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DOCUMENT DE TRAVAIL

De:	Présidence
A:	Groupe Services financiers et Union bancaire (Crypto Assets) Services financiers (Attachés)
Sujet:	Règlement sur les marchés de crypto-actifs (MiCA) - Réunion préparatoire au quatrième trilogue politique - Agenda annoté

FRENCH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION
Regulation on markets in crypto-assets and amending Directive (EU) 2019/1937 - Preparatory meeting for the fourth political trilogue
June 22 at 10.00 AM

1. Introduction

A fourth political trilogue will take place on June 30. The objective of the Presidency is to reach a political agreement on that day.

Following the last trilogue, the Presidency would like to check the support of the Council for some compromise proposals on important items of the file. Any flexibility from the Council to deviate from the general approach will be used only if necessary by the Presidency.

This note also lays out compromises found on issues discussed in the previous WPs.

2. Debriefing of the third trilogue

3. Discussion items for the fourth political trilogue

a. Supervision of "significant" CASP

During the previous trilogues the EP has strongly insisted on a EU-level supervision for significant CASPs, but has showed flexibility on the criteria which would be used to characterize a CASP as significant. The Presidency has thoroughly explained the rationale for keeping the supervision at the national level and has showed no openness towards the EP's demands. We have nevertheless at this stage no indication that the EP will eventually agree on a national supervision and consequently need to explore different options for compromise. Three options described below (and further detailed in ***Annex I***) can be considered.

(i) **Option 1** – direct ESMA supervision over few very significant CASPs with broad investor uptake including significant retail use across the EU (EP position).

ESMA would be in charge of directly supervising only the largest trading platforms and wallet providers (based on a very high threshold of the number of average monthly users demonstrating a significant retail use across the EU, which could be determined for example taking into account the number of users of the CASP website – 20 million for instance). ESMA supervision would be financed exclusively by fees paid by the supervised entities. Where the same entity also carries out MiFID activities, in order to ensure coherence with any MiFID supervision of the same entities at national level, close cooperation and an MoU between ESMA and national authority would be required (comparable to the cooperation between ECB/SSM and national authorities when it comes to credit institutions providing MiFID services, see Article 3(1) of the SSM Regulation).

Explanation: This option, based on EP clarifications at the last trilogue, would introduce ESMA direct supervision but would as a compromise limit it to a very small number of the very largest service providers with thresholds clearly defined in legislation based on a high penetration of retail markets taking inspiration from criteria introduced by the Digital Markets Act, and issues concerning interaction with MiFID supervision would be addressed based on precedents.

(ii) **Option 2** – home NCA can set up a College of supervisors concerning significant CASPs

This option, as well as option 3 would not be as limited in scope as option 1 but would as a compromise only create additional coordination mechanisms, without any direct supervisory powers for ESMA. Without prejudice to the responsibilities of competent authorities under MiCA, if a CASP is significant for the EU as a whole, based on indicators such as the number of users, and the volume and number of transactions, the national authority of the home Member State would set up a College of supervisors involving the national competent authorities of the Member States in which the CASP has a large use base, ESMA, and where the CASP is used in relation to significant ART or EMT, EBA and the ECB. The College would be consulted prior to key supervisory decisions. As MiCA would in this case establish a new College of Supervisors, the ESMA role would be defined by Article 21 of the ESMA regulation.

Explanation: This option corresponds to the ideas floated at the last WP.

(iii) **Option 3** – Regular update to ESMA in relation to significant CASPs coordination role and limited additional powers under Article 19 of the ESA regulation.

Without prejudice to the responsibilities of competent authorities under MiCA, in relation to crypto asset service providers which are significant to the EU as a whole, based on indicators such as the number of users, and the volume and number of transactions, the competent authorities of the home Member State shall update the ESMA Board of Supervisors at least once per year about key supervisory developments, followed by an exchange at the Board of Supervisors. Where necessary, ESMA shall make use of its existing powers set out in Regulation 1095/2010, in particular Articles 9, 29, 30, 31, 31b.

Explanation: This option would introduce a regular update and exchange at the ESMA BoS on significant CASPs, and would refer to the powers under the ESAs regulation, and would not entail any direct supervision.

Note that as **Option 2** and **Option 3** would not confer binding powers on ESMA, the criteria for determining significant CASPs would not have to be described in the same prescriptive way as under option 1. Options 2 and 3 are therefore currently describing the criteria in a more general way, leaving some leeway and flexibility for national authorities to decide in individual cases if they are met. Indeed, risks of arbitrage may be limited, as significant CASPs would be essentially subject to the same requirements and supervision by national authorities as other CASPs.

Question 1: For each option, would you be able to show flexibility if the EP makes it a condition for a political agreement?

Question 2: Is the current wording for each option acceptable to you or would you suggest improvements / specifications?

An additional element could be added to Option 2 and Option 3 to improve the identification of significant CASPs.

(iv) **Possible improvement to Option 2 and Option 3**: where competent authorities of other Member States consider that a CASP should be classified as significant, MiCA could allow them to refer the matter for binding dispute settlement under Article 19(3) of the ESMA regulation.

Explanation: this would build on and be a further development of the ESMA powers to settle disagreements concerning supervisory cooperation, as already included in Articles 83(6) and 89(3) of MiCA.

Question 3: Could you accept such an improvement to options 2 and 3?

Under all options, a point would be added to the review clause to assess the supervisory arrangements concerning significant CASPs.

b. Criteria to be characterized as significant ART or EMT

The EP insists on keeping a criteria which would relate to the international use of an ART or EMT. In view of the fact that the Council requires meeting three criteria to be characterized as significant, the EP sees merit in maintaining a larger set of criteria. The criteria initially proposed by the Commission on cross-border activity of the issuer is not acceptable to the Council because it would treat differently issuers located in smaller Member States, thus contradicting the logic of the internal market. To avoid this problem, the Presidency proposes to accept the idea of a criteria related to cross-border activities of the issuer on an international scale, and to specify that this activity is assessed outside the European Union. Hence, cross-border activity within the internal market would not be a criteria for significance. A Commission delegated act would specify the circumstances under which the activities of the issuer are considered to be significant on an international scale.

Question 4: Would this be acceptable to the Member States? Would you prefer to further specify the criteria and how?

c. NFT exemptions

To foster a way forward with the European Parliament, the Commission is working on a possible compromise regarding the treatment of NFT in the scope of the MiCA regulation. In the spirit of the Council mandate, the Presidency considers that such compromise can only be built on broad exemptions for NFT, and that the inclusion shall only cover existing and well identified risks.

Indeed, following the second political trilogue, the Commission has worked on a new compromise proposal which includes larger exemptions for NFTs than its previous one. The circulated non-paper included:

1. A full exemption of issuers/offerors and person seeking admission of NFTs to a trading platform to all obligations under Title II
2. An exemption from all of Title V, but only for issuers of NFTs who provide these services only for the NFTs which they themselves create.
3. Title VI on market abuse would apply to all transactions, orders or behaviour concerning any crypto-assets, including NFTs, also when such transactions, orders or behaviour takes place on a trading platform that is exempted from MiCA.
4. Under the general review clause an assessment should be made on the developments of NFTs and whether more requirements need to be included in MiCA.

The Presidency considers that those elements could work as a basis for compromise, although, in order to align as much as possible with the initial Council mandate and Member States views already expressed during last working parties, the scope of exemptions should be broadened, so as to ensure a proportionate approach to a limited inclusion in the MiCA regulation in order to tackle specific risks (market abuse/conflict of interest, asset handling and operational resilience risks to be covered by a reference in DORA). Those adjustments could include:

- To include a certain threshold, below which NFT related services providers would also be exempted from Title V requirements (set at such a level that in particular art auction companies would be out of scope).
- For NFT entities that would be subject to Title V, clarification to which extent and how Title V obligations shall be adapted (some of them do not seem to fit indeed with what

an NFT is and entails, for instance how to apply best execution requirement, how to apply investment advice service, etc.)
- To include in Recital 8b how NFT can qualify as another category of crypto-assets (either security token, utility token, etc.).

The last political trilogue showed the Parliament expressing openness towards the Council's position by considering that a proportionate and adapted approach was necessary, with the only inclusion of NFTs which uses mimic financial instruments ones.

While the Presidency will continue to express the well-founded reluctance of the Council to include NFTs in the scope of MiCA, the principle of including NFTs with broad exemptions could constitute a landing point. In that regard, the Presidency is asking Member States for political guidance regarding:

- Thresholds: A proportionate approach of not-own issued NFT service providers inclusion in the scope of MiCA should be ensured. Big market players may therefore be regulated by MiCA as they offer substantially important services in terms of amounts and number. Therefore, such thresholds should be based on a tool related both to the number of NFT submitted and to the value of NFTs. An auction house selling only one NFT in a 10 year period at 500M EUR, nor cross-game platform selling 100 M NFT of swords at 1 cent shall be included in the scope of MiCA. Average trading volumes or custody volumes over one year could be a first approach on that regard.

Question 5: What are Member States views on the definition of the threshold?

- The adequate level for setting the threshold: Two approaches could be distinguished: (i) to specify only in level 1 the type of criteria to be used and to delegate in level 2 to ESMA or the Commission the task of determining in the near future this threshold - which will leave sufficient time to see the market stabilize, (ii) to already include in MiCA in level 1 a precise quantitative threshold (for instance an average monthly trading volume of 500 M€).

Question 6: Which approach do Member States favour?

- Potential issues arising from the application of Titles V and VI to NFT-related CASPs: the application of Title V obligations might require some adaptations, according to comments made previously by some Member States. Mandating ESMA to define at level 2 the modalities of application to NFTs of certain rules of titles V and VI, could encroach upon essential elements of the Regulation. Hence, it would be preferable to amend provisions of the level 1 text if needed. Member States are therefore asked to provide concrete suggestions for amendments at level 1. A recital for Title VI application may also be an adequate way forward to specify how such rules would apply.

Question 7: Which Title V and Title VI provisions Member States consider strictly inapplicable to NFT – related CASP and how could they be amended?

d. Environmental impact of crypto-assets

A possible updated compromise has been discussed at trilogues based on the previous Commission services non paper (see ***Annex II***). Compared to the previous version, the following amendments have been discussed following requests made by the EP and the Presidency during the last trilogue : (i) ESMA shall develop draft regulatory technical standards instead of guidelines on the content, methodologies and presentation of information related to principal adverse environmental and climate-related impact, (ii) the review clause is strengthened with the addition of an assessment of policy options and additional legislative

measures that would be warranted to mitigate the adverse impacts on the climate and environment of the technologies and (iii) proportionality and the size and volume of the crypto-asset issued should be taken into when determining whether adverse effects are principal, which entails that there would be no disclosure on crypto-assets which are not widely used.

Question 8: Could Member States agree with this compromise proposal?

e. AML provisions compromise

List of non-compliant CASPs

At the last trilogue, the EP has agreed on integrating the register of "non-compliant CASPs" in the MiCA regulation, rather than on the TFR regulation, and agreed on restricting it to the scope of MiCA (i.e. only target CASPs that are not authorized under MiCA). The Presidency has drafted a technical proposal that covers CASPs active in the EU without authorization, as well as CASPs actively soliciting clients under the reverse solicitation framework. The Presidency estimates such register could foster exchange of information and support early detection by NCAs of illegal activities. The EP insists on granting ESMA the possibility to add CASPs to this list on its own initiative. The possible compromise drafted in ***Annex III (1)*** could be proposed to the EP. The role given to ESMA is in this proposal framed in a way that is Meroni compliant.

Question 9: Can Member States accept such compromise?

Presence of authorised CASP in high-risk AML jurisdictions (Annex III – 2)

Articles 54 (l. 754a, 754b, 754c) and 61a (l. 865i) of the EP version include an interdiction for CASPs to have their parent company in countries listed on EU list of AML high-risk third countries, as well as on the EU list of no cooperative jurisdictions for tax purposes. CASPs should not be controlled by an entity established in any of those jurisdictions either. The EP argues that such restrictions have been introduced in the past, as part of the regulation on securitisation 2017/2402 and in AIFMD.

The Presidency has informally suggested to take into account such lists in the authorisation process, but not to make it an automatic criteria for granting or refusing authorisation. This is done by making explicit that the authorisation process should duly take into account compliance with provisions of AMLD related to high-risk third countries, and in particular provisions on (I) enhanced customer due diligence (article 18a of AMLD) when dealing with entities and customers located in such countries and (ii) specific measures required by Article 45 of AMLD when the CASPs has subsidiaries in such countries.

The EP has signalled such proposal would not be enough in their views. However, the Presidency estimates that an automatic ban would be disproportionate and would be inefficient for fighting money laundering:

1. Third country CASPs located in high-risk countries would still be able to operate under the reverse solicitation regime and serve European customers.
2. Under AMLD, European CASPs would already be required to apply enhanced due diligence measures for customers located in these countries.
3. Moreover, CASPs located in listed countries, would have to apply European requirements, which include data protection, and be subject to potential supervisory decisions requesting CASPs to close down operations in such countries.

Forbidding any business relationship with entities located on AML list is one of the strongest counter-measures suggested by the FATF, and should be used as last resort.

<u>Question 10</u>: Do Member States share PCY's views? What do you think about introducing an automatic ban as proposed by the EP?

f. Transitional periods and grandfathering clauses – Appendix 1

During the last political trilogue, transitional periods and grandfathering clauses were not finally agreed, but each side showed flexibility. Technical teams agreed upon a draft compromise attached to this issue note. Under such compromise, date of application would be 18 months for CASP and general crypto-assets (as proposed by the European Parliament) and 12 months for stablecoins – ART and EMT - (as proposed by the Council), with specific provisions for Title II and Title III as per the Council mandate and provision for Title IV as per the EP mandate.

In order to finalize the compromise, the Parliament is asking the Council if Member States could show flexibility and accept that the grandfathering period for CASP that provided services in accordance with applicable law before entry into application be reduced to 18 months after the date of entry into application, as well as for the simplified procedure provision (Art 123(2) and (3) – I.1555/1556).

<u>Question 11</u>: Can Member States accept this compromise? What are Member States views on the duration of the grandfathering clause for CASP already operating?

4. Other discussion items

<u>Question 12</u>: Do Member State have any particular comments on the following items?

a. Market abuse

As explained during the 3rd working party, in order to include firms professionally engaged in trading of crypto-assets on own account, provisions related to suspicious transaction and order report (STOR) have been introduced in a new article 80a under title VI (that applies to all players in the scope of MICA) instead of article 61 (only focused on CASPs).

Moreover, in a DLT environment there are ways of committing market abuse which are not strictly related to orders and transactions. Consequently, in accordance with the remarks of ESMA, the new article 80a mentions the "consensus mechanism" as part of the aspects on which there might be STORs.

In order to clarify the repartition of competencies among national competent authorities (NCAs), ESMA will develop draft regulatory technical standards to specify the competent NCA for the detection and sanctions in case of cross-border market abuse. On top of that, a specific provision underlines clearly the importance of information transmission among NCAs.

ESMA will also develop guidelines on supervisory practices among NCAs to detect and prevent market abuse cases in order to avoid divergent approaches at the root of potential loopholes and unfair competition.

Taking into account the remarks of some Member States, article 83 on cooperation between competent authorities has also been better align with article 25 of MAR in order to allow an effective supervision. Henceforth, it is clearly stated that competent authorities shall provide assistance to competent authorities of other Member States and EBA and ESMA.

Besides, additional provisions have been introduced in article 77 to specify that ESMA shall develop implementing technical standards (ITS) to determine the technical means for appropriate public disclosure and delay of publication in order to ensure uniform conditions of application of these provisions.

Finally, taking into account the reactions of Member States, no provisions have been introduced regarding peer review and insider list.

b. Inducement

In order to establish a more consistent and robust framework, the provisions on inducements in article 73 (1a) (line 971a) have been aligned with article 24 from MIFID II.

That's why a clear distinction has been made between, on one hand, CASPs providing advices on an independent basis and portfolio management and, on the other hand, CASPs providing advices on a non-independent basis, each case coming along with specific provisions. In particular, the formers are subject to a ban on inducements.

On top of that, CASPs shall provide clients with information on all costs and associated charges.

c. Reverse solicitation

As explained during the 4th working party, it appeared necessary to strengthen the current provisions related to reverse solicitation to ensure that it does not lead to an unlevelled playing field detrimental to the CASPs located within the EU and submitted to the MICA regulation.

Consequently, ESMA and the Commission will publish on a regular basis a report on the circumvention of MICA by third-country actors in order to improve the efficiency of controls as well as consumer protection (recital 51). Moreover, ESMA will issue guidelines on supervision practices to detect and prevent circumventions, which will foster convergence and promote consistent supervision (article 53b).

d. Consequences if a NCA misses a deadline (line 352) – Annex IV

During the June 3rd Working Party, Member states were asked to provide political guidance regarding the consequences of a failure by a national competent authority to respond within the time limits of the authorisation procedures. The EP openness to revert back to the Commission's initial version was welcomed by several Member States, while others reaffirmed their strong opposition to an automatic approval of authorisation in case of failure to take a decision within the time limits laid down in this Regulation, for fear of "forum shopping". The need for a possibility of appeal was also stressed so as to ensure legal certainty and security regarding approval processes.

With the aim of aligning MiCA provisions with other financial regulations, in particular MiFID and Crowdfunding, the Commission drafted a possible compromise in this spirit, making it possible to answers questions and demands expressed by the Council, with:

- The removal of the amendment of the Council mandate, specifying that "[a] failure shall not be deemed to constitute approval of the application". Therefore the text would not specify what happens if a Competent Authority misses a deadline;
- The possibility for an issuer of an ART or a CASP, which provided all the information required, to exercise a right of appeal, if no decision is taken within 6 months of its submission of authorisation (Article 94);
- A technical adjustment, requesting CASP supervision competent authorities to notify the applicant of its decision regarding authorisation within five days of the date of that decision. It therefore clarifies that the decision is not be deemed an approval if the decision is not notified.

e. Language used to write white papers and operating rules for MiCA regulated crypto-assets

A consistent and adequate framework throughout the MiCA regulation should be adopted regarding the language used to write white papers for MiCA regulated crypto-assets, especially across Titles. The Presidency deemed there was no logic differentiating languages obligations according to the types of crypto-assets and drafted a possible way forward at technical level (see ***Annex V***).

The overall logic in the general case is to request that the white paper is drawn up either in the language of the home Member State or English referred to using "language customary to international finance". If an crypto-asset are offered or crypto-asset services provided in another Member States, white papers or operating rules shall be drawn up either in the language of the host Member States or in English, avoiding offerors and CASP operating on a large cross-border basis to draft white papers and operating rules.

One additional possibility, which has not yet been looked into, would be to give the NCAs the possibility of requesting the translation of documents into the language of the home Member State.

Several Member States already stressed the need to keep the sentence related to the summary, with the assumption that (i) the reading such summary by potential holders in the

position to make use of it would be eased if drafted in their language, (ii) avoid NCA requesting that the entirety of the white-paper be translated.

f. Definition of "placing of crypto-assets"

If the current definition of "placing of crypto-assets" from the Council mandate (article 3, line 150) is inspired by MiFID II, this definition is significantly different in that it defines the placing as an act of marketing whereas MiFID 2 placing service is focused on the active research of investors for specific operations.

Consequently, the definition from the Council mandate is too large and could limit issuers to organise general marketing of their tokens. Besides, it could require social networks platforms or market places to be authorised as CASP. Reciprocally, CASPs already authorised for the service of trading platform for crypto-assets operation could also need to be authorised for placing services.

Therefore, the Presidency proposes the following definition:

"Placing of crypto-assets means the research of specified purchasers or investors, on behalf of or for the account of the offerors or of a party related to the offeror, of crypto-assets."

g. Investment of the reserve of assets

The Parliament is concerned by the risk of an excessive concentration of the investment of reserve of assets for issuers of ARTs (article 34, lines 554). In a spirit of compromise, and in order to strengthen investor protection, the Presidency suggests to include some requirements on the model of MIFID II.

Article 4 of MiFID II delegated directive includes rules on investment of clients' funds that are held by an investment firm on behalf of the client. According to this article, investment firms shall consider the need for diversification of the client funds as part of their due diligence. This article also provides that in case the investment firm deposits client funds with a credit institution or a money market fund of the same group as the investment firm, the investment firm limits the funds that it deposits with any such group entity so that funds do not exceed 20 % of all such funds.

Therefore, the Presidency proposes the following provision:

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

Where issuers of asset-referenced tokens invest a part of the reserve of assets with a credit institution, bank or money market fund, they shall limit the funds that they deposit with any such entity so that funds do not exceed 20% of the reserve."

h. Exemption for public authorities – recital 7

During Council mandate negotiations, Member States asked the Presidency to clarify what was meant by public authorities which would benefit for the exemption of MiCA obligations.

The Presidency fears that such exemption would provide a loophole for regional or local authorities to issue general crypto-assets or stablecoins very close in nature to national currencies or the euro. Such exemption could be seen by regional or local authorities as a way

to issue regional or local currency on a very large scale, without being protected by MiCA provisions.

Therefore, the Presidency suggests to replace “by other public authorities, including central, regional and local administration” by “by other national public authorities”.

5. (Poss.) AOB

6. Conclusions

ANNEX I: Supervision of CASP – Drafting proposals

Option 1 – in legislative terms, this option would be drafted by introducing similar provisions and procedures as are currently in the text in relation to significant ARTs/EMTs.

Option 2

Add a new Article 83a

"1. Without prejudice to the responsibilities of competent authorities under MiCA, if a CASP significant for the EU as a whole, based on indicators such as the number of users, and the volume and number of transactions, the national authority of the home Member State shall set up a College of supervisors.

2. The College shall involve the national competent authorities of the Member States in which the CASP has a large retail user base, ESMA, and where the CASP is used in relation to significant ART or EMT, EBA and the ECB.

3. The national authority of the home Member States shall consult the College prior to key supervisory decisions.

4. ESMA shall have the powers set out in Article 21 of Regulation (EU) 1095/2010."

Option 3

Add a new Article 83a

"1. Without prejudice to the responsibilities of competent authorities under this Regulation, in relation to crypto asset service providers which are significant to the EU as a whole, based on indicators such as the number of users, and the volume and number of transactions, the competent authorities of the home MS shall update the ESMA Board of Supervisors at least once per year about key supervisory developments, followed by an exchange at the Board of Supervisors.

2. Where necessary, ESMA shall make use of its existing powers set out in Regulation (EU)1095/2010, in particular Articles 9, 29, 30, 31, 31b of that Regulation."

Improvement to options 2 and 3

An additional paragraph would be added to Art 83a:

"Where the competent authority of a home Member State does not apply this Article to a crypto asset service provider in spite of indications that the crypto asset service provider is significant, the competent authorities of other Member States may refer the matter to ESMA under Article 19 of Regulation (EU)1095/2010."

ANNEX II: Environmental impact

Line 15a and b and d (EP text) to be replaced by the following:

"(5a) The consensus mechanisms used for the validation of transactions in crypto assets may have a substantial environmental and climate impact. It is therefore necessary for consensus mechanisms to deploy more environmentally-friendly solutions and ensure that any principal adverse environmental and climate related impact of the consensus mechanism and issuance of the crypto-assets is adequately identified and disclosed by the relevant issuers and crypto-asset service providers. When determining whether adverse effects are principal, account should be taken of the principle of proportionality, and the size and volume of the crypto asset issued. ESMA should therefore be mandated to develop draft regulatory technical standards to further specify the content, methodologies and presentation of information in relation to sustainability indicators with regard to climate and other environment-related adverse impacts, also to ensure coherence of disclosures by different issuers and service providers. When developing such technical standards, ESMA should take into account the various types consensus mechanisms used to issue crypto-asset transactions, their characteristics and the differences between them, as well as their incentive structures and define key energy and resource efficiency indicators on the use of energy. ESMA should also take into account existing disclosure requirements and ensure complementarity, consistency and avoid double burden on companies. The Commission should be empowered to adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010."

Line 125a of EP to be deleted

Line 193b and c (EP text) to be adjusted and replaced by the following:

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

Line 218a to be added:

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

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

ESMA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after the entry into force]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010."

Line 825a (EP text) to be adjusted and replaced by the following:

"4a. Crypto-asset service providers shall make publicly available, in a prominent place on their website, information related to principal adverse environmental and climate-related impact of

the consensus mechanism used to issue each crypto-asset in relation to which they provide services.

4b. ESMA, in cooperation with EBA, shall develop draft regulatory technical standards in accordance with Article 10-14 of Regulation (EU) No 1095/2010 on the content, methodologies and presentation of information referred to in paragraph 4a of this Article in respect of the sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts.

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

ESMA shall submit those draft regulatory technical standards to the Commission by [please insert date 12 months after the entry into force]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010."

Line 1545 (review clause), to be amended as suggested by the European Parliament:

"(n) a description of developments in business models and technologies in the crypto-asset market with a particular focus on the environmental and climate impact of new technologies, as well as an assessment of policy options and where necessary any additional measures that would be warranted to mitigate the adverse impacts on the climate and environment of the technologies used in the crypto-assets market and, in particular, of the consensus mechanisms used to issue crypto-assets;"

ANNEX III: AML provisions compromise

1. Register of non-compliant CASPs

Article 91ab (NEW)

Register of non-compliant CASPs

1. ESMA shall establish a **non-exhaustive** register of entities circumventing articles 53 and 53b;

2. The register referred to in paragraph 1 shall contain at least the commercial name and**/or** the website, where applicable, of the non-compliant crypto-asset service provider **and the name of the competent authority which submitted the information**;

3. That register shall be publicly available **on the ESMA website in machine-readable format** and shall be updated on a regular basis ~~to take into account any changes of circumstances concerning the service provider included in the list or any information that is brought to its attention~~. ~~The register shall enable centralised access to information submitted by Union or third countries' competent authorities and by the EBA.~~

4. ESMA shall update the register to include any case of infringement identified on its own initiative in accordance with Article 17 of Regulation (EU)1095/2010, in which it has adopted a decision addressed to a crypto asset service provider under paragraph 6 of that Article, or any information of entities operating without the necessary authorisation or registration submitted by the relevant supervisory authorities in third countries.

Article 82

1a (new). ESMA **and the competent authorities** ~~should~~ **shall** be able to use the relevant supervisory and investigative powers referred to in paragraph 1 as regards entities listed on the register of non-compliant CASPs.

2. Authorization of CASPs

Recital 53a

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

Article 55

Assessment of the application for authorization and grant or refusal of authorization

4a. Before granting or refusing an authorization as a crypto-asset service provider that is established in high-risk third countries, as listed in accordance with Article 9 of Directive (EU) 2015/849, competent authorities shall in particular ensure that the applicant CASP complies with articles 26(2) and 45(3) and 45(5) of that same directive.

4b. Before granting or refusing an authorization as a crypto-asset service provider, competent authorities shall ensure, where appropriate, that CASPs have put in place appropriate procedures when dealing with natural persons or legal entities established in the third countries identified by the Commission as high-risk third countries, in order to comply with 18a(3) of Directive (EU) 2015/849.

ANNEX IV: Consequences if a NCA misses a deadline

The Commission proposal corresponds to the following articles. Commission modifications are highlighted in yellow.

ARTs - Article 19(1) – l. 352

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

~~***Where the competent authority fails to take a decision within the time limits laid down in this Regulation, such failure shall not be deemed to constitute approval of the application.***~~

CASPs – Article 55 (5) – l.777

Article 55(5): Competent authorities shall, within ~~*three*~~***two*** months from the date of receipt of a complete application, assess whether the applicant crypto-asset service provider complies with the requirements of this Title and shall adopt a fully reasoned decision granting or refusing an authorisation as a crypto-asset service provider. **It shall notify the applicant of its decision within 5 days of the date of that decision.** That assessment shall take into account the nature, scale and complexity of the crypto-asset services that the applicant crypto-asset service provider intends to provide.

~~***Where the competent authority fails to take a decision within the time limits laid down in this Regulation, it shall not be deemed to constitute approval of the application.***~~

Right of appeal – Article 94[1]

Member States shall ensure that ~~*any decision*~~***decisions*** taken under this Regulation ~~*is*~~***are*** properly reasoned and ~~*is*~~ subject to the right of appeal before a tribunal. The right of appeal before a tribunal shall also apply where, in respect of an application for authorisation as **an issuer of an asset-reference token or** a crypto-asset service provider which provides all the information required, no decision is taken within [six months] of its submission, in respect of an application for authorisation.

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[1] The wording is indicative as the exact wording would be reviewed by lawyer-linguist to align it with existing regulations.

ANNEX V: Crypto-asset languages

Regarding languages to be used to draft white papers and operating rules, the draft compromise reads as follow:

Titre II – Article 5(9) – I.214

Commission	European Parliament	Council	**Draft compromise**
9. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance.	9. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in ~~*a language customary in the sphere of international finance*~~***English***.	9. The crypto-asset white paper shall be drawn up in ~~*at least one of the official languages*~~***a language accepted by the competent authority*** of the home Member State ***and, if offered in another Member State, either in a language accepted by the competent authorities of each host Member State notified*** or in a language customary in the sphere of international finance. ***The respective summary shall be drawn up in a language accept by the competent authority of the home Member State and in the languages accept by the competent authorities of each host Member State.***	9. The crypto-asset white paper shall be drawn up in ~~*at least one of the*~~ ***an official language of the home Member State, or in a language customary in the sphere of international finance.*** ***If the crypto-asset is offered in another Member State, the crypto-asset white paper shall be drawn up in an*** official ~~*languages*~~***language*** of the ~~*home*~~***host*** Member State***,*** or in a language customary in the sphere of international finance.

Titre III – Article 17(4) – I.341

Commission	European Parliament	Council	**Draft compromise**
4. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance.	4. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in ~~*a language customary in the sphere of international finance*~~***English***.	4. ~~*The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance.*~~	4. ~~*The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance.*~~***[already covered in Article 5]***

Titre IV – Article 46(7) – I. 695

Commission	European Parliament	Council	**Draft compromise**
7. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in a language customary in the sphere of international finance.	7. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State or in ~~*a language customary in the sphere of international finance*~~***English***.	7. The crypto-asset white paper shall be drawn up in at least one of the official languages of the home Member State ~~*or*~~***and*** in a language customary in the sphere of international finance.	7. The crypto-asset white paper shall be drawn up in ~~*at least one*~~***an official language*** of the ***home Member State, or in a language customary in the sphere of international finance.*** ***If the crypto-asset is offered in another Member State, the crypto-asset white paper shall be drawn up in an*** official ~~*languages*~~***language*** of the ~~*home*~~***host*** Member State***,*** or in a language customary in the sphere of international finance.

Titre V – Article 68(2) – I.933

Commission	European Parliament	Council	**Draft compromise**
2. These operating rules referred to in paragraph 1 shall be drafted in one of the official languages of the home Member States or in another language that is customary in the sphere of finance. Those operating rules shall be made public on the website of the crypto-asset service provider concerned.	2. These operating rules referred to in paragraph 1 shall be drafted in one of the official languages of the home Member States ~~*or in another language that is customary in the sphere of finance*~~***and in English***. Those operating rules shall be made public on the website of the crypto-asset service provider concerned.	2. These operating rules referred to in paragraph 1 shall be drafted in one of the official languages of the home Member States or in another language that is customary in the sphere of finance. ***Where services are provided in another Member State the operating rules shall also be drafted in a language that is customary in the sphere of finance.*** Those operating rules shall be made public on the website of the crypto-asset service provider concerned.	2. ~~*These*~~***The*** operating rules referred to in paragraph 1 shall be ~~*drafted in one of the*~~***drawn up in an*** official ~~*languages*~~***languag e*** of the home Member ~~*States*~~***State,*** or in ~~*another*~~***a*** language ~~*that is*~~ customary in the sphere of ***international*** finance. ***If crypto-asset services are provided in another Member State, the*** ~~*Those*~~ operating rules ***referred to in paragraph 1*** shall be ~~*made public on the website of the crypto-asset service provider concerned*~~***drawn up in an official language of the host Member State, or in a language customary in the sphere of international finance***.

ANNEX VI: Market abuse

Article 80a

1. Any person professionally arranging or executing transactions in crypto-assets shall have in place effective systems, procedures and arrangements to monitor and detect market abuse as referred to in this Title. The person shall without delay report to the competent authority as referred to in paragraph 2 any reasonable suspicion regarding orders and transactions, including cancellation or modification thereof and other aspects of the functioning of DLT such as the consensus mechanism, that there may exist circumstances that indicate that any market abuse has been committed, is being committed or is likely to be committed.

2. Persons professionally arranging or executing transactions in crypto-assets shall be subject to the rules of notification of the Member State in which they are registered or have their head office, or, in the case of a branch, the Member State where the branch is situated. The notification shall be addressed to the competent authority of that Member State.

3. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards to specify:

(a) appropriate arrangements, systems and procedures for persons to comply with the requirements established in paragraph 1;
(b) the notification template to be used by providers to comply with the requirements established in paragraph 2;
(c) the competent authorities for the detection and sanctions in case of cross-border market abuse.

ESMA shall submit those draft regulatory technical standards to the Commission by [18 months after the entry into force of the Regulation].

In order to ensure consistent harmonisation of this Article's supervision, ESMA shall also draft guidelines on supervisory practices among NCA to detect and prevent market abuse cases by [24 months after the entry into force of the Regulation].

Article 77 (addition)

4. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine:

(a) the technical means for appropriate public disclosure of inside information as referred to in paragraph 1;

and

(b) the technical means for delaying the public disclosure of inside information as referred to in paragraphs 2 and 3.

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

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

Article 83

1.Competent authorities shall cooperate with each other for the purposes of this Regulation. Competent authorities shall render assistance to competent authorities of other Member States and EBA and ESMA. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

[…]

2.A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:

(a) communication of relevant information could adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes;

(b)where complying with the request is likely to adversely affect its own investigation, enforcement activities or, where applicable, a criminal investigation;

ANNEX VII: Inducements

Article 73

Advice on crypto-assets and portfolio management of crypto-assets

1. Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall assess whether crypto-asset services or crypto-assets are suitable for the clients, considering the clients' knowledge and experience in investing in crypto-assets, investment objectives, including his risk tolerance and financial situation, including his ability to bear losses.

Crypto-asset service providers that are authorised to provide advice on crypto-assets shall in good time before providing advice on crypto-assets inform potential clients of the following:

(a) whether the advice is provided on an independent basis;

(b) whether the advice is based on a broad or on a more restricted analysis of different crypto-assets and, in particular, whether the range is limited to crypto-assets issued or offered by entities having close links with the crypto-asset service provider or any other legal or economic relationships, such as contractual relationships, that are so close as to pose a risk of impairing the independent basis of the advice provided.

Crypto-asset service providers shall also provide potential clients with information on all costs and associated charges, including the cost of advice, where relevant, the cost of crypto-assets recommended or marketed to the client and how the client is permitted to pay for it, also encompassing any third-party payments.

Where a crypto-asset provider informs the client that advice is provided on an independent basis, that provider shall:

(a) assess a sufficient range of crypto-assets available on the market which must be sufficiently diverse to ensure that the client's investment objectives can be suitably met and must not be limited to crypto-assets issued or provided by:
    (i) the provider itself or by entities having close links with the provider; or
    (ii) other entities with which the crypto-asset provider has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided;
(b) not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the crypto-asset provider's duty to act in the best interest of the client must be clearly disclosed and are excluded from this point.

Crypto-asset service providers that are authorised to provide portfolio management of crypto-assets shall not accept and retain fees, commissions or any monetary or nonmonetary benefits paid or provided by an issuer or any third party or a person acting on behalf of a third party in relation to the provision of the service to their clients.

Where a crypto-asset provider informs the client that advice is provided on a non-independent basis, that provider can receive inducements under the conditions that the payment or benefit:

a) is designed to enhance the quality of the relevant service to the client; and

(b) does not impair compliance with the CASP's duty to act honestly, fairly and professionally in accordance with the best interest of its clients.

The existence, nature and amount of the payment or benefit referred to in the second subparagraph, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant crypto-assets service.

2. Crypto-asset service providers that are authorised to provide advice on crypto-assets shall ensure that natural persons giving advice or information about crypto-assets or a crypto-asset service on their behalf possess the necessary knowledge and competence to fulfil their obligations. Member States shall publish the criteria to be used for assessing such knowledge and competence.

[…]

6. Crypto-asset service providers that are authorised to provide advice on crypto-assets or portfolio management of crypto-assets shall for each client regularly review the assessment referred to in paragraph 1 at least every two years after the initial assessment made in accordance with that paragraph.

[…]

10. Crypto-asset service providers shall understand the characteristics of the crypto-assets it recommends or invests in on behalf of the client.

ANNEX VIII: Reverse solicitation

Recital 51 (addition)

ESMA should monitor and report annually on the scale and severity of any circumvention of this Regulation by third-country actors, as well as propose possible countermeasures.

The Commission should, in its final report, analyse the scale and severity of any circumvention of this Regulation by third-country actors and propose concrete and effective dissuasive penalties to be imposed on such entities in order to end or significantly reduce such circumvention.

Article 53b (3) (addition)

In order to foster convergence and promote consistent supervision with regard to this risk of this Article circumvention, ESMA shall also issue guidelines on supervision practices to detect and prevent circumventions to this Article.