Council of the European Union
General Secretariat

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**Interinstitutional files:**
**2020/0265(COD)**

**Brussels, 06 April 2021**

**WK 1791/2021 REV 1**

**LIMITE**

**EF**
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**CODEC**

WORKING PAPER

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**WORKING DOCUMENT**

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| From: | Presidency |
| To: | Working Party on Financial Services (Crypto Assets) |
| Subject: | MiCA: Presidency compromise text, table 1 of 3<br>- Comments from 16 Member States |

**MiCA proposal 2020/0265 (COD) - PCY technical drafting proposal #1** (WK 14906 2021 INIT)
**Table 1/3** Deadline: 20 Jan 2021
Comments received from: LV NL FI SI CZ AT RO HU EE HR SE ES EL MT LU IE Updated 06/04/2021 10:50

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| **2020/0265 (COD)**<br>**Proposal for a**<br>**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**<br>**on Markets in Crypto-assets, and amending Directive (EU) 2019/1937**<br><br>**(Text with EEA relevance)** | **2020/0265 (COD)**<br>**Proposal for a**<br>**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**<br>**on Markets in Crypto-assets, and amending Directive (EU) 2019/1937**<br><br>**(Text with EEA relevance)** | Titles I +II are in table 1;<br>Titles III and IV are in table 2;<br>Remaining titles are in table 3.<br><br>In the second column of these documents, you will find the proposed technical changes, where deletions are marked with ~~strikethrough~~ and additions with **bold**. The PCY's explanations for the proposed amendments are provided in the 3rd column.<br><br>All parts of the proposal marked in grey are not subject to any drafting by the PCY. | LU:<br>(Comments):<br>LU GENERAL COMMENT: Please note that any comments and remarks made hereafter may be supplemented after further analysis and are non-exhaustive. We reserve the right to comment issues not addressed hereafter at a later stage. Observations made during the CWP sessions remain fully valid. We also noted that changes have been introduced to the original COM proposals on a number of elements that were not discussed during the Council WPs (f. ex. on the duration of the right of withdrawal under article 12 (5)). We believe these elements are not purely technical and if changes are introduced, they should also be discussed at the CWP. |
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| THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, | 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 Treaty on the Functioning of the European Union, and in particular Article 114 thereof, | | |

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| Having regard to the proposal from the European Commission, | Having regard to the proposal from the European Commission, | | |
| | | | |
| After transmission of the draft legislative act to the national parliaments, | After transmission of the draft legislative act to the national parliaments, | | |
| | | | |
| Having regard to the opinion of the European Central Bank , | Having regard to the opinion of the European Central Bank , | | |
| | | | |
| Having regard to the opinion of the European Economic and Social Committee , | Having regard to the opinion of the European Economic and Social Committee , | | |
| | | | |
| Acting in accordance with the ordinary legislative procedure, | Acting in accordance with the ordinary legislative procedure, | | |
| | | | |
| Whereas: | Whereas: | | |
| | | | |
| (1) The Commission's communication on a Digital Finance Strategy aims 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 | (1) The Commission's communication on a Digital Finance Strategy aims 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 | | |

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| interest in developing and promoting the uptake of transformative technologies in the financial sector, including blockchain and distributed ledger technology (DLT). | interest in developing and promoting the uptake of transformative technologies in the financial sector, including blockchain and distributed ledger technology (DLT). | | |
| | | | |
| (2) In finance, 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 consumers. By streamlining capital-raising processes and enhancing competition, issuances of crypto-assets can allow for a cheaper, less burdensome and more inclusive way of financing 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. | (2) In finance, 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 consumers. By streamlining capital-raising processes and enhancing competition, issuances of crypto-assets can allow for a cheaper, less burdensome and more inclusive way of financing 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. | | |
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| (3) Some crypto-assets qualify | (3) Some crypto-assets qualify | Amended as several MS pointed | |

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| as financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU of the European Parliament and of the Council . The majority of crypto-assets, however, fall outside of the scope of Union legislation on financial services. There are no rules for services related to crypto-assets, including for the operation of trading platforms for crypto-assets, the service of exchanging crypto-assets against fiat currency or other crypto-assets, or the custody of crypto-assets. The lack of such rules leaves holders of crypto-assets exposed to risks, in particular in areas not covered by consumer protection rules. The lack of such rules can also lead to substantial risks to market integrity in the secondary market of crypto-assets, including market manipulation. To address those risks, some Member States have put in place specific rules for all – or a subset of – crypto-assets that fall outside Union legislation on financial services. Other Member States are considering to legislate in | as financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU of the European Parliament and of the Council . The majority of crypto-assets, however, fall outside of the scope of Union legislation on financial services. There are no rules for services related to crypto-assets, including for the operation of trading platforms for crypto-assets, the service of exchanging crypto-assets against ~~fiat~~ **an official** currency **of a country** or other crypto-assets, or the custody of crypto-assets. The lack of such rules leaves holders of crypto-assets exposed to risks, in particular in areas not covered by consumer protection rules. The lack of such rules can also lead to substantial risks to market integrity in the secondary market of crypto-assets, including market manipulation. To address those risks, some Member States have put in place specific rules for all – or a subset of – crypto-assets that fall outside Union legislation on financial services. Other Member States are | out that the term legal tender only covers bank notes and coins, not commercial bank money.<br>The term "fiat currencies" seems to be too vague and not common in EU legal texts. Also,the definition should in theory also be able to apply on tokens referring to possible official currencies which are not of fiat nature (commodity or representative money).<br><br>In Art. 3(1)(3), COM saw merit in using the term "official currency of a country".<br>The term has been substituted throughout the Regulation, considering the individual context. | FI:<br>(Comments)<br>Change from "fiat currency" to "official currency of a country" is ok. "Fiat currency" is not used elsewhere in relevant legislation (e.g. MiFID 2, PSD2, EMD2) except for AMLD5. We would like to ask, however, does this cover the official currencies of any country in the world or only those of EEA Member States?<br>In the AMLD5, fiat currencies are said to cover electronic money in addition to banknotes and coins (recital 8). The use of "fiat currencies" in the AMLD5 could in the future be amended in line with the terminology used in the MiCA.<br><br>HU:<br>(Comments):<br>HU supports using the term official currency of a country provided as it encompasses M0-M2 monetary aggregates and eventually representative money.<br><br>SE:<br>(Comments):<br>We support the term "official currency of a country" consistently throughout the draft regulation. |

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| this area. | considering to legislate in this area. | | ES:<br>(Comments):<br>Agreed on proposed amendment, in general terms.<br>Nevertheless, further clarification would be desirable on whether the term "funds" relates only to money denominated in euro or in other EU currencies, or includes also other non-EU official currencies.<br>Strictly speaking, non-EU currencies are not of legal tender within the EU, i.e. payees cannot be legally force to accept payments in said currencies, nor those currencies can be used for extinguish debts or liabilities unless agreed bilaterally.<br>This is particularly relevant for EMT, since, those can be issued backed on non-EU currency and it's not clear if that particular token should be deemed as e-money or ART.<br>Also, for some CA services, the fact that non-EU official currencies are deemed as "funds" would lead to require an additional PSP license (i.e. exchange or execution of orders).<br><br>LU:<br>(Comments):<br>LU comments:<br>In addition we suggest the deletion of the words "in the secondary market of |

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| | | | crypto-assets" in the following sentence:<br>"The lack of such rules can also lead to substantial risks to market integrity ~~in the secondary market of crypto-assets~~, including market manipulation."<br><br>In our view, the lack of dedicated rules may not only pose risks to market integrity in the secondary market, but also in the primary market.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
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| (4) The lack of an overall Union framework for crypto-assets can lead to a lack of users' confidence in those assets, which | (4) The lack of an overall Union framework for crypto-assets can lead to a lack of users' confidence in those assets, which | | |

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

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| widely adopted by consumers. Such a development could raise additional challenges to financial stability, monetary policy transmission or monetary sovereignty. | widely adopted by consumers. Such a development could raise additional challenges to financial stability, monetary policy transmission or monetary sovereignty. | | |
| | | | |
| (5) A dedicated and harmonised framework is therefore necessary at Union level to provide specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework. Such harmonised framework should also cover services related to crypto-assets where these services are not yet covered by Union legislation on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of consumer protection and market integrity in crypto-asset markets. A clear framework should enable crypto-asset service providers to scale up their business on a cross-border basis and should facilitate their access to banking services to run their activities smoothly. It should also ensure | (5) A dedicated and harmonised framework is therefore necessary at Union level to provide specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework. Such harmonised framework should also cover services related to crypto-assets where these services are not yet covered by Union legislation on financial services. Such a framework should support innovation and fair competition, while ensuring a high level of consumer protection and market integrity in crypto-asset markets. A clear framework should enable crypto-asset service providers to scale up their business on a cross-border basis and should facilitate their access to banking services to run their activities smoothly. It should also ensure | | |

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| financial stability and address monetary policy risks that could arise from crypto-assets that aim at stabilising their price by referencing a currency, an asset or a basket of such. While increasing consumer protection, market integrity and financial stability through the regulation of offers to the public of crypto-assets or services related to such crypto-assets, a Union framework on markets in crypto-assets should not regulate the underlying technology and should allow for the use of both permissionless and permission-based distributed ledgers. | financial stability and address monetary policy risks that could arise from crypto-assets that aim at stabilising their price by referencing a currency, an asset or a basket of such. While increasing consumer protection, market integrity and financial stability through the regulation of offers to the public of crypto-assets or services related to such crypto-assets, a Union framework on markets in crypto-assets should not regulate the underlying technology and should allow for the use of both permissionless and permission-based distributed ledgers. | | |
| | | | |
| (6) Union legislation on financial services should not favour one particular technology. Crypto-assets that qualify as 'financial instruments' as defined in Article 4(1), point (15), of Directive 2014/65/EU should therefore remain regulated under the general existing Union legislation, including Directive 2014/65/EU, regardless of the technology used for their issuance or their transfer. | (6) Union legislation on financial services should not favour one particular technology. Crypto-assets that qualify as 'financial instruments' as defined in Article 4(1), point (15), of Directive 2014/65/EU should therefore remain regulated under the general existing Union legislation, including Directive 2014/65/EU, regardless of the technology used for their issuance or their transfer. | | |

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| (7) Crypto-assets issued by central banks acting in their monetary authority capacity or by other public authorities should not be subject to the Union framework covering crypto-assets, and neither should services related to crypto-assets that are provided by such central banks or other public authorities. | (7) Crypto-assets issued by central banks acting in their monetary authority capacity or by other public authorities should not be subject to the Union framework covering crypto-assets, and neither should services related to crypto-assets that are provided by such central banks or other public authorities. | | |
| | | | |
| (8) Any legislation adopted in the field of crypto-assets should be specific, future-proof and be able to keep pace with innovation and technological developments. 'Crypto-assets' and 'distributed ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets which 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. Any definition of 'crypto-assets' should therefore correspond to the definition of | (8) Any legislation adopted in the field of crypto-assets should be specific, future-proof and be able to keep pace with innovation and technological developments. 'Crypto-assets' and 'distributed ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets which 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. Any definition of 'crypto-assets' should therefore correspond to the definition of | | |

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| 'virtual assets' set out in the recommendations of the Financial Action Task Force (FATF) . For the same reason, any list of crypto-asset services should also encompass virtual asset services that are likely to raise money-laundering concerns and that are identified as such by the FATF. | 'virtual assets' set out in the recommendations of the Financial Action Task Force (FATF) . For the same reason, any list of crypto-asset services should also encompass virtual asset services that are likely to raise money-laundering concerns and that are identified as such by the FATF. | | |
| | | | |
| (9) A distinction should be made between three sub-categories of crypto-assets, which should be subject to more specific requirements. The first sub-category consists of a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and that is only accepted by the issuer of that token ('utility tokens'). Such 'utility tokens' have non-financial purposes related to the operation of a digital platform and digital services and should be considered as a specific type of crypto-assets. A second sub-category of crypto-assets are 'asset-referenced tokens'. Such asset-referenced tokens aim at maintaining a stable value by | (9) A distinction should be made between three sub-categories of crypto-assets, which should be subject to more specific requirements. The first sub-category consists of a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and that is only accepted by the issuer of that token ('utility tokens'). Such 'utility tokens' have non-financial purposes related to the operation of a digital platform and digital services and should be considered as a specific type of crypto-assets. A second sub-category of crypto-assets are 'asset-referenced tokens'. Such asset-referenced tokens aim at maintaining a stable value by | Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3. | FI:<br>(Comments)<br>The use of "legal tender" should be deleted in the amended text. "Legal tender" has also been removed from the other amended parts of the draft regulation.<br><br>HU:<br>(Comments):<br>Following the amendments of the definitions of utility token in Article 3(1)(5) and asset-referenced token in Article 3(1)(3), the changes of the definitions should be mirrored in this recital as well.<br><br>With reference to the token distinction it is of utmost importance to clarify that crypto-asset category encompasses 4 sub-categories, namely |

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| referencing several currencies that are legal tender, one or several commodities, one or several crypto-assets, or a basket of such assets. By stabilising their value, those asset-referenced tokens often aim at being used by their holders as a means of payment to buy goods and services and as a store of value. A third sub-category of crypto-assets are crypto-assets that are intended primarily as a means of payment aim at stabilising their value by referencing only one fiat currency. The function of such crypto-assets is very similar to the function of electronic money, as defined in in Article 2, point 2, of Directive 2009/110/EC of the European Parliament and of the Council . Like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are used for making payments. These crypto-assets are defined as 'electronic money tokens' or 'e-money tokens'. | referencing several currencies that are legal tender, one or several commodities, one or several crypto-assets, or a basket of such assets. By stabilising their value, those asset-referenced tokens often aim at being used by their holders as a means of payment to buy goods and services and as a store of value. A third sub-category of crypto-assets are crypto-assets that are intended primarily as a means of payment aim at stabilising their value by referencing only one ~~fiat~~ **official** currency **of a country**. The function of such crypto-assets is very similar to the function of electronic money, as defined in in Article 2, point 2, of Directive 2009/110/EC of the European Parliament and of the Council . Like electronic money, such crypto-assets are electronic surrogates for coins and banknotes and are used for making payments. These crypto-assets are defined as 'electronic money tokens' or 'e-money tokens'. | | utility-tokens, the two types of stablecoins and all others, whereas others cover all tokens which does not fall into the specific sub-groups.<br><br>SE:<br>(Comments):<br>The use of "legal tender" should not be used in the amended text as it has been removed from the other amended parts of the draft regulation.<br><br>EL:<br>(Comments):<br>It should be clarified that there are not only three sub-categories of crypto-assets (i.e. utility tokens, asset-referenced tokens and e-money tokens). In fact, the category of crypto-assets "other than asset-referenced tokens or e-money tokens" does not consist only of utility tokens.<br>Additionally, we would like to point out that this Regulation pertains to financial markets. We may need to consider the case where such a broad definition of utility token also refers to tokens dealing with other economic assets.<br>To this end, we reiterate the close relation and interaction between |

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| | | | definitions adopted and the scope of the Regulation.<br><br>LU:<br>(Comments):<br>LU Comment:<br>The proposed text lacks clarity as regards the main differences between e-money and e-money tokens. This recital should be amended in line with the amendment made to the definition of utility tokens under article 3(1) (5).<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
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| (10) Despite their similarities, electronic money and crypto-assets referencing a single fiat currency differ in some important aspects. Holders of electronic money as | (10) Despite their similarities, electronic money and crypto-assets referencing a single ~~fiat~~ **official** currency **of a country** differ in some important aspects. Holders of | Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3. | FI:<br>(Comments)<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be |

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| defined in Article 2, point 2, of Directive 2009/110/EC are always provided with a claim on the electronic money institution and have a contractual right to redeem their electronic money at any moment against fiat currency that is legal tender at par value with that currency. By contrast, some of the crypto-assets referencing one fiat currency which is legal tender 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 fiat currency 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 | 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 ~~fiat~~ **an official** currency **of a country** ~~that is legal tender~~ at par value with that currency. By contrast, some of the crypto-assets referencing one ~~fiat~~ **official** currency **of a country** ~~which is legal tender~~ 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 ~~fiat~~ **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 | | consistent throughout the draft regulation.<br><br>ES:<br>(Comments):<br>See previous comment.<br><br>EL:<br>(Comments):<br>Issuers of e-money tokens should grant the users of tokens with a claim to redeem their tokens at any time at par value.<br><br>LU:<br>(Comments):<br>LU Comment<br>The difference between e-money and e-money token is unclear. This recital states that such as traditional e-money, e-money tokens should be provided with a claim on the issuer. The only way to distinguish e-money from e-money tokens is thus the technology that is attached. There are fundamental uncertainties around the concept of e-money tokens. Applying a different regime to e-money which is stored and issued on the DLT is not in line with the principle of technological neutrality.<br>We also question whether e-money tokens should be included in this |

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| possible to capture all the types of crypto-assets referencing one single fiat currency that is legal tender. To avoid regulatory arbitrage, strict conditions on the issuance of e-money tokens should be laid down, including the obligation for such e-money tokens to be issued either by a credit institution as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council , or by an electronic money institution authorised under Directive 2009/110/EC. For the same reason, issuers of such e-money tokens should also grant the users of such tokens with a claim to redeem their tokens at any moment and at par value against the currency referencing those tokens. Because e-money tokens are also crypto-assets and can also raise new challenges in terms of consumer protection and market integrity specific to crypto-assets, they should also be subject to rules laid down in this Regulation to address these challenges to consumer protection and market integrity. | 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 ~~fiat~~ **official** currency **of a country** ~~that is legal tender~~. To avoid regulatory arbitrage, strict conditions on the issuance of e-money tokens should be laid down, including the obligation for such e-money tokens to be issued either by a credit institution as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council , or by an electronic money institution authorised under Directive 2009/110/EC. For the same reason, issuers of such e-money tokens should also grant the users of such tokens with a claim to redeem their tokens at any moment and at par value against the currency referencing those tokens. Because e-money tokens are also crypto-assets and can also raise new challenges in terms of consumer protection and market integrity specific to crypto-assets, | | proposal. E-money tokens meant for trading on a trading platform may define as financial instruments as defined in Article 4 (1), point (15) of Directive 2014/65/EU.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |

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| | they should also be subject to rules laid down in this Regulation to address these challenges to consumer protection and market integrity. | | |
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| (11) Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for issuers of crypto-assets that should be any legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets. | (11) Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for issuers of crypto-assets that should be any legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets. | | |
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| (12) It is necessary to lay down specific rules for entities that provide services related to crypto-assets. A first category of such services consist of ensuring the operation of a trading platform for crypto-assets, exchanging crypto-assets against fiat currencies that are legal tender or other crypto-assets by dealing on own account, and the service, on behalf of third parties, of ensuring the custody and administration of crypto-assets or ensuring the control of means to | (12) It is necessary to lay down specific rules for entities that provide services related to crypto-assets. A first category of such services consist of ensuring the operation of a trading platform for crypto-assets, exchanging crypto-assets against ~~fiat~~ **official** currencies **of a country** ~~that are legal tender~~ or other crypto-assets by dealing on own account, and the service, on behalf of third parties, of ensuring the custody and administration of crypto-assets or | Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3. | FI:<br>(Comments)<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be consistent throughout the draft regulation.<br><br>ES:<br>(Comments):<br>Please refer to a previous comment on whether non-EU currencies are funds.<br><br>IE: |

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| access such crypto-assets. A second category of such services are the placing of crypto-assets, the reception or transmission of orders for crypto-assets, the execution of orders for crypto-assets on behalf of third parties and the provision of advice on crypto-assets. Any person that provides such crypto-asset services on a professional basis should be considered as a 'crypto-asset service provider'. | ensuring the control of means to access such crypto-assets. A second category of such services are the placing of crypto-assets, the reception or transmission of orders for crypto-assets, the execution of orders for crypto-assets on behalf of third parties and the provision of advice on crypto-assets. Any person that provides such crypto-asset services on a professional basis should be considered as a 'crypto-asset service provider'. | | Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
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| (13) To ensure that all offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, in the Union, or all the admissions of such crypto-assets to trading on a trading platform for crypto-assets are properly monitored and supervised by competent authorities, all issuers of crypto-assets should be legal entities. | (13) To ensure that all offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, in the Union, or all the admissions of such crypto-assets to trading on a trading platform for crypto-assets are properly monitored and supervised by competent authorities, all issuers of crypto-assets should be legal entities. | | |
| | | | |
| (14) In order to ensure consumer protection, prospective purchasers of crypto-assets should be informed about the characteristics, functions | (14) In order to ensure consumer protection, prospective purchasers of crypto-assets should be informed about the characteristics, functions | | EL:<br>(Comments):<br>Information to be provided by the |

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| and risks of crypto-assets they intend to purchase. When making a public offer of crypto-assets in the Union or when seeking admission of crypto-assets to trading on a trading platform for crypto-assets, issuers of crypto-assets should produce, notify to their competent authority and publish an information document ('a crypto-asset white paper') containing mandatory disclosures. Such crypto-asset white paper should contain general information on the issuer, 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. To ensure fair and non-discriminatory treatment of holders of crypto-assets, the information in the crypto-asset white paper, and where applicable in any marketing communications related to the public offer, shall be fair, clear and | and risks of crypto-assets they intend to purchase. When making a public offer of crypto-assets in the Union or when seeking admission of crypto-assets to trading on a trading platform for crypto-assets, issuers of crypto-assets should produce, notify to their competent authority and publish an information document ('a crypto-asset white paper') containing mandatory disclosures. Such crypto-asset white paper should contain general information on the issuer, 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. To ensure fair and non-discriminatory treatment of holders of crypto-assets, the information in the crypto-asset white paper, and where applicable in any marketing communications related to the public offer, shall be fair, clear and | | issuer to the consumer is a cornerstone in the procedure of establishing trust in the market. |

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| not misleading. | not misleading. | | |
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| (15) In order to ensure a proportionate approach, the requirements to draw up and publish a crypto-asset white paper should not apply to offers of crypto-assets, other than asset-referenced tokens or e-money tokens, that are offered for free, or offers of crypto-assets that are exclusively offered to qualified investors as defined in Article 2, point (e), of Regulation (EU) 2017/1129 of the European Parliament and of the Council and can be exclusively held by such qualified investors, or that, per Member State, are made to a small number of persons, or that are unique and not fungible with other crypto-assets. | (15) In order to ensure a proportionate approach, the requirements to draw up and publish a crypto-asset white paper should not apply to offers of crypto-assets, other than asset-referenced tokens or e-money tokens, that are offered for free, or offers of crypto-assets that are exclusively offered to qualified investors as defined in Article 2, point (e), of Regulation (EU) 2017/1129 of the European Parliament and of the Council and can be exclusively held by such qualified investors, or that, per Member State, are made to a small number of persons, or that are unique and not fungible with other crypto-assets. | | |
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| (16) Small and medium-sized enterprises and start-ups should not be subject to excessive administrative burdens. Offers to the public of crypto-assets in the Union that do not exceed an adequate aggregate threshold over a | (16) Small and medium-sized enterprises and start-ups should not be subject to excessive administrative burdens. Offers to the public of crypto-assets in the Union that do not exceed an adequate aggregate threshold over a | | EL:<br>(Comments):<br>The threshold to be set should take into account the size of the market of each MS. |

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| period of 12 months should therefore be exempted from the obligation to draw up a crypto-asset white paper. However, EU horizontal legislation ensuring consumer protection, such as Directive 2011/83/EU of the European Parliament and of the Council , Directive 2005/29/EC of the European Parliament and of the Council or the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts , including any information obligations contained therein, remain applicable to these offers to the public of crypto-assets where involving business-to-consumer relations. | period of 12 months should therefore be exempted from the obligation to draw up a crypto-asset white paper. However, EU horizontal legislation ensuring consumer protection, such as Directive 2011/83/EU of the European Parliament and of the Council , Directive 2005/29/EC of the European Parliament and of the Council or the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts , including any information obligations contained therein, remain applicable to these offers to the public of crypto-assets where involving business-to-consumer relations. | | |
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| (17) Where an offer to the public concerns utility tokens for a service that is not yet in operation, the duration of the public offer as described in the crypto-asset white paper shall not exceed twelve months. This limitation on the duration of the public offer is unrelated to the moment when the product or service becomes | (17) Where an offer to the public concerns utility tokens for a service that is not yet in operation, the duration of the public offer as described in the crypto-asset white paper shall not exceed twelve months. This limitation on the duration of the public offer is unrelated to the moment when the product or service becomes | | |

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| factually operational and can be used by the holder of a utility token after the end of the public offer. | factually operational and can be used by the holder of a utility token after the end of the public offer. | | |
| | | | |
| (18) In order to enable supervision, issuers of crypto-assets should, before any public offer of crypto-assets in the Union or before those crypto-assets are admitted to trading on a trading platform for crypto-assets, notify their crypto-asset white paper and, where applicable, their marketing communications, to the competent authority of the Member State where they have their registered office or a branch. Issuers that are established in a third country should notify their crypto-asset white paper, and, where applicable, their marketing communication, to the competent authority of the Member State where the crypto-assets are intended to be offered or where the admission to trading on a trading platform for crypto-assets is sought in the first place. | (18) In order to enable supervision, issuers of crypto-assets should, before any public offer of crypto-assets in the Union or before those crypto-assets are admitted to trading on a trading platform for crypto-assets, notify their crypto-asset white paper and, where applicable, their marketing communications, to the competent authority of the Member State where they have their registered office or a branch. Issuers that are established in a third country should notify their crypto-asset white paper, and, where applicable, their marketing communication, to the competent authority of the Member State where the crypto-assets are intended to be offered or where the admission to trading on a trading platform for crypto-assets is sought in the first place. | | |
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| (19) Undue administrative burdens should be avoided. | (19) Undue administrative burdens should be avoided. | | |

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| Competent authorities should therefore not be required to approve a crypto-asset white paper before its publication. Competent authorities should, however, after publication, have the power to request that additional information is included in the crypto-asset white paper, and, where applicable, in the marketing communications. | Competent authorities should therefore not be required to approve a crypto-asset white paper before its publication. Competent authorities should, however, after publication, have the power to request that additional information is included in the crypto-asset white paper, and, where applicable, in the marketing communications. | | |
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| (20) Competent authorities should be able to suspend or prohibit a public offer of crypto-assets or the admission of such crypto-assets to trading on a trading platform for crypto-assets where such an offer to the public or an admission to trading does not comply with the applicable requirements. Competent authorities should also have the power to publish a warning that an issuer has failed to meet those requirements, either on its website or through a press release. | (20) Competent authorities should be able to suspend or prohibit a public offer of crypto-assets or the admission of such crypto-assets to trading on a trading platform for crypto-assets where such an offer to the public or an admission to trading does not comply with the applicable requirements. Competent authorities should also have the power to publish a warning that an issuer has failed to meet those requirements, either on its website or through a press release. | | |
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| (21) Crypto-asset white papers and, where applicable, marketing communications that have been | (21) Crypto-asset white papers and, where applicable, marketing communications that have been | | |

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| duly notified to a competent authority should be published, after which issuers of crypto-assets should be allowed to offer their crypto-assets throughout the Union and to seek admission for trading such crypto-assets on a trading platform for crypto-assets. | duly notified to a competent authority should be published, after which issuers of crypto-assets should be allowed to offer their crypto-assets throughout the Union and to seek admission for trading such crypto-assets on a trading platform for crypto-assets. | | |
| | **(21a) Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets raised. These arrangements shall also ensure that any funds or other crypto-assets collected from purchasers or potential purchasers are duly returned as soon as possible, where an offer to the public is cancelled for any reason or where a consumer exercises a right of withdrawal.** | According to a MS proposal, added cross-reference to Art. 9(2) underlines the importance of safeguards for the collected funds/crypto-assets in case the withdrawal rights according to Art. 12 are exercised. | FI:<br>(Comments)<br>With regard to recital 58, a similar reference to the definition of "funds" (adopted in the PSD2) could be added. The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be consistent throughout the draft regulation.<br><br>AT:<br>(Comments):<br>In ATs view the recital makes sense and guarantees the possibility to return funds if necessary. Nevertheless, the right of withdrawal according to Art. 12 is still subject to discussion. In general, we support consumer rights, however, we see room for alignment with Directive 2002/65/EC in order to provide consistency between the regulatory frameworks. We do not see |

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| | | | any reason why consumers who purchase crypto assets should be preferred to consumers purchasing transferable securities. Art. 6 of Directive 2002/65/EC contains an exemption of the right of withdrawal for *financial services whose price depends on fluctuations in the financial market.* This provision should be taken into account for Art. 12.<br><br>HU:<br>(Comments):<br>HU supports the proposed amendment.<br><br>SE:<br>(Comments):<br>We support this amendment, but it should be highlighted that this only applies to offers that are limited in time, otherwise the relevant article in Title II needs to be revised.<br>Further, with regards to recital 58, a similar reference to the definition of "funds" (adopted in the PSD2) could be added.<br>The use of "funds" in the meaning of PSD2 should be consistent throughout the draft regulation.<br><br>ES:<br>(Comments): |

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| | | | Ok to proposed comments. Also, the use of the term consumer should be reviewed.<br><br>LU:<br>(Comments):<br>LU comment:<br>We agree with the proposed recital. However, we note that this new recital uses two different terminologies to refer to the acquirer of crypto asset e.g "purchasers or potential purchasers and "consumer".<br><br>The term "consumer" is defined is defined in article 3 whereas the term "purchaser" is not defined. Both terms are used in other parts of the text of the proposal such as the terms "holder of crypto-assets",<br>"client" and "investor" .<br><br>We would suggest a streamlining, to the extent possible, of all the terms referring to the persons who will acquire crypto assets, ARTs, EMTs and benefit from crypto assets services these terms since using several terms, all the more not defined, could be confusing and could add complexity to the text.<br><br>We would rather avoid classifying the |

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| | | | various type of crypto assets on the basis of their purposes or finality (i.e. investment/payment) which can sometimes be difficult to determine or which can change over time. The term "investor" could therefore be a bit misleading. It conveys a purpose-oriented meaning about a specific person.<br>On the basis of the MIFID annex, an alternative that may be worth exploring further is the use of the terms "clients" and make a difference between "clients" that act as retail and the ones that are professional clients. Professional clients would be stakeholders that would not benefit from specific protection whereas the "(non-professional) clients", being either natural or legal person, would be entitled to consumer protection.<br>Indeed, the use of the term "consumer" may also be problematic in the sense that it commonly refers to natural persons only.<br><br>IE:<br>Phrase "duly returned as soon as possible" is open to interpretation and not specific. |
| (22) In order to further ensure | (22) In order to further ensure | See corresponding change in Art. | FI: |

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| consumer protection, the consumers who are acquiring crypto-assets, other than asset-referenced tokens or e-money tokens, directly from the issuer or from a crypto-asset service provider placing the crypto-assets on behalf of the issuer should be provided with a right of withdrawal during a limited period of time 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. | consumer protection, the consumers who are acquiring crypto-assets, other than asset-referenced tokens or e-money tokens, directly from the issuer or from a crypto-asset service provider placing the crypto-assets on behalf of the issuer should be provided with a right of withdrawal during a limited period of time 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. | 12(5) (deletion) for further explanation. | (Comments)<br>Ok<br><br>AT:<br>(Comments):<br>See comment regarding recital 21a<br><br>SE:<br>(Comments):<br>We support this change as this leads to higher consumer protection.<br><br>EL:<br>(Comments):<br>We agree.<br><br>LU:<br>(Comments):<br>LU comment:<br>Since this amendment is not a technical amendment, and has never been discussed during a working party, we would need more clarification on the goal to be achieved and the background of he initial proposal by the Commission and of this new drafting in order to be able to assess this new provision.<br>More discussion is needed on this amendment. |
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| (23) Even where exempted from the obligation to publish a crypto-asset white paper, all issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, should act honestly, fairly and professionally, should communicate with holders of crypto-assets in a fair, clear and truthful manner, should identify, prevent, manage and disclose conflicts of interest, should have effective administrative arrangements to ensure that their systems and security protocols meet Union standards. In order to assist competent authorities in their supervisory tasks, the European Securities and Markets Authority (ESMA), in close cooperation with the European Banking Authority (EBA) should be mandated to publish guidelines on those systems and security protocols in order to further specify these Union standards. | (23) Even where exempted from the obligation to publish a crypto-asset white paper, all issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, should act honestly, fairly and professionally, should communicate with holders of crypto-assets in a fair, clear and truthful manner, should identify, prevent, manage and disclose conflicts of interest, should have effective administrative arrangements to ensure that their systems and security protocols meet Union standards. In order to assist competent authorities in their supervisory tasks, the European Securities and Markets Authority (ESMA), in close cooperation with the European Banking Authority (EBA) should be mandated to publish guidelines on those systems and security protocols in order to further specify these Union standards. | | |
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| (24) To further protect holders of crypto-assets, civil liability rules should apply to crypto-asset issuers | (24) To further protect holders of crypto-assets, civil liability rules should apply to crypto-asset issuers | | |

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| and their management body for the information provided to the public through the crypto-asset white paper. | and their management body for the information provided to the public through the crypto-asset white paper. | | |
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| (25) Asset-referenced tokens aim at stabilising their value by reference to several fiat currencies, to one or more commodities, to one or more other crypto-assets, or to a basket of such assets. They could therefore be widely adopted by users to transfer value or as a means of payments and thus pose increased risks in terms of consumer protection 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. | (25) Asset-referenced tokens aim at stabilising their value by reference to several ~~fiat~~ **official** currencies **of a country**, to one or more commodities, to one or more other crypto-assets, or to a basket of such assets. They could therefore be widely adopted by users to transfer value or as a means of payments and thus pose increased risks in terms of consumer protection 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. | Rewording of "fiat currency" as commented in Art. 3(1)(3) and recital 3. | FI:<br>(Comments)<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be consistent throughout the draft regulation.<br><br>ES:<br>(Comments):<br>See previous comment.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
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| (26) So-called algorithmic 'stablecoins' that aim at maintaining a stable value, via protocols, that provide for the increase or decrease of the supply of such crypto-assets in response to changes in demand should not be considered as asset-referenced tokens, provided that they do not aim at stabilising their value by referencing one or several other assets. | (26) So-called algorithmic 'stablecoins' that aim at maintaining a stable value, via protocols, that provide for the increase or decrease of the supply of such crypto-assets in response to changes in demand should not be considered as asset-referenced tokens, provided that they do not aim at stabilising their value by referencing one or several other assets. | | |
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| (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. | (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. | | |
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| (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. | (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. | | |

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| The authorisation requirement should however not apply where the asset-referenced tokens are only offered to qualified investors, or when the offer to the public of asset-referenced tokens is below a certain threshold. Credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council should not need another authorisation under this Regulation in order to issue asset-referenced tokens. In those cases, the issuer of such asset-referenced tokens should be still required to produce a crypto-asset white paper to inform buyers about the characteristics and risks of such asset-referenced tokens and to notify it to the relevant competent authority, before publication. | The authorisation requirement should however not apply where the asset-referenced tokens are only offered to qualified investors, or when the offer to the public of asset-referenced tokens is below a certain threshold. Credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council should not need another authorisation under this Regulation in order to issue asset-referenced tokens. In those cases, the issuer of such asset-referenced tokens should be still required to produce a crypto-asset white paper to inform buyers about the characteristics and risks of such asset-referenced tokens and to notify it to the relevant competent authority, before publication. | | |
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| (29) A competent authority should refuse authorisation where the prospective issuer of asset-referenced tokens' business model may pose a serious threat to financial stability, monetary policy transmission and monetary | (29) A competent authority should refuse authorisation where the prospective issuer of asset-referenced tokens' business model may pose a serious threat to financial stability, monetary policy transmission and monetary | | |

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| sovereignty. The competent authority should consult the EBA and ESMA and, where the asset-referenced tokens is referencing Union currencies, the European Central Bank (ECB) and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation. The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent authority with a non-binding opinion on the prospective issuer's application. Where authorising a prospective issuer of asset-referenced tokens, the competent authority should also approve the crypto-asset white paper produced by that entity. The authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer such crypto-assets in the Single Market and to seek an admission to trading on a trading platform for crypto-assets. In the same way, the crypto-asset white paper should also be valid for the | sovereignty. The competent authority should consult the EBA and ESMA and, where the asset-referenced tokens is referencing Union currencies, the European Central Bank (ECB) and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation. The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent authority with a non-binding opinion on the prospective issuer's application. Where authorising a prospective issuer of asset-referenced tokens, the competent authority should also approve the crypto-asset white paper produced by that entity. The authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer such crypto-assets in the Single Market and to seek an admission to trading on a trading platform for crypto-assets. In the same way, the crypto-asset white paper should also be valid for the | | |

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| entire Union, without possibility for Member States to impose additional requirements. | entire Union, without possibility for Member States to impose additional requirements. | | |
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| (30) To ensure consumer protection, issuers of asset-referenced tokens should always provide holders of asset-referenced tokens with clear, fair and not misleading information. The crypto-asset white paper on asset-referenced tokens should include information on the stabilisation mechanism, on the investment policy of the reserve assets, on the custody arrangements for the reserve assets, and on the rights provided to holders. Where the issuers of asset-referenced tokens do not offer a direct claim or redemption right on the reserve assets to all the holders of such asset-referenced tokens, the crypto-asset white paper related to asset-referenced tokens should contain a clear and unambiguous warning in this respect. Marketing communications of an issuer of asset-referenced tokens should also include the same statement, where | (30) To ensure consumer protection, issuers of asset-referenced tokens should always provide holders of asset-referenced tokens with clear, fair and not misleading information. The crypto-asset white paper on asset-referenced tokens should include information on the stabilisation mechanism, on the investment policy of the reserve assets, on the custody arrangements for the reserve assets, and on the rights provided to holders. Where the issuers of asset-referenced tokens do not offer a direct claim or redemption right on the reserve assets to all the holders of such asset-referenced tokens, the crypto-asset white paper related to asset-referenced tokens should contain a clear and unambiguous warning in this respect. Marketing communications of an issuer of asset-referenced tokens should also include the same statement, where | | |

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| the issuers do not offer such direct rights to all the holders of asset-referenced tokens. | the issuers do not offer such direct rights to all the holders of asset-referenced tokens. | | |
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| (31) In addition to information included in the crypto-asset white paper, issuers of asset-referenced tokens should also provide holders of such tokens with information on a continuous basis. In particular, they should disclose the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets, on at least a monthly basis, on their website. Issuers of asset-referenced tokens should also disclose any event that is likely to have a significant impact on the value of the asset-referenced tokens or on the reserve assets, irrespective of whether such crypto-assets are admitted to trading on a trading platform for crypto-assets. | (31) In addition to information included in the crypto-asset white paper, issuers of asset-referenced tokens should also provide holders of such tokens with information on a continuous basis. In particular, they should disclose the amount of asset-referenced tokens in circulation and the value and the composition of the reserve assets, on at least a monthly basis, on their website. Issuers of asset-referenced tokens should also disclose any event that is likely to have a significant impact on the value of the asset-referenced tokens or on the reserve assets, irrespective of whether such crypto-assets are admitted to trading on a trading platform for crypto-assets. | | |
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| (32) To ensure consumer protection, issuers of asset-referenced tokens should always act honestly, fairly and professionally and in the best | (32) To ensure consumer protection, issuers of asset-referenced tokens should always act honestly, fairly and professionally and in the best | | |

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| 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. | 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. | | |
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| (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. | (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. | | |
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| (34) Issuers of asset-referenced tokens should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or might be exposed. The management body of such issuers and their shareholders should have good repute and sufficient expertise and be fit and | (34) Issuers of asset-referenced tokens should have robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and effective processes to identify, manage, monitor and report the risks to which they are or might be exposed. The management body of such issuers and their shareholders should have good repute and sufficient expertise and be fit and | | |

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| proper for the purpose of anti-money laundering and combatting the financing of terrorism. Issuers of asset-referenced tokens should also employ resources proportionate to the scale of their activities and should always ensure continuity and regularity in the performance of their activities. For that purpose, issuers of asset-referenced tokens should establish a business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the performance of their core payment activities. Issuers of asset-referenced tokens should also have a strong internal control and risk assessment mechanism, as well as a system that guarantees the integrity and confidentiality of information received. | proper for the purpose of anti-money laundering and combatting the financing of terrorism. Issuers of asset-referenced tokens should also employ resources proportionate to the scale of their activities and should always ensure continuity and regularity in the performance of their activities. For that purpose, issuers of asset-referenced tokens should establish a business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the performance of their core payment activities. Issuers of asset-referenced tokens should also have a strong internal control and risk assessment mechanism, as well as a system that guarantees the integrity and confidentiality of information received. | | |
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| (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 | (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 | | |

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| 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. | tokens should therefore be required to establish and maintain appropriate contractual arrangements with those third-party entities ensuring the stabilisation mechanism and the investment of the reserve assets backing the value of the tokens, the custody of such reserve assets, and, where applicable, the distribution of the asset-referenced tokens to the public. | | |
| | | | |
| (36) To address the risks to financial stability of the wider financial system, issuers of asset-referenced tokens should be subject to capital requirements. Those capital requirements should be proportionate to the issuance size of the asset-referenced tokens and therefore calculated as a percentage of the reserve of assets that back the value of the asset-referenced tokens. Competent authorities should however be able to increase or decrease the amount of own fund requirements required on the basis of, inter alia, the evaluation of the risk-assessment mechanism of the | (36) To address the risks to financial stability of the wider financial system, issuers of asset-referenced tokens should be subject to capital requirements. Those capital requirements should be proportionate to the issuance size of the asset-referenced tokens and therefore calculated as a percentage of the reserve of assets that back the value of the asset-referenced tokens. Competent authorities should however be able to increase or decrease the amount of own fund requirements required on the basis of, inter alia, the evaluation of the risk-assessment mechanism of the | | |

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| 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. | issuer, the quality and volatility of the assets in the reserve backing the asset-referenced tokens or the aggregate value and number of asset-referenced tokens. | | |
| | | | |
| (37) In order to stabilise the value of their asset-referenced tokens, issuers of asset-referenced tokens should constitute and maintain a reserve of assets backing those crypto-assets at all times. Issuers of asset-referenced tokens should ensure the prudent management of such a reserve of assets and should in particular ensure that the creation and destruction of asset-referenced tokens are always matched by a corresponding increase or decrease in the reserve assets and that such increase or decrease is adequately managed to avoid adverse impacts on the market of the reserve assets. Issuers of asset-backed crypto-assets should therefore establish, maintain and detail policies that describe, inter alia, the composition of the reserve assets, the allocation of assets, the comprehensive | (37) In order to stabilise the value of their asset-referenced tokens, issuers of asset-referenced tokens should constitute and maintain a reserve of assets backing those crypto-assets at all times. Issuers of asset-referenced tokens should ensure the prudent management of such a reserve of assets and should in particular ensure that the creation and destruction of asset-referenced tokens are always matched by a corresponding increase or decrease in the reserve assets and that such increase or decrease is adequately managed to avoid adverse impacts on the market of the reserve assets. Issuers of asset-backed crypto-assets should therefore establish, maintain and detail policies that describe, inter alia, the composition of the reserve assets, the allocation of assets, the comprehensive | | |

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| assessment of the risks raised by the reserve assets, the procedure for the creation and destruction of the asset-referenced tokens, the procedure to purchase and redeem the asset-referenced tokens against the reserve assets and, where the reserve assets are invested, the investment policy that is followed by the issuer. | assessment of the risks raised by the reserve assets, the procedure for the creation and destruction of the asset-referenced tokens, the procedure to purchase and redeem the asset-referenced tokens against the reserve assets and, where the reserve assets are invested, the investment policy that is followed by the issuer. | | |
| | | | |
| (38) To prevent the risk of loss for asset-referenced tokens and to preserve the value of those assets issuers of asset-referenced tokens should have an adequate custody policy for reserve assets. That policy should ensure that the reserve assets are entirely segregated from the issuer's own assets at all times, that the reserve assets are not encumbered or pledged as collateral, and that the issuer of asset-referenced tokens has prompt access to those reserve assets. The reserve assets should, depending on their nature, be kept in custody either by a credit institution within the meaning of Regulation (EU) No 575/2013 or | (38) To prevent the risk of loss for asset-referenced tokens and to preserve the value of those assets issuers of asset-referenced tokens should have an adequate custody policy for reserve assets. That policy should ensure that the reserve assets are entirely segregated from the issuer's own assets at all times, that the reserve assets are not encumbered or pledged as collateral, and that the issuer of asset-referenced tokens has prompt access to those reserve assets. The reserve assets should, depending on their nature, be kept in custody either by a credit institution within the meaning of Regulation (EU) No 575/2013 or | | |

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| by an authorised crypto-asset service provider. Credit institutions or crypto-asset service providers that keep in custody the reserve assets that back the asset-referenced tokens should be responsible for the loss of such reserve assets vis-à-vis the issuer or the holders of asset-referenced tokens, unless they prove that such loss has arisen from an external event beyond reasonable control. | by an authorised crypto-asset service provider. Credit institutions or crypto-asset service providers that keep in custody the reserve assets that back the asset-referenced tokens should be responsible for the loss of such reserve assets vis-à-vis the issuer or the holders of asset-referenced tokens, unless they prove that such loss has arisen from an external event beyond reasonable control. | | |
| | | | |
| (39) To protect holders of asset-referenced tokens against a decrease in value of the assets backing the value of the tokens, issuers of asset-referenced tokens should invest the reserve assets in secure, low risks assets with minimal market and credit risk. As the asset-referenced tokens can be used as a means of payment, all profits or losses resulting from the investment of the reserve assets should be borne by the issuer of the asset-referenced tokens. | (39) To protect holders of asset-referenced tokens against a decrease in value of the assets backing the value of the tokens, issuers of asset-referenced tokens should invest the reserve assets in secure, low risks assets with minimal market and credit risk. As the asset-referenced tokens can be used as a means of payment, all profits or losses resulting from the investment of the reserve assets should be borne by the issuer of the asset-referenced tokens. | | |
| | | | |
| (40) Some asset-referenced tokens may offer all their holders | (40) Some asset-referenced tokens may offer all their holders | Rewording of “fiat currency” as commented in Art 3(1)(3) and | NL:<br>(Comments): |

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| rights, such as redemption rights or claims on the reserve assets or on the issuer, while other asset-referenced tokens may not grant such rights to all their holders and may limit the right of redemption to specific holders. Any rules regarding asset-referenced tokens should be flexible enough to capture all those situations. Issuers of asset-referenced tokens should therefore inform the holders of asset-referenced tokens on whether they are provided with a direct claim on the issuer or redemption rights. Where issuers of asset-referenced tokens grant direct rights on the issuer or on the reserve assets to all the holders, the issuers should precisely set out the conditions under which such rights can be exercised. Where issuers of asset-referenced tokens restrict such direct rights on the issuer or on the reserve assets to a limited number of holders of asset-referenced tokens, the issuers should still offer minimum rights to all the holders of asset-referenced tokens. Issuers of asset-referenced | rights, such as redemption rights or claims on the reserve assets or on the issuer, while other asset-referenced tokens may not grant such rights to all their holders and may limit the right of redemption to specific holders. Any rules regarding asset-referenced tokens should be flexible enough to capture all those situations. Issuers of asset-referenced tokens should therefore inform the holders of asset-referenced tokens on whether they are provided with a direct claim on the issuer or redemption rights. Where issuers of asset-referenced tokens grant direct rights on the issuer or on the reserve assets to all the holders, the issuers should precisely set out the conditions under which such rights can be exercised. Where issuers of asset-referenced tokens restrict such direct rights on the issuer or on the reserve assets to a limited number of holders of asset-referenced tokens, the issuers should still offer minimum rights to all the holders of asset-referenced tokens. Issuers of asset-referenced | recital 3. | Altough this would probably fall outside the scope of this draft version (and we therefore maintain the right to come back with further comments in a later stage), we have previously commented that we would like to delete this recital because we do not agree with the lack of redemptions rights etc. pertaining to ARTs:<br><br>We strongly believe that, in order to mitigate risks to consumer protection, holders of ART's should have a claim on the reserve and should always be able to redeem their initial investment. A difference in rights can be possible, but not regarding redemption rights or claims to the reserve. This consideration should therefore be rewritten in order reflect this.<br><br>FI:<br>(Comments)<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be consistent throughout the draft regulation.<br><br>ES:<br>(Comments):<br>See previous comment. |

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| tokens should ensure the liquidity of those tokens by concluding and maintaining adequate liquidity arrangements with crypto-asset service providers that are in charge of posting firm quotes on a predictable basis to buy and sell the asset-referenced tokens against fiat currency. Where the value of the asset-referenced tokens varies significantly from the value of the reserve assets, the holders of asset-referenced tokens should have a right to request the redemption of their asset-referenced tokens against reserve assets directly from the issuer. Issuers of asset-referenced tokens that voluntarily stop their operations or that are orderly wound-down should have contractual arrangements in place to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens. | tokens should ensure the liquidity of those tokens by concluding and maintaining adequate liquidity arrangements with crypto-asset service providers that are in charge of posting firm quotes on a predictable basis to buy and sell the asset-referenced tokens against ~~fiat~~ **an official** currency **of a country**. Where the value of the asset-referenced tokens varies significantly from the value of the reserve assets, the holders of asset-referenced tokens should have a right to request the redemption of their asset-referenced tokens against reserve assets directly from the issuer. Issuers of asset-referenced tokens that voluntarily stop their operations or that are orderly wound-down should have contractual arrangements in place to ensure that the proceeds of the reserve assets are paid to the holders of asset-referenced tokens. | | IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
| | | | |
| (41) To ensure that asset-referenced tokens are mainly used as a means of exchange and not as a store of value, issuers of asset- | (41) To ensure that asset-referenced tokens are mainly used as a means of exchange and not as a store of value, issuers of asset- | | LU:<br>(Comments):<br>LU comment: |

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| referenced tokens, and any crypto-asset service providers, should not grant interests to users of asset-referenced tokens for time such users are holding those asset-referenced tokens. Some asset-referenced tokens and e-money tokens should be considered significant due to the potential large customer base of their promoters and shareholders, their potential high market capitalisation, the potential size of the reserve of assets backing the value of such asset-referenced tokens or e-money tokens, the potential high number of transactions, the potential interconnectedness with the financial system or the potential cross-border use of such crypto-assets. Significant asset-referenced tokens or significant e-money tokens, that could be used by a large number of holders and which could raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty, should be subject to more stringent requirements than other asset- | referenced tokens, and any crypto-asset service providers, should not grant interests to users of asset-referenced tokens for time such users are holding those asset-referenced tokens. Some asset-referenced tokens and e-money tokens should be considered significant due to the potential large customer base of their promoters and shareholders, their potential high market capitalisation, the potential size of the reserve of assets backing the value of such asset-referenced tokens or e-money tokens, the potential high number of transactions, the potential interconnectedness with the financial system or the potential cross-border use of such crypto-assets. Significant asset-referenced tokens or significant e-money tokens, that could be used by a large number of holders and which could raise specific challenges in terms of financial stability, monetary policy transmission or monetary sovereignty, should be subject to more stringent requirements than other asset- | | Recitals 9 and 25 state that asset-referenced tokens could be widely used by their holders as a means of payment to buy goods and services and as a store of value, whereas Recital 41 states that the Regulation aims at ensuring that asset-referenced tokens are mainly used as a means of exchange and not as a store of value.<br>This should be streamlined |

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| referenced tokens or e-money tokens. | referenced tokens or e-money tokens. | | |
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| (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. | (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. | | |
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| (43) Issuers of asset-referenced tokens should have an orderly wind-down plan to ensure that the rights of the holders of the asset-referenced tokens are protected where issuers of asset-referenced tokens stop their operations or when they are orderly winding down their activities according to | (43) Issuers of asset-referenced tokens should have an orderly wind-down plan to ensure that the rights of the holders of the asset-referenced tokens are protected where issuers of asset-referenced tokens stop their operations or when they are orderly winding down their activities according to | | |

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| national insolvency laws. | national insolvency laws. | | |
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| (44) Issuers of e-money tokens should be authorised either as a credit institution under Directive 2013/36/EU or as an electronic money institution under Directive 2009/110/EC and they should comply with the relevant operational requirements of Directive 2009/110/EC, unless specified otherwise in this Regulation. Issuers of e-money tokens should produce a crypto-asset white paper and notify it to their competent authority. Where the issuance of e-money tokens is below a certain threshold or where e-money tokens can be exclusively held by qualified investors, issuers of such e-money tokens should not be subject to the authorisation requirements. However, issuers should always draw up a crypto-asset white paper and notify it to their competent authority. | (44) Issuers of e-money tokens should be authorised either as a credit institution under Directive 2013/36/EU or as an electronic money institution under Directive 2009/110/EC and they should comply with the relevant operational requirements of Directive 2009/110/EC, unless specified otherwise in this Regulation. Issuers of e-money tokens should produce a crypto-asset white paper and notify it to their competent authority. Where the issuance of e-money tokens is below a certain threshold or where e-money tokens can be exclusively held by qualified investors, issuers of such e-money tokens should not be subject to the authorisation requirements. However, issuers should always draw up a crypto-asset white paper and notify it to their competent authority. | | |
| | | | |
| (45) Holders of e-money tokens should be provided with a claim on the issuer of the e-money tokens | (45) Holders of e-money tokens should be provided with a claim on the issuer of the e-money tokens | Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3. | FI: (Comments) |

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| concerned. Holders of e-money tokens should always be granted with a redemption right at par value with the fiat currency that the e-money token is referencing and at any moment. Issuers of e-money tokens should be allowed to apply a fee, where holders of e-money tokens are asking for the redemptions of their tokens for fiat currency. Such a fee should be proportionate to the actual costs incurred by the issuer of electronic money tokens. | concerned. Holders of e-money tokens should always be granted with a redemption right at par value with the ~~fiat~~ **official** currency **of a country** that the e-money token is referencing and at any moment. Issuers of e-money tokens should be allowed to apply a fee, where holders of e-money tokens are asking for the redemptions of their tokens for ~~fiat~~ **the official** currency **of a country**. Such a fee should be proportionate to the actual costs incurred by the issuer of electronic money tokens. | | As a remark, neither "fiat currency" nor "official currency of a country" is terminology used in the EMD2. Coherence in the use of terminology could be something to take into account in the course of the upcoming PSD2/EMD2 review.<br>First and foremost, the use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be consistent throughout the draft regulation.<br><br>ES:<br>(Comments):<br>See previous comment.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
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| (46) Issuers of e-money tokens, | (46) Issuers of e-money tokens, | | |

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| and any crypto-asset service providers, should not grant interests to holders of e-money tokens for the time such holders are holdings those e-money tokens. | and any crypto-asset service providers, should not grant interests to holders of e-money tokens for the time such holders are holdings those e-money tokens. | | |
| | | | |
| (47) The crypto-asset white paper produced by an issuer of e-money tokens should contain all the relevant information concerning that issuer and the offer of e-money tokens or their admission to trading on a trading platform for crypto-assets that is necessary to enable potential buyers to make an informed purchase decision and understand the risks relating to the offer of e-money tokens. The crypto-asset white paper should also explicitly indicate that holders of e-money tokens are provided with a claim in the form of a right to redeem their e-money tokens against fiat currency at par value and at any moment. | (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 ~~fiat~~ **an official** currency **of a country** at par value and at any moment. | Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3. | FI:<br>(Comments)<br>It should be specified whether the right to redeem the e-money tokens at par value is possible only in the same official currency to which the e-money tokens were exchanged to or in any official currency. In other words, does "at par value" necessarily mean redemption in the same currency as the originally exchanged funds were in?<br><br>SE:<br>(Comments):<br>It should be specified that the right to redeem the e-money tokens at par value is possible exclusively in the same official currency to which the e-money tokens were exchanged (if that is indeed the intent).<br><br>ES:<br>(Comments):<br>See previous comment |

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| | | | IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
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| (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. | (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. | | EL:<br>(Comments):<br>The investments should also be low risk investments. |
| | | | |
| (49) Significant e-money tokens can pose greater risks to financial stability than non-significant e-money tokens and traditional electronic money. Issuers of such significant e-money tokens should therefore be subject to additional requirements. Issuers of e-money | (49) Significant e-money tokens can pose greater risks to financial stability than non-significant e-money tokens and traditional electronic money. Issuers of such significant e-money tokens should therefore be subject to additional requirements. Issuers of e-money | | LU:<br>(Comments):<br>LU comment:<br>These paragraphs refer to 'interoperability requirements'. However, those requirements are not defined elsewhere in the Regulation. Those requirements should be |

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| tokens should in particular be subject to higher capital requirements than other e-money token issuers, to interoperability requirements and they should establish a liquidity management policy. Issuers of e-money tokens should also comply with certain requirements applying to issuers of asset-referenced tokens, such as custody requirements for the reserve assets, investment rules for the reserve assets and the obligation to establish an orderly wind-down plan. | tokens should in particular be subject to higher capital requirements than other e-money token issuers, to interoperability requirements and they should establish a liquidity management policy. Issuers of e-money tokens should also comply with certain requirements applying to issuers of asset-referenced tokens, such as custody requirements for the reserve assets, investment rules for the reserve assets and the obligation to establish an orderly wind-down plan. | | reflected in the Titles of the Regulation applicable to significant asset-reference tokens and significant e-money tokens. |
| | | | |
| (50) Crypto-asset services should only be provided by legal entities that have a registered office in a Member State and that have been authorised as a crypto-asset service provider by the competent authority of the Member State where its registered office is located. | (50) Crypto-asset services should only be provided by legal entities that have a registered office in a Member State and that have been authorised as a crypto-asset service provider by the competent authority of the Member State where its registered office is located. | | |
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| (51) This Regulation should not affect the possibility for persons established in the Union to receive crypto-asset services by a third- | (51) This Regulation should not affect the possibility for persons established in the Union to receive crypto-asset services by a third- | | |

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| 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. | 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. | | |
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| (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 | (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 | | |

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| indicate the crypto-asset services for which the crypto-asset service provider is authorised and should be valid for the entire Union. | indicate the crypto-asset services for which the crypto-asset service provider is authorised and should be valid for the entire Union. | | |
| | | | |
| (53) To facilitate transparency for holders of crypto-assets as regards the provision of crypto-asset services, ESMA should establish a register of crypto-asset service providers, which should include information on the entities authorised to provide those services across the Union. That register should also include the crypto-asset white papers notified to competent authorities and published by issuers of crypto-assets. | (53) To facilitate transparency for holders of crypto-assets as regards the provision of crypto-asset services, ESMA should establish a register of crypto-asset service providers, which should include information on the entities authorised to provide those services across the Union. That register should also include the crypto-asset white papers notified to competent authorities and published by issuers of crypto-assets. | | |
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| (54) Some firms subject to Union legislation on financial services should be allowed to provide crypto-asset services without prior authorisation. Credit institutions authorised under Directive 2013/36/EU should not need another authorisation to provide crypto-asset services. Investment firms authorised under Directive 2014/65/EU to provide | (54) Some firms subject to Union legislation on financial services should be allowed to provide crypto-asset services without prior authorisation. Credit institutions authorised under Directive 2013/36/EU should not need another authorisation to provide crypto-asset services. Investment firms authorised under Directive 2014/65/EU to provide | | |

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| one or several investment services as defined under that Directive similar to the crypto-asset services they intend to provide should also be allowed to provide crypto-asset services across the Union without another authorisation. | one or several investment services as defined under that Directive similar to the crypto-asset services they intend to provide should also be allowed to provide crypto-asset services across the Union without another authorisation. | | |
| | | | |
| (55) In order to ensure consumer protection, market integrity and financial stability, crypto-asset service providers should always act honestly, fairly and professionally in the best interest of their clients. Crypto-asset services should be considered 'financial services' as defined in Directive 2002/65/EC of the European Parliament and of the Council . Where marketed at distance, the contracts between crypto-asset service providers and consumers should be subject to that Directive. Crypto-asset service providers should provide their clients with clear, fair and not misleading information and warn them about the risks associated with crypto-assets. Crypto-asset service providers should make their pricing policies public, should | (55) In order to ensure consumer protection, market integrity and financial stability, crypto-asset service providers should always act honestly, fairly and professionally in the best interest of their clients. Crypto-asset services should be considered 'financial services' as defined in Directive 2002/65/EC of the European Parliament and of the Council . Where marketed at distance, the contracts between crypto-asset service providers and consumers should be subject to that Directive. Crypto-asset service providers should provide their clients with clear, fair and not misleading information and warn them about the risks associated with crypto-assets. Crypto-asset service providers should make their pricing policies public, should | | |

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| establish a complaint handling procedure and should have a robust policy to identify, prevent, manage and disclose conflicts of interest. | establish a complaint handling procedure and should have a robust policy to identify, prevent, manage and disclose conflicts of interest. | | |
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| (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. | (56) To ensure consumer protection, crypto-asset service providers should comply with some prudential requirements. Those prudential requirements should be set as a fixed amount or in proportion to their fixed overheads of the preceding year, depending on the types of services they provide. | | |
| | | | |
| (57) Crypto-asset service providers should be subject to strong organisational requirements. Their managers and main shareholders should be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. Crypto-asset service providers should employ management and staff with adequate skills, knowledge and expertise and should take all reasonable steps to perform their functions, including through the preparation of a business continuity | (57) Crypto-asset service providers should be subject to strong organisational requirements. Their managers and main shareholders should be fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. Crypto-asset service providers should employ management and staff with adequate skills, knowledge and expertise and should take all reasonable steps to perform their functions, including through the preparation of a business continuity | | |

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| 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. | 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. | | |
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| (58) In order to ensure consumer protection, crypto-asset service providers should have adequate arrangements to safeguard the ownership rights of clients' holdings of crypto-assets. Where their business model requires them to hold funds as defined in Article 4, point (25), of Directive (EU) 2015/2366 of the European Parliament and of the Council in the form of banknotes, coins, scriptural money or electronic money belonging to their clients, crypto-asset service providers | (58) In order to ensure consumer protection, crypto-asset service providers should have adequate arrangements to safeguard the ownership rights of clients' holdings of crypto-assets. Where their business model requires them to hold funds as defined in Article 4, point (25), of Directive (EU) 2015/2366 of the European Parliament and of the Council in the form of banknotes, coins, scriptural money or electronic money belonging to their clients, crypto-asset service providers | | |

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| should place such funds with a credit institution or a central bank. Crypto-assets service providers should be authorised to make payment transactions in connection with the crypto-asset services they offer, only where they are authorised as payment institutions in accordance with Directive (EU) 2015/2366. | should place such funds with a credit institution or a central bank. Crypto-assets service providers should be authorised to make payment transactions in connection with the crypto-asset services they offer, only where they are authorised as payment institutions in accordance with Directive (EU) 2015/2366. | | |
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| (59) Depending on the services they provide and due to the specific risks raised by each type of services, crypto-asset service providers should be subject to requirements specific to those services. Crypto-asset service providers providing the service of custody and administration of crypto-assets on behalf of third parties should have a contractual relation with their clients with mandatory contractual provisions and should establish and implement a custody policy. Those crypto-asset service providers should also be held liable for any damages resulting from an ICT-related incident, including an incident | (59) Depending on the services they provide and due to the specific risks raised by each type of services, crypto-asset service providers should be subject to requirements specific to those services. Crypto-asset service providers providing the service of custody and administration of crypto-assets on behalf of third parties should have a contractual relation with their clients with mandatory contractual provisions and should establish and implement a custody policy. Those crypto-asset service providers should also be held liable for any damages resulting from an ICT-related incident, including an incident | | |

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| resulting from a cyber-attack, theft or any malfunctions. | resulting from a cyber-attack, theft or any malfunctions. | | |
| | | | |
| (60) To ensure an orderly functioning of crypto-asset markets, crypto-asset service providers operating a trading platform for crypto-assets should have detailed operating rules, should ensure that their systems and procedures are sufficiently resilient and should be subject to pre-trade and post-trade transparency requirements adapted to the crypto-asset market. Crypto-asset service providers should ensure that the trades executed on their trading platform for crypto-assets are settled and recorded on the DLT swiftly. Crypto-asset service providers operating a trading platform for crypto-assets should also have a transparent fee structure for the services provided to avoid the placing of orders that could contribute to market abuse or disorderly trading conditions. | (60) To ensure an orderly functioning of crypto-asset markets, crypto-asset service providers operating a trading platform for crypto-assets should have detailed operating rules, should ensure that their systems and procedures are sufficiently resilient and should be subject to pre-trade and post-trade transparency requirements adapted to the crypto-asset market. Crypto-asset service providers should ensure that the trades executed on their trading platform for crypto-assets are settled and recorded on the DLT swiftly. Crypto-asset service providers operating a trading platform for crypto-assets should also have a transparent fee structure for the services provided to avoid the placing of orders that could contribute to market abuse or disorderly trading conditions. | | |
| | | | |
| (61) To ensure consumer protection, crypto-asset service | (61) To ensure consumer protection, crypto-asset service | Rewording of “fiat currency” as commented in Art 3(1)(3) and | FI: |

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| providers that exchange crypto-assets against fiat currencies or other crypto-assets by using their own capital should establish a non-discriminatory commercial policy. They should publish either firm quotes or the method they are using for determining the price of crypto-assets they wish to buy or sell. They should also be subject to post-trade transparency requirements. Crypto-asset service providers that execute orders for crypto-assets on behalf of third parties should establish an execution policy and should always aim at obtaining the best result possible for their clients. They should take all necessary steps to avoid the misuse of information related to clients' orders by their employees. Crypto-assets service providers that receive orders and transmit those orders to other crypto-asset service providers should implement procedures for the prompt and proper sending of those orders. Crypto-assets service providers should not receive any monetary or non-monetary benefits for transmitting those orders to any | providers that exchange crypto-assets against ~~fiat~~ **an official** currencies **of a country** or other crypto-assets by using their own capital should establish a non-discriminatory commercial policy. They should publish either firm quotes or the method they are using for determining the price of crypto-assets they wish to buy or sell. They should also be subject to post-trade transparency requirements. Crypto-asset service providers that execute orders for crypto-assets on behalf of third parties should establish an execution policy and should always aim at obtaining the best result possible for their clients. They should take all necessary steps to avoid the misuse of information related to clients' orders by their employees. Crypto-assets service providers that receive orders and transmit those orders to other crypto-asset service providers should implement procedures for the prompt and proper sending of those orders. Crypto-assets service providers should not receive any monetary or non-monetary benefits | recital 3. | (Comments)<br>"An official **currency** of a country" (not "currencies")<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be consistent throughout the draft regulation.<br><br>ES:<br>(Comments):<br>See previous comment. Also the use of the word "consumer" should be reviewed.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |

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| particular trading platform for crypto-assets or any other crypto-asset service providers. | for transmitting those orders to any particular trading platform for crypto-assets or any other crypto-asset service providers. | | |
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| (62) Crypto-asset service providers that place crypto-assets for potential users should communicate to those persons information on how they intend to perform their service before the conclusion of a contract. They should also put in place specific measures to prevent conflicts of interest arising from that activity. | (62) Crypto-asset service providers that place crypto-assets for potential users should communicate to those persons information on how they intend to perform their service before the conclusion of a contract. They should also put in place specific measures to prevent conflicts of interest arising from that activity. | | |
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| (63) To ensure consumer protection, crypto-asset service providers that provide advice on crypto-assets, either at the request of a third party or at their own initiative, should make a preliminary assessment of their clients' experience, knowledge, objectives and ability to bear losses. Where the clients do not provide information to the crypto-asset service providers on their experience, knowledge, objectives and ability to bear losses, or it is | (63) To ensure consumer protection, crypto-asset service providers that provide advice on crypto-assets, either at the request of a third party or at their own initiative, should make a preliminary assessment of their clients' experience, knowledge, objectives and ability to bear losses. Where the clients do not provide information to the crypto-asset service providers on their experience, knowledge, objectives and ability to bear losses, or it is | | |

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| clear that those clients do not have sufficient experience or knowledge to understand the risks involved, or the ability to bear losses, crypto-asset service providers should warn those clients that the crypto-asset or the crypto-asset services may not be suitable for them. When providing advice, crypto-asset service providers should establish a report, summarising the clients' needs and demands and the advice given. | clear that those clients do not have sufficient experience or knowledge to understand the risks involved, or the ability to bear losses, crypto-asset service providers should warn those clients that the crypto-asset or the crypto-asset services may not be suitable for them. When providing advice, crypto-asset service providers should establish a report, summarising the clients' needs and demands and the advice given. | | |
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| (64) It is necessary to ensure users' confidence in crypto-asset markets and market integrity. It is therefore necessary to lay down rules to deter market abuse for crypto-assets that are admitted to trading on a trading platform for crypto-assets. However, as issuers of crypto-assets and crypto-asset service providers are very often SMEs, it would be disproportionate to apply all the provisions of Regulation (EU) No 596/2014 of the European Parliament and of the Council to them. It is therefore necessary to lay down specific rules | (64) It is necessary to ensure users' confidence in crypto-asset markets and market integrity. It is therefore necessary to lay down rules to deter market abuse for crypto-assets that are admitted to trading on a trading platform for crypto-assets. However, as issuers of crypto-assets and crypto-asset service providers are very often SMEs, it would be disproportionate to apply all the provisions of Regulation (EU) No 596/2014 of the European Parliament and of the Council to them. It is therefore necessary to lay down specific rules | | AT:<br>(Comments):<br><br>AT: We do not understand the exemption of the MAR for CASPs that are SMEs. In particular, we do not find the corresponding provision in the legal text. Therefore, we would ask for a clarification of the Presidency or the Commission in this regard. |

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| 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. | prohibiting certain behaviours that are likely to undermine users' confidence in crypto-asset markets and the integrity of crypto-asset markets, including insider dealings, unlawful disclosure of inside information and market manipulation related to crypto-assets. These bespoke rules on market abuse committed in relation to crypto-assets should be applied, where crypto-assets are admitted to trading on a trading platform for crypto-assets. | | |
| | | | |
| (65) Competent authorities should be conferred with sufficient powers to supervise the issuance of crypto-assets, including asset-referenced tokens or e-money tokens, as well as crypto-asset service providers, including the power to suspend or prohibit an issuance of crypto-assets or the provision of a crypto-asset service, and to investigate infringements of the rules on market abuse. Given the cross-border nature of crypto-asset markets, competent | (65) Competent authorities should be conferred with sufficient powers to supervise the issuance of crypto-assets, including asset-referenced tokens or e-money tokens, as well as crypto-asset service providers, including the power to suspend or prohibit an issuance of crypto-assets or the provision of a crypto-asset service, and to investigate infringements of the rules on market abuse.<br><br>**(65a) Competent authorities,** | As noted by one MS, in accordance with Art. 113(1) second paragraph, it should be further specified as to when an infringement is considered committed intentionally and when negligently. Technically, one may likewise consider including this clarification in the recitals. | FI:<br>(Comments)<br>Consistency with the terminology used in the MAR is encouraged. For example, in the MAR, the assessment concerns "gravity" of the infringement instead of seriousness. In addition, it is not required in the MAR to assess whether the infringement was intentional or not. Since in Table 3 there have been considerable alignments with the MAR, we would consider aligning this provision as well. |

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| authorities should cooperate with each other to detect and deter any infringements of the legal framework governing crypto-assets and markets for crypto-assets. Competent authorities should also have the power to impose sanctions on issuers of crypto-assets, including asset-referenced tokens or e-money tokens and crypto-asset service providers. | **when determining the type and level of an administrative penalty or other administrative measures to be imposed, shall take into account the extent to which the infringement is intentional or results from negligence and all other relevant circumstances. The EBA, when adopting a decision imposing a fine, shall also take into account the nature and seriousness of the infringement. For these purposes, an infringement shall be considered to have been committed intentionally if the competent authorities or the EBA find objective factors which demonstrate that such an issuer or its management body acted deliberately to commit the infringement.**<br><br>**(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. | | AT:<br>(Comments):<br>From ATs point of view, it should also be examined how attempts of infringements of the rules on market abuse are executed. [Alignment with MAR]<br><br>HU:<br>(Comments):<br>We support the proposed amendment. According to our interpretation the list of relevant circumstances laid down in Art. 93 are not exhaustive, and NCAs are allowed to assess and evaluate circumstances beyond the ones contained in the list. Could you please verify this interpretation?<br><br>SE:<br>(Comments):<br>We do not see the merits of this amendment as this already is clearly stated in different Articles in the draft regulation (Art 93, 112(3)(d) and 113(1), but we do not oppose it.<br>We note that article 113(1) second paragraph only mentions the EBA, not the competent authorities.<br>Consistency with the terminology used in the MAR is encouraged. |

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| | Competent authorities should also have the power to impose sanctions on issuers of crypto-assets, including asset-referenced tokens or e-money tokens and crypto-asset service providers. | | EL:<br>(Comments):<br>We agree.<br><br>LU:<br>(Comments):<br>LU Comment:<br>We disagree with the proposal. We propose to withdraw the proposed 65a. It is in practice extremely difficult or sometimes impossible to determine whether the infringement is intentional or results from negligence. Such proposal would give way to regulatory arbitrage, but also the measures might lose some of their dissuasive power when determined on the sole completion of the facts.<br><br>In addition 65b should be divided in two separated sub-recitals where MS cooperation should be separated from the power granted to competent authorities to impose sanctions.<br><br>We assume that the comment of the PCY intends to refer to article 93 rather than article 113(1)<br><br>IE:<br>Re 65 (a) How will a standard approach be set to ensure all MS assess the intentionality of |

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| | | | infringement similarly? Need to avoid any different treatments.<br><br>Re the EBA and "objective factors" – what are these objective factors? Are they defined somewhere?<br><br>Re 65 (b) How will competent authorities cooperation with each other to detect and deter infringements? Is there a proposed framework / guidance on this engagement? Potentially this will come through on the RTS's?<br><br>The phrase "…The EBA, when adopting a decision imposing a fine…" implies that only the EBA can impose fines.<br><br>Overall, this recital needs to be carefully considered. It may be helpful to clarify the administrative procedures/infringement aspects in their own provision in the text itself rather than relying on the recitals for clarity. Particularly because administrative penalties will require |

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| | | | secondary legislation in Ireland, it is important that this is set out clearly in the text to ensure it is transposed fully. Further analysis will be conducted and legal advice received in due course. Therefore these are preliminary views. |
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| (66) Significant asset-referenced tokens can be used as a means of exchange and to make large volumes of payment transactions on a cross-border basis. To avoid supervisory arbitrage across Member States, it is appropriate to assign to the EBA the task of supervising the issuers of significant asset-referenced tokens, once such asset-referenced tokens have been classified as significant. | (66) Significant asset-referenced tokens can be used as a means of exchange and to make large volumes of payment transactions on a cross-border basis. To avoid supervisory arbitrage across Member States, it is appropriate to assign to the EBA the task of supervising the issuers of significant asset-referenced tokens, once such asset-referenced tokens have been classified as significant. | | |
| | | | |
| (67) The EBA should establish a college of supervisors for issuers of significant asset-referenced tokens. Those issuers are usually at the centre of a network of entities that ensure the issuance of such crypto-assets, their transfer and their distribution to holders. The members of the college of | (67) The EBA should establish a college of supervisors for issuers of significant asset-referenced tokens. Those issuers are usually at the centre of a network of entities that ensure the issuance of such crypto-assets, their transfer and their distribution to holders. The members of the college of | | |

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| supervisors should therefore include all the competent authorities of the relevant entities and crypto-asset service providers that ensure, among others, the custody of the reserve assets, the operation of trading platforms for crypto-assets where the significant asset-referenced tokens are admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant asset-referenced tokens on behalf of holders. The college of supervisors should facilitate the cooperation and exchange of information among its members and should issue non-binding opinions on supervisory measures or changes in authorisation concerning the issuers of significant asset-referenced tokens or on the relevant entities providing services or activities in relation to the significant asset-referenced tokens. | supervisors should therefore include all the competent authorities of the relevant entities and crypto-asset service providers that ensure, among others, the custody of the reserve assets, the operation of trading platforms for crypto-assets where the significant asset-referenced tokens are admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant asset-referenced tokens on behalf of holders. The college of supervisors should facilitate the cooperation and exchange of information among its members and should issue non-binding opinions on supervisory measures or changes in authorisation concerning the issuers of significant asset-referenced tokens or on the relevant entities providing services or activities in relation to the significant asset-referenced tokens. | | |
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| (68) Competent authorities in charge of supervision under Directive 2009/110/EC should | (68) Competent authorities in charge of supervision under Directive 2009/110/EC should | | |

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| 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. | 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. | | |
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| (69) The EBA should establish a college of supervisors for issuers of significant e-money tokens. Issuers of significant e-money tokens are usually at the centre of a network of entities which ensure the issuance of such crypto-assets, their transfer and their distribution to holders. The members of the college of supervisors for issuers of significant e-money tokens should therefore include all the competent authorities of the relevant entities | (69) The EBA should establish a college of supervisors for issuers of significant e-money tokens. Issuers of significant e-money tokens are usually at the centre of a network of entities which ensure the issuance of such crypto-assets, their transfer and their distribution to holders. The members of the college of supervisors for issuers of significant e-money tokens should therefore include all the competent authorities of the relevant entities | | |

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| and crypto-asset service providers that ensure, among others, the operation of trading platforms for crypto-assets where the significant e-money tokens are admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant e-money tokens on behalf of holders. The college of supervisors for issuers of significant e-money tokens should facilitate the cooperation and exchange of information among its members and should issue non-binding opinions on changes in authorisation or supervisory measures concerning the issuers of significant e-money tokens or on the relevant entities providing services or activities in relation to those significant e-money tokens. | and crypto-asset service providers that ensure, among others, the operation of trading platforms for crypto-assets where the significant e-money tokens are admitted to trading and the crypto-asset service providers ensuring the custody and administration of the significant e-money tokens on behalf of holders. The college of supervisors for issuers of significant e-money tokens should facilitate the cooperation and exchange of information among its members and should issue non-binding opinions on changes in authorisation or supervisory measures concerning the issuers of significant e-money tokens or on the relevant entities providing services or activities in relation to those significant e-money tokens. | | |
| | | | |
| (70) To supervise the issuers of significant asset-referenced tokens, the EBA should have the powers, among others, to carry out on-site inspections, take supervisory measures and impose fines. The EBA should also have powers to | (70) To supervise the issuers of significant asset-referenced tokens, the EBA should have the powers, among others, to carry out on-site inspections, take supervisory measures and impose fines. The EBA should also have powers to | | |

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| supervise the compliance of issuers of significant e-money tokens with additional requirements set out in this Regulation. | supervise the compliance of issuers of significant e-money tokens with additional requirements set out in this Regulation. | | |
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| (71) The EBA should charge fees on issuers of significant asset-referenced tokens and issuers of significant e-money tokens to cover its costs, including overheads. For issuers of significant asset-referenced tokens, the fee should be proportionate to the size of their reserve assets. For issuers of significant e-money tokens, the fee should be proportionate to the amount of funds received in exchange for the significant e-money tokens. | (71) The EBA should charge fees on issuers of significant asset-referenced tokens and issuers of significant e-money tokens to cover its costs, including overheads. For issuers of significant asset-referenced tokens, the fee should be proportionate to the size of their reserve assets. For issuers of significant e-money tokens, the fee should be proportionate to the amount of funds received in exchange for the significant e-money tokens. | | |
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| (72) In order to ensure the uniform application of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the modifications of the definitions set out in this Regulation in order to adapt them | (72) In order to ensure the uniform application of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the modifications of the definitions set out in this Regulation in order to adapt them | | |

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

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| (73) In order to promote the consistent application of this Regulation, including adequate protection of investors and consumers across the Union, technical standards should be developed. It would be efficient and appropriate to entrust the EBA and ESMA, as bodies with highly specialised expertise, with the development of draft regulatory technical standards which do not involve policy choices, for submission to the Commission. | (73) In order to promote the consistent application of this Regulation, including adequate protection of investors and consumers across the Union, technical standards should be developed. It would be efficient and appropriate to entrust the EBA and ESMA, as bodies with highly specialised expertise, with the development of draft regulatory technical standards which do not involve policy choices, for submission to the Commission. | | |
| | | | |
| (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, | (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, | | |

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| governance arrangements for issuers of asset-referenced tokens, the information necessary for the assessment of a qualifying holdings in an asset-referenced token issuer's capital, the procedure of conflicts of interest established by issuers of asset-referenced tokens, the type of assets which the issuers of asset-referenced token can invest in, the obligations imposed on crypto-asset service providers ensuring the liquidity of asset-referenced tokens, the complaint handling procedure for issuers of asset-referenced tokens, the functioning of the college of supervisors for issuers of significant asset-referenced tokens and issuers of significant e-money tokens, the information necessary for the assessment of qualifying holdings in the crypto-asset service provider's capital, the exchange of information between competent authorities, the EBA and ESMA under this Regulation and the cooperation between the competent authorities and third countries. The Commission should adopt those | governance arrangements for issuers of asset-referenced tokens, the information necessary for the assessment of a qualifying holdings in an asset-referenced token issuer's capital, the procedure of conflicts of interest established by issuers of asset-referenced tokens, the type of assets which the issuers of asset-referenced token can invest in, the obligations imposed on crypto-asset service providers ensuring the liquidity of asset-referenced tokens, the complaint handling procedure for issuers of asset-referenced tokens, the functioning of the college of supervisors for issuers of significant asset-referenced tokens and issuers of significant e-money tokens, the information necessary for the assessment of qualifying holdings in the crypto-asset service provider's capital, the exchange of information between competent authorities, the EBA and ESMA under this Regulation and the cooperation between the competent authorities and third countries. The Commission should adopt those | | |

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| regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council and Regulation (EU) No 1095/2010 of the European Parliament and of the Council . | regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council and Regulation (EU) No 1095/2010 of the European Parliament and of the Council . | | |
| | | | |
| (75) The Commission should be empowered to adopt implementing technical standards developed by the EBA and ESMA, with regard to machine readable formats for crypto-asset white papers, the standard forms, templates and procedures for the application for authorisation as an issuer of asset-referenced tokens, the standard forms and template for the exchange of information between competent authorities and between competent authorities, the EBA and ESMA. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of | (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 | | |

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| Regulation (EU) No 1093/2010 and Article 15 of Regulation (EU) No 1095/2010. | Regulation (EU) No 1093/2010 and Article 15 of Regulation (EU) No 1095/2010. | | |
| | | | |
| (76) Since the objectives of this Regulation, namely to address the fragmentation of the legal framework applying to issuers of crypto-assets and crypto-asset service providers and to ensure the proper functioning of crypto-asset markets while ensuring investor protection, 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. | (76) Since the objectives of this Regulation, namely to address the fragmentation of the legal framework applying to issuers of crypto-assets and crypto-asset service providers and to ensure the proper functioning of crypto-asset markets while ensuring investor protection, 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. | | |

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| (77) In order to avoid disrupting market participants that provide services and activities in relation to crypto-assets that have been issued before the entry into force of this Regulation, issuers of such crypto-assets should be exempted from the obligation to publish a crypto-asset white paper and other applicable requirements. However, those transitional provisions should not apply to issuers of asset-referenced tokens, issuers of e-money tokens or to crypto-asset service providers that, in any case, should receive an authorisation as soon as this Regulation enters into application. | (77) In order to avoid disrupting market participants that provide services and activities in relation to crypto-assets that have been issued before the entry into force of this Regulation, issuers of such crypto-assets should be exempted from the obligation to publish a crypto-asset white paper and other applicable requirements. However, those transitional provisions should not apply to issuers of asset-referenced tokens, issuers of e-money tokens or to crypto-asset service providers that, in any case, should receive an authorisation as soon as this Regulation enters into application. | | |
| | | | |
| (78) Whistleblowers can bring new information to the attention of competent authorities which helps them in detecting infringements of this Regulation and imposing penalties. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to actual or potential infringements of this Regulation | (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 | | |

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| and to protect them from retaliation. This should be done by amending Directive (EU) 2019/1937 of the European Parliament and of the Council in order to make it applicable to breaches of this Regulation. | and to protect them from retaliation. This should be done by amending Directive (EU) 2019/1937 of the European Parliament and of the Council in order to make it applicable to breaches of this Regulation. | | |
| | | | |
| (79) The date of application of this Regulation should be deferred by 18 months in order to allow for the adoption of regulatory technical standards, implementing technical standards and delegated acts that are necessary to specify certain elements of this Regulation, | (79) The date of application of this Regulation should be deferred by 18 months in order to allow for the adoption of regulatory technical standards, implementing technical standards and delegated acts that are necessary to specify certain elements of this Regulation, | | |
| | | | |
| HAVE ADOPTED THIS REGULATION: | HAVE ADOPTED THIS REGULATION: | | |
| | | | |
| TITLE I<br>Subject Matter, Scope and Definitions | TITLE I<br>Subject Matter, Scope and Definitions | | |
| | | | |
| Article 1<br>Subject matter | Article 1<br>Subject matter | | |
| | | | |
| This Regulation lays down uniform rules for the following: | This Regulation lays down uniform rules for the following: | | |
| | | | |

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| (a) transparency and disclosure requirements for the issuance and admission to trading of crypto-assets; | (a) transparency and disclosure requirements for the issuance and admission to trading of crypto-assets; | | |
| | | | |
| (b) the authorisation and supervision of crypto-asset service providers and issuers of asset-referenced tokens and issuers of electronic money tokens; | (b) the authorisation and supervision of crypto-asset service providers and issuers of asset-referenced tokens and issuers of electronic money tokens; | | |
| | | | |
| (c) the operation, organisation and governance of issuers of asset-referenced tokens, issuers of electronic money tokens and crypto-asset service providers; | (c) the operation, organisation and governance of issuers of asset-referenced tokens, issuers of electronic money tokens and crypto-asset service providers; | | |
| | | | |
| (d) consumer protection rules for the issuance, trading, exchange and custody of crypto-assets; | (d) consumer protection rules for the issuance, trading, exchange and custody of crypto-assets; | | |
| | | | |
| (e) measures to prevent market abuse to ensure the integrity of crypto-asset markets. | (e) measures to prevent market abuse to ensure the integrity of crypto-asset markets. | | |
| | | | |
| Article 2<br>Scope | Article 2<br>Scope | | |
| | | | |
| 1. This Regulation applies to persons that are engaged in the | 1. This Regulation applies to **legal and natural** persons that are | Several MS expressed a need for more clarity regarding the personal | SI: |

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| issuance of crypto-assets or provide services related to crypto-assets in the Union. | engaged in the issuance of crypto-assets or provide services related to crypto-assets in the Union. | scope of the directive. We would like to propose this wording to make sure that the directive applies to legal persons as well as natural persons. Although natural persons are not able to receive authorisation due to the legal entity requirement in Art. 4 para. 1 (a), Art. 15 para. 2, and the following, there may be natural persons that offer CA or CA-related services without authorisation. In such a case restricting the scope to legal persons would prevent NCAs from taking actions pursuant to Art. 82 against the natural persons. | (Comments):<br>We would ask you to provide clear explanation of the proposed addition. Would natural persons that currently offer CA or CA-related services be either (1) forced to cease their operations or reorganise as a legal person that complies with regulatory requirements or (2) allowed to continue their operations without authorisation. We strongly disagree with the second option as it may (1) encourage legal persons engaged in the issuance of CA or provision of services related to CA to reorganise as a legal person and operate without authorisation and (2) expose CA markets and investors to additional risks.<br><br>CZ:<br>(Comments):<br>More clarity is welcome, although interpretation of original expression “persons” should have been both legal and natural persons, the explicit wording is positive.<br><br>HU:<br>(Comments):<br>As regards Hungary – somewhat similarly, to the MAR regime – the legal basis of sanctioning natural |

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| | | | persons engaged in unauthorised activity shall be the domestic law establishing the rules and regulations on the execution of MiCA regime.<br><br>SE:<br>(Comments):<br>We support this amendment. However please also see our comment on Article 3(1)(8).<br><br>ES:<br>(Comments):<br>Ok<br><br>EL:<br>(Comments):<br>Given the legal entity requirement for issuers and service providers, the inclusion of the natural persons in the scope creates a contradiction.<br><br>IE:<br>We welcome the Cion's attempts to provide clarity around the personal scope of the proposal.<br><br>We also welcome the PCY's attempts to ensure that NCAs have the ability to take action pursuant to A82. |

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| | | | However, it is important to reiterate that there should be further discussions on scope throughout the course of the working parties as the lack of clarity on scope is not limited to just this provision. |
| | | | |
| 2. However, this Regulation does not apply to crypto-assets that qualify as: | 2. However, this Regulation does not apply to crypto-assets that qualify as: | | |
| | | | |
| (a) financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU; | (a) financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU; | | AT:<br>(Comments):<br>In ATs view the delineation between financial instruments according to MiFID and crypto assets according to MiCA needs to be sound and definitive. Any ambiguity between the two regimes should be duly avoided in the level 1 text. |
| | | | |
| (b) electronic money as defined in Article 2, point (2), of Directive 2009/110/EC, except where they qualify as electronic money tokens under this Regulation; | (b) ~~electronic money as defined in Article 2, point (2), of Directive 2009/110/EC, except where they qualify as electronic money tokens under this Regulation;~~ | COM clarification: The definition of e-money tokens in Art. 3(1)(4) as well as Art. 43(2) as proposed in this drafting refer already to crypto-assets, so this para in scope is not deemed necessary by COM. | FI:<br>(Comments)<br>We believe that if this provision is deleted altogether and not replaced elsewhere in the draft regulation, the outcome would be that there are assets not falling in the scope of either MiCA nor EMD2. These assets would include |

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| | | | such that are not based on DLT (therefore are not e-money tokens) and which do not represent a claim against the issuer of the asset (therefore are not e-money). The regulation of such exempted assets would then require amending the definition of e-money under the EMD2 to also cover assets not representing a claim against the issuer. Alternatively, the definition of e-money tokens could be amended to also include assets not based on DLT or similar technology.<br><br>CZ:<br>(Comments):<br>Deleting this provision is accepted positively. However, we are of the opinion that in the definition of e-money tokens itself should be mentioned that they are deemed to e-money.<br><br>AT:<br>(Comments):<br>AT understands the deletion due to systemic reasons. Nevertheless, it should be clear for market participants which provisions will be applicable to their token. On a general note, the interaction between MiCA and existing EU financial market legislation (like MiFID II, EMD II, |

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| | | | AIFMD, …) should be duly addressed in the final legal act.<br><br>RO:<br>(Comments):<br>In our opinion, the motivation for removal of electronic money from negative scope is not sustained. We believe that only the last part should be removed starting with *"except where they…"*. In our opinion, it is necessary to be very clear that the proposed regulation does not apply to crypto-assets that qualify as electronic money as defined in Directive 2009/110/EC. This delineation between MiCA and EMD is very important also from the perspective of the assessment of the application of an issuer of ART, respectively the requirement provided in Article 16(2)(d) on an independent legal opinion that the ARTs do not qualify as financial instruments, electronic money, deposits or structured deposits.<br><br>HR:<br>(Comments):<br>We believe that this provision should remain unchanged. It provides more clarity that this Regulation does not apply to traditional electronic money. We think that keeping this provision |

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| | | | provides more clarity than having to conclude about the negative scope through definition of EMT and provisions of Art. 43.<br><br>SE:<br>(Comments):<br>We prefer to keep this article as the distinction against e-money as defined in EMD is important in order to define and catch all relevant types of assets.<br><br>ES:<br>(Comments):<br>Further clarification needed on whether "classic" e-money issued on DLT is deemed as EMT or is a different type of e-money. If the latter, also it needs to be clarified whether this DLT-based "classic" emoney is under EMD or MiCA." should be removed.<br><br>EL:<br>(Comments):<br>In our view, reference to "electronic money as defined in Article 2, point (2), of Directive 2009/110/EC" should be kept.<br><br>IE:<br>This makes more sense as had originally been slightly |

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| | | | contradictory with those other provisions. |
| | | | |
| (c) deposits as defined in Article 2(1), point (3), of Directive 2014/49/EU of the European Parliament and of the Council ; | (c) deposits as defined in Article 2(1), point (3), of Directive 2014/49/EU of the European Parliament and of the Council ; | | CZ:<br>(Comments):<br>**We would like to point out that the category of deposits does not include all categories of funds on payment accounts. There is a category of scriptural money which might not be always considered as deposit!**<br>Directive PSD II expressly states that any funds received by payment institutions from payment service users with a view to the provision of payment services **shall not constitute a deposit within the meaning** of Directive 2013/36/EU.<br>Thus we propose to add an exemption for scriptural money as it is in PSD II. Similar problem constitutes article 6 (3) EMD2. Otherwise the exemptions proposed in this Article would not be sufficient.<br>We are aware of the absenting definition of "scriptural money". However, the category is definitely wider compared to "deposits". See our comments above. The Council working group should consider the |

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| | | | need and feasibility of scriptural money definition. |
| | | | |
| (d) structured deposits as defined in Article 4(1), point (43), of Directive 2014/65/EU; | (d) structured deposits as defined in Article 4(1), point (43), of Directive 2014/65/EU; | | |
| | | | |
| (e) securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402 of the European Parliament and of the Council . | (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 . | As proposed by some MS to clarify that the securitisation is a process or scheme and not the exempted instrument as such. | FI:<br>(Comments)<br>Ok<br><br>AT:<br>(Comments):<br>In our view this inclusion is not necessary, as the wording of the initial reference is in line with Regulation (EU) 2017/2402.<br><br>SE:<br>(Comments):<br>We do not see the merits of this amendment as the definition of securitisation in Regulation (EU) 2017/2402 refers to the process and not the instrument, but we do not oppose it.<br><br>IE:<br>Does the clarification signify that the process of securitisation is exempt? What about tokenisation |

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| | | | of financial instruments? |
| | | | |
| 3. This Regulation does not apply to the following entities and persons: | This Regulation does not apply to the following entities and persons: | | |
| | | | |
| (a) the European Central Bank, national central banks of the Member States when acting in their capacity as monetary authority or other public authorities; | (a) the European Central Bank, national central banks of the Member States when acting in their capacity as monetary authority or other public authorities; | | |
| | | | |
| (b) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities as defined in Directive 2009/138/EC of the European Parliament and of the Council when carrying out the activities referred to in that Directive; | (b) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities as defined in Directive 2009/138/EC of the European Parliament and of the Council when carrying out the activities referred to in that Directive; | | NL:<br>(Comments):<br>Apologies for not raising this earlier and although we know that this fall outside the scope of this new draft compromise, we were wondering why this exemption for insurance undertakings is included. Could COM react on this? |
| | | | |
| (c) a liquidator or an administrator acting in the course of an insolvency procedure, except for the purpose of Article 42; | (c) a liquidator or an administrator acting in the course of an insolvency procedure, except for the purpose of Article 42; | | |
| | | | |
| (d) persons who provide crypto-asset services exclusively for their parent companies, for their | (d) persons who provide crypto-asset services exclusively for their parent companies, for their | | LU:<br>(Comments):<br>LU comment: |

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| subsidiaries or for other subsidiaries of their parent companies; | subsidiaries or for other subsidiaries of their parent companies; | | What are the limits of the term "exclusively"? If an entity provides such services for parent and/or subsidiaries and third parties, does MiCA not apply for the services provided to parent and/or subsidiaries but applies to the services provided to third parties? |
| | | | |
| (e) the European investment bank; | (e) the European investment bank; | | |
| | | | |
| (f) the European Financial Stability Facility and the European Stability Mechanism; | (f) the European Financial Stability Facility and the European Stability Mechanism; | | |
| | | | |
| (g) public international organisations. | (g) public international organisations. | | |
| | | | |
| 4. Where issuing asset-referenced tokens, including significant asset-referenced tokens, credit institutions authorised under Directive 2013/36/EU shall not be subject to: | 4. Where issuing asset-referenced tokens, including significant asset-referenced tokens, credit institutions authorised under Directive 2013/36/EU shall not be subject to: | | |
| | | | |
| (a) the provisions of chapter I of Title III, except Articles 21 and 22; | (a) the provisions of chapter I of Title III, except Articles **15 Paragraph 4, 17,** 21 and 22; | Following comments by several MS the provisions added contain rules that are explicitly applicable | NL:<br>(Comments):<br>As discussed during the first CWG |

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| | | to credit institutions and should be mentioned. | under the POR PCY, we do not agree with an automatic exemption for CIs. During this CWG an alternative solution was proposed, where CIs should notify the NCA on an ex-ante basis when they want to issue ARTs. Chapter I of Title III should be changed accordingly before we can agree. We do agree however with including art. 17, as we have already had this discussion in the CWG.<br><br>HU:<br>(Comments):<br>The wording of the amendment could lead misinterpretation. Our proposal is the following:<br>a) the provisions of chapter I of Title III, except Article**s** **15 Paragraph 4, and Articles 17,** 21 and 22;<br><br>EE:<br>(Comments):<br><br>EE: it should be further assessed whether excluding article 17 for credit institutions is feasible, as article 15 (4) explicitly states that article 15 (1) is not applied to credit institutions; however, credit institutions are still required to submit the WP under article 17. In other words, it should be |

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| | | | assessed whether excluding these provisions for CI's does not pose an additional risk by not publishing the necessary information, and if such risks are covered by other compensating mechanisms.<br><br>ES:<br>(Comments):<br>We also suggest reviewing the following chapters/articles of Title III, that might overlap with CRD/CRR/BRRD regulations:<br>- Chapter 2, articles 27-30.<br>- Chapter 4.<br>- Chapter 5, articles 41 (1), 41 (3) and 41 (4).<br>Chapter 6.<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Agree – as credit institutions must prepare a white paper. |
| | | | |
| (b) Article 31. | (b) Article 31. | | |
| | | | |
| 5. Where providing one or more crypto-asset services, credit institutions authorised under | 5. Where providing one or more crypto-asset services, credit institutions authorised under | | ES:<br>(Comments): |

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| Directive 2013/36/EU shall not be subject to the provisions of chapter I of Title V, except Articles 57 and 58. | Directive 2013/36/EU shall not be subject to the provisions of chapter I of Title V, except Articles 57 and 58. | | In addition, we suggest reviewing the following chapters/articles of Title V that might overlap with CRD/CRR/BRRD regulations:<br>- Chapter 2, articles 60-66.<br>- Chapter 4. |
| | | | |
| 6. Investment firms authorised under Directive 2014/65/EU shall not be subject to the provisions of chapter I of Title V, except Articles 57, 58, 60 and 61, where they only provide one or several crypto-asset services equivalent to the investment services and activities for which they are authorised under Directive 2014/65/EU. For that purpose: | 6. Investment firms authorised under Directive 2014/65/EU shall not be subject to the provisions of chapter I **and chapter II** of Title V, except Articles 57, 58, 60 and 61, where they only provide one or several crypto-asset services equivalent to the investment services and activities for which they are authorised under Directive 2014/65/EU. For that purpose: | Proposal by a MS. Probably a mere technical error, as Art. 60 and 61 belong to Chapter II | NL:<br>(Comments):<br>We suggest also including art. 66.<br><br>FI:<br>(Comments)<br>Ok<br><br>CZ:<br>(Comments):<br>We would like an explanation why is it necessary according to art. 60 to raise capital in case of crypto-assets? Why is not the original capital sufficient? What are additional associated risks different from services related to MiFiD Annex I Section C securities. In addition, we do not understand why the investment firms need to have special procedure in art. 58 for cross-border provision of services. MiFID II sets specific rules for investment firms and we do not see any reason why they should be omitted when crypto-asset |

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| | | | services are provided. For investment firms MiFiD rules should apply. This remark also applies to credit institutions.<br><br>ES:<br>(Comments):<br>If investment firms have to comply with article 61, they should also have to comply with the communication requirements of Article 62. Hence, this article should be added to the list of exceptions, together with Articles 57,58, 60 and 61.<br><br>EL:<br>(Comments):<br>In our understanding all articles of chapter II of Title V apply to investment firms where they provide crypto-assets services. MiFID equivalent requirements apply only in relation to the provision of investment services.<br><br>Therefore, we do not support the redrafting proposal to include “chapter II” but, instead, we propose the deletion of references to articles 60 and 61 in the original proposal. Besides this is in line with par.5 of this article. |

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| | | | LU:<br>(Comments):<br>LU Comment:<br>As portfolio management on crypto-assets is proposed to be added to this proposal as part of the catalogue listed in the definition of crypto-asset services, a point has to be added here that this activity is deemed to be equivalent to the investment activities referred to in point (4) of Section A of Annex I to Directive 2014/65/EU.<br><br>IE:<br>OK (need to check logic by MS as to proposal) |
| | | | |
| (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; | (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 | (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 | | |

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| point (3) of Section A of Annex I to Directive 2014/65/EU; | 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; | (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; | (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. | (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 | (f) the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be | Typo | IE:<br>Ok |

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| equivalent to the investment services referred to in points (5) of Section A of Annex I to Directive 2014/65/EU. | equivalent to the investment services referred to in points (5) of Section A of Annex I to Directive 2014/65/EU. | | |
| | | | ES:<br>(Comments):<br>Include a new point 6 (g) related to **portfolio management** on Crypto-Assets:<br><br>*(g) the crypto-asset services defined in Article 3(1), point (xx), of this Regulation are deemed to be equivalent to the investment activities referred to in point (4) of Section A of Annex I to Directive 2014/6.*<br><br>Also, we suggest, in order promoting a level playing field, adding a point 2.7. to include Management Companies<br><br>*Management companies authorised under Directive 2009/65/EC and/or Directive 2011/61/EU and whose programme of activities establishes the possibility of providing the following servic*<br>*ES: a) Reception and transmission of orders in relation to one or more financial instruments; and/or b) Investment advice.*<br>*v) Portfolio management*<br>*shall not be subject to the provisions of Chapter I and II of Title V, with the exception of Articles 57, 58, 60, 61 and 62, only where they provide such services in* |

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| | | | *an equivalent manner in relation to crypto-assets services.*<br><br>*In respect thereof:*<br>*a) 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.*<br>*b) b) the crypto-asset services defined in Article 3(1), point (17), of this Regulation are deemed to be equivalent to the investment services referred to in point (5) of Section A of Annex I to Directive 2014/65/EU."*<br>*c) the crypto-asset services defined in Article 3(1), point (xx), 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* |
| Article 3<br>Definitions | Article 3<br>Definitions | | |
| | | | |
| 1. For the purposes of this Regulation, the following definitions apply: | 1. For the purposes of this Regulation, the following definitions apply: | | |

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| | | | |
| (1) 'distributed ledger technology' or 'DLT' means a type of technology that support the distributed recording of encrypted data; | (1) 'distributed ledger technology' or 'DLT' means a ~~type of~~ technology that ~~support the distributed recording of encrypted data~~ **enables the operation and use of distributed ledgers, whereas;** | MS suggested general alignment with internationally recognized standards on technical terminology – here leaning on the ISO-Definition in ISO 22739:2020 – Blockchain and distributed ledger technologies – Vocabulary | NL:<br>(Comments):<br>While we would not oppose using these definitions, the proposed definitions are not in line with those the FSB uses. In our view, the FSB definitions are clearer and easier to understand. Furthermore, the FSB definitions are more tailored to the financial use of DLT/tokens etc. We would therefore prefer using the FSB terminology. From the viewpoint of harmonizing regimes on a global level, this would probably also be the most effective definition as well.<br><br>FI:<br>(Comments)<br>In order to further clarify the meaning of a "distributed ledger" and a "consensus mechanism", the definition of a "node" should also be added, for example as 1c. A (DLT) "node" has also been defined by the ISO.<br>It should be clarified why the approach taken by the ISO is adopted as regards this definition but not elsewhere in the draft regulation, most notably as regards the definition of a crypto-asset.<br><br>HU:<br>(Comments): |

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| | | | HU supports the proposed amendment.<br><br>SE:<br>(Comments):<br>We see merits in the amended proposition, as we find the original definition in the definition in MiCA partly difficult to understand and as it deviates somewhat from the definition of DLT developed by other organisations. We note that the OECD and World Economic Forum has defined DLT and blockchain slightly differently.<br><br>EL:<br>(Comments):<br>In order to avoid use of the terms to be defined, we suggest the following alternative definition:<br><br>IE:<br>We support the alignment of the definitions in MiCA with internationally recognised standards on technical terminology. |
| | **(1a) 'distributed ledger' means an information store that keeps records of transactions and is shared across a set of DLT network nodes and synchronized between the DLT network nodes.** | | SE:<br>(Comments):<br>We prefer the wording "transactions and/**or information**" as this is more in line with the definition of the OECD |

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| | **using a consensus mechanism.**<br><br>**(1b) a 'consensus mechanism' means rules and procedures by which an agreement among DLT network nodes is achieved that a transaction is validated.** | | expert group on blockchain.<br>If we are to use the amended version, we should define the word "node" as well.<br>Does all DLT use consensus mechanisms? Is it crucial that this is included in the definition? We see the merits of having a narrow scope but at the same time we are not sure that all DLTs use consensus mechanisms.<br>We prefer the wording "transactions **or new addition of information**" for the reasons mentioned above.<br><br>EL:<br>(Comments):<br>(1a) 'distributed ledger' means an information store that keeps records of transactions ~~and~~ which is shared and synchronized across a set of ~~DLT~~ multiple computers (network nodes) ~~and synchronized between the DLT~~ using a consensus mechanism.<br><br>IE:<br>(1a) is circular: it defines DLT by making reference to DLT network and DLT nodes.<br><br>A possible drafting suggestion may be to refer to the technology as a whole: |

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| | | | "Distributed Ledger Technology (DLT) comprises of infrastructure and protocols that allow digital data to be permanently recorded and stored simultaneously across a geographically dispersed network of nodes that validate the transactions via consensus mechanisms."<br><br>(1b) does not make reference to the technological basis for the consensus mechanism, one of the 3 technological characteristics of DLT (peer 2 peer, cryptography and consensus protocol). It is more than "rules and procedures"<br><br>A possible drafting solution may be:<br><br>"a consensus mechanism is any fault-tolerant protocol used to secure agreement on a single data value or a single state of a distributed ledger network". |
| (2) 'crypto-asset' means a digital representation of value or | (2) 'crypto-asset' means a digital representation of value or | | CZ: |

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| rights which may be transferred and stored electronically, using distributed ledger technology or similar technology; | rights which may be transferred and stored electronically, using distributed ledger technology or similar technology; | | (Comments):<br>We do not agree with this definition as we mentioned many times before and also in the non-paper. We called for change in the definition of crypto-asset, as we find this definition to be too vague. See non-paper presented by CZ, RO and SK in December 2020.<br><br>LU:<br>(Comments):<br>LU comment:<br>The current definition of crypto asset lacks clarity as regards so-called crypto-currency not being a representation of a value or right but having a value (for example the bitcoin) or being an asset having a value. Our understanding was these crypto assets were in scope of Mica but they do not match the definition. |
| | | | |
| (3) 'asset-referenced token' means a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets; | (3) 'asset-referenced token' means a type of crypto-asset that purports to maintain a stable value by referring to the value of **more than one official currency of a country** ~~several fiat currencies that are legal tender~~, one or several commodities or one or several crypto-assets, or a | Amended as several MS pointed out that the term legal tender only covers bank notes and coins, not commercial bank money.<br>In addition, the term fiat currencies seems to be too vague and not common in EU legal texts. Also, the definition should in theory also | ES:<br>(Comments):<br>The definition of an ART shall depend on how it is finally decided to regulate CA that are backed by official currencies, and whether they are merged with the definition of an EMT. |

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| | combination of such assets; | be able to apply on tokens referring to possible official currencies which are not of fiat nature (commodity or representative money).<br><br>COM saw merit in using the term "official currency of a country".<br><br>The term should be substituted throughout the Regulation, considering the individual context. | EL:<br>(Comments):<br><br>Typo:<br>more than one official currencies<br><br>LU:<br>(Comments):<br>LU Comment:<br>There is a slight difference with the definition as foreseen in AML5 e.g.: "virtual currencies means a digital representation…..which is not necessarily attached to **a legally established currency**…"<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
| | | | |
| (4) 'electronic money token' or 'e-money token' means a type of | (4) 'electronic money token' or 'e-money token' means a type of | Amended as several MS pointed out that the term legal tender only | FI:<br>(Comments) |

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| crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender; | crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a**n official currency of a country** ~~- fiat currency that is legal tender~~; | covers bank notes and coins, not commercial bank money. | In order to avoid discrepancies, terminology used in the EMD2 should be considered to be updated in accordance with this draft regulation. Furthermore, the use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be coherent throughout the draft regulation.<br><br>CZ:<br>(Comments):<br>1. We are of the opinion that in the definition of e-money token itself should be mentioned that they are deemed to e-money. We do not consider appropriate that this important aspect is mentioned in Article 43, not in the definition.<br><br>2. As a second point, we have to emphasize our concern about category of e-money tokens itself.<br><br>Crypto-asset services concerning EMT can be qualified as payment services if EMTs are funds as defined under current PSD II rules. Therefore, this situation could indicate a collision between regulation of payment services and the proposed crypto-asset regulation. In particular, crypto-assets service providers would have to follow |

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| | | | two different set of regulatory requirements and two different licensing regimes in order to provide services in relation to e-money tokens.<br><br>Thus, we are still not fully convinced that there is need for a special category of e-money tokens. We believe that the definition of e-money could be adapted to cover e-money tokens or significant e-money tokens.<br><br>If the intention really is to create special category of EMTs, we consider that much easier and clearer solution would be to stipulate that EMTs are e-money stored in a distributed ledger and that these assets are regulated as e-money. Under this option we would be able to set only limited number of new obligations, e. g. requirement for publication of a white paper, instead of laying down complicated regulation.<br><br>AT:<br>(Comments):<br>On a general note, we think that legal clarity for all market participants should be a guiding principle. We see the possibility of circumventing regulatory requirements for e-money tokens by simply including an additional official currency in the |

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| | | | reserve.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
| | | | |
| (5) 'utility token' means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token; | (5) 'utility token' means a type of crypto-asset which is **only** intended to provide digital access to a **service,** good or **product** ~~service, available on DLT~~, and is only accepted by the issuer of that token; | One MS suggest the addition in order to better define the perimeter of this kind of crypto-asset. Another MS suggested changing "good" to "product".<br><br>Another MS proposed deletion availability of the services, goods and products to be on DLT, as otherwise it might seem as if the service itself must be available on DLT. The token runs on DLT as that is part of the definition of crypto asset used. | FI:<br>(Comments)<br>We believe the term "good" would already cover the term "product". It is also common language in EU legislation to refer to goods and services. We would therefore not support the change.<br><br>CZ:<br>(Comments):<br>Changes are acceptable from our point of view, but we would prefer keeping "good or service", and not to add "product". We would like to point out |

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| | | | that using "accepted by" is not accurate, because utility token can be accepted not by the issuer (who has the obligation to perform service, good or product), but by various entities.<br><br>HU:<br>(Comments):<br>HU supports the proposed amendment.<br><br>SE:<br>(Comments):<br>We can support the amended definition; however we note that it is common language in EU legislation to refer to "goods and services".<br><br>EL:<br>(Comments):<br>In relation to the addition of the word "only", we would like further clarification as to whether and how this addition would influence the classification and legal treatment of hybrid tokens.<br><br>We support deleting the reference to availability on DLT.<br><br>MT:<br>(Comments):<br>Many utility tokens are often admitted to trading on the secondary market |

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| | | | after their issuance. By inclusion of the term 'only' within the definition may result in many utility tokens not being ultimately defined as such once they are traded on the secondary market.<br><br>LU:<br>(Comments):<br>LU comment<br>We are not sure to grasp the difference between a good and a product and the intention of this addition? We commonly speak of goods and services. We propose not to add product but to keep the word goods.<br><br>Any amendment to this definition should be reflected in recital (9)<br><br>Most of the utility tokens are also accepted by other entities. The nature of the crypto currencies being to be easily convertible. The word 'only' is also very restrictive and might lead to circumvention with the possibility to add another functionality to the token to avoid falling in the scope of the definition. We have not seen any practical examples of a pure utility token under the proposed definition. Will a utility token that is accepted by persons/entities other than the issuer be covered by this definition? |

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| | | | IE:<br>Generally, the term "goods and services" is commonly understood so don't see a need for the addition of or change to "product". However, this is not a significant issue and we can support the change in wording in the spirit of compromise.<br><br>Addition of "only" seems appropriate.<br><br>We think that "digital access to a service" implies the token provides access to the service, not that the service is on DLT. |
| | | | |
| (6) 'issuer of crypto-assets' means a legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets; | (6) 'issuer of crypto-assets' means a legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets; | | CZ:<br>(Comments):<br>We have to emphasize that definition of issuer was discussed during working party 13th November. Commission said that there should be also natural person in the definition of issuer, not only legal person.<br><br>In addition to that, we are of the |

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| | | | opinion that the term "issuer" is not consistent with the definition. The issuer is a person who issues crypto-assets. See the distinction between issuer and offeror in article 2 letters h) and i) of prospectus regulation. However, the proposed definition determines a person who offers – who promotes – crypto-assets to purchase. It can be identical person, however, there can be two different subjects – an issuer and also an intermediary who promotes issued crypto-assets.<br>Is it the intention to cover permission-less DLT by imposing the requirements to "person who offers or seeks the admission to trading"?<br>We believe that it should be clarified who is the person who seeks the admission, because it can be also the person who is hired by the issuer (the entity who decides to issue such assets). |
| | | | |
| (7) 'offer to the public' means an offer to third parties to acquire a crypto-asset in exchange for fiat currency or other crypto-assets; | (7) 'offer to the public' means an offer to third parties to acquire a crypto-asset in exchange for ~~fiat~~ **an official** currency **of a country** or other crypto-assets; | Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3.In the precise context , "funds" could also be appropriate. | NL:<br>(Comments):<br>As we have mentioned in previous comments:<br><br>Third parties are not the same as 'the public'. What is the definition of third parties? |

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| | | | FI:<br>(Comments)<br>Referring to the addition made in recital 21a, we would support using the term funds here. Alternatively, the term "funds" used in recital 21a should be changed accordingly to an "official currency of a country". This will depend on selected terminology on the level of the overall draft regulation.<br><br>IE:<br>As above. |
| | | | |
| (8) 'crypto-asset service provider' means any person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis; | (8) 'crypto-asset service provider' means any **natural or legal** person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis; | Several MS expressed a need for more clarity regarding the personal scope of the directive. We would like to propose this wording to make sure that the directive applies to legal persons as well as natural persons. Although natural persons are not able to receive authorisation due to the legal entity requirement in Art. 53 para. 1, there may be natural persons that offer CA or CAS without authorisation. In such a case restricting the scope to legal persons would prevent NCAs from taking actions pursuant to Art. 82 against the natural persons. | FI:<br>(Comments)<br>Ok<br><br>CZ:<br>(Comments):<br>We support the change to clarify that the provision applies to both natural and legal persons. Although the interpretation of original term "persons" would be natural and legal person, the explicit wording brings more clarity.<br><br>EE:<br>(Comments):<br><br>EE: The wording of article 2 (1) ("*This* |

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| | | | *Regulation applies to **legal and natural** persons that are engaged in the issuance of crypto-assets or provide services related to crypto-assets in the Union*.") implies that the addition proposed within this article 3 (8) is not necessary.<br><br>SE:<br>(Comments):<br>We note that the wording in Article 2(1) is "this Regulation applies to **legal and natural** persons", while this Article speaks of "any **natural or legal** person". We would like to see consistency in the terminology.<br>Apart from that, we can support the amended definition.<br><br>ES:<br>(Comments):<br>Ok<br><br>EL:<br>(Comments):<br>In line with our comments in article 2 par. 1, given the legal entity requirement of Art. 53 par.1, we believe that this amendment creates a contradiction.<br><br>Further, in our opinion, the addition of the term "natural" is not necessary for |

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| | | | the purposes mentioned in the PCY comment.<br><br>LU:<br>(Comments):<br>LU comment:<br>What is the purpose of the wording "on a professional basis"? What is meant here to be covered or to be excluded? This may lead to non-professional actors being out of scope, is it the intention behind this wording?<br><br>IE:<br>As above. |
| | | | |
| (9) 'crypto-asset service' means any of the services and activities listed below relating to any crypto-asset: | (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; | (a) the custody and administration of crypto-assets on behalf of third parties; | | |
| | | | |
| (b) the operation of a trading platform for crypto-assets; | (b) the operation of a trading platform for crypto-assets; | | |
| | | | |
| (c) the exchange of | (c) the exchange of crypto- | See comments on Art. 3(1)(3). | |

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| crypto-assets for fiat currency that is legal tender; | assets for **an official currency of a country** ~~fiat currency that is legal tender~~; | Some MS find the term "fiat currency that is legal tender" too narrow, as it only covers banknotes and coins but not commercial bank money.<br><br>In Art. 3(1)(3), COM saw merit in using the term "official currency of a country". | FI:<br>(Comments)<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be coherent throughout the draft regulation.<br><br>IE:<br>As above |
| | | | |
| (d) the exchange of crypto-assets for other crypto-assets; | (d) the exchange of crypto-assets for other crypto-assets; | | |
| | | | |
| (e) the execution of orders for crypto-assets on behalf of third parties; | (e) the execution of orders for crypto-assets on behalf of third parties; | | |
| | | | |
| (f) placing of crypto-assets; | (f) placing of crypto-assets; | | SE:<br>(Comments):<br>We would like to see the insertion of a reference to the definition in Article 3(15). |
| | | | |
| (g) the reception and transmission of orders 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- | (h) providing advice on crypto- | | |

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| assets; | assets; | | |
| | **(i) providing portfolio management on crypto-assets;** | Several MS suggested adding portfolio management to the catalogue, as the crypto-asset services draw distinctly on the MiFID financial services. Furthermore, such services are already offered on the market and should not be left unregulated. | FI:<br>(Comments)<br>Ok, provided that this is also included, if appropriate, in the list of correspondent investment services in Article 2(6).<br><br>CZ:<br>(Comments):<br>We welcome this proposal. However, we are of the opinion that investment firm with authorisation to provide portfolio management should be entitled to provide also portfolio management on crypto-assets. Thus, the provision in Article 2(6) should be add:<br>*(xx) 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~~s~~ (4) of Section A of Annex I to Directive 2014/65/EU.*<br><br>HU:<br>(Comments):<br>HU supports the proposed amendment.<br><br>SE:<br>(Comments):<br>We support this amendment, provided |

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| | | | that this is also included, if appropriate, in the list of correspondent investment services in Article 2(6).<br><br>EL:<br>(Comments):<br>We agree. Further adaptation of chapter 3 of Title 5 will be required.<br><br>LU:<br>(Comments):<br>LU comment<br>Do these services fall under Articles 6 para 3 of the UCITSD and 6 para 4 of the AIFMD?<br><br>IE:<br><br>(if this activity is added, it needs to be defined, as "advice" under (h) needs to be defined – done in 17 and 18 below) |
| (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 | (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 | | LU:<br>(Comments):<br>LU comment:<br>Drafting suggestion:<br>(10) 'the custody and administration |

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| crypto-assets, where applicable in the form of private cryptographic keys; | crypto-assets, where applicable in the form of private cryptographic keys; | | of crypto-assets on behalf of third parties' means safekeeping or controlling, on behalf of third parties, crypto-assets or the means of access to such crypto-assets, where applicable in the form of private cryptographic keys, **or similar means**<br><br>(Comments):<br>The addition of "or similar means" at the end of this definition would leave room for further technological developments and maintain the technological neutrality of the legislation. |
| | | | |
| (11) 'the operation of a trading platform for crypto-assets' means managing one or more trading platforms for crypto-assets, within which multiple third-party buying and selling interests for crypto-assets can interact in a manner that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for fiat currency that is legal tender; | (11) 'the operation of a trading platform for crypto-assets' means managing one or more trading platforms for crypto-assets, within which multiple third-party buying and selling interests for crypto-assets can interact in a manner that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for ~~fiat~~ **an official** currency ~~that is legal tender~~ **of a country**; | Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3. | NL:<br>(Comments):<br>We have previously posed a (written) question on this paragraph on which we haven't yet received an answer:<br><br>Does this include bulletin boards?<br><br>FI:<br>(Comments)<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be coherent throughout the draft |

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| | | | regulation.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
| | | | |
| (12) 'the exchange of crypto-assets for fiat currency' means concluding purchase or sale contracts concerning crypto-assets with third parties against fiat currency that is legal tender by using proprietary capital; | (12) 'the exchange of crypto-assets for ~~fiat~~ **an official** currency' **of a country** means concluding purchase or sale contracts concerning crypto-assets with third parties against ~~fiat~~ **an official** currency **of a country** ~~that is legal tender~~ by using proprietary capital; | Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3. | EL:<br>(Comments):<br>We would like to reiterate our opinion that a clarification is needed on whether the equivalent of MiFID II investment service "dealing on own account" is encompassed under the service of 'the exchange of crypto-assets for fiat currency'.<br>If not, the service of dealing on own account should be included in the list of crypto-assets services.<br><br>IE:<br>Official currency tends to be the |

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| | | | legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
| | | | |
| (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; | (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; | (14) 'the execution of orders for crypto-assets on behalf of third parties' means concluding agreements to buy or to sell one or more crypto-assets or to subscribe for one or more crypto-assets on behalf of third parties **and includes the conclusion of agreements to sell crypto-assets issued by the crypto-asset service provider at** | Wording as suggested by a MS. The added part brings the definition in line with the comparable MiFID 2-definition in Art. 4(1) (5). | SE:<br>(Comments):<br>We support this amendment. It is, however, strongly encouraged that clarity is provided in terms of differentiating between Articles 3(1)(14) and 3(1)(15), especially as regards the sale of crypto-assets by a party other than the issuer. |

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| | **the moment of their issuance**; | | ES:<br>(Comments):<br>Further clarification needed on the interaction of MiCA and PSD2, especially in those cases where CA are considered funds.<br><br>EL:<br>(Comments):<br>We fully support the alignment with MiFID II.<br><br>In this line, we propose replacing "third parties" with "clients" in this and following references, where applicable.<br><br>LU:<br>(Comments):<br>LU comment:<br><br>It makes sense to align with MiFID definition. We understand that this is to encompass the distribution of crypto-assets at first issuance. Next point (15) seems similar. Is there a real difference between "selling crypto-assets at the moment of their issuance" and "placing crypto-assets on behalf of the issuer"?<br>As a general comment, we believe that alignments of MiCA and MiFID provisions are useful to avoid potential |

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| | | | discussions. |
| | | | |
| (15) 'placing of crypto-assets' means the marketing of newly-issued crypto-assets or of crypto-assets that are already issued but that are not admitted to trading on a trading platform for crypto-assets, to specified purchasers and which does not involve an offer to the public or an offer to existing holders of the issuer's crypto-assets; | (15) 'placing of crypto-assets' means the marketing**, on behalf of or for the account of the issuer or of a party related to the issuer,** of ~~newly-issued~~ crypto-assets ~~or of crypto-assets that are already issued but that are not admitted to trading on a trading platform for crypto-assets,~~ to ~~specified~~ purchasers ~~and which does not involve an offer to the public or an offer to existing holders of the issuer's crypto-assets~~; | Wording following MS comments to stress that the activity is provided to the issuer. | FI:<br>(Comments)<br>It is strongly encouraged that clarity is provided in terms of differentiating between Articles 3(1)(14) and 3(1)(15), especially as regards the sale of crypto-assets by a party other than the issuer. Furthermore, it should be clarified what qualifies as "a party related to the issuer".<br><br>SE:<br>(Comments):<br>We find the word marketing somewhat broad and are considering the definition of placing by the FCA more accurate. ("*Placing is the service of finding investors for securities on behalf of a seller and may involve a commitment to take up those securities where others do not acquire them*"), however replacing the words "securities" by "crypto assets" and "seller" by "issuer" here.<br>We note that the amended definition will broaden the scope, which we support.<br>We also note that the amended definition does not include any |

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| | | | commitment to take up the crypto-assets that are not acquired by anyone.<br><br>ES:<br>(Comments):<br>See previous comment on MiCA/PSD2 interaction<br><br>EL:<br>(Comments):<br>We would appreciate further justification for the addition of "on behalf of or for the account of the issuer or of a party related to the issuer" , taking into account that this phrase is not used neither in MiFID II nor in the Prospectus Directive or the Regulation on Crowdfunding Service Providers.<br><br>Drafting suggestion:<br>"to potential purchasers"<br><br>LU:<br>(Comments):<br>LU comment:<br><br>See comment above under (14)<br><br>IE:<br>Ok |
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| (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; | (16) 'the reception and transmission of orders for crypto-assets on behalf of third parties' means the reception from a person of an order to buy or to sell one or more crypto-assets or to subscribe for one or more crypto-assets and the transmission of that order to a third party for execution; | | |
| | | | |
| (17) 'providing advice on crypto-assets' means offering, giving or agreeing to give personalised or specific recommendations to a third party, either at the third party's request or on the initiative of the crypto-asset service provider providing the advice, concerning the acquisition or the sale of one or more crypto-assets, or the use of crypto-asset services; | (17) 'providing advice on crypto-assets' means offering, giving or agreeing to give personalised or specific recommendations to a third party, either at the third party's request or on the initiative of the crypto-asset service provider providing the advice, ~~concerning the acquisition or the sale of one or more~~ **in respect of one or more transactions relating to** crypto-assets, or the use of crypto-asset services; | The amendment aligns the definition with the corresponding MiFID2-definition in Art. 4(1) (4). | NL:<br>(Comments):<br>While we understand that this change would lead to more alignment with MiFID2, it would lead to a significant increase of the scope. What are the practical consequences of this enlargement? Would non-investment related advice also fall under this activity? I.e., if one would advise on what type of token is (from a technical point of view) best to issue utility tokens? In MiFID2, this activity is really focused on advice regarding investments strategies etc. We fear that increasing the MiCA scope would lead to unintended effects. Therefore, before we have more information on what the practical consequences of this change are, we oppose this change.<br><br>EL: |

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| | | | (Comments):<br>We agree.<br><br>See comment for "(14) 'execution of order" regarding the adoption of the term "client".<br><br>IE:<br>Preliminary thoughts are that alignment with MiFID2 is welcome but naturally, jurisdictional gaps will appear as MS transposed MiFID2. |
| | **(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** | Several MS suggested adding portfolio management to the catalogue, as the CAS draw distinctly on the MiFID financial services. Furthermore, such services are already offered on the market and should not be left unregulated. The wording follows Art.4 (1) (8) MiFID2. | FI:<br>(Comments)<br>This should be added in the list of correspondent investment services under Article 2(6).<br><br>CZ:<br>(Comments):<br>We welcome this proposal. However, we are of the opinion that investment firm with authorisation to provide portfolio management should be entitled to provide also portfolio management on crypto-assets. Thus, the provision in Article 2(6) should be add:<br>*(xx) the crypto-asset services defined in Article 3(1), point (17a), of* |

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| | | | *this Regulation are deemed to be equivalent to the investment services referred to in point~~s~~ (4) of Section A of Annex I to Directive 2014/65/EU.*<br><br>HU:<br>(Comments):<br>HU supports the proposed amendment.<br><br>SE:<br>(Comments):<br>We support this amendment. It should consequently be added in the list of correspondent investment services under Article 2(6).<br><br>EL:<br>(Comments):<br>We agree.<br><br>LU:<br>(Comments):<br>LU comment<br><br>As a general remark, we would like to point out that this new definition only refers to discretionary client-to-client basis contracts. Quid non-discretionary mandates?<br><br>IE:<br>As above. |
| (18) ‘management body’ means | (18) ‘management body’ means | Editorial changes and changes to | |

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| the body of an issuer of crypto-assets, or of a crypto-asset provider, which is appointed in accordance with national law, and which is empowered to set the entity's strategy, objectives, the overall direction and which oversees and monitors management decision-making and which includes persons who direct the business of the entity; | the body **or bodies** of an issuer of crypto-assets, or of a crypto-asset **service** provider, which ~~is~~ **are** appointed in accordance with national law, and which ~~is~~ **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; | further align (for the sake of consistency) this definition with definitions already used in EU legislative texts. | FI:<br>(Comments)<br>Ok<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Ok |
| | | | |
| (19) 'credit institution' means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013; | (19) 'credit institution' means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013; | | |
| | | | |
| (20) 'qualified investors' means 'qualified investors' as defined in Article 2, point (e), of Regulation (EU) 2017/1129; | (20) 'qualified investors' means 'qualified investors' as defined in Article 2, point (e), of Regulation (EU) 2017/1129; | | |
| | | | |
| (21) 'reserve assets' means the basket of fiat currencies that are legal tender, commodities or crypto-assets, backing the value of an asset-referenced tokens, or the investment of such assets; | (21) 'reserve assets' means the basket of ~~fiat~~ **official** currencies **of a country** ~~that are legal tender~~, commodities or crypto-assets, backing the value of an asset-referenced tokens, or the investment of such assets; | | FI:<br>(Comments)<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be coherent throughout the draft |

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| | | | regulation.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
| | | | |
| (22) 'home Member State' means: | (22) 'home Member State' means: | | |
| | | | |
| (a) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, has its registered office or a branch in the Union, the Member State where the issuer of crypto-assets has its registered office or a branch; | (a) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, has its registered office ~~or a branch~~ in the Union, the Member State where the issuer of crypto-assets has its registered office ~~or a branch~~; | Drafting as suggested by some MS; when an issuer has a registered office and a branch in the EU, the home member state should be that of the registered office. | HU:<br>(Comments):<br>HU supports the proposed amendment.<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Ok |
| | | | |
| (b) where the issuer of crypto- | (b) where the issuer of crypto- | | NL: |

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| assets, other than asset-referenced tokens or electronic money tokens, has no registered office in the Union but has two or more branches in the Union, the Member State chosen by the issuer among those Member States where the issuer has branches; | assets, other than asset-referenced tokens or electronic money tokens, has no registered office in the Union but has ~~two~~ **one** or more branches in the Union, the Member State chosen by the issuer among those Member States where the issuer has branches; | | (Comments):<br>This would give issuers much freedom to cherry-pick their preferenced location, even though they might have minimal economic activity in that Member State. Would it not be better to look at the Member State where the largest branch of the issuer is located, and designate that Member State as home Member State?<br><br>EL:<br>(Comments):<br>Suggested drafting:<br><br>"where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, is established in a third country and has no registered office in the Union…"<br><br>Comment: For increased clarity, in case this subparagraph refers to third country issuers.<br><br>IE:<br>Ok |
| | | | |
| (c) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, is established in a third country and | (c) where the issuer of crypto-assets, other than asset-referenced tokens or electronic money tokens, is established in a third country and | | |

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| has no branch in the Union, at the choice of that issuer, either the Member State where the crypto-assets are intended to be offered to the public for the first time or the Member State where the first application for admission to trading on a trading platform for crypto-assets is made; | has no branch in the Union, at the choice of that issuer, either the Member State where the crypto-assets are intended to be offered to the public for the first time or the Member State where the first application for admission to trading on a trading platform for crypto-assets is made; | | |
| | | | |
| (d) for issuer of asset-referenced tokens, the Member State where the issuer of asset-referenced tokens has its registered office; | (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; | (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; | (f) for crypto-asset service providers, the Member State where the crypto-asset service provider has its registered office; | | |
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| (23) 'host Member State' means the Member State where an issuer of crypto-assets has made an offer of crypto-assets to the public or is seeking admission to trading on a trading platform for crypto-assets, or where crypto-asset service provider provides crypto-asset services, when different from the home Member State; | (23) 'host Member State' means the Member State where an issuer of crypto-assets has made an offer of crypto-assets to the public or is seeking admission to trading on a trading platform for crypto-assets, or where crypto-asset service provider provides crypto-asset services, when different from the home Member State; | | |
| | | | |
| (24) 'competent authority' means: | (24) 'competent authority' means: | | |
| | | | |
| (a) the authority, designated by each Member State in accordance with Article 81 for issuers of crypto-assets, issuers of asset-referenced tokens and crypto-asset service providers; | (a) the authority **or authorities**, designated by each Member State in accordance with Article 81 for issuers of crypto-assets, issuers of asset-referenced tokens ~~and~~ **or** crypto-asset service providers; | MS suggested a clarification that different authorities may be designated by MS. | FI:<br>(Comments)<br>Ok<br><br>SE:<br>(Comments):<br>We can support this amendment as Article 81 speaks of "competent authorities".<br>However, we note that in Article 4(26) of MiFID 2 the definition is 'competent authority' while Article 67 of the same Directive speaks of "Designation of competent authorities". Thus, this amendment might not be necessary. |

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| | | | EL:<br>(Comments):<br>In an effort to align with other EU legislative texts (MiFID, PROSPECTUS REGULATION) we prefer the original drafting.<br><br>IE:<br>Supportive of clarification. |
| | | | |
| (b) the authority, designated by each Member State, for the application of Directive 2009/110/EC for issuers of e-money tokens; | (b) the authority, designated by each Member State, for the application of Directive 2009/110/EC for issuers of e-money tokens; | | |
| | | | |
| (25) 'commodity' means 'commodity' under Article 2(6) of Commission Delegated Regulation (EU) 2017/565 ; | (25) 'commodity' means 'commodity' under Article 2(6) of Commission Delegated Regulation (EU) 2017/565 ; | | |
| | | | |
| (26) 'qualifying holding' means any direct or indirect holding in an issuer of asset-referenced tokens or in a crypto-asset service provider which represents at least 10% of the capital or the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the | (26) 'qualifying holding' means any direct or indirect holding in an issuer of asset-referenced tokens or in a crypto-asset service provider which represents at least 10% of the capital or the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the | | |

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| Council , taking into account the conditions regarding aggregation thereof laid down in paragraphs 4 and 5 of Article 12 of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists. | Council , taking into account the conditions regarding aggregation thereof laid down in paragraphs 4 and 5 of Article 12 of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists. | | |
| | | | |
| (27) 'inside information' means any information of a precise nature that has not been made public, relating, directly or indirectly, to one or more issuers of crypto-assets or to one or more crypto-assets, and which, if it was made public, would be likely to have a significant effect on the prices of those crypto-assets; | (27) 'inside information' means any information of a precise nature that has not been made public, relating, directly or indirectly, to one or more issuers of crypto-assets or to one or more crypto-assets, and which, if it was made public, would be likely to have a significant effect on the prices of those crypto-assets; | | |
| | | | |
| (28) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession. | (28) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession. | | |
| | | | |
| 2. The Commission is empowered to adopt delegated acts in accordance with Article 121 to specify technical elements of the definitions laid down in paragraph | 2. The Commission is empowered to adopt delegated acts in accordance with Article 121 to specify technical elements of the definitions laid down in paragraph | | |

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| 1, and to adjust those definitions to market developments and technological developments. | 1, and to adjust those definitions to market developments and technological developments. | | |
| | | | |
| TITLE II<br>Crypto-Assets, other than asset-referenced tokens or e-money tokens | TITLE II<br>Crypto-Assets, other than asset-referenced tokens or e-money tokens | | |
| | | | |
| Article 4<br>Offers of crypto-assets, other than asset-referenced tokens or e-money tokens, to the public, and admission of such crypto-assets to trading on a trading platform for crypto-assets | Article 4<br>Offers of crypto-assets, other than asset-referenced tokens or e-money tokens, to the public, and admission of such crypto-assets to trading on a trading platform for crypto-assets | | |
| | | | |
| 1. No issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, in the Union, offer such crypto-assets to the public, or seek an admission of such crypto-assets to trading on a trading platform for crypto-assets, unless that issuer: | 1. No issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, in the Union, offer such crypto-assets to the public, or seek an admission of such crypto-assets to trading on a trading platform for crypto-assets, unless that issuer: | | |
| | | | |
| (a) is a legal entity; | (a) is a legal entity; | | |
| | | | |
| (b) has drafted a crypto-asset white paper in respect of those crypto-assets in accordance with | (b) has drafted a crypto-asset white paper in respect of those crypto-assets in accordance with | | |

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| Article 5; | Article 5; | | |
| | | | |
| (c) has notified that crypto-asset white paper in accordance with Article 7; | (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; | (d) has published the crypto-asset white paper in accordance with Article 8; | | |
| | | | |
| (e) complies with the requirements laid down in Article 13. | (e) complies with the requirements laid down in Article 13. | | |
| | | | |
| 2. Paragraph 1, points (b) to (d) shall not apply where: | 2. Paragraph 1, points (b) to (d) shall not apply where: | | CZ:<br>(Comments):<br>We would prefer exemption also for point (a) thus the issuer could be natural person. |
| | | | |
| (a) the crypto-assets are offered for free; | (a) the crypto-assets are offered for free; | | |
| | | | |
| (b) the crypto-assets are automatically created through mining as a reward for the maintenance of the DLT or the validation of transactions; | (b) the crypto-assets are automatically created ~~through mining~~ as a reward for the maintenance of the DLT or the validation of transactions**;** | One MS pointed out that the term "mining" is primarily related to the decentralized consensus mechanism of Proof of Work (PoW), PCY would recommend a neutral wording in order to be able | NL:<br>(Comments):<br>While we agree with this change, we do like to point out that is does not in practice change the approach of MiCA towards decentralised crypto assets (including the practical issues that |

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| | | to capture similar issues (e.g. Proof of Stake). | would arise).<br><br>FI:<br>(Comments)<br>Ok<br><br>AT:<br>(Comments):<br>AT can support the amendment. However, from our point of view, the term 'created' should be replaced by 'distributed' in order to also cover cases of pre-mined crypto-assets which should not be treated differently.<br><br>HU:<br>(Comments):<br>We recommend reformulation of the exemption in a following manner:<br>(b) the crypto-assets are automatically created or **allocated** as a reward for the maintenance of the DLT or the validation of transactions.<br><br>It should be mentioned that in line with PCY comments block rewards are the characteristics of PoW consensus mechanisms (e.g.: Proof of Burn, or Delayed Proof of Work). On the contrary most Proof of Stake (PoS) consensus mechanisms does not provide block rewards, but allocate either pre-minted tokens and/or |

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| | | | transaction fees associated with the transactions in the block.<br><br>Our proposed approach covers rewards distributed by both PoW and PoS consensus mechanisms.<br><br>EL:<br>(Comments):<br>We are not against this deletion.<br><br>IE:<br>Fully agree with the drafting proposal in order to retain DLT platform neutrality in MICA. |
| | | | |
| (c) the crypto-assets are unique and not fungible with other crypto-assets; | (c) the crypto-assets are unique and not fungible with other crypto-assets; | | |
| | | | |
| (d) the crypto-assets are offered to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account; | (d) the crypto-assets are offered to fewer than 150 natural or legal persons per Member State where such persons are acting on their own account; | | LU:<br>(Comments):<br>LU comment<br><br>How can this limit be enforced and monitored in practice? |
| | | | |
| (e) over a period of 12 months, the total consideration of an offer to | (e) over a period of 12 months, **starting with the beginning of the** | Amended as suggested by several MS to give more legal certainty | NL:<br>(Comments): |

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| 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; | **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; | regarding the calculation of the exemption. | We agree with this change, however we would also like reiterate our concerns regarding what would happen after this period of 12 months. Given the extreme volatility of prices of crypto assets, the value of the issued assets can very easily surpass the 1.000.000 EUR cap after 12 months, and increase to significantly higher values.<br><br>FI:<br>(Comments)<br>Ok<br><br>CZ:<br>(Comments):<br>We do not consider appropriate to count the equivalent of EUR 1 000 000 in crypto-assets. Firstly, which crypto-assets are meant? Issued by particular issuer and representing similar rights? All emissions of the same issuer are calculated even though the rights represented are different? And secondly, the value of crypto-assets is not stable, what moment of time is relevant. What prices are relevant for the calculation? The market one, the price of issue?<br><br>EL:<br>(Comments): |

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| | | | We agree.<br><br>LU:<br>(Comments):<br>LU comment:<br>It remains unclear if this paragraph apply to offers that may provide for several rounds of issuance and where the initial rounds of issuance might be for free?<br><br>IE:<br>Ok.<br><br>Our views on the EUR1 000 000 offer limit are still preliminary. We would welcome further discussion as to aligning this limit with crowdfunding regulation (or prospectus). As the intention of the MICA regulation is to open the EU market digitally to EU citizens an EUR1 000 000 limit appear counterintuitive to this objective. |
| | | | |
| (f) the offer to the public of the crypto-assets is solely addressed to qualified investors and the crypto-assets can only be held by such | (f) the offer to the public of the crypto-assets is solely addressed to qualified investors and the crypto-assets can only be held by such | | |

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| qualified investors. | qualified investors. | | |
| | | | |
| For the purpose of point (a), crypto-assets shall not be considered to be offered for free where purchasers are required to provide or to undertake to provide personal data to the issuer in exchange for those crypto-assets, or where the issuer of those crypto-assets receives from the prospective holders of those crypto-assets any third party fees, commissions, monetary benefits or non-monetary benefits in exchange for those crypto-assets. | For the purpose of point (a), crypto-assets shall not be considered to be offered for free where purchasers are required to provide or to undertake to provide personal data to the issuer in exchange for those crypto-assets, or where the issuer of those crypto-assets receives from the prospective holders of those crypto-assets any third party fees, commissions, monetary benefits or non-monetary benefits in exchange for those crypto-assets. | | |
| | | | |
| 3. Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for a service that is not yet in operation, the duration of the public offer as described in the crypto-asset white paper shall not exceed 12 months. | 3. Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for a service**s**, **goods, or products** that is not yet in operation **or existing,** the duration of the public offer as described in the crypto-asset white paper shall not exceed 12 months. | Clarification issue;<br>MS suggested adding “product” | FI:<br>(Comments)<br>We believe that the term ”good” would already cover the term ”product”. We therefore find the addition unnecessary.<br><br>CZ:<br>(Comments):<br>Changes are acceptable from our point of view, but we would prefer keeping “good or service”, and not to add “product”. |

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| | | | HU:<br>(Comments):<br>HU supports the proposed amendment.<br><br>MT:<br>(Comments):<br>TYPO-<br>3. Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for a service**s**, **goods, or product~~s~~** that is not yet in operation **or existing,** the duration of the public offer as described in the crypto-asset white paper shall not exceed 12 months.<br><br>LU:<br>(Comments):<br>LU comment<br><br>Typo: the word “a” should be deleted before services, goods or products”<br><br>We refer to our comments regarding the definition of utility token.<br><br>In line with the amendment made under 2.(e) above, it should be clarified when do these 12 months start, as there is not formal approval process, date indicated at the whitepaper, date of the notification, |

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| | | | date of the publication….?<br><br>IE:<br>As above, don't see a strong need for inclusion of the term "product" but no objection. |
| | | | |
| Article 5<br>Content and form of the crypto-asset white paper | Article 5<br>Content and form of the crypto-asset white paper | | |
| | | | |
| 1. The crypto-asset white paper referred to in Article 4(1), point (b), shall contain all the following information: | 1. The crypto-asset white paper referred to in Article 4(1), point (b), shall contain all the following information: | | LU:<br>(Comments):<br>LU comment:<br>This item focuses on a detailed description of the characteristics of the offer to the public. It should also require a detailed description of the crypto-asset trading platforms on which crypto-assets are to be admitted to trading (such as the functioning and underlying technology of such trading platforms, how investors can access such trading platforms and trade the crypto-assets, what costs are involved etc.). |
| | | | |
| (a) a detailed description of the | (a) a detailed description of the | | |

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| issuer and a presentation of the main participants involved in the project's design and development; | issuer and a presentation of the main participants involved in the project's design and development; | | LU:<br>(Comments):<br>LU comment:<br>When reference is made to the issuer it should be clarified whether this refers to the definition of issuer of crypto assets which in turns describes potentially three different persons/ entities as issuer, offeror and the person asking admission to trading. All the more that art 5 para 1 alinea (a) require a description of the issuer and then article 5 para 2 and article 5 para 3 refer more on the offer to the public.<br>As a general comment, clarity is needed when reference is made to the issuer throughout the text of the regulation whether it refers to the actual issuer or whether reference is made to the issuer of CA as mentioned in the definition which may lead to 3 different functions. |
| | | | |
| (b) a detailed description of the issuer's project, the type of crypto-asset that will be offered to the public or for which admission to trading is sought, the reasons why the crypto-assets will be offered to | (b) a detailed description of the issuer's project, the type of crypto-asset that will be offered to the public or for which admission to trading is sought, the reasons why the crypto-assets will be offered to | Amended as suggested by one MS as funds (fiat currency) or other crypto-assets collected could be the consideration paid to purchase the crypto-asset concerned without any investment purposes related to the | FI:<br>(Comments)<br>The use of either the term "funds" in the meaning of the PSD2 or "official currency of a country" should be coherent throughout the draft |

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| the public or why admission to trading is sought and the planned use of the fiat currency or other crypto-assets collected via the offer to the public; | the public or why admission to trading is sought and **where relevant** the planned use of the **official currency of a country** ~~fiat currency~~ or other crypto-assets collected via the offer to the public; | commercial activity of the seller.<br><br>Rewording of "fiat currency" as commented in Art 3(1)(3) and recital 3.In the precise context of this provision, "funds" could be more appropriate. | regulation as regards the collection of some type of monetary value from the public.<br><br>SI:<br>(Comments):<br>It is not clear how disclosing the planned use of the official currency of a country or other crypto-assets collected via the offer to the public might not be relevant in some cases. We believe that disclosing the planned use of the funds collected via the offer should remain mandatory. We also believe that withholding information regarding the planned use of the funds collected via the offer is a hallmark of a potential financial fraud.<br><br>CZ:<br>(Comments):<br>We would like to stress that the term "issuer´s project" is not defined. Does the project have to relate to issuing of particular crypto-assets? Or can the issuer issue crypto-assets without any relation to his business?<br><br>LU:<br>(Comments):<br>LU comment:<br>The white paper shall include the number of crypto-assets that will be |

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| | | | issued or which admission to trading is sought. However, there is no indication regarding the obligation to include the maximum supply of a given crypto-asset. This information is key for the consumers since it has a direct dilutive effect on the crypto-assets in circulation and should also be included in the white paper.<br><br>IE:<br>Official currency tends to be the legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
| | | | |
| (c) a detailed description of the characteristics of the offer to the public, in particular the number of crypto-assets that will be issued or for which admission to trading is sought, the issue price of the crypto-assets and the subscription terms and conditions; | (c) a detailed description of the characteristics of the offer to the public, in particular the number of crypto-assets that will be issued or for which admission to trading is sought, the issue price of the crypto-assets and the subscription terms and conditions; | | |

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| | | | |
| (d) a detailed description of the rights and obligations attached to the crypto-assets and the procedures and conditions for exercising those rights; | (d) a detailed description of the rights and obligations attached to the crypto-assets and the procedures and conditions for exercising those rights; | | |
| | | | |
| (e) information on the underlying technology and standards applied by the issuer of the crypto-assets allowing for the holding, storing and transfer of those crypto-assets; | (e) information on the underlying technology and standards applied by the issuer of the crypto-assets allowing for the holding, storing and transfer of those crypto-assets; | | |
| | | | |
| (f) a detailed description of the risks relating to the issuer of the crypto-assets, the crypto-assets, the offer to the public of the crypto-asset and the implementation of the project; | (f) a detailed description of the risks relating to the issuer of the crypto-assets, the crypto-assets, the offer to the public of the crypto-asset and **where relevant** the implementation of the project; | One MS mentioned that information on implementation of the project is not always relevant | FI:<br>(Comments)<br>Rationale could be added in the recitals since making this only conditional may undermine consumer protection.<br><br>SI:<br>(Comments):<br>Please refer to the previous comment.<br><br>EL:<br>(Comments):<br>We agree.<br><br>LU: |

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| | | | (Comments):<br>LU comment:<br>We disagree with the proposition. We propose to withdraw "where relevant". All the risks should be described in the whitepaper. |
| | | | |
| (g) the disclosure items specified in Annex I. | (g) the disclosure items specified in Annex I. | **Most MS prefer additional information in the whitepaper (included into Annex I):**<br>**- consumer protection;**<br>**- assurance on code by audit;**<br>**- potential losses;**<br>**- risk catalogue;**<br>**- risk warning statement;**<br>**- asset segregation;**<br>**- soft cap;;**<br>**- vesting**<br>**- characteristics of the trading venues;**<br>**- costs and fees;**<br>**- remuneration of the issuer;**<br>**- the number of crypto-assets that will be issued or for which admission to trading is sought;**<br>**- preferential treatment of specific holders and the reasons for the preferential treatment of the specific holders;** | NL:<br>(Comments):<br>It is a bit difficult to react on these proposals with a more detailed background. We would like to point out that in previous CWG many MS pointed out that the white paper process should be proportionate. Including all of these items might be disproportionate.<br><br>FI:<br>(Comments)<br>Further discussion is necessary prior to adopting the full list.<br><br>HU:<br>(Comments):<br>This topic needs further examination.<br><br>SE:<br>(Comments):<br>Further discussion is necessary prior to adopting the full list. |

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| | | **- down the table more request for additional information.** | EL:<br>(Comments):<br>We are skeptical about the addition of this information to Annex I. Some of these (risk catalogue, risk warning statement) already exist.<br><br>MT:<br>(Comments):<br>**- assurance on code by independent auditor;**<br>-clarification on 'down the table' in last point<br><br>- **Addition of a statement stating that the written text within the whitepaper will take precedence over any code or script that will be used in the issuance of the crypto-asset**<br><br>LU:<br>(Comments):<br>LU comment:<br><br>It is not clear what is meant by "assurance on code by audit"<br><br>We would suggest adding "initial distribution of the crypto-assets" (between founders, other parties, free |

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| | | | float…)?<br>Maximum circulating supply of crypto-assets (maximum amount that can be issued as embedded in the code) is a key information that should be included in the minimum content of the white paper.<br><br>IE:<br>This is a good development and in line with our own original discussions regarding the whitepaper contents.<br><br>It seems appropriate that as much information as possible be set out in the Annex itself so we welcome this addition to the level 1 text. |
| | **h) the state of incorporation of the issuer, the applicable law and the competent court.** | One MS expressed an additional information on the issuer | NL:<br>(Comments):<br>While we understand this proposal, in practice this would be very difficult. The competent court and applicable law is very difficult to define beforehand. I.e. – issuers would be liable under criminal law in all Member States. Furthermore, it is up to courts themselves to define their jurisdictions (of course within the boundaries of national and European law). |

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| | | | FI:<br>(Comments)<br>Ok, good addition increasing consumer protection.<br><br>SE:<br>(Comments):<br>We are not sure of the meaning of the word "state" in this context. Jurisdiction?<br>We support adding information on applicable law and competent court, preferably also stating the types of disputes referred to.<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Additional information may provide clarity, but only in the case that the issuer is an incorporated entity? |
| 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. | 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. | | |

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| 3. The crypto-asset white paper shall contain the following statement: "The issuer of the crypto-assets is solely responsible for the content of this crypto-asset white paper. This crypto-asset white paper has not been reviewed or approved by any competent authority in any Member State of the European Union". | 3. The crypto-asset white paper shall contain the following **clear and prominent** statement **on the first page: "**~~The issuer of the crypto-assets is solely responsible for the content of this crypto-asset white paper.~~ This crypto-asset white paper has not been reviewed or 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".** | One MS suggested that it should be clarified where to include such a statement (front page, first page or for example last page).<br>Orientation on Art 8 (5) of the Regulation (EU) 2017/1129 | FI:<br>(Comments)<br>Ok<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Agreed as it will drive consistency across all MS |
| | | | |
| 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, unless the issuer of those crypto-assets can guarantee such future value. | 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~~, unless the issuer of those crypto-assets can guarantee such future value~~. | One MS mentioned that it cannot be seen how an issuer could really offer such an improbable guarantee. | EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Agreed |
| | | | |
| 5. The crypto-asset white paper shall contain a clear and unambiguous statement that: | 5. The crypto-asset white paper shall contain a clear and unambiguous statement that: | | |
| | | | |
| (a) the crypto-assets may lose | (a) the crypto-assets may lose | | |

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| their value in part or in full; | their value in part or in full; | | |
| | | | |
| (b) the crypto-assets may not always be transferable; | (b) the crypto-assets may not always be transferable; | | |
| | | | |
| (c) the crypto-assets may not be liquid; | (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. | (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) public protection schemes protecting the value of crypto assets do not exist.** | One MS suggested providing additional information to investors that there are no protection schemes. | FI:<br>(Comments)<br>Ok<br><br>HU:<br>(Comments):<br>It should be included in the risk statement, if deemed necessary to explicitly state.<br><br>EL:<br>(Comments):<br>Clarification is needed in relation to such schemes and whether |

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| | | | compensation schemes are included or not.<br><br>IE:<br>Is this future-proof? |
| 6. Every crypto-asset white paper shall contain a statement from the management body of the issuer of the crypto-assets. That statement shall confirm that the crypto-asset white paper complies with the requirements of this Title and that, to the best knowledge of the management body, the information presented in the crypto-asset white paper is correct and that there is no significant omission. | 6. Every crypto-asset white paper shall contain a statement from the management body of the issuer of the crypto-assets. That statement shall confirm that the crypto-asset white paper complies with the requirements of this Title and that, to the best knowledge of the management body, the information presented in the crypto-asset white paper is correct and that there is no significant omission. | | |
| | | | |
| 7. The crypto-asset white paper shall contain a summary which shall in brief and non-technical language provide key information about the offer to the public of the crypto-assets or about the intended admission of crypto-assets to trading on a trading platform for crypto-assets, and in particular about the essential elements of the crypto-assets | 7. The crypto-asset white paper shall contain a summary which shall in brief and non-technical language provide key information about the offer to the public of the crypto-assets or about the intended admission of crypto-assets to trading on a trading platform for crypto-assets, and in particular about the essential elements of the crypto-assets | Amended as suggested by MS; the wording is based on other EU legal texts. | FI:<br>(Comments)<br>Ok<br><br>IE:<br>Agreed |

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| concerned. The format and content of the summary of the crypto-asset white paper shall provide, in conjunction with the crypto-asset white paper, appropriate information about essential elements of the crypto-assets concerned in order to help potential purchasers of the crypto-assets to make an informed decision. The summary shall contain a warning that: | concerned. **The summary shall be presented and laid out in easily understandable words and in a clear and comprehensive form, using characters of readable size.** The format and content of the summary of the crypto-asset white paper shall provide, in conjunction with the crypto-asset white paper, appropriate information about essential elements of the crypto-assets concerned in order to help potential purchasers 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; | (a) it should be read as an introduction to the crypto-asset white paper; | | |
| | | | |
| (b) the prospective purchaser should base any decision to purchase a crypto-asset on the content of the whole crypto-asset white paper; | (b) the prospective purchaser 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 sell financial | (c) the offer to the public of crypto-assets does not constitute an offer or solicitation to sell financial | | |

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| instruments and that any such offer or solicitation to sell financial instruments can be made only by means of a prospectus or other offering documents pursuant to national laws; | instruments and that any such offer or solicitation to sell financial instruments can be made only by means of a prospectus or other offering documents pursuant to national laws; | | |
| | | | |
| (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. | (d) the crypto-asset white paper does not constitute a prospectus as referred to in Regulation (EU) 2017/1129 or another offering document pursuant to Union legislation or national laws**;** | | |
| | | | |
| 8. Every crypto-asset white paper shall be dated. | 8. Every crypto-asset white paper shall ~~be dated~~ **contain the date of the notification**. | Some MS expressed a need for clarification on the relevant date to be mentioned in the white paper | FI:<br>(Comments)<br>Ok<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Agreed |
| | **8a. Every crypto-asset white paper shall contain an index of the information contained in the document, placed after the** | Suggested by MS to align the provision with requirements of the Prospectus Directive. | FI:<br>(Comments)<br>Ok |

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| | **summary pursuant to paragraph 7.** | | SE:<br>(Comments):<br>We note that an index of this character is not mandatory for all types of prospectus, thus we are hesitant about the said alignment with the Prospectus Directive.<br><br>IE:<br>Agreed, it will create consistency and a blueprint. |
| 9. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance. | 9. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance. | | LU:<br>(Comments):<br>LU comment:<br>Despite the fact that article 14(3) of the proposal mentions the translation of the summary, article 5(9), only refers to the language of the white paper, and fails to determine whether the summary should be translated in the official languages of the host Member States. This point should be clarified. |
| | | | |
| 10. The crypto-asset white paper shall be made available in machine readable formats. | 10. The crypto-asset white paper shall be made available in machine readable formats. | | |
| | | | |

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| 11. ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 10. | 11. ESMA, after consultation of the EBA, shall develop draft implementing technical standards to establish standard forms, formats and templates for the purposes of paragraph 10. | | |
| | | | |
| ESMA shall submit those draft implementing technical standards to the Commission by [please insert date 12 months after entry into force]. | 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. | Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010. | | |
| | | | |
| Article 6<br>Marketing communications | Article 6<br>Marketing communications | | |
| | | | |
| Any marketing communications relating to an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, or to the admission of such crypto-assets to trading on a trading platform for crypto-assets, shall | 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 | | |

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| comply with all of the following: | comply with all of the following: | | |
| | | | |
| (a) the marketing communications shall be clearly identifiable as such; | (a) the marketing communications shall be clearly identifiable as such; | | |
| | | | |
| (b) the information in the marketing communications shall be fair, clear and not misleading; | (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; | (c) the information in the marketing communications shall be consistent with the information in the crypto-asset white paper, where such a crypto-asset white paper is required in accordance with Article 4; | | |
| | | | |
| (d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the crypto-assets concerned. | (d) the marketing communications shall clearly state that a crypto-asset white paper has been published and indicate the address of the website of the issuer of the crypto-assets concerned. | | LU:<br>(Comments):<br>LU comment:<br>Such as for the requirements concerning white paper under article 5 (3), the crypto-asset marketing communications shall contain the following clear and prominent statement on the first page: “This crypto-asset marketing communications has not been reviewed or approved by any |

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| | | | 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 marketing communications". |
| | | | |
| Article 7<br>Notification of the crypto-asset white paper, and, where applicable, of the marketing communications | Article 7<br>Notification of the crypto-asset white paper, and, where applicable, of the marketing communications | | LU:<br>(Comments):<br>LU comment<br><br>Given that the white papers are notified to CA, there might be an expectation from the consumer/investor/client that the CA also reviews the contents in some way.<br>As no prior approval is required, the mission and responsibilities of the competent authorities should be clarified in the text of the regulation to avoid any such misleading expectations. |
| | | | |
| 1. Competent authorities shall not require an ex ante approval of a crypto-asset white paper, nor of any marketing communications relating | 1. **The publication of the whitepaper as referred to in Article 8 is subject to: the prior notification to the competent** | Drafting as proposed by MS: The powers available to the competent authority during this 20 days period should be clarified in article 81 | NL:<br>(Comments):<br>We would again like to reiterate our concerns that this notification, especially as it is more detailed by the |

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| to it before their publication. | **authority of the Home Member State of the Issuer of the documents and information listed in paragraph 2, (a) to (d); the notification shall be made at least 20 working days before the publication;** 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~~ **such documents and information**. | (suspension/prohibition/additional information. In addition, the investors' rights should also be protected (right of withdrawal?) in case of prohibition of the offer after the publication of the whitepaper). Additional legible suggestions. | new proposed text, would lead to expectations that there actually is an authorization process. As we have pointed out before, we believe that we should either have a full authorization process, or nothing at all regarding prior approval or notification of the white paper. Otherwise, supervising authorities could end up in situations where they see possible risks to consumer protection etc., but they cannot intervene because their only task is to check the white paper for completeness. This could lead to reputation risks for the supervisors, and a loss of confidence when something does go wrong with a specific crypto asset.<br><br>I we keep going down this path, we would like to notice that the deadline of 20 working days is short (especially given the risks described above).<br><br>FI:<br>(Comments)<br>The 20 day requirement could be set in paragraph 2 in order to reduce the word amount in paragraph 1. See comments on paragraph.<br>Furthermore, due to the deletion of paragraph 2, the only required information to be attached to the white |

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| | | | paper are the explanations in current paragraph 3 (financial instrument, electronic money, deposit etc.)<br><br>AT:<br>(Comments):<br>AT would support a longer notification period consumer protection and liability reasons. It is questionable whether the notification period of 20 working days prior to the publication is sufficient to effectively utilize the powers pursuant to Art. 82 para. 1.<br><br>SE:<br>(Comments):<br>We are still analysing the draft regulation and our position on the proposed ex-ante notification of the crypto-asset white paper. This question is not of technical character and needs to be discussed further.<br>Nevertheless, we note the reference to Article 81 and wonder if it should not be Article 82?<br>Also, if this amendment is to be inserted, it should be clear that it is referring to "**Artice 6** paragraph 2 (a) to (d)".<br><br>EL:<br>(Comments): |

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| | | | We suggest the following wording:<br>"1. The publication of the whitepaper as referred to in Article 8 is subject to: the prior notification to the competent authority of the Home Member State of the Issuer of the ~~documents~~ whitepaper and any marketing communications and the information listed in paragraph 2, (a) to (~~d~~c); the notification shall be made at least 20 working days before the publication; 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~~ such documents and information.<br><br>Comment: for greater clarity since paragraph 2 is proposed to be deleted.<br><br>LU:<br>(Comments):<br>LU comment:<br><br>We fail to see the added value of the amendments made to paragraph 1 and paragraph 2 of this article 7. It does not clarify the powers available to the competent authorities during this 20 days period.<br>To do so, amendments should be made to article 81(1). |

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| | | | In addition, since paragraph 2 is deleted by the PCY, paragraph 1 shall not contain a reference to "documents and information listed in paragraph 2, (a) to (d)". Article 7 might require additional drafting efforts in order to achieve the aims indicated in the column "PCY comments".<br>We would like to ensure that the marketing communication be also notified to the competent authority.<br><br>In addition, since the term "competent authority" is defined under article 3 (24), we find it confusing to use here a different concept. This will add complexity to the text. This term should be streamlined throughout the text of the regulation,<br><br>IE:<br>We have no issue with the amendment. In the absence of ex ante approval (which we consider to be the better option), the powers of the CA to take appropriate action are very important. Otherwise a notification process would appear to be meaningless.<br><br>Based on the extension of |

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| | | | paragraph 1, paragraph 2 can be deleted. |
| | | | |
| 2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their crypto-asset white paper, and, in case of marketing communications as referred to in Article 6, such marketing communications, to the competent authority of their home Member State at least 20 working days before publication of the crypto-asset white paper. That competent authority may exercise the powers laid down in Article 82(1). | 2. ~~Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their crypto-asset white paper, and, in case of marketing communications as referred to in Article 6, such marketing communications, to the competent authority of their home Member State at least 20 working days before publication of the crypto-asset white paper. That competent authority may exercise the powers laid down in Article 82(1).~~ | Due to the extension of paragraph 1, paragraph 2 may be deleted.<br><br>In addition, one MS noted that last sentence is misleading. Under Article 82, (1), competent authorities have all the supervisory and investigative powers set out in Article 82, (1) to supervise compliance with Title II.<br>MS suggested that it would be better to clarify Article 82 (1) if needed. | FI:<br>(Comments)<br>Alternatively, in order to improve the clarity of the wording, the following could be stated in the paragraph:<br>The notification referred to in paragraph 1 shall be made at least 20 working days before publication.<br><br>SE:<br>(Comments):<br>Please see comment above.<br>Further, in order to improve the clarity of the wording, the following could be stated in the paragraph:<br>**"The notification referred to in paragraph 1 shall be made at least 20 working days before publication."** |
| | | | |
| 3. The notification of the crypto-asset white paper shall explain why the crypto-asset described in the crypto-asset white paper is not to be considered: | 3. The notification of the crypto-asset white paper shall explain why the crypto-asset described in the crypto-asset white paper is not to be considered: | | NL:<br>(Comments):<br>Where relevant (zie hieronder)<br><br>LU:<br>(Comments):<br>LU comment:<br>The notification of the crypto-asset |

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| | | | white paper shall also explain why the crypto-asset issued are not to be considered an asset referenced tokens or EMT. |
| | | | |
| (a) a financial instrument as defined in Article 4(1), point (15), of Directive 2014/65/EU; | (a) a financial instrument as defined in Article 4(1), point (15), of Directive 2014/65/EU; | | |
| | | | |
| (b) electronic money as defined in in Article 2, point 2, of Directive 2009/110/EC; | (b) ~~electronic money as defined in in Article 2, point 2, of Directive 2009/110/EC;~~ | Clarification by COM: The definition of e-money tokens in Art. 3(1)(4) refers to crypto-assets. so this para in scope is not necessary. See also Art. 43 (2) as proposed here ("e-money tokens shall be deemed to be 'electronic money' as defined in Article 2(2) of Directive 2009/110/EC") | NL:<br>(Comments):<br>This proposed change depends on the discussion of the final definition of EMT. If EMTs would include multiple currency assets, we cannot automatically assume that they are e-money. We would therefore like to reserve our final opinion regarding this point for a later stage.<br><br>FI:<br>(Comments)<br>We would prefer not removing this since it may be essential for consumers to know whether the tokens are to be considered e-money tokens or just e-money. Even if this would just mean explaining the difference in technology, any explanation will improve consumer protection. |

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| | | | Furthermore, removing this provision would be inconsistent with what has been suggested in Article 16(2)(d) in Table 2. In that Article, a legal opinion comparing the token to e-money is required.<br><br>HU:<br>(Comments):<br>We do not understand why this deletion is necessary here.<br><br>SE:<br>(Comments):<br>We prefer to keep this article as it may be essential for consumers to know whether the tokens are to be considered e-money tokens or just e-money. Even if this would just mean explaining the difference in technology, any explanation will improve consumer protection.<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Agreed |
| | | | |
| (c) a deposit as defined in Article 2(1), point (3), of Directive | (c) a deposit as defined in Article 2(1), point (3), of Directive | | |

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| 2014/49/EU; | 2014/49/EU; | | |
| | | | |
| (d) a structured deposit as defined in Article 4(1), point (43), of Directive 2014/65/EU. | (d) a structured deposit as defined in Article 4(1), point (43), of Directive 2014/65/EU. | | |
| | **The competent authority may exercise the powers laid down in Article 82(1) if this explanation is not appropriate.** | Use of the supervisory power ex Art. 82 (1) if issuer's explanation is not appropriate | FI:<br>(Comments)<br>The following is already stated in Article 82: "In order to fulfil their duties under Titles II, III, IV and V of this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigative powers…"<br>Title II includes Article 7 (Articles 4-14).<br><br>SE:<br>(Comments):<br>What does the word "appropriate" mean in this context? How do you determine this? We encourage consistency with the vocabulary in Article 82.<br><br>EL:<br>(Comments):<br>This drafting proposal seems to indicate that the powers of competent authorities laid down in art. 82(1) can only be exercised where the |

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| | | | explanation foreseen in paragraph 3 is not appropriate.<br>In our view this paragraph does not provide an adequate clarification in relation to the exercise of the powers of competent authorities during the time interval between the notification and the publication of the white paper.<br><br>LU:<br>(Comments):<br>LU comment:<br><br>The formulation "if this explanation is not appropriate." is purely subjective and should be changed in order to understand what is meant by appropriate.<br><br>IE:<br>Agreed |
| 4. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, together with the notification referred to in paragraphs 2 and 3, provide the competent authority of 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 | 4. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall, together with the notification referred to in paragraphs 2 and 3, provide the competent authority of 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 | | IE: |

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| platform for crypto-assets. They shall also inform their home Member State of the starting date of the intended offer to the public or intended admission to trading on such a trading platform for crypto-assets. | platform for crypto-assets. They shall also inform their home Member State of the starting date of the intended offer to the public or intended admission to trading on such a trading platform for crypto-assets. | | |
| | | | |
| The competent authority of the home Member State shall notify the competent authority of the host Member State of the intended offer to the public or the intended admission to trading on a trading platform for crypto-assets within 2 working days following the receipt of the list referred to in the first subparagraph. | The competent authority of the home Member State shall notify the competent authority of the host Member State of the intended offer to the public or the intended admission to trading on a trading platform for crypto-assets **and transfer the corresponding crypto-asset whitepaper** within 2 working days following the receipt of the list referred to in the first subparagraph. | One MS expressed it should be provided that the home regulator notifies the host regulator of the offer and the White Paper and not only the offer. | NL:<br>(Comments):<br>This is not in line with the Prospectus Regulation and could lead to unnecessary burdens for NCAs.<br><br>FI:<br>(Comments)<br>Ok.<br><br>ES:<br>(Comments):<br>We would prefer if NCA only had to notify ESMA instead of each NCA. ESMA could make these notifications and whitepapers available to all other CAN, hence streamlining the process.<br><br>EL:<br>(Comments):<br>We support that the documents and the information notified to the competent authority of the home Member State |

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| | | | according to (the new) paragraph 1 should be available to the competent authority of the host Member State.<br><br>In case the competent authority of the host Member State cannot have access to the aforementioned documents and information within the time foreseen in this paragraph and in a straightforward manner through the register referred to in Article 57 then a requirement for bilateral exchange should be introduced.<br><br>IE:<br>Does each regulator need to have a contact point to ensure this communication reaches the necessary area? Processes need to be in places to avoid notifications getting lost as 2 working days is a very short lead time. Potentially this will come through on the RTS's? |
| | | | |
| 5. Competent authorities shall communicate to ESMA the crypto-asset white papers that have been notified to them and the date of their notification. ESMA shall make the notified crypto-asset | 5. Competent authorities shall communicate to ESMA ~~the crypto-asset white papers that have been notified to them~~ **the documents notified in accordance to paragraph 2** and the date of their | | FI:<br>(Comments)<br>Paragraph 2 has been suggested to be removed. Is reference made to the explanations in current paragraph 3? This is a significantly reduced amount |

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| white papers available in the register referred to in Article 57. | notification. ESMA shall make the notified crypto-asset white papers available in the register referred to in Article 57. | | of information in comparison to the original content in the removed paragraph 2.<br><br>EL:<br>(Comments):<br>Drafting correction: documents notified in accordance to paragraph ~~2~~ 1.<br><br>LU:<br>(Comments):<br>LU comment:<br><br>We don't think it is wise that ESMA already publishes the white paper in the public register before the publication of white paper by the issuer (i.e. notification to NCA 20 days before publication) as long as the NCA has not decided the action it will take regarding the white paper (refusal etc). ESMA should publish in the register only once it is sure that NCA doesn't take any action…<br><br>Since the draft technical proposal contemplates a deletion of paragraph 2, the amendment proposed here should be redrafted accordingly.<br><br>We note the reference to the issuer's |

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| | | | LEI in the newly introduced wording. Will each issuer necessarily have a LEI?<br>Also, we note that the new wording does not use the defined term "issuer of crypto-assets", but only "issuer". Is this intended? If not we would propose to use the defined term.<br><br>Article 57 concerns the register of crypto assets service providers, which means service providers that shall only be EU legal entities and providing services after the issuance of CA. Therefore, is does not make sense to include in this list white papers which may also be issued by non EU issuers and concern the issuance of CA. As a consequence, the recording of these white paper in the CASP register may be very confusing/misleading. Either the content and the denomination of the register shall be amended or another register for white papers should be created. |

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| | **6. In order to ensure uniform conditions of application of this Regulation, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notification of the white paper referred to in paragraph 4. Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.** | Regulatory technical standards for the notification of the white paper Art. 7.4<br><br>One MS suggests specifications regarding the content and format of the passport notification should be added | NL:<br>(Comments):<br>We do not deem RTS for this necessary as the documents that need to be shared are limited. We do not see the added benefit of including these RTS.<br><br>We do not really understand this proposed change. Would these RTS be the proposed guidance on what constitutes a crypto-asset vis-à-vis a financial instrument? We would have more information on what this entails, what the goal of these RTS would be and what the added benefit would be before we can agree with this change. |
| | **7. ESMA shall develop draft regulatory technical standards to specify the data necessary for the classification of crypto-asset white papers in the register referred to in Article 57, and the practical arrangements to ensure that such data, including the LEIs of the issuer, is machine readable.**<br>**ESMA shall submit those draft regulatory technical standards to the Commission by XXX.** | Regulatory technical standards for the classification of crypto-assets white paper in the register referred to in Art. 57<br><br>One MS suggests specifications regarding the content and format of the passport notification should be added | FI:<br>(Comments)<br>Further discussions should occur.<br><br>CZ:<br>(Comments):<br>We would not add any other RTS in the Regulation. Together with DORA, there are many delegated acts and RTS and we have to point out that they are often delayed. Thus, with enormous number of Level 2 regulation, we risk their delay.<br><br>SE: |

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| | **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.** | | (Comments):<br>We believe that the time limits specified in Article 7(2) and (4) are too limited; they do not provide sufficient time for a thorough examination of the content of the notified White Paper. It is also unclear how these time limit relates to the NCA's need to request additional information.<br>As regards to the amended article 7(7) we believe this provision is more appropriate as a subparagraph to Article 57.<br>Further we prefer using the term "**Legal Entity Identifyer**" instead of the abbreviation LEI.<br><br>EL:<br>(Comments):<br>We support the development of implementing technical standards to establish standard forms, templates and procedures for the notification of the white paper referred to in paragraph 4. Furthermore, we propose to include in the scope of the implementing technical standards the information listed in (the new) paragraph 2 of this article. |

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| | | | We agree.<br><br>LU:<br>(Comments):<br>LU comment<br>We do not see the benefit to have this provision here, concerning crypto-assets, other than asset-referenced tokens or e-money tokens. Since the register will contain also data regarding the ART and EMT we would suggest to add this provision on RTS in article 57, rather than in here.<br><br>In addition article 57 does not refer to a classification of crypto asset and neither of passport notification. It is therefore unclear what is the intention here.<br><br>IE:<br>Ok |
| Article 8<br>Publication of the crypto-asset white paper, and, where applicable, of the marketing communications | Article 8<br>Publication of the crypto-asset white paper, and, where applicable, of the marketing communications | | |
| | | | |
| 1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish | 1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish | | |

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| their crypto-asset white paper, and, where applicable, their marketing communications, on their website, which shall be publicly accessible, by no later than the starting date of the offer to the public of those crypto-assets or the admission of those crypto-assets to trading on a trading platform for crypto-assets. The crypto-asset white paper, and, where applicable, the marketing communications, shall remain available on the issuer's website for as long as the crypto-assets are held by the public. | their crypto-asset white paper, and, where applicable, their marketing communications, on their website, which shall be publicly accessible, by no later than the starting date of the offer to the public of those crypto-assets or the admission of those crypto-assets to trading on a trading platform for crypto-assets. The crypto-asset white paper, and, where applicable, the marketing communications, shall remain available on the issuer's website 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. | 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<br>Offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, that are | Article 9<br>Offers to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, that are | | |

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| limited in time | limited in time | | |
| | | | |
| 1. Issuers 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 16 working days from the end of the subscription period. | 1. Issuers 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 ~~16~~**20** working days from the end of the subscription period. | The period should be set to 20 working days to enhance consumer protection as the period in Article 12 is longer this way. | FI:<br>(Comments)<br>Ok<br><br>SE:<br>(Comments):<br>We note that in Article 12 the term "calendar day" is used.<br><br>EL:<br>(Comments):<br>We agree.<br><br>LU:<br>(Comments):<br>LU comment:<br><br>As a reverse conclusion from this provision and article 12(5), it seems that a public offer for crypto-assets might remain eternally open. If the purpose of the proposal is to facilitate the financing of businesses, public offers unlimited in time should not be necessary to achieve such purpose. For prospectuses, the public offer period is limited by the duration of validity of the prospectus. A detailed analysis of |

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| | | | potential risks for consumers linked to unlimited public offers of crypto-assets and unlimited validity of whitepapers should be conducted before admitting them.<br>The obligation to publish the results of an offer to the public of crypto-assets should apply in all circumstances under which such offer is closed (e.g. in case all crypto-assets offered to the public for an unlimited period have been placed).<br><br>IE:<br>Need further review vis a vis Irish Consumer Protection laws before confirming change. |
| | | | |
| 2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit for their offer to the public of crypto-assets shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets, raised during such offer. For that purpose, such issuers shall ensure that the funds or other crypto-assets collected during the offer to the public are kept in | 2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that set a time limit for their offer to the public of crypto-assets shall have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets, raised during such offer. For that purpose, such issuers shall ensure that the funds or other crypto-assets collected during the offer to the public are kept in | | LU:<br>(Comments):<br>LU comment<br>Issuers shall ensure that the funds or other crypto-assets collected during the offer to the public or received in exchange for asset-reference tokens, are kept in custody by either a credit institution, where the funds take the form of fiat currency or a crypto-asset service provider authorized for |

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| custody by either of the following: | custody by either of the following: | | the custody and administration of crypto-assets on behalf of third parties. A third option consisting of having the crypto-assets raised secured on-chain through the use of smart contracts (cryptographic vaults), which is currently industry practice. This is not foreseen in the regulation text and is considered by some as more secure than trusting a crypto-asset service provider).<br>It is unclear why the requirement to have effective arrangements in place to monitor and safeguard the funds, or other crypto-assets, raised during an offer of crypto-assets is linked to the existence of a time limit for such an offer. This requirement should always apply. |
| | | | |
| (a) a credit institution, where the funds raised during the offer to the public takes the form of fiat currency; | (a) a credit institution, where the funds raised during the offer to the public takes the form of ~~fiat~~ **an official** currency **of a country**; | | FI:<br>(Comments)<br>The use of either "funds" in the meaning of the PSD2 or "official currency of a country" should be coherent throughout the draft regulation.<br><br>IE:<br>Official currency tends to be the |

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| | | | legal currency of a country (or many, as in the case of the Euro). Companies, organisations, individuals do not have "official currency" and some countries do not have their own legal currency but accept other countries' legal currency. To add "***of a country***" to "official currency" is redundant and does add clarity or meaning. |
| | | | |
| (b) a crypto-asset service provider authorised for the custody and administration of crypto-assets on behalf of third parties. | (b) a crypto-asset service provider authorised for the custody and administration of crypto-assets on behalf of third parties. | | |
| | | | |
| Article 10<br>Permission to offer crypto-assets, other than asset-referenced tokens or e-money tokens, to the public or to seek admission for trading such crypto-assets on a trading platform for crypto-assets | Article 10<br>Permission to offer crypto-assets, other than asset-referenced tokens or e-money tokens, to the public or to seek admission for trading such crypto-assets on a trading platform for crypto-assets | | LU:<br>(Comments):<br>LU comment<br>The word "permission" in the heading of this article should be replaced by "possibility" in order to avoid the misleading impression that a permission would be granted by a competent authority. |
| | | | |
| 1. After publication of the crypto-asset white paper in | 1. After publication of the crypto-asset white paper in | | |

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| accordance with Article 8, and, where applicable, Article 11, issuers of crypto-assets may offer their crypto-assets, other than asset-referenced tokens or e-money tokens, throughout the Union and seek admission to trading of such crypto-assets on a trading platform for crypto-assets. | accordance with Article 8, and, where applicable, Article 11, issuers of crypto-assets may offer their crypto-assets, other than asset-referenced tokens or e-money tokens, throughout the Union and seek admission to trading of such crypto-assets on a trading platform for crypto-assets. | | |
| | | | |
| 2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that have published a crypto-asset white paper in accordance with Article 8, and where applicable Article 11, shall not be subject to any further information requirements, with regard to the offer of those crypto-assets or the admission of such crypto-assets to a trading platform for crypto-assets. | 2. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, that have published a crypto-asset white paper in accordance with Article 8, and where applicable Article 11, shall not be subject to any further information requirements, with regard to the offer of those crypto-assets or the admission of such crypto-assets to a trading platform for crypto-assets. | | |
| | | | |
| Article 11<br>Modification of published crypto-asset white papers and, where applicable, published marketing communications after their publication | Article 11<br>Modification of published crypto-asset white papers and, where applicable, published marketing communications after their publication | | |
| | | | |

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| 1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall modify their published crypto-asset white paper, and, where applicable, published marketing communications, to describe any change or new fact that is likely to have a significant influence on the purchase decision of any potential purchaser of such crypto-assets, or on the decision of holders of such crypto-assets to sell or exchange such crypto-assets. | 1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall modify their published crypto-asset white paper, and, where applicable, published marketing communications, to describe any change or new fact that is likely to have a significant influence on the purchase decision of any potential purchaser of such crypto-assets, or on the decision of holders of such crypto-assets to sell or exchange such crypto-assets. | | LU:<br>(Comments):<br>LU comment<br>This is too vague. How can one assess what information, or change therein, is sufficient to significantly influence the decision-making of potential purchasers?<br>Investment decisions are unique to the risk appetite and awareness of each individual investor and changes to these decisions can be based on a long list of elements. It is impossible to define an exhaustive list and request that only changes in these need to be modified in the white paper. |
| | **1a. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their modified crypto-asset white papers, and where applicable, modified marketing communications, to the competent authority of their home Member State, including the reasons for such modification, at least seven working days before their publication. ~~That~~** | Several MS propose to place the current article 11(4) before article 11(2), as article 11(2) follows up on the obligation set out in article 11(4) by indirectly referring thereto. | FI:<br>(Comments)<br>Ok<br><br>EL:<br>(Comments):<br>We support the placement of paragraph 4 after paragraph 1.<br><br>LU:<br>(Comments): |

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| | ~~**competent authority may exercise the powers laid down in Article 82(1).**~~ | | IE:<br>Ok |
| 2. The issuer 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. | 2. The issuer 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. | Several MS propose to place the current article 11(4) before article 11(2), as article 11(2) follows up on the obligation set out in article 11(4) by indirectly referring thereto. | FI:<br>(Comments)<br>Ok<br><br>LU:<br>(Comments):<br>LU Comment<br>This provision seems to contradict article 11(1a), as article 11(2) requires the issuer to 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, whereas article 11(1a) requires issuers to notify their modified crypto-asset white papers, and where applicable, modified marketing communications, to the competent authority of their home Member State, including the reasons for such modification, at least seven working days before their publication. These provisions should be reworded in order to avoid this contradiction and ensure equal access to information that is likely to have a significant influence on the purchase decision of |

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| | | | any potential purchaser of such crypto-assets, or on the decision of holders of such crypto-assets to sell or exchange such crypto-assets.<br><br>IE:<br>Ok |
| | | | |
| 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. | 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. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their modified crypto-asset white papers, and where applicable, modified marketing communications, to the competent authority of their home Member State, including the reasons for such modification, at least seven working days before their publication. That competent | 4. ~~Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall notify their modified crypto-asset white papers, and where applicable, modified marketing communications, to the competent authority of their home Member State, including the reasons for such modification, at least seven working days before their publication. That competent~~ | Several MS propose to place the current article 11(4) before article 11(2), as article 11(2) follows up on the obligation set out in article 11(4) by indirectly referring thereto. | IE:<br>Ok |

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| authority may exercise the powers laid down in Article 82(1). | ~~authority may exercise the powers laid down in Article 82(1).~~ | | |
| | | | |
| 5. Within 2 working days of the receipt of a draft 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 State referred to in Article 7(4). | 5. Within 2 working days of the receipt of a draft 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 State referred to in Article 7(4) **and communicate the notification and the date of the notification to ESMA. ESMA shall make the notified modified crypto-asset white papers available in the register referred to in Article 57.** | One MS mentioned that the "initial" white paper is communicated to ESMA (Art. 7 (5)), so should the modified white paper. | FI:<br>(Comments)<br>Ok<br><br>EL:<br>(Comments):<br>We support the amendment. Furthermore, in our view, the notification and the communication foreseen in this paragraph should be made in accordance with the implementing technical standards and the regulatory technical standards of paragraphs 6 and 7 of article 7.<br><br>LU:<br>(Comments):<br>LU comment:<br><br>Cf our comment above concerning article 57 and the register for CASP |

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| | | | which is not appropriate to register white papers<br><br>In addition in our view, a provision shall be included to detail what should be done with the older version of the white paper.<br><br>IE:<br>Ok |
| | | | |
| 6. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish the modified crypto-asset white paper, and, where applicable, the modified marketing communications, including the reasons for such modification, on their website in accordance with Article 8. | 6. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall publish the modified crypto-asset white paper, and, where applicable, the modified marketing communications, including the reasons for such modification, on their website in accordance with Article 8. | | |
| | | | |
| 7. 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 | 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 | | |

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| 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. | 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). | 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). | | LU:<br>(Comments):<br>LU Comment<br>In relation to our comment under article 4 (2), does that mean that several ICO rounds are possible for a utility token (which is current practice in the industry) as far as the cumulated duration of the offers do not exceed 12 months? If yes, this fact should be better reflected in the Regulation. |
| | | | |
| Article 12<br>Right of withdrawal | Article 12<br>Right of withdrawal | | AT:<br>(Comments):<br>In ATs view the recital makes sense and guarantees the possibility to return funds if necessary. Nevertheless, the right of withdrawal according to Art. |

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| | | | 12 is still subject to discussion. In general, we support consumer rights, however, we see room for alignment with Directive 2002/65/EC in order to provide consistency between the regulatory frameworks. We do not see any reason why consumers who purchase crypto assets should be preferred to consumers purchasing transferable securities. Art. 6 of Directive 2002/65/EC contains an exemption of the right of withdrawal for *financial services whose price depends on fluctuations in the financial market.* This provision should be taken into account for Art. 12. |
| | | | |
| 1. Issuers of crypto-assets, other than asset-referenced tokens and e-money tokens, shall offer a right of withdrawal to any consumer who buys such crypto-assets directly from the issuer or from a crypto-asset service provider placing crypto-assets on behalf of that issuer. | 1. Issuers of crypto-assets, other than asset-referenced tokens and e-money tokens, shall offer a right of withdrawal to any consumer who buys such crypto-assets directly from the issuer or from a crypto-asset service provider placing crypto-assets on behalf of that issuer. | | LU:<br>(Comments):<br>LU Comment<br>Similar to supplements to prospectuses for securities under the Prospectus Regulation, a right of withdrawal should also be granted where a modified white paper is published |
| | | | |
| Consumers shall have a period of 14 calendar days to withdraw their | Consumers shall have a period of 14 calendar days to withdraw their | | IE: |

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| agreement to purchase those crypto-assets without incurring any cost and without giving reasons. The period of withdrawal shall begin from the day of the consumers' agreement to purchase those crypto-assets. | agreement to purchase those crypto-assets without incurring any cost and without giving reasons. The period of withdrawal shall begin from the day of the consumers' agreement to purchase those crypto-assets. | | |
| | | | |
| 2. All payments received from a consumer, including, if applicable, any charges, shall be reimbursed without undue delay and in any event not later than 14 days from the day on which the issuer of crypto-assets or a crypto-asset service provider placing crypto-assets on behalf of that issuer is informed of the consumer's decision to withdraw from the agreement. | 2. All payments received from a consumer, including, if applicable, any charges, shall be reimbursed without undue delay and in any event not later than 14 days from the day on which the issuer of crypto-assets or a crypto-asset service provider placing crypto-assets on behalf of that issuer is informed of the consumer's decision to withdraw from the agreement. | | LU:<br>(Comments):<br>LU Comment<br>It seems that the wording "a crypto-asset service provider placing crypto-assets on behalf of that issuer" is not consistent with the definition of 'issuer of crypto-assets' in article 3(1)(6) of the proposal, which defines the person offering the crypto-assets also as 'issuer of crypto-assets'. |
| | | | |
| The reimbursement shall be carried out using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement. | The reimbursement shall be carried out using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement. | | |

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| 3. Issuers of crypto-assets shall provide information on the right of withdrawal referred to in paragraph 1 in their crypto-asset white paper. | 3. Issuers of crypto-assets shall provide information on the right of withdrawal referred to in paragraph 1 in their crypto-asset white paper. | | |
| | | | |
| 4. The right of withdrawal shall not apply where the crypto-assets are admitted to trading on a trading platform for crypto-assets. | 4. The right of withdrawal shall not apply where the crypto-assets are admitted to trading on a trading platform for crypto-assets. | | |
| | | | |
| 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. | 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.~~ | MS generally commented on the need to strengthen consumer protection and give more attention to the right of withdrawal. In light of the "fear of missing out" (FOMO) symptom common to many Crypto-Asset offers especially near the end of an offer as well as based on equal protection grounds, it seems unbalanced to deny consumers their right of withdrawal if they purchase the offered CAs less than two weeks before the end of a time-limited offer or even on the last day. This could also lead to market practices detrimental for consumer protection by intensifying marketing | FI:<br>(Comments)<br>Ok<br><br>SE:<br>(Comments):<br>Please see our comment on Recitals 22.<br><br>EL:<br>(Comments):<br>We agree.<br><br>LU:<br>(Comments):<br>LU comment:<br>Since this amendment is not a technical amendment, and has never been discussed during a working party, |

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| | | communications shortly before the offer´s end. | we would need more clarification on the goal to be achieved and the background of the initial proposal by the Commission and of this new drafting in order to be able to assess this new provision.<br>More discussion is needed on this amendment.<br><br>IE:<br>Need to ensure consumer protection and right of withdrawal safeguards remain after deletion of (5) |
| | | | |
| Article 13<br>Obligations of issuers of crypto-assets, other than asset-referenced tokens or e-money tokens | Article 13<br>Obligations of issuers of crypto-assets, other than asset-referenced tokens or e-money tokens | | |
| | | | |
| 1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall: | 1. Issuers of crypto-assets, other than asset-referenced tokens or e-money tokens, shall: | | |
| | | | |
| (a) act honestly, fairly and professionally; | (a) act honestly, fairly and professionally; | | |
| | | | |
| (b) communicate with the holders of crypto-assets in a fair, clear and not misleading manner; | (b) communicate with the holders **and prospective holders** of crypto-assets in a fair, clear and not misleading manner; | One MS suggests adding “prospective holders” comparable to the approach taken in Article 59 (1) | EL:<br>(Comments):<br>We agree. |

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| | | | LU:<br>(Comments):<br>LU comment<br>Streamline the term used with the other terms that will be used for the aquirer of crypto assets.<br><br>IE:<br>Ok |
| | | | |
| (c) prevent, identify, manage and disclose any conflicts of interest that may arise; | (c) ~~prevent,~~ identify, **prevent,** manage and disclose any conflicts of interest that may arise; | One MS mentioned that only conflicts that have been identified can be prevented.<br><br>Change the chronological sequence of the required actions. | FI:<br>(Comments)<br>Ok<br><br>IE:<br>Agreed |
| | | | |
| (d) maintain all of their systems and security access protocols to appropriate Union standards. | (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. | For the purposes of point (d), ESMA, in cooperation with the EBA, shall develop guidelines pursuant to Article 16 of Regulation (EU) No 1095/2010 to specify the Union standards. | | |
| | | | |
| 2. Issuers of crypto-assets, | 2. Issuers of crypto-assets, | One MS expressed that the issuer | |

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| other than asset-referenced tokens or e-money tokens, shall act in the best interests of the holders of such crypto-assets and shall treat them equally, unless any preferential treatment is disclosed in the crypto-asset white paper, and, where applicable, the marketing communications. | 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** ~~is~~ disclosed in the crypto-asset white paper, and, where applicable, the marketing communications. | should explain to the holders the reasons for any preferential treatment. | FI:<br>(Comments)<br>Ok<br><br>SE:<br>(Comments):<br>We support this amendment, reference to Art 5(1)(g).<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Agreed |
| | | | |
| 3. Where an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, is cancelled for any reason, issuers of such crypto-assets shall ensure that any funds collected from purchasers or potential purchasers are duly returned to them as soon as possible. | 3. Where an offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, is cancelled for any reason, issuers of such crypto-assets shall ensure that any funds collected from purchasers or potential purchasers are duly returned to them as soon as possible. | | |
| | | | |
| Article 14<br>Liability of issuers of crypto-assets, other than asset-referenced tokens or e-money tokens for the information given in a crypto-asset | Article 14<br>Liability of issuers of crypto-assets, other than asset-referenced tokens or e-money tokens for the information given in a crypto-asset | | |

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| white paper | white paper | | |
| | | | |
| 1. Where an issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body has infringed Article 5, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of crypto-assets may claim damages from that issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body for damage caused to her or him due to that infringement. | 1. Where an issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body has infringed Article 5, by providing in its crypto-asset white paper or in a modified crypto-asset white paper information which is not complete, fair or clear or by providing information which is misleading, a holder of crypto-assets may claim damages from that issuer of crypto-assets, other than asset-referenced tokens or e-money tokens, or its management body for damage caused to her or him due to that infringement. | | CZ:<br>(Comments):<br>This provision should be unified with the conception of liability in the Prospectus Regulation and the proposal of Regulation on European crowdfunding service providers for business. These two regulations use similar wording and similar concept. The uniformity across EU legislative should be maintained. We suggest harmonization with crowdfunding regulation.<br><br>We would like to remind that approach of civil liability should not differ among these three pieces of EU regulation. |
| | | | |
| Any exclusion of civil liability shall be deprived of any legal effect. | Any exclusion of civil liability shall be deprived of any legal effect. | | |
| | | | |
| 2. It shall be the responsibility of the holders of crypto-assets to present evidence indicating that the issuer of crypto-assets, other than asset-referenced tokens or e-money | 2. It shall be the responsibility of the holders of crypto-assets to present evidence indicating that the issuer of crypto-assets, other than asset-referenced tokens or e-money | | |

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| Commission proposal | PCY technical drafting proposal | PCY comments | MS Comments |
|---|---|---|---|
| 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. | 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: | 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; | (a) the summary is misleading, inaccurate or inconsistent when read together with the other parts of the crypto-asset white paper; **or** | One MS wants to clarify that they do not apply cumulatively | FI:<br>(Comments)<br>Ok<br><br>EL:<br>(Comments):<br>We agree.<br><br>IE:<br>Agreed |
| | | | |
| (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 | (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 | | |

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| Commission proposal | PCY technical drafting proposal | PCY comments | MS Comments |
|---|---|---|---|
| to purchase such crypto-assets. | to purchase such crypto-assets. | | |
| | | | |
| 4. This Article does not exclude further civil liability claims in accordance with national law. | 4. This Article does not exclude further civil liability claims in accordance with national law. | | |
| | | | |
| | | **CONT. Tables 2+3** | **CONT. Tables 2+3** |