reinsurance or retrocession activities referred to in that Directive;

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

[26] 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) (OJ L 335, 17.12.2009, p. 1).

(h) officially recognised occupational pension schemes within the scope of Directive (EU) 2016/234127 or Directive 2009/138/EC;

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

(j) a pan-European Personal Pension Product as defined in Article 2, point (2), of Regulation (EU) 2019/12381;

(k) Social security schemes which are covered by Regulations (EC) No 883/200428 and (EC) No 987/200929 of the European Parliament and of the Council.

By [18 months after entry into force], ESMA shall issue guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments.

4. [deleted]

4a. This regulation shall be without prejudice to Regulation (EC) 1024/2013.

5. [deleted]

6. [deleted]

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27 Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p.37).

28 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

29 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

Article 3

Definitions

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

(1) ‘distributed ledger technology’ or ‘DLT’ means distributed ledger technology as defined in [the DLT Pilot Regime Regulation];

(1b) ‘distributed ledger’ means a distributed ledger as referred to [in the DLT Pilot Regime Regulation]

(1c) a ‘consensus mechanism’ means a consensus mechanism as defined in [the DLT Pilot Regime Regulation]

(2) ‘crypto-asset’ means a digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology or similar technology;

(3) ‘asset-referenced token’ means a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referencing to any other value or right or a combination thereof, including one or more official currencies;

(4) ‘electronic money token’ or ‘e-money token’ means a type of crypto-asset that purports to maintain a stable value by referencing to the value of one official currency;

(3a) "Official currency" means an official currency of a country issued by a central bank or other monetary authority;

(5) ‘utility token’ means a type of crypto-asset which is only intended to provide access to a good or a service supplied by the issuer of that token.

(6) ‘issuer of crypto-assets’ means the natural or legal person or other undertaking who issues the crypto-assets;

(7) ‘offer to the public’ means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the crypto-assets to be offered, so as to enable potential holders to decide whether to purchase those crypto-assets;

(7a) ‘offeror’ means a natural or legal person, or other undertaking, or the issuer, which offers crypto-assets to the public.

(7b) "funds" means funds as defined in Article 4, point (25), of Directive (EU) 2015/2366;

(8) ‘crypto-asset service provider’ means legal person or other undertaking whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis, and are allowed to provide crypto-asset services in accordance with Article 53;

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

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

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

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

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

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

(f) placing of crypto-assets;

(fa) providing transfer services for crypto-assets on behalf of third parties;

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

(h) providing advice on crypto-assets;

(hb) providing portfolio management on crypto-assets;

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

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

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

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

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

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

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

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

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

(17b) ‘providing transfer services for crypto-assets on behalf of third parties’ means to transfer, on behalf of a natural or legal person, crypto-assets from one distributed ledger address or account to another;

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

(19) ‘credit institution’ means a credit institution authorised under Directive 2013/36/EU;

(19a) ‘investment firm’ means an investment firm authorised under Directive 2014/65/EU;

(20) ‘qualified investors’ means persons or entities that are listed in points (1) to (4) of Section I of Annex II of Directive 2014/65/EU;

(20a) ‘close links’ means close links as defined in [MiFID];

(21) ‘reserve of assets’ means the basket of assets securing the claim towards the issuer of an asset-referenced token;

(21a) ‘reserve assets’ means the assets that constitute the reserve of assets;

(22) ‘home Member State’ means:

(a) where the offeror or person seeking admission to trading of crypto-assets, other than asset-referenced tokens or electronic money tokens, has its registered office in the Union, the Member State where the offeror or person seeking admission to trading of crypto-assets has its registered office;

(b) where the offeror or person seeking admission to trading of crypto-assets, other than asset-referenced tokens or electronic money tokens, has no registered office in the Union but has one or more branches in the Union, the Member State chosen by the offeror or person seeking admission to trading among those Member States where the offeror or person seeking admission to trading has branches;

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

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

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

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

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

(24) 'competent authority' means:

(a) the authority or authorities, designated by each Member State in accordance with Article 81 for offerors or persons seeking admission to trading of crypto-assets, other than asset-referenced tokens and e-money tokens, issuers of asset-referenced tokens or crypto-asset service providers;

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

(25) [deleted]

(26) ‘qualifying holding’ means any direct or indirect holding in an issuer of asset-referenced tokens or in a crypto-asset service provider which represents at least 10% of the capital or the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC32 of the European Parliament and of the Council, taking into account the conditions regarding aggregation thereof laid down in paragraphs 4 and 5 of Article 12 of that Directive, or which makes it possible to exercise a significant influence over the management of the issuer of asset-referenced tokens or in a crypto-asset service provider in which that holding subsists;

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

(28) ‘retail holder’ means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

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

(28c) ‘client’ means any natural or legal person to whom a crypto-asset service provider provides crypto-asset services;

(28d) ‘matched principal trading’ means matched principal trading as defined in [MiFID]

32 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).

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

TITLE II

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

Article 4

Offers of crypto-assets, other than asset-referenced tokens or e-money tokens, to the public

1. No person shall offer crypto-assets, other than asset-referenced tokens or e-money tokens, to the public in the Union unless that person:

   (a) is a legal person;

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

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

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

   (da) where applicable, has drafted marketing communications in respect of those crypto-assets in accordance with Article 6;

   (db) where applicable, has published the marketing communications in accordance with Article 8;

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

2. Title II shall not apply to the offers to the public where:

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

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

(c) [deleted]

(ca) the offer concerns a utility token of a good or service which exist or is in operation;

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

(d) [deleted]

(e) [deleted]

(f) [deleted]

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

For offers referred to in point (cb) of the first subparagraph for which over each period of 12 months, starting with the beginning of the initial offer, the total consideration of the offer or the offers to the public of crypto-assets in the Union exceeds EUR 1 000 000, the offeror shall send a notification to the competent authority containing a description of the offer, specifying why the offer is exempted in accordance with point (cb).

On the basis of that notification, the competent authority shall take a duly motivated decision where it considers that the activity does not qualify under the exemption provided in point (cb) of the first subparagraph as a limited network and inform the offeror accordingly.

2a. An authorisation pursuant to Article 53 is not required regarding the custody, administration and transfer of crypto-assets covered by the situations listed in paragraph 2 points (a) to (cb), unless:

(a) there exist at least another offer which would not benefit from the exemption or

(b) the crypto asset is admitted to a trading platform.

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

(a) an offer to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account;

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

(c) an offer of crypto-assets solely addressed to qualified investors and the crypto-assets can only be held by such qualified investors.

2c. The exemptions referred to in paragraph 2 and 2b shall not apply if the offeror or another person on his behalf communicates its intention of seeking admission to trading in any communication.

3. Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for goods and services that are not yet in operation or which do not exist, the duration of the public offer as described in the crypto-asset white paper shall not exceed 12 months from the publication of the crypto-asset white paper.

3a. Any subsequent offer to the public of crypto-asset shall be considered as a separate offer and the requirements from paragraph 1 shall apply, without prejudice to the possible application of paragraphs 2 and 2b to the subsequent offer.

No additional crypto-asset white paper shall be required in any subsequent offer of crypto-assets as long as a crypto-asset white paper has been published in accordance with Articles 8 and Article 11, and the person responsible for drawing up such white paper consents to its use by means of a written agreement.

3c. Where the offer of crypto-assets to the public is exempted from the obligation to publish a crypto-assets white paper in accordance with paragraphs 2 and 2b, the offeror may voluntarily draw up a white paper in accordance with this Regulation.

Following the notification of the crypto-asset white paper in accordance with Article 7, the offeror shall be subject to all the rights and obligations provided under this Title and no derogations shall apply.

Article 4a

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

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

   (a) is a legal person

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

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

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

   (da) where applicable, has drafted marketing communications in respect of those crypto-assets in accordance with Article 6;

   (db) where applicable, has published the marketing communications in accordance with Article 8;

   (e) complies with the requirements laid down in Article13.

1a. The operator of the trading platform for crypto-assets shall comply with paragraph 1, when the crypto-assets are admitted to trading on its platform for crypto-assets on the operator's own initiative and the white paper has not been published in accordance with Article 8 in the cases required by this Regulation.

1b A person seeking admission of a crypto-asset to trading on a trading platform for crypto-assets and the respective operator of that platform may conclude a written agreement providing that the operator of the trading platform shall comply with all or part of the requirements of points b) to e) of paragraph 1.

The agreement referred to in the previous subparagraph shall clearly state that the person seeking admission to trading must provide to the operator of the trading platform all the necessary information to enable the operator to comply with points b) to e) of paragraph 1, as applicable.

4. Paragraph 1, points (b) to (d) as regards the crypto-asset white paper shall not apply:

(a) [deleted]

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

(c) a crypto-asset white paper is available in accordance with Article 5, updated in accordance with Article 11, and the person responsible for drawing up such white paper consents to its use by means of a written agreement.

Article 5

Content and form of the crypto-asset white paper

1. A crypto-asset white paper shall contain all the following information, as specified in Annex I:

(0a) information about the offeror or the person seeking admission to trading;

(0b) information about the issuer, if different from the offeror or person seeking admission to trading;

(0c) information about the operator of the trading platform when it prepares the white paper;

(ca) if different from the persons referred to under 0a-0c, the identity of the person which prepared the crypto-asset white paper and the reason why that person prepared the crypto-asset white paper;

(a) information about the crypto-asset project,

(c) information about the offer to the public of crypto-assets or their admission to trading on a trading platform for crypto-assets;

(d) information on the rights and obligations attached to the crypto-assets;

(b) information about the crypto-assets;

(e) information on the underlying technology;

(f) information on risks;

(g) information on principal adverse environmental and climate related impact of the consensus mechanism used to issue the crypto-asset.

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

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

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

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

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

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

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

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

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

   (e) where applicable, a clear risk warning that the crypto-assets are not covered by the investor compensation schemes in accordance with, Directive 97/9/EC of the European Parliament and of the Council;

   (ea) a clear risk warning that the crypto-assets are not covered by the deposit guarantee schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council.

6. The crypto-asset white paper shall contain a statement from the management body of the offeror, person seeking admission to trading of the crypto-assets or an operator of a trading platform. That statement, which shall be placed after the statement referred in paragraph 3, shall confirm that the crypto-asset white paper complies with the requirements of this Title and that, to the best knowledge of the management body, the information presented in the crypto-asset white paper is in accordance with the facts and that the crypto-asset white paper makes no omission likely to affect its import.

7. The crypto-asset white paper shall contain a summary, placed after the statement referred to in Paragraph 6, which shall in brief and non-technical language provide key information about the offer to the public of the crypto-assets or about the intended admission of crypto-assets to trading on a trading platform for crypto-assets, and in particular about the characteristics of the crypto-assets concerned. The summary shall be presented and laid out in easily understandable words and in a clear and comprehensive form, using characters of readable size. The format and content of the summary of the crypto-asset white paper shall provide, in conjunction with the crypto-asset white paper, appropriate information about the characteristics of the crypto-assets concerned in order to help potential holders of the crypto-assets to make an informed decision. The summary shall contain a warning that:

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

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

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

(d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129[33] or another offering document pursuant to Union legislation or national laws.

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

8a. Every crypto-asset white paper shall contain a table of content.

9. The crypto-asset white paper shall be drawn up in an official language of the home Member State, or in a language customary in the sphere of international finance.

If the crypto-asset is offered in another Member State, the crypto-asset white paper shall be drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance.

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

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

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

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

[33] 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).

11a. ESMA, in cooperation with EBA, shall develop draft regulatory technical standards in accordance with Article 10-14 of Regulation (EU) No 1095/2010 on the content, methodologies and presentation of information referred to in letter (g) of paragraph 1 of this Article in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment- related adverse impacts.

When developing the draft regulatory technical standards, ESMA shall consider the various types of consensus mechanisms used to validate crypto-asset transactions, their incentive structures and the use of energy, renewable energy and natural resources, the production of waste, and greenhouse gas emission ESMA shall update the regulatory technical standards in the light of regulatory and technological developments.

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

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

Article 6

Marketing communications

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

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

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

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

(d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the offeror, the person seeking admission to trading, or the operator of a trading platform of the crypto-assets concerned, as well as a contact telephone number and an email address of those persons;

(e) marketing communications shall contain the following clear and prominent statement: "This crypto-asset marketing communication has not been reviewed or approved by any competent authority in any Member State of the European Union. The offeror of the crypto-assets is solely responsible for the content of this crypto-asset marketing communications".

Where the marketing communication is prepared by the person seeking admission to trading or the operator of a trading platform, a reference to its name should be included in the statement instead of "offeror".

Prior to the publication of the white paper no marketing communications can be disseminated, where such a crypto-asset white paper is required in accordance with Article 4 or 4a. Such restriction does not affect the ability of the offeror, the person seeking admission to trading, or the operator of a trading platform, to conduct market soundings.

The competent authority of the Member State where the marketing communications are disseminated shall have the power to exercise control over the compliance of marketing communications, relating to an offer of crypto-assets to the public or an admission to trading on a trading platform for crypto-assets, with paragraphs 1 and 2.

Where necessary, the competent authority of the home Member State shall assist the competent authority of the Member State where the marketing communications are disseminated with assessing the consistency of the advertisements with the information in the white paper.

The use of any of the supervisory and investigatory powers set out in Article 82 in relation to the enforcement of this Article by the competent authority of a host Member State shall be communicated without undue delay to the competent authority of the home Member State of the offeror, the person seeking admission to trading, or the operator of the trading platform of a crypto-asset.

Article 7

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

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

2. Offerors, persons seeking admission to trading, or operators of trading platforms of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their crypto-asset white paper, to the competent authority of their home Member State.

2a. The marketing communications shall be notified, upon request, to the competent authority of the home Member State and to the competent authority of the host Member States, when addressing potential holders in that Member State.

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

(a) a crypto-asset excluded from the scope of this Regulation in accordance with Article 2(3);

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

(c) [deleted]

(d) [deleted]

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

3a. The elements referred in paragraphs 2 and 3 shall be notified to the competent authority of the home Member State at least 20 working days before the publication of the crypto-asset white paper.

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

The competent authority of the home Member State shall notify the single point of contact of the host Member States of the intended offer to the public or the intended admission to trading on a trading platform for crypto-assets and transfer the corresponding crypto-asset whitepaper within 5 working days following the receipt of the list referred to in the first sub-paragraph.

5. The competent authority of the home Member State shall communicate to ESMA the information specified in paragraphs 2 and 3 as well as the starting date of the intended offer to the public or intended admission to trading and of any change thereof. It shall communicate such information within 5 working days after receiving it from the offeror or from the person seeking admission to trading.

ESMA shall make the information referred to in Article 91a(2) available in the register on the starting date of the offer to the public or admission to trading.

Article 8

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

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

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

Article 9

Information on the result of the offer and safeguarding of funds and crypto-assets, other than asset-referenced tokens or e-money tokens, *received during offers*

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

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

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

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

   (b) a crypto-asset service provider providing custody and administration of crypto-assets on behalf of third parties.

2a. When the offer to the public has no time limit, the offeror shall comply with paragraph 2 until the retail holder right to withdrawal set out in Article 12 has expired.

Article 10

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

1. After publication of the crypto-asset white paper in accordance with Article 8, and, where applicable, Article 11, offerors may offer crypto-assets, other than asset-referenced tokens or e-money tokens, throughout the Union and such crypto-assets may be admitted to trading on a trading platform for crypto-assets in the Union.

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

Article 11

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

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

   This requirement applies for the duration of the offer or for as long as the crypto-asset is admitted to trading.

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

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

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

4. [moved up]

5. Within 5 working days of the receipt of the modified crypto-asset white paper, and, where applicable, the modified marketing communications, the competent authority of the home Member State shall notify the modified crypto-asset white paper and, where applicable, the modified marketing communications to the competent authority of the host Member States referred to in Article 7(4) and communicate the notification and the date of the publication to ESMA.

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

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

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

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

8a. The older versions of the crypto-asset white paper and the marketing communications shall remain publicly available on the website for at least 10 years after their publication, with a prominent warning stating that they are no longer valid and with the hyperlink to the dedicated website sections where the final version is published.

Article 12

Right of withdrawal

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

   Retail holders shall have a period of 14 calendar days to withdraw their agreement to purchase those crypto-assets without incurring neither fees nor costs and without giving reasons. The period of withdrawal shall begin from the day of the retail holders agreement to purchase those crypto-assets.

2. All payments received from a retail holder, including, if applicable, any charges, shall be reimbursed without undue delay and in any event not later than 14 days from the day on which the offeror of crypto-assets or a crypto-asset service provider placing crypto-assets on behalf of that offeror is informed of the retail holders's decision to withdraw from the agreement.

   The reimbursement shall be carried out using the same means of payment as the retail holder used for the initial transaction, unless the retail holder has expressly agreed otherwise and provided that the retail holder does not incur neither fees nor costs as a result of such reimbursement.

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

4. The right of withdrawal shall not apply where the crypto-assets have been admitted to trading on a trading platform for crypto-assets prior to the purchase by the retail holder.

5. Where issuers of crypto-assets have set a time limit on their offer to the public of such crypto-assets in accordance with Article 9, the right of withdrawal shall not be exercised after the end of the subscription period.

Article 13

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

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

   (a) act honestly, fairly and professionally;

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

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

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

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

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

3. Where an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, is cancelled, offerors of such crypto-assets shall ensure that any funds collected from holders or potential holders are duly returned to them, no later than 25 days after the date of cancellation.

Article 14

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

1. Where an offeror, person seeking admission to trading of crypto-assets, other than asset-referenced tokens or e-money tokens or the operator of a trading platform, or its administrative, management or supervisory bodies have infringed Article 5, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of crypto-assets may claim damages from those persons or bodies for damage caused to her or him due to that infringement.

   With regard to civil liability, as referred to in the previous subparagraph, any contractual exclusion thereof shall be deprived of any legal effect.

   Where the white paper and marketing communications are prepared by the operator of the trading platform in accordance with Article 4a(2), the person seeking admission to trading shall also be responsible when it provides false, misleading or incomplete information to the operator of the trading platform.

2. It shall be the responsibility of the holders of crypto-assets to present evidence indicating that the offeror, person seeking admission to trading, or the operator of the trading platform of crypto-assets, other than asset-referenced tokens or e-money tokens, has infringed Article 5 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said crypto-assets.

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

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

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

4. This Article is without prejudice to further civil liability claims in accordance with national law.

TITLE III

Asset-referenced tokens

Chapter 1

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

Article 15

Authorisation

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

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

   (b) Is a credit institution and complies with Article 15a.

   Asset-referenced tokens may be issued by undertakings that are not legal persons only if their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons and if they are subject to equivalent prudential supervision appropriate to their legal form.

2. [deleted]

3. Paragraph 1 shall not apply where:

(a) over a period of 12 months, calculated at the end of each calendar day, the average outstanding value of all of asset-referenced tokens never exceeds EUR 5 000 000, or the equivalent amount in another currency, and the issuer is not linked to a network of issuers covered by this exemption; or

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

In cases under letters a) and b) issuers shall, produce a crypto-asset white paper as referred to in Article 17 and notify that crypto-asset white paper, and any marketing communications, upon request, to the competent authority of their home Member State.

4. [deleted]

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

6. The approval granted by the competent authority of the issuers' crypto-asset white paper under Article 15a(1), Article 19 or of the modified crypto-asset white paper under Article 21 shall be valid for the entire Union.

7. Upon a written consent from the issuer, other persons may offer or seek admission to trading the asset-referenced tokens. Those entities shall comply with Articles 23, 25 and 36.

Article 15a

Requirements applicable to credit institutions

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

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

   (b) notifies the respective competent authority, at least 90 working days before issuing the asset-referenced token for the first time, with the following information:

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

      (b) a legal opinion that the asset-referenced tokens does not qualify as:

         (i) a crypto-asset excluded from the scope of this Regulation in accordance with Article 2(3);

         (ii) a e-money token;

      (c) a detailed description of the governance arrangements as referred to in Article 30(1);

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

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

(f) a description of the business continuity policy referred to in Article 30(8);

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

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

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

1b. Competent authorities receiving the notification as referred to in paragraph 1 point (b) shall, within 20 working days of receipt of such information, assess whether all required information has been provided. They shall immediately inform the credit institution when they conclude some information is missing and thus that the notification is not complete. Where the information is not complete, they shall set a deadline by which the credit institution is to provide any missing information.

The deadline for providing any missing information should not exceed 20 working days. For that period, the period under paragraph 1(b) shall be suspended. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the period under paragraph 1 point (b).

The credit institution shall not issue the asset-referenced token where the notification is incomplete.

2. Where issuing asset-referenced tokens, including significant asset-referenced tokens, credit institutions shall not be subject to Articles 15, 16, 18, 19, 20, 31, 37 and 38 of this Title.

3. [deleted]

4. Competent authorities shall communicate without delay the complete information received in paragraph 1 to the ECB and, where the credit institution is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, to the central bank of that Member State.

   The ECB and, where applicable, a central bank as referred to in the first sub-paragraph shall, within 20 working days after having received the complete information, issue an opinion on the application and transmit it to the competent authority.

   The competent authority shall require the credit institution to not issue the asset-referenced token when the ECB or, where applicable, a central bank as referred to in first sub-paragraph, gives a negative opinion on grounds of smooth operation of payment systems, monetary policy transmission, or monetary sovereignty.

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

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

6. The competent authority shall communicate to ESMA the withdrawal of authorisation of a credit institution which issues asset-referenced tokens.

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

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

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

Article 16

Application for authorisation

1. Legal persons or other undertakings that intend to issue asset-referenced tokens shall submit their application for an authorisation as referred to in Article 15 to the competent authority of their home Member State.

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

   (a) the address of the applicant issuer;

   (aa) the Legal Entity Identifier (LEI) of the applicant issuer, if applicable;

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

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

   (d) a legal opinion that the asset-referenced token does not qualify as:

      (i) a crypto-asset excluded from the scope of this Regulation in accordance with Article 2(3),

      (ii) a e-money token;

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

(ea) where cooperation arrangements with specific crypto-asset service providers exist, a description of their internal control mechanisms and procedures to ensure compliance with the obligations in relation to the prevention of money laundering and terrorist financing under Directive (EU) 2015/849;

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

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

(h) proof that any natural or legal persons that have qualifying holdings in the applicant issuer have sufficiently good repute;

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

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

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

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

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

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

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

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

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

2b. Competent authorities shall acknowledge to the applicant in writing receipt of the application received under paragraph 1 promptly and no later than two working days after receipt of the application.

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

(a) for all the members of the management body, the absence of a criminal record in respect of convictions or the absence of relevant penalties under national rules in force in the fields of commercial law including insolvency law, financial services legislation, anti-money laundering legislation, legislation countering the financing of terrorism, fraud, or professional liability;

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

(ba) for all natural or legal persons that have qualifying holdings in the applicant issuer, the absence of a criminal record in respect of convictions or the absence of relevant penalties under national rules in force in the fields of commercial law including insolvency law, financial services legislation, anti-money laundering legislation, legislation countering the financing of terrorism, fraud, or professional liability;

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

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

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

5. The EBA shall, in close cooperation with ESMA, develop draft implementing technical standards to establish standard forms, templates and procedures to transmit information for the purposes of the application, including the standards to be met by the legal opinion referred to in paragraph 2, point (d), in order to ensure uniformity across the Union.

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

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

Article 17

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

1. A crypto-asset white paper for asset-referenced tokens shall contain all of the following information, as specified in Annex II:

(0a) information about the issuer;

(0b) where applicable, identity of the person other than the issuer that offer or seek admission to trading pursuant to Article 15(7) and the reason why that person offer or seek admission to trading;

(0c) if different from the issuer, the identity of the person which prepared the crypto-asset white paper and the reason why that person prepared the crypto-asset white paper;

(0d) information about the asset-referenced tokens;

(0e) information about the offer to the public of asset-referenced tokens or their admission to trading on a trading platform for crypto-assets;

(0f) Information on the rights and obligations attached to asset-referenced tokens;

(0g) Information on the underlying technology;

(0h) Information on risks;

(a) [deleted]

(b) information on the reserve of assets;

(c) [deleted]

(d) [deleted]

(e) [deleted]

(f) [deleted]

(g) [deleted]

(h) [deleted]

(i) information on principal adverse environmental and climate related impact of the consensus mechanism used to issue the crypto-asset.

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

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

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

(a) the ARTs may lose their value in part or in full;

(b) the ARTs may not always be transferable;

(c) the ARTs may not be liquid;

(e) where applicable, a clear risk warning that the asset-referenced tokens are not covered by the investor compensation schemes in accordance with, Directive 97/9/EC of the European Parliament and of the Council;

(ea) a clear risk warning that the asset-referenced tokens are not covered by the deposit guarantee schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council.

6. The crypto-asset white paper for asset-referenced tokens shall contain a statement from the management body of the issuer. That statement shall confirm that the crypto-asset white paper complies with the requirements of this Title and that, to the best knowledge of the management body, the information presented in the crypto-asset white paper is in accordance with the facts and that the crypto-asset white paper makes no omission likely to affect its import.

7. The crypto-asset white paper shall contain a summary, placed after the statement referred to in Paragraph 6, which shall in brief and non-technical language provide key information about the offer to the public of the asset-referenced tokens or about the intended admission of asset-referenced tokens to trading on a trading platform for crypto-assets, and in particular about the characteristics of the asset-referenced tokens concerned. The summary shall be presented and laid out in easily understandable words and in a clear and comprehensive form, using characters of readable size. The format and content of the summary of the crypto-asset white paper shall provide, in conjunction with the crypto-asset white paper, appropriate information about characteristics of the asset-referenced tokens concerned in order to help potential holders of the asset-referenced tokens to make an informed decision.

The summary shall indicate that:

(a) the holders of asset-referenced tokens have a redemption right at any moment;

(b) the conditions of redemption.

The summary shall contain a warning that:

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

(b) the potential holder should base any decision to purchase an asset-referenced token on the content of the whole crypto-asset white paper;

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

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

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

Every crypto-asset white paper shall contain a table of content.

4. The crypto-asset white paper shall be drawn up in an official language of the home Member State, or in a language customary in the sphere of international finance.

If the crypto-asset is offered in another Member State, the crypto-asset white paper shall be drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance.

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

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

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

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

6a. ESMA, in cooperation with EBA, shall develop draft regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 on the content, methodologies and presentation of information referred to in paragraph 1, point (i), of this Article in respect of the sustainability indicators in relation to climate and other environment- related adverse impacts.

When developing the draft regulatory technical standards referred to in the first subparagraph, ESMA shall take into account the various types of consensus mechanisms used for the validation of transactions in crypto-assets, their incentive structures, the use of energy, renewable energy and natural resources, the production of waste, and greenhouse gas emissions. ESMA shall update the regulatory technical standards in the light of regulatory and technological developments.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by... [12 months after the date of entry into force of this Regulation].

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

Article 18

Assessment of the application for authorisation

1. Competent authorities receiving an application for authorisation as referred to in Article 16 shall, within 25 working days of receipt of such application, assess whether that application, including the crypto-asset white paper referred to in Article 16(2), point (i), comprises all required information. They shall immediately notify the applicant issuer of whether the application, including the crypto-asset white paper, is missing required information. Where the application, including the crypto-asset white paper, is not complete, they shall set a deadline by which the applicant issuer is to provide any missing information.

2. The competent authorities shall, within 60 working days from the receipt of a complete application, assess whether the applicant issuer complies with the requirements set out in this Title and take a fully reasoned draft decision granting or refusing authorisation. Within those 60 working days, competent authorities may request from the applicant issuer any information on the application, including on the crypto-asset white paper referred in Article 16(2), point (i).

   During the assessment process, competent authorities may cooperate with the relevant AML/CFT supervisors, FIUs or other public bodies.

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

3. Competent authorities shall, after the 60 working days referred to in paragraph 2, transmit their draft decision and the application file to the EBA, ESMA and the ECB. Where the applicant issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, competent authorities shall transmit their draft decision and the application file to the central bank of that Member State.

4. The EBA and ESMA shall upon request of the competent authority within 20 working days after having received the draft decision and the application file, issue an opinion on evaluation of the legal opinion referred to in Article 16(2)(d), and transmit their opinions to the competent authority concerned.

   The ECB and, where applicable, a central bank as referred to in paragraph 3 shall, within 20 working days after having received the draft decision and the application file, issue an opinion on evaluation of the risks posed to monetary policy transmission, monetary sovereignty, the smooth operation of payment systems, and financial stability and transmit their opinions to the competent authority concerned.

   The opinions referred to in subparagraphs 1 and 2 shall be non-binding, without prejudice to Article 19(2a).

   That competent authority shall duly consider the opinions referred in paragraphs 1 and 2, without prejudice to Article 19(2a).

Article 19

Grant or refusal of the authorisation

1. Competent authorities shall, within 25 working days after having received the opinions referred to in Article 18(4), take a fully reasoned decision granting or refusing authorisation to the applicant issuer and, within 5 working days, notify that decision to applicant issuers. Where an applicant issuer is authorised, its crypto-asset white paper shall be deemed to be approved.

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

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

   (aa) members of the management body do not meet the criteria set out in Article 30(2), first subparagraph;

   (ab) natural or legal persons that have qualifying holdings do not meet the criteria of sufficiently good repute set out in Article 30(3), first subparagraph;

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

   (c) the applicant issuer's business model may pose a serious threat to financial stability, the smooth operation of payment systems, market integrity, or exposes the issuer or the sector to serious risks of money laundering and terrorist financing.

2a. EBA and ESMA shall jointly develop guidelines on the assessment of the suitability of the members of the management body of issuers of ARTs and of the natural or legal persons that have qualifying holdings in issuers of ARTs.

EBA and ESMA shall develop the guidelines referred to in subparagraph 1 within 12 months from the date of entry into force of this Regulation.

2a. Competent authorities shall also refuse authorisation if the ECB or, where applicable, a central bank as referred to in Article 18(3), gives a negative opinion under Article 18(4) on grounds of smooth operation of payment systems, monetary policy transmission, or monetary sovereignty.

3. The competent authority shall communicate to ESMA the list of the host Member States, the information referred to in Article 91a(3) and the starting date of the intended offer to the public or intended admission to trading within two working days after granting authorisation.

The competent authority shall communicate to the single point of contact of the host Member States, the EBA, the ECB and, where applicable, the central banks referred to in Article 18(3) the information referred to in Article 91a(3) and the starting date of the intended offer to the public or intended admission to trading within two working days after granting authorisation.

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

(a) [deleted]

(b) [deleted]

(c) [deleted]

(d) [deleted]

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

Article 19a

Monitoring of asset-referenced tokens

1. For asset-referenced tokens with a value issued higher than EUR 100 million, the issuer shall report quarterly to the competent authority, for each asset-referenced token:

   (a) the customer base;

   (b) the value of the asset-referenced token issued and the size of the reserve of assets;

   (c) the average number and value of transactions per day;

   (d) an estimation of the average number and value of transactions per day associated to uses as means of exchange within a single currency area.

   Transaction refers to any change of the natural or legal person entitled to the token by transfer of an asset-referenced token to another DLT address or account.

   Transactions which are associated with the exchange with other crypto-assets or funds with the issuer or with a crypto asset service provider should not be considered to be associated to uses as means of exchange, unless there is evidence that the asset-referenced token is used for settlement of transactions in other crypto-assets.

1a. The competent authority may require issuers to comply with the reporting obligation of paragraph 1 for asset-referenced tokens with less than EUR 100 million issued.

2. Crypto-assets service providers which provide services on the asset-referenced tokens, shall provide the issuer of asset-referenced tokens with information necessary to prepare the report, including by reporting off chain transactions.

3. The competent authority shall share the information received with the ECB and, where applicable, a central bank as referred to in Article 18(3) and competent authorities of host Member States.

3a. The ECB and, where applicable, a central bank as referred to in Article 18(3) may provide to the competent authority their own estimations of the quarterly average number and value of transactions per day associated to uses as means of exchange used within their respective currency area.

4. The EBA, in close cooperation with the ESCB, shall develop draft regulatory technical standards specifying the methodology to estimate the average number and value of transactions per day associated to uses as means of exchange in each single currency area.

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

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

5. The EBA shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraphs 1 and 2.

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

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

Article 19b

Restrictions to issue asset-referenced tokens used widely as a means of exchange

1. When, for a given asset-referenced token, the estimated quarterly average number and value of transactions per day associated to uses as means of exchange is higher than 1 000 000 transactions and EUR 200 million respectively, within a single currency area, the issuer shall:

   (i) stop issuing the asset-referenced token;

   (ii) present a plan to the competent authority, within 40 working days, to ensure that the number and value of transactions per day associated to uses as means of exchange within a single currency area is kept below 1 000 000 and EUR 200 million respectively.

   The competent authority shall use either the information provided by the issuer, its own estimations, or the estimations provided by the ECB and, where applicable, a central bank as referred to in Article 18(3) whichever is higher.

   When several issuers issue the same asset-referenced token, the criteria referred in the first sub-paragraph shall be accessed after aggregating the data from all issuers.

2. The plan referred to in paragraph 1(ii) shall be approved by the competent authority. The competent authority shall require modifications, including, where necessary, the introduction of a minimum denomination amount, in order to ensure a timely decrease of the use as means of exchange of the asset-referenced token.

3. The competent authority may only allow the issuer to issue again asset-referenced tokens when it has evidence that the average number and value of transactions per day associated to uses as means of exchange is lower than 1 000 000 transactions and EUR 200 million respectively within a single currency area.

Article 20

Withdrawal of the authorisation

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

   (a) [deleted]

   (b) the issuer has ceased to engage in business for 6 successive months, or has not used its authorisation for 12 successive months;

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

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

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

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

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

   (ga) the issuer's activity poses a serious threat to financial stability, the smooth operation of payment systems, market integrity or exposes the issuer or the sector to serious risks of money laundering and terrorist financing.

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

1a. Competent authorities shall also withdraw the authorisation of issuers of asset-referenced tokens when the ECB or, where applicable, a central bank as referred to in Article 18(3), issues an opinion that the asset-referenced token poses a serious threat to monetary policy transmission, smooth operation of payment systems or monetary sovereignty.

1b. Competent authorities shall limit the amount of asset-referenced tokens to be issued or impose a minimum denomination to the asset-referenced tokens when the ECB or, where applicable, a central bank as referred to in Article 18(3), issues an opinion that the asset-referenced token poses a threat to monetary policy transmission, smooth operation of payment systems or monetary sovereignty, and specify the applicable limit or minimum denomination amount.

2. The relevant competent authorities shall notify the competent authority of an issuer of asset-referenced tokens of the following without delay:

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

(b) the fact that the members of the issuer's management body or natural or legal persons that have qualifying holdings in the issuer have breached national provisions transposing Directive (EU) 2015/849 of the European Parliament and of the Council1 in respect of money laundering or terrorism financing.

3. Competent authorities shall withdraw the authorisation of an issuer of asset-referenced tokens where they are of the opinion that the facts referred to in paragraph 2, points (a) and (b), affect the good repute of the management body of that issuer, or of any natural or legal persons that have qualifying holdings in the issuer, or if there is an indication of a failure of the governance arrangements or internal control mechanisms as referred to in Article 30.

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

Article 21

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

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

(a) the governance arrangements, including reporting lines to the management body and risk management framework

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

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

(d) the mechanism through which asset-referenced tokens are issued and redeemed;

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

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

(g) the mechanisms to ensure the liquidity of asset-referenced tokens, including the liquidity management policy for issuers of significant asset-referenced tokens;

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

(i) [moved up]

(j) the complaint handling procedure;

(k) the money laundering and terrorist financing risk assessment and general policies and procedures.

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

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

The draft modified crypto-asset white paper shall be notified to the competent authority of the home Member State.

The competent authority shall electronically acknowledge receipt of the draft modified crypto-asset white paper as soon as possible, and within 5 working days after receiving it.

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

The competent authority may consult the EBA, ESMA and shall consult the ECB, and, where applicable, the central banks of Member States the currency of which is not euro, when the modifications are deemed to be potentially relevant for monetary policy transmission, monetary sovereignty and for the smooth operation of payment systems. They shall provide an opinion within 20 working days after having received the consultation request.

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

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

(b) to take any appropriate corrective measures to address concerns related to financial stability, the smooth operation of payment systems, or market integrity.

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

When the ECB or the central bank as referred to in Article 18(3) have proposed different measures than the ones requested by the competent authority, the measures proposed shall be combined or, if not possible, the more stringent measure shall prevail.

3a. The competent authority shall communicate the modified white paper to the ESMA, the single point of contact of the host Member States, the EBA, the ECB within two working days after granting approval.

ESMA shall make the modified white paper available in the register referred to in Article 91a without undue delay.

Article 22

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

1. Where an issuer, or its administrative, management or supervisory bodies have infringed Article 17, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of such asset-referenced tokens may claim damages from that issuer of asset-referenced tokens or its bodies for damage caused to her or him due to that infringement.

   With regard to civil liability, as referred to in the previous subparagraph, any contractual exclusion thereof shall be deprived of any legal effect.

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

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

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

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

4. This Article is without prejudice to further civil liability claims in accordance with national law.

Chapter 2

Obligations of all issuers of asset-referenced tokens

Article 23

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

1. Issuers of asset-referenced tokens shall:

   (a) act honestly, fairly and professionally;

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

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

Article 24

Publication of the crypto-asset white paper

Issuers of asset-referenced tokens shall publish on their website their approved crypto-asset white paper as referred to in Article 19(1) and, where applicable, their modified crypto-asset white paper referred to in Article 21. The approved crypto-asset white papers shall be publicly accessible by no later than the starting date of the offer to the public of the asset-referenced tokens or the admission of those tokens to trading on a trading platform for crypto-assets. The approved crypto-asset white paper, and, where applicable, the modified crypto-asset white paper shall remain available on the issuer's website for as long as the asset-referenced tokens are held by the public.

Article 25

Marketing communications

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

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

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

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

   (d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the crypto-assets, as well as an email address and a telephone number of the issuer.

2. [deleted]

3. Marketing communications and the respective modifications shall be published on the issuer's website.

   Competent authorities shall not require an approval of marketing communications before publication.

   The marketing communications shall be notified to the competent authority of the home Member State upon request.

4. Prior to the publication of the white paper no marketing communications can be disseminated. Such restriction does not affect the ability of the issuer to conduct market soundings.

Article 26

Ongoing information to holders of asset-referenced tokens

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

2. Issuers of asset-referenced tokens shall publish as soon as possible on a publicly and easily accessible place on their website a brief, clear, accurate and transparent summary of the audit report as well as the full and unredacted audit report in relation to the reserve assets referred to in Article 32.

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

Article 27

Complaint handling procedure

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

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

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

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

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

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

   Power is delegated to 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 28

Identification, prevention, management and disclosure of conflicts of interest

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

   (a) their shareholders;

   (b) the members of their management body;

   (c) their employees;

   (d) any natural or legal persons that have qualifying holdings in the issuer;

   (e) the holders of asset-referenced tokens;

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

   (g) [deleted].

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

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

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

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

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

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

(b) the details and methodology for the content of the disclosure referred to in paragraphs 2, 3 and 4.

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

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

Article 29

Information to competent authorities

Issuers of asset-referenced tokens shall notify immediately their competent authority of any changes to their management body, and shall provide their competent authority with all the necessary information to assess compliance with Article 30(2).

Article 30

Governance arrangements

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

2. Members of the management body of issuers of asset-referenced tokens shall have sufficiently good repute and possess sufficient knowledge, experience and skills to perform their duties. They shall also demonstrate that they are capable of committing sufficient time to effectively perform their duties.

In particular, they shall not have been convicted of offences relating to money laundering or terrorist financing or other offences that would affect their good repute.

2a. The management body shall assess and periodically review the effectiveness of the policy arrangements and procedures put in place to comply with the obligations set out in Chapters 2, 3, 5 and 6 of this Title and take appropriate measures to address any deficiencies.

3. Natural or legal persons that have qualifying holdings in issuers of asset-referenced tokens shall have sufficiently good repute.

In particular, they shall not have been convicted of offences relating to money laundering or terrorist financing or any other offences that would affect their good repute.

4. [deleted]

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

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

(b) the custody of the reserve assets, including the segregation of 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, and redeemed;

(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 liquidity of asset-referenced tokens, including the liquidity management policy for issuers of significant asset-referenced tokens;

(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;

(ha) the written consent of the issuer of the asset referenced token given to entities which may offer or admit to trading the asset-referenced token;

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

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

(k) [deleted]

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

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

6a. When the issuer of asset-referenced tokens decides to discontinue providing services and activities, such as issuing the asset-referenced token, it shall present a plan to the competent authority for such discontinuation, for approval by the competent authority. The discontinuation of the asset-referenced token may trigger the implementation of the plan referred to in Article 42 where the issuer is unable or likely to be unable to comply with its obligations.

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

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

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

10. Issuers of asset-referenced tokens shall have systems and procedures in place that are adequate to safeguard the security, integrity and confidentiality of information as required by Regulation (EU) 2021/xx of the European parliament and of the Council on digital operational resilience[36] and in line with Regulation (EU) 2016/679[37] of the European parliament and of the Council (General Data Protection Regulation). Those systems shall record and safeguard relevant data and information collected and produced in the course of the issuers' activities.

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

12. The EBA, in close cooperation with ESMA and the ECB, shall develop guidelines specifying the minimum content of the governance arrangements on:

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

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

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

(d) the audits referred to in paragraph 11, including the minimum documentation to be used in the audit.

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

37 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).

11a. When developing these regulatory technical standards, EBA shall take into account the provisions on governance requirements in existing Union financial services legislation, including Directive 2014/65/EU.

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

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

Article 31

Own funds requirements

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

(a) EUR 350 000;

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

(ba) a quarter of the fixed overheads of the preceding year, to be reviewed annually and calculated in accordance with Article 60(6).

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

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

2. The own funds referred to in paragraph 1 shall consist of the Common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions referred to in Articles 46(4) and 48 of that Regulation.

3. Competent authorities of the home Member States may require issuers of asset-referenced tokens to hold an amount of own funds which is up to 20 % higher than the amount resulting from the application of paragraph 1, point (b) where an assessment of any of the following indicates a higher 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 30, paragraphs 1, 7 and 9;

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

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

   (d) where the reserve of assets includes investments, the risks posed by the investment policy on the reserve of assets;

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

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

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

3a. Competent authorities of the home Member States may require issuers of asset-referenced tokens which are not significant to comply with any requirement set out in Article 41, where necessary, to address the higher degree of risks identified in accordance with paragraph 3, or any other risks that Article 41 aims to address, such as liquidity risks.

3b. Without prejudice to paragraph 3, issuers of asset-referenced tokens shall conduct, on a regular basis, stress testing that takes into account severe but plausible financial stress scenarios, such as interest rate shocks, and non-financial stress scenarios, such as operational risk. Based on the outcome of such stress testing, the competent authorities of the home Member States shall require issuers of asset-referenced tokens to hold an amount of own funds that is between 20% and 40% higher than the amount resulting from the application of paragraph 1, point (b), in certain circumstances given the risk outlook and stress testing results.

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

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

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

(c) the criteria for requiring higher own funds, as set out in paragraph 3;

(d) the minimum requirements for the design of stress testing programmes, taking into account the size, complexity and nature of the asset-referenced tokens, including but not limited to a) the types of stress testing and their main objectives and applications; b) the frequency of the different stress testing exercises; c) the internal governance arrangements; d) the relevant data infrastructure; e) the methodology and the plausibility of assumptions, and the application of the proportionality principle to all of these minimum requirements, whether quantitative or qualitative. The minimum periodicity of the stress tests and the common reference parameters of the stress test scenarios, in accordance with paragraph 3a.

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

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

Chapter 3

Reserve of assets

Article 32

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

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

1a. The reserve of assets shall be insulated from the issuer's estate, and from the reserve of assets of other tokens, in the interest of the holders of tokens under relevant law, such that creditors of the issuers have no recourse on the reserve of assets, in particular in the event of insolvency.

1ab. The issuer of asset-referenced tokens shall ensure that the reserve of assets is operationally segregated from the issuer's estate, and from the reserve of assets of other tokens.

1b. The reserve of assets shall be composed and managed in such a way that the risks associated to the assets referenced by the asset-referenced tokens are covered.

1c. The reserve of assets shall be composed and managed in such a way that the liquidity risks associated to the permanent redemption rights of the holders are addressed.

1d. The EBA, in close cooperation with ESMA and the ECB, shall develop draft regulatory technical standards further specifying the liquidity requirements, taking into account the size, complexity and nature of the reserve assets and of the asset-referenced token itself.

The regulatory technical standard shall establish in particular:

(a) the relevant percentage of the reserve of assets according to daily maturities, including the percentage of reserve repurchase agreements that are able to be terminated by giving prior notice of one working day, or the percentage of cash that is able to be withdrawn by giving prior notice of one working day;

(ab) the relevant percentage of the reserve of assets according to weekly, including, the percentage of reverse repurchase agreements that are able to be terminated by giving prior notice of five working days, or the percentage of cash that is able to be withdrawn by giving prior notice of five working days; or

(ac) other relevant maturities, and overall techniques for liquidity management;

(b) the minimum amounts in each official currency referenced to be held as deposits in credit institutions, which cannot be inferior than 30% of the amount referenced in each official currencies;

For the purpose of points a) to ac), the EBA shall take into account, amongst other things, the relevant thresholds laid down in Article 52 Directive 2009/65/EC.

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

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

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

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

3. The management bodies of issuers of asset-referenced tokens shall ensure effective and prudent management of the reserve of assets. The issuers shall ensure that issuance and redemption of asset-referenced tokens is always matched by a corresponding increase or decrease of the reserve of assets.

   The issuer of an asset-referenced token shall determine the aggregate value of reserve assets by using market prices. Their aggregated value shall be at least equal to the aggregate value of the claims on the issuer from holders of asset-referenced tokens in circulation.

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

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

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

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

(d) describe the procedure by which the asset-referenced tokens are issued and redeemed, and the procedure by which such issuance and redemption will result in a corresponding increase and decrease of the reserve of assets;

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

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

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

5. Without prejudice to Article 30(11), issuers of asset-referenced tokens shall mandate an independent audit of the reserve assets every six months, assessing the compliance with the rules of this Chapter, as of the date of its authorisation as referred to in Article 19, or of the date of issuing the asset-referenced tokens for the first time in accordance with Article 15a.

The result of the audit referred to in the first subparagraph shall be notified to the competent authority without delay, at the latest within six weeks of the reference date of the valuation. The result of the audit shall be published within two weeks of the date of notification to the competent authority. The competent authority may instruct the issuer to delay the publication in the event that:

(a) the issuer has been required to implement recovery arrangement or measures in accordance with Article 41a(3);

(b) the issuer has been required to implement a redemption plan in accordance with Article 42;

(c) it is deemed necessary to protect the economic interests of holders of the asset referenced token;

(d) it is deemed necessary to avoid a significant adverse effect on the financial system of the home Member State or another Member State.

5a. The valuation referred to in paragraph 3 at market prices shall be made by using mark-to-market, as defined in point 8 of Article 2 of [the MMF Regulation] whenever possible.

When using mark- to-market:

(a) the reserve asset shall be valued at the more prudent side of bid and offer unless the reserve asset can be closed out at mid-market;

(b) only good quality market data shall be used; such data shall be assessed on the basis of all of the following factors:

(i) the number and quality of the counterparties;

(ii) the volume and turnover in the market of the reserve asset;

(iii) size of the reserve of assets.

5b. Where use of mark-to-market is not possible or the market data is not of sufficient quality, a reserve asset shall be valued conservatively by using mark-to-model, as defined in point 9 of Article 2 of [the MMF Regulation].

The model shall accurately estimate the intrinsic value of the reserve asset, based on all of the following up-to-date key factors:

(a) the volume and turnover in the market of that reserve asset;

(b) the size of the reserve of assets;

(c) market risk, interest rate risk, credit risk attached to the reserve asset.

When using mark-to-model, the amortised cost method, as defined in point 10 of Article 2 of [the MMF Regulation], shall not be used.

Article 33

Custody of reserve assets

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

(a) [moved to Article 32]

(b) the reserve assets are not encumbered nor pledged as a 'financial collateral arrangement' within the meaning of Article 2(1), point (a) of Directive 2002/47/EC[38] of the European Parliament and of the Council;

[38] 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).

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

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

(e) concentration in the custodians of reserve assets are avoided;

(f) concentration risks in the reserve assets are avoided.

Issuers of asset-referenced tokens that issue two or more categories of asset-referenced tokens in the Union shall have a custody policy for each pool of reserve of assets.

Issuers of asset-referenced tokens that have issued the same category of asset-referenced tokens shall operate and maintain only one custody policy.

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

(a) a crypto-asset service provider providing services referred to in Article 3(1), point (10), where the reserve assets take the form of crypto-assets;

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

(ba) an investment firm where the reserve assets take the form of financial instruments, that provides the ancillary service of safekeeping and administration of financial instruments for the account of clients as defined in Annex I, Section B, to Directive (EU) 2014/65.

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

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

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

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

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

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

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

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

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

For the purpose of point (a), credit institutions shall ensure that funds are registered in the credit institutions' books within segregated account in accordance with national provisions transposing Article 16 of Commission Directive 2006/73/EC[39] into the legal order of the Member States. The account shall be opened in the name of the issuers of the asset-referenced tokens for the purpose of managing the reserve assets of each asset-referenced token, so that the funds held in custody can be clearly identified as belonging to each reserve of assets.

[39] 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).

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

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

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

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

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

7. The credit institutions, crypto-asset service providers and investment firms that have been appointed as custodians in accordance with paragraph 3 shall not carry out activities with regard to issuers of asset-referenced tokens that may create conflicts of interest between those issuers, the holders of the asset-referenced tokens, and themselves unless all of the following conditions have been complied with:

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

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

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

Article 34

Investment of the reserve of *assets*

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

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

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

4. The EBA shall, in cooperation with the ESMA and the ECB, develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid and bearing minimal credit and market risk as referred to in paragraph 1. When specifying the financial instruments referred to in paragraph 1, the EBA shall take into account:

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

   (b) the correlation between those assets referenced by the asset-referenced token and the highly liquid financial instruments the issuers may invest in;

(c) the conditions for recognition as high quality liquid assets under Article 412 of Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 2015/61[41];

(cc) constraints on concentration, preventing the issuer from investing in more than a certain percentage of reserve assets issued by a single body.

In doing so, the EBA shall devise suitable limits to determine concentration requirements, and thereby taking into account, amongst other things, the relevant thresholds laid down in Article 52 Directive 2009/65/EC.

(cd) constraints on concentration, preventing the issuer from keeping in custody more than a certain percentage of crypto-assets or assets with crypto-asset service providers, investment firms or credit institutions which belong to the same group, as defined in Article 2(11) of Directive 2013/34/EU[42].

For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph, as long as the issuer of the asset-referenced token ensures that the reserve of assets is invested in a way so that the concentration risk is minimised.

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

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

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

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

Article 35

Rights on issuers of asset-referenced tokens

1. Issuers of asset-referenced tokens shall grant holders redemption rights at all times on the issuer of asset-referenced tokens, and on the reserve assets when the issuer is not able to comply with its obligations in accordance with Chapter 6. The issuer shall establish, maintain and implement clear and detailed policies and procedures on such rights.

2. Upon request by the holder of asset-referend tokens, the respective issuer must redeem at any moment by paying in funds other than e-money the market value of the asset-referenced tokens held or by delivering the referenced assets. Issuers shall establish a policy on such permanent redemption right setting out:

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

   (b) the mechanisms and procedures to ensure the redemption of the asset-referenced tokens, including in stressed market circumstances, including in the context of implementation of the plan from Article 41a, or in case of an orderly redemption of asset-referenced tokens as referred to in Article 42;

   (c) the valuation, or the principles of valuation, of the asset-referenced tokens and of the reserve assets when this right is exercised by the holder of asset-referenced tokens, including by using the methodology from Article 32(6);

   (d) the settlement conditions when this right is exercised

(e) [deleted]

(ea) measures the issuers is taking to adequately manage increases or decreases of the reserve, to avoid any adverse impacts on the market of the assets included in the reserve.

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

3. [deleted]

4. [deleted]

3. Without prejudice of Article 41a, the redemption of asset-referenced tokens shall not be subject to a fee.

5. [deleted]

Article 36

Prohibition of interest

1. No issuer of asset-referenced tokens shall grant interest in relation to asset-referenced tokens.

2. When providing crypto-asset services related to asset-referenced tokens, crypto-asset service providers shall not grant interest.

3. For the purposes of the application of the prohibition of interest of paragraphs 1 and 2, any remuneration or any other benefit related to the length of time during which a holder of asset-referenced tokens holds such asset-referenced tokens, shall be treated as interest. This includes net compensation or discount, with an equivalent effect of an interest received by the holder, directly from the issuer or through third parties, directly associated to the asset-referenced token or through the remuneration or pricing of other products.

Chapter 4

Acquisitions of issuers of asset-referenced tokens

Article 37

Assessment of intended acquisitions of issuers of asset-referenced tokens

1. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who intends to acquire, directly or indirectly, a qualifying holding in an issuer of asset-referenced tokens or to further increase, directly or indirectly, such a qualifying holding so that the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 %, or so that the issuer of asset-referenced tokens would become its subsidiary (the 'proposed acquisition'), shall notify the competent authority of that issuer thereof in writing, indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 38(4).

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

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

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

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

5. When performing the assessment referred to in paragraph 4, first subparagraph, competent authorities may request from the persons referred to in paragraph 1 any additional information that is necessary to complete that assessment. Such request shall be made before the assessment is finalised, and in any case no later than on the 50th working day from the date of the written acknowledgement of receipt referred to in paragraph 3. Such requests shall be made in writing and shall specify the additional information needed.

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

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

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

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

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

Article 38

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

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

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

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

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

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

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

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

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

4. To ensure consistent application of this Article, EBA, in close cooperation with ESMA, shall develop draft regulatory technical standards specifying detailed content of information that is

necessary to carry out the assessment referred to in Article 37(4), first subparagraph and that shall be provided to the competent authorities at the time of the notification referred to in paragraph 37(1). The information required shall be relevant for a prudential assessment, be proportionate and be adapted to the nature of the persons and the intended acquisition referred to in Article 37(1).

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

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

Chapter 5

Significant asset-referenced tokens

Article 39

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

1. The EBA shall classify asset-referenced tokens as significant asset-referenced tokens on the basis of the following criteria, as specified in accordance with paragraph 6 and where at least the same three of the following criteria are met either in the first report following the authorization, as referred to in paragraph 2, or in at least two consecutive reports:

   (a) the number of holders of the asset-referenced tokens is larger than 10 million;

   (b) the value of the asset-referenced tokens issued, where applicable, their market capitalisation or the size of the reserve of assets of the issuer of the asset-referenced token, is higher than EUR 5 billion;

   (c) the number and value of transactions in those asset-referenced tokens, is higher than 2 500 000 transactions and EUR 500 million respectively, per day;

   (d) [covered above]

   (da) the issuer of the asset-referenced tokens is a provider of core platforms services designated as gatekeeper in accordance with Regulation (EU) .../... (Digital Markets Act).

   (e) the significance of the activities of the issuer of the asset-referenced tokens on an international scale, including the use of the asset-referenced tokens for payments and remittances.

(f) the interconnectedness with the financial system.

(g) the fact that the same legal person or other undertaking issues at least one additional asset-referenced token or e-money token, and provides at least one crypto-asset service.

When several issuers issue the same asset-referenced token, the criteria referred in the first sub-paragraph shall be assessed after aggregating the data from all issuers.

2. Competent authorities of the issuer's home Member State shall provide the EBA and the ECB with information on the criteria referred to in paragraph 1 as received in Article 19a and as specified in accordance with paragraph 6 on at least a biannual basis.

Where the issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is included in the reserve assets, competent authorities shall transmit the information referred to in the previous sub paragraph to the central bank of that Member State.

3. Where the EBA is of the opinion that asset-referenced tokens meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of the issuer's home Member State, to the ECB and to central bank as referred to in paragraph 2.

The EBA shall give 20 working days, to issuers of such asset-referenced tokens, their competent authorities, the ECB and the central bank as referred to in the second paragraph, to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within 60 working days after the notification referred to in paragraph 3 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5. The supervisory responsibilities on issuers of significant asset-referenced tokens shall be transferred to the EBA 20 working days after the notification of the decision referred to in paragraph 4.

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

5a. EBA shall assess yearly the eligibility of the asset-referenced tokens under its supervision on the basis of information provided by the issuers.

Where the EBA is of the opinion that asset-referenced tokens no longer meet the criteria in accordance with paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those asset-referenced tokens and the competent authority of the issuer's home Member State, to the ECB and to central bank as referred to in paragraph 2.

The EBA shall give issuers of such asset-referenced tokens, their competent authorities, the ECB and the central bank referred in paragraph 2 20 working days to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

5b. The EBA shall take its final decision on whether an asset-referenced token is no longer a significant asset-referenced token within 60 working days after receiving the information referred to in paragraph 5a and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5c. The supervisory responsibilities on issuers of significant asset-referenced tokens shall be transferred to the competent authority of the home Member State 20 working days after the notification of the decision referred to in paragraph 5b.

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

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 121 to further specify the criteria set out in paragraph 1 for an asset-referenced token to be deemed significant and determine:

(a) The circumstances under which the activities of the issuer of asset-referenced tokens are considered to be significant on an international scale outside the EU;

(i) [deleted]

(ii) [deleted]

(iii) [deleted]

(iv) [deleted]

(v) [covered above]

(b) the circumstances under which asset-referenced tokens and their issuers shall be considered as interconnected with the financial system;

(ba) the circumstances under which the issuance of other asset-referenced tokens, e-money tokens or provision of crypto-asset services should be considered for the purposes of identification of an asset-referenced token as significant;

(c) the content and format of information provided by competent authorities to the EBA under paragraph 2.

(d) the procedure and timeframe for the decisions taken by the EBA under paragraphs 3 to 5.

Article 40

Voluntary classification of asset-referenced tokens as significant asset-referenced tokens

1. Applicant issuers of asset-referenced tokens that apply for an authorisation as referred to in Articles 15a and 16, may indicate in their application for authorisation that they wish to classify their asset-referenced tokens as significant asset-referenced tokens. In that case, the competent authority shall immediately notify the request from the prospective issuer to the EBA, to the ECB and to central bank as referred to in Article 39(2).

   For the asset-referenced tokens to be classified as significant at the time of authorisation, applicant issuers of asset-referenced tokens shall demonstrate, through its programme of operations as referred to in Article 16(2), point (c) that it is likely to meet at least three criteria referred to in Article 39(1), as specified in accordance with Article 39(6).

2. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens are likely to meet the criteria in accordance with Article 39(1), as specified in accordance with Article 39(6), the EBA shall within 20 working days from receipt of the request mentioned in paragraph 1 prepare a draft decision to that effect and notify that draft decision to the competent authority of the applicant issuer's home Member State, to the ECB and to central bank as referred to in Article 39(2).

   The EBA shall give the entities referred in the first sub paragraph the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

3. Where, on the basis of the programme of operation, the EBA is of the opinion that asset-referenced tokens are unlikely to meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall within 20 working days from receipt of the request mentioned in paragraph 1 prepare a draft decision to that effect and notify that draft decision to the applicant issuer and the competent authority of the applicant issuer's home Member State, to the ECB and to central bank as referred to in Article 39(2).

   The EBA shall give the entities referred in the first sub paragraph the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an asset-referenced token is a significant asset-referenced token within 60 working days after the notification referred to in paragraph 1 and immediately notify the issuers of such asset-referenced tokens and their competent authorities thereof.

5. Where asset-referenced tokens have been classified as significant in accordance with a decision referred to in paragraph 4, the supervisory responsibilities shall be transferred to the EBA on the date of the decision by which the competent authority grants the authorisation referred to in Article 19(1).

Article 41

Specific additional obligations for issuers of significant asset-referenced tokens

1. Issuers of significant asset-referenced tokens shall adopt, implement and maintain a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards.

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

3. Issuers of significant asset-referenced tokens shall assess and monitor the liquidity needs to meet redemption requests by holders of asset-referenced tokens. For that purpose, issuers of significant asset-referenced tokens shall establish, maintain and implement a liquidity management policy and procedures. That policy and those procedures shall ensure that the reserve assets have a resilient liquidity profile that enable issuer of significant asset-referenced tokens to continue operating normally, including under liquidity stressed scenarios.

3a. Issuers of significant asset-referenced tokens shall conduct liquidity stress testing, on a regular basis, and depending on the outcome of such tests, the EBA may decide to strengthen the liquidity risk requirements referred to in Article 32(1d) and paragraph (6) point aa).

Where an issuer of significant asset-referenced tokens offers two or more categories of crypto-asset tokens or provides crypto-asset services, these stress tests shall cover all of these activities in a comprehensive and holistic manner.

4. The percentage referred to in Article 31(1), point (b), shall be set at 3% of the average amount of the reserve assets for issuers of significant asset-referenced tokens.

5. Where several issuers offer the same asset-referenced token that is classified as significant, each of those issuers shall be subject to the requirements set out in the paragraphs 1 to 4.

Where an issuer offers two or more categories of asset-referenced tokens in the Union and at least one of those asset-referenced tokens is classified as significant, such an issuer shall be subject to the requirements set out in paragraphs 1 to 4.

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

(a) the minimum content of the governance arrangements on the remuneration policy referred to in paragraph 1;

(aa) liquidity requirements and the minimum contents of the liquidity management policy as set out in paragraph 3, including the minimum amount of deposits in each official currency referenced, which cannot be inferior than 60% of the amount referenced in each official currencies;

(b) the procedure and timeframe for an issuer of significant asset-referenced tokens to adjust to higher own funds requirements as set out in paragraph 4.

In the case of credit institutions, the EBA shall calibrate the technical standards taking into consideration any possible interactions between the regulatory requirements established in this Regulation and the regulatory requirements established in the existing Union law.

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

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

6a. The EBA, in close cooperation with ESMA and the ECB, shall issue guidelines with a view to establishing the common reference parameters of the stress test scenarios to be included in the stress tests in accordance with paragraph 3a. The guidelines shall be updated periodically taking into account the latest market developments.

Chapter 6

Recovery and orderly redemption

Article 41a

Recovery plan

1. An issuer of asset-referenced tokens shall draw up and maintain a recovery plan providing for measures to be taken by the issuer to restore the compliance with the requirements applicable to the reserve of assets when the issuer fails to comply with those requirements.

   The plan shall also include the preservation of its services related to the asset-referenced tokens issued, the timely recovery of operations and the fulfilment of the issuer's obligations in the case of events that pose a significant risk of disrupting operations.

   The plan shall include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options, including:

   (a) liquidity fees on redemptions;

   (b) limits to the amount of asset-referenced tokens to be redeemed on any working day;

   (c) suspension of redemptions.

2. The issuer of asset-referenced tokens shall notify the recovery plan to the competent authority within 6 months after authorisation, or of the date of issuing the asset-referenced tokens for the first time in accordance with Article 15a. The competent authority shall require amendments where necessary to ensure a proper implementation of the plan referred to in paragraph 1 and notify its decision to the issuer within 40 working days. Any such request of the competent authority has to be implemented by the issuer within 40 working days. The recovery plan shall be reviewed and updated regularly.

   Where applicable, the issuer shall also notify the plan to its resolution and prudential supervisory authorities in parallel to the competent authority.

3. Where the issuer fails to comply with requirements applicable to the reserve of assets or, due to a rapidly deteriorating financial condition, is likely in the near future to not comply with requirements applicable to the reserve of assets, the competent authority shall have the power to require the issuer to implement one or more of the arrangements or measures set out in the recovery plan or to update such a recovery plan when the circumstances are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure compliance with applicable requirements.

4. In the circumstances under paragraph 3, the competent authority shall have the power to temporarily suspend redemption of asset-referenced tokens, provided that the suspension is justified having regard to the interests of the holders of asset-referenced tokens and the financial stability.

4a. Where applicable, the competent authority shall notify the resolution and prudential supervisory authorities of the issuer of any measure taken according to paragraphs 3 and 4.

5. EBA, after consultation of the ESMA, shall issue guidelines to specify the format of the recovery plan and the information to be contained in the recovery plan.

Article 42

Redemption Plan

1. Issuers of asset-referenced tokens shall draw up and maintain an operational plan to support an orderly redemption of each asset-referenced tokens to be implemented upon a decision by the competent authority where the issuer is unable or likely to be unable to comply with its obligations, including in the case of insolvency or resolution, where applicable, or withdrawal of authorisation of the issuer without prejudice to the commencement of a crisis prevention measure or crisis management measure as defined is Article 2(1), point (101) and (102) of Directive 59/2014/EU or resolution measure as defined in Article 2, point (11) of Regulation (EU) 2021/23.

2. The plan referred to in paragraph 1 shall demonstrate the ability of the issuer of asset-referenced tokens to carry out the redemption of outstanding asset-referenced tokens issued without causing undue economic harm to their holders or to the stability of the markets of the reserve assets.

   The plan shall include contractual arrangements, procedures and systems, including the designation of a temporary administrator according to the applicable law, to ensure the equitable treatment between all holders of asset-referenced tokens and that the holders of asset-referenced tokens are paid in a timely manner with the proceeds from the sale of the remaining reserve assets.

   The plan shall ensure the continuity of any critical activity performed by issuers or by any third-party entities which are necessary for the orderly redemption.

3. The issuer of asset-referenced tokens shall notify the plan referred to in paragraph 1 to the competent authority within 6 months after authorisation, or of the date of issuing the asset-referenced tokens for the first time in accordance with Article 15a. The competent authority shall require amendments where necessary to ensure a proper implementation of the plan referred to in paragraph 1 and notify its decision to the issuer within 40 working days. Any such request of the competent authority has to be implemented by the issuer within 40 working days. The plan shall be reviewed and updated regularly.

4. Where applicable, the competent authority shall notify the resolution authority and prudential supervisory authority of the issuer of the plan referred to in paragraph 1.

   The resolution authority may examine the redemption plan with a view to identifying any actions in the redemption plan which may adversely impact the resolvability of the issuer and make recommendations to the competent authority with regard to those matters.

5. EBA shall issue guidelines on

   (a) the content of the plan referred to in paragraph 1 and on the periodicity for review taking into account the size, complexity, nature and business model of the asset-referenced token;

   (b) the triggers for implementation of the plan referred to in paragraph 1.

TITLE IV

Electronic money tokens

Chapter 1

Requirements to be fulfilled by all issuers of electronic money tokens

Article 43

Requirements for the offer or admission to trading of e-money tokens

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

   (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; and

   (b) [moved down]

   (c) publishes a crypto-asset white paper notified to the competent authority, in accordance with Article 46.

1a. E-money tokens shall be deemed to be 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC.

An e-money token which references a Union currency shall be deemed to be offered to the public in the Union.

1b. Title II and III of Directive 2009/110/EC shall apply with respect to e-money tokens unless otherwise stated in this Title of this Regulation.

2. The potential offeror of e-money tokens shall notify its competent authority 40 working days before the date on which it intends to issue e-money tokens.

2a. Paragraph 1 shall not apply to to issuers of e-money tokens exempted in accordance with Article 9(1) of Directive 2009/110/EC.

(a) [deleted]

(b) [deleted]

2b. Paragraph 1, 1a and 1b shall not apply to e-money tokens exempted in accordance with Articles 1(4) and 1(5) of Directive 2009/110/EC.

2c. In the cases referred to in paragraphs 2a and 2b, the issuers of electronic money tokens shall produce a crypto-asset white paper and notify such crypto-asset white paper to the competent authority in accordance with Article 46.

3. Upon written consent from the issuer, other persons may offer or seek admission to trading of the e-money tokens. Those entities shall comply with Articles 45 and 48.

Article 44

Issuance and redeemability of electronic money tokens

1. By derogation of Article 11 of Directive 2009/110/EC, only the following requirements regarding the issuance and redeemability of e-money tokens shall apply to issuers of e-money tokens.

2. Holders of e-money tokens shall be provided with a claim on the issuer of such e-money tokens. Any e-money token that does not provide all holders with a claim shall be prohibited.

3. Issuers of such e-money tokens shall issue e-money tokens at par value and on the receipt of funds.

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 in funds other than e-money.

5. Issuers of e-money tokens shall prominently state the conditions of redemption in the crypto-asset white paper as referred to in Article 46 paragraph 2 subparagraph (d).

6. Without prejudice to Article 41a, redemption shall not be subject to a fee.

7. [deleted]

   (a) [deleted]

   (b) [deleted]

Article 45

Prohibition of interests

1. By derogation to Article 12 of Directive 2009/110/EC, no issuer of e-money tokens shall grant interest in relation to e-money tokens.

2. When providing crypto-asset services related to e-money tokens, crypto-asset service providers shall not grant interest.

3. For the purposes of the application of the prohibition of interest of paragraphs 1 and 2, any remuneration or any other benefit related to the length of time during which a holder of e-money tokens holds such e-money tokens, shall be treated as interest. This includes net compensation or discount, with an equivalent effect of an interest received by the holder, directly from the issuer or through third parties, directly associated to the e-money token or through the remuneration or pricing of other products.

Article 46

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

1. Before offering e-money tokens to the public in the EU or seeking an admission of such e-money tokens to trading on a trading platform, the issuer of e-money tokens shall publish a crypto-asset white paper on its website.

2. The crypto-asset white paper referred to in paragraph 1 shall contain all the following information as specified in Annex III:

   (a) an information about the issuer of e-money tokens;

   (aa) where applicable, identity of the person other than the issuer that offer or seek admission to trading pursuant to Article 43(3) and the reason why that person offer or seek admission to trading;

   (b) information about the e-money tokens

   (c) information about the offer to the public of e-money tokens or their admission to trading

   (d) information on the rights and obligations attached to the e-money tokens

   (e) the information on the underlying technology

   (f) information on the risks

   (g) information on principal adverse environmental and climate related impact of the consensus mechanism used to issue the crypto-asset;

   (h) a clear risk warning that the crypto-asset is not covered by the investor compensation schemes in accordance with Directive 97/9/EC of the European Parliament and of the Council;

(ha) a clear risk warning that the crypto-asset is not covered by the deposit guarantee schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council.

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

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

4. The crypto-asset white paper shall also include a statement from the management body of the issuer of e-money confirming that the crypto-asset white paper complies with the requirements of this Title and specifying that, to their best knowledge, the information presented in the crypto-asset white paper is correct and that there is no significant omission.

5. The crypto-asset white paper shall include a summary, placed after the statement referred to in the previous paragraph, which shall, in brief and non-technical language, provide key information in relation to the offer to the public of e-money tokens or admission of such e-money tokens to trading, and in particular about the essential elements of the e-money tokens. The summary shall be presented and laid out in easily understandable words and in a clear and comprehensible form, using characters of readable size. The summary shall indicate that:

(a) the holders of e-money tokens have a redemption right at any moment and at par value;

(b) the conditions of redemption.

6. The crypto-asset white paper shall contain the date of the notification.

6a. The crypto-asset white paper shall contain a table of content.

7. The crypto-asset white paper shall be drawn up in an official language of the home Member State, or in a language customary in the sphere of international finance.

If the crypto-asset is offered in another Member State, the crypto-asset white paper shall be drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance.

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

8a. ESMA, in cooperation with EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 8.

8b. ESMA shall submit those draft implementing technical standards to the Commission by [please insert date 12 months after entry into force].

8c. 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.

9. The issuer of e-money tokens shall notify its draft crypto-asset white paper to the relevant competent authority as referred to in Article 3(1) point (24)(b) at least 20 working days before its date of its publication.

Relevant competent authorities shall not require an ex ante approval of a crypto-asset white paper.

10. Any significant new factor, material mistake or material inaccuracy which is capable of affecting the assessment of the e-money token shall be described in a modified crypto-asset white paper prepared by the issuer and notified to the relevant competent authority, in accordance with paragraph 9.

10a. The relevant competent authority as referred to in Article 3(1) point (24)(b) shall communicate to ESMA, within 5 working days after receiving the information from the issuer, the information referred to in Article 91a(4) and the starting date of the intended offer to the public or intended admission to trading and of any change thereof.

ESMA shall make such information available in the register referred to in Article 91a on the starting date of the offer to the public or admission to trading or in the case of a modified crypto-asset white paper as soon as it is published.

10b. The relevant competent authority as referred to in Article 3(1) point (24)(b) shall communicate to ESMA the withdrawal of authorisation of the issuer of the e-money token.

10c ESMA, in cooperation with EBA, shall develop draft regulatory technical standards in accordance with Article 10-14 of Regulation (EU) No 1095/2010 on the content, methodologies and presentation of information referred to in letter (g) of paragraph 2 of this Article in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment- related adverse impacts.

When developing the draft regulatory technical standards, ESMA shall consider the various types of consensus mechanisms used to validate crypto-asset transactions, their incentive structures and the use of energy, renewable energy and natural resources, the production of waste, and greenhouse gas emission ESMA shall update the regulatory technical standards in the light of regulatory and technological developments.

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

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

Article 47

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

1. Where an issuer, or its administrative, management or supervisory bodies have infringed Article 46, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of such e-money tokens may claim damages from that issuer of e-money tokens or its management body for damage caused to her or him due to that infringement.

   With regard to civil liability, as referred to in the previous subparagraph, any contractual exclusion thereof shall be deprived of any legal effect.

2. It shall be the responsibility of the holders of e-money tokens to present evidence indicating that the issuer of e-money tokens has infringed Article 46 and that such an infringement had an impact on his or her decision to buy, sell or exchange the said e-money tokens.

3. A holder of e-money tokens shall not be able to claim damages for the information provided in a summary as referred to in Article 46(5), including the translation thereof, except where:

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

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

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

Article 48

Marketing communications

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

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

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

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

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

2. The marketing communications shall contain a clear and unambiguous statement that all the holders of the e-money tokens have a redemption right at any time and at par value on the issuer.

3. Competent authorities shall not require an ex ante approval of any marketing communications.

   Marketing communications and the respective modifications shall be published on the issuer's website.

   The marketing communications shall be notified to the relevant competent authority upon request.

   Prior to the publication of the white paper no marketing communications can be disseminated. Such restriction does not affect the ability of the issuer to conduct market soundings.

Article 49

Investment of funds received in exchange of e-money tokens

Funds received by issuers of e-money tokens in exchange of e-money tokens and safeguarded in accordance with Article 7(1) of Directive 2009/110/EC shall be:

(a) invested in secure, low-risk assets denominated in the same currency as the one referenced by the e-money token that qualify as highly liquid financial instruments with minimal market risk, credit risk and concentration risk, in accordance with Article 34(1) of this Regulation, and

(b) deposited in a separate account in a credit institution.

In any case, at least 30% of the funds received shall always be deposited in a separate account in a credit institution.

Article 49a

Recovery and redemption plan

Articles 41a and 42 shall apply to issuers of e-money tokens.

Chapter 2

Significant e-money tokens

Article 50

Classification of e-money tokens as significant e-money tokens

1. The EBA shall classify e-money tokens as significant e-money tokens on the basis of the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), and where at least the same three of the following criteria are met in either in the first report following the authorization, as referred to in paragraph 2, or in at least two consecutive reports.

2. Competent authorities of the issuer's home Member State shall provide the EBA and the ECB with information on the criteria referred to in Article 39(1) of this Article and specified in accordance with Article 39(6) on at least a biannual basis.

   Where the issuer is established in a Member State the currency of which is not the euro, or where a currency that is not the euro is referenced by the e-money token, competent authorities shall transmit the information referred to in the previous subparagraph to the central bank of that Member State.

3. Where the EBA is of the opinion that the e-money token meets the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuer of that e-money token and the competent authority of the issuer's home Member State, to the ECB and to central bank as referred to in paragraph 2.

The EBA shall give 20 working days, to issuer of such e-money token, the competent authorities, the ECB and the central bank as referred to in the second subparagraph of paragraph 2, to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an e-money token is a significant e-money token within 60 working days after the notification referred to in paragraph 3 and immediately notify the issuers of such e-money tokens and their competent authorities thereof.

5. The supervisory responsibilities on issuers of significant e-money tokens shall be transferred to the EBA in accordance with Article 98(4), 20 working days after the notification of the decision referred to in paragraph 4.

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

5a. As a derogation of paragraph 5, the supervisory responsibilities of the issuers of significant e-money tokens denominated in an official currency of the EU other than the euro, where at least 80% of the number of holders and of the volume of transactions of the significant e-money tokens are concentrated in the home Member State shall not be transferred to the EBA.

The competent authority of the issuer home Member State shall provide the EBA with information on the application of the derogation criteria referred to in the first subparagraph, on a yearly basis.

For the purpose of the first sub-paragraph a transaction shall be considered to take place in the home Member State when the payer or the payee are established in the home Member State.

5b. EBA shall assess yearly the eligibility of the e-money token under its supervision on the basis of information provided by the issuers.

Where the EBA is of the opinion that e-money token no longer meet the criteria referred to in paragraph 1, as specified in accordance with paragraph 6, the EBA shall prepare a draft decision to that effect and notify that draft decision to the issuers of those e-money tokens and the competent authority of the issuer's home Member State, to the ECB and to central bank as referred to in paragraph 2.

The EBA shall give issuers of such e-money token, their competent authorities, the ECB and the central bank referred in the second sub-paragraph 20 working days to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4d. The EBA shall take its final decision on whether an e-money token is no longer a significant e-money token within 60 working days after receiving the information referred to in paragraph 5a and immediately notify the issuers of such e-money token and their competent authorities thereof.

4e. The supervisory responsibilities on issuers of significant e-money token shall be transferred to the competent authority of the home Member State 20 working days after the notification of the decision referred to in paragraph 5b.

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

Article 51

Voluntary classification of e-money tokens as significant e-money tokens

1. An issuer of e-money tokens, authorised as a credit institution or as an 'electronic money institution' as defined in Article 2(1) of Directive 2009/110/EC or applying for such authorisation, may indicate that they wish to classify their e-money tokens as significant e-money tokens. In that case, the competent authority shall immediately notify the request from the issuer or applicant issuer to EBA.

   For the e-money tokens to be classified as significant, the issuer or applicant issuer of e-money tokens shall demonstrate, through a detailed programme of operations, that it is likely to meet at least three criteria referred to in Article 39(1), as specified in accordance with Article 39(6).

2. Where, on the basis of the programme of operation, the EBA is of the opinion that the e-money tokens meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to the competent authority of the issuer or applicant issuer's home Member State, to the ECB and to the central bank as referred to in Article 50(2) 2nd subparagraph.

   The EBA shall give the entities referred in the first sub paragraph the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

3. Where, on the basis of the programme of operation, the EBA is of the opinion that the e-money tokens do not meet the criteria referred to in Article 39(1), as specified in accordance with Article 39(6), the EBA shall prepare a draft decision to that effect and notify that draft decision to competent authority of the issuer or applicant issuer's home Member State, to the ECB and to the central bank as referred to in Article 50(2).

   The EBA shall give the entities referred in the first sub paragraph the opportunity to provide observations and comments in writing prior the adoption of its final decision. The EBA shall duly consider those observations and comments.

4. The EBA shall take its final decision on whether an e-money token is a significant e-money token within 60 working days after the notification referred to in paragraph 1 and immediately notify the issuers or applicant issuer of such e-money tokens and their competent authorities thereof. The decision shall be immediately notified to the issuer or applicant issuer of e-money tokens and to the competent authority of its home Member State.

5. The supervisory responsibilities on issuers of e-money tokens shall be transferred to the EBA in accordance with Article 98(4), 20 working days after the notification of the decision referred to in paragraph 4.

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

5a. As a derogation of paragraph 5 the supervisory responsibilities of the issuers of significant e-money tokens denominated in an official currency of the EU other than the euro, where at least 80% of the number of holders and of the volume of transactions of the significant e-money tokens are expected to be concentrated in the home Member State shall not be transferred to the EBA.

The competent authority of the issuer home Member State shall provide the EBA with information on the application of the derogation criteria referred to in the first subparagraph, on a yearly basis.

For the purpose of the first sub-paragraph a transaction shall be considered to take place in the home Member State when the payer or the payee are established in the home Member State.

Article 52

Specific additional obligations for issuers of e-money tokens

E-money institutions issuing significant e-money tokens, shall apply the following requirements:

(a) Articles 32, 33, 34 and Article 41, paragraphs 1, 2, 3 and 3a of this Regulation, instead of Article 7 of Directive 2009/110/EC;

(b) [moved above]

(c) Articles 30(6a), 31(2), 31(3), 31(3b) and 41(4) of this Regulation, instead of Article 5 of Directive 2009/110/EC;

(d) [deleted]

2 Competent authorities of the home Member States may require e-money institutions issuing e-money tokens which are not significant, to comply with any requirement provided in paragraph 1 where necessary to address risks that those provisions aim to address, such as liquidity risks, operational risks, or risks arising from non-compliance with requirements for management of reserve of assets.

3. Articles 19a, 19b and 20(1b) are applicable to e-money tokens denominated in a currency which is not an official currency of an EU Member State.

TITLE V

Authorisation and operating conditions for Crypto-Asset Service providers

Chapter 1

Authorisation of crypto-asset service providers

Article 53

Authorisation

1. No person shall, within the Union, provide crypto-asset services unless it is a legal person or other undertaking that has been authorised as crypto-asset service provider in accordance with Article 55 or it is a credit institution, central securities depository, investment firm, market operator, e-money institution, a management company of UCITS, or an alternative investment fund that is allowed to provide crypto-asset services in accordance with Article 53a.

   Crypto-asset service providers authorised in accordance with Article 55 shall have a registered office in a Member State of the Union where they carry out at least part of their crypto-assets services. They shall have the place of effective management in the Union and at least one of the directors shall be resident in the EU.

   Crypto-asset services may be provided by undertakings that are not legal persons only if their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons and they are subject to equivalent prudential supervision appropriate to their legal form.

   Crypto-asset service providers authorised in accordance with Article 55 shall, at all times, meet the conditions for their authorisation.

   A person who is not a crypto-asset service provider shall not use a name, or a corporate name, or issue marketing communications or use any other process suggesting that he or she is a crypto-asset service provider or that is likely to create confusion in that respect.

2. Competent authorities that grant an authorisation under Article 55 shall ensure that such authorisation specifies the crypto-asset services that crypto-asset service providers are authorised to provide.

3. Crypto-asset service provider shall be allowed to provide crypto-asset services throughout the Union, either through the right of establishment, including through a branch, or through the freedom to provide services.

   Crypto-asset service providers that provide crypto-asset services on a cross-border basis shall not be required to have a physical presence in the territory of a host Member State.

4. Crypto-asset service providers seeking to add crypto-asset services to their authorisation in accordance with Article 55 shall request the competent authorities that granted the authorisation for an extension of their authorisation by complementing and updating the information referred to in Article 54. The request for extension shall be processed in accordance with Article 55.

Article 53a

Provision of crypto-asset services by authorised credit institutions, central securities depositories, investment firms, market operators, e-money institutions, management companies of UCITS and alternative investment fund managers

1. A credit institution may provide crypto-asset services if it notifies the competent authority of the home Member State, at least 40 working days before providing those services for the first time, with the information specified in paragraph 6.

1a. A central securities depository authorized under Regulation 909/2014/EU, may only provide the service of custody and administration of crypto-assets on behalf of third parties, if it notifies the competent authority of the home Member State, at least 40 working days before providing this service for the first time, with the information specified in paragraph 6.

For the purpose of the above paragraph, the crypto-asset service defined in Article 3(1), point (10), of this Regulation is deemed equivalent to the service of 'providing, maintaining or operating securities accounts in relation to the settlement service referred to in Section B of the Annex of Regulation 909/2014/EU.

2. An investment firm may provide crypto-asset services in the EU equivalent to the investment services and activities for which it is specifically authorised under Directive 2014/65/EU if it notifies the competent authority of the home Member State, at least 40 working days before providing those services for the first time, with the information specified in paragraph 6.

For the purpose of paragraph 2:

(-a) the crypto-asset service defined in Article 3(1), point (10), of this Regulation are deemed to be equivalent to the ancillary service referred to in point (1) of Section B of Annex I to Directive 2014/65/EU;

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

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

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

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

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

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

(g) the crypto-asset services defined in Article 3(1), point (17a), of this Regulation are deemed to be equivalent to the investment services referred to in point (4) of Section A of Annex I to Directive 2014/65/EU.

3. An electronic money institution authorised under Directive 2009/110/EC may only provide the crypto-asset services "custody and administration of crypto-assets on behalf of third parties" and "providing transfer services for crypto-assets on behalf of third parties" with regard to the e-money tokens it issues, if it notifies the respective competent authority, at least 40 working days before providing those services for the first time, with the information specified in paragraph 6.

4. A management company of a UCITS or an alternative fund investment manager may provide crypto-asset services in the EU equivalent to the management of portfolios of investment and non-core services for which it is authorised under Directive 2009/65/EC or Directive 2011/61/EU to provide non-core services and if it notifies the competent authority of the home Member State, at least 40 working days before providing those services for the first time, with the information specified in paragraph 6.

For the purpose of paragraph 4:

(a) the crypto-asset services defined in Article 3(1), point (16), of this Regulation are deemed to be equivalent to the non-core service referred in Article 6(4), point (b) sub-point (iii) of Directive 2011/61/EU;

(b) the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be equivalent to the non-core service referred in Article 6(4), point (b) sub-point (i) of Directive 2011/61/EU and Article 6(3), point (b) sub-point (i) of Directive 2009/65/EC;

(c) the crypto-asset services defined in Article 3(1), point (17a), of this Regulation are deemed to be equivalent to the service referred in Article 6(4), point (a) of Directive 2011/61/EU and Article 6(3), point (a) of Directive 2009/65/EC.

5. A market operator authorised under Directive 2014/65/EU may operate a trading platform for crypto-assets defined in Article 3(1), point (11), if it notifies the competent authority of the home Member State, at least 40 working days before providing that service for the first time, with the information specified in paragraph 6.

6. For the purpose of paragraphs 1 to 5 the following information shall be notified:

(a) a programme of operations setting out the types of crypto-asset services that the applicant crypto-asset service provider wishes to provide, including where and how these services are to be marketed;

(b) a description of the internal control mechanism, policies and procedures to ensure compliance with the national measures transposing Directive (EU) 2015/849, risk assessment framework, including for the management of ML/TF risks, and business continuity plan.

(c) the technical documentation of the IT systems and security arrangements, and a description in non-technical language;

(d) a description of the procedure for the segregation of client's crypto-assets and funds;

(e) where there is the intention to ensure the custody and administration of crypto-assets on behalf of third parties, a description of the custody policy;

(f) where there is the intention to operate a trading platform for crypto-assets, a description of the operating rules of the trading platform and of the procedures and system to detect market abuse;

(g) where there is the intention to exchange crypto-assets for funds or crypto-assets for other crypto-assets, a description of the non-discriminatory commercial policy governing the relationship with clients as well as a description of the methodology for determining the price of the crypto-assets they propose for exchange against funds or other crypto-assets;

(h) where there is intention to execute orders for crypto-assets on behalf of third parties, a description of the execution policy;

(j) where there is intention to provide advice or portfolio management, proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider or managing portfolios on behalf of the applicant crypto-asset provider have the necessary knowledge and expertise to fulfil their obligations;

(m) the type of crypto-assets (asset-references tokens, e-money tokens and/or other crypto-assets) to which the crypto-asset service will relate.

6a. Competent authorities receiving the notification as refer to in paragraph 1 to 5, shall within 20 working days of receipt of such information, assess whether all required information has been provided. They shall immediately inform the entities referred to in paragraphs 1 to 5 when they conclude some information is missing and thus that the notification is not complete. Where the information is not complete, they shall set a deadline by which the entities referred to in paragraphs 1 to 5 are to provide any missing information.

The deadline for providing any missing information should not exceed 20 working days. For that period, the period under paragraphs 1 to 5 shall be suspended. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the period under paragraphs 1 to 5.

The crypto-asset service provider shall not start providing the crypto-asset services where the notification is incomplete.

Entities referred to in paragraphs 1 to 5 shall not be required to submit the information under paragraph 6 which was previously submitted to the competent authority where such information would be identical.

When submitting the information under paragraph 6, the entities referred to in paragraphs 1 to 5 shall explicitly state that the information not resubmitted is still up to date.

7. Where providing crypto-asset services the credit institution, central securities depositary, investment firm, market operator, electronic money institution, alternative investment funds manager and management company referred to in paragraphs 1 to 5 shall not be subject to Articles 54, 55, 56, 60, 74 and 75.

9. The right referred to in paragraphs 1 to 5 shall be revoked upon the withdrawal of the authorisation which enabled the credit institution, central securities depository, investment firm, electronic money institution, alternative investment funds manager, management company and market operator to provide crypto-asset services without an authorisation pursuant to Article 53.

9a. The competent authority shall communicate to ESMA the information specified in Article 91a(5) and the starting date of the intended provision of crypto-asset services and of any change thereof after verifying the completeness of the information received in paragraph 6.

ESMA shall make such information available in the register referred to in Article 91a on the starting date of the provision of crypto-asset services.

10. ESMA shall, in close cooperation with EBA, develop draft regulatory technical standards to specify the information that a notification shall contain, in accordance with paragraph 6.

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

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

11. The ESMA shall, in close cooperation with EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the notification from paragraph 6.

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

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

Article 53b

Provision of services at the exclusive initiative of the client

1. Where a client established or situated in the Union initiates at its own exclusive initiative the provision of a crypto-asset service or activity by a third- country firm, the requirement for authorisation under Article 53 shall not apply to the provision of that service or activity by the third- country firm to that person, including a relationship specifically relating to the provision of that service or activity.

   Without prejudice to intragroup relationships, where a third- country firm, including through an entity acting on its behalf or having close links with such third- country firm or any other person acting on behalf of such entity, solicits clients or potential clients in the Union, regardless of the means of communication used for solicitation, promotion or advertising in the Union, it shall not be deemed to be a service provided at the own exclusive initiative of the client.

   The second subparagraph shall apply regardless of any contractual clause or disclaimer purporting to state otherwise, including any clause or disclaimer that the third country firm will be deemed to respond to the exclusive initiative of the client.

2. An initiative by a client as referred to in paragraph 1 shall not entitle the third- country firm to market new categories of crypto-assets or crypto-asset services to that client otherwise than trough authorisation in accordance with Article 53.

3. ESMA shall develop by [18 months after date of entry into force] guidelines to specify when a third country firm is deemed to solicit clients established or situated in the Union.

   In order to foster convergence and promote consistent supervision with regard to this risk of this Article circumvention, ESMA shall also issue guidelines on supervision practices to detect and prevent circumventions of this Article.

Article 54

Application for authorisation

1. Legal persons and other undertakings that intend to provide crypto-asset services shall apply for authorisation as a crypto-asset service provider to the competent authority of their home Member State.

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

   (a) the name, including the legal name and any other commercial name to be used, the legal entity identifier of the applicant crypto-asset service provider, the website operated by that provider, a contact email address, a contact telephone number and its physical address;

   (b) the legal form of the applicant crypto-asset service provider;

   (c) the articles of association of the applicant crypto-asset service provider;

   (d) a programme of operations setting out the types of crypto-asset services that the applicant crypto-asset service provider wishes to provide, including where and how these services are to be marketed;

   (e) a description of the applicant crypto-asset service provider's governance arrangements;

   (f) proof that members of the management body of the applicant crypto-asset service provider are of sufficiently good repute and possess appropriate knowledge, skills and experience to manage that provider;

(g) the identities of any natural or legal persons that have qualifying holdings in the applicant crypto-asset service provider, and the amounts of those holdings, as well as proof that those persons are of good repute;

(h) a description of the applicant crypto-asset service provider's internal control mechanism, policies, controls and procedures to identify, assess and manage risks, including ML/TF risks, and business continuity plan;

(i) the technical documentation of the IT systems and security arrangements, and a description in non-technical language;

(j) proof that the applicant crypto-asset service provider meets the prudential safeguards in accordance with Article 60;

(k) a description of the applicant crypto-asset service provider's procedures to handle complaints from clients;

(l) a description of the procedure for the segregation of client's crypto-assets and funds;

(m) where the applicant crypto-asset service provider intends to operate a trading platform for crypto-assets, a description of the operating rules of the trading platform and of the procedure and system to detect market abuse;

(n) where the applicant crypto-asset service provider intends to ensure the custody and administration of crypto-assets on behalf of third parties, a description of the custody policy;

(o) where the applicant crypto-asset service provider intends to operate a trading platform for crypto-assets, a description of the operating rules of the trading platform;

(p) where the applicant crypto-asset service provider intends to exchange crypto-assets for funds or crypto-assets for other crypto-assets, a description of the non-discriminatory commercial policy governing the relationship with clients as well as a description of the methodology for determining the price of the crypto-assets they propose for exchange against funds or other crypto-assets;

(q) where the applicant crypto-asset service provider intends to execute orders for crypto-assets on behalf of third parties, a description of the execution policy;

(r) where the applicant crypto-asset service provider intends to provide advice or portfolio management, proof that the natural persons giving advice on behalf of the applicant crypto-asset service provider or managing portfolios on behalf of the applicant crypto-asset provider have the necessary knowledge and expertise to fulfil their obligations;

(rb) where the applicant crypto-asset service provider intends to provide transfer services for crypto-assets on behalf of third parties, information on the manner in which such transfer services will be provided;

(v) the type of crypto-assets to which the crypto-asset service will relate;

(y) a description of the applicant crypto-asset service provider's internal control mechanisms, including policies and procedures to comply with the obligations in relation to AML/CFT under Directive (EU) 2015/849 of the European Parliament and of the Council.

2a. For the purposes of paragraph 2, point (f) and (g), applicant crypto-asset service provider shall provide proof of all of the following:

(a) for all the members of the management body, the absence of a criminal record in respect of convictions or the absence of relevant penalties under national rules in force in the fields of commercial law including insolvency law, financial services legislation, anti-money laundering legislation, legislation countering the financing of terrorism, fraud, or professional liability;

(b) that the members of the management body of the applicant crypto-asset service provider collectively possess sufficient knowledge, skills and experience to manage the crypto-asset service provider and that those persons are required to commit sufficient time to perform their duties;

(ba) for all natural or legal persons that have qualifying holdings in the applicant crypto-asset service provider the absence of a criminal record in respect of convictions or the absence of relevant penalties under national rules in force in the fields of commercial law including insolvency law, financial services legislation, anti-money laundering legislation, legislation countering the financing of terrorism, fraud, or professional liability;

3. Competent authorities shall not require an applicant crypto-asset service provider to provide any information they have already received pursuant to Directive 2009/110/EC, Directive 2014/65/EU, Directive 2015/2366/EU or national law applicable to crypto-asset services prior to the entry into force of this Regulation, provided that such information or documents are still up-to-date and are accessible to the competent authorities.

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

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

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

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

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

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

Article 55

Assessment of the application for authorisation and grant or refusal of authorisation

1. Competent authorities shall acknowledge receipt of the applications under Article 54(1) promptly, and in any event within 5 working days following receipt thereof, in writing to the applicant crypto-asset service provider.

1a. The competent authority shall, within 25 working days of receipt assess whether that application is complete by checking that the information listed in Article 54(2) has been submitted. Where the application is not complete, the authorities shall set a deadline by which the applicant crypto-asset service providers are to provide the missing information.

2. Competent authorities may refuse to review applications where such applications remain incomplete after the deadline referred to in paragraph 1a.

3. Once an application is complete, competent authorities shall promptly notify the applicant crypto-asset service provider thereof.

4. Before granting or refusing an authorisation as a crypto-asset service provider, competent authorities shall consult the competent authorities of another Member State in any of the following cases:

(a) the applicant crypto-asset service provider is a subsidiary of a crypto-asset service provider, a credit institution, a central securities depository, an investment firm, a market operator, a management company, an alternative fund manager, a payment institution, an insurance undertaking, an e-money institution or institution for occupational retirement provision authorised in that other Member State;

(b) the applicant crypto-asset service provider is a subsidiary of the parent undertaking of a crypto-asset service provider, a credit institution, a central securities depository, an investment firm, a market operator, a management company, an alternative fund manager, a payment institution, an insurance undertaking, an e-money institution or institution for occupational retirement provision authorised in that other Member State;

(c) the applicant crypto-asset service provider is controlled by the same natural or legal persons who control a crypto-asset service provider, a credit institution, a central securities depository, an investment firm, a market operator, a management company, an alternative fund manager, a payment institution, an insurance undertaking, an e-money institution or institution for occupational retirement provision authorised in that other Member State.

40a. To verify that the applicant has not been subject of an investigation, competent authorities may consult the AML/CFT competent authorities and the FIU before granting or refusing an authorisation as a crypto-asset service provider.

4a. Before granting or refusing an authorisation as a crypto-asset service provider that operates establishments or relies on third parties established in high-risk third countries identified in accordance with Article 9 of Directive (EU) 2015/849, competent authorities shall ensure that the applicant crypto-asset service provider complies with national provisions transposing Articles 26(2), 45(3) and 45(5) of that Directive.

4b. Before granting or refusing an authorisation as a crypto-asset service provider, competent authorities shall ensure, where appropriate, that the applicant crypto-asset service providers have put in place appropriate procedures to comply with the national provisions transposing Article 18a(1) of Directive (EU) 2015/849, and in addition, complies with the national provisions transposing Article 18a(3) of Directive (EU) 2015/849.

4c. Where close links exist between the crypto-asset service provider and other natural or legal persons, the competent authority shall grant authorisation only if those links do not prevent the effective exercise of the supervisory functions of the competent authority.

4e. The competent authority shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the crypto-asset service provider has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

5. Competent authorities shall, within 40 working days from the date of receipt of a complete application, assess whether the applicant crypto-asset service provider complies with the requirements of this Title and shall adopt a fully reasoned decision granting or refusing an authorisation as a crypto-asset service provider. It shall notify the applicant of its decision within 5 days of the date of that decision. That assessment shall take into account the nature, scale and complexity of the crypto-asset services that the applicant crypto-asset service provider intends to provide.

Competent authorities shall refuse authorisation where there are objective and demonstrable grounds that:

(a) the management body of the applicant crypto-asset service provider poses a threat to its effective, sound and prudent management and business continuity, and to the adequate consideration of the interest of its clients and the integrity of the market, or exposes the crypto-asset service provider to a serious risk of ML/TF;

(aa) the members of the management body do not meet the criteria set out in Article 61(1), first subparagraph;

(ab) the natural or legal persons that have qualifying holdings do not meet the criteria of sufficiently good repute set out in Article 61(2), first subparagraph;

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

5a. ESMA and EBA shall jointly develop guidelines on the assessment of the suitability of the members of the management body of the crypto-asset service provider and of the natural or legal persons that have qualifying holdings in the crypto-asset service provider.

ESMA and EBA shall develop the guidelines referred to in subparagraph 1 within 12 months from the date of entry into force of this Regulation.

5a. The competent authorities may, during the assessment period under paragraph 5, and no later than on the 20th working day of that period, request any further information that is necessary to complete the assessment. Such request shall be made in writing to the applicant crypto-asset service provider and shall specify the additional information needed.

The assessment period under paragraph 5 shall be suspended for the period between the date of request for information by the competent authorities and the receipt of a response thereto by the applicant crypto-asset service provider. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

6. Competent authorities shall inform ESMA of all authorisations granted under this Article, all refusals of authorisations and all the information referred to in Article 91a(5). ESMA shall make available in the register referred to in Article 91a the information on the successful applications.

7. [deleted]

Article 56

Withdrawal of authorisation

1. Competent authorities shall withdraw the authorisation in any of the following situations if the crypto-asset service provider:

   (a) has not used its authorisation within 12 months of the date of granting of the authorisation;

   (b) has expressly renounced to its authorisation;

   (c) has not provided crypto-asset services for 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;

   (ea) fails to have in place effective systems, procedures and arrangements to detect and prevent money laundering and terrorist financing in accordance with Directive (EU) 2015/849;

(f) has seriously infringed this Regulation, including the provisions relating to the protection of holders of crypto-assets or clients of crypto-asset service providers, or market integrity.

2. Competent authorities shall have the power to withdraw authorisations in any of the following situations:

(a) the crypto-asset service provider have infringed national law transposing Directive (EU) 2015/849 in respect of money laundering or terrorist financing;

(b) the crypto-asset service provider has lost its authorisation as a payment institution in accordance with Article 13 of Directive (EU) 2015/2366 or its authorisation as an electronic money institution granted in accordance with Title II of Directive 2009/110/EC and that crypto-asset service provider has failed to remedy the situation within 40 calendar days.

3. Where a competent authority withdraws an authorisation, the competent authority shall notify ESMA and the single contact points of the host Member States without undue delay. ESMA shall make such information available in the register referred to in Article 91a.

4. Competent authorities may limit the withdrawal of authorisation to a particular service.

5. Before withdrawing the authorisation, competent authorities shall consult the competent authority of another Member State where the crypto-asset service provider concerned is:

(a) a subsidiary of a crypto-asset service provider authorised in that other Member State;

(b) a subsidiary of the parent undertaking of a crypto-asset service provider authorised in that other Member State;

(c) controlled by the same natural or legal persons who control a crypto-asset service provider authorised in that other Member State.

5a. Before withdrawing the crypto-asset service provider's authorisation, competent authorities may consult the authority charged with supervising compliance of the crypto-asset service provider with AML/CFT rules.

6. The EBA, ESMA and any competent authority of a host Member State may at any time request that the competent authority of the home Member State examines whether the crypto-asset service provider still complies with the conditions under which the authorisation was granted, when there are grounds to believe it may no longer be the case.

7. Crypto-asset service providers shall establish, implement and maintain adequate procedures ensuring the timely and orderly transfer of the clients' crypto-assets and funds to another crypto-asset service provider when an authorisation is withdrawn.

Article 57

[deleted]

Article 58

Cross-border provision of crypto-asset services

1. Crypto-asset service providers that intend to provide crypto-asset services in more than one Member State, shall submit the following information to the competent authority of the home Member State:

   (a) a list of the Member States in which the crypto-asset service provider intends to provide crypto-asset services;

   (b) the starting date of the intended provision of the crypto-asset services;

   (c) a list of all other activities provided by the crypto-asset service provider not covered by this Regulation.

   (d) the crypto-asset services that it intends to provide on a cross-border basis.

2. The competent authority of the home Member State shall, within 10 working days of receipt of the information referred to in paragraph 1 communicate that information to the single point of contact of the host Member States, to ESMA and to the EBA. ESMA shall make such information available in the register referred to in Article 91a.

3. The competent authority of the Member State which granted authorisation shall inform the crypto-asset service provider concerned of the communication referred to in paragraph 2 without delay.

4. Crypto-asset service providers may start to provide crypto-asset services in a Member State other than their home Member State from the date of the receipt of the communication referred to in paragraph 3 or at the latest 15 calendar days after having submitted the information referred to in paragraph 1.

Chapter 2

Obligation for all crypto-asset service providers

Article 59

Obligation to act honestly, fairly and professionally in the best interest of clients and information to clients

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

2. Crypto-asset service providers shall provide their clients with fair, clear and not misleading information, including in marketing communications, which shall be identified as such. Crypto-asset service providers shall not, deliberately or negligently, mislead a client in relation to the real or perceived advantages of any crypto-assets.

3. Crypto-asset service providers shall warn clients of risks associated with transactions in crypto-assets.

   When providing services referred to in Article 3(1), point 11, 12, 13, 17 or 17a, crypto-asset service providers shall provide the clients with hyperlinks to any crypto-asset white papers for the crypto-assets in relation to which they are providing the services.

4. Crypto-asset service providers shall make their pricing, costs and fee policies publicly available, in a prominent place on their website.

4a. Crypto-asset service providers shall make publicly available, in a prominent place on their website, information related to principal adverse environmental and climate-related impact of the consensus mechanism used to issue each crypto-asset in relation to which they provide services. This information may be taken from the crypto-asset white papers.

4b. ESMA, in cooperation with EBA, shall develop draft regulatory technical standards in accordance with Article 10-14 of Regulation (EU) No 1095/2010 on the content, methodologies and presentation of information referred to in paragraph 4a of this Article in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment- related adverse impacts.

When developing the draft regulatory technical standards, ESMA shall consider the various types of consensus mechanisms used to validate crypto-asset transactions, their incentive structures and the use of energy, renewable energy and natural resources, the production of waste, and greenhouse gas emission. ESMA shall update the regulatory technical standards in the light of regulatory and technological developments.

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

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

Article 60

Prudential requirements

1. Crypto-asset service providers shall, at all times, have in place prudential safeguards equal to an amount of at least the higher of the following:

   (a) the amount of permanent minimum capital requirements indicated in Annex IV, depending on the nature of the crypto-asset services provided;

   (b) one quarter of the fixed overheads of the preceding year, reviewed annually.

2. The prudential safeguards referred to in paragraph 1 shall take any or a combination of the following forms:

(a) own funds, consisting of Common Equity Tier 1 items referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions pursuant to Articles 46 and 48 of that Regulation;

(b) an insurance policy covering the territories of the Union where crypto-asset services are provided or a comparable guarantee.

3. Crypto-asset service providers that have not been in business for one year from the date on which they started providing services shall use, for the calculation referred to in paragraph 1, point (b), the projected fixed overheads included in their projections for the first 12 months' of service provision, as submitted with their application for authorisation.

4. The insurance policy referred to in paragraph 2 shall be disclosed to the public through the crypto-asset service provider's website and shall have at least all of the following characteristics:

(a) it has an initial term of no less than one year;

(b) the notice period for its cancellation is at least 90 days;

(c) it is taken out from an undertaking authorised to provide insurance, in accordance with Union law or national law;

(d) it is provided by a third-party entity.

5. The insurance policy referred to in paragraph 2, point (b) shall include, coverage against the risk of:

(a) loss of documents;

(b) misrepresentations or misleading statements made;

(c) acts, errors or omissions resulting in a breach of:

(i) legal and regulatory obligations;

(ii) the duty to act honestly, fairly and professionally towards clients;

(iii) obligations of confidentiality;

(d) failure to establish, implement and maintain appropriate procedures to prevent conflicts of interest;

(e) losses arising from business disruption or system failures;

(f) where applicable to the business model, gross negligence in safeguarding of clients' crypto-assets and funds;

(g) liability of the CASP vis-à-vis clients under Art. 67(8).

6. For the purposes of paragraph 1 point (b), crypto-asset service providers shall calculate their fixed overheads for the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders in their most recently audited annual financial statements or, where audited statements are not available, in annual financial statements validated by national supervisors:

   (a) staff bonuses and other remuneration, to the extent that those bonuses and that remuneration depend on a net profit of the crypto-asset service providers in the relevant year;

   (b) employees', directors' and partners' shares in profits;

   (c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;

   (d) non-recurring expenses from non-ordinary activities.

Article 61

Governance requirements

1. Members of the management body of crypto-asset service providers shall have sufficiently good repute and possess knowledge, experience and skills to perform their duties. They shall demonstrate that they are capable of committing sufficient time to effectively perform their duties.

   In particular, they shall not have been convicted of offences relating to money laundering or terrorist financing or other offences that would affect their good repute.

2. Natural or legal persons that have qualifying holdings shall have sufficiently good repute.

In particular, they shall not have been convicted of offences relating to money laundering or terrorist financing or other offences that would affect their good repute.

Where the influence exercised by the persons referred to in subparagraph 1 is likely to be prejudicial to the sound and prudent management of a crypto-asset service provider, competent authorities shall take appropriate measures to put an end to that situation. Such measures may include applications for judicial orders or the imposition of sanctions against directors and those responsible for management, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

3. [deleted]

3a. Crypto-asset service providers shall establish adequate policies and procedures sufficient to ensure compliance with its obligations under this Regulation.

4. Crypto-asset service providers shall employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them, and taking into account the scale, the nature and range of crypto-asset services provided.

5. The management body shall assess and periodically review the effectiveness of the policies arrangements and procedures put in place to comply with the obligations set out in Chapters 2 and 3 of this Title and take appropriate measures to address any deficiencies.

6. Crypto-asset service providers shall take all reasonable steps to ensure continuity and regularity in the performance of their crypto-asset services. To that end, crypto-asset service providers shall employ appropriate and proportionate resources and procedures, including resilient and secure ICT systems in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council.

They shall establish a business continuity policy, which shall include ICT business continuity as well as disaster recovery plans set-up in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council [DORA Regulation] aimed at ensuring, in the case of an interruption to their ICT systems and procedures, the preservation of essential data and functions and the maintenance of crypto-asset services, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of crypto-asset services.

7. Crypto-asset service providers shall have mechanisms, systems and procedures in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council as well as effective procedures and arrangements for risk assessment to comply with the obligations in relation to money laundering and terrorist financing under national provisions transposing Directive (EU) 2015/849 of the European Parliament and of the Council, and to prevent and detect money laundering and terrorist financing in accordance with that Directive. They shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of those mechanisms, systems and procedures, taking into account the scale, the nature and range of crypto-asset services provided, and take appropriate measures to address any deficiencies.

Crypto-asset service providers shall have systems and procedures to safeguard the security, integrity and confidentiality of information in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council.

8. Crypto-asset service providers shall arrange for records to be kept of all crypto-asset services, activities, orders, and transactions undertaken by them. Those records shall be sufficient to enable competent authorities to fulfil their supervisory tasks and to perform the enforcement actions, and in particular to ascertain whether the crypto-asset service provider has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.

The records kept in accordance with this paragraph shall be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the competent authority before the five years have elapsed, for a period of up to seven years.

9. [moved to Article 80a]

9c. To ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards to specify:

(a) the measures ensuring continuity and regularity in the performance of the crypto-asset services referred to in paragraph 6;

(b) the records to be kept of all crypto-asset services, orders and transactions undertaken referred to in paragraph 8.

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

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

Article 62

Information to competent authorities

Crypto-asset service providers shall notify without any delay their competent authority of any changes to their management body, before the new members exercise any kind of activity, and shall provide their competent authority with all the necessary information to assess compliance with Article 61.

Article 63

Safekeeping of clients' crypto-assets and funds

1. Crypto-asset service providers that hold crypto-assets belonging to clients or the means of access to such crypto-assets shall make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the crypto-asset service provider's insolvency, and to prevent the use of a client's crypto-assets for their own account.

2. Where their business models or the crypto-asset services require holding clients' funds other than e-money tokens, crypto-asset service providers shall have adequate arrangements in place to safeguard the rights of clients and prevent the use of clients' funds for their own account.

3. Crypto-asset service providers shall, by the end of the business day following the day the funds other than e-money tokens were received, place the client's funds with a central bank or a credit institution.

   Crypto-asset service providers shall take all necessary steps to ensure that the clients' funds other than e-money tokens held with a central bank or a credit institution are held in an account or accounts separately identifiable from any accounts used to hold funds belonging to the crypto-asset service provider.

4. Crypto-asset service providers may themselves, or through a third party, provide payment services related to the crypto-asset service they offer, provided that the crypto-asset service provider itself, or the third-party, is authorised to provide those services under Directive (EU) 2015/2366.

Where payment services are provided crypto-asset service providers shall inform their clients of all of the following:

(a) the nature and terms and conditions of those services, including references to the applicable national law and to the clients' right; and

(b) whether those services are provided by them directly or by a third party.

5. Paragraphs 2 and 3 of this Article shall not apply to crypto-asset service providers that are electronic money institutions as defined in Article 2, point 1 of Directive 2009/110/EC, payment institutions as defined in Article 4, point (4), of Directive (EU) 2015/2366 or credit institutions.

Article 64

Complaint handling procedure

1. Crypto-asset service providers shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients and shall publish descriptions of those procedures.

2. Clients shall be able to file complaints with crypto-asset service providers free of charge.

3. Crypto-asset service providers shall make available to clients the template for complaints and shall keep a record of all complaints received and any measures taken in response thereof.

3a. Crypto-asset service providers shall inform clients of the possibility to file a complaint.

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

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

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

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

Article 65

Identification, prevention, management and disclosure of conflicts of interest

1. Crypto-asset service providers shall maintain and operate an effective policy to identify, prevent, manage and disclose conflicts of interest, taking into account the scale, the nature and range of crypto-asset services provided, between themselves and:

(a) their shareholders or any person directly or indirectly linked to them by control;

(b) their managers and employees;

(c) their clients, or between one client and another client.

2. Crypto-asset service providers shall disclose to their clients and potential clients the general nature and sources of conflicts of interest and the steps taken to mitigate them.

Crypto-asset service providers shall make such disclosures on their website in a prominent place.

3. The disclosure referred to in paragraph 2 shall be made on an electronic format and shall include sufficient detail, taking into account the nature of each client and to enable each client

to take an informed decision about the service in the context of which the conflicts of interest arises.

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

5. ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards to specify:

   (a) the requirements for the maintenance or operation of internal rules referred to in paragraph 1, taking into account the scale, the nature and range of crypto-asset services provided;

   (b) the details and methodology for the content of the disclosure referred to in paragraphs 2, 3 and 4.

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

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

Article 66

Outsourcing

1. Crypto-asset service providers, that rely on third parties for the performance of operational functions, shall take all reasonable steps to avoid additional operational risk. They shall remain fully responsible for discharging all of their obligations under this Title and shall ensure at all times that all the following conditions are complied with:

   (a) outsourcing does not result in the delegation of the responsibility of the crypto-asset service providers;

   (b) outsourcing does not alter the relationship between the crypto-asset service providers and their clients, nor the obligations of the crypto-asset service providers towards their clients;

   (c) outsourcing does not change the conditions for the authorisation of the crypto-asset service providers;

   (d) third parties involved in the outsourcing cooperate with the competent authority of the crypto-asset service providers' home Member State and the outsourcing does not prevent the exercise of supervisory functions, including on-site access to acquire any relevant information needed to fulfil those functions;

   (e) crypto-asset service providers retain the expertise and resources necessary for evaluating the quality of the services provided, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;

   (f) crypto-asset service providers have direct access to the relevant information of the outsourced services;

(g) crypto-asset service providers ensure that third parties involved in the outsourcing meet the standards laid down in the relevant data protection law which would apply if the third parties were established in the Union.

For the purposes of point (g), crypto-asset service providers are responsible for ensuring that the standards laid down in the relevant data protection legislation are set out in the contract referred to in paragraph 3.

2. Crypto-asset service providers shall have a policy on their outsourcing, including on contingency plans and exit strategies taking into account the scale, the nature and range of crypto-asset services provided.

3. Crypto-asset service providers shall enter into a written agreement with any third parties involved in outsourcing. That written agreement shall specify the rights and obligations of both the crypto-asset service providers and of the third parties concerned, and shall allow the crypto-asset service providers concerned to terminate that agreement.

4. Crypto-asset service providers and third parties shall, upon request, make available to the competent authorities and the relevant authorities all information necessary to enable those authorities to assess compliance of the outsourced activities with the requirements of this Title.

Article 66a

Orderly wind-down of providers

Crypto-asset service providers carrying out one of the services referred to in Articles 67 to 71 shall have in place a plan that is appropriate to support an orderly wind-down of their activities under applicable national law, including the continuity or recovery of any critical activities performed by those service providers. That plan shall demonstrate the ability of the crypto-asset service provider to carry out an orderly wind-down without causing undue economic harm to its clients.

Chapter 3

Obligations for the provision of specific crypto-asset services

Article 67

Custody and administration of crypto-assets on behalf of third parties

1. Crypto-asset service providers that provide a crypto-asset service of custody and administration on behalf of third parties shall enter into an agreement with their clients to specify their duties and their responsibilities. Such agreement shall include at least all the following:

   (a) the identity of the parties to the agreement;

   (b) the nature of the service provided and a description of that service;

   (c) the means of communication between the crypto-asset service provider and the client, including the client's authentication system;

   (d) a description of the security systems used by the crypto-assets service provider;

   (e) fees, costs and charges applied by the crypto-asset service provider;

   (f) the law applicable to the agreement;

   (g) the custody policy.

2. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall keep a register of positions, opened in the name of each client, corresponding to each client's rights to the crypto-assets. Where relevant, crypto-asset service providers shall record as soon as possible, in that register any movements following instructions from their clients. In such case, their internal procedures shall ensure that any movement affecting the registration of the crypto-assets is evidenced by a transaction regularly registered in the client's position register.

3. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall establish a custody policy with internal rules and procedures to ensure the safekeeping or the control of such crypto-assets, or the means of access to the crypto-assets, such as cryptographic keys.

   Those rules and procedures shall minimise the risk of a loss of clients' crypto-assets or the rights related to those assets or the means of access to the crypto-assets due to frauds, cyber threats or negligence.

   A summary of the custody policy must be made available to clients on their request in an electronic format.

4. Where applicable, crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall facilitate the exercise of the rights attached to the crypto-assets. Any event likely to create or modify the client's rights shall be recorded in the client's position register immediately.

   In case of changes to the underlying distributed ledger technology or any other event likely to create or modify the client's rights, the client shall be entitled to any crypto-assets or any rights newly created on the basis and to the extent of the client's positions at the time of the event's occurrence by such change, except when a valid agreement signed with the custodian pursuant to paragraph 1 prior to the event explicitly provides otherwise.

5. Crypto-asset providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall provide their clients, at least once every three months and at each request of the client concerned, with a statement of position of the crypto-assets recorded in the name of those clients. That statement of position shall be made in an electronic format. The statement of position shall mention the crypto-assets concerned, their balance, their value and the transfer of crypto-assets made during the period concerned.

   Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall provide their clients as soon as possible with any information about operations on crypto-assets that require a response from those clients.

6. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall ensure that necessary procedures are in place to

return crypto-assets held on behalf of their clients or the means of access as soon as possible to those clients.

7. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall segregate holdings of crypto-assets on behalf of their clients from their own holdings and ensure that the means of access to crypto-assets of their clients are clearly identified as such. They shall ensure that, on the DLT, their clients' crypto-assets are held on separate addresses from those on which their own crypto-assets are held.

8. Crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties shall be liable to their clients for the loss of any crypto-assets or of the means of access to the crypto-assets as a result of an incident that is attributable to the provision of the relevant service or the operation of the service provider. The liability of the crypto-asset service provider shall be capped at the market value of the crypto-asset lost at the time the loss occurred.

   Events not attributable to the crypto-assets service provider include any event for which the crypto-asset service provider could demonstrate that it occurred independently of the provision of the relevant service, or operations of the crypto-asset service provider, such as a problem inherent in the operation of the distributed ledger that the crypto-asset service provider does not control.

9. If crypto-asset service providers that are authorised for the custody and administration of crypto-assets on behalf of third parties make use of other providers for the custody and administration of the crypto-assets they hold on behalf of third parties, they shall only make use of crypto-asset service providers authorised in accordance with Article 53.

   Crypto-asset service providers that are authorised for the custody and administer crypto-assets on behalf of third parties and that make use of other providers for the custody and administration of crypto-assets shall inform their customers thereof.

10. The crypto-assets held in custody shall be insulated from crypto-asset service provider 's estate in the interest of the clients of the crypto-asset service provider under relevant law, such that creditors of the crypto-asset service provider have no recourse on the crypto-assets held in custody, in particular in the event of insolvency.

10a. Crypto-asset service provider shall ensure that the crypto-assets held in custody are operationally segregated from the crypto-asset service provider's estate.

Article 68

Operation of a trading platform for crypto-assets

1. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall lay down, maintain and implement clear and transparent operating rules for the trading platform. These operating rules shall at least:

   (a) set the approval processes, including customer due diligence requirements commensurate to the ML/TF risk presented by the applicant in accordance with Directive (EU) 2015/849, that are applied before admitting crypto-assets to the trading platform;

   (b) define exclusion categories, if any, which are the types of crypto-assets that will not be admitted to trading on the trading platform, if any;

   (c) set out the policies, procedures and the level of fees, if any, for the admission of trading of crypto-assets to the trading platform;

   (d) set objective, non-discriminatory rules and proportionate criteria for participation in the trading activities, which promote fair and open access to the trading platform for clients willing to trade;

   (e) set non-discretionary rules and procedures to ensure fair and orderly trading and objective criteria for the efficient execution of orders;

(f) set conditions for crypto-assets to remain accessible for trading, including liquidity thresholds and periodic disclosure requirements;

(g) set conditions under which trading of crypto-assets can be suspended;

(h) set procedures to ensure efficient settlement of both crypto-assets and funds.

For the purposes of point (a), the operating rules shall clearly state that a crypto-asset shall not be admitted to trading on the trading platform, where a crypto-asset white paper has not been published in the cases required by this Regulation.

Before admitting a crypto-asset to trading, crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that the crypto-asset complies with the operating rules of the trading platform and assess the suitability of the crypto-asset concerned. When assessing the suitability of a crypto-asset, the trading platform shall evaluate in particular the reliability of the solutions used and the potential association to illicit or fraudulent activities, taking into account the experience, track record and reputation of the issuer and its development team. The trading platform shall also assess the suitability of the crypto-assets benefiting from the exemption set out in Articles 4(2).

The operating rules of the trading platform for crypto-assets shall prevent the admission to trading of crypto-assets which have inbuilt anonymisation function unless the holders of the crypto-assets and their transaction history can be identified by the crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets.

2. The operating rules referred to in paragraph 1 shall be drawn up in an official language of the home Member State, or in a language customary in the sphere of international finance.

If crypto-asset services are provided in another Member State, the operating rules referred to in paragraph 1 shall be drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance.

3. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall not deal on own account on the trading platform for crypto-assets they operate, even when they are authorised for the exchange of crypto-assets for funds or for the exchange of crypto-assets for other crypto-assets.

3a. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets are only allowed to engage in matched principal trading where the client has consented to the process. Crypto-asset service providers shall provide the competent authority with information explaining its use of matched principal trading. The competent authority shall monitor the crypto-asset service providers' engagement in matched principal trading, ensure that it continues to fall within the definition of such trading and that their engagement in matched principal trading does not give rise to conflicts of interest between the crypto-asset service providers and their clients.

4. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall have in place effective systems, procedures and arrangements to ensure that their trading systems:

(a) are resilient;

(b) have sufficient capacity to deal with peak order and message volumes;

(ba) are able to ensure orderly trading under conditions of severe market stress;

(c) are able to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;

(d) are fully tested to ensure that conditions under points (a), (b) and (c) are met;

(e) are subject to effective business continuity arrangements to ensure continuity of their services if there is any failure of the trading system;

(f) are able to prevent or detect market abuse;

(g) are sufficiently robust to prevent their abuse for ML/TF purposes.

4a. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall inform their competent authority when they identify cases of market abuse or attempted market abuse occurring on or through its systems.

5. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public any bid and ask prices and the depth of trading interests at those prices which are advertised for crypto-assets through the systems of the trading platform for crypto-assets. The crypto-asset service providers concerned shall make that information available to the public during the trading hours on a continuous basis.

6. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make public the price, volume and time of the transactions executed in respect of crypto-assets traded on their trading platforms. They shall make details of all such transactions public as close to real-time as is technically possible.

7. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall make the information published in accordance with paragraphs 5 and 6 available to the public on a reasonable commercial basis and ensure non-discriminatory access to that information. That information shall be made available free of charge 15 minutes after publication in a machine readable format and remain published for at least 2 years.

8. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall initiate the final settlement of a crypto-asset transaction on the DLT within 24 hours of the transaction being executed on the trading platform, or in the case of transactions settled outside the DLT, on the closing of the day at the latest.

9. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall ensure that their fee structures are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse as referred to in Title VI.

10. Crypto-asset service providers that are authorised for the operation of a trading platform for crypto-assets shall maintain resources and have back-up facilities in place to be capable of reporting to their competent authority at all times.

10a. Crypto-asset service providers that are authorised for the operation of a trading platform shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in crypto-assets which are advertised through their systems, or give the competent authority access to the order book so that the competent authority is able to monitor trading. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order.

10b. ESMA shall develop draft regulatory technical standards to specify:

(a) The offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public as referred to in paragraphs 1, 5 and 6;

(b) The content and format of order book records to be maintained as specified in paragraph (10a).

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the date of application of the Regulation].

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

Article 69

Exchange of crypto-assets against funds *or exchange of crypto-assets against other crypto-assets*

1. Crypto-asset providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall establish a non-discriminatory commercial policy that indicates, in particular, the type of clients they accept to transact with and the conditions that shall be met by clients.

2. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall publish a firm price of the crypto-assets or a method for determining the price of the crypto-assets they propose for exchange against funds or other crypto-assets, and any applicable limit defined by the crypto-asset service provider to the amount to be exchanged.

3. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall execute the clients' orders at the prices displayed at the time where the order is final. Crypto-asset service providers shall inform their clients of the conditions to consider their order as final.

4. Crypto-asset service providers that are authorised for exchanging crypto-assets against funds or other crypto-assets shall publish the details of the transactions concluded by them, including transaction volumes and prices.

Article 70

Execution of orders for crypto-assets on behalf of clients

1. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall take all necessary steps to obtain, when executing orders, the best possible result for their clients taking into account the best execution factors of price, costs, speed, likelihood of execution and settlement, size, nature, conditions of custody of the crypto-assets or any other consideration relevant to the execution of the order, unless the crypto-asset service provider concerned executes orders for crypto-assets following specific instructions given by its clients.

2. To ensure compliance with paragraph 1, a crypto-asset service provider that is authorised to execute orders for crypto-assets on behalf of third parties shall establish and implement effective execution arrangements. In particular, they shall establish and implement an order execution policy to allow them to obtain, for their clients' orders, the best possible result. In particular, this order execution policy shall provide for the prompt, fair and expeditious execution of clients' orders and prevent the misuse by the crypto-asset service providers' employees of any information relating to clients' orders.

3. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall provide appropriate and clear information to their clients on their order execution policy and any significant change to it. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the crypto-asset service provider for the client. Crypto-asset service providers shall obtain prior consent from their clients regarding the order execution policy.

4. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with their execution policy and to demonstrate to the competent authority, at its request, their compliance with this Article.

5. Where the order execution policy provides for the possibility that clients orders may be executed outside a trading platform, the crypto-asset service provider shall inform its clients about that possibility and obtain the prior express consent of their clients before proceeding to execute such orders, either in the form of a general agreement or in respect to individual transactions.

6. Crypto-asset service providers that are authorised to execute orders for crypto-assets on behalf of third parties shall monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements, taking account of, inter alia, the information published under paragraph 2. Crypto-asset service providers shall notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.

Article 71

Placing of crypto-assets

1. Crypto-asset service providers that are authorised for placing crypto-assets shall communicate the following information to the offeror, to the person seeking admission to trading, or to any third party acting on their behalf, before concluding a contract with them:

   (a) the type of placement considered, including whether a minimum amount of purchase is guaranteed or not;

   (b) an indication of the amount of transaction fees associated with the service for the proposed operation;

   (c) the considered timing, process and price for the proposed operation;

   (d) information about the targeted purchasers.

   Crypto-asset service providers that are authorised for placing crypto-assets shall, before placing the crypto-assets concerned, obtain the agreement of the issuers or any third party acting on their behalf as regards points (a) to (d).

2. The rules on conflicts of interest referred to in Article 65 shall have specific and adequate procedures in place to prevent, monitor, manage and potentially disclose any conflicts of interest arising from the following situations:

   (a) the crypto-asset service providers place the crypto-assets with their own clients;

   (b) the proposed price for placing crypto-assets has been overestimated or underestimated.

   (c) incentives, including non-monetary, paid or granted by the offeror to the crypto-asset service provider.

Article 72

Reception and transmission of orders on behalf of third parties

1. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall establish and implement procedures and arrangements which provide for the prompt and proper transmission of client's orders for execution on a trading platform for crypto-assets or to another crypto-asset service provider.

2. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall not receive any remuneration, discount or non-monetary benefit for routing clients' orders received from clients to a particular trading platform for crypto-assets or to another crypto-asset service provider.

3. Crypto-asset service providers that are authorised for the provision of the reception and transmission of orders on behalf of third parties shall not misuse information relating to pending clients' orders, and shall take all reasonable steps to prevent the misuse of such information by any of their employees.

Article 73

Advice on crypto-assets and portfolio management of crypto-assets

1. Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall assess whether crypto-asset services or crypto-assets are suitable for the clients or potential clients, considering their knowledge and

experience in investing in crypto-assets, their investment objectives including risk tolerance, and their financial situation including their ability to bear losses.

1a. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall in good time before providing advice on crypto-assets inform potential clients of the following:

(a) whether the advice is provided on an independent basis;

(b) whether the advice is based on a broad or on a more restricted analysis of different crypto-assets and, in particular, whether the range is limited to crypto-assets issued or offered by entities having close links with the crypto-asset service provider or any other legal or economic relationships, such as contractual relationships, that are so close as to pose a risk of impairing the independent basis of the advice provided.

Crypto-asset service providers shall also provide potential clients with information on all costs and associated charges, including the cost of advice, where relevant, the cost of crypto-assets recommended or marketed to the client and how the client is permitted to pay for it, also encompassing any third-party payments.

Where a crypto-asset provider informs the client that advice is provided on an independent basis, that provider shall:

(a) assess a sufficient range of crypto-assets available on the market which must be sufficiently diverse to ensure that the client's investment objectives can be suitably met and must not be limited to crypto-assets issued or provided by:

(i) the provider itself or by entities having close links with the provider; or

(ii) other entities with which the crypto-asset provider has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided;

(b) not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the crypto-asset provider's duty to act in the best interest of the client must be clearly disclosed and are excluded from this point.

Crypto-asset service providers that are authorised to provide portfolio management of crypto-assets shall not accept and retain fees, commissions or any monetary or nonmonetary benefits paid or provided by an issuer, offeror, person seeking admission to trading, or any third party, or a person acting on behalf of a third party, in relation to the provision of the service to their clients.

Where a crypto-asset provider informs the client that advice is provided on a non-independent basis, that provider can receive inducements under the conditions that the payment or benefit:

(a) is designed to enhance the quality of the relevant service to the client; and

(b) does not impair compliance with the CASP's duty to act honestly, fairly and professionally in accordance with the best interest of its clients.

The existence, nature and amount of the payment or benefit referred to in the second subparagraph, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant crypto-assets service.

2. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall ensure that natural persons giving advice or information about crypto-assets or a crypto-asset service on their behalf possess the necessary knowledge and competence to fulfil their obligations. Member States shall publish the criteria to be used for assessing such knowledge and competence.

3. For the purposes of the assessment referred to in paragraph 1, crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall obtain from the client or potential client the necessary information regarding his knowledge of, and experience in investing, including in crypto-assets, his investment objectives, including risk tolerance, his financial situation including his ability to bear losses and his basic understanding of risks involved in purchasing crypto-assets so as to enable the crypto-asset service provider to recommend to the client or potential client whether or not the crypto-assets are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.

Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall warn clients or potential clients that:

(a) due to their nature, the value of crypto-assets might fluctuate;

(b) the crypto-assets might be subject to full or partial losses;

(d) the crypto-assets might not be liquid;

(e) where applicable, the crypto-assets are not covered by the investor compensation schemes in accordance with Directive 97/9/EC of the European Parliament and of the Council;

(ea) the crypto-assets are not covered by the deposit guarantee schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council.

4. Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall establish, maintain and implement policies and procedures to enable them to collect and assess all information necessary to conduct this assessment for each client. They shall take reasonable steps to ensure that the information collected about their clients or potential clients is reliable.

5. Where clients do not provide the information required pursuant to paragraph 3, or where crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets consider that the crypto-asset services or crypto-assets are not suitable for the clients, they shall not recommend such crypto-asset services or crypto-assets, nor begin the provision of portfolio management service.

6. Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall for each client regularly review the assessment referred to in paragraph 1 at least every two years after the initial assessment made in accordance with that paragraph.

7. Once the assessment referred to in paragraph 1 or its review under paragraph 6 has been performed, crypto-asset service providers that are authorised to provide advice on crypto-assets shall provide clients with a report on suitability specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the client. That report shall be made and communicated to the clients in an electronic format. That report shall, as a minimum:

(a) include an updated information on the assessment referred to in paragraph 1; and

(b) provide an outline of the advice given.

The report should make clear that the advice is based on the client's knowledge and experience in investing in crypto-assets, his investment objectives, including his risk tolerance and financial situation, including his ability to bear losses.

8. Crypto-asset service providers that are authorised to provide portfolio management of crypto-assets shall provide periodic statements to the clients in an electronic format of the portfolio management activities carried out on behalf of that client. The periodic statements shall contain a fair and balanced review of the activities undertaken and of the performance of the portfolio during the reporting period, an updated statement of how the activities undertaken meet the client's preferences, objectives and other characteristics of the client, as well as an updated information on the assessment referred to in paragraph 1, or its review under paragraph 6.

The periodic statement referred to in the previous paragraph shall be provided every three months, except when the client has an access to an online system, which qualifies as an electronic format, where up-to-date valuations of the client's portfolio and an updated information on the assessment referred to in paragraph 1 can be accessed, and the service provider has evidence that the client has accessed a valuation at least once during the relevant quarter.

9. ESMA shall adopt by [18 months after the date of entry into force of the Regulation] guidelines specifying:

(a) the information referred to in paragraph 3;

(b) criteria for the assessment of knowledge and experience under paragraph 2; and

(c) the formats of the periodic statement referred to in paragraph 8.

Article 73a

Providing transfer services for crypto-assets on behalf of third parties

1. Crypto-asset service providers that are authorised to provide transfer services on behalf of third parties shall enter into an agreement with their clients to specify their duties and their responsibilities. Such agreement shall include at least all the following:

(a) the identity of the parties to the agreement;

(b) the modalities of the transfer provided and a description of that service;

(c) a description of the security systems used by the crypto-assets service provider;

(d) charges applied by the crypto-asset service provider;

(e) the law applicable to the agreement.

2. ESMA, in close coordination with EBA, shall draft guidelines as regards procedures and policies, including clients' rights, for crypto-asset service providers in the context of crypto-asset transfer services.

Chapter 4

Acquisition of crypto-asset service providers

Article 74

Assessment of intended acquisitions of crypto-asset service providers

1. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a crypto-asset service provider or to further increase, directly or indirectly, such a qualifying holding in a crypto-asset service provider so that the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the crypto-asset service provider would become its subsidiary (the 'proposed acquisition'), shall notify the competent authority of that crypto-asset service provider thereof in writing indicating the size of the intended holding and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4).

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

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

4. Competent authorities shall assess the intended acquisition referred to in paragraph 1 and the information required by the regulatory technical standards adopted by the Commission in accordance with Article 75(4), within 60 working days from the date of the written acknowledgement of receipt referred to in paragraph 3.

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

4a. For the purposes of this assessment, competent authorities may consult authorities charged with ensuring compliance with AML/CFT requirements and the FIU and duly consider their views.

5. When performing the assessment referred to in paragraph 4, first subparagraph, competent authorities may request from the persons referred to in paragraph 1 any additional information that is necessary to complete that assessment. Such request shall be made before the assessment is finalised, and in any case no later than on the 50th working day from the date of the written acknowledgement of receipt referred to in paragraph 3. Such requests shall be made in writing and shall specify the additional information needed.

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

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

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

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

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

Article 75

Content of the assessment of intended acquisitions of crypto-asset service providers

1. When performing the assessment referred to in Article 74(4), competent authorities shall appraise the suitability of the persons referred to in Article 74(1) and the financial soundness of intended acquisition against all of the following criteria:

   (a) the reputation of the persons referred to in Article 74(1);

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

   (c) the financial soundness of the persons referred to in Article 74(1), in particular in relation to the type of business pursued and envisaged in the crypto-asset service provider in which the acquisition is intended;

   (d) whether the crypto-asset service provider will be able to comply and continue to comply with the provisions of this Title;

   (e) whether there are reasonable grounds to suspect that, in connection with the intended acquisition, money laundering or terrorist financing within the meaning of Article 1 of

Directive (EU) 2015/849/EC is being or has been committed or attempted, or that the intended acquisition could increase the risk thereof;

(f) whether funds used to acquire the qualifying holding come from legitimate sources.

2. Competent authorities may oppose the intended acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided in accordance with Article 74(4) is incomplete or false.

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

4. To ensure consistent application of this Article, ESMA, in close cooperation with EBA, shall develop draft regulatory technical standards specifying detailed content of information that is necessary to carry out the assessment referred to in Article 74(4), first subparagraph and that shall be provided to the competent authorities at the time of the notification referred to in Article 74(1). The information required shall be relevant for a prudential assessment, be proportionate and be adapted to the nature of the persons and the intended acquisition referred to in Article 74(1).

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

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

Chapter V

Significant Crypto-Asset Service Providers

Article 75a

Identification of significant CASPs

1. A crypto asset service provider shall be considered significant if the crypto-asset service provider has at least 15 million active users, on average, in one calendar year, in the European Union, where the average is calculated as the average of the daily number of active users throughout the previous calendar year.

2. When a crypto-asset service provider meets the threshold provided in paragraph 1, it shall notify its competent authority within two months after that threshold is satisfied and provide it with the relevant information identified in paragraph 1. When the competent authority considers that the criteria under paragraph 1 is met, it shall notify ESMA.

3. Without prejudice to the responsibilities of competent authorities under this Regulation, in relation to crypto asset service providers which are significant to the EU in accordance with paragraph 1, the competent authorities of the home Member State shall update the ESMA Board of Supervisors once per year about key supervisory developments namely :

   (a) regarding ongoing or concluded authorisations;

   (b) regarding ongoing or concluded processes of withdrawal of an authorisation;

(c) regarding implemented supervisory measures in accordance with points (c), (d), (f), (g), (h), (aa), (ac) of paragraph 1 of article 82.

The competent authority of the home Member State may update ESMA more frequently, or notify it ahead of any decision.

4. The update referred to in paragraph 3 may be followed by an exchange of views at the Board of Supervisors.

5. Where appropriate, ESMA may make use of its powers under articles 29, 30, 31, 31b of Regulation (EU) 1095/2010.

TITLE VI

Prevention and Prohibition of Market Abuse involving crypto-assets

Article 76

Scope of the rules on market abuse

1. The prohibitions and requirements laid down in this Title shall apply to acts carried out by any person and that concern crypto-assets that are admitted to trading on a trading platform for crypto-assets operated by a crypto-asset service provider, or for which a request for admission to trading on such a trading platform has been made.

2. The prohibitions and requirements laid down in this Title shall also apply to any transaction, order or behaviour concerning any crypto-asset as referred to in paragraph 1, irrespective of whether or not such transaction, order or behaviour takes place on a trading platform.

3. The prohibitions and requirements laid down in this Title shall apply to actions and omissions, in the Union and in a third country, concerning the crypto-assets referred to in paragraph 1.

Article 76a

Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:

   (a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers, offerors or persons seeking admission to trading or to one or more crypto-assets, and which, if it were made public, would be likely to have a significant effect on the prices of those crypto-assets or on the price of a related crypto-asset;

   (b) for persons charged with the execution of orders concerning crypto-assets, it also means information conveyed by a client and relating to the client's pending orders in crypto-assets, which is of a precise nature, relating, directly or indirectly, to one or more issuers, offerors or persons seeking admission to trading or to one or more crypto-assets, and which, if it were made public, would be likely to have a significant effect on the prices of those crypto-assets or on the price of a related crypto-asset.

2. For the purpose of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the crypto-assets. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of crypto-assets shall mean information a reasonable holder of crypto-assets would be likely to use as part of the basis of his or her decisions.

Article 77

Disclosure of inside information

1. Issuers, offerors or persons seeking admission to trading shall inform the public as soon as possible of inside information which directly concerns them, in a manner that enables fast access and complete, correct and timely assessment of the information by the public. The issuer or offeror shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer or offeror shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

2. Issuers, offerors or persons seeking admission to trading may, on their own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

   (a) immediate disclosure is likely to prejudice the legitimate interests of the issuers, offerors or persons seeking admission to trading;

   (b) delay of disclosure is not likely to mislead the public;

   (c) issuers, offerors or persons seeking admission to trading are able to ensure the confidentiality of that information.

3. Where an issuer, offeror or a person seeking admission to trading has delayed the disclosure of inside information under paragraph 2, it shall inform the competent authority that disclosure of the information was delayed and shall provide a written explanation of how the conditions set out in paragraph 2 were met, immediately after the information is disclosed to the public. Alternatively, Member States may provide that a record of such an explanation is to be provided only upon the request of the competent authority.

3a. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine:

(a) the technical means for appropriate public disclosure of inside information as referred to in paragraph 1; and

(b) the technical means for delaying the public disclosure of inside information as referred to in paragraphs 2 and 3.

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

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

Article 78

Prohibition of insider dealing

0. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, crypto-assets to which that information relates. The use of inside information by cancelling or amending an order concerning a crypto-asset to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. The use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

1. No person shall engage or attempt to engage in insider dealing or use inside information about crypto-assets to acquire those crypto-assets, or to dispose of those crypto-assets, either directly or indirectly and either for his or her own account or for the account of a third party.

   No person shall recommend that another person engage in insider dealing or induce another person to engage in insider dealing.

2. No person that possesses inside information about crypto-assets shall:

   (a) recommend, on the basis of that inside information, that another person acquires those crypto-assets or disposes of those crypto-assets to which that information relates, or induce that person to make such an acquisition or disposal; or

   (b) recommend, on the basis of that inside information, that another person cancels or amends an order concerning those crypto-assets, or induce that person make such a cancellation or amendment.

3. The use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.

4. This Article applies in particular to any person who possesses inside information as a result of:

   (a) being a member of the administrative, management or supervisory bodies of the issuer or offeror;

   (b) having a holding in the capital of the issuer or offeror;

   (c) having access to the information through the exercise of an employment, profession duties or in relation to its role in the DLT or similar technology; or

   (d) being involved in criminal activities.

   This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Article 79

Prohibition of unlawful disclosure of inside information

1. No person that possesses inside information shall unlawfully disclose such information to any other person, except where such disclosure is made in the normal exercise of an employment, a profession or duties.

2. The onward disclosure of recommendations or inducements referred to in Article 78 (3) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

Article 80

Prohibition of market manipulation

1. No person shall engage in or attempt to engage in market manipulation which shall comprise any of the following activities:

   (a) unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour has been carried out for legitimate reasons, entering into a transaction, placing an order to trade or any other behaviour which:

      (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a crypto-asset;

      (ii) secures, or is likely to secure, the price of one or several crypto-assets at an abnormal or artificial level.

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several crypto-assets, while employing a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a crypto-asset, or secures or is likely to secure, the price of one or several crypto-assets, at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

2. The following behaviour shall, inter alia, be considered as market manipulation:

(a) securing a dominant position over the supply of or demand for a crypto-asset, which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;

(b) the placing of orders to a trading platform for crypto-assets, including any cancellation or modification thereof, by any available means of trading, and which has one of the effects referred to in paragraph 1(a), by:

(i) disrupting or delaying the functioning of the trading platform for crypto-assets or engaging into any activities that are likely to have that effect;

(ii) making it more difficult for other persons to identify genuine orders on the trading platform for crypto-assets or engaging into any activities that are likely to have that effect, including by entering orders which result in the destabilisation of the normal functioning of the trading platform for crypto-assets;

(iii) creating a false or misleading signal about the supply of, or demand for, or price of, a crypto-asset, in particular by entering orders to initiate or exacerbate a trend, or engaging into any activities that are likely to have that effect;

(c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a crypto-asset, while having previously taken positions on that crypto-asset, and profiting subsequently from the impact of the opinions voiced on the

price of that crypto-asset, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

Article 80a

1. Any person professionally arranging or executing transactions in crypto-assets shall have in place effective systems, procedures and arrangements to monitor and detect market abuse as referred to in this Title. The person shall without delay report to the competent authority as referred to in paragraph 2 any reasonable suspicion regarding orders and transactions, including cancellation or modification thereof and other aspects of the functioning of DLT such as the consensus mechanism, that there may exist circumstances that indicate that any market abuse has been committed, is being committed or is likely to be committed.

   The competent authorities receiving the notification of suspicious orders and transactions shall transmit such information immediately to the competent authorities of the trading platforms concerned.

2. Persons professionally arranging or executing transactions in crypto-assets shall be subject to the rules of notification of the Member State in which they are registered or have their head office, or, in the case of a branch, the Member State where the branch is situated. The notification shall be addressed to the competent authority of that Member State.

3. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards to specify:

(a) appropriate arrangements, systems and procedures for persons to comply with the requirements established in paragraph 1;

(b) the notification template to be used by providers to comply with the requirements established in paragraph 2;

(c) in case of cross-border market abuse situations, coordination procedures between the relevant competent authorities for the detection and sanctions.

ESMA shall submit those draft regulatory technical standards to the Commission by [18 months after the entry into force of the Regulation].

In order to ensure consistency of supervisory practices under this Article, ESMA shall also draft guidelines on supervisory practices among NCA to detect and prevent market abuse cases, if not already covered by the RTS mentioned above, by [24 months after the entry into force of the Regulation].

Title VII

Competent Authorities, the EBA and ESMA

Chapter 1

Powers of competent authorities and cooperation between competent authorities, the EBA and ESMA

Article 81

Competent authorities

1. Member States shall designate the competent authorities responsible for carrying out the functions and duties provided for in this Regulation and shall inform the EBA and ESMA thereof.

2. Where Member States designate more than one competent authority pursuant to paragraph 1, they shall determine their respective tasks and designate one or more competent authorities as a single point of contact for cross-border administrative cooperation between competent authorities as well as with the EBA and ESMA.

3. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1 and 2.

Article 82

Powers of competent authorities

1. In order to fulfil their duties under Titles II, III, IV, V and VI of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigative powers:

   (a) to require any natural or legal person to provide information and documents which the competent authority considers could be relevant for the performance of its duties;

   (b) [deleted]

   (c) to suspend, or to require a crypto-asset service provider to suspend, the provision of crypto-asset services for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

   (d) to prohibit the provision of crypto-asset services where they find that this Regulation has been infringed;

   (e) to disclose, or to require a crypto-asset servicer provider to disclose, all material information which may have an effect on the provision of the crypto-asset services in order to ensure the protection of the interests of the clients, in particular retail holders, 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 clients' interests, in particular retail holders;

(h) to require the transfer of existing contracts to another crypto-asset service provider in cases where a crypto-asset service provider's authorisation is withdrawn in accordance with Article 56, subject to the agreement of the clients and the receiving crypto-asset service provider;

(i) [deleted]

(j) [deleted]

(k) 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, offerors or persons seeking admission to trading of crypto-assets and issuers of asset-referenced tokens and e-money tokens, to amend their crypto-asset white paper or their modified cryto-asset white paper, where they find the crypto-asset white paper or the modified crypto-asset white paper does not include the information required by Articles 5, 17 or 46 of this Regulation;

(la) to require, offerors or persons seeking admission to trading of crypto-assets and issuers of asset-referenced tokens and e-money tokens, to amend their marketing communication, where they find the marketing communication does not comply with Articles 6, 25 or 48 of this Regulation;

(m) [deleted]

(n) to require offerors or persons seeking admission to trading of crypto-assets and issuers of asset-referenced tokens and e-money tokens, to include additional information in their crypto-asset white papers, where necessary for financial stability or the protection of the interests of the holders of crypto-assets, in particular retail holders;

(o) to suspend an offer to the public or an admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(p) to prohibit an offer to the public or an admission to trading of crypto-assets, including asset-referenced tokens or e-money tokens, where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;

(q) to suspend, or require a trading platform for crypto-assets to suspend, trading of the crypto-assets, including asset-referenced tokens or e-money tokens, for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(r) to prohibit trading of crypto-assets, including asset-referenced tokens or e-money tokens, on a trading platform for crypto-assets where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;

(ra) to suspend or prohibit marketing communications where there are reasonable grounds for believing that this Regulation has been infringed;

(rb) to require offerors or persons seeking admission to trading of crypto-assets, issuers of asset-referenced tokens and e-money tokens or relevant crypto-asset service providers to cease or suspend advertisements for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(s) to make public the fact that an offeror or person seeking admission to trading of crypto-assets or an issuer of asset-referenced tokens or e-money tokens, is failing to comply with its obligations;

(t) to disclose, or to require the offeror or person seeking admission to trading of crypto-assets or 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 the protection of the interests of the holders of crypto-assets, in particular retail holders, or the smooth operation of the market;

(u) to suspend, or require the relevant trading platform for crypto-assets to suspend, the crypto-assets, including asset-referenced tokens or e-money tokens, from trading where it considers that the situation of the offeror, person seeking admission to trading, or issuer, is such that trading would be detrimental to the interests of the holders of crypto-assets, in particular retail holders;

(v) where there is a reason to assume that a person is issuing asset-referenced tokens or e-money tokens without authorisation or a person is offering or seeking admission to trading on a trading platform for crypto-assets of crypto-assets other than asset-referenced tokens or e-money tokens without a crypto-asset white paper notified in accordance with Article 7, to order the immediate cessation of the activity without prior warning or imposition of a deadline;

(w) to take any type of measure to ensure that an offeror or a person seeking admission to trading of crypto-assets, an issuer of asset-referenced tokens or e-money tokens or a crypto-assets service provider comply with this Regulation including to require the cessation of any practice or conduct 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;

(z) to allow auditors or experts to carry out verifications or investigations;

(aa) to require the removal of a natural person from the management body of an issuer of asset-referenced tokens or of a crypto-asset service provider;

(ab) to request any person to take steps to reduce the size of its position or exposure to crypto-assets;

(ac) where no other effective means are available to bring about the cessation of the infringement of this Regulation and in order to avoid the risk of serious harm to the interests of clients and holders of crypto-assets:

(i) to take all necessary measures to remove content or to restrict access to an online interface or to order the explicit display of a warning to clients and holders of crypto-assets when they access an online interface;

(ii) to take all necessary measures to order a hosting service provider to remove, disable or restrict access to an online interface; or

(iii) to take all necessary measures to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it, including by requesting a third party or other public authority to implement such measures;

(ad) to require an issuer of an asset-referenced token or an e-money token, in accordance with Articles 19b(2), 20(1b), or 52(3), to introduce a minimum denomination or to limit the amount issued.

Supervisory and investigative powers exercised in relation to issuers, offerors, persons seeking admission to trading of crypto-assets and crypto-assets service providers are without prejudice to powers granted to the same or other supervisory authorities as regards those entities, including powers granted to relevant competent authorities under national laws transposing Directive 2009/110/EC and prudential supervisory powers granted to the ECB under Council Regulation (EU) 1024/2013.

2. In order to fulfil their duties under Title VI of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers in addition to powers referred to in paragraph 1:

(a) to access any document and data in any form, and to receive or take a copy thereof;

(b) to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;

(c) to enter the premises of natural and legal persons in order to seize documents and data in any form where a reasonable suspicion exists that documents or data relating to the subject matter of the inspection or investigation may be relevant to prove a case of insider dealing or market manipulation infringing this Regulation;

(d) to refer matters for criminal prosecution;

(e) to require, insofar as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to the investigation of an infringement of Articles 77, 78, 79 and 80;

(f) to request the freezing or sequestration of assets, or both;

(g) to impose a temporary prohibition on the exercise of professional activity;

(h) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring an issuer, an offeror or a person seeking admission to trading of crypto-assets or other person who has published or disseminated false or misleading information to publish a corrective statement.

3. Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in paragraphs 1 and 2.

4. Competent authorities shall exercise their functions and powers referred to in paragraphs 1 and 2 in any of the following ways:

(a) directly;

(b) in collaboration with other authorities, including authorities competent for the prevention and fight against money laundering and terrorist financing.

(c) under their responsibility by delegation to such authorities;

(d) by application to the competent judicial authorities.

5. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

6. A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.

Article 83

Cooperation between competent authorities

1. Competent authorities shall cooperate with each other for the purposes of this Regulation. Competent authorities shall render assistance to competent authorities of other Member States and EBA and ESMA. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

   Where Member States have chosen, in accordance with Article 92(1), second subparagraph, to lay down criminal penalties for an infringement of this Regulation, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for infringements of this Regulation and to provide the same information to other competent authorities as well as to the EBA and ESMA, in order to fulfil their obligation to cooperate for the purposes of this Regulation.

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:

(a) communication of relevant information could adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes;

(aa) where complying with the request is likely to adversely affect its own investigation, enforcement activities or, where applicable, 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 judgement has already been delivered in relation to such natural or legal persons for the same actions in the Member State addressed.

3. Competent authorities shall, on request, without undue delay supply any information required for the purposes of this Regulation.

4. A competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may take any of the following actions:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) share specific tasks related to supervisory activities with the other competent authorities.

A requesting competent authority shall inform the EBA and ESMA of any request.

4a. In the case of an on-site inspection or investigation referred to in paragraph 4, ESMA shall coordinate the inspection or investigation, where requested to do so by one of the competent authorities.

Where the on-site inspection or investigation referred to in paragraph 4 concerns an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, the EBA shall, where requested to do so by one of the competent authorities, coordinate the inspection or investigation.

5. The competent authorities may refer to ESMA in situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, ESMA may, in such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. By derogation to paragraph 5, the competent authorities may refer to the EBA in situations where a request for cooperation, in particular to exchange information, concerning an issuer of asset-referenced tokens or e-money tokens, or crypto-asset services related to asset-referenced tokens or e-money tokens, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, the EBA may, in such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1093/2010.

7. Competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation, and provide cross-jurisdictional assessments in the event of any disagreements.

For the purpose of the first sub-paragraph, the EBA and ESMA shall fulfil a coordination role between competent authorities and across colleges as referred to in Article 99 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.

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, in close cooperation with EBA, shall develop draft regulatory technical standards to specify the information to be exchanged between competent authorities in accordance with paragraph 1.

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

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

10. ESMA, 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.

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

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

Article 84

Cooperation with the EBA and ESMA

1. For the purpose of this Regulation, the competent authorities shall cooperate closely with ESMA in accordance with Regulation (EU) No 1095/2010 and with the EBA in accordance with Regulation (EU) No 1093/2010. They shall exchange information in order to carry out their duties under this Chapter and Chapters 1a and 2 of this Title.

2. [moved up]

3. The competent authorities shall without delay provide the EBA and ESMA with all information necessary to carry out their duties, in accordance with Article 35 of Regulation (EU) No 1093/2010 and Article 35 of Regulation (EU) No 1095/2010 respectively.

4. In order to ensure uniform conditions of application of this Article and Article 83, ESMA, in close cooperation with the EBA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and the EBA and ESMA.

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

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

Article 84a

Promotion of convergence on the classification of crypto-assets

1. ESMA, EIOPA and EBA shall jointly develop by [18 months after date of entry into force] guidelines to specify the content and form of the explanation referred to in Article 7(3) and of the legal opinions referred to in Articles 15a(1)(b)(b) and 16(2)(d), which shall include a template for the explanation or opinion and a standardised test for the classification of crypto-assets.

2. ESMA, EIOPA and EBA shall, in accordance with Article 29 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, where relevant, promote the discussion among competent authorities on the classification of the crypto-assets notified to ESMA under Article 91a(2), (3) and (4), including those that are excluded from the scope of this Regulation, in accordance with Article 2(2a), identify sources of potential divergences in the approaches of the competent authorities and, to the extent possible, promote a common approach.

3. National competent authorities of the home or the host Member States may request an opinion from ESMA, EIOPA or EBA, as appropriate, on the classification of crypto-assets, including those that are excluded from the scope of this Regulation in accordance with Article 2(2a). ESMA, EIOPA and EBA shall provide such opinion, in accordance with Article 29 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, within 15 working days following the receipt of the request by the national competent authorities.

4. ESMA, EIOPA and EBA shall jointly draw up an annual report based on the notifications received under Article 91a and on their work referred to in paragraphs 2 and 3 identifying difficulties in the classification of crypto-assets and divergences in the approaches of national competent authorities.

Article 85

Cooperation with other authorities

Where an offeror or person seeking admission to trading of crypto-assets or an issuer 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 and relevant supervisory authorities from third countries.

Article 86

Notification duties

Member States shall notify the laws, regulations and administrative provisions implementing this Title, including any relevant criminal law provisions, to the Commission, the EBA and ESMA by… [please insert date [24] months after the date of entry into force]. Member States shall notify the Commission the EBA and ESMA without undue delay of any subsequent amendments thereto.

Article 87

Professional secrecy

1. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information is permitted to be disclosed or such disclosure is necessary for legal proceedings or cases covered by national taxation or criminal law.

2. The obligation of professional secrecy shall apply to all natural or legal persons who work or who have worked for the competent authorities. Information covered by professional secrecy may not be disclosed to any other natural or legal person or authority except by virtue of provisions laid down by Union or national law.

Article 88

Data protection

With regard to the processing of personal data within the scope of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with Regulation (EU) 2016/679[50].

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[51].

Article 89

Precautionary measures

1. Where the competent authority of a host Member State has clear and demonstrable grounds for believing that irregularities have been committed by a crypto-asset service provider, by an offeror or person seeking admission to trading of crypto-assets or by an issuer of asset-referenced tokens or e-money tokens it shall notify the competent authority of the home Member State and ESMA thereof.

   Where the irregularities concern 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 notify the EBA.

2. Where, despite the measures taken by the competent authority of the home Member State, the crypto-asset service provider or the issuer, offeror or person seeking admission to trading of crypto-assets persists in infringing this Regulation, the competent authority of the host Member State, after informing the competent authority of the home Member State, ESMA

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50 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)

51 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 (OJ L 295, 21.11.2018, p. 39***).***

and where appropriate the EBA, shall take all appropriate measures in order to protect clients of crypto-asset service providers and holders of crypto-assets, in particular retail holders. This includes preventing the crypto-asset service provider, offeror or person seeking admission to trading from conducting further activities in the host Member State. The competent authority shall inform ESMA and where appropriate the EBA thereof without undue delay. ESMA, and where relevant the EBA, shall inform the Commission accordingly without undue delay.

3. Where a competent authority disagrees with any of the measures taken by another competent authority pursuant to paragraph 2 of this Article, it may bring the matter to the attention of ESMA. ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

By derogation to the first subparagraph, where the measures concern an issuer of asset-referenced tokens or e-money tokens, or a crypto-asset service related to asset-referenced tokens or e-money tokens, the competent authority may bring the matter to the attention of the EBA. The EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

Article 89a

ESMA temporary intervention powers

1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA may, where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict:

   (a) the marketing, distribution or sale of certain crypto-assets other than asset-referenced tokens or e-money tokens with certain specified features or

   (b) a type of crypto asset activity or practice.

   A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by ESMA.

2. ESMA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:

   (a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system in the Union;

   (b) regulatory requirements under Union law that are applicable to the relevant crypto-assets and crypto-asset services do not address the threat;

   (c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.

3. When taking action under this Article, ESMA shall ensure that the action:

(a) does not have a detrimental effect on the efficiency of markets in crypto-assets or on holders of crypto-assets or clients of crypto-asset services that is disproportionate to the benefits of the action, and

(b) does not create a risk of regulatory arbitrage.

Where a competent authority or competent authorities have taken a measure under Article 89b, ESMA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 89c.

4. Before deciding to take any action under this Article, ESMA shall notify competent authorities of the action it proposes.

5. ESMA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.

6. ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals, and at least every six months. Following at least two consecutive renewals and based on proper analysis in order to assess the impact on the consumer, ESMA may decide on the annual renewal of the prohibition or restriction.

7. Action adopted by ESMA under this Article shall prevail over any previous action taken by a competent authority.

8. The Commission shall adopt delegated acts in accordance with Article 121 specifying criteria and factors to be taken into account by ESMA in determining when there is a significant investor protection concern or a threat to the proper functioning or integrity of markets in crypto-assets or to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).

Article 89b

EBA temporary intervention powers

1. In accordance with Article 9(5) of Regulation (EU) No 1093/2010, EBA may, where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict:

   (a) the marketing, distribution or sale of certain asset-referenced tokens or e-money tokens with certain specified features or

   (b) a type of activity or practice related to asset-referenced tokens or e-money tokens.

   A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by EBA.

2. EBA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:

   (a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the whole or part of the financial system in the Union;

   (b) regulatory requirements under Union law that are applicable to the relevant asset-referenced tokens, e-money tokens or services related to them do not address the threat;

   (c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.

3. When taking action under this Article, EBA shall ensure that the action:

(a) does not have a detrimental effect on the efficiency of markets in crypto-assets or on holders of asset-referenced tokens or e-money tokens or clients of services on those assets that is disproportionate to the benefits of the action, and

(b) does not create a risk of regulatory arbitrage.

Where a competent authority or competent authorities have taken a measure under Article 89b, EBA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 89c.

4. Before deciding to take any action under this Article, EBA shall notify competent authorities of the action it proposes.

5. EBA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.

6. EBA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals, and at least every six months. Following at least two consecutive renewals and based on proper analysis in order to assess the impact on the consumer, EBA may decide on the annual renewal of the prohibition or restriction.

7. Action adopted by EBA under this Article shall prevail over any previous action taken by a competent authority.

8. The Commission shall adopt delegated acts in accordance with Article 121 specifying criteria and factors to be taken into account by EBA in determining when there is a significant investor protection concern or a threat to the proper functioning or integrity of markets in crypto-assets or to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).

Article 89c

Product intervention by competent authorities

1. A competent authority may prohibit or restrict the following in or from that Member State:

   (a) the marketing, distribution or sale of certain crypto-assets other than asset-referenced tokens and e-money tokens with certain specified features; or

   (b) a type of crypto asset activity or practice.

2. A competent authority may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that:

   (a) a crypto-asset gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of whole or part of the financial system within at least one Member State;

   (b) existing regulatory requirements under Union law applicable to the crypto-asset or service do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;

   (c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the crypto-asset or service;

(d) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action;

(e) the action does not have a discriminatory effect on services or activities provided from another Member State.

Where the conditions set out in the first subparagraph are fulfilled, the competent authority may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a crypto-asset has been marketed, distributed or sold to clients.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the competent authority.

3. The competent authority shall not impose a prohibition or restriction under this Article unless, not less than one month before the measure is intended to take effect, it has notified all other competent authorities and ESMA in writing or through another medium agreed between the authorities the details of:

(a) the crypto-asset or activity or practice to which the proposed action relates;

(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and

(c) the evidence upon which it has based its decision and upon which it is satisfied that each of the conditions in paragraph 2 are met.

4. In exceptional cases where the competent authority deems it necessary to take urgent action under this Article in order to prevent detriment arising from the crypto-asset or crypto-asset service referred to in paragraph 1, the competent authority may take action on a provisional basis with no less than 24 hours' written notice, before the measure is intended to take effect, to all other competent authorities and ESMA provided that all the criteria in this Article are met and that, in addition, it is clearly established that a one month notification period would not adequately address the specific concern or threat. The competent authority shall not take action on a provisional basis for a period exceeding three months.

5. The competent authority shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. The notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 2 are met. The prohibition or restriction shall only apply in relation to actions taken after the publication of the notice.

6. The competent authority shall revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.

7. The Commission shall adopt delegated acts in accordance with Article 121 specifying criteria and factors to be taken into account by competent authorities in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the of the financial system within at least one Member State referred to in paragraph 2(a).

Article 89d

Coordination by ESMA and EBA

1. ESMA or, for asset-referenced tokens and e-money tokens, EBA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 89c. In particular ESMA or, for asset-referenced tokens and e-money tokens, EBA shall ensure that action taken by a competent authority is justified and proportionate and that where appropriate a consistent approach is taken by competent authorities.

2. After receiving notification under Article 89c of any action that is to be imposed under that Article, ESMA or, for asset-referenced tokens and e-money tokens, EBA shall adopt an opinion on whether the prohibition or restriction is justified and proportionate. If ESMA or, for asset-referenced tokens and e-money tokens, EBA considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall state this in its opinion. The opinion shall be published on ESMA's or, for asset-referenced tokens and e-money tokens, EBA's website.

3. Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by ESMA or EBA under paragraph 2 or declines to take action contrary to such an opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.

Article 90

Cooperation with third countries

1. The competent authorities of Member States shall, where necessary, conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with supervisory authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. Those cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.

   A competent authority shall inform the EBA, ESMA and the other competent authorities where it proposes to enter into such an arrangement.

2. ESMA, in close cooperation with the EBA, shall, where possible, facilitate and coordinate the development of cooperation arrangements between the competent authorities and the relevant supervisory authorities of third countries.

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

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

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

3. ESMA, in close cooperation with EBA, shall also, where possible, facilitate and coordinate the exchange between competent authorities of information obtained from supervisory authorities of third countries that may be relevant to the taking of measures under Chapter 2.

4. The competent authorities shall conclude cooperation arrangements on exchange of information with the supervisory authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 87. Such exchange of information shall be intended for the performance of the tasks of those competent authorities.

Article 91

Complaint handling by competent authorities

1. Competent authorities shall set up procedures which allow clients and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to offerors and persons seeking admission to trading of crypto-assets and 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' handling procedures referred to in paragraph 1 shall be made available on the website of each competent authority and communicated to the EBA and ESMA. ESMA shall publish the references to the complaints' handling procedures related sections of the websites of the competent authorities in its crypto-asset register referred to in Article 91a.

Chapter 1a

ESMA register

Article 91a

Register of crypto-asset white papers, issuers of asset-referenced tokens and e-money tokens, and crypto-asset service providers

1. ESMA shall establish a register of:

   (a) crypto-asset white papers of crypto-assets other than asset-referenced tokens and e-money tokens;

   (b) issuers of asset-referenced tokens;

   (c) issuers of e-money tokens, and

   (d) crypto-asset service providers.

   That register shall be publicly available on its website and shall be updated on a regular basis.

2. As regards crypto-asset white papers of crypto-assets other than asset-referenced tokens or e-money tokens, the register referred to in paragraph 1 shall contain the crypto-asset white papers and the modified white papers, with the old versions of the crypto-asset white papers kept in a separate archive and be clearly marked as old versions.

3. As regards issuers of asset-referenced tokens, the register referred to in paragraph 1 shall contain the following information:

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

(b) the commercial name, physical address, telephone number, e-mail and website of the issuer of the asset-referenced tokens;

(c) the crypto-asset white papers and the modified white papers, with the old versions of the crypto-asset white paper kept in a separate archive and be clearly marked as old versions;

(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;

(e) the date of authorisation and, where applicable, of withdrawal of authorisation.

4. As regards issuers of e-money tokens, the register referred to in paragraph 1 shall contain the following information:

(a) the name, legal form and, if available, the legal entity identifier of the issuer of e-money tokens;

(b) the commercial name, physical address, telephone number, e-mail and website of the issuer of the e-money tokens;

(c) the crypto-asset white papers and the modified white papers, with the old versions of the crypto-asset white paper kept in a separate archive and be clearly marked as old versions;

(d) any other services provided by the issuer of e-money tokens not covered by this Regulation, with a reference to the relevant Union or national law;

(e) the date of authorisation and, where applicable, of withdrawal of authorisation.

5. As regards crypto-assets service providers, the register referred to in paragraph 1 shall contain the following information:

(a) the name, legal form, the legal entity identifier, if available, and the branches of the crypto-asset service provider;

(b) the commercial name, physical address, telephone number, e-mail and website of the crypto-asset service provider and the trading platform for crypto-assets operated by the crypto-asset service provider, where applicable;

(c) the name and address of the competent authority which granted authorisation and its contact details;

(d) the list of crypto-asset services for which the crypto-asset service provider is authorised;

(e) the list of Member States in which the crypto-asset service provider has notified its intention to provide crypto-asset services in accordance with Article 58(2);

(f) any other services provided by the crypto-asset service provider not covered by this Regulation with a reference to the relevant Union or national law;

(g) the date of authorisation and, where applicable, of withdrawal of authorisation.

6. Competent authorities shall notify without delay ESMA of measures taken pursuant to Article 82(1)(c), (d), (g), (o), (p), (q), (r) or (u) and public precautionary measures taken pursuant to Article 89 affecting the provision of crypto-asset services or the issuance, the offering or the use of crypto-assets. ESMA shall include such information in the register.

7. Any withdrawal of an authorisation of an issuer of asset-referenced tokens in accordance with Article 20, of an issuer of e-money tokens or of a crypto-asset service provider in accordance with Article 56, and any measure notified in accordance with paragraph 6, shall remain published in the register for five years.

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

   ESMA shall submit those draft regulatory technical standards to the Commission by [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 1095/2010.

Article 91ab

Register of non-compliant entities providing crypto-asset services

1. ESMA shall establish a non-exhaustive register of entities that have been providing crypto-asset services in violation of Articles 53 and 53b.

2. The register referred to in paragraph 1 shall contain at least the commercial name and/or the website, where applicable, of the non-compliant entities and the name of the competent authority which submitted the information;

3. That register shall be publicly available on the ESMA website in machine-readable format and shall be updated on a regular basis to take into account any changes of circumstances concerning the entities included in the list or any information that is brought to its attention. The register shall enable centralised access to information submitted by Union or third countries' competent authorities and by the EBA.

4. ESMA shall update the register on the basis of information transmitted by competent authorities.

5. ESMA shall update the register to include any case of infringement identified on its own initiative in accordance with Article 17 of Regulation (EU) 1095/2010, in which it has adopted a decision addressed to a non-compliant entity providing crypto-asset services under paragraph 6 of that Article, or any information of entities operating without the necessary authorisation or registration submitted by the relevant supervisory authorities in third countries.

5a. In cases referred to in paragraph 5, ESMA shall be able to use the relevant supervisory and investigative powers referred to in Article 82 paragraph 1 as regards entities listed on the register of non-compliant crypto-asset service providers.

Chapter 2

Administrative measures and penalties by competent authorities

Article 92

Administrative penalties *and other administrative measures*

1. Without prejudice to any criminal sanctions and without prejudice to the supervisory and investigative powers of competent authorities under Article 82, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative penalties and other administrative measures in relation to at least the following infringements:

   (a) infringements of Articles 4 to 13;

   (b) infringements of Articles 15, 15a, 17, 19a, 19b and 21, Articles 23 to 37 and Articles 41a and 42;

   (c) infringements of Articles 43 to 49, except Article 47;

   (d) infringements of Article 53, 53a, 56 and Articles 58 to 74, except paragraph 9 of Article 61;

   (e) infringements of paragraph 9 of Article 61 and Articles 77 to 80a;

   (f) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 82(2).

   Member States may decide not to lay down rules for administrative penalties as referred to in the first subparagraph where the infringements referred to in points (a), (b), (c), (d) or (e) of that subparagraph are already subject to criminal sanctions in their national law by [please insert date 12 months after entry into force]. Where they so decide, Member States shall notify, in detail, to the Commission, ESMA and to EBA, the relevant parts of their criminal law.

By [please insert date 12 months after entry into force], Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission, the EBA and ESMA. 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 penalties and other administrative measures in relation to the infringements listed in points (a) to (d) of paragraph 1:

(a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;

(b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;

(c) maximum administrative fines of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined, even if it exceeds the maximum amounts set out in point (e) and in paragraph 3;

(d) [deleted]

(e) in the case of a natural person, maximum administrative fines of at least EUR 700 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation].

3. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose maximum administrative fines of at least:

(i) EUR 5 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation], in relation to the infringements listed in points (a) to (d) of paragraph 1 committed by a legal person, or

(ii) 3 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, in relation to the infringements listed in points (a) of paragraph 1 committed by a legal person, or

(iii) 5 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, in relation to the infringements listed in point (d) of paragraph 1 committed by a legal person or.

(iv) 12.5 % of the total annual turnover of that legal person according to the last available financial statements approved by the management body, in relation to the infringements listed in points (b) to (c) of paragraph 1 committed by a legal person.

Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(a) [deleted]

(b) [deleted]

(c) [deleted]

(d) [deleted]

4. [deleted]

5. In addition to the administrative penalties and other administrative measures in relation to the infringements listed in paragraph 2 and 3, Member States shall, in accordance with national law, ensure that competent authorities have the power to impose, in the event of the infringements referred to in point (d) of the first subparagraph of paragraph 1, a temporary ban preventing any member of the management body of the crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in crypto-asset service providers.

6. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative penalties and to take at least the following administrative measures in the event of the infringements referred to in point (e) of the first subparagraph of paragraph 1:

   (a) an order requiring the natural or legal person to cease the infringing 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 statement indicating the natural person or the legal entity responsible and the nature of the infringement;

   (d) withdrawal or suspension of the authorisation of a crypto-asset service provider;

   (e) a temporary ban of any member of the management body of the crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in the crypto-asset service provider;

   (f) in the event of repeated infringements of Articles 78, 79 or 80, a ban of at least 10 years of any member of the management body of a crypto-asset service provider, or any other natural person who is held responsible for the infringement, from exercising management functions in the crypto-asset service provider;

(g) a temporary ban of any member of the management body of a crypto-asset service provider or any other natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative fines of at least 3 times the amount of the profits gained or losses avoided because of the infringement, where those can be determined, even if it exceeds the maximum amounts set out in points (i) and (j);

(i) in respect of a natural person, maximum administrative fines of at least EUR 1 000 000 for infringements of Article 77 and EUR 5 000 000 for infringements of Articles 78 to 80 or in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation];

(j) in respect of legal persons, maximum administrative fines of at least EUR 2 500 000 for infringements of Article 77 and EUR 15 000 000 for infringements of Articles 78 to 80, or 2% for infringements of Article 77 and 15 % for infringements of Articles 78 to 80 of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Regulation]. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

7. Member States may provide that competent authorities have powers in addition to those referred to in paragraphs 2 to 6 and may provide for higher levels of penalties than those established in those paragraphs, in respect of both natural and legal persons responsible for the infringement.

Article 93

Exercise of supervisory powers and powers to impose penalties

1. Competent authorities, when determining the type and level of an administrative penalty or other administrative measures to be imposed in accordance with Article 92, shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity and the duration of the infringement;

(aa) whether the infringement has been committed intentionally or negligently;

(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 the interests of holders of crypto-assets and clients of crypto-assets service providers, in particular retail holders.

2. In the exercise of their powers to impose administrative penalties and other administrative measures under Article 92, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative penalties and other administrative measures that they impose, are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative penalties and other administrative measures in cross-border cases.

Article 94

Right of appeal

1. Member States shall ensure that decisions taken under this Regulation are properly reasoned and 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 which provides all the required information, as an issuer of an asset-reference token or a crypto-asset service provider, no decision is taken within six months of its submission.

2. Member States shall provide that one or more of the following bodies, as determined by national law, may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that this Regulation is applied:

   (a) public bodies or their representatives;

   (b) consumer organisations having a legitimate interest in protecting holders of crypto-assets;

   (c) professional organisations having a legitimate interest in acting to protect their members.

Article 95

Publication of decisions

1. A decision imposing administrative penalties and other administrative measures for infringement of this Regulation shall be published by competent authorities on their official websites without undue delay after the natural or legal person subject to that decision has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the natural or legal persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

2. Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise an ongoing investigation, competent authorities shall take one of the following actions:

   (a) defer the publication of the decision to impose a penalty or a measure until the moment where the reasons for non-publication cease to exist;

   (b) publish the decision to impose a penalty or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned;

(c) not publish the decision to impose a penalty or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:

(i) that the stability of financial markets is not jeopardised;

(ii) the proportionality of the publication of such a decision with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a penalty or measure on an anonymous basis, as referred to in point (b) of the first subparagraph, the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication shall cease to exist.

3. Where the decision to impose a penalty or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a penalty or a measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article remains on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

Article 96

Reporting of penalties and administrative measures to ESMA and EBA

1. The competent authority shall, on an annual basis, provide ESMA and EBA with aggregate information regarding all administrative penalties and other administrative measures imposed in accordance with Article 92. ESMA shall publish that information in an annual report.

   Where Member States have chosen, in accordance with Article 92(1), second subparagraph, to lay down criminal penalties for the infringements of the provisions referred to in that paragraph, their competent authorities shall provide the EBA and ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal penalties imposed in an annual report.

2. Where the competent authority has disclosed administrative penalties, other administrative measures or criminal penalties to the public, it shall simultaneously report them to ESMA.

3. Competent authorities shall inform the EBA and ESMA of all administrative penalties or other administrative measures imposed but not published, including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgment in relation to any criminal penalty imposed and submit it to the EBA and ESMA. ESMA shall maintain a central database of penalties and administrative measures communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be only accessible to the EBA, ESMA and the competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

Article 97

Reporting of breaches and protection of reporting persons

Directive (EU) 2019/1937 shall apply to the reporting of breaches of this Regulation and the protection of persons reporting such breaches.

Chapter 3

Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and significant e-money tokens and colleges of supervisors

Article 98

Supervisory responsibilities of EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens

1. Where an asset-referenced token has been classified as significant in accordance with Article 39 or Article 40, the issuer of such asset-referenced tokens shall carry out its activities under the supervision of the EBA.

   Without prejudice to the powers of national competent authorities under paragraph 2, the EBA shall exercise the powers of competent authorities conferred by Articles 19a, 19b, 20, 21, 25, 29, 30, 31, 32, 37, 38, 41a and 42 as regards issuers of significant asset-referenced tokens.

2. Where an issuer of significant asset-referenced tokens provides crypto-asset services or issues crypto-assets that are not significant asset-referenced tokens, such services and activities shall remain supervised by the competent authority of the home Member State.

3. Where an asset-referenced token has been classified as significant in accordance with Article 39, the EBA shall conduct a supervisory reassessment to ensure that the issuer complies with the requirements under Title III.

4. Where an e-money token issued by an e-money institution has been classified as significant in accordance with Articles 50 or 51, the EBA shall supervise the compliance of the issuer of such significant e-money tokens with the requirements laid down in Article 52 and Article 49a.

   The EBA shall exercise the powers of competent authorities conferred by Articles 30(6a), 31, 32, 41a and 42.

5. EBA shall exercise its supervisory powers provided in paragraphs 1 to 4 in close cooperation with other supervisory authorities responsible for supervising the issuer of crypto-assets, in particular:

   (a) the prudential supervisory authority, including the ECB under Council Regulation (EU) 1024/2013, where applicable;

   (c) relevant competent authorities under national laws transposing Directive 2009/110/EC, where applicable;

   (d) those authorities mentioned in article 18(1).

Article 98a

EBA crypto-assets committee

EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for the purpose of preparing EBA decisions to be taken in accordance with Article 44 thereof, relating to the supervisory tasks that have been conferred on EBA as provided for in this Regulation.

The crypto-asset committee provided for in the first subparagraph may also prepare decisions in relation to draft regulatory technical standards and draft implementing technical standards, relating to supervisory tasks that have been conferred on EBA as provided for in this Regulation.

EBA shall ensure that the crypto-asset committee performs only the activities referred to in the first and second subparagraphs and any other tasks necessary for the performance of its crypto-asset related activities

Article 99

Colleges for issuers of significant asset-referenced tokens and significant e-money tokens

1. Within 30 calendar days of a decision to classify an asset-referenced token or e-money token as significant, the EBA shall establish, manage and chair a consultative supervisory college for each issuer of significant asset-referenced tokens or of significant e-money tokens, to facilitate the exercise of its supervisory tasks and act as vehicle for the coordination of supervisory activities under this Regulation.

2. The college shall consist of:

(a) the EBA, as the chair of the college;

(b) ESMA;

(c) the competent authorities of the home Member State where the issuer of significant asset-referenced tokens or of significant e-money tokens is established;

(d) the competent authorities of the most relevant credit institutions, investment firms or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33 or of the funds received in exchange of the significant e-money tokens;

(e) where applicable, the competent authorities of the most relevant trading platforms for crypto-assets where the significant asset-referenced tokens or the significant e-money tokens are admitted to trading;

(ea) the competent authorities of the most relevant payment service providers as defined in Article 4(11) of Directive (EU) 2015/2366 and providing payment services in relation to the significant e-money tokens;

(f) [deleted]

(g) where applicable, the competent authorities of the entities ensuring the functions as referred to in Article 30(5), point (h);

(h) where applicable, the competent authorities of the most relevant crypto-asset service providers providing the crypto-asset service referred to in Article 3(1) point (10) in relation with the significant asset-referenced tokens or with the significant e-money tokens;

(i) the ECB;

(ia) where the issuer of significant e-money tokens is established in a Member State the currency of which is not euro, or where the significant e-money token is referencing a currency which is not the euro, the national central bank of that Member State;

(j) where the issuer of significant asset-referenced tokens is established in a Member State the currency of which is not euro, or where a currency that is not euro is included in the reserve assets, the national central bank of that Member State;

(k) relevant supervisory authorities of third countries with which the EBA has concluded an administrative agreement in accordance with Article 108;

(ka) competent authorities of Member States where the asset-referenced token or the e-money token is used at large scale, upon their request.

2a. EBA may invite other authorities to be members of the college where the entities they supervise are relevant to the work of the college.

3. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

4. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the preparation of the non-binding opinion referred to in Article 100;

(b) the exchange of information in accordance with this Regulation;

(c) agreement on the voluntary entrustment of tasks among its members;

(d) [deleted]

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting.

5. The establishment and functioning of the college shall be based on a written agreement between all its members.

The agreement shall determine the practical arrangements for the functioning of the college, including detailed rules on:

(a) voting procedures as referred in Article 100(4);

(b) the procedures for setting the agenda of college meetings;

(c) the frequency of the college meetings;

(d) [deleted]

(e) the appropriate minimum timeframes for the assessment of the relevant documentation by the college members;

(f) the modalities of communication between college members;

(h) the creation of several formations of the college, one for each specific crypto-asset or group of crypto-assets.

The agreement may also determine tasks to be entrusted to the EBA or another member of the college.

5a. As chair of the college, EBA shall:

(a) establish written arrangements and procedures for the functioning of the college, after consulting the other members of the college;

(b) coordinate all activities of the college;

(c) convene and chair all its meetings and keep all members of the college fully informed in advance of the organisation of meetings of the college, of the main issues to be discussed and of the items to be considered;

(d) notify the members of the college of any planned meetings so that they can request to participate;

(e) keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

6. In order to ensure the consistent and coherent functioning of colleges, the EBA shall, in cooperation with ESMA and the European System of Central Banks, develop draft regulatory standards specifying the conditions under which the entities referred to in points (d) to (f), (h) and (ka) of paragraph 2 are to be considered as the most relevant, or as referring to a large scale, as applicable, and the details of the practical arrangements referred to in paragraph 5.

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

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

Article 100

Non-binding opinions of the colleges for issuers of significant asset-referenced tokens and significant e-money tokens

1. The college for issuers of significant asset-referenced tokens and significant e-money tokens may issue a non-binding opinion on the following:

(a) the supervisory reassessment as referred to in Article 98(3);

(b) any decision to require an issuer of significant asset-referenced tokens or e-money tokens to hold a higher amount of own funds in accordance with Articles 30(6a), 31(3), 31(3b) and 41(4);

(c) any update of the recovery plan or redemption plan of an issuer of significant asset-referenced tokens or an issuer of significant e-money tokens pursuant to Articles 41a and 42;

(d) any change to the issuer of significant asset-referenced tokens' business model pursuant to Article 21(1);

(e) a draft amended crypto-asset white paper in accordance with Article 21(2);

(f) any measures envisaged in accordance with Article 21(3);

(g) any envisaged supervisory measures pursuant to Article 112;

(h) any envisaged agreement of exchange of information with a third-country supervisory authority in accordance with Article 108;

(i) any delegation of supervisory tasks from the EBA to a competent authority pursuant to Article 120;

(j) any envisaged change in the authorisation of, or any envisaged supervisory measure on, the entities and crypto-asset service providers referred to in Article 99(2), points (d) to (h);

(l) a draft amended crypto-asset white paper in accordance with Article 46(10);

2. Where the college issues an opinion accordance with paragraph 1, at the request of any member of the college and upon adoption by a majority of the college in accordance with paragraph 4, the opinion may include any recommendations aimed at addressing shortcomings of the envisaged action or measure envisaged by the EBA or the competent authorities.

3. [deleted]

4. A majority opinion of the college shall be based on the basis of a simple majority of its members.

Where there are several college members per Member State, only one shall have a vote.

Where the ECB is a member of the college in several capacities, including supervisory capacities, it shall have only one vote.

Supervisory authorities of third countries referred to in Article 99(2), point (k), shall have no voting right on the opinion of the college.

5. The EBA and competent authorities shall duly consider the opinion of the college reached in accordance with paragraph 1, including any recommendations aimed at addressing shortcomings of the action or supervisory measure envisaged on an issuer of significant asset-referenced tokens, on an issuer of significant e-money tokens or on the entities and crypto-asset service providers referred to in points (d) to (h) of Article 99(2). Where the EBA or a competent authority does not agree with an opinion of the college, including any recommendations aimed at addressing shortcomings of the action or supervisory measure envisaged, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or recommendations.

Article 101

[deleted]

Article 102

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Chapter 4

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

Article 103

Legal Privilege

The powers conferred on the EBA by Articles 104 to 107, or on any official or other person authorised by the EBA, shall not be used to require the disclosure of information which is subject to legal privilege.

Article 104

Request for information

1. In order to carry out its duties under Article 98, the EBA may by simple request or by decision require the following persons to provide all information necessary to enable the EBA to carry out its duties under this Regulation:

   (a) an issuer of significant asset-referenced tokens or a person controlling or being directly or indirectly controlled by an issuer of significant asset-referenced tokens;

   (b) any third parties as referred to in Article 30(5), point (h) with which the issuer of significant asset-referenced tokens has a contractual arrangement;

   (c) [deleted]

   (d) credit institutions, investment firms or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33;

   (e) an issuer of significant e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant e-money tokens;

(f) any payment service provider as defined in Article 4(11) of Directive (EU) 2015/2366 and providing payment services in relation to significant e-money tokens;

(g) any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

(h) any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1) point (10) in relation with significant asset-referenced tokens or significant e-money tokens;

(i) any operator of a trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;

(j) the management body of the persons referred to in points (a) to (i).

2. Any simple reqest for information as referred to in paragraph 1 shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) include a time limit within which the information is to be provided;

(da) inform the person from whom the information is requested that it is not obliged to provide the information but that in case of a voluntary reply to the request the information provided must be correct and not misleading; and

(e) indicate the fine provided for in Article 113, where the answers to questions asked are incorrect or misleading.

3. When requiring to supply information under paragraph 1 by decision, the EBA shall:

(a) refer to this Article as the legal basis of that request;

(b) state the purpose of the request;

(c) specify the information required;

(d) set a time limit within which the information is to be provided;

(e) indicate the periodic penalty payments provided for in Article 114 where the production of information is required.

(f) indicate the fine provided for in Article 113, where the answers to questions asked are incorrect or misleading;

(g) indicate the right to appeal the decision before the EBA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1093/2010.

4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested.

5. The EBA shall without delay send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 105

General investigative powers

1. In order to carry out its duties under Article 98 of this Regulation, EBA may conduct investigations on issuers of significant asset-referenced tokens and issuers of significant e-money tokens. To that end, the officials and other persons authorised by the EBA shall be empowered to:

   (a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

   (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

   (c) summon and ask any issuer of significant asset-referenced tokens or issuer of significant of e-money tokens, or their management body or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;

   (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

   (e) request records of telephone and data traffic.

   The college for issuers of significant asset-referenced tokens and for issuers of significant e-money tokens as referred to in Article 99 shall be informed without undue delay of any findings that may be relevant for the execution of its tasks.

2. The officials and other persons authorised by the EBA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 114 where the production of the required records, data, procedures or any other material, or the answers to questions asked to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are not provided or are incomplete, and the fines provided for in Article 113, where the answers to questions asked to issuers of significant asset-referenced tokens or issuers of significant e-money tokens are incorrect or misleading.

3. The issuers of significant asset-referenced tokens and issuers of significant e-money tokens are required to submit to investigations launched on the basis of a decision of the EBA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 114, the legal remedies available under Regulation (EU) No 1093/2010 and the right to have the decision reviewed by the Court of Justice.

4. In due time before an investigation referred to in paragraph 1, the EBA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of the EBA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.

5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify whether:

(a) the decision adopted by the EBA referred to in paragraph 3 is authentic;

(b) any measures to be taken are proportionate and not arbitrary or excessive.

7. For the purposes of point (b) paragraph 6, the national judicial authority may ask the EBA for detailed explanations, in particular relating to the grounds the EBA has for suspecting that an infringement of this Regulation has taken place, the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on the EBA's file. The lawfulness of the EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

Article 106

On-site inspections

1. In order to carry out its duties under Article 98 of this Regulation, the EBA may conduct all necessary on-site inspections at any business premises of the issuers of significant asset-referenced tokens and issuers of significant e-money tokens.

The college for issuers of significant asset-referenced tokens and for issuers of significant e-money tokens as referred to in Article 99 shall be informed without undue delay of any findings that may be relevant for the execution of its tasks.

2. The officials and other persons authorised by the EBA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by the EBA and shall have all the powers stipulated in Article 105(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In due time before the inspection, the EBA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, the EBA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice to the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens.

4. The officials and other persons authorised by the EBA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 114 where the persons concerned do not submit to the inspection.

5. The issuer of significant asset-referenced tokens or the issuer of significant e-money tokens shall submit to on-site inspections ordered by decision of EBA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 114, the legal remedies available under Regulation (EU) No 1093/2010 as well as the right to have the decision reviewed by the Court of Justice.

6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of the EBA, actively assist the officials and other persons authorised by the EBA. Officials of the competent authority of the Member State concerned may also attend the onsite inspections.

7. The EBA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 105(1) on its behalf.

8. Where the officials and other accompanying persons authorised by the EBA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify whether:

    (a) the decision adopted by the EBA referred to in paragraph 4 is authentic;

    (b) any measures to be taken are proportionate and not arbitrary or excessive.

11. For the purposes of paragraph 10, point (b), the national judicial authority may ask the EBA for detailed explanations, in particular relating to the grounds the EBA has for suspecting that an infringement of this Regulation has taken place, the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on the EBA's file. The lawfulness of the EBA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1093/2010.

Article 107

Exchange of information

1. In the exercise of EBA supervisory responsibilities under Article 98 and without prejudice to Article 84, the EBA and the competent authorities shall provide each other with the information required for the purposes of carrying out their duties under this Regulation without undue delay. For that purpose, competent authorities and the EBA shall exchange 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 30(5), point (h) with which the issuers of significant asset-referenced tokens has a contractual arrangement;

   (c) [deleted]

   (d) credit institutions, investment firms or crypto-asset service providers ensuring the custody of the reserve assets in accordance with Article 33;

   (e) an issuer of significant e-money tokens or a person controlling or being directly or indirectly controlled by an issuer of significant e-money tokens;

   (f) any payment service provider as defined in Article 4(11) of Directive (EU) 2015/2366 and providing payment services in relation to significant e-money tokens;

   (g) any natural or legal persons in charge of distributing significant e-money tokens on behalf of the issuer of significant e-money tokens;

(h) any crypto-asset service provider providing the crypto-asset service referred to in Article 3(1), point (10), in relation with significant asset-referenced tokens or significant e-money tokens;

(i) any trading platform for crypto-assets that has admitted a significant asset-referenced token or a significant e-money token to trading;

(j) the management body of the persons referred to in point (a) to (i).

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:

(a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;

(b) where judicial proceedings have already been initiated in respect of the same actions and against the same natural or legal persons before the authorities of the Member State addressed;

(c) where a final judgment has already been delivered in relation to such natural or legal persons for the same actions in the Member State addressed.

Article 108

Administrative agreements on exchange of information between the EBA and third countries

1. In order to carry out its duties under Article 98, the EBA may conclude administrative agreements on exchange of information with the supervisory authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 111.

2. The exchange of information referred to in paragraph 1 shall be intended for the performance of the tasks of the EBA or those supervisory authorities.

3. With regard to transfer of personal data to a third country, the EBA shall apply Regulation (EU) No 2018/1725.

Article 109

Disclosure of information from third countries

The EBA may disclose the information received from supervisory authorities of third countries only where the EBA or the competent authority which provided the information to the EBA has obtained the express agreement of the supervisory authority that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that supervisory authority gave its agreement or where such disclosure is necessary for legal proceedings. These requirements shall not apply with respect to other EU supervisory authorities for the fulfilment of their tasks and with respect to judicial authorities when the information requested is needed for investigations or proceedings involving violations subject to criminal sanctions.

Article 110

Cooperation with other authorities

Where an issuer of significant asset-referenced tokens or an issuer of significant e-money tokens engages in activities other than those covered by this Regulation, the EBA shall cooperate with the authorities responsible for the supervision or oversight of such other activities as provided for in the relevant Union or national law, including tax authorities and relevant supervisory authorities from third countries that are not members of the college in accordance with Article 99(2)(k).

Article 111

Professional secrecy

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

Article 112

Supervisory measures by the EBA

1. Where the EBA finds that an issuer of a significant asset-referenced tokens has committed one of the infringements listed in Annex V, it may take one or more of the following actions:

   (a) adopt a decision requiring the issuer of significant asset-referenced tokens to bring the infringement to an end;

   (b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 113 and 114;

   (c) adopt a decision requiring the issuer of significant asset-referenced tokens to transmit supplementary information, where necessary for the protection of holders of asset-referenced tokens, in particular consumers;

(d) adopt a decision requiring the issuer of significant asset-referenced tokens to suspend an offer to the public of crypto-assets for a maximum period of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(e) adopt a decision prohibiting an offer to the public of significant asset-referenced tokens where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;

(f) adopt a decision requiring the relevant trading platform for crypto-assets that has admitted to trading significant asset-referenced tokens, to suspend trading of such crypto-assets, for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(g) adopt a decision prohibiting trading of significant asset-referenced tokens on a trading platform for crypto-assets where it finds that this Regulation has been infringed;

(ga) to adopt a decision requiring issuers of significant asset-referenced tokens, to amend their marketing communication, where they find the marketing communication does not comply with Article 25 of this Regulation;

(gb) to adopt a decision to suspend or prohibit marketing communications where there are reasonable grounds for believing that this Regulation has been infringed;

(h) adopt a decision requiring the issuer of significant asset-referenced tokens to disclose all material information which may have an effect on the assessment of the significant asset-referenced tokens offered to the public or admitted to trading on a trading platform for crypto-assets in order to ensure consumer protection or the smooth operation of the market;

(i) issue warnings on the fact that an issuer of significant asset-referenced tokens is failing to comply with its obligations;

(j) withdraw the authorisation of the issuer of significant asset-referenced tokens;

(ja) to adopt a decision requiring the removal of a natural person from the management body of an issuer of significant asset-referenced tokens.

(jb) to require an issuer of an asset-referenced token or an e-money token under its supervision, in accordance with Articles 19b(2), 20(1b), or Article 52(3) to introduce a minimum denomination or to limit the amount issued.

2. Where the EBA finds that an issuer of a significant e-money tokens has committed one of the infringements listed in Annex VI, it may take one or more of the following actions:

(a) adopt a decision requiring the issuer of significant e-money tokens to bring the infringement to an end;

(b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 113 and 114;

(ba) adopt a decision requiring the issuer of significant e-money tokens to transmit supplementary information, where necessary for the protection of holders of e-money tokens, in particular consumers;

(bb) adopt a decision requiring the issuer of significant e-money tokens to suspend an offer to the public of crypto-assets for a maximum period of 30 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

(bc) adopt a decision prohibiting an offer to the public of significant e-money tokens where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;

(bd) adopt a decision requiring the relevant trading platform for crypto-assets that has admitted to trading significant e-money tokens, to suspend trading of such crypto-assets, for a maximum of 30 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;

(be) adopt a decision prohibiting trading of significant e-money tokens on a trading platform for crypto-assets where it finds that this Regulation has been infringed;

(bf) adopt a decision requiring the issuer of significant e-money tokens to disclose all material information which may have an effect on the assessment of the significant e-money 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;

(c) issue warnings on the fact that an issuer of significant e-money tokens is failing to comply with its obligations.

3. When taking the actions referred to in paragraphs 1 and 2, the EBA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

(a) the duration and frequency of the infringement;

(b) whether financial crime has been occasioned, facilitated or is otherwise attributable to the infringement;

(c) whether the infringement has revealed serious or systemic weaknesses in the issuer of significant asset-referenced tokens' or in the issuer of significant e-money tokens' procedures, policies and risk management measures;

(d) whether the infringement has been committed intentionally or negligently;

(e) the degree of responsibility of the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement;

(f) the financial strength of the issuer of significant asset-referenced tokens, or of the issuer of significant e-money tokens, responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

(g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced tokens or significant e-money tokens responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(i) the level of cooperation of the issuer of significant asset-referenced tokens or of the issuer of significant e-money tokens responsible for the infringement with the EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements by the issuer of significant asset-referenced tokens or by the issuer of e-money tokens responsible for the infringement;

(k) measures taken after the infringement by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens to prevent the repetition of such an infringement.

4. Before taking the actions referred in points (d) to (g) and point (j) of paragraph 1, the EBA shall inform ESMA and, where the significant asset-referenced tokens refer Union currencies, the central banks of issue of those currencies.

5. Before taking the actions referred in paragraph 2, the EBA shall inform the competent authority of the issuer of significant e-money tokens and the central bank of issue of the currency that the significant e-money token is referencing.

6. The EBA shall notify any action taken pursuant to paragraph 1 or 2 to the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement without undue delay and shall communicate that action to the competent authorities concerned and the Commission. The EBA shall publicly disclose any such decision on its website within 10 working days from the date when that decision was adopted, unless such disclosure would seriously jeopardise financial stability or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2016/679.

7. The disclosure to the public referred to in paragraph 6 shall include the following:

   (a) a statement affirming the right of the person responsible for the infringement to appeal the decision before the Court of Justice;

   (b) where relevant, a statement affirming that an 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 113

Fines

1. The EBA shall adopt a decision imposing a fine in accordance with paragraph 3 or 4, where in accordance with Article 116(8), it finds that:

   (a) an issuer of significant asset-referenced tokens or a member of the management body has, intentionally or negligently, committed one of the infringements listed in Annex V;

   (b) an issuer of significant e-money tokens has, intentionally or negligently, committed one of the infringements listed in Annex VI.

   An infringement shall be considered to have been committed intentionally if the EBA finds objective factors which demonstrate that such an issuer or its management body acted deliberately to commit the infringement.

2. When taking the actions referred to in paragraph 1, the EBA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:

   (a) the duration and frequency of the infringement;

   (b) whether financial crime has been occasioned, facilitated or is otherwise attributable to the infringement;

   (c) whether the infringement has revealed serious or systemic weaknesses in the issuer of significant asset-referenced tokens' or in the issuer of significant e-money tokens' procedures, policies and risk management measures;

   (d) whether the infringement has been committed intentionally or negligently;

   (e) the degree of responsibility of the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens responsible for the infringement;

(f) the financial strength of the issuer of significant asset-referenced tokens, or of the issuer of significant e-money tokens, responsible for the infringement, as indicated by the total turnover of the responsible legal person;

(fa) the annual income and net assets of the responsible natural person;

(g) the impact of the infringement on the interests of holders of significant asset-referenced tokens or significant e-money tokens;

(h) the importance of the profits gained, losses avoided by the issuer of significant asset-referenced tokens or significant e-money tokens responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;

(i) the level of cooperation of the issuer of significant asset-referenced tokens or of the issuer of significant e-money tokens responsible for the infringement with the EBA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(j) previous infringements by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens responsible for the infringement;

(k) measures taken after the infringement by the issuer of significant asset-referenced tokens or by the issuer of significant e-money tokens to prevent the repetition of such an infringement.

3. For issuers of significant asset-referenced tokens, the maximum amount of the fine referred to in paragraph 1 shall be up to 12.5% 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.

4. For issuers of significant e-money tokens, the maximum amount of the fine referred to in paragraph 1 shall be up to 10% of the annual turnover, as defined under relevant Union law, in the preceding business year, or twice the amount or profits gained or losses avoided because of the infringement where those can be determined.

Article 114

Periodic penalty payments

1. The EBA shall, by decision, impose periodic penalty payments in order to compel:

   (a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 112;

   (b) a person referred to in Article 104(1):

      (i) to supply complete information which has been requested by a decision pursuant to Article 104;

      (ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 105;

      (iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 106.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of the EBA's decision. Following the end of the period, the EBA shall review the measure.

Article 115

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

1. The EBA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 113 and 114, unless such disclosure to the public would seriously jeopardise financial stability or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2016/679.

2. Fines and periodic penalty payments imposed pursuant to Articles 113 and 114 shall be of an administrative nature.

3. Where the EBA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 113 and 114 shall be enforceable.

5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.

6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 116

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under Article 98, the EBA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annexes V or VI, the EBA shall appoint an independent investigation officer within the EBA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision of the issuers of significant asset-referenced tokens or issuers of significant e-money tokens and shall perform its functions independently from the EBA.

2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to EBA.

3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 104 and to conduct investigations and on-site inspections in accordance with Articles 105 and 106. When using those powers, the investigation officer shall comply with Article 103.

4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by the EBA in its supervisory activities.

5. Upon completion of his or her investigation and before submitting the file with his findings to the EBA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his or her findings only on facts on which the persons concerned have had the opportunity to comment.

6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.

7. When submitting the file with his findings to the EBA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties or the EBA's internal preparatory documents.

8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 117, the EBA shall decide if one or more of the infringements of provisions listed in Annex V or VI have been committed by the issuer of significant asset-referenced tokens or the issuer of significant e-money tokens subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 112 and/or impose a fine in accordance with Article 113.

9. The investigation officer shall not participate in EBA's deliberations or in any other way intervene in EBA's decision-making process.

10. The Commission shall adopt delegated acts in accordance with Article 121 by [please insert date 12 months after entry into force] specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.

11. The EBA shall refer matters to the appropriate national authorities for investigation and possible criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, the EBA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Article 117

Hearing of persons concerned

1. Before taking any decision pursuant to Articles 112, 113 and 114, the EBA shall give the persons subject to the proceedings the opportunity to be heard on its findings. The EBA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

2. Paragraph 1 shall not apply if urgent action is needed in order to prevent significant and imminent damage to financial stability or to the holders of crypto-assets, in particular consumers. In such a case the EBA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

3. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to the EBA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or the EBA's internal preparatory documents.

Article 118

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby the EBA has imposed a fine, a periodic penalty payment or any other penalty or administrative measure in accordance with this Regulation. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 119

Supervisory fees

1. The EBA shall charge fees to the issuers of significant asset-referenced tokens and the issuers of significant e-money tokens in accordance with this Regulation and the delegated acts adopted pursuant to paragraph 3. Those fees shall cover the EBA's expenditure relating to the supervision of issuers of significant asset-referenced tokens and of issuers of significant e-money tokens in accordance with Article 98, as well as the reimbursement of costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 120.

2. The amount of the fee charged to an individual issuer of significant asset-referenced tokens shall be proportionate to the size of its reserve assets and shall cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.

   The amount of the fee charged to an individual issuer of significant e-money tokens shall be proportionate to the size of the e-money issued in exchanged of funds and shall cover all costs incurred by the EBA for the performance of its supervisory tasks in accordance with this Regulation.

3. The Commission shall adopt a delegated act in accordance with Article 121 by [please insert date 12 months after entry into force] to specify further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity under paragraph 2 that can be charged by the EBA.

Article 120

Delegation of tasks by the EBA to competent authorities

1. Where necessary for the proper performance of a supervisory task as regards issuers of significant asset-referenced tokens or significant e-money tokens, the EBA may delegate specific supervisory tasks to the competent authority of a Member State. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 104 and to conduct investigations and on-site inspections in accordance with Article 105 and Article 106.

2. Prior to the delegation of a task, the EBA shall consult the relevant competent authority about:

   (a) the scope of the task to be delegated;

   (b) the timetable for the performance of the task; and

   (c) the transmission of necessary information by and to the EBA.

3. In accordance with the delegated act on fees adopted by the Commission pursuant to Article 119(3), the EBA shall reimburse a competent authority for the costs incurred as a result of carrying out delegated tasks.

4. The EBA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

Title VIII

Delegated acts and implementing acts

Article 121

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3(2), 39(6), 116(10) and 119(3) shall be conferred on the Commission for a period of 36 months from … [please insert date of entry into force of this Regulation].

3. The delegation of powers referred to in Articles 3(2), 39(6), 116(10) and 119(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3(2), 39(6), 116(10) and 119(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Title IX

Transitional and final provisions

Article 122

Report on the application of the Regulation

1. By … [48 months after the date of entry into force of this Regulation] after consulting the EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, where appropriate accompanied by a legislative proposal. An interim report shall be presented by [24 months after the date of entry into force of this Regulation], where appropriate accompanied by a legislative proposal.

2. The report shall contain the following:

   (a) the number of issuances of crypto-assets in the EU, the number of crypto-asset white papers registered with the competent authorities, the type of crypto-assets issued and their market capitalisation, the number of crypto-assets admitted to trading on a trading platform for crypto-assets;

   (aa) experience with the classification of crypto-assets including possible divergences in approaches by national competent authorities;

   (ab) an assessment of the necessity of introduction an approval mechanism for white papers of crypto-assets other than asset-referenced tokens and e-money tokens;

   (b) an estimation of the number of EU residents using or investing in crypto-assets issued in the EU;

   (ba) an estimation of the number of Union residents using or investing in crypto-assets issued and offered outside the Union, if possible, and an explanation on the availability of data regarding this point;

   (c) the number and value of fraud, scams, hacks, the use of crypto-assets for payments related to ransomware attacks, and thefts of crypto-assets reported in the EU, types of

fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;

(d) the number of issuers of asset-referenced tokens authorised under this Regulation, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of payments in asset-referenced tokens;

(e) the number of issuers of significant asset-referenced tokens authorised under this Regulation, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of payments in significant asset-referenced tokens;

(f) the number of issuers of e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the e-money tokens, the size of the reserves and the volume of payments in e-money tokens;

(g) the number of issuers of significant e-money tokens authorised under this Regulation and under Directive 2009/110/EC, and an analysis of the currencies backing the significant e-money tokens, the size of the reserves and the volume of payments in significant e-money tokens;

(ga) the number of significant crypto-asset service providers authorised under this Regulation;

(h) an assessment of the functioning of the market for crypto-asset services in the Union, including of market development and trends, taking into account the experience of the supervisory authorities, the number of crypto-asset service providers authorised and their respective average market share;

(i) an assessment of the level of protection of holders of crypto-assets and clients of crypto-assets service providers, in particular retail holders;

(ia) an assessment of fraudulent marketing communications and scams involving crypto-assets occurring through social media networks;

(ia) an assessment of the requirements applicable to issuers of crypto-assets and crypto-asset service providers and its impact on operational resilience, market integrity, the protection of clients and holders of crypto-assets, and financial stability;

(id) an evaluation of the application of Article 73 and of the possibility of introducing appropriateness tests in Articles 70 to 72 in order to better protect clients of crypto-assets service providers, especially retail holders;

(j) an assessment of whether the scope of crypto-asset services covered by this Regulation is appropriate and whether any adjustment to the definitions set out in this Regulation is needed; and whether any additional innovative crypto-asset forms would need to be added to this regulation;

(ja) an assessment of whether the prudential requirements for crypto-assets service providers are appropriate and whether they should be aligned with the requirements for initial capital and own funds applicable to investment firms under Regulation (EU) 2019/2033 and Directive 2019/2034 EU;

(jb) an assessment of the appropriateness of the thresholds to determine significant asset-referenced tokens and significant e-money tokens set out in Article 39 of this Regulation, and an assessment if the thresholds should be evaluated periodically,

(jc) an assessment of the development of decentralised-finance in the crypto-assets markets and of the adequate regulatory treatment of decentralised crypto-asset systems,

(jd) an assessment of the appropriateness of the thresholds to determine significant crypto-asset service providers set out in Article 75a of this Regulation, and an assessment if the thresholds should be evaluated periodically;

(k) an assessment of whether an equivalence regime should be established for third-country crypto-asset service providers, issuers of asset-referenced tokens or issuers of e-money tokens under this Regulation;

(l) an assessment of whether the exemptions under Articles 4 and 15 are appropriate;

(m) an assessment of the impact of this Regulation on the proper functioning of the internal market for crypto-assets, including any impact on the access to finance for small and medium-sized enterprises and on the development of new means of payment, including payment instruments;

(n) a description of developments in business models and technologies in the crypto-asset market with a particular focus on the environmental and climate impact of new

technologies, as well as an assessment of policy options and where necessary any additional measures that may be warranted to mitigate the adverse impacts on the climate and environment of the technologies used in the crypto-assets market and, in particular, of the consensus mechanisms used to validate crypto-asset transactions;

(o) an appraisal of whether any changes are needed to the measures set out in this Regulation to ensure protection of clients and holders of crypto-assets, market integrity and financial stability;

(p) the application of administrative penalties and other administrative measures;

(q) an evaluation of the cooperation between the competent authorities, the EBA and ESMA, central banks, as well as other relevant authorities, including with regards to the interaction between their responsibilities or tasks, and an assessment of advantages and disadvantages of the competent authorities and the EBA being responsible for supervision under this Regulation;

(qa) an evaluation of the cooperation between competent authorities and ESMA regarding the supervision of significant crypto-asset service providers, and an assessment of advantages and disadvantages of the competent authorities and the ESMA being responsible for supervision of significant crypto-asset service providers under this Regulation;

(r) the costs of complying with this Regulation for issuers of crypto-assets, other than asset-referenced tokens and e-money tokens as a percentage of the amount raised through crypto-asset issuances;

(s) the costs for crypto-asset service providers to comply with this Regulation as a percentage of their operational costs;

(t) the costs for issuers of issuers of asset-referenced tokens and issuers of e-money tokens to comply with this Regulation as a percentage of their operational costs;

(u) the number and amount of administrative fines and criminal penalties imposed for infringements of this Regulation by competent authorities and the EBA.

3. Where applicable, the report shall also follow up on the topics addressed in the Report from Article 122a and 122b.

Article 122a

ESMA annual report on market developments

By ... [12 months from the date of application of this Regulation] and every year thereafter, ESMA, in close cooperation with the EBA, shall submit a report to the European Parliament and to the Council on the application of this Regulation and the developments in the markets in crypto-assets. The report shall be made publicly available.The report shall contain the following:

(a) the number of issuances of crypto-assets in the Union, the number of crypto-asset white papers registered with the competent authorities, the type of crypto-asset issued and their market capitalisation, and the number of crypto-assets admitted to trading on a trading platform for crypto-assets;

(b) the number of issuers of asset-referenced tokens, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of transactions in asset-referenced tokens;

(ba) the number of issuers of significant asset-referenced tokens, and an analysis of the categories of assets included in the reserves, the size of the reserves and the volume of transations in significant asset-referenced tokens;

(c) the number of issuers of e-money tokens, and an analysis of the currencies backing the e-money tokens, the size of the reserves and the volume of payments in e-money tokens;

(d) the number of issuers of significant e-money tokens, and an analysis of the currencies backing the significant e-money tokens, the size of the reserves of assets, and the volume of payments in significant e-money tokens;

(da) the number of crypto-asset service providers, and the number of significant crypto-asset service providers;

(e) an estimation of the number of Union residents using or investing in crypto-assets issued in the Union;

(f) an estimation of the number of Union residents using or investing in crypto-assets issued and offered outside the Union, if possible, and an explanation on the availability of data regarding this point;

(g) a mapping of the geographical location and level of know-your-customer and customer due diligence procedures of unauthorised exchanges providing services in crypto-assets to Union residents, including number of exchanges without a clear domiciliation and number of exchanges located in jurisdictions included in the EUAML/CFT list of high-risk third countries or in the list of non-cooperative jurisdictions for tax purposes, classified by level of compliance with adequate know-your-customer procedures;

(i) proportion of transactions in crypto-assets that occur through a crypto asset service provider or unauthorised service provider or peer-to-peer, and transaction volume;

(j) the number and value of fraud, scams, hacks, the use of crypto-assets for payments related to ransomware attacks, cyberattacks, thefts or losses of crypto-assets reported in the Union, types of fraudulent behaviour, the number of complaints received by crypto-asset service providers and issuers of asset-referenced tokens, the number of complaints received by competent authorities and the subjects of the complaints received;

(k) number of complaints received by crypto-asset service providers, issuers of crypto-assets and national competent authorities in relation to false and misleading information contained in the crypto-asset key information sheet or in marketing communications, including via social media platforms;

(m) possible approaches and options, based on best practices and reports by relevant international organisations, to reduce the risk of circumvention of this Regulation, including in relation to the provision of crypto-asset services by third-country actors in the Union without authorisation.

Competent authorities shall provide ESMA with the information necessary for the preparation of the report. For the purpose of the report, the ESMA may request information from law enforcement agencies.

Article 122b

Report on latest developments on crypto-assets

1. By … [18 months after the date of entry into force of this regulation] after consulting the EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the latest developments on crypto-assets, in particular on areas which were not addressed in this Regulation, where appropriate accompanied by a legislative proposal.

2. The report shall contain at least the following:

   (a) an assessment of the development of decentralised-finance in the crypto-assets markets and of the adequate regulatory treatment of decentralised crypto-asset systems without an issuer or crypto-asset service provider, including an assessment of the necessity and feasibility of regulating decentralised finance;

   (b) an assessment of the necessity and feasibility of regulating, lending and borrowing of crypto-assets;

   (d) an assessment of the treatment of services associated to the transfer of e-money tokens, if not addressed in the context of the review of the Directive (EU) 2015/2366 on payment services;

   (da) an assessment of the development of markets in unique and not fungible crypto-assets and of the adequacy of regulatory treatment of such crypto-assets, including an assessment of the necessity and feasibility of regulating offerors of unique and not fungible crypto-assets as well as providers of services related to such crypto-assets.

Article 123

Transitional measures

1. Articles 4 to 14 shall not apply to offers to the public which ended before [please insert date of entry into application].

1a. By way of derogation from Title II, only the following requirements shall apply in relation to crypto-assets, other than asset-referenced tokens and e-money tokens, which were admitted to trading on a trading platform for crypto-assets before [please insert date of entry into application]:

(a) articles 6 and 8 shall apply to marketing communications published after the date of entry into application;

(b) operators of trading platforms shall ensure by [please insert the date 36 months after the date of application] that a crypto-asset white paper, when required by this Regulation, is prepared, notified and published in accordance with Articles 5, 7, 8 and updated in accordance with Article 11.

2. By way of derogation from this Regulation, crypto-asset service providers which provided their services in accordance with applicable law before [please insert the date of entry into application], may continue to do so until [please insert the date [18] months after the date of application] or until they are granted an authorisation pursuant to Article 55, whichever is sooner.

Member States may decide not to apply the transitional measure provided in the first subparagraph or reduce its duration, where they consider that crypto-asset service providers shall be subject to stricter requirements than those set out in their national regulatory framework applicable before [please insert the date of entry into application].

By [insert date 12 months after entry into force], Member States shall notify to the Commission and ESMA whether they have exercised the option provided in the second subparagraph and the duration of the transitional measure.

2b. By way of derogation from this Regulation, issuers of asset-referenced tokens other than credit institutions which issued asset-referenced tokens in accordance with applicable law before [please insert the date of entry into application of Title III], may continue to do so until they are granted an authorisation pursuant to Article 19, provided that they applied for an authorisation until [please insert the date of entry into application of Title III + 1 month].

2c. By way of derogation from this Regulation, credit institutions which issued asset-referenced tokens in accordance with applicable law before [please insert the date of entry into application of Title III], may continue to do so provided that they notified the competent authority until [please insert the date of entry into application of Title III + 1 month]. After notification, the credit institution shall comply with the requirements laid out in this Regulation.

3. By way of derogation from Articles 54 and 55, Member States may apply a simplified procedure for applications for an authorisation which are submitted between the [please insert the date of application of this Regulation] and [please insert the date [18] months after the date of application] by entities that, at the time of entry into application of this Regulation, were authorised under national law to provide crypto-asset services. The competent authorities shall ensure that the requirements laid down in Chapters 2 and 3 of Title V are complied with before granting authorisation pursuant to such simplified procedures.

4. The EBA shall exercise its supervisory responsibilities pursuant to Article 98 from the date of the entry into application of the delegated acts referred to in Article 39(6).

Article 123a

Amendments to Directive 2013/36/EU

1. In Annex I of Directive 2013/36/EU the point 15 is replaced by the following:

   – "15. Issuing electronic money including electronic-money tokens as defined in point (4) of Article 3 of Regulation (EU) No xxx/xxx of the European Parliament and of the Council."

2. In Annex I of Directive 2013/36/EU the following activities are added:

– "16. Issuance of asset-referenced tokens as defined in point (3) of Article 3 of Regulation (EU) No xxx/xxx [MiCA] of the European Parliament and of the Council.

– 17. Crypto-asset services as defined in point (9) of Article 3 of Regulation (EU) No xxx/xxx [MiCA] of the European Parliament and of the Council."

Article 124

Amendment of Directive (EU) 2019/1937

In Part I.B of the Annex to Directive (EU) 2019/1937, the following point is added:

– "(xxi) Regulation (EU) …./… of the European Parliament and of the Council of … on Markets in Crypto-Assets (EU) 2021/XXX, and amending Directive (EU) 2019/37 (OJ L …).

Article 125

Transposition of amendments of Directive 2013/36/EU and *Directive (EU) 2019/1937*

1. Member States shall adopt, publish and apply, by … [18 months after the date of entry into force of this Regulation], the laws, regulations and administrative provisions necessary to comply with Articles 123a and 124.

2. Member States shall communicate to the Commission, the EBA and ESMA the text of the main provisions of national law which they adopt in the field covered by Article 97.

Article 125a

Amendment to Regulation (EU) No 1093/2010

In Article 1(2) of Regulation (EU) 1093/2010 the first subparagraph is replaced by the following:

> ‘The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2002/87/EC, Directive 2008/48/EC (*), Directive 2009/110/EC, Regulation (EU) No 575/2013 (**), Directive 2013/36/EU (***), Directive 2014/49/EU (****), Directive 2014/92/EU (*****), Directive (EU) 2015/2366 (******), Regulation (EU) No [MiCA] (**********) of the European Parliament and of the Council and, to the extent that those acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation (EU) No 1024/2013 (*******).

Article 125b

Amendment to Regulation (EU) No 1095/2010

In Article 1(2) of Regulation (EU) 1095/2010 the first subparagraph is replaced by the following:

> "The Authority shall act within the powers conferred by this Regulation and within the scope of Directives 97/9/EC, 98/26/EC, 2001/34/EC, 2002/47/EC, 2004/109/EC, 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council[1], Regulation (EC) No 1060/2009 and Directive 2014/65/EU of the European Parliament and of the Council[2], Regulation (EU) 2017/1129 of the European Parliament and of the Council[3], Regulation (EU) No […/…][4] and to the extent that those acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares, issuers or offerors of crypto-assets, persons seeking admission of crypto-assets to trading on a trading platform for crypto-assets or crypto-asset service providers and the competent authorities that supervise them, within the relevant parts of, Directives 2002/87/EC and 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority."

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1 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

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

3 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).

4 Council Regulation (EU) No [MiCA] of [date] on Markets in Crypto-assets, and amending Directive (EU) 2019/1937.

Article 126

Entry into force and application

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

2. This Regulation shall apply from [please insert date 18 months after the date of entry into force].

3. However, the provisions laid down in Title III and Title IV shall apply from [please insert date 12 months of the entry into force].

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

Done at Brussels,

For the European Parliament	For the Council
The President	The President

ANNEX I

Disclosure items for the white paper of crypto-assets, other than asset-referenced tokens or e-money tokens

Part A: Information about the offeror or person seeking admission to trading

1. Name;

1a. Legal form;

2. Registered address and head office, where different;

3. Date of the registration;

4. Legal entity identifier, if available, or national legal entity code;

4a A contact telephone number and an email address of the offeror or the person seeking admission to trading, and the period of days within which an investor contacting the offeror or the person seeking admission to trading via that telephone number or email address will receive an answer;

5. Where applicable, the name of the parent company;

6. Identity, business addresses and functions of persons belonging to the management body of the offeror or person seeking admission to trading;

6a. Business or professional activity of the offeror or person seeking admission to trading and, where applicable, its parent company;

7. [deleted]

8. [deleted]

9. The financial condition of the offeror or person seeking admission to trading over the past 3 years or where the offeror or person seeking admission to trading has not been established for the past 3 years, its financial condition since the date of its registration.

   The financial condition means a fair review of the development and performance of the business of the offeror or person seeking admission to trading and of its position for each year and interim period for which historical financial information is required, including the causes of material changes.

   The review shall be a balanced and comprehensive analysis of the development and performance of the offeror or person seeking admission to trading business and of its position, consistent with the size and complexity of the business.

Part aa: Information about the issuer, if different from the offeror or person seeking admission to trading

1. Name;

2. Legal form;

3. Registered address and head office, where different;

4. Date of the registration;

5. Legal entity identifier, if available, or national legal entity code;

6. Where applicable, the name of the parent company;

7. Identity, business addresses and functions of persons belonging to the management body of the issuer;

8. Business or professional activity of the issuer, and, where applicable, its parent company.

Part ab: Information about the operator of the trading platform when it prepares the white paper

1. Name;

2. Legal form;

3. Registered address and head office, where different;

4. Date of the registration;

5. Legal entity identifier, if available, or national legal entity code;

6. Where applicable, the name of the parent company;

7. The reason why that operator prepared the white paper;

8. Identity, business addresses and functions of persons belonging to the management body of the operator;

9. Business or professional activity of the operator, and, where applicable, its parent company.

Part B: Information about the crypto-asset project

1. Name of the project and of the crypto-assets,if different than the name of the offeror or person seeking admission to trading, and abbreviation or ticker handler;

1a. A brief description of the project;

2. Details of all natural or legal persons (including business addresses and/or domicile of the company) involved in project implementation, such as advisors, development team and crypto-asset service providers;

3. [deleted]

4. Where the project concerns utility tokens, key features of the goods or services developed or to be developed;

5. Information about the project, especially past and future milestones of the project and, where applicable, resources already allocated to the project;

6. where applicable, planned use of any funds or other crypto-assets collected;

7. [deleted]

Part C: Information about the offer to the public of crypto-assets or their admission to trading on a trading platform for crypto-assets

1. Indication on whether the whitepaper concerns an offer of crypto-assets to the public or an admission of crypto-assets to trading on a trading platform for crypto-assets;

1a. The reasons for the offer or for seeking admission to trading;

2. Where applicable, the amount that the offer intends to raise in funds or in any other crypto-asset. Where applicable, any minimum and maximum target subscription goals set for the offer to the public of crypto-assets, and whether oversubscriptions are accepted and how they are allocated;

3. The issue price of the crypto-asset being offered (in an official currency or any other crypto-assets), any applicable subscription fee or the method in accordance with which the offer price will be determined;

4. Where applicable, the total number of crypto-assets to be offered or admitted to trading on a trading platform for crypto-assets;

5. Indication of the potential holders that the offer to the public of crypto-assets or admission of such crypto-assets to trading targets, including any restriction as regards the type of holders for such crypto-assets;

6. Specific notice that purchasers participating in the offer to the public of crypto-assets will be able to be reimbursed if the minimum target subscription goal is not reached at the end of the offer to the public, if they exercise the right to withdrawal foreseen in Article 12 or if the offer is cancelled and detailed description of the refund mechanism, including the expected timeline of when such refunds will be completed;

7. Information about the various phases of the offer of crypto-assets, including information on discounted purchase price for early purchasers of crypto-assets (pre-public sales); in the case of discounted purchase prices for some purchasers, an explanation why purchase prices may be different, and a description of the impact on the other investors;

8. For time-limited offers, the subscription period during which the offer to the public is open

8a. The arrangements to safeguard funds or other crypto-assets as referred to in Article 9 during the time-limited offer or during the withdrawal period;

9. Methods of payment to buy the crypto-assets offered and methods of transfer of the value to the purchasers when they are entitled to be reimbursed;

10. In the case of offers, information on the right of withdrawal as referred to in Article 12;

11. Information on the manner and time schedule of transferring the purchased crypto-assets to the holders;

11a. Information about technical requirements the purchaser has to fulfil to hold the crypto-assets;

12. Where applicable, name of the crypto-asset service provider in charge of the placement of crypto-assets and the form of such placement (with or without a firm commitment basis);

13. Where applicable, name of the trading platform for crypto-assets where admission to trading is sought, and information about the way investors can access such trading platforms and what costs are involved;

14. The law applicable to the offer to the public of crypto-assets, as well as the competent courts;

15. Expenses related to the offer to the public of crypto-assets;

16. [deleted]

17. Potential conflicts of interest, of the persons involved in the offer or admission to trading, pertaining to the offer or admission to trading.

Part Ca: Information about the crypto-assets

1. The type of crypto-asset that will be offered to the public or for which admission to trading is sought;

2. A description of the characteristics and functionality of the crypto-assets being offered or admitted to trading on a trading platform for crypto-assets, including information about when the functionalities are planned to apply;

Part D: Rights and obligations attached to crypto-assets

1. [deleted]

2. [deleted]

3. A description of the rights and obligations (if any) that the purchaser is entitled to, and the procedure and conditions for the exercise of these rights;

3a. A description of the conditions under which the rights and obligations may be modified;

4. Where applicable, information on the future offers of crypto-assets by the issuer and the number of crypto-assets retained by the issuer itself;

5. Where the offer of crypto-assets or admission to trading on a trading platform for crypto-assets concerns utility tokens, information about the quality and quantity of goods or services that the utility tokens give access to;

6. Where the offers to the public of crypto-assets or admission to trading on a trading platform for crypto-assets concerns utility tokens, information on how utility tokens can be redeemed for goods or services they relate to;

7. Where an admission to trading on a trading platform for crypto-assets is not sought, information on how and where the crypto-assets can be acquired or sold after the offer to the public;

8. Restrictions on the transferability of the crypto-assets being offered or admitted to trading on a trading platform for crypto-assets;

9. Where the crypto-assets has protocols for the increase or decrease of their supply in response to changes in demand, a description of the functioning of such protocols;

10. The law applicable to the crypto-assets, as well as the competent courts;

11. Where applicable, a description of protection schemes protecting the value of the crypto-asset and compensation schemes.

Part E: Information on the underlying technology

1. Information on the technology used, including distributed ledger technology, protocols and technical standards used;

2. [deleted]

3. The consensus mechanism, where applicable;

4. Incentive mechanisms to secure transactions and any fees applicable;

5. Where the crypto-assets are issued, transferred and stored on a distributed ledger that is operated by the issuer, the offeror or a third-party acting on their behalf, a detailed description of the functioning of such distributed ledger;

6. Information on the audit outcome of the technology used (if any).

Part F: Risks

1. [deleted]

2. A description of risks associated with the offer of crypto-assets and/or admission to trading on a trading platform for crypto-assets;

2a A description of risks associated with the issuer of crypto-assets, if different from the offeror, or person seeking admission to trading;

3. A description of risks associated with the crypto-assets;

4. A description of risks associated with project implementation;

5. A description of risks associated with the technology used as well as mitigating measures (if any).

Annex II

Disclosure items for white paper for asset-referenced tokens

Part A: Information about the issuer

0a. Name;

0b. Legal form;

0c. Registered address and head office where different;

0d. Date of the registration;

0e. Legal entity identifier, if available, or national legal entity code;

0f. Where applicable, the identity of the parent company;

0g. Identity, business addresses and functions of persons belonging to the management body of the issuer;

0h. Business or professional activity of the issuer and, where applicable, its parent company;

0j. The financial condition of the issuer over the past 3 years or where the issuer has not been established for the past 3 years, its financial condition since the date of its registration.

The financial condition means a fair review of the development and performance of the business of the issuer and of its position for each year and interim period for which historical financial information is required, including the causes of material changes.

The review shall be a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;

1. A detailed description of the issuer's governance arrangements;

2. Except for issuers of asset-referenced tokens that are exempted from authorisation in accordance with Article 15a, details about the authorisation as an issuer of asset-referenced tokens and name of the competent authority which granted such an authorisation.

For credit institutions the name of the competent authority of the home Member State.

2a. In case the issuer of the crypto-asset also issued other crypto-assets or has also activities related to crypto-assets, this should clearly be stated. The issuer should also state whether there is any connection between the issuer and the entity running the DLT network used to issue the crypto asset. This also applies if these protocols are run by or controlled by a person/ legal entity closely connected to project participants;

Part B: Information about the asset-referenced tokens

0a. Name and abbreviation or ticker handler of the asset-referenced tokens;

0b. A brief description of the asset-referenced tokens, including a reference to the type of crypto asset;

0c. Details of all natural or legal persons (including business addresses and/or domicile of the company) involved in the implementation of the asset-referenced tokens, such as advisors, development team and crypto-asset service providers;

1. A description of the role, responsibilities and accountability of any third-party entities referred to in Article 30(5), point (h).

2. Information about the plans for the asset-referenced tokens, including the description of the past and future milestones and, where applicable, resources already allocated.

Part C: Information about the offer to the public of asset-referenced tokens or their admission to trading on a trading platform for crypto-assets

1. Indication on whether the white paper concerns an offer of asset-referenced tokens to the public or an admission of asset-referenced tokens to trading on a trading platform for crypto-assets;

2. Where applicable, the amount that the offer intends to raise in funds or in any other crypto-asset. Where applicable, any minimum and maximum target subscription goals set for the offer to the public of asset-referenced tokens, and whether oversubscriptions are accepted and how they are allocated;

3. Where applicable, the total number of asset-referenced tokens to be offered or admitted to trading on a trading platform for crypto-assets;

4. Indication of the potential holders that the offer to the public of asset-referenced tokens or admission of such asset-referenced tokens to trading targets, including any restriction as regards the type of holders for such asset-referenced tokens;

5. Specific notice that purchasers participating in the offer to the public of asset-referenced tokens will be able to be reimbursed if the minimum target subscription goal is not reached at the end of the offer to the public, including the expected timeline of when such refunds will be completed; the consequences of exceeding a maximum target subscription goal should be made explicit;

6. Information about the various phases of the offer of asset-referenced tokens, including information on discounted purchase price for early purchasers of asset-referenced tokens (pre-public sales); in the case of discounted purchase price for some purchasers, an explanation why purchase prices may be different, and a description of the impact on the other investors;

7. For time-limited offers, the subscription period during which the offer to the public is open;

8. Methods of payment to buy and to redeem the asset-referenced tokens offered;

9. Information on the method and time schedule of transferring the purchased asset-referenced tokens to the holders;

9a Information about technical requirements the purchaser has to fulfil to hold the asset-referenced token;

10. Where applicable, name of the asset-referenced token service provider in charge of the placement of crypto-assets and the form of such placement (guaranteed or not);

11. Where applicable, the name of the trading platform for crypto-assets where admission to trading is sought, and information about the way investors can access such trading platforms and what costs are involved;

12. The law applicable to the offer to the public of asset-referenced tokens, as well as the competent courts;

13. Expenses related to the offer to the public of asset-referenced tokens;

14. Potential conflicts of interest, of the persons involved in the offer or admission to trading, pertaining to the offer or admission to trading.

Part D: Information on the rights and obligations attached to asset-referenced tokens

0a. A description of the characteristics and functionality of the asset-referenced tokens being offered or admitted to trading on a trading platform for crypto-assets, including information about when the functionalities are planned to apply;

0b. A description of the rights and obligations (if any) that the purchaser has, and the procedure and conditions for the exercise of these rights;

0c. A description of the conditions under which the rights and obligations may be modified;

0d. Where applicable, information on the future offers of asset-referenced tokens by the issuer and the number of asset-referenced tokens retained by the issuer itself;

0e. Where an admission to trading on a trading platform for crypto-assets is not sought, information on how and where the asset-referenced tokens can be acquired or sold after the offer to the public;

0f. Any restrictions on the transferability of the asset-referenced tokens being offered or admitted to trading on a trading platform for crypto-assets;

0g. Where the asset-referenced tokens has protocols for the increase or decrease of their supply in response to changes in demand, a description of the functioning of such protocols;

0h. The law applicable to the asset-referenced tokens, as well as the competent courts;

-1h. Where applicable, public protection schemes protecting the value of the asset-referenced token and public compensation schemes;

1. Information on the nature and enforceability of rights, including permanent redemption rights and any claims that holders and any legal or natural person as referred to in Article 35(3), may have against the issuer, including information on how such rights will be treated in case of insolvency procedures; information on whether different rights are allocated to different holders and the non-discriminatory reasons for such different treatment;

1a. a detailed description of the claim that the asset-referenced token represents for holders, including:

(i) the description of each referenced asset and specified proportions of each of these assets,

(ii) the relation between the value of the referenced assets and the amount of the claim and the reserve of assets, and;

(iii) a description how a fair and transparent valuation of components of the claim is undertaken, which identifies, where relevant, independent parties;

2. [deleted]

3. Where applicable, information on the arrangements put in place by the issuer to ensure the liquidity of the asset-referenced tokens, including the name of entities in charge of ensuring such liquidity;

4. The contact details for submitting complaints and description of the complaint handling procedure and any dispute resolution mechanism or redress procedure established by the issuer of asset-referenced tokens;

5. A description of the rights of the holders when the issuer is not able to fulfil its obligations, including in insolvency;

6. A description of rights in the context of the implementation of the recovery plan;

7. A description of rights in the context of the implementation of the orderly redemption plan;

8. Detailed information on how the asset referenced token is redeemed, including whether the holder will be able to choose the form of redemption, the form of transference or the currency of redemption;

Part E: Information on the underlying technology

1. Information on the technology used, including distributed ledger technology, protocols and technical standards used;

2. [deleted]

3. The consensus mechanism, where applicable;

4. Incentive mechanisms to secure transactions and any fees applicable;

5. Where the asset-referenced tokens are issued, transferred and stored on a distributed ledger that is operated by the issuer or a third-party acting on his behalf, a detailed description of the functioning of such distributed ledger;

6. Information on the audit outcome of the technology used, if such an audit was conducted.

Part F: Risks

1. Risks related to the reserve of assets, when the issuer is not able to fulfil its obligations;

4. A description of the risks associated with the issuer of asset-referenced tokens;

5. A description of the risks associated with the offer of asset-referenced tokens or admission to trading on a trading platform for crypto-assets;

6. A description of the risks associated with the asset-referenced tokens, in particular to the assets referenced;

7. A description of the risks associated with implementation of the asset-referenced tokens project;

8. A description of the risks associated with the technology used as well as mitigating measures (if any).

Part G: Reserve of assets

1. A detailed description of the mechanism aimed at aligning the value of the reserve of assets with the claim associated to the asset-referenced tokens, including legal and technical aspects;

2. A detailed description of the reserve of assets and their composition;

3. A description of the mechanisms through which asset-referenced tokens are issued, and redeemed;

4. Information on whether a part of the reserve assets are invested and where applicable, a description of the investment policy for the reserve assets;

5. A description of the custody arrangements for the reserve assets, including the segregation of assets, and the name of credit institutions, investment firms or crypto-asset service providers appointed as custodians.

Annex III

Disclosure items for the white paper for electronic money tokens

Part A: Information about the issuer

1. Issuer's name;

1a. Legal form;

2. Registered address and head office where different;

3. Date of the registration;

4. Legal entity identifier, if available, or national legal entity code;

4a. a contact telephone number and an email address of the issuer, and a period of days during which an investor contacting the issuer via this telephone number or email address will receive an answer.

5. Where applicable, the identity of the parent company;

6. Identity, business address and functions of persons belonging to the management body of the issuer;

6a. Business or professional activity of the issuer and, where applicable, its parent company

7. [deleted]

8. Potential conflicts of interest;

8a. In case the issuer of the e-money tokens also issued other crypto assets or has also other activities related to crypto assets, this should clearly be stated. The issuer should also state whether there is any connection between the issuer and the entity running the DLT network used to issue the crypto asset. This also applies if the protocols mentioned in the previous paragraph are run by/ or controlled by a person/ legal entity closely connected to project participants;

9. The issuer's financial condition over the past three years or where the issuer has not been established for the past three years, the issuer's financial condition record since the date of its registration.

The financial condition means a fair review of the development and performance of the business of the issuer and of its position for each year and interim period for which historical financial information is required, including the causes of material changes.

The review shall be a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;

10. Except for e-money issuers who are exempted from authorisation in accordance with Article 43(2)(b) and (c), details about the authorisation as an issuer of e-money tokens and name of the competent authority which granted authorisation.

Part B: Information about the e-money tokens

-1. Name of the e-money token and abbreviation;

1. Details of all natural or legal persons (including business addresses and/or domicile of the company) involved in design and development, such as advisors, development team and crypto-asset service providers.

Part C: Information about the offer to the public of e-money tokens or their admission to trading

1. Indication on whether the white paper concerns an offer to the public of e-money tokens to the general public or their admission to trading on a trading platform for crypto-assets;

2. Where applicable, the total number of e-money tokens to be offered to the public or admitted to trading on a trading platform for crypto-assets;

3. Where applicable, name of the trading platforms for crypto-assets where the admission to trading of e-money tokens is sought;

4. The law applicable to the offer to the public of e-money tokens, as well as the competent courts.

Part D: Rights and obligations attached to e-money tokens

1. A detailed description of the rights and obligations (if any) that the holder of the e-money token is entitled to, including the right of redemption at par value as well as the procedure and conditions for the exercise of these rights;

2. [deleted]

2a. A description of the conditions under which the rights and obligations may be modified;

4. The law applicable to the e-money tokens, as well as the competent courts;

5. A description of the rights of the holders when the issuer is not able to fulfil its obligations, including in insolvency;

6. A description of rights in the context of the implementation of the recovery plan;

7. A description of rights in the context of the implementation of the orderly redemption plan.

8. The contact details for submitting complaints and description of the complaint handling procedure and any dispute resolution mechanism or redress procedure established by the issuer of e-money tokens;

8a. Where applicable, a description of protection schemes protecting the value of the crypto-asset and compensation schemes.

Part E: Information on the underlying technology

1. Information on the technology used, including distributed ledger technology, protocols and technical standards used, allowing for the holding, storing and transfer of such e-money tokens;

1a. Information about technical requirements the purchaser has to fulfil to gain control over the e-money tokens;

2. [deleted]

3. The consensus mechanism, where applicable;

4. Incentive mechanisms to secure transactions and any fees applicable;

5. Where the e-money tokens are issued, transferred and stored on a distributed ledger that is operated by the issuer or a third-party acting on its behalf, a detailed description of the functioning of such distributed ledger;

6. Information on the audit outcome of the technology used (if any);

Part F: Risks

1. Description of risks associated with the issuer of e-money tokens;

2. Description of risks associated with the e-money tokens;

3. Description of risks associated with the technology used as well as mitigating measures (if any).

Annex IV

Minimum capital requirements for crypto-asset service providers

Crypto-asset service providers	Type of crypto-asset services	Minimum capital requirements under Article 60(1)(a)
Class 1	[Class 1] Crypto-asset service provider authorised for the following crypto-asset services: – reception and transmission of orders on behalf of third parties; and/or – providing advice on crypto-assets; and/or – execution of orders on behalf of third parties; and/or – placing of crypto-assets; and/or – portfolio management on crypto-assets - transfer of crypto-assets	[Class 1] EUR 50,000

Class 2	[Class 2] Crypto-asset service provider authorised for any crypto-asset services under class 1 and: – custody and administration of crypto-assets on behalf of third parties. – exchange of crypto-assets against funds; – exchange of crypto-assets against other crypto-assets.	[Class 2] EUR 125,000
Class 3	[Class 3] Crypto-asset service provider authorised for any crypto-asset services under class 2 and: – operation of a trading platform for crypto-assets.	[Class 3] EUR 150,000

Annex V

List of infringements referred to in Title III and Title VI for issuers of significant asset-referenced tokens, point (1)

1. The issuer infringes Article 21 by not notifying the EBA of any change of its business model likely to have a significant influence on the purchase decision of any actual or potential holder of significant asset-referenced tokens, or by not describing such a change in a crypto-asset white paper.

2. The issuer infringes Article 21 by not complying with a measure requested by the EBA in accordance with Article 21(3).

3. The issuer infringes Article 23(1), point (a) by not acting honestly, fairly and professionally.

4. The issuer infringes Article 23(1), point (b) by not communicating with holders and potential holders of significant asset-referenced tokens in a fair, clear and not misleading manner.

5. The issuer infringes Article 23(2) by not acting in the best interests of the holders of significant asset-referenced tokens, or by giving a preferential treatment to specific holders, which is not disclosed in the issuer's white paper.

6. The issuer infringes Article 24, by not publishing on its website its approved crypto-asset white paper as referred to in Article 19(1) and, where applicable, its modified crypto-asset white paper referred to in Article 21.

7. The issuer infringes Article 24 by not making the white papers publicly accessible before the starting date of the offer to the public of the significant asset-referenced tokens or the admission of those tokens to trading on a trading platform for crypto-assets.

8. The issuer infringes Article 24 by not making the crypto-asset white paper available as long as the significant asset-referenced tokens are held by the public.

9. The issuer infringes Article 25(1) by publishing marketing communications, relating to an offer to the public of significant asset-referenced tokens, or to the admission of such significant asset-referenced tokens to trading on a trading platform for crypto-assets, which do not meet the requirements set out in Article 25(1), points (a) to (d).

9a. The issuer infringes Article 25(3) by not notifying marketing communications to the EBA upon request.

9b. The issuer infringes Article 25(4) by disseminating marketing communications before the publication of the whitepaper.

10. [deleted]

11. The issuer infringes Article 26(1) by not disclosing in a clear, accurate and transparent manner on a publicly and easily accessible place on their website the amount of significant asset-referenced tokens in circulation and the value and the composition of the reserve assets referred to in Article 32, or by not updating the required information at least once a month.

12. The issuer infringes Article 26(2) by not publishing as soon as possible on a publicly and easily accessible place on their website a brief summary of the audit report as well as the full and unredacted audit report in relation to the reserve assets referred to in Article 32.

13. The issuer infringes Article 26(3) by not disclosing in a clear, accurate and transparent manner as soon as possible any event that has or is likely to have a significant effect on the value of the significant asset-referenced tokens or the reserve assets.

14. The issuer infringes Article 27(1) by not establishing and maintaining effective and transparent procedures for the prompt, fair and consistent handling of complaints received from holders of significant asset-referenced tokens and other interested parties, including consumer associations which represent holders of asset-referenced tokens, or by not establishing procedures to facilitate the handling of complaints between holders and third-party entities as referred to in Article 30(5), point (h).

15. The issuer infringes Article 27(2), by not enabling the holders of significant asset-referenced tokens to file complaints free of charge.

16. The issuer infringes Article 27(3), by not developing and making available to the holders of significant asset-referenced tokens a template for filing complaints and by not keeping a record of all complaints received and any measures taken in response to those complaints.

17. The issuer infringes Article 27(4), by not investigating all complaints in a timely and fair manner and/or, by not communicating the outcome of such investigations to the holders of their significant asset-referenced tokens within a reasonable period of time.

18. The issuer infringes Article 28(1) by not implementing and maintaining effective policies and procedures to identify, prevent, manage and disclose conflicts of interest between the issuer itself and its shareholders, the members of its management body, its employees, any natural or legal persons that have qualifying holdings in the issuer, the holders of significant asset-referenced tokens, any third party providing one of the functions as referred in Article 30(5), point (h).

19. The issuer infringes Article 28(1) by not taking all appropriate steps to identify, prevent, manage and disclose conflicts of interest arising from the management and investment of the reserve assets.

20. The issuer infringes Article 28, paragraphs (2) to (4), by not disclosing to the holders of significant asset-referenced tokens the general nature and sources of conflicts of interest and the steps taken to mitigate those risks, or by not making this disclosure on its website in a prominent place, or by not being sufficiently precise in the disclosure to enable the holders of significant asset-referenced tokens to take an informed purchasing decision about such tokens.

21. The issuer infringes Article 29, by not notifying immediately to EBA of any changes to its management body or by not providing EBA with all the necessary information to assess compliance with Article 30(2).

22. The issuer infringes Article 30(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 processes, including sound administrative and accounting procedures.

23. The issuer infringes Article 30(2) by having members of its management body who do not have sufficiently good repute and do not possess sufficient knowledge, experience and skills to perform their duties as well as they do not demonstrate that they are capable of committing sufficient time to effectively perform their duties.

23a. The management body of the issuer infringes Article 30(2a) by not assessing nor periodically reviewing the effectiveness of the policy arrangements and procedures put in place to comply with the obligations set out in Chapters 2, 3, 5 and 6 of this Title and by not taking appropriate measures to address any deficiencies.

23b. The issuer infringes Article 30(3) by having persons with qualifying holdings who do not have sufficiently good repute.

24. The issuer infringes Article 30(5) by not adopting 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, including by not establishing, maintaining and implementing any of the policies and procedures referred to in Article 30(5), points (a) to (k).

25. The issuer infringes Article 30(5) by not establishing and maintaining contractual arrangements with third-party entities as referred to in Article 30(5), point (h), that precisely set out the roles, responsibilities, rights and obligations of each of the third-party entities and the issuer, or by providing for an unambiguous choice of law for such contracts with cross-jurisdictional implications.

26. Unless they have initiated a plan as referred to in Article 42, the issuer infringes Article 30(6), by not employing appropriate and proportionate systems, resources or procedures to ensure the continued and regular performance of their services and activities, and by not maintaining all their systems and security access protocols to appropriate Union standards.

26a. The issuer infringes Article 30(6a) for not presenting to the competent authority for approval a plan for discontinuation of providing services and activities.

27. The issuer infringes Article 30(7) by not identifying sources of operational risks and by not minimising those risks through the development of appropriate systems, controls and procedures.

28. The issuer infringes Article 30(8) by not establishing a business continuity policy and plans that ensure, in case of an interruption of its systems and procedures, the preservation of essential data and functions and the maintenance of their activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its activities.

The issuer infringes Article 30(9) by not having in place internal control mechanisms and effective procedures for risk management, including effective control and safeguard arrangements for managing ICT systems as required by Regulation (EU) 2021/xx of the European Parliament and of the Council.

The issuer infringes Article 30(10) by not having systems and procedures in place that are adequate to safeguard the security, integrity and confidentiality of information as required by Regulation (EU) 2021/xx of the European parliament and of the Council on digital operational resilience[1] and in line with Regulation (EU) 2016/679[2] of the European parliament and of the Council (General Data Protection Regulation).

The issuer infringes Article 30(11) by not ensuring that the issuer is regularly audited by independent auditors.

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

2 ***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).***

29. The issuer infringes Article 31(1) point (a) or point (ba) or 41(4) by not abiding, at all times, to the own funds requirement.

30. The issuer infringes Article 31(2) where its own funds do not consist of the common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions referred to in Articles 46 and 48 of that Regulation.

31. The issuer infringes Article 31(3) by not abiding to the own funds required by the competent authority, following the assessment made in accordance with Article 31(3).

31a. The issuer infringes Article 31(3b) by not conducting on a regular basis, stress testing that shall take into account severe but plausible financial stress scenarios, such as interest rate shocks, and non-financial stress scenarios such as operational risk

31b. The issuer infringes Article 31(3b) by not abiding to hold an additional amount of own funds as requested by the EBA on the basis of the outcome of the stress-test .

32. The issuer infringes Article 32(1) by not constituting and maintaining a reserve of assets at all times.

32a. The issuer infringes Article 32(1ab) by not ensuring that the reserve of assets is operationally segregated from the issuer's estate, and from the reserve of assets of other tokens.

32b. The issuer infringes Article 32(1b) by not ensuring that the reserve of assets is composed and managed in such a way that the risks associated to the assets referenced by the significant asset-referenced token are covered.

The issuer infringes Article 32(1c) by not ensuring that the reserve of assets is composed and managed in such a way that the liquidity risks associated to the permanent redemption rights of the holders are addressed.

33. The issuer infringes Article 32(3) where its management body does not ensure effective and prudent management of the reserve of assets.

34. The issuer infringes Article 32(3) by not ensuring that the issuance and redemption of significant asset-referenced tokens is always matched by a corresponding increase or decrease in the reserve of assets.

34a. The issuer infringes Article 32(3) by not ensuring that the aggregated value of the reserve assets, determined from market prices, is always at least equal to the aggregate value of the claims on the issuer from holders of asset-referenced tokens in circulation.

35. The issuer infringes Article 32(4), by not having clear and detailed policies on the stabilisation mechanism of such tokens that do not meet the conditions set out in Article 32(4), points (a) to (g).

36. The issuer infringes Article 32(5) by not mandating an independent audit of the reserve of assets every 6 months, as of the date of its authorisation or issuing the asset-referenced tokens for the first time in accordance with Article 15a.The issuer infringes Article 32(5) by not notifying to the competent authority and publishing the result of the audit in accordance with 32(5).

37. The issuer infringes Article 33(1) by not establishing, maintaining or implementing custody policies, procedures and contractual arrangements that ensure at all times that the conditions listed in Article 33(1) points (a) to (e) are met.

38. The issuer infringes Article 33(1) by not having a custody policy for each reserve of assets it manages.

39. The issuer infringes Article 33(2) where the reserve assets are not held in custody by a crypto-asset service provider, by a credit institution, or by an investment firm by no later than 5 business days after the issuance of the significant asset-referenced tokens.

40. The issuer infringes Article 33(3) by not exercising all due skill, care, diligence in the selection, appointment and review of credit institutions, investment firms and crypto-asset service providers appointed as custodians of the reserve assets, or by not ensuring that the custodian is a different legal person from the issuer.

41. The issuer infringes Article 33(3) by not ensuring that the credit institutions, investment firms and crypto-asset service providers appointed as custodians of the reserve assets have the necessary expertise and market reputation to act as custodians of such reserve assets.

42. The issuer infringes Article 33(3) by not having contractual arrangements with the custodians that ensure that the reserve assets held in custody are protected against claims of the custodians' creditors.

43. The issuer infringes Article 33(3) by not having custody policies and procedures that set out the selection criteria for the appointments of credit institutions, investment firms or crypto-asset service providers as custodians of the reserve assets and/or by not having the procedure to review such appointments.

44. The issuer infringes Article 33(3) by not reviewing the appointment of credit institutions, investment firms or crypto-asset service providers as custodians of the reserve assets on a regular basis, and, by not evaluating its exposures to such custodians, and by not monitoring the financial conditions of such custodians on an ongoing basis.

45. The issuer infringes Article 33(4) where the reserve assets are not entrusted to credit institutions, investment firms or crypto-asset service providers in accordance with Article 33(4) points (a) to (d).

46. The issuer infringes Article 33(5) where the appointment of a custodian is not evidenced by a written contract, or where such a contract does not regulate the flow of information deemed necessary to enable the issuers, the credit institutions, investment firms and the crypto-assets service providers to perform their functions.

47. The issuer infringes Article 34(1) by investing the reserve of assets in any products that are not highly liquid financial instruments with minimal market, credit and concentration risks or where such investments cannot be liquidated rapidly with minimal price effect.

48. The issuer infringes Article 34(2) by not holding in custody the financial instruments in which the reserve assets are held in accordance with Article 33.

49. The issuer infringes Article 34(3) by not bearing all profits and losses and any counterparty or operational risks that result from the investment of the reserve of assets.

50. The issuer infringes Article 35(1), by not establishing, maintaining and implementing clear and detailed policies and procedures on the rights granted to holders of significant asset-referenced tokens.

51. The issuer infringes Article 35(1) and (2) by not providing holders of significant asset-referenced tokens with a permanent right of redemption in accordance with Article 35(1), (2) , and by not establishing a policy that meets the conditions listed in Article 35(2), points (a) to (ea).

51c. The issuer infringes Article 35(3) by applying fees in the event of the redemption of significant asset-referenced tokens.

52. [deleted]

53. [deleted]

54. [deleted]

55. [deleted]

56. [deleted]

57. [deleted]

58. [deleted]

59. The issuer infringes Article 36 by granting interests in relation to significant asset-referenced tokens.

60. The issuer infringes Article 41(1) by not adopting, implementing and maintaining a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards.

61. The issuer infringes Article 41(2) by not ensuring that its 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), point (10), on a fair, reasonable and non-discriminatory basis.

62. The issuer infringes Article 41(3) by not assessing or monitoring the liquidity needs to meet redemption requests or the exercise of rights, as referred to in Article 36, by holders of significant asset-referenced tokens.

63. The issuer infringes Article 41(3) by not establishing, maintaining or implementing a liquidity management policy and procedures or by not having policy and procedures that ensure that the reserve assets have a resilient liquidity profile that enables the issuer of significant asset-referenced tokens to continue operating normally, including under liquidity stressed scenarios.

63aa. The issuer infringes Article 41(3a) by not conducting on a regular basis, liquidity stress testing and by not strengthening the liquidity risk requirements requested by the EBA.

63a. The issuer infringes Article 41a(1) by not establishing a recovery plan providing for measures to be taken by the issuer to restore the compliance with the requirements applicable to the reserve of assets when the issuer fails to comply with those requirements, including the preservation of its services related to the significant asset-referenced tokens issued, the timely recovery of operations and the fulfilment of the issuer's obligations in the case of events that pose a significant risk of disrupting operations.

63c. The issuer infringes Article 41a(1) by not establishing a plan that includes appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.

63d. The issuer infringes Article 41a(2) by not notifying the recovery plan to the competent authority and, where applicable, resolution and prudential supervisory authorities, within 6 months after the date of authorisation or issuing the asset-referenced tokens for the first time in accordance with Article 15a.

63e. The issuer infringes Article 41a(2) by not reviewing or updating the plan regularly.

64. The issuer infringes Article 42(1) by not having in place and maintaining an operational plan that is appropriate to support an orderly redemption of its significant asset-reference tokens.

The issuer infringes Article 42(1) by not having a plan that demonstrates the ability of the issuer of significant asset-referenced tokens to carry out the redemption of outstanding asset-referenced tokens issued without causing undue economic harm to their holders or to the stability of the markets of the reserve assets

65. The issuer infringes Article 42(2) by not having a plan that includes contractual arrangements, procedures or systems, including the designation of a temporary administrator, to ensuring the equitable treatment between all holders of significant asset-referenced tokens and that the holders of significant asset-referenced tokens are paid in a timely manner with the proceeds from the sale of the remaining reserve assets.

65a. The issuer infringes Article 42(2) by not ensuring the continuity of any critical activities performed by issuers or by any third-party entities, which are necessary for the orderly redemption.

The plan shall ensure the continuity of any critical activities performed by issuers or by any third-party entities, which are necessary for the orderly redemption

65b. The issuer infringes Article 42(3) by not notifying the redemption plan to the competent authority within 6 months after the date of issuing a significant e-money token.

66. The issuer infringes Article 42(3) by not reviewing or updating the plan regularly.

67. Unless the conditions of Article 77(2) are met, the issuer infringes Article 77(1) by not informing 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.

Annex VI

List of infringements of provisions referred to in Title III by application of Title IV for issuers of significant electronic money tokens

1. The issuer infringes Article 30(6a) for not presenting to the competent authority for approval a plan for discontinuation of providing services and activities.

-1a. The issuer infringes Article 32(1) by not constituting and maintaining a reserve of assets at all times.

-1b. The issuer infringes Article 32(1ab) by not ensuring that the reserve of assets is operationally segregated from the issuer's estate, and from the reserve of assets of other tokens.

-1c. The issuer infringes Article 32(1b) by not ensuring that the reserve of assets is composed and managed in such a way that the risks associated to the assets referenced by the significant e-money token are covered.

The issuer infringes Article 32(1c) by not ensuring that the reserve of assets is composed and managed in such a way that the liquidity risks associated to the permanent redemption rights of the holders are addressed.

-1d. The issuer infringes Article 32(3) where its management body does not ensure effective and prudent management of the reserve of assets.

0f. The issuer infringes Article 32(3) by not ensuring that the issuance and redemption of e-money tokens is always matched by a corresponding increase or decrease in the reserve of assets.

0g. The issuer infringes Article 32(3) by not ensuring that the aggregated value of the reserve assets, determined from market prices, is always be at least equal to the aggregate value of the claims on the issuer from holders of e-money tokens in circulation.

-1g. The issuer infringes Article 32(4), by not having clear and detailed policies on the stabilisation mechanism of such tokens that meet the conditions set out in Article 32(4), points (a) to (g).

0i. The issuer infringes Article 32(5) by not mandating an independent audit of the reserve of assets every 6 months, after the date of issuing the e-money token.

The issuer infringes Article 32(5) by not notifying to the competent authority or by not publishing the result of the audit in accordance with 32(5).

1. The issuer infringes Article 33(1) by not establishing, maintaining or implementing custody policies, procedures and contractual arrangements that ensure at all times that the conditions listed in Article 33(1), points (b) to (f) are met.

2. The issuer infringes Article 33(1) by not having a custody policy for each reserve of assets it manages.

3. The issuer infringes Article 33(2) where the reserve assets are not held in custody by a crypto-asset service provider, by a credit institution or by an investment firm by no later than 5 business days after the issuance of the significant e-money tokens.

4. The issuer infringes Article 33(3) by not exercising all due skill, care, diligence in the selection, appointment and review of credit institutions, investment firms and crypto-asset service providers appointed as custodians of the reserve assets or by not ensuring that the custodian is a different legal person from the issuer.

5. The issuer infringes Article 33(3) by not ensuring that the credit institutions, investment firms and crypto-asset service providers appointed as custodians of the reserve assets have the necessary expertise and market reputation to act as custodians of such reserve assets.

6. The issuer infringes Article 33(3) by not having contractual arrangements with the custodians that ensure that the reserve assets held in custody are protected against claims of the custodians' creditors.

7. The issuer infringes Article 33(3) by not having custody policies and procedures that set out the selection criteria for the appointments of credit institutions, investment firms or crypto-asset service providers as custodians of the reserve assets and/or the procedure to review such appointments.

8. The issuer infringes Article 33(3) by not reviewing the appointment of credit institutions, investment firms or crypto-asset service providers as custodians of the reserve assets on a regular basis, and/or, by not evaluating its exposures to such custodians, and/or monitoring the financial conditions of such custodians on an ongoing basis.

9. The issuer infringes Article 33(4) where the reserve assets are not entrusted to credit institutions, investment firms or crypto-asset service providers in accordance with Article 33(4), points (a) to (d).

10. The issuer infringes Article 33(5) where the appointment of a custodian is not evidenced by a written contract, or where such a contract does not regulate the flow of information deemed necessary to enable the issuers and the credit institutions, investment firms and the crypto-assets service providers to perform their functions.

11. The issuer infringes Article 34(1) by investing the reserve assets in any products that are not highly liquid financial instruments with minimal market, credit and concentration risks or where such investments cannot be liquidated rapidly with minimal price effect.

12. The issuer infringes Article 34(2) by not holding the financial instruments in which the reserve assets are held in custody in accordance with Article 33.

13. The issuer infringes Article 34(3) by not bearing all profits and losses and any counterparty or operational risks that result from the investment of the reserve assets.

14. The issuer infringes Article 41(1) by not adopting, implementing and maintaining a remuneration policy that promotes sound and effective risk management of such issuers and that does not create incentives to relax risk standards.

15. The issuer infringes Article 41(2) by not ensuring that its significant e-money tokens can be held in custody by different crypto-asset service providers authorised for the service referred to in Article 3(1) point (10), on a fair, reasonable and non-discriminatory basis.

16. The issuer infringes Article 41(3) by not assessing or monitoring the liquidity needs to meet redemption requests by holders of significant e-money tokens.

The issuer infringes Article 41(3) by not establishing, maintaining or implementing a liquidity management policy and procedures or by not having policy and procedures that ensure that the reserve assets have a resilient liquidity profile that enable the issuer to continue operating normally, including under liquidity stressed scenarios.

16a. The issuer infringes Article 41(3a) by not conducting on a regular basis, liquidity stress testing and by not strengthening the liquidity risk requirements requested by the EBA.

17. The issuer infringes Article 41(4) by not abiding, at all times, to the own funds requirement.

18. The issuer infringes Article 31(2) where its own funds does not consist of the common Equity Tier 1 items and instruments referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions referred to in Articles 46 and 48 of that Regulation.

19. The issuer infringes Article 31(3) by not abiding to the own funds required by the competent authority, following the assessment made in accordance with Article 31(3).

19a The issuer infringes Article 31(3b) by not conducting on a regular basis, stress testing that shall take into account severe but plausible financial stress scenarios, such as interest rate shocks, and non-financial stress scenarios such as operational risk.

The issuer infringes Article 31(3b) by not abiding to hold an additional amount of own funds as requested by the EBA on the basis of the outcome of the stress-test .

19b The issuer infringes Article 41a(1) by not establishing a recovery plan providing for measures to be taken by the issuer to restore the compliance with the requirements applicable to the reserve of assets when the issuer fails to comply with those requirements, including the preservation of its services related to the significant asset-referenced tokens issued, the timely recovery of operations and the fulfilment of the issuer's obligations in the case of events that pose a significant risk of disrupting operations.

19b. The issuer infringes Article 41a(1) by not establishing a plan that includes appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.

19c. The issuer infringes Article 41a(2) by not notifying the recovery plan to the competent authority and, where applicable, resolution and prudential supervisory authorities, within 6 months after the date of issuing e-money tokens.

19d. The issuer infringes Article 41a(2) by not reviewing or updating the plan regularly.

20. The issuer infringes Article 42(1) by not having in place and maintaining an operational plan that is appropriate to support an orderly redemption of its significant e-money tokens.

The issuer infringes Article 42(1) by not having a plan that demonstrates the ability of the issuer of significant e-money tokens to carry out the redemption of outstanding significant e-money tokens issued without causing undue economic harm to their holders or to the stability of the markets of the reserve assets.

21. The issuer infringes Article 42(2) by not having a plan that includes contractual arrangements, procedures or systems, including the designation of a temporary administrator, to ensuring the equitable treatment between all holders of significant e-money tokens and that the holders of significant e-money tokens are paid in a timely manner with the proceeds from the sale of the remaining reserve assets.

21a. The issuer infringes Article 42(2) by not ensuring the continuity of any critical activities performed by issuers or by any third-party entities, which are necessary for the orderly redemption.

22. The issuer infringes Article 42(3) by not notifying the redemption plan to the competent authority within 6 months after the date of issuing of e-money tokens.

22a. The issuer infringes Article 42(3) by not reviewing or updating the plan regularly.

23. [deleted]