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From:	Presidency
To:	Working Party on Financial Services (Crypto Assets)
Subject:	MiCA - Questionnaires on PCY discussion notes on: - Cross Border and Supervision + Title III + Title II - (WKs 3402/2021 + 3403/2021 + 3351/2021) - replies from 19 MS - Monetary sovereignty - (WK 3403/2021) - replies from 18 MS

PCY Discussion notes on Cross Border and Supervision + Title III + Title IIDeadline: **2 April 2021** cob

Replies from: MT ES SK HU FI SE LV CZ AT RO NL IE LU EE DE FR IT PL CY

Q on Monetary sovereignty, (WK 3403/2021)Deadline: **29 March 2021** cob

18 MS: CZ, DK, EL, IE, LU, NL, SK, RO, MT, BE, ES, FI, IT, AT, FR, PL, DE, EE

PCY drafting and questions	Drafting Suggestions Comments
WK 3402/2021 - Presidency discussion note on Cross Border and Supervision	
2. Significant Crypto Assets	
2.1 Criteria	
Q2.1 Do MS agree with the mandate for the Commission to further increase the quantitative thresholds in Level 2 (as per Commission proposal), or do MS prefer to have the quantitative thresholds fixed in Level 1 only?	MT: We agree to stick with the proposal and set thresholds in level 2, due to a developing landscape, and possible need for adjusting thresholds going forward. ES: Given that the market is still in its infancy, we believe it is a wise approach to maintain flexible criteria. This could imply minimum requirements for significance set out in level 1, and a mandate to the commission to further specify these conditions in the future, if necessary. SK: We agree with Commission's proposal, Commission should be allowed to increase the quantitative thresholds in Level 2. HU: In order to ensure legal certainty and clarity, we prefer to have the quantitative thresholds fixed in Level 1 only. FI: Agree with the original draft which includes the Commission mandate.

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	SE: We see the rationale for introducing some flexibility given the fast-changing pace of the industry and could therefore support the delegation to the COM to increase the thresholds. LV: We support the Commission proposal. Mainly due to its flexibility. Lvl 2 would be better for technical criteria. CZ: No, we do not support such a mandate, because the threshold represents an important criterion that must be set directly on Level 1. If the Council agrees on setting quantifiable conditions on Level 1, we propose to include such conditions clearly in the initial paragraphs of the Art. 39. Concerning the threshold, we are generally more in favour in higher threshold for significance. AT: AT does not agree with the COM proposal to define thresholds of significance in Level 2. Important aspects which in consequence have an impact for instance on own funds requirements should not be delegated to Level 2 as this could in our view lead to unpredictability for market participants. Therefore, for the purpose of legal clarity, AT would be in favour of determining the criteria directly in the MiCA Regulation. Otherwise, the criteria could be too selective. Delegated acts should be a tool for technical specifications only. RO: We prefer to have the quantitative thresholds in MiCA (Level 1).
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	NL: Although we deem it important to lay down the thresholds in MiCA itself as much as possible from a perspective of legal certainty and because this concerns an essential element of the Regulation, we agree with granting the Commission the mandate to determine the thresholds by way of a delegated act subject to the limits set in MiCA. We believe that setting fixed thresholds at level 1 would be undesirable because of the inflexibility it creates when the market is still developing. We have to be able to respond flexibly to new developments and insights within the market and adapt the thresholds if it appears that they are no longer fit for purpose. Having said this, we would be open to finding middle ground by for example setting the lower and upper limits in MiCA. IE: Preference would be for legal certainty on level 1 LU: We consider that clear, precise and measurable criteria should be introduced in the Level 1 text and that for the sake of legal certainty and predictability both minimum and maximum thresholds should be accordingly defined. We would like to reiterate our concerns with respect to the criteria set out in Article 39 (1) (a) and (e). We do not consider these criteria to be useful and relevant when determining whether an asset-referenced token is significant or not. The customer base of the promoter of the ART or the size of the shareholder of the issuer do not have any correlation with the actual size of the issue or
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	with the customer acceptance of the token, and thus with the actual systemic impact of the instrument. Furthermore, tokenisation is a cross-border activity by nature and undermining the cross-border principle would set a dangerous precedent and runs counter to the aim of building a true single market. Please see also Q2.4 below. These 2 criteria should hence be deleted EE: The criteria should be defined in the text of the Regulation to further legal clarity in this regard. DE: Quantitative thresholds should be fixed in Level 1 only. FR: A mandate to raise the thresholds in level 2 may not be appropriate for reasons of clarity and legal certainty. IT: We believe that once L1 text has provided for a clear guidance, the definition of the thresholds might be better addressed by L2 measures. Nevertheless, we are also open to considering a better specification in L1. PL: In our view the relevant thresholds should be set in Level 1 text. Level 2 solutions should serve as additional tools in case Level 1 thresholds didn't turn out to be sufficiently prudent. CY:
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	We understand that these thresholds are not ‘<i>de minimis</i>’ thresholds, which determine whether EU Law, i.e. MiCA, will be applicable or not, in which case a clear delineation of the scope of application would have had to take place at Level 1. We understand that these are rather thresholds facilitating the further substantiation and implementation of MiCA provisions on issuers of ‘significant’ ARTs/EMTs. To this end, we understand that the said thresholds aim at further substantiating the abstract term ‘significant’, such term being appropriately embedded in Level1 text and thus subject to further substantiation at Level2, so that we agree with the proposal.
Q2.2 Do MS see merit in including the additional criteria proposed by some MS and the ECB?	MT: The criteria proposed by the ECB should be taken into consideration. (4.) ES: Out of the three criteria suggested, only the second one, complexity, is mentioned in the annex of the fifth FSB report. We believe it would be counterproductive to add criteria which have not been recognized in the international framework. Additionally, even the complexity arguments seem indeed difficult to quantify and use in practical terms. We would rather stick to the current proposal, with added flexibility as mentioned in the previous question. SK: We agree that monetary transmission and sovereignty concerns could be implemented as triggers for more stringent prudential requirements. HU: We are not convinced of the need of the additional criteria proposed; however, we would appreciate if COM/ESAs would assess these additional criteria at a later stage for example in a report. We recommend introducing a review clause in this regard as a compromise solution. FI:

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	We do not see merit. We agree with the Presidency's remarks. SE: We do not see the need to include the proposed criteria, as this would only add complexity and increase the risk of arbitrariness in the assessments. LV: We support inclusion of additional criteria, including specifics in RTS. Support including criteria related to financial stability, for example, custody policy should eliminate concentration risks. Prudential requirements should be further increased due to concerns around monetary policy transmission and monetary sovereignty which is also in line with ECB opinion on MiCA. CZ: No, we consider current proposal sufficient, and we agree with Presidency remarks. Further criterion would make the legislation even more complicated and the supervisory process much longer. AT: AT sees an advantage in maintaining competition issues under the remit of the relevant competition authorities. Furthermore, as already indicated in the respective non paper complexity is itself a complex issue and difficult to quantify. Thus, this could lead again to the mentioned unpredictability for market participants. RO: We agree with the PT PRES that criteria as competition and complexity will make the assessment process more difficult.
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As for the third set of criteria, our central bank is of the opinion that in the absence of objective instruments for assessing the impact on the monetary policy of an ART/EMT, this criterion seems inadequate. Also, we could welcome the inclusion of the ones referring to consumer protection and market integrity as long as they are presented in a clear and easy to evaluate manner.

NL:

While we originally proposed to include competition issues in the approval process, and while we still do see major competition concerns arising with regard to ARTs and EMTs, we do agree that this is a separate area of law which should be left to the competition authorities. Competition concerns should be addressed and dealt with by the antitrust tools and procedures.

As for the complexity criterion, we agree with the PCY that this criterion would be hard to quantify. We additionally consider this to increase the scope for legal uncertainty and regulatory arbitrage.

However, we do absolutely see the value of including criteria relating to monetary transmission and sovereignty concerns, and consumer protection and market integrity. This is also in line with the ECB's opinion.

IE:

ECB's proposal to consider concentration risk on legal entity re issuance of ART/EMT's is a valid one, considering the potential financial stability and network effects risks of failure, both from the points of consumer protection but also monetary stability.

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Not opposed to this additional criteria a priori. However, we would like to see impact assessment whenever possible, particularly considering today's actual concentrations in private sector: big data companies offering financial services products; social media platforms; stablecoin platforms can be used to model potential impacts.

Additionally, the concentration risks posed by an ART/EMT must not be confused with the concentration risks posed by that of a legal entity offering several: they differ in the nature of risk (the first, could be monetary stability; the latter, could be financial/operational risk)

Also, we are open to support ES idea that if we are considering global impact, it should be done so by aligning or considering international thresholds – if available (IMF/FATF/OECD?)

LU:
No, we are not in favour of these additional criteria as they are either not suitable or not measurable and therefore non-quantifiable. The additional criteria proposed could lead to further ambiguity and potentially to market arbitrage.
Competition is a horizontal matter and should be treated accordingly; complexity cannot be quantified and the financial stability issues are already addressed in Article 19 (2) (c).

EE:
We do not agree with the proposed additional criteria as this may cause ambiguity. However we are open to discussion in this matter if the additional criteria is clearly defined and the necessity of adding such criteria better demonstrated.

DE:

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We see merit in including additional criteria. In particular, complexity and interconnectedness already play a role in the G-SIB designation process. It seems helpful to assess whether and to which degree these experiences may be employed in the context of sART/sEMT. Also, taking up a position from competition authorities would reflect the cross-sectoral influence of digital ecosystems and enable an informed decision. A non-binding opinion could be helpful.

With regard to monetary transmission and sovereignty, we have reservations. These criteria are also employed in Art. 19 para 2 lit. c) MiCA, where they serve as reasons to refuse authorisation. This line should not be blurred.

Additional criteria should only be included where these are unambiguous and leave no room for interpretation.

FR:

We agree with the ECB's proposal to include the financial stability criterion. A systemic ART or EMT represents a real risk for financial and monetary stability and the proper functioning of payment systems, which will require European supervision. On the other hand, the competition criterion seems difficult to articulate with the competences of the authorities in charge of competition. As for the complexity criterion, it seems too difficult to assess and lacks clarity.

IT:

We think that market competition should not be included as an indicator because it usually falls under the remit of competition authorities and is out of the scope of financial competent authorities. Conversely, we agree with the other two criteria (business, structural and operational complexity, as well as financial stability, monetary transmission policies, monetary sovereignty, consumer protection and market integrity). We support their inclusion in Level 1 text, provided that they are further specified in Level 2 legislation to clarify their meaning and application.

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	PL: Yes, we do see merit in including additional criteria 2. (<i>business, structural and operational complexity</i>) and 3. (<i>financial stability, monetary transmission policies, monetary sovereignty, consumer protection and market integrity</i>) when classifying ART or EMT as significant. CY: As regards the exclusion of competition-related considerations, we agree with the Presidency's rationale. As to the proposed indicator of complexity, we believe that 'complexity' is assessed by each NCA differently, namely in the light of the regulatory practices and policies applied by it. Thus, the introduction of the (variably interpreted) indicator of 'complexity' will relativise instead of harmonise the assessment on 'significance'. As to the indicators relating to financial stability, we believe that such issues are adequately addressed in the context of the Commission's proposals.
Q2.3 Do MS agree with the relevance of the indicator proposed by the ECB?	MT: We agree with relevance this indicator and it should remain an indicator ES: No SK: We agree with the relevance of indicator proposed by ECB. HU: We see merit in the indicator proposed by the ECB. FI: We support the Presidency's proposal to instead implement aggregated thresholds under each indicator in Art. 39(6) for all ART and EMT issued by the same issuer. We are also of the

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	view that classification as a significant issuer should not include an indicator weighing on the amount and types of CA services the issuer would provide. There is currently no framework in place for supervision of “significant CA service providers”. If, however, such an indicator would be adopted, the eventual wording should not result in the classification of a CA service provider who is not an issuer of any kind of token as a “significant issuer”. SE: We could see merit in including this indicator, however, each token should be assessed on an individual level. LV: We support the indicator proposed. Aggregated triggers. CZ: From our point of view, assessment of global impact is reasonable. Nonetheless, we do not agree with aggregated thresholds. It could lead to situation that almost each crypto-assets issued by widely recognized issuer would be assessed as significant with all regulatory consequences. RO: Yes, we believe the indicator proposed by ECB could be relevant. NL: IE: Yes, see above
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	LU: No, we consider that this criterion is not relevant. As each ART will be backed by its own reserve of assets and given that the risks of each ART are addressed individually via separate safeguarding arrangements pursuant to the provisions of Article 38(2), the concentration in the same legal entity is not an efficient indicator for significance and should therefore not be taken into consideration. EE: Do not agree with the concentration criterion as proposed by the ECB. DE: Yes, we agree in general with the proposed indicator. Issuers of several ART/EMT may carry greater risks. FR: We are open to incorporating this criterion but on the condition that it is modulated according to the respective relevant market criterion: it must be used individually (for each ART or EMT) when the target market per ART or EMT is different, and it must be used globally when they have the same relevant market. IT: Yes, we can agree with the indicator proposed by the ECB because the combination in the same entity of the issuance of EMTs or ARTs as well as the provision of crypto-asset services is an element that increases complexity and risks, and justifies the application of rules on sARTs and sEMTs. PL: Yes.
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	CY: We believe that the said indicator considers the mere fact of exercising the professional activity covered by the authorisation as a systemically important factor. We understand the relevance of this factor in the context of the activities of a credit institution, but we believe that it cannot be expanded to cover all cases of issuers/CASPs by default.
If yes, do MS consider that it should remain an indicator to be used individually for each ART or EMT, or rather that there should be aggregated triggers for classifying all ART and EMT issued by the same issuer as significant?	MT: We think that it should be used individually on each ART or EMT ES: We believe significance should be assessed at the level of each individual token. SK: We think that there should be aggregated triggers for classifying all ART and EMT issued by the same issuer as significant. HU: Although we are open to the proposed indicator, we reserve the right to answer to this question later, as we are still examining it. FI: While we do not completely agree with the relevance of the criteria, we are of the opinion that aggregated triggers are the best option to implement the objectives of the criteria. CZ: We suggest the approach of global impact assessment of an issuer, not individual based assessment of each ARTs or EMTs. We think the issuer could meet the definition of significant issuer also if all issued ARTs and EMTs could have significant impact together. Instead of the

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aggregated threshold, we would keep the threshold for an ART or an EMT. We propose this assessment of significance of such issuer in case of a group of ARTs or EMTs exceeding the threshold, would be done by the competent authority after individual assessment of the case, probably in cooperation with other NCAs.

For instance, if there are five types of stablecoins issued by an entity while none of those crypto assets exceeds the threshold, but they do exceed this threshold together, the competent authority shall decide if a global impact of all stablecoins issued by one entity is significant enough. If the authority does not find the impact to be significant enough, the issuer shall not be deemed as the significant issuer.

If we decide to use this approach, it would be necessary to set directly on Level 1 which conditions would be assessed by national competent authorities.

AT:

AT: From ATs perspective every ART or EMT should be considered individually. An issuer could likely pursue different objectives and purposes with the issued ART or EMT. An aggregated trigger could hamper innovation as issuers would need to apply higher own funds requirements to each reserve although only certain ARTs would be qualified as significant. Furthermore in the current regime provisions could be easily circumvented through the creation of new entities as subsidiaries.

RO:

In our opinion, an indicator to be used at aggregate level would bring clarity in supervision, provided that the entire activity of the issuer is supervised by EBA. Individual application may complicate the division of powers between NCA and EBA.

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	NL: We believe it makes the most sense, also looking at how supervision will be organised, to designate an entity as significant rather than the assets it issues. This would mean that if an entity issues one or more significant ARTs or EMTs, all its other ARTs or EMTs would automatically also be designated as such and will subsequently come under EBA supervision. It would be particularly ineffective if an NCA would only supervise non-significant assets, while EBA would only have the significant ones under its supervision. And quite possibly this ineffectiveness is further magnified, since there could be a spill-over of issues arising with one asset to other assets within the same entity. For instance, operational problems within the issuer may well have effects on both significant and non-significant assets. IE: Yes, see above. <i>“Additionally, the concentration risks posed by an ART/EMT must not be confused with the concentration risks posed by that of a legal entity offering several: they differ in the nature of risk (the first, could be monetary stability; the latter, could be financial/operational risk)”</i> So in effect, there should be 2. EE: Any indicators should be used individually for each ART or EMT as set out in the Proposal.
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	DE: Criteria for significance should be assessed for all tokens individually. Giving the systemic nature of this risk, this aspect might not be enough comprehensive if used individually only for each ART or EMT issuance. Therefore, we could support the Presidency proposal to introduce aggregated thresholds for all ARTs and EMTs issued by the same issuer, triggering the classification as significant for all ARTs and EMTs issued by the same issuer. We could also consider, as a closing criterion, granting the competent authorities the power evaluate the aggregate activity of the same legal entity or group, so as to be able to apply the more stringent requirements established for sARTs and sEMTs. PL: Given that holders of different tokens issued by the same issuer (or related issuers) will have a claim towards the same issuer (or related issuers) we agree with the relevance of the indicator proposed by the ECB. We share the view that there should be both triggers: for classifying ART and EMT individually and for classifying them on aggregated basis.
2.2 Cross border dimension	
Q2.4 Do MS agree with the Presidency proposal to not include the cross-border activity as a trigger for classifying an ART / EMT as significant, but only for assessing whether the sART or sEMT should be subject to EBA supervision?	MT: Yes we agree not to include the cross-border activity trigger since the crypto-asset sector is cross-border by nature and the cross-border criteria is likely to be met by a large number of operators. ES: We are comfortable with cross-border indicator being also a determinant for significance as per the Commission's proposal, but we believe the solution proposed by the presidency is elegant and with little practical differences, so we would not contest if there was an agreement around this proposal. SK:

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	We disagree, we think that all issuers of sART or sEMT should always be subject to EBA supervision similarly to significant institutions which are subject to ECB supervision. HU: We are flexible on this issue. FI: We prefer the original draft which means we would not include the proposals of the Presidency. We are of the view that the floor set in Art. 39(a)(v) is an adequate measure to allow a business to grow domestically or even cross-border without automatically becoming subject to EBA supervision. Furthermore, an issuer does not have to fulfil all the criteria under Art. 39(1) in order to be classified as significant. We are also of the opinion that the re-organisation and re-distribution of supervision in the case of significant issuers would add more complexity to the overall framework and possibly undermine supervisory convergence. Supervisory convergence cannot be guaranteed if the EBA is not the sole supervisor of all significant issuers. SE: Our preferred option would be EBA supervision for all significant ARTs, whether they have cross-border activities or not. LV; (Drafting): LV:
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We agree with the Presidency proposal to not include the cross-border activity as a trigger for classifying an ART / EMT as significant.

But we suggest that the cross-border activity should not be the trigger for assessing whether the sART or sEMT should be subject to EBA supervision. The triggers should be clarified.

CZ:

Generally, we do not support EBA supervision as we are of the opinion that involving NCA is a better option. Therefore, the proposed option is more acceptable for us, however we still see no need to involve EBA into the supervision.

AT:

AT: We see the proposal as a potential way forward as it reflects the initial objective of EBA supervision providing for a consistent European approach for cross border activities.

RO:

Given that crypto-assets are by their nature cross-border, decentralized, online, we agree that cross-border activity should not be used as a trigger for classifying an ART / EMT as significant.

NL:

No, we disagree with the proposed two-tier approach as it would make MiCA even more complex than it already is. The definition and application of a locality criterion would increase ambiguity. It is not clear when such a token is deemed local: only when it is used in one Member State? Or can it still be local when used in multiple Member States? In other words, where do you draw the line? Furthermore, it is important to realise that even when an ART or EMT is significant only in a few Member States, that is not to say it could not have an effect on the financial system of other Member States.

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In addition to this, we wish to point out that the cross-border trigger is one out of a total of six triggers (and potentially eight should the ECB proposal be adopted). In order to be classified as significant, at least three of the criteria must be met, meaning that – in the event the cross-border trigger is activated – two additional criteria have to be fulfilled. So the consideration of the cross-border factor is always taken together with other factors, and we are of the view that it is a very relevant factor indeed both for deciding on the application of more stringent rules and subjecting issuers to EBA supervision.

On a final note, we consider the absence of a rationale for imposing EBA supervision because the issuer merely operates on a local level not to serve as a justification for the creation of a more complicated two-tier system. This would be the exception rather than the rule and should be treated as such. In case a compromise would need to be found on this issue, we would therefore suggest that, if the cross-border trigger *alone* could plausibly lead to a situation that needs alleviating, the introduction of a derogatory clause is explored. Such a clause would provide that, *by way of derogation*, supervision will not be transferred to EBA in case the issuer's activities are so local in nature that this would evidently be unjustified. However, caution should be exercised when contemplating the insertion of such a clause given that, as mentioned before, other factors may very well justify EBA supervision.

IE:

On initial review of this proposal, and considering the digital nature of this issue, we are inclined to prefer less complex (non-tiered) trigger structure. Once an ART/EMT is considered significant, it should be supervised as such, irrespective of cross-border activity, which seems to run counterintuitive to the single digital market aspirations of the EU.

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So our preliminary thoughts are to keep the commission's proposals; however, we would like to continue discussions as to whether supervision should be under EBA, particularly in light of ECB's legal opinion on MICA

LU:

We strongly oppose the Presidency's proposal to use the cross-border criteria (which we consider as not relevant in the MiCA context), as the only trigger for the change in supervision towards a more centralized EU supervision. Such an approach puts into question the entire passporting regime and the home-host cooperation principle. It also adds an additional layer of complexity with no added value and creates an asymmetrical situation, to the detriment of issuers operating from Member States with smaller domestic markets. Such an approach also set a dangerous precedent for other financial services files. We therefore reject this proposal.

EE:

Agree.

DE:

We disagree with the Presidency proposal. While we are of the opinion that national supervisory authorities should continue to play a significant role in supervision of sART and sEMT, supervision at the European Level should go hand in hand with the assessment of significance for reasons of legal certainty.

FR:

yes: the cross-border dimension is a priori a strong characteristic of systemic ART and EMT, insofar as a systemic ART or EMT concentrated in a single jurisdiction seems unlikely, and it seems logical to take it into account.

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	IT: We do not agree with the Presidency proposal, which might introduce an additional level of complexity. The approach should remain as it is now in MiCA: cross-border activity should trigger the classification of an ART/EMT as significant as well as EBA supervision. At the same time, we think that EBA supervision is justified also by the size and the value of the ART/EMT project and not only by the cross-border activity; a European centralized supervision could therefore be appropriate also for large domestic projects that are interconnected with the whole financial system and that could have an impact beyond national borders. PL: We agree with the Presidency proposal. The cross-border activity should not necessary be taken into the account when qualifying ART or EMT as a significant or not. But in case of sART or sEMT having such a cross-border dimension the supervision should be conducted by EBA (cross-border activity should be a necessary condition for subjecting an sART/sEMT issuer to EBA supervision). If the issuer meets the requirements on scale but is active only in one country, this issuer should be subject to NCA supervision. CY: We believe that the proposal in relation to including cross border activity as a trigger for significance does not take into account the fact that EU jurisdictions differ in terms of local clientele and/or market size. Thus, entities established in EU Member States with relatively small local market, will be qualified as 'significant' contrary to similar entities from EU Member States with large local market. For this reason, we do not agree with the suggested trigger, as it would prejudice only relevant entities from small Member States vis-à-vis similar entities from EU MS with larger economic hinterland.
2.3 Technological neutrality	
Q2.5 Do MS agree that such issue should be left for the EMD review?	MT: Such changes can only be effectively implemented through EMD during its forthcoming review.

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	ES: Yes, we do believe changes to the electronic money framework should be undertaken within the EMD review and not here. . SK: We disagree, we think that this issue should be dealt with in MiCA and it should not be postponed till EMD review. HU: Yes, we agree, but it should be clearly stated in the MiCA Regulation that this issue is left for the EMD review. A review clause would be an appropriate way for it. FI: On a general level, we are in favour of aligning the requirements concerning EMTs in the MiCA with the provisions of the EMD. Since EMTs are considered as e-money in the meaning of the EMD, we are in favour of a common framework. The EMD is probably better suited as the common framework. However, possible time constraints can affect the choice of the appropriate legal instrument. SE: Yes. LV: We support identical prudential requirements for identical assets to ensure level playing field.
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	CZ: No, we disagree. We cannot adopt MiCA unless it is clear how to apply it in connection to EMD. Two important questions have been pointed out: (1) how to deal with traditional e-money institutions using DLT; and also (2) how to deal with its supervision. Traditional e-money institution issuing bigger amount of e-money will have choice to use DLT and become issuer of significant EMTs or not to use DLT and follow only EMD requirements. It is obvious that the second is a “more friendly way” for traditional e-money institution. It could lead to hampering use of modern technologies instead of supporting it. Is this really the intention of the proposal? Thus, our proposal is to set an exemption for traditional e-money institutions which only issue e-money and do not intend to issue EMTs. Second issue is the supervision. It seems complicated to supervise e-money institutions by NCAs for years and then forward the supervision to EBA only due to technology used by e-money institutions. From our perspective, NCAs are able to supervise both issuers of significant EMTs and ARTs. Moreover, we would like to highlight that the proposals are obviously not technology neutral despite repeated proclamation of this principle in the explanatory memorandum and recitals of MiCA AT:
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AT: In our view technological neutrality is key in order to make Europe's digital finance sector future proof. Creating substantial differences between EMTs and traditional e-money is not our favourable solution. Therefore, we would advocate to address this issue as soon as possible in order to create a level playing field between traditional e-money and e-money issued on a DLT.

RO:

Yes, we agree.

NL:

Yes, we think the issue should be left for discussion as part of the EMD review.

IE:

Similar to the feedback provided during the meeting by LUX: would support to await due review of this issue during the EMD review. However, do not understand the reference to "technology neutrality" when considering EMT's: the only difference in essence vis a vis e-money, is that the first must be issued on a blockchain/DLT platform. Is the intention here to predict a future where EMT may be issued using a different technology platform? If that day were to arrive, the EMT's may no longer exist and instead be replaced by retail CBDC's for example.

Also, what is the logic behind EMT-s being significant? If they are tokenised e-money, by definition, they are significant. What will be an EMT in EU that is not "significant"? a DLT based e-krona? Does this make an Euro EMT significant by design?

Alongside the potential alignment of ART with payment "function" and EMT, we would like to ask the PSY and other MS's the potential streamlining of EMT's wholistically: without splitting between significant and "not-significant".

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	LU: We strongly reject opening the EMD at this stage. This view gathered support from a large majority of MS and the Commission during the CWP. We refer to the moments made in that regard during the CWP. EE: Agree DE: We agree for the time being. Yet, in general, we are convinced that many parts of MiCA could be addressed very appropriately in respective special legislative acts such as EMD, PSD2, MAR, etc. FR: no : technological neutrality is an important objective and it seems important to cope with this issue as soon as possible (thus in MICA). IT: We agree: despite the potential regulatory arbitrage and/or the potential temporary misalignment with EMD2, this issue should be better left for the upcoming EMD2 review. PL: Yes, we agree to leave this issue for the EMD review. In our opinion introducing special and more restrictive requirements for sEMT (as it is provided by MiCA provisions) is not in conflict with the e-money regulations. Moreover, especially when provided information is not enough for extensive comment.
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	CY: We understand that the meaning given to technological neutrality by the EU Commission as follows: <i>‘Technology neutrality: the freedom of individuals and organisations to choose the most appropriate and suitable technology for their needs. Products, services or regulatory frameworks taking into account the principle of technology neutrality neither impose nor discriminate in favour of the use of a particular type of technology.’</i> Nevertheless, EMTs qualify as e-money pursuant to a mandatory categorisation under MiCA, which was introduced in MiCA in order to avoid possible circumvention of the EMD by issuers of ‘stablecoin’ tokens which would be pegged to a single official currency only. However, let cases of circumvention aside, the intention of the individuals and organisations affected is not to issue e-money by means of another technology but to issue a ‘stablecoin’ pegged by a single fiat currency, since pegging is the key feature of a ‘stablecoin’. Thus, we believe that the assets in question (e-money and EMT) are not genuinely similar, in order to be subject to technological neutrality, but are deemed to be similar by virtue of MiCA provisions. For this reason we believe that different requirements can be imposed upon issuers of stablecoins and a, potential, similar treatment of e-money should be left for the EMD review.
3. Title VII: EBA powers	
3.1. Attribution of supervisory competences to the EBA	
Q3.1 Do MS agree to entrust supervisory powers to the EBA as regards sART and sEMT?	MT: Yes ES: We certainly favor European level supervision for significant crypto-assets. We have in past meetings expressed doubts about the EBA being the ideal entity for this task; however, since

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then, we have taken on board arguments by the Commission and the presidency and believe it is a reasonable compromise. In this regard, we would also like to ask the Commission how precisely they see these supervision tasks by the EBA, is it something that will be undertaken with their own staff entirely, or in close collaboration with NCA, in a similar fashion to SSM.

SK:

Yes, we agree.

HU:

We are open to the proposal to entrust supervisory powers to the EBA as regards sART and sEMT.

FI:

Agree.

SE:

Yes.

LV:

Agree. Dual supervision creates unnecessary complexity and uncertainty related to roles of the institutions involved.

Supervising sART and sEMT on EU level would reduce regulatory arbitrage risks.

CZ:

No, we do not agree. The supervision provided by NCAs is regarded as more beneficial from our point of view.

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	AT: AT: Yes, under certain circumstances, especially with regard to the significance of ARTs or EMTs we see merits in EBA supervision. However, first and foremost the principle of proportionality should be respected also in the context of the supervision. Roles, responsibilities and especially accountabilities need to be clearly and comprehensibly defined. In addition procedural provisions should be as efficient as possible in order to avoid lengthy administrative processes. RO: Yes, we are open to Commission proposal to empower EBA with supervision power over sART and sEMT. NL: Yes, we agree. Like the ECB stated in its opinion, we believe that significant ARTs and EMTs would be better supervised at EU level, as this would ensure a comprehensive overview of risks and coordination of supervisory actions and, at the same time, prevent regulatory arbitrage. While we understand the issue that arises with regard to EMTs and the fact that Electronic Money Institutions are supervised at the national level, we do think that the dual supervision on significant EMTs is complex and rather cumbersome. We would therefore support giving EBA the full mandate for supervision over the issuance of significant EMTs. IE: 1.1 MiCA proposes that the EBA adopt supervision of significant ARTs (Articles 39 – 42) and joint supervision with NCAs of significant EMTs (Articles 50 – 52). In both cases, the
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EBA would be supported by a college of supervisors for each issuer of a significant ART or EMT. While MiCA proposes central supervision of these entities, the responsibility for their authorisation would sit with the relevant NCA, albeit the EBA would have a role in their designation as significant. Further, the resolution and orderly wind-down provisions in MiCA are under-developed and lack clarity on the process and responsible authority.

1.2 We see merit in the proposal for central supervision in MiCA, because the area under supervision is new (markets in crypto assets), and is systemically important at an EU level, and requires an EU approach to the application of policy. Furthermore, it is of note, that no specific competencies on the supervision of markets in crypto assets have been built up at NCAs as of yet.

1.3 However, our view is that the approach proposed in MiCA could create potential misalignment between the authority responsible for authorisation, the authority responsible for supervision and the authority responsible for failure and resolution. Given the potential size and significance of the entities in question, we are of the strong view that in MiCA:

- a. There should be clear alignment and linkage between responsibilities and decisions made on authorisation, supervision and resolution. This is a critical issue that should be addressed in the draft legislation, before providing support for centralised supervision of markets in crypto assets.
- b. There should be a clear articulation of the role for the central authority in each of the three areas.
- c. Furthermore, we do not support the MiCA proposal of centralised supervision for credit institutions issuing significant ARTs or significant EMTs. Paragraphs 4.1 – 4.2

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	d. We would like to dedicate a session to discuss ECB's comments in their legal opinion vis a vis proposals on supervision (et alia, if a full session can be allocated) LU: As outlined in the CWP and in line with previous written comments we provided on this issue, we strongly oppose the proposal to entrust EBA with extensive supervisory powers with respect to sARTs and sEMTs. The Presidency paper and the Commission impact assessment fail to provide any substantive evidence of the need to establish EBA as a single supervisory body for significant ART/EMT. The NCAs are well equipped and have appropriate competences, resources and knowledge to supervise issuer of ART/EMT as well as significant issuers providing cross-border activities. NCAs can rely on long-standing experiences regarding close cross-border cooperation based on the home/host principles. This should not be put into question. The EBA's role on the contrary is to enhance supervisory convergence in the single market by making full use of their recently enhanced toolbox and by acting as a standard setter. We are of the view that the EBA should stick to this role. Finally, the assessment of the threat to the financial stability, monetary policy transmission or monetary sovereignty as part of the authorization process (Article 19) and the opinion from the EBA, ESMA and ECB (Article 18) in conjunction with the maximum harmonization and the direct application of the requirements in MiCA provide sufficient safeguards to achieve a level playing field and a coordinated application and supervision of the sART and sEMT by the home NCAs. EE: Better left to NCA-s. DE:
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	We are convinced that a transfer of supervisory powers for sART and sEMT to the European level may better address risks of cross border sART and sEMT services. That said, we suggest assessing in detail, which European authority and/or which procedure is best equipped to address the tasks and needs that come with MiCA. From a governance point of view, such an assessment could start by further developing the interaction in the colleges for issuers (Art. 99 et seq.). FR: Yes IT: We consider that supervision on sART and sEMT should be performed at the European level, whether it be EBA for every type of ARTs, it depends on the discussion regarding the treatment of ARTs. Should a sub-category of ART with payment function be defined and should remain a residual sub-category of ART with investment function, we ask whether it would be reasonable to grant EBA the powers also in relation to the latter sub-category, or whether it would be better to designate ESMA. PL: We agree with the proposal to entrust supervisory powers regarding sART and sEMT to EBA, under the condition that cross border activity is a necessary condition for EBA supervision (see our answer to Q2.4). Other approach could be inefficient in creating effective common market and could create regional MS approaches. Nevertheless, general EBA competence should be clarified. If some of supervisory competences will remain in the NCA there should be provisions which states that issue very clearly. CY: We believe that EBA's competencies should be limited to sARTs having a clear 'money substitution' purpose, i.e. significant payment ARTs only, to the exclusion of (significant) investment ARTs.
3.2. EBA decision-making	

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Q3.2 Do MS see merit in foreseeing in MiCA an EBA internal committee to promote a more efficient fulfilment of the EBA supervisory role under MiCA?	MT: Yes ES: We have no strong position here but will favor any amendment that would improve fulfillment of the supervisory role of EBA. As has been done in other areas, it would be relevant that these committees are composed by experts in the area. SK: Yes, we support this approach. HU: Yes, we see merit in the idea of foreseeing in MiCA an EBA internal committee. FI: Agree. SE: We don't have strong views on this issue but could support the establishment of an EBA internal committee if it would be helpful in order to support its supervisory functions. LV: We support the EBA internal committee's establishment, if such committee will be necessary. CZ:
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	No, we see no need to involve EBA in supervision. Thus, we do not support creating EBA internal committee. AT: AT: With regard to an establishment of an EBA internal committee we are rather sceptical. To our knowledge all EU-NCAs are EBA Members, therefore we do not fully understand the reference in the non-paper. If the non-paper takes into account third country authorities we would like to refer to Art. 90 MiCAR. Furthermore, new levels of administration generally go hand in hand with higher supervisory fees which could in turn hamper innovation and could strain incumbent market participants. RO: We welcome the Presidency proposal to set up an internal committee within EBA, so that NCAs that are not EBA members can also contribute to the preparation of the decisions regarding sART and sEMT. NL: We suppose there could be merit in creating an EBA internal committee, but in turn we want to avoid creating another administrative layer potentially complicating decision-making. In this connection, we wish to raise two points: 1. What would, concretely, be the relationship of this Internal Committee vis-à-vis the colleges for issuers of significant ARTs and significant EMTs, as laid down in articles 99 to 102? 2. We believe that further analysis should be conducted to determine whether there actually is a need among the ESAs and NCAs that such an internal committee would meet, and which would consequently warrant its creation.
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	IE: See Q3.1, currently we would be of the opinion that more discussion and analysis is required: the EBA is a standard setter, not a regulatory authority. Current regulatory frameworks already working may be more suitable for this role, particularly if ART/EMT's re payment functions are aligned within MICA. LU: No. EE: No. Better left to NCA-s. DE: See above. FR: Yes, if it promotes cooperation between the EBA and the NCAs. IT: We are interested in discussing the proposed solution. In any case, in order to assess the proposal, it would be necessary to clearly define the interplay in terms of scope and competences between the college of supervisors already included in the EC proposal and the new internal committee, as well as which authorities would be members of the EBA internal committee according to the Presidency. PL: Yes, we do see merit in establishing such EBA internal committee.
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	The way of making decision by EBA should be provided by the provisions (MiCA or related Commission regulations). We support the idea of internal committee but we are also propose that members of that committee should include representatives of NCAS where the issuer of sEMT or sART has its headquarter. CY: We believe that EBA's competencies should be limited to sARTs having a clear 'money substitution' purpose, i.e. significant payment ARTs only, to the exclusion of (significant) investment ARTs.
3.3 ARTs	
Q3.3 Do MS agree that an issuer of significant and non-significant ARTs should have such ART subject simultaneously to the MiCA supervision of the EBA and of the NCA? If yes, do MS agree with the Presidency proposed clarification on the powers of the EBA and of the NCA supervising the same issuer?	MT: In order to avoid duplication of supervision, ART issuers should fall under the supervision of NCAs while sARTs should fall under the supervision of EBA. This will mitigate supervisory overlaps which may occur but having different aspects of the same business assessed by different authorities. Despite this supervision should still be collaborative. ES: We support the clarification suggested by the presidency. SK: We disagree, we think that all ART and EMT issued by an issuer of a sART or a sEMT should be supervised by EBA. HU: Yes, we agree that an issuer of significant and non-significant ARTs should have such ART subject simultaneously to the MiCA supervision of the EBA and of the NCA. We agree with the Presidency proposal to ensure that when the same issuer is supervised both by the EBA and by NCA then both authorities should cooperate closely.

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	FI: We are neutral as to the selection of the Presidency proposal vs. its option, the option being that the EBA should be the supervisor of the ARTs issued by an issuer of sARTs. However, if the Presidency's proposal is selected, we support the inclusion of the clarification presented by the Presidency. SE: Eba supervision of non-significant ARTs would be disproportionate in our view, and this applies also when non-significant ARTs are issued by an issuer of sARTs. A clarification in this respect is welcome. Some inefficiencies may arise with dual supervision of the same issuer, so it is critical that the forms of cooperation and division of responsibilities between the NCA and EBA are completely clear. LV: We support the alternative option that due the reasons related to dual supervision already mentioned. CZ: We are of the opinion that there should be only one supervisory authority – NCA. We expect higher efficiency of one supervisory authority. Division of the supervision seems to be more complicated and less effective option. AT: AT: In principle we would agree with the clarification on the powers of the EBA and the NCA supervising the same issuer as defined in Art. 98 para 2 MiCAR. Nevertheless, we need to make sure to avoid duplicities and regulatory arbitrage.
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	RO: The supervision by EBA of all ARTs and EMTs issued by an issuer of a sART or a sEMT would for sure simplify the process. For the case of shared competencies between NCA and EBA clear definition of powers and detailed cooperation arrangements between are necessary. NL: As we mentioned before, the most efficient solution would be to give EBA a supervisory mandate covering all ARTs and EMTs, significant or not, that are issued. In order to reduce complexity and administrative burdens, we disagree with simultaneously subjecting an issuer of significant and non-significant ARTs to the supervision of EBA and of the NCA. We are in favour of bringing all ARTs or EMTs issued by an issuer of a significant ART/EMT under the supervision of EBA. IE: Refer to Q3.1: we are of the opinion that further discussion is required to review comments in relation to supervision of these in ECB opinion, particularly if ART/EMT's re payments are aligned within MICA. LU: No, we are of the opinion that Article 98(2) is sufficiently clear. We consider that such an approach would be counterproductive as it adds an additional and unnecessary layer of complexity to the supervisory work and to the follow-up to be carried out by the supervised issuers. We would like to reiterate our strong support for keeping all the supervisory tasks at the level of the NCA. EE:
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	Only NCA. DE: See above. FR: We do support the second option, which is a single supervisor. To the extent that we support the distinction between investment ART and payment ART, this single supervisor should be either the EBA for payment ART or ESMA for investment ART. IT: This aspect is linked to the question 2.3. If we consider the whole activities carried out by the same legal entity/group in order to determine the significance of ARTs and EMTs, a logical consequence seems to be, to ensure effective and efficient supervision, that all the issuances are subject to the same supervisory authority. Therefore, we would favour the second alternative, i.e. attributing to EBA the power to supervise all ARTs and EMTs issued by the same issuer, in order to reduce complexity and contribute to streamlining the allocation of supervisory responsibilities. However, further discussions are also required on these provisions to coordinate the powers of MiCA authorities with the powers of prudential authorities on the same supervised subjects. Indeed, as also underlined by the ECB in its Opinion, where the issuer of significant stablecoins is a supervised institution, the EBA's obligation to enforce the issuer's compliance with the requirements laid down in the proposed Regulation "<i>should not encroach upon the supervision of prudential requirements</i>" enforced by the NCAs/ECB in their banking supervisory role. PL: Yes, agree with the Presidency proposal. Otherwise, without proper communication, supervision would be highly ineffective.
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	CY: We believe that EBA's competencies should be limited to sARTs having a clear 'money substitution' purpose, i.e. significant payment ARTs only, to the exclusion of (significant) investment ARTs.
Q3.4 Do MS agree with adjusting the role of EBA in the authorisation of ART classified as significant pursuant Art. 40 (voluntary classification)?	ES: We suggest a two-step approach be considered, similar to credit institutions, where EBA has the last Word on these authorizations, only when a first positive decision has been made by the NCA. SK: Yes, we agree. HU: We do not agree, we see no need for modification. FI: Agree. SE: We can see the rationale for the proposal; however, the increased level of complexity seems not entirely justifiable to us. LV: We agree entrusting full authorization to EBA. CZ:

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	No. We do not agree with entrusting a full authorisation to the EBA. Non-binding opinion of EBA would be sufficient. AT: AT: From our perspective if an issuer files an application in order to issue a significant ART indicating that the issuance of this respective ART or EMT will be significant (“Voluntary classification” Art. 40 MiCA), it would make sense to vest EBA with the appropriate competencies within the application process. RO: We consider that EBA should play a role in the authorisation of ART voluntary classified as significant. NL: Yes, we agree upon adjusting EBA’s role in the authorisation of ARTs classified as significant pursuant to Article 40. IE: Our preliminary thoughts are that, in particular for significant ART/EMT, it would be a more robust process to have the authority and consequent full regulation under the same supervisory body. Some of our thoughts on the potential risks and ambiguity in MiCA that support our views: 2.1 In light of the potential risk to monetary policy and financial stability arising from significant EMTs and significant ARTs, MiCA requires that the issuer of a significant EMT must be authorised as a credit institution or electronic-money institution. The issuer of a significant ART would be required to be authorised as an issuer under MiCA by an NCA,
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except where the issuer is already authorised as a credit institution, so the authorisation would be at NCA level not EBA/Other EU level supervisory body.

2.2 An NCA may refuse the authorisation of a significant ART where “there are demonstrable grounds for believing that the applicant issuer’s business model may pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty”. Indeed, this safeguard states that the NCA should consult with the EBA, ESMA and, where an ART references Union currencies, the relevant central bank (in the case of the euro, the ECB). In this case, MiCA states that a **non-binding opinion** should be provided on a case-by-case basis by EBA, ESMA and where applicable, the ECB and other central banks, as to whether authorisation should occur.

2.3 There are several issues here. Firstly, this opinion is non-binding, and as such, consideration should be given as to whether this is sufficient in cases where an ART poses a significant risk to monetary policy or financial stability. Such an opinion is to be considered by the NCA alongside the comments of the applicant issuer. It is essential where an ART or EMT makes direct reference to a currency of the Union that such an opinion be strongly considered by the NCA, in that it can address specific cases where threats to monetary and financial stability may manifest itself. Secondly, there is no mechanism in MiCA to set out what would happen where an authorising NCA rejects the views set out in the non-binding opinion.

Thirdly, there may be limited value to this provision given entities normally evolve into being systemically important after authorisation and establishment, rather than being determined systemically important prior to authorisation.

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	If the adequate EU level supervisory body is entrusted with full authorisation, is binding opinion needed? LU: No, we are against this proposal, The risk of immediate withdrawal of the authorization by the EBA after the initial authorization is a very unlikely scenario and should not be used as a pretext to justify a need for entrusting a full authorization power to the EBA with regard to the authorization process under Article 40. Taking such a far-fetched possibility into account would be a statement of mistrust on the NCA's authorization process. EE: No. DE: For the purpose of this question, we prefer the COM proposal. FR: We are in favour of granting the EBA (or ESMA for investment ART) full authorisation powers. We do not believe that a binding opinion is of any value, since issuers have an interest in complying with it.) IT: No, we would prefer that the authorization power stays within the NCA. If needed, for Article 40, a binding EBA opinion in the authorization process could be evaluated. PL:
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	Yes, we agree with adjusting the role of EBA in the authorisation of ART classified as significant pursuant Art. 40. CY: We believe that EBA's competencies should be limited to sARTs having a clear 'money substitution' purpose, i.e. significant payment ARTs only, to the exclusion of (significant) investment ARTs.
If yes, would MS prefer to entrust a full authorisation power to the EBA, or a binding opinion?	MT: Further to our preference in 3.3, it would make sense to grant EBA full authorisation powers since they would be sole supervisors in such case. SK: We would prefer to entrust a full authorisation power to the EBA. FI: Authorisation preferred. RO: We prefer to entrust a full authorisation power to EBA over the ART voluntary classified as significant. NL: We strongly prefer vesting EBA with a full authorisation power. Under Article 40 EBA is the one that decides whether the ART of the prospective issuer is significant, and if it does decide that the ART may be classified as significant, the supervisory responsibilities will be transferred from the NCA to EBA. In these circumstances, it makes little sense to leave the power to grant or refuse the authorisation with the NCA. This would mean that the NCA

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	grants an authorisation to the issuer, whilst it is not the authority supervising the issuer nor the one that has the power to withdraw the authorisation. The delivery of a binding opinion by EBA is a particularly cumbersome way of structuring its role, which would actually create an undue additional step in the authorisation process. The NCA would be the authority formally issuing the authorisation, but in effect it is EBA through its binding opinion deciding on the issuance. IE: See above. DE: See above. IT: In case additional measures are needed, we would prefer a binding opinion. PL: We would suggest that when EBA finds that a voluntary classification as sART is valid (following article 40(2)), it should be empowered to issue an opinion with respect to authorisation of the sART, after consulting the relevant central banks. An opinion which states that the ART in question should not be authorised should be binding.
3.4 EMT	
Q3.5 Do MS agree that EBA's supervisory powers as regards sEMT should be limited as foreseen in Article 98(4), or do MS consider that additional provisions (or even all) should be put under the EBA supervision? If yes, please specify which.	MT: Having dual supervisory regimes under the EBA and the NCA each looking at different obligations emanating from different Articles is seen as inefficient, disjointed and possibly problematic. As such we prefer an all or nothing approach.

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ES:

The answer to this question is related to the point made above regarding how will EBA undertake supervision in practice, weather with its own staff or through collaboration with NCA. In any case, we believe NCA should maintain a role in supervising these activities.

SK:

We think that in order to avoid unnecessary complexity all provisions should be put under EBA supervision.

HU:

We agree, that EBA's supervisory powers as regards sEMT should be limited as foreseen in Article 98(4).

FI:

We agree with the original draft but would also be inclined to delegate the supervisory powers under Article 52 to the NCAs or the ECB in the role of an NCA. We are not in favour of increasing the EBA's supervisory powers unless the EBA would take on full supervision of at least the EMT-related activity of the issuer. Fragmented supervision could increase complexity.

LV:

Supervision of sEMTs should take place on EU level with EBA as supervisor.

CZ:

From our perspective, NCAs are able to supervise both issuers of significant EMTs and "non-significant" EMTs.

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	If the supervision of EBA would be maintained, we support limiting its supervisory powers to Article 98(4). AT: AT: With regard to the “dual supervision” by EBA and NCAs concerning EMTs we are sceptical that this system will be efficient. It is of utmost importance that there are clear delineations between the competencies and responsibilities of EBA and NCAs. RO: We prefer EBA to assume full supervisory powers regarding sEMT. NL: As previously mentioned, we are in favour of transferring all of the supervisory responsibilities to EBA with regard to significant EMTs. This would reduce complexity and administrative burdens for the issuers, and would also create a more harmonised framework. IE: As mentioned in Q3.2, we are of the opinion that more discussion and analysis is required: the EBA is a standard setter, not a regulatory authority. Current regulatory frameworks already working may be more suitable for this role, particularly if ART/EMT’s re payment functions are aligned within MICA. We need to review these articles vis a vis ECB’s legal opinion. Also need to consider the time lag between MICA reg proposal discussions and EMD review. Finally, we would like clarity as to why EMT’s, being in essence e-money issued on DLT, are being split into significant and “not-significant”, if what we mean is Eurozone-EMTs vs non-Eurozone/ EMT’s?
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	LU: No, we do not see the need to amend provisions that are neither ambiguous nor problematic. We strongly oppose to this approach and we consider that the complexity of the dual system shall not be misused to confere further powers to the EBA. EE: Agree DE: Prudential supervision of credit institutions, e-money and payment institutions should remain with respective supervisory authorities. FR: We do not support additionnel provisions. IT: While we reserve to further analyze this issue, we also consider that it is necessary to address the concerns expressed in the ECB Opinion with regard to dual supervision. PL: Additional provisions should be put under the EBA supervision as otherwise supervision might be ineffective in the long term. Art 52(4) MiCA provides specific additional obligations for issuers of significant e-money tokens, and there must be fullfiled also other requirements which concerns sEMT and non-significant EMT. Our view is that EBA should have supervisory powers in regard to the whole scope of the requirements which are provided for sEMT (including requirements for EMT).
4. Title VII: role of the college	

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Q4.1 Do MS agree with the possibility of two colleges being established for an issuer of sART and sEMT, or should only one college be foreseen for each issuer?	MT: Only one college should be foreseen so as to take a holistic approach as intended. Furthermore. If an issuer issues both ARTs and EMTs it is important that the college take both into consideration. ES: We believe it would be more practical to have colleges set up at the level of the issuer. Its composition could then vary according to the issuances it considers, both geographically and thematically according to each specific issuance. SK: In our opinion, only one college should be foreseen for each issuer. HU: Yes, we agree with the possibility of two colleges being established for an issuer of sART and sEMT. FI: One college only is preferred in order to decrease complexity. SE: We do not have strong views on this issue but could support that one college would suffice. LV: We agree with the possibility of two colleges being established for an issuer of sART and sEMT.
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	CZ: We would support only one college for each issuer. AT: AT: From our point of view it would be beneficial, synergistic and more efficient to supervise each issuer with only a single college. Further details could be stated in the written agreement. RO: We agree with the possibility of setting up two colleges for an issuer of sART and, respectively, sEMT. NL: In principle we do not object to creating two separate colleges for one issuer. But we do consider it to be very important that when two separate colleges for one issuer are established, this does not lead to additional complexity and ineffective supervision nor lead to the colleges each working in a vacuum. There should be clear reasons for and advantages to having two distinct colleges per issuer as opposed to one. A single college is obviously preferred in our opinion. Finally, and perhaps most importantly, the wording of MiCA should not prevent the possibility of creating a single college if supervisors agree on this. IE: 1. MiCA proposes a college of supervisors (the College) that the EBA would establish, manage and chair for each issuer of a significant ART or EMT (articles 99 – 102). It would seem that this is an attempt to provide a structure intended to deal with significant
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	ARTs such as Libra, and the wider eco-system such an issuance belongs to, and not just specific issues. Any specific risks such as run risk, or perhaps a cyber-attack could ultimately create a problem that would affect the complete eco-system. The Bank can see how the College could facilitate discussions on these issues and ensure that supervisors are one with each other and that there is effective challenge in a response to issues. 2. However, there are weaknesses in the current provisions as laid out in MiCA such as not specifying the purpose and objectives of the Colleges, and that the non-binding opinion provisions are issues-focused and not joined up with what the College would do on a regular basis. It is critical to design this arm of the proposal to ensure proper risk mitigation, if the centralised supervision model is to work effectively. As such, the scope and system of supervision needs to be clear, including the role of the ECB. While supervision will obviously be concerned with regulating the issuers, there is an important monetary policy and currency element requiring significant input from the ECB, and this should be clearly present. Our view is that MiCA should clearly specify the purpose and objectives of the Colleges and clarify the role of the ECB LU: This approach has to be carefully assessed; on one side we have to consider the fact that the regime is product based and thus the colleges will have a different composition due to the different markets where the instruments are placed. On the other side we must ensure the efficiency and convergence of the supervisory regime and we should ensure that the issuer is not confronted with the burden of multiple, distinct colleges with divergent supervisory approaches.
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	EE: One college is sufficient. DE: For the time being, we could well accept both options as colleges may be combined by agreements according to Art. 99(5) and 101(5), where this is deemed appropriate. FR: We are in favor of a single college for reasons of efficiency. IT: Establishing a single college for an issuer of both sARTs and sEMTs could be appropriate and more efficient. This means that rules should be defined to specify the composition of the college, which should vary taking into account these factors: i) for different sART or sEMT the involved NCAs may differ; ii) according to the issue to discuss, it could be necessary to prevent undue disclosure of supervisory information to counterparties which are not entitled to receive it. PL: In case when one issuer issues two category of tokens: sART and sEMT we support the view that there should be one college for this particular issuer. Potential investors should be protected due to the location of each, no exclusion would be beneficial for market participants. It will also reduce complexity. CY: We believe that ARTs so long they serve an investment purpose only and do not qualify as <i>payment ARTs</i> should not be subject to the consultative supervisory college.
Q4.2 Do MS agree with the increased flexibility of the college membership as proposed by the Presidency?	MT: Yes

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	ES: Yes we do agree that college composition should be flexible and adaptable. SK: Yes, we agree. HU: Yes, we agree with the increased flexibility of the college membership as proposed by the Presidency, but we would like to emphasize that the same voting right should apply to all authorities. FI: Agree. SE: We support some flexibility in this regard, but it is important that the votes of the college members are allocated appropriately. LV: We agree CZ: Yes, we agree. AT:
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	AT: We could see merits in the flexibility but we would need further details which authorities would be considered to participate. RO: Yes, we agree. NL: Yes, we agree with introducing more flexibility into membership of the college. However, we do have concerns that votes are attributed based on the number of NCAs that participate. A Member State that only delegates one NCA to the Committee has one vote, while Member States that delegate three or more NCAs could have three votes. We do not deem this to be fair, and propose not having weighted voting but instead give all Member States the same voting rights in the supervisory college. In this context, we would also like to ask whether it is correct that the ECB is always a member of a college for an issuer of significant ARTs, and if so, what the reasoning behind this is. Article 99(2)(i) provides that the college shall consist of, <i>inter alia</i>, the ECB whilst article 100(4) states “where the ECB is a member of the college”, thereby implying that there are situations in which the ECB is <u>not</u> a member. If the ECB is not always a member, the text of article 99(2) should be amended accordingly. This is in conformity with the ECB opinion. IE: We are not in a position to provide a clear view on Q4.2 to Q4.4 without further discussion on supervision following further meetings on ART/EMT payment discussions and also ECB legal opinion on these CA and their supervision.
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	LU: We are open to consider an increased flexibility of the college membership provided that the voting system remains fair (1 Member 1 vote), clear and defined in the level 1 text. EE: Agree. DE: Yes. However, we caution that colleges may become quite large, entailing proper impediments that will require further regulatory consideration. FR: We agree with the flexibility of the college membership as proposed by the presidency. IT: More flexibility in relation to the composition of the college might be welcomed. However, to properly answer this question, we would like to preliminarily ask which authorities would be involved and what kind of roles would be envisaged for them. PL: We agree with the increased flexibility of the college membership as proposed by the Presidency. EBA should invite additional authorities relevant for the ART/EMT ecosystem. CY: We believe that ARTs so long they serve an investment purpose only and do not qualify as <i>payment ARTs</i> should not be subject to the consultative supervisory college.
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Q4.3 Do MS consider that the mandate of the college to issue non-binding opinions should be extended to CASP NCAs?	MT: Yes, Malta would further like to note, that especially in this context, the sharing of information between CASP NCAs, will be crucial ES: Yes, it would be reasonable to allow CASP NCA to issue non-binding opinions. SK: Yes, we agree. HU: We are flexible on this issue. FI: (Drafting): If supervisory colleges were to be used also in the case of CA service providers, a bespoke regime for the supervision of such significant CA service providers should be introduced in the MiCA. FI: Disagree. There is no framework in place for the supervision of “significant CA service providers”. We are of the opinion that the framework concerning significant issuers should not be artificially extended to CA service providers. SE: We do not have strong views on this issue.
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	LV: We agree CZ: No, we do not support a mandate to be extended. AT: AT: Due to the fact, that the scope of crypto-services provided by CASPs corresponds with the scope of investment services according to MiFID II, we do not see any legal basis or need for such an extension of the college's mandate. A corresponding competence should therefore lie solely within the remit of ESMA. RO: We believe that a sART or sEMT will be traded on multiple CASPs. We believe that if a nonbinding opinion were to be issued to a CASP, it could be done in the college, by the NCA part of the college and who supervise that CASP. NL: Although we are fully in favour of ensuring a high level of consumer protection and tackling market abuse and we do not oppose this proposal at this stage, we do wonder what the exact added value would be given that, presumably, the supervising authorities for ART and EMT issuers and the authorities for CASPs will in many instances be one and the same. We would therefore like to see a more elaborated text on the scope of this proposal before taking a definitive stance. IE:
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	See Q4.2 LU: No, the CASPs are subject to the supervision of the NCAs, thus we see no added value in extending the mandate of the colleges. EE: Agree DE: Yes, it seems reasonable to extend the college mandates accordingly. FR: No: we do not see the need for non-contributing notices and CASPs are otherwise regulated. IT: We need further information to assess such proposal; it is not clear to us under which circumstances the provisions applicable to a CASP can be different if the crypto-asset is significant. PL: We consider that the mandate of the college to issue non-binding opinions should be extended to CASP NCAs. CY: We believe that consumer protection, despite its importance, cannot be viewed per se as systemically important, to justify the involvement of the college in the supervision of CASPs especially when their services are subject to 'MiFID' equivalence and/or MiFID status of the provider and/or may relate to CAs other than ARTs/EMTs
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Could MS provide examples of decisions of CASP NCAs which should be preceded by such non-binding opinions?	SK: - FI: N/A NL: See our previous comments, as we do not immediately see the added benefit of the proposal under Q4.3, we have the same question. IE: See Q4.2 IT: Please see above. PL: Possible cases include market manipulation (e.g. when there is collusion between issuer and CASP), consumer / investor protection (e.g. information provided to investors when ARTs are listed). CY: See our comment directly above
Q4.4 Do MS agree to clarify the cases where the ECB would have two votes as proposed by the Presidency?	MT: Yes ES:

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	We see no reason to oppose clarifications on this matter. SK: Yes, we agree. HU: We are not convinced of granting two voting rights to the ECB. However, if the majority of the Member State support the proposal of PRES we will not object it. In this case, in order to achieve a level playing field we can only accept the possibility of two votes of the ECB if the central banks of non-euro areas with similar structure of the ECB (namely prudential supervisor of the issuer and central bank at the same time) have also two votes. FI: Agree. The opinion of the central bank can differ from that of a prudential supervisor. However we support that this view is extended also to other authorities which act in both roles inside their respective jurisdictions. SE: We do not fully understand the rationale for allocating two votes to the ECB. We would also welcome clarification on the reasoning behind the difference between the ECB's participation in the colleges for sEMTs and sARTs, respectively, as it is foreseen that the ECB would always be a member of the supervisory college for sARTs while their participation in the college of sEMTs is foreseen only where the issuer of sEMT is established in a MS the currency of which is the euro, or where the sEMT is referencing the euro. LV:
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	We agree CZ: Yes, we are in favour of the clarification. Regarding voting, few questions shall be clarified. For instance, we are not sure about the distribution of votes if a body is a central bank and a prudential supervision concurrently. Does that mean this body from MS will have two votes? This question was raised by more MS during last working party. RO: We agree. NL: As noted during the CWG, we still have somewhat of an issue understanding this so-called ‘two-hat rationale’ for justifying the cast of two votes by the ECB. What was/is the rationale behind this? In our view the attribution of two votes based on dual roles is not consistent with existing practices. For example, the Dutch central bank is both prudential supervisor and central bank tasked with ensuring a smooth payments system in the Netherlands. Nevertheless, it only gets one vote in colleges for credit institutions or payment institutions that operate across borders. As per our reply to question 4.2, we think it is important that the voting system in the colleges is fair, and that all Member States get unweighted and equal voting rights. This also holds for the ESAs and the ECB. It is fairly odd that EBA, being the primary supervisor, has less voting rights than for example the ECB.
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Furthermore, given the other discussions about the role of the ECB and the central banks of non-euro Member States during the CWG, they will most likely get a veto power on those policy areas where they have a mandate anyway. We therefore suggest giving the ECB one vote.

IE:
See Q4.2

LU:
We do not agree with the wording of Article 100 (4) indent 3 and Article 102 (4) indent 3 pursuant to which ECB shall have two votes as a member of the college. The ECB like all other members of the college shall have only one vote in this capacity.

However, the case may be that the ECB has several votes when it acts in addition in its capacity as competent authority of a systemically important credit institution (for example under Article 99 (2) d) or Article 101 (2) b)).

EE:
Agree.

DE:
Yes, there is merit in clarifying the circumstances under which the ECB may have two votes.

FR:
No : we are not in favour of giving two votes to the ECB: it is preferable to maintain a balanced approach of the institutions, which confers 1 vote per entity.

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	IT: Yes, we agree with the clarification. PL: Yes. This issue needs to be clarified. We support the view that EBC could have two votes in two capacities: as a prudential supervisor of the issuer and as a central bank.
5. Role of Central Banks	
Q5.1 Do MS agree with the Presidency proposals to complement/clarify the ECB proposals as regards Central Banks powers?	MT: Yes ES: We agree with and welcome the presidency proposal. SK: Yes, we agree. HU: Yes, we agree. FI: Agree. SE: We support the proposal to provide central banks with the power to issue a binding opinion on the authorisation of ARTs, as regards the conduct of monetary policy and the promotion of smooth operation of payment systems, and support the PCY proposed clarifications in this

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	respect. A general note on this section is the importance of ensuring equal treatment between the ECB and the relevant central banks of Member States whose currency is not the euro. LV: Agree. CZ: Yes, we agree with the Presidency proposal. We would like to point out that the role of the central banks of non-euro area countries needs to be clarified. Nevertheless, the involvement of central banks in the ART or EMT approval process is questionable as real effect of EMT and ART on monetary policy is still uncertain. AT: AT: We would like to refer to our answers below. Furthermore we are still assessing the proposals in detail. With regard to the authorisation of ARTs we believe that the positions and concerns put forward by the ECB within the authorisation process will play a key role and are duly taken into consideration by the NCA/EBA also if the opinion is not fully binding. We are convinced that if the ECB expresses strong concerns this will not be disregarded. RO: We think that some clarifications and details are needed for a better application of Central Banks powers. NL: We firstly like to ask for clarification: when referring to “Central Banks”, does the PCY mean with regard to the Eurozone only the ECB, or also the national central banks of the Eurozone
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	countries? If it is the latter, how would the respective mandates on the smooth functioning of payment systems relate to one another? The Dutch Central Bank also has its own legal mandate on the smooth functioning of the national payments system, whereas the ECB mandate is primarily focused on the European Union as a whole. As for the proposed clarification that NCAs are precluded from rejecting authorisation on the basis of monetary policy concerns as this is an area of exclusive competence of central banks, we fully agree with this. We also agree with the proposed amendment of MiCA by including the criterion of smooth operation of payment systems for rejecting an authorisation of an issuer of ARTs and for requiring corrective measures within the context of the modification of the white paper. It is somewhat unclear to us whether the PCY actually proposes to use the term ‘veto power’ instead of ‘binding opinion’ as proposed by the ECB with regard to the authorisation of ARTs. We do not consider the usage of the term ‘veto power’ to be entirely accurate. There might also be situations where an authorisation is refused on multiple grounds, including the ground that the ART poses a serious threat to the conduct of monetary policy or the promotion of the smooth operation of payment systems. In such situations the binding opinion of the ECB is one important, if not decisive, aspect among several prompting the NCA to refuse authorisation but factually it is not the ‘veto’ exercised by the ECB in itself leading to such a refusal. Another, more fundamental, reason for adopting the term ‘binding opinion’ as proposed by the ECB instead of ‘veto power’ is that no actual voting takes place. IE: We would support clarification of roles. ECB opinion on this matter seems adequate and justified. ECB (Eurozone) and other CBs’ should play stronger role in authorisation.
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	In particular, we would like to highlight the role of CB's as supervisors of CI's. 1. The design of MiCA does not appear to take account of the diverse range of entities within its ambit. Specifically, in the case where existing credit institutions issue a significant ART or significant EMT, the proposed structure may not be appropriate for credit institutions as they are already subject to a clearly defined and rigorous supervisory regime led by the ECB/NCA. There are several gaps in the MiCA framework for such a scenario, including the need for greater clarity on how these several regimes would interact and clarity on implications for capital requirements. Additionally, how could the EBA act as both standard setter and supervisor of a credit institutions that issue a significant ART? 2. A proposal may be different approaches for different categories of entity. In particular, where credit institutions issue a significant ART, such activity would be only one of many activities conducted by those credit institutions, which are already subject to holistic supervision within the SSM framework. Therefore, it would be better if they were to be supervised under the existing supervisory regime led by the ECB/NCA, with the EBA maintaining a standard setting role incorporating additional reporting by NCAs specifically in relation to ARTs, if deemed necessary. EE: Agree DE: The arguments set forth by the ECB in its opinion seem justified, i.e. the ECB/NCBs should have a stronger role in the authorisation process, where monetary policy and operation of
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	payment systems are concerned. To this end, we support clarification of the respective roles of the ECB/NCBs. FR: Yes. Having regard to the fact that ART could be used as monetary substitutes, it is important to ensure that it has no impact on the conduct of the monetary policy. As monetary policy concerns is an area of exclusive competence of central banks, the ECB should indeed be granted to possibility to veto the authorization of an ART that threatens monetary policy. IT: Yes, we support the proposal. PL: We agree with the proposal of additional powers of central banks suggested in the ECB opinion. Central banks should be able to issue a binding non-authorisation opinion (“veto power”) for ARTs on grounds of monetary policy and smooth operation of payment systems.
Q5.2 Do MS agree with the ECB proposals as regards the consultation of central banks on the identification of sART and sEMT?	MT: Yes ES: Yes, we do. SK: Yes, we agree. HU: Yes, we agree.

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	FI: No opinion. SE: We're in principle positive towards a clearer and in some respects enhanced role for central banks in identifying sARTs and sEMTs. "Consult" could benefit from some clarification. LV: Agree. CZ: Yes, we agree with the ECB proposal. AT: AT: We see merits in the cooperation between ECB and NCA with regard to the significance of EMTs and ARTs. RO: Yes, we agree. NL: Yes, we agree with an obligation to consult the ECB or the relevant central bank of Member States whose currency is not the euro. Seeing that significant ARTs and EMTs could have implications for the conduct of monetary policy and the smooth operation of payment systems, involvement of the ECB or relevant central bank would be justified.
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	In addition to this, the criteria proposed by the Commission for qualifying ARTs and EMTs as significant reflect financial stability issues, monetary transmission and sovereignty concerns. Hence it would make sense to consult central banks on the question whether the criteria are met. IE: Support the ECB proposal. We would like to seek clarity irt why EMT's may be considered significant – or not – if they represent tokenised e-money, whether it be in Eurozone or not, and thus should be considered significant? EE: Agree DE: See above. FR: Yes: Considering that the impact of an ART/EMT on the payment system is an important element to assess the systemic importance of an ART/EMT, we support the consultation of the ECB. IT: We are open to consider such consultation, nevertheless we deserve more information on how it would work and its legal implications. PL: Yes, we support this proposal.
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Q5.3 Do MS agree with the Presidency proposal as regards the consultation of the ESCB on the RTS foreseen in Titles III and IV?	MT: Yes ES: Yes, we do. SK: Yes, we agree. HU: Yes, we agree. FI: Agree. SE: Yes. LV: No objection to consulting ESCB. CZ: Yes, we agree. however we have concerns that it could lead to delaying of RTS adoption. RO: Yes, we agree.
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	NL: Yes, we agree. IE: We can preliminary support this proposal as it would bring clarity, notwithstanding that this proposal may change if other changes are made in relation to other elements of the supervisory framework. EE: Agree DE: See above. FR: Yes. In view of the competences of the ESCB under the Treaty and statutes, we agree to have the direct involvement of the ESCB in the preparation of the regulatory technical standards related to its competences, foreseen in Title III and IV. In order to prevent the potential creation of parallel sets of rules, the EBA, the ESMA and the ESCB should cooperate closely when preparing the relevant draft technical standards. The access to information by the ECB and the NCBs is crucial when fulfilling their tasks relating to the oversight of clearing and payment systems IT: We deserve more details in order to ascertain the proposal. In particular, we would ask the Presidency to confirm, as explained during the last WP meeting, that such a consultation would not be for all RTS or but just for those specific aspects that are included in the ESCB mandate.
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	PL: Yes, we agree.
Q5.4 Do MS consider necessary to increase the intervention of central banks in other areas? If yes, which?	MT: No SK: We currently do not see necessity to increase the intervention of central bank in other areas. HU: No, we do not consider necessary to increase the intervention of central banks in other areas. FI: No opinion. SE: Not at this stage. LV: We do not see need for this. CZ: No, we see no need for such an increase. RO: At this time, we have not identified other areas in which the intervention of central banks would be necessary.

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NL:

No, we do not consider this to be necessary.

IE:

Instead of looking at increasing intervention of central banks in other areas, we would like to draw attention to the potential risks attaching to CI issuing ART's without requiring authorisation.

MiCA sets out that credit institutions are not required to seek separate authorisation to issue an ART or a significant ART and credit institutions should remain **subject to CRD, even when they issue ART (Article 15)**. However, under MiCA, such issuers must produce and submit a White Paper for approval to their NCA.

Under CRD, credit institutions are licensed on the basis of a **programme of operations**. If a credit institution wishes to start issuing an ART or significant ART, this activity should be considered as a substantial change/extension of that programme of operations. As such, credit institutions should demonstrate their adherence to any regulatory requirements that go above and beyond their standard authorisation. Furthermore, for credit institutions, it is unclear in MiCA how to align the prudential requirements imposed by MiCA with those imposed by the CRD?

However, the main risks that ARTs pose focus on financial stability and monetary sovereignty. Therefore, the question is why these risks are considered less when a credit institution issues such assets. Consider the potential scenario where a Bigtech company purchases a credit institution for the purpose of issuing ARTs and thus avoiding the requirement in MiCA to seek authorisation as an issuer. Such a purchase would result in a

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qualifying holding application and any proposed ART issuance would have to be reviewed in the context of CRD article 23.1 (d).

Hence we see merit in amending MiCA to include a requirement that credit institutions seek separate authorisation from the NCA or an “extension to authorisation” when issuing an ART with the supervision of the activities being done by the NCA. We would be open to hear from the PSY or other MS as to whether they have any views in relation to their central bank’s concerns re CI’s and CRD’s.

EE:
No.

DE:
(Drafting):
(xz) Supervisors of sEMTs and sARTs shall closely cooperate with other authorities that are responsible for oversight over issuers of crypto assets, in particular where issuers are at the same time subject to oversight under the Framework for Payment Instruments, Schemes and Arrangements.

DE:
At the moment, we do not deem additional intervention rights necessary. Yet, necessity of a cooperation between supervisors of sEMTs and sARTs with other authorities – especially those responsible for oversight – should be reiterated in the recitals. One example could be the cooperation in the context of the PISA Framework (Oversight Framework for Payment Instruments, Schemes and Arrangements).

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	FR: No. IT: No, we don't. PL: A token may become a concern from the perspective of monetary policy or operation of the payment system during its lifetime, as its scale of use increases beyond what was possible to infer at the stage of authorisation. Therefore, in such a case central banks should have the power to request the relevant supervisory authority to conduct an assessment of the functioning of the token in question and possibly set higher capital requirements e.g. on the basis of stress tests.
6. Title VII: home-host relation	
Q6.1 Do MS agree that the home-host framework proposed by the Commission is broadly adequate and that no structural changes (rules on branching, for instance) are necessary?	MT: Yes the current framework is broadly adequate ES: We believe that the proposed approach is appropriate, and indeed we agree that the context of on-line operations has reduced interest in the establishment of branches. However, in the event that a passport in establishment mode (whether branch, tied agent/s, or similar) is required in the event that the CASP has a physical presence in the host MS, this would not be inappropriate given the diversity of services covered. In the case of the investment services companies, we have cases of passports in establishment mode whose branches, for example, are dedicated to the promotion and attraction of clients for the esi in origin, which offers services through "platforms". Having CASP people in Spain identified and located would greatly facilitate the supervisory tasks that could be assigned to them by the host MS. For clients, obliging CASPs with a physical presence in the host MS to opt, for example, for

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	the establishment of a branch subject to compliance with rules of conduct including, inter alia, the existence of a CCS (with its owner), would be in the interest of clients' legal certainty. SK: Yes, we agree. HU: Yes, we agree. FI: No opinion. SE: Yes, we agree that it's broadly adequate and have no major issues at this stage. LV: Support changes proposed by the Presidency. CZ: Yes, we agree. RO: Yes, we agree, but we welcome more clarity. NL: Yes, we agree that the current home-host framework does not require structural changes.
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On a separate note, we wonder why Article 89(2) requires the host NCA to inform the Commission in addition to informing ESMA, and where appropriate, EBA. Is it not more logical for ESMA and/or EBA to inform the Commission where relevant? Moreover, it could mean sharing confidential supervisory information with a political body (the Commission), which is contrary to existing practices.

IE:

We would need to understand more how “rules on branches” would work in relation to CASPS. We support the explicit need for collaboration between countries and a clear framework for dual direction of information would be ideal.

LU:

We agree with the Commission’s proposal. Especially in a sector that is digital and cross border by nature, additional rules on branches are not necessary, the focus shall be set on the cooperation between NCAs in the framework on the freedom of the provision of services.

EE:

Yes.

DE:

We suggest to include this discussion in further work on the interaction of the colleges for issuers (Q 3.1).

FR:

No. The framework governing the relationship between the host country authority and the home country authority should be completed to avoid forum shopping. In this perspective, we could, for

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example, insert into MICA provisions inspired by PSD2, which would require a payment institution applying for authorization in a member state to carry out at least part of its payment services business in that member state.

IT:

In order to grant that the choice of the home MS has clear links with the activities performed, we could evaluate the possibility of a new provision mirroring article 11, par. 3, of PSD 2.

Even though such an activity may not usually be provided through a branch, in any case we deem that the establishment of a branch should be regulated according to the usual features of traditional EU legislation, which establishes powers for the host NCA. In particular, in relation to the supervision of CASP, we are open to discuss the introduction of rules on branching similar to those included in MiFID II.

We have some reservations in relation to issuers' supervision. As already stated in our previous contributions, we believe that the criteria enlisted in article 3 (22) (b) and (c) seem too vague and that they might give issuers of crypto-assets not located in the EU too much discretion in choosing their home MS. We suggest considering more prescriptive criteria, such as the largest market in which the issuer operates in terms of capital raised and/or number of investors. Nevertheless, we believe that this issue is strictly connected to the treatment of third country issuers in Title II, therefore we reserve additional comments on the home MS definition once the treatment of third countries issuers in Title II is defined with the agreement on the Presidency's proposal.

Finally, we take the occasion to ask whether the Presidency intends to discuss the treatment of the reverse solicitation in MiCA, which is currently only addressed by recital 51 pertaining the provision of crypto-asset services. We believe that it is of the utmost importance to avoid the risk of circumvention of MiCA. In better defining the limits in which the reverse solicitation is applicable in the MiCA context, it could be useful to take advantage of the experience gained through other pieces of legislation, like the rules on the cross-border distribution of funds.

PL:

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	Yes, we agree that the home-host framework proposed by the Commission is broadly adequate. No other rules on branching for instance should be implemented as it could result in disrupting the common market. CY: We believe that it should be distinguished between the provision of the ‘passported’ services without the establishment of a physical presence in the Host Member State, on the one hand, and the establishment of a Physical Presence in a host MS, from which the services are provided online, on the other. Thus, relevant provisions may need to be drafted, in the case of the establishment of physical presence, similar to those provided for in MiFID.
Q6.2 Do MS consider important, for legal certainty, to specify which are the “appropriate measures in order to protect consumers” that the host NCA is empowered to take?	MT: ‘Appropriate measures’ are often contingent on the risks being presented (i.e. they vary on a case-by-case basis) and as such it would be difficult to specify within the Regulation. Also doing so may be restrictive. ES: We agree that the measures should be specified as they would be sufficiently broad/comprehensive. Mifid specifies in this respect: Such measures shall include the possibility to prevent offending investment firms from carrying out further transactions in their territory. However, in the case of a passport requirement where there is physical presence: it should be noted that these measures could vary depending on the type of passport chosen by the CASP (freedom to provide vs. physical presence), as is done in investment services companies (e.g. in the case of branches and tied agents in host MS, supervision

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	of organisational requirements is the responsibility of the home MS, and supervision of conduct of business rules is the responsibility of the host MS). SK: Yes, we think that Article 89 should be more specific. HU: Yes, we agree. In our opinion, it is important to follow the MiFID rules in this regard. FI: Agree with adding legal certainty. We would however prefer legal certainty to be provided via soft law instruments like opinions or guidance. Level 2 legislative instruments could also be used instead of amending level 1 text. LV: We support such clarification. CZ: Yes, we consider the specification to be very important. AT: AT: We do see advantages in specifying the “appropriate measures” for the purpose of legal certainty and clarity. RO: Yes, we agree.
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	NL: Yes, this could be done along the lines of MiFIDII, as described in the Presidency's paper. The Regulation stipulates that the host NCA <i>shall</i> take all appropriate measures. In other words, it does not provide the NCA with a discretionary power to take all appropriate measures in order to protect consumers, but imposes an obligation to do so. We therefore consider it paramount that the range of "appropriate measures" is actually defined by, inter alia/for example, including the possibility for the host NCA to prevent offending CASPs from concluding any further transactions with clients that are residents in their territory as similarly provided for in Article 86 MiFID II. IE: It is imperative to provide clarity and legal certainty in level 1 as much as possible. LU: For the sake legal certainty, we agree that the measures that the host NCA can take (i.e. precautionary measure in exceptional circumstances) should be further defined and specified in the Level 1 text. EE: Yes. DE: We support the Presidency's approach to specify what are "appropriate measures in order to protect consumers". FR:
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	Yes IT: Yes, it would be useful to align the wording to MiFID II, introducing examples of appropriate measures (including the power to prevent “offending CASPs from concluding any further transactions with client that are residents in their territories”) nevertheless there should not be a closed list. In this regard, we take the occasion to propose an alignment also with article 108, par. 1, second period of the UCITS directive. This provision gives the authorities of the UCITS host Member State the power to take action against that UCITS if it infringes the laws, regulations and administrative provisions in force in that Member State which fall outside the scope of that Directive or the requirements set out in Articles 92 and 94. We believe that the same power should be granted also in MiCA. Indeed, since MiCA provides a passport right for crypto-assets in absence of product rules, offering a crypto-asset might trigger national laws or regulations which fall outside the scope of MiCA (an example could be the tokenisation of products that may not be offered under national laws, such as cannabis). This problem was addressed in the investment funds framework through the aforementioned provision. PL: Yes, we support the idea to specify the <i>appropriate measures in order to protect consumers</i> which could be foreseen for host NCA. CY: We believe that the ban should be the last resort, following observation of a certain procedure before a supranational body, given the novelty of the assets in question. We furthermore believe that other measures such as additional content in the marketing communications for local investors and/or specific risk warnings and/or lists with explicit risk factors should precede the decision for a ban, as also a reasonable and demonstrable basis, as to the reasons why the measures taken by the Home Member State were not deemed adequate.

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WK 3403/2021 - Presidency discussion note following up on the 4th February meeting (Title III)	
2. Concept of ART: follow up of 4th February meeting: Definition of ART [...] the Presidency would like to hear MS views as regards the following definition: ‘asset-referenced token’ means a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referring to the value of any asset or a combination of assets, including to more than one or several official currency of a country, one or several commodities or one or several crypto-assets, or a combination of such assets;	IE: (Drafting): ‘asset-referenced token’ means a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referring to any other value or right or combination thereof, including one or several official currencies of a country. Art. 3 Para. 1 (3a) “Payments ART” means an asset-referenced token that refers to one or more official currencies of a country or is regularly used as a means of payment; Art. 3 Para. 1 (3b) “Investment ART” means an asset-referenced token that is not a Payments ART; IE: Following concerns from other MS in relation to “assets” not being defined in EU FS regulation or within MiCA, we would be open to support the joint DE/FR/NL/ES proposal as in drafting column. Notwithstanding our initial support for the joint proposed ART definition, we uphold our concerns that “Investment ARTs and tokenized forms of current investment financial instruments (MMF, AIFMD/ UCITS in essence are discernable by the claim being on the issuer not the reserve. Stablecoins purpose when created was to provide a stabilization

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	mechanism so they could be relied upon as means of exchange. They were not created as investment vehicles, as thus, “Investment ART” seems counterintuitive. We also want to continue to highlight that we have been unable to identify real life examples of “ARTs for investment purposes”. We are of the opinion that crypto-assets issued for investment purposes are mostly represented in Title II. IT: Although there is no specific question on this topic, we would like to express our disagreement with footnote n. 4 in the Discussion note according to which “<i>Those crypto assets which would be offered and traded in a decentralised way would not be subject to MiCA</i>”. The only stablecoins, being ART or EMT, that should be allowed in the EU are those that comply with MiCA. ARTs and EMTs that are not compliant with MiCA requirements should be prohibited. CY: (Drafting): <i>‘including but not limited to’</i> [typo]
Q2.1 Do MS agree with the amendments introduced to clarify the relation with the EMT definition (grey highlight)? One possible alternative could be to further expand the definition of EMT, by removing the expression “to be used as a means of exchange”, although it would increase differences vis a vis the definition of traditional e-money.	MT: We agree with the clarification with EMT. ES: WE have nothing against adding to the definition of ART that it is not an EMT, although we don’t believe it is <u>absolutely necessary</u>. Also, we do not agree with removing the reference to means of exchange in the EMT definition. In our view, ART which are not financial instruments hardly can have any other use than being used as means of exchange, which is why we have sustained from the beginning of

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these negotiations that requirements should be aligned with those of EMT. We find it difficult to comment on the definition of an ART whilst there is not yet an agreement on what we want ART to be, whether it will be allowed that they are used as payment instruments – and this is related of course to the discussion of the taxonomy of ART – and which rules should apply, especially regarding the claim. Once there is an agreement on this, it will be possible to comment further on what changes should be done with respect to the definition.

SK:

Yes, we agree with amendments.

HU:

(Drafting):

‘asset-referenced token’ means a type of crypto-asset that is not an electronic money token and that purports to maintain a stable value by referring to the value of any asset or a combination of assets, including to **more than one** official currency of a country, one or several commodities or one or several crypto-asset.

HU:

We do not support the deletion of the “more than one” part of the definition. We recommend restoring the original proposal with “more than one”.

FI:

(Drafting):

One legally less complex option could be to adopt the categories of an “ART with a payment purpose” and an “ART with an investment purpose”. Those two categories could cover all “stablecoins” excluding those falling under the definition of e-money under the EMD.

Alternatively there could be one category of stablecoins under the definition of ART with

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	possibly the sub-categories described by the Presidency listed. The definition of ART would cover all “stablecoins” excluding the ones which would fall the definition of e-money under the EMD. FI: We agree with amending either the ART or EMT definition to an extent which will block any loopholes. However, in case the definition of an ART is amended, we find the wording possibly somewhat confusing in case a sub-category of ARTs such as “an ART with payment purpose” is adopted. An ART with a payment purpose referencing a single currency would, in the light of these amendments, probably be an EMT. Overlap between ARTs with a payment purpose and EMTs must be avoided. It must be carefully assessed which amendment is legally the least complex; amending the definition of an ART or amending the definition of an EMT. SE: We support the proposal concerning the relationship with the EMT definition (grey highlight). We do not support the alternative writing proposal (i.e. to change the definition of EMT). LV: We agree with the amendments introduced to clarify the relation with the EMT definition. CZ: We welcome the effort of the Presidency to resolve the issue of unclear distinction of EMT and ART. However, we do not see the wording of proposed definition to be clearer. According to this proposal the difference is built on the purpose of assets. The EMT is created with the intention to be a mean of exchange and referencing the value to one fiat currency. Regarding, ART referring to the value of other assets or combination of fiat money and other assets, we
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	find the distinction to be clear enough. The only problematic issue for us it the case of ART referring to the value of one fiat currency and possibly the ART referring to the value of more fiat currencies and being mean of exchange. In such a case the only difference is in the intention to be/no to be a mean of exchange, which is difficult to assess. Is it the decision of the issuer if the purpose of crypto asset is to be used as mean of exchange? Or shall the competent authority evaluate the real purpose? If there are stricter requirements for EMTs, issuers would probably choose the option of the ART. We suggest building the distinction of ART and EMT on the inclusion of fiat currency in the claim/reserve. If there are ONLY fiat currencies (one or more) the crypto asset shall meet the definition of EMT regardless the purpose presented by the issuer. (The possibility of opt-out from EMT after the assessment of NCA is also negotiable). If there are any other assets different from fiat currency the crypto asset shall meet the definition of ART regardless the purpose. (Here it is also possible to create a mandate for NCA to monitor the use of such ART and if the payment purpose is proven, crypto assets would move from the category of ART to the category of EMT). To sum it up, we would support rather the alternative proposal to expand the definition of EMTs. AT: AT: In principle we agree with the phrase included “that is not an electronic money token and” as this creates a certain level of delineation between ARTs and EMTs. Nevertheless, we are not in favor of opening ARTs to a reference of only “one” official currency. From our point of view, it is not reasonable to create on the one hand further differentiations between ARTs and EMTs and on the other hand to blur the difference with opening ARTs to a single currency
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	reference. Furthermore, we oppose to remove the expression “to be used as means of exchange”. RO: We believe this would be a step in the right direction and it could be followed by bringing more clarity to the definition of ART, in the sense of presenting that ART can be of two different types: either have a payment purpose, either have investment/other purposes. However, we have doubts that there could be a token referring only to one official currency of a country that could not be categorised as EMT (if not being able to be used for payments, than such a CA should actually be categorised as deposit and only be issued by credit institutions). NL: While we understand the issue with regards EMTs, we fear that this might open up opportunities for regulatory arbitrage. How can a supervisor decide beforehand whether a token is or is not used as a means of exchange, especially during the authorisation process? Does it suffice when an issuer states in its white paper that it does not intend for its asset to be used for payments? Furthermore, we really cannot think of a token that references to a single currency, that will or can only be used for investment purposes and not for payment purposes. We would rather assume that all tokens that refer to a single currency are intended to be used as a means of payment, which means that they always will be an EMT. IE: See Q2 above
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	LU: We would like to express our reservation concerning a negative scope and cross-references in the definition. Defining ARTs in relation to EMTs might not be the most reliable approach as it would leave room for interpretation and classification on a case by case basis. In order to guarantee legal certainty and to avoid ambiguity we would rather support defining each term individually and if necessary explaining the differences in a recital. EE: Generally, agree. There may be difficulties in delimitation. DE: (Drafting): See the drafting suggestions in the joint discussion paper on “Asset-backed crypto-assets used as a means of payment” proposed by FR, DE NL and ES. DE: We would agree on a cumulative solution by including both the grey highlights AND deleting the expression “to be used as a means of exchange“ as any crypto-token referring to a single official currency should prima facie be seen to serve the functionality of placing, transferring or withdrawing monetary value (see the definition of “payment transaction” in Art. 4(5) PSD II). FR: Yes. We do support proposals that strictly differentiate ART from EMT. In this regard, we think that the amendment of the ART definition ‘that is not an electronic money tokens’ can be supported.
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	IT: We could agree with the first amendment in grey (“<i>that is not an electronic money token and</i>”) in order to highlight the differences between ARTs and EMTs. On the second amendment (“<i>one or several</i>” official currencies) we would ask for a clarification: from previous Presidency observations, we understand that an instrument referencing one official currency would be qualified as ART only if other assets are <i>also</i> included in the basket (otherwise, if referencing only one currency, that instrument would be an EMT). Therefore, we would suggest revising the wording to clarify this aspect (i.e. the definition encompasses instruments referencing one currency <i>and</i> other assets). PL: In our view, if two different CA both refer to one currency (and they are both backed by the same currency), they should fall under the same category (i.e. EMT). In our view the purpose of such CA would naturally be payment, but this CA could be simultaneously used in investment purpose (despite what would be laid down in the white paper). For this reason in case of “single currency” CA the delineation between ART and EMT based on the purpose of such CA cannot be efficient (it would rather create a possibility to circumvent certain requirements). Hence, in our view, when there is a reference only to one currency (situation A in the table presented in the Note) such CA should be classified as EMT, and when there are more currencies referenced (situation C) – as ART, regardless of the declared purpose. We therefore opt for the EC proposal of ART definition (with eventual amendments indicated in the answer to Q2.2). CY: We support the idea of a clear delineation between EMTs and ARTs, the former being understood always as ‘funds’ and the latter as either a means of payment (<i>‘payment ART’</i>) or as an investment instrument (<i>‘investment ART’</i>), depending on the sub-categorisation in question. Bearing the aforesaid in mind, we support the introduction of the relevant sub-categories to the term ‘ART’. However, in no case should the definition of an EMT be relativized by the proposed distinction between “EMTs being means of exchange” and EMTs not having this function. The reason is that EMTs are ‘funds’ and these are by definition means of exchange and cannot be subject to the subjective intention of the parties to
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	the transaction in question or the individual token holder, as this would prejudice monetary policy and the official currency. We believe that by clearly distinguishing between following three categories, namely: • (E-) <u>money</u>, i.e. EMTs='funds'; • <u>Instruments of payment</u>, i.e. payment ARTs; and • <u>Investment instruments</u> ('investment ARTs'), the risk of confusion among (current or prospective) token holders is mitigated, whereas clarity and certainty of transactions is ensured. Within this context, we support the idea of not fully assimilating payment ARTs to EMTs, as these are two distinct categories, but to rather afford to payment ARTs a treatment stricter than that of investment ARTs, aiming at ensuring stability by imposing mainly liquidity risk management requirements and, potentially, a guarantee by the issuer, over and above the claim on the reserve. The reason for this differentiation is that it has to be made clear that payment ARTs do not guarantee redemption at par unlike EMTs. This way official currencies will not be undermined, as it would have been the case if payment ARTs were to be treated identically to EMTs, thus attracting the confidence of the public to payment ARTs. Furthermore, the parties to a transaction involving a payment ART will be fully aware that they are using an asset, which may be regulated and liquid, but in lieu of cash. Finally holders of investment ARTs will be fully aware that the token held is subject to the risks inherent in the liquidity of the portfolio backing the token in question. In brief, and bearing in mind the distinction between 'means of payment' for payment ARTs and 'funds' for EMTs respectively, we understand redeemability of payment ARTs as an obligation of means, strengthened by the suggested liquidity risk management provisions recommended by the ECB and a possible guarantee by the issuer over and above the claim on the reserve; conversely,
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	redeemability of an EMT is an obligation of result (obligation to always redeem at par), thus a clear distinction between ‘redeemability’ on the one hand and ‘liability’ on the other is ensured.
Q2.2 Do MS favour a broadening of the assets included in the ART definition, introducing an open list, as proposed above (yellow highlight) or do MS prefer to continue to refer “only” the assets (official currencies, commodities and crypto-assets) included in the Commission proposal, with a closed list?	MT: Allowing for ‘any assets’ will make it very difficult to effectively manage the reserve so the original commission proposal is preferred in this regard. ES: We are very much favorable to an extension of the assets considered in the definition to guarantee its future-proofness and avoidance of loopholes. SK: We prefer open list. HU: We support the introduction of an open list. Regarding the first point in the Presidency discussion note (Concept of ART: classification of the different types of “stablecoins” under MiCA) we would like to indicate that footnote 4. - which states that those crypto assets which would be offered and traded in a decentralised way would not be subject to MiCA - does not reflect the earlier discussions. FI: We agree with an open list. However, introducing an open list further emphasises the need for guidance to separate some ARTs from financial instruments.

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	SE: We see advantages with a closed list, as it would be the most clear definition and the consequences of an open list have not been analysed (for example as regards implications for reserve management). LV: We favour a broadening of the assets included in the ART definition, introducing an open list, as proposed above CZ: We agree with the Presidency. The open list might bring more legal certainty and represents a more flexible solution. We could imagine variety of assets that might be served for value reference of ART, which make the open list to be the right option RO: In order not to create confusion when referring to ARTs, we prefer to keep the current proposal of Commission, with a closed list. NL: Although we favour a broadening of the assets in the ART definition, we would like to see this broadening achieved through a different way than the proposed open list. In order to avoid possible circumvention of MiCA we suggest including a reference to ‘any other value or right or a combination thereof, including one or several official currencies of a country’ instead of referring to any asset or a combination thereof. IE: See Q2 above
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	LU: We are in favour of broadening the scope of the assets included in the definition of ART and thus allowing for more innovative products to be developed. EE: Yes. DE: We agree; see also the discussion paper mentioned in Q 2.1. FR: ☐ ART means a type of crypt-asset that is not an EMT and that purports to maintain a stable value by referring to the value of any asset or a combination of asset, including (one or) several currency official currency of a country, one or several commodities, or one or several of such assets ☐ We support a broadening of the scope of assets in the definition of ART to avoid any loopholes that might result from a restrictive list of assets. However, we would like to comment on the grey part "one or more several assets": the "one IT: As explained in our previous answer, we believe that it is necessary to agree on the more general approach on ARTs before introducing any change. With regard to the proposed amendment ("<i>any asset or a combination of assets, including to</i>"), we highlight the importance of assessing whether this proposal could imply the unintended consequence of reserves composed of too volatile and too risky assets, making it more challenging to manage the reserve.
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	PL: Proposed changes provide a very broad definition of the ART. An open list of assets to which a value of ART refers to could be helpful and more appropriate in the context of technology neutrality and many different business model. In our view, to the extent possible, if a product is designed to serve investment purposes or its value is directly linked to the value of financial instruments (similarly as with derivatives or investment units) it shall fall into financial instruments category and be subject to MiFID/MiFIR requirements. CY: We support the idea of an open list, as the introduction of the sub-category of investment ARTs will catch arrangements that are neither <i>EMTs- 'funds'</i> nor <i>payment ARTs-means of payment</i> and which would have otherwise remained out of MiCA's scope, despite their regulatory importance. However, the sub-category of <i>payment ARTs</i> should, in our view, be clearly defined as a referenced reserve comprising of more than one official currencies or a pool of more than one official currencies combined with other highly liquid assets. Conversely, investment ARTs should form a residual category, with flexibility as to the composition of the reserve.
2. Concept of ART: follow up of 4th February meeting: Relation between the liability of ARTs and correspondent reserve	
Q2.3 Do MS have objections to the several proposals described above to increase the prudential requirements of ART issuers? Do MS have additional proposals?	MT: No, Malta has no further objections or comments ES: The proposals sound fine, as do the contributions made by the ECB. Although, again, we will be in a better position to comment on the precise measures once there is a final view on what we expect ART to be.

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	SK: We currently do not have objections. FI: We agree with the following position of the Presidency: “it is the issuer that holds the liability and the claim/liability is against the issuer, not the reserve”. SE: We support the introduction of more safeguards like the ones ECB has proposed. We particularly support the proposal on concentration risks. Regarding the proposal on stress tests we question whether it is proportionate to impose this on all ARTs, or whether the requirement should only apply to significant ARTs. We do not believe that NCAs should have the right to lower the capital requirements. LV: We don't have objections to this. CZ: We are generally of the opinion that the ART must be convertible to its reserved asset and the ART shall represent secured liability. We agree with the necessity to keep low or no mismatch between the liability and reserves. Thus, we support Presidency in clarifying presented issues. AT: AT: In principle we are open to make MiCAR a robust framework. Nevertheless, the principle of proportionality needs to be taken into consideration.
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	RO: We have no objections. NL: We are strongly in support of the ECB-proposals to increase the prudential requirements of ARTs issuers by requiring 1) stress testing, 2) addressing concentration risks and 3) setting further liquidity requirements regarding the reserve assets. With regard to the Presidency's proposal on the new article 35 granting holders the direct right of a claim on the issuer, we suggest the drafting below. We would also like to note that while intrinsically the text includes a requirement to give holders a claim on the issuer of an ART, it is done in an indirect way (several provisions and recitals have to be read in conjunction). A direct and explicit requirement could make the text more clear. At the very least, a recital should be included to make it clear that such a requirement exists. IE: We would welcome proposals to increase requirements as proposed by ECB in its legal opinion: i) a stress test (amendment 10); ii) the need to address concentration risk (amendment 11); a iii) further detailed liquidity requirements (amendment 12) LU:
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	We consider that the own fund requirements included in the initial Commission's proposal are sufficient and adequate; we do not consider that additional prudential requirements such as those proposed by the ECB are needed. EE: No objections at the moment. DE: At this point, we have no objections against the proposals on prudential requirements as proposed by the corresponding ECB proposals. The prudential requirements should also and especially include the amendments proposed by the ECB in No. 16, which includes corresponding regulatory safeguards for issuers of significant asset-referenced tokens FR: We support the proposed amendments to strengthen the prudential requirements for ART issuers and have no particular comment at this stage on the proposed drafting. IT: We agree with introducing the additional requirements proposed by the ECB concerning stress test, treatment of the concentration risk and more detailed liquidity requirements for all ARTs. PL: No. Presented prudential requirements seems to be enough. CY:
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	Generally, we believe that payment ARTs should be subjected to such prudential requirements that would render redeemability at par possible on a best efforts basis (obligation of means), without however amounting to an identical treatment between payment ARTs and EMTs. In broad terms, this best efforts obligation can be attained by the suggested prudential requirements and, possibly but not mandatorily, by a guarantee provided by the issuer, a concept similar to that of investment funds with capital protection and capital guarantee.
MS are also invited to comment on the drafting proposals included in the Annex (sections 1 and 2) to implement the concept of secured liability and absence of mismatches. (see below)	CZ: Concerning the drafting proposal on secured liability, we do not agree with the legislative solution by the Presidency presented in the Art. 32(1a). The wording “in accordance with national law” is not clear enough for us. Should that mean discretion for MS? We are of the opinion that we should use the existing legislative framework if possible, so we propose an approach similar to the Art. 10 (1)(a) and (1)(b) PSD 2 or to refer to PSD 2 instead of using a reference to national law. We generally agree with other changes from the Presidency, and we also welcome the adjustment in Recital 37. Regarding no mismatches we support the proposed solution in the Art. 32 (1b) and (3). We also welcome the adjustment in Recital 37 DE: (Drafting): We would like to refer to the drafting proposals based on the joint discussion paper (see above Q 2.1.).

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	DE: PL: We do not have objections to the proposals aimed at increasing prudential requirements of ART issuers. However, taking this opportunity we kindly indicate that the intention behind the indicated in the note mismatch prohibition, which is further reflected in draft proposal of Art. 32(1b), seems unclear. In our view, it is impossible to combine the requirement that the reserve shall “cover at all times the risks associated to the claims from ART holders” with the possibility to invest the reserve in transferable securities. Most importantly, such securities expose the owner to many types of risk (e.g. credit risk, interest rate risk) which are not offset by the claim from ART holders. As a result, most changes in market value of reserve assets will immediately cause mismatches to occur (even when such assets would be limited only to highly liquid securities, the correlation of their returns won’t be 100%). In case of the ¥€\$ example reserves could be invested e.g. in sovereign bonds denominated in ¥, € and \$, respectively. Even if cash received by the issuer was invested in these bonds in a “reference” proportion (33¥+0,33€+0,33\$), any subsequent changes in market value of these bonds would alter the initial proportion, thus causing a mismatch. Trying to avoid the mismatch would require constant portfolio rebalancing, which would result in unnecessary transaction costs. Moreover, since transferable securities or commodities normally cannot be bought in fractions some small divergencies from the reference basket are inevitable. For this reason, we believe that some small mismatches have to be allowed, up to a certain threshold relative to the “reference” proportion.
2. Concept of ART: follow up of 4th February meeting: Right to redeem The changes proposed by the Presidency linked to the right to redeem are included in sections 3 and 4 of the Annex. (see below)	CZ: We support changes presented in Section 3 and Section 4. DE: (Drafting):

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	We would like to refer to the drafting proposals based on the joint discussion paper (see above Q 2.1.). DE: We do reiterate that it seems imperative for us to include a statutory right of redemption for all ART referencing at least in part to one or more official currencies. PL: Positive change ensuring clarification of the rights and obligations in favor of investors. If the change is not commented on then it should be deemed reasonable and necessary.
As mentioned in the email, the PCY would welcome MS views on this matter by 29 March: [3. Monetary sovereignty Q3 Do MS have concerns as regards the impacts of crypto-assets offering stability to a basket of assets with payment purposes on the monetary sovereignty? If yes, what is MS favored policy approach to address those concerns?]	MT: Given that we acknowledge the possible implications on monetary sovereignty and financial stability, we think this merits further assessment. ES: As the ECB mentioned in its legal opinion, ART and EMT have a clear monetary substitution dimension. Monetary substitution has a number of implications for financial stability and monetary policy transmission, and is hence a clear source of concern for Spain. ART, contrary to EMT, would carry their own denomination. European financial legislation has a set of rules applicable to payment instruments, namely the E-money directive or PSDII, amongst others. We see no reason why technological innovation or the use of DLT technology should change the way we regulate payment instruments, or at least do not believe this discussion should be undertaken in the MICA negotiation.

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For Spain, it is crucial that MICA does not legitimize pseudo-currencies which are not accepted as such anywhere else without having them conform to rules applicable to other payment instruments, or others that are equivalent in their effects.

Hence, if ART are seen as potential payment instruments, it is our view that they should be regulated in an identical or equivalent fashion to EMT, which in turn are regulated similarly – or more strictly – than e-money. This means, crucially, **direct claim on the issuer for the value initially paid for the token, among others**. We do not necessarily agree with the presidency in the idea that constant value redemption would in practice impede the existence of ART: there are in fact examples of stablecoins which are pegged to the dollar but maintain a reserve of crypto-assets, which could qualify under the definition of ART under the Commission's proposal while guaranteeing a constant peg to the euro or other official currencies. However, if this were the case, we believe it is preferable to close the door to these issuances rather than have to deal with its potential risks.

FI:

We replied we do not have concerns.

AT:

AT: General acceptance of domestic currency for monetary purposes in the domestic economy (as unit of account, means of payment and most liquid store of value) are expressions of monetary sovereignty. Therefore, monetary sovereignty of the Eurosystem or of other official currencies of EU member states needs to be vigorously preserved. For instance, acceptance for tax purposes, economic quality (price stability) and legal tender status should be exclusively provided to domestic official currencies. Consequently, we would be open for tools to address potential risks to monetary sovereignty of the Eurosystem.

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	RO: As we have already presented in RO Non-Paper on sovereignty, our concerns are related to the interference of MiCA Regulation (providing that crypto-assets are used as means of payment) with the monetary sovereignty from the perspective of preserving the right to regulate the use of domestic and foreign currency within the territory of the state, considering that there are non-euro area MS for which the national regulatory framework provides obligation to perform payments between residents for certain types of transactions only in domestic currency. In order to avoid possible risks of interpretation and future application of MiCA Regulation we consider that a specific provision should be included in the regulation or its recital stating that there is no interference from this point of view. Thus, our text proposal is the following: “This Regulation is without prejudice to national legislation regulating the use of domestic and foreign currencies in operations between residents adopted by non-euro area Member States in exercising their prerogative of monetary sovereignty.” EE: Yes, we agree that crypto-assets offering stability to a basket of assets with payment purposes pose an impact on the monetary sovereignty. DE: On this question, we would like to refer to the joint discussion paper (see above Q 2.1.), which exhaustively answers our position on this issue. As a general comment, we continue to share the notion that an overarching objective of regulating stablecoins is to prevent the coming into existence of new, generally accepted units of account rivalling official currencies.
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	Though individual parties may agree to use privately issued means of payment (see COM recommendation 2010/191/EU on the scope and effects of legal tender of euro banknotes and coins, 22 March 2010, Art. 1(a)), instruments not denominated in sovereign currencies shall by regulation be hindered to become generally accepted units of account. This requires at a minimum a direct connection or interoperability with official currencies by way of the principles outlined in the September joint declaration of DE, ES, FR, IT and NL – especially a statutory obligation to redeem into official currency on a 1:1 basis. Network and platform effects in digital ecosystems can lead to scenarios where private actors develop payment solutions not denominated in euro - such as global “stablecoins” - that could have monetary substitution effects and ultimately endanger monetary sovereignty by establishing parallel units of account. The issuance and usage of ARTs for payment purposes should therefore be subject to a stringent regulatory regime reflecting they have an even higher risk profile than EMT denominated in one official currency. If risks cannot be adequately controlled by prudential supervision, another option could be to limit ART usage to non-payment purposes and make sure they also do not offer opportunities for arbitrage against money market funds. FR: As we have just recalled, the protection of monetary sovereignty is a key issue in the regulation of settlement assets (EMT and ART payments). We therefore fully understand the question of principle raised by our Romanian partners. Nevertheless, a solution that would consist of giving precedence to national 'payment prohibition' measures would fragment the application of European law and would undoubtedly raise questions of application. We therefore propose that this analysis be further explored, particularly in light of the solutions being considered to better regulate assets for payment purposes. +++
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	☐ Yes, our answer is clearly and definitively yes. This issue is to us of the utmost importance : we are convince of the existence of risks for monetary sovereignty, which could be challenged by the emergence of units of account competing with the euro or national currencies. All the problems have been presented by Germany in an excellent way and we have nothing to add in this respect. It is therefore essential in our view to avoid this monetary competition through a very demanding regulation of assets for payment purposes. We believe that several measures should be explored to achieve this goal: - clearly distinguishing payment ART from investment ART ; - aligning as much as necessary the rules governing payment ARTs with EMTs - reinforcing our requirements on the reserve, following the principles of the joint communiqué of last September, with in particular the introduction of a legal right of redemption for holders of EMTs and payment ARTs, which protects the consumer from exchange rate risk - introducing a mechanism for reclassifying an investment ART as a payment ART to adapt to usage. ☐ Regarding the second option highlighted by Ge we are quite open to examining proposal, but it is important to ensure that it is legally possible to limit payment uses on European soil and that the means to enforce this prohibition are in place. ☐ As we have just recalled, the protection of monetary sovereignty is a key issue in the regulation of settlement assets (EMT and ART payments). We therefore fully understand the question of principle raised by our Romanian partners. Nevertheless, a solution that would consist of giving precedence to national 'payment prohibition' measures would fragment the application of European law and would undoubtedly raise questions of application. We therefore propose that this analysis be further explored, particularly in light of the solutions being considered to better regulate assets for payment purposes. PL: Yes, in our opinion there are plenty of concerns regarding the impacts of crypto-assets not only on the issue of monetary sovereignty, but mostly on the problem of stability of the currencies, which value
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	could be massively disrupted in the situation when ARTs, which reserves will be in held as a basket of assets shall be accepted in payment purposes. There are several arguments concerning the problem, but first and foremost (1) creating such a common payment method (2) while holders poses the right to redeem ART', with connection to (3) different purchasing power parity of different currencies, might result in massive stability issues of some currencies (especially the weaker ones). It might be problematic not in case of broad speculative actions, but also might affect currency value on a daily bases. It might not be a problem, if the scale of use of the ART' as a payment method is absolutely marginal, but due to the dynamics of the crypto-asset' market and common trend of accepting some crypto-assets as a payment method, even currently, it does not allow any assumption on the scale of possible process. Therefore option 3, relating the reserve to multiple currencies/basket of assets is unacceptable and dangerous in long term. The development of ART linked to a basket of assets, with payment purpose, can potentially be a concern from the perspective of monetary sovereignty if the scale of operations with respect to this ART is large enough. In particular, a large-scale ART, supported as a payment method by leading multinational digital services platforms, can substitute fiat currency, thereby impacting monetary sovereignty, financial stability (adverse impact on deposit base and banking intermediation) and financial markets (by volume of transactions related to management of ART reserve portfolio). In this context, it should be noted that one of concerns voiced in the case of Libra/Diem was the potential large, multinational scale of adoption, driven by the user base of Facebook/Whatsapp. Therefore we see the need for additional tools which should be available to the competent authority. At the current stage, the proposed regulation indicates that a competent authority may refuse authorisation to an issuer of asset-referenced tokens, inter alia, where the issuer's business model may pose a serious threat to financial stability, monetary policy transmission or monetary sovereignty. This assumes that the competent authority is able to accurately foresee such risks at the stage of authorisation (and possibly defend its judgement during a judicial review of its non-authorisation
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decision), which may not be possible, as the scale of risks depends on the scale of the token's use. The current draft does not seem to provide an equivalent tool allowing the competent authority (or a central bank) to react if an asset-referenced token becomes a threat to financial stability, monetary policy transmission or monetary sovereignty during its life, for example due to its widespread adoption. Therefore, we suggest that mechanisms (supervisory tools) which would allow to create incentives for the issuer to limit the scale of issuance should be included in the regulation. One such tool could be capital add-ons based on the results of the required stress tests and imposed on the ART issuer by the competent authority in cooperation with relevant central banks. Alternatively, a competent authority in cooperation with the relevant central bank (or at his request) could temporarily restrict or prohibit the distribution of such ARTs. Other tools can also be considered.

It should be noted that regulatory tools which create economic incentives for financial institutions not to attain excessive size are present in other areas of financial system. For example, while the primary objective of capital buffers for G-SIIs and O-SIIs is to ensure additional loss absorption capacity, they can also indirectly create incentives for large banks not to grow excessively through their impact on the cost of capital.

BE

Disclaimer

The views expressed below are the views of the experts. These are therefore preliminary views that need to be confirmed at political level.

1. We have taken due note of the Romania non-paper relating to the articulation between MiCA assets which would be authorised for payment purpose and the legal and policy constraints relating to the monetary sovereignty principles enshrined into EU Law and the consequences thereof into national law.

We are not willing to comment on whether or not, from the perspective of EU law/TFUE, these principles :

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	a) should bear direct impact on the permitted reference assets of crypto assets; or b) should bear direct impact on the rights embedded in the crypto asset and their economic function but we encourage the Presidency and the Commission to address the issues raised by Romania including from a legal perspective. 2. We believe that our opinion on the fundamental features that MiCA crypto assets should bear in order to be eligible for payment requires a prior opinion on whether or not the function of store of value is a prerequisite for an asset to be used as means of payment. Economically, the function of store of value (both for the economic agent and the economy as a whole) is commonly considered as a prerequisite for an asset to be used as means of payment. There are various economic theories considering the best possible outcome in terms of coexistence of alternative currencies and fiat currencies. However, we take note of the opinion expressed by Germany, France, Spain and The Netherlands (Working Paper dated 30032021), that, as emphasised by IMF senior staff, "<i>co-existence of public and private money is only feasible where private money is redeemable into official currency (digital or non-digital) at a fixed face value, and hence, interoperable</i>". 3. The positions at stake can be summarised as follows: <u>some Member States</u> believe that all ARTs with a payment purpose should bear in substance the economic function of store of value. As a result, not only they should "purport to maintain a stable value" by referring to certain assets, but they should also deliver such stable value relative to the face value at all times (i.e., they should be redeemable at par; redemption value equals face value). This would justify an alignment between ARTs' inherent features and rights and those features and rights embedded in e-money/EMT and commercial deposits (which are redeemable at face value). This outcome seems <i>prima facie</i> desirable not only in the light of monetary sovereignty and monetary policy objectives, but also in the light of consumer protection.
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	At the same time, those Member States require that the definition of ART include reference to any other value or right and not only a reference to “several fiat currencies, one or several commodities or one or several crypto-assets, or a combination of such assets”¹. - the <u>EU Presidency</u> has correctly construed these Member states’ position as questioning the relevance or validity of the category of ARTs with payment purpose. Indeed, if a “payment purpose” ART is required to “maintain a stable value” and to “be redeemable at par at all times”, then the stability of the value is truly designed by reference to a single fiat currency, which is the definition of an EMT. In other words, the MiCA assets eligible for payment purpose would only be EMTs because directly or indirectly/implicitly, the stability would be anchored into the value of a single currency. 4.First, we would like to reiterate that we share the concerns of these Member States as regards the fundamental issues that ARTs raise in terms of consumer protection, monetary sovereignty, and monetary policy transmission and ultimately level-playing field with incumbents, all the more if they become significant. 5.However, based on these policy objectives, we would like to raise the following concerns relating to the requirement of redeemability “at par at all times”: - This requirement, combined with other requirements applicable to payment ART result in a very onerous, potentially non-viable business model (or at the very least very vulnerable) which, if systemic, could cause spill-over effects on the financial system; - In the same vein, the business model <i>of the ecosystem</i> (ultimately, the issuer’s shareholders/promoters) could as a whole be profitable due to fees charged and pricing of goods and services elsewhere in the ecosystem (notably e-commerce platforms), which could lead to potential unfair, opaque consumer practices including pricing and cross-selling. But in addition, these profits will potentially not accrue
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¹ The current definition of ART included in the MiCA-proposal exclusively relates to crypto assets that purport to maintain a stable value by referring to several fiat currencies, one or several commodities or one or several crypto-assets, or a combination of such assets.

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	the ART issuer itself and directly strengthen its viability (they would accrue to service providers in the ecosystem), this whereas such issuer will struggle to generate positive revenues; c) Furthermore, if the issuer fails to redeem at par at all times in certain circumstances, then this will cause distrust and potentially result in runs which would make this payment ART more vulnerable; d) As stated by the Member States mentioned supra, <i>"this may require the issuer to put in place hedging instruments to preserve the currency risk on the reserve"</i> (p.3 of the France, Germany, The Netherlands and Spain Joint Discussion Paper); we may then end up with overly complex and risky financial structures as the hedging concerned would be designed to deliver constant (par) value; e) As suggested by the Presidency, economically an ART redeemable at par at the very least resembles an EMT. Although appearing very strict, a position whereby EMTs would solely be eligible for payment purpose could have the merits of simplicity, clarity, and diminish the cost of supervision, and propose payment assets without exposures to overly complex structures to holders. At the very least this position could also be considered for assets issued to retail holders. f) Finally, our understanding is that there was a general consensus among Member States that ARTs should not be 1:1 equivalent to EMTs as they were reluctant to promote this kind of assets as true equivalents of money. Where such assets bear a store of value function besides a payment function, they effectively compete with State money and EMTs. We remain of the view that having different treatments for ARTs with payment purpose and for EMTs is not entirely negative as soon as clear disclaimers inform the customer of the risks entailed with payment ARTs. This approach (whereby redemption at market value of the reference basket would be promoted) could naturally limit the customer appetite for large exposures on these assets, which is in our view the best outcome under MiCA.
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	Therefore, based on these concerns, our preferred option would be to safeguard the “store of value” function by imposing stability constraints on the portfolio of reference assets itself vis-à-vis the face value rather than (merely) requiring “redeemability at par at all times”. As a result, the reference assets portfolio would naturally tend to deliver such redeemability at par (potentially subject to very limited flexibility). The economic effect would thus be in substance quasi-similar. 6. This being said, should the position of these Member States be upheld, we believe that one additional element should be taken into account when analysing the best possible option: the substantial adverse side effects that a “disconnection” between the issuer’s obligation towards the holder (face/par value) and the market value of the reference assets could have. Indeed, if – as suggested by these Member States - the ART definition is extended to any type of reference assets and redeemability at par is required for ARTs without any constraints/requirements as to the portfolio of referenced assets (besides the constraints on the reserve assets), the following risks may arise: • this may set (depending on the reference portfolio) extremely onerous constraints on the issuer, endangering the viability of the business model (also due to the cost of hedging). • this could potentially adversely impact on the value (hence the stability) of the asset itself, which would be vulnerable to distrust in the event that the issuer would not be able to redeem at par in certain circumstances, whether financial or operational in nature. In particular, the asset could potentially be vulnerable to price swings (and distrust) in times where, e.g., the market value of the portfolio of reference assets would be significantly lower than the countervalue in the original purchase currency (par value). These situations could be perceived as endangering the capacity of the issuer to honour its redemption obligation to holders, hence its perceived value, irrespective of the management of the reserve. The above would be subject to parallel tracking of par value and value of reference assets, which could result in complex products (e.g. duplication of collateral pools?). For these reasons, the most reasonable options are in our view the following:
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	a. the MiCA crypto assets eligible for payment are limited to EMTs as seems suggested by the Presidency: in other words, no ART can be used as a means of payment, unless it complies with the EMT regime; as a result, the category of “ART” should include only “investment ARTs” b. the MiCA crypto assets eligible for payment are EMTs or “payment ARTs” but, besides the current reference in the definition of ARTs to promotor’s intention (“<i>purports to maintain a stable value</i>”) as to stability relative to reference assets, some constraints are set on the reference assets (at portfolio level), so that the promotor is required to demonstrate that the portfolio is effectively designed to deliver intrinsic (by design) stable value relative to face value (so that stability relative to the reference basket would naturally converge towards stability relative to face/par value, removing the disconnection discussed above). The portfolio (which could be dynamic in composition, including relative weights of assets concerned and such reference assets themselves) should therefore be highly likely to deliver stable (face) value. Redeemability at par should tbe a corollary of the primary requirement being that the (potentially dynamic) portfolio, (and ensuing management of the reserve assets) is able to deliver stable (face) value. This, combined with redeemability at par at least at regular intervals could address the above concerns relating to vulnerability to price swings and distrust (hence runs) because the reference assets would inherently be of such a nature that the construct of stable value relative to reference assets would deliver stable value towards face value expressed in a single currency. This also means that the issuer should have the right to adapt the weights and composition of reference assets (subject to competent authority prior approval) should the elected portfolio no longer permit the delivery of such stable value. Whether or not additional measures preventing universal use of payment ARTs (limiting their purchasing power to precise “contexts”: certain goods, communities/ecosystems)) should also be considered together with the option of considering such assets as funds under PSD2.
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	CZ As the crypto assets represent one of the latest trends in technologies and business, the crypto market currently does not reach sufficient size. Thus, we do not at this stage see crypto assets as threat to the monetary sovereignty. Nevertheless, we shall be ready for a dynamic development in the future. DK We believe that this issue is very relevant, but not limited to ARTs. The issue also extends to EMTs and traditional e-money with an underlying foreign currency. Therefore, we are not convinced that this can be mitigated through requirements for issuers of ARTs and EMTs, unless we are willing to restrict the underlying currencies in both ARTs and EMTs to only allow official European currencies. Unfortunately, we do not believe that this would prove effective in a blockchain context, where the number of decentralized issuance of collateralized tokens are increasing every day. We have to be wary of striking the right balance and not accidentally incentivising these business models to become more decentralised and by that complicating our possibility to enforce the rules that are meant to mitigate risks. We would welcome any suggestions on how to effectively minimize the risk of currency substitution without, at the same time, incentivising the market to develop in a more decentralised direction. EL
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We do have concerns as regards the impacts of crypto-assets offering stability to a basket of assets with payment purposes on the monetary sovereignty, especially when dealing with sARTs and sEMTs.

The issue is strongly related to our reservations as to the definitions of ARTs, and the clarity needed on level 1 text, expressed in our previous comments.

We see merit in having well defined ARTs and EMTs, taking into consideration their own characteristics and purposes. We are still not convinced whether the issues of the purpose of ART -investment or payment- and its consequences are adequately addressed.

Furthermore, the nature of new decentralized technologies, as well its rapid spread, set challenges for regulators regarding efficient supervision, as it seems impossible to limit the usability within borders.

The ECB proposal could be a starting point indeed for several solutions.

IE

Key points:

1. **Currency substitution risks:** MiCA will classify crypto-assets offering stability to a basket of assets as an Asset Referenced Token (ART). There are challenges associated with deciding the exact composition of this basket of assets, but there is a key concern regarding increased currency substitution.
2. **Risks to local monetary policy:** If a significant ART were to be routinely adopted as a local means of exchange as an alternative to the “domestic currency”, this may lead to a dilution of the effectiveness of local monetary policy for these countries. Monetary policies in these countries would be implicitly set by those countries in the “fixed basket” of currencies. This would lead to an amplification of the response of domestic interest rates to foreign monetary policy for countries where this stablecoin is used to a significant extent. This effect would be exacerbated if local persons were to switch from saving in the local currency to this stablecoin.

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| | <p>3. Volatility threats to capital flows: If a significant ART were to become widely used on an international scale, the issue of possible volatility in capital flows would remain. It is likely that there would be an increase in capital outflows from countries whose assets were not in the basket, and an increase in capital flows to countries whose assets were in the basket. As such, this may raise interest rates in “outflow” countries, and decrease them in “inflow countries”. Moreover, there are concerns that a shortage of high-quality liquid assets could impair open market operations as eligible collateral becomes scarce.²</p> <p>4. Impact on the value of currencies: Were issuers of significant EMTs / ARTs materially to adjust its holdings of a currency such as the dollar in favour of the euro, there may be concerns from an exchange rate perspective (if the reserve of that issuer were to be sufficiently large). From this perspective, the issuer may be able to distort the supply of money and the value of currencies by holding large reserves of the dollar or euro. Relatedly, purchasing government debt instruments could affect bond yields. This could affect financing conditions and ultimately affect inflation and economic growth dynamics. Furthermore, favouring debt instruments of certain countries over others could introduce asymmetries between them.</p> <p>5. Impact of wide adoption: There could be significant implications for monetary policy if an issuers significant EMT / ART were to be widely adopted. In the case of a global issuer with large reach, there is a possibility that this global firm could adopt a monetary policy following sufficient uptake by the public.</p> <p>6. Monetary policy and yield curve: From a euro area perspective, it is important to know exactly what the short-term assets will be held to back the single-currency EMT: if one member state’s assets are “over-held”, it may have implications for the monetary policy transmission mechanism and affect the yield curve and financing conditions in general.</p> |
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² <https://www.bis.org/cpmi/publ/d187.pdf>

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7. **Generating seigniorage:** Significant EMTs / ARTs could disrupt the ability of central banks to generate seigniorage³ income should widespread adoption ensue. A widespread substitution from banknotes to EMTs / ARTs could lead to a decline in central bank non-interest paying liabilities. The result could be a reduction in central bank earnings that constitute central bank seigniorage revenue. It will be the issuer and not central banks that will collect the seigniorage and in the case of the issuer it will be the interest paid on the cash on deposit or on the liquid government bonds. This loss of revenue would have implications for sovereign finances and governments should it occur. Such a threat could serve as a catalyst to speed up the issuance of central bank own digital currencies.

If we were to rank concerns, they would be:

- a. Less concerned regarding a single currency EMT
- b. More concerned regarding an ART back by basket

It is also important to consider how these scenarios play out over time. Let us use Tether as an example:

The Evolution of 'so called stablecoin' - Tether

[Tether \(USDT\)](#) is a cryptocurrency with a value meant to mirror the value of the U.S. dollar. The idea was to create a stable cryptocurrency that can be used like digital dollars. USDT is the foremost stablecoin in the crypto world. Crypto enthusiasts will tell you that holding USDT ("Tethers") is the same as holding dollars. Tether was launched as RealCoin in July 2014 and was rebranded as Tether in November by Tether Ltd., the company that is responsible for maintaining the reserve amounts of fiat currency. It started trading in February 2015.

Tether, the issuer of USDT, has now admitted that Tethers are not 100% backed by actual dollars. That is, the peg is no longer credible. Initially, Tether announced a one-to-one backing between USDT and the US Dollar. However, this has changed over time and Tether now admit that the one-to-one claim may not hold. Tether does not have 100% traditional currency backing for its reserves. It has "cash equivalents" and "loans made by Tether to third parties". Ultimately, with no central bank backing, a holder of Tether is depending on the reputation of the issuer to stand over the one-to-one backing. This is somewhat risky, particularly in times of stress.

³ Seigniorage here is defined as the profits made by the central bank by issuing liabilities at a rate lower than that received on assets. The issuance of banknotes is a large source of seigniorage revenue for central banks.

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	MiCA: From a monetary policy perspective, the introduction of MiCA is welcome, in that it brings about an infrastructure through which potential threats to monetary policy can be addressed, but there is still some degree of room for improvement in the medium term when it comes to specific regulations. Nonetheless, the infrastructure will help address monetary policy concerns on a case by case basis, with the core message being that it is necessary to consider closely the currently mandated “non-binding opinion” of the relevant monetary authority. It should be noted that specific monetary policy concerns are not addressed in a direct manner in MiCA, with references being mainly to the ability of a competent authority to refuse authorisation where an asset-referenced tokens’ business model may pose a serious threat to financial stability, monetary policy transmission and monetary sovereignty. Indeed, this safeguard states that the NCA should consult with the EBA, ESMA and if an ART references Union currencies the relevant central bank (in the case of the euro, the ECB). In this case, the draft text states that a non-binding opinion should be provided on a case by case basis by the EBA, ESMA and where applicable the ECB as to whether authorisation should occur. It should be noted that this opinion is non-binding, and as such consideration should be made as to whether this is sufficient in cases where an ART poses a significant risk to monetary policy or financial stability. This process is formalised in Article 18, and such an opinion is to be considered by the competent authority alongside the comments of the applicant issuer. It is essential where an ART or EMT makes direct reference to a currency of the union that such an opinion be strongly considered by the
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	competent authority, in that it can address specific cases where threats to monetary and financial stability may manifest itself. Additionally, Article 19 states that authorisation should be refused if there are “demonstratable grounds for believing that the applicant issuer’s business model may pose a threat to financial stability, monetary policy transmission or monetary sovereignty”. Provided that each specific case is adequately assessed from these perspectives, and weight is given to the non-binding opinion of the monetary authority, this suggests that these concerns should be addressed on a case by case basis. Reference is also made in MiCA to “significant tokens” that would raise specific challenges in terms of financial stability or monetary policy transmission should be subject to more stringent requirements. This once again provides a safeguard, but it is not clear what the criteria for more stringent requirements should be, and indeed if this relates to the non-binding decision of the ECB, ESMA or EBA referenced in point (29). Additionally the impact of an ART not backed by a union currency should also be considered. If this ART were to be heavily adopted by consumers in member states, they may face defacto “dollarization”, where transactions in the member state become increasingly dominated by a non-domestic currency. This would undermine the national monetary authority’s ability to control the local money supply, and to some extent should be considered in a more general fashion. It would be hoped, however, that this concern would be directly addressed in any case by case assessments.
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Finally it is stated that e-money tokens be redeemable at par (Article 44). To some extent this mitigates concerns regarding money creation, but it should be noted that this requires clear rules regarding the holding of reserves to ensure this demand is met.

IT

Yes, we have concerns as regards the impacts of “ART with payment purposes” on monetary sovereignty, considering that ARTs are likely to be widely used in practice as payment instruments.

As a first consideration, we believe that the potential impact of a redemption right at par value (1:1) needs to be carefully assessed. In particular, the risks (currency, market and liquidity risks) to which issuers would be exposed in case of a redemption at par value should be analysed, in order to assess **whether the provision of strengthened regulatory requirements for “Payment” ARTs would enable issuers to effectively address all such potential risks or whether, on the contrary, the redemption at par value would expose the issuer of “Payment” ARTs to greater default risks, generating unintended consequences and impairing consumer protection and financial stability.**

This concern is also related to a further issue, i.e. **the need to avoid generating any misleading reliance by the holders on the substantial equivalence between “Payment” ARTs on one hand, and EMTs** (and in general traditional payment instruments) on the other hand, with potential impacts on the conduct of monetary policy, the functioning of payment systems and the unit of account function of money. Indeed, the structural characteristics of ARTs make ARTs substantially different from EMTs and, in general, from traditional payment instruments. These considerations raise critical uncertainties as to the possibility to extend to ARTs with

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payment purposes the same redemption right at par provided for EMTs. In this regard, we would also take the opportunity to flag another concern, which pertains to **the choice of the legal denomination of this sub-category of ARTs as “Payment” ARTs, for its consequences for consumer protection and trust.** The term *payment* associated with ART may induce the holders to believe that these instruments share the same (or very similar) features of more familiar means of payments (in particular, e-money), thereby blurring the necessary distinctions between different categories of instruments. Therefore, also **name choice should be carefully assessed;** in particular, we would suggest considering alternative denominations, such as “ART with transactional purposes” or “transactional ART”.

Having said this, we could support **a redemption right for transactional ARTs** (that in our opinion should always be granted to the holders) **on the basis of the value of the underlying assets**, while **strengthening the rules on the composition and management of the reserve, on the investment policy and on other possible mechanisms that can stabilize the value of the reserve.**

Hence, we believe that **sound stabilization mechanisms of the reserve**, combined with the rules on asset custody, **would represent the main safeguard for ART holders with transactional purposes**, while also avoiding generating misleading expectations by the holders as to a supposed equivalence between ARTs and EMTs (in particular, with regard to redemption rights).

To avoid the concerns of the potential **emergence of any new “unit of account” due to a widespread use of transactional ARTs as means of payment**, the aforementioned approach should also be complemented by recognizing to the competent authorities the powers to

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intervene in order to prevent **the usage of ARTs as a new unit of account**, considering the threat to monetary stability and consumer protection. **Ongoing supervision** would play a critical role; in particular we could envisage a solution based on criteria that would enable the competent authorities to assess whether a transactional ART is likely to become a new unit of account. Such a solution may be designed **drawing on the regime already provided for significant ARTs: i.e., criteria and thresholds** should be established in L1 and further specified in L2 as indicators of the potential emergence of any new unit of account; competent authorities would be required to verify on a regular basis whether an ART meets these criteria and, in this case, conduct a supervisory reassessment so as to decide **which preventive measures are needed** (e.g. whether and how specific categories of transactions should be restrained). We acknowledge that this solution, would need to be further explored, in particular, defining the frequency of the assessment by the competent authorities and their powers (which would have an *ex-ante* nature, in order to prevent from the onset negative impacts on financial stability and consumer protection).

Therefore, we believe that a careful assessment of the potential risks and the subsequent definition of the regulatory and supervisory framework applicable to ART with transactional purposes is necessary to address all possible concerns and, in parallel with it, to effectively explore and choose between the alternative configurations of the value (initial value or market value) at which ART with transactional purpose should be redeemed.

LU

First of all, we would like to address the general issues arising from the classification of ARTs as proposed by the PT Presidency. As already mentioned during previous CWP's we are very

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skeptical as regards the creation of any new subcategory of ARTs which will add additional layers of complexity to the initial envisaged crypto-asset framework. Furthermore, ex-ante classification of ARTs based on their functionalities/purposes raises several legal and practical concerns for instance in relation to the initial identification of the purposes of the ART; the criteria used for the classification (which depends on the development of the market and the economical behavior of the crypto-asset holders) and the potential change of the ART's purpose/functionalities over the time. Therefore, in order to provide a future-proof regulatory framework that enables innovation and to keep the flexibility for a yet developing new industry, we do not support the introduction of such a classification in the MiCA Regulation, which may have unintended consequences.

Regarding potential impacts of crypto-assets in general on monetary sovereignty, we do not share at this point in time the view that crypto-assets could become new unit of account or erode the role of national currencies and thus we consider that in the current setup and at this early stage of development of the crypto-asset market which is still modest in size, ARTs are not likely to pose yet significant threats to the monetary sovereignty. Moreover, we should keep in mind that MiCA is the beginning of a regulatory journey in a new innovative field and that the legal framework should in consequence remain flexible and future-proof instead of being from the outset too cumbersome, complex and unworkable. On the longer term, a proper monitoring of the development of this nascent market and of the respective macro-economic and monetary indicators will be a more appropriate approach in this regard.

NL

- Yes, we do share these concerns. As underlined by the ECB Opinion on MiCA, ARTs can have an effect on monetary sovereignty and monetary policy.
- ARTs with a payment purpose could undermine monetary policy transmission of the ECB or NCBs of non-euro member states by reducing the role of the euro in the (digital) economy. The monetary strategy of the ECB or a non-euro NCB would be less effective as a

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	result. The EU can become more vulnerable to economic shocks other financial risks. Moreover, the ART could create exposure to foreign currency risks on large parts of the (digital) economy. • Secondly, the policy decisions driving an ART are based on the private interests of the investors, issuers and associated intermediaries of the ART ecosystem. These may not be in line with the strategic objectives set out by the ECB or a non-euro NCB in the pursuit of economic stability, welfare and sustainability for the EU as a whole. Furthermore, as ARTs are privately issued, it is questionable whether the policies of the ART-system are based on public values and interests, or only focused on the private interests of the issuer (and its associated partners). • Apart from monetary sovereignty, there is a further impact on financial stability by ARTs attached to a basket of currencies which are used as payment tokens. A question that should be addressed is how issuers of ARTs are incentivized to take the necessary steps to ensure liquidity and solvability of the system, which are more complicated than for e-money tokens (EMTs) as the token is supported by a more complex portfolio. In other words, how one can provide assurance that private issuers are motivated to step up as funders/lenders of last resort and inject liquidity in the system in case the ART-ecosystem has a liquidity shortfall. No assurance in this regard could make these ARTs intrinsically unstable, and could lead to negative spillover effects to the rest of the financial sector in case the ART-system is in distress. • Therefore, appropriate measures should be taken to ensure that ARTs do not undermine public monetary policies and to not endanger monetary sovereignty and financial stability. • The statement adopted in September 2020 by DE, ES, FR, IT and NL proposes measures to remedy these concerns. Furthermore, the ECB Opinion also offers potential solutions, by setting requirements on the management of the reserve, introduce stress testing and increase own funds requirements. These requirements could be accompanied by further powers for the supervisors and/or central banks to allow them to directly intervene in the issuance of new assets if monetary sovereignty or financial stability is negatively affected, for
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	example by setting moratoria on issuing new ARTs, or requiring (temporary or permanent) higher own funds requirements. SK As Euro Area MS, we think that MiCA is sufficiently dealing with our concerns regarding monetary sovereignty. In our opinion, treatment of crypto-assets should be same in Euro Area MS and non Euro Area MS.
Annex	
Section 1. Secured Liability	
<u>In Articles 32 and 33, the Presidency proposes the following adjustments:</u>	DE: (Drafting): We would like to refer to the drafting proposals based on the joint discussion paper (see above Q 2.1.). DE: The following comments therefore only complement the drafting proposals in the discussion paper.
Article 32	RO: We agree.
[...]	
<u>1a The reserve shall be insulated in accordance with national law in the interest of the holders of the ART against the claims of other</u>	HU: We do not consider this solution appropriate. As cross-border activities are likely to be significant, a harmonized solution is needed instead of leaving this issue to national law.

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creditors of the issuer, in particular in the event of insolvency;

SE:

We support this amendment.

CZ:

We do not support this drafting (please see the explanation in Q2.3.), especially because of the wording “in accordance with national law”, which seems to be unclear to us.

We propose referring to the Art. 10 (1)(a) and (1)(b) PSD 2 or use the similar approach as in PSD II.

IE:

Do not see issue with this inclusion at this point in time.

LU:

ok

DE:

This proposition would be generally in line with the wording of Art. 10(1)(a) of PSD II and indicate a further alignment with existing regulation.

IT:

We can agree with the proposed adjustment.

CY:

We understand this as a common requirement for both payment ARTs as well as investment ARTs. However, given that national law provisions may require amendments to legislation or, even more,

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	changes in jurisprudence, in order to ensure the envisaged ‘ring-fencing’, we believe that harmonized provisions should be introduced irrespectively of the possible legal form under which the reserve is organised. Furthermore, the status of the token holder as a creditor, as it emanates from the wording ‘the holders of the ART against the claims of other creditors’ needs to be clarified. We believe that the token-holder is to be considered as a creditor from the moment the redemption right is exercised. Until that point the token-holder is bound by the terms of the ‘White Paper’. Thus, it has to be ensured that a token-holder having exercised the redemption right is not a(n) ‘other creditor’ but a creditor allowed to request the dissolution of the reserve and, where a guarantee by the issuer is provided, to raise the relevant claim against the issuer.
[...]	
Article 35	RO: We agree.
1. Issuers of asset-referenced tokens shall establish, maintain and implement clear and detailed policies and procedures on the rights granted to holders of asset-referenced tokens, including any direct claim or redemption rights on the issuer of those asset-referenced tokens or on the reserve assets.	FI: There could SE: We support these adjustments. CZ: We agree with proposed change of the Art. 35(1). NL: (Drafting): 1. Issuers of asset-referenced tokens shall establish, maintain and implement clear and detailed policies and procedures on the direct right of a claim rights granted to holders of

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	asset-referenced tokens, including any other rights direct claim or redemption rights on the issuer of those asset-referenced tokens or on the reserve assets. NL: 'Any' implies that such a direct claim is optional and should therefore be deleted and replaced by 'their'. We also wonder why 'or redemption rights' is deleted given that the proposed article 35 (4a) does (still) refer to redemption rights IE: Do not see issue with this redraft at this point in time as proposed changes clarify claim on issuer (not reserve) DE: We do not agree with the proposed changes to this section as there might be situations in which the issuer (no longer) is in control of the reserve assets. In these situations, it would be advantageous for holders of ART to have an erga omnes right on the reserve assets. IT: We would like to ask for more information on the proposed deletions. In particular, we do not understand the reason for deleting the words "redemption rights". Conversely, we can suppose that the deletion of the words "or on the reserve assets" is explained by the idea that the liability is referred to the issuer, while the function of the reserve is to guarantee such a liability: we would like to know if this is the rationale for the proposed deletion.
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	We also consider that the amendment no. 13 of the ECB Opinion would modify Article 35 establishing that “<i>Holders of asset-referenced tokens shall be provided with a claim on the issuer of such asset-referenced tokens or on the reserve assets. Any asset-referenced token that does not provide all holders with a claim shall be prohibited</i>”. We would like to ask whether and how the Presidency intends to implement this amendment (in particular, if it intends to mandate a redemption right only for ARTs with payment purpose). CY: We understand that this provision corresponds to the legislative intention to render the redemption right mandatory by law regarding all ARTs and not leave it up to be determined by the issuer. We further understand that the issuer may provide, over and above the said redemption right, a guarantee claim. Thus, it has, in our view, to be distinguished between redemption, which takes place out of the assets of the reserve and a guarantee claim, which may be provided by and on the issuer, over and above the said redemption right.
[...]	NL: (Drafting): 2. Where holders of asset-referenced tokens are granted rights as referred to in paragraph 1, issuers of asset-referenced tokens shall establish a policy setting out: 2. With regard to the direct right of a claim of holders of asset-referenced tokens on the issuers of asset-referenced tokens referred to in paragraph 1, and where such holders are granted any other rights as referred to in paragraph 1, issuers shall establish a policy setting out: NL: An amendment of article 35, paragraph 1 requires an amendment of paragraph 2 as well. Also, ‘Where’ implies that there are situations in which no claim on the issuer exists.

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<u>The Presidency also proposes adjustments to the corresponding Recital 37:</u>	RO: We agree.
(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. <u>Such reserve constitutes a guarantee to the issuer liability represented by the asset-referenced token.</u> 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-referenced crypto-assets should therefore establish, maintain and detail policies that describe, <i>inter alia</i>, the composition of the reserve assets, the allocation of assets, the comprehensive assessment of the risks raised by the reserve assets, the procedure for the creation and destruction of the asset-referenced tokens, 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.	FI: We would like to ask for an assessment on whether there could be a statement included in the recital concerning the possible legal effects of classification as an AIF in a case where the issuer would offer direct claims on the reserve. SE: We believe that the consequences of structuring ARTs as secured liabilities have not yet been fully assessed and welcome further discussions on this matter. CZ: We welcome adapting the recital 37. IE: (Drafting): We prefer PSY's proposed adjustments to recital 37 two pages below: “In order to stabilise <u>cover their liability</u> the value of their asset-referenced tokens, issuers of asset-referenced tokens should constitute and maintain a reserve of assets backing <u>matching the risks reflected in such liability</u> 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

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or decrease is adequately managed to avoid adverse impacts on the market of the reserve assets. Issuers of asset-~~backed~~-referenced 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 assessment of the risks raised by the reserve assets, the procedure for the ~~creation~~-issuance and ~~destruction~~-redemption 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.

IE:

Current drafting is not clear to us. Is the proposal to mean that the “reserve is necessary as it represents a guarantee to the issuer that it can meet the liability owed on the asset-referenced-token?”

In relation to the PSY’s comment:

“such proposal would result in requirements applicable to ART to be stricter than requirements applicable to EMT as: i) Credit Institutions are not subject to those requirements when issuing e-money; ii) EMI may alternatively comply with Art. 10(1)(b) from PSD II which foresees that “funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution”;

We are not clear as to what requirements would be applicable to ART’s issuers that are *not* CI: if the requirements are stricter than those applicable to EMI’s issuing EMT’s, this would lead to possible arbitrage and a misalignment of ART’s with payments purposes and EMT’s.

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	We are keen to revise these drafting proposals after discussion of ART/EMT/payments during our meeting on April 9th. DE: Closer to the discussion paper WK 1273, we would prefer a wording more neutral in terms of civil law implications, stating that the reserve serves the function of collateralising the issuer's liabilities (as resulting from contractual arrangements and statutory obligations) against token holders, especially redemption claims. IT: We believe that establishing effective requirements on the reserve of assets is of paramount importance. Nonetheless, we would suggest intervening on this recital only after choosing the approach to follow on the definition of ART and the fundamental features of the regulatory framework applicable to them. CY: We believe that drafting clarity needs to be achieved between the redemption claim, which is granted to all holders of (payment or investment) ARTs, is satisfied out of the assets of the reserve on the basis of the applicable value at the relevant point in time and is legally segregated/insulated from the issuer on the one hand; and the guarantee, which is an additional security provided by the issuer, over and above the redemption right, on the other. Thus, the reserve constitutes the pool out of the assets of which the redemption claim will be satisfied and not the guarantee. The issuer is liable to redeem the ART out of the assets of the reserve when the redemption right is exercised and, where applicable liable to satisfy the claim of the guarantee, if and as provided.
Explanation	

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• <u>To express the idea of a secured liability the Presidency proposes to use the current requirements applicable to EMI and Payment Institutions when offering e-money (including EMT) and payment accounts, currently foreseen in article 10(1)(a) of PSD II</u> • <u>It should be noted that such proposal would result in requirements applicable to ART to be stricter than requirements applicable to EMT as: i) Credit Institutions are not subject to those requirements when issuing e-money; ii) EMI may alternatively comply with Art. 10(1)(b) from PSD II which foresees that “funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution”;</u> • <u>Nevertheless, if we would completely copy the e-money framework it would mean that, in practice, Chapter 3 from Title III on the reserve would not be applicable to credit institutions.</u>	
Section 2. No mismatches	
<u>In Article 32, the Presidency proposes the following adjustments:</u>	
Article 32	
[...]	
<u>1b The reserve shall be composed and managed so as to cover at all times the risks</u>	SE:

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<u>associated to the claims from holders of the asset referred token.</u>	We support this amendment. CZ: We agree with proposed change, however we would like to underline a possible consequence if the definition of ART will be extended as proposed by the Presidency. In such a case, problems with the calculations of the current value of the assets may occur, same as unintended mismatches. Similar challenge has been discussed for money markets funds regulation. If the proposed definition of ART were adopted, we would suggest considering a clarification in the regulation, that there is no obligation to compensate the damage caused by incorrect calculation of the current value. RO: We agree. NL: (Drafting): 1b The reserve shall be composed and managed so as to cover at all times the risks associated to the claims from holders of the asset referred token. IE: (Drafting): The reserve shall be composed and managed so as to cover at all times the risks associated to the claims on the issuer from holders of the asset referred token. LU: This paragraph is too vague;
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	IT: In principle, we agree that there should be no mismatch between the basket of referenced assets and the reserve. However, similarly to what we explain in the previous comment, we would suggest intervening on this provision only after choosing the approach to follow on the definition of the regulatory framework for ARTs. CY: We find the term ‘covered’ too abstract. More specifically, the risks associated with the (redemption) claim are, in essence, liquidity risks, since they relate to the ability of the reserve to satisfy the redemption claim of the relevant holder out of the assets of the reserve. Thus, the relevant provision can be specific in this respect, depending on the type of crypto-asset in question (investment ART, payment Art or EMT). Equally, the composition of the reserve primarily corresponds to the type of the crypto-asset (payment ART, investment ART) in question and is subsequently managed in a manner that the reserve can meet claims from token holders
[...]	
3. The management bodies of issuers of asset-referenced tokens shall ensure effective and prudent management of the reserve assets. The issuers shall ensure that each the issuancecreation and destructionredemption of asset-referenced tokens is always matched by a corresponding increase or decrease of the reserve of assets in a value equal to the face value of the asset referenced tokens created or destroyed.	FI: Whereas we support the adoption of the new terms “issuance” and “redemption”, we would ask for an assessment whether this requirement would be better included in provisions concerning redemption rights (rather than claims). SE: We support this amendment. CZ: We agree with proposed changes. LU:

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	What is the difference between the terms used? issuance/creation and destruction/redemption? Why removing the reference to the face value? the reference to the changes in the face value represented a clear method to stabilize the value of the ART as proposed in the initial Commission's proposal. IT: We need additional clarification in relation to paragraph 3. In any case, before amending the original EC proposal on this provision, we think that it is necessary, as said, to agree on the general approach to follow, in particular to ensure the protection of the holders. CY: We agree with the suggested drafting.
Such increase or decrease shall be adequately managed to avoid any adverse impacts on the market of the reserve assets.	
The aggregate value of reserve assets shall always be at least equal to the aggregate <u>value of the claims from holders face value</u> of asset-referenced tokens in circulation.	SE: We support this amendment. RO: We agree. NL: (Drafting): The aggregate value of reserve assets shall be at least equal to the aggregate value of the claims of from holders of asset-referenced tokens in circulation. NL:

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	<i>Of</i> is the correct preposition in this context. IE: (Drafting): The aggregate value of reserve assets shall always be managed to be at least equal to the aggregate <u>value of the claims on the issuer from holders</u> face value of asset-referenced tokens in circulation. IE: By saying the value be “at least” equal, it is open to misuse or misinterpretation. For example, a reserve value of 98% ART is that “at least equal” to 100%? Is 80% at least equal? Or does it have to be 100%? If not always, does it have to be equal once a month? Twice in a week? By cob of business every day? If not set to be maintained, the value of the reserve is open to risk of fluctuations (gaps that could be managed via insurance, hedging, etc but could be addressed directly on level 1 by providing clarity) DE: We disagree, as face value of tokens in circulation is easier, more encompassing and does not allow for arbitrary definitions of what would constitute a claim or not. IT:
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	Please refer to the previous comment. Besides, we need additional clarification in relation to the proposed deletion of “always”. It seems to us that the original proposal provides for a better protection of the holders. CY: The way this drafting suggestion is formulated implies that value of the reserve depends on the value of the claims and not on that of the assets included in the reserve. If the intention is to say that the value of the claim shall be calculated on the basis of the value of the reserve in proportion to the tokens held, including fractions thereof, then the suggestion needs to be reformulated.
[...]	
<u>The Presidency also proposes adjustments to the corresponding Recital 37:</u>	
(37) In order to stabilise cover their liability the value of their asset-referenced tokens, issuers of asset-referenced tokens should constitute and maintain a reserve of assets backing matching the risks reflected in such liability 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 referenced crypto-assets should therefore establish, maintain and detail policies that describe, <i>inter alia</i>, the composition of the reserve assets, the allocation of assets, the comprehensive	FI: (Drafting): Highlighted in yellow – the changes made to Art. 32(3) presented above should be reflected in the terminology of this recital as well. This means removing “creation” and “issuance” in favour of issuance and redemption. Exact amendment proposal: <i>...Issuers of asset-referenced tokens should ensure the prudent management of such a reserve of assets and should in particular ensure that the issuance and redemption of asset-referenced tokens are always matched...</i> Second amendment suggestion is also highlighted in yellow. We question whether, following the amendment replacing “destruction” with “redemption”, the wording “the procedure to purchase and redeem the asset-referenced tokens” is necessary any longer. This might constitute overlap. Exact amendment proposal: <i>...the procedure to purchase and redeem the asset-referenced tokens against...</i> FI:

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assessment of the risks raised by the reserve assets, the procedure for the creation-issuance and destruction-redemption 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.	Technical amendment in order to align wording with Art. 32(3). CZ: We agree with such a change of the recital and also with deleting of “always”. RO: We agree. IE: “at all times” has disappeared from initial (37) (see previous version in this document) We would like clarity from the PSY and hear feedback from other MS’s as to whether the lack of a period/time frame for the maintenance of the reserve is a help or a hindrance in achievement this objective – and whether risks of non-compliance (and failure) are more likely to occur. LU: This modification completely alters the nature of the proposal by removing the stable value principle and replacing it by a secured liability principle. In our view such an amendment would require an in-depth impact assessment. IT: Please refer to the comment on paragraph 3. CY: We believe that there explicit reference should be made to liquidity risk management, as the relevant risks relate to the ability of the reserve to honour redemption requests, and that its intensity varies
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	depending on whether the token in question is a payment ART (stricter liquidity risk management requirements) or an investment ART (more lenient requirements). We would like to further reiterate that a liability will exist from the moment the redemption right is exercised and the token holder becomes a creditor. To this end, the term 'liability' should be amended by the term 'potential liability'.
Explanation • <u>As proposed by the Presidency the reserve should reflect the claim holders have which corresponds to the issuer liability;</u> • <u>This would be achieved with: i) requirement on A32(3) for reflecting the issuance and redemption of ART in the reserve; ii) prohibition of mismatches, meaning that when the value of the claim increases the value of the reserve should automatically increase due to its composition; and iii) A34(3), which sets that any loss should be borne by the issuer</u> • <u>The adverse market impact is addressed in new Article 35(4a) proposed below</u> • <u>"Always" removed to allow for temporary deviations and to ensure compatibility with Art 33(2) which provides the issuer with five days to move assets to the reserve after issuance</u>	IE: <u>"Always" removed to allow for temporary deviations and to ensure compatibility with Art 33(2) which provides the issuer with five days to move assets to the reserve after issuance</u> We would like to explore with PSY and other MS whether dropping "always" and replacing with "at least" and not including a time horizon will maintain the adequate safeguards these provisions are trying to achieve. Is MICA due to allow for temporary deviations of up to 5 days to move assets in and out of the reserve and no other temporary deviations are allowed? Is the risk to ART's holders extinguished by allocating mismatched losses to the issuer (then any temporary deviations are at issuer's risk)? If so, perhaps such a statement would need to be clear.
Section 3. Quantification of rights	
<u>In Article 17, the Presidency proposes the following adjustments:</u>	
Article 17	

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1. The crypto-asset white paper referred to in Article 16(2), point (i), shall comply with all the requirements laid down in Article 5. In addition to the information referred to in Article 5, however, the crypto-asset white paper shall contain all of the following information:	
<u>(0a) a detailed description of the claim that the asset-referenced token represents for holders, including the contribution to such claim of each asset being referenced when more than one asset is referenced.</u>	SE: Ok. CZ: We agree with this proposal. RO: We agree. IE: What is meant by “detailed description”? Is the intention that the holder unequivocally knows the value of the redemption, after deduction of related costs? Will this “detailed description” be defined? This drafting proposal needs to be revisited AFTER agreement has been achieved as to whether ART’s are to further be designated as “ART investments” and “ART payments” – as the holder’s claim on the reserve may differ. DE:

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	We agree, more clarity in the accompanying document would complement any additional proposals included in the joint discussion paper, to which we refer. IT: In line with the previous comments, also here we are in principle in favour with greater clarity for the benefit of the holders. However, we would suggest intervening on this recital only after choosing the approach to follow on the definition of the regulatory framework for ARTs. PL: We agree as it is an important change in favour of investors. CY: The ART does not represent a claim, it represents a value, which is proportional to the value of the assets included in the reserve and is vested with a redemption claim, the specific features of which (conditions for its exercise, limitations etc) need to be further detailed in the white paper. Once again, we believe that the assets included in the reserve do not contribute to the claim, since the claim is established by means of MiCA provisions; but that the value of the claim is calculated on the basis of the value of the assets included in the reserve.
[...]	
Section 4. Implementation of the redemption right	
<u>In Article 35, the Presidency proposes the following adjustments:</u>	DE: (Drafting): We refer to our drafting proposals in the joint discussion paper.
Article 35	
[...]	

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4a Issuers of asset-referenced tokens shall clearly state the conditions of redemption, referred to in paragraph 1 and 4, including any fees relating thereto.

FI:

To ensure legal clarity, we propose that it be stated whether the conditions of this paragraph also apply in the case of redemption rights used under paragraph 2(b) or not.

Said paragraph: *the mechanisms and procedures to ensure the redemption of the asset-referenced tokens, including in stressed market circumstances, in case of an orderly wind-down of the issuer of asset-referenced tokens as referred to in Article 42, or in case of a cessation of activities by such issuer*

SE:

We note that there is an ongoing discussion in the working party group regarding the rights granted to ART holders according to this article, and we also note that there is a complementary drafting proposal in the document titled “MiCA PCY Drafting Title II and III” on this very same article.

We thus find it difficult to comment on this Article and welcome a complete draft proposal once the working party discussions has advanced.

CZ:

Yes, we generally agree with the Presidency concerning all changes in Art. 35(4a).

RO:

We agree.

IE:

This drafting proposals need to be revisited AFTER agreement has been achieved as to whether ART's are to further be designated as “ART investments” and “ART payments” – as

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	the holder's claim on the reserve, redemption values and mechanisms may differ between the two types of ARTs – particularly if ART payments is to be aligned with EMT. LU: Provisions concerning fees and redemption conditions are already foreseen in Art 35(2) (e) and 35 (4) second sub-paragraph. CY: We agree.
<u>If issuers offer the possibility to acquire and redeem the token by paying in funds the sum equivalent to the market value of the assets referenced by the token, the issuer shall establish policies and procedures to:</u>	HU: We would like to refer back and support previous discussions: the person who buys an ART referencing a basket of assets should have the right to redeem linked to such basket (namely at market price) rather than to the price initially paid for the ART. NL: (Drafting): If Issuers offer the possibility to acquire and redeem the token by paying in funds the sum equivalent to the market value of the assets referenced by the token, the issuer and shall establish policies and procedures to: NL: This new requirement seems to make redemption at market value a possibility, rather than the standard (as was the general opinion during the CWG), because of the word 'if'. We suggest deleting it.

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	Secondly, we wonder whether it is clear enough to simply mention ‘market value’, or whether it would also be necessary to include a requirement that the holder can redeem it in the currency of their choice. Otherwise, it could lead to situations where holders are pushed into accepting redemption in a different currency. LU: The wording of this paragraph is not clear. In this paragraph the wording “paid in funds” is used while in the next paragraph the wording “accept a payment in an official currency” is used. Terminology should be used in a consistent manner thorough the text. IT: We believe that the drafting proposal should be properly assessed only after deciding the treatment of the so-called payment ART. In any case, the drafting proposal does not seem completely coordinated with the ECB Opinion, as the amendment no. 13 of the Opinion provides that “<i>Holders of asset-referenced tokens shall be provided with a claim on the issuer of such asset-referenced tokens or on the reserve assets. Any asset-referenced token that does not provide all holders with a claim shall be prohibited</i>”. Conversely, the Presidency proposal seems to leave open the possibility that issuers are not obliged to grant holders a claim. If our understanding of the Presidency proposal is correct, we would in any case ask whether such a proposal is aimed at taking into account the ECB Opinion and, if yes, to what extent. As to the possibility proposed by the Presidency “<i>to acquire and redeem the token by paying in funds the sum equivalent to the market value of the assets referenced by the token</i>”, with specific regard to ARTs with transactional purposes please refer to our answer to Q3 on monetary sovereignty. CY: We believe that drafting clarity needs to be achieved between the redemption claim, which is granted to all holders of (payment or investment) ARTs, is satisfied out of the assets of the reserve on the basis
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	of the applicable value at the relevant point in time and is legally segregated/insulated from the issuer on the one hand; and the guarantee, which is an additional security provided by the issuer, over and above the redemption right, on the other.
<u>(a) Ensure a fair and transparent valuation of the assets referenced;</u>	CZ: Please see out comment to Art. 32 (1b). AT: AT: We would be interested to know how this procedure could work with regard to the potential exchange rate risks of multicurrency ARTs.
<u>(b) adequately manage increase or decreases of the reserve to avoid any adverse impacts on the market of the assets included in the reserve.</u>	CY: We believe that thresholds triggering relevant action must either be established in MiCA or the issuer must be required to establish them in the relevant liquidity risk management and procedures
<u>[If issuers, when selling an asset reference token, accept a payment in an official currency, they shall always provide the option to redeem the token in the same official currency.]</u>	CZ: We support this idea as well. The same official currency should be use as a first option, however, the issuer and the client should also have a possibility to deviate in the café of their agreement (to redeem in different currency). AT: AT: In our view a repayment in the official currency chosen by the investor/consumer would probably be the most feasible and reasonable way. NL:

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	We strongly support including such a requirement, which could also be linked to the issue raised in our previous comment. IE: <u>[If issuers, when selling an asset reference token, accept a payment in an official currency, they shall always provide the option to redeem the token in the same official currency.]</u> This statement would be required for ARTs payments if they are to be aligned with EMT. IT: We would support the proposal in square brackets as it aims at ensuring a correspondence between the form of the initial token acquisition and the one of the subsequent redemption. CY: This and other similar issues form part of the conditions for redemption and have to be specified in the white paper, unless a specific provision for payment ARTs only will be introduced.
<u>Explanation</u> • <u>The latter requirement, under square brackets, intends to implement a proposal by a MS in the 4th February meeting; MS are asked to provide their views.</u> • <u>The Presidency proposes to not refer to physical redemption as the Presidency did not found specific requirements to prescribe.</u>	HU: It is stated in the Presidency discussion note that Member states broadly favoured the two options (physical and financial) to implement the redemption right. As we indicated in our written comments earlier, in our opinion the default option should be the financial redemption and upon request physical redemption should also be allowed if it is feasible. SE:

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	We generally support the direction of these amendments but please see our general comments above on the article as a whole. IE: We would initially support to not refer to physical redemption for the same reasons as the Presidency found. IT: We would like to ask whether this means that physical redemption and financial redemption would both be allowed, but not further regulated, or whether only financial redemption would be allowed.
WK 3351/2021 - Presidency discussion note following up on the 4th February meeting (Title II)	
Annex	
1. Definitions of issuer and offeror	PL: Clarification was needed and was provided. Very positive change.
<u>In Title I, Article 3, the Presidency proposes the following adjustments:</u>	
(6) ‘issuer of crypto-assets’ <u>means the identifiable natural or legal person who creates the crypto-assets;</u> 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;	FI: We do not oppose the amendment but would like to note that in technical amendments of the draft regulation, the term “creation” is fairly frequently suggested to be removed and replaced with “issuance”. In order to promote terminological coherence, we would select a term other than “create” as part of the definition. If the term “create” is used however, we would regard it as terminologically coherent to use this term elsewhere in the draft regulation as well.

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	CZ: We consider the redrafted definition to be appropriate. RO: We agree. NL: (Drafting): (6) ‘issuer of crypto-assets’ means the an identifiable natural or legal person who creates the crypto-assets; NL: We propose the replacement of ‘<i>the</i>’ by ‘<i>an</i>’ in order to make it clearer and more explicit that ‘an issuer of crypto-assets’ can be more than one natural or legal person. IE: The PSY are aiming to revise the definitions to better account for the existence of three parties, namely and “issuer” and “offeror” and “a person seeking admission to trading” as per their previous notes. While doing this they aim not to undermine the content of the Commissions original proposal, looking to add practical clarity, which is ideal. Secondly, they raise an issue with the responsibility for the issuance of the white paper for General Crypto Assets, especially in the case where there is no Issuer or Offeror e.g. a non EU Crypto Asset issuance that is admitted for trading intra EU. In this case, they propose to modify the text to give effect to their policy proposal that in this case the <i>trading platform will be responsible for the white paper requirement and that the</i>
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proposal should support them in requiring that they must receive all necessary original documentation from the non-EU issuer to facilitate the issuance of a EU White Paper prior to admission to trading. Again, we think this additional clarity is welcome and thus we support the technical redrafting proposals contained here - recitals 11: revision to 6 and 7; addition of 7(a)

LU:

We understand that although a natural or legal person creating a crypto-asset through a mining process would fall under the definition of issuer of crypto asset, such person acting as offeror, will however not be subject to the rules under article 4 paragraph 1, pursuant to the new drafting of article 4 paragraph 2.

DE:

As to the proposed definitions of issuer, the proposed changes might not cover situations where entities/persons simply – without “creating” first - seek the admission of a crypto asset to a trading platform. Generally, it seems beneficial to us to further align the “offer” topics with the Prospectus Regulation, where appropriate and proportional.

IT:

We do not believe that the definition of issuer of crypto-assets should contain the adjective identifiable. The definition should be as broad as possible.

We need more information about the case where creation and destruction of token is not made by the same person.

CY:

We believe that the suggested definition focuses only on the operational role of the issuer (creation/destruction of tokens). What should also be considered, in our view, is the role of the issuer

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	(where applicable) as the person responsible for honouring the obligations associated with the crypto-asset in question, given the redeemability element vested therein. In this respect the issuer is to be (in legal terms) distinguished from the offeror, which should be the entity responsible for ensuring compliance with the MiCA (regulatory) provisions.
(7) ‘offer to the public’ means <u>a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the crypto-assets to be offered, so as to enable potential holder/client to decide to purchase those crypto-assets. This definition also applies to the placing of crypto-assets through crypto-assets services providers</u> an offer to third parties to acquire a crypto-asset in exchange for funds or crypto-assets;	MT: In the proposed definition of ‘offer to the public’ reference is also being made to placement of crypto-assets. While the placement of crypto-assets and the offering of crypto-assets to the public go hand in hand, we do not believe that they should be assigned the same definition. Furthermore, the current proposed definition will result in 2 definitions of placement (since a definition already exists in Article 3(15)). FI: (Drafting): “...communication to natural and legal persons...” FI: The definition of “placing of crypto-assets” should be amended accordingly. We would also like to ask for clarification on whether “communication in any form and by any means” is a broader concept than “marketing communications” as meant in e.g. Article 6. The amended recital 11 does not provide an exact answer to this question. We would also suggest amending “communications to persons” as “communications to natural and legal persons”. CZ: We consider the redrafted definition to be appropriate. RO:

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	We agree. NL: We prefer crossing out “client” if the term “holder” is used consistently throughout the Regulation. “Client” might create confusion in the context of a public offering. IE: See above LU: (Drafting): ‘offer to the public’ means <u>a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the crypto-assets to be offered, so as to enable potential holder/client to decide to purchase those crypto-assets. <u>This definition also applies to the placing of crypto-assets through crypto-assets services providers</u></u> LU: We do not agree with the sentence “<i>This definition also applies to the placing of crypto-assets through crypto-assets service providers</i>”. First of all, a standalone definition of placing of crypto-asset is given under Article 3 (15) and mentions in particular that “<i>placing of crypto-assets ... [...] does not involve an offer to the public or an offer to existing holders of the issuer’s crypto-assets</i>”. The combination of both definition is thus misleading.
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	Furthermore, this part of the definition is unclear and potentially problematic since it would entail that offerors are also to be considered as CASP providing the service of placing of crypto asset (art 3 (15)) and thus would be subject to Title II or III (other CA or EMT) and Title V (CASPs) PL: We suggest a small editorial amendment to the definition of the “offer to the public”: <i>‘offer to the public’ means a communication to persons in any form and by any means, presenting sufficient information on the crypto-assets to be offered the terms of the offer and the crypto-assets to be offered terms of the offer, so as to enable potential holder/client to decide to purchase those crypto-assets. This definition also applies to the placing of crypto-assets through crypto-assets services providers;</i> CY: We believe that the current definition considers the term offer as being rather informative in nature and not as a legally binding communication, where the token will be issued against the consideration to be received once acceptance of the offer is made. In our view, the said definition should be amended accordingly, in order to make clear that it is a legally binding communication from the issuer’s side.
<u>(7a) ‘offeror’ means legal or natural person, including the issuer, which offers crypto-assets to the public;</u>	FI: (Drafting): <i>“natural or legal person”</i> CZ: We consider the redrafted definition to be appropriate. RO: We agree.

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	IE: See above LU: (Drafting): 'offeror' means legal or natural person, including the issuer of crypto -assets, which offers crypto-assets to the public; LU: In order to match the definition of "issuer of crypto assets". IT: The definition encompasses both natural and legal person, while Article 4 provides that only a legal person may be the offeror. Also Article 4a states that the request for admission to trading can be made only by a legal person. Could the Presidency provide additional information regarding the possible inconsistency between the definition and the rules pertaining to the offering and admission to trading? CY: We believe that, apart from this clarification, the term 'offeror' should be amended to make clear that it refers to the person responsible for ensuring (regulatory) compliance with MiCA, whereas (civil) liability for honouring claims arising out of holding the token rests with the issuer (where applicable).
<u>The Presidency also proposes adjustments to the corresponding Recital 11:</u>	
(11) Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down	FI:

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rules for issuers and offerors of crypto-assets ~~that should be any legal person who offers to the public any type of crypto-assets as well as or persons asking-seeks~~ the admission of such crypto-assets to a trading platform for crypto-assets. The mere publication of bid and offer prices is not to be regarded in itself as an offer of crypto-assets to the public and is therefore not subject to the obligation to draw up a white paper under this Regulation. A white paper should only be required where those situations are accompanied by a communication constituting an ‘offer of crypto-assets to the public’ as defined in this Regulation.

We would also like to ask for clarification on whether a “communication” is a broader concept than “marketing communications” as meant in e.g. Article 6. In case the concepts are not identical, we would like to suggest clarifying further what are the trigger thresholds for “communication” and for “marketing communication”.

CZ:

We accept the change in the recital 11.

RO:

We agree.

NL:

(Drafting):

(11) Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for issuers [...] The ~~mere~~ publication of bid and offer prices is not to be regarded in itself as an offer of crypto-assets to the public and is therefore not subject to the obligation to draw up a white paper under this Regulation. A white paper should only be required where **such a publication those situations is are** accompanied by a communication constituting an ‘offer of crypto-assets to the public’ as defined in this Regulation.

NL:

For clarity purposes we suggest this redraft.

IE:

See above

LU:

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	(Drafting): Given the different risks and opportunities raised by crypto-assets, it is necessary to lay down rules for issuers <u>and offerors</u> of crypto-assets that should be any legal person who offers to the public any type of crypto-assets as well as or persons asking seeks the admission of such crypto-assets to a trading platform for crypto-assets. The mere publication of bid and offer prices is not to be regarded in itself as an offer of crypto-assets to the public and is therefore not subject to the obligation to draw up a white paper under this Regulation. A white paper should only be required where those situations are accompanied by a communication constituting an ‘offer of crypto-assets to the public’ as defined in this Regulation. LU: In order to match the definition of “offer to the public”. IT: We would prefer not to add the last sentences according to which “<i>The mere publication of bid and offer prices is not to be regarded in itself as an offer of crypto-assets to the public and is therefore not subject to the obligation to draw up a white paper under this Regulation. A white paper should only be required where those situations are accompanied by a communication constituting an ‘offer of crypto-assets to the public’ as defined in this Regulation.</i>”. We acknowledge that they are inspired by the Prospectus Regulation, nevertheless, in the new and different context of MiCA we are not sure that this addition is advisable, also considering its effect on possible enforcement activities towards unauthorised entities. CY: We believe that the sentence ‘<i>A white paper should only be required where those situations are accompanied by a communication constituting an ‘offer of crypto-assets to the public’ as defined in this Regulation.</i>’, clearly implies that the term ‘offer’ has the content of a legally binding
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	communication, which exists in parallel with the informative communication of the white paper. Thus the term ‘offer’ should in our view be amended accordingly
<u>Explanation</u> • <u>New definitions as proposed in the second meeting;</u> • <u>On the issuer definition the Presidency considered to refer also to the ability to destroy crypto assets; but to prevent arbitrage to Title III and IV (a case where the creation and destruction of tokens was not concentrated in the same person) such reference is avoided;</u> • <u>The definition ‘offer to the public’ was aligned with the Prospectus Regulation and in recital 14 it was clarified the relation with the service by a CASP offering exchange services (also in line with prospectus regulation - recital 14);</u> • <u>For avoidance of any doubt it is clarified that the when the offeror is the issuer it is also captured by the definition.</u>	HU: We support the Presidency proposal regarding the definitions. IE: “For avoidance of any doubt it is clarified that the when the offeror is the issuer it is also captured by the definition.” – we welcome this clarification.
2. Definition of crypto asset and utility token	
<u>The Presidency proposes adjustments to the corresponding Recital 8 as well as a new Recital 8a:</u>	
(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	FI:

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ledger technology' should therefore be defined as widely as possible to capture all types of crypto-assets, **which can have a financial use and** 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 'virtual assets' set out in the recommendations of the Financial Action Task Force (FATF)⁴. 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.

We would like to ask for clarification on what constitutes "a financial use". We would consider withholding this amendment in case it adds legal ambiguity. A case example of ambiguity can be found in the AMLD5 definition of virtual currencies whereby a requirement for this type of asset is set to be **"accepted by natural or legal persons as a means of exchange"**. To a somewhat contradictory manner, the following is stated in recital 10 of the said directive: *Although virtual currencies can frequently be used as a means of payment, they could also be used for other purposes and find broader applications such as means of exchange, investment, store-of-value products or use in online casinos. **The objective of this Directive is to cover all the potential uses of virtual currencies.*** We would discourage such misalignments between definitions and recitals. In the case of crypto-assets, if "a financial use" is not adopted in the legal definition of a crypto-asset, the wording should also be removed from the recital. Even more importantly, if "a financial use" is adopted in the legal definition, the meaning of the wording should be clarified. We would also like to note that restricting the definition of a crypto-asset to "payment and investment purposes" only has not been supported by the MS. Adding "a financial purpose" to the definition would also have a restricting effect on the scope of application, although an ambiguous one. Finally, we are of the opinion that the wording "can have" adds ambiguity as it does not clearly imply whether the financial purpose is mandatory or not.

CZ:

We welcome this change in recitals.

AT:

⁴ FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France (www.fatf-gafi.org/recommendations.html).

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	AT: We welcome the proposed adjustment, as it promotes legal clarity and certainty and emphasizes the legislative focus on financial market use cases. RO: We agree. NL: What constitutes ‘having a financial use’? As mentioned during the CWG, a tokenized car or house can also be seen as ‘having a financial use’. We suggest adding more clarification, as this would lead to questions on the scope of MiCA regarding, for example, tokenized assets. IE: We support the clarification of scope that only cryptoassets that may have a financial use be in scope of MiCA. We strongly believe that digital representations, based on DLT/blockchain technology, of “real life” assets that are not of a financial nature and thus not already regulated by financial services regulations (but fall under business conduct, consumer protection, digital markets or other existing regulations), should not be captured under MICA. Examples of such digital representations of “real life” assets may be loyalty points, events tickets, health passes, professional accreditations. DE: What qualifies as financial use? This – while its intention is definitely useful – might need further clarification, such as subcategories. We refer to the December session, where– in line with the FATF recommendations – it has been proposed to refer to payment and investment purposes not covered by existing financial market legislation.
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	PL: We note that the term “which can have a financial use” is unclear. While we agree with the exclusions from the scope of MICA proposed below (e.g. lack of transferability, non-fungibility coupled with non-fractionability etc.) the additional term “financial use” may make the scope less clear (e.g. should the conditions such as non-transferability be considered as aspects of “lack of financial use”, or should they be considered separately?) CY: We agree with the concept of only admitting crypto-assets (‘CAs’) that have a financial use in MiCA’s scope of application. However, we believe that a clear distinction has to be drawn between crypto-assets that are excluded and those that are exempted (Art.4) from MiCA. Thus, CAs without financial or those CAs not being transferable are, in our view, excluded and cannot become MiCA-relevant, including by not being able to be admitted to trading (which would otherwise imply financial use per se). Given the need to achieve clarity in this respect, we believe the element of financial use should be further analysed in the recitals together with the distinction between excluded and exempted CAs respectively.
<u>(8a) This legislation should only apply to crypto-assets that may be transferred among holders. This means that crypto-assets which are only accepted by the issuer, being technically impossible to transfer directly to other holders without the issuers permission are excluded from the scope. Examples of such crypto assets may include merchant’s loyalty schemes that use DLT system, with the crypto-assets analogous to loyalty points.</u>	SE: The precidency or the commission are welcome to clarify if fund-like structures are categorized as ART or other crypto-asset. If classified as other crypto assets, SE see a risk the following sentence may lead to the perception that fund-like structures are out of scope. <i>“This means that crypto-assets which are only accepted by the issuer, being technically impossible to transfer directly to other holders without the issuers permission are excluded from the scope.”</i>

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- SE see a risk that the examples may outdate the recital.

CZ:

We do not understand the recital well. Why could not be loyalty points transferred to another person? From our point of view, transferability is not the decisive character, but the tradability is.

Thus, the character of tradability should be included into definition of crypto-assets. We would suggest changing this recital by giving the characteristic of “tradability” as the major characteristic for application of MiCA.

AT:

AT: We support the introduction of the proposed recital 8a, as it promotes legal clarity and certainty.

RO:

We agree.

NL:

(Drafting):

(8a) This legislation ~~shall~~ ~~should~~ only apply to crypto-assets that may be transferred among holders. This means that crypto-assets which are only accepted by the issuer, being technically impossible to transfer directly to other holders without the issuers permission, are excluded from the scope. Examples of such crypto assets may include merchant’s loyalty schemes that use DLT system, with the crypto-assets analogous to loyalty points.

NL:

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	The phrasing of this recital is rather confusing. ‘Should’ MiCA not apply or ‘shall’ it not apply? Further on in the text it is stated that these crypto assets are excluded from the scope of MiCA. IE: We support this additional recital, see above. LU: (Drafting): (8a) This legislation should only apply to crypto-assets that may be transferred among holders. This means that crypto-assets which are only accepted by the issuer, being technically impossible to transfer directly to other holders without the offeror’s permission are excluded from the scope. Examples of such crypto assets may include merchant’s loyalty schemes that use DLT system, with the crypto-assets analogous to loyalty points. LU: We wonder whether this should not read “<i>being technologically impossible to transfer directly to other holders without the offeror’s permission</i>”. This would extend the exclusion to crypto-assets offered to the public and according to the new definition of offeror it would also include the issuer CY: We would like to reiterate that a distinction between CAs that are excluded and those that are exempted (Art. 4) has to be explicitly drawn: CAs that are excluded, i.e. those that have no financial use and/or are not transferable can never become MiCA relevant, since the door of admission to trading is not open to them, unlike the exempted CAs under Art. 4. To this end, the recital should clearly refer to the said
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	difference and its consequences, including providing for guidance, in order to establish the element of ‘financial use’. Furthermore, the issue of re-categorisation of an excluded CA needs to be considered: For instance the white paper (drafted pursuant to a commercial decision and not MiCA requirements) of a non-transferable/non-financial (including but not limited to the CA not being fractional), hence excluded, CA is amended to provide for transferability/financial use. Will this lead to a different assessment as to MiCA-scope inclusion of the initially excluded CA? Given its importance, we believe that the transferability issue needs to be addressed in the body of MiCa and not in recitals.
In Title I, Article 3:	
(2) ‘crypto-asset’ means a digital representation of value or rights which may be transferred and is stored electronically, using distributed ledger technology or similar technology;	IE: (Drafting): ‘crypto-asset’ means a digital representation of value or rights which may be transferred, stored and traded electronically, using distributed ledger technology or similar technology; IE: Without making direct reference to the ability of “fungibility”, by adding that the CA may be traded electronically the definition infers the same characteristics as “fungibility”. This proposed change to the definition would not apply to purchases and sales of NFT’s for example, as each NFT being unique, there is no market to consider. NFT transactions thus would be treated akin to same transactions in “real life”; art auctions, rare items sales, etc This addition to the definition however would require a definition of “trading”, which in our view should be aligned to MIFID definition. This would have the added benefit of providing

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	clarity vis a vis online / digital exchanges for non-fungible items for example, and exchanges for crypto-assets until Title II and Title III ART's with investment purposes. LU: (Drafting): (2) 'crypto-asset' means a digital representation of value or rights which may be transferred among holders and is stored electronically, using distributed ledger technology or similar technology; LU: Although we agree with a more developed explanation in the new recital 8a, we would prefer also clarifying the text of the definition itself. DE: We generally agree with the proposed changes when it comes to limiting the scope of the regulation to - transferable - crypto assets with a financial use in order to prevent a potential MiCA "overreach". CY: See our comment directly above
<u>Explanation</u> • <u>At this stage the Presidency proposes to keep the crypto asset definition and clarify the expression "may be transferred" in a new recital.</u> • <u>The cases covered in the recital already include some cases from the limited network but</u>	CZ: We do not consider the recital sufficient. The definition is not appropriate and it cannot be fixed only by amendment of recital.

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<u>not all; as proposed in the meeting the Presidency will propose to exclude additional limited networks (where the token is also accepted by a limited number of merchants with contractual arrangements with the offeror) from the scope of Title II (and Title V on custody) provided that they are not traded in a trading platform;</u> <u>In addition, it is proposed to clearly state in recital 8 that the Regulation does not intent to capture crypto assets without financial use.</u>	IE: We would like to propose the inclusion of “<i>and traded electronically</i>” as an inference to the fungibility nature of the CA covered in MICA. Re “<u>In addition, it is proposed to clearly state in recital 8 that the Regulation does not intent to capture crypto assets without financial use</u>”, we fully welcome this addition to the recital.
<u>In Title I, Article 3 the Presidency proposes the following adjustments:</u>	
(5) ‘utility token’ means a type of crypto-asset which is only intended to provide digital access to a	CZ:

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service, good or <u>a service product provided</u>, and is only accepted by the issuer of that token;	We do not even see this redrafted definition of a token utility is suitable. The word "digital" needs to be deleted from the definition, as otherwise utility tokens might only apply to digital services or digital goods. The digital access condition must be met only in relation to the owner's access to the tokens. RO: We agree. IE: (Drafting): ; and <u>being technically impossible to transfer directly to other holders without the issuer's permission are excluded from the scope.</u> IE: We do not understand the explanation given by the PSY re “to avoid overlap”: shouldn’t utility tokens without financial value and only intended to provide digital access to services and goods provided by the issuer be exempt from the legislation, with the ability of “being technically impossible to transfer to other holders without the issuer’s permission” being further explanation in recitals? We would welcome explanation on this point also on the point of “technically impossible” – is this reference meant to be in relation to the underlying blockchain platforms (ie, “technologically” impossible) or technically as it is not contractually/by design possible (like for example, loyalty points). IT: We are not sure that the proposed change is needed, nevertheless we do not see major problems in the new definition.
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	PL: Reasonable change in earlier agreed direction. CY: (Drafting): utility token' means a type of crypto-asset which is only intended to provide digital access to a service, good or a service product provided, it and is only accepted by the issuer of that token <u>and has no other legal effect than towards the said issuer</u>; CY: Our understanding is that transferability differentiates an (excluded) non-transferable token, which might otherwise have been considered as a utility token, from a MiCA-relevant utility token. In the affirmative we believe that the definition of a utility token should be amended to make clear that the rights associated with the token can only be exercised vis-a-vis the issuer. Otherwise, it could be implied that another entity might be liable to ensure that the issuer provides access to the good or service in question or assumes the obligations of the issuer
<u>Explanation</u> <u>Proposal to clarify the definition of the utility token and to avoid overlap with the clarification on recital 8a (if the holder can only transfer the token to the issuer it would not be considered able to be transferred pursuing the crypto asset definition and therefore would be outside of the scope); even if a token only confers rights vis a vis the issuer, if it is possible to transfer the token among holders it may be also</u>	

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<u>accepted by other merchants as a mean of payment</u>	
3. Article 4 and new Article 4a	SE: SE supports the proposed structure of art. 4 and 4a.
<u>Explanation on the structural change</u> <u>In order to fully distinguish the case of public offers and admission to trading the Presidency proposes to split Art 4 into two articles to ensure clarity on the applicable conditions and exemptions on the two cases.</u>	CY: We would like to reiterate the need to distinguish between excluded and exempted CAs respectively and express the view that it needs to be clearly stated that admission to trading is possible only for exempted CAs, namely those exempted under Art.4
<u>In Title II, the Presidency proposes the following adjustments to Article 4(1) and (2):</u>	
Article 4 <i>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</i>	CZ: We are generally in favour of design of Art. 4 and Art. 4a proposed by the Presidency. RO: We agree. NL: As mentioned before, we do not see any need to depart from the original Commission proposal regarding the exemptions from Title II. The new scope of the exemptions is very

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	broad and absolute, which could lead to tokens that have ‘a financial use’ to be exempted from important parts of MiCA. The original Commission’s proposal was more balanced. IE: We welcome these changes. CY: We believe, as per our previous relevant comments, that the offeror should ensure <u>regulatory compliance</u>, i.e. compliance with regulatory provisions, and not appear as also having to satisfy <u>legal/contractual</u> claims associated with the holding of the token. We believe that those two roles, even where co-inciding within the same entity, should be held distinct in MiCA and not create the impression that the offeror is also assuming civil liability. Thus, it should be made clear that the offeror ‘<u>does not offer</u>’ but ‘<u>ensures compliance of the offer with Title II</u>’ provisions. Furthermore, an EU based CASP offering its clients access to third-country platforms where CAs are traded, will it be considered as an offeror within the Union?
1. No issuer-offeror 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-offeror :	RO: We agree.
(a) is a legal entity;	IT: We have already highlighted the possible inconsistency between the proposed definition of offeror and this requirement. It may occur that an offeror is not a legal entity itself.

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(b) has drafted a crypto-asset white paper in respect of those crypto-assets in accordance with Article 5, <u>without prejudice of paragraph 4</u>;	RO: We agree. NL: (Drafting): without prejudice to of paragraph 4 IE: We welcome these changes. LU: <u>“without prejudice of paragraph 4”</u> is unclear and should be clarified which paragraph is reference to here. PL: It is unclear which paragraph 4 the addition refers to. Article 4 does not have a paragraph 4, no new paragraph 4 is proposed, while the paragraph 4 of article 5 seems wholly unrelated to the issue in question.
(c) has notified that crypto-asset white paper <u>and marketing communications</u> in accordance with Article 7;	SE: SE does not support the addition. SE does not see a need of marketing communications being notified to the NCA. RO: We agree. IE:

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	We welcome these changes.
(d) has published the crypto-asset white paper in accordance with Article 8;	
(e) complies with the requirements laid down in Article 13.	
2. Paragraph 1, points (b) to (d) shall not apply where:	AT: AT: Since we are convinced that Article 13 lays down core principles every offeror should comply with, we would like to flag that we do not fully understand why the compliance with the requirements pursuant to Article 13 is not foreseen in case an offeror intends to offer a crypto asset that is exempted as set out in Article 4 paragraph 2. IE: We welcome these changes. CY: We understand that Art. 4(2) refers to exempted CAs only, i.e. CAs being transferable and having a financial use but exempted pursuant to Art. 4(2). However, the said exemption will be waived in case of seeking admission to trading. Bearing the aforesaid in mind, it has to be made clear, if and when a MiCA-relevant utility token would fall under the exemptions, especially those contemplated under (ca) and (cb).
(a) the crypto-assets are offered for free;	
(b) the crypto-assets are automatically created as a reward for the maintenance of the DLT or the validation of transactions <u>in the context of a consensus mechanism</u> ;	SE: SE advocates that "<i>consensus mechanism</i>" shall be defined. AT:

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	AT: As there are also mechanisms different from so-called “consensus mechanisms” we would ask for a more “technology-neutral” wording. Otherwise, basically just proof of work-technologies would benefit from this exemption. RO: We agree. IE: We welcome these changes. IT: It is necessary to specify that such exemption is only linked to the initial offering and that it is not applicable in case of resale.
(c) the crypto-assets are unique and not fungible with other crypto-assets <u>and are not fractionable</u>;	FI: We support this amendment. SE: SE support the addition. CZ: We do not consider “are not fractionable” to be the decisive point. RO: We agree. NL:

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	Why is the addition of ‘fractionable’ necessary here? Please also refer to our comments below. IE: We welcome these changes. DE: Tokens that are “unique”, meaning they cannot be substituted with a similar and resembling instrument should not be included under MiCA in order to prevent the regulation form becoming vague and overbroad. However, fungibility being used to restrict the reach of MiCA might lead to delineation issues. Additionally, we would like to point out that there might exist situations in which crypto assets with clear a financial usage, that are transferable, would be excluded by simply relying on an exemption based on “unique and not fungible”. Additionally, "fungible" should be further clarified according to its financial market meaning. IT:
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	We are fine with the proposed new wording of Article 4 (2) (c) as well with the new recital (X). We believe that the exemption should remain in Article 4 and that it should not be referred to the scope of the Regulation itself. PL: We support the addition of non-fractionability condition.
<u>(ca) the crypto-assets represent the purchase of an existing good or service and enable the holder to collect the good or use the service [and have a validity limited to X months];</u>	FI: “collect” could be replaced be “redeem” RO: We agree. IE: We welcome this addition as it is intended to cater for the application of DLT/blockchain to “real life” goods or services. We would like to explore however what is the intention of “existing goods”? is it meant to cover digital representation of “existing” cinema tickets for example? If so, it will not cover the application of DLT to a future service for which and entrance ticket may be required? (ie a virtual concert)? Finally, we welcome this explanation and consider that by MICA explicitly excluding CA without financial use out of the legislation, there is no requirement to introduce a validity date. LU:

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	We agree with the proposal to not introduce a validity date for the exclusion. IT: We believe that the validity date should be introduced in the Regulation. Otherwise, crypto-assets incorporating the right to obtain a service or a product already paid might, de facto, assume a different nature, turning into “investment products”. Indeed, in case there is a very long validity date, the market value of the crypto-asset might not be linked to the value of the product or service, but rather it could result in the value attributed to it in the secondary market. PL: We would support keeping the time-limited validity, probably to 12 months in order to limit arbitrage. The proposed recital 8a covers issues mentioned in the note – a token representing software licence would typically not be transferable among holders.
<u>(cb) where the holder of the crypto assets has the right to use them in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror.</u>	MT: (Drafting): <u>(cb) where the holder of the crypto assets has the right to use them in exchange for goods and services in a limited network of merchants with contractual arrangements with the offeror, provided that the utility, value or application of the crypto-asset is restricted, solely to the acquisition of goods or services solely within the distributed ledger technology platform on or in relation to which it was issued.</u> MT: On the proposed wording of Article 4(2)(cb) – this exemption may have implications, for example it may result in small payment systems, which result from a limited network of merchants, being unregulated. In this regard, we are proposing the addition of a proviso RO: We agree.

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	IE: We welcome these changes.
(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;	IE: We welcome these changes.
(e) over a period of 12 months, starting with the beginning of the offer, the total consideration of an offer to the public of crypto-assets in the Union does not exceed EUR 1 000 000, or the equivalent amount in another currency or in crypto-assets;	IE: We welcome these changes.
(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 qualified investors.	IE: We welcome these changes.
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.	
<u>Articles 9, 12 and 14 and Title V, regarding the custody and administration of crypto assets, shall not apply to the offers listed in the first subparagraph.</u>	SE: SE notes that there is a lack of consistency regarding the proposed exemptions. We do not see the rationale of article 6 and 13 being applicable to offers listed in the first subparagraph. SE

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	see a risk that lack of compliance of article 6 and 13 will undermine the confidence in the regulation. SE prefers that offers listed in the first subparagraph is exempted from all requirements in title II. RO: We agree. NL: As mentioned in the CWG, we strongly oppose exempting these tokens from Title V, and we also oppose exempting them from arts. 12 and 14. In our eyes, it would lead to an unnecessary and unexplainable decrease in consumer protection, and would create room and opportunities for legal arbitrage. Issuers might try to legally scope out their tokens to circumvent consumer protection rules, or CASPs might claim that they do not fall under the remit of MiCA. Given previous discussions, it is unclear when a specific token has a financial use or not (or can be financialized). We see no underlying reasoning for exempting these tokens from these articles and especially Title V. IE: We welcome these changes. LU: This should be clarified. IT: We are not in favour of this proposal. In particular, in relation to Article 4 (2) (b) (creation through mining) we believe that the provision of Title V should be applicable. Indeed, the exemption under Article 4 (2) (b) is only connected to the technical aspects pertaining to the emission, but such crypto-
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	assets do have a financial connotation, and therefore their custody should be provided by duly authorised entities.
The Presidency proposes as well a new Recital:	
<u>(X) Title II should not apply to crypto-assets that are unique and not fungible with other crypto-assets, including digital art and collectibles, whose value is attributable to each crypto-asset's unique characteristics and the utility it gives the token holder, provided that they are not fractionable. Similarly, it also does not apply to crypto assets representing services or physical assets that are unique and not fungible, such as product guarantees or real estate, provided that they are not fractionable. While these crypto-assets may be traded in market places, be accumulated speculatively and, in limit cases be used as means of exchange they are not readily interchangeable and the relative value of one crypto-asset in relation to another, each being unique, is hard or impossible to predict. Such features limit the extent to which these crypto-assets can have a financial use limiting risks to users and the system and justifies the exemption.</u>	SE: On a general level, we support clarity on this issue in the recital, however, we are somewhat hesitant to enter examples of assets as this may lead to the regulation being outdated. CZ: We support this approach. It is a good step forward. However, clarifying recital should be included to avoid future misunderstandings. Are cinema tickets fungible or not? Are smart contracts fungible or not? It should be absolutely clear otherwise the definition will not work. The provided draft of the recital is also confusing. What do digital art and collectibles as crypto-assets mean in connection with the proposed crypto-asset definition? ('crypto-asset' means a digital representation of value or rights which may be transferred and is stored electronically, using distributed ledger technology or similar technology) Do these formulations mean the ownership of them through the crypto-assets on the DLT? Or the code of the digital art itself? We appreciate this proposal, but we are of the opinion that further work is necessary. RO: We agree. NL:

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	And what would happen if they were to have a financial use (as per amended recital 8)? As mentioned before, we do not see any need to depart from the original Commission proposal regarding the exemption of tokens from Title II. The new scope of the exemptions is very broad and absolute, which could lead to tokens that have ‘a financial use’ being exempted from MiCA. Furthermore, there is no recital explaining why these tokens should be exempted from Title V as well. IE: (Drafting): <u>Title II shall not apply to crypto-assets that are unique and not fungible with other crypto-assets, including digital art and collectibles, whose value is attributable to each crypto-asset’s unique characteristics and the utility it gives to the token holder, provided that they are not fractionable. Similarly, it also does not apply to crypto assets representing services or physical assets that are unique and not fungible, such as product guarantees or real estate, provided that they are not fractionable. While these crypto assets may be traded in market places, be accumulated speculatively and, in limited cases, may be used as means of exchange, they are not readily interchangeable and the relative value of one crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset is hard or impossible to predict. Such features limit the extent to which these crypto-assets can have a financial use , thus limiting risks to users and the system , and justifies the exemption.</u> IE: Please see drafting suggestion, in particular the importance of missing commas.
<u>Explanation</u>	

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• <u>Drafting in line with the Presidency proposal to</u> - o <u>Introduce exemptions linked to CA representing the purchase of goods or services and related to limited networks;</u>	PL: Agree with the comments and direction of change as it is compliant with the nature of hereby crypto-assets.
• <u>differently from the proposal presented in the paper, and following MS comments, the Presidency considers that the validity date may unduly condition some business models (for instance, a software licence can be valid for several years or even indefinitely) and it is not necessary to prevent the financial use of the token (if the crypto asset begins to be traded it will automatically be subject to Title II); Do MS agree to not introduce a validity date for the exclusion?</u>	SE: SE does not have a strong view of this matter. LV: Agree. CZ: Yes, we agree with the validity date. IE: We welcome this explanation and consider that by MICA explicitly excluding CA without financial use out of the legislation, there is no requirement to introduce a validity date. DE: We can see the case for excluding validity dates. A valid point for excluding validity dates is that this might prove to be an indirect case of ensuring technological neutrality by way of preventing the inadvertent regulation of some business models such as software licenses and the like. IT: Please see our comment above.

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	PL: Yes.
o <u>Exclude exemptions a), b) and c), as well as the two new exemptions from all requirements of Title II and Title V (only custodian services)</u>	SE: SE support that such offers are exempted from all requirements in title II. NL: See previous comments, we fundamentally disagree with exempting them from Title V.
• <u>As regards the concept of “unique and not fungible with other crypto-assets” the Presidency proposes to: i) provide further clarity in a recital; ii) introduce an additional condition (“not fractionable”) as a crypto asset “unique and not fungible” may have financial characteristics if it may be fractioned and fractions of such crypto asset can be exchanged autonomously;</u>	PL: Agree with the comment.
o <u>Pursuant the Commission proposal the exemption of unique and not fungible crypto assets also applies when they are exchanged in a trading platform (i.e. the Commission exemption did not refer to an offer but rather to the crypto asset); therefore the difference between excluding these crypto assets from scope and from Title II is very small; it should also be noted that the trading of such assets in a trading platform would be different from fungible assets, rather resembling an auction as the token is unique; indeed, even if they would not be excluded from</u>	SE: <u>Question:</u> If non-fungible tokens are exempted from the regulation, does this imply that a service provider that only offers services or trading related to non-fungible tokens also is exempted from the regulation (eg. title V – CASP)? CY: We would like to reiterate our view that an explicit distinction needs to be drawn between excluded and exempted CAs respectively. In case of a ‘grey zone’, as it can possibly be the case with ‘unique and not fungible CAs’, an explicit provision as to the status and treatment of this specific category needs, in our view to be inserted.

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<u>Art 4a there would be doubts on whether a market place hosting auctions of non fungible tokens would be a trading platform.</u>	
o <u>When questioned in the last meeting MS where split as to whether to exclude non fungible tokens from the scope. However, having in mind the background provided, the Presidency would like to take this issue again to delegations.</u>	
<u>Questions to MS</u>	
o <u>Do MS consider that an operator of a marketplace hosting auctions of non fungible tokens is providing the service “operation of a trading platform for crypto assets”?</u>	MT: No SK: In our opinion, operator of a marketplace hosting auctions of non fungible tokens is not providing the service “operation of a trading platform for crypto assets. MiCA should not apply to these kinds of marketplaces. FI: Yes, but only if the non fungible tokens are included in the definition of a crypto-asset. CZ: We do not consider that an operator of that platform shall be authorised under Title V. As it was mentioned in the discussion note, the nature of non-fungible tokens differs from fungible tradable crypto-assets. It should be clearly stated in recitals. In addition, these platforms are more “bulletin boards” than trading platforms. AT:

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	AT: No, we do not share this interpretation. RO: We agree. NL: This is possible, depending on how the auction is designed and whether the NFT can be traded afterwards. IE: This is a fast evolving area with the recent developments in NFT's transactions and we would welcome the opportunity to discuss this further with other delegations as proposed by the PSY. Let's speculate as to how would MICA treat the eventual move to an only-digital platform for the auction of items by Christy's – would the famous auction house become a trading platform for crypto-assets by purely moving to a DLT/blockchain platform to carry out its business? We are currently of the opinion that the use of technology to carry out a business should not determine, or supersede, the characteristics of the assets. The only way for non-fungible assets to be exchanged is by means of an auction or clearing house, as by their nature of being fungible, no other similar item exists to derive a value or a market from. Not even a Picasso, for the fact of being a Picasso, will have the same value as any other of his paintings: each being unique – i.e. non fungible.
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We have not had the chance to research further or review any analysis as to why a marketplace hosting auctions of non-fungible tokens would be providing the service “operation of a trading platform for **crypto assets**”. Note the use of words “operation is for a platform of *qualifying* crypto-assets. This highlights the importance of a robust and fit-for purposed **definition of crypto-assets**. **We thus would like to refer back to our drafting proposal for Title 1, article 3 (2):**

*‘crypto-asset’ means a digital representation of value or rights which may be transferred, stored **and traded electronically**, using distributed ledger technology or similar technology;*

LU:

We would agree to exclude crypto-assets that are unique and non-fungible with other crypto-assets and are not fractionable from the scope of MiCA so that an operator of a marketplace hosting auctions of non-fungible tokens could not fall under the definition of crypto asset service provider providing the service of “operation of a trading platform for crypto-assets”

EE:

No

IT:

To properly answer this question we would welcome additional information in relation to the types of marketplace that the Presidency has in mind and in particular in relation to their functioning. Nevertheless, we would like to observe that the concept of “trading platform” should be interpreted neutrally, and therefore regardless of the specific modalities of interaction within the system.

PL:

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	If the marketplace hosts only auctions of non-fungible and non-fractionable tokens, then such marketplace may be excluded from CASP definition.
o <u>Do MS agree to exclude from the definition of crypto asset “crypto-assets that are unique and not fungible with other crypto-assets and are not fractionable”?</u>	MT: Yes, crypto-assets which are unique and not-fungible may be excluded from the scope entirely SK: Yes, we agree. FI: No. We would include it in the definition but exempt the issuer/offeror from most if not all requirements. We would however consider it appropriate to regulate the ecosystems in which these non fungible tokens are traded and/or regulate services related to the issuance of such tokens. LV: We support the exclusion. CZ: We support this approach. It is a good step forward. However, clarifying recital should be included to avoid future misunderstandings. Are cinema tickets fungible or not? Are smart contracts fungible or not? It should be absolutely clear otherwise the definition will not work. The provided draft of the recital is also confusing. What do digital art and collectibles as crypto-assets mean in connection with the proposed crypto-asset definition? (‘crypto-asset’ means a digital representation of value or rights which may be transferred and is stored electronically,

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	using distributed ledger technology or similar technology) Do these formulations mean the ownership of them through the crypto-assets on the DLT? Or the code of the digital art itself? We appreciate this proposal, but we are of the opinion that further work is necessary AT: AT: In order to better understand the implications of the proposed exclusion from the definition we would like to ask PCY to explain the insertion of “(...) and are not fractionable”? Besides the intended meaning, we would be interested in the rationale behind this proposal. On a general note, we would like to recall our position on the current definition of crypto assets, as we consider it well balanced. RO: We agree. NL: We still do not completely understand why the addition of ‘non-fractionable’ is necessary. We would prefer keeping a broad definition of crypto-asset (as we presume this questions sees to the definition in art. 2), and eventually scope out specific assets in other articles (such as art. 4). As mentioned before, we would prefer sticking to the Commission’s proposal regarding the exemptions in art. 4. IE:
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	In the absence of information, research or more in-depth analysis to this effect, we are of the preliminary view that digital platforms for the purchase and sale of NFT's have different characteristics to the trading platforms for crypto-assets trading. EE: Agree IT: Please see our comment above. PL: Yes. We note that the addition of non-fractionability is necessary.
<u>Furthermore, in Title II, the Presidency proposes the following adjustments to Article 4:</u>	
<u>2a. Paragraph 1, points (b) to (d) shall not apply to any of the following types of offers of crypto assets to the public:</u>	CZ: We support proposed exemptions. Nonetheless, we are of the opinion that we could focus more on the character of tradability of crypto-assets. The inclusion of this character into definition would be much better but we would also support the exemption for non-tradable crypto-assets. As we understand the whole idea presented by PT PRES during last working parties, requirements of Title II should not cover crypto-assets which are not traded. RO: We agree. PL: Reasonable exclusion concerning prospectus regulation exclusions.

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(d) an 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;	IE: Seems reasonable
(e) over a period of 12 months, starting with the beginning of the offer, the total consideration of an offer to the public of crypto-assets in the Union does not exceed EUR 1 000 000, or the equivalent amount in another currency or in crypto-assets;	IE: We would like to open to discussion with the PSY and other MS the offer limit of EUR 1 000 000. Currently, the Prospectus Regulation limit is set at EUR 8 000 000 and the Crowdfunding Regulation at 5 000 000. Considering the proposed changes made to the original MICA proposal to strengthen scope, definitions, whitepaper content, etc we are of the opinion that EUR1 000 000 may be counterintuitive to the spirit of MiCA and the Digital Finance package: that of building an European wide digital market place. We would like to explore the potential to align the limit to the Crowdfunding Regulation (EUR 5 000 000), considering the digital reach and potential of the DLT/blockchain technology.
(f) an the offer of to the public of the crypto-assets is solely addressed to qualified investors and the crypto-assets can only be held by such qualified investors.	IE: Seems reasonable
Explanation	

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<u>The Presidency proposes to keep the treatment of the last three exemptions as proposed by the Commission</u>	
<u>2b. The exemptions referred to in paragraph 2 and 2a shall not apply if the offeror communicates the intention of seeking admission to trading in the white paper or in any marketing communications</u>	FI: (Drafting): <i>The exemptions referred to in paragraph 2 and 2a shall not apply if the offeror communicates the intention of seeking admission to trading. - -</i> FI: Paragraphs 2 and 2a exempt the issuer/offeror from any requirement to publish a white paper or communications. We would avoid using these terms and find it sufficient to deem that communication of an intention to seek trading is sufficient. We therefore suggest removing the last part of the paragraph. SE: SE supports the addition. RO: We agree. NL: (Drafting): 2b. The exemptions referred to in paragraph 2 and 2a shall not apply if the offeror communicates its the intention of seeking admission to trading in the white paper or in any marketing communications LU: (Drafting):

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	2b. The exemptions referred to in paragraph 2 and 2a shall not apply if the offeror communicates the intention of seeking admission to trading in a the white paper or in any marketing communications LU: For both the exemptions referred to in paragraph 2 and 2a, a white paper is not required. Therefore it makes little sense to mention it here. At least, this paragraph should read “if the offeror communicates the intention of seeking admission to trading in a white paper or any marketing communication”
<u>Explanation</u> • <u>The Presidency considered that having the “creation of expectations” as a trigger for the obligation of the white paper would be ambiguous and rather proposes to use “communicates the intention” which is more objective</u>	IE: Change is justifiable
3. Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for a services, 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.	RO: The definition of a utility token refers only to goods and services. Maybe to use the same wording in this case? Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for a services, 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.

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	IE: Seems reasonable LU: (Drafting): Where the offer to the public of crypto-assets, other than asset-referenced tokens or e-money tokens, concerns utility tokens for a services, goods, or products a service 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. LU: This shall be aligned with the amended definition of utility token. Furthermore, it should be clarified when the 12 months period starts, as there is not formal approval process and no white paper is required?
<u>3a. No additional white paper shall be required in any such subsequent resale of crypto-assets or final placement of crypto-assets through crypto-asset service providers, or when asking for admission to trading as long as a white paper is available in accordance with Article 5 and the offeror responsible for drawing up such white paper consents to its use by means of a written agreement.</u>	SE: SE supports the addition. RO: We agree. NL: The reference to “Any such subsequent resale” seems to come out of thin air here. There is no previous reference to or mention of a “subsequent resale”.

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	IE: Seems reasonable LU: We agree with the introduction of the new paragraph. IT: The current proposal does not include a validity date for the white paper, contrary to what provided by the Prospectus Regulation. We question whether it should be appropriate to align MiCA to the Prospectus Regulation also in this respect. We believe that it should be possible not to produce a white paper for subsequent resale of crypto-assets or admission to trading only in case a validity date for the white paper is introduced in MiCA and the resale or admission to trading takes place before its expiration. Otherwise, the market might not have sufficient and updated information on the crypto-asset. PL: Reasonable change.
<u>Explanation</u> <u>In line with Art 5 of Prospectus Regulation and avoid the multiplication of white papers ; in line with the Commission proposal the obligation of a new white paper still applies if a person with no relation with the first offeror wants to make a public offer to sell its CA; do MS agree that those offers should be subject to a new white paper, as in securities? Or should the white paper be limited to the ICO? Should there be a different treatment for offers that are limited in</u>	MT: A whitepaper should remain applicable. If there are significant changes to the ICO, the rights and utility of the crypto-asset, etc, a modified whitepaper should be notified to the NCA. In the absence of significant changes, the original whitepaper may be maintained. Furthermore, it is assumed that issuers continue to provide updates on the ICO and the milestones set out within the whitepaper via the Issuer's website. The above also applies to time-limited offers. FI:

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<u>time and those which are not, as in the latter case the white paper should be always up to date?</u>	No opinion SE: To avoid the multiplication of white papers SE supports a proposal in line with the prospectus regulation, where intermediaries are allowed to use the initial prospectus. SE does not see a need for a different treatment for offers that are limited in time. CZ: In general, a white paper should be always up to date. It means that each offeror does not have to prepare a new white paper if the white paper used by previous offeror is still relevant. The white paper related to offers that are limited should be up to date in the time of the offer. IE: In general, we are of the opinion that white papers should always be up to date. This is an important point, which needs to be considered vis a vis whether all whitepapers will be available centrally in EU or not: a clear mechanism for storing and accessing whitepapers at any moment, from anywhere in the EU, must be available, so as to maintain integrity of the data originally vetted in the whitepaper and to ensure there is no discrepancy of value of information being stale for holders of CA, who purchase those CA at different times. DE: We welcome this approach. A new person/entity trying to offer those crypto assets or the public might expose investors to different circumstances than the previous one. Hence, there would be the need for a new white paper – and responsible and potentially liable entities. Also, this would be more in line with the prospectus regulation, increasing the level of investor protection. There should not be a different treatment for limited time offers since any material
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	change in the whitepaper would trigger the obligation to amend or update it accordingly as already noted by the commission proposal in Art. 11. IT: We are against limiting the white paper to ICOs. Any offerings to the public of a crypto-asset should trigger the publication of a white paper. In our understanding this is a direct consequence of the Presidency's proposal in relation to the introduction of the offeror figure. We believe that it is worth considering a better alignment with the first part of Article 5 of the Prospectus regulation so as to clarify that any resales of crypto-assets might trigger a new offer to the public. In this regard, we would welcome a clarification in the text to prescribe that, also in case an exemption pursuant to article 4 (2) has been applied in the context of the initial offering, that does not mean that such exemption is applicable also for the resale of those crypto-assets. Please consider that this aspect is particularly critical in relation to the exemption under article 4 (2) (b). Indeed, we believe that in case of resale of crypto-assets created through mining a white paper is to be produced, since the exemption under article 4 (2) (b) should not be applicable.
<u>Finally, in Title II, the Presidency proposes the following new Article 4a:</u>	
<u>Article 4a</u> <u>Admission of crypto-assets, other than asset-referenced tokens or e-money tokens, to trading on a trading platform for crypto-assets</u>	SE: SE supports the added article. RO: We agree. IE: Seems reasonable

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	PL: Reasonable change.
<u>1. No person shall ask for admission of a crypto-assets, other than asset-referenced tokens or e-money tokens, to trading on a trading platform for crypto-assets, unless that person:</u>	IE: Seems reasonable
<u>(a) is a legal entity;</u>	IT: We wonder about the alignment of this proposed provision with the Prospectus Regulation: in particular, couldn't the person asking admission to trading be a natural person too? Is there any particular reason to limit this provision to legal entities?
<u>(b) has drafted a crypto-asset white paper in respect of those crypto-assets in accordance with Article 5;</u>	IE: Seems reasonable
<u>(c) has notified that crypto-asset white paper and marketing communications in accordance with Article 7;</u>	IE: Seems reasonable
<u>(d) has published the crypto-asset white paper in accordance with Article 8;</u>	IE: Seems reasonable
<u>(e) complies with the requirements laid down in Article 6 and 13.</u>	IE: Seems reasonable LU:

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	It is unclear why reference is here made to Article 6 (marketing communication) whereas such reference does not appear under Article 4, paragraph 1(e). We would welcome additional clarification in that regard.
<u>Explanation</u>	
<u>The presidency proposes to keep the Commission proposal by copying the Art 4(1).</u>	
<u>The operator of the trading platform shall be liable to comply with this paragraph when the crypto assets are admitted to trading on its own initiative.</u>	SE: SE supports the addition. RO: We agree. IE: Seems reasonable LU: Since the exemptions to the application of Title II have be increased, the absence of white paper will be more frequent and persons asking admission to trading of crypto-assets will be liable to produce such white paper. It should be assessed whether the persons asking admission to trading of crypto-assets will accept to take the responsibility to comply with Title II instead of such issuer or offeror. We see here a risk that EU trading platforms will not be allowed to admit decentralized crypto-assets not complying with Title II and in the case they do not accept to take the responsibility of complying with Title II themselves, they will shut-down the exchanges of such crypto-assets.

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	This may end-up to push decentralized crypto-assets to choose unregulated and non-European solutions. We also question the purpose of a regulation excluding most of the current business models of the industry. IT: We support the specification. CY: We believe that the term ‘liable’ refers to civil law-contractual claims, whereas the appropriate term for compliance with regulatory provisions is ‘responsible’. Otherwise, there might be the risk that entities subject to contractual/civil law claims would be facing regulatory responsibility and vice versa.
<u>Explanation</u> • <u>Clarification that when the operator of the trading platform voluntarily lists the crypto asset the operator is deemed to be the “person asking for admission”; this enables to capture crypto assets with no identifiable offeror and to limit arbitrage (there would be the risk that all admission to trading would be voluntary)</u>	
<u>2. Upon agreement between the person asking for admission of a crypto-assets to trading on a trading platform and the respective operator, the operator may become liable for compliance with all or part of the requirements foreseen in paragraph 1.</u>	SE: SE supports the addition. CZ: We support the drafting proposal of the Art. 4a(2).

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	RO: We agree. NL: (Drafting): 2. Upon agreement between the person asking for admission of a crypto-assets to trading on a trading platform and the respective operator, the operator may become liable for compliance with all or part of the requirements prescribed by foreseen in paragraph 1. IE: Seems reasonable LU: Please see our comment above. IT: We are not in favour of the proposed addition. If an issuer wants to enter the European market it must comply with MiCA and be subject to the liabilities associated with the regulation. The operators of the trading platform have their own duties and their own liabilities. Therefore, in case the listing is requested by the issuer, the latter must be responsible for the content of the white paper. CY: See our comment directly above.
<u>Such agreement shall foresee the obligation for the person seeking admission to trading to provide all the necessary information to enable the operator to comply the requirements foreseen in paragraph 1.</u>	RO: We agree. NL: (Drafting):

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	Such agreement shall foresee contain the obligation for the person seeking admission to trading to provide all the necessary information to enable the operator to comply the requirements prescribed by foreseen in paragraph 1. IE: Seems reasonable
<u>Explanation</u> <u>Operators of crypto assets trading platforms referred that issuers (particularly third country issuers) may not want to list as they would be afraid of the liability associated with MiCA; foreseeing the possibility to transfer liability can facilitate listing in the EU.</u>	DE: The proposed treatment could lead to increased investor protection by creating additional entities being potentially liable. Extending MiCAs reach by potentially transferring liability could therefore be a viable way CY: We believe that the status of an EU CASP as a potential offeror, when offering to its clients access to third country-platforms needs to be clarified.
<u>[3. The operator of the trading platform shall be liable to comply with paragraph 1 when the person asking for admission of a crypto-assets to trading is established in a third country.</u>	SE: SE supports the addition. CZ: We support the drafting proposal of the Art. 4a(3). RO: We agree. IE:

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	Seems reasonable; aligns to discussions in WP's and brings safeguards into EU markets for CA established in third-country. LU: Please see our comment above. IT: We believe that the entry into the European market by third-country issuers should be assisted by additional safeguards. In this regard, we are in favour of the introduction of paragraph 3 in Article 4a concerning the admission to trading. Nevertheless, we reiterate that we deem it important to tackle the same issue also in relation to the offering of crypto-assets by third-country issuers. A possible solution could be requiring a duly authorised CASP to intervene in the offering, otherwise it would be advisable to require at least cooperation agreements with the third-country competent authorities. PL: We would support this option, as the enforcement of requirements on third-country issuers is difficult. CY: The issue between regulatory responsibility and civil liability is more intense here, as the offeror assumes regulatory responsibility only, which is not sufficient comfort for a third country issuer, as the civil claims' aspect remains unaddressed, in case of unintended listings.
<u>In the case referred in the previous paragraph, the person asking for admission of a crypto-assets to trading shall provide all the necessary information to enable the operator to comply with the requirements foreseen in paragraph 1.]</u>	NL: How would this be supervised, given the supervisor does not have a mandate over a party established in a third country? IE:

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	Seems reasonable
Explanation From the meeting and written comments the Presidency did not get a clear mandate to introduce such provision; the Presidency would like to test with MS again such possibility with a clear drafting proposal	FI: No opinion
4. Paragraph 1, points (b) to (d) shall not apply where:	SE: SE supports the addition. CZ: We do support the drafting proposal of the Art. 4a(4). RO: We agree
(a) the crypto-assets are fungible with crypto-assets already admitted to trading on the same trading platform in the Union;	AT: AT: We are sceptical towards the reference to “(...) are fungible with crypto-assets already admitted (...)”, as being fungible seems rather abstract and not suitable to crypto assets. We do understand that letter a is basically in line with the relevant provision of the Prospectus Regulation (PR). However, we believe that e.g. shares of huge, listed corporations and similar financial instruments the co-legislator had in mind when passing the PR are not comparable to rather heterogeneous crypto-assets. Hence, we would suggest further elaboration on a more suitable wording. NL:

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	We have concerns about this exemption. What exactly does ‘fungibility’ mean in this context? It can be interpreted as meaning that crypto assets which can be traded for each other might, be exempted. Could the Presidency offer examples of when this situation would arise? IE: Seems reasonable IT: We believe that a better alignment with the Prospectus regulation is advisable e.g. in terms of percentage of the fungible crypto-assets that can be admitted on a trading platform without a white paper. Moreover, we highlight that the admission to trading of fungible crypto-assets might affect the price of the crypto-assets originally listed. It is a risk that should be duly described in the white paper.
<u>(b) the crypto-assets are already admitted to trading on another trading platform in the Union;</u>	RO: We agree as long information is passed in a timely manner to all platforms IE: Seems reasonable IT: In relation to the proposed exemption we believe that it is worth considering that in case a financial instrument is listed on a regulated market there are ongoing disclosure obligations, while under the MiCA for crypto-assets different from ART and EMT such ongoing obligations are not foreseen. It is worth considering the introduction of a similar obligation in Title II, also taking into account the need to ensure the enforceability of MiCA by NCAs for example in relation to the respect of the thresholds prescribed by Article 4 (2a). Finally, it should be considered that the current proposal does not foreseen a validity date for the white paper.
<u>(c) when Article 4(3a) applies.</u>	

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	IE: Seems reasonable
<u>Explanation</u> • <u>In line with exemptions foreseen in Prospectus Regulation Art 1(5) (j) & (a)</u> • <u>Addressing MS concerns on the existence of several WP.</u>	PL: Reasonable change.
	End